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The Senate and the Civil War 1922-1925

Prologue, Duration and Protracted Aftermath

Dissertation submitted to the department of Modern History, Trinity College Dublin for the degree of Ph.D.

Date: November 2012

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Summary

The Senate of the Irish Free State is the principal focus of this study. The subject is approached from a variety of perspectives within the specific context of the Irish civil war. The time-frame encompasses the civil war years from 1922 to 1925 and the completion of the Senate's first triennial term. The following interrelated questions are examined: firstly, who were the members of the Upper House and what was the origin and evolution of the Senate as institution, which was inaugurated on 11 December 1922? Allied to this, as Anglo-Irish relations were central to political circumstances; what were the factors, historical and political leading to the Revolution, whose protracted resolution culminated in the civil war? Secondly how and in what manner did members of the Senate contribute to legislation and nation building as founder members of the new state? Thirdly, why did this group, who were in no way involved in the conflict at the onset, conventional or early guerrilla phases of the campaign, on becoming members of the Seanad become the centre and focus of some of the most destructive and virulent excesses of the civil war? Through exploration and analysis the central questions of this study will establish why and how the enduring perception of this body has served to overshadow and obscure the true features and characteristics of the Senate of the Irish Free State.

The Senate as constituted in 1922 had its origins in Home Rule legislation of the previous decade. The complexity of the civil war conflict was equally rooted in the preceding years. Home rule, which had been a catalyst for change was inextricably linked with and affected the rapidly changing political scene. The cumulative effects of the political and military events in this period of transition witnessed the evolution and transformation of national aspirations from the goal of home rule to that of an Irish Republic. With the establishing of Dáil Eireann and the Anglo–Irish war southern unionists accepted that change was inevitable. Seeing the Senate as their only possible source of representation in a new political order, they negotiated and lobbied for the best conditions possible for a Second Chamber.

The concerted attacks on both senators and deputies in the early days of the new administration and the government's drastic response, not only set the model for violence for months to come, but drew senators directly within the ambit of the

reprisals policy. Collectively they were psychological hostages as the IRA directed that they would be shot as a reprisal in the event of the execution of republican prisoners. Individual senators experienced trauma through intimidation, kidnapping, being shot at and having their houses burned to the ground. Detailed examination of specific attacks against members and their property, reveal that motivations were fuelled by irrational antipathy fed by prejudice, propaganda and misconceptions of perceived identities.

While examining the daily unfolding of the legislative work of the Senate, a clear picture emerges of the difficulties encountered in the transfer from the old regime to the new. The urgency of emergency legislation was testimony to the anarchic conditions prevailing, the need for society's protection and the restoration of law and order in the protracted aftermath of the conflict. The broad range of legislative work covering vital aspects of national life are discussed. Senators' extra legislative activities in the social and cultural sphere contributed to the government's aim of favourably projecting, nationally and internationally, the attributes of the new state.

Circumstances at the foundation of the state during a bitter civil war brought together three groups of political elites, members of the Senate, the Dáil and Republicans. How these three groups of political elites acted, interacted and were acted upon bring into sharp focus key issues, values and beliefs fuelling extreme reactions as evidenced by intimidation, discrimination and sectarianism. Identities, religious, cultural and political, which were fundamental to hostilities are analysed revealing a wide range of attitudes, assumptions and contrary opinions. An examination of all elements, political streams, ideological themes, together with perceptions and misconceptions reveal the multiple factors which shaped the national mood and mindset prevailing during months of civil war and subsequent years of consolidation.

ABBREVIATIONS

AA	Appropriation Accounts 1922-1925
BLO	Bodleian Library Oxford
BL	British Library
BNA	British National Archives, Kew
CAB	Cabinet Minutes (British)
C&A	Comptroller and Auditor General
CO	Colonial Office
DMP	Dublin Metropolitan Police
DT	Department of the Taoiseach
IFU	Irish Farmers Union
ILP	Irish Labour Party
IRA	Irish Republican Army
IRAO	Irish Republican Army Organization
IRA	Irish Republican Brotherhood
ITGWU	Irish Transport and General Workers Union
JP	Justice of the Peace
KC	Kings Counsel
MAD	Military Archives, Dublin
NAI	National Archives Ireland
NLI	National Library Ireland
PRONI	Public Record Office of Northern Ireland
RHK	Rothe House Kilkenny, Archives
RIC	Royal Irish Constabulary
TD	Teachta Dála, Member of Dáil Eireann
TCD	Trinity College Manuscripts Department
WSA	Wiltshire and Swindon, Archives
UCDA	University College Dublin, Archives
UKPA	United Kingdom Parliamentary Archives, House of Lords

INTRODUCTION

The Irish Free State was founded on 6 December 1922 in the midst of civil war. Five days later, on Monday 11 December, the Senate or Upper House of the new state's legislature assembled for the first time. Considering the diversity of the sixty members Senate and the circumstances attending the establishment of the Upper House, it is surprising how little attention it has received from historians, and what limited research has been undertaken on the subject. By contrast there was keen contemporary interest, as journalists in the period consistently reported on the Seanad, its personnel and debates; national newspapers in the 1920s, *The Irish Times, Irish Independent,* and the *Freeman's Journal* faithfully recorded the Senate's proceedings throughout the first triennial period. Contemporary critiques presented commentaries on a wide range of aspects of the second chamber and the legislature.[1] Modern historians have been less attentive.

It is forty-two years since there has been any serious analysis of the Seanad. Garvin's analysis in *The Irish Senate* published in 1969, delineating the structure and function of the chamber is informative and invites the reader to further research. Yet his study of the first Irish Senate consists of one, fourteen page long chapter in his comprehensive work on a later Senate.[2] There is no demographic profile of individual members of the senatorial group. Little is known of the sixty four senators who served in the first three years in the State's Legislature, at a crucial juncture in the nation's history. Attention is focused on a privileged minority section of the composition of the chamber; 'of the nominees, eight were peers, four were baronets and one was a knight....' This oft repeated mantra, consistently replicated in the literature, is a direct quote form McCracken's work *Representative Government in Ireland*, of 1958.[3]

Seldom in the literature is the true statistic cited; sixty per cent were Catholic, thirty-five percent were Protestants and of the five percent others, one was

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[1] Daniel A. Binchy, 'Proposals for a new Senate,' Studies: *An Irish Quarterly Review*, Vol. 25, No. 97, Mar., 1936, pp. 20-32; Gosnell, H.F., 'An Irish Free State Senate Election,' *Political Science Review*, Vol. 20, (February,1926), pp. 117-120; W. P. M. Kennedy, 'Significance of the Irish Free State,' *The North American Review*,' Vol. 218, No. 814, Sept. 1923, pp. 316-324; A.E. 'Twenty Five Years of Irish Nationality,' *Foreign Affairs*, Vol. 7, No. 2, Jan. 1929, pp. 204-220.
[2] Tom Garvin, *The Irish Senate* (Institute of Public Administration, 1969).
[3] John L. McCracken, *Representative Government* (Oxford, 1958).

a Jewess and three were members of the Quaker community. Their collective demographic profile is as varied and distinct as that of society as a whole. Clearly the Upper House's connections, association and identification with the British ascendency has persisted for decades into the 1950s and 60s suggesting firstly, the triumph of perception and propaganda over statistical data and secondly, a paucity of information and knowledge of this diverse group of senators of the Upper House of the Free State Legislature.

Donal O'Sullivan's work on the Senate published seventy-two years ago in 1940, is valuable. Perhaps, in deference to the fact that he knew the members personally and many were still active in society, he refrained from any close analysis of their actions and interactions. His state of the parties and breakdown of figures for various elections are of value.[4] While providing a brief historical overview of the previous decade, he gives no details of the key events or of the personnel from various traditions, constitutionalist, nationalist, labour and unionist, whose persistent political efforts influenced the shape and structure of the Senate as constituted in 1922. Evidence within the Midleton Papers reveals that O'Sullivan had requested permission to access the Earl's papers; his request was denied. O'Sullivan's own papers in UCD Archives are of little use, being limited in content and relating only to a later period. Few original sources of the period other than selective *Seanad Debates* and limited newspaper reports are cited in his work. While acknowledging the detail records provided, it is necessary at all times to be aware of the attitudes, values and historical bias, which were particularly his own.

The principal challenge of this study has been its approach and methodology; how best to structure and present research results so as to do justice to the principals, the newly nominated and elected senators; the institution, the bicameral system and second chamber of the legislature; and the context, the complex, bitter civil war conflict between two groups of warring elites, which threatened the survival of the embryonic state in 1922-23. More specifically, since it is beyond the scope of this

[4] Donal O'Sullivan, *The Irish Free State and its Senate* (Dublin, 1940).

study to discuss all 145 Acts passed into law in the period,[5] how best to chose a representative section of legislation for examination and analysis, so as to assess senators function in the process and the effectiveness or otherwise, of their contribution to the day to day legislative work of the second chamber. Further in reviewing the practical work of the Upper House it is necessary that in any evaluation, the physical, social and psychological conditions resulting from the conflict situation, and the protracted unsettled aftermath of civil war, is considered in assessing this group's contribution to laying the foundations of state. An appraisal of their extra legislative endeavours will be necessary to ascertain their contributions in the more comprehensive concept of nation building.

Approaching the project from a variety of perspectives, source material will be examined posing key interrelated questions. Firstly, who were the members of the Upper House and why were they chosen as senators? What was the origin and evolution of the Senate as institution, inaugurated on 11 December 1922? Bicameralism and the genesis and evolution of the second chambers are examined within the context of home rule legislation from 1886-1920. Allied to and interrelated with this, as Anglo-Irish relations were central to political circumstances, what were the factors, historical and political leading to revolution, whose resolution, culminated in the civil war? Thirdly, why did this group, who were in no way involved in the conflict at the onset, conventional or early guerrilla phases of the campaign, on becoming members of the Seanad became the centre and focus of some of the most destructive and virulent excesses of the civil war? Finally how and in what manner did the Senate contribute on a day to day basis, to the legislative process of establishing, protecting and laying the foundations of state. Through exploration and analysis, the central questions of this study will attempt to establish why and how the enduring perception of this body has served to overshadow and obscure the true features and characteristics of the Upper House of the Oireachtas.

Fanning claims that in the politics of the Irish Free State 'the treaty became the touchstone of political allegiance, unionist versus nationalist being replaced by

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[5] See *Irish Statute Book, Legislation Directory* 1922- 2011(eISB), produced by the Office of the Attorney General and reproduced by permission of the Houses of the Oireachtas; O'Halpin, Eunan (1996) *Partnership program managers in the Reynolds/Spring Coalition, 1993-1994:an assessment.* DCU Business School Research Paper Series (Paper No. 6), Dublin City University Business School, Ireland. p. 9.

pro-treaty versus anti-treaty.'[6] This points to the bipolar model characteristic of much of the literature on the period. Equally it points to a challenge for this study. Such a model is inadequate to provide an authentic representation of the characteristics and function of this specific group of senators. Sourcing personal papers and correspondence of the principals was the first task to eliciting the views, opinions, interests and preoccupations of their originators. Among the papers and correspondence examined are those of senators Dunraven, Glenavy, Horace Plunkett, Peter DeLoughry, Esmonde, Alice Stopford Green, James Douglas, Jameson, MacLysaght, MacPartlin, Maurice Moore, O'Rourke, Wicklow and W.B. Yeats. Personal and filmed interviews provide a more nuanced portrayal of the period. But a more pluralist, organic approach is needed to establish the political streams responsible for the formative influences of the group in the decade prior to assuming senatorial office.

A wide range of archival material from both Irish and British repositories is examined revealing, actions and interactions of key personnel whose policies drove the political momentum in the formative years from 1912-22. The British tradition of maintaining records ensures an invaluable source of information on the period. Analysis of the personal papers of Lloyd George, Bonar Law, Walter Long, Midleton and J. H. Bernard reveal the growth and deterioration of ongoing Anglo-Irish relations, of both unionist and nationalist streams. The latticework correspondence of Churchill, Bernard, Midleton, Desart, Frances Stevenson, Lloyd George's secretary, Margo Greenwood and James Campbell bring into sharp focus the fears, aspirations, expectations and in many instances the perceptions and misconceptions of both unionist and nationalist traditions.

One of the merits of this study lies in its examination of the little used Midleton, Bernard and Wicklow papers which clearly indicate that southern unionists were not only proactive and determined to ensure their continued prestige and political future in the new Ireland, but were in many instances responsible for British policy decisions taken in this period. Ironically those whose efforts were most determined and persistent in effecting the Senate as constituted in December 1922, Midleton, Desart and Donaghmore, declined Cosgrave's offer of nomination to the

[6] Ronan Fanning, 'The British Dimension,' *The Crane Bag,* Vol. 8, No. 1, 1984, pp. 41-52.

Senate on grounds of the second chamber's limited powers. These papers are evocative of developments and changing trajectories, of divergent traditions unionist, national and republican. Two persistent themes dominate in Bernard's records; suspicion and distrust of the power and influence of the Catholic Church, and unionist's ever-increasing fear of republicanism.

This was the formative decade that witnessed the growth and development of senators' respective political and cultural views and allegiances. Tom MacPartlin papers and those of Tom Johnson, chart the Labour stream from source in 1912. The commitment of future senators Thomas Farren, Thomas Foran, John T. O'Farrell and Michael Duffy is manifest in Irish Labour movement activities through the period. The DeLoughry and O'Rourke papers reveal the transformation of nationalist political values; both served prison sentences, as did Martin Fitzgerald. James Douglas' papers indicate that like others, he objected to being identified as either nationalist or unionist, but was consistent in his political commitments. Alice Stopford Green's papers are a rich repository of decades of nationalist cultural endeavours. Senators Gogarty, Yeats, MacLysaght and Hyde have equally recorded their literary and cultural pursuits. Through this preceding decade these various streams occasionally merged, but for the most part, developed separately to eventually coalesce in 1922 in the diverse features and characteristics of the Senate's personnel.

A more personal stream of note is that of James Campbell, future Chairman of the Senate. The literature's abiding image of Campbell, is of his association with Ulster, Carson and 1912. His considerable correspondence and political documents of the period are therefore essential to portray his true image. In the interim years Campbell, now Lord Glenavy, had modified his unionist views, advising Lloyd George in 1916 that 'partition was a desperate and dangerous gamble.' He claimed the failure of the Convention in 1917 and 18 was due to 'the unutterable hostility of Ulster delegates,' [7] he 'was wholly against conscription'[8] and expressed his 'admiration for the young disciplined

[7] UKPA Lloyd George Papers, F/180/3/5, Campbell to Lloyd George, 23 Sept. 1919.
[8]BNA Midleton Papers, 30/67/2292, Midleton to Lord Stamford, private secretary to the King, 4 May 1918.

members of Sinn Féin.'[9] During the Anglo-Irish war he exercised a moderating influence which was resented in Castle circles, leading to his retirement as Lord Chancellor in 1921.[10] In July 1922 on the invitation of the Provisional Government, he served as chairman of the Judiciary Committee, whose findings were passed into law in the Courts of Justice Bill of 1924, thereby laying the foundations of the state's legal system existing to the present day. Yet, the abiding image of Glenavy, who is central to this study, is of his association with Ulster, Carson and 1912.

All the political documents of Irish Government Departments housed in the National Archives, UCD Archives and other repositories are revealing of the struggles and challenges of the new state. Papers and correspondence of key personnel such as Eamon de Valera, Richard Mulcahy, Kevin O'Higgins, W.T. Cosgrave, Hugh Kennedy, Diarmuid O'Hegarty, Ernie O'Malley and Gavin Duffy are indispensible to presenting a balanced picture of the political and military division leading to the outbreak of civil war on 28 June 1922.

Seanad and *Dáil Debates* are fundamental to the genesis and development of administrative and legislative functions and equally to formulating profiles of political elites of the new state. A broad spectrum of newspapers, national and provincial evoke the immediacy of unfolding events during months of civil conflict while at the same time providing a general overview of national preoccupations and concerns from both urban and rural perspectives.

Chapter one is structured in three sections to facilitate discussion and analysis of first, the senate's personnel, second, the senate as institution, and third, the historic context at its inception in 1922. The sixty members of the Upper House of the Free State legislature are presented; their demographic profile is examined from a variety of perspectives, gender, class, religion, occupation, cultural, social, political and geographic. As a primary aim of this study is to communicate the true features of all sixty principals, Tables are used in the Appendices and throughout the study providing details, facts and figures on all senators. Section two will examine the

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[9] UKPA Lloyd George Papers, F/180/3/5, Campbell to Lloyd George, 23 Sept. 1919.
[10] *The Irish Independent*, 23 Mar. 1931.

origins and genesis of second chambers and their development within the context of the Home Rule legislation of 1886, 1893, 1912-14 and 1920. Bicameralism in general is discussed considering its advantages, disadvantages and relevance in the more specific Irish context. The machinery of government proposed by legislation will be scrutinized. With comparative analysis, the profile of the second chambers will be examined in the legislatures of the six counties of Northern Ireland, the Southern Ireland Parliament established under the Government of Ireland Act 1920, and the bi-cameral legislature established for the Irish Free State under the Constitution of Saorstát Eireann Act No.1 of 1922.

Section three explores the historic events of the previous decade in the context of developing Anglo Irish relations. Four key or pivotal events, 'protracted moments' are highlighted, exploring their influence and impact on persons and events; the Parliament Act of 1911, the Easter Rising, General Election of December 1918 and the Ratification of the Treaty. Senators, from their particular political perspective nationalist, unionist or labour contribute throughout the period. Dáil Eireann and the Anglo Irish war changed the Irish political trajectory leading eventually to truce and treaty. With gradual acceptance of change, southern unionists redoubled their efforts to secure representation in the proposed Senate. An examination of their final attempts in the latter part of 1922, reveal their determination to participate in the new Irish State.

Analysis of decisions taken following ratification of the treaty, reveal influences and events which led to political polarization. Elements which split the nationalist movement, polarizing the polity into pro and anti-treatyites in the early months of 1922, are examined to establish the causal factors of civil war. Paradoxically the republican ideal, which had fuelled the revolution and reinvigorated the constitutional tradition, reasserts itself to reject compromise. Their armed opposition to existing constitutional arrangements created civic chaos, manifesting in the conditions prevailing at the foundation of the Irish Free State and the inception of the Senate in December 1922.

Building on the foundation laid in chapter one, chapter two will recount how senators were drawn unwittingly into the increasingly bitter conflict. Detailed

accounts of outrages against senators are presented. Due to the poor quality of the few available photographs of senator's burnt out dwellings, the writer made the decision not to include them in the study. However, the outrages are supported by a Table indicating dates, type and frequency of IRA attacks. A map delineating numbers and locations provides the geographical dispersion of attacks. Analysis of records confirms the trauma experienced by individual senators, through intimidation, kidnapping, being shot at and their houses burned to the ground. Collectively senators were psychological hostages as the IRA directed that they would be shot as a reprisal in the event of the execution of republican prisoners.

'How elites perform under the strain of conflict' Kissane argues, 'is a key issue in the analysis of any civil war.'[11] By the latter phase of the war the reprisal policy was central to and operated by both sides in a conflict marked by bitter hostility. Both sides were obdurate. Both resisted any attempts at peace negotiations. Determined by an extensive examination of newspaper reports, an appraisal of the national mood at this juncture reveals an increasingly war weary population. International press reports decry the ongoing Irish civil war while at the same time accepting the necessity of protecting democracy. With a growing country-wide momentum for peace Senators Douglas and Jameson are approached by de Valera with a request that they act as peace negotiators between Republicans and the Government. Analysis of Seanad records chart the steps which eventually lead to a cessation of hostilities. As the House becomes more settled, Tables of senators' attendance and contributions to debates will lend greater clarity to the ongoing operations of the second chamber.

Coterminous with chapter two, chapter three presents the legislative work of the members indicating how the ongoing conflict impacted on the quality and pace of day-to-day legislative work in the House. The initial and primary constitutional task of the Seanad, was to establish a set of rules and regulations for practice and procedures which were ultimately formulated within the Seanad's *Report of the Committee on Procedures relative to Standing Orders.* Within the context of the civil war, there was immediacy and urgency in transferring from the old regime to the new. Legislative powers as defined in

[11] Bill Kissane, *The Politics of the Irish Civil War* (Oxford, 2005), p. 65.

the Constitution are discussed. The legislative process in relation to bills is charted, indicating the interaction of members of the Executive and those of the Upper House. A broad range of legislative work covering vital aspects of national life will be analysed. Evidence confirms that despite the conflict the legislative work of laying the foundations of state proceeded at a steady pace.

As conditions became more settled a primary aim of the government was to ensure the favourable projection, nationally and internationally, of the attributes of the new state. James Douglas, who had served on the constitution committee, introduced the League of Nations (Guarantee) Bill in the Seanad in March 1923 and would represent Ireland at the Inter-parliamentary Union in Copenhagen in the same year.

Chapter four charts the various steps in the process of consolidation and nation building. Relations between Seanad and Dáil are examined. The passage into law of the Courts of Justice Bill, the Army Mutiny, Aonach Tailteann, international relations and resolution of the Boundary issue, indicate how a range of issues, legislative, security, cultural, public and political relations are managed in consolidating the foundations of the state. The Boundary Commission, a central issue for all sections of the polity, is discussed with particular relevance to its resolution. The extra legislative activities of members of the House will be examined to ascertain how and in what manner they served to strengthen and consolidate an emerging, modern Irish national identity. With growing confidence, senators of the Saorstát could look with favourable comparison to their neighbouring second chambers, the Northern Senate and the House of Lords. At home the House refused to remain silent on the contentious issue of the continued absence of senators, who were members of the peerage.

Irish historical discourse has generally presented the civil war as a conflict between two groups of political elites espousing divergent nationalist ideologies. This bipolar model of the conflict obscures the reality of that third group of political elites, members of the Upper House of the Oireachtas. Senators were not only integral to the conflict, being specifically targeted victims, but were also key

participants in its resolution as principal state and nation builders in its protracted aftermath. Based on evidence of archival material and the analysis and development of central themes and issues, this study seeks to dispel perceptions and misconceptions and reveal the true features, characteristics and contributions of senators of the Irish Free State Senate.

CHAPTER ONE

SECTION ONE

Transition, Transformation and Transfer of Power

The men who sit in the Irish Upper House will not be elected on the basis of flimsy platforms and empty promises. They will not enter politics as the henchmen of parties and bosses with their fortunes dependent upon the reputations they hope to make. Their reputations will be made and secured long before they are called upon to assume the reins of government. Their records will be behind and not before them.[1]

Within days of assuming the position of Cathaoirleach of the Irish Free State Senate on 12 December 1922, James Campbell, Lord Glenavy wrote with a considerable degree of frustration to his long term friend Andrew Bonar Law:

> From the information that reaches me from good sources, the sense of insecurity and anxiety was never more prevalent. .....I have had enough of this kind of atmosphere during the Easter rebellion and for the last four years to last me a lifetime.[2]

Glenavy not alone communicated the war weary atmosphere prevailing countrywide in December 1922, the anxiety and abhorrence at the prospect of its continuance in the months ahead, but equally his utter rejection of the cumulative stress and difficulties of the preceding years of revolution. The crisis civil war circumstances and civic chaos prevailing at the foundation of the new state must be critiqued within the context of the preceding transformative years of revolution. While Glenavy pointed to the Easter Rising as the source of the existing conflict, evidence suggests that he was much more personally involved with the earlier origins of the revolution.

Ironically Glenavy, who had been intimately involved with the political and judicial processes during those years, had the unique distinction of being present at the

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[1] H.C. Black (ed), 'Observations on the Bicameral system,' in *Constitutional Review,* Vol. 10, No.1, Jan.-Oct. (1926), p. 123.

[2] UKPA Bonar Law Papers, 108/3/2, Glenavy to Bonar Law. One of a series of letters urging that he Glenavy, be appointed to the Law Lordship, 2 Dec. 1922.

launch of, what Labour leader Thomas Johnston terms, the 'victorious but bloodless rebellion in Ulster' in September 1912.[3] Glenavy, together with Edward Carson, James Craig, Lords Beresford, Londonderry and other prominent Northern unionists, signed Ulster's Solemn League and Covenant promising to 'use all means which may be necessary to defeat the present conspiracy to set up a home rule parliament in Dublin.'[4] For two years following the overt unionist opposition, civil war threatened to overwhelm the polity. This singular act of defiance initiated a process which was responsible for the introduction of paramilitary groups into Irish society, thereby triggering a decade of revolution encompassing the Easter Rising, the War of Independence and ultimately Civil War.

The Senate or Upper House of the Oireachtas, where Gleavy presided as Chairman for the duration of its first triennial period from December 1922 to July 1925, had its origin and evolution within the framework of three decades of home rule legislation. From the outset, with the introduction of the first Home Rule Bill in 1886, the attempt to settle the Irish question by constitutional means was fraught with difficulties and outright opposition. The legislation for second chambers formulated in four Home Rule Acts over a period of almost thirty years, presaged the form and characteristics of the Upper House as specified in the 1922 Constitution. Though revolutionary nationalism held sway between 1916 and 1921 the constitutional tradition prevailed, firstly, to establish Dáil Eireann in 1919 and finally in establishing the bicameral system of the Oireachtas of the Irish Free State in December 1922. Despite 'the sense of anxiety and insecurity' engendered by civil war conditions, Glenavy and his fellow senators assembled to establish Seanad Eireann on 11 December 1922.

This chapter is structured in three sections, to facilitate the discussion and analysis of (i) the senate's personnel, (ii) the senate as institution, and (iii) the historic context at its inception in 1922. The sixty members of the Upper House of the Free State legislature are presented; their demographic profile is examined from a variety of perspectives, gender, religion, class, occupation, cultural, social, political and geographic. In section two the origins and genesis of second chambers is explored within the context of the four Home Rule Bills of 1886, 1893, 1912-14 and 1920.

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[3] PRONI, IFN/ 7A/2/47, 28 Sept. 1912.
[4] Ibid., IFN/ 7A/2/51, 28 Sept. 1912.

Bicameralism in general is discussed considering its advantages, disadvantages and their relevance in the more specific Irish context. The machinery of government proposed by legislation is scrutinized, and with comparative analysis the profile of the second chambers examined in each of the legislatures; for the six counties of Northern Ireland, the Southern Ireland Parliament established under the Government of Ireland Act 1920, and the bi-cameral legislature established for the Irish Free State under the Constitution of Saorstát Eireann Act No.1 of 1922.

Section three explores the historic events of the previous decade in the context of developing Anglo Irish relations. Four key or pivotal events, 'protracted moments' are highlighted, exploring their influence and impact on persons and events. Subsequent to the Parliament Act of 1911 and the introduction of the Home Rule Bill 1912, Ulster unionists are revealed as an implacable force resisting and obstructing Home Rule legislation. Analysis of the second pivotal moment, the Easter Rising, indicates that the republican ideal reinvigorates and inspires separatists to choose and utilize constitutional channels, leading to the third 'moment; the triumph of the General Election of December 1918. The collective consciousness progressively transforms national aspirations from the goal of Home Rule to that of an Irish Republic. The confluence of political and military events, the Irish and Sinn Féin Conventions of 1917, the conscription crisis and the phenomenal rise and influence of the Sinn Féin movement gradually changes the balance of power. British policy becomes increasingly coercive leading to deterioration in Anglo Irish relations. Unionists persist in their efforts to resist home rule and representatives of Labour co-operate with Sinn Féin on the proposed election.

The establishing of Dáil Eireann and the Anglo Irish war changed the Irish political trajectory leading eventually to truce and treaty. Southern unionists with gradual, though reluctant acceptance of change redoubled their efforts to secure representation in the proposed Senate. An examination of their final attempts in the latter part of 1922 reveals their determination to participate in the new Irish State.

Analyses of the decisions taken following the fourth key moment, ratification of the treaty, reveal influences and events which led to political polarization and the outbreak of hostilities. Those elements which split the nationalist movement, polarizing

the polity into pro and anti-treatyites in the early months of 1922 are examined to establish the causal factors of civil war. Passing the Constitution Bill was the Provisional government's primary concern in the latter months of the year. Republicans had refused to compromise on treaty conditions to end to the war with Britain; they further refused to compromise on the contradictions within the constitution. Paradoxically the republican ideal, which had fuelled the revolution and reinvigorated the constitutional tradition, reasserts itself to reject compromise. Their armed opposition to existing constitutional arrangements created civic chaos, manifesting in the conditions prevailing at the foundation of the Irish Free State and the inception of the Senate in December 1922.

Process, Procedures and Transfer of Power

On the 6 December 1921, a jubilant Lloyd George had announced to his cabinet 'early this morning a Treaty of Peace has been signed by the representatives of the British and Irish peoples.'[5] The proposed peace resolution augured well for Ireland following two extended years of Anglo-Irish conflict. In Dublin, Dáil Eireann approved the treaty on 7 January.[6] De Valera resigned two days later; anti-treaty deputies left the Dáil on the following day and Arthur Griffith was unanimously elected President.[7] Ward maintains that with the Dáil's approval of the cabinet, 'authority was transferred in a very orderly way from a cabinet led by De Valera to another led by Griffith, which had the support of a majority of the Dáil.[8] The British continuing to refuse recognition or acceptance of Dáil Eireann, called for the establishment of a Free State Provisional government to meet to approve the treaty. The government was to be formed from MPs elected for constituencies of Southern Ireland under the terms of the 1920 Government of Ireland Act. The meeting was convened by Griffith, as leader of the Irish delegation in London, not by the Lord Lieutenant, as would have been required by law and it did not include the southern Senate.[9] On 14 January, in accordance with the terms of the treaty approved by the majority of the Dáil, the treaty was formally endorsed and a Provisional government was set up under the leadership of Michael Collins. Ward argues that the specific requirements insisted upon by the British, were a challenge to 'the legitimacy of Dáil Eireann' that they refused to acknowledge. The two

[5] BNA CAB/24/131, 6 Dec. 1921.
[6] *Dáil Debates*, (T), Vol. 3, Col. 345-46, 7 Jan. 1922.
[7] *Dáil Debates,* Vol. 3, Col. 410, 10 Jan. 1922.
[8] Ward, *The Irish Constitutional Tradition*, p. 165.
[9] Ibid.

governments, whose personnel were virtually identical, agreed that a general election should take place at the earliest possible moment. In an effort to reconcile the differences and stem the widening rift which had emerged following the treaty, it was decided to proceed with the drafting of the Constitution so that it might be published and presented to the people 'before the election.'[10]

Following the signing of the treaty a series of procedures were undertaken by the British government to legalize the transfer of power from the United Kingdom to the Irish Free State. Passed at Westminster on 31 March 1922, The Irish Free State Agreement Act confirmed the treaty and empowered the King to transfer governmental powers to the Provisional government. From January to June 1922 the Irish and British wrestled with the problem of how to translate the guidelines supplied by the Anglo-Irish Treaty into a constitution that both governments could accept.[11] The two-fold challenge for the Provisional government lay on the one hand, in the demand to satisfy conflicting Irish and British interests and on the other, in the increasingly urgent necessity to reconcile pro and anti-treatyites. Consequently one of the Provisional Government's first acts in January 1922 was the selection of a committee to draft the new constitution. On 6 December, following months in the process of drafting, the Irish Free State Constitution went into effect. The interim ten months were to witness some of the most formative events of the decade, the Irish civil war, the deaths of Arthur Griffith and Michael Collins, the founding of the Irish Free State and the establishing of its bicameral legislature with the Third Dáil or popular chamber and the second chamber or Upper House, the First Seanad Eireann

Preparations for the Constitution

The committee selected to draft the constitution met for the first time on the 24 January 1922.[12] There were eight members, under the chairmanship of Michael Collins, Hugh Kennedy, legal advisor to the Provisional Government; James G. Douglas, a business man and Quaker (Senator); Darrel Figgis, TD and vice-chairman; C. J. France, an American lawyer; James Murnaghan, Professor of Jurisprudence in UCD; John O'Byrne, a barrister; Alfred O'Rahilly, Professor of Mathematical Physics in UCC and

[10] *Dáil Debates*, Vol. 2, Col. 91, 28 Feb. 1922.
[11] Ward, *The Irish Constitutional Tradition*, p. 164.
[12] UCDA, Kennedy Papers, P4/ 299, see *Irish Times*, 31 Jan. 1922.

James McNeill, retired from the Indian Civil Service.[13] Michael Collins as chairman of the drafting committee, attended only two meetings and 'the effective chairmanship fell to his deputy Darrell Figgis, a writer, who was Arthur Griffith's choice for the committee.[14] The committee presented three separate drafts to the Provisional Government in early March. These were scrutinised and amended at twelve cabinet meetings between April and the end of May. Finally on the 26 May 1922, Michael Collins brought the new agreed version to London.[15] Following intense negotiations, a substantially amended draft was agreed by both governments on 15 June, and though not entirely satisfied with conditions, southern unionists reached an agreement on the nature of the Senate as it was to be constituted.[16] Provisions relating to the Oath, the Governor General, the Privy Council and the symbolic vesting of authority in the King were reluctantly agreed. The Provisional Government accepted the amendment and the revised draft was published in the national press on the morning of the general election 16 June 1922.[17]

From a British perspective the constitution was to provide the country with legislative independence, while at the same time protecting vital British interests in Ireland. For anti-treatyites it was a publication confirming their worst fears, as they had refused to compromise on the terms of the treaty it was hardly likely that they would compromise on the constitution. Keogh defines it as a document with 'the King stamped all over it.'[18] Difference and division, principally on the issues of the oath and the Crown which had emerged following the signing of the treaty, had become more entrenched in the interim months. Farrell claims that the constitution served to confirm and strengthen those differences 'already tearing pro and anti-treaty politicians and their supporters apart.'[19] For the Provisional Government, compromise was the price they were prepared to pay for independence; though abhorrent to many the imposition of the Crown conditions was tolerated for a greater good. Ward argues that 'such an odd combination of monarchy and popular sovereignty could only be the result of a

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[13] McCracken, *Representative Government*, p. 54.
[14] Ward, *The Irish Constitutional Tradition*, p 167.
[15] Farrell, *De Valera's Constitution*, p. 25.
[16] BNA, Midleton Papers, 30/67/2981, Midleton, Bernard, Jameson & Donaghmore met with Churchill, Collins, O'Higgins & Kennedy in the office of the Secretary of State for the Colonies, 13 June 1922.
[17] *The Irish Times*, 16 June 1922. *Freeman's Journal*, 16 June, 1922; *Irish Independent*, 16 June 1922.
[18] Dermot Keogh, *Twentieth Century Ireland: Revolution and State Building* (Dublin, 2005), p. 7.
[19] Farrell, *De Valera's Constitution,* p. 26.

compromise' adding the rejoinder that 'not every compromise in politics makes complete sense.[20]

Ironically the one group who had no problems with the imposition of Crown conditions, southern unionists, were no more satisfied with the constitution than either pro or anti-treatyites. The third Dáil met on 9 September and the on 18th W.T. Cosgrave, introducing the Constitution of the Irish Free State (Saorstat Éireann) Bill, divided it into three parts, (i) Articles that had been agreed upon with the British Government, (ii) Articles, which covered the agreements reached with the southern unionists and (iii) the remaining Articles.[21] He indicated that the Government intended to stand by the first two groups, but in relation to the third group there was a free vote in the assembly.[22] Aware that such a decision would not meet the expectations of those present Cosgrave rationalized:

> They may not represent all that members might wish, but they do represent the maximum that our representatives were able to secure at that time, and, I should say, now. And it will be found that, if compared with the Constitutions of the other members of the Commonwealth; they are equal to the best of them.[23]

In relation to section (ii) Cosgrave explained that it was a matter of honour to fulfilling a promise:

> Made in much the same way as the Articles of Agreement with the British Government that is, the Agreement entered into with the representatives of the southern unionists on the one hand and Mr. Griffith on the other....I believe the Minister for Home Affairs was also associated with him.[24]

The agreement reached with southern unionists in no way met their expectations and they continued, through a series of meetings with the Provisional government up to late November to have the powers of the Senate increased. During September and October

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[20] Ward, *The Irish Constitutional Tradition*, p. 169.
[21] Dáil *Debates,* Vol. 1, Cols. 354-88, 18 Sept. 1922; McCracken, *Representative Government*, p. 55.
[22] UCDA, Hugh Kennedy Papers, P4/220, 26 Aug. 1922.
[23] *Dáil Debates*, Vol. 1, Cols. 354-55, 18 Sept. 1922.
[24] Ibid.

the draft was debated in the Dáil[25] and the Constitution of Saorstat Eireann Bill, proposed by Kevin O'Higgins and seconded by Ernest Blythe, was ratified on the 25 October. [26] On 6 December, after a brief debate in the British Parliament and just within the twelve months limit specified by Article 17 of the Treaty, the Irish Free State and its Constitution came officially into existence.[27] Having received the royal assent on 5 December, the new state was constituted on Wednesday 6th by the No. 1, Act of 1922, defined as, 'an Act to enact the Constitution of the Irish Free State [Saorstát Eireann] and for implementing the Treaty between Great Britain and Ireland signed at London on 6 December 1921.' At that first official Dáil sitting, the newly elected President W.T. Cosgrave presented his list of members nominated to Seanad Éireann.[28] Two days later the Dáil confirmed the thirty members elected to the second chamber.[29] On Monday 11 December the bicameral system of the new legislature came into operation as the Senate or Upper House of the Oireachtas assembled for the first time.[30]

Establishing the Senate

Senator James G. Douglas, Leas Chathoirleach of the Seanad and Michael Collins' nominee on the Constitution Committee, maintained that the task before them in drafting the constitution was to devise a second chamber suitable to a democratically governed State – one which would have sufficient power to enable it to play a real part in the legislature, and make it worthwhile for persons of ability to become its members. The character of its personnel he claimed, 'should command the respect if not always the complete approval of the people of the country.'[31] Article 30 of the Constitution specified the composition of Seanad Eireann: 'it shall be composed of citizens who shall be proposed on the grounds that they have done honour to the nation by reason of useful public service or, because of special qualifications or attainments, they represent important aspects of the Nation's life.'[32] Eligibility for Senate membership necessitated that applicants be thirty five years or over. The requirements of Article 30 are clearly

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[25] *Dáil Debates,* Vol. 1, Cols. 1906-09, 25 Oct. 1922.
[26] Ibid, 25 Oct. 1922.
[27] Farrell, *De Valera's Constitution*, p. 27.
[28] *Dáil Debates,* Vol. 2, Cols. 28-30, 6 Dec. 1922.
[29] Ibid, 8 Dec. 1922.
[30] *Seanad Debates,* Vol. 1, Col. 6, 11 Dec. 1922.
[31] James G. Douglas, *President de Valera and the Senate* (Dublin, 1934), pp.18-19.
[32] *The Constitution*, 1922, Art. 30.

fulfilled by the selection of both the members nominated and those elected to the Upper House.

Senators Nominated and Elected December 1922

Senators nominated on 6 Dec.	***Senators elected on 8 Dec.***
Bagwell, John	Barnville, Henry L.
Burgess, Rt. Hon. H.G.	Barrington, William
Desart, Countess Ellen	Butler, Richard A.
Dowdall, James C.	Costello, Ellen
Dunraven, Lord	Counihan, John J.
Esmonde, Sir Thomas H.G.	De Loughry, Peter
Everard, Sir Nugent	Douglas, James Green
Eyre, Edmund W.	Duffy, Michael
Fitzgerald, Martin	Farren, Thomas
Glenavy, Lord	Green, Alice Stopford
Gogarty, Dr Oliver St John	Griffith, Sir John Purcer
Goodbody, James P.	Irwin, Cornelius J.
Granard, Lord	Kenny, Patrick W.
Greer, Sir Henry	Linehan, Thomas
Guinness, Henry S.	Love, Joseph C.
Haughton, Benjamin	Molloy, William J.
Headfort, Marquis of	Moore, Colonel Maurice
Jackson, Arthur	MacEvoy, Edward
Jameson, Rt. Hon. Andrew	MacKean, James
Keane, Sir John	MacLoughlin, John
Kerry, Lord	MacLysaght, Edward
Mahon, General Sir Bryan	MacPartlin, Thomas
Mayo, Lord	Nesbit, George
Moran, James	ODea, Michael
Plunkett, Sir Horace	OFarrell, John T.
Poe, Sir William Hutchinson	ORourke, Bernard
Wyse Power, Jenny	OSullivan, Dr. William
Sigerson, Dr. George	Parkinson, James J.
Wicklow, Lord	Westropp Bennett, Thomas
Yates, W.B.	

** Senators nominated to the Senate on 6 Dec. 1922[33]

** Senators elected to the Senate on 8 Dec. 1922 [34]

[33] *Dáil Debates*, Vol. 2, Cols. 26-30, 6 Dec. 1922.
[34] Ibid.,Vol. 2, Cols. 41-42, 8 Dec. 1922.

The difficulties anticipated by the Constitution Committee in securing suitable candidates for the Upper House were unfounded as the acceptance of the foregoing nominated and elected members ensured that Article 30 was complied with in essential details. Article 82 specified 'the first Seanad Éireann shall be constituted immediately after the coming into operation of this Constitution' and details the manner of its establishment: [35]

> The first Seanad Éireann shall consist of sixty members, of whom thirty shall be elected and thirty shall be nominated. The thirty nominated members of Seanad Éireann shall be nominated by the President of the Executive Council who shall, in making such nominations, have special regard to the providing of representation for groups or parties not adequately represented in Dáil Eireann.[36]

Kohn argues that the mode of election and composition of the second chamber represented 'one of the Constitution's most original features.'[37] A combination of two models, nomination and election was the unique system devised to accommodate the special requirements necessary in establishing the second chamber. The 'groups or parties', a clear reference to the southern unionist minority, allied with the British Government, were strongly in favour of the establishment of a Senate. The idea of a bicameral Irish Parliament was not new. The Home Rule Acts of 1893, 1912-14, the Convention of 1917 and 'the Government of Ireland Act of 1920 had included schemes for a second chamber.'[38] Elections to the Upper and Lower Houses were held in 1920 but the Dáil refused to recognize the Senate because of the Crown's power to nominate some of the members.[39] The treaty had made no provisions for a Senate and with the changing political scene unionists were increasingly vulnerable. At a meeting with Griffith and O'Higgins on 6 December 1921, certain safeguards were promised to southern unionists; (i) the adoption of proportional representation in elections for the Dáil, and (ii) due representation for unionists in the Senate. [40] Further safeguards

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[35] *The Constitution of the Irish Free State (Saorstát Eireann) Act No. 1 of 1922 and the Public General Acts passed by the Oireachtas of Saorstát Eireann during the year 1922* (Stationary Office, Dublin, 1923).
[36] *Constitution*, 1922, Art. 82.
[37] Kohn, *The Constitution of the Irish Free State*, p. 190.
[38] Garvin, *The Irish Senate,* p. 2.
[39] NAI, DE/98, 27 Apr. 1921.
[40] BNA, Midleton Papers, 30/67/2981, Midleton, Bernard, Jameson & Donaghmore met with Churchill, Griffith, Collins, O'Higgins & Kennedy in the office of the Secretary of State for the Colonies, 13 June 1922; O'Sullivan, *The Irish Free State and its Senate*, p. 76.

ensured that the nominations for the Senate were to be made on the advice of the members of the Chambers of Commerce, the College of Physicians and Surgeons, Benchers of Kings Inns and Incorporated Law Society and the Corporations of Dublin and Cork.[41] Detailed examination of ongoing negotiations between southern unionists, the British and the Provisional Government in those transitional years are recounted in Section Two of this Chapter. Southern unionists were not the only group to be given special consideration in the constitution.

Originally it was intended that the Senate contain six university members but Kevin O'Higgins transferred university representation to the Dáil, much to the satisfaction of both Deputy Gerald Fitzgibbon of the National University of Ireland and Deputy William Thrift of Trinity College, Dublin. On 4 October 1922 in the course of the Dáil debate on the Constitution Bill, Fitzgibbon expressed his unqualified approval of the new constitutional arrangements:

> I represent the constituency that sent me here, and I am satisfied, and take on my own shoulders the responsibility of deleting University representation (for the Seanad), ... in consideration of the great concession this House has made in placing University representatives in the Dáil, to assist in the legislation, instead of being put into a cooling chamber.[42]

Neither he nor his fellow representative had any desire to be associated either with southern unionists or a lesser 'cooling chamber' as Thrift confirmed his wholehearted agreement that university representation be removed from the Senate:

> I should like to associate myself with what Deputy Fitzgibbon has said. I represent the University, and it has no connection with southern unionists. On behalf of that University I associate myself with him in saying that I am prepared to accept the withdrawal of this clause..... in consideration of the concession made giving University representation in the Dáil.[43]

As this left the Senate with only fifty six members, at the Report stage of the Bill, Kevin O'Higgins proposed that the original agreed figure be maintained; 'I think we should adhere to the sixty'[44]

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[41] Ibid.
[42] *Dáil Debates*, Vol. 1, Cols. 1152- 53, 4 Oct. 1922.
[43] Ibid.
[44] Ibid.,Vol. 1, Col. 1726, 18 Oct. 1922.

Article 82 further details the mode of selection and the terms of office:

> Of the thirty nominated members, fifteen to be selected by lot, shall hold office for a full period of twelve years, the remaining fifteen shall hold office for the period of six years.
> Of the thirty elected members the first fifteen shall hold office for a period of nine years, the remaining fifteen shall hold office for a period of three years.[45]

The selection by lot of the thirty nominated senators did not take place until 8 February 1923, when lots were drawn during the Seanad debate. James Douglas Leas Chathoirleach, in the absence of the Cathoirleach requested that Senator Alice Stopford Green as the senior member present, draw the lots.[46] The Senate was renewed every three years, as a quarter of the Senators retired. For the purpose of the Triennial Elections the whole country was considered a single electoral area. Elections were held on the principles of proportional representation, the electorate consisted of all citizens over thirty years of age and there were no property qualifications of any sort.[47] Any casual vacancies caused by death or resignation were filled by the vote of 'the Senate itself and any members so co-opted were to retire at the end of the current Triennial period.'[48]

Inception of the Senate

On 11 December 1922 a majority of the fifty-six men and four women members of the Senate assembled for the first time in temporary premises in the National Museum, Dublin, while renovations to Leinster House were being completed. Article 13, of the Constitution directed that 'the Oireachtas shall sit in or near the city of Dublin or in such other place as from time to time it may determine.[49] On the following day both Dáil and Seanad were addressed by T.M. Healy, Governor General, at a joint gathering in the Dáil chamber as the constitution determined that 'the Oireachtas was to be summoned and dissolved by the representative of the crown.'[50] The first business of the Senate was to elect a Chairman or Cathaoirleach, Lord Glenavy and vice-chairman or Leas Chathaoirleach, Senator James G. Douglas.[51] Proposed by

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[45] *The Constitution*, 1922, Art. 82.
[46] *Seanad Debates,* Vol. 1, Cols. 261-63, 8 Feb. 1923.
[47] *The Constitution*, 1922, Art. 14.
[48] Ibid., Art. 34.
[49] *The Constitution,* 1922, Art. 13.
[50] Ibid.
[51] *Seanad Debates*, Vol. 1, Cols. 9-19, 12 Dec. 1922.

Senator John McLoughlin and seconded by Senator Guinness, and with only two dissenting votes, those of Senators Colonel Maurice Moore and Jenny Wyse Power, Glenavy was elected first Cathaoirleach of the Senate. Edward MacLysaght moved that James Douglas be elected as vice-Chairman and the motion was seconded by Senator Benjamin Haughton.[52]

What his fellow Senators were possibly unaware of was that the Cathaoirleach was a somewhat reluctant Chairman. Glenavy had been in almost daily correspondence in the previous weeks with his close friend, Prime Minster Andrew Bonar Law, keeping him up to date on the civil war situation in Ireland. Without naming sources he claimed, 'the rank and file of the Free State army are contemplating a coup d'état.'[53] But the political and military situation at this point was not Glenavy's primary concern. He wished to know if Bonar Law had the opportunity to consider the question of the vacant Law Lordship. For weeks previously Glenavy had been pressing his case and was depending on Bonar Law's to support and confirm his appointment as a Law Lord. Emphasising his suitability for the position he said, 'it is certain that in the coming years the Law Lords and Judicial Committee will be called on to deal with many Irish questions.'

In the first week of December Glenavy needed a decision urgently, as he was in the difficult position of having to choose. He explained, 'I have been invited by President Cosgrave to accept a nomination to the Free State Senate and he has asked for a definite reply by tomorrow.'[54] Glenavy was quite emphatic that he would intensely 'dislike' accepting this offer for any number of reasons, one being that 'the Senate as formed would be neither ornamental nor useful and for this and other causes, Irishmen had, within the last few days declined to join it.[55] Bonar Law's letter of refusal which dashed any hope that he might be appointed, received an immediate an characteristically bitter response from Glenavy, 'I will not attempt to disguise from you the hurt to my feelings and the disappointment to my ambition which your letter has inflicted.'[56]

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[52] Ibid.
[53] UKPA, Bonar Law Papers, 108/3/2, Glenavy to Bonar Law urging that he be appointed to the Law Lordship, 2 Dec. 1922.
[54] Ibid.
[55] Ibid.
[56] UKPA, Bonar Law Papers, 108/3/3, Glenavy to Bonar Law expressing anger at his failure to receive a Law Lordship, 4 Dec. 1922.

Within a matter of days however, the seventy-one year old Glenavy, despite his thwarted ambition and bitter disappointment at not being appointed a Law Lord, overcame his dislike of accepting Cosgrave's offer of nomination to the Senate, attended the first sitting of Seanad Eireann on 11 December and was elected Cathaoirleach or Chairman of the Upper House on the following day. His remarkable adaptability is evident in his acceptance speech to the Senate:

> I claim but one qualification for this honourable position to which you have appointed me today – the qualification that I am certain I hold in common with all of you, that is a love of my country and its people, a passionate desire for the restoration of peace, goodwill and unity among all Irishmen and a speedy and honourable release from the horrors and devastation of the fratricidal strife that at present is being waged in our midst.[57]

The vice chairman, James G. Douglas, at thirty-five years of age was one of the youngest members of the senate. A Quaker by religion, he was interested in politics from an early age, becoming a member of the Dublin Liberal Association, whose members for the most part were Protestant home rulers. Douglas was deeply moved by the events of the 1916 Rising and together with AE [George Russell] and others, who considered themselves neither unionist nor nationalist, were committed to the achievement of 'full dominion status' for Ireland. He was involved in the Irish Convention of 1917-18 and like so many others lobbied vigorously against conscription. At the request of his friend L. Holingsworth Wood, a leading member of the American Committee for Relief in Ireland, he was instrumental in establishing the White Cross in 1921, to assist those disadvantaged by the Anglo-Irish conflict, and ensuring that the relief was distributed on a non-political non-sectarian basis. A personal friend and admirer of both Michael Collins and Erskine Childers, it was on Collins' invitation that Douglas served on the Constitution Committee in 1922, from which time he developed a keen interest in constitutional matters.[58]

The demographic profile of the Senate reflected the diverse characteristics of population's varied perspectives, gender, religion, class, occupation, social, political and geographic. Of the thirty nominees twenty-eight were men and two were women. Equally there were twenty-eight men and two women elected members. In all there

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[57] *Seanad Debates*, Vol. 1, Col. 17-18, 12 Dec. 1922.
[58] J. Anthony Gaughan (ed.), *Memoirs of Senator James G. Douglas* (Dublin, 1998); *DIB;* MacLysaght, *Changing Times.*

were thirty-six Catholics, twenty Protestants, three were members of the Religious Society of Friends or Quakers and one, Ellen Countess of Desart was a Jewess. This composition suggests the governments' desire for diverse religious representation in the Upper House. All strata of socioeconomic status were represented in occupations from skilled labour, farming, business, banking, industry, teaching, medical and legal professions to the landowning aristocracy.

Of the thirty nominees eight were peers, four were baronets and one was a Knight, eleven had served in the British army and thirteen had been educated at English public schools, Oxford and Cambridge or Trinity College, Dublin.[59] While most of the literature cites this statistic, it is not strictly accurate; seven members were peers, the eighth representative of the peerage Senator Ellen Desart, was the widow of the late fourth Earl of Desart. Her brother in law the fifth Earl, who had lobbied consistently on behalf of unionists representation in the senate, like Midleton and others had declined his nomination to the Upper House. The Earls of Dunraven and Mayo and Sir Hutcheson Poe had been members of the Irish Landlord's Convention of 1903, which had paved the way for the Wyndham Act of the same year.[60] Mayo together with Dunraven had co-operated with the All for Ireland League of William O'Brien.

A high percentage of former southern unionists had served in politics, industry and banking in the two previous decades. Messer's Jameson and Guinness were directors of the Bank of Ireland, G.H. Greer, director of the National Stud and H.G. Burgess former Director General of Transport in Ireland. The army, commerce, publishing and the arts were all represented. The Earl of Granard was a long-term supporter of the Home Rule movement, Sir Bryan Mahon was a former Commander in Chief of the British Forces in Ireland from 1916-18. Martin Fitzgerald was proprietor of the *Freeman's Journal.* W. B. Yeats, Edward MacLysaght and Oliver St. John Gogarty, all men of letters brought their unique literary experience and expertise to Seanad discourse.

A similar differentiation marked the choice of women nominees; Jenny Wyse Power had been active in the Ladies Land League (1881-2), in local government and in

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[59] McCracken, *Representative Government in Ireland*, p. 138; Garvin, *The Irish Senate*, p. 3.
[60] *ODNB; DIB; Thom's Irish who's who* (Dublin and London, 1923); Terence Dooley, *The Decline of the big house in Ireland :a study of Irish landed families 1860-1960 (*2001)

numerous political organisations as well as running businesses and rearing a family 'who themselves contributed to public life.'[61] A nationalist, she had been a lifelong admirer and supporter of Parnell, was a member of the Gaelic League, the Dublin Women's Suffrage Association and was a co-founder of Inghinidhe na hEireann. She served on the board of guardians of the North Dublin Poor Law Union from 1903-12 and was appointed to Dublin Corporation. Her premises in Henry Street served as a gathering place for nationalists and it was here that the proclamation of the republic [1916] was signed. Though a founder member and first president of Cumann na mBan, being a strong supporter of the treaty she resigned and became a founder member of Cumann na Saoirse. Ellen Desart, by contrast was a unionist; her contribution to the city and environs of Kilkenny was immense. A former President of the Gaelic League, she resigned the position in 1915 as the association became more overtly political. Over the course of the two previous decades she founded and funded a theatre, woollen mills, a furniture factory and garden village. In 1915 she built a hospital to support the war effort and was at all times involved in the economic, social and cultural life of the city.[62]

The women elected, reflected a similar commitment and dedication to public service. Alice Stopford Green, a writer and noted historian was interested in Irish nationalism and was the principal instigator and financial supporter of the committee organized in 1914 for the purchase and importation of arms for the Irish Volunteers. Among her published works were *The Old Irish World* [1912] and *History of the Irish State to 1014* [1925]. A constitutionalist, she was a friend of Roger Casement and although horrified by the Rising [1916], she did all in her power to prevent his subsequent execution. She offered her home in St. Stephen's Green as a place of meeting and refuge for nationalists during the Anglo-Irish war.[63] Eileen Costello a London teacher, was an Irish language enthusiast and political activist. She joined the Irish Literary Society in London and later became a member of the Gaelic League. She moved to Tuam, County Galway, where she converted to Catholicism and continued her teaching career in the local Presentation convent where she commenced a lifelong interest in the collection of 'folk songs in Irish.'[64]

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[61] McNamara, M. & Mooney, P. *Women in Parliament: Ireland 1918-200* (Dublin, 200), p. 18; *DIB.*
[62] Mary Stafford, 'Countess Ellen Desart and Capt. the Hon. Otway Cuffe, Members of the Gaelic League Kilkenny 1900-1915', Thesis for a B.A., NUI Maynooth, 2003.
[63] *DIB; ODNB;* R.B. McDowell, *Alice Stopford Green : A Passionate Historian* (London, !967).
[64] Mc Namara & Mooney, *Women In Parliament*, p. 18; *DIB.*

A further indication of the diversity of the group was evident in the range and variety of the organizations and clubs to which they belonged and to which they had contributed in the previous decade. Political organizations such as Sinn Fein, the United Irish League, the Volunteer movement, the Irish Unionist Alliance, the Anti Partition League, the Irish Transport and General Workers Union and the Workers Union of Ireland collectively contributed to the formation of members' respective political ideologies and affiliations. Such formative influences manifested in beliefs and attitudes which were later expressed during the course of Seanad debates. Social, sporting and cultural clubs provided a network of supports: the Freemasons, the Gaelic Athletic Association and the Gaelic League. The Gaelic League, more than any other organization, spearheaded the Irish cultural revival at the turn of the century, attracting nationalists, unionists and labour members alike in the desire for a revival of the native language and the encouragement and support of Irish manufacture and industry. Senators DeLoughry, O'Rourke and Fitzgerald had each served a term in prison.

The arts, commerce and the medical profession were well represented among the elected, as were organised labour and farming. Farmers had nine members including R.A. Butler, chairman of the Irish Farmers Union and J. J. Counihan, a member of the Executive of the Irish Cattle Traders Association. One of the most active and notable elected members was Colonel Maurice Moore, formerly of the Connaught Rangers.[65] Earlier in the year he had been sent by the Government, as Envoyé Extraordinaire to Paris.[66] There was no legal representation among the elected members. Although Glenavy was a former unionist MP, Attorney General [1916], Lord Chief Justice (1917) and subsequently Lord Chancellor [1919], there was no practicing solicitor or barrister among the nominees. Senators representing Labour, Duffy, Farren, O'Farrell, MacPartlin and latterly Foran were among the most active members of the second chamber.

On 13 December *The Irish Times* noted that when taking the oath on the previous day, Michael Duffy of Labour had worn the badge of the Transport Workers

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[65] NLI, Maurice Moore Papers, MS 10, 581, Apr. 1921. Moore had commanded the Irish Volunteers upon their formation in 1913, was involved with the Irish Convention of 1917, and was appointed in 1920 as a Sinn Fein envoy to South Africa where he met in Apr. 1921 with General Smuts thus contributing to Smuts involvement in bringing about the Truce.

[66] Ibid., MS 10, 583, 19 June 1922.

Union.[67] As a group, the Labour members had been highly committed, active members of their union in the preceding revolutionary years. As early as 27 March 1914, Thomas MacPartlin together with Tom Johnson and Jim Larkin had signed an Irish Transport Union Congress Manifesto declaring the right of Irish workers to arm themselves in the face of the threat from Carson's Volunteers; 'if it is lawful for Carson to arm, it is lawful for us – the workers – to arm.'[68] Thomas Foran who was general president of the I.T.G.W.U. from 1913 to 1939 was arrested and imprisoned, in the aftermath of the 1916 Rising. Thomas Farren a strong nationalist, served on the committee which organized the O'Donovan Rossa funeral and was a member of the Irish National Aid Fund formed after the Rising.[69] Collectively Labour members played a crucial role in the anti-conscription campaign. MacPartlin, Farren and John T. O'Farrell were present at the special conference meeting which made the decision to withdraw Labour candidates from the 1918 general election thereby clearing the way for Sinn Féin's triumph in the polls.[70]

Again Farren, MacPartlin and O'Farrell were members of the party which met with a special delegation of the British parliamentary Labour Party which visited Ireland in 1920 to ascertain conditions prevailing countrywide at the time.[71] Like so many others attempting peace initiatives in 1921, Foran as president of the I.T.G.W.U. accepted an invitation by H.G. Burgess to meet in London with Edward Shortt, former chief secretary of Ireland from May 1918 to January 1919. Johnson, Foran and William O'Brien decided to accept the invitation issued by Burgess, whom they knew and respected since his time in Dublin as Irish manager of the company to which he belonged.[72] Though the meeting yielded little in the way of advancing a peace initiative, Labour's willingness to engage in discussions was a mark of their longstanding commitment to and involvement in the increasingly fraught political process. Labour's former decision to abstain from elections was not repeated in the general election of June 1922, though Thomas MacPartlin declined to stand.[73] Of Labour's eighteen candidates, seventeen were returned. The eighteenth candidate, John O'Farrell lost by a

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[67] *The Irish Times*, 13 Dec. 1922.
[68] J. Anthony Gaughan, *Thomas Johnson 1872-1963*(Naas, 1980), p. 36-7.
[69] Ibid., pp. 63-6; *DIB*.
[70] Ibid,. p. 120.
[71] Ibid., p. 164.
[72] Ibid., p. 175.
[73] UCDA MacPartlin Papers, P19/A/19, 2 Apr. 1922.

slim margin of thirteen votes.[74] Six months later O'Farrell. MacPartlin, Farren and Duffy together with Burgess took their seats in the first Seanad Eireann. Thomas Foran would join them in later in 1923 to fill the vacancy created by the unexpected death of his friend and Labour colleague Tom MacPartlin, who died on 20 October 1923 while attending a conference of the I.L.O. in Geneva. [75]

Geographically each of the four provinces was represented in the Senate. With the exception of counties Carlow, Cavan, Leitrim, Mayo and Westmeath and [the six counties of Ulster], all of the remaining twenty one counties were directly represented. Of the five southern counties not directly represented two, Cavan and Mayo had senate association; the Marquis of Headford had extensive lands in Virginia, Co. Cavan and Maurice Moore's original home Moore Hall, Ballyglass, Co.Mayo was later destroyed by the IRA because of his senate association. Of the sixty members twenty four lived in Dublin and the Leinster area; the remainder resided in the counties of Ulster, Munster and Connaught.

SECTION TWO

The Irish Constitution and Second Chambers

When the Constitution Committee sat to frame the 1922 Irish Free State Constitution, the concept of second chambers had not only been well recognized and accepted but had evolved to the point where James Bryce in his work on *Modern Democracies* published in 1921 could claim, 'modern thinkers and statesmen who have held, that every well framed constitution should contain some check on the power of the popular assembly, have usually found it in the creation of a second assembly capable of criticizing, amending and if need be, rejecting measures passed by the other chamber.'[76]

In 1922, the acting chairman of the Irish Constitution Committee was requested by the Provisional Government, to prepare a volume on Constitutions for the information of the third Dáil Eireann which was to act as a Constituent Assembly for

[74] *Irish Independent,* 21 June 1922.
[75] UCDA MacPartlin Papers, P19/A/29, 20 Oct. 1923.
[76] James Bryce, *Modern Democracies* (New York, 1921), p. 398.

Saorstat Eireann.[77] In the relatively short space of four months the committee produced a work which was fairly representative in its variety, a special attempt having been made 'to furnish the texts of entirely new constitutions, which had been enacted or prescribed during or since the recent European War.'[78] In geographical terms the constitutions ranged over four Continents and covered a time span from the eighteenth to the twentieth century.

Considering a variety of matters and differing viewpoints of the constitutions presented, nine were Monarchies and ten were Republics. Interestingly, the selection was presented in chronological order starting with the most recent so as to facilitate analysis and understanding of changes over a particular time span. Structuring the work in this manner, provided a clear indication of how the evolution of political thought manifested in differing forms of constitutions. While earlier constitutions tended to place the weight of power in legislative organization, later constitutions placed that power more and more with the people themselves. The latter was a feature of particular note in the Irish Free State Constitution.

Sir James Aitkins, Lieutenant-Governor of Manitoba and President of the Canadian Bar Association, in his comprehensive article 'Constitutional Development in the English speaking World' published in 1924, described what he termed 'the Anglo-Saxon-Celtic constitutional birthright; the right and duty of the people to govern themselves locally'.[79] In admiration of the independence and autonomy of such a 'constitutional birthright,' he argued that 'the last word in constitution making the Irish Free State Act, asserts that same thing and showed the continuity of the drift in Article 2, 'all powers of Government and all authority, legislative, executive and judicial are derived from the people of Ireland...'[80] Leo Kohn, in his analysis eight years later expressed a similar admiration; 'an intense democratic radicalism permeates the framework of the Irish Constitution.'[81]

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[77] *Selected Constitutions of the World prepared for Presentation to Dáil Eireann by order of the Irish Provisional Government* (Dublin, 1922).
[78] Ibid.
[79] Sir James Atkins, 'Constitutional Development in the English Speaking World,' H.C. Black (ed), *Constitutional Review,* Vol. 8, (73) Jan.-Oct. (1924), p. 71.
[80] Ibid.
[81] Leo Kohn, *The Constitution of the Irish Free State* (London, 1932), p. 112.

Aitkins considered and contrasted the influence and origins of more recent constitutions 'Australia, South Africa and the Irish Free State had before them the English, American and Canadian Constitutions and speaking generally, fixed more of the English general constitutional principles than Canada did, but fewer than the United States.[82] Hugh Kennedy, Chief Justice of the Irish Free State in his forward to Kohn's work published in 1932, emphasised the fact that the Constitution Committee were entirely free from any obligation to accept existing British or Dominion models. Consequently they could on the one hand, 'respond to the guidance of Irish history and existing Irish conditions' and on the other 'borrow of the experience of the constituted democracies of the world.'[83] They looked to the constitutions of the United States, to the continental models of France, the German Republic and also referenced those 'rules of law, affirmations and negations, enunciated from time to time over centuries, which make up collectively the unwritten constitution of Britain.'[84]

While Aitkins, Kennedy and Kohn affirmed the Anglo-Saxon-Celtic 'constitutional birthright,' democratic radicalism, and the freedom to follow the guidance of Irish history, Ward argues that the 1922 Constitution in fact 'embodied two contradictory principles.'[85] One, it claimed 'all authority, legislative, executive and judicial [are] derived from the people' and equally, it recognized the British monarch 'King George V, as head of the Irish executive with substantial powers drawn not from the Irish people but from the royal prerogative in English Common Law.'[86] The principle was clearly specified in Article 12 of the Constitution 'the Oireachtas shall consist of the King and two Houses....' the oath of Article 17, further demanded that every member of the Oireachtas before taking his seat solemnly swear to be 'faithful to H. M. King George V, his heirs and successors by law.' It was a constitutional anomaly which, even if it posed a problem for the electorate, a majority were prepared to accept in the interest of peace; the minority would not. This constitutional contradiction was forced upon Irish republicans in 1922 as the price of a negotiated independence and an end to their war with Britain.[87] Despite republican rejection of the 1922 constitutional

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[82] Sir James Atkins, 'Constitutional Development in the English Speaking World,' H.C. Black (ed), *Constitutional Review,* Vol. 8, (73) Jan.-Oct. (1924), p. 71.
[83] Kohn, *The Constitution of the Irish Free State*, p. xi.
[84] Ibid.
[85] Alan J. Ward, The *Irish Constitutional Tradition – Responsible Government and Modern Ireland 1782-1992* (Dublin, 1994), p. 15-16.
[86] Ibid.
[87] Ward, *The Irish Constitutional Tradition*, p. 15.

arrangements, Kohn's 'democratic radicalism' was evident in the annunciation and of the priority given to the personal and political rights of the people.

The inclusion of a Declaration of Fundamental rights in the Irish Constitution was of more than formal import; it marked a radical break with the pivotal conception of the modern British constitution, the doctrine of sovereignty of parliament.[88] The political and personal rights of its citizens were clearly defined and proclaimed. The inclusion in the body of the constitution, prior to its functional provisions, of a chapter of fundamental declarations in the traditional tenor of Continental Constitutions, represented a characteristic deviation of the Irish from the Dominion Constitutions.[89] American and French influence was responsible for the priority given to individual and civic rights embodied in many modern constitutions. The positioning of the 'Rights' before the functional provisions in the text, was specifically designed to emphasize their priority. For Kohn, 'fundamental rights in a modern constitution implied the limitation of parliament and the protection of minorities.'[90]

Though continental constitutions may have provided the model, its deeper inspiration was to be found in the revolutionary origin of the Constitution.[91] Kohn argues that it is characteristic of all constitutional settlements, which arise from a political upheaval that 'they endeavour to ensure the perpetual maintenance of the newly won liberties by their incorporation in the organic law of the new order.'[92] Framed on the elaborate model of the American and more recent Continental constitutions, the Irish Declaration of Fundamental Rights was threefold; one, it enunciated a general statement of the political fundamentals of the state; two, it enshrined guarantees of individual liberties and three, it directed the Legislature to enact the economic, social and cultural reforms appropriate to the new order. While Articles 2 to 11 enunciate the rights of the citizen's of the new state, Article 12 delineated the structure of its bicameral legislature.

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[88] Kohn, *The Constitution of the Irish Free State*, p. 105.
[89] Ibid..
[90] Ibid., p. 106.
[91] Ibid., p. 108
[92] Kohn, *The Constitution of the Irish Free State*, p. 108

Bicameralism Advantages and Disadvantages

Bicameralism, the practice of having two legislative or parliamentary chambers in government had both advocates and detractors. Professor Adams a strong advocate of bicameralism, cautioned against unicameral legislatures; 'I cannot think a people can be long free or ever happy whose government is in one chamber.'[93] P. Norton defines bicameral legislatures as 'constitutionally designated institutions for giving assent to binding measures of public policy; that assent being given on behalf of a political community that extends beyond the government elite responsible for formulating those measures.'[94] In the bicameral system, the governing elite serve in two chambers though reference to the 'legislature' is often considered to refer to the first chamber as for instance; the Dáil in Ireland, the House of Commons in the United Kingdom, the Lok Sabha in India and the Bundestag in Germany. Measures of public policy bills must be given approval in both houses before being presented to the head of state for assent and subsequently passed into law.

The traditional liberal justification for bicameralism is that it slows down the legislative process, renders abrupt change difficult, forces myopic legislators to have second thoughts and thereby minimise arbitrariness and injustice in governmental action.[95] Bryce argues that there was 'no such doctrine in the middle ages and neither had the restriction on democratic haste emerged in the ancient world.'[96] The councils of Greek republics and the Senate of Rome, both cited benefits resulting from the existence of two functioning bodies exercising constitutional powers. Bicameralism grew in popularity through the ages. The widespread adoption of an upper house throughout most of Europe and the wider world springs from the historical accident that Britain had a bicameral legislature in 1815, when her institutions were regarded as a model for Western Europe.[97]

Considered the 'Mother of Parliaments,' the British legislature originally developed from the assembly of estates. Five distinct estates were present in the model

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[93] Adams, cited in Douglas, *President de Valera and the Senate*, p. ii.
[94] P. Norton, 'General Introduction', in P. Norton (ed), in *Legislatures* (Oxford, 1990), p. 1.
[95] William H. Riker, 'The Justification of Bicameralism,' *International Political Science Review,* Vol. 13, No.1, Applications of Political Theory in the Study of Politics, (Jan. 1992), pp. 101-11.
[96] Bryce, *Modern Democracies*, Vol. 2, p. 398.
[97] S. E. Finer, V. Bogdaner, & B. Rudden, *Comparing Constitutions* (Oxford, 1995), p. 59.

parliament of 1295, but through the consolidation of interests, the organization of two legislative chambers, the House of Lords and the House of Commons soon evolved.[98] The origin of the bicameral system, with its two houses, was therefore more an accident than by any deliberate choice. Since the mid-eighteenth century constitutionalists have proclaimed the merits of bicameralism; the traditional justification or purpose, as stated, being that it slows down the legislative process, thereby rendering greater care, caution and attention to government action. By doing so it provides the legislature as a whole, with an additional layer or extra dimension to counter-balance the power of the executive, giving credence to the belief 'that the more branches government has, the more difficult it becomes for any one group to entirely monopolise its operation.'[99]

A legislative system, bicameralism has both advantages and disadvantages; one advantage of the second chamber being that it can relieve the lower house of pressure in the case of excessive legislation, or as is reiterated over and over by those who support the system, to put a stay on legislation that is hasty or ill considered. The disadvantages of second chambers range from, conservative dispositions which can impede or obstruct necessary legislative measures, delaying tactics which effect decision making and not least, the extra cost to the public exchequer for the maintenance of an upper house. Though opinions on bicameralism were varied, the dangers of unicameral legislatures were clearly noted and acknowledged. Marriott introduced his work *Second Chambers,* with a quotation from John Stuart Mill:

> A majority in a single assembly, when it has assumed a permanent character – when composed of the same persons habitually acting together, and always assured of victory in their own House – easily becomes despotic and overweening, if released from the necessity of considering if its acts will be concurred by another constituted authority.[100]

Mill saw the danger of granting unlimited power without checks of any kind to one group. The same reason which induced the Romans, who had two consuls, makes it desirable that there should be two chambers; that neither of them may be exposed to the corrupting influence of undivided power, even for the space of a single year.[101]

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[98] James D. Barnett 'The Bicameral System in State Legislation,' *The American Political Science Review,* Vol. 9, No. 3 (Aug. 1915), pp. 449-466.
[99] Carmichael & Baker, *Second Chambers*, p. 9.
[100] John Stuart Mill, cited in Marriott, *Second Chambers*.
[101] Ibid.

Though France created two chambers in 1830 and 1875, the dilemmas associated with having two chambers of a parliament prompted the French prelate and revolutionary Emmanuel Sieyès (the Abbé Sieyès) to remark that 'if a second chamber dissents from the first it is mischievous; if it agrees with it, it is superfluous.'[102] For Mill, a second chamber was neither superfluous nor a dilemma and while he looked to the past for confirmation of his views on the bicameral system, he equally saw the system as necessary to compensate for the inadequacies of the present. The deficiencies of a democratic assembly, which represented the general public, were the deficiencies of the public itself, want of special training and knowledge. For Mill, 'the appropriate corrective was to associate it with a body, of which special training and knowledge should be the characteristics.'[103]

By contrast, for Bentham there was no justification for second chambers; there was no special authority in a bicameral legislature. He had no respect for tradition believing that the government of England had been an in league with the aristocracy-ridden monarchy using its power on behalf of the aristocrats at the expense of the rest of the population.[104] He objected to long terms of office, which caused members to be more independent of the people and consequently neglectful of their general interest. For Bentham the participation of two chambers in the process of legislation could only lead to unnecessary delay and deadlocks due to mutual jealousies and conflict of authority. He perceived little other than the disadvantages of an upper house; the furthering of private interests, jobbery and ultimate corruption.

However the crux of Bentham's opposition to second chambers was that such a body might stultify the will of the majority.[105] On the self-preference principle - the end of government 'the greatest happiness of the greatest number' could be attained solely by the participation of all in the selection of the governors. Bentham's defence of single chambers was an integral part of his belief in majority rule.[106] While the wide acceptance of democracy produced a growing justification for second chambers,

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[102] Cited in Garret Fitzgerald 'When the tame pussy-cat Seanad grew some claws,' *The Irish Times,* 20 May 1995; Garvin, *The Irish Senate*, p. 10.
[103] John Stuart Mill, *Considerations on Representative Government*, cited in Douglas, *President de Valera and the Senate*, p. 26.
[104] Lewis Rockow, 'Bentham on the Theory of Second Chambers,' *The American Political Science Review,* Vol. 22, No. 3 (Aug. 1928), pp. 576-590.
[105] Ibid.
[106] Ibid.

Rockow reviewing Bentham's work in 1928 argued 'whatever the defects of democracy, they would not be cured by a second chamber.'[107] The usual argument against bicameralism and in favour of a unicameral system is that majorities aught always to be completely unfettered.[108] It is an interesting theory which would have been problematic had it been put to the test in the political climate of the Irish Free State in 1922-23.

The leading authority on political science in France, Professor Joseph Barthelémy, in his *Le Gouvernement de la France,* first published in 1919, stated:

> The Senate is charged in the Constitution with the mission of moderation, of balance, of stability. Its duty is to offer a resistance, at least for the time being, to the ill-considered impulses of the Chamber of Deputies, who are younger, more numerous and a more direct product of universal suffrage.

The considered opinion of the civilised world was in favour of bicameral legislatures. There wasn't any serious doubt that second chambers 'had been retained in even the most democratic countries for the very good reason that the people recognize the value of revision and of some effective check against hasty legislation.'[109] In Norway the second chamber was created by the lower house. Immediately after an election the house proceeded to select one-quarter of its members proportionately, according to parties, and these selected members form the upper chamber which has its own President and staff and which remains unchanged, except for casual vacancies, until the next general election.[110] James Douglas claimed that the committee which drafted the Constitution of the Saorstat 'very carefully examined the Norwegian Constitution, and although they recognized its merits, they did not consider that it would provide the best kind of second chamber for this country. [111]

Of the European countries maintaining the bicameral system those still in operation in the late 1920s were Sweden, created in 1809; Norway in 1814; Belgium in

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[107] Ibid.
[108] William H. Riker, 'The Justification of Bicameralism,' *International Political Science Review,* Vol. 13, Applications of Political Theory in the Study of Politics (Jan. 1992), pp. 101-116.
[109] Ibid., p. 21.
[110] Douglas, *President de Valera and the Senate*, p. 33.
[111] Senator James Douglas, speaking at the second stage of (Amendment No.24) of the Constitution Bill in the Seanad, 1934..

1836; Holland in 1848; Switzerland in 1874; and France in 1875. In Sweden the second chamber was elected on almost universal suffrage by persons of 24 years of age and upwards. In Belgium two thirds of the senate was elected and one third co-opted from distinguished citizens. The Dutch Senate was elected by Local Government bodies, which themselves were elected by universal suffrage. In Switzerland the Upper House represented the Cantons, and the senate in France was elected by the French and Colonial Departments.[112] Other bicameral states in Europe with modern Constitutions were, Hungry adopted in 1920, Austria 1919, Czecho-Slovakia and the Danish Constitution dating from 1915. Greece, formerly a unicameral legislature indicated its preference for a second chamber and adopted a bicameral system in 1926. The new Portuguese Constitution of 1933 provided for two houses and was passed into law after being submitted to a plebiscite by the people.[113] Yugoslavia formerly unicameral also adopted a bicameral system in 1933. By the 1930s Estonia, Turkey, Latvia, Bulgaria, Lithuania, Finland and Spain were the only independent states in Europe with single-chambers.

William Renek Riddell, Justice of the Supreme Court of Ontario, addressing the California State Bar Association on 12 October 1923, remarked on the change of attitude of the newest states attending the Imperial Conference in London on 1 October 1923. W.T. Cosgrave, Eoin MacNeill and Desmond Fitzgerald representing the Irish Free State were present as were representatives of all the Dominion States in the Commonwealth. Riddell was particularly struck by the independence and autonomy of two states; 'the action of the Dominion of Canada and the Irish Free State in declining to ratify the Treaty of Lausanne, was strikingly illustrative of the extent to which the sense of dependence upon Imperial diplomacy had been lost and that, without dismay or complaint from the authorities at Westminster.[114] The Irish delegates were manifesting their newly-won independence as Cosgrave had confirmed on 6 December 1922, 'we have received the position of absolute equality and freedom, not only among other States of the Empire, but among other nations of the world.'[115]

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[112] Douglas, *President de Valera and the Senate*, p. 36.
[113] Ibid., p. 37.
[114] W. R. Riddell, 'The Imperial Conference of 1923,' H.C. Black (ed), *Constitutional Review,* Vol. 8, (73) Jan.-Oct. (1924), p. 139.
[115] *Dál Debates*, Vol. 2, Cols. 14-15, Cosgrave's speech following his selection as President on 6 Dec. 1922.

Bicameralism – The Irish Context

The committee formed to draft the Irish Constitution of 1922 believed that the task before them was to devise a second chamber suitable to a democratically governed state – one which would have sufficient power to enable it to play a real part in the legislature. Article 12 of the 1922 Constitution specified:

> A Legislature is hereby created, to be known as the Oireachtas. It shall consist of the King and two Houses, the Chamber of Deputies otherwise called and herein generally referred to as Dáil Éireann and the Senate (otherwise called and herein generally referred to as) Seanad Éireann.[116] The sole and exclusive power of making laws for peace, order and good government of the Irish Free State is vested in the Oireachtas.[117]

The second chamber would have sufficient power to make it worthwhile 'for persons of experience and ability to become members; but nevertheless a second chamber which could not thwart the will of the electorate.'[118] Based on the evidence of negotiations in the establishing the second chamber, it is clear that the senate would never be in a position to thwart the will of the Dáil. James Douglas claimed that constitution committee members were in general agreement that the proposed Seanad should not be in a position 'to control the Executive and that it should not have any power over administration.'[119] Their aim was to produce a second chamber whose duty was (a) To subject every proposed law to a revision, thereby introducing improvements in form and substance and (b) To prevent undue haste in the passing of important laws by securing a period during which the opinion of the people regarding a law might be duly formed and expressed.[120]

Considering the disadvantages of second chambers 'it can be claimed that they serve no constructive purpose, often operating as nothing more than a convenient mechanism for distributing consolation prizes for political failure, appeasing politicians

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[116] *The Constitution,* 1922, Art. 12.
[117] The Constitution of the Irish Free State (Saorstát Eireann) Act, No. 1 of 1922 and the Public General Acts passed by the Oireachtas of Saorstát Eireann during the year 1922 (Stationary Office, Dublin, 1923).
[118] Douglas, *President de Valera and the Senate*, p. 18.
[119] Ibid., p. 19.
[120] Ibid.

ejected from more active public office.'[121] While the latter claims may be valid for the later years of the senate, in 1922 the existence of a second chamber served to bring a diversity of talent to the polity, while at the same time providing a political niche and safeguard for a minority group in the new political regime. Evidence has shown that in the transition from the old order to the new, a remarkable volume of reversionary work was done. Equally in the fraught civil war conditions of 1922 the familiar, more traditional bicameral legislature provided a sense of security and stability, as voiced three decades earlier by Irish Parliamentary members who confessed 'to being divided between a democratic inclination for one chamber and the feeling that two chambers would look more like a parliament.'[122]

John Stuart Mill expressed the opinion that 'if one house represents popular feeling the other should represent personal merit, tested and guaranteed by actual public service, and fortified by actual public experience.'[123] H.C. Black editor of the *Constitutional Review* quoted an article written in 1922 which clearly anticipates such 'personal merit' in the new Irish legislative structure:

> The men who sit in the Irish Upper House will not be elected on the basis of flimsy platforms and empty promises. They will not enter politics as the henchmen of parties and bosses with their fortunes dependent upon the reputations they hope to make. Their reputations will be made and secured long before they are called upon to assume the reins of government. Their records will be behind and not before them.[124]

The range of political perspectives and discussion on the second chamber are further revealed throughout this study. The Oireachtas or bicameral legislature of the Irish Free State, established on 6 December 1922, remained in existence until the abolition of the Seanad or Upper House on 29 May 1936.

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[121] Carmichael & Baker, *Second Chambers*, p. 10.
[122] BNL Minutes of a secret meeting of Irish party leaders in Dublin, 16-18 Nov. 1892, Add. MSS. 44774, F 147-48: cited in Ward, *The Irish Constitutional Tradition*, p. 67.
[123] John Stuart Mill, *Considerations on Representative Government*, cited in Douglas, *President de Valera and the Senate*, p. 26.
[124] H.C. Black (ed), 'Observations on the Bicameral system,' *Constitutional Review,* Vol. 10, No.1. Jan.-Oct. (1926), p. 123.

Origin and evolution within Home Rule Legislation

The second chamber of the Irish legislature as constituted in 1922 had its origins and evolution within the framework of the four Home Rule Bills of 1886, 1893, 1912-14 and latterly the Government of Ireland Act of 1920. While the earliest concept of home rule was formulated by Daniel O'Connell in the 1840s, it was Isaac Butt who developed and furthered the concept in May 1870 with the Home Government Association, founded for 'the restoration to Ireland of that right of domestic legislation without which Ireland can never enjoy real prosperity and peace.'[125] Most of the members of Butt's Association were Protestants who considered that they should have the right to participate in the legislative process in a 'domestic Irish Parliament.' The Association, renamed the Home Rule League in 1873, consolidated the idea as it presented a constitutional plan whereby 'domestic legislation' should be devolved to an Irish Parliament. By 1874 the concept of home rule was firmly established within the Irish polity as forty-nine home-rulers were elected to Parliament.

Butt founded the Irish Parliamentary Party whose members' chief aim was home rule for Ireland. He wanted to see an Irish parliament established which would be 'solely responsible for Irish affairs; the imperial parliament would continue to have exclusive control over imperial matters.'[126] In the proposed constitutional arrangements he recommended an Irish House of Commons, of between 250 and 300 members, chosen in an election separate from the imperial parliament, and 'the restoration of the House of Lords in an effort to attract the Irish aristocracy to his proposals.'[127] Butt had laid the foundation for home rule but it was Parnell, with the Irish Party's support for Gladstone's Liberal Government in February of 1886, who was instrumental in the introduction of the first Home Rule Bill on 8 April of that year. In his introductory speech in the House of Commons, Gladstone admitted that the time had come to discuss 'how to reconcile imperial unity with diversity of legislation.'[128]

For Parnell and the Irish Party their sole aim was home rule or a 'domestic legislature' for Ireland. Gladstone in his introduction on 8 April 1886 presented a much

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[125] David Thornley, *Isaac Butt and Home Rule* (London, 1964), p. 97. Kendle, *Ireland and the Federal Solution,* pp. 11-20.
[126] Kendle, *Ireland and the Federal Solution*, p. 15.
[127] Ibid., p. 13.
[128] *Hansard,* HC, Deb. Vol. 304, Cols. 1045, 8 Apr. 1886.

more complex perception of the Irish question and proceeded during the debate to deal systematically with the issues:

> The two questions of land and of Irish government are, in our view, closely and inseparably connected, for they are the two channels through which we hope to find access, ...to that question which is the most vital of all—namely, the question of social order in Ireland. As I have said, those two questions are in our view.....are inseparable the one from the other.

That first bill, termed The Government of Ireland Bill of April 1886, was defeated at its second stage on 8 June in the House of Commons by 341 votes to 311. The bill proposed a unicameral assembly which was to consist of two Orders; the first Order to consist of twenty eight representative peers plus seventy five elected members. The second Order was to have 204 members, with a possible two extra members elected by the Royal University, so as to be on par with the two members elected by the University of Dublin, Trinity College. Irish MPs would no longer sit in Westminster Parliament. The 'Orders' system proposed, based on the structure of the Synod of the Church of Ireland, had limited legislative powers. The first Order or upper house had the power to delay legislation for three years; in the event of a disagreement, the second Order, or popular house, had a numerical advantage towards a resolution in joint sittings. Executive power rested solely with the Lord Lieutenant of Ireland who was answerable to neither Order. Britain was to retain control over defence, war, peace treaties with other states, coinage and trade. While the Dublin Metropolitan Police was to pass to Irish control, Britain was to retain control of the Royal Irish Constabulary until such time as it was deemed safe to be transferred to Irish hands.

Gladstone was careful in his choice of language to make a clear distinction between the Westminster Parliament and the subordinate system being proposed for Ireland:

> We propose to introduce what I would generally explain as two Orders, though not two Houses; and we suggest that with regard to the popular Order, which will be more numerous the provisions of the Act may be altered at any period after the first Dissolution; but with regard to the other less numerous Order the provisions of the Act can only be altered after the assent of the Crown to an address from the Legislative Body for that purpose.[129]

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[129] *Hansard* , HC, Deb. Vol. 304, Cols. 1055-1063, 8 Apr. 1886.

Ireland's presence in the Westminster Parliament posed a problem for Gladstone. He claimed there could not be 'a domestic legislature in Ireland dealing with Irish affairs, and Irish Peers and Irish Representatives sitting in parliament at Westminster to take part in English and Scottish affairs.'[130] He deliberated at length on the distinction between imperial and non imperial affairs and arrived at the conclusion, that if a domestic legislature were to be given to Ireland, Irish members could not justly 'retain a seat in the parliament at Westminster.'[131]

The second Home Rule Bill introduced by Gladstone in February 1893, proposed a bicameral system with an Upper Legislative Council of forty eight elected members and a Lower Legislative Assembly of 103 members. The Executive Committee of the Privy Council was to be subject to the Lord Lieutenant of Ireland. The earlier decision of no Westminster representation of 1886 was reversed, as Ireland was now to have eighty MPs in Westminster, together with a number of representative Irish Peers. The bill was passed on 1 September 1893 in the House of Commons by 347 votes to 304, but later soundly defeated by 419 votes to forty one in the House of Lords.

Though the issue of Irish representation in Westminster was of secondary concern to Irish members, it remained a contentious issue for others. In 1886 unionists objected to home rule on the ground that it violated the principle of 'no taxation without representation.' Seven years later in 1893 conversely, they accused Gladstone of 'undermining responsible government at Westminster by proposing to allow Irish members to participate in British affairs.[132] Both arguments presented a dilemma; one, if the Irish were represented at Westminster it would give them power over British affairs; equally, to deny them that access would sever them from all participation in the affairs of the United Kingdom. There was no satisfactory solution to the dilemma, short of a comprehensive plan involving devolution for Scotland, Wales, England and Ireland that would allow all regional matters to be removed from the United Kingdom Parliament.[133] Neither English Scottish nor Welsh politicians had any interest in regional devolution as there was no demand for it among their constituents. Yet the

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[130] Ibid.
[131] Ibid.
[132] Alan J. Ward, *The Irish Constitutional Tradition,* p. 74.
[133] Ibid.

particular concept prevailed, becoming known as 'home rule all round' which would later be taken up and strongly advocated by the Round Table Movement.

Alternative Schemes

Various alternative schemes for establishing self-government for Ireland were offered during the home rule years; one was Joseph Chamberlain's 'Central Board Scheme' of May 1885, another, the Irish Council Bill of 1907 and latterly Federalism, generally referred to a 'home rule all round.' Chamberlain's scheme, which was proposed in May 1885, advocated 'a system of elected County Boards and an elected Central Board with powers to legislate and administer certain all Ireland affairs.'[134] Though the scheme had the advantage of replacing both the Castle Administration and the Lord Lieutenancy, Parnell deemed it to be no substitute for the restitution of an Irish Parliament, but saw it simply as an improvement to the existing system of local government. For Irish members it was a threat to home rule that must be avoided at all cost. The scheme was rejected by the cabinet on 9 May 1885 and while the Home Rule Bills of 1886 and 1893 ran their course in the interim years, Campbell-Bannerman's Liberal government reintroduced the concept of limited devolution in its 'Irish Council Bill' of 1907.

The Irish Council Bill, a further initiative in Irish Constitutional Reform was principally the work of the Under Secretary, Sir Anthony MacDonnell.

> MacDonnell proposed an executive council of thirty members, ten nominated by the lord lieutenant and the remainder indirectly elected by delegates from the county councils, to advise the Irish government on the conduct of public business, and on how public money should be spent within limits set for a five year period by Westminster. The activities of all major Irish government institutions except the police forces and the legal system would come within the council's ambit. [135]

MacDonnell, whose chief concern was the improvement of government organization and performance, considered this could best be achieved by delegating responsibility to public representatives, so as to encourage participation in the decision making process.

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[134] Ibid., p. 89.
[135] O'Halpin, *The Decline of the Union*, p. 74.

However, this plan offered less than either Chamberlain's proposals or home rule and clearly reaffirmed Ireland's sub-ordinate status. O'Halpin claims 'there was scarcely an interest group in Irish public life whose position was not threatened by the scheme as MacDonnell had conceived it.'[136]

His reforming zeal was unlikely to be welcomed by those of differing ideals and aspirations. Irish unionists were likely to see his plan as a step towards home rule, Irish nationalists as a means of avoiding it.[137] The bill's recommendations were careful to retain essential control in the proposed reorganization. The Council would have administrative powers over the departments of government, but no legislative powers, and even its decisions on administrative matters might be reserved by the Lord Lieutenant.[138] It is O'Halpin's contention that the 'various Irish departments would resist developments which might bring them under closer central control, while the Catholic Church would hardly take kindly to the creation of a unified and secular administrative body to control education.[139] Neither administrative nor legislative recommendations satisfied conflicting expectations. There was no provision for an Irish Parliament, the supremacy of the United Kingdom Parliament was absolutely unquestioned, the powers of the Irish body were strictly limited and responsible government, the instrument of independence in the colonies was precluded.[140] The Irish Council Bill was withdrawn when it was unanimously rejected by the Irish Party.

