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THE IMPLICATIONS OF IRISH HOME RULE  
FOR THE BRITISH CONSTITUTION  
1880 – 1914

BY

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Thesis Submitted For the Degree of M. Phil.  
2002

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## CONTENTS

STATEMENT

SUMMARY

ACKNOWLEDGEMENTS

INTRODUCTION	I
1. THE HISTORICAL BACKGROUND: PERCEPTIONS FORMED AND TRADITIONS ESTABLISHED	1
2. NATIONALISM V UNIONISM: TWO PERCEPTIONS OF HOME RULE	24
3. THE BRITISH CONSTITUTION: FROM OLIGARCHY TO PARTY DOMINANCE	59
4. THE PEOPLES V PARLIAMENT: THE DICEYAN PERSPECTIVE	109
5. HOME RULE: JUSTICE FOR IRELAND OR A BREACH OF THE CONSTITUTION?	126
CONCLUSION	173
BIBLIOGRAPHY	184

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## SUMMARY:

This thesis examines aspects of the 'Irish Question' and its impact on British politics predominantly between 1880 – 1914, with special reference to its implications for the character of the British Constitution, and its efficacy when applied to a divided society.

It analyses the conceptual ideas of the major political actors and how these were formulated and adapted to meet particular circumstances.

It is divided into five Chapters:

1. Outlines the historical background from the beginning of the seventeenth century to the granting of Catholic Emancipation in 1828. It sets out the makings of a divided society, with particular attention to the plantation of Ulster
2. Examines the arguments for and against the granting of Home Rule during the time of the first and second Home Rule Bills of 1886 and 1893, assessing the strategies used by both the Irish Parties to attain what each perceived to be justice for Ireland. It looks at how successful Gladstone's Governments were at accommodating these two different perceptions of justice.
3. Discusses the evolutionary changes of the British Constitution, with particular attention to the 1911 Parliament Act, examining the Unionists' claim, that the passing of this Act was part of a 'corrupt parliamentary bargain' between the Liberal Government and the Irish Parliamentary Party.
4. Examines A V Dicey's argument that the passing of a Home Rule Bill by virtue of the 1911 Parliament Act would lack constitutional validity, since there were reasonable grounds to suspect that the House of Commons did not represent the determined will of the nation. Hence, the Liberals were usurping the Sovereignty of the people.
5. Assesses Dicey's arguments within the context of the 'Ulster Crisis' 1912-1914, and explores the argument that the passing of Home Rule by virtue of the 1911 Parliament Act would exceed the bounds of legitimate government authority.

## ACKNOWLEDGEMENTS:

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## INTRODUCTION

This thesis examines aspects of the 'Irish Question' and its impact on British politics predominantly between 1880 - 1914, with special reference to its implications for the character of the British Constitution, the relationship between Ireland and the Westminster Parliament and the Constitution's efficacy when applied to a divided society. It asks the question, What if any is or at least should be the limitation of Government authority within the British Constitution? And crucially, it examines the corollary of this: What safeguards does the British Constitution provide for its citizens, and are there circumstances when it is justifiable for the people to use active resistance against Constitutional Government?

Notes on text:

Whilst recognising that Southern Unionists played a significant role in opposing Home Rule by constitutional means during the three Home Rule Bills of 1886, 1893 and 1912, it is Ulster Unionism that this thesis will concentrate on, since it was from this section that the threat of armed resistance was articulated between 1886 - 1914 and became a real possibility from 1912 onwards. The term Ulster Unionist will be used when referring to those Unionists from the North, Irish Unionists will include both Southern and Northern Unionists. The terms Imperial and Westminster Parliament are used interchangeably. As is the term Irish Parliamentary Party and Nationalist Party.

The framework of the thesis is chronological but its approach is thematic. This methodology allows for an analysis of the conceptual ideas of the major political actors at a specific time. It looks at how perceptions were formulated, established and adapted to meet the particular circumstances of the time. The decision to include an historical chapter outlining the makings of a divided society, and also the constitutional relationship between Ireland and the Imperial Parliament was taken because past events that occurred during the seventeenth and eighteenth century played such a crucial part in

the demands for and against the granting of Irish Home Rule from 1886 onwards. Therefore, chapter one will briefly outline the key events and the decisions taken at this time, since it will be argued, that these to a large extent were instrumental in polarising Irish society, as well as contributing to the British State's lack of full legitimacy in Ireland.

