THE CASE FOR FEDERAL DEVOLUTION

The Case for Federal Devolution

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Dedicated

To the Memory of Earl Brassey

Who while he lived was the most ardent

among the workers in the cause of

FEDERAL DEVOLUTION

THE CASE IN ITS GENERAL ASPECTS

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I

The Case in its General Aspects

The report of the Speaker's Conference on Federal Devolution has attracted a larger amount of public attention to the subject than had before been given to it. But many, if not most, of the comments upon it have been of so vague, hesitating, and perplexed a nature as to make it evident that those responsible for them were ill equipped for the task they had undertaken. This and its admitted importance make it seem advisable briefly to review the whole subject, and to set out in orderly detail what are the main reasons that justify the proposed change in the mode of working our Constitution, and what are the actually existing conditions that ought to determine the nature and extent of the change.

Misconception about origin of Devolution Movement

There is one very common misconception about the origin of the proposal which ought, at the outset, to be cleared away. It is that the demand for devolution is the outcome of reviving sentiments of nationality which fail to find scope and freedom for their expression under a Constitution which, for all legislative and administrative purposes, unites the peoples of England, Scotland, and Wales under a common Parliament. Those who entertain this view admit that there is nothing in the state of opinion in England to support it; but they see, or think they see, it confirmed by the state of opinion prevailing in Scotland and Wales. This, on the face of it, is a very improbable explanation of the movement, for it assumes that England, the greatly predominant partner in the Union, is being reluctantly dragged at the heels of Scotland and Wales into the acceptance of vague and undefined constitutional changes intended to satisfy equally vague and undefined sentiments of nationality which she herself does not share and with which she has no sympathy. I believe the explanation to be totally mistaken.

The peoples of Great Britain have no quarrel with the Union as such. They have all prospered, morally and materially, under it; and they all know this, and, what is better, they all feel it. It is not the Union as such that is called in question by the demand for devolution. Nor is it any unsatisfied sentiment of nationality that impels us towards it.

What, however, is true, and what gives to the idea its seeming justification, is that a more insistent demand for devolution has come from Scotland and from Wales than from England. But in neither of these countries has the demand ever been, in the strict sense of the word, popular. It has never been, for example, comparable in any respect whatsoever with the demand made by Ireland for Home Rule. Nor certainly has it ever been of a nature so widespread and so insistent as to force English members of the House of Commons against their own sense of what was right and expedient, to consent to the setting up of a Conference, presided over by the Speaker of the House, to devise a scheme to give effect to the demand, and to give effect to it in such a way as to make it

applicable not to Scotland and Wales only, but to England as well. The thing is altogether improbable, and, as I have said, I believe it to be totally mistaken.

The true Origin

But if this is a false explanation of the origin of the movement towards devolution, what is the true one? The answer ought to be obvious, and is not, in reality, open to doubt. It is that the Parliament of the United Kingdom has more work to do than it can possibly accomplish. This ought by this time to have been brought home clearly enough to us all by what, as I shall later show, has been a long and painful experience. Unhappily, however, it has not been so. There are still men of influence among us who, while they admit that Parliament does not now do its work with its old freedom and efficiency, and that a change must be made, hold that something which they do not specify, less drastic than a scheme of devolution, would satisfy our needs. Let us consider this; and, that we may do it with some hope of agreement, let us, in the

to consider the nature and extent of the task which this Constitution imposes on the Parliament of the United Kingdom.

Constitution of the Empire

In respect to its Constitution the Empire is divided into three parts: the United Kingdom; the self-governing Dominions; and the Dependencies, the Crown Colonies, and the Protectorates.

In the first and second, governments are controlled by separate Parliaments directly representing the several peoples concerned. In the third, they are controlled by the Parliament which directly represents only the peoples of the United Kingdom.

The task of the United Kingdom Parliament

In respect to the nature and extent of its task, the Parliament of the United Kingdom acts in four separate and, to a large extent, separable capacities. In one capacity it acts as the local legislature for the peoples of England, Scotland, and Ireland, providing for their several and historically distinct domestic interests. In another it acts as

Kingdom that are common to the three peoples, and that have grown up under, and are largely the fruit of, the Union between them. Acting in these two capacities its functions correspond with and, though very different in the mass and complexity of their details, are the same in scope as the functions of the Provincial and Dominion Parliaments of Canada and the State and Commonwealth Parliaments of Australia. In a third capacity it acts as the legislature finally responsible for the government of the Dependencies, Crown Colonies, and Protectorates. While in a fourth it stands among the other sovereign powers of the world as the single sole sovereign authority finally responsible for the control and protection of the interests of the British Empire as a whole and in all its parts.

Acting in these several capacities Parliament is responsible, to a large extent directly, to a more limited extent indirectly, for the peace, order, and good government of a quarter of the total population of the earth. This population, moreover, does not inhabit contiguous territories. It is scattered over all the four quarters of the globe. It is not homogeneous in race, nor are the

different races on the same level of historical development. They have not all the same political rights, nor have they all the same political responsibilities. They have not a common system of law, nor do the varying systems find their ultimate sanction in the same ideas of justice, human or divine. They have different religions, different histories, different traditions, and different habits and customs of life.