Federalism

'Federalism,' 'home rule all round' and 'devolution' were interchangeable terms used in relation to home rule for Ireland; it also embraced the more general concept of constitutional reform for the United Kingdom. The concept was by no means a new one; it had been broached as early as 1830s and had received much attention in the eighties and nineties at the time of Gladstone's two home rule bills.[141] Following the failure of his 'Central Board' plan in 1885-6, Chamberlain became an advocate of federalism with subordinate regional legislatures. Federalism within the contemporary political context

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[136] Ibid., p. 75.
[137] Ibid.
[138] Ward, *The Irish Constitutional Tradition,* p. 89
[139] O'Halpin, *The Decline of the Union*, p. 75.
[140] Ward, *The Irish Constitutional Tradition,* p. 90.
[141] J. E. Kendle, 'The Round Table Movement and 'Home Rule All Round,' *The Historical Journal*, Vol. 11, No. 2 (1968), pp. 332-353.

implied, 'the erection of four provincial parliaments with separate executives for Ireland, Scotland, Wales and England, responsible for essentially local matters and an overall parliament sitting in London, elected on a population basis, responsible for general United Kingdom affairs such as postal services, customs, trade, defence and foreign policy. At the very least the scheme meant the devolution onto local government bodies, possibly provincial councils, of many of the more parochial problems considered at Westminster.'[142]

Federation or home rule had both its advocates and detractors. A.V. Dicey was one of the most persistently vehement critics of home rule. A Vinerian Professor of Law at Oxford and a fellow of All Souls, he published extensively over the course of the forty year period of home rule, consistently propounding his theories on constitutional developments. Dicey a unionist, acknowledged Irish desire for home rule and independence but he believed that it was 'incumbent upon those who did not share that ambition to examine the proposals and if necessary point out the "fallacies of federation."'[143] He cautioned against the demands of federalism, 'the elaborate distribution and definition of political powers,' the 'dislocation of all British constitutional arrangements,' and claimed that by undermining parliamentary sovereignty it would deprive English institutions of their 'elasticity, strength and their life'. Over the years his arguments and assumptions were to crop up again and again in the speeches and articles of others and his constructs were to determine the nature of unionist response.[144] Dicey's considerable academic status coupled with his distrust of nationalists, rendered him a favourite with unionists whom he urged to resist home rule. Following the Home Rule Bill of 1912, in a published work *A Fool's Paradise,* he reiterated the premise that home rule would lead to disunity and the disintegration of the Empire.

Following the House of Lords' rejection of the Liberal's budget in 1909, there was a revival of interest in federalism. The Round Table Movement founded in the same year were advocates of federalism, their primary aim being constitutional reform and a resolution of the congestion of business in the imperial parliament. Members including Lionel Curtis and many former members of Milner's 'Kindergarten,' reasoned

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[142] Ibid.
[143] Kendle, *Ireland and the Federal Solution*, p. 21.
[144] Ibid., p. 24.

that 'only federalism or 'home rule all round' would resolve the problems at Westminster. To their minds the controversy over home rule for Ireland opened the door to such a solution; hence their interest in the Irish problem and the emphasis on congestion in all future Round Table arguments in favour of 'home rule all round'.[145]

For Irish nationalists, domestic legislation or home rule was their sole focus and goal. From a British perspective, home rule for Ireland was simply part of a more ambitious and sweeping concept of constitutional reforms as expressed by the Sir Edward Grey, Foreign Secretary in Asquith's Liberal Cabinet. Grey's vision had little to do with satisfying Irish constitutional expectations but rather with what he termed 'a great constitutional reform which [would] include home rule for the different parts of the United Kingdom, the reform of the Second Chamber and a permanent adjustment of the relations between the two houses.[146]

Third Home Rule Bill 1912-14

That same sweeping concept of constitutional reform was much in evidence on 11 April 1912, when Prime Minster Asquith finally introduced the third Home Rule Bill claiming 'I have always presented the case for Irish Home Rule as the first step in a larger and more comprehensive policy.'[147] Two years previously he had committed to home rule in the British general elections of 1910. Following the constitutional crisis of November 1909, which ensued upon the House of Lords rejection of Lloyd George's budget, Government dissolved Parliament and called for a general election. Having lost their majority in the January election, Liberals and their opposition the Conservatives, were at an impasse. The Irish Party under the leadership of John Redmond, seizing the opportunity to further their cause, pledged support for the Liberals on condition that the Home Rule Bill would be introduced. The only hope of passing home rule legislation depended on curbing the powers of the House of Lords, which had repeatedly and vehemently opposed all previous attempts to do so.

Upon his election Asquith immediately introduced his Parliament Bill which was enacted in 1911. The act eliminated the House of Lords' veto by providing that a

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[145] Ibid.
[146] Kendle, *Ireland and the Federal Solution*, p. 137.
[147] *Hanzard*, HC, Deb. Vol. 36, Col. 1403, 11 Apr. 1912.

bill that passed in the House of Commons three times in successive sessions would become law over the opposition of the House of Lords.[148] For members of the Upper House it was the issue of home rule which diminished their long-held privileged position. Lord Selbourne, speaking in the Lords on 8 August 1911, maintained that if the 'fatal policy of endeavouring to pass home rule' had not been imposed upon the government they would have taken a wholly different course.

> I do not believe they ever would have contemplated this abuse of the Prerogative or have set out a partisan and temporary settlement....But the government was dragged down to their temporary position because they are tied hand and foot to the chariot wheels of Mr. Redmond.[149]

Nor were they alone in their criticism of Asquith's opportunism.

Balfour in discussing the varied perspectives and complexities of the home rule situation in 1912 queried how, 'with Irish representation in Westminster, could it be possible to constrain an Irish Parliament should the necessity arise. How might a Liberal government deal with a crisis in Ireland if it depended on Irish votes for its survival? [150] Balfour's perception of such a political configuration was akin to Selbourne's claim that the government were 'tied hand and foot to the Redmond's chariot wheels.' The third Home Rule Bill introduced in the House of Commons on 11 April was passed on 25 May with a majority of seventy seven votes. As expected the bill was overruled in three successive sessions in the House of Lords in 1912, 1913 and 1914. However, under the provisions of the 1911 Parliament Act, the Home Rule Bill was finally passed into law on 18 September 1914.

Asquith's bill established an Irish Parliament of two Houses, a House of Commons consisting of 164 elected members and a Senate of forty members. In addition, Ireland was to be represented in the Parliament of the United Kingdom by forty-two members. The Irish Parliament was given full power to legislate for Irish affairs with the exception of specific subjects; defence, religion, treaties, naturalization, trade with any place outside of Ireland, merchant shipping, coinage, trademarks, copyright and stamp duties while other matters – the collection of taxes, the

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[148] Ward, *The Irish Constitutional Tradition*., p. 53-4.
[149] *Hansard*, HL, Deb. Vol. 9, Cols. 815-78, 8 Aug. 1911
[150] Kendle, *Ireland and the Federal Solution*, p. 152

management of Land purchase, old age pensions, national insurance, labour exchanges, savings banks and the Royal Irish Constabulary – were reserved to the imperial Government. In introducing his measure Asquith suggested that larger and more comprehensive policy which, in the interest of the United Kingdom and the Empire, would emancipate the Imperial Parliament from local cares and local burdens.[151] Home rule for a united Ireland went on to the statute books but was immediately followed by a Suspensory Act, that delayed its introduction until the end of the war.[152] Both Acts presented simultaneously ensured that home rule would be postponed for the duration of the war which had been declared on 4 August 1914.

The Government of Ireland Act 1920

With the signing of the peace treaty at the end of the war, the suspended Home Rule Act of 1914 was scheduled to come into effect within six months. The deteriorating situation in Ireland from January 1919 onwards necessitated Government action. Following a visit by Walter Long to Ireland in September, it was decided that Long should chair a committee whose task it was to examine, report and advise the cabinet on the best course of action and policy to be adopted in the situation. The committee which reported early in November 1919 advised against either the repeal or postponement of the Home Rule Act 1914, but recommended that the government should make 'a sincere attempt to deal with the Irish question once and for all.'[153] The existing situation presented a dilemma, while the government was committed at all costs to maintaining the integrity of the Empire, it was equally emphatic that 'Ulster should not be forced under the rule of an Irish parliament against its will'[154] The first condition excluded any proposal for allowing Ireland or any part of Ireland to establish an independent republic, while the second precluded the establishment of a single parliament for all Ireland on the lines of the home rule bills of 1886, 1893 and 1912.[155] After considerable deliberation the committee recommended the establishment of two parliaments, one for Ulster, one for the three southern provinces of Ireland and the final withdrawal of British rule.

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[151] *Hansard* , HC, Deb. Vol. 36, Cols. 1399-1426, 11 Apr. 1912.
[152] Ward, *The Irish Constitutional Tradition*, p. 96.
[153] BNA 'First Report of Cabinet Committee on the Irish Question,' c. p. 56, Cab. 27/68, 4 Nov. 1919
[154] Ibid.
[155] Kendle, *Ireland and the Federal Solution*, p. 229.

The fourth and final Government of Ireland Bill, presented on 20 February 1920, was approved by both Houses and received the Royal assent on 23 December 1920. The Act which came into force on 3 May 1921, created two Home Rule Parliaments for a partitioned Ireland; one for six counties of North East Ulster and another for the remaining twenty six counties, the twenty three counties of Munster, Leinster and Connaught, plus the remaining three counties of Ulster, Donegal, Cavan and Monaghan. Similar constitutional systems proposed for both jurisdictions were modelled, as a whole, on the previous home rule bills with the exception of the mode of election, the composition of the Senate and the unique and original mechanism of the Council of Ireland devised for the purpose of unifying both parts of Ireland.

The Act proposed a similar system of election to both Houses of Commons, proportional representation in multimember constituencies, a system which had originally been devised by the Convention of 1918, so as to ensure adequate representation for Protestants in the South of Ireland. The system was applied to the North too although the Catholic population there, about thirty five percent of the total, was sufficiently concentrated to have ensured fair representation under the British system of election in single member constituencies.[156] The original government bill proposed that two unicameral parliaments should be established in Ireland but this proposal was amended in the House of Lords to provide for two bicameral legislatures.[157] [See also Section Three, pp. 115-122]. The Convention model applied also to the Southern Senate with sixty-four seats; nomination, which would ensure both representation of a variety of interests and protection for the minority, approximately ten percent of whom were Protestants. Twenty-six seats in the Northern Senate were filled by election in the House of Commons with the exception of two, which were reserved for the Lord Mayors of Londonderry and Belfast.

From the earliest days of the debate, the Council was considered a 'vital medium' a 'great unifier' the mechanism which would heal wounds and unite the nation. The Chief Secretary for Ireland Ian Macpherson, speaking at the second stage of the reading of the bill on 29 March in the House of Commons, claimed that the Council would become a 'real stepping stone on the way to union.'

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[156] Ward, *The Irish Constitutional Tradition*, p.108.
[157] Ibid..

> The appointment of members of the Council is to be the first business undertaken by the two parliaments, so that the Council would come into operation at the earliest possible date and commence its deliberations before either government was finally committed to separate administrative proposals.[158]

In his enthusiasm for the Council, Macpherson considered that should its initial efforts be successful, he anticipated that its powers would be increased by the two parliaments to the point where it would be virtually, a parliament for all Ireland and from that stage an easy transition to complete union. L. Worthington-Evans was much more cautious in his predictions, and while acknowledging that following a few years of separate parliaments, through constant intercourse in the Council they might possibly come together, warned that there was considerable fear and suspicion to be overcome, 'they may consent and I hope they will consent, to unite in an Irish parliament and take their place as one unit in a Federation of the United Kingdom.'[159]

The Act did not establish a federal system but two subordinate parliaments, of which only one, Northern Ireland, implemented the legislation. The Act had made provisions for elections to take place in both parts of Ireland North and South on 24 May 1921. On 7 June following elections, the Northern House of Commons assembled and elected James Craig as prime minster. Despite continuing hostilities the Dáil decided to recognize the elections; de Valera stated 'that everyone elected to the northern and southern parliament was entitled to be summoned, unionists and all.'[160]

Elections to the Senate were to take place at the same time, as the Act provided for a second chamber consisting of three ex-officio members, seventeen Crown nominees and forty-four elected members representing the Catholic Church, the Church of Ireland, the Irish Peerage, the Privy Council and the Local Authorities.[161]

Though Dáil Eireann from its inception was a unicameral parliament, it is evident that a second chamber or senate was being considered by the Dáil as early as February 1921. Cosgrave had been in communication with the Vatican in relation to what was described as a 'Theological Senate', a sort of Upper House which would

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[158] *Hansard,* HC, Deb. Vol. 127, Col. 930, 29 Mar. 1920.
[159] Ibid., HC, Deb. Vol. 127, Col. 1036, 29 Mar. 1920.
[160] *Dáil Debates,* Vol. 1, Col. 292, 10 May 1921.
[161] A.G. Donaldson, *Some Comparative Aspects of Irish Law* (Dublin, 1949), p. 75.

decide 'whether any enactments of the Dáil were contrary to Faith and Morals or not.'[162] It was suggested that a guarantee be given that 'the Dáil would not make laws contrary to the teachings of the Church in return for which, the Vatican would be asked to recognize the 'Dáil as a body entitled to legislate for Ireland.'[163] The request to the Vatican for support and affirmation of the Dail's 'entitlement' to legislate for Ireland clearly indicated the degree of uncertainty and vulnerability being experienced in the early months of 1921.

De Valera was quite emphatic in his rejection of any such suggestions; a 'Theological Board or Senate' would not work and could in time create difficulties. Furthermore, 'for the Dáil to admit there existed the necessity for such a check on their legislation would be a fatal error.'[164] The evidence suggests that Cosgrave was preparing to align the Dáil with a new potential power base the Vatican now that the prospect of severing the British connection was imminent. Such an association would have given invaluable prestige and support to any new and politically vulnerable state. However, it was a questionable choice, considering one of the primary reasons for establishing a second chamber was to accommodate southern unionists, the majority of whom were Protestants. Conversely, Cosgrave's desire for Vatican support may have been to insure against any undue influence by the non-Catholic members of the senate. Either way, his fellow members of cabinet rejected the suggestion.

As the issue of the second chamber also posed a problem for the County Councils Committee, the secretary contacted the Dáil seeking instructions regarding the upcoming Senate elections. After a week of inter-ministerial discussions, it was decided on 27 April that 'a ministerial order boycotting the elections to the Senate of Southern Ireland should be issued forthwith.'[165] The following day a 'Proclamation' signed by Austin Stack, the Minister of Home Affairs, was circulated:

> The so-called Government of Ireland Act 1920 is illegal inasmuch as it is a foreign statute, although Dáil Eireann has decided to recognize the popular elections of the people .....the Senate of the so-called Parliament of Southern Ireland, being for the most part a nominated body, the resultant composition of that body would not be an expression of the public will, nor an indication of public

[162] NAI DE/396, 24 Feb. 1921.
[163] Ibid.
[164] NAI DE/396, 4 Mar. 1921.
[165] NAI DE/98. 27 Apr. 1921.

> opinion; the elections thereto would serve no useful purpose; and the recognition of such a body would be contrary to democratic principles. The ministry of Dáil Eireann therefore order that members of councils and other bodies who uphold the right of the Irish people to choose their own representatives and Government take no part in the partial Election so proposed for the Senate.[166]

Neither de Valera nor Stack seemed to find any inconsistency in rejecting elections to the Senate because the Government of Ireland Act was defined as 'illegal' and a 'foreign statute,' while at the same time permitting election to Dáil Eireann under the same 'illegal foreign statute.'

The formal opening of the Southern Irish Parliament took place at 3.00 pm on 28 June in the Department of Agriculture building in Merrion Street.[167] When the Lords Justices entered the chamber, the only persons present were fifteen Crown nominated senators and the four Trinity members of the House of Commons. The rows of empty chairs were a testimony to the absent members, 'the 124 Sinn Fein candidates who were returned unopposed in the South.'[168] The *Irish Times* painted a stark contrast between the opening of the Belfast and Dublin parliaments:

> Belfast, the city of the Covenant, to whom the very words Home Rule were an anathema, reveled in the pomp and pageantry of the Royal visitors who were in attendance at the birth of the Northern Ireland Parliament. The stillbirth of the Southern Parliament was by contrast a hollow mockery. Dublin in whose soul a century of passionate longing had raged, spurned the very privilege for which so many of her dearest sons have lived and died.[169]

Clearly *The Irish Times* perception of 'home rule' was quite at odds with that of members of Dáil Eireann and the IRA. With seemingly little acknowledgement of the radical ideological shift which has taken place in the intervening seven years and even less of the irony of the situation, mystified it asks 'where is the spirit of 1914?'

It was of supreme irony that the one section of the polity, Ulster, which fought so vehemently and consistently against home rule for over thirty years, should now be the one section that accepted and worked the final Home Rule Act of 1920. With

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[166] NAI DE/98, 27 Apr. 1921.
[167] *The Irish Times*, 29 June 1921.
[168] Ibid.
[169] *The Irish Times*, 29 June 1921.

regards to Westminster, in 1886 Gladstone's problem was what to do with the eighty Irish MPs. In the Government of Ireland Act, Ireland as a whole was assigned forty-six seats of which Northern Ireland had only thirteen, including one for Queen's University.[170] As Southern Ireland refused to acknowledge the Act, the remaining thirty-three seats were irrelevant. With regard to the House of Lords, the Act made no provision for continued Irish representation in the Upper House.

The Act of Union had provided that twenty eight representative Irish peers should sit in the House of Lords, but that number steadily declined to zero after 1921.[171] The records indicate that senators of the Free State Senate who were members of the Lords in 1922, continued to attend debates in Westminster right through the years of the Senates' first triennial period. Senators Mayo, Dunraven and Granard were all present at the debate on the Irish Free State (Confirmation of Agreement Bill) in the House of Lords on 7, 8 and 9 October 1924.[172] Mayo, a frequent attendee, was again present at the debate on the Slave Trade in May 1925.[173] There is no record that the Earls of either Wicklow or Kerry continued to attend at Westminster after taking their seats in the Irish Free State Senate in December 1922

The Northern and Southern Ireland Legislatures

The first Northern Ireland Parliament was officially opened in Belfast City Hall by King George V, on 22 June 1921. In a moving speech to the historic gathering, he appealed to all sections of the community both north and south, to act decisively in the interest of peace:

> I pray that my coming to Ireland today may prove to be the first step towards an end of strife among her people, whatever their race or creed. In that hope I appeal to all Irishmen to pause, to stretch out the hand of forbearance and conciliation, to forgive and forget, and to join in making for the land which they love, a new era of peace, contentment and good will.[174]

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[170] Brigid Hadfield, *The Constitution of Northern Ireland* (Belfast, 1989), p. 59.
[171] Ward, *The Irish Constitutional Tradition*, p. 120.
[172] *Hansard*, HL, Deb. Vol. 59, Cols. 591-666, 8 Oct. 1924.
[173] Ibid., HL, Deb. Vol. 61, Cols. 192-236, 13 May 1925.
[174] *The Irish Independent*, 23 June 1921.

He expressed the hope that the gathering would be a prelude to the day when Ireland North and South, under one parliament or two, as the people themselves would choose, would work together in common love for their country, on a sure foundation of mutual justice and respect.

Under the terms of the Government of Ireland Act of 1920, Westminster intended to establish two parliaments and governments in Ireland with extensive devolved powers, but subject to the supremacy of Westminster, where power to legislate on matters of imperial and national concern was to be retained.[175] The Act provided for two bicameral legislatures, one each for the two autonomous regions of Northern and Southern Ireland; each legislature comprised of an Upper House or Senate and a Lower House of Commons. Unionists ensured that the Northern Senate, unlike that planned for the south would not be weighed in favour of the minority.[176] The all-Ireland dimension of the Act consisted of the establishment of a Council of Ireland, 'with provisions made for it to be transmuted into an all-Ireland parliament with potentially very extensive powers.' [177] The Council of Ireland, which was to have been composed of twenty members from each parliament meeting under a president nominated by the Crown, was destined never to meet. As previously discussed the Parliament of Southern Ireland, which assembled in Dublin on 28 June, with only four unionist members of the House of Commons, and fifteen of the sixty four senators present, was an abortive event; thereafter the southern legislature was suspended and Southern Ireland continued to be ruled directly from Westminster. The six counties of Northern Ireland remained within the United Kingdom and for it and it alone the 1920 Act, as amended, came into operation.[178]

In addition to the bi-cameral structure of their respective legislatures, a common factor of the northern and southern legislatures was the Crown, which was represented, initially, by the Lord Lieutenant and later by the Governor. The new office of Governor had not yet come into being because its creation required an amendment to the original

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[175] Hadfield, 'The Northern Ireland constitution,' *Northern Ireland Politics and the Constitution*, pp 1-12.
[176] Michael Laffan, *The Partition of Ireland 1911-1925*(Dundalk, 1983), p. 68.
[177] Hadfield, 'The Northern Ireland constitution,' *Northern Ireland Politics and the Constitution*, pp 1-12.
[178] Ibid.

Act.[179] Following the abolition of that office under the Irish Free State [Consequential Provisions] Act, 1922, the Crown in Northern Ireland was thereafter represented by the Governor, whose duty was to summon, prorogue and dissolve parliament in the King's name. His primary function was to grant the royal assent to legislation passed, and perform the normal ceremonial functions associated with the Crown. In 1922, invoking section 12 of the 1920 Act, the Governor withheld his assent, 'reserved a bill' abolishing proportional representation in local government elections.

In 1912 the Liberal government had intended that elections for the new Irish senate should be carried out under PR and the system was imposed experimentally for local elections in 1920. [180] The system had the desired effect considerably reducing unionist seats particularly on Belfast Corporation. The government saw PR as a means of protecting both minorities, Protestants in the south and Catholics in the north.[181] Craig and his supporters objected strongly against the new system seeing it as a threat to their unionist majority. Their pleas were rejected and the bill laid down that in both parts of Ireland elections must be held under PR for the first three years of the new parliaments' life.[182] In the face of threats of resignation from the unionist government, and in spite of pressure put upon Westminster by the [then] Provisional Government of the Irish Free State, the Royal assent to the bill was eventually given, Section 12 was never invoked again.[183]

It was evident by 28 June 1921 that the Parliament of Southern Ireland would not function. By contrast, weeks earlier the machinery for establishing the Northern Parliament had been put in motion. On the evening of 7 June 1921, the *Dublin Gazette* published the Lord Lieutenant's directives in relation to the transfer of services and functions, of the departments of the Government of Northern Ireland, under the Government of Ireland Act, 1920. 'The department of the Prime Minster of Northern Ireland will be the channel of communication between His Excellency the Lord Lieutenant and the Executive Committee of Northern Ireland, between that Committee and the Departments of the Government of Northern Ireland, between the Government

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[179] Ward, *The Constitutional Tradition*, p. 116.
[180] Laffan, *The Partition of Ireland*, p. 68.
[181] Ibid., p.69.
[182] Ibid.
[183] Hadfield, 'The Northern Ireland constitution,' *Northern Ireland Politics and the Constitution*, pp 1-12.

of Northern Ireland and the Council of Ireland and will supervise the preparation of minutes for the Executive Committee.'[184] The article continued to outline in detail the specific functions of the Ministry of Finance, Home Affairs, Labour, Education, Agriculture and Commerce. Under the 1920 Act, the northern legislature had power to legislate on all matters transferred to it. Section 4 of the Act, precluded the Northern Parliament from legislating on those matters of imperial and national concern, which remained the responsibility of Westminster and Section 5 prohibited the enactment of laws interfering with religious equality.[185]

The Northern House of Commons had fifty two seats. Originally, these were divided among multi-member constituencies of four to eight seats, including four Queen's University seats, and with elections by the single transferable vote system of proportional representation.[186] Of the fifty two seats, forty were held by unionists, a comfortable majority, which they subsequently held for decades. The remaining seats went to nationalists and republicans, who like their political counterparts in the south, chose to abstain from participation in parliament. The Commons sat for the first time on 7 June 1921, when James Craig was appointed 'Prime Minister or Head of the Executive'; although no such office was provided by the 1920 Act. The executive power, however, was effectively located in the Prime Minster, the leader of the largest party in the Northern Ireland House of Commons and therefore, invariably a unionist, and his single same party cabinet, who individually headed the northern Ireland departments of ministries.[187]

The Northern Upper House or Senate had twenty-six seats, of which two were held *ex officio* by the mayor of Londonderry and the lord mayor of Belfast. Similar to the pattern in the Commons, members of the Senate were almost exclusively unionist. Twenty four senators were elected for eight year terms by the Commons on a system of proportional representation, with half of the seats being filled every four years.[188] Senators who were to retire at the end of the first parliament were to be selected by lot.

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[184] *Dublin Gazette,* 7 June 1921, *The Irish Times,* 8 June 1921.
[185] Hadfield, 'The Northern Ireland constitution,' *Northern Ireland Politics and the Constitution*, pp 1-12.
[186] Martin Wallace, *British Government in Northern Ireland* (London, 1982), p. 18.
[187] Hadfield, 'The Northern Ireland constitution,' *Northern Ireland Politics and the Constitution*, pp 1-12.
[188] Wallace, *British Government in Northern Ireland* , p. 18.

From 1921-25 all twenty four senators were unionists, in 1925 all except one Labour member were unionists. Hugh O'Doherty, the first Roman Catholic nationalist mayor of Londonderry was an *ex officio* member until 1923; thereafter all *ex officio* members were Ulster unionists.

It is interesting to note that there was no church representation of either persuasion in the first northern senate. By contrast, the first two members elected to the abortive southern senate were two Church of Ireland bishops. Senators Most Rev. Charles Fredrick D'Arcy, D. D. Archbishop of Armagh and Primate of all Ireland and Most Rev. John Allen Fitzgerald Gregg, D.D. Archbishop of Dublin were the first two duly elected Senators of the Parliament of Southern Ireland by the Archbishops and bishops of the Church of Ireland, having Sees situated wholly or in part in Southern Ireland.[189] As recounted above there were no elections to the abortive Southern Senate, and despite Cosgrave's communications with the Vatican in early 1921, there was no church representation in the Free State Senate. This suggests that the strongly democratic ethos prevailing in 1922 precluded the necessity for the mandatory clerical presence.

Post Treaty Resolution

The 1921 treaty had provided that Northern Ireland had one month's grace in which to withdraw, following the establishing of the Irish Free State on 6 December 1922:

> If before the expiration of the said month, an address is presented to His Majesty by both Houses of the Parliament of Northern Ireland, to that effect, the powers of the Parliament and Government of the Irish Free State shall no longer extend to Northern Ireland.[190]

Within the week, the address had been presented and another north-south point of contact had been severed. The Dáil debate on the treaty was much concerned with the oath of allegiance to the Crown which members of the Free State were required to take, yet 'paid comparatively little attention to the Council of Ireland, the Boundary

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[189] *The Irish Times*, 25 May 1921.
[190] Article 11, *Articles of Agreement for a Treaty between Great Britain and Ireland*, signed in London on 6 Dec. 1921.

Commission or the prospect of continuing partition.'[191] For three years the issue remained in abeyance until November 1925, when a British newspaper suggested that there would be little change to the existing boundary. The public controversy forced the British, Northern and Irish Governments to resolve the issue. The schedule to the (Confirmation of Agreement) Act 1925, which was the last major piece of legislation amending and supplementing the Articles for a Treaty of 1921, spoke of the desire in the light of the improved relations now existing between the governments and peoples of Great Britain, Northern Ireland and the Irish Free State, to 'avoid any causes of friction which might mar or retard the future growth of friendly relations between the said governments and peoples.'[192] Partition was a reality, the Council or stepping stone had been side-tracked, the border issue was about to be resolved, yet clearly evident, behind the thinly veiled, measured language of political diplomacy was the vulnerable, fragile relationship, still prevailing in late 1925. The Act recorded the formal agreement between Great Britain and the Free State that the extent of Northern Ireland should be such as was fixed by section 1(2) of the 1920 Act, namely the six counties of Antrim, Armagh, Down, Fermanagh, Londonderry and Tyrone.[193]

Second Chambers - Overview

From the outset the issue of second chambers was problematic. The 1886 home rule bill and all subsequent bills established the priority of the popular or lower house. The fact that there were three quite different plans for the upper house or first Order, in the three home rule bills - four if the nominated chamber that was proposed in 1912 and amended in committee, is included.[194] Both Gladstone and Asquith seemed to have struggled with the classic Abbe Sieyés dilemma posed by second chambers in responsible government, that of their purpose and function; how to devise 'a representation formula that does not produce two chambers that are mirror images of each other and therefore redundant.'[195] 'Parnell preferred this system to a bicameral Parliament with an Irish House of Lords.'[196]

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[191] Wallace, *British Government in Northern Ireland* , p. 18.
[192] Hadfield, 'The Northern Ireland constitution,' *Northern Ireland Politics and the Constitution*, pp 1-12.
[193] Ibid.
[194] Ward, *The Irish Constitutional Tradition*, p. 68.
[195] Ibid.
[196] Great Britain, *Parliamentary Debates*, 3rd series, Vol. 306, Col. 1172, 7 June 1886, cited in Ward, *The Irish Constitutional Tradition*, p. 67.

During a lengthy debate on second chambers in the course of the 1893 Bill, Gladstone citing the long experience of second chambers in the Colonies indicated that no colonists had ever expressed a desire to depart from their present Constitutions.

> I do not think there is a single exception to the principle of a Second Chamber in the case of any Colonial Legislature properly so called. ..... It has been proved beyond doubt that the Second Chamber operates as a very serious check upon the immediate action of the representative Chamber, ... and a wide experience of the free Constitutions of the Colonies has given sanction to the principle of a Second Chamber, ... and this principle is peculiarly recommended in the particular case of Ireland.[197]

Gladstone, who in 1886 had advocated the Orders system to avoid establishing two Houses which might have appeared to be on par with the Westminster administration, had altered his opinion in the interim years. The 1893 and the 1912 bills abandoned the two Orders and proposed instead conventional bicameral legislatures, although the leaders of the Irish Party had expressed a preference that the issue of a second chamber be left to the Irish Parliament to decide.[198] Memories of the House of Lords of the exclusively Protestant Grattan's Parliament did not inspire confidence in second chambers, particularly in the Catholic members of the party. However, the influence of known and familiar constitutional arrangements of differing countries such as, the American States, who deliberately chose to follow the example of the British Parliament with its two Houses, inevitably invited imitation. The Irish members, 'confessed to being divided between a "democratic inclination for one chamber, and the feeling that two chambers would look more like a parliament."[199]

The image and association of the House of Lords, one of the earliest concepts of second chambers was to dog constitutional aspirations in all home rule discussions. And although the 1911 Parliament Act left the Lords a weakened second chamber with considerably restricted legislative powers, its historic image continued to adversely affect attitudes and perceptions to the determent of the second chamber as constituted in 1922. The historic experience of the Irish members may have inclined them to avoid a second chamber or privileged upper house, but their feeling in relation to the

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[197] *Hansard,* HC, Deb. Vol. 12, Cols. 550-607, 10 May, 1893.
[198] Ward, *The Irish Constitutional Tradition*, p. 67.
[199] BNL Minutes of a secret meeting of Irish party leaders in Dublin, 16-18 Nov. 1892, Add. MSS. 44774, F 147-48:cited in Ward, *The Irish Constitutional Tradition*, p. 67.

appropriateness of a bicameral system which was fairly consistent for the constitutional arrangements of the time, outweighed their reservations. As James Bryce indicated, the bicameral example had been followed in most of the countries that had given themselves 'frames of more or less popular government in modern times, including not only those, which in the Old World had been influenced by the British model of Cabinet and Parliamentary Government, but those also which in the Western hemisphere had taken the United States as their pattern.'[200]

Political Perspectives

On 9 June 1986, on the one hundredth anniversary of the first home rule bill, the historian John A. Murphy reminded us 'that in popular perception terms like Emancipation, Repeal and Home Rule transcended specific legal and political categories and denoted quite simply Irish control and Irish power.'[201] From a unionist perspective, nationalist pursuit of control and power was a threat to their cherished union with Britain. For Ulster unionists, a Protestant minority in a predominantly Catholic nationalist population, the proposed third home rule bill was to be resisted at all cost. O'Halpin claims 'the disappearance of the Lords' veto changed the Irish question; Ulster not Ireland now became the crucial issue.'[202] Yet the evidence suggests that Ulster, from the very beginning of the home rule debates, unequivocally voiced its objection. Following the passing of the Parliament Act in 1911, the strength and depth of Carson's resistance and resolve was clearly evident in the mass demonstration held at Craigavon on 23 September. And Kendle argues 'that the fact that Ulster would prove an obstacle to the quick and easy passage of the home rule bill should not have surprised the Liberals or Asquith'[203] Yet Asquith, like Gladstone before him, failed to appreciate the extent of Ulster resistance which had been repeatedly articulated from the earliest home rule debate.

From the outset of the debates in 1886, Ulster had watched with growing apprehension as nationalists pursued their particular agenda. Ulster unionists believed that 'Irish nationalists would use their parliament, their responsible government, their

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[200] Bryce, *Modern Democracies,* Vol. 2, pp. 398-99.
[201] John A. Murphy, "One hundred Years of Ulster says No,' *Irish Times*, 9 June 1986, cited in Ward, *The Irish Constitutional Tradition*, p. 87.
[202] O'Halpin, *Decline of the Union,* p. 98.
[203] Kendle, *Ireland and the Federal Solution*, p. 151.

judiciary and their police to pursue independence, and if that were to happen no government in London would be able to enforce the supremacy of the United Kingdom without the use of military force.'[204] The tenor of all unionists' arguments from the start of home rule discussions manifested fear, firstly of their position under home rule and a Dublin government, secondly at what they considered the first step in the disintegration of the empire, the premise so adroitly propounded by A.V. Dicey. The threat they argued 'was not simply to Britain's position in Ireland, but to the integrity of the empire as a whole, because Ireland would set a precedent for the colonies.'[205]

As early as 1886, Gladstone had given consideration to various schemes which had been proposed for Ulster.

> One scheme is, that Ulster itself, or, ... a portion of Ulster, should be excluded from the operation of the Bill we are about to introduce. Another scheme is, that a separate autonomy should be provided for Ulster,..... Another scheme is, that certain rights with regard to certain subjects—such, for example, as education and some other subjects—should be reserved and should be placed, to a certain extent, under the control of Provincial Councils.

Despite the fact that Gladstone was well aware of Ulster's resistance, had proposed exclusion, specific rights and even autonomy among possible schemes to placate unionists, no action was taken, or any attempt made to deal with the Ulster problem. The evidence suggests that he failed utterly to appreciate either the depth of Ulster's resistance or their resolve and capacity to obstruct proposed legislation.

During the course of the same debate the representative for mid-Antrim, Robert Torrens O'Neill, warned that should the proposed home rule measures be adopted they would be imposing restrictions upon and alienating the people of Ulster. As a consequence:

> The Protestants of that Province would be perfectly able to protect themselves, in case of any interference with what they considered their just rights. From his knowledge of the temper and the feeling of the Protestants of the North of Ireland, he could say that they were quite

[204] Ward, *The Irish Constitutional Tradition*, p. 81.
[205] Ibid., p.81.

> determined to protect themselves by all means in their power if by any chance their liberty was interfered with.[206]

This was the language of belligerence yet all threats, warnings and the challenge of Ulster Protestant resistance went unheeded as the 'temper and feelings' of Ulster were given little serious consideration.

During his introduction of the Home Rule Bill in 1893, Gladstone, in expressing the hope that the proposed measures would result in unity thereby effecting a great change in Ireland, found his rhetorical flow sharply interrupted by the curt and ominous interjection of another Ulster representative William Johnston, who promptly informed him that 'the change will be civil war.'[207] Again the devolution crisis of 1904 -05 had shocked the Ulster unionists into loud protests and had led to the formation in 1905 of the Ulster Unionist Council.[208] With the threat of forthcoming legislation Edward Carson joined forces with James Craig to resist home rule at all costs. Carson was emphatic that should the home rule bill be passed 'a provisional government would be established in Ulster under the leadership of the Ulster Unionist Council.'[209]

Ulster had made their objections known from 1886 and continued to do so during each subsequent home rule bill. They rejected the reform schemes proposed by Sir Anthony MacDonnell in the 1900s to their detriment by bringing 'administrative reform into the centre of political controversy, where they were seen either as an alternative to or a prelude to full home rule.'[210] They observed the ongoing political process with foreboding. The Parliament Act of 1911 heralded imminent legislative change confirming Ulster's worst fears. Yet again their threats were to go unheeded. Asquith chose to ignore Ulster in his home rule bill of April 1912, either because he did not appreciate how serious Carson and the Ulster Council were or because he hoped that once the bill had been passed twice by the Commons, the unionist party would be obliged to bargain and accept a modified and devolutionary scheme in order to protect Ulster.

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[206] *Hansard,* HC, Deb. Vol. 304, Col. 1053, 8 Apr. 1886.
[207] *Hansard,* HC, Deb. Vol. 12, Col. 555, 10 May 1893.
[208] Kendle, *Ireland and the Federal Solution*, p. 150.
[209] Ibid.
[210] O'Halpin, *Decline of the Union*, p. 215.

Any doubts as to the seriousness of the home rule issue, not alone in Belfast but countrywide were soon to be dispelled as in early January 1912 the *Leinster Leader* predicted:

> In two months time this country will jump to the eye of the world, and people who had forgotten that Ireland existed or who had come to the conclusion that we had disappeared and become a province of England will be once more aware that there is an island beyond an island with an extraordinary vitality and a claim to recognition as a nation.[211]

That 'extraordinary vitality' soon became evident both north and south as 1912 registered a ferment of political activity in Ireland's principal cities. Churchill visited Belfast on 8 February to be met by one of the most hostile receptions ever witnessed in the city. A mass meeting of nationalists was held in Dublin's Sackville Street on 31 March and a little over a week later on 9 April, Bonar Law addressed a unionist demonstration in Belfast.[212] On 14 April Asquith introduced his home rule bill which was approved by the nationalist convention. Asquith himself spoke at a meeting in the Dublin's Theatre Royal on 19 July; there he assured his listeners that the government was determined to pass the bill in the Commons and send it to the House of Lords before Christmas. The Irish Unionist Alliance organized meetings all over England and Ireland and the nationalist party were equally active. [213] The Ulster Unionist Council and the Unionist Clubs Committee's campaign were launched by Carson in Enniskillen on 17 September. Their resolve was simple and direct, 'we hereby reaffirm the resolve of the great Ulster Convention of 1892, we will not have home rule'. The climax of the campaign on 28 September 1912, witnessed Ulster men and women sign the Covenant pledging that 'if home rule was forced on them they would refuse to recognize its authority.'[214] Throughout 1913 the home rule question gradually came to dominate the domestic political scene, and increasingly Ulster loomed as a barrier to a peaceful solution of the problem.[215]

The challenge posed by the Ulster Volunteer force evoked a nationalist response resulting in the founding of the Irish Volunteers, thus providing paramilitary

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[211] *Leinster Leader*, 6 Jan. 1912.
[212] *The Irish Times*, 4 Jan. 1913.
[213] Ibid.
[214] Ibid.
[215] J. E. Kendle, 'The Round Table Movement and 'Home Rule All Round,' *The Historical Journal*, Vol. 11, No. 2,(Cambridge University Press, 1968), p. 349 of pp. 332-353.

support for opposing political persuasions. It was not until the early months of 1914 that the full realization of the imminent crisis became evident; Carson and Craig, having armed the Ulster Volunteers were now preparing to establish a provisional government for the province. During the second reading of the Home Rule Bill on the 9 March, Asquith admitted the possibility of civil war over Ulster. The province was in crisis as the Buckingham Palace Conference, convened on 21 July collapsed three days later over the inability to resolve the central, crucial issue of Ulster's exclusion. Time and the confluence of political circumstances in Europe, prevented any further negotiations as the Austro-Hungarian regime delivered its ultimatum to Serbia heralding the onslaught of the First World War.

Exclusion, temporary or permanent had not been implemented but its demand forced the realization that though Ireland was a geographical entity, it was politically divided. Ward's analysis of the situation in 1914 indicates that exclusion would have denied, 'even if only temporarily, the principle of majority rule in the island as a whole, and it would have risked the permanent exclusion of some Ulster counties.'[216] It would soon become evident that the principle of majority rule was not a priority with certain sections of the polity, and that Ulster's exclusion would eventually be accepted and welcomed as the lesser of two evils. The abrupt hiatus imposed on home rule negotiations in 1914 created specific conditions consigning unresolved issues to a political limbo. On one specific issue however there was no ambiguity. The extent of unionist resistance, which had been building through the course of almost three decades, had eventually erupted into an open challenge clearly revealing the depths of Ulster's objections to and the outright rejection of an all Ireland Parliament under a Dublin Government.

[216] Ward, *The Constitutional Tradition*, p. 97.

SECTION THREE

Home Rule – Political Context

The political discourse of the year 1915 was dominated by discussions of war, the recruitment drive, Volunteers, Ulster Volunteers and the newly split Irish and National Volunteers, the growing threat from separatists, the possibility of conscription or compulsion and the overarching, unresolved issue of home rule. Pro-British and Redmondite sentiment swept Ireland, influenced by the granting of home rule, by the Irish newspaper propagation of the British war hysteria and perhaps by relief at the postponement of civil war.[1] Yet the political limbo was unsettling. Politically, nationalists anticipated trouble until such time as home rule was an accomplished fact. Northern unionists were determined and resolute in their rejection of home rule. Southern unionists, who were beginning to accept the eventual inevitability of the suspended legislation, were equally apprehensive in the face of uncertainty.

The crisis in Ulster of the previous two years and Carson's singular campaign had left southern unionists vulnerable and with a growing sense of isolation. Horace Plunkett writing years later to John Dillon expressed his bafflement at Asquith's failure to call Carson's bluff in 1912:

> The Prime Minister should have said to the House of Commons and so to democracy and the world, 'here is a Privy Councillor, who in a year or two may be Chancellor of England, actually announcing that he will drill and arm a section of His Majesty's subjects to challenge the supremacy of Parliament. [2]

Plunkett was emphatic that had Asquith the courage to confront Carson then, he and his Covenanters would never have had the backing of big business. Fitzpatrick claims that 'merchants and industrialists who dominated Ulster unionism cherished freedom of trade with the same fervour as freedom of faith.'[3] But Carson's challenge to the supremacy of parliament and persistence had paid off, earning him the backing and total

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[1] Maume, *The Long Gestation : Irish Nationalist Life 1891-1918* (Dublin, 1999), p. 150.
[2] Sir Horace Plunkett to John Dillon 12 Aug. 1922. Discussion of the Ulster Crises in Hinkson (ed.), *Seventy Years Young: Memoirs of Elizabeth Countess of Fingall* (Dublin, 1991), p. 406.
[3] David Fitzpatrick, *The Two Irelands 1912-1939* (Oxford, 1998), p. 25.

support of northern unionists and the captains of industry. And although exclusion had not been implemented, it was a real possibility which would inevitably rebound to their detriment, on southern unionists.

Recruitment efforts were undertaken countrywide. Redmond, Bishop J. H. Bernard and others believed that if nationalists and unionists shared 'the bloody sacrament of the battlefield' their subsequent sense of unity would prevent partition. Carson did not share their sentiment. His primary concern was for Ulster and maintaining the union with Britain. In January 1915 speaking at Crawfordsburn on the utilization of the Ulster Volunteers, while war conditions and the dangers to the civilized world were discussed, inevitably the domestic situation dominated the proceedings. For Carson, Ulster's welfare was paramount and if that meant partition so be it as 'the home rule danger was if anything worse, the home rule difficulty was only in abeyance, the difficulty was still here because Ulster was here.'[4]

On 20 September 1914, during a speech to local Volunteers in Woodenbridge, County Wicklow, Redmond had advocated enlisting as 'it would shame Ireland and its martial traditions if Irishmen refused to fight in defence of the right of freedom of religion.'[5] Separatists rejected Redmond's appropriation of the Volunteers; to MacNeill and Pearse, Redmond had violated Volunteer principles. Maurice Moore, inspector general of the National Volunteers, urged Redmond to maintain the Volunteers and criticised hysterical denunciations of the Irish Volunteers by Tom Kettle and the *National Volunteer*.[6] Nugent Everard presided at a meeting to encourage enlistment on 15 January in Navan, where Kettle addressed a special request to the National Volunteers, hoping that when Catholic and Covenanter, unionist and nationalist had written in blood their joint acceptance of this bill of honour on the continent, 'they might possibly find an easier way of settling their differences at home after the war.'[7] Stephen Gwynn MP, in an attempt to inspire a similar sense of honour, recounted how on the day on which the Home Rule Bill was passed he requested that he be allowed to join up despite being over the age for military service. Approximately 150,000 National

[4] *The Irish Times*, 6 Jan. 1915
[5] Stephen Gwynn, *John Redmond's Last Years* (London, 1919), pp. 154-55.
[6] *Spark*, 20 June 1915; see Maume, *The Long Gestation*, pp. 149-58..
[7] *The Irish Times*, 18 Jan. 1915.

Volunteers followed Redmond while 10.000 Irish Volunteers held to their original commitment.

Recruitment numbers in Ireland was a frequent topic in both the House of Commons and the Lords. While there was an urgent need for men at the front, following the establishing of the Volunteers, there was equally a suspicion and apprehension of armed groups back in Ireland and their potential for revolt. It was considered unfortunate that 'there were a certain number of revolutionary Irishmen, insignificant in number,' and probably a 'larger number of men holding similar views in the United States of America.'[8] The drilling of paramilitary groups did not instil confidence but rather the threat and possibility of subversive activity. Midleton asked if the Prime Minster would give an assurance that unless these troops were enrolled and take the oath of allegiance, that they be given no authority over citizens, as people in Ireland were in terror of the prospect of such an idea. He added that the home rule scheme did not at any time 'contemplate the raising and maintenance of an Irish Army by the government of Ireland.'[9]

As the war advanced rumours of conscription became more persistent. As early as 1915, press reports abounded with views of patriotic fervour expressing the necessity for conscription. There were more balanced and considered assessments of compulsory recruitment, and there were those who were completely opposed to the measure. On 14 May, Dungannon Rural District Council adopted a resolution calling on the government to consider conscription. The speakers cast considerable blame on farmer's sons, who as a class were not volunteering. A recruiting officer returning from a countrywide recruiting drive expressed a similar finding, 'farmers sons were not enlisting' consequently; the only solution to the problem was conscription.[10] An open meeting was called in the City Hall, Dublin in late July to discuss the issue.[11]

The general opinion was that conscription at some time was inevitable. Laurence Ginnell MP communicated his support from London, confirming that conscription was likely to come and recommended 'passive resistance.' Maurice Moore was undecided,

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[8] Ibid, 9 Jan. 1915.
[9] Ibid.
[10] *The Irish Times* 22 May 1915.
[11] Ibid., 24 July 1915.

as a military man with a sense of duty, his ambivalence was understandable. There was support and encouragement from clergy in many parts of the country. Among those present were Alderman Laurence O'Neill presiding, W.T. Cosgrave, Thomas Farren representing the Trade's Council, James Connolly and Harry Boland. Although the Irish Party had already pledged to oppose conscription, Thomas Kelly addressing the gathering, advised that 'the Irish Party in Parliament would have to be watched because all, with the exception of Ginnell, would do anything the British Government asked them.'[12] The motion 'conscription must be resisted' was passed and John Sweetman supporting it claimed, 'it was far better for young men to sacrifice their lives if need be, in Ireland, than to sacrifice them on the battlefield of France.'

The Easter Rising

The condition of Ireland by the beginning of 1916 was alarming.[13] Sweetman's comment on 'self sacrifice' would have appealed to separatists. Though collectively described as Sinn Féiners they included the IRB and many intellectuals such as Griffith, MacNeill and Pearse, who propounded their views in a range of publications *Nationality, The Irish Volunteer, Spark* and others. Claiming to be the bearers of the true Gaelic tradition, they warned against the evils of British cultural influences. The able propaganda of Sinn Féin also did a great deal to contribute to a general sense of malaise, from which only separatism could profit.[14] The uncertainty of the early months of 1916, with nationalist exhortations to 'martial traditions' and 'the bloody sacrament of the battlefield'; expressions of hope when 'Catholic and Covenanter, unionist and nationalist would write their joint acceptance of the bill of honour in their blood' appeared to set the scene for 'bloody sacrifice'. The separatists preached rebellion, drilled openly, carried arms and practised attacks on government offices. [15] The threat of conscription, the raid on the Gaelic Press which produced many of the separatist publications and rumours of a possible crackdown by the Castle should have heralded an imminent revolt. Yet when the Easter Rising took place on 24 April 1916 it came as a surprise to both civilians and the authorities.

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[12] Ibid.
[13] O'Halpin, *Decline of the Union*, p. 111.
[14] Ibid.
[15] Ibid.

On the following day *The Irish Times* reported the event in simple measured tones:

> An attempt has been made to overthrow the constitutional government of Ireland... during the last twenty four hours an effort has been made to set up an independent Irish Republic in Dublin....it was well organized with a large party of armed men taking part.[16]

Other publications not so circumspect in their reporting were quick to judge. *The Manchester Guardian* claimed 'the prime movers are the Sinn Féin organization and principal among them is the notorious Sir Roger Casement.' With no named leaders and little reference to the declaration of the Irish Republic, it claimed that a rebellion 'differs from a riot in having some serious purpose to overthrow a government, however remote the success may be.' Uncertainty, war conditions and the suspended legislation were considered the principal contributing factors to the rebellion:

> Home rule is unhappily only in prospect; it is comparatively easy to appeal to the old feuds and the old hatreds. Nationalist parliamentary representation has been decried as time-servers and misleaders and every successful effort to raise recruits for the war opposed. [17]

As the circumstances of the rebellion became clearer the *Guardian*'s analysis was more considered, seeing the rising as the result of an amalgam of two ideas:

> One was the profound disbelief in parliament and parliamentary action for political ends and this is the central ideas of Sinn Féiners. The other was syndicalism, disbelief in political action to improve the conditions of labour. In Ireland they call this Larkinism.[18]

Redmond, as leader of the nationalists, spoke to reassure the country that the German plot had failed. 'The majority of the people of Ireland retain their calmness, fortitude and unity. This attack on their interests was abhorrent, their rights, their hopes, their principles.' Home Rule has not been destroyed; it remains indestructible.[19] Following a meeting of the Parliamentary Party, their Nationalist Manifesto was published presenting two alternatives for Ireland. 'Either, Ireland was to be given over to unsuccessful revolution and anarchy, or the constitutional movement must have the full support of the people.'

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[16] *The Irish Times,* 25 Apr. 1916.
[17] *The Manchester Guardian,* 26 Apr. 1916
[18] Ibid., 2 May 1916
[19] *The Irish Times*, 3 May 1916.

Lovat Fraser's critique in the *Daily Mail* strongly criticized the government, placing full responsibility for the state of rebellion on their inaction. Fraser claimed they failed to anticipate, accurately evaluate the situation, or act on available evidence. For months it has been reasonably certain that there would be an attempt at revolt in Ireland. In every newspaper office in London the possibility was known. Every Irish Member of Parliament could see what was coming. The only people who could not see and would not listen, were the government and Mr. Birrell. There was nothing conspicuously foolish about this well organized plot, which so very nearly succeeded in gravely embarrassing the government and the nation. For almost incredible foolishness Fraser claimed 'we must turn our eyes towards the government which blandly permitted the Sinn Féiners to rehearse rebellion in Dublin.'[20]

The Aftermath

Though initially greeted with hostility, the insurrection and how it was perceived would change dramatically in the following years. Its aftermath saw a process of wholesale conversion, along with a pattern of retrospective endorsement of the defeated rebels and their objectives.[21] The self-sacrificing republican ideal which had fuelled the rebellion, would slowly but surely transform the national consciousness. Edward MacLysaght described the process of being wakened from his lethargy:

> Before the first World War politics in Ireland were still in the doldrums. The somewhat vague prospect of home rule did not stir the blood. The Rising woke me up and rom that time on I resolved to be more than just a sympathetic Gaelic Leaguer. The political aspect of Irish freedom now began actively to engage my attention.[22]

The *Guardian* had argued that 'disbelief in the effectiveness of parliament and the inability of the political process to improve the conditions of labour' was the primary motivation for the uprising. Politicians, the press and public alike were in agreement on the failure of the existing political process. Following his visit to Ireland 'Asquith told the House of Commons on 25 May that he believed the old machinery of government in Ireland had broken down and that the time had come for a new departure.'[23]

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[20] *Daily Mail* article reproduced in *The Irish Times*, 2 May 1916.
[21] Laffan, *The Resurrection of Ireland*, p. 48.
[22] MacLysaght, *Changing Times*, pp. 55-6.
[23] Gaughan, *Thomas Johnson*, p. 64.

In the immediate aftermath of the revolt future senators Peter DeLoughry of Kilkenny and Bernard O'Rourke of Monaghan were arrested and imprisoned on suspicion of involvement in the Rising. Many of Tom Johnson's friends and colleagues in the Labour movement were arrested and imprisoned, and a large cache of the movement's papers were impounded. Among those arrested were Thomas Foran and William O'Brien. Tom MacPartlin, in an attempt to support and encourage O'Brien while in prison wrote:

> Roll on August when we will all meet at Trade's Congress at Cork – that is if all the Labour men are not deported before that, such strange things are happening at present in Ireland. When you are brought to trial you will enjoy a hearty laugh at Mr. Law's terrible charges.[24]

MacPartlin's letter was a conscious effort to appear up-beat, but written, like an afterthought, in clear bold letters down the margin of the page were five words which conveyed his true feelings on the situation; 'tragic, tragic, tragic, tragic, tragic.'[25]

Despite the 'retrospective endorsement' of the events of Easter 1916 the loss of life and executions were just that, tragic. Many years later J. L. Garvin writing in the *Observer* claimed:

> Every one of the men who were in the rising, Mr. Cosgrave not the least of them, admits that if the rank and file, many of whom had no idea for what purpose they had been mobilised on Easter Sunday, had been dismissed contemptuously to their homes and the leaders treated as lunatics the whole thing would have been over.[26]

In a sense the Rising was a prologue, the main event was about to begin.

Four Pivotal Events

Analysis of events within the time span of this study indicate four crucial or pivotal 'moments' each responsible for a redirected political trajectory. The Parliament Act of 1911, the Easter Rising 1916, the General Election of 1918 and acceptance of the treaty on 7 January 1922, were protracted moments which lead ultimately to civil war and the founding of the Irish Free State. Speaking of the Parliament Act of 1911, O'Halpin maintains that 'the disappearance of the Lords' veto changed the Irish

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[24] UCDA MacPartlin Papers, P/19/A/7, MacPartlin to O'Brien, n.d. 1916.
[25] Ibid.
[26] *Observer*, 26 Apr. 1926.

question; Ulster not Ireland became the crucial issue.[27] Craig had warned that the morning home rule was passed they must be prepared to assume responsibility for the government of Ulster. It had taken the British government thirty years to appreciate the depth of Ulster's resistance.

Paul Bew in his critique on moderate nationalism argues that 'after the Easter Rising of 1916 both the policy and its principle instrument, the Parliamentary Party, were destroyed by the rise of the separatist Sinn Féin movement.'[28] The remainder of that year was a time of transition, prisoners were still incarcerated and the problem of home rule and Ulster exclusion had not gone away. Fr. Michael O'Flanagan, vice-president of Sinn Féin revealed a remarkable insight into the broader socio-geographic context. 'If we reject home rule rather than agree to the exclusion of the unionist part of Ulster, what case have we to put before the world?'

O'Flanagan was aware of Ulster's need to contain its ethnocentrism and political dominance within its own boundaries. Unlike many separatists, whose concept of nationhood coincided with the national geographic entity, he was uniquely confident in his national identity acknowledging 'the island of Ireland and the national unit of Ireland simply do not coincide.'[29] Acknowledging the complexity of the situation he supported the partition clauses in the attempted home rule settlement in 1916. While the republican elite defined the 'second moment' in revolutionary terms, it was up to others to translate and integrate its legacy into political reality. The new departure promised by Asquith, was not what he anticipated nor would it come from either the Parliamentary Party or its policy but rather from O'Flanagan and a group of separatists in North Roscommon.

The transformation of public opinion, however incomplete, was the most important change in the period after the rising, and it was the fundamental reality behind the more exciting events of 1917.[30] Insurrection and 'blood sacrifice' had dominated 1916; the republican ideal which inspired the rebellion was about to be reinvigorated and redirected through constitutional channels. 'The turning point came with the North Roscommon by-election,' with what Laffan claims was 'a campaign which proved to be

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[27] O'Halpin, *Decline of the Union*, p. 98.
[28] Paul Bew, 'Moderate Nationalism and the Irish Revolution, 1916-1923,' *The Historical Journal*, Vol. 42, No. 3, Sept. 1999, p. 729.
[29] *Weekly Freeman*, 19 June 1916.
[30] Laffan, *The Resurrection of Ireland*, p. 76.

among the more important in modern Irish political history.' The initiative to contest the election was taken by O'Flanagan and a group of local Volunteers and separatists. The Sinn Féin candidate eventually chosen was George Nobel Plunkett, whose three sons had fought in the rising; one a signatory of the proclamation had been executed, the two remaining were imprisoned. O'Flanagan was a highly articulate, dynamic and tireless organizer who knew how to motivate and inspire. The Volunteers harnessed their military discipline applying it where and when appropriate to ensure a successful campaign. Until they were strong enough to challenge the British government again they could keep themselves busy by fighting a lesser enemy: the Redmondites.[31] Their efforts were successful; Plunkett was elected for North Roscommon defeating Thomas Devine of the Parliamentary Party.

The decision by separatists to contest the by-election, not alone harnessed post rising sympathy but served to instil confidence and focus their political aspirations along constitutional lines. Laffan maintains that 'Sinn Féin's election campaigns have generally been seen as the first fruits of the party's revival.'[32] Enthused and encouraged by the initial success in February 1917, they contested and won three by-elections in rapid succession; South Longford, East Clare and Kilkenny. It was the defeat of the Parliamentary Party in four successive contests which transformed public disillusionment, widespread even before the rising and the home rule negotiations, into a massive exodus of its members.[33] It is remarkable that a group, considered by the British administration and public alike as extremists and rebels, could within a matter of months refocus their energies and ultimately achieve their goal through constitutional means. The triumph of Sinn Féin in the elections of December 1918, that third pivotal moment, consolidated their victory and clarified the way ahead; establishing the Irish Republic. It was a moment which even gained Edward Carson's comment 'as regards Ireland the elections have cleared the air. The issue is between an independent republic or government under the parliament of the united Kingdom. Every other alternative has proved to be a sham.'[34]

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[31] Ibid., p. 81.
[32] Ibid., p. 113.
[33] Ibid., p. 116.
[34] *The Irish Times*, 30 Dec. 1918.

Post Rising Political Negotiations

The government's one positive and constructive move after the Rising was its renewed effort to bring about a home rule settlement, but the negotiations which followed soon collapsed in bitterness and disillusionment. [35] Following a meeting on the 6 June 1916 in the Ulster Hall, Belfast, delegates of the Ulster Unionists Council declared:

> We reaffirm our unabated abhorrence of the policy of home rule, which we believe to be dangerous to the security of the Empire and subversive of the best interests alike, of Ireland and the United Kingdom and we decline to take any responsibility for setting up such a form of government.[36]

However in the existing circumstances they were prepared to discuss the issue with the government since:

> The cabinet, which is responsible for the government of the country is of the opinion that it will tend to strengthen the Empire and to win the war in which it is now engaged if all questions connected with home rule are settled now, instead of at the termination of the war.[37]

The Irish Question was once again affecting British policy and the war effort; how the situation was perceived in America was crucial. *The Round Table* expressed the opinion that despite the hard-line approach, 'the majority of unionists realised the need for some kind of home rule.'[38] On Asquith's instigation Lloyd George initiated discussions with Redmond. Walter Long, incensed by the turn of events complained bitterly to James Campbell:

> I regard this scheme as the breach of two solemn pledges (i) No Controversial legislation during the war and (ii) No Home Rule 'til the end of the war. As regards this precious scheme itself, it is a gross betrayal of friends and many 'foes' i.e. (moderate substantial men who are nationalists). It is a bad scheme, the worst of any that has ever been proposed. I am utterly puzzled by the line adopted by B[onar] L[aw] and A.J.B[alfour] and Carson.[39]

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[35] Laffan, *The Resurrection of Ireland*, p. 56.
[36] BLO Curtis Papers, MS 89, 6 June 1916.
[37] Ibid.
[38] *The Round Table*, Vol. vi, pp. 648-9, Dec. 1915-1916.
[39] WSA, Walter Long Papers, 947/173, Long to Campbell (Later Lord Glenavy), 29 June 1916.

In his reply Campbell informed Long, what he claimed was the 'general opinion' in Ireland to the proposed home rule discussions:

> There is a great and growing sense of relief here among all classes under the belief that this thing is going to burst up, because you may trust me absolutely when I tell you, it has not a friend in Ireland outside the nationalist party.[40]

With a final word of encouragement and exhortation to Long, Campbell confirmed:

> The Roman Catholic Bishops, with one exception, are all against the Bill and determined to kill it. I hope for the sake of my country they will succeed and they will if you and your friends stand firm.[41]

Long continued to keep a close eye on Irish affairs. Henry Duke had been appointed chief secretary of Ireland on 31 July, following the resignation of Augustine Birrell four weeks earlier. On 31 August, Long wrote to Duke cautioning against Redmond's recommended appointment of T. P. Gill as undersecretary.

> I believe that everybody in Ireland who shares my views would regard this appointment as a deathblow to all our hopes. I am sure this is no exaggeration. If the report is correct it is a proof of another of Redmond's faulty judgements as to what is best in his own interests.[42]

Long's involvement in the negotiations of the proposed home rule settlement had provided him with personal experience of Redmond's most recent 'faulty judgements.'

Altered Trajectories

Following the Rising, Redmond and his party had been anxious for the redirection of politics on constitutional lines and the immediate implementation of home rule to the point of accepting the exclusion of the Ulster counties (which they considered to be a temporary measure). While Ulster unionists were happy with their exclusion, southern unionists were horrified at the prospect of a settlement. Formerly they had dreaded control by Redmondites, now they had to fear the prospect of an even

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[40] Ibid., 947/173, Campbell to Long, 23 July 1916.
[41] Ibid.
[42] WSA, Walter Long Papers, 947/208, 31 Aug. 1916.

more terrifying master, republican rebels.[43] The cabinet's announcement of the terms of settlement on 22 July, led to a complete breakdown in any further negotiations. During the course of discussions, Long and Lansdowne, the prominent southern unionists, succeeded in extracting further important concessions from the cabinet and in altering the terms of settlement: 'not only would partition be made permanent (or at least, it could not be ended without a new act of parliament), but future Irish representation in Westminster would also be diminished.'[44]

There had been widespread unease and outright opposition to partition during negotiations. Archbishop Bernard writing to Lloyd George in early June 1916 didn't hesitate in expressing his opinion:

> Separatist legislation for Ireland will injure Ireland's highest interest....So long as Ireland remains part of the empire, so long will sedition and disloyalty on the part of these Irishmen who demand a republic, be a menace to our security.[45]

Ever vigilant for his Protestant flock, Bernard was aggrieved that southern unionists were being given so little consideration:

> Ulster is quite capable of looking after herself, but the claims of the loyal minority in the south and west for protection and generous treatment, are conspicuous. We have contributed our share to the empire during the last hundred years. Loyalty has been a tradition in the class of which I speak, the one class in Ireland who have not taken arms in support of its political aims between 1913-16 is the unionist class in the south and west.[46]

Bernard sought to impress upon Lloyd George the importance of this group to the political, economic and cultural life of the country and the growing necessity of their protection:

> No one who knows Ireland will deny the large part, which this class plays in the serious intellectual life of the country and also the country's trade. It will be at once unjust to the

[43] Laffan, *The Resurrection of Ireland*, p. 60.
[44] Ibid.
[45] BNL, J.H. Bernard Papers, MS, 52781, 3 June 1916.
[46] Ibid.

> minority and injurious to the welfare of Ireland as a whole, if they are not treated with special consideration in any settlement or attempted settlement. [47]

Bernard warned that the greatest struggle ahead for Ireland was not between Catholic and Protestant, nor home rulers or nationalists, but between the forces of order and authority on the one hand and the forces of anarchy and disorder on the other. The issues of partition and home rule were to remain, and as Bernard had predicted, the situation countrywide deteriorated over the next two years. His mood and predictions echoed those expressed by Walter Long in his letter to Henry Duke, 'Lord MacDonnell has just returned from a visit to Ireland and brings the gloomiest report of the conditions of the country and he is not "one of us" nor is he an alarmist.'[48]

The *débâcle* of the home rule negotiations in the summer of 1916 had important long term effects.[49] From this point onwards, the exclusion of Ulster and its political consequence were inevitable; with the Ulster unionist exclusion southern unionists were increasingly vulnerable with every political shift. And with the spectre of a 'Republic' looming large Bernard, Midleton and the southern minority were forced to accept that home rule was by far the lesser of two evils. Deceived, dissatisfied and disillusioned, the Parliamentary Party would never regain their former power, and lack of trust in the political process and personnel led to an inevitable deterioration of Anglo Irish relations for the remainder of the decade.

Anglo Irish relations were very poor in December 1916, when Lloyd George succeeded Asquith as Prime Minister. Lloyd George's overriding aim was to win the war, and to this end on Duke's recommendation, Irish prisoners held without trial in British jails were to be released. Ministers agreed that release was a risk worth taking, having 'considered the question from the point of view of the effect of the release on Ireland itself; on American relations; on Imperial policy; and on the parliamentary situation as a whole.'[50] This conciliatory gesture may have improved Anglo-American relations and temporarily placated sections of the Irish polity but nationalists were becoming increasingly apprehensive in the face of the growing strength and influence of the Sinn Féin movement. Aware of the value of their support for the government,

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[47] Ibid.
[48] WSA, Walter Long Papers, 947/208, 31 Aug. 1916.
[49] Laffan, *The Resurrection of Ireland*, p. 61.
[50] O'Halpin, *Decline of the Union*, p. 136.

'nationalists gave warning that unless a further effort was made to devise a workable home rule agreement immediately they might not continue to support the government in the Commons.'[51]

The Irish Convention

In May 1917 Lloyd George devised a scheme for an Irish Convention to be set up under the chairmanship of Horace Plunkett; its aim was to initiate a scheme of self-government for Ireland, without adversely affecting the integrity of the British Empire. O'Halpin claims that 'the convention was a clever device because it placed on the Irish the onus for settling their own dispute; as far as the cabinet was concerned, the less heard about Ireland the better.'[52] Plunkett knew that the most difficult problem was to ensure Sinn Féin participation. For de Valera the Convention was irrelevant; consequently Sinn Féin absented themselves, as nationalist, Ulster unionist and southern unionist parties participated. Edward MacLysaght together with AE (George Russell), acted as a conduit in an effort to keep Sinn Féin in touch. Lines of communication were kept open as they in turn were in constant touch with Eoin Mac Neill, Bulmer Hobson, James Douglas and Alice Stopford Green. MacLysaght recorded that he had little faith in the Convention from the start, yet he was determined to put the Sinn Féin point of view to the gathering. In addressing the Convention, he was conscious that many present considered the Sinn Féin movement to be a temporary aberration on the political scene:

> This is no passing phase to be contemptuously brushed aside, as one speaker did. Nor is it a contemptible fact to be recognised but deprecated, which has been the attitude of a number of previous speakers. With the ideals and principles of Sinn Fein I am heart and soul at one; and I am bound to regard this as a hostile assembly.[53]

MacLysaght expressed the earnest hope that a settlement would be found concluding 'if no settlement is arrived at, the consequences will be appalling.'[54]

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[51] Ibid., p. 138.
[52] Ibid., p. 139.
[53] MacLysaght, *Changing Times*, p. 76.
[54] Ibid.

Southern unionists were no lovers of home rule but the changing political circumstances forced them to acquiesce and work for the best possible conditions. Bernard, Midleton and Desart met with members of the War Cabinet, Lloyd George, Curzon, Bonar Law and Professor Adams,[55] in February 1918 to discuss the difficulties of the Convention. In an effort to elicit the general opinion of the home rule issue Lloyd George suggested that in many quarters 'the Roman Catholic Hierarchy did not really desire home rule and the Bishop of Raphoe's demand for control of Customs was a wrecking demand.' [56] In his private correspondence Bernard was equally critical of Catholics. Yet like the Catholic Hierarchy who had tempered their allegiances to keep Sinn Féin on side, he was also reading the signs of the times.

Bernard, together with Midleton and Desart drafted a document, which was signed by all unionists at the Convention and sent it to Downing Street on 28 February 1918. They were determined that their perspective on the unfolding situation in Ireland was made quite clear in Westminster. In attempting to convey to the government the deteriorating situation, they claimed that the release of Sinn Féin prisoners had led to an enormous increase of republican activity throughout the country:

> The efforts of the Convention to promote agreement among Irishmen of moderate views are being prejudiced by the unchecked efforts of those extremists. They have promoted sedition throughout Ireland. They publicly defy the law of the land.[57]

Elaborating in detail on the growing violence throughout the country, they requested that the leaders who had incited others to crime should be arrested, trials carried out to their conclusion, that sentences duly given should be rigidly enforced and concluded with a warning:

> Unless some public assurance is given to this effect and unless it is acted upon with firmness, we are convinced that Ireland will drift into a condition from which no efforts of the Convention will be able to extricate her. [58]

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[55] Adams, William George Stewart [1974-1966], Professor of Political Science at All Souls College, Oxford; through the influence of Thomas Jones he was invited to join Lloyd George's personal secretariat editing the reports of the war cabinet and serving until 1918 as one of the private secretaries to Lloyd George: See *ODNB*.
[56] BNL J.H. Bernard Papers, MS 52781, Lloyd George to Bernard, 6 Feb. 1918.
[57] Ibid., MS 52781, 26 Feb. 1918.
[58] Ibid.

Their warning echoed that of MacLysaght. Campbell who was equally pessimistic in his retrospective 'state of the nation' report to Lloyd George said:

> Looking back I am now satisfied that there was never real hope of the success of the Convention owing to the abstention of S(inn) F(éin), the determination of the Roman Catholic Hierarchy to wreck it, and the unutterable hostility of the Ulster delegates to Home Rule for a united Ireland.[59]

Since the Ulster delegates' ultimate aim was exclusion or partition, and Campbell's expressed belief that partition was a 'desperate and dangerous gamble'[60] there was little hope for a meeting of minds on any satisfactory outcome. Overall Campbell's reflections to Lloyd George indicate that he was beginning to modify his former hard-line approach in the face of a changing political scene.

On 8 April 1918 the Convention issued its report proposing an Irish parliament for the whole of Ireland. Parliament would have to defer to the British government on such substantive matters as customs, excise, defence, policing and even postal matters.[61] The report met with little approval from any of the concerned parties. Ulster unionists rejected any dominance by the southern nationalists, leaving Ulster nationalists to view their position with foreboding. Desperate to gain some form of home rule, Redmond, who had witnessed his parliamentary party representation transfer to Sinn Fein in recent by-elections, joined the southern unionists in proposing a moderate scheme.[62] Lloyd George wrote to Plunkett on 28 February 1918:

> The only hope of agreement lies in a solution, which on the one side, provides for the unity of Ireland under a single legislature with the adequate safeguards for the interests of Ulster and the southern unionists, and on the other preserves the well being of the empire and the fundamental unity of the United Kingdom...[63]

Northern unionists had, ostensibly, come to the Convention to find a compromise

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[59] UKPA Lloyd George Papers, F/180/3/5, Campbell to Lloyd George, 23 Sept. 1919.
[60] James Campbell to the British Cabinet, British Cabinet Records, May 1916, cited in Costello, *The Irish Revolution*, p. 326.
[61] Francis Costello, *The Irish Revolution and its Aftermath 1916-1923 (*Dublin, 2003), p. 30; see R.B. McDowell, *The Irish Convention* (London, 1970); J. Anthony Gaughan *Memoirs of James G. Douglas* (Dublin, 1998); Patrick Maume, *The Long Gestation : Irish Nationalist Life 1891- 1918* (Dublin, 1999)
[62] Costello, *The Irish Revolution and its Aftermath 1916-192,* p. 30.
[63] NLI Horace Plunkett Papers, MS 18,545, 28 Feb. 1918.

between the Home Rule Act of 1914 and the partition proposals of 1916.[64] It soon became clear that their dual goal was to establish partition and direct rule.

A report along the lines of the prime minister's offer was approved by a majority of 44 votes to 29, the majority consisting of southern unionists and moderate nationalists, the minority of the unlikely combination of northern unionists and extreme (or progressive) nationalists.[65] The so-called 'failed' Convention however, had succeeded in two ways. It had brought nationalist Ulster and southern unionists working together for the first time and secondly it proved that the political circumstances in Ireland had changed. Formerly divergent unionists and nationalists, at least temporarily, had come together with the view to improving their respective political prospects. MacLysaght had warned 'If the Convention fails, it will require revolution and bloodshed to arrive at the inevitable result, Irish Freedom'[66]

> It is true that Sinn Féin is demanding a republic – complete separation...Mr Anderson says it would be risky and dangerous to interfere with the status quo. I warn Mr. Anderson and his friends that it will be dangerous not to interfere with it, drastically.[67]

Republican Aspirations

With no resolution, for Campbell the outlook in the following months was bleak as he witnessed Sinn Féin leaders who openly boasted:

> "Home Rule in any shape will only afford (us) a jumping off ground for a Republic" – and I am convinced that the very first act of any Home Rule Parliament (will be) the proclamation of a Republic; no safeguards could deprive S[inn]F[ein] of its majority, under existing conditions.[68]

Despondent at the outcome of the Convention, Campbell feared that Sinn Féin rhetoric would accentuate the failure with triumphant shouts of 'another object lesson of the incapacity of our English rulers'.[69] Sinn Fein's growing confidence, the increasing vulnerability of southern minority, the covert power of the Catholic Church, the

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[64] West, *Horace Plunkett*, p. 171.
[65] Ibid.. 174.
[66] MacLysaght, *Changing Times,* p.76.
[67] Ibid., pp. 76-7.
[68] UKPA Lloyd George Papers, F/180/3/5, Campbell to Lloyd George, 23 Sept. 1919.
[69] Ibid.

growing demand for complete independence and an 'ideal Republic' together had transformed the national mood. The political narrative had changed, become more focused, more single-minded as Fitzpatrick summarizes; 'the ideologists of the renascent Sinn Féin reformulated the rhetoric of liberation.[70] As MacLysaght told the Convention 'Sinn Fein wants only complete freedom for Ireland, to work out her own destiny in her own way, without constant interference, benevolent or malign, by another nation.[71]

Plunkett's hope of providing a constitutional solution to the Irish situation suffered a severe setback as on the day after the issuing of his report on 8 April, the Government announced plans for conscription in Ireland. Though conscription had been discussed, anticipated and feared as early as 1915, the announcement had the effect of uniting parties of many political persuasions; the outrage felt at this move galvanised action on all fronts. On 18 April, Laurence O'Neill, Lord Mayor of Dublin convened a conference to register and express the collective outrage that was felt countrywide. The Irish Parliamentary Party, Sinn Féin and the leadership of the Labour movement issued a joint statement stating that the Conscription Act 'must be regarded as a declaration of war on the Irish nation. The Catholic hierarchy ordered that the pledge against Conscription be read outside all churches on the following Sunday and made it clear that conscription was 'an oppressive and inhuman law which the Irish people [had] a right to resist.'[72]

In the face of the deteriorating situation in 1918 Midleton was invited by Lloyd George and members of the cabinet to take the Viceroyalty of Ireland with a free hand to deal with the situation. In his reply to the King declining the position he explained his reasons:

> I declined to act as Viceroy on the ground that the position proposed in accord with government policy would force me to act with 90% of the population against me with regard to conscription and the whole of the remainder on account of Home Rule.[73]

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[70] Fitzpatrick, *The Two Irelands*, p. 28
[71] MacLysaght, *Changing Times*, p.76.
[72] A statement issued by the Catholic Bishops following their plenary session at Maynooth 16 Apr. 1918.
[73] BNA Midleton Papers, 30/67/2292, Midleton to Lord Stamford private secretary to the King, 4 May, 1918.

He excused himself, on the grounds that it was an improper position for the King's representative to be boycotted by the entire population, his invitations would be ignored and the police would have difficulties when he appeared in public. Privately, he confided to a friend that the cost of assuming the position of Viceroy would be excessive.

> To carry it out adequately I had always understood that with one or two exceptions, Viceroys had to spend between £15,000 and £20.000 a year in addition to the official salary. And as Wimborne was a man of large fortune and had shown considerable profusion in the office, it would be an ungrateful task to have to cut things down at a moment of great tension.[74]

Midleton compiled a report, giving an account of a series of meetings with Lloyd George and members of the cabinet over the last days of April and early May. He had been summoned urgently by the Prime Minister, offered the Viceroyalty and participated in discussions on the deteriorating situation in Ireland. He explained that although Lord French was prepared to use coercion, James Campbell, the Chief Justice was 'wholly against conscription and declared that he would not take part in it; also home rule at that crucial time was impracticable.' In discussing the difficulty in acquiring recruits, Midleton expressed surprise when Lloyd George explained:

> The object is not recruits – but to avoid secession, and added that 'he could not change the proposal for home rule without losing the support of America and the Labour and Liberal Party.[75]

Conscription

After two days of intense negotiations Lloyd George remained adamant about their proposed policy; 'they could not face America without having tried home rule – conscription must be delayed until they had made progress with the Bill.' When the Prime Minister disgustedly claimed 'all have funked conscription,' the cabinet eventually agree that government would best be carried out at this time by a group of three; Midleton, French and the Lord Chief Justice, James Campbell. All three confirmed their agreement:

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[74] Ibid., 30/67/2305, n.d. May 1918.Midleton to Bonar Law.
[75] Ibid.

> To force home rule now would render Ulster bitterly hostile to conscription and French is of the opinion that if Conscription could not be forced by the sword on the rest of Ireland, Ulster would present an almost insuperable difficulty.[76]

Lloyd George's increasingly coercive Irish policy was a cause of concern. Midleton advised against any further attempts to implement home rule reiterating the complexities and consequent dangers of the situation:

> The situation gets daily graver, and both the Irish Judges who have been asked to co-operate, agree on the impossibility of setting up home rule in the near future, and the increasing gravity of the anti-conscription movement.[77]

He illustrated both the centrality and difficulties of the home rule issue for all, nationalists, Ulster unionists and southern unionists:

> As regards conscription Mr. Redmond's attitude was that he was helpless as regards getting men unless Home Rule in some shape was granted, but that if it were, he would make every effort in his power and take risks to obtain recruits.[78]

By contrast Craig, representing Ulster unionists was uncompromising in his demands:

> Unless Ulster was excluded, conscription was equally impossible...but if it were made clear to them that they would be excluded from any Home Rule Bill, they would be able to provide a large body of men and in that case they would not care whether there was conscription in the south or not. ... 'If you comply with our demands you shall have men - if you do not you shall have none.'[79]

Home rule was being used as both a bargaining chip and to blackmail.

Despite Ulster's antagonism and the nationwide anti-conscription movement the government felt 'bound to continue to make their efforts for home rule.'[80] The issues were becoming more complex; home rule, partition, conscription and the threat of force

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[76] BNA Midleton Papers, 30/67/2292, Midleton to Lord Stamford, private secretary to the King, 4 May 1918.
[77] Ibid., 30/67/2290, Midleton to Lloyd George advising against home rule on 3 May 1918.
[78] Ibid., 30/67/2296, discussed at an interview between Lords Midleton, Desart and Captain Craig on 9 May 1918.
[79] Ibid., 30/67/2296, 9 May 1918.
[80] Ibid.

added daily to the political confusion. Campbell's more conciliatory attitude was manifest as he refused to agree to French's use of force. He was particularly concerned for the RIC whose responsibility was to enforce it; the RIC were gravely shaken by the whole Conscription issue:

> The Constabulary are denounced individually from the altar in every village, and General Byrne claimed that if they were employed on Conscription the force would be disrupted. 'I submit that the decision taken by the Prime Minster is as mistaken as it is grave and I venture to predict that before many weeks elapse, the government will have to reconsider their position.'[81]

Catholic nationalists were not alone in resisting the proposed conscription; on 16 May a miscellaneous group addressed a statement to the chairman and the members of the Mansion House Conference condemning the 'menace of conscription.'[82] Of the nine signatures on the document, five would later serve as senators in the Free State Senate, Alice Stopford Green, Dr. Douglas Hyde, John O'Neill, P.W. Kenny, and Edward MacLysaght.

The group forwarded the document to Archbishop Bernard for his signature of support; the document described conscription as 'an invasion of national right.'[83] However, there is no evidence that Bernard ever signed or returned the document. The Mansion House conference had put the collective position forcibly and comprehensively, and despite the fact that their statement had been suppressed by practically all British newspapers, the evidence suggests that public sympathy and opposition was highly effective in reversing the British decision on conscription. Edward MacLysaght expressed the opinion that any 'body on which de Valera, Dillon and Healy worked together with the direct co-operation of Labour, and the approval of the Hierarchy, was undeniably representative of the whole nation (except of course unionists).'[84] Evidence within the Midleton Report suggests that Lloyd George planned to use conscription to 'round up' Sinn Féin activists, yet paradoxically not implementing it helped to ensured continued American support. As Midleton had predicted two weeks earlier, the British Government decided, in the face of the weight

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[81] Ibid.
[82] TCDA Bernard Papers, MS 2388-93/150. 16 May 1918: the document stated that the 'decision of the parliament of the British people to conscript the manhood of Ireland, by the order of the English Privy Council, in thus deliberately ignoring our national status, effectively denies it.
[83] Ibid.
[84] MacLysaght, *Changing Times*, p. 79.

of opposition not to enforce conscription. His advice to Lloyd George on Sinn Féin however, was about to take effect.

Sinn Féin Arrests

In his letter to the King on 4 May, Midleton, referring to Sinn Fein's involvement in the 'German Intrigue' and the proposed organization of a countrywide general strike, advised:

> Sinn Fein are to be suppressed; they must be declared at once to be an illegal organization, the leaders must be arrested as well as their followers where they continue the movement and the greater number of newspapers of Ireland must be suppressed.[85]

Two weeks later mass arrests of Sinn Féin members took place on 17 May, on the pretext of involvement in the so-called German plot.[86] Again the Catholic Church was implicated, the rumoured accusation being that, 'communications between Sinn Féiners and Germany are kept largely through Maynooth and the Vatican.'[87] An examination of the so-called incriminating evidence revealed that 'most material dealt with contacts between Irish –Americans and Germany before February 1917 and that there was nothing directly implicating Sinn Féin.'[88] Midleton's advice may have temporarily discommoded the Sinn Féin movement but, like so much of British policy, ultimately it proved to be counterproductive.

The cumulative effect of the 1916 executions, the ineffectiveness of the Irish Convention, the Conscription Act and the arrests following the German plot, created a favourable climate for the acceptance of Sinn Féin as an effective political party. The Representatives of the People Act of 1918 almost doubled the number of potential votes for the electorate. In the 1918 General Election Sinn Féin won 73 of the total 105 parliamentary seats, thereby firmly establishing itself as a legitimate party with the moral authority to represent the people. Time, the Great War and the changing political scene across Europe gave rise to hitherto unimagined possibilities. The assassination of

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[85] BNA Midleton Papers, 30/67/2292, Midleton to Lord Stamford private secretary to the King, 4 May1918.
[86] For a detailed account of the 'German Plot' see O'Halpin, *Decline of the Union*, pp. 159-63.
[87] Christopher M. Andrews, *Her Majesty's Secret Service: The Making of the British Intelligence Community* (New York, 1987), p. 249, cited in Costello, *The Irish Revolution,* p. 33.
[88] O'Halpin, *Decline of the Union*, p. 162.

Tsar Nicholas of Russia and his family on 17 July 1918 shattered the myth of hereditary rule by divine right. The democratisation of the suffrage, the promise of self determination, and the Russian revolution led many in Sinn Féin to believe that what was once an honourable but hopeless aspiration could soon be realised.[89] Sinn Féin's election Manifesto outlined both their goals and their methods; 'to secure the establishment of the Irish Republic' by with-drawing 'Irish Representation from the British parliament and by denying the right and opposing the will of the British Government to legislate for Ireland.'[90]

Anglo-Irish War, Truce and Treaty

The first Dáil, which met in the Mansion House on 21 January 1919, was the creation of Sinn Féin, whose party integrated various separatist groups during the Ard Fheis in late October 1917. These Sinn Féin candidates, members of the independence movement, engaged in active struggle, elected to the British parliament in December 1918, now constituted themselves as Dáil Éireann.[91] They had promised the electorate to abstain from Westminster and create a national assembly, to drive the English out of Ireland by whatever means that was necessary and to appeal to the post-war peace conference for recognition.[92] Establishing Dáil Éireann was part of their campaign as was their presentation of the Constitution of Dáil Éireann. Four documents were put before the Dáil at that first assembly, a Declaration of Independence, a Message to the Free Nations of the World, the Democratic Programme and the Constitution. The Declaration of Independence stated:

> At the threshold of a new era in the history, the Irish electorate in the General Election of December 1918, seized the first occasion to declare by an overwhelming majority its firm allegiance to the Irish Republic.[93]

The Constitution made no provision for a Senate or Second Chamber. Neither home rule nor its proposed legislative structures were of any consideration in this new political configuration. 'Twice in the course of its history the Dáil has functioned as a unicameral legislature: during its revolutionary period [1919-21] and for the interval

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[89] Kissane, *The Politics of the Irish Civil War*, p. 6.
[90] See Sinn Féin's 1918 *General Election Manifesto*.
[91] Basil Chubb, *The Government and Politics of Ireland* , 2nd ed. (Harlow, 1982), p. 42.
[92] Maryann Valiulis, *Portrait of a Revolutionary, General Richard Mulcahy and the Founding of the Irish Free State* (Dublin, 1992), p. 33.
[93] *Dáil Debates*, Vol.1, Col.16, 21 Jan. 1919.

between the abolition of the first senate in 1936 and the creation of the second under the new constitution of 1936.'[94]

In the Declaration of Independence, a Republic was declared and that declaration was unequivocal in both its aims and method, 'to ratify the establishment of the Irish Republic' and to 'make this declaration effective by every means at [their] command.'[95] As subsequent events reveal, the means were both political and military though the connection between the two was at times, tenuous. Comerford argues that, 'republicanism in the sense of physical force insurgency had achieved its apotheosis at Easter Week and was revived in 1919 with the Irish Volunteers, soon generally known as the IRA, embarking on a guerrilla campaign against the forces of the crown.'[96] The constitutionalist *Cork County Eagle* sounded an ominous note as it predicted:

> Attempting to create Irish Republics is no child's play. There is a world of difference in using a vote and using a gun. Sinn Féin will very soon, if it lives up to its declarations, become a very serious business for many.[97]

Though there was no definite inception of hostilities; in a sense the country drifted into increasing terrorism and acts of war.[98] What is now generally acknowledged as the start of the Anglo-Irish war began with the killing of two RIC men at Soloheadbeg in Tipperary in January 1919, coincidently on 21 January, the same day as the convening of the First Dáil; the killings took place without the Dáil's knowledge or consent. Hart claims 'the coincidence of the killings and the declaration of independence was just that, although it would prove irresistibly convenient for chroniclers of the revolution.'[99] Evidence of the motivation for the killings is compelling. On 21 January, Seamus Robinson, Sean Treacy, Dan Breen and six other volunteers ambushed a cart carrying gelignite in Soloheadbeg, Co. Tipperary, killing two policemen in the process. Quarry workers, who had been warned beforehand to stay silent, watched in horror. Breen later made it quite clear that killing the policemen, not acquiring the gelignite, was their main purpose. He claimed, 'the gelignite was only

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[94] McCracken, *Representative Government in Ireland*, p. 137.
[95] *Dáil Debates*, Vol. 1, Col. 16, 21 Jan. 1919.
[96] Comerford in McGarry (ed.), *Republicans and Democracy*, p. 15.
[97] *Cork County Eagle*, 4 Jan. 1919.
[98] J. A. Murphy, *Ireland in the Twentieth Century* (Dublin, 1975), p. 14.
[99] Hart, *The IRA at War*, p. 63.

incidental; we were surprised that there were only two of them – we'd hoped we could take on ten.' [100] Rev. William Keogh manifested a considerable degree of ambivalence:

> Ireland's enemies would try to lay this crime against the new popular movement striving for her independence but they are wrong. The leaders of that movement are far too logical and God-fearing to countenance such crimes. No party in the country would be more pained by the crime or condemn it more strongly than the leaders of that movement.[101]

By early 1919 Sinn Féin were riding high in the estimation of all. Few wished to acknowledge or be seen to support violence. Harry Boland denied the suggestion that de Valera had supported the violence, in an *American Journal* interview.[102] Yet the mood of the country had changed, the authorities had suppressed the Dáil, the crown forces were becoming more oppressive as they intensified their activities against Sinn Féin.

There was a collective unease in the face of British militarism and the issue of prisoners remained unresolved. A Labour party document described the repressive provisions of DORA, the Defence of the Realm Act:

> Under regulation No. 14B of the Defence of the Realm Act, a man can be arrested without a warrant and transported to an England prison and kept there to the end of his life, without knowing why and without charge or trial. No writ of Habeas Corpus can touch him.[103]

The scene was being set for confrontation - the *Journal* summarised:

> Ireland is given over completely to militarism and reactionism..... Mr Shortt who would have opposed Lord French and released the Sinn Féin leaders and other MP's imprisoned without trial, is himself removed.[104]

After the election but before the poll was declared [Shortt] urged the cabinet to release the remaining detainees held in British prisons before they became MPs.[105] Prisoners had been detained under the terms of DORA for the duration of the war on the grounds that they posed a threat to national security. Shortt's advice was ignored and 'most of

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[100] Carlton Younger, *Ireland's civil war* (London, 1986), p. 86; Paul Bew, 'Moderate Nationalism and the Irish Revolution, 1916-1923,' *The Historical Journal*, Vol. 42, No. 3, Sept. 1999, p. 737; see also Joe Ambrose, *Sean Treacy and the Tan War* (Cork, 2007), Cpt. 7.
[101] *Munster Advertiser*, 1 Feb. 1919.
[102] *Weekly Freeman*, 24 Mar. 1919.
[103] UCDA MacPartlin Papers, P19/D/11, Document titled Civil Liberty in Ireland, n.d. 1921.
[104] *Freeman's Journal*, 18 Jan. 1919.
[105] O'Halpin, *Decline of the Union*, p. 178.

the Sinn Féin and separatist leaders, many of them now MPs, remained in jail.'[106] When in early 1919 French recommended the release of the prisoners to the cabinet, there was no initial agreement. Long considered it was dangerous 'because it would give the cabinet the appearance of weakness at a time when industrial trouble was threatened in Britain.'[107] French eventually released the remaining prisoners by February 1919; one suggestion is that he feared a rise in fatalities from the Spanish Flu while incarcerated by the British jails. Whether it was that or their avoidance of political fallout from the threatened industrial trouble on the homeland, British administration was ever vigilant of its image in the public's perception.