For the remaining three chapters the specific time span of between 1880 and 1914 has been chosen because it was a period in which the 'Irish Question' tested the limit of Governmental authority to its uttermost. In 1886 the then Prime Minister, W E Gladstone introduced the first Home Rule Bill for Ireland; from this time onwards, the British Constitution was called upon to find a solution to the differing ideals and demands of two groups - The Irish Nationalists and The Ulster Unionists. In this sense the 'Irish Question' was very much a 'British' one, since it tested the British theory that all political issues could be resolved by Parliament. Chapter two discusses the strategies used by the two Irish Parties, to achieve what each perceived was 'justice' for Ireland during the time of the first and second Home Rule Bills. As the Irish Parliamentary Party moved at least ostensibly towards constitutionalism the Ulster Unionist Party began to articulate its determination to resist any measure of Home Rule, even if this involved the use of force. It will be argued however, that at this time, the threat was perhaps more rhetorical than real, given that the Ulster Unionist Party had its own built in constitutional safeguard - the House of Lords, which virulently opposed Home Rule. But the social and political landscape was changing, and the House of Lords was soon to lose its power of veto.

Chapter three begins by examining the nature of the British Constitution, and how it evolved to meet the demands of a changing society. The Reform Act of 1832 established the House of Commons as the dominant House within the Constitution. This was given statutory recognition following the passing of the Parliament Bill of 1911. Sovereignty now effectively resided with the Government of the day, it was no longer, even theoretically shared between the two Houses of Parliament. This dominance was made

possible by the electoral changes that occurred in the nineteenth century such as the extension of the franchise, and the redistribution of seats. These changes were accompanied by the rise of mass disciplined parties as politicians now had to seek the votes of the electorate. It will be argued However, that the Lords themselves were instrumental in bringing forward their own demise by their partisanship towards the Conservative Party. However, the Irish Parliamentary Party was heavily involved in bringing about the curtailment of the Lords power of veto. It once again held the balance of power in 1910, and used its political advantage to secure Home Rule for Ireland. The Unionist Party argued, that the Liberal Government was involved in a 'corrupt parliamentary bargain' with the Irish Parliamentary Party: claiming that the Irish Nationalist Party had offered its support to the Liberal Government on condition that the latter introduce a Bill for the curtailment of the Lords' power of veto. From this time onwards Unionists became convinced that the Liberal Government was guilty of a 'corruption of the constitution', this was to result in two of the most bitter constitutional crises of the twentieth century, in which the weaknesses of an unwritten British constitution were exposed. Its hitherto strengths, its flexibility and its in built-checks and balances were revealed to be its weakness.

It could be argued, that the impact of Irish Home Rule brought into focus wider political issues than Ireland. O'Day has argued, that the crisis surrounding the third Home Rule Bill of 1912 was larger than Ireland, 'it concerned the nature of governmental authority and legitimacy.' (1) Could, asked O'Day, 'ephemeral political majorities perhaps elected to Parliament for entirely different reasons, impose an apparently objectionable minority policy on the whole country without resistance?' (2) This thesis explores the argument that it should not, even if technically it could do so. By 1912, the dominance of Party government had been confirmed by the passing of the 1911 Parliament Act, no longer could the House of Lords use its power of veto to block Government Bills. A Bill would become law within the lifetime of a single Parliament, hence under the doctrine of

Parliamentary Sovereignty there appeared to be no limits to Government Authority. Chapter four examines the arguments of A V Dicey, generally regarded as the constitutional expert of the day. Dicey was an ardent defender of the Union, and abhorred Home Rule in any shape or form, however it will be argued, that Dicey provided a sound constitutional argument against the granting of Home Rule by virtue of the 1911 Parliament Act. Dicey's argument was that although Parliament was the Supreme Sovereign body from a legal stand-point, politically ultimate Sovereignty resided with the electorate. Therefore, the Legislature should, if there was reasonable doubt that it does not represent the deliberate will of the people, dissolve Parliament and seek the verdict of the Nation. If the Government refused, argued Dicey, the King could exercise his powers and dismiss his ministers and appoint new ones, thus forcing a General Election. The powers of the Crown were by this time more symbolic than real, but were they atrophied by their disuse? No argued Dicey, there were precedents, whereby the Crown had used its power to ensure that the Legislature represented the deliberate will of the people.

Chapter five examines Dicey's constitutional arguments within the context of the 'Ulster Crises' between 1912- 14. The Unionists contended, that Home Rule did not represent the will of the people, so much as the demands of the Irish Parliamentary Party, therefore, the Liberal Government was guilty of violating the spirit of the constitution, by its refusal to submit its policy of Home Rule to the verdict of the Nation. The Liberal Government, however, maintained that Home Rule had been official Party policy since 1891, therefore, it had formed part of its manifesto in the two elections of 1910. Moreover, as the duly elected Government it had the right to pass the Bill into law. These differing perception of democracy (3) involved the concept of the 'mandate'; a somewhat ambiguous doctrine within the British Constitution, but one that, as will be shown was by 1912 becoming more prevalent. However, there was another more emotive and moral dimension to the passing of the third Home Rule Bill, that of the rights of the people.