Now, in respect to an Empire thus composed it is, to say the least of it, highly improbable that any single legislature could be competent to the full and adequate discharge of the responsibilities that actually rest on the Parliament of the United Kingdom. But in saying this it is necessary to distinguish ; for it would be foolish to deny that, taken largely and as a whole, the imperial responsibilities of Parliament have been well met and well discharged. The British Empire is itself an abiding witness to the fact. Why, then, can we not be content to leave things as they are ?

In dealing with this question it is necessary to go further into detail and to distinguish between the administrative and the legislative functions of Parliament. The two

are inextricably connected; but they may, and they actually do, make very different demands on the time and attention of Parliament, both in regard to different portions of the Empire and in regard to different periods in its history. Parliament, it should be always borne in mind, is not itself an administrative body. Nor does it directly appoint any of the actual administrative bodies of the Empire, though, except in the case of the Dominions, all of them depend for their existence upon it. Its administrative duties and responsibilities are confined, on the one hand, to a declaration of the policy by which the administrative bodies are to be guided, and to which they are in their action to give effect; and, on the other, to an ever-vigilant supervision and control of these bodies in order to secure from them a full, ungrudging, and loyal compliance with its declared policy. But for a very long period in the history of Parliament, up, indeed, to the passing of the Reform Bill of 1832, its responsibilities, even in relation to the United Kingdom, were mainly concerned with administration and only to a small extent with legislation. This will not be disputed; and so long as it

continued to be the case, the work of Parliament suffered from none of the evils of congestion.

Moreover, its responsibilities in relation to the Empire, taken as a whole, have always been concerned mainly with administration, though this has been becoming in our own time less true, and is certain as time goes on to become still less so. Since 1832, however, a great change has been taking place, a change which has tended more and more to focus the time and attention of Parliament on legislation undertaken on behalf of the peoples of the United Kingdom rather than on administration; and it is from this change that Parliamentary congestion has directly sprung. Not to recognize this, not to comprehend it in its causes and its consequences, is to fail to recognize and comprehend what are the permanent and abiding reasons that justify the demand for devolution, and that makes compliance with it necessary.

The growth of Congestion

Up to the passing of the Reform Bill of 1832 there is no record in our Parliamentary annals of any complaint that Parlia-

ment had less time at its disposal than was required to satisfy the demands which each year, as it came about, made upon it. But soon after that date the complaints begin, and they have not only never since ceased, but as the years have gone by they have become more and more insistent. I cannot here prove this in detail. Nor is it necessary that I should. There is one outstanding and incontestable fact in our history that amply accounts for them. It is the constantly growing demand in modern times for legislation. There is not a single great legislative measure affecting the conditions under which we carry on our daily life that we owe to the Parliaments of the eighteenth or of the earlier part of the nineteenth centuries, unless the measures giving effect to the Unions of England and Scotland and of Great Britain and Ireland be excepted; and these, vastly important and significant as they have proved to be, were effected rather with the object of modifying the administration of interests common to the three countries than of making legislative changes in the conditions of the day-to-day life of their peoples. Profoundly different from this has been the

history of legislation during the last eighty or ninety years. There has not been a year amongst them that has not been signalized by the passing of some Act of Parliament affecting in a larger or smaller degree the general conditions of our life. Nor is this all. These years are divided into three distinct periods, each determined in its extent by the passing of a new Franchise Act. Each of these Acts brought within the Constitution a new class of voters; and each class in succession demanded legislation intended to secure improvements in the conditions of its life. Nor were the several demands merely successive. They were also cumulative. The demands made on the Parliaments elected between 1867 and 1885 were greater in number and larger in scope than those made on the Parliaments elected between 1832 and 1867. So, too, were the demands made on the Parliaments elected between 1885 and 1918 as compared with the two earlier periods. And so certainly will be the demands made as a consequence of the Franchise Act of 1918.

This is the explanation, and at the same time the very sufficient justification, of the complaints made in modern times that

Parliament had too much to do and could not get through its work. Those who desire to see the records of these complaints will find them in "Hansard," and in speeches delivered in the country by our leading statesmen. They led, at varying intervals, to the appointment by the House of Commons of no fewer than 16 Select Committees to inquire into and suggest means of meeting them. The first of these Committees was appointed in 1837 and the last in 1913. None of them, however, suggested devolution as a means of relief. This, in fact, lay beyond their terms of reference. But such suggestions as they made admittedly failed in their purpose. The mass of work went on accumulating, and the power of the House to cope with it went on diminishing.

Here, in its general aspects, we have the case for devolution, but only in its general aspects. That case is overwhelmingly strengthened by a consideration of the effects of congestion on our whole Parliamentary system.

THE EFFECTS OF CONGESTION ON OUR PARLIAMENTARY SYSTEM

II

The Effects of Congestion on our Parliamentary System

Closure of Debates

The first of these to which I refer is the closures of debates in the House of Commons. This means of expediting the transaction of business now operates in three distinct and progressively adopted forms. I will not enter into a detailed consideration of them. It is enough to say that, however necessary they may be, and under the existing condition of things actually are, they one and all seriously limit and restrict the free deliberative power and responsibility of the House of Commons; and nothing but a necessity from which there is no other way of escape ought ever to reconcile the House to a permanent acceptance of them. They have all been brought into operation on the suggestion of Governments of the day, made on the plea that they were

necessary to the transaction of business essential to the interests of the country. But they can be, and they have been, used to override the rights of minorities; and to accept them as permanent parts of the procedure of the House must inevitably tend to aggrandize the power of Governments and to diminish in a corresponding degree the power of control by the House over them.