James Campbell

Ten of the most formative years in Irish history had passed, since Campbell stood beside Carson as one of the first signatories of the Covenant in 1912.[108] Following the passing of the Parliament Act in 1911, Carson spoke of the 'most nefarious conspiracy' to impose home rule and warned:

> We must be prepared in the event of Home Rule passing, with such measures as will carry on for ourselves the government of those districts of which we have control – and time is precious in these things –we must be prepared, the morning Home Rule passes, ourselves to become responsible for the government for the Protestant province of Ulster.[109]

Campbell was at that time 'pencilled in as the attorney general in the planned Ulster provisional government during the home rule crisis.'[110] Following a brilliant academic career he became a talented and ambitious advocate and as a unionist he campaigned against home rule in both England and Ireland. He was returned to Westminster as an MP for Trinity College Dublin in 1903. Within a week of his appointment as attorney general of Ireland in 1916, the Easter Rising took place, followed by the proclamation of martial law with the Defence of the Realm Act 'amended to allow serious offences to

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[106] Ibid.
[107] Ibid., p. 186.
[108] PRONI IFN/7A/2/47, 28 Sept. 1912.
[109] Carson's speech delivered at the home of James Craig, in 1911 cited in Wallace, *British Government in Northern Ireland*, p. 15.
[110] O'Halpin, *Decline of the Union*, p. 164.

be dealt with by courts martial.'[111] In May of that year Campbell warned the British Government of the danger of partition:

> Englishmen may well think that the experiment is worth the risk, but no Irishman who is conscious of the dreadful results that must inevitably follow from its failure can regard it as anything short of a desperate and dangerous gamble.[112]

Evidence suggests he reassessed and reconsidered his political stance in the intervening years; what had been acceptable to him in 1911-1912 was by 1916 considered a 'desperate and dangerous gamble.'

History has not been kind to James Campbell. Because of his prominence as a unionist spokesman, he had become a hate-figure for many nationalists. D.P. Moran dubbed him 'Jim Crow' likening his activities to that of a 'carrion crow' a name applied to unionists who recounted discreditable stories of Irish affairs.[113] Moran's acerbic social commentary must be questioned in the light of his own struggle to assert his Irish Catholic identity. The fact that Campbell was an office-holder in the Masonic order was a further reason for suspicion. He chose to be associated with society's recognized power bases, the legislature, the judiciary, the church and latterly with academia. He held chancellorships in several Church of Ireland dioceses, Dublin, Glendalough and Kildare, Tuam, Waterford and Clogher and in 1919 he became vice-chancellor of Dublin University. [114] A highly successful professional, Campbell was representative of the *status quo* and in the context of the latter part of the second decade, Ireland's *status quo* was being assaulted by the increasingly powerful national socio-political movement – Sinn Féin.

Appointed Lord Chancellor of Ireland in May 1919, his tenure was to witness the fraught years of struggle for Irish independence. His attitude and efforts during the Irish Convention and conscription crisis are recounted above. He recommended a more lenient policy during conscription; his concern at the increasing attacks on the military

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[111] Ibid., p. 119.
[112] James Campbell to the British Cabinet, British Cabinet Records, May 1916, cited in Costello, *The Irish Revolution*, p. 326.
[113] Patrick Maume, *DIB; ODNB.*
[114] Ibid.

and particularly members of the RIC, were indicative of a more empathetic approach as he advised Lloyd George:

> The officers and men were never more reliable than at present, but they are practically devoid of detective experience and are confronted with an organization thoroughly and skilfully disciplined, taught and trained to keep its secrets, and in this way, together with leakages from government, they are able to baffle the efforts of the police.[115]

He cautioned at this stage against any relaxation of existing precautions, fearing a fresh and 'better organized outbreak of rebellion.' He was adamant that the immediate reorganization of the RIC was essential:

> I regard as urgent and essential, namely the complete remodelling of the detective side of the Irish police; by setting up a distinct, Criminal Investigation Department on the lines of that constructed in the Land League days to deal with all cases and kinds of political crime.[116]

While his correspondence indicated his ambition for the forces of law and order, Campbell's own personal ambition occasioned considerable adverse criticism from contemporaries and historians alike. O'Halpin claims he 'distinguished himself only by his importunity, greed and opportunism'[117] and 'he was unquestionably the most persistent and blatant place seeker that the British politicians had to contend with in the last decade of the union. He wrote countless letters, demanding advancement for himself and was shameless in his requests.'[118] Maume's biographical note suggests that he showed contempt for the new order by mispronouncing Saorstát Eireann as 'Sour state I ran', by dismissive haughtiness towards his fellow senators, and by adjourning the house to suit his own convenience.[119] Since the source for this evidence is Edward MacLysaght, a contemporary and fellow senator, it is necessary to be aware of the context, MacLysaght was a Catholic, a nationalist, a lover of the Irish language, a strong supporter of Sinn Féin and Campbell's associations with Ulster and Carson were not easily forgotten.

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[115] UKPA Lloyd George Papers, F/180/3/5, Campbell to Lloyd George, 23 Sept. 1919.
[116] Ibid.
[117] O'Halpin, *Decline of the Union*, see footnote 41 on p. 236.
[118] Davidson to Bonar Law, reporting a talk with Campbell's private secretary, 8 July 1918, 83/5/8, cited in O'Halpin, *Decline of the Union*, p. 164.
[119] Maume, *DIB*.

Campbell's opportunism earned him the criticism of nationalists, unionists and labour alike. MacLysaght referred to him as an Orangeman and 'a unionist as prominent as Carson or Craig – they might have been called the three 'Cs.'[120] In March 1918 Tom Johnson published a pamphlet *A handbook for Rebels*, which contained extracts from the speeches of Carson, Craig, Bonar Law and Campbell indicating how 'with complete success, by a display of armed force, they challenged the might of the empire and were afterwards honoured by the government they defied.'[121] For Johnson and many others this group were synonymous with rebellion and would henceforth be clearly identified as 'the leaders of the Ulster rebels.' In the forward to the pamphlet Johnson expressed the hope that:

> The speeches of British statesmen, lawyers, legislators and soldiers would provide for the generation which survived the war, some useful hints on the science of 'bloodless rebellion,' and that before setting out to defy parliament and the law, the example of the leaders of the Ulster rebels would be borne in mind.[122]

In pointing to the difference, injustice and inequality of the British governments' treatment of its citizens in Ulster and Southern Ireland, Johnson emphasised two key issues. One, these speeches were 'in defiance of the British government and parliament on the issue of home rule for Ireland,' and secondly, in relation to the 'bloodless coup' there 'is not on record throughout the long story of this armed challenge to constitutional authority in Ulster, a single execution, imprisonment, deportation, prosecution or even a police baton charge.'[123]

As early as 1916 Campbell had started to distance himself from the more extreme unionists. It is evident from his considerable correspondence that he had modified his view on many issues over the preceding period. His initial opposition to home rule, his grudging admiration of Sinn Féin members in earlier days, his growing opposition of British force during the conscription crisis, all had effected a more conciliatory attitude towards Irish nationalist aspirations. His position as head of the Irish judiciary afforded him a unique perspective on the deteriorating situation; like so many southern unionists, he had by 1920 accepted the inevitability of some form of self

[120] MacLaysaght, *Changing Times*, p. 138.
[121] Gaughan, *Tom Johnson*, p. 104.
[122] Ibid., 105.
[123] Ibid., 105-6.

government for Ireland and their necessity of acceptance of change. In 1921 he urged the British government to postpone elections and enter into compromise talks with Sinn Féin with a view to broadening the Government of Ireland Act.[124] Campbell had never underestimated Sinn Féin. Since 1905 he had observed it enlist an 'entire generation of young Roman Catholic Irishmen, with what he termed their "skilfully and successfully engineered propaganda." The Sinn Féin organization is entirely political – it's one and only object being the conversion of Ireland into a Republic.'[125] Campbell's changed perspective was viewed differently by others. By September 1920 Castle official Mark Sturgis thought him 'a poltroon of the most contemptible dye – does nothing and apparently thinks of nothing but the best way to show S[inn] F[éin] that he is neutral and passive. –A coward and a shirker, and by God a thief too since he continues to draw his salary.'[126]

Campbell had participated in Ulster's 'bloodless rebellion' in 1912. In the following years Ireland had witnessed armed insurrection, a complete reversal of constitutional patterns and deterioration of civic order as the IRA entered into conflict with the forces of the crown. Campbell had modified his views in the intervening years – others had not. Ireland's trauma and turbulence echoed that of Europe. In 1922 Winston Churchill recalled what he termed the deluge of war; 'every institution, almost, in the world was strained. Great Empires have been overturned; the whole map of Europe has been changed. The position of countries has been violently altered.'

> The mode of thought of men, the whole outlook of affairs, the grouping of parties, all have encountered violent and tremendous changes in the deluge of war, but as the deluge subsides and the waters fall, we see the dreary steeples of Fermanagh and Tyrone emerging once again. The integrity of their quarrel is one of the few institutions that have been unaltered in the cataclysm which has swept the world.[127]

Churchill's metaphor is highly evocative of Ulster's dogged persistence, their single-minded determination to cling to union with Britain, by exclusion, partition by any

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[124] *DIB.*

[125] UKPA, Lloyd George Papers, F/180/3/5, James Campbell (later Lord Glenavy, Cathoirleach of the first Seanad), to Lloyd George on 23 Sep. 1919 informing him of the origins of conflict in the early stages of the Anglo Irish war.

[126] Michael Hopkinson, *The Last Days of Dublin Castle : The Diaries of Mark Sturgis* (Dublin, 1999), p. 48, see also pp. 62-64.

[127] W. L. S. Churchill, *The World Crisis, Vol. 5, The Aftermath* (London, n. d), p. 314.

means that prevented their integration into a Catholic, nationalist parliament under a Dublin government. The 1920 Government of Ireland Act provided them with their exclusion, the machinery for home rule and the means to maintain their unionist dominance of six counties of Ulster for decades to come.

Final Steps to a Settlement

Lloyd George's introduction of the Government of Ireland Bill in autumn 1920 was to have political consequences for the remainder of the century. The Act, partitioning the country into Northern and Southern Ireland, came into law on 23 December 1920. The issue of establishing a second chamber, or Senate surfaced early in the home rule debate. Walter Long who had championed the southern unionist cause since 1905 as Chief Secretary, assured Midleton that the government was anxious to do all they could to lessen the risks and dangers to which southern unionists would be exposed in the new legislative system.[128] Long's support didn't waver and by 1914 he was considering federalism as a possible solution to the problem. By 1916 he was aware that a considerable groundswell of support had developed within the Unionist Party for a federal solution to the Irish problem.[129] However by December 1919 his impatience with the situation and constant unionist demands was beginning to show as he confided to Lord French. 'I profoundly regret the attitude of Irish unionists, which consists of crying for the moon, and appealing to us here to protect them from their own local enemies.'[130] Yet on 26 July 1920 he again reassured Midleton 'We have no intention of entering into negotiations with S(inn) F(éin), nor would we ever wish to....the thing is unthinkable.'[131]

Yet the unthinkable happened as peace attempts, official and unofficial, were initiated on many levels. Despite Midleton and unionists' frequent demands upon the British government, they had by 1921 accepted the inevitable changing political situation and Midleton was instrumental in bringing Sinn Féin and southern unionists together for talks on 4 and 8 July.[132] Maurice Moore, sent by the Dáil as a Sinn Féin envoy to South Africa in 1920-21, was instrumental in involving General Smuts in

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[128] *Hansard* HC, Deb. Vol. 129, Cols. 197-201, 10 May 1920.
[129] John Kendle, *Walter Long, Ireland, and the Union, 1905-1920* (Montreal, 1992), p. 147.
[130] Ibid., p. 186.
[131] BNA Midleton Papers, 30/67/43, Long to Midleton, 26 July 1920.
[132] Hopkinson, *The Irish War of independence*, p. 196.

Peace negotiations, which led eventually to the Truce.[133] The struggle continued up to and beyond the Elections of May 1921 but by this time both sides in the conflict had had enough and it had become increasingly apparent that it was a war that neither side could win.[134] Arms limitations and losses, the arrests or deaths of activists, the shrinking number of reliable company volunteers, the vigorous and improving British security effort all set an effective limit on guerrilla capabilities.[135] For now, peace offered a welcome alternative. [136] The Kings' plea for peace in June and Lloyd Georges' subsequent invitation to a conference with de Valera bore fruit. 'The latter accepted on 8 July, and on 10 July a truce was signed between representatives of the Irish and British armies, to come into force at noon the next day.'[137]

There were further months of negotiations between the Truce of 11 July and the signing of the Peace Treaty on 6 December 1921. Against the background of renewed threats of war from the British and sporadic outbursts of disorder the political sparring continued during August and September.[138] Eventually to further the process, the decision was made to meet in conference, this being considered the most practical and hopeful way to an understanding.[139] To this end Arthur Griffith, Michael Collins, Robert Barton, Edmund Duggan and George Gavin Duffy were chosen as the delegation of plenipotentiaries for the negotiations.[140]

The treaty, signed in London on 6 December 1921 contained no detailed provisions for a Senate, which unionists regarded as vital for their protection.[141] They had gradually accepted the inevitable change following the Great War and the Easter Rising, and had consequently lobbied and negotiated to ensure their place in the new order. They were deeply concerned about a range of issues and their future position in the new Irish state. In his papers Midleton recounted being asked by Lloyd George on the 15 November to meet with Arthur Griffith, who was then in London.[142] On the following day Midleton, Bernard and Jameson met with Griffith where they discussed

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[133] NLI Maurice Moore Papers, MS 10,581, n.d.. Apr. 1921.
[134] J. Smith, *Britain and Ireland: From Home Rule To Independence* (Harlow, 2000), p. 89.
[135] Hart, *The IRA at War,* p. 74.
[136] Ibid.
[137] O'Sullivan, *The Irish Free State and its Senate* (Dublin, 1940), p. 45.
[138] Coogan, *Ireland since the Rising*, p. 33.
[139] NAI DE 2/302, 30 Sept. 1921.
[140] *Dáil Debates*, Vol. 4, Cols, 94-5, 14 Sept. 1921.
[141] Boyce, *Ireland 1828-1923*, p. 96.
[142] BNA Midleton Papers, 30/67/3109, 15 Nov. 1921.

safeguards for the southern unionist minority and other related issues. In his report of the meeting to Lloyd George Midleton stated:

> They [the unionists], have specifically brought before me among other points the question of completion of Land Purchase, of Dual Taxation in the two countries, of compensation of losses during the late unrest and of the Education Grants guaranteed under Section 24 of the Act of 1922. [143]

He concluded his report and stated 'all these questions, I have assured them will be duly considered as points materially affecting the future of Ireland in its new status.'[144] On the same day Griffith reported his account of the meeting to de Valera:

> They [the unionists], strongly argued there should be a Senate. I said "I was in favour of a Second Chamber and I believed my colleagues would be. If it comes to a point, when we were erecting the machinery I would propose that they be consulted as to the constitution of the Senate." They said "they were satisfied with this."[145]

Though reassuring, the issue of safeguards for minorities was of continued concern in the following months.

On 6 December 1921, Midleton and his colleagues were summoned to No.10 Downing Street. There they were informed that the treaty had been signed overnight. Midleton strongly objected to specific omissions in the document:

> I at once pointed out to the Prime Minister that no single one of the pledges given to the southern unionists had been carried out, and that their interests, especially in regard to Irish Land had been entirely neglected in the treaty.[146]

After a heated discussion Lloyd George hurriedly arranged a meeting with Griffith. On the afternoon of the signing of the treaty Midelton, Bernard and Jameson met with Arthur Griffith and Kevin O'Higgins where they again argued strongly for a Senate. Griffith informed them that he and his colleagues favoured a bicameral parliament and

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[143] Ibid., 16 Nov. 1921. Patrick Buckland, *Irish Unionism 1:the Anglo-Irish and the New Ireland 1885-1922* (Dublin,1972), pp. 245-58.
[144] Ibid.
[145] O'Sullivan, *The Irish Free State and its Senate*, p. 75.
[146] BNA Midleton Papers, 30/67/3110, 6 Dec. 1921.

promised to consult them about the powers of the Senate and the provisions of the Constitution at the appropriate time. Midleton and the unionists were reluctantly accepting that the focus of power had shifted from London to Dublin. Lloyd George had proposed to begin withdrawing the Crown forces both military and auxiliary in Southern Ireland as soon as the articles of Agreement were ratified.

Ratification of the Treaty – A Pivotal Moment

The debate to ratify the treaty, that 'fourth pivotal moment' was a crucial factor in the process as it set the scene and provided the catalyst for the civil war of 1922-23. The debate, which involved no unionist representation, was the next step in the political process. From the suspended Home Rule Act of 1914, through the Easter Rising, the failed Convention, the Conscription crisis, the 1918 election, the establishing of Dáil Éireann, the Anglo Irish war leading to the Truce and Treaty, a process was at work that slowly but inexorably effected a transfer of power. As Hart summarises, 'the legitimacy and existence of the British state was directly and forcibly challenged, this challenge was supported by a large proportion of the Irish population, and sovereignty in the twenty-six counties was ultimately transferred to a new polity and government.'[147]

When the treaty was carried in the Dáil by 64 votes to 57 on 7 January 1922 it confirmed the Dáil's division into two camps, treatyites and the anti-treatyites. Political polarisation of itself is a simplistic and totally inadequate explanation for the months of violent conflict, which followed. Despite the majority vote, the Cabinet was divided, the Dáil was divided but in what extent or in what proportion the general public divided was difficult to establish. Ideology, conviction, accident, personality and geography all helped divide much of the country into pro and anti-treatyites.[148] Kissane argues that 'paradoxically, a point in Irish history that should have been seen as a triumph of national unity revealed the deep divisions within Irish nationalism and its capacity for internal discord.'[149] Each side deeply resented the overwhelming demand for compromise. For thirteen days constitutional methods were applied to resolve the issue of acceptance or rejection of the treaty. Acceptance was confirmed and the way was now clear to enable the political process to move forward. The [now] two

[147] Hart, *The IRA at War*, p. 11.
[148] Keogh, *Twenty Century Ireland*, p. 3.
[149] Kissane, *The Politics of the Irish Civil War*, p. 1.

Governments, whose personnel were virtually identical, agreed that the will of the Irish Electorate should be ascertained at the earliest possible moment and that they proceed with the drafting of the Constitution so that it might be published and presented to the people 'before the election.'[150]

Political Polarization

On 14 January members elected for Southern Ireland assembled to elect a provisional government. Republicans boycotted this assembly and took no part in the election by the pro-treaty faction of this government.[151] In reality the membership overlapped with that of the Dáil government resulting in a dual system. Thus the pro-treaty faction was able to claim organizational continuity with the institutions of 1919, while staying within the terms of the treaty, and thus straddle two essentially conflicting constitutional arrangements.[152] This contrasted with the Republican perspective, which was perceived as a usurpation of the Dáil authority, as recounted by Ernie O'Malley:

> Sixty-four members were present, including four Unionists from Trinity College who had last year been the only members to attend this Southern Parliament. The Articles of agreement were submitted to the body. They approved them. By their presence they had agreed to a divided Ireland. A Provisional Government was formed before the meeting ended, with Michael Collins as chairman and authority taken from the hands of the Dáil.[153]

For five months, there was political and constitutional confusion, as the two governments existed side by side following ratification of the treaty agreement. Dual government created 'space' for the possibility of compromise and to some extent delayed polarization which eventually led to civil war. Dáil ministries ceased to function as its members gradually gravitated towards meetings of the Provisional Government. Ronan Fanning's assessment of the situation was that it 'led to the practical, although unofficial, fusion of the two systems of government, and the Dáil Cabinet met as a separate body for the last time on 28 April.'[154] Whatever the constitutional niceties, the real issue was the acquisition and consolidation of power,

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[150] *Dáil Debates*, Vol. 2, Col. 91, 28 Feb. 1922.
[151] Colm Campbell, *Emergency Law in Ireland, 1918-1925* (Oxford, 1994), p. 151.
[152] Ibid., p. 152.
[153] O'Malley, *The Singing Flame*, p. 48.
[154] Ronan Fanning, *Independent Ireland* (Dublin, 1983), p. 9.

and this enabled not only formal transfers from the British, but also the creation of institutions at home which would act as power bases.[155]

Uncertainty

Transition and confusion characterised those early weeks making it difficult to decipher the reality of change or continuity. Uncertainty, dissent and division marked the unfolding political and military situation. IRA GHQ was dominated by pro-treaty members and little time was lost by this group in creating a new and exclusively pro-treaty, military force from IRA cadres who supported the treaty.[156] As with the constitutional continuity of 1919, so it now appeared that the continuity with the IRA of 1919-21 was also being maintained. It was only later that the distinction between this new 'National Army' or 'Free State Army' and the IRA became absolutely clear.[157] The British began to evacuate the country slowly, handing their barracks over to the Irish Republican Army.[158] By early February *The Irish Times* listed those evacuated to date:

> All Auxiliary Police 1,200 men, seventeen Battalions of Infantry, six Squadrons of Cavalry, two Batteries of Royal Garrison artillery, four Batteries of Royal Field Artillery, one Machine Gun Battalion and today the exodus of the Black and Tans begins, they number 5,000.[159]

At a meeting in Dublin of anti-treaty officers de Valera, appealing for unity, emphasised the point that 'no matter what political parties said or did, the army must remain intact.'[160] And again speaking of the Volunteers he stated; 'As the arm of the Government of the Republic it would be impossible to have two governments in any country; there could only be one.'[161] The unity of the army was, for both sides essential to political stability. O'Malley saw little chance of maintaining such unity:

> I had no longer any faith in Collins or Mulcahy. They would use the army for their own purpose and slowly our men would either be absorbed or would have to return to their farms, businesses or universities.[162]

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[155] Campbell, *Emergency Law in Ireland*, p. 152.
[156] Ibid.
[157] Ibid.
[158] O'Malley, *The Singing Flame*, p. 48.
[159] *The Irish Times*, 4 Feb. 1922.
[160] O'Malley, *The Singing Flame*, p. 48.
[161] *The Irish Times*, 16 Mar. 1922.
[162] O'Malley, *The Singing Flame*, p. 49.

For O'Malley and his comrades in arms, the primary function of the army was the realization of the republican ideal; equally Collins and Mulcahy saw the same army as essential to the 'acquisition and consolidation of power.'

The process of transfer from one regime to another presented its own difficulties. Barracks, so long fortified, now lay empty and open to looting:

> People from the towns and neighbouring places took everything they could lay their hands on, gas and electrical fittings, woodwork, timber, closets baths. The orgy of loot had developed into destruction...people seemed drunk as they smashed tore and carried off material for which they had no use.[163]

O'Malley saw this orgy of looting as an expression and release of long held, pent-up feelings of hatred of the now departing British garrison. The British evacuation was still underway and the Royal Irish Constabulary was being disbanded. As chaos and confusion escalated, some British troops were fired on during the process of evacuation. Members of the Free State Army were also subject to attack in their efforts to become established in their new quarters.

Because of the continued deterioration of the military situation, the Provisional Government issued an order on 6 March banning the planned Army Convention. Liam Lynch suggested that the IRA should be under the control of the Army Executive and demanded that recruitment of the Civic Guard should be discontinued and policing returned to the sole control of the IRA. On 22 March Rory O'Connor gave a Press interview in which he stated that 'there were times when revolution was justified and the army had overthrown the Government in many countries in that way.'[164] His well publicised though ill-advised and intemperate comments merely added to the growing dissention and disorder. With the Government's concern over the growing rift within the army and the possible consequence of the proposed Army Convention, they issued a statement, which was published in the press on 25 March:

> It is quite evident to the unanimous Dáil Cabinet, that at an Army Convention contemplated for the 26 March, it is proposed to remove the army from under the control of the Government elected by the people, which is Dáil Eireann. Such a purpose is illegal and you are thereby instructed that the holding of this Convention is forbidden. Minister of Defence, Mulcahy stated;

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[163] Ibid., p. 35.
[164] *Irish Independent*, 23 Mar. 1922.

> any officer or man attending, would therefore sever his connection with the Irish Republican Army.[165]

Despite the Government's objection, the convention met in the Round Room of the Mansion House on Sunday 26 March. Over two hundred delegates unanimously reaffirmed allegiance to the Republic. Predictably they reaffirmed the republican status of the army and agreed that the army should be brought back under the complete control of its executive.[166] A broad range of subjects was discussed, among them 'the military necessity for the defence of the Republic' one of the proposed strategies being 'to occupy the buildings known as the Four Courts.[167]

Press reports describe these developments as 'ominous' and headlines read 'Irish Republican Army - Split.' On the following Tuesday the Chief of Staff General O'Duffy issued a statement:

> All officers and men are hereby relieved of the responsibility of obeying orders issued to them by any superior officer who severed his connection with the Irish Republican Army, by reason of his having attended the irregular Convention held on 26 March, or of his recognizing the 'Executive Council' elected at that irregular Convention.[168]

When the convention reassembled a proposal to set up a dictatorship was defeated, a new executive was appointed and Liam Lynch was confirmed as Chief of Staff.[169] Although fifty per cent of the delegates were for strong action against the Provisional Government, deep underlying divisions were evident in the group.

The *Freeman's Journal* published an account of the proceedings of the convention and as a reprisal for their effort had their offices sprayed with petrol and burned by a group of armed and undisguised men. Mr. Moore, managing editor, claimed the paper had been destroyed because of its courage in printing the truth.[170] The editor of the *Cork Examiner* was threatened. The *Clonmel Nationalist* earlier had seen the IRA smash the press, melt down the type and threaten the editor.[171] Political and military uncertainty was creating a vacuum in which anarchy could flourish. From the

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[165] *The Irish Times*, 25 Mar. 1922.
[166] Hopkinson, *Green Against Green*, p. 68.
[167] UCDA Hugh Kennedy Papers P4 / 253, 1 Apr. 1922.
[168] Ibid., 1 Apr. 1922.
[169] O'Malley, *The Singing Flame*, p. 65.
[170] *Irish Independent,* 30 Mar. 1922.
[171] Keogh, *Twentieth Century Ireland*, p. 5.

convention onwards the anti-treaty IRA got most of the blame for the worsening disorder and the increasingly apparent threat of civil war.[172]

The anti-treaty forces had set up their headquarters in the Gaelic League building in Parnell Square. As a headquarters it was unsuitable and living conditions were becoming increasingly difficult:

> Mulcahy , since the convention, had repudiated the bills which he had ordered those, who had once accepted his orders to run on the local traders. The shopkeepers blamed our men for non-payment. [173]

As a consequence, following a meeting of the Army Council, it was decided to raid the banks in Dublin and throughout the country as a means to maintain their men. At midnight on 13 April, Rory O'Connor led a group of anti-treaty forces and took possession of the Four Courts. The decision to raid banks countrywide, even more than the decision to occupy the Four Courts, indicated that republicans were in combat mode, were considering renewal of hostilities and that events had moved beyond a point of no return.

Public Perspectives

The rapid deterioration of conditions, the polarization of pro and anti-theatyites, and the even narrower polar emphasis on the personalities of Collins and de Valera obscured the concerns and efforts of the majority 'middle ground' of the population. While unionists' lobbying for Senate conditions was ongoing, like the rest of the majority, their growing anxieties were communicated to London through the agency of Midleton. Applying the convention of addressing the King in the third person, he emphasised the extreme gravity of the situation:

> The hasty withdrawal of British troops, against which your Majesty's Government was repeatedly warned, has left the South of Ireland without any force to preserve order and even if
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> individuals were made amenable, there are no courts sitting effectively to deal with them. [174]

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[172] C.S. Andrews, *Dublin Made me: An Autobiography* (Dublin, Cork, 1979), p. 218.
[173] O'Malley, *The Singing Flame*, p. 67.
[174] BNA Midleton Papers, 30/67/2934, Midleton informed the King of the conditions countrywide, 30 Apr. 1922.

He highlighted comparisons and the regional aspects of the general anarchy:

> The mutiny of the IRA is probably the least serious element in crime. The Provisional Government believe it is decreasing and that in Sligo and other places desertions from de Valera to their side are taking place.[175]

The most dangerous symptom in Midleton's opinion was the prevalence of two classes of crime hitherto associated with countries which he categorized as 'backward civilizations.'

> Plunder of every sort is rife throughout the South and is increasing by leaps and bounds. In the last fortnight 400 cases of plunder and looting have occurred on one railway alone and goods can only be conveyed at owner's risk.[176]

The list was endless, houses were entered and all valuables removed, motor cars, stock valuables and property were taken in all districts. More brazen still, a group of men came to the enclosure at Punchestown races, took seven cars including the Lord Lieutenant's and all in full view of the police. Outrages increased daily but the worst development was the selection of Protestant victims supposedly as retribution for the treatment of Catholics in Belfast. 'The victims in these cases are selected apparently without regard to their antecedents and nine murders were recorded on Co. Cork in the last two days.'[177]

The Dunmanway killings evoked little public outrage which suggests a considerable de-sensitizing in the face of the growing anarchy. Midleton met with the Lord Mayor of Dublin to be told that they were making no headway whatsoever in their efforts. The Lord Mayor, an ardent Sinn Féiner and the Catholic Archbishop had been unremitting in their attempts to bring the contending parties in the South to justice but had totally failed. The Mayor stated that 'should the Government continue to do nothing in the face of the escalating outrages, he intended to form a Committee of Public Safety in Dublin and hoped his example would be followed by every county authority.'[178]

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[175] Ibid.
[176] Ibid.
[177] Ibid., See Peter Hart, *The IRA and its enemies : violence and community in Cork*,1916-1923(Oxford, 1998); Meda Ryan, *Tom Barry, IRA Freedom Fighter,* (Cork, 2005); Eoin Neeson, *The Civil War 1922-23*(Dublin, 1989).
[178] Ibid.

Collins' conciliatory policy was duly noted. The Provisional Government considered that their chance of winning the election depended on avoiding a coercive policy. They could secure voters from intimidation and estimated that they would defeat de Valera by 10 to 1 in the count. Midleton assured the King that according to general opinion and the particular opinion of J.H. Bernard, Provost of Trinity College, Andrew Jameson, President of the Chamber of Commerce, the Lord Mayor and the Lord Chancellor:

> If matters go on unchecked as at present, by two months from now it will be beyond the power of the Provisional Government, to restore order without prolonged struggle.[179]

He concluded his report to the king by urging Churchill and the British Government to put a stay on any further withdrawal of troops until the Provisional Government was in a stronger position, so as to avoid 'the spoliation and slaughter of innocent subjects.' The king's reply by return regretted the Irish Government's paralysis and inability to maintain law and order and requested that Midleton place all the facts of the situation before Churchill at the first possible opportunity. The evidence suggests that Midleton and the unionists had not yet grasped the fact that applying to the British was no longer an option; their only protection and security must henceforth come from the Provisional Government.

Unionist's Political Efforts

When the Irish Free State Agreement Bill came before the House of Lords on 23 March 1922, Lord Oranmore and Browne moved an amendment that would have the effect of making bicameral, by the addition of a Senate, the Parliament to which the Provisional Government was responsible. Acknowledging that the senate was incomplete, he suggested there were at least forty four senators who were prepared to take their seats. His reference was to those nominated to the Senate of the Southern Irish Parliament of 1921. Midleton seconded this proposal arguing that the Provisional Government must be responsible to two chambers not one. Both expressed the fear that advantage might be taken of Collins' single-chamber government to pass legislation highly injurious to southern loyalists. Viscount Peel, in attempting to allay their fears

[179] BNA Midleton Papers, 30/67/2934, Midleton to the King, 30 Apr. 1922.

stated that the term of the Provisional Government would be short and their principal task would be the passing of the Constitution Bill. Midleton's growing suspicion of the unfolding political process meant he was arguing his position on two fronts; his disagreement with Peel and his distrust of Collins.

> A body of men might rush the Provisional Government with a proposal which could be of the worst possible character for those, who up till now have been responsible of paying about half of the whole taxation of southern Ireland.[180]

He was not prepared to accept the present inconsistencies of the political process. Pointing to the fact that the Provisional Parliament would be elected from constituencies under the 1920 Act, he questioned why the Senate, elected under the same Act, should be excluded? While accepting that the Senate had not been constituted, he claimed that was the fault of his Majesty's government, 'who allowed one chamber to be called together and not the other.'[181] Midleton displayed a customary degree of arrogance towards the members of the Provisional Government and the new constitutional arrangements. He seemed incapable of grasping the fact that he and his peers were now of the *ancien régime* with rapidly diminishing power and authority.

Other unionists however, were very aware that as a minority group their one hope was to be politically organised which they did initially through the IUA, the Irish Unionist Alliance and later through the APL, the Anti-partition League headed by Midleton. A variety of factors militated against their success; politically they didn't have the numbers and geographically they were widely dispersed as Midleton illustrated:

> As the Minority of 350,000 they are scattered among, nine times that number of Sinn Féiners, it is improbable that even under Proportional Representation, they could obtain more than one or two representatives out of 200.[182]

By 1922 Midleton was becoming increasingly frustrated with attempts to secure adequate representation. It was painfully clear that the only avenue open to southern

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[180] *The Irish Times*, 24 Mar. 1922.
[181] Ibid.
[182] BNA Midleton Papers, 30/670/ 2979, a Memorandum by Midleton on a Conference of Ireland held on the 27 & 28 Apr. 1922.

unionists was in the proposed Senate and discussions on its establishment in no way met their expectations. In a memorandum produced in April 1922 he stated:

> There is no reason to suppose that any of the Minority representing Commerce, the Universities, Education or the Landed Interest would be elected by a constituency of say 1,200,000, who could not know them but by distant repute, and who besides being alien in creed and divided from them by recent upheavals, are quite inexperienced in politics. [183]

Following the Collins-de Valera pre-election pact in May 1922, Bernard wrote to Midleton expressing utter indignation at what he considered a violation of the terms of the treaty, and demanded that Churchill be informed immediately:

> I hope that before Mr Churchill meets with the members of the Provisional Government of Ireland you will call his attention to some of the implications of the nefarious agreements reached last Saturday. If it be admitted or acquiesced in by the British Government, it means the complete abandonment of the so-called Treaty of last December and the establishment of a Republic in Ireland.[184]

Bernard's anger was palpable as he spelled out the implications for the political situation, the Provisional Government and above all, the treaty:

> By Article 17 of the Treaty every member of the Provisional Government must signify in writing his acceptance of the Treaty. Now the first clause of the (pact) agreement, reached on Saturday, is to the effect that the government of Ireland in the immediate future will be composed partly of those who signed the Treaty and those who are bitterly opposed it, as they are convinced Republicans. The election arranged for June will be a complete farce.[185]

Fear of republicanism and the possibility of a Republic were paramount in all unionist discussions. There is little doubt that the Dunmanway massacre was uppermost in Bernard's mind, as it had been in Midleton's. Eleven men had been shot dead and another wounded; all were Protestants.[186] The unprecedented massacre, which took place between 26 and 29 April, sent hundreds of Protestants in the area into hiding and forced many more to flee their homes. Despite a joint statement issued by the Provisional Government and the Dáil Cabinet promising 'to bring the culprits of the

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[183] Ibid.
[184] BNA Midleton Papers, 30/67/ 2978, Bernard to Midleton on the Election Pact (22 May), June 1922.
[185] Ibid.
[186] Hart, *The IRA and its Enemies*, p. 276.

Dunmanway killings to justice' there was little that could have been done with limited Army resources and as Hart points out 'at that time the dissident IRA were in control of nearly the whole of Cork and Munster.'[187] The spectre of mass murder had long haunted the unionist political imagination; when it arrived, the reality struck with the force of a nightmare.[188] In the midst of the home rule crisis of 1914 the then resident magistrate in Bandon had reported that 'on the part of the minority there is a widespread fear of possible outrages against their lives and property.'[189] The long held fears when realised, left Irish and British observers 'bewildered and shocked by the killings, which seemed to come out of nowhere.'[190]

Keenly aware of the fragile treaty arrangements, Bernard was horrified by the possibility of any republican connections. Indicating how the proposed pact endangered not only the substance but the very survival of the treaty, he emphasised the possible consequences for unionists:

> This will not be a parliament as contemplated by the treaty, but an election to Dáil Eireann, every member of which must take the Republican oath. This completely shuts out the members of Trinity College, who are the only members representing the Southern loyalists in the Southern Parliament.[191]

Bernard reminded Midleton, how at Lloyd George's request, he had acquiesced on the treaty in December so as to support Griffith and Collins for the sake of the country. By doing so, they had rejected republicans; a decision, which he now feared in the light of the recent killings, would rebound on them in the form of the wrath of extreme republicans. Protestant confidence was shaken to the core and this latest action only served to confirm their growing distrust of Collins:

> It has been perfectly clear to some of us for some time that Mr. Collins has not kept faith with us. His main purpose for the last two months was to keep together the Irish Republican Army and in order to conciliate the extremists in the Army, he has ignored all the violence and outrages which they have committed. He has given loyalists fair words but no protection.[192]

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[187] Ibid., pp. 276-77
[188] Ibid.
[189] CO 904/227.
[190] Hart, *The IRA and its Enemies,* p. 277.
[191] BNA Midleton Papers, 30/67/ 2978, Bernard to Midleton on the Election Pact (22 May), June 1922.
[192] Ibid.

For Bernard the only hope lay in the political process and for him the proposed pact was simply the means of empowering republicans. Ernest Blythe speaking on the pact years later claimed:

> No one who saw Griffith on the day the government was asked to agree to the Collins de Valera pact can doubt that it was only by a supreme effort that he held himself back from a denunciation of Collins.[193]

For months Griffith had been gripped by the fear that if the government did not take early steps to assert its authority the country would fall into anarchy in the difficult and dangerous days between March and June.[194] Regan's assessment of the pact was that 'no matter how unpalatable the arrangement was to fastidious democratic tastes, Collins succeeded in finding a *modus operandi* by which the treaty and the Provisional Government could gain a democratic mandate hitherto postponed and denied; albeit an imperfect one'.[195]

Bernard's focus however was not so all-encompassing; his one concern was for the safety and protection of Protestant loyalists in Southern Ireland. Unlike Midleton, Bernard was coming to the realization that Westminster was distancing itself from Irish politics leaving southern unionists to their own devices. In anger, frustration and apprehension he expressed not only his distrust of the political process and his growing fears for the future, but he also placed full responsibility for the possible consequences of the pact with Westminster:

> If the government at Westminster recedes one inch from the terms of the treaty, a Republic will be established in Ireland before the end of the year to the shame of Great Britain and the discomfiture of all loyal people in the south of Ireland.[196]

By June the pact, which had little appeal on either side had been repudiated.

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[193] *The Irish Independent*, 8 Jan. 1938, E. Blythe speaking at the launch of Pierce Beaslie's book *Michael Collins; Soldier and Statesman*.
[194] Ibid.
[195] Regan, *The Irish Counter-Revolution*, p. 60.
[196] BNA Midleton Papers, 30/67/ 2978, Bernard to Midleton on the Election Pact (22 May), June 1922.

The Constitution - Election

The British government had insisted that an election on the treaty take place in the first half of 1922. The Constitution was published on the morning of the election, 16 June. As early as 12 December 1921 the leadership of the IRB, the Irish Republican Brotherhood, had sent a circular to their members stating that the treaty would have to be judged on the substance of the Constitution.[197] Collins' original draft had attempted to play down the Crown connections, having no mention of the treaty, the oath of allegiance or the Crown. The British severely amended this and the final draft contained a clause stipulating that if in any respect the constitution conflicted with the treaty, it would be 'void and inoperative.'[198] The pro-treaty party won the election with 239,193 votes to the anti-treaty Sinn Féin's 133,864 votes; that was fifty eight seats to the former and thirty six to the latter, out of a total of 128 seats. A further 247,226 votes were cast collectively for all other parties, all of whom supported the treaty. The Labour party took seventeen seats, the Farmers' party won seven and the Independents got ten.[199]

During the six months following the treaty, Collins and his colleagues struggled desperately to construct an executive capable of restoring order and to conciliate their disaffected brethren.[200] But the litany of disruptive and destructive events of this period was merely a symptom of the festering malaise and an indication of the inevitable eruption, which was to follow. Business, transport, commerce, communications, the whole network that ensures the efficient, effective support and fabric of a society was systematically being ravaged. Post offices were raided, train services were disrupted, newspaper distribution was interfered with and banks were ruthlessly targeted. The organised raids on branches of the National Bank on 1 May, when nearly £50,000 was taken, took place by order of the Army Executive.[201] Between 13 February and 22 July, thirty one branches were raided by the IRA countrywide. It was estimated that the total sum involved amounted to £167,377.5s.2d.[202] There were 331 raids on post offices between 23 March and 19 April, and 319 attacks on the Great Southern and Western

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[197] Regan, *The Irish Counter-revolution*, p. 32.
[198] Kissane, *The Politics of the Civil War*, p. 71.
[199] Ibid.
[200] Fitzpatrick, *The Two Irelands*, p. 125.
[201] Hopkinson, *Green Against Green*, p. 90.
[202] UCDA Hugh Kennedy Papers, P4/ 251, .n. d.

Railway by armed men between 1 March and 22 April.[203] The extent of social disruption meant that the government had to consider all possibilities and therefore 'was necessarily preoccupied with immediate questions relating to the threat of civil war.'[204] Political and military elites were increasingly aware that their disaffected brethren in the rank and file were beyond conciliation.

Southern unionists regularly brought to the British government's notice their deep concern about social and economic conditions.[205] And British business was equally intent on protecting its own interests. On 10 June Henry Guinness, governor of the Bank of Ireland, wrote to Michael Collins to inform him that the 'Register of Government Stocks' which had been maintained at the Dublin branch of the bank for many years, was now to be transferred to Belfast and London. Collins immediately informed the government that 'this was a most sinister proposal and doubted if they had the power to do this.' 'It is' he claimed 'a typical instance of how they load the dice against us at every turn.' 'It is another of these moves calculated to strengthen enormously the position of the N[orth] E[ast].' Collins' anger and suspicion were evident as he pointed to the possible source of this move claiming not be surprised if, 'our friend Sir John Anderson hasn't something to do with it.'[206]

Henry S. Guinness, together with co-directors of the Bank of Ireland Andrew Jameson and Sir T.H.G. Esmonde, served in the Free State Senate. By bringing their financial expertise to senatorial deliberations, they adequately fulfilled the requirements of Article 30, of the Constitution. While banking representation in the first senate was in equal proportion to all other careers present, such close cooperation between institutions was inevitably of mutual benefit to both the government and the Bank of Ireland.

Civil War

The degeneration of political division over the treaty into armed conflict between the provisional government and its Irregular opponents was predictable but not

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[203] Hopkinson, *Green Against Green*, p. 90.
[204] Ibid., p. 89.
[205] Hopkinson, *Green Against Green*, p. 90.
[206] UCDA Hugh Kennedy Papers, P4/237, June 1922.

inevitable.[207] However, a series of circumstances in the days prior to the attack on the Four Courts, the assassination of Sir Henry Wilson in London on 22 June and the kidnapping of J. J. Ginger O'Connell, the army's Deputy Chief of Staff on 27 May have been the impetus and trigger for the start of the conflict. Arguments about what triggered the government's attack on 28 June would form the basis of the two sides' interpretations of the civil war in the months and years to come.[208] The anti-treatyites claim that it was pressure from the British government. According to O'Higgins, civil war was necessary because the 'mutineers' set themselves energetically to prepare a *coup d'etat* that would plunge the country back into a death struggle with Britain.[209] Following the assassination of Sir Henry Wilson, Lloyd George delivered an ultimatum informing Michael Collins that:

> The ambiguous position of the IRA could no longer be ignored by the British Government and still less could Rory O'Connor be permitted to remain with his followers and his arsenal in open rebellion in the heart of Dublin and in possession of the Courts of Justice.[210]

Lloyd George claimed that such actions were, 'in defiance of the treaty and incompatible with its faithful execution.'[211]

Ironically the provisional government and its Irregular opponents both may have been implicated in the assassination plot. It is possible that both Collins and members of the Four Courts Executive were involved in the planning of Wilson's assassination.[212] Although the evidence of the Four Court's involvement is slight it was known that Reginald Dunne, one of the assassins, met with Collins and Rory O'Connor in Dublin earlier in June in connection 'with the planning of the shooting.'[213] The assassins were arrested and sentenced to death. The provisional government protested to P.C. Short, British Secretary of State for Home Affairs, 'Expressing the revulsion of public opinion in Ireland against the impending execution of Reginald Dunne and Joseph

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[207] Fitzpatrick, *The Two Irelands*, p. 123.
[208] Kissane, *The Politics of the Civil War*, p. 74.
[209] Ibid., K. O'Higgins, typescript copy of an article or letter to a US newspaper, 1922-3 (UCDA, Mulcahy Papers, P35C/160).
[210] NAI DT. S 1322, 22 June 1922.
[211] Ibid.
[212] Hopkinson, *Green Against Green,* p. 113.
[213] Ibid.

O'Sullivan.'[214] The protests proved useless as both men were executed for the murder of Sir Henry Wilson. The kidnapped J. J. O'Connell was housed in the Four Courts for the duration of its bombardment.

On 27 June the Provisional Government served notice on the forces in occupation of the Four Courts and following their refusal to evacuate the building, the attack by government forces commenced at 4.15 am on 28 June.[215] The British government had made it plain that the choice for the Southern government was between dealing with the Four Courts garrison and failing that, allowing the British to return.[216] There was no choice, certainly for Collins. Right through the treaty debate he had made it clear that freeing the country of the British forces was their principal aim and goal. He was not about to risk the return of the British. The military action was taken, reluctantly. Despite six months of anxious political and military confusion there was little planning on either side for an eventual conflict. Hopkinson argues that 'for all the confusion and mixed emotions involved, the Four Courts attack served to clarify the situation.'[217] There were now two camps or divisions and they were clearly defined. The conflict was now that of Free State versus Republic and the 'issue was that of whether the treaty terms were to be implemented or not.'[218] Where the political process had failed circumstances dictated that military strategies were now deemed necessary.

Military Strategies

The prospect of civil war was so terrible, and the immediate background to the Four Courts so confused, that few could come to terms with its reality once it began.[219] The Republicans' lack of forward planning and their difficulty in communicating between divisions hampered the establishing of a concrete strategy. The taking of the Four Courts proved a far from straightforward business.[220] Very little progress was made by government troops on the first day, 28 June. Their inability to use the eighteen-pound guns provided by the British hindered their advancement. Shortly after the attack

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[214] UCDA Hugh Kennedy Papers, P4/194, July 1922.
[215] NAI DT, S 1322.
[216] Hopkinson, *Green Against Green*, p. 118.
[217] Ibid., p.119.
[218] Ibid.
[219] Ibid., p. 128.
[220] Hopkinson, *Green against Green*, p. 120.

Churchill warned Macready that the imposition of British troops might be necessary. Yet both Collins and the British knew that for British troops to enter the fighting would be fatal. Despite the fact that the Irregulars had been in occupation of the Four Courts since 14 April there was little evidence of forward planning for, or the resisting of an eventual attack.

Even before the attack there was considerable disagreement between Dublin No.1 Brigade and the Four Courts leadership about the tactics to be pursued.[221] Tod Andrews claimed that he couldn't believe they were 'going to indulge in such a foolish futile military exercise.'[222] Lack of co-ordination and communication meant there was little chance of their success. The Western Division was in complete ignorance of the conditions in Dublin. Oscar Traynor's attempts to co-ordinate the Irregular Divisions countrywide, received replies from only two, the Belfast O/C and Seamus Robinson in South Tipperary. The attack culminated with the explosions of two mines in the Archives department of the building, which had been laid beforehand by the Four Courts garrison. Their explosives had been stored in the strong room of the 'Treasury' and the Records Office was used as a munitions factory.[223] The Public Record office which housed centuries of legal records was destroyed in the explosion.

Traynor commandeered the Hammam Hotel on 29 June, which was then used as Irregular headquarters. The four hotels in O'Connell Street were linked by smashing through the walls of the billiard room in the Hammam Hotel, which then became the hospital. The first fighting was intended to dislodge the anti-treaty IRA from their positions in Dublin city centre.[224] For the first three days of July, J. F. Homan, an ambulance driver and James Douglas (Senator), were to act as messengers and peace makers between Collins and de Valera. Douglas, a Quaker with pacifist principles was not involved in the fighting when civil war broke out. But as a well-known Dublin businessman and concerned citizen, he was to feature in future peace negotiations. Collins offered; 'all, including officers, were free to return to their homes without a formal surrender, provided they deposit their weapons in the national armoury.'[225] Decommissioning of arms was to prove the stumbling block. It was then proposed that

[221] Ibid., 121.
[222] Andrews, *Dublin Made Me*, p. 231.
[223] UCDA Hugh Kennedy Papers, P4/283, n.d.
[224] Kissane, *The Politics of the Irish Civil War*, p. 101.
[225] Ibid.

'the republican military leaders give a public assurance that on the withdrawal of government troops they would cease fighting and return to their homes, leaving only one army in the country.'[226] The peacemakers returned with this offer to discover that de Valera had departed. On 5 July a white flag was hoisted above the Hammam. De Valera and others, who had come to give their support had been smuggled across the river to Mount Street. Cathal Brugha was the last to surrender. Having seen his men safely from the Granville Hotel, he exited the building gun in hand and was instantly shot down. He died that evening in the Mater Hospital. James Douglas' peace efforts which bore little fruit in the opening stages of the conflict would prove to be much more effective at the end of the civil war.

Because of the imprisonment and dispersal of the Executive members, and the danger of capture, it was impossible for the Executive meeting to take place until 16 October.[227] By the second week of July Republicans had established themselves in a line between Limerick and Waterford to Clonmel following the line of the River Suir. However, lack of planning and confusion dogged their every move as they adopted a policy of evasion. Time after time, when major confrontation appeared imminent, they evacuated and burned their garrison buildings in important centres such as Sligo and Castlebar in the west, and Clonmel and Waterford in the south.[228] Maintaining discipline in their ranks was an ongoing problem. An insufficient number of officers led to lack of organisation and unity, which was essential to effective, successful action. This indecisiveness greatly weakened the Republicans' morale and lowered their faith in their leaders.[229] Added to the lack of discipline, co-ordination and planning, was the lack of interest from leaders of the old IRA. Government intelligence reports show that Sean O'Hegarty and Florence O'Donoghue were 'not taking any interest in the war.' The report claimed that they were 'out for peace and compromise.'[230]

Kissane claims that it was 'clear that the anti-treaty IRA was ill prepared for military conflict and was bereft of any clear strategy apart from falling back to defend its local areas.'[231] By early August Irregulars had removed from urban bases. On 9

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[226] Ibid.
[227] Andrews, *Dublin Made Me*, p. 240.
[228] Hopkinson, *Green Against Green,* p. 129.
[229] Ibid.
[230] UCDA Mulcahy Papers, Pa/50, 25 July 1922.
[231] Kissane, *The Politics of the Civil War*, p. 79.

August Emmet Dalton landed with a contingent of troops at Passage West and proceeded the following day to Cork city.[232] The government troops landing by sea, followed by a rapid succession of defeats further demoralised the Irregulars. In open conflict a substantial body of national army troops had clearly outmanoeuvred the Irregular forces. Following the taking of Cork city by army troops the IRA simply returned to their homes.

Political efforts were also attempted. Following a meeting in Cork on 22 July, a group styling itself 'The Peoples Rights Association' sent a deputation to the government 'Requesting that the speaker of the Dáil immediately summon the second Dáil to be followed by the third Dáil…to enable it to take steps to end the state of civil war.[233] William Murphy writing to General Mulcahy on the same day cautioned:

> Needless to say this association is a de Valera manoeuvre to confuse the whole issue, by securing an armistice and to give the Irregulars a much needed opportunity of re-organising and consolidating their position.[234]

Both the military and political situation was fraught with ambiguity and confusion. What Sean T. O'Kelly had anticipated and feared in January, 'the ultimate dissipation of the whole movement' was now a reality.[235] Civil war had brought about the complete collapse of the Sinn Féin movement. By 11 June 1923 only sixteen Sinn Féin *Cumainn* remained in existence; the number at the beginning of 1922 had been 1,485.[236]

Government Initiatives

The Provisional government by contrast, took immediate action on many fronts. An official statement issued on 3 July stated that no newspapers could be:

> Imported, distributed, published or sold in the area of the jurisdiction of the Provisional government…..the contents of which have not been submitted to the censors of the Nation Army and passed by them.[237]

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[232] UCDA, Mulcahy Papers, P7a/50, 9 Aug. 1922.
[233] UCDA Mulcahy Papers, P7a/50, 2 July 1922.
[234] Ibid
[235] NLI Sean T. O'Kelly Papers, MS 18,548, n.d.
[236] Hopkinson, *Green Against Green*, p. 132.
[237] UCDA, Hugh Kennedy Papers, P4/226, 3 July 1922.

Censorship was essential and control of the media vital as a means of propaganda. The government let it be known that those who were in the Four Courts at the time of the explosion were well aware that mines had been set. Traps had been laid with the sole intention of killing national troops. The Irregular leader Ernest O' Malley informed Brigadier General O'Daly that he regretted that the causalities among the troops were not greater.[238] The government made full use of the press. There was an immediate 'call to arms' to the men of Ireland and praise for those who had already 'unflinchingly borne the brunt of battle against the forces of anarchy.'[239] The earliest intelligence report from Cork shows that propaganda was playing a large part in many deciding to take sides, one way or the other. *The Examiner* it claimed 'was doing incalculable harm' in this respect, necessitating immediate action, as any delay was dangerous.[240]

On 12 July a 'war council' of three, with Collins as Commander-in-Chief, and Generals Mulcahy and Duffy took over responsibility of the war. Regulation and organization of the army was a priority. Collins sent a copy of the British Army 'commissions' form to 'the government law officer to draft something similar so that the Commander in Chief and the Minister of Defence be empowered to issue commissions.'[241] Communication was vital. The government contacted the Postmaster General demanding that a scheme be put in place whereby every member of the government might be contacted at any time of the day or night.[242] There was an immediate restriction on imports. Oil companies were informed by the Minister of Defence that the importation of motor spirit and lubricant oils, were forbidden except through the Port of Dublin. The same restrictions applied to, sheet metal, iron plates, motor car parts and wireless apparatus.[243] The government was ensuring that anything that might serve as weaponry would not be accessible to the Republicans.

With the level of destruction and devastation in the capital in the first week of July 1922, immediate and collective efforts were made to retrieve and save as much as possible of the remains of the records destroyed in the Four Courts. On 2 July a notice was published in the Press requesting that any fragments collected be 'carefully

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[238] Ibid., P4/284, 4 July 1922.
[239] Ibid., P4/226,
[240] UCDA Mulcahy Papers, P7a/50, 19 July 1922.
[241] UCDA Hugh Kennedy Papers, P4/257. 28 July 1922.
[242] Ibid., P4/276, 28 July 1922.
[243] Ibid., P4/255, 21 July 1922.

preserved, preferably in envelopes and delivered up to the Government at a designated office.'[244] Diarmuid O'Hegarty requested the O/C in the Four Courts Hotel to facilitate the inspection of the ruins of the building.[245] Herbert Wood, Deputy Keeper of the Public Records Office and of the Royal Society of Antiquaries liaised with Hugh Kennedy, the government law officer, so that everything possible was done to collect what could be saved. 'The premises of the society were placed at the disposal of the government for the reception of documents, or fragments of documents scattered by the explosion in the Four Courts.'[246]

All essential services were affected in the immediate aftermath of the Dublin conflict. Horace Plunkett writing to his cousin on the 4 July described the 'isolation', which was more complete than during the Easter Rising. 'There were no postal services for anywhere except for England and America and then only from Kingstown.'[247] It was impossible to hold a planned IAOS meeting on the 11th as the railways had been destroyed. The general opinion was however, that the anti-treaty forces would soon evacuate the city and take to the hills.[248] Plunkett's assessment was a fairly accurate one. The position of the Dublin No.1 Brigade had been weakened by the fighting in the capital and the outlook for the 'Republican IRA was a bleak one.'[249] *An tOglach* commenting on Republican action in January 1923 stated:

> Properly speaking, there has never been an attack on a military post in Dublin ....and it has never entered the wildest dreams of the Irregulars that they could capture or hold any position in Dublin City any time since July.[250]

Blake argues that the anti-treaty IRA had made 'a fundamental mistake by leaving Dublin in the hands of their enemies, thereby allowing the Provisional Government to present themselves to the outside world as the lawful government in overall control of the situation.'[251]

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[244] Ibid., P4/226, 2 July 1922.
[245] Ibid., P4/284, 2 July 1922.
[246] Ibid., P4/284, 23 July 1922.
[247] Hinkson (ed.), *Seventy Years Young*, Horace Plunkett to Daisy, the wife of his cousin the Earl of Fingall 4 July 1922, p. 406
[248] Ibid.
[249] Hopkinson, *Green Against Green*, p. 145.
[250] Ibid.
[251] Blake. *The Irish Civil War and What It Still Means for the Irish People*, p. 36.

Return to Normal

Whatever the perceptions of the public in relation to the political, military or administrative institutions, within a comparatively short period of time life in the capital returned to normal. Any restrictions which may have been placed on public gatherings, were lifted by mid-July. The records show that the Phoenix Park Races took place on Sunday 16 July and on the following day, the National Athletic and Cycling championships were held at Croke Park.[252] The *Tailtainn* Swimming Trials started on Monday in the Zoological Gardens. On 19 July the Moran Memorial Golf classic took place at Milltown Golf Club as the Irish Oaks was taking place at the Curragh.[253] The civil war may have been in progress but it in no way impinged upon the sporting fixtures of Dublin sporting enthusiasts. And so it continued into August, as members of the Dublin Rowing Club displayed their paces at Island Bridge.[254] The excitement of opening day of the Horse Show was evident as Sir Bryan Mahon inspected the Judging enclosure.[255] An amazing 100,000 people gathered on the banks of the capital's river to watch the Liffey swim, for the *Irish Independent's* Prize of 50 Guineas; the route was from Guinness Wharf to Butt Bridge.[256]

On 15 August a special correspondent for the *Irish Times* wrote 'if the pro-treaty forces moved quickly the war should be over in three weeks.'[257] This was an over-optimistic and inaccurate estimate of the existing military situation. On 5 August Collins reported that the army's divisional strength had reached almost 13,000, 'the definite military problem' being restricted to parts of Munster.[258] O'Halpin claims, 'the army's operational performance during the first phase of conflict could scarcely be faulted.'[259] It quickly established physical control of most of the country other than the south west, reducing Republicans to fragmented hit-and-run tactics.[260] Clearly the national army had the upper hand in conventional open conflict. O'Duffy however admitted that while they had captured the towns, they had not captured Irregulars or

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[252] *The Irish Independent*, 17 July 1922.
[253] Ibid., 20 July 1922.
[254] Ibid., 1 Aug. 1922.
[255] Ibid., 16 Aug. 1922.
[256] Ibid., 17 Aug. 1922.
[257] *The Irish Times*, 15 Aug. 1922.
[258] Fitzpatrick, *The Two Irelands*, p. 131.
[259] O'Halpin, *Defending Ireland,* p. 27.
[260] Ibid.

their arms. Among a collection of Republican documents captured in 36 Aylesbury Road, was a note written by Liam Lynch, indicating that the Irregulars were at this point about to change their military strategy. 'It looks at present as if we are back to guerrilla tactics. Everywhere within the next week or two, all forces will be operating more or less in their own areas.'[261]

Hopkinson claims that 'guerrilla warfare tactics were to prove much more difficult to deal with than the Republicans' ineffective hold on the towns had been.'[262] Deasy and Moloney from the Republican command established the strategy best suited to the changing circumstances. Active Service units or columns were to be employed. They were to be small in number, not exceeding thirty-five and consist of the best and most experienced men. Such groups, as had been proven in the Anglo-Irish war, were more wieldy, fleet, efficient and effective. The columns were to obstruct communications and to attack isolated posts and enemy forces when they left their bases.[263] The pattern of former years was being repeated. Fitzpatrick argues that similar to the Anglo-Irish war, 'the rationale of resistance was to evade arrest, defend one's weapons, create military and social havoc, provoke counterproductive coercion, arouse popular indignation and thereby destabilize the state to the point of collapse.'[264] Ongoing press reports confirmed that the IRA were increasingly successful in their stated aim of creating military and social havoc.

Stabilizing the state through the restoration of civil government was central to Collins' strategy at this point. He advised that an official statement should be issued relative to the plans of the Irregulars for the assassinations of prominent members of the government and army.[265] Following his advice to the Government in a letter dated 21 August 'it was decided that Parliament should be prorogued. It was further agreed that a proclamation should be issued, summoning Parliament to meet on Saturday 9 September at 11am.'[266] On the following day, he requested 'a copy of the agenda of the new Dáil, which was due to be settled at the government's meeting that day, be sent to

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[261] UCDA Mulcahy Papers, P7a/81, 5 Aug. 1922.
[262] Hopkinson, *Green Against Green*, p. 172.
[263] Ibid., p. 173.
[264] Fitzpatrick, *The Two Irelands*, p. 132.
[265] UCDA Hugh Kennedy Papers, P4/220. 21 Aug, 1922.
[266] Ibid. 21 Aug. 1922.

him.'[267] This was one report he was destined not to see; on that same day 22 August, Michael Collins was shot dead in an ambush in Béal na mBláth, in his home county of Cork.

Collins' death threatened a crisis and dealt an initial blow to the confidence of the Provisional Government. For Republicans it was a major opportunity as they planned to take military advantage of the situation. Two days after Collins' death Churchill asked his successors for 'an assurance that there would be no change in their attitude towards the treaty.'[268] As Churchill had so succinctly stated in Dundee on 8 April, his primary concern was for 'the treaty, the whole treaty and nothing but the treaty.' The Government's response was formulated at a meeting held on 26 August, ' they regard as vital the clauses dealing with external relations, the Senate and matters relating to Justice, and that no alteration in any of these clauses should be permitted.'[269]

The Guerrilla Campaign

Fitzpatrick claims that, 'the loss of Collins, compounded by Griffith's natural demise ten days earlier did not foster a conciliatory spirit among their successors.'[270] Any initial shock, grief or loss of confidence was set aside as they dealt with the immediate political and military situation. Cosgrave replaced Collins as chairman of the Provisional Government and Mulcahy became Commander-in-Chief and Minister of Defence. Fitzpatrick's analysis suggest a hardening of government's attitudes as, 'their response to the guerrilla campaign was to secure the Dáil's approval on 28 September for the creation of military courts and committees, with powers exceeding the most egregious instruments created by British or northern governments.'[271] Hopkinson argues that, 'in the long term Collins' death made the war a harsher, nastier affair and led to a greater degree of commitment and ruthlessness in the provisional government side, culminating in the executions.'[272]

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[267] Ibid., P4/241, 22 Aug. 1922.
[268] Kissane, *The Politics of the Civil War*, p. 86.
[269] UCDA Hugh Kennedy Papers, P4/220, 26 Aug. 1922.
[270] Fitzpatrick, *The Two Irelands*, p. 133.
[271] Ibid.
[272] Hopkinson, *Green Against Green*, p. 179.

The guerrilla campaign involved the familiar elements: flying columns, raids, ambushes, killing of 'informers', cutting of communications, destruction of property, looting and bullying of opponents.[273] It was becoming obvious by early September that IRA guerrilla tactics were increasingly successful. Depending on their respective viewpoints, both national and provincial newspapers provided reports of sporadic attacks or successes. An analysis of the situation published in the *Irish Times* on 20 September concluded, 'ever since the radical change in strategy made by the Irregulars in August it has been increasingly difficult for the national army to strike any blow of immediate effect.'[274] For the government forces, this situation contrasted strikingly with their earlier successes of the conventional phase of the war. Between September and December a kind of military stalemate existed.[275] The slow progress and ineffectiveness of the army was in many cases due to their lack of familiarity or popularity in local areas. Hopkinson concludes, 'had it been a more effective force, it might well have decisively moved against the remnants of the Republican units before guerrilla resistance had intensified and become more effective.'[276]

Republicans enjoyed popularity in their own areas, but not to the extent that they had experienced during the War of Independence. Among the captured Aylesbury Road documents was one which expresses the hope 'that civilian attitude
will continue to improve' and 'it must be nursed a bit'.[277] Regrets were also expressed in relation to Collins and the unfortunate situation that made 'the shooting of such a leader with such a splendid previous record,' necessary.[278] In late September the IRA in a communiqué to de Valera stated, 'we consider it imperative that some sort of Government, whether provisional or Republican or a military one should be inaugurated at once.'[279] Following this request the IRA set up a republican government formed from the anti-treaty Deputies with de Valera as head.

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[273] Fitzpatrick, *The Two Irelands*, p. 133.
[274] *The Irish Times*, 20 Sept. 1922.
[275] Hopkinson, *Green Against Green*, p. 173.
[276] Ibid.
[277] UCDA ,Mulcahy Papers, P7a/81, extracts from documents captured at No. 36, Aylesbury Road, Dublin.
[278] Ibid.
[279] Ibid., P7a/82, 24 Sep. 1922.

Further Government Initiatives

Politically the government was moving on many fronts. Sanction was given to the army to co-operate with the authorities in places outside Ireland for the arrest of persons engaged in gun running or other activities on behalf of the Irregulars.[280] Earlier in the conflict, an intelligence report from Colonel Maxwell Scott at British General HQ stated 'a representative of de Valera had called on a German firm in Berlin, making enquiries in relation to landmines, aeroplanes, stick hand-grenades and heavy machine guns.'[281] Restricting Republicans' access to arms was vital. Government was also extending its punitive powers. Orders were given that 'Kilmainham prison should be fitted up as a female prison to accommodate women found assisting Irregulars by carrying communications and munitions.'[282] Concern was expressed over violation of Red Cross regulations. Emergency legislation was drawn up to deal with disorder and the deteriorating situation.

The 'Public Safety Bill' was put before the Dáil in late September; O'Halpin argues that as 'conditions were abnormal, the ordinary system of justice could not function and harsh measures were therefore required as a temporary measure to help restore order.'[283] The bill which came into effect on 15 October confirmed the government's new hard-line approach as 'under this legislation emergency, judicial and punitive powers were granted to the army.'[284] There was little if any public objection to the emergency measures, but instead they were accepted as a necessary step to end the war. Following a brief amnesty for anyone prepared to surrender his weapons and to stand aside from the conflict, these powers came into operation.[285] In all, seventy-seven men were executed. Four IRA men from Dublin, who had been captured in County Wicklow, were shot by firing squad. On 24 November Erskine Childers was executed, having been captured in possession of a gun, which had been given to him by Michael Collins. Lionel Curtis writing to his friend Bishop Fallon of London, Ontario earlier that year described Childers as an extremist:

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[280] UCDA Hugh Kennedy Papers, P4/221, 6 Sept 1922.
[281] UCDA Mulcahy Papers, P7a/50.
[282] UCDA Hugh Kennedy Papers, P4/221, 6 Sept. 1922
[283] O'Halpin, *Defending Ireland,* p. 30.
[284] Ibid.
[285] Ibid.

> Some of the most inveterate of those extremists are not Irishmen at all. Erskine Childers is one of them, an old school friend of mine and a former clerk of the House of Commons, he is another sort of Robespierre, driven practically mad by an American wife.[286]

Horace Plunkett, shocked on hearing of Childers' death, said 'beyond all question he was sincere in his insane hatred of Imperialism, his bravery, ability and industry were all of a very high order. If only he had taken a sound line he would have been by far the ablest man in Irish affairs. It is a tragedy if ever there was one.' [287] Over the following six months the executions would be evenly distributed throughout the state: between 17 November and 26 April, thirty five would take place in the eastern command area, twenty in the western command area, nineteen in the southern command area and seven in the Curragh.[288]

Hopkinson claims that the execution policy came as a shock to republicans causing 'Liam Lynch to change his attitude to reprisals.'[289] As a consequence on the 30 November, Lynch issued an order from General Headquarters to all battalions stating that 'all members of the Provisional 'Parliament' who were present and voted for the murder Bill will be shot on sight.'[290] Added to this was a list of categories of government supporters with members of the Senate in the 'A' list. The residences and offices of certain categories were to be destroyed included 'Residences of Senators.' It was notable that factories were not to be interfered with, suggesting republican concern for employment.[291] Hopkinson argues that, 'from this point the war had the character of a vendetta on a national scale.'[292] In the space of three months both sides in the civil war had changed their respective strategies. As a consequence of the developments, government members lived in siege conditions at their offices, while their movements were studied by potential assassins.[293]

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[286] BLO Curtis Papers, MS, 86-89, Curtis to Rev. Lord Bishop Fallon, of London, Ontario Canada, 7 Jan. 1922.
[287] Hinkson (ed.), *Seventy Years Young*, Horace Plunkett to Daisy, the wife of his cousin the Earl of Fingall, writing from Algeciras on 2 Dec. 1922, p. 413.
[288] Kissane, *The Politics of the Civil War*, pp. 87-8.
[289] Hopkinson, *Green Against Green*, p. 190.
[290] UCDA Mulcahy Papers, P7a/83, 30 Nov. 1922.
[291] Ibid.
[292] Hopkinson, *Green Against Green*, p. 190.
[293] Ibid.

Unionist's final attempts to shape the Senate

As the war degenerated into its terrorist phase in the latter part of 1922, unionists were making their final efforts to ensure they would get the Senate they had planned. On 13 June, Midleton, Bernard, Jameson and Donaghmore, together with Griffith, Collins, O'Higgins and Hugh Kennedy met with Churchill in the office of the Secretary of State for the Colonies; Lionel Curtis acted as secretary for the proceedings.[294] At the meeting, though agreement was reached on the details of the composition and mode of election for the Upper House plus all of the Articles concerning the Senate in the Constitution, the unionists were dissatisfied with the outcome and registered their protest. On the following day they wrote to Churchill:

> We the undersigned wish to place on record that although according to the pledge of his Majesty's government and the Provisional Government we have been given the opportunity of seeing and discussing these Articles of the Irish Constitution which affects the composition and elections of the two Houses, the other Articles of the Constitution have not been submitted to us.[295]

While they expressed appreciation for the opportunity to give advice and have their views considered during the prolonged discussions, the final outcome in no way met their expectations:

> We regret that the precedent of the Senate now in existence for Southern Ireland under the Act of 1920 has not been followed and we are not satisfied that any Senate constituted as proposed by popular election and with powers so strictly limited can afford genuine protection to minorities in Ireland.[296]

Signed by Midleton, Bernard, Jameson and Donaghmore, a copy of the letter was sent to Collins and another to the press for publication.

Bernard had been so incensed by the Collins de Valera pact in May that he told Midleton to see Churchill before the meeting. Midleton, to ensure a successful outcome at that 5.30 pm meeting, had duly written privately to Churchill in the morning, to emphasise certain points:

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[294] BNA Midleton Papers, 30/67/2981, meeting at the Office for the Secretary of State for the Colonies, 13 June 1922.
[295] Ibid.
[296] Ibid.

> While it is possible that they [Provisional Government], may give way on the objectionable provision that the Senate should be nominated by the Lower House, which would inevitably be used to boycott members who had been troublesome in the Senate, they obviously will not accept the final nomination resting in the hands of one impartial person namely, the Governor General.[297]

Midleton wanted to ensure the inclusion of influential unionist businessmen and had anticipated all of the Provisional government's possible objections:

> They do not see their way to any direct representation of any of the great commercial bodies or other interests in the Senate, and it would be pure chance if an electorate over thirty, even voting by provinces, would not send a majority of members of the IRA.[298]

In an effort to prepare Churchill for the issues that might arise at the afternoon meeting, he pointed to an area of concern repeatedly referred to in his communications, the Provisional Government's lack of political experience:

> Ireland is a different proposition: the people are exceedingly ignorant, and as regards political organization, they have none of the experience, which has been gained here in the last thirty-seven years. There has been no genuine political fighting in the South during that period.[299]

He warned Churchill of the danger particularly in relation to the then Article 45, which gave the people the power to initiate legislation including changes to the constitution:

> This is the most dangerous and objectionable and ought to be resisted at all hazard. It will be used for popularity hunting intentions, or to get rid of the allegiance, or the Senate, or of anything that comes athwart the national sentiment of the moment. You see in India how serious the position is when the Viceroy has to act directly against the Assembly.[300]

Emphasising the conditions of intimidation that existed countrywide, his plea was for every possible support for the Senate. With reference to their common political experience Midleton concluded; 'all I want is an effective check and no one knows better than you how to throw your weight on the side.' Clearly, despite his prior

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[297] BNA Midleton Papers, 30/67/2985, Midleton to Churchill, 13 June 1922.
[298] Ibid.
[299] Ibid.
[300] Ibid.

communication in relation to the meeting, Churchill's contribution in the afternoon failed to meet Midleton's expectations.

Disappointment at the outcome of the June discussions did not however deter Midleton and the unionists. They continued with dogged determination to have an input into the Provisional government's arrangements and policies, Belton keeping Midleton informed at every turn. Belton reported in September that he had found Cosgrave 'very tolerable' and 'quite amenable.' As well as being sympathetic 'he is desirous of co-operating with the best elements of all parties of the country and his one desire is to see a prosperous progressive and united Ireland.'[301]

By October Bernard's previous complaints had been reconsidered and he was better pleased with the most up-to-date constitutional arrangements:

> You have probably heard of the progress, which the Dáil is making with the Constitution. Our University members in conjunction with the members of the National University have secured representation in the Lower House in future parliaments.....this is not only of benefit for the University but for loyalists generally...as they are much more likely to have influence in the Lower House.[302]

On 20 October the Earl of Desart met with Cosgrave whom he described as' an educated man of about forty five or fifty, of good appearance and manners, very quick and intelligent, genuinely anxious to restore order and create stability'.

> He certainly seems anxious to meet us as far as possible and said over and over again that he attached the greatest importance to keeping us in the country. All I hear of him and O'Higgins is favourable. This seems to be the general opinion.[303]

Cosgrave assured Desart that due to the transfer of the University places, the Landed Gentry and Bankers would supplement Senate vacancies in the first nominations. Again he impressed upon Desart the importance of having landed representatives, but not as they had termed themselves, the 'Irish Peerage'; 'in that form it would be impossible to carry it (in the Dáil), but as the "Landed Gentry" it might be done.' The evidence suggests that not all members of the Dáil were disposed to accommodating the former

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[301] BNA Midleton Papers, MS 30/67/53 Belton to Midleton, 1 Sept. 1922.
[302] Ibid., Bernard to Midleton, 6 Oct. 1922.
[303] Ibid., Desart to Midleton, 20 Oct. 1922.

privileged ascendancy class. Following a lengthy meeting of full and frank discussions, Desart reported in detail to Midleton emphasising Cosgrave's most pressing demand:

> He (Cosgrave), attached immense importance to the ratification of the Constitution as soon as possible and regarded with the utmost dismay the possibility that the political events in Great Britain might delay it. His view was that with ratification and an election, the Republicans would disappear as a party altogether and the government would be strong enough to create a law abiding state.[304]

The primary concern of both Provisional and British governments' was that the Constitution Bill would be passed and that nothing would impede the full implementation of the treaty and the establishing of the Free State. Three days later Kevin O'Higgins expressed his satisfaction when the Dáil passed the Bill:

> I think we have reason to congratulate ourselves that to a very large extent we have become independent of political variations in England. The Constitution is an interpretation of the Treaty; and the Treaty conferred on Ireland the Constitutional status of Canada. .....which is by the full admission of British Statesmen equal in status with Great Britain and is as free as Great Britain. She has complete control of her own destiny. [305]

With the successful ratification of the Bill, it is ironic that the final threat to the completion of the political process came, not from the Republicans but from southern unionists themselves.

Dissatisfaction and Disillusionment

Due to unionist dissatisfaction, Cosgrave's initial discussions in October were followed by further talks in London on the occasion of his visit to the Prime Minister, Bonar Law. On 9 November Midleton, Donaghmore and Desart met with Cosgrave who was accompanied by Ministers Hogan and O'Higgins. Midleton and his colleagues were adamant that the powers of the Senate were far too restricted, that the period for which they could halt bills was much too short 'to have any effect save to cause irritation,' and would simply become law after 270 days; consequently 'the operations of the Senate

[304] BNA Midleton Papers, 30/67/53, Desart to Midleton, 22 Oct. 1922.
[305] *Dáil Debates*, Vol. 1, 1906-08, 25 Oct. 1922.

were futile and that in the interests of Ireland generally and of the minority, it was imperative the Constitution should be amended.'[306]

With the Constitution Bill successfully ratified in the Irish parliament, the threat of a hold up or further delay in the political process by a proposed amendment in the House of Lords was not welcome. In attempting to justify the provisions, Cosgrave fell back on the civil war situation in Ireland as being the real barrier to any reconsideration. He admitted the proviso that the Lower House should not have to pass a measure a second time after rejection by the Senate was faulty but he did not see how to amend it:

> His colleagues contended that as the Senate would be largely nominated by the Lower House they hoped there would not be friction, and which fortified the contention that the Senate was intended to be a farce.[307]

Cosgrave spoke at length on the psychology of Ireland and the necessity of relying on persuasion rather than power. He was adamant the he would be unable to carry an amendment to the Constitution in Dáil Eireann. They had only secured the concessions made with Griffith by frequently threatening their own resignations, and by appeals to Mr. Griffith's memory and the good faith which should be kept with him. Cosgrave had proposed a list of nominations in which, following the names of the three members of the conference present, he had included all of the representative Irish unionists. All three unionists present were later to decline their nomination to the Upper House on the same grounds for which they now fought the limited powers of the Senate.

The unionists felt that further discussion was futile as the Irish Ministers were not 'free agents.' But undeterred they focused their efforts in another direction; they planned an amendment to the Irish Constitution in the House of Lords. One week later Midleton called a meeting at the home of Lord Oranmore and Browne in London. Oranmore had participated in the Irish Convention, was a key southern unionist and a close friend of Midleton. John Butler in a critique of Lord Oranmore's journal states, 'throughout the decade preceding the formation of the Irish Free State the affable Oranmore was one of the few in whom Midleton regularly confided; the real importance of the journal may be the insight it offers into the mind of this difficult character who

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[306] BNA, Midleton Papers, 30/67/3087, Desart to Midleton, 22 Oct. 1922; Report of a meeting held in London on 9 Nov. 1922.
[307] Ibid.

played such a key role in Anglo–Irish relations, only to reject the lord lieutenancy when it was offered to him.'[308]

After years of lobbying, unionist's hopes had been dashed by the outcome of the 1921 senate. Like others, Oranmore acknowledged that the 1920 bill was a 'very bad bill' giving no consideration to a second chamber. Consequently he had moved an amendment in the House of Lords to have a senate included for both parts of Ireland. I December 1920 he wrote, 'I have been very busy since I last wrote over the Home Rule Bill and my amendment setting up the Senates for North and South succeeded in defeating the government by a large majority.'[309] The Senate established for the Parliament of Southern Ireland brought little satisfaction to the unionists. Oranmore was sworn to the Privy Council of Ireland on the 29 May, and to the Senate of Southern Ireland on the 13 July 1921; the second of the only two meetings of that abortive senate. Eight nominated senators of the 1921 senate would later serve in the Free State Senate; Senators Dunraven, Everard, Granard, Guinness, Jameson, Mahon, Mayo and Wicklow.

On 16 November 1922 'a meeting of a dozen Irish peers to which Bernard and the Rt. Hon. Andrew Jameson were invited was held at Lord Oranmore's London house.'[310] Midleton told the gathering that he had informed the Duke of Devonshire of the amendment to the Constitution Bill to increase the power of the Senate, which they proposed to bring before the House of Lords. A manifesto dealing with the question of compensation would be brought before both Houses.[311] After a lengthy discussion considering all the limitations of the proposed senate, the group divided on the issues, one side including Lansdowne, Midleton and Oranmore, supported the necessity of making further effort with regard to the Senate; the other collectively urged caution against taking any further action which might prove detrimental to the position of unionists:

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[308] John Butler, 'Lord Oranmore's Journal, 1913-27,' *Irish Historical Studies*, Vol. 29, No. 116, Nov., 1995, p. 556.
[309] Lord Oranmore's Journal, 1913-27,' *Irish Historical Studies*, Vol. 29, No. 116, Nov., 1995, 19 Dec. 1920.
[310] R.B. MacCarthy, *John Henry Bernard 1860-1927: a study of a leader of Southern Unionists*(Dublin, 2008), pp. 57-8.
[311] BNA Midleton Papers, 30/67/3089, Report of a meeting in the house of Lord Oranmore and Browne on 16 Nov. 1922.

> Under the circumstances the good feeling which existed between southern unionists and the Provisional government might be jeopardised.....and [ultimately] they the southern unionists could be charged with having broken the treaty.[312]

'Lord Midleton's proposal was soundly beaten and Bernard's view may be inferred from a note in his diary for 16 November: "the amendment was rejected, I am glad to say."'[313]

Communications from those unable to attend indicated that a majority declined to participate in any further political intervention. Lord Iveagh and Colonel Guinness with commitments to others commercially, expressed 'great difficulty in taking action.' 'Jameson strongly advised against any attempt to improve the bill,' and Bernard considering the case of Trinity College, took the same view. Dunraven was definitely opposed to taking any step against the Provisional Government and even Desart considered the resulting difficulties would far outweigh anything that might be achieved.[314] The meeting concluded with the resolution; 'it was decided not to move amendments to the Irish Constitutional Bill in the House of Lords.'[315] The Earl of Wicklow, who within the month would take his place in the Free State Senate, declining to attend, explained to Midleton 'I am afraid that I cannot agree to attach my name to your proposed manifesto.' Having expressed his objections in detail he concluded:

> I believe that any attempt to secure amendments in the British Parliament to the Constitution to which the Parliament of Southern Ireland have agreed, would diminish the goodwill upon which we rely...It would play into the hands of the Republican party who would like nothing better than to be able to say, "the treaty was only a dodge to rehabilitate the unionist ascendancy."[316]

Surprisingly Oranmore barely mentioned the gathering in his home of the 16 November 1922; his only comment was 'a meeting here yesterday to consider the Constitution Bill.'[317] Two weeks later, following the second reading of the Free State Bill, he was utterly despondent. He said the proceedings were 'a miserable performance.

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[312] Ibid.
[313] MacCarthy, *John Henry Bernard 1860-192,* p. 58.
[314] BNA Midleton Papers, 30/67/3089, Report of a meeting in the house of Lord Oranmore and Browne on 16 Nov. 1922.
[315] Ibid.
[316] BNA Midleton Papers, 30/67/3097, the Earl of Wicklow to Midleton on 11 Nov. 1922.
[317] Lord Oranmore's Journal, 1913-27,' *Irish Historical Studies*, Vol. 29, No. 116, Nov., 1995, 17 Nov. 1922.

No amendments allowed- a terrible constitution with a powerless senate.'[318] Two weeks later still, he referenced 6 December in a state of grief: 'Oh day of wrath - Oh day of mourning! I wonder how long it will be till the English go back. I could have been nominated to the senate had I wished it, but I would not have my name submitted.'[319] Oranmore's journal entry for the 20 January 1923 is revealing. It summarised unionist rejection and their disappointment at unfilled expectations following five years of negotiations for a senate:

> St John [Midleton] looking well but depressed over the failure of his Irish plans and also that he is not in the Government. He said "we have failed, but if we had won we should have governed Ireland, and you would have led the Senate."[320]

Bernard's disappointment was even more marked when he wrote to Austin Chamberlain two years later. 'The real danger is to Irish loyalists who recognise in the Irish government, as is at present constituted, the Kings government.'[321] Bernard's myopia and angry were clearly expressed in his accusation of broken promises to unionists. 'Our position would become quite intolerable if we were excluded from the Empire. We were definitely promised that this would not be so at the time of the treaty.'[322] The majority of unionists however, accepted the inevitability of the changing political circumstances and realised that their future in the Free State depended on their co-operation with the new political administration.

Summary

Political and military events, administrative and legislative processes, and a wide range of ideologies, nationalist, separatist, unionist and labour collectively contributed to the unique circumstances existing at the foundation of the state.

The origin and evolution of the bicameral system within four Home Rule Acts from 1886 to 1920 prefigured the bicameral legislature established at the foundation of the Irish state. The republican ideal which inspired the Easter Rising reinvigorated the nationalist movement to channel their efforts constitutionally, leading to Sinn Féin's

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[318] Ibid., 1 Dec. 1922.
[319] Ibid., 14 Dec. 1922.
[320] Ibid., 20 Jan. 1923.
[321] Bernard to Austin Chamberlain, MP, on 18 Feb. 1924, cited in MacCarthy, *John Henry Bernard 1860-1927,* p. 58.
[322] Ibid.

triumph in the 1918 general election. The failure of the Irish Convention to effect a settlement saw the further divergence of nationalists and southern and northern unionists. The establishing of Dáil Eireann, the deterioration of Anglo-Irish relations and subsequent war led to the treaty and independence. The political polarization following the treaty culminated in civil war.

Members nominated and elected to the Senate or Upper House of the Irish legislature had their formative influences in the political and military complexities of the decade prior to assuming senatorial office. The views, influences and ideologies nurtured in the varied political streams, nationalist, separatist, unionist and labour, which for the most part had developed separately, eventually coalesced in 1922 in the diverse characteristics and collective profile of the Senate personnel who assembled to take their seats at the inception of the Irish Free State Senate on 11 December 1922.

CHAPTER TWO

Civil War: Heroes, Horse-traders and Hostages

For months to come members of the Senate will be 'targets' and like members of the Dáil today will require protection day and night.[1]

No civilized people, and no legislature of a civilized state can defend the doctrine of reprisals, and that is what is meant here. Somebody commits an offence, and somebody else must suffer for it, because, forsooth the Executive arm is not capable of bringing the offenders to justice.[2]

When the Senate met on 12 December 1922 the country was in a state of civil war. Senator Martin Fitzgerald was under an IRA death threat. Senator Jenny Wyse Power's business premises in Camden Street had been bombed two days earlier. The *Freeman's Journal* reported that gangs roamed the streets displaying their prowess with petrol and incendiary bombs.[3] Senator Glenavy, elected Cathaoirleach of the Seanad on the day, writing to Andrew Bonar Law earlier stated:

> I am very depressed over the position here, as looting and crime of all kinds are general and the Irregulars seem to have the mastery in many parts of the West and South. The F[ree] S[tate] Government is acting fearlessly and well but I fear they are not equal to the task. The question of finance is becoming desperate. The greater portion of the people are paying nothing, either in the shape of taxes, rates, rents or even their land commission annuities. [4]

Two weeks previously Glenavy had been warned by his son not to return from London as de Valera's paper, *An Phoblacht* promised that reprisals would follow the execution of Childers. The report added that in this connection the Free State had acted under the advice of C.J. Gregg [treasury official], T.M. Healy, Justice Wylie and Lord Glenavy.[5] Glenavy was a marked man. The evidence indicated a focused and 'concerted attack on

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[1] UKPA, Bonar Law Papers, 108/3/2, Glenavy to Bonar Law predicting the deterioration of law and order in the months to come, 2 Dec. 1922.
[2] *Dáil Debates*, Vol. 2, Cols. 1197-98, Thomas Johnson, leader of the Labour Party speaking on 31 Jan. 1923 in the Dáil on the threatened reprisals by the Government against the IRA who had kidnapped Senator John Bagwell.
[3] *Freeman's Journal*, 11 Dec. 1922.
[4] UKPA, Bonar Law Papers, 108/2/5, Glenavy to Bonar Law lamenting the state of the country, 4 Nov. 1922.
[5] Ibid., 108/2/18, Glenavy to Bonar Law, n.d., December 1922.

members of the government, the Postmaster General, Deputy Sean Mc Garry, T.D., Mr. Mc Dunphy, Acting Secretary of the Cabinet, and Senator Jenny Wyse Power.'[6] The selection and specific targeting of a Minister, Senator, Deputy and civil servant was a conscious and deliberate statement of rejection and attack by the Irregulars on the legislative and administrative functions of the new state.

This chapter will examine how unfolding events of the civil war impacted upon individual senators on a day to day basis. The initiation of the Seanad is examined, within the context of the crisis situation of the second week of December 1922.

Initiation, Assassination and Retribution

The traumatic events of the first days of the new state were a clear indication that the civil war had entered a new and particularly violent phase. The assassination of Deputy Seán Hales and the wounding of Páidrig O'Máille, Deputy Speaker of the Dáil, while leaving the Ormond Hotel on 7 December, left the country shocked and appalled at the tragedy. *The Irish Independent* reported that 'a thrill of horror ran through Dublin yesterday, when it became known that Brigadier Seán Hales, T.D. for Cork County, and hero of so many fights had been shot dead.'[7] On Friday 8 December, the day following the assassination, four IRA prisoners held in Mountjoy jail were executed without trial; Rory O'Connor, Liam Mellows, Joseph McKelvy and Richard Barrett. The government's press release stated; 'persons taken in arms against the Irish Government' were executed as 'a reprisal for the assassination of Brigadier Sean Hales, on his way to Dáil Eireann.' The statement announced that action was taken as 'a solemn warning to those associated with them and who are engaged in a conspiracy of assassination against the representatives of the Irish people.'[8] A brief note on the circumstances indicated that the executions took place at 9.30 am at a spot at the rear of the prison buildings, and the bodies were interred within the grounds.