Did the Liberal Government have the moral right to coerce a section of the United Kingdom out of the British Constitution and force them to accept the authority of their sworn historical enemies, the Irish Nationalists? Under the doctrine of Parliamentary Sovereignty it has to be conceded that legally it could, but was it morally acceptable that a Party should use its Parliamentary majority to effect such a measure? The crisis surrounding the third Rule Bill highlighted many of the ambiguities and indeed the weaknesses of the British Constitution, the role of the Crown was an ambiguous one, symbolically a figure head, but it nevertheless still possessed and continues to possess powers that can be used, to curb the powers of a Parliamentary majority. As has been mentioned it can dissolve Parliament, or more drastically it has the right to refuse the Royal Assent. This holds dangers for the Crown, since it is in effect a veto against the democratically elected Representatives of the people and has not been used since 1712. But under the British Constitution people are subjects of the Crown as well as citizens of the State, therefore, it will be argued, that George V was faced with a dilemma, should he give his assent to a Bill which, the Ulster Unionists and the British Unionists argued forced a section of his subjects out of the British Constitution? Did not the Crown have a responsibility to protect its subjects? It will be argued that the crisis surrounding the third Home Rule revealed critical weaknesses in the British system of Government, it disclosed above all the danger of the Party system, whereby a Government could pass into law any Bill which may or may not be supported by the Nation. In essence, the Legislature could give effect to the deliberate will of a faction. These, hitherto, latent and unexplored issues were exposed during the 'Ulster Question' of 1912-14: their resonances are still felt today, and not only in Ireland, as the present Government tackles yet again the 'Ulster Question', and the wider issue of constitutional reform.

References to pages I - V

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STABILITY 1900-1914 (1979)
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## CHAPTER ONE

### THE HISTORICAL BACKGROUND: PERCEPTIONS FORMED AND TRADITIONS ESTABLISHED

One of the questions this thesis asks, is whether there are circumstances when it is justifiable for the people to use active resistance against Constitutional Government? It may be argued, that nowhere in the United Kingdom has there been such a sustained challenge to the State's authority as in Ireland. Prior to the mid nineteenth century at least, the British State frequently met this challenge by a policy of coercion. It was hoped that the Act of Union signed by George III in August 1800, which became law on the 1st January 1801 when the United Kingdom was established, would secure a peaceful settlement between the two countries. It will be suggested however, that the volatile relationship that existed between England and Ireland prior to this period, together with the fragmented society that existed within Ireland made the securing of a peaceful and lasting solution to (what later become known as) 'the Irish question' a bleak one. The history of Anglo-Irish relations reveals a tradition of conflict, conquest and confiscation followed by rebellion. The Irish, be they referred to as Native Irish, Anglo-Norman (Old English) or New English, appeared to have shared a common assumption, that loyalty to the State was conditional. Political obligation was seen as contingent on the State's ability to protect its subjects. It may however be fair to argue, that all political authority is to a certain degree conditional. Even in Hobbes' 'Great Leviathan', where the authority of the Sovereign is almost absolute, a person has a right to ultimate rebellion; since self protection takes precedence over political obligation: 'The obligation of subjects to the sovereign, is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them. The end of obedience is protection.' (1) John Locke, who sought (in the Two Treaties of Government) to establish William and

Mary's throne on the will of the people, (whose theory has become the cornerstone of Western Liberal Democracy) argued, that ultimate sovereignty resided with the people. The State, for Locke, was fiduciary, its authority dependant on the will of the people, the latter having a right to withdraw consent if they deem it is no longer acting in their best interests. Locke's theory set limits on the authority of the State. Essentially the State was brought into existence to protect a person's private property: 'Political power, then, I take to be the right of making laws with the penalties of death, and consequently all less penalties, for regulating and preserving of property etc.' (2) These two very different conceptions of the State appear to share a common belief, that the State has an obligation to protect its citizens. This may be the crux of the 'Irish Question', that the majority of the Irish population, whether they be Catholic or Protestant did not believe that the British State was able to or indeed interested in protecting or even addressing the rights of its citizens. Ireland may have been conquered in the Seventeenth Century, but the majority of its population, the Native Irish believed that British rule was unjust, therefore, they did not develop a loyalty towards the British State, rather they were forced to submit to it. And as Beckett astutely observes: 'men who submit by force retain the will, and may acquire the ability to resist.' (3) This propensity to resist, and indeed the will to do so, seems to be a central tenet prevalent in Irish history: as is the tradition of direct action against the Crown or Parliament. The plantation of Protestant Scottish and English settlers during the sixteenth and seventeenth century ensured that the political and economic structure in Ireland was transformed to mirror that of England's; whereby, hereditary primogeniture replaced the chieftain clan structure, but the majority of the population perceived the system as unjust. Moreover, whilst the Reformation was successful in the development of a predominantly Protestant society in mainland Britain it failed to take root in Ireland, therefore, the seeds of sectarian conflict were firmly planted. The failure through either lack of interest or resources to replace Catholicism with Protestantism as the religion of the majority contributed greatly to the British State's