Legislation by reference

Second, there is the device for saving time known as legislation by reference, about which all that need be said is that it makes the law more difficult for the subject to understand, and that it adds both to the frequency and the cost of litigation.

Reference of public Bills to Committees

Third, there is the rapidly growing practice of withdrawing not merely private but public Bills from the consideration of the House as a whole and referring them to Committees. For this practice, so far as it affects private Bills, a good and sufficient

as it affects public Bills, there is and there can be no such reason. It is true that it saves time, but it tends to, and, if persisted in, will in the end completely, undermine the responsibility of the mass of members to their constituents for the detailed provisions of the measures so referred. Moreover, the Committees do not adequately represent opinion in the House on the details of the referred measures. Their members are selected by the Committee of Selection to represent parties in proportion to their strength in the House. But members of the House specially interested in a particular measure press for appointment on the Committee to which the measure is referred, and they generally succeed in their object. These members attend the sittings of the Committee with greater regularity than those less interested, and they are not infrequently able to carry amendments against the Government and against what is known to be the prevailing opinion in the House.

Reference of controversial points of Legislation to Departments of State

difficult and controversial points of legislation from Parliament as a whole to public Departments to be dealt with by them through Orders in Council, Provisional Orders, and Departmental Committees. Here again a very sensible saving of the time of Parliament is secured, but secured at a great cost to public interests. Contrary to the whole spirit of our Constitution, it makes Departments of State, intended to be solely administrative in their functions, sources of the law which they are themselves to administer. Nor is this all. The effects of the practice on the spirit and working of our local administrative authorities are of the worst possible kind. New Provisional Orders or new Orders in Council issuing from this Department or from that pour steadily down upon them. Under this constant flow these authorities become more and more uncertain and confused as to what their powers really are, and friction between them and the central administrative Departments grows steadily in extent and intensity. This is the main, though not the sole, source and explanation of the

But it is not the Departments that are to blame. They merely do what they are told by a Parliament which has not itself the time to discuss and define the powers it hands over to them. But unless the evil is checked, and checked in the only effective way open to us, by relieving Parliament of some portion of the impossible task now imposed upon it, it will end in destroying the spirit and working of our whole system of local government.

All these are open, obvious, and universally admitted effects of congestion on our Parliamentary system. But in addition to them there are others that are less obvious and less often remarked upon, though they are certainly not less serious. I mention three.

The effect of Congestion on Cabinet responsibility

The first relates to the gradual cessation of Cabinet responsibility to the House of Commons. The chief outward sign of this responsibility, and the only means by which it can be effectively secured and enforced, is the regular attendance of the Prime Min-

answer to the House for the Government, declare its policy and express its mind on any subject that may come up for discussion; and when I first entered the House in 1892 the old tradition in respect to his duty to be present at all its sittings was still observed. Mr. Gladstone, so far as my recollection carries me, rarely, if ever, missed a sitting. He was present with us on all days and at all hours, and irrespective of the nature or importance of the subjects under discussion. I have, however, been told on high authority that he began to realize, during his tenure of office from 1880 to 1885, how inimical this duty of daily and hourly attendance in the House was to the proper performance of his other duties as Prime Minister. But up to the end of his public life he held that it was the chief and most binding obligation imposed upon him by his office If a sacrifice of duty had to be made, it was not this duty that should suffer. Since his time, however, other views have more and more tended to prevail, till at last the presence of the Prime Minister in the House is as rare and

Mr. Lloyd George for this, as is too frequently done. Blame of this kind leads nowhere, for he has an answer which the House cannot reasonably reject so long as it allows a condition of things to continue which makes a neglect of some duty, and indeed of many duties, inevitable. None the less, the practice weakens, and, if continued, must ultimately destroy, the working of our Constitution in one of its most fundamental and peculiarly characteristic features.

There is, besides, another aspect of this subject to which attention ought to be directed. The work of the Cabinet, and particularly the legislative and more onerous side of it, has branched out in so many and such different directions that no single member of it can possibly make himself acquainted with or responsible for it all. It is notorious that, in consequence of this, collective responsibility of the Cabinet for the proposals it submits to Parliament has ceased to be a reality and become a mere form. Each member is forced to confine himself to a consideration of the proposals of his own Department and to disregard

feeble and confused in the performance of his special duties. But more and worse than this. It is also notorious that meetings of the Cabinet have come to resemble meetings of ambassadors representing rival and opposed interests, each member seeking to maintain and advance the interest for which he is peculiarly responsible without any sort of regard to or thought of a common national interest that ought to guide, limit, and control them all. The assertion and maintenance of this common national interest is the special function of the Prime Minister at Cabinet meetings; but he is, in the circumstances, as little capable of adequately discharging it as any other member of the Cabinet. All this is notoriously true, and no democratically governed country could be exposed to greater internal risks and dangers than are necessarily inherent in such a state of things. But the remedy, and only effective remedy, is devolution.

