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THE IRISH CONSTITUTION

Darrell Figgis

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Содержание

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Introduction
IRELAND AND A COMMUNITY OF NATIONS

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

Whether one believes ardently in the faith that the will of a people should under all circumstances prevail, and that the forms

of Government should at all times be submissive to that will, is indifferent. That is a question for the individual, with which I do not presume to interfere. One need only believe with l'Abbé Coignard that "a people is not susceptible to more than one form of government at the same period," to believe, further, that if one asserts the derivation of all power and authority from the popular will, if that will be once fairly and honestly ascertained, it then follows that the will of the people is sufficient to itself, and that all forms of government must be made malleable to it. On that supposition, all frustrations and obstructions of, and impediments to, the constant exercise of that will must of necessity be cogs in the machinery of government; and for that reason in two articles I turned from exposition to criticism.

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

of the Judiciary and the Executive beyond the ready control of the people or the people's representatives, that I dealt with them as I did. Apart from them I kept away from criticism.

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

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

These causes fall under, broadly, two heads. The first is that Ireland is not what these other nations were when their Constitutions were first framed. Nor is Ireland, indeed, what

they are now. Canada, for example, and Australia, are English Colonies, first established by white men in a coloured population. The greater part of these white men draw their traditions and inspiration, their habits of thought and habits of public conduct, from the rootstock of the English nation. They look to England as their mother-country. But Ireland is an ancient nation and a mother-country in her own right. She has herself peopled the earth with her children. Her empire is as far-flung as England's. And if it is not based on military might, but linked by ties of memory, pride and love, it has not therefore proved itself any the less powerful internationally at times of crisis and danger for the mother at home.

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

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

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

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

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

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

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

For the other nations of the Commonwealth are themselves not now what they were when their constitutions were first framed. They were then but colonies, on whom their mother-country was pleased to bestow constitutions – and if the pleasure

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

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

in the Community of Nations with the other members of it. Specifically she accepted the "law, practice and constitutional usage" of Canada; and that constitutional usage implies, not the dead timber of the Canadian Constitution, but the living tissue of her constitutional experience.

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

For when a nation such as Ireland joins a confederacy so

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

So it has proved in the very case of this Constitution. The full height of nationhood is the recognition of sovereignty; and the completest act of sovereignty of which a nation may be capable is to confer its Constitution on itself. With the exception of Great Britain, none of the other members of the Community were, when their constitutions were enacted, capable of this. Each of them received its Constitution as bestowed, not by the Act of its own Legislature, but by the Act of a suzerain Legislature. And that shortness of national stature remained until it was removed by the addition of Ireland to the Community. For Ireland will receive her Constitution by the Act of her own Constituent Assembly, not by the Act of any suzerain Legislature. Whether the Constitution be or be not adopted by any other assembly neither gives nor detracts from the national authority it will possess. If it be so adopted, it will be adopted, not as giving it authority, but as the completing Act of ratifying the Treaty. That

is to say, it will be adopted by the Parliament of Great Britain as concluding the interest of that Parliament in the international bargain of the Treaty; and it will be passed and prescribed by the Irish Assembly as giving it full force and effect in Ireland. And that is a full sovereign act. But, since all the members of the Community are declared to be co-equal, the advent of Ireland, therefore, has given the recognition of sovereignty to them all, and raised each to the full height of nationhood.

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

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

The Irish Constitution

I
WHAT IS A CONSTITUTION?

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

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

Plainly, therefore, nothing should be written into a Constitution that is of a temporary, experimental, or questionable nature, or which should fall to the lot of ordinary law-making and the changing convenience of practice. A Constitution is

that which is permanent, as far as anything in this world may be permanent. Even to amend it, or add to it, requires in all countries (except England, where the Constitution has not taken a written form) a procedure quite different from that of ordinary legislation. To change it, or recast it, requires a revolution. Such a revolution may not be accompanied by bloodshedding, or it may, but it is certainly accompanied by insecurity and unsettlement.

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

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

Yet in England certain fundamental rights are recognised, with which Parliament would not lightly tamper; and these

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

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

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

all citizens may claim the protection of the courts of law against them.

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

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

Such Constitutions were made in 1814 by Norway, in 1830 by Belgium, and only last year by "Jugo-Slavia." In the last case the kingly line already existed before the Constitution was framed, and an oath was prescribed in it, according to which the King swore "to maintain the Constitution intact." In the first two cases the kingly lines were not chosen until the Constitutions had been framed, when the chosen dynasties stepped into the places appointed for them, and carried out the functions defined for them. In each case, however, the authority of the king sprang,

not from the divine right of kings, but from the divine right of the people, as set forth in the sovereign act of giving themselves a Constitution.