lack of legitimacy in Ireland. The subsequent policies based on religious discrimination, ensured that religious divisions within Irish society would become entrenched, with each group growing evermore suspicious and fearful of the other. During the seventeenth century a pattern emerged, whereby the results of conflicts between Catholics and Protestants were seen as a victory for one necessarily meant the destruction of the other: with the British State cast in the role of illegitimate arbiter. There were occasions when groups attempted to cross the divide: The United Irishmen, Young Ireland and The Home Government Association, tried to unite the Catholic and Protestant population, but past atrocities fuelled by a particular interpretation of history (depending on which side of the divide one was) ensured their failure. This chapter will examine the historical background of Anglo-Irish relations, drawing on the seemingly 'Irish' tradition of direct action against the State. As Boyce has argued: 'What made Ireland somehow different to other parts of the United Kingdom, was the fact, that contending political groups in Ireland did not rule out violence as a means of achieving their aims.' (4)

#### IRELAND A CONQUERED NATION-BUT AT WHAT COST?

On March 30th 1603, Hugh O'Neill, Earl of Tyrone submitted to the Queen's Lieutenant Mountjoy: this may have brought to an end open-warfare in Ireland, as the Gaelic Chiefs were forced to accept the authority of the British State, but it did not however, introduce stability. A letter sent by Mountjoy, the Queen's Lord Lieutenant to Robert Cecil in April 1603, predicting that Ireland was 'now capable of what form it shall please the king to give it', (5) was not an accurate one. The terms of the treaty of Mellifont were generous enough: O'Neill was pardoned and all his lands restored, but the power of the Gaelic Lords had been severely weakened. The replacement of tanistry, the Irish custom of selecting a ruler by that of primogeniture, the English custom, reduced the position of the chiefs to that of a landlord, as tenants were now required to seek justice in British Courts. (6) This interference by the British State, resulted in the 'flight of the Earls' in 1607,

when O'Neill along with some one hundred chiefs chose exile rather than submit to English rule. The Crown reasoned that by their actions, the Earls were guilty of treason, therefore, confiscation of their lands was legal. These escheated lands were granted to English and Scottish 'undertakers', who under the terms of the scheme were to bring over English and Scottish settlers, build castles and towns, and introduce English law, the Protestant religion and 'civility'. (7) Land also went to 'servitors' (men who had served the Crown in Ireland). Although the latter was subject to the same terms and conditions as the 'undertakers', they were permitted to take Irish tenants. The rules of the plantation scheme were however, not strictly adhered to, as the new settlers of Ulster found themselves caught between the twin roles of 'civilizer and profit-maker.' (8) As early as 1618 there was evidence of letting and sub-letting to the Native Irish on the basis of short-term leases and high rents. (9) Therefore instead of forming settler townships the settlers were dispersed throughout a predominantly Gaelic population. The English Crown adopted the same strategy towards solving the Ulster problem as it did for the American colonies - plantation. But, unlike the Native Americans who were driven off their lands, in Ulster, 'Catholics remained near the settlers, a standing challenge to the property of the new settlers and their regime.' (10) The continued presence of swordsmen, ( an estimated 10,000 in 1609) who owed allegiance to the Lords they followed (the Catholic Gentry), 'encouraged among the settlers a mentality appropriate to a state of siege and they armed themselves accordingly'. (11) Evidently the new Protestant settlers felt a continual threat from the Native population, who they regarded as uncivilised and brutal. The Catholic population in turn resented the interlopers who had, with the aid of the British State stolen their 'lands'. English property laws now governed Ireland, and Crown officials in Dublin looked on the New-English-settlers favourably. (12) In 1641 the Native (Catholic) population rebelled, but this was not merely a revolt by an oppressed people, granted that poor harvests and the quartering of Soldiers in Ulster frustrated the Catholic population. (13) However the political situation

in England at the time was also a decisive factor of the insurrection: the fear of the increasing power of an anti-Catholic Puritan Parliament and the corresponding weakening of the King threatened the Catholic religion. Indeed it was written that Parliament intended to send over the 'Scots "with the sword" against the Irish "to supplant us and raze the name of Catholicke and Irish out of the whole kingdom" '. (14) The insurgents justified their use of force on 'the invasion of the royal prerogative by the 'puritan faction' in England and Scotland,' which according to Beckett: 'they not unreasonably regarded as a threat to their own religion'. (15) Their objective was a Catholic Ireland, loyal to the Stuart Crown. (16) From the outset it was portrayed as a 'loyal rebellion'. In 1912 Ulster Unionists would put forward the same argument to justify their threat of rebellion, claiming that they were defending Ulster in the name of the Crown. The 1641 insurrection and the massacre of Protestants by Catholics was to have a profound effect on the relationship between the two groups. Although there is now a recognition that the atrocities committed have been exaggerated, 'the exaggerated versions have been as important as the reality in shaping attitudes within Ireland.' (17) These outrages quickly became part of the Protestants anti-Catholic mythology, and served to confirm and fuel a 'them and us' mentality. Its historiography ensured that Ireland would become two nations - one Protestant one Catholic. History could and has been called upon to justify each 'nation's' particular claim for justice. The defeat of the 1641 uprising by the Cromwellian army was to result in a further confiscation of Catholic lands. In March 1642 the Government passed the Adventurers Act: those that lent money to the government to defeat the Irish rebellion were to receive a share of the land confiscated upon the successful defeat of the rebels. Some 2,500,000 acres out of the expected confiscations were earmarked to meet the Government's liability. (18) Such was the scale of these confiscations that whereas, in 1641 Catholics owned some 60% of the land, by 1660 they only owned eight to nine per cent, almost all of it in the counties of Connaught and Clare. (19) A new landlord class was thus established in Ireland, and