Examination of press reports over the relevant three days, revealed little or no public outrage at the government's 'official reprisal'. The issue of Ulster's decision to leave the Free State and discussions on the Boundary Commission, commanded more

[6] *Freeman's Journal*, 11 Dec. 1922.
[7] *The Irish Independent*, 8 Dec. 1922,
[8] Ibid., 9 Sept. 1922.

column inches than the reprisal executions. Biographical notes on newly elected senators, Stock Exchange reports and Christmas advertising all vied for equal attention. The Labour Party was among the few to condemn government action. During the course of the Dáil Debate on the evening of the 8th, Tom Johnson outraged, accused the government of an act of 'vengeance' perpetrated within days of the foundation of the state, 'I am almost forced to say that I believe you have killed the new State at birth'[9] Johnson and the Labour Party had strongly objected to the previous executions in November. Although it recognized the Free State's claim to be the legitimate government of the twenty-six counties, it strongly opposed the government's policy on executions, treatment of political prisoners and security legislation.[10] Gavin Duffy claimed they had reached the limit when it was an official policy to try a man for one thing and execute him for something else. 'Where' he asked 'was this Corsican Vendetta going to end'?[11]

For Gavin Duffy, the government had not alone stepped outside all accepted legal parameters, but also the accepted norms of society:

> Those men, prisoners of war for several months, were put to death by the government because somebody killed Sean Hales. The idea staggered imagination – that any group of men calling themselves an Executive authority could be so far driven from the ordinary course of human understanding as to sanction such an act.[12]

Earlier in July, Duffy had resigned because as he claimed 'I would otherwise be taking responsibility for a decision which constituted a very dangerous attack upon the first principles of freedom and democracy.'[13] That decision was taken on 25 July 1922 by the government determined to abolish the Supreme Court and its judges, rather than meet in open court an application for release on habeas corpus, made on behalf of one of the military prisoners in Mountjoy. Duffy explained, 'under the laws adopted by the Dáil, habeas corpus, which goes back seven hundred years, is the first and stoutest bulwark of the rule of law in securing personal liberty. No freeman shall be taken and imprisoned, unless by lawful judgement of his peers or by the law of the land.'[14] Reprisals and execution without trial were not the law of the land. The ultimate personal liberty, the right to life, had been violated. Duffy had nothing but condemnation for the assassination

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[9] Ibid.
[10] Gaughan, *Thomas Johnson*, p. 217.
[11] *Dáil Debates*, Vol. 2, Col. 50, 8 Dec. 1922; *Irish Independent*, 9 Dec. 1922.
[12] Ibid.
[13] UCDA, MacPartlin Papers, P19/D/16, 26 Aug. 1922, newspaper cutting within the file.
[14] Ibid.

of his late colleague, but he was unequivocal that the government had 'violated the very Constitution established only two days previously.'[15]

The only explanation for the sanctioning of such a deed, in Duffys estimation, was that those responsible 'were not in their normal frame of mind.' In justifying the government's action, Kevin O'Higgins argued that 'the government had got past anger and mere emotion;' they had resisted all temptation to revenge as they had done on previous occasions. 'There was no ebullition of anger and no one ran amok when Michael Collins was killed in Cork.' The action taken was 'at once punitive and deterrent'; the members of 'the Parliament of Ireland must be kept safe to perform their duties.' [16] O'Higgins claimed that the action taken was justified on the grounds that the assassination was a crime against the people. 'When one struck at a man of representative character one struck at the people who gave him his mandate.'[17] The basis of the present attack on the people was to smash democratic institutions and it was to prevent that that they were obliged to take the step they took. O'Higgins final argument was, that while a state of war existed, those who had been made responsible for the restoration of law and order have but one code; *"Salus populi suprema lex"* the safety and preservation of the people is the highest law.'[18]

The immediate source of the crisis situation in the second week of December resulted from more aggressive hard-line policies which had been adopted by both sides in the conflict. From September onwards, anti-treatyite IRA had resorted to guerrilla tactics, systematically inflicting destruction and devastation on the business fabric of the country. From his prison cell Rory O'Connor had preached further devastation, urging his colleagues, who were still at liberty, that they should burn down the provisional government's ministries and other buildings, and 'try and make government impossible by every means.'[19] The government's response to this new onslaught was to enact punitive emergency legislation. Under the terms of the Special Powers Act, military courts were empowered to try cases involving attacks on the national army, specific

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[15] *Irish Independent*, 9 Dec. 1922.
[16] *Dáil Debates*, Vol. 2, Col. 67-68, 8 Dec. 1922.
[17] Ibid.
[18] Ibid.
[19] UCDA, Ernie O'Malley Papers, P17a/62, 12 Sept.1922 cited in Laffan, *The Resurrection of Ireland*, p. 414.

offences against property, breaches of the military's regulations and unauthorised possession of explosives, ammunition and lethal weapons.[20]

But it was the executions of November, which evoked the most extreme and focused Republican response. Liam Lynch, Chief of Staff of the IRA, in response to the executions under the Special Powers Act, had issued orders on 30 November to all IRA units, to kill on sight persons falling into any of fourteen categories, among them deputies who had voted for the so-called 'Murder Bill', senators, hostile newspaper publishers, writers, and aggressive treatyite supporters.[21] By the week end of 10 December, Deputy Hales was dead, Senator Fitzgerald was already under death threat, senators were arriving in the city for the inception of the Seanad; the question on most minds must have been, who was next? Panic seized some deputies and senators, with two allegedly resigning and fleeing the capital followed by secret service officers with orders to bring them back.[22]

Glenavy had told Bonar Law that the government were acting 'fearlessly and well' but questioned whether they were really up to the task. The task before the cabinet on that fateful Thursday in December was daunting. If, as may have seemed likely during the evening of 7 December in the cabinet room, there was to be a follow-through of the events of the day and other members of the Oireachtas were to be systematically assassinated on sight, then the ministers must have realised that the future of the regime depended in the first instance on the survival of its servants and elected representatives.[23] Public silence on the execution policy registered acquiescence and continued support for the government. History has proved to be more critical. While Regan argues that 'Lynch's policy had the potential to destroy the nascent Free State administration'[24] his assessment of the government's response was that it was 'a brutal and utterly ruthless act without pretence of legality.'[25] He states 'that the lawmakers of a newly independent state should have to transgress such a natural law as the ministers of the Free State Government did when they ordered the executions of four untried men, remains a profound tragedy.[26] Yet to prevent the country from degenerating into chaos, it was necessary that the ruling body

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[20] *Dáil Debates*, Vol. 1, Cols. 790-840, 28 Sept. 1922.
[21] UCDA Mulcahy Papers, P7a/83, detailed in Republican documents captured from No. 36, Aylesbury Rd., 30 Nov. 1922 and UCDA P69/2 (18-20), Operation order No. 16, Con Moloney(A/G) to O/C's all divisions, 26 Jan. 1923, See O'Malley & Dolan, *No Surrender Here!,* p. 553.
[22] Michael McInerney, 'Ernest Blyth: A Political Profile III', *Irish Times* 1 Jan. 1975; Edward Mansfield, Clonmel, resigned from the Senate on 12 Dec. 1922, without taking his seat.
[23] Regan, *The Irish Counter-Revolution*, p. 117. Curran, *The Birth of the Irish Free State,* p. 266.
[24] Ibid., p.117.
[25] Ibid., p. 116.
[26] Ibid., p. 117.

with responsibility for law and order survive. The most recent IRA strategy of assassination of members of the Oireachtas was a constant threat. Survival of government personnel was therefore essential so as to effect immediate and decisive action in the emergency situation.

The country was in a state of war and the crisis situation necessitated extreme measures to protect key personnel from further terrorist outrage. O'Halpin's analysis of the ministers' decision taken on that night was that this was 'an act of state terror, of a kind never seen again in Ireland, as the government turned Liam Lynch's expansive logic of collective responsibility back on to the republican elite.'[27] Since the republicans' stated objective was 'to try to make government impossible by every means' the question therefore must be, what 'punitive deterrent' was available to a government in this tragic situation other than to fight terror with terror? The rules of conventional warfare did not apply; reprisal was recognised as an effective weapon of the terrorist milieu, a milieu in which both parties in the conflict had formerly operated with considerable proficiency. The unfolding tragedy was to become more complex. O'Halpin's analysis, while questioning the government's integrity, points to possible future consequences; 'this ferocious premeditated act also made it difficult for the government, if indeed it had the will, to control unofficial reprisals and murders by its own forces.'[28] Paradoxically, the government's continuing official execution policy placed its own representatives in ever-increasing danger.

The regime inasmuch as it existed was the sum of its personnel, and no matter how much effort was placed on protecting its civil servants they remained vulnerable to intimidation and attack.[29] Regan argues 'where the blowing up of bridges, the mining of roads and the sniping of the government's military had thus far failed to kill off the embryonic Free State, here was a strategy to strangle it at birth.'[30] However, this was one political crime halted in its tracks. Kissane summarises; 'for the government the simple lesson drawn from the executions of 8 December was that they had prevented the implementation of Lynch's "orders of frightfulness"; no more T.Ds were assassinated during the civil war.'[31] However, Regan cautions against 'underestimating the

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[27] O'Halpin, *Defending Ireland*, pp. 34-35.
[28] Ibid., p. 35.
[29] Regan, *The Irish Counter-Revolution*, p. 115.
[30] Ibid.
[31] Kissane, *The Politics of the Irish Civil* War, p. 92.

significance of the reprisals in terms of both the overall war and their place in modern Irish political history.'[32] The reprisals of 8 December 1922 were crucial to all that followed and were to have a direct effect on the newly elected members of the Senate. Regan maintains 'as an event they were as critical as they were emblematic; in a war in which resources and manpower were so unevenly distributed, it is difficult to see by what means other than assassination and the destruction of the enemy elite the anti-treatyites could have hoped to achieve victory by December 1922.'[33]

The public's silence on the executions demands explanation. O'Halpin argues that 'absence of significant protests at the time from non-republican sources, and the results of subsequent elections, suggests that the general public acquiesced in drastic measures.'[34] Overall press reports on the 8th, reflected the public's condemnation of the assassination and their eagerness to affirm support for the legitimacy of the government; 'we have supported the treaty; we support the government and shall continue to support it in its arduous task of consolidating the gains secured, in its effort to avoid anarchy and to restore order and public security.' [35] On the following day the 9th, there were scarcely any protests on the 'reprisal executions,' and the *Independent*'s report was accompanied by little more than a mild rebuke:

> If we deprecate such a proceeding it is because we wish to aid, and not to embarrass, the government in its endeavour to make secure for the nation the rights it has won. May we echo the words of Deputy Fitzgibbon, himself a staunch supporter of the government, in hoping that what happened yesterday morning may not occur again?[36]

Nor was there any significant protest from the British press. The *'Daily Chronicle'* commenting on the executions, acknowledged that they were startling but agreed that it would be 'a bold man who would say that reprisals were never in any circumstances justifiable.'[37] The article refrained from any further judgement maintaining that the Irish Government alone were responsibility of maintaining law and order.

The dual shock of assassination and awe at the drastic response of the executions, was captured in Jenny Wyse Power's reaction; 'I don't agree with it, but glory

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[32] Regan, *The Irish Counter-Revolution*, p. 119.
[33] Ibid.
[34] O'Halpin, *Defending Ireland*, p. 35.
[35] *Irish Independent*, 8 Dec. 1922.
[36] Ibid. 9 Dec. 1922.
[37] Ibid.

be to God wasn't it wonderful.'[38] What was 'wonderful' was not that four men had been executed without trial, for a crime committed by others, but rather that in the crisis situation someone had the daring to step outside the 'accepted norms' of civilized society, take decisive and ultimately effective action, irrespective of the ethical, moral or legal implications of that decision. The silence of senators' points to their tacit acceptance of government policy. Society's de-sensitization, even traumatisation, and its passive acceptance of the unorthodox, even criminal action, is a mark of the extent of disruption and drift from normality existing in December 1922. Whether the collective silence was the result of fear of the deteriorating situation in the face of the militant republican challenge, or that the government's response was deemed appropriate in the circumstances in O'Halpin's estimation 'the public seemed very willing to leave the difficult decisions and harsh measures, to their elected representatives.' And whatever the theoretical objections to exceptional laws and actions against political crime, O'Halpin concludes 'harsh measures never did serious political damage to an incumbent administration provided the response was seen to be proportionate to the immediate challenge posed by militant republicanism.'[39]

The Senate, Contextualization, Alienation

Retrospective analysis has all the advantage of distance and detachment. The immediacy of trauma, country-wide disruption and chaos was experienced personally by senators and deputies. Some T.Ds had already been specifically targeted, particularly Tom Johnson for providing Labour support for the government. President Cosgrave offered to house Labour T.Ds in Buswell's Hotel near the Dáil where a number of T.Ds were already residing under military protection.[40] Johnson declined the offer despite the fact that the position of deputies and senators remained precarious for the following five months. Whatever about Glenavy's dissatisfaction with the proposed Senate or his predictions of the prospects for Ireland in the weeks ahead, he was entirely prophetic in one observation made to Bonar Law that 'for months to come, members of the Senate will be "targets" and like members of the Dáil today will require protection day and night.'[41]

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[38] Ulick O'Connor, *Oliver St John Gogarty*, (London, 1983), p. 210; Regan, *The Irish Counter-Revolution*, p. 116.
[39] O'Halpin, *Defending Ireland*, p. 35.
[40] Gaughan, *Tom Johnson*, p. 215.
[41] UKPA, Bonar Law Papers, 108/3/2, Glenavy to Bonar Law, 2 Dec. 1922.

That sense of insecurity and anxiety posed by the deteriorating conditions was understandably evident in the senatorial gathering on 12 December. 'Is it necessary to remind anyone, what this warfare and these acts of violence are causing the nation?' James Douglas, Leas-Chathoirleach, addressing the day-old Senate highlighted the deteriorating condition; 'there is no day but some property, life and good will, which is more important than either, is being destroyed.'[42] For Glenavy, there was not a night one of his neighbours was not raided or burgled and he expected his turn to come.[43] The varying degrees of emotion expressed during the general discussion indicated the level of frustration and helplessness in the gathering. There was utter rejection of this 'holocaust' and the idea that violence could achieve any good. Shame was felt at the manner by which the country and the civil war were being perceived internationally. Douglas expressed poignant sadness and grief on his own personal loss:

> I knew Michael Collins in the days when he was not believed in by many, and I learned to respect and to love him for his great, big kind heart, and this war has taken him from us. On the other side at the same time, I knew Erskine Childers and I learned to respect and love him for his usefulness and he too has gone.[44]

Douglas, a personal friend of both Collins and Childers, expressed the close personal trauma which so many in the war divided society were experiencing. Edward MacLysaght, a friend of both Childers and de Valera, condemned Childers' execution claiming it was an act that 'even the tension of the time ...could not justify.'[45] Where close friendships had existed across party lines and political divisions, there was now only alienation.

MacLysaght had been scheduled to host a gathering at his home in Raheen, in County Clare, for de Valera and his party on 2 December 1921, in the company of Michael Brennan and the staff of the First Western Division H.Q. But as treaty negotiations in London had become critical, de Valera had to forgo the engagement and return to Dublin. Later, MacLysaght, feeling it was his duty to contribute to political life at such a crucial juncture, put himself forward as an Independent candidate in the general election on 16 June 1922. Shortly before the deadline for submission of papers to the

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[42] *Seanad Debates*, Vol.1, Cols. 25-6, 12 Dec. 1922.
[43] UKPA, Bonar Law Papers, 108/2/5, Glenavy to Bonar Law describing the deteriorating situation.
[44] *Seanad Debates*, Vol. 1, Col. 27, 12 Dec 1922.
[45] MacLysaght, *Changing Times*, p. 132.

sheriff's office, de Valera met MacLysaght in Ennis and persuaded him to withdraw his nomination, as it was not in the interest of the country that Independents should stand in that election. Being convinced that the Pact was necessary, MacLysaght withdrew his candidature, but continued to hold to his belief, that men in his position who had always been nationalists, should take their part in the political life of the country.[46] Bernard O'Rourke was a friend and supporter of Sean McEntee and had canvassed for his election in South Monaghan.[47] Friends and acquaintances that had formerly co-operated for the common good were now rent asunder by the divisions of civil war.

That division was experienced by many and on many levels. Both Senators Jenny Wyse Power and George Nesbitt had been long term members of Sinn Féin. They had served on the Committee of the General Election Fund in 1918. At this year's *Ard Comhairle* in Dublin in January, Nesbitt was elected to the standing committee and Wyse Power as treasurer presented the treasurer's report.[48] What stance would be taken in relation to the treaty by various members was then unclear. De Valera told the gathering 'we are fundamentally divided. The two secretaries have gone for maintaining the Republic,' but he did not know about the treasurers – 'we do not know the views of Mrs. Wyse Power?' [49] She had since made her pro-treaty support quite clear, having resigned from *Cumann na mBan,* she became a founder member of *Cumann na Saoirse*, specifically founded to support the treaty. The wife and sister of Peter DeLoughry made a similar transition in Kilkenny. On 26 July, a month after the outbreak of civil war Wyse Power closed down the Sinn Féin office in 6 Harcourt Street, maintaining 'there was no work to be done and she did not want to waste money.'[50] In the immediate aftermath of the treaty the standing committee had decided to vest the party's funds and property in de Valera as trustee, and in October he wrote to the pro-treaty treasurers asking them to implement this decision.[51] On 20 October both treasurers summoned the standing committee to enable them to pay off party debts. At a meeting on 26 October, with republican members in the minority, agreement was reached at paying off various debts, and the pro-treaty majority endorsed Wyse Power's recent action in refusing to sign cheques to cover the salaries for the office staff; no further expenditure was to be

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[46] Ibid., pp. 132-33.
[47] UCDA Bernard O'Rourke Papers, P117/75, 13 May 1921.
[48] *Meath Chronicle*, 21 Jan. 1922.
[49] Ibid.
[50] NAI, 2B/82/116 (11), Joe Clark to Boland, 27 July 1922, cited in Laffan, *The Resurrection of Ireland*, p. 418.
[51] Laffan, *The Resurrection of Ireland,* p. 418.

incurred without the standing committee's authority.[52] As a postscript, in February 1924 the two treasurers lodged Sinn Fein funds totalling £8,610 with the chancery division of the High Court – an action which would provoke controversy for a further quarter of a century.[53]

It seems remarkable that both republicans and pro-treaty members of the organization could meet at all under the circumstances, particularly since it was inevitable that they would disagree. Wyse Power had used her authority to take what she considered the best and most appropriate action in the circumstances. De Valera and the republican members, who were furious at her high-handed action, tried to re-convene a meeting with a view to re-opening the offices, but she and her co-treasurer would neither hand over funds nor acknowledge de Valera as trustee. The *debacle* continued up to November with republicans attempting to call an *Ard Comhairle;* Wyse Power and her colleague were emphatic that this could only be done by a standing committee and that was impossible due to the prevailing civil war situation. Whether it was the stance she had taken in determined opposition to republican take-over of Sinn Féin Offices and funds, or simply because senators were collectively under death threat, Wyse Power was one of the first members of the Senate to experience the IRAs destructive power, when her premises in Camden Street was bombed on Sunday 10 December 1922.[54]

Despite the consequence, Wyse Power's actions had been positive and decisive. By contrast, for Maurice Moore growth of apathy in the face of the escalating conflict was shocking. He recounted the progressive deterioration from verbal abuse, to burning houses, reprisals and murder. Like Douglas, Wyse Power, Nesbitt and most of the senators present, he acknowledged his relations with people on both sides of the conflict. He expressed abhorrence at the revolutionary rhetoric being shot at each other, 'like bullets from a machine gun.' Moore's graphic picture of the incremental deterioration was familiar to all present:

> We drifted from abuses into fighting and we went on from that to burning houses and murder and from that to reprisals, all the time being shocked at each thing that happened - but whatever

[52] NAI, 2B/82/116(11), 2B/82/116(12), Minutes, Sinn Féin standing committee 26 Oct. 1922, cited in Laffan, *The Resurrection of Ireland*, p. 419.
[53] Ibid.
[54] *The Irish Times*, 11 Dec. 1922.

happens now we take as a matter of course, so that now there is hardly anything left to be shocked at.[55]

The reprisals of 8 December stunned the country into silence. Though they had maintained their collective silence on the government's official reprisals of four days earlier, clearly the members of the Chamber were shocked at the necessity for the drastic measure. 'I think,' Moore stated, 'we have come to the climax of shocks. I have been meeting several of those who have been fighting on opposite sides, in the hills of Dublin and I find that they are also shocked.[56] Despite the political polarization, Moore had obviously maintained contact with his earlier Volunteer associates who were now operating on both sides of the conflict. The fact that many senators had friends and acquaintances on both sides of the conflict, served to increase the poignancy of the situation.

The discourse on the day lacked specific political focus. While no particular outrage of the early months of the civil war, or the specific outrages against senators in the most recent days were mentioned, the general consensus was that the source of conflict and existing crisis situation had originated in 1914. The course of the discussion appears to indicate a reluctance to engage with the immediate horror, instead concern focused on more distant underlying causes. With seemingly tacit acceptance that silence was the best policy in the immediate crisis situation, in confusion and frustration, it is hardly surprising they should seek a focus of blame elsewhere. Moore articulated the point, 'I cannot hide from myself that the present state of the country is due to causes that happened many years ago, beginning principally in 1912 and 1913.'[57]

Oliver St. John Gogarty, though much more stringent in his assessment, similarly looked northward for the source of the problem; 'Belfast owes us a mighty grudge for not supporting that sink of acidity – Lord Carson, he used the enemies of Ireland as a springboard and is now safely deposited on the English Woolsack.'[58] Gogarty's rhetoric was a veiled reference to Glenavy's former associations with Carson. He advised however, 'we must not allow a consideration such as that to influence us now,' indicating that past events, however long term, would not easily be forgotten. But with an obvious

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[55] Ibid.
[56] Ibid.
[57] *Seanad Debates*, Vol. 1, Col. 15, 12 Dec. 1922.
[58] Ibid., Vol. 1, Cols.12-15, 12 Dec. 1922.

effort to transcend both the implication of past events and the immediate crisis situation, he asked the members 'to have the courage to consider the date of the Seanad as starting from 1 January' from which time all former mentalities would be over-ridden and cease to affect the present actions of the House.[59]

The 12 December was the first working assembly of the Free State Senate. It should have been an occasion of celebration; instead the menace of increasing violence hung over the gathering with ominous foreboding. The ruthless determination of the government to deal with the republican threat had come as a shock to all, Oireachtas members, the public and combatants on the opposing sides alike. John O'Farrell of Labour, looking beyond the conflict anticipated inevitable consequences, 'a slide into economic and social ruin.' Glenavy had already claimed that the country's finances were desperate. As a businessman, Douglas predicted uncontrollable unemployment, possibly starvation and if violence was to continue he claimed 'it will lead to loss of life daily, even hourly.' In an effort to stem the violence and contribute in a positive and concrete manner, Douglas moved the resolution

> That Seanad Eireann desires to record its conviction that the securing of internal peace is essential to the well being of the Irish nation, it therefore decides to appoint five senators as a committee to consider, and if feasible, to consult with others as to the possibility of an immediate cessation of acts of violence.[60]

He proposed a committee be formed with the sole purpose of initiating peace talks.[61] Senator Alice Stopford Green seconded the proposal and expressed the hope they might 'devise the means of contact and friendly discussion' between the warring factions. To this end a committee of five members was decided upon, Senators Dowdall, Mc Partlin, Westropp Bennet, Stopford Green and Douglas.[62] While the Senate's immediate wish was for peace, this newest group of political elites had no illusions as to their position and prospects in the present scheme of things. The experience of the political and military events of the previous eleven months and the now-well established pattern of violence of the previous three years, left them in no doubt that the threats already directed specifically at senators were genuine and would be acted upon.

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[59] Ibid.
[60] *Seanad Debates,* Vol.1, Cols. 24-29, 12 Dec. 1922.
[61] Ibid..
[62] Ibid., Vol.1, Col. 33. 12 Dec. 1922.

The Senate under Siege

Liam Lynch's directive on 30 November was a general order in relation to members of the Senate, as members at that point had neither been named, nominated nor elected. Following the publishing of the names of the newly nominated and elected senators, an order was issued by Con Moloney (A/G) from IRA G.H.Q. dated 26 January 1923, it stated:

> Houses of members of 'FREE STATE SENATE' in attached list, marked A & B will be destroyed. From above date if any of our Prisoners of War are executed by the enemy one of the Senators on the attached list marked 'A' will be shot as a reprisal.' Factories owned by any of the above mentioned Senators will not be destroyed. [63]

The directive now placed senators directly within the ambit of the execution and reprisals policy. The document or 'Senate death list,' was detailed and specific containing the names of senators, their occupations, addresses, clubs and defining most as 'Imperialist' and 'Freemason.' The order to commence operation against the 'Enemy,' clearly selected named senators as 'specific targets'.[64] The sweeping term 'enemy' used collectively for this diverse group of sixty people, is misleading. The specifically named senators in this document were for the most part, members of the ascendancy class, Protestant, unionists and, as stated, Imperialist and Freemasons.

This was a proposed terrorist targeting of selected individuals, and not as intimated, an anonymous group who were supporters of the government. Kalyvas distinguishes between two basic types of terrorism in civil war, where political actors may target their victims selectively or indiscriminately. Violence is selective or discriminative when individuals are targeted, based on personalized information about their actions; it is indiscriminate when individuals are targeted solely on the basis of their membership in a group perceived to be connected with the opposition, and irrespective of their individual actions.[65] The IRA claimed that senators were targeted because of their support of the

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[63] UCDA P69/2 (18-20), Con Moloney (A/G) to O/C's all divisions, 26 Jan. 1923, See O'Malley & Dolan, *No Surrender Here*!, p. 553.

[64] UCDA, Mulcahy Papers, P7a/83, detailed in Republican documents captured from No.36, Ailesbury Rd., 30 Nov. 1922 and UCDA P69/2 (18-20), Operation order No. 16, Con Moloney (A/G) to O/C's all divisions, 26 Jan. 1923, See O'Malley & Dolan, *No Surrender Here!*, p. 553.

[65] Statis N. Kalyvas, 'The Paradox of Terrorism in Civil War' *The Journal of Ethics*, Vol. 8, No. 1, 2004, pp. 97-124.

pro-treaty government, yet paradoxically the IRA Order of 26 January reveals a remarkable degree of research of highly 'personalized information.' This very specific selectivity suggests an older animosity, antipathy even hatred, that ubiquitous Anglophobic sectarianism that was so much part of perceptions, attitudes and prejudices of the period.

In the context of the Irish civil war, from a republican perspective anyone who was pro-treaty was the 'enemy'. But this term was much more complex, having long term, deep-seated origins when used in relation to this minority group. Its members were perceived as belonging to a race, class, religion, culture and allegiance that was anti Irish and alien to republicanism.[66] Garvin argues that 'republican interpretation of revolutionary legality received its ratification and expression in the Dáil Constitution of 1919.'[67] Members of a privileged Upper House, many with perceived British connections and associations, had no place or consideration in that constitution's unicameral legislature. The Oireachtas of the Irish Free State was regarded as the result of a *coup d'état*; the signatories of the Anglo-Irish treaty had by-passed the revolutionary Dáil; the Dáil of the Irish Free State was therefore illegal.[68] Added to the indignation of this perceived illegality, the Upper House or Senate now provided a furtherance of privilege and prestige for the pro-British ascendancy class and southern unionist Protestants who had no mandate from the people. This complex, collective definition of 'enemy' was not just political; it carried the historic, deep-seated antipathy for a particular race, class and culture and it was deeply sectarian. For Republicans, their revolutionary legality still prevailed, as they were at war with the enemy. The shooting of a member of this alien minority group was therefore perfectly justified as a reprisal, in the event of the execution of any republican prisoners of war.

A New and Ideal Free State

The press, eager to maintain normality, claimed 'the Seanad has been accepted by the outside world as the fulfilment of all those views of tolerance and liberality, which the champions of Irish liberty in the past have made.'[69] The *Freeman's*

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[66] See O'Malley & Dolan, *No Surrender Here!,* p. 553; Blake, *The Civil War*; Hopkinson, *Green Against Green.*
[67] Garvin, *The Irish Senate*, p. 5.
[68] Ibid.
[69] *Freeman's Journal*, 12 Dec. 1922.

Journal's welcoming acceptance of the newest members of the legislature was heartening, but to the most recent champions of Irish liberty, Republicans, members of the Senate were simply the 'enemy.' At midnight, on Christmas Eve, twenty armed and masked men entered the home of Senator Glenavy's son Gordon Campbell, ordered all including terrified children out, drenched the house with oil and set it ablaze. The telephone wires for a radius of a quarter of a mile around were cut, so that no prior warning could be given to Glenavy, who lived close by and was scheduled to have a 'visit' on the same night. One of those terrified children, Patrick Campbell, Gordon's son speaking about that faithful night and the specific targeting of his father stated:

> The truth was he had come back to Ireland because he loved Ireland, and loved the idea of taking part in the formation of what he thought of, romantically, as being a new and ideal Free State. One of the first tastes he got of the new and ideal state was when the IRA burnt down our house on Christmas Eve, 1922, and it seemed for a long half hour that they were going to execute him on his own front lawn.[70]

Executions, official and unofficial, were an expected part of the escalating conflict.

Two days previously a man had walked into the local shopkeeper in broad day light and shot him dead, simply because he was a government supporter. Seamus O'Dwyer of Upper Rathmines, was shot as he stood behind the counter in his premises. Described as one of the best known workers in the national movement, he gave 'his best in the war for Irish freedom and he gave his best in the efforts to secure peace for the country.'[71] Glenavy, clearly shocked by the incident, wrote to Bonar Law, 'these events, particularly the raid on Charlie's [his son] house has made my wife really nervous.'[72] Despite his initial reluctant decision to accept the offer of nomination to the Senate 'for a few months to help them get the machinery going,' he now regretted his decision. Like so many in the Senate who had displayed anxiety and stress, he was utterly despondent 'I can't stand much more and if they try to molest us any further we will cut our losses and clear out to England as life under such conditions is intolerable.[73]

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[70] Patrick Campbell, *35 Years on the Job* (Harmondsworth, 1973), p. 22. Patrick, was son of Gordon (Charlie) Campbell.
[71] *Irish Independent*, 22 Dec. 1922.
[72] UKPA, Bonar Law Papers, 108/3/6, Glenavy to Bonar Law on the attack on his son's home, 27 Dec. 1923.
[73] Ibid.

The intolerable impasse prevailing in December was the result of months of deterioration and demoralization. Michael Hayes, Ceann Chomhairle of the Dáil in 1922-23, in retrospective analysis, highlighted key issues which led to political polarization and eventual civil war. While de Valera and his supporters had attended meetings of the Second Dáil after January 1922, constituting what Hayes terms 'a prickly and difficult opposition,' de Valera's failure to condemn the occupation of the Four Courts was crucial.[74] Hayes claims he did this so that 'civil war could have been avoided.' Against his better judgement de Valera further acquiesced and defended 'Rory O'Connor's unfortunate repudiation of the Dáil, and so decided not to enter the Third Dáil.'[75] A vital step in the process was de Valera's consent to become President of the Republic and 'Chief Executive of the State' on 25 October. He appointed an Executive and with Liam Lynch, the Chief of Staff of the anti-treaty forces, took responsibility for the acts of these forces.[76] Hayes maintains that what up to then had been 'political wrangling and sporadic if widespread fighting thus became a full scale civil war with political and military leadership on both sides.'[77] Government Emergency legislation further aggravated alienation ensuring that those who were formerly 'theoretical supporters of Sinn Féin, were now passionately anti-treaty.'

The initial effect of the executions from November had been to stir the Republicans into increased violence. At the end of November and the start of December 1922, the pattern of IRA activity corresponded with that established at the start of the guerrilla phase.[78] Shortly after midnight on 26 December, while driving near his home in Ballinakill, Co. Laois, Senator Sir William Hutcheson Poe was held up and assaulted by a group of Irregulars. Knowing that senators were under IRA death threat and thinking that he was about to be murdered, he asked for time to write to his wife. He was ordered from his car and his personal effects, money and watch were stolen; the car was then drenched in petrol and burned as he watched helplessly. The seventy-four-year-old Senator was then ordered to walk home, which was impossible as he had lost a leg in action in the Sudan many years previously. Ultimately, he had to wait in the chill December night until his chauffeur could get a car to take him to his home. The Irregulars' accusation and condemnation was that he had accepted nomination as a senator and had supported a

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[74] Michael Hayes, 'Dáil Eireann and the Irish Civil War' *Studies: An Irish Quarterly Review*, Vol. 58, No. 299, Spring,1969, pp. 1-23.
[75] Ibid., p. 18.
[76] Ibid.
[77] Ibid., p. 19.
[78] Campbell, *Emergency Law in Ireland*, p. 168.

government,which they were determined to overthrow.[79]

Earlier on 23 March, Hutcheson Poe had protested strongly to Sir Henry Wilson because of derogatory remarks he had made, thereby adding greatly to the Provisional Government's difficulties. Wilson had claimed that 'owing to the actions of Lloyd George, the twenty-six counties of the South and West were reduced to a welter of chaos and murder.'[80] Did the senator on that bleak December night, review and revise his evaluation of Wilson's remarks? Wilson was dead, murdered on his own doorstep in London and the senator himself was now on the receiving end of that 'welter of chaos.' At a meeting of the Executive Council on 10 January 1923, Kevin O'Higgins, Minister of Home Affairs, recommended establishing a military post at Ballinakill with a view to creating an effective check on the district, which was an acknowledged centre of disorder.[81]

> Such action would provide protection for the Senator's house, which if destroyed would result in a claim for compensation altogether out of proportion of any measures which might be taken to prevent its destruction.[82]

Days later the President and members of the Executive Council signalled their approval of the action taken. A guard was posted on the Senator's house and all valuable property was removed to a place of safety.[83] Along with the personal safety of Oireachtas members, clearly the issue of compensation was of prime concern for the government.

Kissane claims 'it is widely believed that the actual conduct of the civil war did not reflect credit on either side.'[84] The Government's Public Order Bill and Execution Policy had brought the conflict in this guerrilla phase of the war to a new level of extremism and bitterness on both sides. There is little credit in the Irregulars' treatment of the aging, disabled senator; utter disregard for his person, common theft, arson and destruction were less the actions of the patriot and more that of the criminal. William O' Brien, writing at a later date on the civil war claimed:

> The lack of magnanimity on the winning side and the criminal desperation of the losers

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[79] *The Irish Times,* 6 Jan, 1923; O'Sullivan, *The Irish Free State and its Senate.* p. 103.
[80] *Irish Independent*, 23 Mar. 1922.
[81] NAI, DT, S 1941, 10 Jan. 1923.
[82] Ibid.
[83] Ibid, 23 Jan. 1923.
[84] Kissane, *The Politics of the Civil War,* p. 63.

> constitutes a page in history which no unbiased Irishman can read without aching eyes and cheeks of shame.[85]

Sean MacEntee, republican and later Fíanna Fáil TD admitted 'quite frankly, I think the civil war was a complete disaster.' When asked by an RTE interviewer if he examined his conscience, his reply was direct:

> Did I examine my conscience? No, this was one of those periods when emotion overcomes reason – but one gets into these situations, not as a result of cold thought and calm judgement.[86]

That lack of magnanimity was painfully evident in the government's continued ruthless execution policy. On 13 December seven members of the anti-treaty forces had been captured in a dug-out in Rathbride, The Curragh, County Kildare; six were from Kildare and the seventh from County Tipperary. Six days later all were executed.[87]

In addition to the Senate 'death list', the IRA had ordered the destruction of the homes and property of senators and for the next four months they ruthlessly and relentlessly carried out this order to devastating effect. Daily and weekly press reports record the ceaseless destruction. On 2 January the premises of Senator Bernard O'Rourke at Inniskeen, Monaghan was drenched with petrol and set ablaze.[88] Days later, the home of Senator Sir John Keane at Cappoquin, Co. Waterford was burned down by a group of armed men.[89] Early on the morning of the same day a bomb was thrown at government buildings in Merrion Street, Dublin, 'where many Ministers and officials were housed.'[90] Regan claims that, 'during the winter of the civil war, ministers, some with their wives and senior civil servants, took refuge in government buildings where they shared primitive conditions, often sleeping together on office floors under armed guard.[91] IRA raiding parties could and did strike anywhere and at any time. The surprise element of terrorist tactics contributed greatly to a siege mentality. Regan argues that, 'against a backdrop of increasing social and political disintegration, mutinies, shifting alliances and

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[85] NLI William O'Brien Papers, MS 4201, W. O'Brien, 'The Irish Free State: Secret History of its Foundation.'
[86] Sean MacEntee in RTE interview, n.d., *Seven Ages*, Produced and directed by Sean O'Mordha, An Araby Production for RTE in association with BBC Northern Ireland (RTE 2000).
[87] *Irish Independent*, 20 Dec. 1922.
[88] *The Irish Times*, 2 Jan. 1923.
[89] *The Observer,* 14 Jan. 1923; *The Irish Times*, 14 Jan. 1922.
[90] Ibid.
[91] Regan, *The Irish Counter-Revolution*, p. 97.

the constant threat of assassination, *coup d'état* and collapse, there formed within the elite a bunker mentality which was to prove enduring.'[92] For senators, a more numerous and more dispersed group, the sense of isolation and vulnerability in the face of IRA terrorist tactics was more acute.

Intimidation

More insidious and a more psychologically damaging policy was the IRA's intimidation by anonymous letter. This was one of the most chilling *modus operandi* of operational strategy. Senator James Douglas, whose house was not burned, still endured the stress of innumerable anonymous threatening letters. He tells of receiving as many as two and three letters a day and of his greatest concern, which was their effect upon his wife and aging parents.[93] There was the constant anxiety of whether or not these threats would be acted upon. On 19 April 1923, his father John Douglas had a midnight visit to his home at 'Avonbeg', 87 Templeogue Road, Terenure, from a group of armed anti-treatyites who threatened to shoot him if he did not subscribe to the Prisoners' Dependents Fund.[94] On 6 February the *Irish Times* reported that Senator George Sigerson had submitted his resignation due to intimidation and the threat to burn his residence at 3 Clare Street, Merrion Sq.[95] The Senator, a doctor and an author, had been a friend of Eugene O'Curry, George Petrie and John O'Donovan and had been counsellor and friend of many of the Young Irelanders. In an *Irish Times'* interview he explained his position:

> I attend the Senate every day, taking the same risks as my colleagues; but if I continue to act my house will be burned and it is my family, my practice and my patients who will suffer. I have been in the advance ranks of most of the Irish National movements, with William Smyth O' Brien, John Martin, Charles Kickham and many others of the Young Ireland Movement.[96]

At a loss and utterly perplexed as to why he was targeted by republicans, he recalled the many leaders of the Easter Rising, including Cathal Brugha, who had stayed at his house in Clare Street.

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[92] Ibid. p.100.
[93] Gaughin, *James G. Douglas*, p. 20.
[94] Ibid.
[95] *The Irish Times,* 6 Feb. 1923; O'Sullivan, *The Irish Free State and its Senate*, p. 106.
[96] Ibid,

W.T. Cosgrave, aware no doubt of the possible publicity coup for the IRA, and to prevent creating a precedent and further resignations, persuaded Sigerson to withdraw his resignation. Although his house was not burned, the threat was not withdrawn and the Senator continued to serve in the Seanad until his death in 1925. IRA terrorist tactics had succeeded in instilling fear and anxiety in members of the Upper House. As Cosgrave himself by now knew, this was a more subtle, more insidious and corrosive form of harassment. His own home, Beech Park House, Ballyboden, which was unoccupied at the time, was set on fire early on Saturday 13 January.[97] Cosgrave, defiant in the face of this personal attack derided the incendiaries:

> Bismark tried to reduce Paris by bombing and shell and when he failed to do that he resorted to other means. It's the same with some people in this country and Bismark was a much bigger proposition than they are.[98]

Arson and intimidation by anonymous letter was by now rife throughout the country. *The Church of Ireland Gazette* of 16 June 1922 recounted its well established pattern:

> The campaign is carried on in the night by unnamed persons, who give no reasons for their actions. The system, which usually followed, is first, the despatch of an anonymous letter giving
>
> the recipient so many days, or hours, to clear out. If this notice is disregarded, bullets are fired at night through his windows, bombs are thrown at his house, or his house is burned down.[99]

Captain Belton, who liaised between the British and Provisional Governments, wrote to Midleton on 3 May 1922 with details of one such case:

> At three o'clock on the previous day Major Brown of Castlebar received notice from the Irregular IRA detachment at Castlebar that he and his family must leave the district before 6 pm or stand the consequences. [100]

Brown quickly left the district with his wife and two daughters. Though the pattern was well established a key issue in later months was that of popular support. Campbell claims that 'support for the Republicans was very much lower than it had been in 1919-21

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[97] *The Irish Times*, 15 Jan. 1923.
[98] Ibid.
[99] *Church of Ireland Gazette*, 16 June 1922; Hart. 'The Protestant Experience' in English & Walker (eds.), *Unionism in Modern Ireland*, p. 92.
[100] BNA Midleton Papers, 30/67/2290, Belton to Midleton, 3 May 1922.

conflict and correspondingly, the National Army enjoyed a degree of support that had never been available to the British army or to the RIC.'[101]

Several points need be made about the period as a whole. First, as Hart claims, 'murder, arson and death threats were a very small part of a much wider pattern of harassment and persecution and for every such case, there were a hundred raids, robberies or other attacks.'[102] Donal O' Sullivan, assistant clerk of the Senate during the civil war period, who knew each senator, expressed a similar sentiment and statistic. In his account of outrages against the senators he claims that 'most of the occurrences were literally, as well as figuratively, deeds of darkness, and mere shootings at [senators'] residences [were] omitted, as being too numerous to even mention.'[103]

On 11 May, a sample IRA anonymous letter which was sent to hundreds of homes in the spring of 1922 by western IRA units, was read during the course of proceedings in the House of Lords: 'I am authorised to take over your house and all property contained therein, and you are hereby given notice to hand over to me within one hour from receipt of this notice, the above land and property.' [104] The usual reasons for the demand given, in these earlier months were, that the campaign of murder in Belfast was allegedly financed by the British Government, or as a reprisal for the murder of innocent men, women and children in Belfast. Following the signing of the treaty the guerrillas who were mostly anti-treaty simply continued the now well-established regime of intimidation, persecution and expulsion of the acknowledged 'enemies,' soldiers, policemen and Protestants.[105] By December and the early months of 1923 members of the Senate were the constant recipients of anonymous threatening letters.

Ongoing Destruction

The utter helplessness of the continuing situation is echoed in many press editorials. *The Connaught Tribune* condemned the policy of annihilation and national suicide claiming it was 'the maddest folly and it must be ended on terms of sane constitutional methods if we are to have any country left for either Free State or

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[101] Campbell, *Emergency Law in Ireland*, p. 169.
[102] Hart, 'The Protestant Experience' in English & Walker (eds.), *Unionism in Modern Ireland*, p. 92.
[103] O'Sullivan, *The Irish Free State and its Senate*, p. 102.
[104] *Proceedings of the House of Lords*, Vol. 51, Col. 889, 11 May 1922.
[105] Hart, 'The Protestant Experience' in English & Walker (eds.), *Unionism in Modern Ireland*, p. 90.

Republic.'[106] But constitutional methods had failed to stem the tide. The governments' continued execution policy ensured reciprocal violence from the IRA. With relentless ferocity and increasingly destructive intent the republican IRA intensified their campaign against Free State senators. Around midnight on 9 January a band of armed incendiaries surrounded 'Marlfield' the home of Senator John Bagwell in Clonmel, Co. Tipperary. The pattern was as usual; the Irregulars informed the Senator 'they had orders to burn the house.'[107] The house contained a valuable collection of art works, china and other artefacts, and more important, it housed one of the finest libraries in the country. The invaluable collection had been amassed by the Senator's father, the historian Richard Bagwell.[108]

In rapid succession 'Palmerstown' in Co. Kildare, the home of Senator the Earl Mayo, 'Kilteragh', Senator Sir Horace Plunkett's house in Foxrock, Co. Dublin, Senator Maurice Moore's ancestral home in 'Moore Hall', Lough Carra, Co. Mayo and the home of Senator Thomas Linehan at Whitechurch, Co. Cork were utterly destroyed. On 29 January, shortly after dark, a group of armed IRA broke into Palmerstown House. The Senator and his wife were given time to leave, as the entire house except for the servants quarters, was sprayed with petrol and set ablaze.[109] The Curragh military fire brigade which arrived round midnight, failed to stem the blaze and in a very short time the house was completely destroyed. One of the most beautiful mansions in county Kildare, Palmerstown held many art treasures; all except three paintings by Sir Joshua Reynolds were destroyed. By morning the wine cellar and the servant's quarters were the only part of the building standing.[110] Despite the carnage, the seventy-one-year-old Senator was adamant that he would not leave his ruined home and demesne, and would not be driven from his own country. Instead, he and his wife occupied and lived in the servant's quarters.[111] By morning, the remainder of the once magnificent structure was reduced to gaping blackened walls and a heap of smouldering ruins.[112]

On the same night, 29 January, Irregulars broke into Kilteragh, the home of Senator Horace Plunkett in Foxrock. Plunkett was absent in the United States but the premises

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[106] *The Connacht Tribune*, 9 Dec. 1922.
[107] *The Irish Times,* 10 Jan. 1923.
[108] Ibid., *DIB*.
[109] *Kildare Observer*, 4 Feb. 1923.
[110] *Leinster Leader*, 3 Feb. 1923.
[111] Ibid; *DIB*.
[112] *The Irish Times*, 31 Jan. 1923.

were at the time occupied by his chauffeur and secretary. They were told to clear out as a powerful landmine was placed in the central fire grate in the main hall. Clearly calculated to cause the maximum destruction, the resultant explosion practically wrecked the whole building.[113] A general directive from IRA headquarters had recently advocated the greater use of mines, 'It is probably the most effective weapon we can use; this fact does not appear to be fully realised' and the directive concluded, 'or if it does it is not acted upon.'[114] In the case of Kilteragh, the destructive power of the mine was clearly understood and acted upon to devastating effect. While the structure was irreparably damaged, there was very little fire on that night and what did ensue was very quickly extinguished. The government had a guard placed on the premises and the following night, considering that any further attack was unlikely, the guard returned to barracks. However the Irregulars who had been watching for just such an opportunity, drenched the interior with petrol and completed the destruction of the already badly damaged building.[115] Though the secretary and chauffeur narrowly escaped being burned to death, the mansion and its entire contents including many thousands of pounds worth of pictures were destroyed.[116] Senators had little option but to accept and suffer the consequences of these 'acts of war,' as they continued to attend and fulfil their duties in the Seanad.

Policy, Strategy and Obstruction

IRA orders to destroy the homes of senators were being carried out with merciless efficiency. In November de Valera who had obviously questioned the efficacy of their rules of engagement, had suggested that the Speaker of the House be informed of their 'eye for an eye policy.'[117] He was looking to the future political implications of the present military strategy and he saw little in that to give him hope. Yet again the reprisal policy was a primary feature of IRA strategy. After the IRA burnings of the following weeks he again told Liam Lynch that the policy of an 'eye for an eye' was not going to win the people round and without the people they could never win.[118] Evidence suggests, in the dying days of 1922, that the Republican elite secretly acknowledged that winning was not now an option.

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[113] Ibid.,3 Feb. 1923.
[114] UCDA, P69/2(65-66), K for Con Moloney (A/G) to O/Cs commands, divisions and independent brigades, General Headquarters, Dublin, 2 Feb. 1923;
[115] *The Irish Times,* 3 Feb. 1923; *DIB.*
[116] Ibid.
[117] UCDA, De Valera Papers, P150/1749, De Valera to Lynch, 27 Nov. 1922.
[118] Ibid., De Valera to Lynch, 12 Dec. 1922.

The increased criminality of the following months marks a level of desperation. Arson was a highly visual and spectacular expression of IRA destructive power and they used it to full effect. Senators, who were only weeks in office, were continuously under siege. The *Observer's* special correspondent reported:

> Republicans are now determined to prosecute their guerrilla warfare with unabated vigour and will hesitate at nothing, which in their opinion, will help to prevent the Free State government from functioning. The atmosphere in the city is electrical; the citizens are nervous and uneasy in anticipation of what the future may hold.[119]

For the Senate, it held the promise of further terror and disruption. In that same IRA directive advocating the greater use of mines, all divisions were urged to intensify their campaign:

> While the enemy is straining every nerve to establish himself Militarily and in the Civil Administration of the country, the resources at our disposal are not being used to the fullest advantage.[120]

This was a Republican communiqué rallying the troops, by itemising the failures of the enemy to protect its citizens and essential services. The directive continued:

> He [the enemy] is powerless in his efforts to guard such an essential public service as the Post Office, to set up Courts throughout the country, to enforce the Decrees of such Courts as are set up, or to guard his lines of communication.[121]

Once again the republican objective was made clear, obstruction by every means possible to smash democratic institutions and make government impossible.

Pressure to intensify the IRA campaign had its effect in Ballintober, Co. Mayo. On 1 February, Moore Hall the ancestral home of Senator Maurice Moore was destroyed. A beautiful mansion, this was the home of the Senator's late elder brother, the novelist George Moore. A wealth of irreplaceable treasures of historic interest was destroyed. [122] This historic landmark was the place from which John Moore, the Senator's grandfather

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[119] *The Observer*, 14 Jan. 1923.
[120] UCDA, P69/2(65-66), K for Con Moloney (A/G) to O/Cs, commands, divisions and independent brigades, General Headquarters, Dublin, 2 Feb. 1923.
[121] Ibid.
[122] *The Irish Times*, 3 Feb. 1923.

marched with his men to join General Humbert after the French landing at Killala in September 1798; and it was in Moore Hall that the Independence of Connaught was signed.[123] It is interesting to note a query in an IRA Memorandum of 22 August 1922. 'Is there any intention of burning Maurice Moore's place, Kilteragh

Foxrock, or was the place previously mentioned which the enemy had intended to occupy?' [124] This query was followed by a request:

> Could you please see to it that Horace Plunkett's motor-cars are not interfered with, as there are certainly people in that district more hostile towards the Republic and people who deserve more to have their cars taken from them.[125]

There are two points of note; firstly, Kilteragh was the home of Horace Plunkett, not Maurice Moore and secondly neither were senators at this early stage of the war, yet both were considered a target. It is evident that IRA violence was not, at this stage indiscriminate; due consideration was given to Plunkett's political stance. As the document suggests, at one stage the Irregulars had used Moore Hall as a training camp. Ironically Moore himself was forbidden to use the property. He and his elder brother, the legal owner, had quarrelled and ceased to have any communications after 1913.[126] Now months later as attitudes hardened and violence increased accordingly, the homes of both Maurice Moore and Horace Plunkett were totally destroyed.

To what extent IRA groups worked alone in their respective areas or actively co-ordinated their efforts to create maximum effect, is not clear. There is a remarkable degree of co-ordination in many of their attacks. On the same night on which Moore Hall was 'fired' the home of Senator Thomas Linehan at Whitechurch, Co. Cork was burned to the ground. The pattern and *modus operandi* were the same. The raiding party arrived, sprayed the whole building with petrol, set it on fire and watched as the house and its contents were destroyed. The IRA arson campaign had a decidedly geographical dimension. Of these four houses destroyed, two were in Leinster, one was in Munster and one in Connaught. It strongly suggests that this was a reprisal, an 'eye for an eye'

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[123] Ibid., *DIB*. O'Sullivan, *The Irish Free State and its Senate*, p. 105.
[124] UCDA, P17A/55, 22 Aug. 1922. Memorandum from Ernie O'Malley (A.A.C/S) to Paddy Brennan (A.O/C Dublin 2 Brigade).
[125] Ibid.
[126] *DIB*.

strategy, mirroring the geographical locations of the recently executed leaders, who coincidently hailed one from each province, excluding Connaught.

Evidence suggests that there was a lack of communication between the republican political and military elites. De Valera wanted to know what the ultimate objective of Lynch's policy was and warned him that 'his leadership had too low an estimate of the strength and determination of their opponents, and too high an estimate of their own.'[127] Undeterred by political criticisms or warnings against their motives and military methodology, the IRA was about to change their operational strategy. On 12 January at approximately 8 p.m. a motor car, containing three men and a woman, drove up to the Dublin home of Senator Oliver St. John Gogarty and requested that he accompany them on an urgent case. Gogarty, a well-known surgeon, wit and literary enthusiast had been Arthur Griffith's medical adviser. In view of the suspicious circumstances and aware, as a member of the Oireachtas that he might well be a target, he declined. Dropping all pretence they then forced him into the car at the point of a revolver, blindfolded him and drove him to Salmon Pool House, in Island Bridge on the banks of the Liffey.[128] Gogarty was obviously in good physical condition. At an unguarded moment he threw his overcoat in the face of one of his captors. He ran for his life followed by a hail of bullets, plunged into the river and swam in the icy waters 'where he narrowly escaped drowning in a heavy flood.'[129] Climbing out of the freezing waters on to the opposite bank, he managed to get help in a nearby house and eventually got a change of dry clothing in the Civic Guards Barracks in the Phoenix Park. Following this episode his house was fired into and he himself had to live under police protection.[130]

Principles and Political Actors

Kalyvas claims that political actors use violence to achieve multiple, overlapping or mutually contradictory, goals including 'intimidation, demoralization, polarization and terrorization.'[131] Terror can be induced by either indiscriminate or selective violence and both were used to effect during the civil war. For de Lupis 'indiscriminate violence is

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[127] UCDA, De Valera Papers, P150/1749, de Valera to Lynch, 15 Dec. 1922.
[128] *The Irish Times*, 15 Jan. 1923; *DIB*.
[129] *The Observer,* 14 Jan, 21 Jan. 1923; *The Irish Times,* 15 Jan. 1923.
[130] Ibid., 21 Jan. 1923.
[131] Statis N. Kalyvas, 'The Paradox of Terrorism in Civil War' *The Journal of Ethics*, Vol. 8, No. 1, 2004, pp. 97-124.

often described by the term "reprisals."'[132] By January 1923 a pattern of increasingly bitter reciprocal violence characterized hostilities. Regan argues that 'the issue of assassination and reprisal are crucial to understanding the Irish civil war and were arguably the most important tactics employed by both sides in the conflict.'[133] Each atrocity of one side dictated the other's level of response. There was little chance of an outright victory in the civil war for either side with the adoption of guerrilla tactics by the IRA after August 1922. Following the spate of burnings of the senators' homes and the kidnapping of Oliver St. John Gogarty, an official announcement on 14 January stated that three men had been executed in Dundalk that morning. The initial executions in November, including Childers, had brought a new level of vindictiveness to the conflict. And the 'official reprisal executions' of 8 December had shocked the nation into stunned silence.

This was an act of terror, institutional violence used to induce rebels into compliance. Kalyvas argues that 'resorting to violence in the context of a civil war in order to achieve compliance is generally referred to as "terrorism"'.[134] And although it differs from the term's everyday use, its underlying logic is the same; it encompasses 'two analytically distinct, though often overlapping, functions: elimination and deterrence. ....victims and targets of violence are distinct.'[135] The members of the IRA responsible for the assassination of Sean Hales were targeted by the Free State government to induce compliance; the victims in this case were the 'innocent' four who were executed in Mountjoy. O'Higgins claimed that the government's official reprisal was necessary as a 'punitive deterrent.' As the theory of deterrence posits that 'threats can reduce the likelihood of certain actions' it is therefore possible to claim that this particular act of violence was successful, as it achieved the desired result. No deputies or senators were assassinated during the remainder of the civil war. However the likelihood of further assassinations and reprisals was a distinct possibility in January 1923.

Indiscriminate violence by the IRA in the context of civil war meant that 'victims were selected on the basis of their membership in some group and irrespective of their

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[132] Ingrid Detter De Lupis, *The Law of War* (Cambridge; CUP, 1986), p. 255.
[133] Regan, *The Irish Counter-Revolution*, p. 114.
[134] Statis N. Kalyvas, 'The Paradox of Terrorism in Civil War,' *The Journal of Ethics*, Vol. 8, No. 1, 2004, pp. 97-124.
[135] Ibid., p. 99.

individual actions.'[136] Senators were the group of 'victims' chosen for reprisal in the event of further executions of IRA prisoners. Eight anti-treatyites were executed in November. Indicating the level of government determination to smash the power of the IRA, the four executions of 8 December were followed by seven subsequent executions of Irregulars captured in the Curragh on 13 December.[137] By mid-January, fourteen more IRA men were executed by the Free State government. Collective attitudes were hardening. Indiscriminative violence was a fundamental characteristic of the hostilities with an 'eye for an eye' or reprisal policy clearly operating on both sides of the conflict.

The Press, Conciliation and Criticism

For *The Observer* 'there was little doubt that these happenings were the result of the complete breakdown of peace negotiations, which officially or unofficially had undoubtedly been proceeding.'[138] Similar hopes were expressed in a range of press reports. The Senate Peace Committee following their initial decision, continued to work privately. Stephen Gwynn, correspondent for *The Observer* reported 'more open activity is carried on by a body whose existence was hardly suspected, the members of the old IRA who refused to join either national army or combatant Irregulars.'[139]

> Prominent men of all parties have been endeavouring to discover some common ground upon which peace could be based but I understand that Mr. de Valera and the extreme Republicans insisted that they could only negotiate with the Government as an executive authority.[140]

Subsequently Gwynn claimed, 'with such an attitude no progress was possible, and it may now be assumed that the Government will accept nothing less than the complete surrender of the armed Irregulars.'[141]

As the 'Republic' was a central causal issue for the civil war, it was inevitable that it would be the focus of discussion from the respective perspectives of both sides in the conflict. In a press interview in early February, Kevin O'Higgins, Minster of Home Affairs, took the opportunity of addressing an open question directly to the republican

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[136] Statis N. Kalyvas, 'The Paradox of Terrorism in Civil War' *The Journal of Ethics*, Vol. 8, No. 1, 2004, p. 97-124.
[137] *Irish Independent,* 20 Dec. 1922.
[138] *The Observer*, 14 Jan. 1923.
[139] Stephen Gwynn, writing for *The Observer*, 7 Jan. 1923.
[140] Ibid.
[141] *The Observer*, 14 Jan. 1923.

opposition. He asked them, 'to pause after their year of hysteria' and consider the question, 'what was it all about'? In answering the question from his particular perspective, O'Higgins was emphatic, 'it cannot be about a Republic because no one in their senses expected to get a Republic by negotiations.' In recounting the sequences of events leading to truce and treaty O'Higgins explained, 'if we were absolutely determined not to accept less than that, we should never have accepted a truce, or agreed to negotiate.'[142]

As the plenipotentiaries knew only too well, Lloyd George had set the parameters; the inclusion of Ireland in the British Commonwealth was a condition fundamental to the existence of the empire, which could in no circumstances be altered. This situation was well understood by de Valera, the Cabinet of Dáil Eireann and Dáil Eireann itself. O'Higgins was adamant that in private de Valera had made it quite clear to them, using a very specific cattle-trading metaphor, that in relation to the negotiations 'it had really boiled down to the question of what we were really going to sell the cow for.'[143] De Valera knew that compromise was not only inevitable but fundamental to a settlement. This was not the first time a horse or cattle-trading metaphor had been employed to clarify Irish intentions. Ackerman, the American journalist who had been employed by Dublin Castle to establish Sinn Féin's demands and their exact position on the Republic, assured Sir Basil Thomson 'an Irishman always asks for £100 for a horse if he expects to get £25.'[144] Three points were evident from O'Higgins' one-sided discussion: firstly de Valera had always been aware that it was impossible to get a Republic; secondly, it was politically naive to think that a Republic was ever possible at this stage of Anglo-Irish negotiations; and thirdly, it was evident from as far back as 1912 that whatever political settlement or constitutional arrangements would emerge from Anglo-Irish negotiations, the integrity of the British Empire was sacrosanct. The conflict which engulfed Ireland between June 1922 and May 1923 may have been defined as the Irish civil war but central to its causal factors was Britain's determination that 'the inclusion of Ireland in the British Commonwealth was a condition fundamental to the Empire.'

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[142] *The Irish Times,* 12 Feb. 1922.
[143] Ibid., 12 Feb. 1922.
[144] Carl W. Ackerman, 'Ireland from a Scotland Yard Notebook,' *Atlantic Monthly*, June 1922, p. 441.

Media Management and Propaganda

Despite the ongoing traumatic, personal experiences of individual senators, it is notable that at no time were any of their experiences, intimidation, burnings, or kidnapping ever discussed in the Senate. An examination of Seanad records show that there was no mention of any IRA terrorist outrages. There was constant and ongoing concern about the deteriorating situation. The necessity for Emergency Powers legislation meant that the crisis situation was central to Oireachtas concerns at all times. However no mention was ever made of the trauma experienced by senators on an almost daily basis, suggesting that there was an unspoken agreement among the members, to maintain a total silence in relation to these personal attacks. This collective stance suggests there was an overall government policy against public discussion of IRA outrages so as to deprive the Irregulars of the oxygen of publicity.

For the IRA, the enemy was engaged on many fronts and not least through the medium of propaganda. From the earliest days of the civil war propaganda was a vital weapon for both sides. In early August 1922 an IRA directive set out a clear strategy for dealing with the Provisional Government's propaganda campaign:

> As almost the entire Press, is at present being used as a medium of enemy propaganda, you will see that the *Irish Independent, Freeman's Journal, Irish Times,* or any other hostile newspapers are prevented from being brought into your area for sale or circulation.[145]

This sweeping directive further cautioned against newspaper agents. 'Enemy propaganda is being freely circulated through their agent. Every effort should be made to trace the channels through which this is sent, principally Dublin, and have it destroyed.'[146] Ironically, the IRA was not the only one to criticise the government's propaganda at that time. An extract from a Government meeting of 25 July 1922, recounts a letter sent by Senator Maurice Moore, the then-special envoy to Paris, to the Minister of Foreign Affairs:

> I must confess that we are all here puzzled by the propaganda in the *Free Press* and the *War News*. I dare say the Independents have behaved badly in many ways; indeed I am cognisant of most

[145] UCDA, P69/2 (8-9), Liam Lynch (C/S) to all divisions, Field General Headquarters, Old Barracks, Fermoy, 7 Aug. 1922; O'Malley & Dolan, *No Surrender Here*!, p. 524.
[146] Ibid.

> objectionable proceedings. Still I believe that the tone adopted by these papers is a disgrace to the Free State party and more damaging in the long-term to themselves than to anyone else.[147]

Moore was of the opinion that the public would not easily tolerate such attitudes.

> I know that both sides had lost favour before I left Ireland. All those Proclamations by Generals, major and minor, who seem to rise from the ranks in the night, appear in a ridiculous light to the outside world.[148]

Whether publications were glorifying themselves or castigating their opponents, Moore expressed his rejection of such inappropriate propaganda.

Now six months on, the war of words to garner support and shape perceptions had become more focused, widespread and virulent. The Government's publicity department, in an effort to stem the flow, published samples of Irregular propaganda in the American Press and the unscrupulous methods adopted by the Irregulars on foreign platforms. It cited an article in *The Newark Evening News* for 27 November 1922; Republicans claimed, 'In addition to 11,000 prisoners in jail, 400,000 men are fighting in the Republican army.' The Government completely rejected this. 'This is so absurd that it hardly needs comment':

> The active Irregulars are of course numbered only in the hundreds and as their activities show, they do not fight; usually they confine themselves to destruction or to attacks on unarmed individuals, as the press reports daily indicate.[149]

Evidence indicates that Republican propaganda was widespread. Senator Esmonde was informed by a friend in Auckland, New Zealand:

> I am continually in receipt of propaganda literature from Washington USA, signed by that political crank Laurence Ginnell, now deceased, RIP extolling de Valera and all his works and pomp.[150]

To what extent the dissemination of such information in the USA, Australia and New Zealand served the Republican cause is difficult to assess. Their distortion of facts so as to manipulate perceptions had a direct bearing on the fate of members of the Senate.

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[147] NAI, DT, S1775, Colonel Maurice Moore to the Minister of Foreign Affairs, 25 July 1922.
[148] Ibid.
[149] *The Irish Times*, 4 Jan. 1923.
[150] NAI, Esmonde Papers, 981/4/8/2, N. Sheahan, Auckland, New Zealand, to Esmonde, 5 May 1923.

Perceptions, Misconceptions, Definitions

Defined as unionists, Protestants, Imperialists and Freemasons, the prevailing perception was that the majority of the Senate were of the aristocratic landlord class, whose principal allegiance was to Britain and the Crown. Analysis on Senate *Attendance and Contribution to Debates,* and data on individual senators in the Appendices, reveals a very different picture. The evidence shows that 60% of the Senate were Catholic and nationalist, 35% were Protestant and the remaining 5% were Quakers and one Jewess. As with any body of people relating and working together over a period of time, a core group emerged. Contrary to popular perception, Senate records show that the core group of articulate, committed, consistently contributing senators were in fact for the most part nationalist, Catholic, labour and nationalist and republican. The minority of ex-unionists, having chosen to support the government could now more accurately be termed independents. The majority were constitutional nationalists; Labour senators upheld labour concerns at every opportunity, and though loyal supporters of the government, Maurice Moore and Jenny Wyse Power indicated republican sympathies and did eventually join Fíanna Fáil. Yet the perception prevailed. The fact that the Senate or Upper House was seen as Ireland's answer to the British House of Lords, added to the perceived Anglo connections. The Senate 'death list' was a systematic attempt to further shape this idea and elicit an adverse emotive reaction. In a divided society striving to establish its national identity, the terms Imperialist and Freemason applied to most on the list, denotes this group as ethnically outsiders, alien and other.

Freemasonry

It is not surprising that Republicans chose to couple the defining terms Imperialist and Freemason, since there was a strong correlation between the growth of Imperialism and Freemasonry. However, there was nothing mysterious or subversive about this. By 1850 there were fifty Masonic lodges in Ireland; in 1890 there were seventy-four and by 1922 there were sixty lodges alone in Dublin city, apart from those others spread through the country.[151] The primary mechanism responsible for the building of this expansive network of lodges was the regimental lodge.[152] Regiments going abroad to whatever part

[151] *The Irish Times,* 27 Apr. 1922.
[152] Jessica Harland Jacobs, *Builders of Empire: Freemasonry and British Imperialism 1717-1927* (UNCP, 2007), p. 2.

of the empire, established lodges or joined existing ones. Harland Jacobs whose work on Imperial history addresses themes such as race, gender and identity indicates that 'merchants and colonial administrators, soldiers and officers and ordinary colonists of all types joined the Brotherhood because membership offered a passport to convivial society, moral and spiritual refinement, material assistance and social advancement in all parts of the empire.'[153]

It was the element of secrecy surrounding Freemasonry that engendered fear and suspicion. Colonel Jephson O'Connell, Director of Inspection in the National Army during the troubled months between June 1923 and February 1924, while investigating the reorganisation of the IRB within the army, was informed that 'ex-officers who had served in the British army had organised themselves and a Masonic Lodge had been established by them in the Curragh.'[154] Fear of the Masonic Brotherhood's influence prevailed on many levels. On 10 October 1922, Thomas Markham, one of Collins' intelligence officers, wrote to the Archbishop of Dublin to bring his attention to the growing concerns about appointments in the new administration.[155] Highlighting the undue influence exercised by Andy Cope, chief liaison for the British Government, upon the members of the Provisional Government, he implied a more subtle and ominous threat. 'Appointments made recently in Merrion Street reveal his hidden hand; Freemasonry to a small extent as yet, is working its way into Merrion Street.'[156] And revealing that the sectarian element was ever present he stated; 'it is regrettably true that men styling themselves Catholic are Freemasons.'[157]

Freemasonry contributed in important ways to the establishment, maintenance and extension of imperial power.[158] But there was nothing covert or subversive in its aims; it operated in all levels and classes in society. It was instrumental in lubricating the administrative, military and commercial networks on which British power was based.[159] The ability and ease at networking within the brotherhood engendered fear and suspicion of Masonry infiltrating the army and civil service in 1923-24. Its success in strengthening

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[153] Ibid., p. 3.
[154] Regan, *The Irish Counter-Revolution*, p. 176; O'Halpin, *Defending Ireland*, p. 47.
[155] Ibid., p. 98.
[156] DAA, Byrne Papers, Thomas Markham to Edward Byrne, 10 Oct. 1922, cited in Regan, *The Irish Counter-Revolution*, p. 98.
[157] Ibid.
[158] Harland Jacobs, *Builders of Empire*, p.13.
[159] Ibid.

and providing support on the institutional level was based on its support of the individual. Harland Jacobs' analysis indicates that 'it operated as a surrogate family that helped meet a range of needs, material, recreational and psychological.'[160] By providing this support it instilled a confidence, a sense of belonging and a clear sense of one's self esteem and identity.

The fact that lodges were established in the far-flung lands of the empire meant that being a member of the world wide Brotherhood conferred a supra-national identity or membership of a 'universal republic.' Supra-national identity results when people define a community of belonging that extends beyond their national place of origin.[161] It is understandable that republicans should equate and couple freemasonry and imperialism, and the secret element of the Brotherhood tended to further deepen suspicion. Supra-national identity however, was neither religious as in Catholicism, nor ideological as in Communism, but simply a community of belonging to facilitate social networking. It was a community of charitable disposition, which met for mutual support and convivial society and whose aim was to achieve high moral standards in every aspect of their daily lives. O'Halpin poses the question, 'how could anyone have regarded Irish Freemasons as potentially subversive?'[162] The problem, as with so many aspects of membership of the Senate and the complex situation prevailing in 1923, was perception. Though the Brotherhood professed equality and universal kinship, paradoxically it was perceived as being hierarchal and elitist in its structure.

Freemasons, Apolitical, Non-religious

On Monday 24 April 1922, the IRA broke into and occupied the Masonic Hall in Molesworth Street, Dublin.[163] In the previous weeks, attacks had taken place on Masonic Halls throughout the country. When asked by the Masons, on whose order and authority this action had been taken, the leader of the IRA raiding party stated, 'his orders were from the Belfast Refugees' Committee and the only authority needed was the revolver in his hand.'[164] In an attempt in an *Irish Times* report to emphasise the a-political nature of their organisation, article No. 32 of the Masonic Constitution was cited: 'No discussion

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[160] Ibid., p.16.
[161] Harland Jacobs, *Builders of Empire*, p. 12.
[162] O'Halpin, *Defending Ireland*, p. 54.
[163] *The Irish Times*, 27 Apr. 1922.
[164] Ibid.

of a political or religious nature, shall under any pretence whatever, be permitted in any Masonic assembly.'[165] But the suspicion that the Order was in some way subversive, persisted. And as the IRA was at war, they could and did choose very specific targets, usually unionists and Freemasons. A fairly typical communiqué sent to a Galway landlord in the spring of 1922 read:

> As a result of the treatment of the Catholic population of Belfast and other northern towns by Orange gunmen there, thousands of men, women and children are homeless and starving and their immediate needs must be supplied. The executive committee of the IRA have decided that unionists and freemasons of the south and west be compelled to supply their needs. You are ordered to leave your residence at Woodlaw which with your entire property is confiscated'[166]

The pattern was recognized and condemned by the Catholic Bishops in a statement issued from Maynooth on 20 June1922:

> In Southern Ireland we have seen too many instances of barbarous treatment of our Protestant countrymen. Not only has their property been at times unjustly seized, and they themselves unjustly driven from their homes, but their lives have in some cases been murderously attacked.[167]

The statement condemned what it termed 'manifestations of savagery' which were contrary to the teachings of the church and alien to all traditions in the South of Ireland. But more specifically it questioned, rejected and condemned the motivation for such action:

> No plea of reprisals for the treatment meted out to Catholics of the six counties can justify these immoral attacks on life and property. A primary duty of a stable government will be to crush the lawless elements who have gone far to stain the name of our fair country, and a first duty of the people will be to aid the government in bringing the criminals to justice.[168]

In May 1923, Joseph McGrath, Minister of Industry and Commerce, proposed the formation of a Secret Service, which would have jurisdiction in all parts of An Saorstát:

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[165] Ibid.
[166] *Sunday Independent,* 20 June 1999, an extract from, Ruth Dudley Edwards, *The Faithful Tribe.*
[167] *The Irish Catholic Directory*, 1923, p. 606.
[168] Ibid.

> Its function, should be very widespread in so far that it should have a detailed record of all sections in An Saorstát such as Republican Clubs (if started), Ancient Order of Hibernians, Orange Lodges, Freemasons, Land and Labour, Communists, etc.[169]

The scheme was dismissed at cabinet level, yet the manner in which McGrath made his case illustrates the range of threats which the government believed the new state faced.[170] The fear of secret societies in relation to state security and the security forces had surfaced in 1916, when Catholic members of the Dublin Metropolitan Police protested against conditions of employment by joining the AOH. Policemen were forbidden to join secret societies, but the DMP men protested that it was unfair to forbid them to join the AOH, while Protestant policemen could become Freemasons.[171] The government agreed to prohibit policemen joining the Masons in future.[172]

Regan argues that, 'the fear that democracy could be overturned by dedicated minorities was central to the whole defence of the new state.'[173] Such fear is understandable considering the state was founded as a result of years of revolution and bitter civil war. Brothers, non-Brothers and veteran Sinn Féiners all worried about Masonic domination of Free State institutions.[174] Regan further claims, that within the context of the early 1920's, profound paranoia was a component of the politics of any new regime. It is ironic that this paranoia should be projected on to Freemasons. What the British seemed to have understood was that the spread of their empire could be successfully achieved by providing the necessary network of supports to fulfil the psychological and social needs of its empire builders; happy operatives make better empire builders. These networks operated on all levels from the 'old boys' network of the public school system, to the soldier's camaraderie of the regimental lodges.

In 1922 -23 republicans used this deep-seated fear and suspicion to justify their targeting of members of the senate. And the perception of Masonry as a secret society and a danger to Catholic nationalist Ireland persisted. In 1925 the *Irish Times* stated that a law brought in by Mussolini to suppress secret societies was viewed apprehensively by the

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[169] DT S 583, Memorandum by McGrath, 9 May 1923, cited in O'Halpin, *Defending Ireland,* p. 53.
[170] O'Halpin, *Defending Ireland*, p. 54.
[171] Maume, *The Long Gestation*, p. 191.
[172] *Mayo News*, 11 Nov. 1916.
[173] Regan, *The Irish Counter-Revolution*, p. 193.
[174] Ibid

Vatican 'on the grounds that some future government might use it against the church'. The *Catholic Bulletin* was enraged:... 'anyone could have told the gentry of the *Irish Times* that this was merely Freemason flummery and poorly-made flummery at that, a feeble effort to make out that catholic religious orders are just as much secret societies as the Grand Orient and the Brethren or the Scottish Rite.'[175] The power of the Catholic Church, a supra-national religious organization, was clearly evident; fear of a similar potentially powerful supra-national social organization of Masons, was therefore hardly surprising. Any suggestion of preferential treatment or advancement for former unionists, Protestants, Masons inevitably evoked the customary condemnation. 'The Free State is a happy hunting-ground for pension or job-seeking Masons, nineteen out of the thirty members nominated by the president of the executive council to the unnecessary, undemocratic senatorial body, are Freemasons.'[176] The Irish Republican Army's Order No. 16, issued on 26 January 1923 with its comprehensive list of Senators defined as Imperialists and Freemasons, would not easily be forgotten.

While it was shrouded in mystery and intrigue, contributing to its perception as subversive, Freemasonry was as much a public institution as an esoteric club. When Republicans defined Free State senators as Imperialists and Freemasons however, their terminology was specifically chosen to imply, British Imperial dominations of the past, all the paranoid perceptions of the present, and an ominous subversive threat to the future. The Senate 'death list' served as an IRA insurance policy, named persons who could justifiably be considered as appropriate targets, subjects for reprisals in the event of the execution of republican prisoners. Years of resistance strategies during revolution and civil war had established aggressive strategies and patterns of hostility, the kernel of which was 'reprisal'; the 'tit for tat', the 'eye for an eye', the 'hit and hit back' policy which was key and central to the *modus operandi* of both sides in the civil war from November 1922 onwards. Their perceived British connections and associations drew members of the Senate within the ambit of this reprisals policy, holding them hostage to a an IRA 'death list' for the full term of the civil war.

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[175] Margaret O'Callaghan, 'Language, Nationality and Cultural Identity in the Irish Free state, 1922-7: The '*Irish Statesman*' and the '*Catholic Bulletin*' Reappraised' *Irish Historical Studies*, Vol. 24, No. 94, Nov. 1984, pp. 226-245.; *Catholic Bulletin,* Feb. 1925.

[176] *Catholic Bulletin*, Feb. 1927.

Abduction, Reprisals, Retaliation

Abduction and kidnapping was an essential part of the IRA insurance-gathering strategies to gain the upper hand. Kidnapping was nothing new however as there was a well-established practice of kidnapping and hostage-taking in previous years. In June 1921 Lord Bandon was taken from his home in Bandon Castle and moved to various locations in the West Cork area where, Tom Barry ordered, he was to be shot should the British try to recapture him. During the June hostilities, the West Cork IRA had kidnapped four justices of the peace and a number of British Loyalists, both from the armed forces and the civilian administration.[177] The 'eye for an eye' policy was adopted specifically to prevent the continuous shooting of prisoners by British troops.[178] Lord Bandon was Earl of Cork, Lord Lieutenant and cousin to Lord Midleton, leader of the southern unionists and as such was a principal bargaining chip in any negotiations with the British. Bandon was held as an insurance policy against further executions of prisoners and only released 'on the announcement of the Truce.'[179]

Whether Oliver Gogarty was intended as a hostage for bargaining purposes or was to be held for ransom will never be known, but the abortive kidnap did not in any way deter the IRA. Two weeks later while walking with his wife near their home in Howth, John Bagwell, whose home in Clonmel had been destroyed three weeks earlier, was accosted by armed men, forced into a waiting car at gun point and driven away.[180] Upon reporting the kidnap, the military's action was immediate and decisive. A proclamation bearing the time and date, '9.00 am 31 January 1923,' and signed by Major-General Hogan, G.O.C., Dublin Command, was posted all around Dublin. Having detailed the circumstances of the kidnap it stated:

> Warning is hereby given that, in the event of the said Senator John Bagwell not being set, unharmed, at liberty, and permitted to return to his own home, within 48 hours of the date and hour of this Proclamation, punitive action will be taken against several associates in this conspiracy, now in custody or otherwise.[181]

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[177] Ryan, *Tom Barry*, p. 133.
[178] Ibid.
[179] Ibid., pp. 135-45.
[180] *The Irish Times* 31 Jan. 1923; *Irish Independent*, 1 Feb. 1923; O'Sullivan, *The Irish Free State and its Senate*, p. 105.
[181] Ibid.

This was no idle warning. There was an explicit threat of reprisal in this official statement. The executions of 8 December were fresh in IRA minds. The Bishop's statement had claimed that 'the primary duty of the government was to crush the lawless elements.' No doubt IRA intelligence sources were aware of the latest government anti-terrorist strategies. When the government met with the Army Council on 11 January, and Ministers presented memoranda on how the lawless state of the country could be dealt with, both O'Higgins and Hogan advocated more systematic executions.[182] Within a month to the day on 11 February, O'Higgin's own father was shot dead by the IRA in the family home in Stradbally, County Laois. Faced with the rapidly deteriorating situation, it is evident that members of the government had no hesitation in acting. Regan argues that 'the assassination and reprisal policies marked the very extremes of political violence in this period.'[183] Figures for the month of January alone indicate the government's relentless execution policy; the Free State executed a total of thirty four Republican prisoners in January, bringing the total number executed to date to fifty three.

While questioning the efficacy of counter measures, 'O'Higgins and Hogan were determined to ensure that the military would not go soft on the opposition.'[184] At the meeting on 11 January, it was decided that committees of officers be established at battalion level throughout the country to sentence prisoners, resulting in more localised executions.[185] John Bagwell's kidnappers were faced with the prospect of being responsible for the immediate execution of some of their IRA colleagues now held in custody. Following the issuing of the military Proclamation, Thomas Johnson, the Labour leader, raised the question in the Dáil as to the legitimacy of giving notice of proposed reprisals in the case of Senator Bagwell. He condemned the policy of reprisals in the strongest terms, as he had done previously; referring to the executions of 8 December 1922:

> Certain executions took place as a deterrent.....the evidence of the last few weeks suggests that they [the Government] were at fault in their judgement... we were told that that action was not taken as a punishment...now punitive action is to be taken against people in custody or not in

[182] Regan, *The Irish Counter-Revolution*, p. 120; Kissane, *The Politics of the Irish Civil War*, p. 92.
[183] Ibid.
[184] Ibid., p. 121.
[185] Ibid.; Kissane, *The Politics of the Irish Civil War*, p. 92.

> custody for an offence committed by somebody in Howth last night.....Will the punitive measures be an act of retaliation.?[186]

Whether termed as punitive action, retaliation or revenge, the Minister of Defence in a frank statement made no attempt to justify the general policy, but argued that in the case of 'a desperate disease, a desperate remedy was inevitable.' There was little doubt that there was a strong body in Ireland who objected to the adoption of a policy of reprisals. Acknowledging that reprisal was a bad policy but that their provocation was worse, the Minister concluded:

> If the men who hold Senator Bagwell in their power are not determined to plunge Ireland deliberately into another maelstrom of horror, they will set him at liberty at once....and.....No clemency would be exercised in the case of those who had instigated the campaign against the government.[187]

As with the case in the December assassination, Mulcahy made it abundantly clear that he was not prepared to stand by and see Deputies and Senators kidnapped. Bagwell was held in a farmhouse somewhere in County Dublin and was moved the following day to another commandeered house in the vicinity. The following morning he escaped through a rear window while his captors were having breakfast. In light of the government's threatened retaliation, the suggestion was that Bagwell was 'permitted' to escape, indicating that the warning Proclamation promising reprisal and punitive action had the desired effect. Whatever the circumstance, John Bagwell escaped, running a considerable distance before receiving a lift from a passing motorist, who drove him back to Dublin.

Intensification of Campaign

The increase in intensity of attacks by the IRA in the months of February and March of 1923, initiated the most desperate and destructive period of the civil war. Press reports testify to country-wide chaos. 'On the night of Saturday 27 January, Opera-goers returning home by tram in the districts of Chapelizod and Lucan were subjected to a barrage of rifle and revolver fire. Snipers proceeded to fire on Marlborough Barracks, and the Governor-General's residence at the Viceregal Lodge.'[188] Such events were daily

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[186] Ibid.
[187] *Dail Debates*, Vol. 2, Cols. 1211-16, 31 Jan. 1923; *The Irish Times*, 1 Feb. 1923.
[188] *Southern Star*, 3 Feb. 1923.

happenings and were reported in national and provincial newspapers around the country. While an IRA directive ordered the immediate intensification of their campaign its target was the government and its ministries. 'It is imperative that our activities be immensely increased at once, and the enemy attacked vigorously, both in the field and in every department in which he attempts to establish his authority.'[189] This was a detailed and specific rallying call for an all-out offensive against the enemy. 'Officers in every area must assume the offensive, receiving as much direction as is possible from Senior Officers, but at the same time taking the initiative on every possible occasion.'[190]

The emphasis on taking personal responsibility regardless of rank, signalled the all-or-nothing nature of this final aggressive drive in the conflict. 'If officers are not pushing the War they should be replaced by more aggressive officers.'[191] The immediacy and urgency expressed in this communiqué revealed the IRA's awareness that this was the last desperate push in the campaign:

> It is urgent that the utmost advantage be taken of the present season, especially the next two months, as it is clear that Summer time will favour the enemy, enabling him to camp his forces in various places where he could not maintain posts at present.[192]

With fifty three Republican prisoners executed before 1 February, the effect of the execution policy upon IRA morale up to this point can only be imagined. But the renewed call to vigorous aggressive action had its effect countrywide. Within days, the residence of Senator Dr. O'Sullivan, at Dooks, Glenbeg, Co. Kerry was broken into, looted and burned to the ground. The Mansions of both Majors Wise and Perry, in Co. Tipperary, Rochestown House and Woodroffe respectively were utterly destroyed. It was considered the only reason for such an action was that Major Perry was a relative of Senator Bagwell.[193] It seems futile to question the motivation for any such destruction; destruction at this point was an end in itself. Lord Londonderry commenting on the situation expressed the helplessness of many. 'When we look across the border we see conditions that seem almost chaotic. When will the destruction of life and property cease and Southern Ireland prosper again.'[194]

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[189] UCDA, P69/2(65-66), K for Con Moloney (A/G), to O/Cs commands, divisions and Independent brigades, General Headquarters, Dublin, 2 Feb. 1923.
[190] Ibid.
[191] Ibid.
[192] Ibid.
[193] *The Irish Times*, 12 Feb. 1923.
[194] Ibid., 12 Feb. 1923.

There was little chance of the cessation of violence or the prospect of prosperity anywhere in the twenty-six counties. On 3 February a group of armed Irregulars entered the premises of Senator Wyse Power, 21 Henry Street in Dublin, produced bottles of petrol which they threw on the tables and floor, set them alight and escaped in the confusion and consternation of the crowd which gathered following the outrage.[195] This was the second attack on Wyse Power; her premises in Camden Street had been bombed on 10 December 1922. Again to ask for an explanation or reason is futile. But the irony of this attack is, regardless of how her politics was perceived by the Irregulars, Jenny Wyse Power was in fact a republican. Nor was she the only one to be targeted for a second time by the IRA; Senator Linehan's second residence, which he had bought at the cost of £4,000 following the destruction of his former home at Whitechurch, was completely gutted.[196] Oliver Gogarty's West of Ireland home in Renvyle, Connemara was burnt to ashes, destroying valuable modern paintings by Orpen, Augustus John and others.[197] The Terenure home of Stephen Gwynn, special correspondent with the *Manchester Guardian,* was broken into and a mine laid, causing extensive damage. [198] Gwynn, who reported extensively on political affairs, was accused by Irregulars of not being sympathetic to their cause. Gwynn had claimed:

> The best-known caricature of Irish architecture was now the 'ruin'. This ever-increasing number of ruins was creating a whole new industry, the trade of preparing compensation claims, which was in fact now rivalling the undertaker in importance. [199]

With a touch of sardonic humour Gwynn concluded; 'still, in either case, there is a corpse, a remains, be it a house or a human.'[200]

On the Republican side there were plans to widen the conflict by carrying out attacks in England, but these were scrapped when during March approximately 100 suspects were rounded up in Britain.[201] Overall IRA decline was becoming increasingly apparent in mid-March and the killing on 10 May of the Republican Chief of Staff underlined the

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[195] *The Anglo-Celt*, 10 Feb. 1923.
[196] *The Irish Times*, 19 Feb. 1923.
[197] O'Sullivan, *The Irish Free State and its Senate*, p. 107.
[198] *The Manchester Guardian*, 1 Feb.1923.
[199] Ibid., 4 Feb.1923.
[200] Ibid..
[201] Campbell, *Emergency Law in Ireland*, p. 171.

futility of continuing the campaign.[202]

The intensification of operations and the all-out push ordered by IRA Headquarters contributed to an increase in urgency and daring. Senator Bryan Mahon's home 'Mullaboden' in Ballymore Eustice, County Kildare, was burned down in broad daylight. The Irregular party arrived in a stolen lorry containing seventy cans of petrol. The servants were made to pile the furniture in the centre of the rooms to ensure that the fire would do the maximum damage. A gramophone, a pair of field glasses and Mahon's military uniform, which one of the raiders donned upon leaving, were taken as trophies. The symbolism and ridicule of this gesture would not have been lost upon any observer; Bryan Mahon was the former commander of British Forces in Ireland from 1916-18. From the time of taking office members of the Upper House had been under siege. Sentries on guard at Senator Nugent Everard's home, Randlestown in Navan, opened fire on several occasions when intruders attempted to gain entrance.[203] While members of the House were under siege, so also were their relatives. Cavanore House, owned by Patrick O'Rourke of Inniskeen, brother of Senator Bernard O'Rourke, was burned to the ground. All that remained of the newly restored house, which was about to be occupied, was a heap of smouldering ruins. [204]

Statistics

Official British Government figures show that from 6 December 1922 to 26 March 1923, 116 houses were burned. Added to the ninety four houses destroyed in the previous twelve months, the combined total for the whole period was 210 premises.[205] The document is detailed and specific, containing names, dates, locations including all the specifics of the homes of Senators destroyed in this period and up to the end of March. Desart Court, Co. Kilkenny, Castle Forbes, Co. Longford, Ballynastragh, Co. Wexford and Burton Hall, Stillorgan, Dublin, respectively the homes of Senators Ellen Desart, the Earl of Granard, Sir Thomas Esmonde and Henry Guinness, were among those cited. On 22 February Desart Court was so effectively destroyed that nothing remained but the bare

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[202] Ibid.
[203] Ibid., 17 Feb. 1923.
[204] *The Irish Times*, 20 Feb. 1923.
[205] UKPA, Bonar Law Papers, 114/1/42, 28 Mar. 1923. A covering letter with these documents suggest they are highly confidential and must be dealt with in a covert manner. W.M. Jellett, K.C., their originator, was not to be directly contacted in relation to them.

walls.[206] The raiders were determined to do a thorough job in this instance. Three weeks later, furniture saved from the ruined building, which was being transported in lorries for storage, was intercepted on Cuffe's Grange road outside Kilkenny by a group of Irregulars; it was sprayed with petrol, set ablaze and completely destroyed. Raiders arrived at 11.30 pm. at Castle Forbes and placed landmines in both the hall and other rooms. The resulting explosion was so powerful that it was heard seventy miles away. All the windows in the nearby village of Newtown Forbes were shattered.[207] Burton Hall was broken into by a raiding party and Senator Guinness and his family were turned out. A large tin of gelignite was placed in the basement and the upper rooms were drenched with petrol. Though the centre portion of the house was badly burnt, the gelignite failed to explode which saved the building from total destruction.[208]

Senator Sir Thomas Esmonde had gone to London in early March where he was scheduled to speak at a St. Patrick's Banquet. Shortly after his arrival he received a telegram from Cosgrave, informing him of a rumour that his home Ballynastragh near Gorey, had been attacked. Cosgrave, who had wired both the Gorey office and the Carlow Command to discover the truth or otherwise of the rumour, apologised 'for the pain and uncertainty and promised to further investigate and keep him informed.'[209] This was quickly followed the following morning by a telegram confirming his worst fears. The curt wording said it all; 'very much regret your house completely destroyed.' [210] A band of about fifty had descended upon Ballynastragh, drenched the house and its contents with petrol and set it ablaze. The resultant fire completely destroyed the building. The original house dated from 1300, and part of the modern building, which had been burnt once before by Oliver Cromwell's soldiers, was four hundred years old. [211] Colonel Laurence Esmonde, the Senator's brother, asked and was permitted to remove a golden chalice and vestments from a chapel in the upper part of the building. With the combination of gas bombs and strong March winds, huge flames soon lit the night sky. Historic documents dating from the Jacobite period, the events of 1798, the O'Connell era and some interesting letters from Parnell were all destroyed in the blaze.[212] A friend of

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[206] *Southern Star*, 3 Mar. 1923; O'Sullivan, *The Irish Free State and its Senate*, p. 107.
[207] *The Irish Times*, 26 Feb. 1923.
[208] Ibid., 24 Mar. 1923.
[209] NAI, Esmonde Papers, 981/4/8/2, 10 Mar. 1923.
[210] Ibid., 11 Mar. 1923.
[211] *The Irish Times*, 12 Mar. 1923, O'Sullivan, *The Irish Free State and its Senate*, p. 107.
[212] Ibid.

Esmonde writing to commiserate with him following the destruction of his home, expressed the perplexity of many:

> I read with the greatest horror and disgust that the party calling themselves Republicans has purposely burnt your house and all its contents. No more dastardly deed has been done by them. The only one to compare to it was the burning of Horace Plunkett's house. Who could have supposed after the great services of you two for Ireland, your houses should be so destroyed. [213]

[213] NAI, Esmonde Papers, 981/4/8/2, Lord Eversely to Esmonde, 15 June 1923, commiserating with him on the destruction of Esmonde's home Ballynastragh, Co. Wexford.