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

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

There has hitherto been one chief exception; and that exception is of striking interest at the present time. For within the British Empire the theory has been that there is only one sovereign assembly, the Parliament at Westminster. It is true that the Constitutions of Canada, Australia and South Africa were each drawn up by Constituent Conventions in the

countries themselves; but by the prevalent theory none of these peoples were competent to confer these Constitutions upon themselves. They were not, that is to say, sovereign; and before the Constitutions they devised therefore could come of effect they had to be passed as Imperial Acts by the Parliament at Westminster.

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

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

They will not be able to do what they will, and they will not be able to act as they will, for they must obey the requirements and act within the limits of the Constitution, as prescribed by

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

II.
THE PLAN OF THE CONSTITUTION

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

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

I have already shewn that the writing of a Constitution is itself evidence that the people are sovereign, even though no statement

to that effect is included in the writing. But when one comes to look in the Constitutions of the world it is curious to note the persistence with which that truth is overlooked. The Canadian Constitution, for example, having provided for the Union of Provinces by which the Federation was created, begins at once with the statement that "the Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen." Nothing has been said about a Legislature – nothing about the people of Canada. The Constitution begins at once with an Executive Authority which nothing has brought into being, and which therefore exists of its own right, original and indefeasible, all things else in the Constitution depending from it. The pyramid is hung from heaven, for the philosophy of the plan is to be found in the mediaeval myth of the Divine Right of Kings.

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

I have taken the Canadian Constitution because it is specially mentioned in the present draft of the Constitution of *Saorstat Eireann*; but the same supposition is found in many other

constitutions, such as those of Denmark, Sweden, South Africa. In them are to be found the relics of the mediaeval theory of government, of a divine authority conferred on a family, which therefore ruled of its own right; and of its own grace summoned the subjects of that authority for counsel and advice. Therefore in these constitutions it is assumed that the sovereignty is above and the subjection below – even though no one to-day supposes that the practical facts are what they assume them to be.

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

The Constitution of *Saorstat Eireann* begins with the people, and with a statement of the sovereignty of the people. "All powers of Government," it says in Article 2, "and all authority, legislative, executive and judicial, are derived from the people and the same shall be exercised in *Saorstat Eireann* through the organisations established by or under, and in accord with, this Constitution." In this Constitution, therefore, the people of Ireland establish their own right, original and indefeasible, and all things and persons and institutions named or created

by or under it depend from them. That is in the present, as it was in the original, draft. Whatever institution or organisation is established to act on their behalf, acts under an authority conferred by them; and in accord with the specific bestowal of that authority; and not otherwise. Whatever person or power is named, is named to act on their behalf; acts under the same authority; in accord with the specific bestowal of that authority; and not otherwise. The people confer of their own right; and what they may confer they may withdraw. If the authority they confer be abused or transgressed, it ceases thereupon to have any sanction or reverence, and possesses no binding effect. That is to say, in the terms of my figure, the apex of the pyramid rests on the base, is hung from no mythical divine right of kings, and has no support outside the people of Ireland.

The people, consequently, are citizens of a free state, not the subjects of authority. It is necessary, therefore, at once to state who are the citizens of this state, and what constitutes their citizenship. This the next article proceeds to define. In this article the whole question of future citizenship is referred to legislation. It properly belongs to legislation, since it includes a number of complex matters and details quite unsuited to a Constitution. Yet there must be an original citizenship, otherwise the service of the state could not begin. Article 3, therefore, states what constitutes the original citizenship of Saorstat Eireann; and leaves all matters "governing the future acquisition and termination of citizenship" to be "determined by law," making it a constitutional

provision, however, that "men and women have equal rights as citizens." And Article 4 provides that the official language of that citizenship shall be the Irish language.

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

Therefore in the first section of the Constitution, where the original authority of the people is stated, certain matters are withheld. They are described as *Fundamental Rights*. The liberty of the Person, the Inviolability of the Dwelling, Freedom of Conscience and the Free Practice and Profession of Religion, the

Free Expression of Opinion, Free Assembly, Free Association, Free Elementary Education, and the Inalienability of Natural Resources, are each dealt with in successive articles as forming the essentials of these rights. Before any powers are conferred, before any organisations or institutions of Government are created, these matters are put to one side and reserved. They belong to the people. None shall interfere with them. The people are sovereign, and they so decide.

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

III.
THE MAKING OF LAWS

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

Obviously, then, once a Constitution has stated the sovereign

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

The most important part of these legislative provisions, however, is the setting up of a National Assembly, or Synod, to be known as the Oireachtas. This is to be formed of two Houses, Dail Eireann and Seanad Eireann. There are many powerful

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

Конец ознакомительного фрагмента.