the Native Irish and the Anglo-Norman Catholic Gentry of Ireland were effectively marginalised, as the Cromwellian Army did not attempt to distinguish 'between one kind of Catholic or another, or between those innocent of massacre and those who were guilty.' (20) The Protestant new English were now firmly establishing themselves as the new landed gentry. However, the succession of the Catholic James II in 1685 and the subsequent policies of the Crown was to send alarm bells ringing among the new English gentry. All too soon Protestant became convinced that their fears were justified by James' Catholicisation of the Army and the Irish Administration: however, it was the possibility of an attack on the land settlement that most frightened them. By 1686 an exodus had begun by those that believed that their capital would be more secure in England. (21) In England too there was unease about James' religious beliefs. James' decision to send for Irish troops ( now mostly Catholic) to lend him support in England frightened and outraged the majority of the population. The events of 1641 were still remembered and anti-Catholic feelings were running high. The confrontation between Crown and Parliament (in England) was finally resolved when William landed at Torbay in November 1688 and James fled the country a month later. But although mainland Britain accepted William and Mary as Protestant Constitutional Monarchs, the predominantly Catholic Ireland still regarded James as their true King, and the Catholics there were prepared to defend their Sovereign by force of arms. However, James was in return expected to redress the injustices suffered at the hands of the British State since Tudor times. In what has become known as the 'Patriot Parliament' which met in May 1689, Catholic grievances were addressed. James was forced reluctantly to repeal the Acts of Settlement and Explanation outright. Those that had owned land in 1641 could now take the necessary action to recover them, without regard to the claims of subsequent purchasers - (22) i.e. the Protestants. An act declaring that 'the English Parliament had no right to legislate for Ireland' was also passed. James II appeared to be reluctant to pass these measures, however, he [James] was pointedly reminded by

Parliament that: 'If your Majesty will not fight for our rights, we will not fight for yours.'

(23) Once again displaying the tradition of conditional loyalty so prevalent in Ireland, irrespective of one's political persuasion. James' defeat at the Battle of the Boyne was to confirm the supremacy of the Protestant population of Ireland, not only in the question of land, but also in their civil and religious liberties. For the Boyne was, as Stewart rightly asserts:

the critical moment of a long struggle between the Roman Catholic and Protestant interests. Its results was to establish securely in Ireland the Protestant Ascendancy which lasted until recent times. (24)

The Boyne has become revered in Unionists' historiography as the decisive moment when Protestantism triumphed over Catholicism. The Protestants believed that their own heroic victories of the previous century together with the atrocities committed by the Catholics during the same period was justification for the latter's oppression. This oppression, although on a lesser scale was extended to Dissenters. The Ulster Scots were denounced as stubborn enemies of the 'Tory Monarchy and episcopacy' and the Cromwellians were branded as 'republicans and regicides.' (25) Thus the Anglican Ascendancy in Ireland could portray themselves as the only loyal citizens, and by so doing could claim the right to govern Ireland. In this the Ascendancy was aided by the British Parliament, which in 1691 passed a bill requiring an oath of allegiance, which included renouncing the spiritual supremacy of the Pope. This Act ensured that the Parliament that met in Dublin in 1692 was a Protestant one. Henceforth the Ascendancy could and indeed did consolidate their supremacy by the passing of the 'Penal Laws'. So effective were these laws that by the reign of George I, the Irish Lord Chancellor was able to boast 'The law does not suppose any such person to exist as an Irish Roman Catholic.' (26) Although the laws were not strictly enforced the mere fact that these laws could be invoked, as occurred when in 1714, when Louise XIV recognised James II's son