On the growth of greatness among our public men

The second of the less obvious effects of congestion is suggested by the record of a conversation which Mr. Gladstone had with

Sir Robert Peel in July, 1846. In it Sir Robert is stated to have referred to

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

I quote this not for the purpose of comparing and contrasting the state of things deplored by Peel in 1846, with the state of things in 1809, when he first entered Parliament; nor for the purpose of comparing and contrasting it with the state of things to-day, when what was then just beginning to make itself felt as an evil has grown to such an immense and overwhelming magnitude. I quote it for the much more limited purpose of referring to the adverse effect which "the immense multiplication of details of public business" must of necessity have "on the growth of greatness among our public men."

In what I have to say on this point I shall not venture on any comparison of the

greatness of the great men of the seventeenth and eighteenth centuries with the greatness of the great men of to-day. Even if I were competent to do this, it is not necessary. For the adverse effect to which Peel referred is as certain as anything connected with the growth of character and purpose in our lives can be. No man whose whole available time and strength are absorbed in the consideration of "an immense multiplication of details of business" can be a great man. The thing is impossible. The ability to look at the whole of the complicated interests of the State in one connected view is not easy of attainment. It implies, indeed, a knowledge of details of business, but it also implies an elevation of view which enables a man to see, in and beyond them, that living, co-active, and co-operative whole which constitutes the State; and this is not possible without sustained and concentrated effort and the available time and strength to make it. No State, moreover, can long remain great which suffers the continuance of a condition of things adverse to the growth of greatness among its public men. Its interests will inevitably be dealt with by bits and scraps, piecemeal

and haphazard, some at one time and on one pretext, and some at another, just as they press, without any sort of regard to their relations or dependences; and sooner or later confusion, disorder, and disaster must be the result. Are there not signs and portents that we are even now tending in this direction?

On the interest taken by Members in their work and on the quality of debates in the House

The third and last effect to which I refer relates to the influence which congestion has on the interest taken by members of Parliament in their work, and on the quality of the debates in the House of Commons. Here again I fall back on the experience and testimony of men acquainted with an earlier and better condition of things, and who were just beginning to suffer from the evils which have grown so vastly since their time. One of the most powerful of the sixteen Select Committees, to whose appointment I have already referred, was the Committee of 1848. In its report it is stated that

> the business of the House seems to be continually on the increase. The characteristic of the present Session has been the number of important subjects

under discussion at the same time and adjourned debates on all of them. This intermingling of debates adjourned one over the head of the other, has led to confusion, deadening the interest in every subject and prejudicing the quality of the debates on all.

This, let me repeat, was written by men who were dealing with something that was still new and abnormal in their experience as members of the House of Commons, and who, from their own personal knowledge, could testify to another and a better state of things. We in our day and generation have no such personal knowledge to fall back upon which might have served to keep alive in us a sense of the magnitude of the evil from which we suffer. What they deplored as new and bad we have inherited, and inherited in degrees and proportions which they could never have foreseen or foretold. We have been brought up under it, and have become so much accustomed to it as to regard it as something which we must accept as inevitable—capable, perhaps, of improvement by a change in this or that detail of our procedure, but patiently to be borne with as a whole. This may be natural; but if ever there was a time when men engaged in the practical conduct of public

alize their own experience by a study of the experience of those who went before them, this is that time.

We are admittedly in the midst of a great crisis in our life, a crisis which every reflecting man knows we shall not pass through without great changes being made in our laws and institutions. Are not demands for these changes being now pressed upon us from all sides? Do we not have to show our desire to satisfy them by bringing them all "under discussion at the same time" and having "adjourned debates on them all"? Does not the intermingling of debates, adjourned one over the head of the other, prejudice the quality of the debates on them all? But, more serious even than these things, are they not also so multitudinous as to lead inevitably to a confusion of mind which must deaden the interest of Members in them all? Who that has watched the proceedings in the present Parliament, who that seriously considers the cause of the meagre attendance of Members at its debates, will deny that these things are true? Taken singly or collectively, Members of the present House of Commons are as eager to do their duty as

the Members of any House of Commons have ever been; but they have an impossible task imposed upon them, and either that task must be lightened, or confusion will so grow upon the House and the country as to endanger the whole fabric of our life. The danger is imminent; and if our experience is to count for anything, then the only effective means of meeting it is devolution.

CONDITIONS THAT OUGHT TO DETERMINE LIMITS OF A SCHEME OF DEVOLUTION

III

Conditions that ought to determine limits of a scheme of Devolution.

Having stated what are the main reasons that justify the demand for devolution, I now proceed to consider the actually existing conditions that ought to determine the nature and limits of a scheme framed to give effect to the demand.

Areas

In this consideration the first point that presents itself for settlement is the question of the units of area to which a scheme should apply. In dealing with it, I follow the example of the Speaker's Conference and leave Ireland out of account. So far as Scotland and Wales are concerned, it has never been suggested that they should be partitioned, and I take this as a sufficient reason for holding that they should be treated as single, undivided units under

any scheme of devolution. The case of England is different. It was suggested at the Conference, and it has been repeatedly suggested elsewhere, that it should be divided into several areas. The reasons given in support of this have been twofold.