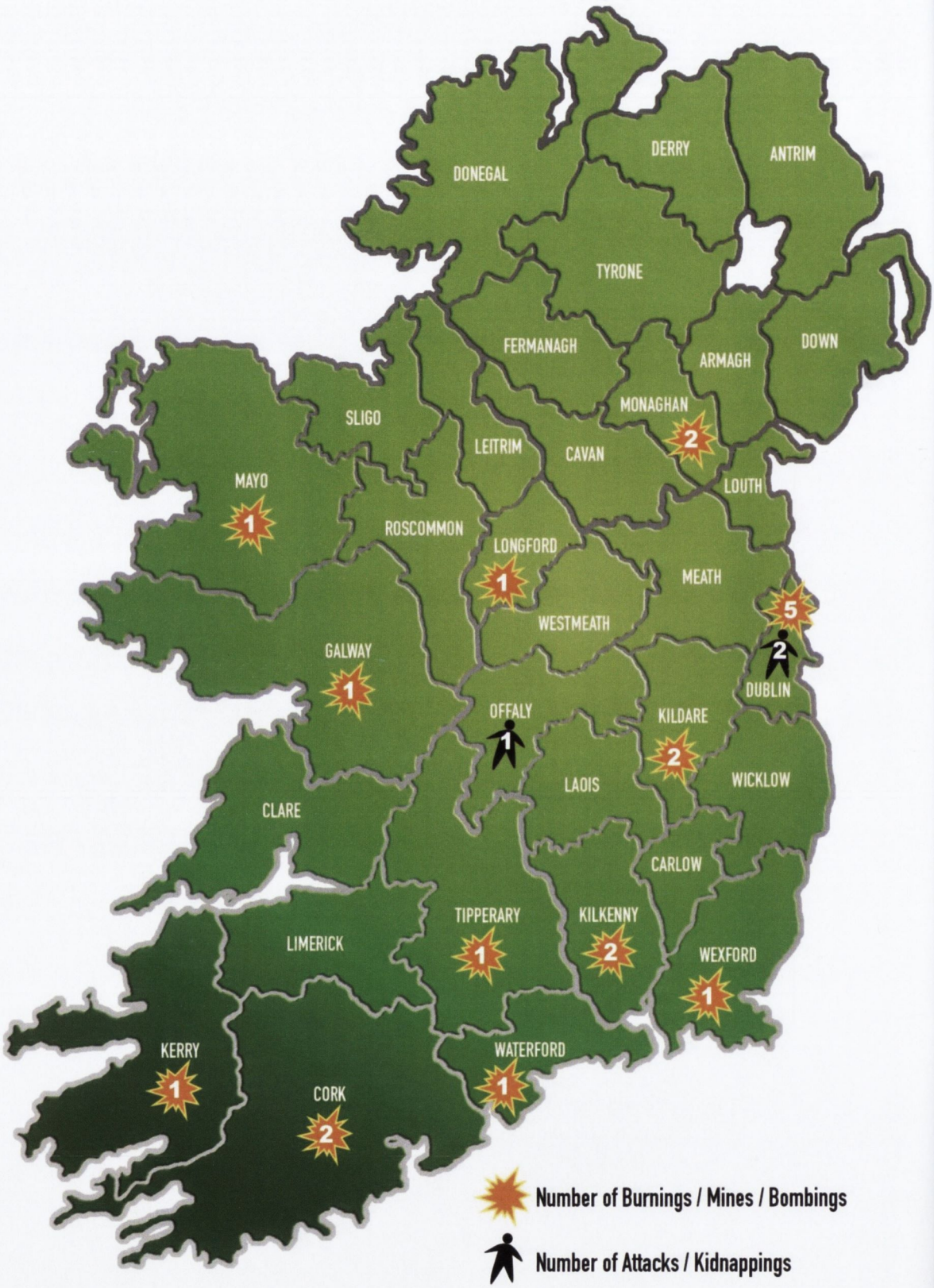
Outrages against Senators – 22 March 1922 - 26 March 1923

1922	*Senator*	*Outrage*	*County*
28 Mar.	Fitzgerald, M.	Printing Presses Smashed	Dublin
06 Dec.	Fitzgerald, M.	Death Threat – Leave Ireland	Dublin
10 Dec.	Wyse Power, J.	Commercial Premises Bombed	Dublin
26 Dec.	Hutcheson Poe, W.	Attacked, Robbed, Car Burnt	Laois
1923	*Senator*	*Outrage*	*County*
02 Jan.	O'Rourke, B	Mill, Inniskeen, Destroyed	Monaghan
09 Jan.	Bagwell, J.	Home 'Marfield' Burnt	Tipperary
12 Jan.	Gogarty, Dr. O.	Kidnapped	Dublin
29 Jan.	Earl of Mayo	Home 'Palmerstown' Burnt	Kildare
29 Jan.	Plunkett, Sir H.	Home 'Kilteragh' Mined, Burnt	Dublin
30 Jan.	Plunkett, Sir H.	Home 'Kilteragh' Destroyed	Dublin
29 Jan.	Bagwell, J.	Kidnapped from Howth	Dublin
01 Feb.	Moore, M.	Ancestral Home Destroyed	Mayo
01 Feb.	Linehan, T.	Home, Whitechurch, Burnt	Cork
03 Feb.	Wyse Power, J.	Henry St. Shop, Petrol Spray	Dublin
04 Feb.	O'Sullivan, Dr. W.	Holiday Home Burnt	Kerry
05 Feb.	Sigerson, Dr. G.	Intimidation	Dublin
16 Feb.	Mahon, Sir B.	Home, 'Mullaboden' Burnt	Kildare
18 Feb.	O'Rourke, B.	Home, 'Cavanore House' Burnt	Monaghan
19 Feb.	Keane, Sir J.	Home, 'Belmont' Burnt	Waterford
22 Feb.	Desart, Countess	Ancestral Home Destroyed	Kilkenny
23 Feb.	Gogarty, Dr. O.	Renvyle House, Destroyed	Galway
26 Feb.	Earl of Granard	Castle Forbes, Mined, Burnt	Longford
09 Mar.	Esmonde, Sir T.	'Ballynastragh', Mined, Burnt	Wexford
24 Mar.	Guinness, H.S.	Home 'Burton Hall', Burnt	Dublin
26 Mar.	Desart (Furniture)	Two Lorries Destroyed	Kilkenny
n.d.	Bennett, W.W.	Attempted Burning	Limerick
n.d.	Douglas, J.G.	Anonymous Letters (3 daily)	Dublin
n.d.	Glenavy, Lord	Attempted Attacks (6)	Dublin
n.d.	Everard, Sir N.	Attempted Attacks Randlestown	Meath
n.d.	Linehan, T.	Home (second), Burnt	Cork

* All above attacks have been verified

** Unverified accounts cite thirty seven houses of Senators burnt

Location of Specific Outrages against Senators



Northern Ireland and the 'Murder State'

Most recent chaotic conditions north of the border had abated and the issue of unity of the divided island was a matter of concern. On 20 January 1923, the *Freeman's Journal* announced that Lord Glenavy, Chairman of Seanad Eireann had approached the six-county government with the object of bringing about a union of the two Irish Governments. [214] It is most unlikely that this was an official approach; it is more likely to have been a tentative, covert appraisal of the mood and receptiveness of the northern population. The *Northern Whig* in answer to this approach claimed 'whatever the consequences may be there can and will be no union with the 'Murder State.' James Craig, speaking in Belfast to delegates on the occasion of the annual meeting of the Ulster Unionist Council two weeks later, referred to Glenavy's letter on 'unity with the Free State.' Craig was emphatic that there would be no discussions behind their backs and that any such offers must be laid before the people of the six counties. Glenavy's attempt to initiate covert discussions was thus publically rebuffed, as Craig reiterated that the sole issue of the last election produced the definite answer, 'they would not co-operate with the Free State Parliament.'[215] Seeking to distance himself from Glenavy's agenda he claimed that 'far too much had been made of Glenavy's confidential letter to him.' The *Whig* was very clear in its position:

> Lord Glenavy and every other person engaged in this intrigue for reducing the North to the deplorable condition of the rest of Ireland should clearly understand that there can be no union such as they desire. We are confident the Northern Government and the Northern people will return a fitting answer to Lord Glenavy's imprudent communication.[216]

Among the officers re-elected during the meeting to the Council were Carson, Craig, Londonderry and Sharman Crawford, all of whom had signed the Covenant in Belfast, as did Glenavy in 1912. During three years of vicious sectarian conflict from 1920 – 1923 which had wrecked havoc in Northern Ireland, partition had been proposed, established and confirmed.

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[214] *Freeman's Journal*, 20 Jan. 1923.
[215] *Irish Independent*, 1 Feb. 1923.
[216] *Freeman's Journal*, Jan. 20 1923.

James Douglas had no hesitation in placing the source and course of that conflict and the now-permanent partition, with the Belfast boycott of 1920.[217] Monaghan's Catholic Deputy Sean Mc Entee, put Belfast Sinn Fein's petition for a boycott before the Dáil on 6 August 1920; Monaghan's Protestant Deputy, Ernest Blyth, totally opposed the blockade and forecast that it would destroy any possibility of unity between North and South. Sectarian riots in Derry and Belfast in the summer of 1920 claimed at least eighty two victims.[218] Despite warnings of inevitable consequences, a Belfast Boycott Committee was set up in August by northern Catholics which included businessmen, clergy and Bishop MacRory. The situation deteriorated rapidly as catholic workers were locked out for refusing to sign 'loyalty agreements'. Riots continued in towns across the province with both Catholics and Protestants killed in increasing numbers. By October 1920 the part-time paramilitary B-Specials were established, providing a further aggravation and threat to the Catholic population. With the introduction of the Government of Ireland Act, Carson resigned as Ulster Unionist leader in February 1921 and was succeeded by James Craig.

Lee claims that 'Craig could be neither cowed nor cajoled; he was willing to contemplate compromise, but only within the limits permitted by the temper of his Conservative allies in London and his followers in the North.'[219] Elections took place in the six-county area on 24 May 1921. The Labour Party abstained, indicating their rejection of the 'Partition Act'. Craig, revealing that sectarianism was at the heart of the Northern conflict, warned that 'outside the Unionist Labour Party Association, there was no political party in which trade unionists could exert an influence on parliamentary or municipal elections unhindered by the power of the Church of Rome.'[220] Inevitably unionists secured forty of the fifty two seats, a majority they would hold for decades. The Government was formed on 7 June 1921 with Craig closely modelling its procedures and practices on the Government of Westminster. He was the authority within his northern boundary and would brook no dissent 'dissolving the county councils of Fermanagh and Tyrone when they dared declare allegiance to the Dáil in late 1921.'[221]

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[217] *Seanad Debates*, Vol. 6, Cols. 155-56, 12 Dec. 1925.
[218] Lee, *Ireland 1912-1985*, p. 59.
[219] Lee, *Ireland 1912-1985*, p. 60.
[220] Gaughan, *Thomas Johnson*, p. 190.
[221] Lee, *Ireland 1912-1985*, p. 60.

Retrenchment

With the signing of the treaty in December 1921 the predominant tone of the Belfast press was one of profound astonishment that an agreement should have been reached, 'a contingency which had apparently never been anticipated.'[222] According to the *Belfast Telegraph,* the creation of the Irish Free State aroused no enthusiasm in Ulster but rather, generated resentment against the British Government for having placed Ulster in so difficult a position. By conceding to Sinn Féin practically all it had asked, the British government was almost ensuring that northern boundaries would be recast. Any reduction of her already small area would lead to infinitely higher taxation than the South and run the risk of tariffs imposed by the South. The *Belfast News-Letter's* principal concern was also with finance; Northern Ireland would still be liable for £8,000,000 a year. Fear and suspicion for their eventual geographical entity was the undercurrent of all northern press reports. For the *Northern Whig* there was a price to be paid for being able to "contract out" of the Irish Free State.' The Commission to be set up to re-adjust the boundaries of the province would have the power to cut and carve the whole of the six-counties.[223]

Within the early months of 1922 the Provisional Government, in issuing official reports from day to day of the savageries in Belfast, had taken a very necessary step. So long as pretence could be kept up that nationalist were the aggressors, the Orange press made no effort to end the campaign of assassinations.[224] 'Now the *Northern Whig* wants help in the restoration of order, but it will not yet admit that the Orange gunmen are chiefly responsible for the continuance of the murder policy as they were solely responsible for the pogrom of 1920.' The *Irish Independent* in its analysis of the *Whig's* report claims that it carefully avoided showing how or where the official reports were inaccurate and maintained that the 'policy of letting the light shine on Belfast's dark deeds may force the Northern government to safeguard life and property within its own borders.'[225]

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[222] *The Irish Independent*, 8 Dec. 1921, citing the *Northern Whig,* the *Belfast Telegraph* and the *Belfast News-Letter.*
[223] Ibid,
[224] *Irish Independent*, 8 Mar. 1922.
[225] Ibid.

The speaker of the House of Commons in Westminster refused to take questions on the conflict from Mr Devlin informing him that the issue of law and order was the sole responsibility of the Northern parliament. Inevitable comparisons were made between the vindictive sentences imposed at Downpatrick Assizes on four nationalists found guilty of possessing arms; public memory was not so short as to have forgotten the nominal fines imposed on unionists for similar offenses. The *Independent* report stated that 'it was the responsibility of James Craig's government to take under effective control all arms and ammunition and disarm the Belfast mobs which were still operating, in many cases with the connivance of a section of the Specials. The government must afford full protection to the lives and property of all its citizens.'[226]

Daily press reports were the only means by which to estimate the carnage and what the *Freeman's Journal* terms 'shameful record of blood' in the North. Collins promised, in the course of three meetings with Craig in early 1922, to try to curb the IRA attacks on the North, in return for the reorganization of the Royal Ulster Constabulary to provide Catholics with some representation in, and protection from, the police.[227] In an open letter to Craig in April, Collins complained bitterly about his lack of co-operation and breach of faith with their former agreement or pact. The two main issues of contention were (a) Release of prisoners and (b) Clause 5 of the Pact: to establish a committee of Protestants and Catholics to hear and investigate claims of intimidation, outrages and other complaints. Craig had complied with neither of the proposed issues to date. Collins concluded his long letter with:

> I would suggest that it would be much better for the peace of your area and the general welfare of our country if you devote your energies in co-operation with us in the true spirit of the agreement towards establishing civilized conditions in Belfast.[228]

Yet Collins himself had been responsible for the transfer of arms to the North, ostensibly for the protection of Catholics.

In discussing the perceptions which shaped strained relations existing between unionists and nationalists following the break-down of the Craig-Collins pact, Clare O'Halloran cites an extract from the *Donegal Vindicator:* 'Irishmen want no quarrel with

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[226] Ibid.
[227] Lee, *Ireland 1912-1985*, p. 61.
[228] *Freeman's Journal*, 29 Apr. 1922.

"Ulstermen" but we are flesh and blood. We will no longer preach brotherhood when those we call brothers become as devils.'[229] O'Halloran claims 'there is evidence here of the frustration which nationalists felt at northern unionists unyielding resistance to their overtures of goodwill.'[230] Clearly with such hardened attitudes any meeting of minds was impossible.

In the first six months of the year 171 Catholics and ninety three Protestants were killed across the six county area. In April, Craig introduced a Special Powers Act and following deterioration in the situation, internment was introduced on 24 May. By mid-June the most common headline in a range of press reports was 'Belfast Horrors.' On 10 June the *Anglo-Celt* itemized a list of such horrors; a Catholic housekeeper was doused with petrol and set alight, hundreds of Catholics left their houses and fled the city for Dublin, Monaghan, Cavan, Donegal and Leitrim, the Mater hospital was under fire for forty five minutes on Monday evening.[231] There were 20,000 Specials and 10,000 British soldiers in Belfast, and Craig in the Belfast parliament, advocated arming all Protestants. Rev, Dr. Gregg, speaking at the Church of Ireland Synod in Dublin, pointed to the possibility of civil war between the North and South and said that 'if both governments agreed to a respite from constitutional rivalries and antagonisms there would be a completely different atmosphere in five years time.'[232] While Gregg's prediction had validity in a very general political sense, it is extraordinary in the light of ongoing hostilities that he refrained from any condemnation of either religious groups, in the light of the blatant sectarian horrors visited daily, principally upon Catholics.

Gregg's intimation that 'constitutional rivalries and antagonisms' was the root cause of the conflict, suggests an abdication of his responsibility as a churchman and religious leader to deal with the obvious sectarian hatreds which fuelled the conflict. Decades of deep-seated suspicion and religious indoctrination had served to divide Catholics and Protestants, each attributing to the other, malign motives of conspiracy and intrigue. These divisions were supported, perpetuated and institutionalized by a range of organizations such as the Orange Order, Freemasons and the Ancient Order of Hibernians. The pathetic willingness of some Catholics to attribute to Freemasons an

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[229] *Donegal Vindicator*, 26 May 1922.
[230] Clare O'Halloran, *Partition and the limits of Irish nationalism : an ideology under stress* (Dublin, 1987), p. 67.
[231] *The Anglo-Celt*, 10 June 1922.
[232] Ibid.

image of diabolical influence; the pathetic proclivity of allegedly hard-headed Ulster Scots to depict the Pope of Rome as anti-Christ, suggest that Irish, North and South were far from immune to conspiracy fantasies.[233] The *Freeman's Journal* was not as circumspect as Gregg in its analysis, claiming:

> The Ascendancy is busy keeping alive the flames of sectarian bitterness in the North, and the new Orange halls are opened all over N. E. Ulster, the latest being Portglenone and Ahoghill. The Rt. Hon. Hugh O'Neill M.P. attended both functions accompanied by the Imperial Grand Master.[234]

The Grand Master's speech on the occasion was typical of the manner in which propaganda and prejudice were perpetuated. He told his audience that 'some day in the near future their enemies from the South would attack them, and they should not be lulled into a false sense of security.' He claimed 'there was good quarry in Ulster and there was nothing the rebels would like better than to get it all, including Orangemen and B-Specials.'[235] While there was an element of incitement in the tone of this speech the most ominous indication for the future was that the Orange Association intended something that had never hitherto been done; 'taking an active part in all future elections, urban, rural and parliamentary.' In the *Journal's* estimation this would accentuate matters in Ulster and 'produce an atmosphere of sectarian bitterness that even Ulster had not hitherto experienced.'[236]

By mid July 1923 reports of northern disturbances had long ceased to dominate the southern press. Coverage of 12 July Orange celebrations detailed inevitable invective; John Gordon, M.P. speaking in Monkstown, County Antrim claimed the Free State was disloyal and had a deep-seated hatred for Britain and all things British. And referencing recent comments of the Governor General, said 'we will not allow one inch of our soil to be filched from us. We desire to live in peace with the South, but if we are invaded woe betide the invader.'[237] Though a defensive siege mentality still prevailed, there was evidence of resolution and consolidation. Celebrations were notable for absence of 'the old enthusiasm,' the majority of the Orange parades passed of peacefully and remarkable speeches of loyalty to the Free State were delivered in a joint Cavan and Monaghan meeting, the first of its kind ever to be held in the Free State.

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[233] Lee, *Ireland 1912-1985*, p. 78.
[234] *Freeman's Journal*, 14 Apr. 1923.
[235] Ibid.
[236] Ibid.
[237] *The Irish Independent*, 13 July 1923.

Senators and deputies proceeded with the legislative business of laying the foundations of state despite the ever present threat of violence. Key figures within the civilian leadership were clearly convinced that behind the Irregular campaign lay the menace of social revolution and this fear informed their more extreme proposals.[238] Kevin O'Sheil, a government legal adviser, was convinced that the IRA campaign could lead to the coming of Bolshevism. In his view the Irregulars had placed themselves outside the pale of civilization and had to be dealt with 'by methods usually not adopted by civilised governments.'[239] O'Sheil in the course of a thesis on revolt and revolution, examined the historical and contemporary precedents for effective and ineffective repression of armed revolt citing the experience of Charles I of England and the Roundheads; Louis XVI of France and the Jacobins; Kerensky and the Bolsheviks; and the German Sparticist revolt and Free Corps of 1919 and 1920. O'Sheil concluded:

> Revolution was achieved because the hand that ruled was ...unwilling to strike at the challenge hard enough and effectively enough....Time has always been on the side of the Revolt against the Constitutional Authority.[240]

Clearly a more extreme hard-line approach was being advocated. The stringency of civilian ministers' policy proposals, along with the impatience they showed towards the speed with which the army was applying itself to the job of cleaning up the IRA and social disorder, marked a subtle but important divergence between the civil and military wings of the regime.[241] The possibility of Bolshevism and social revolution was not just political hyperbole. The seeds of such a revolt were right in their midst in the capital city as Senator Thomas Farren highlighted in the Seanad debate on 7 February 1923. Farren expressed amazement and disbelief at the Government's decision to withhold the Housing Grant from Dublin Corporation. The Government had strongly objected to the Corporation's decision to give an allowance of half pay to the dependents of its employees who were untried prisoners, and consequently withheld the Housing Grant.

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[238] Kissane, *The Politics of the Irish Civil War*, p. 92.
[239] UCDA Mulcahy Papers, P7/8/100, O'Sheil to Cosgrave, 1 Feb. 1922.
[240] UCDA Mulcahy Papers, P7/B/107, Memorandum by Kevin O'Sheil, 'The effect of bad conditions on constructive work' 25 Jan. 1923; Regan, *The Irish Counter-Revolution*, p. 122.
[241] Regan, *The Irish Counter-Revolution*, p. 122.

Farren questioned the policy; 'is it fair to visit the sins of the members of the Corporation on the unfortunate people who are rotting in the filthy slums of the city?'[242]

He cited the appalling statistics; seventy-four thousand people were living in one-roomed tenements. The mortality rate per 10,000 of the population in single rooms was 390, as against sixty four who lived in four roomed houses.[243] As well as depriving these people of better living conditions a much more dangerous consequence of this decision was that it left between three and four thousand building workers unemployed. 'I suggest'; Farren continued, 'it is not good to have that number of hungry men unemployed in these times.'[244] The implication of this for social stability or unrest was not lost on his listeners, which included W.T. Cosgrave who was present in the Senate on the day to answer questions. While Farren's condemnation of the government's withholding of the housing grant seems somewhat mis-directed, the subsequent adverse consequences of this policy were evident to all. Consequently he proposed that the decision to withhold the Housing Grant be overturned. His proposal was rejected and in answer Cosgrave explained:

> The Government cannot act both ways. It cannot pour money to assist a municipality to do its duty and to discharge its obligation to the public, and at the same time subsidise those who make war upon that municipality and attempt to destroy the life and property of the nation.[245]

On this occasion, 'the hand that ruled' was striking back, not only at the republican militant challenge to constitutional authority, but to any group or organisation, such as Dublin Corporation, prepared to support any such challenge or threat to the ultimate stability of the nation and state.

Accusations and Condemnations

'Never before in the world's history did such a wild destructive hurricane spring from such a thin, intangible, unsubstantial vapour.'[246] Cardinal Logue's analogy, condemning those responsible for the violence of the civil war was somehow appropriate

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[242] *Seanad Debates*, Vol. 1, Cols. 237-42, 7 Feb. 1922.
[243] Ibid., Vol. 1, Col. 243-45, 7 Feb. 1922.
[244] Ibid.
[245] *Seanad Debates*, Vol. 1, Col. 253, 7 Feb. 1923.
[246] *Irish Independent*, 12 Feb. 1923. An extract from the Lenten Pastoral of the Archbishop of Armagh, His Eminence, Dr. Logue.

considering the orgy of arson to which the country had been subjected in most recent months. He utterly rejected the acknowledged cause of the bitter conflict:

> The difference between some equivocal words in an oath; the difference between internal and external connection with the British Commonwealth; this is the only foundation I have ever seen alleged.[247]

The Cardinal not only cited de Valera's 'external association' as the cause of the conflict but suggests a dark, more deep-seated source such as 'pride, jealousy, ambition, self-interest, even mere sentimentality'; and with an added accusation stated 'but if they exist they are kept in the background.'[248] There were little of the protagonist's aims, ideas or attitudes kept in the background. Judgements, accusations and condemnations were rife on both sides in the conflict. Speaking in the Dáil, Minister of Defence Mulcahy claimed that de Valera was responsible for the present state of affairs, which he could now no longer control. Mulcahy admitted that subsequent to the Four Courts he himself met with de Valera who claimed he did not agree with what was being done, but that certain people over whom he had no control, had taken that line of action.[249] Yet, de Valera speaking in a press interview in February was adamant that:

> Peace on the basis of acceptance of the so-called Treaty of 6 December 1921, was impossible. Irish republicans will never consent to surrender Irish national independence and sovereignty, to any threats and in any circumstances, that is definite.[250]

Kevin O'Higgins' views expressed in the same report were no less emphatic:

> The people who continue to associate with Mr. de Valera in his criminal conspiracy, who have no mercy on the Irish nation and no regard for the will of its citizens, cannot expect sympathy or consideration when caught red handed in acts of sabotage.[251]

Ó' Higgins concluded with a stinging criticism: 'Mr. de Valera, like his compatriot Don Quixote, is tilting at windmills.'[252]

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[247] Ibid.
[248] Ibid.
[249] *Dail Debates*, Vol. 2, Cols. 1213-16, 31 Jan. 1923.
[250] *The Manchester Guardian*, 5 Feb. 1923.
[251] Ibid.
[252] Ibid.

The population as a whole were war weary. Revolutionary rhetoric delivered by the conflicting elites, did nothing to protect ordinary citizens. While an armed guard was allotted to some senators and a few others who were known to have incurred the especial enmity of republicans, there was growing dissatisfaction countrywide at the government's inability to protect innocent civilians. In a pamphlet based on a series of articles in the *Morning Post* on 5, 6, 7, 8, February 1923, conditions in Co. Cork were described as those existing in the middle ages. It detailed the burning of Senator Linehan's home, described a county lapsing into 'savagedom' and claimed that the revolver was the only law which prevailed.[253] In an article entitled 'How to Restore Order in Ireland' written by George Bernard Shaw for the *New Leader,* Shaw discloses that he had been asked to become a Senator but declined until such time as the government transferred to London![254] His typically Shavian solution to Ireland's present troubles was; 'give every citizen a revolver which must at all times be fully loaded.' [255] Some may have appreciated Shaw's particularly sardonic humour, but for those who had been personally touched by the destruction and chaos, there was little comfort.

Regan claims that the decisive battle of the civil war was fought not on the streets of Dublin or of Limerick, nor in the boreens and fields of the Munster Republic, but in the minds of two opposing elites.[256] While this historical overview and analysis is made with a considerable degree of distance and detachment, it totally disregards the anxiety and intimidation experienced by the general public in so many ways on a daily basis. Decisions were made in the Headquarters of these respective elites, but it was the general public who were on the receiving end of their directives. The psychological conflict of the warring elites spilled over on to the population as a whole. Senators, who were specifically targeted, were victims of a sustained reign of terror and destruction.

More traumatic than specific attacks, was the fact that they were psychological hostages, knowing that at any time, they could be subject to reprisals and retaliation in the event that republicans were executed or incarcerated. Reasons given by republicans for attacks were; they had accepted membership of the Senate and were supporting the Government of the Irish Free State. And as was reiterated time and again their principal aim was 'to make government impossible by every means.' There is a considerable

[253] UKPA. Bonar Law Papers, 114/1/45, a pamphlet on *Conditions in County Cork*, Feb. 1923.
[254] *Irish Times,* 16 Mar. 1923.
[255] Ibid.
[256] Regan, *The Irish Counter-Revolution*, p. 126.

degree of ambivalence, even contradiction in this reasoning. Of the sixty members serving in the Senate, there was a group of six Labour and Trade Union senators, yet there is no evidence or record that any of their houses were burned, or that they were ever subjected to shooting, anonymous letters or intimidation

A persistent source of concern and anxiety for the British administration had been the existence and strength of Irish connections with Bolshevism. In documents sent in March 1923 to Andrew Bonar Law, W.M. Jellett, in setting out the state of Bolshevism in Ireland stated: 'The Revolutionary parties in Ireland today are: (i) Irish Labour: including The Irish Labour Party, (ii) The Irish Transport and General Workers Union and The Irish Communist Party. Their aim is the establishment of a Workers Republic in Ireland and the destruction of the British Empire.'[257] The reported connections between labour and republicanism would suggest that labour senators' political orientation protected them from IRA attack. Republican outrages against certain other members of the Senate suggests that hostility stemmed, not so much from their support for the Free State government, as from their class, religion, status or perceived British connections. Psychological factors which fuelled the conflict must not be underestimated; fear, suspicion, sectarianism and perceived class and religious distinctions all contributed to the hostilities. Whatever the privately held opinions of labour supporters in the Dáil and Seanad, on 9 March Thomas Johnson, the Labour Leader made it clear that he and his colleagues of the Labour Party:

> Fully supported the government in resisting anyone attacking the foundations of the State. For the sake of maintaining society in the country, any opposition to society must be resisted and overthrown.[258]

Labour support for the government in this instance seems unequivocal yet resistance for many was costly. In his analysis Regan further argues that 'the weapons were not mines and rifles, bullets and grenades, but resolve and ruthlessness.'[259] While acknowledging the resolve and ruthlessness, to underestimate the trauma, sadness and grief, the sense of loss and betrayal, and the inevitable legacy of bitterness which lingered in the polity for

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[257] UKPA, Bonar Law Papers, 114/1/42, 28 Mar. 1923. A covering letter with these documents suggest they were highly confidential and must be dealt with in a covert manner. W.M. Jellett, K.C., their originator, was not to be directly contacted in relation to them.
[258] *Dáil Debates*, Vol. 2, Col. 2281, 9 Mar. 1923.
[259] Regan, *The Irish Counter-Revolution*, p. 126.

decades, is to undervalue the sacrifice of the deprived, the maimed, the violated and above all those who were executed, on both sides of the conflict.

Obduracy and Optimism

Nowhere was resolve and ruthlessness more evident than in the blocks, objections and obstacles raised against proposals to further the process of peace. As early as 2 January 1923, Longford County Council forwarded a peace resolution to the government. Cosgrave's rejection of the initiative was ruthless, even pitiless.

> These peace resolutions are all moonshine ...the minority made war and now when they are taken, they squeal. How many opportunities did they get of peace and they would not have it.[260]

His judgements were curt and definitive. 'They wanted war, and when war was made they wanted peace, always at their own price.'[261] Cosgrave was implacable as he dictated terms. 'If they will not accept these terms they must take war at their cost, we have paid a heavy price for what we have got and will now get the value of what the people have won in spite of the Irregulars.'[262]

In summary, the authority of the ballot box must be accepted, bandits, gunmen or rebellion would not be tolerated and Irish men will be masters in their own country. For Cosgrave there was no compromise. In an open letter to the *Irish Time*s in February, he claimed that the government was determined to put down this revolt against democracy regardless of the cost. His criticism and condemnation was directed at de Valera:

> The guns and ammunition, which the Irregulars have been trying to borrow or buy from Russia, may add to the destruction but will not bring de Valera nearer to either alternative of their programme; victory over, or extermination of the Irish Nation.[263]

Almost daily articles on various peace initiatives were reported in the press, as efforts were made by both members of church and various institutions of the state. For both elites

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[260] UKPA, Bonar Law Papers, 114/1/15, 6 Jan. 1923, Loughnane to Sturgis giving an account of W.T. Cosgrave's reply to Longford County Council's Peace Proposals.
[261] Ibid.
[262] Ibid.
[263] Letter written by Cosgrave to *The Irish Times*, 24 Feb. 1923.

in the conflict however, retaining the absolute power of decision-making seemed paramount. A directive from IRA headquarters warned:

> If individuals, whether clergy or laymen persist in trying to get into communication with any members of the army with a view to seducing them from their allegiance, and influencing them to accept terms of peace which would mean the surrendering the Republic, they will at once be placed under arrest.[264]

A similar directive had been issued weeks earlier on 27 December and subsequent to this, officers who had been captured had been approached with offers of peace. The directive is clear; anyone violating this order 'would be suspended and would be court-martialled when released.'[265] There is little doubt that this was a reference to Liam Deasy who had been arrested under the name of John Hurley, at Ballinkurry on 18 January. Deasy, Deputy Chief of Staff of the Irregulars, offered to aid the securing of immediate and unconditional surrender of all arms and men as required by General Mulcahy.[266] Evidence suggested that there were at least some republicans who, like so many on the Free State side and the general public, were weary of the destruction and desirous of peace. Deasy lamented that they had gradually regressed from the path of warfare to that of vendetta, and expressed the hope of unity once again, against the common foe. [267] This was tantamount to an expression of nostalgia for the former unity of friends and comrades of the Anglo-Irish conflict; this expression of regret communicated the awfulness of the wounds and divisions of civil war, a concept so much more poignant when defined in Irish; Cogadh na Cairde. Time and the circumstances of the civil war had utterly changed the dynamics of the conflict.

The political dynamics were also changing; government was gaining the upper hand and was resolved to hold it. O'Higgins rejected any possibility of a truce on the basis of proposals put to Tom Barry by Archbishop Harty of Cashel. Proposals by other Boards were rejected with equal distain. O'Higgins' reply to the Tullamore Rural District Council, in relation to proposals of the Neutral IRA, was scathing:

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[264] UCDA, P69/2(67-68), Memo No. 10) K for Con Maloney (A/G) to O/Cs commands, divisions and independent brigades, General Headquarters, Dublin, 10 Feb. 1923.; O'Malley & Dolan, *No Surrender Here !,* p. 547.
[265] Ibid.
[266] *The Irish Times*, 17 Feb. 1923.
[267] Ibid.

> The man who professes neutrality with regard to the present cowardly and criminal campaign.....is like a moral coward who knows it is wrong and is afraid to say so, or a physical coward who thinks it is right, and is afraid to participate.[268]

By contrast de Valera's reply on 22 February to the Neutral IRA Members' Association was much more conciliatory and courteous: 'Our desire for an honourable understanding, and for peace is not less than your own, and you can feel especially assured, that you will have our most earnest support in any endeavour to give back to our country that internal unity which was her strength in the years of her struggle with England. We cannot agree that your proposal for a truce under the present conditions would lead to peace. It would be regarded by both sides merely as a breathing space in which to prepare for a more violent resumption of hostilities.'[269]

Through the early months of 1923 the *Southern Star* had consistently maintained that 'the vast majority of the plain people were disgusted with ambushes and executions.'[270] Yet executions and reprisals were at the core, and central to the continuing conflict. A letter to Offaly Co. Council members from IRA Field Headquarters, Offaly No.1, Brigade demanded:

> As the Free State Government have murdered upwards of one hundred soldiers of the IRA, and are contemplating the murder of numerous others of its members who are prisoners in their hands, it is high time that you, as a member of the Offaly Co. Council, do let people see whether you approve of the Free State Government 'murder policy', signed Brigadier-General, 27 March 1923.

Co. Council chairman Mr. Kelly, resenting the tone of the directive, claimed the matter did not concern council members, as most had their own opinions in relation to the 'murders and executions.' Kelly argued that most people, supporters of the Free State or not, were republicans, at least they were democrats, and would support any democratic form of government supporting majority rule. The general consensus was resentment, rejection and disapproval of the methods employed by both sides in the conflict. There was however agreement on one point, 'executions had embittered the whole situation and were the direct cause of the state of affairs in the country today. It was their political opponents the Free State Government were executing, and it was all nonsense to talk

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[268] *The Irish Times*, 12, 13, Mar. 1923.
[269] *Southern Star*, 3 Mar. 1923.
[270] *Southern Star*, 3 Feb. 1923.

about the will of the people, as they got no such mandate from the Irish people.'[271] Kelly and his colleagues had chosen constitutional methods. They wanted peace and made it quite clear that they rejected both IRA militant republicanism, their demands and the Free State Government's execution policy.

By mid-April the momentum towards peace was countrywide and would not be halted. Press reports, editorials and letters to the newspapers all testify to the desire of the general public for peace, stability and a return to normality. Senator James Douglas, who had acted as a messenger of peace between Collins and de Valera following the fall of the Four Courts, and had established the committee in the Senate to work towards peace, was pressed by a *Times* reporter to give some idea of the progress if any, that the committee were making. Douglas confirmed that they had been meeting from time to time, but that any approaches made to him personally were made only on condition of utter confidentially and that they were not reported back to the committee.[272]

Peace Negotiations

On Monday evening 23 April Douglas was visited by a woman who requested that he accompany her to meet with an 'important person,' who was in hiding and who wished to speak with the Senator. Douglas, who was understandably suspicious declined to do so but agreed to meet on the following night and as a precautionary measure, asked 'that the meeting be in the house of a friend, H.G. Grubb.[273] At 10.00 pm. on 24 April Douglas met with de Valera, who told him that 'he and some of his associates felt that the time had come to end the civil war.' During the course of their conversation, while Douglas agreed to act as a conduit to arrange a meeting between de Valera and Cosgrave, he expressed doubts that members of the lawfully elected government would discuss terms with persons who were in arms against them. It also emerged that de Valera had very specific terms and conditions. Firstly, while he would agree to meet with Cosgrave, on no condition whatsoever would he meet with O'Higgins. Secondly, if a condition of meeting meant, cessation of attacks on the government, than it was useless to discuss the matter further as 'he hadn't got the authority to order a surrender of arms.' De Valera insisted on absolute confidentiality, asking that Cosgrave not to be told about this meeting. It was further decided that approaching the

[271] *Southern Star*, 7 Apr. 1923.
[272] Gaughan, *Memoirs of Senator James G. Douglas*, p. 93; 14 Mar. 1923.
[273] Ibid., p. 98.

government would be best done by two persons and Senator Andrew Jameson was considered most suitable.[274]

It is difficult to understand how any progress was to be made with the government, if Douglas could not confirm his meeting with de Valera. It is doubly difficult to understand how de Valera could be so demanding in his terms and conditions, considering the series of events, which had taken place in March and April. On the Republican side there had been plans to widen the conflict by carrying out attacks in England, but these were scrapped when during March approximately one hundred suspects were rounded up in Britain.[275] Overall, since mid-March IRA decline was becoming increasingly apparent. On 10 April, Liam Lynch, the Irregular Chief of Staff was captured during an engagement in the Knockmealdown mountains in County Waterford and died later of his wounds.[276] Four days later Austin Stack was captured in the same area. A statement issued by Portobello Army Headquarters stated; he had in his possession a series of documents, in his own handwriting, calling for a general laying down of arms.[277] On 17 April Dan Breen was captured and with most of the leaders under arrest there was little hope that the Irregular campaign could continue.[278] De Valera was in no position to dictate terms as government forces were obviously closing in on the republican leadership, but as requested Douglas contacted Cosgrave and the government.

Due to the fact that Jameson was in London and Cosgrave was ill, it was Saturday morning 28 April before Douglas recounted events to Cosgrave in government buildings. Cosgrave made it quite clear that he could not act on so little information and would not authorise further discussion without consulting members of the government. The senators were free to act on their own volition with the clear understanding that de Valera was a wanted person and liable to arrest. They were promised that they would not be followed and were asked to report back to Cosgrave at once.[279] Events were moving rapidly; on the previous evening 27 April, a proclamation was issued by de Valera from Irish Republican Army G.H.Q. Dublin, which in effect was a ceasefire. It was published in the press the following morning. Concurrently with the proclamation, Frank Aiken, who had succeeded Liam Lynch as Chief of Staff, issued an order addressed to O.C.s,

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[274] Gaughan, *Memoirs of Senator James G. Douglas*, pp. 97-99.
[275] Campbell, *Emergency Law in Ireland*, p. 171.
[276] *The Irish Times*, 12 Apr. 1923; O'Sullivan, *The Irish Free State and its Senate*, p. 111.
[277] Ibid.,16 Apr. 1923.
[278] Ibid.,21 Apr. 1923.
[279] Gaughan, *Memoirs of Senator James G. Douglas*, p. 101.

Commands and Independent Brigades ordering a suspension of all offensive operations from noon on 30 April. On the same day, Douglas and Jameson both received letters marked 'Confidential' from de Valera requesting that they meet him with a view to discussing practical steps to the conclusion of an immediate peace.[280] It was arranged that they should meet on 1 May at 9 p.m in the house of Mr. Jonathan Hogg in Rathgar.[281]

In a statement, read in the Senate on 9 May and co-signed by both Douglas and Jameson, the Seanad was given full details of all subsequent meetings with de Valera and also of their meeting on 2 May, reporting back to Cosgrave.[282] On Thursday 3 May they met again with de Valera bringing with them the document in which government terms were clearly spelt out:

> All political action within the country should be based on a recognition by every party in the State of the following principles of order: *(a)* That all political issues whether now existing or in the future arising shall be decided by the majority vote of the elected representatives of the people: *(b)* As a corollary to *(a)* that the people are entitled to have all lethal weapons within the country in the effective custody or control of the Executive Government responsible to the people through their representatives.[283]

The acceptance of these principles and practical compliance by the surrender of arms was to be the preliminary condition for the release of prisoners, who would be required to subscribe individually to the specified conditions.[284] This was to be signed, dated and witnessed and Douglas and Jameson were further authorised to inform de Valera that:

> (1) Military action against him and his followers would cease when the arms held by them were delivered into the effectual custody of the Free State Executive authorities. The arrangements for the delivery of the arms and the place of their deposit would be made with as much consideration as possible for the feelings of those concerned. (2) Prisoners to be released on the satisfactory fulfilment of (1) and the signature of each prisoner before release to the conditions of the document above mentioned.

In addition the Free State Government promised to keep 'a clear field for Mr. de Valera and his followers to enable them to canvass for the votes of the people at the next election

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[280] Ibid; O'Sullivan, *The Irish Free State and its Senate*, p. 112.
[281] Ibid., p. 102.
[282] *Seanad Debates*, Vol. 1, Col, 1018-20, 9 May 1923; *The Irish Times,* 10 May 1923.
[283] Ibid.
[284] *Seanad Debates*, Vol. 1, Col. 1020-21, 9 May 1923.

provided they undertook to adhere strictly to constitutional action.'[285]

Douglas recounted the sequence of events; 'we were requested to ask de Valera to give the names of the leaders on whose behalf he could speak and to state his opinion as to what proportion of the rank and file of the present armed opposition would agree to be bound by his decision. He was also asked what amount of acceptance of the proposals, when approved by him, would be received from the prisoners. De Valera agreed to carefully consider the proposals and to report back in a few days.' Both senators afterwards received a message stating there were some points on which de Valera was not clear and which he would like to discuss further. Accordingly it was arranged that Douglas would see him on Saturday evening, when he promised to give a written reply to the government.

Finally Jameson and Douglas met with de Valera on Monday evening 7 May, and were shown a document, which De Valera suggested, should form the basis of a document to be jointly signed by himself and Cosgrave. He believed he had included all the essential points in the Free State Government's conditions in the document. With reference to the statement of the Government that they could not reopen the question of the Oath, de Valera stated he had nevertheless felt it right 'as a general principle, that there should be no barrier to elected representatives who accepted the main principles taking their seats.' He also felt it his duty to make it clear that full and satisfactory co-operation of all citizens for the good of Ireland could not be assured if any elected representatives were prevented from taking part in any future Parliament because of an Oath to which they could not honourably subscribe.

De Valera was a defeated leader negotiating surrender terms, but that fact in no way impaired either his confidence or his vision for the future. Government's promise to facilitate their canvass during future elections, indicated a remarkably conciliatory gesture, considering that de Valera had been in arms against that same government for the previous eleven months. Perhaps his most unusual, even bizarre suggestion was 'that republican forces be assigned at least one suitable building in each province, to be used by them as barracks and arsenals, where republican arms would be stored, sealed up, and defended by a specially pledged republican guard—these arms to be disposed of after the elections by re-issue to their present holders, or in such other manner as may secure the

[285] Ibid.

consent of the government then elected.'[286]

He further suggested that all censorship of the mail and of the press should be abolished and that the press should guarantee a fair proportion of space for the advocacy of the Republican programme and that adequate protection should be guaranteed to Republican printers and newspapers. With regard to the Government's condition that 'prisoners should individually sign acceptance of the principles proposed,' de Valera stated that he did not consider this necessary. He spoke as leader assuming full responsibility for all. When he signed, he would do so on behalf of all Republican forces, including prisoners, and he expressed confidence before signing, 'that prisoners when released would act in the spirit of the agreement.'

In relation to Cosgrave's very specific questions as to the legitimacy of his representation, de Valera stated 'that he spoke on behalf of the combined Republican Government and Army Council,' who, with the exception of one member not available at the moment, were aware of the proposals made except in so far as they had been altered in conversation during negotiations. He further stated that before signing he would 'take steps to assure himself that they would act in the spirit of the agreement.' He also requested it be stated, that he 'considered it important that on the conclusion of peace, civil servants and others formerly in the public service should as far as possible be reinstated if they so desired,' and that no previous action in support of the Republican cause should be a bar to employment. Acceptance of this draft, which was drawn up following de Valera's considerations, was to be co-signed, dated and witnessed. The Draft was given by Douglas and Jameson to Cosgrave on Monday 7 May and they received Cosgrave's reply to this Draft on 8 May.[287]

> *Dear Mr. Jameson*, The Government was hopeful, from what you reported to us of the conversation Mr. Douglas and yourself had with Mr. De Valera, that even at this late hour he was minded to turn definitely aside from the paths of violence and destruction he has trodden for so many months, and along which he has led those who looked to him for guidance. The Government, anxious to facilitate the restoration of peace to the country, set down in writing, in short and unambiguous terms, the fundamental preliminary conditions upon which peace must rest. You

[286] Ibid.
[287] *Seanad Debates*, Vol. 1, Cols. 1021-26, 9 May 1923.

> have brought back to us, not an acceptance of these conditions, but a long and wordy document inviting debate where none is possible.[288]

Cosgrave dismissed de Valera's suggestions in relation to elections. 'Mr. de Valera well knows we are already preparing for an early election, and if he accepts the preliminary conditions, we have made it clear we would give every possible opportunity to all parties to obtain votes.'[289] On the issue of arms Cosgrave spelt out conditions: 'we have informed you that we must insist on effective control of all arms, but we would be prepared to invite the Bishops to act through local clergy as intermediaries for their collection. Once we were satisfied arms had been handed over in good faith, prisoners who admitted that the terms had been accepted on their behalf, and that they were bound by them, would be released':

> The Government has to say now that the conditions already specified are conditions from which the Government cannot and will not depart. Accordingly, no further communication with Mr. de Valera can be entertained save only a communication indicating his definite acceptance of the terms stated in writing and handed to you for his signature. Mise le meas, *Liam T. MacCosgar.*[290]

The senators dutifully relayed President Cosgrave's letter to de Valera on 8 May:

> *Dear Sir,* We enclose herewith a copy of a letter received this evening from Mr. Cosgrave, which requires no comment from us. An Dáil meets tomorrow afternoon, and we assume the Government will then make a statement and possibly read our report to them. It is, therefore, essential that any reply which you may wish to send through us should reach us tomorrow not later than 1 p.m., when our responsibility in this matter will come to an end. Andrew Jameson & James Douglas.[291]

At one o'clock on 9 May they received de Valera's reply:

> *Dear Sirs*, I have received your letter and Mr. Cosgrave's reply, which has disappointed me not a little. My offer generously embraced every principle of national value that I could conceive our opponents to be honestly fighting for. I have been met by rigid insistence on a condition in a form, which is well known by everyone conversant with the situation to be impracticable. May I thank

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[288] Ibid.
[289] Ibid.
[290] Ibid.
[291] *Seanad Debates*, Vol. 1, Col. 1026, 9 May 1923.

> you both for your good offices, and express my appreciation of the impartial manner in which you reported our discussions. Faithfully yours, *Eamon de Valera.* [292]

Having fully recounted the sequence of events of their involvement as intermediaries from 28 April to 9 May, Douglas ended his report. Senator Farren of Labour was eager to inquire further, but there was a general consensus within the Chamber on the day, that total silence should be maintained from this point onwards, on such crucial and sensitive negotiations. Douglas said all he had to say on the matter and concluded 'I have nothing further to add.'[293] Others were not quite so abstemious.

The following day in the Dáil the peace negotiations were discussed at length. Deputy Sean Milroy, referring to the senators' statement in the Seanad on the previous day, expressed the opinion that it was time that this 'comic opera diplomacy and hanky panky negotiations were stopped.' He was deeply suspicious of de Valera's approach to the senators on 1 May:

> I want to know what preceded that; have we, behind the backs of the government of the Free State, a number of meddling busybodies coquetting with Irregularism and trying to keep us in the dark about what is going on? [294]

With belittling judgements and a hard-line uncompromising approach Milroy refused to dignify the conflict with the term 'war' claiming, if it had been himself who had waged 'war' there would have been no eminent personages from either the Seanad or the Dáil trying to secure reconciliation for him; the only negotiator which would be sent would be a member of the C.I.D. With little tolerance for 'the jig-saw puzzle mentality of Irregular politicians,' Milroy stated that the only thing which mattered was 'the basic principle of democratic law.'[295] Inevitably the issues of de Valera's attitude and actions, the Oath and the Treaty were discussed in the to and fro of debate. The kernel of the problem, the most fundamental, the most vital consideration was summarised by Deputy Hogan, 'common honesty, common decency, everything that makes life reasonable has been outraged for the past year, and any peace you make now that does not vindicate these will be no peace at all.'[296] It was left to Cosgrave to pour oil on the troubled waters between the two Houses. Fearing that Deputy Milroy's criticism of the two senators might be

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[292] Ibid.
[293] *Seanad Debates*, Vol. 1, Cols. 1018-29, 9 May 1923.
[294] *Dáil Debates*, Vol. 3, Col. 796, 10 May 1923.
[295] Ibid.
[296] Ibid.,

misunderstood, he assured the gathering that Mr. de Valera had indeed approached the senators and that they had acted throughout with a high sense of public duty. Cosgrave concluded, 'they should be honoured for the part they played in the business and the trouble they took in connection with it.'[297]

Resolution

There was little sign of rancour in this exchange between the two leaders Cosgrave and de Valera, neither triumphalism in the former, nor defeatism in the latter. Cosgrave's former obduracy had been replaced by conciliation. For a leader of the losing side in the conflict, de Valera's correspondence of the period indicates a remarkable energy, an impetus toward reorganization and renewal. Writing to the Sinn Féin Organizing Committee on 31 May he said:

> As I have indicated, what is needed at the moment is a broadly national organization, which will embrace all who put the cause of national independence and general national interests above all sectional and party interests. This seems so obvious to me I am surprised that there is any difference of opinion about it.[298]

Following the establishing of the Cumann na nGaedhal party, de Valera's fears that the Sinn Féin movement might have been taken over by their opponents 'so as to swamp the Republican element in it' were unfounded. His vision transcended mere factions or party divisions, he was thinking as a national leader, outlining an all-embracing agenda for future decades:

> If we think narrowly in terms of party, we shall condemn our movement to a policy that will be little better than factionism, and the national cause will be set back, ten, twenty perhaps fifty years. We should set out to organize, not a party, but a nation. To me Sinn Féin meant the nation organized. I never regarded it as a mere political machine.[299]

He recommended that they 'act as wisely and as energetically as they had done in 1917.' This he assured them would ensure the desired result; 'we shall win the people over once more.' This displayed a remarkable degree of confidence in a leader who, within the same week had 'dumped arms' and ceased military activity against the State. Less than four months later, it was evident that the process of 'winning the people over again' had

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[297] *Dáil Debates*, Vol. 3, Col. 816, 10 May 1923.
[298] UCDA, P150/1818, 31 May 1923, De Valera to Sinn Féin Organizing Committee.
[299] Ibid.

already begun as Sinn Féin secured forty four seats in the general election of 27 August 1923.

Reordering and Renewal

Ministers who had always been closely guarded were, within a day of the announcement of the ceasefire, seen moving freely about the city. *The Irish Times* reported that, 'Mr. Cosgrave and Minister Mulcahy were seen in Dublin streets in open top cars.'[300] 'The back of the revolt is broken:' Oliver St. John Gogarty writing to Lady Londonderry was of the opinion that the reign of terror was coming to an end, 'the situation seems to be very much better and the ministers are going about the town again.'[301] Life was slowly returning to normal. Kevin O'Higgins claimed:

> The point had been reached and passed when it became more dangerous to be a rebel than a declared supporter of the government and predicted that before the end of June this land would be safe for ladies to travel in.[302]

Writing to Hazel Lavery in October 1922 O'Higgins had been confident that the country was gradually returning to its senses, as the only alternative was chaos. 'I imagine that by March or April our writ will be running without much of a limp.'[303] O'Higgins had been premature in his predictions. The executions of November and of the early months of 1923, and more particularly the reprisals of 8 December, had changed the dynamics of the conflict, bringing the country to the brink of chaos for the following seven months.

From May onwards, the primary concern for both houses, Dáil and Seanad was to provide the necessary legislation to establish and maintain law and order. There were several attempts at an application of habeas corpus, on the 15, 18, and 21 June, which posed problems for the legislators. The application was refused by the Master of the Rolls on 15 June, on the grounds that the 'Irish Republican Army Proclamation did not state that a state of war had ceased to exist.'[304] However it was becoming clear that such a writ would eventually be granted, which would be tantamount to a judicial declaration that all

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[300] *The Irish Times*, 1 May 1923.
[301] PRONI, Lady Londonderry Papers, P3099/3/16/61, 31, Mar. 1923, Gogarty to Lady Londonderry expressing gratitude for her hospitality, 31 Mar. 1923.
[302] *The Irish Times*, 10 May 1923.
[303] UKPA Bonar Law Papers, 114/1/20, O'Higgins to Hazel Lavery about the appointment of T. M. Healy as Governor General, 27 Oct. 1922.
[304] O'Sullivan, *The Irish Free State and its Senate*, p. 126.

internees were illegally detained.[305] In the event of such a situation the risk was considerable. Internees would have to be released and as arms, which had not been surrendered, would be available, there was always the possibility of resumption of hostilities. Furthermore, action could no longer be taken against Irregulars still at liberty, since the army's power of arrest and detention would have ceased. The emergency situation necessitated new legislation. The Public Safety (Emergency Powers) Bill, introduced in the Dáil on 15 June, was sent to the Senate on 26 July.[306] Following thirteen amendments by the Senate, the Bill was passed into law on 1 August 1923.[307] As anticipated, a writ of habeas corpus on behalf of an internee was made to the courts and granted. The Court of Appeal ruled that a state of war had come to an end on 31 July 1923, consequently the internee, Mrs Connolly O'Brien was released. A week earlier in a press interview de Valera had said that it was not the intention of the Republican Government or the Army Executive to renew the war in the autumn, or after the elections. 'The war so far as we are concerned is finished.'[308]

The conflict was ended but not resolved. The arms were dumped but not surrendered. The government had won the war and most of the anti-treatyite supporters were interned or on the run. Kevin O'Higgins speaking in the Seanad on 30 July 1923, read a letter highlighting the ever present danger. The letter dated 27 June, was written by Frank Aiken, Irregular Chief of Staff, to a colleague in prison:

> With regard to the future, I believe that the rifle and revolver is out of date as an offensive weapon. The use of explosives, gas and fire may be concentrated on, also small trench mortars. If we have to fight another war with the Staters it will be short and sweet.[309]

There was no room for complaisance; law and order was yet to be restored. From August 1923 to February 1924 there were 738 cases of arson and robbery. For the comparable period in the previous year, the total was 1,502.[310] For the month of January 1924 alone, 545 indictable offences were reported to the Civic Guard.[311] On 21 February 1924, Kevin O'Higgins informed the Dáil that in certain counties members elected to the Dáil were

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[305] Ibid.
[306] *Seanad Debates*, Vol. 1, Col. 1418, 26 July 1923.
[307] *Dáil Debates,* Vol. 4, Cols. 1749-50, 1 Aug. 1923.
[308] *The Irish Times,* 23 July 1923.
[309] *Seanad Debates*, Vol. 1, Cols. 1584-85, 30 July 1923.
[310] *Dáil Debates*, Vol. 6, Col. 1172, 20 Feb. 1924.
[311] Ibid., Vol. 6, Col. 1216, 20 Feb. 1924.

leading armed gangs of robbers.[312] A number of unarmed British soldiers disembarking from Spike Island on 21 March 1924 were fired upon. One was killed and eighteen others were wounded. Five civilians, three men and two women were among the casualties. The Dáil adjourned on 25 March as an expression of sympathy of the Irish Nation. [313] Two days later Senator Love from Cobh endorsed the President's resolution of sympathy and the Seanad was adjourned.[314] The ominous threat of violence was to remain for months, even years.

Senators Attendance and Contribution to Debates 1922 - 1925

Certain factors, together with the civil war conditions prevailing at the inception of the Seanad, impacted upon aspects of the operation and organization of the Upper House in its early days. Examination of the records indicates reluctance, even resistance to the maintenance of attendance records. On the 14 March 1923, Edward MacLysaght proposed that 'an accurate register be kept of attendance at each meeting of the Seanad.' He anticipated objections as some senators might consider that it was 'somewhat undignified and savours of school.' He noted that the House of Lords, a body to which he did not compare the Seanad, though 'fairly dignified,' kept such a record. Senator Wyse Power considered 'it was a shame' that no records had been kept. The Cathaoirleach explained that the duties of the staff had not been defined as yet. But as Chairman of the Standing Committee he would strongly press 'that one member of the staff should have the duty each day, of recording accurately the attendance of members.'[315] For John T. O'Farrell it was a matter of business in view of the fact that 'people from the country would have to get travelling expenses.'[316] Four months later on 4 July, James Douglas informed the members that 'a book had now been prepared' and requested that senators sign their names 'to facilitate the staff and the Clerk in keeping a record of attendance.'[317]

A critical underlining assumption, based on the Literature's much quoted statistic on the composition of the First Seanad, 'of the thirty nominees, eight were peers, four were baronets, one was a knight ....' suggests that the proceedings of the Senate were

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[312] Ibid., Vol. 6, Cols. 1257-58, 21 Feb. 1924.
[313] *Dáil Debates,* Vol. 6, Cols. 2291-94, 25 Mar. 1924.
[314] *Seanad Debates*, Vol. 2, Cols. 1257-60, 27 Mar. 1924.
[315] *Seanad Debates*, Vol. 1, Cols. 468-69, 14 Mar. 1923.
[316] Ibid.
[317] Ibid., Vol. 1, Col. 1324, 4 July 1923.

dominated by members of the British ascendancy, landowning, unionist class. Evidence based on analysis of daily Attendance Records and Contributions to Debates for the entire period of the First Triennial Session, refutes this assumption.

Tables 1-3 Senators Statistics From 1922-1925

Using the Tables below and all relevant statistical data on senators as a framework for analysis (See Appendices), the socio-demographic characteristics of members are considered and comparability and variations presented in three categories in Tables 1 2, and 3:

(1)	***20***	***Highest***	***Attendees***
(2)	***20***	***Average***	***Attendees***
(3)	***24***	***Lowest***	***Attendees***

Based on daily and monthly figures for Attendance and Contribution to debates, Tables a, b, c, and d, (See Appendices), provide annual figures for each of the original fifty nine senators, and the five senators subsequently elected to fill vacancies which occurred due to death or resignation during the first triennial period.

In the absence of original attendance records, figures are based on the record of attendance and Division Lists within the *Journal of Proceedings of Seanad Eireann*, Vols. 1, 2, 3 and the Records of *Seanad Debates* from 11 December 1922 – 8 July 1925.
While it is possible to establish exact figures for Contributions to Debates, there are some discrepancies in the figures on Attendance. Due to the fact that some day's proceedings were not recorded in the *Journals,* on the days on which no votes were taken there were no recorded Division Lists. A similar situation applies to *Seanad Debates*; on the days on which no votes were taken, only numbers of those who contributed to the debate can be accurately established.

Location – *Highest Category*; twelve countrywide, eight from Dublin.
Average Category; ten countrywide, ten from Dublin.
Lowest Category; fifteen countrywide, nine from Dublin.

Occupation- *Highest Category* represented a broad spectrum of occupations, business,

farming, Trade Unions, banking, teaching, law, army (retired).
Average Category represented a similar diversity business, farming, company directors, manufacture, land owner.
Lowest Category by contrast represented the highest number of landowners (ascendency class), and doctors, but a similar diversity of others; army (retired), company director, teaching.

Religion – *Highest Category*; twelve Catholics, seven Protestants, one Quaker.
Average Category; ten Catholics, eight Protestants, one Jewess and one Quaker.
Lowest Category; eleven Catholics, twelve Protestants and one Quaker.

Age - *Highest Category;* eleven (age 35-60), seven (60-85), two missing
Average Category; twelve (age 35-60), six (60- 85), two missing
Lowest Category; ten (age 35-60), twelve (60- 85), two missing

Analysis of numbers in relation to location reveal a remarkable balance in all three categories *Highest, Average* and *Lowest,* between the numbers of senators located in Dublin and those dispersed countrywide. The chaotic state of the country's transport system did not deter senators in the *Highest Category* travelling from Cork, Galway, Sligo, Limerick, Clare, Waterford and Wexford. There is a similar dispersion in the *Average* and *Lowest* groups.

As regards occupation, the only three legal representatives in the Senate are in the *Highest Category*; also two Labour Senators, Trade Union Officials are in the *Highest Category,* among the first five. There is one Labour/TUO in the *Average* group and one in the *Lowest.** Excluding the Cathaoirleach, there is no member of the peerage (categorised as of the ascendency landowning class) in the *Highest Category;* there are three in the *Average Category* and the remainder are in the *Lowest.* Business, farming, the army (retired), manufacturing and the arts are represented in all three groups. There is no doctor in the *Highest Category*, one in the *Average* and three in the *Lowest.*
**Note the anomaly*

Given the fact that 60% of the Senate were Catholic, 35% were Protestant and 5% others there is a similarly proportionate difference represented in the *Highest Category*. In the *Average Category* there is an almost even 50% division with a slightly higher proportion of Protestants to Catholic in the *Lowest Category*.

Considering the age groups (as cited above), the *Highest Category* has 55% of the younger group as opposed to 45% of the older; in the *Average Category* it a 50-50% equal divide of the age groups. The *Lowest Category* by contrast has the lesser, 40% of the younger age group, and differing from the *Highest* and *Average Categories* it has a higher 60% of the older age group.

The necessity of establishing a *Place Rating* (***PR***) on a scale of sixty four, for each senator based on Attendance figures has presented some anomalies:

*Senator MacPartlin's ***PR*** of *48* is misleading, as he died on 20 October 1923. Up to this point, like his other Labour/TUO colleagues, he was among the highest Contributors and Attendees in the Senate.

*There are three late appointments to the Senate in the *Lowest Category.*

* *Two retired and two were deceased in the *Lowest Category*

Table 1 ***Senators – 20 Highest Attendees 1922-1925***

Name	***Address***	***CD***	***AR***	***PR***
Glenavy, J H M	Dublin	120	123	*1*
Moore, M	Dublin	103	111	*2*
O'Farrell, J T	Dublin	103	105	*3*
Douglas, J G	Dublin	102	104	*4*
Farren, T	Dublin	95	103	*5*
Keane, J	Waterford	85	96	*6*
Esmonde, H T G	Wexford	84	92	*7*
Bennett, W	Limerick	88	91	*8*
Guinness, H	Dublin	82	87	*9*
Kenny, P B	Waterford	71	86	*10*
Wyse Power, J	Dublin	58	85	*11*
Everard, W N	Meath	60	84	*12*
Barrington, W	Limerick	63	83	*13*
MacLysaght, E	Clare	73	82	*14*
Linehan, T	Cork	69	81	*15*
Love, J C	Cork	38	72	*16*
Irwin, C	Wexford	39	69	*17*
Brown, S*	Dublin	59	66	*18*
Yeats, W B	Sligo	49	65	*19*
Costello, E	Galway	23	63	*20*

AR *Attendance Record*
CD *Contribution to Debates*
PR *Place Rating (based on 64 members)*
* *Late Election to the Senate*
(d) Died
(r) Resigned

Table 2 ***Senators – 20 Average Attendees 1922-1925***

Name	*Address*	*CD*	*AR*	*PR*
Wicklow, Earl of	Wicklow	27	62	*21*
Jameson, A	Dublin	57	60	*22*
DeLoughry, P	Kilkenny	35	56	*23*
Griffith, J P	Dublin	20	55	*24*
O'Dea, M	Dublin	38	54	*25*
Desart, E	Kilkenny	12	54	*26*
Dowdall, J C	Cork	40	53	*27*
Mc Loughlin, J	Donegal	34	53	*28*
Mayo, Earl of	Kildare	49	52	*29*
Gogarty, O St	Dublin	41	52	*30*
Jackson, A	Sligo	31	52	*31*
Butler, R	Dublin	26	52	*32*
Fitzgerald, M	Dublin	32	49	*33*
Counihan, J	Dublin	22	49	*34*
Nesbitt, G	Dublin	19	49	*35*
O'Rourke, B	Monaghan	18	48	*36*
Haughton, B	Cork	32	47	*37*
McKean, J	Dublin	22	46	*38*
Green, A S	Dublin	21	44	*39*
Duffy, M	Meath	15	44	*40*

AR *Attendance Record*
CD *Contribution to Debates*
PR *Place Rating (based on 64 members)*
* *Late Election to the Senate*
(d) Deceased
(r) Resigned

Table 3 ***Senators – 24 Lowest Attendees 1922-1925***

Name	***Address***	***CD***	***AR***	***PR***
McEvoy	Laois	10	41	*41*
Moran, J	Dublin	19	37	*42*
Poë, W H *(r)*	Laois	24	35	*43*
Bagwell, J	Tipperary	29	34	*44*
Kerry, Earl of	Kerry	28	34	*45*
Cummins, W*	Kildare	21	34	*46*
Sigerson, Dr G *(d)*	Dublin	17	33	*47*
Mac Partlin, T *(d)*	Dublin	27	31	*48*
Foran, T*	Dublin	12	31	*49*
Parkinson, J J	Kildare	12	30	*50*
O'Sullivan, Dr W	Kerry	8	30	*51*
Mahon, Sir B	Kildare	8	22	*52*
Molloy, W	Roscommon	3	21	*53*
Goodbody, J P	Limerick	8	20	*54*
Granard, Earl of	Longford	7	16	*55*
Headford, Marquis of	Meath	3	14	*56*
Barnville, Dr H	Dublin	0	14	*57*
Greer, Sir H	Kildare	3	11	*58*
Eyre, E	Dublin	6	8	*59*
Hyde, Dr D*	Dublin	3	7	*60*
O'Neill, J*	Wicklow	4	6	*61*
Burgess, H G	Dublin	1	3	*62*
Plunkett, Sir H *(r)*	Dublin	1	2	*63*
Dunraven, Earl of	Limerick	1	1	*64*

AR *Attendance Record*
CD *Contribution to Debates*
PR *Place Rating (based on 64 members)*
* *Late Election to the Senate*
(d) Deceased
(r) Resigned

Summary

The earliest days, weeks and months of the Seanad should have been a time of challenge and pride in establishing the legislative foundation of the new state. Instead, it was fraught with anxiety as senators, 'marked out for special attention' and subjected to indiscriminate violence, were drawn within the vicious cycle of executions and reprisals. The burnt out shell of houses across the Irish landscape, spoke the personal loss of many. Despite death threats which hung over them for the duration of the conflict, no senators were assassinated during the civil war. However, the indiscriminate violence took its toll and left a lasting legacy.

Anderson in his research on 'the primary contribution of indiscriminate violence' in the context of modern war, indicates that it actually serves to 'aggravate insurgencies and leave lasting, bitter memories which time does not erase.[318] De Valera writing to Monsignor John Hagen as early as 19 May 1923 claimed 'the split in the nation is already deep, and the bitterness between the opposing parties intense.'[319] Pro-treaty T.D. Michael Hayes, in retrospect claimed, not only was 'the civil war all loss,' but worst of all, 'worse than the burnings and destruction was the cynicism generated by the conflict between men who had once stood so steadfastly together.'[320] Edward MacLysaght, like so many of the senators with friends on both sides of the political divide stated 'the civil war left a legacy of bitterness more harmful than the very extensive economic damage done to the country.[321] History has confirmed and recorded that legacy of bitterness which marked political divisions in successive decades.

Speaking in the Seanad on 9 August 1923 at the first dissolution of the Oireachtas, President Cosgrave, on behalf of the other members of the Ministry, expressed deep appreciation for the manner in which all proposals put for their consideration had been received:

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[318] Truman Anderson, *The Conduct of Reprisals by the German Army of Occupation in the Southern USSR, 1941-43,* Vol. 1, (Ph.D. Dissertation, The University of Chicago, 1995), p. 43.
[319] UCDA, P150/1826, de Valera to Monsignor John Hagen, Rector of the Irish College in Rome, 19 May 1923.
[320] Michael Hayes, 'Dáil Eireann and the Irish Civil War,' *Studies: An Irish Quarterly Review*, Vol. 58, No. 299, Spring, 1969, pp. 1-23.
[321] MacLysaght, *Changing Times*, p. 135.

> I wish to pay tribute to the extraordinary courage and perseverance of the senators who were marked out for special attention during the past six or eight months and to the fine exhibition of citizenship shown by them in that period. [322]

Despite death threats, kidnapping, anonymous letters, being shot at and their houses burned to the ground, senators stayed the course fulfilling their legislative obligations, as they endured their baptism of fire, during the most violent months of the Irish Civil War.

[322] *Seanad Debates*, Vol. 1, Col. 2208, 9 Aug. 1923.

CHAPTER THREE

Legislation

A Legislature is hereby created, to be known as the Oireachtas. It shall consist of the King and two Houses, the Chamber of Deputies (otherwise called and herein generally referred to as 'Dáil Eireann'), and the Senate (otherwise called and herein generally referred to as 'Seanad Eireann'). The sole and exclusive power of making laws for the peace, order and good government of the Irish Free State (Saorstát Eireann), is vested in the Oireachtas.[1]

The Senate as it stands is neither by composition or powers, any bulwark against hasty or confiscatory legislation of which there is a great danger.[2]

An immense mass of legislative work was undertaken by the Oireachtas in a relatively short space of time; between 6 December 1922 and 8 July 1925, the Dáil and Seanad passed 145 Acts into law. Sixty four Acts were passed in 1924, the greatest number in any one year to the present day.[3] Of these, ten Acts dealt with public safety, firearms and the criminal justice system indicating, despite the cessation of conflict, that the Oireachtas was still engaged with the problem of protecting the state from internal attack. Both Glenavy and Kevin O'Higgins had cited the dictum *Salus raepublicae suprema lex,* confirming that at this specific time, public safety was the supreme law and the legislature's primary task. The aim of this chapter is to present an account of the legislative work undertaken by members of the second chamber or Upper House of the Oireachtas between December 1922 and July 1925.

Certain facts are important to establish. The majority of senators were unacquainted before their meeting at the first Senate assembly on 11 December 1922. Not all were familiar with the structure of the legislature or the process and procedures of the

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[1] *Constitution of the Irish Free State* (*Saorstát Eireann*) 1922, Art. 12.
[2] UKPA Bonar law Papers, 114/1/24, Lord Midleton to Bonar Law, 24 Nov. 1922.
[3] See *Irish Statute Book, Legislation Directory* 1922- 2011(eISB), produced by the Office of the Attorney General and reproduced by permission of the Houses of the Oireachtas; O'Halpin, Eunan (1996) *Partnership program managers in the Reynolds/Spring Coalition, 1993-1994:an assessment.* DCU Business School Research Paper Series.(Paper No. 6). Dublin City University Business School, Ireland. p. 9.

bicameral system. This was a time of transition, of testing, a time of trial and error. As the country was in the grip of civil war, there was immediacy in dealing with necessary legislation to protect the state from internal aggression, to establish stability and accomplish the transfer from the old regime to the new. Coupled with the fact that a considerable number of senators were novices to the legislative process, the work of those early sessions was undertaken in conditions of considerable stress. Though seldom referred to in the House, members, specifically members of the ascendancy class, were consistently targeted by the IRA [See Chapter Two]. The lack of familiarity with the legislative process, the discomfort and inconvenience of inadequate temporary premises, the insecurity and anxiety induced by prevailing civil war conditions, all added greatly to the difficulty of those fraught early months.

Records indicate that the Senate's first tentative steps, their initial task was to provide the Senate with a working structure in the form of Standing Orders and Committees. Following an examination of the mechanisms, powers and functions of the legislature as stipulated in the Constitution, specific legislation will be discussed. An investigation of the bills introduced in the period, reveal that ten bills of varying proposals were initiated in the Seanad. It was necessary that proposed legislation be deemed worthy of the legislature's time and consideration. Analysis of those bills rejected, are revealing of the interaction between the Executive and the second chamber and the process and procedures for the passage of proposed bills through the House. A wide range of legislation covering vital aspects of national life is discussed; legislation establishing the function of the Departments of State and Emergency legislation necessary for public safety and the restoration of law and order. Issues of particular concern for senators are examined in detail for example; the Indemnity (British Military) Act 1923, and the Damage to Property (Compensation) Act 1923, which dominated debate through the course of that year. Proposed legislation to provide divorce facilities in the Free State was to generate a considerable degree of controversy. An examination of the records of the period reveal, that members of the Senate, through their legislative endeavours, innovation, stability and persistence in a time of trial and transition, were major contributors to the founding of the state and to nation building.

Initiation and Inception

> The proceedings of Parliament are regulated chiefly by ancient usage, or by the settled practice of modern times, apart from distinct orders and rules: but usage has frequently been declared and explained by both houses and new rules have been established by positive orders and resolutions.[4]

Though the bicameral system of the Oireachtas was modelled on that of the Westminster Parliament, there was neither indigenous 'ancient usage' nor 'settled practice' as outlined by Erskine May, to guide members of the Senate upon its inception. However, a perusal of the earliest published Standing Orders indicate remarkable similarity with the procedures, practice, and rules of debate as set out by Erskine May. Rules of communication between the two Houses reflect those of the Lords and Commons; messages, conference, joint committees and select committees. Brian Farrell's analysis of procedures and practice in the Dáil Eireann confirm that 'examination of the Standing Orders of the first Dáil, reveals an almost total acceptance of the British pattern of legislative-executive relations. There was the same provision for a daily Question Time, and for ministerial motions, the same precedence given to governmental business and the same emphasis on the power of the executive 'to arrange such business in such sequence as they think fit.'[5] Following the example and well established practice of the successor of Dáil Eireann, it was inevitable that the second chamber would also look to the tried and trusted practice and procedures of their nearest neighbour.

Working within the framework of the Constitution, the Senate's first task was to establish distinct orders and rules by which the second chamber might operate. On 11 December, Provisional Chairman Senator Sigerson, informed the Seanad of its duty to consider the appointment of a committee to draw up Standing Orders. Maurice Moore suggested that as a temporary measure 'they accept the Standing Orders of Dáil Eireann, so far as they might be applicable to the Seanad.' Thomas Henry Gratten Esmonde, former MP., member of the Irish Parliamentary Party and one-time chief whip, moved that senators Glenavy, Keane, Douglas, Kenny, Moran, Goodbody, Granard and Dunraven be appointed members of this committee. Determined to have Labour representation, Tom MacPartlin proposed John T. O'Farrell; Ellen Costello ensured a female input by proposing Jenny Wyse Power. Nugent Everard advised 'it would be

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[4] Thomas Erskine May, *A Treatise upon the Law, Privileges, Proceedings and Usage of Parliament* (London, 1844), p. 131.
[5] Farrell, *The Founding of Dáil Eireann*, p. 68.

unwise to include Lords Dunraven and Granard, as Dunraven was unwell and Granard was in America.' Everard's advice proved to be prophetic, as records indicate that both senators were among the lowest attendees in the Seanad; the former Dunraven, attending on only one occasion in the entire three year period, 10 October 1923 the day on which he took the oath. Following discussion, the question was put and agreed 'that a Committee on Standing Orders consist of the following: senators Glenavy, Keane, Douglas, Moran, Kenny, Goodbody, O'Farrell, Wyse-Power and Esmonde.'[6]

Standing Orders

In the following days, newly appointed Cathaoirleach Glenavy took matters firmly in hand: 'we are more or less at present proceeding in the dark. We are only finding our feet, finding our way, and before we come to a debate on any serious constitutional question, we should have our own Standing Orders so that we can proceed with due process and deliberation.'[7] Senator Hutcheson Poe claimed that Standing Orders had been drawn up for the Seanad by Deputy Darrell Figgis. Glenavy sharply refuted any such suggestion. Apart from the fact that the Constitution clearly stated that each House would set their own Standing Orders, for Glenavy to permit such an encroachment on the House would be a reflection on its competence.[8] 'I am afraid that would be an invasion of our rights that we are not likely to submit to. If we are not competent to draw up our own Standing Orders, we would certainly not justify our position.' He recommended 'what we arranged yesterday was that we should adopt the Standing Orders of the other House, until the appointed Committee has drawn up Standing Orders for our own use.' As the proposal had not been put in the form of a resolution, the matter was then redressed. The question was put and agreed 'that the Standing Orders of Dáil Eireann be adopted by Seanad Eireann, in as far as they were applicable, until the Committee appointed by the Seanad had drawn up suitable Standing Orders.'[9]

On 18 December the Report of the Committee was presented to the chamber. In presenting, Glenavy apologized for the short notice, aware that members would be anxious to scrutinize and consider the Orders for themselves. As yet incomplete, it

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[6] *Seanad Debates*, Vol. 1, Cols. 4, 11 Dec. 1922.
[7] Ibid., Vol. 1, Col. 42, 13 Dec. 1922.
[8] *Constitution 1922*, Art. 20.
[9] *Seanad Debates,* Vol. 1, Cols. 33-34, 12 Dec. 1922.

would be necessary to make further Orders arranging, as far as was practicable, for inter-communication between the two Houses and for the attendance of Ministers in the chamber. Consideration of the Orders could be held over, as members would not be required to meet again until 2 or 3 of January. In the meantime, the committee would remain in office with the purpose of bringing forward any additional Orders that might be necessary. The question was put and agreed 'that consideration of the Report of the Committee on Standing Orders be adjourned until after the Christmas Recess.'[10] In the New Year, the committee reported and the original Standing Orders were adopted on 25 January 1923. They were thereafter amended on 15 March, 9 May, 11 July and 14 November 1923. They were further amended on 25 January and 1 May 1924 and again on 11 June and 12 November 1925.[11]

Committees

As with standing orders, Committees were essential to establish structures and parameters for the simple day to day functioning of the House. In answer to Senator Mayo's query on travelling expenses, the Cathaoirleach informed the Seanad that like the Dáil, they had the power to provide for the payment of its members and in addition, 'provide them with free travelling facilities in any part of Ireland.' He recommended that the best course to adopt was to appoint at least one Committee to determine such matters. Later on, it would be essential to have a Committee to determine issues in relation to the Chairman and Deputy Chairman and for the official staff required for the Seanad. He suggested that one good Committee should consider and report to the House, who upon the recommendations, could come to any conclusion they saw fit. Senators were asked to bear it in mind that it would 'be a great tax upon the representatives of the Seanad who live in distant parts of the country to be asked to attend those Committees. Therefore, as far as possible, he requested that they impose this duty on residents in the city or vicinity.'[12] In his estimation a Committee of business men would dispose of relevant matters in two sittings. Proposed and agreed, the Committee consisted of senators Esmonde, Jameson, Purser Griffith, Gogarty, Parkinson, Bennett, Moore, Farren, Wyse Power, MacLysaght, and O'Dea.

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[10] Ibid., Vol. 1, Cols. 53-54, 18 Dec. 1922.
[11] *Report on the Procedures Relative to Standing Orders* (Stationary Office, Dublin), 28 May 1930.
[12] *Seanad Debates*, Vol. 1, Col. 45, 13 Dec. 1922.

Early records confirm that a considerable amount of time was spent on committee work, as the structural forms of the second chamber were being formulated. On 10 January, the committee made their recommendations acting in consultation with President Cosgrave and the Minister of Finance, who had attended meetings. On 14 December, on a resolution of the Seanad, the names of senators Glenavy and James Douglas were added to the list of members of the Committee. Subsequent meetings of the enlarged Committee were held on 29 December 1922, and on 4 and 9 January 1923.[13] The Report recommended that the remuneration payable to the Cathaoirleach, the Leas-Chathaoirleach and the members of Seanad Eireann should be the same as may be fixed by the Dáil for the Ceann Comhairle, Leas-Cheann Comhairle and members of the Dáil. First class vouchers, or season tickets for travel to and from the homes of senators, were to be provided. The clerk, assistant and second assistant clerks were appointed, Major General Dalton, Donal O'Sullivan and Diarmaid Coffey with salaries of £1,000, £700 and £500 per annum respectively.

Glenavy's consideration, that senators from the country be spared the responsibility of time-consuming committee work, was laudable. Such commitment was both demanding and time consuming and was not always noted and recorded. It is noticeable that Edward MacLysaght, elected to the committee on 13 December, ceased to attend subsequent meetings. MacLysaght, from Co. Clare and one of the highest attendees and contributors' in the Senate admitted, 'I was glad to escape as far as I could from the committees which, unnoticed by the public, constituted a considerable portion of the work of a TD or Senator.'[14] As the demands for greater organization became evident, a proposal, moved originally by Maurice Moore and later amended by James Douglas, was put to the House and agreed on 10 January 1923. What was envisaged was a type of 'master committee' appointed to consider and report on 'the advisability of establishing Standing Committees appointed either by the Seanad alone or jointly by the Seanad and the Dáil.'[15]

Cathaoirleach Glenavy, with an eye to future difficulties, signalled his approval of the proposal. 'The moment we get our Seanad in order and proceed to enter systematically upon the business entrusted to us, we will find ourselves up against

[13] Ibid., Vol. 1, Col. 90, 10 Jan. 1923.
[14] MacLysaght, *Changing Times*, p. 142.
[15] *Seanad Debates*, Vol. 1, Col. 112-120, 10 Jan. 1923.

difficulties every day, by reason of the absence of Ministers in our Seanad, and the absence of means of communication between the two Houses.'[16] Considering the task before them, the great benefit he saw in the amendment suggested by Douglas, was that it enabled them to get joint Committees into working order at the earliest moment. For Glenavy, this was an interim measure that in no way committed the Seanad, yet would inevitably lead to smoother operations between the two houses of the Oireachtas. 'While the matter is worthy of much greater consideration, this is only a proposal that a Committee should report on the subject. Consequently it does not pledge the Seanad to anything, and it gives them the fullest opportunities later on the discussing the whole question when the report comes up.'[17] The primary function of this Committee was to suggest to the Seanad the purpose, methods of appointments and duties of any Committees that might be recommended. With five members to form a quorum, the Committee consisted of senators Jameson, Butler, Parkinson, Moore, Dowdall, Bryan Mahon, John Keane, Wyse Power, Yeats, O'Farrell, MacLysaght, Moran, Chairman Glenavy and Deputy Chairman Douglas.

Earliest Legislation

Immediacy and urgency characterized the earliest legislation, indicating the necessity to regularise the legal process and procedures essential for transition from the old regime to the new. In the first eight months, the new administration passed no less that forty-seven Acts, covering almost every aspect of national life. By the close of December 1922, five Acts had been passed into law. The Free State Constitution provided that the laws hitherto in force in the twenty-six counties should continue to be of full force and effect, insofar as they were not inconsistent with the Constitution. Act No. 2 of 1922, the Adaptation of Enactments Act, regularized existing legislation thereby paving the way for all that was to follow, as Cathaoirleach Glenavy explained:

> Under the laws existing prior to the establishment of the Free State, in many Acts of Parliament, provision was made that certain things were to be done by Order of the King in Council, or the Privy Council, or named individuals, it is to provide a substitute for that, to meet the altered conditions in this country that the change proposed becomes necessary.[18]

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[16] Ibid.
[17] Ibid.
[18] *Seanad Debates*, Vol. 1, Col. 67, 18 Dec. 1922.

All Acts previously passed by the British Parliament, which were in force on 6 December 1922, now by virtue of Article 73 of the Constitution, had the force of law in Saorstát Éireannn.

> Article 73 states; the laws in force in the Irish Free State at the date of the coming into operation of this Constitution shall continue to be of full force and effect until the same or any of them shall have been repealed or amended by enactment of the Oireachtas.[19]

Senator Esmonde, moved by the historic import of their actions in passing all stages of the Enactments Bill on 18 December, asked the Senate to pause in their deliberations and mark the occasion. 'We have passed the first Act of an Irish Parliament for 123 years.'

> I think we may all thank Providence that we have been allowed to take part in this work. We have set a milestone to-day in our Nation's progress; we have done what generation after generation of Irishmen have lived and died to do, and we may thank God we have lived to see this day.[20]

The Expiring Laws Continuance Bill and Local Elections Postponement Bill were dealt with, with equal rapidity. The Local Elections Bill was essential to postpone pending elections for members of borough, county borough, urban district councils and town commissioners, which were required to be held in January and would have had to take place had the necessary legislation not been put in place. Deputy Blythe informed the Dáil that owing to the non-completion of the Register of Local Government Electors now in the course of preparation, and for other reasons, 'the elections should be postponed to a date later in the year.'[21] Considering civil war conditions prevailing countrywide, all present were in agreement that this was not the time for elections. The Dáil and Executive were determined that in the public interest, elections should not be held for some considerable time to come. Consequently the Expiring Laws Continuance Bill and the Local Elections Postponement Bill were agreed, and therefore were deemed to have passed through all their stages.[22]

Deputy Blythe's concerns were not solely for the prevailing civil war conditions; seasonal considerations could also be detrimental to the electoral process:

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[19] *Constitution* 1922, Art., 73.
[20] *Seanad Debates*, Vol. 1, Col. 70, 18 Dec. 1922.
[21] *Dáil Debates*, Vol. 2, Col. 366, 18 Dec. 1922.
[22] *Seanad Debates*, Vol. 1, Cols. 74-5, 18 Dec. 1922.

> There is no doubt at all that the holding of elections during short days, with people rushing into badly-lighted Polling Booths facilitates the practice of impersonation, which is a matter to be considered.[23]

Despite the need to protect the electoral process, Blythe assured the members that the work of councils and commissions would not be hindered:

> Every casual vacancy which shall occur among the members of any borough council or urban district council or among the commissioners of any town after the passing of this Act and before the prescribed date of election, shall be filled by.... the choice of such council or commissioners ....., and any councillor or commissioner so chosen shall hold office in all respects as if he had been elected to fill the vacancy.[24]

On the final day before the Christmas recess, Senator Horace Plunkett informed the chamber of his upcoming visit to America, and requested the Seanad's approval of his research on two subjects while in the States. Firstly, he wished to gather information on specialised libraries where accurate information upon the world's legislation and administration might be obtained. The object of this endeavour was to eventually establish such a Library for the Houses of the Oireachtas. His second objective was to ascertain the very best policies on agricultural development, so as to have a body of advice and expertise available to the government for the inevitable period of reconstruction after the war. Following a brief discussion, Senator Farren formally proposed 'that the Seanad give authority to Sir Horace Plunkett to move in the United States in the direction indicated in his statement in the Seanad .'[25] Plunkett, a former MP., who had taken the oath on the previous day, left for America having attended the Seanad for only two occasions in its first triennial period. On 16 October 1923 he submitted his resignation to the Cathaoirleach. He apologized on the grounds of ill health, claimed the Seanad was a small body that could not afford to have members who are unable to attend, at least a majority of its sittings, and concluded 'I do not believe that such attendance will ever be the best way of rendering that service to my country which will continue to be the chief aim and object of my life for the days I may be spared to see.'[26]

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[23] *Dáil Debates*, Vol. 2, Col. 346, 18 Dec. 1922.
[24] Ibid., Vol. 2, Cols. 356-57, 18 Dec. 1922.
[25] *Seanad Debates*, Vol. 1, Cols. 82-86, 20 Dec. 1922.
[26] Ibid,. Vol. 2, Col. 64, 14 Nov. 1923.

Legislative Powers of the Senate

The Constitution is the fundamental structure upon which the state was set up by Dáil Eireann sitting as a constituent assembly.[27] The Constitution clearly set out the legislative powers of both Dáil and Seanad. Each House of the Oireachtas was to elect its own Chairman and Deputy Chairman, and prescribe their powers, duties, remuneration, and terms of office.[28] Each House was to establish its own Rules and Standing Orders, with power to attach penalties for their infringement and power to ensure freedom of debate.[29] Furthermore each House had the right to protect its official documents and private papers, and to protect itself and its members against any person interfering with or molesting, or attempting to corrupt its members in the exercise of their duties. The sitting of each House of the Oireachtas was to be in public and in cases of special emergency; either House could hold a private sitting with the assent of two-thirds of the members present.[30] Though formally summoned by the Governor General, the date of reassembly and conclusion of each session of the Oireachtas was fixed by Dáil Eireann.[31] While the Dáil stipulated the date of re-assembly and conclusion of the session of each House, it did so 'provided that the sessions of Seanad Eireann were not concluded without its own consent.'[32] In theory members of the Oireachtas had therefore control over its own sessions, but in practice this power passed to the Executive Council in whose hands rested the responsibility for a definite legislative programme.[33] According to Article 57 of *The Constitution,* every Minister had the right to attend and be heard in Seanad Eireann.

Procedure and Process

Nicholas Mansergh, writing in 1934 stated 'modern legislation tends to be at times haphazard, as the atmosphere of the Lower House does not favour calm deliberation.'[34] The conditions prevailing in 1922 were even more in need of that 'calm deliberation' which could be provided by the more stable, more conservative body the Senate before a proposal became law. To bring proposals into law, there was a set procedure and process. All primary legislation such as Acts of the Oireachtas start life as bills which are

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[27] McCracken, Representative *Government in Ireland*, p. 56.
[28] *The Constitution* 1922, Art. 21.
[29] Ibid., Art. 20.
[30] Ibid., Art. 25.
[31] Mansergh, *The Irish Free State*, p. 88.
[32] *The Constitution* 1922, Art. 24.
[33] Mansergh, *The Irish Free State*, p. 107.
[34] Ibid., p. 93.

proposals for legislation: those applicable to the general body of citizens are called Public Bills and those promoted by local authorities and private bodies or individuals for their own purposes are called Private Bills. Private Bills are very rare and are dealt with under separate procedures.[35] They fall under two categories: (i) Bills which deal simply with the private interest of the individual, which either seek to gain some personal advantage or to get rid of some personal grievances; (ii) Bills which seek to acquire for the purposes of trade or enterprise an interest of a public character, or seek to acquire compulsory powers for the acquisition of the lands of the individual or of the State. The records show that five private bills were introduced in the period from 1922 to July 1925. Two were passed into law; the Sligo Lighting and Electric Power Act and the Pilotage Orders Confirmation Act, both which were passed in 1924; three were passed up to July 1925. Between February 1924 and July 1925 three Divorce Bills were lodged with the Examiner [without success]: as Dr. Downey, co-adjutor Bishop of Ossory commented to W.T. Cosgrave in September 1925 'there was never any apprehension with regard to divorce bills passing into law.'[36]

Seanad and Dáil

Table 1 ***Age range of Senators in 1922-1923***

	30-40	*40-50*	*50-60*	*60-70*	*70-80*	*80-*
	5	19	12	15	6	3
	8.35%	31.65%	20%	25%	10%	5%

Table 2 ***Age range of Dáil Deputies in 1922-1923***

20-30	*30-40*	*40-50*	*50-60*	*60-70*	*70-80*	*80-*
14	34	35	20	6	2	
12.6%	30.6%	31.5%	18%	5.5%	1.8%	

An analysis of the age groups in 1922-23 of members of both Houses of the Oireachtas (Tables 1&2), are given in percentages based on the membership: sixty senators in the Upper House and 128 deputies in the Lower House. Considering three age groups 20-40 years, 40-60, and 60-80 and upwards, reveal both differences and similarities. Since there were no senators under the age of thirty-five, as specified by the

[35] *The Statute Book*, http://www.irishstatutebook.ie/about.html, 7 Oct. 2009.
[36] NAI DT, S 4127, Cosgrave to Dr. Downey, co-adjutor Bishop of Ossory, 21 Sept. 1925.

Constitution, only 8.35% of its members were under the age of 40 years as contrasted with 33.2% of Dáil members under 40. The middle age group between 40 and 60 years in both Houses are remarkable similar; 51.6% in the Senate, 49.5% in the Dáil. With the older group, 60 - 80 years and upwards, the percentages again differ sharply, conversely, with 40% of the Senate in the older group and only 7.3% of the over 60's in the Dáil. [37]

Table 3 *Senate Sittings: Number of days in each Month 1922-1925*

	1922	***1923***	***1924***	***1925 July***
Jan		3	6	6
Feb		4	3	7
Mar		5	9	5
April		4	1	2
May		2	3	4
June		6	6	7
July		7	8	4
Aug		5	0	
Sept		1	0	
Oct		3	17	
Nov		2	5	
Dec	5	3	4	
Total	5	45	62	35

Table 4 *Dáil Sittings: Number of days in each Month 1922-1925*

	1922	***1923***	***1924***	***1925 July***
Jan		13	11	
Feb		11	10	6
Mar		12	12	13
April		7	8	9
May		13	16	17
June		14	15	16
July		22	19	5
Aug		5	2	
Sept		3		
Oct		5	9	
Nov		8	11	
Dec	10	8	9	
Total	10	121	122	66

An analysis of Oireachtas records [Tables 3&4], reveal that in the thirty-one month period from 6 December 1922 to 8 July 1925, the Seanad sat for a total of 147 days. The Dáil sat

[37] There is uncertainty over a very small % of the ages. Sources used; NAI, *Census* 1911, Members Databases of Seanad & Dáil; *Directory of Irish Biography*; *Oxford Directory of National Biography*; a range of local newspapers.

for 319 days; 172 days more than the Seanad in the same period. Not including the 5 days in which the members sat in December 1922.