as James III of England, Scotland and Ireland was enough to ensure that the divide between 'loyal' Protestant subjects and 'traitorous' Catholics was firmly established and maintained. Moreover, the laws ensured that 'for the most part of the eighteenth century the Roman Catholics and Dissenters of Ireland was excluded from any significant part of the political process.' (27) It may be suggested, that the discriminatory measures experienced by the Roman Catholics (at the hands of the British State) during the seventeenth century, and extended against them by the Ascendancy during the eighteenth century, convinced the Catholics that justice for them would be unattainable until the twin pillars of oppression i.e. the British State and the Protestant Landlords were removed from their position of power. At the beginning of the seventeenth century the Gaelic Chiefs of Ireland had little in common with the Anglo Norman Lords, but the State's tendency to regard all Catholics as traitors and heretics, and treat both as such ensured that an alliance was formed. The two groups had little choice but to unite under the common banner of religion; hence the Irish Nation became synonymous with that of a Catholic one. So complete was this fusion, that Sir Richard Cox in his publication of 1689-90 *Hibernia Anglicana* claimed:

if the most ancient Natural Irish-Man be a Protestant, no man takes him for other than an Englishman; and if a Cockny be a Papist, he is reckoned in Ireland as much an Irish-Man as if he was born on Slevelogher. (28)

Although the Catholic population were denied their rights to take part in the political process, this did not mean that their will to right the wrongs done to them by the British State and the Protestant Ascendancy diminished, it was merely that their power of resistance was severally curtailed by an all-powerful Protestant Landlord class that dominated Irish society. Crucially the people turned to 'secret societies', perceiving these as the best form of protection from unjust landlords, whose powers were seen to be propped up by the British connection. It was this tradition of 'secret societies' that was to

be so advantageous to Parnell in the 1880's, in his quest for Home Rule. However, as the eighteenth century progressed, it was from within the Ascendancy class itself that the State's authority was challenged, as many of the Ascendancy themselves became dissatisfied with Ireland's subordinate position.

'PATRIOTS' USE THE THREAT OF FORCE TO SECURE JUSTICE FOR IRELAND.

The Glorious Revolution had indeed ushered in a new constitution in England. It had secured the supremacy of Parliament, whilst the Septennial Act of 1715 fixing the duration of a Parliament (in theory at least) set limits on that power. The 'Habeas Corpus' Act protected the rights of subjects from arbitrary imprisonment. However, none of these were extended to Ireland. 'Whatever the blessings of the "Glorious Revolution" may have been for England they were ingloriously denied to Ireland.' (29) During the second half of the Eighteenth Century, a group which became known as the 'patriots' began to demand that these Acts were extended to Ireland. In the 1761 Parliament Henry Flood established himself as leader of this group, their aims were, according to Beckett:

the limitation of the life of parliament by a septennial act, reduction of the pensions list, establishment of a national militia, a habeas corpus act, security of tenure for the judges. And behind these detailed proposals lay the less clearly defined aim of establishing the position of the rights of Ireland as a distinct kingdom. (30)

An Independent legislator was clearly the aim of the 'patriots' who drew on the arguments put forward by William Molyneux, in his pamphlet of 1698, entitled, 'The case of Ireland's being bound by Acts of Parliament in England stated', in which he argued that, Ireland was a separate Kingdom bound by a common crown: and as such, Ireland had a right to an independent Parliament. (31) To understand their grievances it is vital to outline the relative weakness of the Irish Parliament in its scope to pass legislation. This

was due to the constraints imposed by Poyning's Law of 1494, which essentially meant that all Parliamentary business had to have the prior approval of the King's deputy and his council in Ireland and by the King and his council in England. The Irish Parliament's position was made worse by the 1719 Declaratory Act (6 George I), which bound Ireland to the Acts of Westminster. (32) Although this Act merely put into statute that which had been common practice since 1640, it was a clear indication that Ireland was regarded by the Westminster Parliament, not as a sister kingdom, but as a dominion. The oft-quoted phrase, England's dilemma is Ireland's opportunity is applicable here, for it was events overseas that was to be the crucial factor in achieving the 'patriots' ultimate aim - legislative independence, but not self-government. The American War of Independence, which began in April 1775 was instrumental in providing both the constitutional blueprint and the practical circumstances by which Ireland received some measure of autonomy. The latter involved the defence of Ireland, which became a more urgent consideration with the removal of troops to fight in the American War. To secure Ireland's defences local gentry organised Volunteer corps. By 1780 there was an estimated 30,000 to 40,000 volunteers in the country. The opposition 'Patriot' Party was quick to recognise the potential of such a force; with Grattan (33) declaring that the Volunteers were 'the armed property of the Nation', and Flood (34) declaring that the Volunteers should be used to extract 'Ireland's rights from England and remain on foot till these were secured.' (35) And secured they were, although a change of ministry from Lord North's to the Whigs under Rockingham may have facilitated the granting of an Independent Parliament: given that when in opposition the Whigs had supported the aspirations of the Protestant Nationalists, they were bound to introduce some measure of autonomy for Ireland when they took office. But whatever the reasons behind the 'Patriots' success it is the role played by the Volunteers that has been most significant in Irish history. Grattan's Volunteers, as they have become known, have acted as a blueprint for both Irish Nationalists and Unionists. The methods employed, i.e. the threat of



rebellion against the forces of the State has been emulated by both groups in an attempt to secure their own aims and aspirations, but always under the banner of securing 'justice for Ireland'. 'Grattan's Parliament' was short-lived and may have been more cosmetic than effective, as 'Irish Parliamentary management continued to enable the Castle government to get its business done as much as before'. (36) Symbolically however, the constitution of 1782 was a watershed in Irish history: it asserted (at least in theory) Ireland's position as a sister kingdom of England united by one Crown. Moreover, the perception that this Parliament was achieved as a result of the threat of the use of force was to have a profound and lasting effect on Anglo-Irish relations. The Irish peoples' belief that Ireland could and would procure her rights from the British State only by the threat of direct action was largely substantiated at this time.