It has been urged, first, that, as it is a large country with a large population, division would be both convenient and practicable; and, second, that a Parliament for England as a whole, possessing large legislative and administrative powers, might become a formidable rival of the Imperial Parliament, and might even, in the eyes of the English electors, assume an importance and authority which would overshadow that Parliament. No one will deny that these are powerful reasons in favour of partition. But there are other considerations that must be taken into account before we can accept them as conclusive. In the Speaker's letter to the Prime Minister it is stated that the subdivision of England presented "formidable administrative difficulties." I do not question this statement. But these difficulties have never appeared to me to be insuperable, or to be of such a nature as by themselves to outweigh the

undoubted advantages of partition. The real difficulties are legislative rather than administrative.

If England were a new country, with a sparse population, and with the conditions of her life still primitive and undeveloped, the matter would present no difficulties, either of an administrative or of a legislative nature. Divide her and draw your lines of division where you like and no interest common to her people as a whole would materially suffer. What has happened in the Dominions is a sufficient proof of this. But England, in this respect, is not like the Dominions. Her life is more highly developed, and her strictly domestic interests more complex and more closely woven together, than is the case in any other country in the world. Moreover, one law, regulating these interests, has, in many cases for centuries, run through the country from end to end. Subdivide these interests now, and subject each subdivision to separate and independent legislatures, and, as English interests, they disappear.

Let me illustrate this by reference to one interest, of exceptional importance, but typical of many others. In the list of

powers to be devolved on the subordinate legislatures, contained in the Conference Report, is the power over all "matters affecting religious denominations." But these denominations are English denominations. They are not peculiar to this or that part of the country. They extend throughout its length and breadth, and what affects them in one part affects them in all. If, then, you divide them, and subject each division to a different legislature, you at least open wide the way to their disappearance as English denominations. Take the greatest of them all, the Church of England, and put, let us say, the Province of York under one legislature with power to determine the whole future status, the doctrine and the discipline of the Church within the Province; and divide the Province of Canterbury and put each corresponding division of the Church under a separate legislature, each with the same power; and whatever else may be said of it, it will cease to be the Church of England.

This is the difficulty that stands in the way of subdividing England, and no one who seriously considers it will be likely to

regard it as anything but insuperable. England is too old a country, she has been too long accustomed to regard her life as one and indivisible, to make it safe to cut and hack her now.

General legislative powers to be devolved

The next question that presents itself for our consideration relates to the powers that are to be devolved on the subordinate legislatures. The question has too often been treated as if there were nothing in the history and constitution of the United Kingdom to guide us in answering it, and as if what we had to do was to draw out a long list of powers, and in a haphazard way select such of them as it might seem safe or convenient to devolve. This, I hold, is to ignore the conditions that ought to determine our consideration of the question. But more than this, it has too often been assumed that the effect of our acceptance of a scheme of devolution would be to substitute a real federal in place of a real unitary Constitution; and on this assumption it has been thought well that the devolution of power to the subordinate legislatures should be, to begin with at any

rate, of the most limited kind possible. This, again, I hold to be entirely mistaken.

Dealing with these two points, it is necessary that I should, in the first instance, say something about the terms and conditions of the Union between England and Scotland. That Union has never been, nor was it ever intended that it should be, a completely incorporating Union. It is true that the two peoples brought within it were brought under a single legislative authority—the Parliament of Great Britain; but this authority was to exercise its powers on the understanding, and subject to the condition, that certain pre-existing differences between the law and administration of the two countries were to continue to be recognized and given effect to. These differences remain as pronounced to-day as they were when the Union was first effected.

Scotland has never been, nor was it ever possible that it should be, a part of England in the sense in which Wales has been a part of it. In all the fundamental relations of private life, in the relations of husband and wife, of parent and child, of master and servant, of landlord and tenant, of buyer

and seller, in all the interests associated with religion and education and with the provision for the poor, England and Scotland had before the Union, and continue to have to-day, different laws and different systems of administering them. Within the sphere of these relations and interests the two countries were and are, and, even if the Union retains its present form, will continue to be, to all practical intents and purposes, separate and distinct countries. It follows from this that the Union has been completely incorporating only in respect, first, to the foreign and imperial interests of the two peoples; and, second, to those large internal interests common to both and that have grown up under the Union and since it was effected. Apart from these interests, it has been a quasi-federal Union, under which each country has retained its own law and its own system of administering that law.

Here, then, in the working of our existing Constitution, we have a measure of legislative and administrative devolution clearly defined for us. Thus defined, it will be a measure providing for the creation of a legislature in each of the two countries and for

the devolution upon each legislature of all those powers, legislative and administrative, which are now exercised by the United Kingdom Parliament in the several and historically distinct interests of each country. And about our acceptance of this definition there ought to be no controversy among us. To reject the facts from which it is derived, to act as if they did not exist, is to reject our experience and to consult our fancy.