Bills

Bills can be introduced in either the Dáil or Seanad and there are five stages in considering a bill. The second and third stages are considered the most important as they offer the fullest opportunities to members to discuss and amend the contents of the bill.[38] There was mutual agreement between the two Houses about the necessity of preventing undue delay with legislation in the earliest days of the nascent state. Consequently discussion in the Senate on those earliest bills was kept to a minimum, so that legislation was dealt with, with speed and efficiency. Once both Houses had passed a bill, the President presented a vellum copy of the bill, prepared in the Office of the Houses of the Oireachtas to the Governor General for signature and promulgation into law. The signed text was then enrolled for record in the Office of the Registrar of the Supreme Court.[39]

Proposed bills fell into two categories, Ordinary and Money Bills. A bill may be initiated in Seanad Eireann and if passed by Seanad Eireann, it is then introduced into Dáil Eireann.[40] The Senate had full powers of initiation and amendment, but in practice only a small number of bills were ever proposed in the Senate. Its legislative power approximated to the House of Lords, as defined in the Parliament Act of 1911.[41] Together both Houses of the Oireachtas passed 143 Acts in to law in the period.

Table 5 ***Acts of the Oireachtas - 6 December 1922 - 8 July1925***

1922	1923	1924	1925 July
5	50	64	26

* Two Private Acts in 1924 not included

* Three Private Acts in 1925 not included

Table 5 indicates the number of Acts passed into law in the specific period

[38] *The Statute Book*, http://www.irishstatutebook.ie/about.html, 7 Oct. 2009.
[39] Ibid.
[40] *The Constitution* 1922, Art. 39.
[41] Mansergh, *The Irish Free State*, p. 94.

Bills Initiated in the Seanad

Of the ten bills initiated in the Senate between 1923 – 1925 [Table 6], six were passed un-amended by the Dáil; four were rejected.

Table 6 ***Number of Bills Initiated in the Senate 1923-1925***

Public Holiday Bill - 1923	MacLysaght, E	R
Dyestuffs (Import Regulation) Repeal Bill	J. G. Douglas	P
League of Nations (Guarantee) Bill	J. G. Douglas	P
Valuation (Postponement of Revision) Bill	T. Linehan	P
Oireachtas Witness Oaths Bill - 1924	J. G. Douglas	P
Private Bill Costs Bill	J. G. Douglas	P
Coroners Bill - 1925	P. De Loughry	R
Land Bill	R. A. Butler	R
Shop Hours (Barbers – Hairdresser (Dublin - Districts) Bill	T. Farren	R
Shop Hours (Drapery Trades, Dublin and Districts) Bill	J. G. Douglas	P

**P – Passed*

**R – Rejected*

One early successful example of a private bill was the Dyestuffs Repeal Bill, introduced by James Douglas on 26 July 1923. At the close of the European war, Great Britain found it necessary to safeguard the dye industries in Great Britain. The industry had been set up and encouraged by the British Government during the war to prevent the import of dyes, particularly from Germany, one of the world's greatest producers of dyestuffs. Douglas, a long-time businessman, was ever vigilant of factors which would provide advantage and so advance industry:

> We have no dye industry in this country to protect, and as we have small textile industries which are struggling in competition with Great Britain, it is clearly in the interests of Ireland to repeal this

> Act, and give the benefit to our own textile industries in competition by allowing dyes to come in here as cheaply as they can be got.[42]

The Dyestuffs (Import Regulation) Repeal Act, 1923 was passed into law on 8 August 1923.

By contrast, The Public Holiday Bill of 1923 introduced by Edward MacLysaght was rejected. The bill proposed to substitute certain Church Holy Days, traditionally kept throughout Ireland, as holidays in place of English bank holidays; for example, 15 August was to supersede the first Monday in August. As MacLysaght himself explained; it was opposed by the bankers 'as any innovation bringing them out of line with England would have been.' Surprisingly, Labour was equally opposed to the bill. Considering worker's rights, their argument was that 'public holidays should always fall on a Monday.' Expressing his disappointment not alone with his Labour colleague's opposition, MacLysaght complained 'the Catholic support upon which I had counted was entirely lukewarm.'[43]

Analysis of the course and eventual objective of the latter three bills to be rejected is revealing on many levels. Two years into their term of office, senators were more familiar with procedures and more confident and assured in their proposals and presentation. It was necessary that the procedure, process and passage of a bill conform to regulations clearly stated in Standing Orders.

Coroners Bill 1925

In each of the three cases cited here, the proposer was attempting to redress what they saw as a lack of legislation in very specific cases. Senator DeLoughry wished to ensure that there was an investigation in all cases of unexpected death. Senator Farren was demanding tighter regulations on Sunday trading for hairdressing businesses and Senator Linehan sought to provide legislative protection for a small minority, who had failed to benefit under the Land Act of 1923. The course of the discussions are revealing of the interaction between the Executive and the senatorial body. The objective of the ministers involved in each process was firstly, that the proposed legislation was necessary. Secondly, that the wording was clear and unambiguous and above all that the legislative process was not in any way limited, was not abused, was not appropriated for

[42] *Seanad Debates*, Vol. 1, Cols. 1413-14, 26 July 1923.
[43] MacLysaght, *Changing Times*, p.138.

partisan purposes, or used merely to satisfy personal pecuniary considerations. It was the task of Cathaoirleach Glenavy to oversee proceedings, guiding and advising as and when appropriate. By early 1925 the Oireachtas had been in operation for almost thirty months, by which time, members of the upper chamber were familiar with the Chairman's unique and inimitable style of conducting the business of the Seanad.

The Coroners Bill, introduced by Peter DeLoughry on 6 May 1925, proposed that 'inquests should be held in every case where death was believed to have been due to sudden or "unprovided" causes.' It was considered necessary, on the following stage, to insert words defining certain diseases from which death occurred that might not properly come under the coroner's jurisdiction. The matter had been fully debated previously, when the Local Government Bill was going through the Seanad. DeLoughry had proposed an amendment along the lines on which the present bill was framed, but though the amendment was passed in the Senate, it was rejected by the Dáil. On being returned to the Senate, it was suggested that the proper way to achieve the objective of the amendment, was by means of a private bill initiated in the Seanad. Acting on this suggestion from the members of the upper house, DeLoughry duly introduced his bill.[44]

The Second Reading on 20 May clarified its objective. 'It will be the duty of the coroner to hold an inquest in the case of a death, in respect of which there is any reasonable suspicion that the death may have been due to causes other than common illness.' Minister of Justice Kevin O'Higgins, who did not object in principle, stated 'my objection to the bill is that it really leaves the situation very much as it finds it.'[45] His legal expertise was evident as he proceeded to query the reading, section by section, paying particular attention to, and demanding clarity on the term 'reasonable suspicion'.

> One might ask—a suspicion in whose mind, in the mind of the coroner? The coroner, I take it, would declare that he always held inquests in the case of any death in which he had a suspicion, so that if the Bill were to go through, it would need to be quite clear as to who was to have this suspicion which would constitute a cause for an inquest.[46]

To support his argument, O'Higgins cited insider knowledge. 'My late father was a coroner, and I know that in the form of wire which arrived announcing a death, there was invariably a formula at the end, stating that the police either had, or had not a

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[44] *Seanad Debates*, Vol. 5, Col. 76, 6 May 1925.
[45] Ibid., Vol. 5, Cols. 145-54, 20 May 1925.
[46] Ibid., Vol. 5, Col, 149 , 20 May 1925.

suspicion of foul play.' However, he suggested that if the senator did not press for the legislation, he would undertake to circularize coroners on the matter. He would inform them that a bill had been introduced in these terms, that cases were cited in support of it by a senator, that inquests were not always held in cases in which it would be in the public interest that they should be held; and generally draw the attention of coroners to their duty in the matter. O'Higgins' sole objection to the bill was that it did not alter the existing legal position in the slightest; it contributed nothing and it changed nothing. 'The position the day after it was passed' he claimed, 'would be exactly the position the day before it was passed, and I do not think bills like that ought to be introduced.'[47]

Though impartial, Glenavy's manner in conducting the proceedings indicated that he was in agreement with O'Higgins. But members in the House on the day were determined to further the issue and not have the matter so easily dismissed. In its defence, DeLoughry explained that the wording was taken from a judicial decision in England. 'That is the objection to it' the Cathaoirleach interjected 'this bill is doing no more than stating what the law is at present.'[48] Samuel Brown proposed the matter be referred to a Select Committee and was promptly ruled out of order by Glenavy. Brown, he said, was being irregular, throwing this out as a sort of bait to the Seanad; the question of referring it to a Select Committee could only arise after the bill has been read a second time. Ever conscious of historical precedent, Senator Esmonde suggested, as this was the first bill that the Seanad had endeavored to pass, they should not allow it to die prematurely. 'Not without an inquest' quipped the Cathaoirleach. Glenavy's quick wit and ready pun neither dispelled the gravitas of the situation nor deterred the protagonists; DeLoughry, Brown, Douglas and Esmonde pressed their case. The question was put and agreed to 'that the bill be referred to a Special Committee.' Glenavy directed Brown to get names of members of the Committee, its number, its Chairman and its quorum, and clearly specified 'it must be done to-day.'[49]

It was fully ten months before the matter came before the Senand again. In the interim its original proposer, Peter DeLoughry, had lost his seat in the first triennial

[47] Ibid.
[48] Ibid., Vol. 5, Cols. 145-52, 20 May 1925.
[49] Ibid.

election on 17 September 1925. On 3 March 1926 the Cathaoirleach put the question and it was agreed 'that the Seanad give power to the Select Committee appointed to deal with the Coroners Bill to call witnesses'[50] After due consideration by the Select Committee, the bill was withdrawn. Eventually on 12 May, based on the original bill which had consisted of little more than three clauses, the new and much more comprehensive proposal was put before the House to receive its second reading. Senator Douglas moved that Standing Orders be suspended to allow the new bill to be introduced without notice. The question was put and agreed 'that leave be given for the introduction of the Coroners (Amendment) Bill, 1926.[51] Eleven months later the Coroners (Amendment) Act, No. 1 of 1927 was passed into law on 3 February.

Shop Hours (Barbers and Hairdressers, Dublin and District) Bill

Senator Farren, like his fellow Labour colleagues, was consistently attentive to Trade Union concerns. On 10 December 1925, Farren proposed a bill whose objective was 'compulsorily to close barbers and hairdressers shops on Sundays in the city and townships surrounding Dublin.' He had been approached by the Secretary of the Dublin Masters' Guild, the Employers' Association of Hairdressers and by the Secretary of the Journeymen's Trade Union in connection with the matter. Attempting to introduce the second stage of the bill on 14 December, Farren ventured the opinion that 'there would be little or no controversy on the matter.' The Cathaoirleach's acerbic wit asserted itself with a tentative caution, 'there might be more hair flying.' In the ensuing interchange Glenavy ruled the motion irregular. 'Being a public bill moved by a private Senator, notice of intention to move the second reading should have been given.'[52] On this occasion the Cathaoirleach declined to suspend Standing Orders.

Three days later, on 17 December, the second stage was considered in the presence of Minister McGilligan of Industry and Commerce, who claimed there was no brief on the part of the Government to speak for or against this bill. However, two bills of this sort, dealing with the drapery trade, were already before the Oireachtas. Having professed the Government's openness to the bill, the minister then proceeded to castigate the House for its introduction, 'I want to put it to the Seanad that it is an abuse of the Oireachtas to bring in measures here affecting, as Senator Farren said, "five barbers shops in Dublin." If

[50] Ibid., Vol. 6, Col. 501, 3 Mar. 1926.
[51] Ibid., Vol. 7, Cols. 79-80, 12 May 1926.
[52] Ibid., Vol. 6, Cols. 110-11, 14 Dec. 1925.

we are going to have legislation of that sort put through all stages, the Oireachtas will be overwhelmed with such legislation, and there will be no time to pay attention to the grave matters that should claim the attention of the Oireachtas.'[53] The minister's choice of language indicated a degree of frustration, even anger; he did not suggest that the introduction of this measure was inappropriate, inconvenient or inopportune, but rather that it was 'an abuse.' This was a clear rebuke which he reiterated. 'I would like to suggest, before a second reading is given to this bill, that it is an abuse of the Oireachtas to have measures of this sort introduced in this way.' Clearly in the minister's estimation, the accumulated legislation pending had prior claim to 'five barbers shops' 'We have indicated that until the mass of legislation required for more important things is cleared off, we do not see any time for legislative measures of this kind. I suggest it is better to postpone this bill which deals with five barbers' shops in Dublin.'[54] The question put 'that the bill be read a second time' was defeated by eighteen votes to seven.

Land Bill 1925

The Land Bill of 1925 suffered a similar fate though its process was not so abruptly aborted. Introduced by Senator Butler on 17 June 1925, the bill proposed to 'Amend the Land Act of 1923 in respect of (a) the sub-division of holdings possessing potential value as building ground; (b) certain residential holdings; (c) certain long leases and fee-farm grants, and (d) arrears of rent.'[55] It did not propose to interfere with the power of the Land Commission under the 1923 Act to take over and divide lands. The Act of 1923 had been in operation for nearly two years. Experience in the working of the Act had shown that a number of farmers, possibly only a small percentage in the Free State, found themselves unexpectedly deprived of the benefits of the 1923 Act. This bill proposed to enable these farmers to come under the benefit of the Act. Senator McLaughlin, conscious of the upcoming Senate elections, expressed the hope that the Seanad would do everything in its power to facilitate the passing of this bill as 'it is only natural that the senators going before the electors should have something in the way of legislative effort to show.' He was destined to disappointment as on 8 July, during the course of his statement on the position of pending legislation, the Cathaoirleach indicated that the Land Bill would be held over and to be dealt with after the Recess.

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[53] *Seanad Debates*, Vol. 6, Cols. 267-68, 17 Dec. 1925.
[54] Ibid.
[55] Ibid., Vol. 5, Cols. 489-90, 17 June 1925.

On 10 February 1926, the second stage of the Land Bill was again deferred awaiting the presence of Minister Hogan, Minister of Lands and Agriculture. Two weeks later on 25 February, the bill, read by Senator Linehan was supported by senators O'Rourke, Bennet and Moore. The minister indicated that he would find it necessary to introduce a Land Bill in the Dáil during the coming session, to amend the Act in respect of the section dealing with Land Bank cases.

> It has been found that land was purchased at a very excessive price in 1920 and that it would be quite impossible, as was contemplated by the Act of 1923, to resell the land at that price. It will also have to be amended in respect of building ground. I agree that the section of the Land Act, 1923, dealing with building ground has caused a lot of hardship.[56]

However, it was the fourth section of the bill which concerned Senator John Keane. 'I should like to ask the Government a question and that is, when are those to whom the arrears are due likely to get paid?' Keane argued that there was a solemn contractual obligation in such matters, and claimed it would be doing an infinity of harm to two parties if the solemnity of their contract was not recognized. The minister, with barely concealed impatience cited the witness of history:

> If there is a contract broken in introducing a new Act dealing with land, then there was a contract broken in 1923, 1903, 1889, 1881, and 1870, and in all the Land Acts behind that time, not only in this country, but in England, Scotland, France and Germany. You can argue there is a contract. Undoubtedly there is a contract between the owner of the superior interest and the occupier, and wherever legislation affects that in any way there is a breach of contract.[57]

He was indignant as he called on the experience of collective legislators. 'I protest against the suggestion that Irish Land legislation amounts in fact to a breach of contract —some failure to keep your contract, some interference with the credit of the State, which apparently does not apply to the land legislation that has been found necessary to pass in every other country in the world since Parliaments began.' As the Minister had indicated, during the debate on the second reading, he intended introducing an amending Land Bill. On 24 March, Linehan proposed that the Third

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[56] Ibid., Vol. 6, Cols. 492-500, 25 Feb. 1926.
[57] Ibid.

or Committee Stage of this bill be postponed in order that they might be able to see what provisions it contained. [58] The Land Bill of 1925 was rejected; the bill which eventually dealt with the issues raised in its proposed legislation was the Land Act No. 19 of 1927, which was passed into law on 21 May of that year.

Inter-parliamentary Union and the League of Nations

On 13 June 1923, Glenavy reminded members of the Seanad that they had an invitation to meet Dr. Christian Lange, the distinguished Norwegian and Secretary-General of the Inter-Parliamentary Union at 11.30 am in the Dáil on the following morning. He expressed the hope that as many members of the Seanad as could conveniently do so would avail themselves of the invitation as the subject was of considerable importance and one which closely affected all present.[59] Many of newly independent Ireland's legislators were novices in the field. Association with the Inter-Parliamentary Union (hereafter IPU), would provide invaluable insights into international parliamentary practice and perspectives and provide the opportunity for Irish representation in an international political arena.

Lange's first official connection with the IPU came in 1899, when he was appointed secretary of the organizational committee for the Union's Conference to be held that year in Oslo. In 1909 he was appointed secretary-general of the IPU, holding the office until 1933. He brought tact, diplomacy and personal magnetism to his chosen task. That the Union continued to exist during and after the war, when so many international organizations became casualties, was a tribute to Lange's persistence. From the establishment of the League of Nations he was an ardent supporter, participating as delegate and advisor.[60] An essential part of his duties was to meet with parliamentary groups in various countries, helping to formulate the agenda for annual meetings. To this end he addressed members of the Dáil and Seanad on 14 June 1923, by way of a prelude to the IPU Conference to be held in Copenhagen two months later in August.

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[58] *Seanad Debates*, Vol. 6, Col. 542, 24 Mar. 1926.
[59] *Seanad Debates,* Vol. 1, Cos.. 1186-87, 13 June 1923.
[60] Falnes, Oscar J., 'Christian L. Lange and His Work for Peace' *American-Scandinavian Review, 57* (1969), pp. 266-274.

Origins of the Inter-Parliamentary Union

The IPU was the first permanent forum for political multilateral negotiations. It was founded in 1889 by two parliamentarians, William Randal Cremer of the United Kingdom and Frederic Passy of the Chamber of Deputies in France. Cremer, a member of the British House of Commons, was instrumental in 1887 in causing a memorial to be presented by members of the British Parliament to the President and Congress of the United States in support of arbitration. A similar memorial from France was presented expressing the wish that a treaty of arbitration might be signed between that country and Britain. The following year Cremer arranged a joint meeting between members of both British and French parliaments to discuss arbitration between Britain, France and the United states. As a result of this conference, the association, formed in Paris in 1889 became known as the Inter-Parliamentary Union with Frederic Passy, the celebrated French internationalist and peace worker as its president. As the organization evolved, a Central Council was formed which met when the main body was not in session. It also established an executive bureau at Berne, with Dr. Charles Albert Gobat the Swiss parliamentarian as secretary.[61]

The aim, purpose and composition of the IPU were set out in the comprehensive, twenty-eight articles of its constitution. The first article of its statutes defined its main purpose; uniting in common action the members of all parliaments constituted in national groups, in order to bring about the acceptance, in their respective countries, either by legislation or international treaties, of the principle that differences between nations should be settled by arbitration, or in other ways either amicable or judicial.[62] It likewise advocated the study of other questions of international law and in general of all problems relating to the development of peaceful relations between nations.[63] The IPU was responsible for calling together the two peace conferences of The Hague 1899 and 1907, the latter on the specific request of President Roosevelt, following the IPU conference in St. Louis in 1904.

The Union was a federation composed of national groups, constituted within parliaments. The finances of the Union are chiefly assured by official subventions of the various participating states. An example of annual expenses for the year 1921 provided

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[61] *The Advocate of Peace,* Vol. 69, No. 3, Mar. 1907, pp. 51-54.
[62] *Advocate of Peace through Justice*, Vol. 83, No. 5, May 1921, pp.184-185.
[63] Ibid.

the sum of 80,000 Swiss francs or $14, 000. The Union met either annually or bi-annually. Before the war eighteen conferences had met between 1889 and 1913. The conference scheduled to meet in August 1914 was prevented from doing so due to the outbreak of war. The planned conference of 1920 was cancelled due to the unsettled conditions in Europe, and the presidential election pending in the United States. The Council met in Geneva in October 1919, in The Hague in June 1920 and in Geneva in April 1921 chiefly to prepare for the 1921 Stockholm Conference.[64]

The chief significance of the organization lay in the fact that it was composed of members of parliaments who viewed problems in government from an international standpoint. Until the Union came into existence, it was the custom of legislators to confine themselves to interests within the geographical limits of their own country. Ideas of arbitration and peace, formerly advocated by peace societies and humanitarians, were now being adopted by statesmen and politicians. It also meant that the international attitude of governments was no longer left to rulers and their cabinets, but more and more to be the subject of legislative action and the theme of popular discussion.[65] Following The Hague Conference of 1899, at which members of the Union were delegates, the Tzar acknowledged that the idea of the Conference had initially been inspired by the IPU. With its rapid growth and development, the Union was the best general representative of international public opinion of the time. By 1907, it was sufficiently influential with governments to prevent the second Hague Conference from proving a failure, thereby making a memorable success in promoting order and peace of the world, unlike The Hague gathering in 1899.[66]

International Peace Groups

The growing influence of the IPU seemed to question the identity, even the necessity of former peace groups. In an article in *The Advocate of Peace* Journal as early as August of 1894, Marquis Pandolfi, in considering the respective merits and relations of the Peace Congress and the IPU, was of the opinion that in certain circumstances they might beneficially merge. Pandolfi, a member of the Union, while expressing the highest appreciation for the Congress, highlighted the principal difference between the two. The

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[64] Ibid.
[65] *The Advocate of Peace,* Vol. 69, No. 3, Mar. 1907, pp. 51-54.
[66] Ibid.

aim of both organizations was essentially similar, to be advocates of peace; their *modus operandi* was different as Pandolfi explained, 'the purpose of the Congress is to educate public opinion against war and in favour of peace and to develop among the nations a deeper sense of justice and fairness. The primary function of the Union is to more directly influence legislation through its members in the different parliaments.'[67]

In 1919 following the war, one of the primary questions before the Council was, whether the IPU had any further use now that the League of Nations had been established. However, it was evident that the League of Nations, the Pan-American Union or the International Labour Office or any diplomatic conference whatsoever, could only exclusively be a representation of the governments. While the 19th IPU Conference held in Stockholm in 1921, cordially welcomed the institution of the League of Nations, it reaffirmed that the primary aim and function of the Union was in 'organizing the world for the maintenance of peace.' Furthermore the Union could not devote itself to a more useful and practical work than the support of the League of Nations in the field of international co-operation, and in its efforts for the maintenance of peace and a drastic reduction of armaments. The evidence suggests that in the uncertainty of the post war period and based on its previous experience of thirty-two years, the IPU was reassessing its role and function and extending its influence to operate in a general advisory capacity.

In its role of friendly commentator and councillor to the League's Assembly, the Union considered an important issue to be addressed was 'the unrepresentative' character of the League's assembly which by the existing constitution was essentially bureaucratic.[68] With observation, advice and dialogue any deficiencies in that assembly could be addressed.' What body' one speaker at the Stockholm gathering queried 'was more fitted to remedy such deficiencies, voicing as it does the concerted opinions of parliaments.' For a generation the Union or 'Parliament of Parliaments' had proved itself, by labouring for the arbitration of international disputes as a substitute for war. The Union through its parliamentary character would still remain an invaluable element in the international life of the world. [69] The consensus was that the IPU must strengthen its activities in the field of international co-operation and work towards disarmament so that

[67] *The Advocate of Peace* (1894-1920), Vol. 58, No. 8, Aug. 1894, p. 181.
[68] *Advocate of Peace through Justice,* Vol. 83, No. 9/10 Oct. 1921. pp. 333-336.
[69] Ibid., Vol. 86, No. 8, Aug. 1924, pp. 472-478.

world peace might be maintained. The aims were reiterated in the Conferences at Stockholm 1921, Vienna 1922 and Copenhagen 1923.

Ireland and the Inter-Parliamentary Union

When Christian Lange addressed members of the Oireachtas in June 1923 he facilitated the entry of Ireland's legislators into a wider international political arena. The twenty-first Conference of the IPU was held in Copenhagen from 13 to 21 August, and was attended by 600 delegates including representatives from America, Austria, Belgium, Bulgaria, Denmark, Spain, Estonia, Finland, France, Great Britain, Hungary, Dutch Indies, Ireland, Iceland, Italy, Japan, Latvia, Lithuania, Norway, Holland, Portugal Romania, Kingdom of Serbs, Croats and Slovenes, Sweden, Switzerland, Czecho-Slovakia.[70] While Canada, Chile, Greece and Turkey were unable to send delegates, for the first time Ireland, Iceland, Latvia and Lithuania had representatives at the Conference. Ireland was to have been represented by Michael Hayes, Ceann Comhairle of the Dáil and James Douglas, Leas Chathaoirleach of the Seanad. However, as Hayes was prevented from attending, due to the imminence of the general election, Senator James Douglas was the sole representative for Ireland.[71]

Both Ireland and the Union derived benefit from the alliance. The IPU consisted of members of independent parliaments and did not admit members of parliaments which were subsidiary to, or had representatives in any other parliament. Therefore, the Northern Ireland parliament did not qualify for admission to the IPU. When the Irish group became definitely organized, the IPU would then have representatives from every parliament in Europe. *The Irish Times,* ever vigilant of Ireland's image abroad, commented on the advantages of the alliance; 'the fact that Ireland was represented for the first time this year, and that a group of the Union was being formed amongst members of the Oireachtas, was another proof that the independent character of the Irish parliament was now fully recognized by the nations of the world.'[72]

Dr. Moltesen, a member of the Folketing and President of the Danish group was elected as presiding officer of the conference. It was customary to elect a vice president

[70] *The Irish Times,* 23 Aug. 1923.
[71] Ibid.
[72] Ibid.

from each of the countries represented at the conference, and consequently in 1923 Senator Douglas was among those elected as vice president of the conference. Sittings of the conference were held morning and afternoon on 15, 16 and 17 August and the conference concluded with a grand banquet in the Paladsteatre, Copenhagen, at which over a thousand persons were present. More than 400 parliamentarians from twenty-six countries participated. Two of the leading papers published interviews with Senator Douglas and considerable interest was shown in Copenhagen in the fact that this was Ireland's first time to be represented.

Arthur Deerin Call, reporting on the conference from Copenhagen described it as 'an oasis in the desert of contemporary Europe.' The main subjects which occupied the assembly were disarmaments, the rights of minorities, reparations and allied debts. Call remarked on the skill and authority of those who steered the discussions well away from controversial issues, so as to avoid conflicts and the possibility of a rift in the Union. Credit for this skill he attributed, not only to the presiding officer but most particularly to Dr. Lange, Secretary General of the Union.[73] The varied range of subjects was addressed and contrary points of view were expressed. Some looked upon parliamentary control of foreign policy from one angle; others took an entirely different perspective on the matter. Strangely enough there was less difference on the subject of disarmaments. The League of Nations was a centre of interest though some had no enthusiasm for the League whatsoever.

However, many of the conferees, such as James Douglas, strongly believed in the League of Nations as the saviour of the world. The League, and now the IPU were both means of protecting Ireland from 'splendid isolation,' a means whereby channels of communication could be maintained with Europe and the wider world. The League of Nations (Guarantee) Act, No. 41[discussed in chapter Four], was passed into law on 8 August 1923. While Irish legislators were looking to and planning for the future, members of the IPU conference were dealing with the economic legacy of the most recent past.

[73] *Advocate of Peace through Justice*, Vol. 85, No. 11, Nov. 1923, pp. 371-379.

Legacy of the Past

The most important debate centred round the closely related questions of reparation for war damages and for inter-allied debts. Discussions therefore focused on the economic conditions of Europe and the need for the speedy re-establishment of normal conditions of trade; a proposal for a treaty of mutual assistance amongst members of the League of Nations, with a view to the facilitation of the reduction of armaments and a series of resolutions dealing with the rights and duties of national minorities. These subjects had been given special study during the previous year by Commissions set up by the 1922 Conference and led to long interesting discussions.[74] Most of the resolutions represented a compromise that even for a minority of conferees was unsatisfactory. Yet to get that number of parliamentarians from such wide sections of the world together in one room was of immense value. 'Every parliamentarian who attended the conference acknowledged the fructifying and educational value of the experience.'[75]

Christian Lange in discussing the Union's three particular lines of action reaffirmed the importance of that same value. Firstly the IPU endeavoured to suggest and inspire new measures. Governments are slow to bring forward new ideas and to act upon them. The Union therefore bringht forward ideas for governments' consideration was duly followed by discussion and action. Secondly, following conference discussion and recommendations, it assisted in international reforms by working through its national groups. Thirdly, and perhaps the most important, was the personal and open dialogue between political men from different countries and continents, made possible through the annual international meetings. Emphasising the international all embracing aspect of the Union, Lange claimed that 'side by side with the representatives of national and political interests, there should be also be representatives of the common interests of mankind.'[76] Perhaps the meaning of this international body has nowhere been more accurately summed up than in the words of Senator McKinley of the United States who said 'it is not without significance that in this day of divergent interests, points of views and policies, there exists in the world this organization of parliamentarians, each trying as best he may to understand the other fellow's job.'[77]

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[74] Ibid.
[75] Ibid.
[76] *Advocate of Peace through Justice*, Vol. 86, No. 8, Aug. 1924, pp. 472-478
[77] Ibid., Vol. 85, No. 7, July 1923, pp. 252-259.

Financial Legislation

While the Senate had equal power with the Dáil to initiate legislation, except for money bills, their role in relation to financial legislation was only ever an advisory one. The Dáil had the sole right to initiate and legislate for money mills; in this matter they had 'legislative authority exclusive of Seanad Eireann.'[78] Once again British precedent was being followed; the House of Lords had long been excluded from ruling on money bills. As early as 3 July 1678 a ruling in the Commons stated:

> It is the undoubted and sole right of the commons, to direct, limit and appoint in such bills, the ends, purposes, considerations, conditions, limitations and qualifications of such grants; which ought not to be changed or altered by the House of Lords.[79]

The principle was accepted by the Lords, which never attempted any but verbal recommendations from that day forward. Money bills sent to the Senate for recommendations had to be returned within twenty-one days and any recommendations could be 'accepted or rejected, wholly or in part.'[80] It was the responsibility of the Chairman of the Dáil to certify a money bill and in this 'the precedent of the Parliament Act of 1911 was followed.'[81]

Where there was any difficulty over the adequate definition of a money bill, the question was referred to a Committee of Privileges consisting of three members elected by each House, with a Chairman who was a senior judge of the Supreme Court, able and willing to act and who, in the case of a tied vote, but not otherwise, was entitled to vote. The decision of the Committee on the question was final and conclusive.[82] *The Constitution* is clear and specific on the definition of a money bill. It is a bill which contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on public moneys or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; subordinate matters incidental to those subjects or any of them. In this definition the

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[78] *The Constitution* 1922, Art. 35.
[79] 9 Com. J. 509, 3 July 1678, cited in Erskine May, *Treatise*, p. 321.
[80] *The Constitution* 1922, Art. 38
[81] Mansergh, *The Irish Free State*, p. 96.
[82] *The Constitution* 1922, Art. 35.

expressions 'taxation', 'public money' and 'loan' respectively do not include any taxation, money or loan raised by local authorities or bodies for local purposes.[83]

All bills other than money bills could be introduced in the Senate and the members could amend any such bills, which originated in the Dáil. Prior to 1928 it could suspend a bill for 270 days but if it rejected a bill, or amended it in any way unacceptable to the Dáil the bill went to the Governor General for the royal assent at the end of the suspensory period, at first without any further action and after 1928, on a resolution of the Dáil.[84] Prior to 1928 the Senate had the power to force a referendum on any bill which was acknowledged by both Houses to be urgent and necessary for the public safety. Equally it could request a joint sitting with the Dáil to discuss non-money bills but was not empowered to amend them. Having been passed by both Houses, a majority of the members of the Senate could secure the suspension of a bill for ninety days, by presenting a written demand to the President of the executive council within seven days.[85] Within that period a referendum could be called by three fifths of the Senate members. If a referendum was not called for, after the permitted 270 days of the suspensory period, the Senate had the power to demand a further suspension of ninety days. Neither the mechanism of a referendum nor of a joint sitting was requested by the Senate in the first triennial session. The framers of *The Constitution* had made considerable provisions for a wide range of differences and difficulties, which in the event, proved to be unnecessary. There was consequently no real need for the elaborate machinery by which differences could be settled.[86]

Appropriation - the Comptroller and Auditor-General

Of the 145 Acts passed in the specified period, 33 of these are classified as Financial Legislation. The Senate's power was limited in relation to such legislation and money bills sent from the Dáil had to be returned within 21 days. While they had no power to amend, they could recommend, but any recommendations could be accepted or rejected. Taxation, pensions, compensation, superannuation, general expenditure and miscellaneous financial measures all come under this heading. There was confusion in the House as to the definition of various Bills and particularly in relation to money Bills. Cathaoirleach Glenavy expressed the collective doubt, first, as to what a money bill was,

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[83] Ibid.
[84] McCracken, *Representative Government in Ireland*, p. 139.
[85] Ibid.
[86] Mansergh, *The Irish Free State*, p. 97.

and secondly as to the powers, privileges and obligations of the Seanad in regard to it. As chairman, his instinct was to act on the side of caution, as he explained: 'I should be very loath to embark upon the premature consideration of that question.'[87]

However in relation to the appointment of the Comptroller and Auditor-General, Glenavy did not hesitate: 'I suggest this is a very urgent matter, because the Comptroller and Auditor-General should have been appointed at the beginning of the year, and no expenditure can be incurred, in the ordinary way, until he has been appointed.'[88]

The unseemly haste in dealing with legislation, had earlier been queried by Senator Guinness; 'as regards the Appropriation Bill, is it possible under the ordinary rules of the legislature that it would come before us for debate, or is the procedure merely that it should be passed by this Seanad?' [89] All were new to the procedures and in this, as in other issues because of the urgency of the Comptroller's appointment, Standing Orders were suspended so that this Bill could be put through all its stages. Despite the evident urgency, Senator Douglas spoke at length on the importance of this appointment:

> This official will be a trustee of the whole Oireachtas to see that no money is expended which has not been sanctioned in some form or other by proper legal methods, by the Dáil, or by both Houses, as the law may stand in a particular case. He will have the power of withholding sanction of the payment of money until he is satisfied there is a legal warrant for the expenditure. Therefore it is only right that his position should be that of practically a Judge, only removable by resolution of both Houses, as provided in the Bill.[90]

The Comptroller and Auditor-General Act came into law on 12 January 1923, and George Mc Grath was subsequently appointed to the post. A month earlier, T.M. Healy, the Governor General in his speech to the Oireachtas pointed to their fiscal responsibilities, stating:

> Members of Dáil Eireann, the Estimates of the sums required for the service of the Irish Free State for the year ending on the 31st March, 1923, will be laid before you in due course and in

[87] *Seanad Debates*, Vol. 1, Col.71-72, 18 Dec. 1922.
[88] Ibid., Vol. 1, Col. 105-06, 10 Jan. 1923.
[89] Ibid., Vol. 1, Col. 71, 18 Dec. 1922.
[90] *Seanad Debates*, Vol. 1, Cols. 107-08, 10 Jan. 1923.

> accordance with the provisions of Article 37 of your Constitution, and will require your most earnest consideration.[91]

All Appropriation Accounts of Saorstát Eireann for the specified period were subsequently presented, 'pursuant to Section 7 of that Act (No.1, 1923).' The legislative act of Appropriation authorised the expenditure of a designated amount of public funds, for specific purposes, for each financial year from 1 April to the 31 March of the following year.

Claims and Expenses

On one specific subject, all Reports for the specified period were consistently critical; the issue of travelling expenses and subsistence charges. There were an appreciable number of cases where claims were made for travelling and subsistence expenses which were considered neither reasonable nor necessary. Un-vouched charges and claims for car hire without details of journeys were referred to Accounting Officers with the demand for full details of all expenditure incurred. No expenses claims whatsoever were made by senators for the year 1922-23, and savings were made in the year 1923-24, because some senators did not accept allowances during periods when they were unable to attend the Senate. However it was noted that in the same year, free travelling facilities were provided for one senator between Dublin and various places throughout the country. The Attorney-General, to whom the matter had been referred, was of the opinion:

> That a hotel in which a member spent merely a night or two could not be held to be one's place of residence for the purpose of the Act. Accordingly the provision of free travelling facilities in such circumstances was withdrawn in August 1924.[92]

Other discrepancies were noticed. A Dáil Deputy availed of free travel to Dublin after the date of his resignation. Travel vouchers were used on occasions for journeys other than those connected with Dáil business. A senator used free travel to Dublin to attend a meeting not connected with Seanad business. Both deputies and senators took single tickets to and from Dublin where a return ticket would have cost less.[93]

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[91] *Dáil Debates*, Vol. 2, Col. 102, 12 Dec. 1922.
[92] *Appropriations Accounts*, 1923-24, Sec. 8, p. iv.
[93] Ibid., 1924-25, Sec. 8, p. xv.

An analysis of the Reports from the year 1922 to 1925 show that the difficulties encountered in the first year were soon rectified. During 1923-24 the financial administration of the public services showed steady improvement as compared with the previous year. The necessity of obtaining the prior sanction of the Ministry of Finance for unusual or extraordinary expenditure was generally recognised by accounting departments, the vouching of claims was more satisfactory and the number of errors in accounts was markedly reduced.

Specific Legislation - Indemnity (British Military) Bill, No. 2, 1923.

Abnormal conditions before and after the establishment of the state were responsible for a distinct group of statutes. 'Indemnity Acts were passed to protect from legal proceedings, those who had served either the British or Irish government during the Anglo-Irish struggle, or the Free State government during the civil war.'[94] There was remarkable agreement among members of the Senate on the terms of the Indemnity Bill when it came before the house. From December 1922, Cosgrave had been preparing the ground to facilitate the smooth passage of the Amnesty Bill, 1923. In anticipation of possible difficulties, he sought the full co-operation of the British government as he explained to Bonar Law:

> As you are doubtless aware, the immediate legislation which we hope to get through parliament includes an Amnesty Bill, to give legal effect to the undertaking given by the late General Collins, with regard to British military engaged in Ireland prior to the Truce. We had hoped that this Bill would be regarded as non-contentious, but we find that, the case of the Connaught Rangers and other prisoners now held by your government, is occupying the public mind and also the mind of many members of our parliament.[95]

Cosgrave highlighted inequity and lack of reciprocity in the terms of agreement:

> We have reason to believe that the question of these prisoners will be raised when the Amnesty Bill is brought forward and it will be urged that while we propose complete amnesty for British Military in Ireland, the British government, by its continued detention of the prisoners (referred to above) have granted only a partial amnesty to our nationals. [96]

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[94] McCracken, *Representative Government in Ireland*, p. 173.
[95] UKPA Bonar Law Papers, 114/1/10. 16 Dec. 1922, Cosgrave to Bonar Law on the Amnesty Bill conditions.
[96] Ibid.

He earnestly requested that the matter be given the fullest consideration. 'The passage of the Bill will be considerably facilitated and much undesirable comment avoided if your government could find it possible to permit the immediate release of these prisoners.'[97]

The initial British response, though cordial, was guarded. Bonar Law expressed regret that 'due to the absence of the Secretary of War it was not possible to give a reply until the following week.'[98] The records, however, show that the issue had already been under discussion as a letter, addressed specifically to Bonar Law, from the War Office a week earlier, informed him of the facts:

> You are no doubt cognisant of all the facts connected with the mutiny, so I need not go over them. I have looked carefully through the papers and I am strongly of the opinion that the utmost concessions that can be made, has been made and that in no circumstances can any further remissions be made. The effect of granting it would be detrimental to the discipline of the whole army.[99]

British procrastination and lack of action was now impeding the Irish legislative process. On 24 January, before the second reading of the Indemnity Bill in the Seanad, Maurice Moore put forward a motion suggesting:

> The consideration of this Bill be adjourned to give the British Government the opportunity, by a similar gracious act, to release every Irish prisoner under its control for a political offence connected with Ireland in whatever country the offence may have been committed. The status, political or otherwise, of each prisoner to be decided by a certificate of the Irish Government.[100]

Several representations had been made in the previous weeks to the British Prime Minister on the issue. Stephen Gwynn, political correspondent for the *Manchester Guardian*, who had himself served in the Rangers, wrote on behalf of two friends:

> Members of the Senate who served with much distinction in the Connaught Rangers urge that the Amnesty Bill in both parliaments should pass with the least possible revival of bitterness.[101]

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[97] Ibid.
[98] UKPA Bonar Law Papers, 114/1/11, 18 Dec. 1922, Bonar Law to Cosgrave in reply to requests for immediate release of prisoners.
[99] Ibid., 114/1/7, 12 Dec. 1922, the War Office to Bonar Law, the signature on this three page document is indecipherable.
[100] *Seanad Debates*, Vol. 1, Col. 159, 24 Jan. 1923.
[101] UKPA, Bonar Law Papers, 114/1/7 Stephen Gwynne to Bonar Law on the issue of prisoners, 20 Dec. 1922.

Maurice Moore and Bryan Mahon, Gwynn's friends, were both holding to their already stated position in the Seanad. Mahon supported Moore's resolution with regards to the Rangers; 'I understand all of them have been released except one, Lance Corporal Dowling, who is a prisoner in England; the others who were released were in India.'[102] On the following day a report was sent, via the Vice Regal Lodge, to London, of the previous day's proceedings in the Senate. It contained details of both the suspension and an editorial by the *Freeman's Journal*, which was highly critical of the British Government's procrastination:

> The Seanad yesterday suspended consideration of the Government's Amnesty Bill until all citizens of the Free State imprisoned for political offences committed before the Truce are released. That such a drastic step should be provoked by the inaction of the British Government who should have been the first to assist, shows a strange lack of cordial co-operation with the Irish Government in its onerous work of pacification.[103]

Stating that the situation was the result of the British Government's inability to fulfil its duty to the Irish Free State, the report speculated:

> Why Dowling should be still a prisoner remains a mystery. It is true that he was a member of Sir Roger Casement's Brigade. But nearly all the members of the Brigade were found in German prison camps after the armistice, brought back to headquarters of their respective regiments and released without penalty. Why not John Dowling? [104]

The report concluded, confirming that friends of peace in both countries were in sympathy with the Senate's protest.

On 7 February the Senate received a communication from the Dáil in relation to the Indemnity (British Military) Bill, stating; 'while appreciating the reasons stated by Seanad Éireann for adjourning consideration of the Bill, the Dáil urges that the object which both Houses have in view would be best attained by the speedy passage of the Bill into law.'[105] This request was followed by the presence of President Cosgrave in the Senate, giving assurances that the issue would be resolved and in an effort to break the impasse between the two Houses, invoked the Proclamation issued by the late Commander-in-Chief, General Collins, of 10 February 1922:

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[102] *Seanad Debtes*, Vol. 1, Col. 164, 24 Jan. 1923.
[103] UKPA, Bonar Law Papers, 114/1/10, 5 Jan. 1923, Loughnane to Sturgis quoting from the *Freeman's Journal.*
[104] Ibid.
[105] Ibid., Vol. 1, Col. 221-23, 7 Feb. 1923.

> Now that a Treaty of Peace has been concluded between the peoples of Ireland and Great Britain, the Provisional Government hereby decree a General Amnesty in respect of all acts committed in the course of the recent hostilities. .....The Provisional Government appeals to all Irish citizens to respect this amnesty in the spirit and in the letter. In this, as in other matters, we must not suffer ourselves to be outdone by our late enemies in seeking that the wrongs of the past may be buried in oblivion.[106]

Not all were prepared to consign the wrongs of the past to oblivion. Senator Kenny, who supported Moore's Resolution, considered the Dáil was rather premature in pressing the issue. He was of the opinion that the attitude of the British Government, with regard to the entire matter of the withholding freedom for Irish prisoners in her jails, should be put to the test. Bills should have been introduced at the same time, both in the British Parliament and in the Dáil. Kenny, with lingering deep-seated suspicion, was not inclined to accept the President's assurances:

> I have not the sublime faith in British Ministers that some in this Seanad seem to have; I do not think that anything in her history, or in the history of the connection between the two countries, would justify us in even hoping that these prisoners would be released as a result of this act of grace which we are now asked to perform.[107]

While still questioning the 'private information' on which Cosgrave's assurances were based, Kenny withdrew his opposition in the best interest of the prisoners. In so doing he placed full responsibility for the consequences of their action on the President:

> We are entirely acting now in what we are to do, on the assurances the President has given us, on what warrant and what foundation he knows best himself, but if the prisoners are still withheld after we withdraw our opposition, certainly the blame cannot rest with the Seanad.[108]

On the strength of the assurances given, Maurice Moore forwarded a motion, rescinding his previous resolution and following its confirmation by twenty signatories, the Bill was ready for its second reading in the House. The Indemnity (British Military) Act No. 2, defined as 'an act to restrict the taking of legal proceedings in respect of certain acts, matters and things done in Saorstát Éireann in the recent conflict with the British Government, and to provide for matters consequential thereon,' was signed into law on 10 February 1923. The issue of Dowling [variously named John and Joseph], was brought before the Seanad again on 5 July when Maurice Moore passed a resolution:

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[106] Ibid.
[107] Ibid. Vol. 1, Col. 236-37, 7 Feb. 1923.
[108] Ibid.

> That in the opinion of the Seanad the British Government should release or hand over to the Irish Government Joseph Dowling, ...at present undergoing a life sentence of penal servitude in England in respect of an offence, political or quasi-political, committed prior to the Anglo-Irish Treaty, and that in passing this Resolution, the Seanad has in mind (1) the International and Constitutional aspect of the case, and (2) the adverse effect on the harmonious relations between Ireland and Great Britain produced by the continued retention of this prisoner.[109]

On 3 August 1923, the all-encompassing Indemnity Act of 1923 was enacted. Its aim was to restrict the taking of legal proceedings in respect of certain acts and matters done during the suppression of armed rebellion to overthrow by force the lawfully established government of Saorstát Éireann. The Indemnity Act No. 40 of 1924 was similarly to ensure that no action or other legal proceeding whatsoever, whether civil or criminal, should be instituted in any court of law or equity in Saorstát Éireann for or on account of, or in respect of any act, matter, or thing done, whether within or outside Saorstát Éireann, after the 21 January 1919 and before the 28th day of June 1922.

Land and Agriculture

Analysis of proceedings of the Oireachtas for the period reveals the importance of legislation dealing with land and agriculture. The census of 1926 indicates that 53% of the country's productive workforce was employed in agriculture - four times as many as were engaged in all forms of production - and two-thirds of whose total population lived outside the towns.[110] The preoccupation of tenant farmers with land ownership was understandable. The principal object of the Land Bill of 1923 was to facilitate the completion of land purchase by agricultural tenants. The half century before independence had witnessed an extraordinary transformation in the pattern of Irish landholding, the nearest thing to a social revolution in modern Irish history, as the landlord class progressively surrendered ownership of the land to the tenants who worked it.[111] Any fears that the landowning ex-unionists might impede the legislative process in the Seanad, were soon allayed. With the exception of Sir John Keane, who brought an adversarial style to most issues, there was an eagerness to see the process completed.

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[109] *Seanad Debates,* Vol. 1, Col. 1369-70, 5 July 1923; see also the *Freeman's Journal*, 12 Feb. 1924.
[110] Fanning, *Independent Ireland*, p. 73.
[111] Ibid.

Senator Mayo expressed the general feeling countrywide on the subject; 'these Land Bills have given rise to more heart burnings than anything else in this country.'[112]

The policy of land purchase, begun under the British administration, was carried out by a series of land acts extending over the previous two to three decades. Four of the sitting senators, Dunraven, Hutcheson Poe, Mayo and Nugent Everard, together with tenant representatives, had formed a conference in the early years of the century, to facilitate a scheme whereby the government paid the difference between the price offered by tenants and that demanded by the landlords. Their efforts were to eventually lead to the Wyndham Land Act of 1903. The main objective of the 1923 Act was to enable tenants to become owners of their own holdings. The Bill like so many others in the first year of the Senate was rushed through its stages in the House. There was considerable concern and controversy over the conditions and decisions that might be handed down by the Land Commission and the consequent rights of anyone seeking to appeal. The Minister of Lands and Agriculture, Patrick Hogan, apologised to the Senate for the necessary haste and expressed his gratitude for the manner in which section 24 had been improved by Senators Jameson and Guinness. The Minister's decision on the contentious section was final:

> Any person aggrieved by the decision of the Judicial Commissioner on any question of law arising out of this section may appeal from such decision to the Court of Appeal, but there shall be no appeal from any decision of the Judicial Commissioner on any question of price.[113]

'From 1870 to 1909, six Land Acts had been passed, whereby 400,000 holdings had become the property of the tenants; a rental of £7,000,000 had been purchased by the state and about £130,000,000 worth of Land stock had been issued to the vendors in payment.'[114] In 1870 only 3% of occupiers of land-holdings had owned their holdings; by 1916 64% of land was owner-occupied and by 1929 – following the passage of the 1923 Land Act, providing for the compulsory purchase of all remaining leasehold land by the Land Commission – the comparable figure was over 97%.[115]

While the Land Bill was being debated, de Valera who was in hiding at the time sent a message which was read at a meeting of his party in the Mansion House on 17 July.

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[112] *Seanad Debates*, Vol. Col. 1470, 27 July 1923.
[113] *Seanad Debates*, Vol. 1, Col. 2162, 3 Aug. 1923.
[114] O'Sullivan, *The Irish Free State and its Senate*, p. 131.
[115] Fanning, *Independent Ireland,* p. 73.

He emphasized that the principle he wanted to stand by was that of Fintan Lalor who claimed:

> The entire ownership of Ireland, moral and material, up to the sun and down to the centre is vested of right in the people of Ireland; they and none other but they are the landowners and lawmakers of this island.[116]

Land Act No. 42 was passed into law on 9 August 1923. De Valera, who did not recognize the power of the Oireachtas, in his message assured the people of Ireland that 'they and none but they were the landowners and lawmakers of this land.'[117]

Agricultural Exports, Markets, Regulations, Recommendations

Agriculture was of paramount importance and the government's particular concern even in times of crisis. On 9 December 1922, Cosgrave wrote to Bonar Law on the grave aspect of bringing Ireland into the Bill for removing the embargo on the importation of Canadian store cattle:

> The imposition of statutory restrictions on the importation of Irish cattle to Great Britain should be deferred, at least until the Irish Ministry of Agriculture has had the opportunity of discussing the case with the British Ministry as has been afforded to the Canadian Ministry.[118]

Cosgrave has no hesitation in pointing to the manner in which British action would be perceived internationally:

> In the first week of the existence of the Irish Free State, Great Britain will appear as directing against Ireland's principal industry, a new and permanent disability not only without previous intimation, but contrary to what we were led to expect. [119]

Irish opinion held this policy to be both unfair and unnecessary as there was no danger of any disease being spread through the agency of Irish cattle. Ireland's principal industry must be protected at all costs. Irish agriculture was in deep depression in the early twenties following the monopoly it had enjoyed in the British market during the First World War when Britain was denied access to her traditional suppliers on the continent

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[116] *Irish Independent*, 18 July 1923.
[117] Ibid; see also Terence Dooley, *The land for the people: the land question in independent Ireland* (Dublin, 1964).
[118] BPA, Bonar Law Papers, 113/5/20, 9 Dec. 1922.
[119] Ibid.

and in the commonwealth.[120] Consequently, there was a steady profit despite disregard for quality and standard, but post-war conditions meant Irish agriculture was unable to compete with higher standards of produce and output from more progressive continental competitors. The government plan was to standardize products such as eggs, bacon and butter under a national brand and regulate livestock breeding so as to improve the national herds.

Speaking in the Seanad at the report stage of the Agricultural Produce (Eggs) Bill, Minister Hogan made it clear that the industry would be firmly regulated and specified the conditions which from then on, would control the sale and export of eggs:

> There shall be paid to the Minister by the person applying for registration of any premises in the register of exporters the deposit specified ... in this Act on account of the first annual fee payable in respect of such premises, and the payment of such deposit shall be a condition precedent to the registration of the premises.[121]

The strong farming lobby in the House, Senators Butler (chairman of the farmer's union), Keane, Counihan, Linahan and others were responsible for a total of seventy-four amendments to the three Agricultural Produce Bills, all of which were accepted by the Dáil. Many amendments were simply a matter of phraseology, change of word, definition or punctuation. With the 'Eggs' Bill the earliest amendments dealt with annual fees, registration as legitimate producers and various regulations common to both the 'Eggs' and 'Butter' Bills. Others dealt with testing, grading and packing. One of particular note was amendment No. 8, which was intended to ensure the protection and top quality of the Irish Egg market. The Seanad had placed 'particular emphasis on the description of eggs which could be brought into the premises.' Minister Hogan explained:

> This amendment is meant to guard against the possibility of foreign eggs being brought on to the premises and sold as Irish eggs.....There is a danger that when Irish eggs get a reputation on the foreign market....there would be a great temptation of people to buy Russian eggs in great quantities and to sell them as Irish eggs on the English market. [122]

He further elaborated on the dangers and temptations which could prove detrimental to the Irish market:

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[120] Fanning, *Independent Ireland,* p. 73.
[121] *Seanad Debates*, Vol. 3, Col. 857, 16 July 1924.
[122] *Dáil Debates,* Vol. 8, Cols. 1654-62, 18 July 1924.

> The market must be safeguarded against the temptation to buy Russian eggs in great quantities and sell them as Irish.....we are taking power here to make a regulation compelling any exporter who sells foreign eggs to sell them as foreign eggs and mark them as such.[123]

Accurate descriptions and definitions were essential for successful regulation and protection of the country's markets. Many such amendments, in relation to farm produce, set the scene and reputation for the future brand of top quality Irish farm produce.

'In addition there were acts relating to drainage, livestock, noxious weeds and pest control, seed supply and relief from rates for agricultural land.'[124] This type of legislation gradually restored Irish products to their rightful place in the British market. 'It also improved the status of the farmers, many of whom benefited by the Arterial Drainage Act 1925, whereby provision was made to cope with thousands of acres of land subject to flooding.'[125] Allied to the Land Act and those of agricultural purpose was the State Lands Act No. 45 of 1924. Subject to legislative approval as specified by Article 11 of the Constitution, this act authorised the leasing and granting of licences of state owned lands in the interest of the general public.

Damage to Property (Compensation) Act

Material damage and the cost of the civil war were immense: in 1923-24 30% of all national expenditure was devoted to defence and a further 7% to compensation for property losses and personal injuries.[126] As late as 1926-27 compensation absorbed £1.7 million of the national expenditure of £28 million and only subsequently did defence and compensation no longer rank among the five heaviest charges on expenditure.[127] Analysis of the legislation reveals the resulting legacy of the revolutionary period in the Damage to Property and Compensation Acts. There were three such Acts, Numbers 15 and 43 of 1923, and Act number 42 of 1924. The Damage to Property (Compensation) Bill was brought before the Seanad for its second reading on 28 March 1923. Introduced to the Dáil before Christmas, the second reading took place on 6 February, passing through its final stages six weeks later. President Cosgrave, presenting it in the Seanad on 28 March, outlined the details:

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[123] Ibid.
[124] McCracken, *Representative Government in Ireland*, p. 174.
[125] O'Sullivan, *The Irish Free State and its Senate*, p. 136.
[126] Fanning, *Independent Ireland*, p. 39.
[127] *Dail Debates*, Vol. 7, Col. 193, 6 May 1924 ;See Curran, *Irish Free State*, p. 276; Neeson, *Civil War*, p. 173; Kiernan, 'Public Finance' in *Saorstat Eireann official handbook* (London, 1932), pp. 86-7.

> It is a very far-reaching Bill. It seeks..... to deal as equitably as is possible in the circumstances with the various classes of persons who have suffered damage either to property or to person. A Commission has been set up, consisting of a County Court Judges two prominent citizens, to deal with cases of personal compensation that is for injury to the person. [128]

The Bill was in three sections; (i) dealt with proceedings and claims for compensation for acts committed on or before 11 July 1921, (ii) dealt with injuries committed after 11 July 1921 and (iii) dealt with matters which gave rise to very serious interruption of the ordinary law [up to or from 1919 most particularly in early 1921], by reason of two Acts, the Criminal and Malicious Injuries Acts of 1919 and 1920.

The Bill stipulated that no legal proceedings would ensue in respect of damage committed on or before 11 July 1921. Claims were then under the consideration of the Compensation Commission set up by agreement between the British and Provisional Government. As regards the claims for damage done to property before the Truce, the position was; where decrees were obtained after a defense had been made by the County Council concerned, steps for payment were assured. Where no decrees were obtained, or where decrees were obtained but the County Council of the area where the damage occurred did not make a defence, the claims were subject to adjudication by the Compensation Commission. Speaking in the Dáil, Cosgrave stated there would be no discrimination against persons who had refused to recognise the courts of the late Government. In the case of injury to the person, the Government of Saorstát Éireann were responsible for the provision of due compensation to supporters of the national side who suffered injury and proposals to give full effect to this arrangement were being considered.[129]

Past Provisions - Present Proposals

A large number of cases had been dealt with and a number of these had been held up by reason of the fact that releases had to be secured from persons to whom awards had already been made. Cosgrave emphasised the Bill's urgency, the purpose being to protect Local Authorities against excessive claims:

> These persons, until this Bill is passed, have got a legal right against Local Authorities. The legal right has been exercised in a few cases, not many, and generally it is accepted that, although it was

[128] *Seanad Debates*, Vol. 1, Cols. 688-91, 28 Mar. 1923;Cosgrave explains the details of the Bill.
[129] *Dail Debates,* Vol. 2, Cols. 293-93, 15 Dec. 1922.

> a legal right, it was not a negotiable asset to a person having it. Very few decrees in respect of these Acts have been paid.— Very considerable popular opposition was exhibited by Local Authorities all over the country to the operation of the Criminal and Malicious Injuries Acts of 1919 and 1920.[130]

In the face of this earlier legislation Local Authorities had acted swiftly:

> Practically every Local Authority, certainly in 26 counties, and perhaps more, at once cut communication with the Local Government Board, which was then functioning in the Custom House, and took extraordinary measures to protect the moneys that were given to them by ratepayers to discharge the various services in respect of which these moneys were levied. The sums generally awarded up to the time of the Truce in respect of these two Acts of 1919 and 1920 approach £8,000,000 or £10,000,000.[131]

In summarising the purpose of the Bill, Cosgrave criticised the grave miscalculation in passing measures, which had given powers so extraordinary as to threaten to undermine the entire accountancy of Local Authorities. Cosgrave's long experience in local administration was evident in his conclusion; 'these are things which legislative bodies should have borne in mind. Certainly it was a remarkable departure from the law as expounded by persons having experience of local administration.'[132]

The proposed retrospective aspect of the legislation was causing considerable disquiet; Martin Fitzgerald cautioned against it:

> A retrospective Act with reference to money is one, which should be very carefully thought out. If a debt was a debt six weeks ago it ought to be a debt to-day. It should be a debt until an Act of Parliament makes it not a debt, and I do not think it adds to the credit of any country to make an Act of Parliament with reference to money retrospective.[133]

Jameson agreed with Fitzgerald that it was inadvisable for the Government to reopen cases which had already been fought, where local authorities had been represented, and a decision given under the then existing law. The Government, taking legal right to have them re-opened and dealt with under a newly established law, was running the great risk of having their reputation for honest and fair dealing seriously attacked. He pointed to the danger in creating such a precedent, which could in time rebound to their disadvantage. Once established, the very principle which they themselves now proposed to make into

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[130] *Seanad Debates*, Vol. 1, Cols. 688-91, 28 Mar. 1923.
[131] Ibid.
[132] *Seanad Debates*, Vol. 1, Col. 691, 28 Mar. 1923.
[133] Ibid., Vol. 1, Col. 698, 28 Mar. 1923.

law, a new Parliament could upset just as easily. By contrast, Senator Farren of Labour applauded the decision to re-assess previous awards:

> We all know that in some cases that have already been dealt with, outrageous compensation awards have been given, in one particular case, compensation up to something like £1,000 was given for the inconvenience of being away from home for a day and a night.[134]

Part Two

Part two of the Bill concerned damages which had been committed and the steps to be taken to enable persons to claim in respect of such damage. The degree of interest and concern expressed by members in relation to the details of this section of the Bill is understandable. By the end of March 1923, at least twenty-six senators had been victims of IRA violence in one form or another, intimidation, kidnapping or the total destruction of their homes by fire, as Cosgrave acknowledged:

> Members of this Seanad have suffered, perhaps in respect to their numbers more seriously than any other institution in the country.[135]

In tabling the Bill, the aim was to distribute as fairly as possible compensation to those who had suffered. Due consideration of the capacity and the ability of those who had to pay was necessary. The ordinary duty of the Government and the claims of Local Authorities, in respect of areas which had suffered severely by reason of inflicted losses, need be considered.

A major source of opposition to the Bill was that compensation for consequential loss was denied. Specific conditions were now stipulated. The basis of the compensation was that property damaged was to be restored:

> That is to say that the ordinary rights which prevailed previous to the passing of the Acts of 1919 and 1920 do not run. A person was then entitled to get money without any liability as to the expenditure of that money. There is a provision made here that where such damage has been inflicted the damaged property shall be restored or that a substituted building shall replace the damaged building.[136]

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[134] Ibid., Vol. 1, Col. 720, 28 Mar. 1923.
[135] *Seanad Debates*, Vol. 1, Cols. 688-734, 28 Mar. 1923.
[136] Ibid.

Sir John Keane didn't hesitate to offer full, free and candid criticism of the proposed legislation. 'There are two main features of the Bill, which are of a peculiar character as contrasted with other Compensation Bills. These are the rebuilding clause and the method in which compensation is to be paid.'[137] While accepting that many people would not want to rebuild he appreciated the Government's point of view, that capital, where awarded for compensation, should not be allowed to leave the country. Also legal expenses should be considered; costs should be earmarked and set forth as a distinct part of the award.

Many in the Seanad had experienced very considerable costs in having expert valuations made of their properties, therefore costs should be paid over and above any amount awarded for compensation. However, the greatest opposition resulted from the proposed form of payment in part, by securities. In a press interview on 11 March, Cosgrave, speaking on the mode of payment had stated; 'the finances of the country are eminently sound .....our plan is to pay half cash and half bonds, which should bear a rate of interest sufficient to ensure their saleability at full value in the market.[138]'Two weeks later Senator Esmonde expressed his objection; 'I do not agree with the payment being partly in money and partly in script securities..... compensation ought to be in cash.'[139] Keane was outraged by the proposal and blunt in his demands; 'having made the award in sterling, pay it in sterling, and not in a gambling coin'[140] The method of payment of compensation was the issue that was to engage the greater part of discussion in the successive stages of the Bill.

At the committee stage of the Bill Keane tabled an amendment proposing, that securities given as compensation would be accepted as payment of any debt, or sum of money collectable by, or payable to, the late Provisional Government or the Government of Saorstát Eireann, or any department or authority of either of these Governments. Stating that this amendment was the most important one in the whole Bill, he summarised:

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[137] Ibid.
[138] *Sunday Independent*, 11 Mar. 1923.
[139] *Seanad Debates*, Vol. 1, Col. 717, 28 Mar. 1923.
[140] Ibid, Vol. 1, Col. 696, 28 Mar. 1923.

> It asks that these securities shall be legal tender by anybody for debts due to the Government. It is only extending the principle, which the Government have already laid down to a limited extent, I might leave it at this—what is sauce for the goose is sauce for the gander.[141]

He was in effect suggesting that the government be paid in its own coin, for Death Duties, Income Tax or Super-Tax. And there was the added advantage that if those securities were allowed as legal tender for debts, they would automatically retain a value somewhere about their face value. He urged the Government to accept this amendment, not on the grounds of justice, but on the more practical and compelling grounds of public interest and security. Senator Guinness, while in agreement to a certain extent with Keane, considered it unfair to ask the government to accept bonds for cash due to them. He therefore resolved the issue by tabling a further amendment that payment by securities be limited to Death Duties alone.[142] The Seanad tabled sixteen amendments; twelve were agreed by the Dáil and the remaining four were agreed as amended by the Dáil.[143]

Part Three

Growing concerns about the danger and effects of this proposed Compensation Bill were widespread, not alone in Ireland but also in Britain. Speaking in the Seanad on 28 March Cosgrave claimed:

> A good deal of criticism has been indulged in another country about this Bill. A great number of people have alleged imperfections in it and have alleged against this State that we never really intended to bear our share of contributing towards the losses that they had sustained. People have made claims against us and have slandered our country and have received money, not to a very large extent, but to a small extent, on the ground that they had lost property here and suffered wrongs, and so on.[144]

Writing to Bonar Law earlier in November, Midleton had expressed grave reservations about the Senate's legislative capabilities; 'the Senate as it stands is neither by composition or powers any bulwark against hasty or confiscatory legislation of which there is great danger.'[145] Others were equally critical. On 19 April, at a joint meeting of members of both Houses of the British parliament, Mr. Lipsett, K.C., a member of the English and Irish Bar, spoke on behalf of The Irish Loyalist Compensation Claimants.

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[141] Ibid., Vol.1, Col. 848, 13 Apr. 1923.
[142] Ibid., Vol. 1, Col. 853, 13 Apr. 1923.
[143] O'Sullivan, *The Irish Free State and its Senate*, p. 607.
[144] *Seanad Debates*, Vol. 1, Cols. 732-33, 28 Mar. 1923.
[145] UKPA Bonar Law Papers, 114/1/24, 24 Nov. 1922, Midleton to Bonar Law.

Lipsett, a recognised authority on criminal injury law, presented an analysis of the Damage to Property Bill and the consequent disastrous position in which loyalists were now placed. Two classes of persons were cited; those who suffered injury to their person or property and were entitled to compensation under the Criminal Injuries Act, and those whose property had been confiscated or interfered with in circumstances for which the Criminal Injuries Act did not provide. Lipsett was precise in naming the source of the loyalists' present predicament; their loyalty and friendship for the United Kingdom and the British Empire. Consequently, responsibility for their predicament now rested firmly with the British Government:

> So far as the government of the day were unable or failed to give them adequate protection the duty of the state to compensate them for their loss is definite and clear....it is for the government and not for the injured to make such arrangements for reimbursement by the Southern Irish government as may be considered practicable and expedient. The British government has admitted its moral obligation but has endeavoured to induce the Southern Irish government to relieve it of its responsibility.[146]

'Rights, which were established under the existing law in the recognised Tribunals of the land, (in many cases provided at very great outlay for expert witnesses and legal expenses), were extinguished. It was now necessary to come to the Commission as an applicant without any legal status and bound to accept any amount that may be offered.'[147] The question of the Commission and its procedure had thus become one of extreme urgency and importance.

With reference to the post-Truce cases, part two of the Damage to Property Compensation Act 1923 proceeded to curtail the existing rights of the person whose property had been injured in the post-Truce period in a manner which must have been repugnant to all persons who were themselves subject to the rule of law and justice.[148] It provided that all decrees, even where fully defended by the County Councils in open court, were to be re-opened and re-heard on the application of the Irish Minister of Finance. [149] Lipsett considered the possible outcome:

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[146] UKPA, Bonar Law Papers, 114/1/47, Lipsett was addressing a meeting of members of both Houses of the British Parliament, which was presided over by Sir John Butcher, MP, in Committee Room No. 9 on 19 Apr. 1923.
[147] Ibid
[148] Ibid.
[149] Ibid.

> The effect may well be that to get £1,000.00 compensation, a Loyalist may well have to submit to a re-building condition which would involve the outlay of several thousand pounds at present day building prices and this notwithstanding, he may anticipate the burning out a second time of his new premises as soon as they are re-erected.[150]

Senator Linehan had suffered just such a fate; upon acquiring a second premises he had to suffer the outrage of having his second property destroyed. During the Report stage of the Seanad debate he questioned the policy:

> Where a full reinstatement condition is attached to a decree under this section, and such condition requires the erection of a new building, and the site of the injured building is not situated in a city, town or urban district, then and in any such case the condition may provide for the erection of the new building near to, instead of on, the site of the injured building.[151]

Since Linehan had re-located at a distance from his original residence, it would appear that he was anxious to establish his new home far from the site of previous destruction.

Like members of the Senate Lipsett was outraged at what he termed the 'grotesque' method of payment:

> There is nothing whatever in preventing the Minister of Finance making the rate of interest merely nominal and giving a Free State Bond, payable at a future date so far ahead, as practically to confiscate the award.[152]

Citing some extreme examples to prove his point, Lipsett presented a pessimistic preview of the expenses of the Dublin Parliament, with estimates, expenditures and deficits to date. With a degree of bitterness and not a little paranoia he stated:

> No one who knows Ireland will anticipate that services such as the Army, Civic Guard, Ministries and Departments will be either cut down or left unpaid to leave funds to pay Loyalist sufferers.....the Criminal Injuries Acts of 1919 and 1920 passed specifically to compensate persons injured by unlawful associations and seditious assemblies, are repealed. The result of this legislation is that Loyalist of Southern Ireland may be murdered, maimed or ill-treated in any way that the animus of the armed bands may devise.[153]

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[150] UKPA, Bonar Law Papers, 114/1/47, 19 Apr. 1923.
[151] *Seanad Debates*. Vol. 1, Col. 917, 18 Apr. 1923.
[152] UKPA, Bonar Law Papers, 114/1/47, 19 Apr. 1923.
[153] Ibid.

For Lipsett, the Damage to Property Compensation Act 1923 was repugnant to all persons subject to the rule of law and justice and he was prepared to use any available opportunity to gain leverage for his clients, members of the Southern Loyalists Claims Association. He appealed to the assembled members of the British Parliament as he presented a step-by-step strategy.[154] It was clear from the Irish Budget that the Government couldn't meet its obligations without a loan, and they could not raise a loan without a guarantee from the British Government:

> The British will therefore be in a strong position, not only to demand that the monies be used to repay Irish loyalists, but as a consequence they would not have to call on British taxpayers.[155]

Putting the case for the loyalists he asked that no financial assistance for the Irish Government should be contemplated until it had first provided full compensation for Irish loyalists, 'for losses caused them by their allegiance to, and their friendship for the King and Constitution.'[156] Compensation for Damages to property was to remain a highly contentious issue in the early years of the nascent state requiring further legislation in 1923 and 1924.

Amendments

The Seanad tabled sixteen amendments to the Damage to Property Compensation Bill; twelve were agreed by the Dáil and the remaining four were agreed, as amended by the Dáil, which went into Committee on the amendments on 25 April. While a considerable number of amendments were usually a matter of a change of word, phraseology, a printer's error or the difference between 'partial' and 'total' reinstatement, others were more complex. Cosgrave introduced the Seanad's Amendment No. 4 by saying:

> Personally, I would like, if we could accept all the amendments the Seanad put up but it is not possible...It is not necessary to say that the Seanad represents an order which has suffered very considerably within the last twelve or eighteen months, and as such their attitude reflects more clearly the mind of the persons affected. [157]

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[154] UKPA, Bonar Law Papers, 114/1/47, 19 Apr. 1923.
[155] Ibid.
[156] Ibid.
[157] *Dáil Debates,* Vol. 3, Cols. 392- 407, 25 Apr. 1923; see also Niamh Mary Brennan Ph.D. thesis (UCD, 1994), 'Compensating Southern Irish Loyalists after the Anglo-Irish Treaty, 1922-32'.

So saying, Cosgrave acknowledged the ongoing trauma experienced by senators and the fact that compensation for damage to property was a very personal issue for many members of the House. All amendments up to No.12 which dealt with Keane's contentious issue of payment of death duties by securities were accepted. No.13 in relation to the same issue of payment was modified. Cosgrave pointed to the difficulty:

> Any person could discharge all duties to the state under what is called Death Duties by means of these securities. It might mean that within the next twelve months we would get back all these securities.[158]

He was advised by responsible officers that they could not stand over the amendment as it came from the Seanad; the financial implications were too great to be considered. Amendments No. 14, 15, 16, of less import, were modified to the satisfaction of all and the Damage to Property Compensation Act was finally passed into law on 12 May 1923.

Some amendments were little more than a preference of one word for another, or the inclusion of a more appropriate term to provide greater clarity. Other amendments were of considerable impact and lasting effect. The Bill to establish the new police force which was introduced in the Dáil early in 1923, was of particular note. The Senate proposed an amendment that the force's name be changed to the Irish translation, Gárda Síochana; the amendment was passed and the title has remained to the present day. The Irish language was again the subject of a Senate amendment in 1924, with the Bill to amalgamate the railways into the reconstituted Great Southern Railways Company. In the first amendment, Irish was to be obligatory in the examinations of all railway clerks and in the second, it was mandatory for the company to replace all public notices, signs, travel tickets and station names, formerly in English with both languages, Irish and English.

Defence Forces Temporary Provisions Act (Public Safety Act) No. 1 and 2

Article 46 of the Constitution provides 'that the Oireachtas has the exclusive right to regulate the raising and maintaining of such armed forces as are therein referred to, and that every such armed force shall be subject to the control of the Oireachtas.'[159] In 1922-23 law, order and internal security was the Defence Forces' priority. Emergency legislation was essential to protect the state from armed aggression. In its substantive provisions it granted special powers of arrest, detention, and internment without trial, and

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[158] Ibid.
[159] *The Constitution* 1922, Art. 46.

permitted the venue of jury trials to be changed.[160] The ending of martial law meant that not only the powers which had been resorted to were open to legal challenge; it also meant that the institutions which had been entrusted with the execution of these powers were now subjected to legal scrutiny.[161] The result was a rash of legislation designed to regularise the bodies which had been created ad hoc during the fighting.[162]

'In the sphere of public order and administration, temporary Acts were passed establishing an army, a police force, and a paid magistracy called District Justices, and regulating the Civil Service.'[163] The National army was legislated for with the Defence Forces (Temporary Provisions) Act of 1923 and the Garda Síochána [Civic Guard] Temporary Provisions Act No. 37, 8 August in the same year. During the Report stage of the Bill Kevin O'Higgins speaking in the Seanad emphasised the importance of the legislation:

> This is a Bill of some administrative urgency. The total establishment of the Gárda Síochána provides for 837 stations, and the business of placing them through the country has been of necessity slow. There are about 70 stations still to be established, and from the point of view of administration and of facilitating negotiation with owners of houses, it is rather important that the Board of Works should be armed with the powers given in the Bill.[164]

The Garda Síochána Act of 1924 established the unarmed civic guard or police force, to serve the needs of the whole country, replacing the temporary Act of 1923. Ninety-seven per cent of the new police force were old IRA men carefully screened for their pro-treaty sympathies and by the end of 1922, 2,000 guards occupied 190 stations throughout the country.[165] O'Higgins plan, to see all 837 stations manned, was intended to facilitate the rapid restoration of law and order.

All temporary Acts, with the exception of one, were replaced the following year. The Defence Forces (Temporary Provision) Act No. 30 of 1923, which contained 246 sections and eight Schedules, was the basis in law of the army and was passed into law on 3 August. As with so much of the early legislation there was an immediate necessity in passing this Bill into law. That being the case very few amendments were offered in the

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[160] Campbell, *Emergency Law in Ireland*, p. 172.
[161] Ibid., p. 172.
[162] Ibid., p. 172.
[163] O'Sullivan, *The Irish Free State and its Senate*, p. 123.
[164] *Seanad Debates*, Vol. 3, Cols. 259-60, 19 June 1924.
[165] Fanning, *Independent Ireland*, p. 66; see Gregory Allen, *The Garda Síochána: Policing Independent Ireland* 1922-82 (Dublin, 1999); also Conor Brady, *Guardians of the Peace* (Dublin, 1974).

Dáil and when the Bill came before the Senate, the Minister of Defence [in good faith], assured the House that it was intended to bring in a permanent measure in the course of six months or so.[166] On 2 August, following discussions with the Minister of Defence Mulcahy, Senator Jameson put a resolution to the House; 'that this Bill come into effect immediately'. A confluence of circumstances necessitated urgent legislative action. All prisoners held by the military for military offences, were held because the country was in a state of war.[167]

As previously discussed, the granting of an application for a writ of habeas corpus by the Court of Appeal on 31 July 1923 on the grounds that a state of war had ceased to exist, presented difficulties for the government. It was now necessary that legislation keep pace with judicial ruling. On 2 August Jameson explained the consequent difficulty and necessity for his proposed resolution regarding the Defence Forces Bill:

> The Minister for Defence informs me that under Article 47 of the Constitution, this Bill does not become law for a week. Article 47 says "not later than seven days from the date on which Bills have been passed or deemed to have been so passed," and they interpret that clause to mean that the Bill does not become law for seven days after it is passed. The result would be, if that is so, and I am told that is the decision of the Courts, that all military prisoners would have to be let out practically tomorrow morning.[168]

Article 47 anticipated such a difficulty; "These provisions shall not apply to Money Bills or other such Bills as shall be declared by both Houses to be necessary for the immediate preservation of the public peace, health or safety."[169] Jameson appealed to the House for support for his resolution:

> Now I am informed by the Minister for Defence that the letting out of these military prisoners would be most dangerous to the peace of the realm. I think with that information before us, that the Seanad would pass a resolution necessary to make this Act effective at once. The resolution that I have to bring before the Seanad is "That it is hereby declared that the Bill entitled the Defence Forces (Temporary Provisions) Bill, 1923, which has this day been passed by this House is necessary for the immediate preservation of the public peace and safety and accordingly that the provisions of Article 47 of the Constitution of Saorstát Éireann shall not apply to that Bill."[170]

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[166] O'Sullivan, *The Irish Free State and its Senate*, p. 124.
[167] *Seanad Debates*, Vol. 1, Col. 2044, 2 Aug. 1923.
[168] *Seanad Debates*, Vol. 1, Col. 2044, 2 Aug. 1923.
[169] Ibid., Vol. 1, Col. 2045, 2 Aug. 1923.
[170] Ibid.

Jameson asked the Seanad to endorse the statement of the Minister for Defence to enable him to take care of the peace of the realm. Proposed by Jameson and seconded by Thomas Gratten Esmonde, the motion was declared carried.[171] The Irish Armed Forces were finally set on an official footing on 1 October 1924 under The Defence Forces (Temporary Provisions) Act and this continued to be the law governing the army, being renewed annually until the establishing of the Defence Forces Act, No. 18 of 1954.[172]

The confluence of events over the period of five days from 31 July to 4 August 1923 proved a testing point for the Oireachtas. *The Irish Times* claimed that it was difficult to keep pace with the bewildering sequence of events.[173] The Court's declaration on 31 July that a state of war no longer existed and its dramatic intervention on behalf of an internee had toppled the Government's plans. It impacted not only the Defence Forces Act but also the Public Safety (Emergency Powers) Act. On 1 August 1923, the Public Safety (Emergency Powers) Act 1923, received the Royal assent, but the ruling by the Court of Appeal held that its mode of enactment was defective.[174] 'When the matter again came before the Court the central issue turned on the mode of enactment of the Public Safety Act with reference to Article 47 of the Constitution.'[175]

> Any Bill passed or deemed to have been passed by both Houses may be suspended for a period of ninety days on the written demand of two-fifths of the members of Dáil Éireann or of a majority of the members of Seanad Éireann presented to the President of the Executive Council not later than seven days from the day on which such a Bill will have been so passed.....These provisions shall not apply to money Bills or to such Bills as shall be declared by both Houses to be necessary for the immediate preservation of the public peace, health of safety.[176]

Counsel for the applicant contended that the Act could only become binding not earlier than seven days after its passage by both Houses, since within that period a written demand for its suspension could have been made.[177] As the Act had not been declared by both Houses to be deemed necessary for the immediate preservation of the peace, article 47 of the Constitution therefore applied in full. 'The significance of the decision lies in its

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[171] Ibid., Vol. 1, Col. 2048, 2 Aug. 1923.
[172] *Irish Statute Book,* http://www.irishstatutebook.ie/sitemap.html.
[173] *The Irish Times*, 3 Aug. 1923.
[174] Campbell, *Emergency Law in Ireland,* p. 171.
[175] Ibid., p. 259.
[176] Art. 47.
[177] Campbell, *Emergency Law in Ireland*, p. 259.

having been the first example of statutory emergency provisions to be rendered inoperative by reference to the new Constitution.'[178]

Consequently the Court ruled that the Defence Forces (Temporary Provisions) Act and the Public Safety (Emergency Powers) Act were rendered inoperative for seven days. The government was then faced with the prospect of having to release prisoners. As a consequence of this a similar Bill, which incorporated the first Act in total was rushed through the legislative process; the Emergency Powers Act, No. 2 of 1923. Cosgrave explained the situation to the Seanad on 3 August:

> We do not consider that we are justified at this moment in bringing forward for the consideration of the Oireachtas, an amnesty for prisoners. ..... We have been forced at very short notice to submit this measure to the Oireachtas. We are advised that it will meet the necessities of the case, and I have only to apologise again for having drawn so much on your patience with regard to the consideration of this measure which the circumstances of the last twenty-four hours have rendered absolutely necessary.[179]

Glenavy, when asked for advice on the situation by Senators Esmonde and Jameson, vacated the chair so as to explain the legal ramifications:

> The only justification for the detention of any citizen without trial is the fact that a state of war is existing in the country. There is an old Latin maxim ...."*Salus reipublicæ suprema lex*" which, shortly translated, means that the public safety is the paramount and the supreme law of the land and all other considerations of law have to give way to it. But as I have said, once the Courts came to the conclusion that a state of war ceased to exist, it thus became inevitable that if the powers of detention were to be preserved even for the shortest period, an Act of the Oireachtas was necessary.[180]

It was evident to all present that public safety was paramount as Cosgrave presented the House with the Public Safety (Emergency Powers) No. 2 Bill, 1923. The Bill, which had been introduced in the Dáil, was passed on the previous evening with a resolution declaring 'it is necessary for the preservation of the public peace and safety that the provisions of Article 47 of the Constitution of Saorstát Eireann shall not apply to the Bill.'[181] Article 47 contained not only the bane but also the antidote.[182]

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[178] Ibid., p. 261.
[179] *Seanad Debates*, Vol. 1, Col. 2069-70, 3 Aug. 1923.
[180] Ibid., Glenavy vacated the chair to explain a legal point.
[181] Ibid.
[182] *The Irish Times*, 3 Aug. 1923.

The resolutions passed by both Houses had lifted the seven-day embargo on the Bills. The abortive Public Safety Act (No.1)[183] was scheduled, in its entirety to Act No. 2. Section (i) of the Bill provided that the schedule had the force of law. Section (ii) specified it was necessary for the immediate preservation of the public peace and safety. All constitutional requirements having been complied with, the Bill, signed by the Governor-General on the same day, became law immediately.[184] *The Irish Times* expressed the opinion that the Free State Government had received a sharp reminder of the fact that 'raw haste is the half-sister to delay.' Analysis of the rapid sequence of events over the four-day period highlighted certain important points; 'one, the traditional independence and impartiality of the Courts of Law, two, the undesirability of hurried lawmaking and three, the sanctity of the Constitution.'[185]

The Ministers and Secretaries Act 1924

Between 1922 and 1924, there was a range of legislation to establish and consolidate the administrative functions of the state. While much legislation was innovative there was also a considerable degree of continuity. It was increasingly obvious that 'the constitutional forms adopted were those of British parliamentary democracy: the government system was based on the Westminster model; the administrative system on the Whitehall model.'[186] Ireland in the United Kingdom had been governed by an unwieldy proliferation of forty-seven departments, offices and boards.[187] The Ministers and Secretaries Act, No. 16 of 1924 was passed into law on 21 April of that year. 'All politico-administrative functions were crystallised in eleven separate Departments of State, with a minister as the responsible head of each; President, Finance, Justice, Local Government and Public Health, Education, Lands and Agriculture, Industry and Commerce, Fisheries, Posts and Telegraph, Defence and External Affairs.'[188] The function and regulation of these departments was established by the Civil Service Regulation Act of 1924, which replaced the temporary act of the previous year.

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[183] Act No. 28 of 1923, 1 Aug. 1923.
[184] Act No. 29 of 1923, 3 Aug. 1923.
[185] *The Irish Times*, 3 Aug. 1923.
[186] Chubb, *The Government and Politics of Ireland*, p. 9.
[187] Fanning, *Independent Ireland,* p. 62.
[188] O'Sullivan, *The Irish Free State and its Senate*, p. 135.

There was a considerable degree of concern and discussion in the Senate about the proposed restructuring of Departments. Senator O'Farrell suggested a separate department for Transport and Communications:

> The present Ministry of Industry and Commerce is a combination of the old Board of Trade, and the old Ministry of Labour, and its duties are very wide and exceedingly comprehensive. The Ministry is, I believe, overworked and over-burdened at present, and it is unable to give to the very vital questions of transport and the various problems that arise out of it, that expert attention and consideration that these questions deserve. [189]

O'Farrell, with an eye to the future, recommended the total modernization and co-ordination of all transport systems to facilitate more effective, efficient agriculture, industry and commerce:

> The problem merits consideration of a specialised nature. I think everybody will agree that there requires to be a co-ordination of the various transport services, such as road, motor, canal, rail, and the various other methods of transport that may be developed in the future. It is obvious that the means of transport that are available are running in direct competition with each other, and the result will probably be failure, and if you get a cheap service it will be inefficient. One or other of them must go to the wall.[190]

O'Farrell's vision was not to materialize in 1924 as transport, including railways, shipping and civil aviation were to remain the responsibility of the Department of Industry and Commerce.

Like his labour colleagues MacPartlin, Foran, Duffy and Cummins, O'Farrell had, since the Labour Party's formation in 1912, championed the cause of workers. They maintained an international perspective while consistently warning against 'competitive commerce' which threatened 'to destroy Irish productive enterprises.' Now as legislatures they were obligated to legislate in accordance with the dictates of the Democratic Programme of first Dáil Eireann:

> It shall also devolve upon the National Government to seek the co-operation of the governments of other nations in determining a standard of social and industrial legislation with a view to general improvement in the conditions under which the working classes live and labour.[191]

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[189] *Seand Debates*, Vol. 2, Col. 1081, 19 Mar. 1924.
[190] Ibid.
[191] Tom Johnson's Draft of *The Democratic Programme,* cited in Farrell, *The Founding of Dáil Eireann*, p. 89.

O'Farrell's concern was not solely for a co-ordinated system, but the manner in which it restricted the development of a broad range of agriculture, industry and trade. Obstacles to industrial development in the Free State were legion: the home market, even for commonplace goods, was too small to enable home producers to compete with imported goods – for luxury goods the home market was still smaller; large factories could not succeed without an export trade which would need special training or practical monopoly of some raw material or other commodity neither of which was available. Factors necessary to attract foreign enterprise or capital (such as convenience of location, supplies of raw materials, low labour and transport costs), were equally lacking.[192]

Senator's approach to various issues revealed their particular personal interests and perspectives. O'Farrell saw a transformed transport system as interdependent and essential to overall industrial development. When the 'Ministers' Bill came before the Senate for its fifth and final reading on 3 April, W. B. Yeats expressed satisfaction that the Museum, the National Gallery and the School of Art were now under the Ministry of Education. He had grave reservations however, that any change would be detrimental to the arts should the government at any time in the future detach these institutions from the Ministry of Education. He requested that a separate Ministry of the Arts be established instead, as 'the Arts in Ireland had suffered for several generations from having been under the Department of Agriculture.'[193] The Senate made ten amendments to the Bill, all of which were agreed to by the Dáil in Committee on 9 April.[194]

Amendments Specific and General

Choice of appropriate wording was the suggested change in most amendments. However, the recommendations in No. 2 amendment that 'officers in a particular department be transferred after a period of three years,' generated a considerable degree of discussion if not controversy. General Mulcahy, viewing the recommendation from the perspective of his own department considered it a limitation:

[192] Fanning, *Independent Ireland*, p. 76.
[193] *Seanad Debates*, Vol. 2, Col. 1319, 3 Apr. 1924.
[194] *Dáil Debates*, Vol. 6, Cols. 2992-3001, 9 Apr. 1924.

> A regular military machine should be worked in accordance with the ideas of the Chief of Staff in war time, and it would be most advisable that you would not prevent yourself, by legislation, from passing a Chief of Staff to the position of Adjutant-General or of Quartermaster-General.[195]

While Mulcahy saw a threat to the autonomy and advancement in his department, Thomas Johnson saw the advantage in limiting the term of office; 'unless some limitation of this kind is inserted there might be a continual rotation of personnel and there might be a permanent holding of these offices.' Cosgrave reaffirmed the advantages and the inevitably of transfers:

> However competent, capable or experienced, they would not become what we call indispensible institutions, and while there are enormous advantages to be gained through a good deal of experience and a great administrative ability sooner or later ....they will leave their positions.[196]

The majority present perceived the advantages and amendment No. 2 with all other nine proposed by the Seanad were accepted. The Ministries and Secretaries Act 1924, was the statute that laid the foundation for the central administration of the State for decades to come.

Divorce Legislation

It was the duty of the Leas Cathaoirleach of the senate to take charge of private bills. As no one had previous experience in the legislative process, Michael Hayes suggested that James Douglas go to London to consult with clerks of the House of Lords and the House of Commons on the working of British standing orders. In an effort to reduce the expense of the procedure governing the passage of such bills, British officials recommended a number of simplifications, which were eventually embodied in the private business standing orders adopted by the Irish Senate in November 1923. Clearly prescribed conditions stipulated, that any person or group of persons wishing to propose such a bill had to lodge an application in the Private Bill Office. The most important arrangement for private bills was that 'after they had been passed by the examiner, they would be taken first in the senate and after second reading, be sent to a joint committee appointed by both Dáil and senate.'[197]

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[195] Ibid.
[196] Ibid.
[197] Gaughan, *Senator James G. Douglas*, p.110.

In February 1924, three Private Bills for divorce were lodged with the Examiner. He duly informed the Joint Committee on Standing Orders that the orders having been complied with, the three bills were deemed to have had their first reading. The Joint Committee, comprised of senators Douglas (chairman), Barrington, Brown and Farren, and Deputies Cooper, Magennis and O'Maille presented a Report to both Houses in which they set out the situation and particular difficulties of the case:

> While the Committee do not wish to prejudge the decision to be reached by the Oireachtas, they consider it proper to point out that the present position is unsatisfactory from every point of view, as under Standing Order No.1, unrestricted power is given to introduce Divorce Bills into the Oireachtas, even in cases where a judgement of a court of law has not been previously attained.[198]

It was 11 February 1925 before the Dáil passed their Resolution and returned a message to the Senate putting the responsibility back upon the Committee:

> The Joint Committee on Standing Orders relative to Private Business (is) requested to submit additional Standing Orders regulating the procedure to be adopted in connection with Private Bills relating to Matrimonial matters other than Bills of Divorce *a vinculo matrimonii,* and to propose such alterations in the Standing Orders as will prevent the introduction of Bills of Divorce a *vinculo matrimonii.*[199]

When the message came before the Senate on 5 March, Glenavy ruled that the motion was out of order:

> My clear and distinct view is that any such course requires legislation. Under the Constitution it is absolutely plain and clear that any such course as that proposed by the Resolution cannot be legally effected ...., but requires the authority of legislation ... President Cosgrave, when introducing it into the Dáil distinctly stated that under the existing Private Bill Standing Orders, and under the Constitution, as it exists up to date, these Private Bills dealing with divorce could be legitimately and lawfully introduced; and what the Government sought by this Resolution was a declaration that for the future the introduction of such Bills would not be permitted.[200]

Glenavy explained that the right of a citizen to petition Parliament by way of a Private Bill was an existing legal right at Common Law. As such, it was within the ambit of Article 73 of the Constitution, which provided that the laws in force at the date on which the Constitution came into operation should continue to be of full force and effect until repealed or amended by enactment of the Oireachtas. Article 65, enabled the High Court

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[198] *Reports of Committees*, Vol. 1, p. 637.
[199] *Dáil Debates*, Vol. 10, Col. 82, 11 Feb. 1925.
[200] *Seanad Debates*, Vol. 4, Col. 931, Mar. 1925.

to decide the validity of any Law with regard to provisions of the Constitution, but this power did not extend to the constitutionality or otherwise of a Resolution. The issue of divorce had been considered previously. As early as 1922, some solicitors had already approached Hugh Kennedy, the provisional government's law officer, to establish what facilities for divorce would be open to the residents of independent Ireland.[201] Kennedy raised the matter with Cosgrave, who suggested the matter be brought to Dr. Byrne, Archbishop of Dublin.