#### THE GRATTAN CONSTITUTION-A PROTESTANT ONE.

The constitution of 1782 however, failed to meet or even address the demands of the Catholic population. Although the 'penal laws' by this time had largely been suppressed, in the political sphere Catholics were still discriminated against: they were still not allowed to sit in Parliament or vote at parliamentary elections. Although politicians such as Grattan fought for Catholic emancipation, provided of course, that this did not impinge on Protestant power, others such as Flood vigorously opposed such measures. In 1783 he made his position clear when he defended the Penal laws on the basis that:

ninety years ago four-fifths of Ireland were for King James. They were defeated. I rejoice in that defeat. The laws that followed were not laws of persecution; they were laws of necessity. (37)

Flood believed that the Roman Catholics would use 'political power to undermine the constitutional link with Britain.' (38) The dissatisfaction of the Catholic population was to prove advantageous to the Society of United Irishmen, who in 1798 attempted to force England to grant 'justice' to Ireland. This organisation was founded in October 1791 with

the objective of 'abolishing unnatural distinctions, to unite all Irishmen against the unjust influence of Great Britain, and secure their true representation in a national Parliament.'

(39) Indeed their declared aims were: 'to unite the whole people of Ireland, to abolish the memory of all past dissensions, and to substitute the common name of Irishman in place of the denominations of Protestant, Catholic, Dissenter.'<sup>(40)</sup> Evidently if each person was to be referred to by one title, then each would have equality within the law. Little wonder (given the position of Catholics in Ireland at this time) that in 1792, Wolfe Tone was appointed Secretary of the Catholic Committee: a body founded in 1756 to promote the political interests of the Roman Catholic population. In 1792 a Catholic Convention was called, modelled on the Volunteers, and a deputation was sent to London to put their case directly before Pitt, the British Prime Minister, thus circumventing the authority of Dublin Castle. For as Foster argues, 'the Catholic Committee had in the end by-passed the Viceroy and presented a petition directly to London, thus tacitly threatening to withhold support from the system of Irish government as established in 1782. (41) The British Government, mindful of the international situation especially in France, deemed it necessary to grant Catholic concessions.<sup>(42)</sup> The Catholic Relief Act of 1793, introduced by Hobart, the chief secretary (The terms of which had been largely dictated by England) (43) granted the franchise to Catholic forty-shilling freeholders, along with lifting other restrictions. However, a motion made by George Knox to admit Catholics to Parliament was defeated by 163 to 69. Catholics were, therefore, still denied equal citizenship. The Ascendancy was fearful that:

Catholics once in control of the State, would soon adopt a more dictatorial tone; they were not to be trusted, whatever the British Government in London might like to think; the land settlement of the seventeenth century would be endangered (44)

There was outrage by some Protestant groups in Ireland at any measures designed to bring their perceived 'disloyal popish enemies' within the Protestant constitution. The

Dublin cooperation was virulently opposed to the parliamentary reforms, proclaiming that:

the Protestants of Ireland should not be compelled by any authority whatever to abandon that political situation which their forefathers won with their swords and which therefore is their right. (45)

Indeed the Morning Post in 1792, told how some Protestants contemplated the use of 'gunpowder and bayonet' as the only 'specific remedies against Catholic agitation for reform.' (46) Catholics however, were partially admitted within the pale of the constitution, and their gains ensured that they would not be satisfied until they were recognised as equal citizens. It was not henceforth a matter of 'if' but of 'when' Catholics would be granted emancipation. The reforms of 1793 in reality did little to alleviate the grievances of the masses who resented the unjust landlord and tithe system. Tone and the United Irishmen hoped to attract this group to their cause. 'If the men of property will not help us they must fall: we will free ourselves by the aid of that large and respectable class of the community - the men of no property'. (47) However the agrarian Catholic and Protestant secret societies which were endemic in the Irish countryside meant there was little hope of achieving The United Irishmen's leitmotif - of substituting the name of Protestant, Dissenter and Catholic for that of Irishman. When the United Irishmen attempted to attract the 'men of no property' they were confronted by two rival groups, the Catholic Defenders, and the Protestant Orange Society. By 1795 Defenderism was a national movement, which in the South was directed against landlords, but in Armagh it opposed protestants. In September of that year there was a battle between Catholic Defenders and Protestant Peep o' day boys. The latter were the unequivocal victors, and later that day this group formed the Orange Order. The latter's declared aims were 'to maintain the laws and peace of the country and the Protestant Constitution, and to defend the King and his heirs as long as they shall maintain the Protestant ascendancy'. (48) Such a Society was unlikely to be attracted to the United Irishmen, whose aims were to