Effect of Devolution on powers of United Kingdom Parliament

I turn now to consider the assumption that a scheme of devolution would federalize our Constitution. While it is true that we have got into the habit of speaking of "federal" devolution, it is not true that under a scheme of devolution our Constitution would become, in the strict sense, "federal." Legal sovereignty would still remain vested, solely and exclusively, in the Parliament of the United Kingdom. In the course of the discussions on the Irish Bill now before the House of Commons there has been a good deal of loose and uninformed talk, turning upon this point,

but evoked by the method adopted in the Bill of specifying the powers of the two Irish Parliaments proposed to be set up under its provisions. In accordance with that method, these Parliaments are to have powers over all matters not specifically reserved to the Imperial Parliament, and it was held that this was an offence against common sense, and at the same time contrary to the best examples of a federal Constitution. That sense and these examples dictated a strict enumeration of the powers to be devolved on the subordinate legislatures, otherwise these legislatures would possess undefined powers the exercise of which would inevitably lead to conflicts with the Imperial legislature. This would all be true if in the Irish Bill the ground plan of a real federal Constitution applicable to the United Kingdom as a whole was being laid out. But this is not the case. What the framers of the Bill state they had in view, and what they claim the Bill does, was to lay out the ground plan of a scheme of federal devolution applicable to the United Kingdom as a whole; and this is a very different thing. It is worth while to examine the difference.

A real federal Constitution presupposes an agreement between two or more independent sovereign States to form a Government which shall be their common instrument for the control and management of certain specified interests which in common they agree to commit to its charge, each of the States retaining in its own hands the control and management of all interests not thus specifically committed. A devolutionary system, on the other hand, presupposes a single sovereign State which, without absolutely surrendering any of its powers, delegates the exercise of such of them as it thinks expedient to strictly subordinate legislatures. In the one case legal sovereignty is divided between the central and the local legislatures. Each has its own clearly defined sphere of action upon which the other has no legal right to trespass. A written document is required to apportion their several jurisdictions, and a tribunal has to be set up to adjudicate, in accordance with the provisions of this document, upon any question, relating to powers, that may arise between them. In the other the central power is in the position

the authority of his agents, and is never exposed to the risks of concurrent jurisdiction, for the reason that, in the presence of the principal the authority of the agent is known to be subsidiary and provisional. Of a federal system the Constitution of the United States is the example best known to the world. Of a devolutionary system the Constitution of the British Empire is the only example that exists.

It may make the distinction clearer if I further illustrate it by a reference to the Constitutions of the Dominion of Canada and the Commonwealth of Australia. These Constitutions, considered by themselves, are strictly federal. In the case of Canada the powers of the Dominion Parliament are legally restricted by the powers specifically assigned in a written document to the provincial legislatures. In the case of Australia the powers of the Commonwealth Parliament are legally restricted to the powers specifically assigned to it in a written document, the powers not so specified remaining, as in the case of the United States, with the State legislatures. This is true of these Constitutions when considered by themselves, but when considered in their

relation to the Constitution of the Empire as a whole there is nothing strictly federal in them. They are illustrations of a devolutionary system of Parliamentary government. Each of them is embodied in an Act of the Parliament of the United Kingdom, and each Act sets up legislatures and devolves powers upon them, but not so as legally to restrict the supreme sovereignty of the devolving authority.

But if this is the nature of the relation that will exist between the United Kingdom Parliament and the two Irish Parliaments, on the assumption that the Irish Bill passes into law, and if it is the nature of the relation that would exist between the United Kingdom Parliament and the English and Scottish Parliaments under a scheme of devolution applicable to England and Scotland, why, it may be asked, specify powers at all? If the United Kingdom Parliament can at any moment override an Act of a subordinate legislature, why can we not content ourselves with setting up legislatures in the several component portions of the United Kingdom and devolving upon each of them a general power to make laws for the peace,

order, and good government of that portion committed to its charge, leaving to the Imperial Parliament the management and the control of those external and internal interests which are not peculiar to any one of them, but which affect them all alike? The answer is clear and indubitable. The specification of powers is made for greater certainty and as a guide to the subordinate legislature. And for this purpose it matters nothing whether it is the reserved powers that are specified or the devolved. The question between them is not one of principle, but of Parliamentary expedience; and every Cabinet that has been responsible for framing an Irish Home Rule Bill has adopted the view that Parliamentary expedience favours the specification of the reserve powers; and no one who considers the subject from the Parliamentary point of view can doubt that these Cabinets were right.

Finance powers

I have now described generally what are the actually existing historical conditions that ought to define and limit the distribution of legislative and administrative powers

as between the United Kingdom Parliament and the subordinate legislatures. So far the matter has been comparatively simple. The lines of distribution, if we care to look for them, are already laid down for us. But when we come to consider the distribution of the taxing powers, the conditions that present themselves are of a very different kind, and the difficulty of framing a satisfactory scheme becomes real and substantial. The difficulty is inherent in any attempt, made in any country, to distribute taxing powers between different governing authorities. But it is more or less serious in proportion to the growth and expansion of the industrial and commercial life of the country, to the extent of the interdependence of its component parts, and to the total cost of its government. Let me take the United States as an example. When their Constitution was originally framed the problem was a comparatively simple one, and it was solved by a distribution which, on grounds of policy equally applicable to us, gave to Congress exclusive powers over indirect taxation, while to the several State

allocation of the two spheres of taxation between the central and the local legislatures satisfactorily met the revenue requirements of each. But no such simple solution is open to us. For the cost of the government of the United Kingdom is, and under any scheme of devolution must continue to be, enormously greater than would be the revenue to be derived from any conceivable system of indirect taxation. The Parliament of the United Kingdom must therefore have powers over both direct and indirect sources of revenue.