Cosgrave's tendency to invoke ecclesiastical authority had been clear even before independence when, in January 1921, he proposed to de Valera that the first Dáil's authority should be complemented by a so-called 'theological senate.' He visualized a second chamber 'responsible for testing the theological orthodoxy of such measures as the Dáil might pass, with a view to increasing Vatican support for its cause.'[202] Byrne recommended that the proposed case be permitted to come before the Senate, which would openly state its position on the issue; 'a shrewd proposal which left all onus for seeking divorce facilities with the proponents of divorce.'[203] The catholic hierarchy was very clear on its resolution passed at the Maynooth assembly of 9 October 1923, signed by Cardinal Logue:

> Hitherto, in obedience to divine law, no divorce with the right to remarry has ever been granted in this country. The bishops of Ireland have to say that it would be altogether unworthy of an Irish legislative body to sanction concession of such divorce, no matter who the petitioners may be.[204]

The Divorce Bill was not passed into law in 1925 but the debate and discussion it generated did produce a remarkable degree of invective from various sections of society. W.B. Yeats expounding the subject in the Senate quoted from an article by Fr. Peter Finlay, a proponent of the Catholic perspective:

> The refusal to legalise divorce is no denial of justice to any section of our people, no infringement of the fullest civil and religious liberty, which our Constitution guarantees to all. ...the prohibition of suttee is a denial of justice to the Hindu widow ....who has a far clearer right to do herself to death on her husband's funeral pyre [her religion imposed it upon her as a duty] than any member of a Christian community can have, to put away his wife and enter into a state of public legalised adultery. England acted justly when she forbade suttee in India. The Irish Free State will act justly

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[201] Fanning, *Independent Ireland*, p. 54.
[202] NAI, DE, 2/396; Fanning, *Independent Ireland*, p. 54.
[203] Ibid., p.55.
[204] Statement on Divorce, issued by the Irish Hierarchy following the bishops meeting at Maynooth, 9 Oct. 1923 cited in Fanning, *Independent Ireland*, pp. 55-6.

> ....in refusing to legalise absolute divorce and re-marriage.... which is akin to polygamy, robbery and murder.[205]

By contrast, Yeats' own view of the subject was delivered with no less vigour and not a little hubris:

> I think it is tragic that within three years of this country gaining its independence, we should be discussing a measure, which a minority of this nation considers to be grossly oppressive. I am proud to consider myself a typical man of that minority. We, against whom you have done this thing, are no petty people. We are one of the great stocks of Europe. We are the people of Burke; we are the people of Grattan; we are the people of Swift, the people of Emmet, the people of Parnell. We have created the most of the modern literature of this country. We have created the best of its political intelligence. [206]

An examination of the Yeats Papers reveals that much thought and consideration had gone in to the preparation of this speech. There are three typed versions A, B and C with hand written corrections. For Yeats this speech was a performance with a purpose. Years earlier he had written:

> A play with a purpose or a moral, is as much a part of social organization as a newspaper or a speech. It likes to see the railway tracks of thought.....It is afraid of the wilderness....it loves rhetoric because rhetoric is impersonal and pre-determined.[207]

Although Yeats espoused his own highly individual esoteric system, The Golden Dawn, in this instance he identified with and spoke on behalf of the Protestant, Anglo-Irish minority, though not at their instigation. His predetermined purpose was to ensure protection from the 'wilderness' of the majority in the grips of a 'clerical bourgeoisie.' Fitzpatrick argued that Yeats was 'the unlikeliest of senators to scheme politics or lobby for interest groups.'[208] For Yeats, this was a solo run, not so much a political crusade as a personal affirmation. He had the limelight; he was centre stage and used his rhetoric to confirm his Anglo-Irish identity and his rights within that privileged minority. In the process he did untold damage to already fragile relations, both religious and political

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[205] *Seanad Debates*, Vol. 5, Cols. 438-39, 11 June 1925.
[206] Ibid., Vol. 5, Col. 443, 11 June 1925.
[207] NLI, W.B. Yeats Papers, MS 30,008-30,011, *The Folly of Argument*, Vol. 2, No, 1, June 1911, pp. 2-8.
[208] David Fitzpatrick, 'Yeats in the Senate,' *Studia Hibernica,* No. 12, 1972, pp. 7-26.

throughout the country. The government was infuriated by his diatribe, 'while Yeats for his part increasingly identified the government with the hated 'clerical bourgeoisie.'[209]

Amicable, working relations that had been painstakingly forged through the earliest years of the first triennial period in the Senate dealt a severe set-back by the divorce controversy of June 1925. Yeats' speech had contained attacks, not only on the Catholic Church in general, but also on the Protestant bishop of Meath who was opposed to divorce.[210] The *Irish Times* evaluation was that 'a poet may sing of broken hearts; but the task of mending the bruised hearts that seek relief from tragic wedlock in the Free State, needs qualities of steadiness and compromise that are found more often in plainer men.'[211] Senator Peter DeLoughry, who had supported his friend and fellow Kilkenny Senator Ellen Desart in the proposed motion for divorce, paid a price for his loyalty. DeLoughry was severely criticised by the local Kilkenny clergy for his stance; as a result of the adverse publicity, he lost his seat in the Senate Election of 17 September 1925.[212] Archbishop Byrne's shrewd proposal 'that the Senate be permitted to initiate the debate,' succeeded as he had calculated, in focusing the full brunt of antipathy on members of the Senate. Yeats' equally calculated invective on the subject added to the collective hostility. Glenavy who had initiated the proceedings in March summarised his dilemma:

> When I first confronted the question in March last, I ransacked the Constitution and the Standing Orders, and came to the conclusion from which I have never wavered and which has never been challenged:.....it was impossible that this matter could be disposed of except in one or other of two ways: either it be left alone, in which case it would have died a natural death long before now, and Divorce Bills *a vinculo* would have disappeared for ever from the Free State; or bring in a short Act of Parliament which has not been done.[213]

There were many who, in retrospect, would have wished as Glenavy suggested 'it be left alone.' James Douglas, who had introduced the Resolution, was subjected to misunderstanding and severe criticism in the press, particularly from the *Catholic Bulletin.* The storm of controversy, which the divorce issue generated, did not easily abate. The three divorce bills were withdrawn by the promoters thereby freeing the government from any obligation of further action. The position remained the same until

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[209] Ibid.
[210] Gaughan, *Senator James Douglas*, p.116.
[211] *The Irish Times,* 12 June 1925.
[212] I am indebted to Declan Dunne, Raheny, Dublin and Patricia DeLoughry, Parliament St. Kilkenny, grandson and granddaughter respectively of Senator DeLoughry for this information.
[213] *Seanad Debates*, Vol. 5, Cols. 933-38, 7 July 1925.

the passing of the 1937 constitution which provided that 'no law shall be enacted providing for a grant of a dissolution of marriage.'[214] Following a referendum on 25 November 1995, Article 41 of the Constitution was removed allowing for a provision which paved the way for the introduction of divorce legislation.

Attendance a Contentious Issue

The introduction of The Oireachtas (Payment of Members) (Amendment) Bill of 1925, almost inevitably brought up a contentious issue which had persisted from the earliest days of the Seanad. The issue of senators' attendance was raised consistently throughout the first triennial period. The debate on the 'Members Payment' Bill provided a perfect opportunity for John T. O'Farrell to broach the subject in the closing days of the chamber's first session. Acknowledging that the majority of the House were exceedingly good in their attendance, he said:

> There is one section of the House, a small section, which hardly ever graces the chamber with their presence. There are at least two or three people who were never here more than two or three times since the Seanad was formed in 1922. [215]

Analyses of Attendance Records leave little doubt as to whom O'Farrell was referring. The Earls of Dunraven, Granard, Kerry and the Marquis of Headford were among the lowest attendees in the Senate. Accepting that allowances were 'a small matter to those people' O'Farrell argued that 'the principle of taking money for service not rendered, was an exceedingly bad one.' If a workman, who was employed, claimed unemployment benefit, he was open to prosecution and liable to sentence of imprisonment for a miserable 15/- per week. For O'Farrell, this was both unjust and inequitable 'while people of birth, position and standing in the country were, for the last two or three years, taking money from a poor country for services they did not render.'[216]

O'Farrell's argument was that the Seanad had been established for the very purpose of giving this important element of the community representation. They were selected because of the fact that they represented important interests. Yet these

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[214] *The Constitution* 1937, Art. 41.
[215] *Seanad Debates*, Vol. 5, Cols. 868-70, 7 July 1925.
[216] Ibid.

were the people who had abrogated their right to representation by failing to turn up. He failed to understand why they continued to hold on to their seats:

> I think in all decency and justice to the electorate, they should resign their seats. We have the first triennial election going on now, and it is nothing short of a public scandal that three or four seats should be disfranchised in this House and not declared vacant for the purposes of election.[217]

He suggested that they should follow the good example set by Sirs Horace Plunkett and Hutcheson Poë and resign.

Maurice Moore agreed that 'continued absence during the whole of two and a half years was serious matter.' Edward MacLysaght pronounced it 'scandalous.' Farren argued that those who did not attend ought to have the decency to resign. Referencing the concept of 'a fair day's work for a fair day's pay,' he said 'judging by the input of some members of the House they were not entitled to anything. The consensus was that protest ought to be made against the continued absence of some members of this House, and since they had failed to attend to their business, measures should be taken to ensure that others were put in their places.

Those who had consistently voiced concerns on the attendance issue, O'Farrell, Farren, Moore, Douglas, MacLysaght and Bennett were among the highest attendees and contributors to debate. The absence issue therefore, highlighted unfavourable comparisons. Examination of the interaction of members in debate through the period, reveal a remarkable degree of ease and integration between members of differing religious and cultural identity; Anglo-Irish Protestants and Catholic nationalists efficiently and effectively integrated and co-operated in their common purpose as legislators. While matters of payment, the continued holding of seats and consequent injustice to the electorate were voiced, the 'absence issue' served to focus a residue of long term, deep seated opposition to and resentment of a privileged class. The absentees who had declined 'to grace the chamber with their presence' were privileged historically as O'Farrell stated, by 'birth, position and standing'; being nominated to the House, they did not have to go before the electorate. Being extensive landowners of the ascendency class, they were privileged economically. To members of a democratic institution striving to establish

[217] Ibid.

itself, this absence presented as arrogance and perceived indifference, a stark reminder of a recent alien cultural dominance.

It was left to Glenavy to assure the chamber that a register would be kept by the Clerk. The 'Payments' Bill was read a Second Time and Standing Orders were suspended to enable the Bill to be put through its remaining stages. The Bill passed through Committee without amendment, was reported, received for final consideration, and passed.[218] On the following day Glenavy presented the chamber with the state of pending legislation and the bills that would stand over during the recess.[219] Having disposed of the business in hand he bid farewell to the Senate, and indicating that continuing unsettled conditions still prevailed, he assured the House that under Standing Orders the Chairman had the power to convene a meeting 'should a position of urgency arise.'

Summary

This chapter has presented the legislative work of the Senate from its inception and throughout the first triennial session. The initial and primary constitutional task of the Seanad, was to establish a set of rules and regulations for practice and procedures which were ultimately formulated within the Seanad's *Report of the Committee on Procedures relative* to *Standing Orders.* A general committee was formed to provide a framework, whereby the purpose, methods of appointments and specific function of diverse committees, might be recommended. Legislation is discussed from a range of perspectives; the immediacy and urgency within the context of the civil war, transfer from the old regime to the new, legislative powers as defined in the Constitution, public and private bills and those specifically initiated in the Seanad. The legislative process in relation to bills is charted, indicating the interaction of members of the Executive and those of the Upper House.

The origins, purpose and functions of the Inter-Parliamentary Union and Senator James Douglas' representation of Ireland in 1923, reveal how such an

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[218] *Seanad Debates*. Vol. 5, Cols. 868-70, 7 July 1925.
[219] Ibid., Vol. 5, Cols. 939-44, 8 July 1925.

association facilitated Irish legislators, providing them with an opportunity to participate in a wider international political arena. Douglas' proposal of the League of Nation's Bill would eventually present even more favourable circumstances where the new emerging nation might receive recognition and advancement. The most immediate and beneficial effect to Ireland in 1923 was that being a member of the Union was not only an affirmation and confirmation of the independent character of the Irish parliament, but that the Irish legislature was now fully recognized by the nations of the world.

A broad spectrum of the legislation necessary to establish and consolidate the foundations of the state is discussed. Financial legislation, the Senate's limited influence with 'money bills', the issue of expenses and remuneration of the Seanad staff were all considered on an ongoing basis throughout the period. Establishing and protecting the state's principal industries, necessitated legislation covering agricultural exports, markets and above all regulations to ensure highest quality produce, so as to create and maintain an internationally recognized National Brand. Constitutional forms, the politico-administrative functions of the state, were crystallised in eleven separate departments of state as specified by the Ministers and Secretaries Act 1924. The Civil Service Act of the same year confirmed and defined the function and regulation of those departments.

Unresolved issues from the old regime were dealt with in the Indemnity Acts and Damage to Property (Compensation) legislation. Conditions prevailing during the civil war and subsequent post revolutionary period, demanded persistent, repeated temporary emergency legislation to protect the state from internal aggression. Special provisions granted powers of arrest, detention, and internment. Temporary provisions were necessary for immediate regulation of the National Army and the Gárda Síochána; all temporary acts, with the exception of the Defence Forces Act were replaced by 1925. The consistently contentious issue of attendance is debated. Proposed divorce legislation in 1924, apart from instigating a storm of controversy in the following year, highlighted unresolved constitutional issues and the availability or otherwise, of legal facilities for residents, posing consequent future legislative challenges for legislators in the newly independent Saorstát Eireann.

CHAPTER FOUR

Consolidation and Nation Building

We don't pretend to be one voice, we are one people with many voices, and there are many who have different views.[1]

> *There is no greater tyranny than the tyranny of absolute democracy, and the only protection against that is the independence of the judges.*[2]

The aim of this chapter, structured in three sections, is to examine the progress of consolidation and nation building throughout the Seanad's first triennial period. Senators were a diverse group of citizens whose sphere of influence extended far beyond their legislative operations. They were consistently involved on many levels lending support, encouragement and prestige to public events essential to state building, while also acting as a critical voice regarding apparent state excesses.

Section one charts the progress of the new system of judiciary and legal administration and Cathaoirleach Glenavy's central role in its formulation and passage into law in The Courts of Justice Act of 1924. Reconstruction and the restoration of law and order in the aftermath of revolution and civil war was a slow process. Evidence suggests there remained pockets of organized, covert resistance. Conditions prevailing are examined in the context of the Army Mutiny of March 1924. Analysis of the government's resolution of the potential conflict situation indicates a more realistic and conciliatory approach to the issue. Senators debating the Ministers and Secretaries Bill challenge the appropriateness of military titles and positions in relation to civilian power. Resolution of the crisis indicates a realignment of the army's position; a crucial step was taken in the consolidation of democracy as henceforth the military was subject to civilian control.

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[1] Máire Comerford, journalist and Republican activist, interviewed by Kenneth Griffith, n. d., *Curious Journey*, Directed by Gareth Wynn Jones, Executive Director Aled Vaughan, Photography by Gareth Owen and Mike Reynolds (1973).

[2] Senator Samuel Brown, *Seanad Debates*, Vol. 2, Col. 419, 16 Jan. 1924.

Section two examines the Seanad's contribution to society in the context of language, culture and identity. As conditions gradually returned to normal, a primary aim in the process of nation building was the favourable projection of attributes of the new state and of national identity. Senators introduced, supported and contributed to Aonach Tailteann, an exposé of Gaelic culture and identity. The Aonach was planned and executed by the government, not only to raise the morale of the nation, but to indicate national expansion and industrial power. Analysis of the event reveals that it was a bold statement of de-Anglicization, calculated to appeal to national and international audiences alike. Examination of the historical context presents not alone senators' political and cultural endeavours in previous decades, but also the origin and evolution of the many components, racial, religious, political and cultural that contribute to the highly complex concept that is 'national identity.'

Section three investigates consolidation and state building in the context of national and international relations. Senator Douglas, Ireland's representative at the Inter-parliamentary Union in 1923, introduced the League of Nations Bill in March of the same year. Participation in the League of Nations, the Inter-parliamentary Union and the British Commonwealth enhanced government status at home and abroad. Analysis reveals the political interdependence so essential to economic survival and success. The high percentage of senators with business, industrial and agricultural interests, promoted legislative measures for regulation and protection of industrial and agricultural initiatives.

Senators' attitudes, opinions and response to the Boundary issue are discussed in the context of its legislative resolution. Examination of both national and provincial newspapers over the three year period, confirms that this one issue consistently reported, evaluated and analysed, remained a contentious part of the national political narrative.

Consolidation

'It is generally agreed 'that the civil war strengthened the impulse towards democracy in Irish life.'[3] By 1925 signs of consolidation and stability were beginning to manifest themselves. 'The record of the new state, the establishment of the structures of a viable democracy and their endurance in a time of political instability compounded by economic crisis, appears to many commentators to be a remarkable feat.'[4] But equally there remained a residue of resistance and opposition to the new regime. The *Irish Independent* as late as 8 January 1925 recounted a troubling event which took place at the Dublin District Court following the arrest of two men in Drumcondra, Noel Moore and Michael Kavanagh of Ballybough Road. [5] Moore, who was found to be in possession of a revolver said 'I might as well tell the truth. We were arranging to rescue a prisoner, Michael MacNamara from Mountjoy Prison.' A subsequent search of Kavanagh's house revealed a notebook with a note and sketches, purporting to be a plan of Mountjoy. The note was signed O.C., 4th Battalion suggesting there was still a considerable degree of covert, organized resistance in existence. [6] Revolution and civil war may have ceased to directly affect society, but an aftermath of resentment, anger and possibly revenge would remain a troubling undercurrent for years to come.

Regan claims what was most remarkable was 'the speed with which a relatively stable society, complete with the structures of a democratic political system was achieved after a decade of revolution and civil war.'[7] Yet evaluation of conditions in the post war years by contemporaries presents a more stark and realistic picture of progress. Ernest Blyth, in an RTE interview decades later, spoke of difficulties and disillusionment:

> So many things were believed about what an Irish Government could do. Most of us thought that prosperity would arise instantly if we got rid of British rule and of course the

[3] Kissane, *The Politics of the Irish civil war*, p. 203.
[4] Regan, *The Irish Counter-Revolution*, p. 376.
[5] *Irish Independent*, 8 Jan. 1925.
[6] Ibid.
[7] Regan, *The Irish Counter-Revolution*, p. 371.

harsh realities began to dawn on people during that period.[8]

Survival, the restoration of law and order and a total commitment to the principal task of nation building was the primary urge following the violent conflict of 1922-23. There is evidence of collaboration between government and the national press to keep the public informed and up to date on the legislature's progress; an effective means of counteracting political instability. What the *Irish Independent* described as a 'Zest for Lawmaking' was presented as an 'information' series of articles by C. Lehane, B.L., explaining the voluminous, even bewildering output of legislation. The legislative measures of the session would be examined under four main heads, Finance, Administration, Economics and Social Betterment.[9] Press reports of Dáil and Seanad Debates were part of this educative process. Step by step, the public were informed of the process and objectives of establishing the structures of democracy's legislative and administrative systems.

Fashioned in Freedom by the Oireachtas

Glenavy was involved with the process of formation and initiation of the Free State's judiciary and legal code of practice as early as July 1922. He proved to be a highly effective, decisive and sometimes divisive Chairman of the first Senate. He represented both change and continuity, his career within Irish political and judicial systems spanned four of the most formative decades of Irish history. Paradoxically he epitomised tradition, transition and transformation. As head of the Irish judiciary from 1918 to 1921, his experience of revolution brought him to the realization of inevitable change. From Attorney General, Lord Chief Justice and Lord Chancellor in the *ancient regime,* to leader of the Upper House of the Free State legislature, he oversaw the legislative process which brought closure to the Dáil Courts of the revolutionary period, preparing the way for the new judiciary as laid out within the legislative proposals of the Courts of Justice Bill. But his prominent role as Chairman of the Senate tended to eclipse the contribution his experience and expertise brought to the

[8] Ernest Blyth, RTE interview, n. d. in *The Seven Ages,* produced and directed by Séan O'Mordha for RTE (2000), in association with BBC Northern Ireland.

[9] *Irish Independent*, 9 Jan. 1925; see O'Halpin, Eunan, *Partnership programme managers in the Reynolds/Spring Coalition, 1993-1994:an assessment*. DCU Business School Research Paper Series.(Paper No. 6). Dublin City University Business School, Ireland (1996), p. 9.

Judiciary Committee which established the legal code of practice for the new order in the Free State.

On 22 July 1922 the Provisional Government issued a directive to the Minister of Home Affairs and the Law Officer 'to prepare a code for courts in Ireland.'[10] By September the Judiciary Committee, which included Glenavy, was assembled to deliberate on the proposed legal system for the new state; Glenavy was selected to chair the committee.[11] Considering that the country was in a state of civil war, as Kotsonouris argues 'it must have come as something of a shock that the person chosen to be chairman of the committee, whose members were to "consider and report" on an Irish judicial blueprint, was none other than Lord Glenavy.'[12] However, what is not generally known was that during the British repressive campaign of the 1920s, Glenavy had exercised a moderating influence and that this was resented in Castle circles. So deep was the cleavage in the long run that Glenavy openly declared from the Bench that he had ceased to take responsibility for administrative action; and with rumours of impending retirement it became an open secret that certain influences were being used to 'shelve' him.[13]

As an old opponent said of him 'Glenavy was at heart a Radical all his life. I prophesied that he would kick over the traces years before he did so'.[14] Obviously the Provisional Government were eminently capable of putting aside Glenavy's former unacceptable connections in the interest of availing of the necessary expertise. Other members of the Judiciary Committee were Hugh Kennedy, the then Law Officer, Secretary of the Committee Michael Smithwick, two lawyers, two barristers, and representing commercial interests, the president of the Chamber of Commerce. No one suggested that there might be a voice for social reform, but neither was there, as might have been in later years, a mandatory clerical presence.[15]

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[10] NA, DT, G. 1. 2, Minutes of Provisional Government, 10 July 1922.
[11] NA, DT, G. 1. 3, Minutes of Provisional Government, 12 Sept. 1922.
[12] Mary Kotsonouris, *Retreat from Revolution: The Dáil Courts*, 1920-24, p. 109.
[13] *Irish Independent*, 23 Mar. 1931.
[14] *Irish Independent*, 4 Mar. 1926.
[15] Ibid.

A difficult transition was being effected in perilous times. Michael Hayes, Cheann Comharile of the fourth Dáil and a principal in that transformative process wrote, 'no group of Irishmen had ever before undertaken so difficult a task as to assume from the British, even in twenty-six counties of Ireland, the power which the British had heretofore enjoyed. The treaty settled merely principles and an immense number of details had to be seen to.'[16] Primary among those details was a proposed new judicial system for the state; Cosgrave wrote to the Judicial Committee on 29 January 1923:

> There is nothing more prized among our newly won liberties than the liberty to constitute a system of judiciary and an administration of law and justice according to the dictates of our own needs and after a pattern of our own designing. This liberty is established in the constitution drawn up and passed by the elected representatives of the people.[17]

A preliminary conference of the committee was held at government buildings on 2 February, an outline of its recommendations was approved on 23 April; the final report was submitted to Cosgrove on 17 May 1923.

When the Bill was presented in the Seanad on 16 January 1924, Senator Esmonde invited Glenavy to vacate the chair, so as to give the House the benefit of his expertise as Chairman of the Judicial Committee. Glenavy, in an effort to highlight the importance of the independence of the judiciary, quoted from a lecture delivered by ex-President Woodrow Wilson, emphasising the independence of the Supreme Court of the United States:

> Parliament and Congress of the United States cannot by legislation go one inch outside the Constitution, the judges have an equal power and footing with the Government itself, and he proceeded to state that the permanent guarantee and the basis of all personal freedom and of liberty in the United States is to be found in the courage and the conscience of the Courts and their perfect freedom from all Government control.[18]

Glenavy's emphasis and advocacy for the independence of the judiciary was echoed in the Seanad by Samuel Brown who advised the House to carefully consider all the implications of the Bill before it came to Committee:

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[16] Michael Hayes, 'Dáil Eireann and the Irish Civil War,' *Studies: An Irish Quarterly Review*, Vol. 58, No. 299, Spring, 1969, p. 11.
[17] UCDA Kennedy Papers, P4/1090, 29 Jan. 1923.
[18] *Seanad Debates*, Vol. 2, Col. 411, 16 Jan. 1924.

> The question of the independence of the judges is a most important question for this country. There is no greater tyranny than the tyranny of absolute democracy, and the only protection against that is the independence of the judges.[19]

The House debated and deliberated as national press reports kept the public informed of the legislature's progress in establishing the proposed judicial code.

Glenavy, who claimed to be 'father to the bill' led unfailing opposition to any intervention by the Executive in the regulation of judges. Government's objection to proposed amendments led to what Esmonde called a constitutional crisis.[20] They challenged the right of Seanad Eireann to pass an amendment that justices were to be paid from the central fund and not by a vote on the estimates – the same amendment that had failed in the Dáil. The argument was that the Governor General had made the appropriate order, which was a financial measure, in September 1923; it had been duly passed in the Dáil and could not be overturned in the Seanad. A special committee composed of Glenavy, Douglas, Brown and O'Farrell met over a period of two weeks to consider 'the most important question to come before the Seanad in reference to its powers.'[21] While the Seanad failed to overturn the initial order, the committee's report vindicated the Houses' right to pass the amendment. Following the prolonged debate of the subject, forty two amendments were accepted including Glenavy's recommendation in relation to judge's salaries. The bill was passed into law on 12 April 1924.

The public had watched with interest as the legislature struggled in establishing this crucial institution of state. An insightful critique appeared in the *Sunday Times* four days later. Cosgrave had thought in September that he was going to put the Bill through the Dáil in three days and through the Seanad in less. However both Houses of the Oireachtas were aware that there was 'nothing more prized among their newly won liberties' than the liberty to establish a judiciary system and an administration of law and justice as befitted their 'own needs and after a pattern of our own designing.' The subsequent publishing of the Oireachtas debates on the issue, according to the *Sunday Times,* was of benefit to the general public; 'the delay had effected this gain,

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[19] Ibid.,Vol. 2, Col. 419, 16 Jan. 1924.
[20] *Seanad Debates,* Vol. 2, Col. 924, 6 Mar. 1924.
[21] Ibid., Vol. 2, Col. 1136, 20 Mar. 1924.

that public interest in the principles and problems it raised had now been aroused. The process of conflict and delay therefore proved to be a process of national education and that was a great gain.'[22]

Voice of the 'Gael in the Courts of Law'

The first pledge by a judge on Irish soil to serve the law of the people, and not the sovereign's was made in a formal ceremony at Dublin Castle on 10 June 1924.[23] For the *Irish Times* there was 'the inevitable comparisons' with times past:

> A procession of judges in crimson and ermine, with full bottomed wigs, was a spectacle which always attracted a considerable gathering in the Central Hall of the Four Courts. There will be a procession of judges at Dublin Castle this morning to make the prescribed declaration before the Chief Justice, but no wig or gown will be worn.[24]

On the following day during the course of the 'elaborate and impressive' ceremony the Chief Justice, Hugh Kennedy, speaking first in Irish and then in English, was obviously deeply moved by the historic precedent:

> This is surely a precious moment-the moment when the silence of the Gael in the courts of law is broken, and that within what was once the Pale-the moment when, after a week of centuries, Irish courts, fashioned in freedom by an Oireachtas again assembled are thrown open to administer justice according to laws made in Ireland by free Irish citizens for the wellbeing of our dearly-beloved land and its people.[25]

By contrast the *Freeman's Journal* focused its ire on the *ancient regime;* this may have been a new day for free Irish citizens but the deeds of the past were not easily forgotten:

> No department of the old order in Ireland was more poisoned in its effects upon Irish social life than the department of justice. In every conflict where the civic rights of the common people conflicted with the interests of the dominant class, the scales were heavily weighed against the people.[26]

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[22] *Sunday Times*, 20 Jan. 1924.
[23] Kotsonouris, *Retreat from Revolution*, p. 128.
[24] *The Irish Times*, 11 June 1924.
[25] Ibid., 12 June 1924.
[26] *Freeman's Journal*, 12 June 1924.

But now 'the old system was gone root and branch.'[27] 'The Gael' as the Chief Justice said 'had come fully into his own' and in the *Journal's* opinion 'this most significant phase of the Irish revolution will have healthful effects upon 'peace, order and good government in Ireland.'

The Free State legal and judicial system was in operation; henceforth justice would be administered according to Irish law for free Irish citizens. When Glenavy vacated the chair on 16 January to explain the proposed legislation, he admitted that he had had many curious experiences in a long and varied career spanning a forty year period, 'but the happiest, I say without hesitation, was my experience of the Judiciary Committee.'[28] His claim to be 'father' of the system had validity; he had guided the Committee in its deliberations, an originator and co-ordinator of the proposed legislation, he oversaw its passage through the Upper House, witnessed the Courts of Justice Act passed into law on 12 April 1924 and attended the formal ceremony of prescribed declaration before the Chief Justice, in Dublin Castle on 10 June. Saotstát Eireann had initiated a system of judiciary and administration of law which prevails to the present day.

Seanad/Dáil Relations

By 1924 relations between the two Houses of the Oireachtas were becoming more settled. Initially in 1922 there was evidence of tension and a degree of resentment on the part of Dáil deputies. Donal O'Sullivan, long time clerk of the first Seanad, acknowledged 'that the attitude of the government and the Dáil towards the Senate was, from the outset, one of imperfect sympathy.'[29] His argument was 'that former revolutionaries now turned politicians, were not eager to share their hard-won power in the new constitutional arrangements.' Most members of the government had participated in the Anglo-Irish war, as did a majority of the members of the Dáil. The Dáil was a product of universal suffrage and 'regarded itself as the real repository of the sovereign rights of the people.'[30] O'Sullivan claimed they jealously regarded 'law-

[27] Ibid.
[28] *Seanad Debates,* Vol. 2, Col. 405, 16 Jan. 1924.
[29] O'Sullivan, *The Irish Free State and its Senate*, p. 120.
[30] Ibid.

making' as their particular right and had little wish to share it with a second chamber whom they perceived to be interlopers.

During the discussion on the Constitution of Saorstát Eireann Bill, on 25 October 1922, the question as to whether or not Ministers might be selected from any future Senate elicited a considerable degree of reluctance and ambiguity. Kevin O'Higgins conceded the point; Ministers might be selected from the Senate and also it was agreed that, unless implicitly barred, Ministers might be selected who would be members of neither Seanad nor Dáil. [31] Cosgrave dispelled any ambiguity, considering it essential to provide clarity on the issue:

> It is possible for a person outside to come in, but it is not mandatory on the Dáil to elect such persons, and the body to elect such person will be a Committeé ..... that Committee will be from this Dáil and will nominate persons , but I do not think that will be done in this Dáil or the next, but may be at a future time.[32]

Even at this early stage Cosgrave was asserting the primacy of the Dáil in the future decision-making process. Both Garvin and Mansergh are in agreement that, 'ultimately the Senate depended on the Dáil's goodwill for its very existence.'[33]

Article 55 of the Constitution, without direct reference to members of the Senate, permitted the appointment of an outsider to ministerial rank, except for Ministers who were members of the Cabinet or Executive Council. In December 1922, three Extern Ministers were appointed to Cosgrave's first administration, and four were appointed in September 1923 to the second; all ministerial positions were conferred on members of the Dáil. 'Under the Ministries and Secretaries Act 1924, power was given to the Executive Council to appoint Parliamentary Secretaries to Ministers, up to a maximum of seven.'[34] None of these were ever offered to the Senate; yet again all such positions were given to Dáil deputies. In October 1924 John Henry Bernard, ever vigilant of the attitude to and treatment of Protestant loyalists, wrote yet again to Midleton:

> From what I can learn, the heads of the Irish Government are sensible of the services that loyalists like Andrew (Senator) Jameson and our Professor (Deputy) Thrift could render if they

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[31] *Dáil Debates*, Vol. 1, Col. 1936, 25 Oct. 1922.
[32] Ibid.
[33] Ibid., p. 4; Mansergh, *The Irish Free State*, p. 140.
[34] O'Sullivan, *The Irish Free State and its Senate*, p. 120.

were Ministers but they are afraid to take them into the Executive Council or to give them high office for fear of Republican criticism.[35]

Republicanism from the Protestant perspective was an ever-present threat which they perceived as a barrier to any unionist advancement.

Deep-seated prejudices inevitably impinged on the development of normal relations between the two Houses of the Oireachtas. The biased attitude of Dáil members encountered by the Senate is difficult to comprehend at this remove. Any analysis of the fraught relations prevailing in those early years must be examined in the context of a decade of revolution and civil war, where the primary impulse was always resistance. In a period of conflict the enemy was met with a strategy, a *modus operandi*, a coping mechanism for dealing with unacceptable or difficult circumstances. In Ireland, a long history of resistance to political domination had for centuries been met with a range of coping strategies; boycotting, isolation, abstentionism, ostracism and the ultimate in the pantheon of resistance, silence. The Senate were not the enemy, but their co-legislators; so why were they isolated and in many cases subjected to silent treatment? The evidence suggests that resistance was so deeply ingrained in the individual and collective psyche of the former revolutionaries, that normal relations, if not impossible, were certainly difficult.

O'Sullivan, a daily witness to the interaction between the Houses of the Oireachtas, describes the 'imperfect sympathy', the 'exclusion from co-partnership', the 'position of isolation', the 'absence of any nexus with the government', the Dáil's 'non co-operation' and as Glenavy had anticipated, the Seanad business deferred due to the 'absence of the sponsoring Minister.'[36] In March 1923 members of the Seanad, frustrated at all attempts to elicit the Dáil's co-operation or the attendance of Ministers for the purpose of answering questions on matters connected with Executive and Administrative policy, acknowledged their powerlessness in the circumstances:

We have no power to compel them to be here, and, consequently, we came to the conclusion that as long as we have no power to compel them, and as long as they are engrossed, as they are at present, with very grave and responsible duties, it would be an extra, and perhaps

[35] BNL J.H. Bernard Papers, MSS 52781, 24 Oct. 1924.
[36] O'Sullivan, *The Irish Free State and its Senate*, pp. 116-33.

> impossible, burden to cast upon them to suggest that they should attend here for the purpose of answering questions.[37]

With acceptance and a considerable degree of resignation it was decided that due to existing civil war conditions, the matter should be let rest.

It was not until 1930 that set procedures were adopted by Standing Orders which stipulated that the Second Reading of a Bill should be introduced by the relevant Minister or Parliamentary Secretary in charge. Though initially unsure of either their role or power, examination of Seanad debates reveals the growing confidence of members of the House. Garvin claims 'the Senate was able to present a very real threat to non financial legislation.'[38] He tempers his argument by admitting, 'it would have been a very dangerous power for the House to use against a hostile, hurried or determined Dáil, as the constitution could be amended by a simple act of the Oireachtas.'[39] Yet despite the demands of urgent, and in many cases emergency legislation, senators were persistent in their questioning and deliberations and were not diverted from their purpose, as, in the Amnesty Bill, the Courts of Justice Bill, the Divorce Bill and many others.

The issue of Seanad costs and expenses was a constant source of annoyance for the Dáil as Deputy Gorey indicated:

> I see here that the Clerk of the Seanad is drawing £1,000 a year, the Assistant Clerk £700, and the Second Assistant Clerk £500; the reporting staff is put down at £800. I do not think the Dáil has as large a staff as that, and I suppose we do seven times as much work as they do in the Seanad.[40]

Criticism and contrasts were inevitable as deputy Kennedy drew unfavourable comparison with the Belfast Second Chamber where Senators were paid one guinea a day for each day they sat.[41] There was little evidence of courtesy, as deputy Beamish rejecting the Seanad's proposed amendments to the Intoxicating Liquor Bill, did not hesitate to personalize his objections:

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[37] *Seanad Debates*, Vol. 1, Col. 507, 23 Mar. 1923.
[38] Garvin, *The Irish Senate*, p. 4.
[39] Ibid.
[40] *Dáil Debates*, Vol. 2, Col. 2272, 9 Mar. 1923.
[41] *Irish Independent*, 5 July 1928.

> It is easy for Senators to argue on this question with their cellars full of wines and spirits and plenty of soda water. The ordinary workman, farmer or labourer with very little money in his pocket cannot afford to order in the drink which is probably enjoyed in Senatorial houses. [42]

Invariably the source of antipathy was political, religious or socio-economic prejudice.

Fanning argues that the treaty became the touchstone of political allegiance, in the politics of the Irish Free State; 'unionist versus nationalist being replaced by pro-treaty versus anti-treaty.'[43] Members of the Senate were pro-treaty but the minority section was still perceived as unionists. Prompted by undue criticism of the minority on one occasion, Senator John Keane was moved to defend the minority's cultural and economic value by listing their varied contributions to Irish society; 'in matters of taxation, they pay out of all proportion to their numbers; they are large employers of labour, responsible for the poor; and their names adorn the pages of Irish history.'[44] A certain level of rancour is to be expected in the cut and thrust of political debate but the tone and tenor of comments made by Dáil deputies in relation to their co-legislators in the early years of the new administration, ranged from petty to the vitriolic, some even indicated a degree of irrational hatred. Garvin argues that, 'the two Houses made strange bedfellows: the post-revolutionary Dáil, even though it lacked anti-treaty representation in its first years, and the explicitly conservative Senate represented differing political viewpoints whose points of contact were sometimes few and rather tenuous.'[45]

National Celebrations

Democracy, state building and individual liberty, were themes dominating Ministers' speeches at the St. Patrick's Day National Banquet in the Metropole Restaurant on 17 March 1924. The Senate was represented by senators Green, Wyse Power and Nesbitt. Kevin O'Higgins' speech focused on the importance and responsibility of the individual, particularly in context of the recent by-election; large number of Dublin voters had failed to take the trouble to go to the polls. General Mulcahy reiterated the 'individual' theme saying, 'Irish Ireland

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[42] *Dáil Debates,* Vol. 9, Col. 2320, 10 Dec. 1924.
[43] Ronan Fanning, 'The British Dimension,' *The Crane Bag,* Vol. 8, No. 1, 1984, p. 43.
[44] *Seanad Debates*, Vol. 15, Col. 928, 2 June 1930.
[45] Garvin, *The Irish Senate*, p. 4.

would only be built up by individual effort.'[46] Referencing his former speech on the Democratic Programme before the first Dail, Mulcahy repeated his sentiments of five years earlier; they would be a 'people who might lift their heads properly in the world.'[47]

The inevitable rhetoric, calculated to affirm, exhort and inspire took an unexpected turn as Mulcahy spoke of 'distractions', of 'weakness here and there,' of people 'getting things distorted', 'things that are abnormal in other countries, such as bank robberies, threaten to be regarded as normal in Ireland' and the 'normal of other lands were thought abnormal in Ireland.'[48] The *Freeman's Journal,* focusing on Mulcahy's obscure, even ominous speech advised, 'spokesmen at home speak with a new burden of responsibility, but they must not let the experience of the past two years weigh too heavily on them, bitter and disappointing though those years have been.'[49] Analysis of sources and press reports for that and subsequent weeks indicate that the General was under considerable stress and ensuing events reveal that conditions, in at least one of the democratic institutions of state, were anything but normal.

Army Mutiny

Faced with an Army Mutiny on the following night 18 March, Mulcahy as Minister of Defence took decisive action. Press reports the following day recounted the 'sensational happenings' of the 'long night siege' as troops led a raid on Devlin's Hotel, Parnell Street where dissident officers were meeting:

> The amazing happenings of the night commenced at 9.30 p.m., when two lorries manned by troops drew up outside Devlin's public house. Troops cleared the premises and proceeded to confront members of a mysterious gathering in an upstairs room where a stand-off ensued. Troops continued to arrive and surround the building.[50]

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[46] *Irish Independent,* 18 Mar. 1924.
[47] Ibid.
[48] *Freeman's Journal*, 18 Mar. 1924.
[49] Ibid.
[50] Ibid., 19 Mar. 1924.

Public curiosity was intensified with the arrival of President Cosgrave and Ministers Kevin O'Higgins and Joseph McGrath. Intermittent rifle fire was heard as more troops entered the building. Elaborate steps were taken to prevent any escape. Troops were placed in the ruins on the west side of O'Connell Street and a machine gun was trained on the beleaguered premises.[51] On the following day, due to disapproval of his unauthorised action, Mulcahy resigned. The Cabinet demanded that the Army Council, Generals O'Murthuile, O'Sullivan and MacMahon, relinquish their posts and the Minister of Industry and Commerce Joseph McGrath resigned in sympathy. Government's press release reassured the public that 'the army's loyalty was assured.'

The manner in which the mutiny of March 1924 was dealt with is revealing on many levels. Disagreement and dissatisfaction are inevitable in any organization but their resolution, even in post civil war conditions, should not result in either a conflict situation with the potential for renewed civil war, or resignation of the Army Command for the successful execution of their duty. For the President of the Executive and Government Ministers to negotiate with dissidents at midnight in a city pub, is not normal, expected or accepted procedure within the structures of a democratic state. Lack of either the mechanisms or the skills to deal with unresolved issues, and the presence of deep-seated underlying antagonisms created a conflict situation, providing no realistic alternative course of action to prevent the crisis. Mulcahy's speech at the National Banquet, with references to 'distractions, weakness and the abnormal' took on a new significance in the light of subsequent events.

That officers of the mutiny, principal among them Liam Tobin and Charles Dalton, had grievances was evident from as far back as the summer of 1923, when they engaged in a series of meetings with Cosgrave, Mulcahy and McGrath. It was hoped that discussions would salve the wounds of division and avoid anything that might adversely affect the Elections in August. As little changed in the interim months, Tobin and Dalton presented their ultimatum to the government on 6 March 1924, threatening to take action 'to save the country from

[51] Ibid.

the treachery that threatens to destroy the aspirations of the nation.'[52] Cosgrave claimed 'the mutiny was a challenge to the democratic foundations of the state and to the very basis of parliamentary representation and responsible government.'[53] McGrath, in the mutineers defence, argued 'that the action of the old IRA officers was not mutiny but rather a dispute between two rival secret organizations, the IRB and the old IRA.'[54] A process of communication and negotiations, both secret and otherwise was in train, resulting in the government's now more lenient attitude towards the mutineers. However Army headquarters continued to receive intelligence reports of rumoured assassination plots, violence and political intrigue.[55]

While the mutineers' grievances were being considered and discussed, if not resolved, Mulcahy's decisive though controversial action precipitated the crisis. Tobin and Dalton escaped arrest on the night and there were little or no documents to indicate the mutineers' plans. Rumour had it that a *coup d'état* and the kidnapping of the entire Cabinet had been planned. Whereas the reaction of the government to the mutiny was generally characterised by restraint and compromise, its reaction to the Army Council in upholding the law was almost ruthless.[56] The *Irish Times* was measured in its analyses:

> Everybody will agree with Mr. O'Higgins that the establishment of discipline in the army is a vital necessity, but most people will have much sympathy with General Mulcahy's position. Mutiny has been condoned and resignation has been the fate of those responsible persons who refused to condone it.[57]

Experience of recent civil war clearly informed the government decisions taken on the mutiny, but equally it revealed a degree of mistrust of the Army Command.

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[52] *The truth about the army crisis, with a forward by Major-General Liam Tobin, issued by the Irish Republican Organization, Summerhill, Dublin* (Dublin, 1924), p. 12.
[53] *Dáil Debates*, Vol. 6, Col. 1896, 11 Mar. 1924.
[54] Maryanne Gialanella Valiulis, 'The Army Mutiny of 1924 and the Assertion of Civilian Authority in Independent Ireland,' *Irish Historical Studies,* Vol. 23, No. 92, Nov. 1983, p. 364.
[55] Ibid.
[56] Ibid.
[57] *The Irish Times*, 20 Mar. 1924.

A section of the executive council led by O'Higgins, was dissatisfied both with conditions in the army and with the Minister for Defence.[58]

Seanad Perspective

Coincidently the Seanad were debating the Ministers and Secretaries Bill in mid-March as the mutiny crisis unfolded. Its circumstances clearly impacted on perspectives with regard to current legislation. Senator John Keane strongly objected to the title of Commander-in-Chief being applied to the Minister for Defence as specified in the proposed legislation. He maintained that the question was a constitutional matter of the highest importance, that the supremacy of the civil power was involved.[59] Keane put forward an amendment that the title 'Commander-in- Chief' be deleted from the bill; the wording suggested that the Minister of Defence must be a soldier and conversely that a soldier must be the Minister of Defence. Keane's amendment was lost on a show of hands, but the Attorney General assured the House that 'a soldier could not be elected to the Dáil, and no one was likely to be made a minister, who was not a member of the Dáil.' He further emphasised the point that the particular section of the bill was specifically structured 'to complete the government's scheme for establishing complete civil control.'[60]

The mutiny issue was debated at length in the Dáil, however there is no record of open discussion in the Seanad. Emmet Dalton, clerk of the Upper House, was the older brother of Charlie Dalton one of the mutineers. The considerable cohort of former military men in the House would have had decided views on the subject of mutiny; what secret, covert discussions or negotiations that may have taken place are not recorded. Mystery and intrigue were an inevitable component of the event. W.B. Yeats' interest was obvious from the content of his personal papers for the period, among which was a copy of the mutineer's publication, *The Truth about the Army Crisis.* The forward of the publication by Liam Tobin, points to a grievance which may have eventually

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[58] Maryanne Gialanella Valiulis, 'The Army Mutiny of 1924 and the Assertion of Civilian Authority in Independent Ireland,' *Irish Historical Studies,* Vol. 23, No. 92, Nov. 1983, pp. 354-366.
[59] *Irish Independent*, 20 Mar. 1924.
[60] Ibid.

forced the issue. 'It had been made impossible for us to reach the Irish people through the press, which has refused to publish – or has been prevented from publishing any statement.'[61]

By mid 1924, the mutineers' case had been heard and some of their grievances met. The Army Council had 'fallen on their swords,' a voluntary acquiescence in a 'sacrifice' for the greater good. By so doing, a precedent was established confirming subordination of the national army to the civilian government in power. It was a vital step in the consolidation of democracy. Lessons of the civil war had been learned; the conflict-situation paradigm had been superseded in favour of a more politically sophisticated, realistic and conciliatory approach to the issue; grievances were assuaged and lack of compromise was admonished. Challenges to the democratic foundations of the state had been faced, difficult and controversial decisions had been taken and through their parliamentary representation, the will of the people had prevailed.

Language, Culture and Identity

In March 1925, Professor Tomás O'Máille of University College Galway, writing to congratulate Senator Alice Stopford Green on her forthcoming book *History of Ireland,* stated:

> A history of Ireland .....the result of recent research is very much needed. What is also greatly in demand is a [history] of Ireland written in Irish, suitable for being used in schools. Accordingly I shall be very grateful if you will kindly give me the right to translate yours. If you do so I shall endeavour to put it into good literary Irish – in this way, I expect it will prove a standard work in both English and Irish.[62]

Green was surely gratified by O'Maille's suggestion as it would provide a perfect means of furthering the primary goals of a specific group of senators, the propagation of the Irish language, literature and culture. Green used her extensive network of contacts to ensure a continued and ongoing interest in Irish history. Alfred O'Rahilly confirmed his interest and support of her most recent publications. 'I will try to get them reviewed in the *Irish Tribune*. I have ordered

[61] NLI MS 30, 674, W.B. Yeats Papers, n. d. 1924.
[62] NLI Alice Stopford Green Papers, MS 10,457 (7), O'Máille to Green, 3 Mar. 1925.

copies for the library so as to draw the students' attention to them. I hope they will be a great success.'[63] Following an appeal to Labour Headquarters, R. J. Mortished assured her that 'Cathal O'Shannon, editor of the *Voice of Labour* had himself just started a series of lectures to a class on Irish history.' He advised that she 'contact T. J. O'Connell with a view to discovering the attitude of National Teachers.'[64]

Senators' attitude to the Irish language and culture, from the outset, was highly proactive. On 19 April 1923, W. B. Yeats had put a proposal to the Seanad that a work be undertaken, what he termed a work of 'science,' that is a study of language which is of great importance to culture and 'a study of old literature.'[65] He was adamant that this was not in any way propaganda, but a work which might be undertaken by any government of the world. Much of this work had been done already, with very limited resources, by the Royal Irish Academy, Trinity College, the School of Irish Learning and the Irish Texts Society. While the greater portion of the Saga Literature had been translated and edited, there was great need for critical editions of the Annals of Boyle, Innisfallen and Connaught and above all, perhaps, the greatest need was for a dictionary of the old Irish language. Yeats had done the preparatory groundwork:

> I have been in consultation during the last week with the principal Gaelic scholars, or most of them. Mr. Best, Professor MacNeill, Dr. Douglas Hyde, and Mr. Gwynn. I think they are unanimous on the importance of the dictionary. Then, too, as a preliminary work, a proper catalogue is required of the work of the Royal Irish Academy. A very large, rough catalogue does exist, but a condensed catalogue is necessary. Trinity College have just published their catalogue, and the British Museum is about to publish its catalogue of Irish Manuscripts .[66]

Green and Yeats spearheaded the project. A committee was established consisting of senators Yeats, Green, Costello, and Edward MacLysaght; its aim was to determine how and in what manner Irish language and culture might be advanced.

The Committee met on five occasions in 1923 and finally on 21 May 1924. Evidence was heard from expert witnesses:—Dr. R.L. Praegar, Dr. R.I.

[63] Ibid., MS 10, 457 (8), O'Rahilly to Green 30 Apr. 1926.
[64] Ibid., MS 10, 457 (7), Mortished to Green, 16 Dec. 1925.
[65] *Seanad Debates*, Vol. 1, Col. 992-94, 19 Apr. 1923.
[66] Ibid.

Best, the Rev. Dr. Lawlor, Dr. Douglas Hyde, Mr. E.J. Gwynn, Professor O. Bergin, Professor T. O'Rahilly, Mr. R. Foley and Professor Tomás O'Máille. The Committee's Report was presented to the Seanad on 4 June 1924. The lengthy, detailed report's principal recommendations were '(i) The editing and publishing of important texts, both of the early, the classical periods and of modern times (ii) Publication of photographic facsimiles of important Codexes by the latest scientific processes (iii) The dictionary of Old Irish, in course of preparation by the Royal Irish Academy under the editorship of Dr. Bergin, should receive further aid (iv) The publication of Catalogues of MSS. is of great importance for students. Catalogues should be compiled not only for the Royal Irish Academy, but also for those collections in the Franciscan Convent, the King's Inns, the National Library, and many others in Ireland or outside (v) Investigation of living dialects (vi)Folk-lore, songs and traditions cannot be neglected (vii) A survey of the antiquities of the country, such as is at present being carried out by Commissions in England, Wales and Scotland.'[67]

From the outset, members of the House and most particularly members of this committee had, in one way or another, been pushing the Irish language agenda. Edward MacLysaght claimed:

> I constituted myself a sort of watchdog on behalf of the Irish language at the first meeting I made a short speech in Irish. I think there were only four senators beside myself capable of following a speech in the language – so I was really addressing myself and a few officials and reporters.[68]

Alice Green was associated with the School of Irish Learning as far back as 1908 when she served as a Governor, together with Edward Gwynn, Sir Anthony MacDonnell and Douglas Hyde, and where she was closely associated with Kuno Meyer, John MacNeill, R.I. Best and Osborn Bergin.[69] In the following decade, Green, together with Douglas Hyde, Oliver St. John Gogarty, Maurice Moore, Gratten Esmonde, Professors O'Maille, William Magennis and others founded a society specifically to develop and further all aspects of cultural nationalism. The Society of Irish Tradition, established in 1917 met between 4 July 1917 and 7

[67] Ibid., Vol. 3, Cols. 162-66, 4 June 1924.
[68] NLI Edward MacLysaght Papers, MS 4,750, 'Master of None', typescript manuscript, 1952.
[69] NLI Alice Stopford Green Papers, MS 10,457 (1), Bergin to Green, 3 Mar. 1908.

May 1919. [70] Their common cultural nationalism was a unifying force transcending their political and religious differences. The primary aim of the Society was 'to rebuild social life in Ireland and to raise the standard of individual culture and efficiency by encouraging the revival and study of Irish tradition and history.'[71]

As a result of decades of former associations, there was a network of academics and historians, with their respective expertise, available to advise, guide and support the Seanad's cultural aspirations. As the findings of the Senate's committee indicated, the preservation of every aspect of Irish heritage was considered. Green conferred and consulted with R. Best of the National Library of Ireland on a range of issues, not the least being the importance of Irish source material:

> I think the neglect of Irish sources was due to complete ignorance rather than contempt. When Keating's history was translated by O'Connor in 1723, it was accepted as genuine history and the publication of the Irish Annals by the Rev. Charles O'Connor, a grandson of the Venerable Charles of Belanagare, in 1826 came as a revelation of what lay hidden in the ancient records, and was welcomed by investigators of all classes.[72]

It took time for the ambitious recommendations of the committee to be implemented with the eventual establishment of the Manuscripts Commission and the Irish Folklore Institute. However, this committed group remained vigilant on many levels being equally protective of built environment as of literary and cultural heritage. During the debates on the Shannon Electric scheme in 1925, senators Yeats and Brown were instrumental in inserting a clause within the proposed legislation, ensuring the preservation of endangered monuments. As a result a seventh century church was removed from an island in the Shannon, before the water's level was raised, and re-erected in a churchyard in Killaloe, where it stands today.

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[70] Shane Stephens, 'The Society of Irish Tradition 1917-1919,' *Béaloideas,* Vol. 67, 1999, p. 149.
[71] Ibid.
[72] NLI Alice Stopford Green Papers, MS 10,457 (2), Best to Green, 16 July 1928.

The Senate and Aonach Tailteann

Senators' cultural endeavours were evident in their support of Aonach Tailteann. Senator Yeats hosted the gathering in place of the President, Senator Glenavy delivered a speech of welcome at the opening event and Senator Gogarty wrote a *Tailteann Ode* which he submitted for competition. Raising the standard of culture, rebuilding social life and the reclamation and renewal of national heritage was the primary function of the most ambitious Free State, post-war event in August of 1924. Aonach Tailteann was a project portraying the image and ethos of new and independent Ireland. It was a process, a reaffirmation of national identity, of state-building and a confident return to normality. Variously termed the Aonach or the Tailteann Games, it was 'a sporting and artistic festival with ancient origins, and was one of a series of events staged or participated in by independent Ireland as a method of projecting the positive attributes of the new state.'[73] It was a remarkable feat of organization culminating in an extravaganza calculated to raise the national morale.

As host of the opening banquet in Dublin's Metropole Hotel, W.B. Yeats claimed that the unique event was 'a symbol of the nation's coming of age.' It was like a young man entering upon posterity:

> Of whom it is impossible to say whether he is a wise man or a fool, whether he will enlarge his estate or be a mere spendthrift. He is celebrating his coming of age, and asks the goodwill of his neighbors....and out of a period of terror and strained hearts and tragic incident we are reverting to normality.[74]

The recent period of terror and tragic incidents had ceased. The theme of normality, which had such negative connotations five months earlier during the mutiny crisis, was now voiced with relief and celebration. *The Irish Times* in its analysis of the event attributed an almost phoenix–like quality to its success asking, how 'so many discouraged and apathetic people' could be 'stimulated into action,' how 'so large and

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[73] Mick Cronin, 'Projecting the Nation through Sport and Culture: Ireland, Aonach Tailteann and the Irish Free State,' *Journal of Contemporary History*, Vol. 38, No. 3, Jul. 2003, p. 396.
[74] *Irish Statesman*, 9 Aug. 1924.

complex an organization' was 'completed in a time of political anxiety and industrial stress.'[75]

Success was principally due to Minister for Posts and Telegraphs, J.J. Walsh who had taken on the task of organization two years previously. Despite the impending political crisis of 1922, the Provisional Government granted Walsh £6,000 to begin work on the extensive planning and putting the necessary infrastructure in place.[76] It was an ambitious heritage project, an exposé of Gaelic culture and identity and had the full support of the Government. Michael Collins as Minister of Finance had signed the order to cover costs of the proposed games.[77]

For participants, spectators and visitors, national and international alike, it was a bold statement of de-Anglicization.

Confidence and renewal were a consistent theme of speeches on the memorable opening night. The national press vied for superlatives to accurately express the event. For the *Irish Independent* it heralded the 'future greatness of the country'; for *The Irish Times* it was 'the most important psychological moment in the history of the Free State.'[78] Among the guests from abroad were Sir John and Lady Lavery, Sir Edwin and Lady Lutyens, and many representative men of Science, Literature and the Arts.[79] Present also was Francis Hackett, a native of Kilkenny, author and historian and a long-term protégé of Senator Ellen Desart. She had been his mentor and benefactor encouraging his literary career; he in turn dedicated his *Ireland: A Study in Nationalism* to her. In his introduction he stated:

> It was through your great kindness in 1913 that I was enabled to begin this book. The important thing is not that two people should be inspired by the same convictions, but rather that each of them should hold his or her own convictions in a high and worthy spirit. Harmony of aim, not identity of conclusion is the secret...I wish that I could be as sure of my own 'high and worthy spirit' as I am of yours; ....I trust you will read this book in place of the book to which you gave your friendship and support. [80]

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[75] *The Irish Times*, 4 Aug. 1924.
[76] Mick Cronin, 'Projecting the Nation through Sport and Culture: Ireland, Aonach Tailteann and the Irish Free State,' *Journal of Contemporary History*, Vol. 38, No. 3, Jul. 2003, p. 399.
[77] NAI Department of Finance, FIN 1/379.
[78] *Irish independent*, 4 Aug. 1924; *The Irish Times*, 4 Aug. 1924.
[79] NLI W. B. Yeats Papers, MS, 30676, n. d. 1924.
[80] Dedication to Countess Ellen Desart, 5 June 1918 in Francis Hackett, *Ireland: A Study in Nationalism* (New York, 1918).

Ushered in with pomp and splendour and amidst scenes of gaiety and rejoicing, Aontach Tailteann, revived after the lapse of many centuries, was opened in the presence of tens of thousands drawn from every part of Ireland as well as from almost every country where Irishmen are to be found. [81]

The capital city was *en fete;* a rare spectacle of vivacity, spectacular brilliance and 'stir'. Most of the provincial press were as enthusiastic as the nationals. 'Thousands of flags and miles of varied-coloured bunting displayed all over the city in the principal streets from public buildings, business houses, beautiful floral designs, including golden hued baskets of charming flowers set on the standards of the electric lights on the main thoroughfare, are but some of the kaleidoscopic fascination of Dublin *en fete* for the Aonach.'[82] Visitors came in their thousands from America, Australia, England, Scotland and the nations of the Europe as well as from the Orient. The report claimed that 'the atmosphere produced, especially to those who look under the surface, is one of national expansion and industrial promise.'[83] The populist polemic continued at length but its essence expressed national pride in the developments, material, intellectual and spiritual which was the result of the nation's newly acquired freedom.

Floats displayed industrial exhibits and the product of educational, artistic and sporting skill as they paraded the streets. Aeroplanes throbbed, salvoes of artillery and the pealing of bells heralded the march of competitors from Clonliff College to Croke Park where a fanfare of trumpets greeted their arrival.[84] The press was loud in its praise of the organization, schedule and spectacle of the games. Together with traditional games of hurling, Gaelic football and camogie, there was boxing, swimming, tennis, horse-racing and golf. To maximise the impact, particularly for foreign visitors, the Aonach ran concurrently with the annual Horse Show. And as if confirming Ireland's forward-thinking modern status, there were motor cycle, speedboat and aeroplane races. Politicians, celebrities and citizens alike participated. Prizes for literary awards were presented at the Abbey Theatre on Friday 8 August with Senator Oliver St. John

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[81] *The Southern Star*, 9 Aug. 1924.
[82] *Westmeath Examiner*, 8 Aug. 1924.
[83] Ibid.
[84] *The Southern Star*, 9 Aug.1924.

Gogarty receiving first prize for his *Tailteann Ode*.[85] Vocal competitions were adjudicated and awarded by John McCormack in the Metropolitan Hall.

Evaluation and Provincial Perspectives

By any criteria Aonach Tailteann was a major success. It had its detractors and its critics. J. J. Walsh had to defend the financial outlay in the Dáil:

> The total amount of money voted to the Tailteann Games, contrary to the many figures given in the Press and elsewhere, from the first Dáil to the present time, amounts to £6,500. The present sum of £7,500 is a loan which is a first charge on the takings of the games, and is re-payable, in addition, with five per cent interest, which I think is the customary percentage for banks to charge. The General Council had the alternatives of securing this money from one of the banks or getting it in this way.[86]

Lest anyone should be in doubt that this production was an entirely Irish event, a counterblast to former anglicized presentations, the *Westmeath Examiner* proudly claimed 'it is such as could not have been produced in Ireland, were its government still carried on by Englishmen.'[87] By contrast the *Limerick Leader* was restrained in its depiction. The national games had proved to be a success and they ventured to predict it was but 'the prelude to the establishment of an Irish Olympiad which will be a yearly feature of sports entertainment.'[88]

Examination of both national and provincial publications provides an interesting contrast between urban and rural levels of interest. The farther south or west the local press, the less enthusiastic was their evaluation and attention. For the *Nenagh Guardian* depressed times in farming and business, the slow harvesting weather and the unfortunate and unjustifiable strike troubles in Dublin tended 'to damp the nation's enthusiasm and perhaps diminish somewhat the attendance.'[89] A decidedly understated hope was expressed that 'many differences might be healed and many evil memories buried in oblivion.'[90] Perusal of the

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[85] *Freeman's Journal*, 9 Aug.1924.
[86] *Dáil Debates*, Vol. 7, Col. 2016, 5 June 1924.
[87] *Westmeath Examiner*, 8 Aug. 1924.
[88] *Limerick Leader*, 11 Aug. 1924.
[89] *The Nenagh Guardian*, 2 Aug. 1924.
[90] Ibid.

Munster Express over the three week period in early August, revealed no reference whatsoever to the Aonach.' The one and only reference to the 'Tailteann Games' was their incorporatation by an enterprising local draper, as an eye-catching feature in an advertisement for his retail drapery trade.[91] The *Leitrim Observer*, covering counties Roscommon, Longford, Cavan and Sligo news, like its southern counterpart carried no reports of the Dublin event.[92] *The Connacht Tribune* acknowledged that the county was well represented in the Games and that a Galway man gave a credible display in the Marathon. [93]

There is little evidence that the grand spectacle of their mutual heritage, in any way effected reconciliation with Republicans. Sinn Féin's publicity Department issued a statement from de Valera, confirming that his decision, arrived at some months ago not to participate, remained unchanged. Whatever countenance was given by the people to the acceptance of 'the pretended settlement with England' had been in part the result of 'misunderstanding of the position,' and in part the result of 'the fears excited by England's threats of renewed war.' The true aspirations of the people were 'complete independence against all forms of foreign domination and of interference.'[94] All republicans would accordingly await the day when 'the Tailteann Games could be truly what they were intended, when the Republican government took the initiative three years ago, for the restoration of a grand rally of the whole Irish race, and the outward expression of our new-won freedom.'[95] Clearly republican perceptions continued to be coloured by their particular political perspective.

Horace Plunkett in an assessment and critique of the early years of the new state tells that 'a favourite republican taunt was to compare Free State Ministers with Free State pillar boxes, in which British red had been hurriedly overlaid with a thin coating of Irish green.'[96] This analogy of superficial veneer could in no way be attributed to the Aonach; evidence reveals it was a bold political statement, reaffirming the uniqueness of authentic Gaelic culture,

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[91] *The Munster Express*, 2 Aug. 1924.
[92] *Leitrim Observer*, 2, 9, 16 Aug. 1924.
[93] *The Connacht Tribune*, 23 Aug. 1924.
[94] *Limerick Leader,* 6 Aug. 1924.
[95] Ibid.
[96] Horace Plunkett, 'Ireland's Economic Outlook,' *Foreign Affairs*, Vol. 5, No. 2, Jan. 1927, p. 207.

expressed in self-consciously, confident, modern Irish terms. *The Irish Times* did not overstate when they claimed it was 'a most important psychological moment in the Irish Free State; a collective appraisal echoed in Senator Yeats' symbol of "coming of age."' A threshold had been crossed, society had moved from dissidence and division to responsible nationhood and state building. Party divisions would continue to be an unsettling element in the body politic but as the Senate's chairman Lord Glenavy said of the state in his welcoming speech on the opening night, 'it would soon attain the full measure of its strength and stature as a peaceful and united nation in which no man would be for party, but all would be for State.'[97]

Glenavy's speech at the national celebration and his expressed aspiration for 'a peaceful united nation' would have been neither credible nor acceptable in the context of the revolutionary society of previous years. By 1925 a noticeable degree of social, class and religious co-operation was beginning to manifest itself. The ease and integration evidenced among senators in the Upper House, and in the wider society belied their class, religious, cultural and economic diversity. A more mature, inclusive attitude was expressed in the aspiration of republican Máire Comerford 'we don't pretend to be one voice, we are one people with many voices, and there are many who have different views.'[98]

The Senate and the Gaelic League

The movement with the greatest influence on the governing elite of the new state was the Gaelic Revival, which was in itself part of a wider mobilization of civil society that occurred towards the end of the nineteenth century.[99] Douglas Hyde, W. B. Yeats, Alice Green, Ellen Desart, Ellen Costello and Jenny Wyse Power were among the senators who became involved with the Gaelic League at the turn of the century. Hyde speaking in Kilkenny on the night of 29 November 1900 unequivocally stated that 'the Irish were themselves responsible for the Anglicization of the Irish race and

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[97] *Sunday Independent*, 3 Aug. 1924.
[98] Máire Comerford, journalist and Republican activist, interviewed by Kenneth Griffith, n. d., *Curious Journey*, Directed by Gareth Wynn Jones, Executive Director Aled Vaughan, Photography by GarethOwen and Mike Reynolds (1973).
[99] Kissane, *The Politics of the Irish Civil War,* p. 22

nation.'[100] The resolution of those present was, 'a total commitment, not only to the Irish language, but to all that was distinctly Irish.' Ellen Desart, inspired by Hyde, joined the League in 1900 and together with Otway Cuff, Standish O'Grady and others established themselves as a nucleus of change, social, economic and cultural, for Kilkenny society. They saw themselves as part of the larger movement of cultural nationalism working for a new and better Ireland, more reflective, more sympathetic and more generous.[101]

Desart, as an English Jewess of Austrian extraction would have appreciated Shaw's concept of national identity. 'We are a parcel of mongrels; Spanish, Scottish, Welsh, English and even a Jew or two.'[102] She served as president of the Kilkenny Branch of the Gaelic League from 1912 until 1915 when she resigned due to its increased politicisation. The concept of national identity was becoming more complex. Hyde himself resigned in 1915 from the National Branch as his apolitical stance was rejected by the League's more politically active separatists. Edward MacLysaght recounted his excitement at the new spirit and awakening nationalism which pervaded the country at the time 'I became conscious of the forces which were already revitalizing the country, particularly the Gaelic League and the co-operative movement. By 1917 I had the Fáinne and ambitious plans for the foundation of a nua-ghaeltacht.'[103] His nua-ghaeltacht did not materialize at the time but other enthusiasts were determined to continue their national culture pursuits.

Within two years future senators Green, Hyde, Gogarty, Esmonde and Maurice Moore had founded the Society of Irish Tradition to continue their work in a more culturally appropriate assembly. Green, a close associate of Eoin MacNeill produced six histories between 1908 and 1925; MacNeill claimed her contribution to the literary tradition portrayed the 'most characteristic elements in Irish nationality.'[104] Among Sinn Féin activists deported in 1916 to Reading jail were Arthur Griffith, Seán Milroy, Darrell Figgis, Ernest Blyth, Tomas McCurtain and Peter DeLoughry (senator). This enforced incarceration afforded

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[100] *The Kilkenny Moderator*, 1 Dec. 1900.
[101] D. Gwynn, 'Standish O'Grady' in *Old Kilkenny Review*, 1970. No. 22.
[102] Quote by George Bernard Shaw, denouncing what he termed 'the hackneyed myth, of the Irish race'; quoted in Greene and Laurence, *The Matter with Ireland*, p. 294.
[103] NLI MacLysaght Papers, MS 4,750, 'Master of None' (1952) autobiographical unpublished manuscript, Chapter 3, pp. 19-20.
[104] Päärnilä, *Race, Religion and History*, p. 126.

'Irish republican leaders an opportunity to meet each other, some for the first time, to mingle, discuss strategies and plan the future for an independent Ireland.'[105] By May 1918, DeLoughry was back, this time in Lincoln jail in the company of de Valera, Sean McGarry, and Terence McSwiney. Within a matter of weeks the prisoners were highly organized; Irish and Spanish classes were given by de Valera, GAA sports were organized and DeLoughry, writing to his sister Lil in Kilkenny, told her he wanted to study Irish history and requested that she send him a copy of *Mitchell's History of Ireland* and Alice Green's *Making and Undoing*.[106]

DeLoughry's hunger for knowledge of Irish history, for an articulation of the national narrative and identity, what MacNeill termed the 'most characteristics elements in Irish nationality', is a measure of the growing intensity of nationalist ideology:

> I want what I will get the most profit out of and I intend reading and re-reading and checking my knowledge so I don't care whether they are written in an attractive form or not.

Tom Barry, republican activist when interviewed, indicated a similar thirst for knowledge of history and an evocation of nationalist identity, common to Sinn Féin members of the period:

> Of course at that time I had no conception of Irish nationality. In those days I could name every king and queen of England but knew nothing of our own. Irish history was excluded from schools – not alone the National Schools but the Jesuit College I went to afterwards. In short the whole country was an accepted, subject race of Britain.[107]

Barry was not alone in acknowledging his inadequacies and complained of lack of instruction in the subject.

Green was highly critical of writers and historians such as Litton Falkiner, Richard Bagwell, John Mahaffy and G.H. Orpen claiming they were

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[105] Unpublished biography of Senator Peter Deloughry 'Peter's Key' by his grandson Declan Dunne.
[106] Ibid.
[107] Tom Barry interviewed by Kenneth Griffith, n. d., *Curious Journey*, directed by Gareth Wynn Jones, executive director Aled Vaughan, photography by Gareth Owen and Mike Reynolds (1973).

responsible for giving 'a childish, primitive and barbarous picture of Irishmen, who in their view were predestined to evil and possessed elements of the savage up to modern times'; this was the kind of history teaching being circulated in British schools and universities that was responsible for the 'state of things' for example; 'the hostility between the English and the Irish' [108] Hutchinson, in discussing the genesis and pervasive effects of cultural nationalism claims that 'history has become the teacher of nations, recording their triumphs and disasters.'[109] From his perspective, three centuries of Irish historic instruction had served to regenerate the true spirit of Ireland. 'O'Halloran and Vallancey in the eighteenth century, Petrie, O'Curry and O'Donovan in the early nineteenth century and MacNeill in the late nineteenth century have been the focus of a scientific quest to recover the spirit of Ireland's Celtic past through all its vicissitudes and to demonstrate Ireland's place as one of the ancient civilizations of Europe.'[110] For Alice Green those vicissitudes had still to be overcome; 'national life' had been ruined by English subjugation and most of all, by the destruction of the national language.[111]

The Senate and the Gaelic Language

The Irish language had been one of the greatest casualities of British culture. By 1900 only fourteen percent of the population spoke Gaelic and that only in the south and west and in the Gaelic speaking areas of the Western seaboard. But with the foundation of the Gaelic League a renewed enthusiasm for the language with its rich literary heritage 'enabled present day Irishmen to share the ideals and emotions of their ancestors, preserving the continuity of the race, that once held possession of more than half of Europe.'[112] For the League the Gaelic language was an essential part of Irish national identity, a means by which to unite the fellowship of the revival and counteract the scourge of Anglizisation. Theoretically the movement was non- political and a unionist could be a Gaelic Leaguer (presumably being able to put his case more eloquently in his native tongue), but members of the League were overwhelmingly

[108] Päärnilä, *Race, Religion and History*, p . 129.
[109] Hutchinson, *The Dynamics of Cultural Nationalism*, p. 197.
[110] Ibid.
[111] Päärnilä, *Race, Religion and History,* p. 129.
[112] Douglas Hyde, address to The Irish Literary Society: E. Curtis & R.B. McDowell, *Irish Historical Documents* (London, 1943), pp. 310-13.

nationalist and Catholic; even those nationalists whose Irish was scanty must have realized that Ireland's claim to political autonomy would be greatly strengthened if it was in the process of becoming a Gaelic-speaking country with a distinct Gaelic culture.[113]

However to other perspectives there was danger in the single-minded objectives of the movement. To a leading unionist the aim of the League seemed to be 'as much to foster hatred of England and all things English as to foster love of Ireland', and Caesar Litton Falkiner remarked that 'the League at times was more concerned with politics than philology.'[114] The concept or idea of the Irish race, visualised as other and opposite to the enemy the English, was thereby perpetuated and associated with an image of conflict; one entity in opposition to the other. Moran argues that it was 'time to recognise that Irish nationalist images are the key to understanding how the idea of an Irish nation has been able to command so much "loyalty, sacrifice, death and hatred."'[115] Edward Gwynn, a unionist and distinguished Celtic scholar condemned the movement because he claimed 'it laid bare the conflict of races which lies at the bottom of all Irish questions, deepens the old divisions between native and settlers – invigorates the old antagonism to all institutions and habits of English origin and awakens in the Irish Protestant the consciousness of his Anglo-Saxon descent.'[116]

'For fervent supporters of the Gaelic movement, 1922 seemed to mark the beginning of a new and golden age.'[117] The Constitution had defined Irish as the national language and there was an all out effort to promote it countrywide. It became a compulsory subject in that year in primary schools and soon a pass in Irish was required at the intermediate and leaving certificate examinations, on the results of which grants to secondary schools were based.[118] The language had both its enthusiasts and sceptics. In the Senate, John Keane remarked that when he went about the country he did not find 'fierce enthusiasm' for the revival of the Gaelic language and John Bagwell complained that the speaking of Irish was being promoted by

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[113] McDowell, *Crisis & Decline*, p. 30.
[114] For the views of a fervent supporter of the revival stated with uncompromising force, see D.P. Moran, *The Psychology of Irish Ireland* (Dublin,1908), cited in McDowell *Crisis & Decline*, p. 31.
[115] Moran, 'Images icons and the practice of Irish History' in McBride (ed.), *Images, Icons and the Irish National Imagination*, p. 176.
[116] E. Gwynn, *Ireland Today* (Dublin, 1913), pp. 138-46.
[117] McDowell, *Crisis & Decline*, p. 178.
[118] *Report of the Department of Education* 1933-4, p. 54.

'artificial encouragement and coercion', and emphasised that 'it was for the Senate to ensure that idealist did not runaway entirely with common sense'[119]

MacLysaght with retrospective disappointment asked 'can we ever hope to see again the enthusiasm which manifested itself in 1921 for the Irish language?'[120] The five Irish signatories of the Anglo-Irish Treaty had signed their names in old Gaelic script. Catriona Crowe of the National Archives, in evaluating the circumstances of that unique event claims:

> This was a significant statement of de-Anglization, a cutting loose from the demands of what must have been seen as the superior culture, and giving an indication of what their (the signatories), aspirations were culturally and politically at the time.[121]

MacLysaght, the most fervent supporter of the language in or out of the Senate, had long espoused that same aspiration of de-Anglization. Later he lamented the turn of events that shattered the spirit of revival, 'the split in the treaty blew that spirit to atoms as surely as the Four Courts explosion made dust of the archives.'[122] He maintained 'there was the belief that with the departure of the British, the general feeling was after July 1921, that they were at last going to hand over the destiny of the country to the native government.' Irish was so integral to his concept of national identity his expectation was that it would flourish within the new regime. Many people who had no love for it itself or for the tradition it embodied, set themselves to learn Irish because he argued 'they felt that they would be seriously handicapped without it.'[123] MacLysaght focused his disappointment claiming that opposition wrecked the Gaelic League and resulted 'in throwing away of what may proved to have been the last chance of saving the Irish language as the vernacular of Ireland.'[124]

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[119] McDowell, *Crisis & Decline*, p. 179.
[120] NLI MacLysaght Papers, MS 4,750, 'Master of None' (1952) unpublished autobiographical manuscript, Chapter 11, p. 9.
[121] Catriona Crowe, director of the National Archives of Ireland in an RTE interview, n. d., *Seven Ages*, produced and directed by Sean O'Mordha, An Araby Production for RTE in association with BBC Northern Ireland, RTE (2,000).
[122] NLI MacLysaght Papers, MS 4,750, 'Master of None' (1952) unpublished autobiographical manuscript, Chapter 11, p. 9.
[123] Ibid.
[124] Ibid.

The Senate's Cumdac

The myth of Mother Ireland was integral to nationalist discourse and ideology. 'This then is my foster-mother, the island in which ye are, even Ireland; it is the mast and the produce, the flower and the food of this island that have sustained me from the Deluge until today.'[125] Alice Green in her intended speech on the occasion of her presentation of a gift to the Senate on 26 November 1924, argued that this sentiment, this feeling was the refrain of Irish nationality, the loyalty of a people made one by their son-ship to the land that bore them. It was, she claimed, 'an early and passionate conception of Irish nationality.' Richard Kearney argues that 'myths of motherland are more than antique curiosities; they retain a purchase on the contemporary mind and can play a pivotal role in mobilizing sentiments of national identity.'[126] Green was attempting, as did cultural nationalists in previous decades, to instil national confidence by use of an empowering symbol of identity.

The gift presented to the Senate by Senator Samuel Browne in Green's absence due to illness, was the first ceremonial gift to the new Oireachtas. Fashioned in copper and fine silver repoussé and with cloisonné work, the casket was designed and made by Mia Cranwill, a noted artist. Its purpose, as Green explained, was to hold a vellum roll containing all the signatures of members of the first Senate. The casket, 'shrine' or Cumdac which was to be placed on the table at the opening of every meeting of the Seanad was unique:

> Its treatment is a mixture of heraldic blazonry and symbolic figures, the central group of which are, Body, Mind and Estate in the midst of a troubled and intensely modern world. I cannot imagine a better inspiration for artists in metal and enamel than this beautiful creation.[127]

The inspirational Cumdac was an ancient case or covering, for a bell or reliquary, which pious princes of ancient Ireland were wont to present to holy men.

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[125] *Seanad Debates,* Vol. 3, Cols. 1140-5 , Quoted in Alice Stopford Green's speech to the Senate, on 26 Nov. 1924.
[126] Richard Kearney, *Post-nationalist Ireland : Politics, culture, philosophy* (London, 1997), p. 120.
[127] *Irish Independent*, 21 Nov. 1924.

This highly symbolic gift was an expression of integration of both the old and new order; a symbol of ancient Irish heritage fashioned in a bold modern medium. In its concept, this object evoked Ireland's historic past and its future hope. Green interpreted the symbolic imagery; 'the shrine in its intense vitality carries to us its own message. If we want to revive here an Irish nation, we must dig our roots deep into its soil, and be nourished by that ancient earth.' While referencing the myth of motherland, Green did not evoke a particular pre-established narrative of identity, such as the 'vulnerable virgin ravished' by the English aggressor of the seventeenth century. Nor does she suggest 'the passive daughter' who was submissive to the 'alien marauder of the eighteenth century.' The nineteenth and twentieth century feminine which donned the more 'militant guise' of the all consuming 'mother goddess' who calls her sons to blood sacrifice, is not the image she evoked.[128] Hers is a grounded, fruitful earth mother who nourishes the sons she bore, but equally who in 'a troubled modern' world demands duty, reciprocity and responsibility to the land that bore them. As Green the historian explained 'it was not privileges of race that united Irishmen in one country and under one law, but a common loyalty to the land that gave them birth.' 'Whether we are of ancient Irish decent, or of later Irish birth, we are united in one people and we are bound by one lofty obligation, to complete the building of our common nation.'[129]

National identity is a complex concept of which national language is but one component. By 1925 society had moved beyond conflict mode; a mindset of defence and resistance was shifting to one of collective positive nation-building. The literary and cultural endeavours of a range of organizations and a wide variety of people spanning several decades, among them a considerable group of future senators, were bearing fruit in the distinct features and diverse characteristics of the emerging new state. There was a persistent 'cutting-loose from the previously dominant culture.' Old antagonisms were being transcended; divisions were evaluated for their diversity and entrenched positions were being replaced by commonsense and compromise. As Green advocated and Yeats was unequivocal, it was a 'coming of age.' Aonach Tailteann indicated and subsequent events confirmed that the need for the population as a whole to speak

[128] See Kearney, 'Myths of Motherland' in *Post-nationalist Ireland,* pp. 108-121.
[129] *Seanad Debates*, Vol. 3, Cols. 1140-5, 26 Nov. 1924.

in their native Gaelic tongue was not essential to the self-consciously confident, collective assertion and modern expression of national identity.

National and International Relations

On 21 March 1923, James Douglas asked leave of the Seanad to introduce the League of Nations (Guarantee) Bill. The reason, he explained in bringing forward the motion, was principally to create a degree of public interest in the League and to ascertain the general consensus as to whether or not Ireland should become a member. Douglas, who had served on the Constitution Committee and represented Ireland at the Inter-Parliamentary Union in Copenhagen in August of that year, had a long established interest in international affairs. He was anxious to emphasize that it was for the Executive alone to decide the time and manner of application:

> The motion is in no way critical of the Government. I know nothing of their exact matter, but it has been more or less understood that if the public generally supported them they intended at the proper time to apply for membership in the League.[130]

Having listed the disadvantages and short comings of the League, Douglas gave the main reason why Ireland should apply:

> The very act of application, and admission into the League, would be a public admission and recognition by the world of our independent national status, and for that reason, if for no other, we would be wise to make application. My second reason is that membership of the League can be recognised as safeguarding the position which we have achieved and hope to hold.[131]

Considering the civil war conditions prevailing in March 1923, the reasons cited by Douglas were favourable. However senators Barrington and Yeats questioned the cost of membership; the current cost for small nations such as Greece was £30,000. Whether because of the war conditions or negligence of the Seanad office staff, neither senators Bennett nor Kenny had received the papers in

[130] *Seanad Debates*, Vol. 1, Col. 590-93, 21 Mar. 1923.
[131] Ibid.

relation to the resolution. The motion was postponed until senators were better informed.

Senators were prepared and public support having been ascertained four months later Douglas reintroduced the bill authorizing 'the Executive Council, in the name and on behalf of Saorstát Eireann, to give certain guarantees to the League of Nations, and to accept regulations prescribed by that League.' He declined to elaborate further choosing to reserve any remarks until the Second Reading.[132] Minister of Foreign Affairs, Desmond Fitzgerald elaborated further:

> We join the League because we think that it is actually beneficial to this country... the chief point is that Ireland as a free country, as a European country, takes her place with other countries in considering the interests of all of us.[133]

The general system was that every country sent six representatives, three delegates and three substitute delegates. At a meeting in Geneva on 10 September 1923 it was unanimously recommended that Ireland be admitted to the League.

Michael Kennedy in his analysis of Ireland's external relations in the early years of the state claims that 'the League and the Commonwealth were the dual foundations of Free State's external affairs in the 1920s.'[134] The Inter-Parliamentary Union however, while having little or no power in itself, by the very fact of association alone, enhanced Ireland's international profile and therefore should not be undervalued. The more international acknowledgment Ireland received as a new emerging state, the more authentic its standing and the greater therefore its degree of legitimacy. The initial years in the League up to 1925 were formative ones necessitating resolution on several fronts, principal among them, securing the foundations of the state by registration of the treaty; the increasingly vexing issue of the Boundary Dispute was to take more time.

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[132] *Seanad Debates*, Vol. 1, Cols.1467-9, 27 July 1923.
[133] Ibid.
[134] Michael Kennedy, 'The Irish Free State and the League of Nations, 1922-32: The Wider Implications,' *Irish Studies in International Affairs*, Vol. 3, No. 4, 1992, p. 11; see also Michael Kennedy, *Ireland and the League of Nations 1919- 1946* (Dublin,).

'By registering the treaty the Free State had it recognized as an international document and had reassured its own international position and most importantly, its position as a committed League member.'[135] Ireland supported the aims and work of the League, the specific needs of small states and a fair and equitable treatment of all members. Kennedy argues that 'records show that no snub to the British was intended by the state's registration of the treaty,' yet the Irish delegate's action was denounced by Britain. Ireland's independent autonomous stance was clearly unacceptable. Michael MacWhite, Irish envoy at Geneva claimed 'it is generally felt not only in League circles, but amongst the enlightened public, that the English Tory Government attempted to strike a blow at the prestige of the League and the Saorstát at the same time.'[136] Cosgrave's attitude and the Irish Free State's perspective were clearly articulated when he spoke of 'sovereignty' in expressing gratitude for the honour of admission to the assembly. The registration of the treaty on 11 July 1924 'was followed, in spite of Great Britain's denial of its validity, by the eventual registration of the Boundary Adjustment Agreement of 1925.'[137]

An interesting aspect of Irish delegates' initial negotiations at the League assembly was the manner in which the state was perceived and defined. Eoin MacNeill writing to his wife from Geneva said 'the dominion status of Ireland seems not to have filtered through, many saw the Free State as a republic and delegates spoke of the Saorstát as *La Republic Irlandaise,* as also did various press organs'.[138] Irish Republicans would have been highly gratified by such a misapprehension and inaccurate definition. Participation in the League of Nations served not only to enhance Ireland's prestige abroad but to affirm and confirm the government's status and standing at home. By 1925 Ireland, independent and free, had confidently asserted itself in the international political arena; it had taken its place among the nations of the world. From this point onwards the foundations of external relations were firmly established and Ireland's sphere of

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[135] Ibid., p. 14.

[136] NAI DT (S) 3328, MacWhite to Fitzgerald, 18 Dec. 1924, cited in Michael Kennedy,' The Irish Free State and the League of Nations, 1922-32: The Wider implications.' *Irish Studies in International Affairs*, Vol. 3, No. 4, 1992, p. 14.

[137] W.Y. Elliot, 'The Riddle of the British Commonwealth' *Foreign Affairs*, Vol. 8, No. 3, (Apr., 1930), pp. 448.

[138] UCDA MacNeill Papers, File LAI/G/212, MacNeill to his wife cited in Michael Kennedy,' The Irish Free State and the League of Nations, 1922-32: The Wider implications.' *Irish Studies in International Affairs*, Vol. 3, No. 4, 1992, p. 12.

influence could freely expand, channelled through three influential, international institutions, the Inter-Parliamentary Union, the League of Nations and the British Commonwealth of Nations.

Foreign Policy, Trade and Fiscal Fortitude

Philip Kerr in analyzing the evolution of Empire to Commonwealth in December 1922, points to a key transformative moment; in the Anglo-Irish treaty of 1921 the former collective definition 'Empire' was officially described as 'the British Commonwealth of Nations.' He quotes from an article in *The Roundtable* of the same year:

> From now onwards policy is a matter of the people of the Empire, and the British Government will occupy a position somewhat similar to that of the President of the United States, whose foreign policy, to be effective, requires the consent and cooperation of the Senate – in our case the Dominions.[139]

Within a year, the newest Dominion Ireland, defined in the first articled of the Irish Constitution as 'a co-equal member of the community of nations, forming the British Commonwealth of Nations,' was acting with a degree of autonomy that was anathema to British perception and understanding of cooperation

Cosgrave's independent stance at the League of Nations did not blind him to the advantages of membership of the Commonwealth. 'Political conditions do not alter the economic unity of the two islands; .... remote from each other in spirit and philosophy, the islands are one from the point of view of trade, commerce and defence.'[140] Financial considerations were paramount to effective state and nation building. Fanning argues 'England was not so much our most important external affair, as Ireland's only important external affair.'[141] And the political establishment's primary affair in the post civil war years was to extend the country's industrial base,

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[139] Philip Kerr, 'From Empire to Commonwealth,' *Foreign Affairs,* Vol. 1, No. 2, Dec.15, 1922, p. 89.
[140] James O'Connor, 'What of the Irish Free State,' *The North American Review*, Vol. 223, No. 833, Dec. 1926, p. 613.
[141] Ronan Fanning, 'Small States, Large Neighbours: Ireland and the United Kingdom,' *Irish studies in International Affairs*, Vol. 9, 1998, p. 21.

boost the market potential in every way possible so as to ensure a thriving export trade. Cosgrave's action plan was clear:

> Rights and liberties earned by the treaty must be preserved. The fullest possible advantages must be taken of our membership of the British Commonwealth of Nations and of our proximity to the British market.[142]

In the late 1920s the British Commonwealth consisted of the United Kingdom, the Dominions of which Ireland was one, India and the Crown Colonies. It comprised thirteen million square miles – about a quarter of the world's surface. It had 500,000,000 citizens, 'over a quarter of the world's population – peoples of many different cultures, races, and habits, living at varying stages of social development from the most primitive to the most advanced.'[143] Cosgrave fully realized the potential market in Britain and its commonwealth connections. Agriculture, the principal industry, was the bulwark of Ireland's economic stability that must to be fostered and protected. 'The Free State came into being at a time when agricultural prices were tumbling, and by a piece of bad luck it had to reckon with a succession of abnormally bad seasons, with an epidemic of fluke among its sheep and cattle and with restrictions due to the outbreak of foot and mouth disease in Great Britain.'[144]

No one underestimated the difficulties following the destruction, chaos and general confusion of the post civil war years. Minister of Lands and Agriculture P.J. Hogan realized that education and organization were essential for the future of the agriculture industry. Horace Punkett, senator, former Westminster MP and founder of the Irish Agricultural Organization Society claimed that 'the minister cultivated plain speaking such as no Chief Secretary in the old days who valued either his post or his peace of mind would have dared to use.'[145] Hogan's enlightened approach proposed two new university faculties, one in University College Dublin for general agriculture and the other in University College Cork specifically for dairy science. But the most immediate need was to

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[142] Cosgrave in an RTE interview taken on the steps of Leinster House, n. d., in *Seven Ages*, Produced and directed by Sean O'Mordha, An Araby Production for RTE in association with BBC Northern Ireland (RTE 2000).

[143] Sir Alison Russell, K.C., 'The Constitution of the British Commonwealth' *Journal of Comparative Legislation and International Law*, Third Series, Vol. 24, No. 42, p. 83.

[144] Horace Plunkett, 'Ireland's Economic Outlook,' *Foreign Affairs*, Vol. 5, No. 2, Jan. 1927, p. 206.

[145] Ibid., p. 207.

establish and maintain strict rules, regulations and definitions to ensure top quality agricultural produce, a National Brand acceptable in international markets.

Export markets, the agricultural industry and upholding standards were the chief concern of senators Westropp Bennet, Butler, Linehan, Counihan and Keane in July 1924 when they debated and deliberated on the Agricultural Produce Bill. All of the Senate's seventy four amendments were accepted by the Dáil (See Chapter Three – Legislation). The extent of the government's determination to maintain standards became evident when the Department of Agriculture withdrew 'licences from some thirty exporters for breaches of regulations.'[146] In 1925 the Livestock Breeding Bill occasioned lively debate in the Seanad. Again farming enthusiasts, Linehan, Butler, Bennet, Mayo, Maclysaght and Everard pushed an amendment for compulsory testing for tuberculosis in bulls. Gogarty suggested the use of eugenics, and while Minister Hogan was in agreement, he cautioned discretion, least adverse publicity jeopardise the bill.[147] The implementation of too radical regulations too quickly could have been counterproductive. The fifth and final stage of the bill was debated in the Seanad on 19 February and passed into law as Act No. 3 of 23 March 1925. The Act determined that only prime quality licensed breeding bulls were kept, thus safeguarding the livestock trade which was the foundation and mainstay of the export market.