This is in part our difficulty, but it is not the whole of it. As industrial and commercial interests grow and expand, so the successful administration of certain necessary factors in every system of direct taxation becomes increasingly difficult. This is true even in the case of a country under a completely unitary Constitution, if it happens to have large commercial relations with other countries. But it is far more true in the case of a country under a federal Constitution, or as would be our case, under a measure of devolution, a quasi-

independent taxing authorities. For the power of one taxing authority to extract from its taxpayers the revenue due to it by them is being constantly interfered with and restricted by the commercial and industrial dependence of the area of its jurisdiction on neighbouring areas each possessing equally independent tax jurisdictions. This, if I am correctly informed, is now making itself seriously felt among the State legislatures in the United States. Industry and commerce among them have, in the lapse of time, over-leapt all State boundaries, and have spread their interests and connexions throughout the length and breadth of the whole country; and it is said that the administration of the income and inheritance taxes imposed by the separate States, formerly comparatively simple and successful, has broken down because of the insuperable difficulty with which each State is faced in the efforts it makes to localize and discover the incomes of its individual taxpayers. It is also further said that in consequence of this there is an influential movement towards the complete and total transfer from the separate State

posing and collecting taxes on incomes derived from, and on inheritances of, personal property, leaving the taxes on the income and inheritance of real property still to be imposed and collected by the States.

Whether or not this is an accurate account of the conditions that now affect the administration of the income and inheritance taxes in the United States, they are certainly the conditions that would affect the separate and independent administration of income-tax and death duties by each of the local legislatures under a measure of devolution operating within the United Kingdom. I have already said that to meet its expenditure the Parliament of the United Kingdom must have power over both direct and indirect sources of revenue. If, therefore, we gave to the legislatures of England and Scotland powers concurrent with the powers of that Parliament to impose and collect each its own separate income-tax and death duties, the administration of the taxes would break down, and for precisely the same reasons as are said to have caused its breakdown in America. For here, too, industrial

all local boundaries, and the discovery of individual incomes by a local legislature would be a practical impossibility. This, it may be useful to add, applies with equal force and effect to Ireland. If ever she obtains the power of imposing and collecting a separate Irish income-tax and separate Irish death duties, she will inevitably fail to get the whole of the revenues justly due to her from them. Whether she likes it or not, her relations with Great Britain are as a mere matter of fact too close, and must in the nature of things continue to be too close, to make the thing practicable.

This is our difficulty in respect to the distribution of taxing powers. On grounds of policy, the United Kingdom Parliament must reserve to itself exclusive power over the main indirect taxes. Within the sphere of direct taxation, income tax and death duties are by far our most important sources of revenue; and if their successful administration requires that, for collection at least, they also must remain under the exclusive control of the Parliament of the United Kingdom, then within this sphere there are no other sources of revenue which could be handed

would give them revenues sufficient to meet their expenditures. A way out of the difficulty there is, though it is not an entirely satisfactory one. It is indicated in the Report of the Devolution Conference, and it is set out in the financial provisions of the Irish Bill now before the House of Commons. There is, however, a difference between the two; and, on the point of difference, preference ought, I think, to be given to the provisions of the Bill.

This concludes what I have to say about the powers to be devolved. But it will have been noticed that in dealing with the subject I have made repeated reference to England and Scotland and not to Wales. This is not because I am forgetful of, or desire to question, her claim to be included as a separate unit in a scheme of devolution; but because, in respect to law and administration, she has been to all practical intents and purposes as much a part of England as, for example, Lancashire and Yorkshire have been. There is nothing, therefore, in her history that helps to form

measure of devolution that is intended not to satisfy a sentiment of nationality, but simply and solely to relieve the congestion of business in Parliament.

COMPOSITION OF SUBORDINATE LEGISLATURES

IV

Composition of Subordinate Legislatures

I come now to a consideration of the subject on which the members of the Conference were fundamentally divided, the manner, namely, in which the subordinate legislatures are to be constituted. Are they to consist of one or of two Chambers? In either case, how are the Chambers to be constituted?

According to the Speaker's scheme, the legislatures are to be bicameral. But this conclusion was reached not as the result of any deliberately formed opinion favourable to a bicameral system in respect to subordinate legislatures. It was inherent in the nature of the scheme, a necessary and unavoidable part of it. Under the Constitution as it now is the power to make laws on the matters proposed to be devolved is vested in King, Lords and Commons. But it was felt, and certainly not without reason,

that the Lords would never consent to a scheme which ignored their existence, tacitly abrogated their constitutional functions, and vested these functions exclusively in King and Commons. Hence the acceptance of the bicameral principle, and of the proposal to appoint Committees of the House of Lords to act as Second Chambers of the subordinate legislatures. But an acceptance of this kind does not help us towards an answer to the main question.

That answer must ultimately depend on the opinion prevailing in the several units of area within which each legislature is to have jurisdiction. This, however, only drives us back to the further question as to how the opinion is to make itself known; and to it I reply that it can make itself known only by the Government assuming responsibility for a definite proposal, embodied in the provisions of a Bill setting up either a unicameral system, or a bicameral, and submitting the proposal to Parliament and the country for acceptance or rejection. I express no opinion of my own on the subject, but I venture to submit

latures shall have two Chambers; and I submit it partly on the ground that unless the constitution of the Second Chambers and the powers to be exercised by them are clearly defined, it will be impossible to form a reasoned opinion on their usefulness, and partly also on the ground that it is more expedient that the Government should present a full scheme and submit to the rejection of some of its provisions than that it should be forced in the midst of the discussions upon it to prepare and insert entirely new provisions.

I turn to consider the mode of constituting the First Chamber of the legislatures. If in our consideration of it we are to be guided by precedent and example, there can be no doubt as to what that mode ought to be; and I will venture to say, with all the respect which, in common with every one else, I most willingly accord to the Speaker, that till his proposal was first mooted not one man in a million ever entertained a moment's doubt about it. The proposal has the merit of being original; but it suffers from the very serious demerit

experience, or in the experience of any other people in the world, to sanction and support it. It is urged on our acceptance on the ground that it is tentative and experimental. I let this pass with the remark that a wholly new experiment in the working of any Constitution, and most of all in the working of our Constitution, ought to hold out a better assured hope of success than is claimed for this one even by those who advocate its adoption.

It is further recommended to us on the ground that it involves less of a breach in the continuity of our constitutional life than would be the result of an acceptance of the proposal that each subordinate legislature should have a separately elected Chamber which would directly represent and be directly responsible to the electors in respect to all matters devolved upon it. This, also, I pass by with the single remark that, under a superficial appearance of maintaining that continuity, the proposal would, in fact, profoundly affect and disturb every one of the normal functions and relations of our Constitution, even to the extent of throwing them all completely out of gear.

I am well aware that general statements

of this kind made by me will not be accepted as sufficient to refute a scheme supported by the authority of the Speaker. But I regard myself as relieved from the necessity of opening them out in detail here, by the fact that this has been done in a memorandum included in the Report of the Conference; and I have the less hesitation in referring to this memorandum because, though it appears in the Report under my name, it is not the fruit of my sole unaided reflections. It is a joint production in which some of my colleagues in the Conference, who possess far greater wisdom and experience than I can claim, took the main share.

On the assumption, then, that the Speaker's scheme ought not to be accepted, we are driven to the acceptance of the only other alternative that has been proposed, the alternative, namely, of following the example of what has been done in every other similar case that has hitherto arisen within the Empire, and of constituting separately elected legislatures to carry out those duties and responsibilities from the performance of which we are all agreed that the Imperial Parliament must be relieved.

THE JUDICIARY

V

The Judiciary

The Report of the Conference states that, under the allocation of powers set out in it, no change in the existing judicial systems of England and Scotland would be involved in the adoption of a scheme of devolution applicable to these countries. They would remain as they are. On this point, therefore, there is nothing to add to what the Report contains. But this, as we have seen, is equally true of the administrative systems of the two countries under a scheme of devolution defined as I have suggested it should be; and it gives me the opportunity of once again emphasizing the fact that a change in the mode of working our Constitution, proposed with the object of giving

cannot be a change that is alien to its spirit, or to the intentions of those who, at the time of the Union between England and Scotland, originally framed it.

CONCLUSION

VI

Conclusion

There is one final word which I desire to say on the subject of federal devolution as a whole. The reluctance to set up new organs to express and carry out the common purpose of our life, though not unnatural, is not always to be commended; and it may become a source of grave danger to us. We are experiencing this now in relation to Ireland; and Ireland is not the only instance of it that has occurred in the course of our history.

Occasions must arise in a growing and developing life, such as ours is, when it becomes necessary to create new organs to give full and free expression to its growing and expanding interests and relations. This will not be disputed. History from one point of view, and that not the least impor-

peoples due to this cause. Nor is the process inimical to the felt and conscious unity of their life. On the contrary, it is at once its sign and symbol, and the sole means by which it can be secured and preserved. From the facts relating to the evolution of the structure of animal life biological science has drawn the inference that the grades in the ascending scale of its manifestations are marked off from each other on the one hand, by a growing differentiation of organ, and on the other by a growing concentration of action and purpose.

The inference can, with equal justification, be drawn from the facts relating to the evolution of the conscious moral and spiritual life of men. Here, also, the greater the differentiation of organ the greater is the concentration of action and purpose. But there is this difference between the two. In the former case the movement is involuntary, while in the latter it is voluntary. Those who partake in it are themselves responsible for carrying it out.

fication in the organic structure of the life of any people, for that people, or for their leaders, to be dilatory in dealing with it must lead to weakness, disorder, and confusion among them; while obstinately to resist it will inevitably end in civil strife.

I claim that I have in these pages proved that such an occasion has now arisen among us. Weakness, confusion, and disorder, affecting all the great concerns of our life, prevail among us; and premonitions of civil strife are not absent. Nor are these things the mere aftermath of the war. Though they have been aggravated by it, they existed before it. Nor, further, will federal devolution be the all-sufficient means of freeing us from them and of restoring relations of trust and confidence among us. Nevertheless, without it we shall go forward to disaster.

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