It is not within the scope of this study to examine the full range of industrial and reconstruction initiatives in those formative years. Briefly; to encourage farmers in the formerly grain-growing south-eastern counties, the sugar beet crop was introduced in 1925 by government aid and was readily taken up by the farming community. Two national loans had been successfully floated in Dublin and New York and considerable sums had been invested ihousing, new roads and transport's infrastructure.[148] The Siemens-Schuckert Shannon Electrical Scheme was challenged in the Senate by Senator John Griffith, who questioned the extent of the undertaking, in light of the financial and economic resources of the state. Griffith, former chairman of the Water-Power Recourses Sub-

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[146] Ibid.
[147] *Seanad Debates*, Vol. 4, Cols. 145- 176, 23 Jan. 1925.
[148] Andrew E. Malone, 'Party Government in the Irish Free State' *Political Science Quarterly*, Vol. 44, No. 3, Sept. 1929, p. 375.

Committee of Ireland and Senator Barrington a native of Limerick, both engineers, gave of their experience and expertise, providing the House with a fascinating level of detailed technical information on the state's most ambitious project.[149]

Financing the new state demanded innovative concepts, strategies old and new and enterprises at both national and local levels. The state was bankrupt and the economic fabric of the country had been destroyed. Liam Cosgrave, former Cumann na nGadhael Taoiseach and son of W.T. Cosgrave, described his father's decade of governance in what he termed 'abnormal' times and his difficulty in convincing the people that the state could in fact survive:

> They had to get the banks to invest in the state. That took a great deal of effort. I know my father convinced Senators Henry Guinness and Andrew Jameson, as directors of the Bank of Ireland, who gave a loan which helped to sustain the state and the government. There was no outside help.[150]

No external financiers were prepared to invest in a country slowly emerging from the destruction of revolution and civil war. While records show that the small section of ascendency, land owning senators were among the lowest attendees and contributed little to debate in the Seanad, they were in fact a considerable asset from another perspective. As the Earl of Midleton liked to remind his listeners, they paid twenty five percent of all tax in the state. Taxation was fundamental to economic viability, the work of reconstruction and any possibility of industrial and social progress.

At the founding of the Free State 'control of finance passed into the hands of the Irish Government' and as Eoin MacNeill emphasised, the change in government involved 'no very revolutionary change in the methods of raising revenue'[151] This was not however the new political establishment's first experience in fiscal matters; as referenced above a loan had been floated to

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[149] *Seanad Debates,* Vol. 4, Cols. 1012-1059, 31 Mar. 1925.
[150] Liam Cosgrave in RTE interview, n.d. in *Seven Ages*, Produced and directed by Sean O'Mordha, An Araby Production for RTE in association with BBC Northern Ireland (RTE 2000).
[151] Eoin MacNeill, 'Ten Years of the Irish Free State,' *Foreign Affairs*, Vol. 10, No. 2, Jan. 1932, p. 238.

support the endeavours of the first Dáil. There is no more edifying example of the spirit of the period, than the recorded lists of subscribers to the loan. Prominent among the personal papers of Senator Bernard O'Rourke of Inniskeen, Co. Monaghan, are a batch of records bearing the official stamp of Dáil Eireann's Department of Finance for 1924. The name and address of each subscriber, together with the amount paid, £1 per household in 95% of cases, is carefully recorded.[152] Every family, house by house, street by street were itemised, every town land and parish in towns and villages across South Monaghan, gave of their meagre substance thereby testifying to their support of the revolutionary government. Equally evident is O'Rourke's years of tedious, time consuming, unremarkable work of collecting, recording and facilitating, as a conduit between subscribers and government.[153] O'Rourke and the Monaghan subscribers were in the words of a South Monaghan Cumann na mBán poster, proclaiming to the world their 'absolute confidence in the enactments of Dáil Eireann – The Central Authority of the Irish Government.'[154]

Second Chambers

'It is often urged that there are two criteria of a good second chamber – first that it should not be a replica of the first chamber but should introduce some new quality of experience, and secondly that it should include, if possible, some or many persons of ability and eminence.'[155] Article 30, of the constitution of Saotstát Eireann ensured that the composition of the chamber collectively represented a wide range of special qualities and attainments. The Senate of Northern Ireland retained its unionist dominance throughout the period. The Parliament Act of 1911, while restricting the powers of the House of Lords, left its composition untouched.[156]

The House of Lords had gained esteem during the war because it allowed freedom of discussion but since then conservatives were less supportive. Formerly 'a

[152] UCDA Bernard O'Rourke Papers, P117/67/68 (1), (1919-1920), 28 Aug. 1924.
[153] Ibid.
[154] Ibid., P117/85 (1919-1920).
[155] Denise O'Keefe, 'The Problem of the Senate,' *Studies: An Irish Quarterly Review*, Vol. 25, No. 98, June, 1936, p. 213.
[156] Eugene Parker Chase, 'House of Lords Reform since 1911,' *Political Science Quarterly*, Vol. 44, No. 4, Dec. 1929, p. 569.

party of bankers, industrialists and big businessmen' they were 'no longer interested in a hereditary House of Lords.'[157] Lord Bryce led a Commission to report on its reform. On 18 July 1922 a series of reforms were proposed; in relation to its composition every member except the Blood Royals and the Law Lords should hold membership for a term of years fixed by statute, and it was recommended that the House should be reduced from 429 to 350 members. The Northern Senate's twenty four plus two *ex officio* senators remained consistent as did the Seanad with its sixty members.

In relation to the powers of the three neighbouring second chambers, their function was as a revising or cooling chamber to 'put a stay on hasty or ill advised legislation'; similarly; none of the three had the power to reject money bills; where there was doubt as to the definition of such a bill, a joint committee of both houses should make a decision. Though the Seanad could not amend in relation to money bills, this did not preclude discussion or debates on issues of finance.

There were few points of contact between the neighbouring second chambers. While the Seanad was in the process of establishing Standing Orders, James Douglas received instruction on the procedure for private bills from the clerk of the House of Lords. The Northern Senate and the Seanad passed simultaneous legislation in 1927. The Methodist Church of Ireland Bill of that year was promoted to make the Church legally independent of the Methodist Church of England. Almost identical Bills were passed by the Oireachtas and the Parliament of Northern Ireland to ensure their independence and autonomy. Evidence shows that Senators Mayo, Dunraven and Granard continued to occasionally attend sittings in the House of Lords. There was nothing in either constitution to prohibit the attendance in both second chambers.

Partition, the Boundary Commission and Resolution

Senators, politicians, churchmen and contemporary commentators were critical of the unresolved boundary issue. Article twelve of the Anglo-Irish Treaty provided the Government of Northern Ireland, established under the Government of Ireland Act of 1920, with the facility to opt out of the jurisdiction of the Free State Parliament, on condition that a three member Commission be established. The three members were to represent the Free State, Northern Ireland and Britain, and the Commission's chief aim

[157] Ibid., p. 572.

was to finally determine the geographic boundary between Northern Ireland and the remaining part of the island. Dr. O'Donnell, Coadjutor Archbishop of Armagh, speaking at a banquet in Dundalk on 2 January 1924, said 'partition and the proposed Boundary Commission were a "calamity". Partition was a calamity for the travelling public, the business community and the towns on either side of the border had all suffered because of the unnatural separation.'[158]

Senators from the border counties, John Mc Loughlin of Donegal and Bernard O'Rourke of Monaghan were well acquainted with the unnatural separation and it's consequent suffering. McLoughlin explained to the Seanad, that one of the reasons that impelled people of the border area to press for a Boundary Commission was the fact that there was a Labour Government in power in England. It was believed, they could be trusted to appoint a man of international reputation and integrity as Boundary Commissioner. Instead of a Canadian or South African statesman who would understand the complexities of the problems, religious, ethnic, political and socioeconomic, they were presented with an obscure judge, Mr Justice Feetham. McLoughlin expressed inevitable disappointment and frustration at the outcome of the Commission, but even more so at the seeming lack of understanding among the members of the House of the realities of partition for their northern constituents.[159]

Senator O'Rourke similarly endeavoured to communicate to the House the conditions of stress experienced daily by Catholics at the hands, of what he termed, 'government by the Orange Lodges' or the 'Specials.' Most of them were out raiding every night, and it was 'as much as a Catholic's life is worth to complain.' Two respected parish priests, Fathers Traynor and Coyle, were raided, insulted and searched repeatedly. Coyle's house was searched thirteen times in the one day, on the pretext of searching for arms. Members of the House, he claimed were ill informed on the terrorism that prevails in a quiet country parish, where seventy per cent of the inhabitants wish to come into the Saorstát. He assured the House that 'it is not an exaggeration to say that they are worse off than in penal times.'[160]

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[158] *The Irish Times*, 3 Jan. 1924.
[159] See *Seanad Debates*, Vol. 6, Cols. 122-243, 16 Dec. 1925.
[160] Ibid.

In 1924 Stephen Gwynn, considering partition and the Boundary Commission, saw Ulster's intransigence as the principal obstacle. 'Tactful handling south of the border could do much' but if the handling was such Gwynn cautioned 'that Ulster would only submit to it under compulsion, grave harm would follow.'[161] Uncertainty and suspicion dogged the process of negotiations and though resolution of partition was under discussion, it was not seen as permanent. Gwynn was still considering the possibility of unity. Obstacles to union in the main 'were ideals, symbols, pretences or pretension, and prejudices.' Symbols were fundamental to government's image of the new state; the first postage stamps depicted Ireland in its undivided state. Despite the fact that partition was in place since 3 May 1921, Ireland was presented as a thirty two county Ireland. Of the twelve stamps issued on 6 December 1922, three stamps 1d, 1½d and 2d stamp, carried a full thirty two county map of Ireland with no border defining the six county area of Ulster.[162] 'In 1923 the *Irish Independent* expressed the hope that the poor design of the first set of stamps would not be repeated, and that in the future the government would offer prizes high enough to attract accomplished artists.'[163] While the *Irish Independent's* sense of the aesthetic is laudable, it is surprising that there is so little concern for the political inaccuracy of the early stamps.

Official state symbols, as in postage stamps of 1922 and 1923, suggested that partition was a temporary measure. In 1924, Gwynn observed that Ireland at large was obsessed by a desire to grasp at every symbol of independence. Partition was perceived as temporary and it was generally agreed that 'unless and until unity of some kind was achieved, Ireland as a whole must labour under a heavy handicap.'[164] Renewal of conflict was still a possibility. Whatever the circumstances, the British ministry would take 'whatever action was necessary to enforce observance of the treaty.' Gwynn argued that such action need not be military; the simple act of closing 'the British ports against all imports from the Free State would probably suffice, Britain being Ireland's sole market.'[165] Archbishop O'Donnell wanted the 'calamity' of partition resolved. By late 1925 senators O'Rourke and McLoughlin of the border counties, in the best

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[161] Stephen Gwynn, 'Ireland, One and Divisible,' *Foreign Affairs,* Vol. 3, No.2, Dec. 15, 1924, p. 193.
[162] See Patrick Wallace, of the National Museum on Irish philately in *Seven Ages*, Produced and directed by Sean O'Mordha, An Araby Production for RTE in association with BBC Northern Ireland (RTE 2000).
[163] Ewan Morris, *Our Own Devices* (Dublin, 2005), p. 81.
[164] Stephen Gwynn, 'Ireland, One and Divisible,' *Foreign Affairs,* Vol. 3, No.2, Dec. 15, 1924, p. 194.
[165] Ibid., p. 198.

interests of their constituents, both advocated support for legislative measures to resolve the boundary issue.

The Senate's Legislative Resolution

On 16 December, the Seanad debate on the second stage of the Treaty (Confirmation of Amending Agreement) Bill revealed the diversity of opinions and perspectives, which had fuelled the national debate during the previous twelve months. President Cosgrave, Minister of Justice O'Higgins and the Minister of Industry and Commerce McGilligan were present, following the Dáil debate of the previous day which had continued until midnight. Senator Farren expressed his complete objection 'it is a bad day's work for the people of this country to agree to set up a border line.'[166] While acknowledging the long history of the Boundary issue, Farren expressed opposition to participation in the process:'Partition was imposed upon us by an Alien assembly, but this is the first occasion on which a body of Irishmen in this country are asked to agree to set up a border line between the people of this land.'[167]

Referencing the treaty agreement, he highlighted the comparisons between the very favourable conditions experienced by the minority in the south and those of the minority in the North of Ireland:

> Striking tributes have been given in the debates in the Dáil, on the public platforms, and in the pulpits, in regard to that, and it has been acknowledged that there has been no hostility shown in this State to people who differ from the majority either in religion or politics. But there is a minority in the North-East portion of this country, and I think I am not overstating the case when I say that they have not been shown much tolerance.[168]

Religious difference and comparisons were central to his argument. There was no protection for the northern minority in the terms of Agreement before them. The northern judiciary did not contain one Catholic, while in the Free State judiciary there was a majority of non-Catholics. In the North-East there was a sectarian police force, and no protection for the minority. The system of proportional representation was introduced in the North-East to enable the minority to get representation. Yet at the first available opportunity 'they abolished the system of proportional representation, and deprived the minority of their rights.'

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[166] *Seanad Debates*, Vol. 6, Cols. 124-6, 16 Dec. 1925.
[167] Ibid.
[168] Ibid.

The Earl of Mayo focused on the process and procedure that had led to this point. He had never been in favour of the Commission and was more pragmatic: 'its disappearance simply meant another page in Ireland's troubled history had been overturned.' He predicted that the report and the evidence taken would repose among the archives of the Imperial Government in London for future historians to delve into and try to disentangle. 'The outcome was the product of the Imperial Government; disowned and even boycotted by the Government of Northern Ireland, it was welcomed, but with suspicion by the Free State.'[169]

Bernard O'Rourke, with an Ulsterman's understanding of a border county saw treachery and betrayal. He claimed that the Dáil would have rejected the treaty only for Article 12, giving as was understood at the time, that Tyrone, Fermanagh, South Down, and South Armagh would have the right of self-determination. It was his considered opinion, that MacNeill's incompetence, and England's usual treachery when dealing with Ireland found a way to twist Article 12:

> No doubt we might have sent a stronger representative than Dr. MacNeill, but I do not consider that it would have made any material difference except that the crisis would have come twelve months ago instead of to-day. A stronger man would have broken with them at the first or second sitting, as he would have insisted on the proper terms of reference being carried out—the wishes of the inhabitants.[170]

Though disillusioned with the conditions he pleaded with senators who were thinking of voting against it to consider the alternative, sectarian strife and the possibility of bloodshed, particularly for Catholics in the North:

> It is not yet realised what these people had to suffer, and are still suffering, from the most bigoted and tyrannical Government of modern times. The only Government that is on a par with it has its headquarters at Moscow. The only difference is that Belfast, so far, has not executed any bishops or priests.[171]

Others focused on the origins of the situation. Senator McLoughlin claimed that Clause 12 of the Treaty contained the alleviation of partition, but that machinery was delicate and was knocked out of gear when de Valera drove 'the iron ram-rod of revolt' through it. De Valera was warned of the danger which his rejection of

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[169] Ibid., Vol. 6, Cols. 128-29, 16 Dec. 1925
[170] Ibid., Vol. 6, Cols. 130-141, 16 Dec. 1925.
[171] Ibid.

the treaty meant to the Catholics of Ulster, yet he deliberately split the country and plunged it into an inferno of civil war, in which 'the houses of Protestants were burned in the name of the Irish Republic.' For Senator Kenny, the Government had no responsibility for the boundary; it was 'a heritage handed down to by their predecessors, the Irish Nationalist Party.'

Senator Douglas and Minister O'Higgins

James Douglas like many senators had little confidence in, or hopes for the commission. Following his peace negotiations with de Valera in May 1923, he had become a close friend of Kevin O'Higgins. Douglas tells of a meeting with O'Higgins in Clery's Hotel one evening in November 1925. O'Higgins looked ill and worried as he told Douglas that Eoin MacNeill had just resigned from the commission. MacNeill, who had failed to realise what was going on, had suddenly awakened to the realization that his point of view had been completely ignored by the other two members of the boundary commission.[172] O'Higgins intimated that the government had made a mistake in appointing MacNeill, who by temperament was unsuited to the position. O'Higgins was fearful that a majority report would be issued making alterations in the boundary completely unacceptable to the Free State government. Despondent and speaking as if he saw no way out, O'Higgins told Douglas he was 'afraid that the issue of such a report would wreck both the government and the whole treaty position.'[173]

One month later, Douglas in the Seanad debate cautioned against rejection of the Bill, which would:

> Tend strongly to increase partition, both the actual geographical partition, and what I regard as far more important, the partition in mind and thought between the people that live in our area and the people that live in the area of the North-East. [174]

Douglas, a pacifist with many Northern connections, had no hesitation in placing the source of the now permanent partition in the so-called Ulster boycott:

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[172] Gaughan, *Senator James Douglas*, p.129.
[173] Ibid.
[174] *Seanad Debates*, Vol. 6, Cols. 130-141, 16 Dec. 1925.

> I opposed it then, and I believe now, it was a mistake all along. The policy right up to the time of the treaty, whether unavoidable or not, tended to alienate the minds of many people—who were sympathetic to us in the Northern area.[175]

When Sean McEntee Deputy for Monaghan and a Catholic, put Belfast Sinn Fein's petition for a boycott before the Dáil on 6 August 1920, Ernest Blythe, Monaghan's other delegate and a Protestant, totally opposed the blockade and forecast that if such action was taken it would destroy forever the possibility of any union between North and South.[176] Five years later Blythe's predictions and Douglas' conclusions were manifest in the confirmation of partition.

Of the responses in the Seanad there was none more challenging than that of Henry Guinness. He questioned why, when one day was sufficient to pass a corresponding Bill in the Parliament of Great Britain, and without a dissentient vote, that this country, who had obtained the lion's share by the agreement did not appear to be satisfied. He challenged those who viewed with suspicion 'this astoundingly advantageous bargain made by our representatives.' Andrew Jameson was more forceful in his arguments as he focused on economic survival. The Free State, he claimed, cannot exist without trade. This bill was an opportunity to push trade not only in Great Britain, but in the Colonies. He warned that if people from Britain and further afield continue to see notices advocating 'the boycott of British goods' Irish trade would suffer.[177] 'The sooner we realize that our customers are the people in the north and the British, the better for the Free State.'

Senator O'Farrell and the Referendum

When John T. O'Farrell said 'I realise, and a great many people with ordinary common sense and no great statesmanship realise, that the ultimate result will be the stabilization of the present Boundary from a political point of view,'[178] it was not a compliment to members of the Executive present. Cosgrave immediately took offence at the sub-text of his speech stating 'I have never heard so much drivel spoken in my life as I have heard from Senator O'Farrell who has poured abuse on the Executive

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[175] Ibid., Vol. 6, Cols. 155-56, 12 Dec. 1925.
[176] Minutes of Second Session of Dáil Eireann, 6 Aug. 1920, (N.A. 'Dáil Eireann: Minutes of Proceedings, 1911-1921'), pp. 192-93.
[177] *Seanad Debates*, Vol. 6, Cols. 228-36, 16 Dec. 1925.
[178] Ibid.

Council.'[179] It was known that the Labour Party had previously attended a meeting in the Shelbourne Hotel with the Irregulars or members of the Republican Party. O'Farrell's veiled reference to republicans as 'statesmen' was offensive to Cosgrave, while at the same time referring to the Executive members as mere 'politicians.' With accusations of abuse, the already heated debate proceeded to become more acrimonious.

Labour senators were in agreement that this was a poor settlement. O'Farrell opposed the final stage of the Bill and with the support of his labour colleagues and Maurice Moore, tried to forward a motion to put the issue to a referendum. As standing orders had been suspended to put the Bill through all its stages, and Senator Gogarty had moved that Article 47 of the constitution 'should not be applied to the Bill,' the proceedings were nearing their conclusion. O'Farrell questioned the constitutionality of Gogarty's motion. Chairman Glenavy assured him that the constitution provided that any senator could forward such a motion; 'no constitutional question arises, because the constitution expressly provides that if the motion by Senator Gogarty is carried, then the Bill comes into direct operation.'

Senator Moore, strongly opposed the suspension of the standing orders and the rejection of a referendum claiming 'this Bill is a revolution, an actual revolution':

> If this Bill is passed without a referendum I do not believe the people of the Free State will consider themselves bound by the Treaty or any part of it. The Bill hands over the lives and liberties of our fellow-countrymen, against their will, to a cruel, bigoted and barbarous faction, from whom at present they are suffering every sort of tyranny. The Dáil has no mandate for this agreement.[180]

Angry and despondent, O'Farrell accepted as inevitable that 'the Bill will be passed by this House this evening.' Admitting that he did not know what effect a referendum in the country would have on the Bill he concluded:

> The country, is absolutely inept, and has no moral or political soul at the present time. It is worn and tired out with politics, with fratricidal strife, and I do not believe you would

[179] Ibid, Vol. 6, Col. 220, 16 Dec. 1925.
[180] *Seanad Debates*, Vol. 6, Cols. 235- 42, 16 Dec. 1925.

> get a fifth of the whole to come in and vote any more than you did at the Seanad elections. But when it is passed I believe it is the duty of all parties to try for the sake of the country and make it successful. [181]

Guinness, more hopeful, posed the question to the House 'are we going to hold back and refuse this gesture of peace and concord?' Many aspects of the complex issue had been discussed, incompetent representation, minority rights and safeguards, confirmation of the boundary, the possibility of future strife, trade and economic survival and the call for a referendum. 'The spirit of goodwill stands at our door and knocks' Guinness advised 'let us not refuse a welcome to this gracious visitor.' The Bill passed all its stages in the Seanad but one. Finally, Senator Oliver Gogarty moved, as it was 'necessary for the immediate preservation of the public peace and safety,' that the provisions of Article 47 of the Constitution should not apply to the Bill. The motion was seconded by Senator Dowdall, and despite the strong objections from John T. O'Farrell the motion was passed. The final vote was thirty-one in favour and seven against.[182] The Treaty (Confirmation of Amending Agreement) Act, No. 40 of 1925, was passed into law on the following day 17 December 1925. The Boundary Agreement was given force of law by corresponding Acts passed in both Westminster and Dublin.

Senate Elections

Senate elections took place on Thursday 17 September 1925. There were seventy six candidates for nineteen places. The electorate consisted of approximately 1,300,000 and the whole twenty-six counties was the constituency. The franchise was limited to citizens over thirty years of age; the system of proportional representation (Hare), single transferable vote was used. Only one quarter of the entire electorate went to the polls. The quota was 15,286 votes and more than half the successful candidates failed to achieve the quota. The names of the seventy-six candidates were presented on a ballot paper which measured twenty-two by sixteen inches.

Considering the nature of some of electoral campaigns that have been held in Ireland, the senatorial campaign was extremely quiet.[183] There was a variety of causes

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[181] Ibid.
[182] Ibid.
[183] *The Irish Times* 16 Sept. 1925.

for the low turnout. Poor weather conditions and the fact that the voting time was reduced from twelve to ten hours were unfavourable particularly in working class areas. Voters received no poll cards or official notices as to the location of polling stations which also contributed to a great number of abstentions. Principal among the causes for non-voting at the election, however, was the boycott of the election advocated by Republicans in their newspaper *An Phoblacht.*[184] In western counties, where republicans were strongest, the poll was uniformly low.[185] Counting of votes took sixteen days.

Of the nineteen outgoing senators only eight were re-elected. Three Labour senators O'Farrell, Cummins and Foran were successful but both senators Samuel Brown and Douglas Hyde failed to be returned to the Senate. Other groups which received recognition were the licensed liquor dealers, the ex-soldiers, the farmers, the doctors, and the business men.[186] Harold Gosnell's critique of the 1925 Irish Senate Election in *The American Political Science Review,* February 1926, concluded 'the partial renewal of a second chamber of limited powers will not attract the interest of a large proportion of the electorate when the ballot is a confusing one and the size of the constituency makes electioneering difficult.'[187]

Unity in Diversity – An Overview

While both Houses of the Oireachtas were occupied with legislation necessary to establish the state and effect nation building, the primary objective of government in 1923 was to quell republican resistance, restore law and order and re-establish internal security and national stability. Remarkably this was achieved within a relatively short period of time. With the covert assistance and co-operation of senators Douglas and Jameson, a cease-fire was called by de Valera on 24 May 1923. By the end of 1924, Kevin O'Higgins, Minister of Justice could claim:

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[184] *An Phoblacht*, 11 Sept. 1925.
[185] Harold F. Gosnell, 'An Irish Free State Senate Election,' *The American Political Science Review,* Vol. 20, No. 1, Feb. 1926, p. 118.
[186] *The Irish Times,* 10 Oct. 1925.
[187] Harold F. Gosnell, 'An Irish Free State Senate Election,' *The American Political Science Review,* Vol. 20, No. 1, Feb. 1926, p. 119.

> There is in Ireland a phenomenon, which was never been seen in the days of British administration, an un-armed police force functioning from Donegal to Cork with the complete good will and co-operation of the people.[188]

Partition would remain central to Irish politics for the remainder of the century, thereby keeping both unionist and republican ideologies within the political frame. The issues which divided the sides, were tragically insignificant compared to that which had been achieved; the dream of generations had unbelievably been realised and for the first time in history the Irish State now functioned among the free nations of the world. [189]

Independent Ireland emerged from the matrix of one of the most successful national movements in centuries. Among its members were Senators Wyse Power, Esmonde, Nesbitt, DeLoughry, O'Rourke and others. Following the political split in January 1922, a majority supported the treaty providing legitimacy for the government and continued to do so in successive elections. The considerable reduction in number of Sinn Féin *cumann* by late 1922 confirms a collective review, a modification of former nationalist perspectives. For five years Sinn Féin had carried the aspirations and hopes of a nation. Laffan summarises, 'it faltered in early 1922, yet it was the principal means whereby Ireland's constitutional tradition was transmitted through years of turbulence, and it played an important role in ensuring that governments in independent Ireland would be responsible to the people. Sinn Fein was the democratic face of the Irish revolution'[190]

For senators, constitutional nationalists who had participated in the Sinn Féin movement, acceptance of nomination or election to the Senate was a continuance of their tradition of public service. The split within the Sinn Féin movement, the subsequent divide into pro and anti-treatyites leading to civil war, was a threat to democracy and the survival of the new state. Senators' and the public's acquiescence and acceptance of government's hard-line policy during the civil war, indicated that they were prepared to compromise for a resolution of the conflict, and the protection of democracy. By their participation in the Free State legislature senators were

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[188] UCDA MacNeill Papers; Address by Kevin O'Higgins to the Irish Society at Oxford University, 31 Oct. 1924.
[189] Ibid.
[190] Laffan, *The Resurrection of Ireland*, p. 465.

collectively pro-treatyites, but individually their views and perspectives were formed in differing political traditions, nationalist, unionist and labour; a relative few held republican sympathies. This diversity ensured that no group or individual could, or did dominate the proceedings of the Seanad.

For senators of the unionist tradition with their perceived Anglo connections or associations, acceptance and assimilation in the new Irish society was slow and not without its difficulties. As ethnicity was central to Irish identity, Anglicisation in any form was anathema to it. A decade earlier Edward Gwynn had argued that, 'the conflict of races lies at the bottom of all Irish questions.'[191] Years of Anglo-Irish conflict and subsequent civil war had served to resurrect, reinforce and intensify the latent ethnic tensions of centuries. An even more defining characteristic of senators of the unionist tradition was that of religion.

Stephen Gwynn, argued as late as 1924 that what divided Irish society was 'the state of mind inherited from times when citizenship was the privilege of one religion,' Protestantism. 'Protestant ascendency was adopted as a principle of British policy in the seventeenth and throughout the eighteenth century where it had unrestricted play in Ireland, where the mass of the people were Catholic.' The problem, Gwynn argued was 'Irish politics still presented in terms of ascendancy.' A mindset of centuries is not easily dispelled. 'We in Ireland are confronted with the spirit of ascendancy surviving in the Irish Protestants.'[192] During the thirty one months of the Seanad's first triennial session senators' co-operation in the second chamber served, to some extent, to modify opposing traditions and in an attempt to overcome the legacy of centuries of divisions, political, ethnic, social and economic succeeded in effecting a degree of unity in diversity.

Contemporary Evaluation

Evaluation of a range of critiques on the period by contemporaries presents a remarkable consensus. A long period of hostility to government by British rule left a citizenship with keenly discerning critical interest in the structures and personnel of the political arena. In a state that had come to self-

[191] Edward Gwynn, *Ireland Today*, pp. 138-46; McDowell, *Crisis & Decline*, p. 31.
[192] Stephen Gwynn, 'Ireland, One and Divisible, '*Foreign Affairs*, Vol. 3, No. 2, Dec. 15, 1924, p. 184.

government by revolution and was established in the midst of civil war, the task for the political establishment seemed insurmountable. Contemporaries, Michael Hayes, Darrell Figgis, James O'Connor, Horace Plunkett, Daniel A. Binchy, Stephen Gwynn, Alfred O'Rahily, Eoin MacNeill and A.E.[193] were among those who were in agreement that that settled conditions and a degree of progress manifested in a remarkably short period of time. Speaking as a historian of the epoch A.E's evaluation was that an organic unity came about in national life; political, cultural and economic organizations created a mechanism which politicians could operate and develop for the well-being of the country. 'No people in the modern world can prosper economically until they have created such an organization, and in the Free State this was created rapidly.'[194]

Eoin MacNeill looked beyond organization and structures of nation building, and located success in the experience, expertise and calibre of members of the legislature:

> Those who were most active in bringing about the Irish revolution had previously been engaged in the British civil Service, in Irish county or municipal administration, in the legal or medical professions, or in other occupations of a general public bearing. This, along with a national aptitude for organization, may explain how, almost without delay and in the midst of an armed internal conflict, a complete administrative system was established and began to function effectively.[195]

Members' former experience and habit of public service were now being exercised in the service of the new and independent state. Honesty and integrity were not sacrificed to popularity or public acclaim. A.E. stated 'never did a government coming to power after a revolution throw over so completely the doctrine of "the spoils to the victors."'[196]

Members of the Senate with comparable service in 'county and municipal administration' and occupations 'of general public bearing' brought a greater

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[193] A.E. 'George Russell.'
[194] A. E. 'Twenty Five Years of Irish Nationality,' *Foreign Affairs*, Vol. 7, No. 2, Jan. 1929, p. 220.
[195] Eoin MacNeill, 'Ten Years of the Irish Free State,' *Foreign Affairs*, Vol. 10, No. 2, Jan. 1932, p. 241.
[196] A.E. 'Twenty Five Years of Irish Nationality,' *Foreign Affairs*, Vol. 7, No. 2, Jan 1929, p. 217.

degree of diversity to the Upper House. Professor Daniel Binchy[197] in his critique of the Seanad considered that diversity:

> I do not think we shall ever again see in the Ireland of our time so remarkable a body as the first Senate. Born amidst the din of the civil war, holding its first meet while the guns were still booming, it nevertheless seemed to me to contain the nucleus of a better and greater Ireland.[198]

Politically diverse, unionists, constitutional nationalists, and revolutionaries; 'poets, peers and peasants,' representatives of every feature of Irish life, testified by their presence and commitment that 'no matter how they had differed in the past, their first love and their first service were pledged to the land that bore them.'[199] Class and religious differences were ignored as men and women of Anglo-Irish stock, names which had hitherto stood for 'ascendency' and aloofness, now for the first time threw in their lot with the Irish nation and were rewarded by the burning of their homes by people calling themselves Irish nationalists.[200]

Binchy was correct in his assessment that 'there is no hint of bitterness in the senate debates, but rather a generous desire to end the fratricidal conflict between Irishmen.' Yet, the evidence suggests that there were considerable long-term, adverse consequences of IRA attacks on members of the Upper House. Glenavy, on the occasion of his retirement from the second triennial session in November 1928, broke with the custom of silence on outrages perpetrated against members, when he told the House how 'he had not escaped the observation and attention of those who were watching them at the time. They (the IRA), paid him the complement of visiting his private residence on at least six occasions.'[201] Horace Plunkett, in answer to a friend's concern for his health following the destruction of his home in 1923, confessed:

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[197] Professor of Legal History at UCD 1924 and later at Corpus Christi College, Oxford. See *DIB*.
[198] Daniel A. Binchy, 'Proposals for a new Senate,' *Studies: an Irish Quarterly Review*, Vol. 25, No. 97, Mar. 1936, p. 20.
[199] Ibid.
[200] Ibid.
[201] *Irish Independent*, 29 Nov. 1928.

> My nerves are shattered and I suffer dreadfully from depression. Insomnia, my old enemy is taking mean advantage of all I have gone through physically and mentally, particularly since my home and all its contents were destroyed. I used that house, as a meeting place for all my fellow workers. Assembling workers and friends of Ireland was my *modus opperandi*. I feel that I can never again work as I have done. [202]

Plunkett in referencing his *modus opperandi* pointed to that quality of facilitation, support and encouragement that was so much part of senators' sphere of influence, in a time of reconstruction and nation building. Shortly afterwards Plunkett resigned from the Senate.

Senator Martin Fitzgerald was forced to relinquish almost two centuries of publishing tradition in the *Freeman's Journal.* He closed the business, having failed to recapitalise so as to refurbish the printing presses, following their destruction by the IRA in March 1922. As late as 1945 Stephen Glendon wrote to his cousin Senator Bernard O'Rourke:

> I am afraid you must have suffered a considerable loss through the burning of the Mill. The insurance will hardly cover the loss of trade that has followed since. I don't see the *Sunburst* packets in the shops even now. So I suppose you are not able to supply your customers yet. [203]

In O'Rourke's case the ordinary commerce of everyday business was disrupted for decades. James Douglas, like Glenavy, Bennet and others spoke of the constant, persistent harassment through anonymous threatening letters. That ominous threatening undercurrent persisted for years; as the assassination of Kevin O'Higgins in 1927 indicated, the IRA had not gone away.

The oft cited statistics on the Senate's composition, be it of class, as in 'eight peers, four barons, and one knight.....' or of religion; sixty percent were Catholic, forty per cent Protestant, gives little indication of the diverse inclusiveness of this group of legislators. An American critique written as early as 1923 cited Article 30 of the constitution; citizens were chosen who had 'done

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[202] UCDA Horace Plunkett Papers, P27, 10 July 1923, Plunkett to a friend Mrs. Hamilton, 'Cluaine na Gréine' Foxrock, Co. Dublin.

[203] UCDA Bernard O'Rourke Papers, P117/89, Nodlaig 1945, Fr. Stephen Glendon to his cousin Bernard O'Rourke.

honour to the nation by reason of useful public service' and who because of 'special qualifications or attainments, represented important aspects of the nation's life.' While making favourable comparisons with the criteria of selection of other second chambers, the author concluded 'no second chamber in the world is chosen in such a way, and if anything like success attends it, democracy will have learned how to use in the service of the state, the highest gifts of its citizens.'[204]

Those gifts, interests, experience and expertise were brought to the discourse of the second chamber in service of nation building, in the three most crucial years of the state. Development of industry and commerce was of particular concern to senators with business and manufacturing expertise, McLoughlin of Donegal, O'Dea of Dublin, DeLoughry of Kilkenny, MacLysaght of Clare and O'Rourke of Monaghan. Funding the state's reconstruction and fiscal consolidation was the prerogative of bankers Guinness, Jameson and Esmonde; reorganization of the transport system was effected under the scrutiny of Bagwell, Burgess, Jackson and Moran. Consistently present, contributing and articulate Labour senators O'Farrell, MacPartlin, Farren, Duffy and latterly Foran were ever vigilant of the rights of workers and Trade Unions. Bennett, Butler, Linahan, Counihan and Molloy were protective of agricultural interests; Parkinson, Greer and Everard's sphere of influence and primary interest, the national bloodstock industry, saw its potential in the highly lucrative international export markets.

Issues concerning education, language, literature and art were guaranteed a voice by senators Green, Gogarty, Yeats, Costello and Sigerson. The entrepreneurial spirit was evident in senators Everard, Desart and Goodbody who, at different times, had pioneered the growing of tobacco. Engineers Griffith and Barrington closely monitored the Shannon Electrical scheme. Ex army officers Mahon, Moore, Everard and Greer defended the rights of prisoners to the extent of delaying legislation. This range of experience, qualifications and expertise, intellectual, economic, administrative and social, presented a diversity that prefigured the vocational model, which would

[204] W.P. M. Kennedy, 'Significance of the Irish Free State, *The North American Review*,' Vol. 218, No. 814, Sept. 1923, p. 322.

later be advocated for future senates. Indeed, the trend towards vocational representation was indicated by the fact that specific groups were consulted prior to nomination of candidates for election. A small but strong nucleus of senators, with former parliamentary experience, and or skilled legal training and acumen, ensured the smooth machinery of a well organized second chamber; among them were senators Glenavy, Brown, Esmonde, Keane, Bennett, Wicklow, Granard, Mayo and Kerry. None was more noteworthy than Chairman Glenavy.

Chairman Glenavy

Evidence indicates that Glenavy was a highly efficient, effective chairman. From the day of his appointment he rejected any interference from the Dáil, thereby establishing the independence and autonomy of the Upper House. Initially, due to abnormal post civil war conditions, he accepted the necessity of hasty legislation. Later however, speaking at the Committee stage of the Unemployment Insurance Bill in July 1924, he strongly protested about 'the manner in which they had to pass bills wholesale, as he was convinced that flaws would be found later.'[205] With exacting standards and a determination to uphold the dignity and decorum of debate 'he kept debaters to the point with masterly capacity; or rebuked them if there did not seem to be any point in what they had to say.'[206] He claimed that it was of paramount importance that they at all times 'consider the dignity of the Seanad and avoid having the assembly turned into a sort of publicity board.'[207] When questioned about a newspaper report on Seanad proceedings he was decidedly dismissive: 'If we are to have our Standing Orders and our Constitution interpreted for us by the papers I do not know where we will eventually find ourselves.'[208]

But equally, he challenged the House demanding greater commitment; 'they were' he claimed 'not using the brains of the House to the extent that they could and that the country could reasonably expect.'[209] Pointing to their diversity of experience and expertise, he suggested that senators, interested in particular matters of reform should introduce private bills, not necessarily in the hope that

[205] *Irish Independent*, 10 July 1924.
[206] Ibid., 23 Mar. 1931.
[207] *Seanad Debates*, Vol. 4, Col. 453, 4 Feb. 1925.
[208] Ibid.
[209] *Irish Independent*, 4 Mar. 1926.

they would be passed but to 'call the attention of the public and the Government to specific issues.' Glenavy was suggesting that they use the machinery of the House, in particular the mechanism of the Resolution, to initiate public debate.[210] The inherent power of the House to discuss, by way of resolution, pressing matters of public importance, should be used to advantage; 'matters such as economic depression, unemployment, trade depression, over-taxation, agricultural depression and matters of that kind in which many senators were qualified to give a lead to public opinion.'[211]

On 27 December 1922, Glenavy told his friend Andrew Bonar Law he had decided to accept nomination to the Senate 'for a few months, to help them get the machinery going.'[212]As subsequent events revealed, he served as chairman, not alone for the entire first triennial session 1922-25, but also of the Seanad's second session 1925-28. With no precedent or existing model upon which to base its foundations and structure, it was incumbent on Glenavy to establish procedures and practice at a time when political circumstances and abnormal conditions demanded immediate and urgent legislation. John T. O'Farrell, on the occasion of Glenavy's retirement looked back to those early days when they had neither Standing Orders, Committees or any machinery to regulate the assembly. O'Farrell, who was not given to superlatives, stated unequivocally that success was entirely due to 'the vast legal and parliamentary experience and ability of Lord Glenavy.[213] Glenavy in reply, reiterated his constitutional obligations to both the Senate as institution and to its personnel. As Cathaoirleach of the Upper House and second chamber of the Free State Legislature, his fundamental task and primary goal was 'to give members the fullest and fairest opportunity for discussion, and also to uphold with all his strength, the rights, privileges and dignities of the House as a whole, and each of its individual members.'[214]

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[210] *Seanad Eireann, Report of the Committee on Procedures Relative to Standing Orders,* 21 May 1930. 'Bills, Resolutions and Orders' No. 72 (1) (2) (3), pp. 51-53.
[211] *Irish Independent*, 4 Mar. 1926.
[212] UKPA Bonar Law Papers, 108/3/6, Glenavy to Bonar Law 27 Dec. 1922.
[213] *Irish Independent*, 29 Nov. 1928.
[214] Ibid.

Summary

Though reconstruction and the restoration of law and order were in progress by early 1924, evidence indicated that there remained a residue of resistance and opposition to the new regime. Harsh realities began to dawn as it became apparent that, despite the termination of British rule, there was no prospect of instantaneous prosperity. Among the Senate's extensive legislative programme of that year, was the passage into law of the Courts of Justice Bill, which established the legal code of practice for the new order in the Free State. Glenavy was an integral part of the process, having served as chairman of the Judiciary Committee since 1922. Contrary to W.T. Cosgrave's expectations that the Bill would pass within a matter of days, its prolonged and stormy passage, which was reported daily in the press, served as a vehicle for the nation's education on the legislative processes of both Dáil and Seanad.

Assessment of the Army Mutiny revealed that abnormal conditions still prevailed. Dissatisfaction within a specific group of the army's officer corps, initiated a crisis threatening the foundations of the state. With rumours of a *coup d'état* and the threatened kidnapping of the entire Cabinet, the government's reaction was called into question. While its treatment of the mutineers was generally characterized by restraint and compromise, the stark contrast with its reaction to the Army Council in upholding the law, was almost ruthless. Mutiny was condoned and resignation was the fate of the Army Council, who refused to condone it. In the process of resolution, a precedent was established confirming subordination of the national army to the civilian government in power. It was a vital step in the consolidation of democracy. The government's resolution of the Mutiny crisis clearly indicated, that attitudes to potential conflict situations had changed, and that the conflict paradigm was superseded in favour of a more politically realistic and conciliatory approach to the issue.

Section two examined the Seanad's contribution in the context of language, history and culture, components essential to national identity and the process of nation building. A primary aim of the government in the post civil war period was the favourable projection, nationally and internationally, of the attributes of the new state. Raising the standard of culture, rebuilding social life and reclamation and

renewal of national heritage, were part of the most ambitious Free State, post-war event in August of 1924. The highly successful Aonach Tailteann, an exposé of Gaelic culture and identity, was planned and executed by the government, not only to raise the moral of the nation, but to indicate national expansion and industrial power. Analysis of the event confirms that it was a bold statement of de-Anglicization, a proud proclamation of Ireland and 'Irishness.' Calculated to appeal to national and international audiences alike, it was an acclaimed success, as press reports vied for superlatives to do justice to the event.

Analysis of the historic context reveals the political, literary and cultural endeavours of a range of organizations and a wide variety of people. Spanning several decades, the contributions of revolutionaries, historians, academics and a considerable group of future senators, were now bearing fruit in the distinct features and diverse characteristics of the emerging new state. Aonach Tailteann was a conclusive demonstration of a distancing from a previously dominant alien culture, and of national maturity.

Section three confirms that participation in the League of Nations, the Inter-parliamentary Union and the British Commonwealth enhanced government status at home and abroad. James Douglas' introduction of the League of Nations (Guarantee) Bill in the Seanad in March 1923, culminated in Ireland's admission to the League on 10 September 1923 and registration of the treaty on 11 July 1924. The foundations of external relations were firmly established and Ireland's sphere of influence could freely expand, channelled through the three aforementioned influential, international institutions.

Despite independence, interdependence was a necessary reality for economic stability of which development of the Irish export trade was essential; it was therefore imperative that the fullest possible advantage be taken of Ireland's membership of the British Commonwealth of Nations and of her proximity to the British market. Regulatory legislation was fundamental to the creation and maintenance of a National Brand. The Seanad debated the Agricultural Produce Bill and the Livestock Breeding Bill in 1925 whose specific purpose was

establishing regulations and standards, thus safeguarding the livestock trade which was the foundation and mainstay of the export market.

The Boundary dispute remained an issue of contention from its establishment in June 1921 to its resolution on 17 December 1925. Evidence reveals that the question of the final determination of the geographic boundary between North and South was consistently evaded and held in abeyance. Craig procrastinated at every step in the hope that the matter of the Boundary would peter out and remain in oblivion, as it had done for three years. Described as an unnatural separation and a calamity for the travelling public, it adversely affected the business community and the towns on either side of the border. Ever-present unionist fear of a republic, suspicion and misinformation exacerbated difficulties. When finally established, the Commission deliberated through spring and summer of 1925, giving no indication of its findings. Shock and betrayal was the collective reaction when on 7 November, the *Morning Post* published details of the Commission's findings, suggesting that the new border was simply a readjustment of the existing boundary. The ensuing crisis for Cosgrave's administration demanded immediate action. Within a month of the *Post's* publication, the final settlement confirmed that the 1921 border would remain unchanged. The Seanad debated the issue and the Treaty (Confirmation of Amending Agreement) Act, No. 40 of 1925, was passed into law on 17 December 1925.

CONCLUSION

Members of the Upper House of the Irish Free State legislature, during the Senate's first triennial period, demonstrated by their commitment, persistence and dedicated contribution that they were a formidable group. Fifty six men and four women of the second chamber, served as legislators from 11 December 1922 to 8 July 1925, a period encompassing months of civil war, its protracted aftermath and crucial formative years of the new state. The constitutional requirements for senators' selection, as specified in Article 30 of the 1922 constitution, ensured that individually and collectively, with their continued tradition of public service, they brought a broad range of interests, experience and expertise to the duties and deliberations of the Upper House. Their political and demographic disparity ensured that no one individual or group dominated either the House's agenda or its debates.

As members of the Senate and supporters of the legitimate government they were collectively treatyites. However, this convenient blanket definition belied the social, cultural, economic and religious diversity within the group. Essential to understanding their political stance and the complexity of their respective opinions and ideologies, is the source and development of those belief systems. Rooted in the political events of the preceding years, senators from opposing traditions were compelled through circumstances and their acceptance to the Senate, to engage and in many instances modify, their views so as to co-operate as legislators in the Upper House. Together this group represented a broad political spectrum, constitutionalist, nationalist, moderate and extreme, former unionists, socialist and labour.

The Senate as constituted in 1922 had its origins and evolution within the framework of Home Rule legislation between 1886 and 1920. The records show that southern unionists, though initially opposed to home rule, with Ulster's wish for exclusion, were left a minority, becoming more isolated and vulnerable in a time of rapid political change. Growing demand for a Republic challenged their formerly secure position necessitating compromise, realignment of their political allegiances and ultimate acceptance of change. Through the years of national struggle, their persistent lobbying succeeded in influencing the structure of the proposed Senate of the Free State, so as to secure their adequate representation in the new order. Evidence

in a range of British archival material clearly indicates that this group of unionists were proactive, monitoring and participating in ongoing negotiations with both the British and the Provisional Governments on the issues of the Constitution and the Senate, or second chamber as proposed in 1922.

Comparative analysis of bicameralism reveals points of similarity and difference in various second chambers. The composition of the Northern Senate reflected unionist dominance; the House of Lords remained the preserve of the British Peerage; the Seanad represented a greater political and demographic diversity than either. With its Lords Spiritual, the House of Lords alone of the three, had church representation, which was absent from the other two second chambers. The primary function and justification of all three was to put a stay on hasty or ill advised legislation; similarly none had power over financial legislation. With the democratic emphasis of the 1920s, James Bryce was commissioned to report on reform of the Lords, specifically with recommendations to reduce its membership to 350. The Northern Senate with twenty four, plus two *ex officio* members, retained its structure, function and unionist dominance throughout the period. Change in the Seanad's mode of election became necessary following the abortive election of 1925. The non party ethos which prevailed in the early years was to change with the advent of the Fíanna Fáil government in 1932. An overview of their effectiveness in the period, indicates that each properly exercised the functions entrusted to them by their respective constitutions.

The Seanad, unlike the Dáil, had no precedent but its *raison d'être* like that of second chambers generally, was to put 'a check on the power of the popular assembly' and where necessary 'criticize, amend or reject measures passed by the other chamber.' The model for second chambers proposed in over three decades of Home Rule legislation, prefigured mechanisms adopted by the Senate. While continuity is evident in its mechanisms and structure, one feature marked radical discontinuity and change. In a country where religion was a crucial component in all considerations, and despite the fact that as late as February 1921 W.T. Cosgrave had considered a 'theological Senate' with direct ties to the Vatican, remarkably and contrary to former practice, there was no Church representation in the Senate. The absence of Church representation of either principal denominations, Catholic or Church of Ireland suggests that the strongly democratic ethos prevailing in 1922 precluded the necessity for a mandatory clerical presence.

Senators entered the public arena in a week that witnessed the government's drastic response to Deputy Sean Hales assassination on 7 December. Government's decision of 'reprisal' executions, though ultimately effective, marked not alone the extent of the crisis but also their determination to deal with republicans, whose avowed goal was to prevent the Free State government from functioning. As members of the Oireachtas and supporters of the government, senators were legitimate targets drawn directly within the ambit of the reprisal policy. The pattern of reprisals, set from the earliest days of the Anglo-Irish war, was by 1922-23 fundamental to, and a key characteristic of the civil war conflict. Society's de-sensitization, and its passive acceptance of the government's unorthodox action, is a mark of the extent of disruption and drift from normality existing in December 1922. From this point onwards executions, official and unofficial, and the reprisals policy were integral to the escalating conflict which directly affected senators.

Republican Directive No. 16 of 26 January 1923 ordered 'if any of our prisoners of war are executed by the enemy, one of the senators on the attached list marked "A" will be shot as a reprisal.' This study has examined and discussed each of the attacks on senators and their property in the following five months. Though as many as thirty seven incidents of attacks on senators have been cited, only those from verifiable sources have been listed. Death threats, arson, kidnapping and intimidation by anonymous letter were only part of a wider pattern of violence; random shooting at senators' property were too numerous to mention. The professed aim of republicans was to disable the machinery of government by attacking members of the legislature in an attempt to destroy the embryonic state. The IRA strategy of naming and labelling senators as 'freemason and imperialist' was indicative of psychological discrimination and victimization of those who were labelled; arguably that strategy was equally revealing of the IRA's perceptions and mind-set.

The level of research and presentation of personal details in the Senate 'Death' list indicated a preoccupation with class, property, religious and socioeconomic factors. Evidence has shown that sectarianism was part of the pattern of violence in the earlier years of the revolution. An insidious yet fundamental element of complex factors that shaped perceptions, it continued to fuel the conflict in the terrorist phase of the civil war. The rhetoric of ethnic intolerance and sectarianism was a key part of the revolutionary lexicon. Freemasonry was perceived as synonymous with the Empire,

Protestants, affluence and the ascendancy. While the declared aim of Republicans was the establishment of an Irish Republic, evidence suggests that their motivation was more complex. Though ideological, nationalist and patriotic, their complex political belief system was coloured by long held resentment, grievances and generations of perceived injustice. Evidence indicates that IRA resentment was projected on to those perceived as the source of those grievances; the profile of this specific group of senators reflected the stereotypical images associated with former ascendancy dominance. They were victims of a mind-set nurtured through centuries of resentment and resistance.

The stereotypical image, emphasising titular privilege and prestige had been perpetuated and would continue to evoke memories of an older order and an oppressive past. Ascendency was synonymous with alien dominance. Stephen Gwynn in 1924 argued that the central 'problem of Irish politics still presents in terms of ascendancy.' Evidence in source material of the period suggests that stereotypical images re-enforced a mind-set which continued to associate and perceive 'the spirit of ascendancy surviving in the Irish Protestants.'[215] Both the contemporary mind-set and the subsequent literature have served to prejudice perceptions and obscure the true features of the Senate personnel. A primary aim of this study has been to investigate and, based on evidence, dispel this perception.

The critical underlying assumption of the literature's much quoted statistic on the Senate's composition; 'of the thirty nominees, eight were peers, four were baronets, one was a knight,' suggesting that the proceedings of the Senate were dominated by the ascendancy, Protestant unionist class, has been refuted in this study. Evidence based on analysis of senators' daily attendance records for the entire period presents an accurate picture of the Senate's consistent attendees and contributors to debates. Figures reveal that not one member of the ascendancy class, was in the highest attendance category. And as the study indicates, the rates and pattern of attendance manifested early in the senatorial session remained consistent throughout.

The continued absence of members of the peerage remained a contentious issue throughout the period. Senators, among the highest group of attendees, voiced their

[215] Stephen Gwynn, 'Ireland, One and Divisible,' *Foreign Affairs*, Vol. 3, No. 2, Dec. 15, 1924, pp. 183-198.

objection at members of 'privileged birth, position and standing' retaining their seats in the Senate when they seldom attended the House. No hint of Anglophobic discourse was voiced in the chamber. Yet, the persistent absence of members of the peerage was perceived as arrogance and indifference, a reminder of recent alien cultural dominance. Considering the age profile, the lordships could be excused on grounds of illness and infirmity; equally, being formerly accustomed to the rarefied atmosphere of the House of Lords, arguably, they felt out of place in the more inclusive, pluralist, democratic assembly of the Free State's second chamber.

The initial task confronting the Senate at its inception was to establish machinery for a functioning second chamber. Chairman Glenavy insisted on the independence of the House, advocating that they proceed systematically with the business entrusted to them. Without precedent or a model upon which to fashion its operations and with the constitutional stipulations that each House establish its own Standing Orders, a general committee was formed to provide a framework of rules and regulations for procedures and practice. As the demands for greater organization became necessary, a range of committees reported and advised on structural forms appropriate to the day to day functioning of the chamber. Working within constitutional guidelines, Standing Orders were adopted in January 1923 and continued to be amended incrementally during the first triennial period.

Examination and analysis of the earliest bills proposed revealed that two issues dominated the legislative agenda; as immediacy and urgency characterised both, Seanad Standing Orders were suspended to allow for the simultaneous passage of all legislative stages. Bills necessary to regularize legal process and procedures, were crucial to the transfer and consolidation of power from the old regime to the new. More urgent still was the emergency legislation essential to the protection of the state from internal armed aggression. Glenavy quoted the dictum: *salus reipublicae suprema lex,* to emphasise the primacy of public safety, the supreme law of the land to which all other considerations must give way. Undue haste in implementing emergency powers legislation in 1923, was responsible for exceeding constitutional parameters; Emergency Powers Act No.1 was significant; it was the first example of statutory emergency provisions to be rendered inoperative by reference to the new Constitution.

A mark of the day to day demands of the legislative process is evident in the extensive volume of legislation to come before the House. In total 145 Acts were passed into law in the specified period. Records of the *The Irish Statute Book* indicate that 1924 has the unique distinction of passing sixty four Acts, the greatest number in any one year since the founding of the state to the present day.[216] Records show senators debated and legislated for every facet and condition of Irish life from the quality of eggs to the confirmation of the treaty. Protecting the state's principal industries necessitated legislation covering agricultural exports, markets and regulations to ensure top quality produce, so as to create and maintain an internationally recognized National Brand. The politico-administrative functions of the state were formulated in the Ministers and Secretaries Act 1924. The Civil Service Act of the same year confirmed and defined the function and regulation of those departments. The invective generated by the divorce debate, underlined the needs of a pluralist society, and the necessity of reconciling the minority's constitutional freedom with the dictates of the majority's conscience.

Relations between the Houses of the Oireachtas were tentative. Senators co-operated and supported the Dáil on all emergency legislation. A significant degree of co-operation between senators and members of the Executive is evidenced in the process of bills initiated in the Seanad. Disagreement between the Houses arose when the Seanad moved to delay the Indemnity (British Military) Bill in February 1923. The considerable cohort of former military men in the Senate, considered release of all Irish prisoners was essential before passage of the bill into law. The implied primacy of the Dáil in W.T. Cosgrave's suggestion, that objection to the Bill would best come from the Dáil 'the House in which popular feeling was more generously represented,' was resented by the Senate. Records indicate that relations were occasionally strained, there was a lack of communication or a sense of partnership, and an absence of any nexus with the government. Deputies, former revolutionaries, who considered a nominated Senate had no mandate from the people, were resentful of sharing power in the new constitutional arrangements. As evidenced, Seanad debates reveal a consistent level of frustration at Ministers' reluctance to attend the reading of bills in the Senate.

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[216] See *Irish Statute Book, Legislation Directory* 1922- 2011(eISB), produced by the Office of the Attorney General and reproduced by permission of the Houses of the Oireachtas.

In the three year period reviewed, senators, paradoxically were a cohesive pluralist body, in a population polarized by civil war. The initial difficulties of lack of familiarity with each other and the legislative process were transcended as records indicate their growing confidence in the chamber. There was a marked degree of integration between senators of differing class and religion. They were a critical voice in legislative processes characterized by urgency and haste. They amended and recommended, resisting any undue influence. They challenged where necessary; John Purser Griffith queried the findings of the report on the Siemens Schuckert Shannon Scheme, claiming the project would put too great a strain on the country's finances. John T. O'Farrell's frustration at rejection of his motion for a referendum, during the Seanad debate on the Treaty (Confirmation of Agreement) Bill, is evocative of the general tenor of the population by late 1925; 'the country is worn and tired out with politics and fratricidal strife.'

Senators' sphere of influence extended far beyond the legislative work of the chamber. A primary aim of the government in the post civil war period was the favorable projection, nationally and internationally, of the attributes of the new state. Leas Cathaoirleach James Douglas' introduction of the League of Nations (Guarantee) Bill in the Seanad in March 1923, culminated in Ireland's admission to the League on 10 September 1923 and registration of the treaty on 11 July 1924. Douglas also represented Ireland at the Inter-parliamentary Union in Copenhagen in the same year, and on many subsequent occasions.

Senators' extra-legislative activities were evident as society moved beyond conflict mode. As a mindset of defense and resistance was shifting, they brought their cultural capital and considerable social skills to the service of nation building. Their involvement and contribution to Aonach Tailteann in 1924 was one indication of their social and cultural endeavours. The records show the Aonach was a bold statement of de-Anglicization reaffirming the uniqueness of authentic Gaelic culture. For a country emerging from the chaos of civil war, it was a confident presentation and assertion of modern Irish national identity. At the international gathering on the opening night W.B. Yeats claimed it was symbol of the nation's maturity or 'coming of age.' Chairman Glenavy, more

political in his stance, expressed hope for the state which 'would soon attain the full measure of its strength and stature as a peaceful and united nation.'

If the Dáil had expected a passive, compliant Senate, they were disappointed. This study has shown that determined senators were not deflected from their views on specific legislation. John Keane was adamant that the supremacy of civilian power must be upheld. Andrew Jameson warned, it was time to move beyond the revolutionary rhetoric of boycotting, and the sooner it was realized that the people of the North and Britain were their only customers, the better for the Free State. Young dynamic John T. O'Farrell of Labour, with an eye to the future proposed an ambitious coordinated transport system advocated in Tom Johnson's Democratic Program. Glenavy and Samuel Brown, insisting on the independence of the Judiciary, strongly opposed any intervention by the Executive in the regulation of judges. Emphasizing their responsibility as legislators to protection of democracy, Brown argued 'there is no greater tyranny than the tyranny of absolute democracy, and the only protection against that is the independence of the judges.'[217]

Glenavy in or out of the chamber had exacting standards. As chairman of the Upper House his task was to monitor the legislative process, but equally he insisted that senators had a duty to draw the attention of government and the public to specific issues. The consensus of contemporary evaluations of the legislature's achievements, concluded that a degree of progress manifested itself in a remarkably short period of time. As this study has shown, this group of senators epitomized diversity, they expressed their views individually and they co-operated in effecting the passage of legislation into law in the period. Members from divergent nationalist, unionist and labour traditions worked and related with that degree of political maturity expressed by the republican activist Máire Comerford: 'we don't pretend to be one voice, we are one people with many voices, and there are many who have different views.'

In presenting these conclusions this study has drawn on a wide range of archival material from both Irish and British repositories. Full use has been made of

[217] *Seanad Debates*, Vol. 2, Col. 419, 16 Jan. 1924.

Irish national political collections and personal papers in the NAI, NLI, UCDA, TCDA, MAD, PRONI and of both Irish and British Cabinet Minutes. Personal papers and correspondence of senators and other principals have been indispensible; Douglas, Dunraven, Esmonde, Glenavy, Jameson, A.S. Green, Hugh Kennedy, MacLysaght, T. MacPartlin, O'Rourke, Twomey, Eamon de Valera, W.B. Yeats, and Wicklow. Personal and filmed interviews provide a more nuanced reading of the period. The personal papers of Lloyd George, Andrew Bonar Law, Frances Stevenson, Walter Long and Lionel Curtis are rich sources for British perspectives on the revolutionary and civil war period. The less familiar Midleton and J. H. Bernard papers have given new light and insight, not alone to British Irish negotiations up to and during the civil war but also to unionist lobbying which ultimately had direct impact on the Senate established in 1922.

Seanad and *Dáil Debates* were essential. *Seanad Debates,* a much underused resource, are an invaluable source of information on the day to day legislative business of the second chamber, on the issues of concern at the foundation of the state, and the different and distinct personnel of the Upper House. Extensive newspaper sources, national and provincial, provided context for daily events during the conflict and its protracted aftermath.

Based on all available evidence this study concludes firstly, senators of the Irish Free State Senate who served during the Senate's first triennial period were remarkable; despite months of specific terrorist targeting they stayed and fulfilled their constitutional obligations; they persisted in spite of personal trauma, holding firm to their initial commitment to the Senate, the legislature and the state. Secondly, they defied the myth of an ineffectual Senate dominated by a privileged ascendency class. Thirdly, as legislators they succeeded in difficult circumstances, in laying the foundations of the fledgling state; their sphere of influence extended beyond the chamber into the social and cultural realm so essential to stability and nation building. Finally due to their ascendency associations, it was inevitable that they would continue to bear the antipathy to, and resentment of former alien dominance. Deep seated perceptions are not easily dispelled. In their diversity they did not fit the bipolar model of the conflict period; and they warranted little attention in the subsequent, political bipolar model which ensued after 1932.

Appendices

Senators of the Irish Free State Senate (B-J)

Name	*Address*	*Occupation*	*Age**
Bagwell, John	Tipperary	Railway Director	48
Barnville, Dr Henry L	Dublin	Doctor	35
Barrington, William	Limerick	Engineer	65
Burgess, Rt Hon. H.G.	Dublin	Railway Director	63
Butler, Richard A	Dublin	Butler	47
Costello, Ellen	Galway	Teacher	52
Counihan, John J	Dublin	Farm Sales Manager	43
De Loughry, Peter	Kilkenny	Merchant	39
Desart, Countess Ellen	Kilkenny	Company Director	65
Douglas, James Green	Dublin	Company Director	35
Dowdall, James C	Cork	Company Director	49
Duffy, Michael	Meath	Trade Union Official	38
Dunraven, Earl of	Limerick	Landowner	81
Esmonde, Sir Thomas HG	Wexford	Landowner	60
Everard, Sir Nugent	Meath	Army Officer	73
Eyre, Edmund W	Dublin	Dublin Corpo Official	55
Farren, Thomas	Dublin	Trade Union Official	43
Fitzgerald, Martin	Dublin	Newspaper Owner	67
Glenavy, Lord James HM	Dublin	Barrister	71
Gogarty, Dr Oliver St John	Dublin	Doctor	44
Goodbody, James P	Offaly	Company Director	45
Granard, Earl of	Longford	Landowner	48
Green, Alice Stopford	Dublin	Historian	75
Greer, Sir Henry	Kildare	Army Officer	67
Griffith, Sir John Purcer	Dublin	Engineer	74
Guinness, Henry S	Dublin	Director Bank Ireland	64
Haughton, Benjamin	Cork	Farmer	67
Headfort, Marquess of	Meath	Landowner	44
Irwin, Cornelius	Wexford	Ship Owner	45
Jackson, Arthur	Sligo	Company Director	69

A*	Age in 1922
AS	Active serving member of the Senate
D	Died
DCE	Did not contest election
E & N	Elected for [9] or [3] years; Nominated for [12] or [6] years
F	Failed to be elected
Party	IND – Independent; LAB - Labour
R	Resigned
Religion	C – Catholic; P – protestant; Q – Quaker; J – Je

Senators of the Irish Free State Senate (B-J)

Name	*E & N*	*Religion*	*Party*	*1922-25*
Bagwell, John	N6	P	IND	AS
Barnville, Dr Henry L	E3	C	IND	AS
Barrington, William	E9	C	IND	AS
Burgess, Rt Hon. H.G.	N6	P	IND	AS
Butler, Richard A	E3	C	IND	AS
Costello, Ellen	E9	C	IND	AS
Counihan, John J	E3	C	IND	AS
De Loughry, Peter	E3	C	IND	AS
Desart, Countess Ellen	N12	J	IND	AS
Douglas, James Green	E9	Q	IND	AS
Dowdall, James C	N12	P	IND	SA
Duffy, Michael	E9	C	LAB	AS
Dunraven, Earl of	N12	P	IND	AS
Esmonde, Sir Thomas HG	N12	C	IND	AS
Everard, Sir Nugent	N6	P	IND	AS
Eyre, Edmund W	N6	C	IND	AS
Farren, Thomas	E9	C	LAB	AS
Fitzgerald, Martin	N12	C	IND	AS
Glenavy, Lord James HM	N6	P	IND	AS
Gogarty, Dr Oliver St John	N6	C	IND	AS
Goodbody, James P	N6	Q	IND	AS
Granard, Earl of	N12	P	IND	AS
Green, Alice Stopford	E9	P	IND	AS
Greer, Sir Henry	N6	P	IND	AS
Griffith, Sir John Purcer	E9	P	IND	AS
Guinness, Henry S	N12	P	IND	AS
Haughton, Benjamin	N6	Q	IND	AS
Headfort, Marquess of	N6	P	IND	AS
Irwin, Cornelius	E3	P	IND	AS
Jackson, Arthur	N6	P	IND	AS

AS	Active serving member of the Senate
D	Died
DCE	Did not contest election
E & N	Elected for [9] or [3] years; Nominated for [12] or [6)] years
F	Failed to be elected
Party	IND – Independent; LAB - Labour
R	Resigned
Religion	C – Catholic; P – protestant; Q – Quaker; J – Jewess

Senators of the Irish Free State Senate (B-J)

Name	*1925-28*	*1928-31*	*1931-34*	*1934-36*
Bagwell, John	AS	AS	AS	AS
Barnville, Dr Henry L	AS	AS	AS	AS
Barrington, William	AS	AS	F	
Burgess, Rt Hon. H.G.	AS	DNC		
Butler, Richard A	F	AS	F	
Costello, Ellen	AS	AS	AS	F
Counihan, John J	AS	AS	AS	AS
De Loughry, Peter	F			
Desart, Countess Ellen	AS	AS	D 1933	
Douglas, James Green	AS	AS	AS	AS
Dowdall, James C	AS	AS	AS	AS
Duffy, Michael	AS	AS	AS	AS
Dunraven, Earl of	R 1926			
Esmonde, Sir Thomas	AS	AS	AS	D 1935
Everard, Sir Nugent	AS	D 1929		
Eyre, Edmund W	AS	DNC		
Farren, Thomas	AS	AS	AS	AS
Fitzgerald, Martin	D 1927			
Glenavy, Lord James	AS	DNC		
Gogarty, Dr Oliver St J.	AS	AS	AS	AS
Goodbody, James P	AS	DNC		
Granard, Earl of	AS	AS	AS	DNC
Green, Alice Stopford	AS	D 1929		
Greer, Sir Henry	AS	DNC		
Griffith, Sir John Purcer	AS	AS	AS	AS
Guinness, Henry S	AS	AS	AS	DNC
Haughton, Benjamin	AS	F		
Headfort, Marquess of	AS	DNC		
Irwin, Cornelius	F			
Jackson, Arthur	AS	DNC		

AS	Active serving member of the Senate
D	Died
DCE	Did not contest election
E & N	Elected for [9] or [3] years; Nominated for [12] or [6] years
F	Failed to be elected
Party	IND – Independent; LAB - Labour
R	Resigned
Religion	C – Catholic; P – protestant; Q – Quaker; J – Jewess

Senators of the Irish Free State Senate (J-Y)

Name	*Address*	*Occupation*	*Age**
Jameson, Andrew	Dublin	Company Director	67
Keane, Sir John	Waterford	Army-Barrister	49
Kenny, Patrick B	Waterford	Private Means	39
Kerry, Earl of	Kerry	Landowner	60
Linehan, Thomas	Cork	Farmer	47
Love, Joseph C	Cork	Merchant	50
MacEvoy, Edward	Laois	Merchant	49
MacKean, James	Dublin	Commercial Rep	57
McLaughlin, John	Donegal	Manufacturer	51
MacLysaght, Edward	Clare	Business Man	35
MacPartlin, Thomas	Dublin	Trade Union Official	43
Mahon, Sir Bryan	Kildare	Ex-Army	60
Mayo, Earl of	Kildare	Landowner	71
Molloy, William J	Roscommon	Farmer	63
Moore, Col. Maurice	Dublin	Ex-Army Officer	68
Moran, James	Dublin	Hotelier	67
Nesbitt, George	Dublin	Merchant	52
O'Dea, Michael	Dublin	Manufacturer	50
O'Farrell, John T	Dublin	Trade Union Official	36
O'Rourke, Bernard	Monaghan	Company Director	49
O'Sullivan, Dr William	Kerry	Doctor	70
Parkinson, James J	Kildare	Bloodstock breeder	52
Plunkett, Sir Horace	Dublin	Founder IAOS	68
Poe, Sir William Hutchinson	Offaly	Landowner-Army	84
Sigerson, Dr George	Dublin	Doctor	86
Westroppe Bennett, T.W.	Limerick	Farmer	55
Wicklow, Earl of	Wicklow	Landowner	45
Wyse Power, Jenny	Dublin	Business Woman	64
Yeats, William Butler	Sligo	Poet	57
Mansfield, Edward	*Resigned his*	*seat on 11Dec. 1922*	

A*	Age in 1922
AS	Active serving member of the Senate
D	Died
DCE	Did not contest election
E & N	Elected for [9] or [3] years; Nominated for [12] or [6] years
F	Failed to be elected
Party	IND – Independent; LAB - Labour
R	Resigned
Religion	C – Catholic; P – protestant; Q – Quaker; J – Jewess

Senators of the Irish Free State Senate (J-Y)

Name	*E &N*	*Religion*	*Party*	*1922-25*
Jameson, Andrew	N6	P	IND	AS
Keane, Sir John	N12	P	IND	AS
Kenny, Patrick B	E9	C	IND	AS
Kerry, Earl of	N12	P	IND	AS
Linehan, Thomas	E3	C	IND	AS
Love, Joseph C	E3	C	IND	AS
MacEvoy, Edward	E3	C	IND	AS
MacKean, James	E9	C	IND	AS
McLaughlin, John	E9	C	IND	AS
MacLysaght, Edward	E3	C	IND	AS
MacPartlin, Thomas	E9	C	LAB	D 1923
Mahon, Sir Bryan	N6	C	IND	AS
Mayo, Earl of	N12	P	IND	AS
Molloy, William J	E9	C	IND	AS
Moore, Col. Maurice	E9	C	IND	AS
Moran, James	N12	C	IND	AS
Nesbitt, George	E3	P	IND	AS
O'Dea, Michael	E3	C	IND	AS
O'Farrell, John T	E3	C	LAB	AS
O'Rourke, Bernard	E9	C	IND	AS
O'Sullivan, Dr William	E9	C	IND	AS
Parkinson, James J	E3	C	IND	AS
Plunkett, Sir Horace	N12	P	IND	R 1923
Poe, Sir W Hutchinson	N12	P	IND	R 1924
Sigerson, Dr George	N12	C	IND	AS
Westropp Bennett, T.W.	E3	C	IND	AS
Wicklow, Earl of	N6	P	IND	AS
Wyse Power, Jenny	N12	C	IND	AS
Yeats, William Butler	N6	P	IND	AS
Mansfield, Edward				

AS	Active serving member of the Senate
D	Died
DCE	Did not contest election
E & N	Elected for [9] or [3] years; Nominated for [12] or [6] years
F	Failed to be elected
Party	IND – Independent; LAB - Labour
R	Resigned
Religion	C – Catholic; P – protestant; Q – Quaker; J – Jewess

Senators of the Irish Free State Senate (J-Y)

Name	*1925-28*	*1928-31*	*1931-34*	*1934-36*
Jameson, Andrew	AS	AS	AS	AS
Keane, Sir John	AS	AS	AS	F
Kenny, Patrick B	AS	D 1931		
Kerry, Earl of	AS	R 1929		
Linehan, Thomas	AS	AS	AS	AS
Love, Joseph C	F			
MacEvoy, Edward	F			
MacKean, James	AS	AS	AS	AS
McLaughlin, John	AS	AS	AS	AS
MacLysaght, Edward	F			
MacPartlin, Thomas				
Mahon, Sir Bryan	AS	D 1930		
Mayo, Earl of	D 1927			
Molloy, William J	AS	AS	F	
Moore, Col. Maurice	AS	AS	AS	AS
Moran, James	AS	AS	AS	F
Nesbitt, George	F			
O'Dea, Michael	F			
O'Farrell, John T	AS	AS	AS	AS
O'Rourke, Bernard	AS	AS	AS	AS
O'Sullivan, Dr William	AS	AS	AS	AS
Parkinson, James J	AS	AS	AS	AS
Plunkett, Sir Horace				
Poe, Sir W Hutchinson				
Sigerson, Dr George	D 1925			
Westropp Bennett, T W	AS	AS	AS	AS
Wicklow, Earl of	AS	F		
Wyse Power, Jenny	AS	AS	AS	AS
Yeats, William Butler	AS	F		
*Mansfield, Edward				

AS	Active serving member of the Senate
D	Died
DCE	Did not contest election
E & N	Elected for [9] or [3] years; Nominated for [12] or [6] years
F	Failed to be elected
Party	IND – Independent; LAB - Labour
R	Resigned
Religion	C – Catholic; P – protestant; Q – Quaker; J – Jewes

Senators – Contributions to Debates 1922-1925

Name	*1922-23*	*1924*	*1925*	*Total*
Bagwell, John	6	14	9	29
Barnville, Dr Henry L				
Barrington, William	26	14	23	63
Burgess, Rt Hon. H.G.		*		1
Butler, Richard A	7	7	12	26
Costello, Ellen	6	14	3	23
Counihan, John J	7	5	10	22
De Loughry, Peter	12	4	19	35
Desart, Countess Ellen	5	4	3	12
Douglas, James Green	41	34	27	102
Dowdall, James C	11	16	13	40
Duffy, Michael	5	6	4	15
Dunraven, Earl of	1		1	2
Esmonde, Sir Thomas HG	37	30	17	84
Everard, Sir Nugent	29	13	18	60
Eyre, Edmund W	5	1		6
Farren, Thomas	35	33	27	95
Fitzgerald, Martin	19	8	5	32
Glenavy, Lord James HM	42	44	34	120
Gogarty, Dr Oliver St John	6	13	22	41
Goodbody, James P	6		2	8
Granard, Earl of	4	2	1	7
Green, Alice Stopford	12	8	1	21
Greer, Sir Henry		3		3
Griffith, Sir John Purcer	7	6	7	20
Guinness, Henry S	36	32	14	82
Haughton, Benjamin	12	7	13	32
Headfort, Marquis of		1	2	3
Irwin, Cornelius	13	12	14	39
Jackson, Arthur	12	11	8	31

Senators – Contributions to Debates 1922-1925

Name	*1922-23*	*1924*	*1925*	*Total*
Jameson, Andrew	28	28	1	57
Keane, Sir John	31	30	24	85
Kenny, Patrick B	30	19	22	71
Kerry, Earl of	11	9	8	28
Linehan, Thomas	29	19	21	69
Love, Joseph C	14	10	14	38
MacEvoy, Edward	2	6	2	10
MacKean, James	14	5	3	22
McLaughlin, John	18	9	7	34
MacLysaght, Edward	37	18	18	73
MacPartlin, Thomas	27			27
Mahon, Sir Bryan	6	2		8
Mayo, Earl of	18	20	11	49
Molloy, William J		1	2	3
Moore, Col. Maurice	41	31	31	103
Moran, James	8	3	8	19
Nesbitt, George	2	6	11	19
O'Dea, Michael	17	11	10	38
O'Farrell, John T	41	36	26	103
O'Rourke, Bernard	5	3	10	18
O'Sullivan		2	6	8
Parkinson, James J	6		6	12
Plunkett, Sir Horace	1			1
Poe, Sir W	17	7		24
Sigerson, Dr George	8	9		17
W Bennett,	38	22	28	88
Wicklow, Earl of	16	7	4	27
Wyse Power, Jenny	20	19	19	58
Yeats, William Butler	28	18	3	49

Senators –Attendance Record 1922-1925

Name	*1922-23*	*1924*	*1925*	*Total*
Bagwell, John	9	16	9	34
Barnville, Dr Henry L	10	3	1	14
Barrington, William	34	21	28	83
Burgess, Rt Hon. H.G.	1	1	2	4
Butler, Richard A	17	18	17	52
Costello, Ellen	24	25	14	63
Counihan, John J	20	16	13	49
De Loughry, Peter	23	12	21	56
Desart, Countess Ellen	21	19	14	54
Douglas, James Green	41	34	29	104
Dowdall, James C	16	21	16	53
Duffy, Michael	21	14	9	44
Dunraven, Earl of	1			1
Esmonde, Sir Thomas HG	39	31	22	92
Everard, Sir Nugent	37	25	22	84
Eyre, Edmund W	7	1		8
Farren, Thomas	40	35	28	103
Fitzgerald, Martin	30	13	6	49
Glenavy, Lord James HM	44	44	35	123
Gogarty, Dr Oliver St John	11	18	23	52
Goodbody, James P	10	5	5	20
Granard, Earl of	11	4	1	16
Green, Alice Stopford	24	17	3	44
Greer, Sir Henry	6	4	1	11
Griffith, Sir John Purcer	20	20	15	55
Guinness, Henry S	29	33	15	87
Haughton, Benjamin	23	8	16	47
Headfort, Marquis of	5	5	4	14
Irwin, Cornelius	28	21	20	69
Jackson, Arthur	24	17	11	52

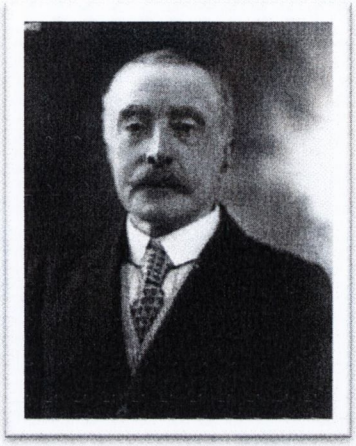
Senators – Attendance Record 1922-1925

Name	*1922-23*	*1924*	*1925*	*Total*
Jameson, Andrew	31	29		60
Keane, Sir John	37	32	27	96
Kenny, Patrick B	38	25	23	86
Kerry, Earl of	12	11	10	33
Linehan, Thomas	33	24	22	81
Love, Joseph C	31	21	20	72
MacEvoy, Edward	17	14	10	41
MacKean, James	27	10	9	46
McLaughlin, John	28	13	12	53
MacLysaght, Edward	42	20	20	82
MacPartlin, Thomas	31			31
Mahon, Sir Bryan	13	6	3	22
Mayo, Earl of	19	21	12	52
Molloy, William J	7	6	8	21
Moore, Col. Maurice	43	36	32	111
Moran, James	19	6	12	37
Nesbitt, George	11	19	19	49
O'Dea, Michael	24	14	16	54
O'Farrell, John T	42	36	27	105
O'Rourke, Bernard	20	14	14	48
O'Sullivan	10	10	10	30
Parkinson, James J	12	7	11	30
Plunkett, Sir Horace	2			2
Poe, Sir W	27	8		35
Sigerson, Dr George	14	19		33
W Bennett,	40	22	29	91
Wicklow, Earl of	32	19	11	62
Wyse Power, Jenny	36	27	22	85
Yeats, William Butler	37	23	5	65
*Mansfield, Edward				

Senator Alice Stopford Green's Gift to the Senate
Cumdac – Casket (26 November 1924)



Lord Glenavy – Cathaoirleach of the Irish Free State Senate 1922-1928



James Henry Mussen Campbell (1851–1931), 1st Baron Glenavy, was Cathaoirleach or Chairman of the Free State Senate from1922 to 1928. A lawyer and politician, he was born on 4 April 1851, third and youngest son to William Mussen Campbell, an officer in the DMP, and his wife, Delia of Terenure, Dublin. It was believed that his paternal grandfather had been a police constable in Glenavy, Co. Antrim, and that this ancestral origin inspired his later choice of title.

Campbell was educated at Kingstown (Dun Laoghaire), and at Trinity College, Dublin, where he won a classical scholarship and was a senior moderator in both classics and history. He obtained his BA in 1874 and won the college historical society's gold medal for oratory. He was called to the Irish bar in 1878 and rapidly became a leading junior on the north-eastern circuit. His skilful oratory ensured rapid advancement, he took silk in 1892 and was made a bencher of King's Inns in 1894. Called to the English bar by Gray's Inn in 1899, he became a bencher in 1901 and K.C. in 1906, but practiced little in England. In 1884 he married Emily MacCullagh, daughter of John MacCullagh resident magistrate of Newry, Co. Down. They had one daughter and three sons, the youngest of whom was killed in the First World War.[1]

Campbell was a politician like most Irish barristers of the time. A unionist, he was elected to parliament for the St Stephen's Green division Dublin, at a by-election in 1898. Two years later he lost this seat to the nationalists but in 1903, at another by-election, he was returned as one of the two members for Dublin University, Edward Carson having been the other member since 1892. He was solicitor-general for Ireland from 1901 to 1905, attorney-general for a short time in December 1905 and

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[1]UKPA Lloyd George Papers, F/180/3/5, 23 Sept. 1919; UKPA Bonar Law Papers, 108/3/6, 27 Dec. 1922; NLI P7666, James G. Douglas Papers; *DIB; ODNB*; Debrett's *Peerage;* O'Halpin, *Decline of the Union* (1987 ; O'Sullivan, *The Irish Free State and its Senate* (1940)*;* Maume, *The Long Gestation* (1999); Kotsonouris, *The Wnding up of the Dáil Courts* (2004); *Seanad Debates* (1922-28); Campbell, *My Life and Easy Times* (1967); MacLysaght, *Changing Times* (1978).

was sworn of the Irish Privy Council in the same year. He was deeply involved in the Ulster unionist movement, the home rule controversy of 1912–14, and was to have been a member of Carson's provisional government. He held his Westminster seat until he was raised to the bench in April 1916.

Campbell as attorney general now began to distance himself from any association with extreme unionists. Appointed as lord chief justice of Ireland in November 1916, he actively participated in efforts to secure a compromise settlement. His modified views incurred the criticism of both hard-line unionists and nationalists; to the former he was an opportunistic lawyer who had used them to secure office for himself; to the latter he was anti home rule and an Ulster rebel. In 1917 Campbell became a baronet, and in June 1918 he was made Lord Chancellor of Ireland, a post he held until June 1921. Mr. Asquith said of him that he had never known so good a law officer.[2] A brilliant speaker, Campbell won a high reputation as an advocate, and was engaged on one side or the other in all principal cases that occupied the attention of the judges at the Four Courts.[3] As a sound lawyer, a forensic orator, and cross-examiner, he was easily in the front rank.[4]

On retiring as Lord Chancellor he was created Baron Glenavy of Milltown, Co. Dublin. As head of the Irish judiciary from 1918 to 1921, he witnessed the country deteriorate into rebellion. Writing to Lloyd George in September 1919, he expressed his growing admiration for the Sinn Féin movement, clearly indicating his changed political thinking and predicting that change was inevitable. It was known too, that when the military repressive campaign made itself evident in the country, the Lord Chancellor exercised a moderating influence and that this was resented in Castle circles. [5] He fully supported the Irish Free State on its establishment, and willingly accepted nomination as a member of its first Senate. He was elected Cathaoirleach or

[2] *Tuam Herald*, 3 Nov. 1923.
[3] *Irish Independent*, 23 Mar. 1931.
[4] Ibid., 31 Jan. 1924.
[5] Ibid.

Chairman of the Upper House on 12 December 1922. [6] Thereafter Glenavy was a determined advocate and upholder of the rights and duties of the Free State Senate..[7] Glenavy was a committed member of the Church of Ireland, holding the position of chancellorship at different times, and of various dioceses. He was also a member of the Masonic Order, part of the reason for his inclusion in the IRA's Senate 'death list' of January 1923. In July 1922 the Provisional Government asked Glenavy to serve on the judiciary committee established to advise the executive council on a new judicial system; he was later appointed as the committee's chairman. The unanimous report of the committee predictably recommended that the essentials of the existing judicial system be maintained, and its findings strongly influenced the Courts of Justice Bill (1924). Glenavy who did not seek re-election in 1928, retired from public life and after a brief illness, died on 22 March 1931, at his residence in Milltown, Co. Dublin.

[6] *Freeman's Journal*, 13 Dec. 1922;19 Dec. 1922; 22 Jan. 1923; 25 Jan. 1923. 31 Jan. 1924; 13 Mar. 1924;4 Apr. 1924; 19 June, 1924; 20 June, 1924; 18 Oct. 1924; 10 Dec. 1924.
[7] *Irish Independent,* 21 Mar. 1924; 2 May, 1924; 10 June, 1924; 10 July, 1924; 1 Apr. 1925; 24 July, 1925; 6 Oct. 1926; 22 Mar. 1931.

Senator James G. Douglas – Leas Cathaoirleach of the Irish Free State Senate 1922-1925



James Green Douglas (1887-1954), senator and businessman, was born on 11 July 1887, eldest son of nine children, to John Douglas and his wife Emily of 19 Brighton Sq., Dublin. The Douglas family drapery business was located at 17–19a Wexford Street, Dublin. Douglas was reared in a strict Quaker household and attended Gertrude Webb's elementary Quaker school at Rathgar. In 1898 he entered the Society of Friends' (Quaker) school as a boarder, at Lisburn, Co. Down.

At the early age of fifteen in 1902, he began a three-year apprenticeship in his father's shop. On 14 February 1911, Douglas married Georgina (Ena) Culley, a fellow apprentice of Lurgan, Co. Armagh, at Eustace Street Quaker meeting-house in Dublin. They lived first at Hannaville Park, Terenure, and later at St Kevin's Park. They had two children, John Harold Douglas (1912–1982) and James Arthur Douglas (1915–1990).[8]

From an early age Douglas was fascinated by politics and influenced by the writings of Arthur Griffith and 'AE' George Russell. With a life-long interest in self education, Douglas spent many evenings reading in the National Library of Ireland. He became a member of the Dublin Liberal Association, whose members for the most part were protestant home rulers. During the Easter rising of 1916, Douglas and his family provided relief to many in need, but refused any military protection. After the

[8] NLI Douglas Papers, POS 7666, 1887-1954; Gaughan, *Memoirs of Senator James G. Douglas* (1998); Douglas, *President De Valera and the Senate; speeches delivered in the senate by Senator J.G. Douglas* (1934); *DIB*; *ODNB*; *Senand Debates* (1922-1936), (1938-1943), (1943-1954). MacLysaght, *Changing Times* (1978).

rising Douglas, with 'AE' and others, who regarded themselves as neither unionists nor nationalists, were actively interested in the Irish Convention 1917-1918, and set out to promote what they termed 'full dominion status' for Ireland. He was strongly opposed to conscription and as a pacifist took no part in the Anglo-Irish conflict 1919-1921.

With his commitment to politics, yet neutral stance, Douglas was sent the sum of $5000 by Hollingsworth Wood, an American Quaker friend, to support victims of the Black and Tans. This led to the foundation of the Irish White Cross, an organization which was supported by the Sinn Féin leadership and by practically all the Irish churches. Between 1920 and 1922 Douglas was the central administrator and facilitator for all White Cross funds. It was through this organization that Douglas met and befriended Michael Collins, whom he came to greatly admire and respect.

Douglas, at Collins's request, served on the committee to draft the constitution for the new state; he acted as a conduit, keeping Collins informed about the committee's progress during the General's unavoidable absences. Early in 1922, Douglas was appointed to chair a commission of inquiry into wages and conditions in the post office; its report recommended many improvements in conditions of work for employees, and a threatened strike was averted. In recognition for his services, Douglas was elected to the Free State Senate and was appointed Leas Cathaoirleach, or vice chairman of the Seanad on 12 December 1922, a position he held until 8 July 1925, the full term of the first triennial period.[9]

Douglas' term in the first Seanad was exemplary.[10] He was consistent in upholding the legal and constitutional rights of citizens.[11] His political and constitutional interests extended internationally. He introduced the League of Nations Bill in the Seanad on 21 March 1923, had the satisfaction of seeing it pass into law on 8 August, and Ireland admitted to the League Assembly on 10 September of the same

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[9] *Freeman's Journal*, 19 Dec. 1922; 9 Feb. 1923; 19 Apr. 1923;10 May 1923; 26 Jan. 1924; 10 Apr. 1924; 20 June 1924;
[10] *Irish Independent*, 13 Dec. 1923; 22 Sept. 1925; 18 Dec. 1925.
[11] *Sunday Independent*, 14 Apr. 1929; 9 Nov. 1930.

year. He was Ireland's representative at the Inter-parliamentary Union in Copenhagen in 1923, and thereafter at Brussels, Rome, and Oslo. A member of the Irish Institute of International Affairs, he served a term as president of the League of Nations Society of Ireland. He was the employers' representative to the International Labour Conference in Geneva (1934), and represented the Oireachtas at the congress of Europe in The Hague (1948). Douglas served as a senator from 1922–36 (Cathaoirleach 1922-25), from 1938–43, and from 1943–54.[12]

Prominent in business and commercial life, Douglas while running the family drapery business, was a director of numerous companies, Aspro (Ireland) Ltd., Greenmount and Boyne Linen Co. Ltd., Philips Lamps (Ireland) Ltd.; in addition he served as president of the Linen and Cotton Manufacturers' Association, and as a member of the council of the Federated Union of Employers. He died on 16 September 1954 and is buried in the Society of Friends' burial ground in Temple Hill, Blackrock, Dublin.

[12] *Southern Star*, 26 Sept. 1925.

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Declan Dunne, Dublin, Grandson of Senator Peter DeLoughry.

Film

Griffith, Kenneth, *Curious Journey*, Directed by Gareth Wynn Jones, Executive Director Aled Vaughan, Photography by Gareth Owen and Mike Reynolds (1973)

O'Mordha, Sean, *Seven Ages*, Producer/Director. An Araby Production for RTE in association with BBC Northern Ireland (RTE 2000)

Interviews (Film)

The following were interviewed by Kenneth Griffith, n. d., *Curious Journey*, Directed by Gareth Wynn Jones, Executive Director Aled Vaughan, Photography by Gareth Owen and Mike Reynolds (1973):

Tom Barry

Máire Comerford

Martin Walton

The following were interviewed by RTE, n. d., *Seven Ages*, Produced and Directed by Sean O'Mordha, An Araby Production for RTE in association with BBC Northern Ireland (RTE 2000):

Tod Andrew

Ernest Blyth

Liam Cosgrave

W.T. Cosgrave

Cathraoine Crowe

Emmet Dalton

Máire McEntee Cruise O'Brien

Sean McEntee