eradicate religious differences, and to substitute the 'common name of Irishman in place of the denominations of Protestant, Catholic and Dissenter'.(49) Indeed many United Irishmen actually enlisted in the Orange Order, (50) the United Irishmen were, therefore, left with the Defenders. This organisation soon joined 'their fortunes with the Jacobin-inspired United Irishmen'. (51) Moreover according to Senior, 'the emergence of the catholic peasantry as a revolutionary force under the leadership of the United Irishmen awakened latent fear among protestants of catholic domination.' (52) The Government's answer to the volatile state that existed in Ireland, between 1795 and 1798 was repression. The passing of the Insurrection Act in 1796 gave the Lord Lieutenant the right to declare martial law on any district or districts where he deemed this to be necessary; The Habeas Corpus Act was suspended; the death penalty could be imposed for administering an unlawful oath and transportation for life for taking such an oath. Coercion was once again the preferred method of Government. Although Grattan and other Patriots in 1797 called for the repeal of the Insurrection Act and parliamentary reforms to ebb the growing tide of rebellion, their pleas went unheeded, and when their proposals were defeated by 170 to 30 votes on May 15th, Grattan, Ponsonby and their followers left Parliament and constitutional reform was completely abandoned. As always Ireland was dependant on the political situation in London, and although Fox argued for reforms, his party was in the minority, and the majority was against granting any such measures. In the wake the United Irishmen's failed rebellion in 1798, the Union was imposed on Ireland. It was virulently opposed by the Protestant Ascendancy, who believed that it would reduce Ireland once again to the status of colony. The British State however, was able through bribery and corruption to secure the Union. The Protestant Ascendancy soon revised their opposition to the Union, quickly realising that their interests would be best as part of the majority within the protestant constitution of the United Kingdom, rather than as minority in a future Catholic Ireland. Thus the Union became almost sacrosanct, a bulwark against being subsumed into a future Catholic

nation as democracy challenged the rule of Oligarchy during the nineteenth century. It may be suggested that by the time of the Union the Protestant Ascendancy had learnt a valuable lesson, in as much as they had experienced what Aughey refers to as 'constitutional insecurity'. (53) They were British citizens yes, and the Union confirmed their de-jure right as such, but their citizenship and indeed their security was dependant on the dictates of the Imperial Parliament, (following the abolition of the Irish one). The danger was that in Ireland there was a growing threat from the Catholic majority who might force the Imperial Parliament to review Ireland's constitutional position, or more immediately to grant emancipation to their [the Protestants] historical enemies - the Catholics. This was the fear of Ireland's 'loyal' subjects, who rapidly forgot the claim of the Protestant Nationalists of Grattan's Parliament, that Ireland was an ancient Kingdom, it (Ireland) was an integral part of the United Kingdom, confirmed as such by the Act of Union 1801. But could they be sure that British politicians would not impose their authority once again, this time to the detriment of the Protestant minority in Ireland? Although Aughey argues from a Unionist (Protestant) perspective, it can be suggested that Catholic population in Ireland also experienced this insecurity, as they continued their struggle to gain admittance to the Protestant constitution. This 'constitutional insecurity' without doubt contributed to the British State's lack of full legitimacy in Ireland. The conditional loyalty displayed (at various times) by all groups in Ireland towards the British State's legitimate authority has been a symptom of that insecurity. Whereas in mainland Britain there developed a reciprocal loyalty between the State and its subjects, in Ireland, historical circumstances prevented the development of such loyalty.

#### THE CATHOLIC POPULATION AND THEIR POSITION WITHIN THE UNION

The majority of Roman Catholics, or at least of their leaders, initially welcomed the Union as the best means of securing emancipation, sadly they were once again denied

citizenship, due in part to pressure from the Ascendancy, which both Fitzgibbon and Portland succumbed to, (54) But, it may have been the King's objections that were most influential, as George III voiced his objections, declaring that the granting of Catholic emancipation would be a violation of his coronation oath:

I would rather give up my throne and beg my bread from door to door throughout Europe than consent to such a measure. (55)

Pitt, the British Prime Minister was in favour of such a measure, having given his word that he would press for emancipation, but was reluctant to press the King on the matter, and consequently, did what he believed to be the honourable thing, and resigned. However, as Curtis argues, Pitt might have best served the interests of Ireland by countering George III's argument that his coronation oath would be violated by the admittance of Catholics to Parliament, by reminding the King that it was Parliament, that imposed this oath on the King in 1689, therefore, it could also relieve him of it in 1800.

(56) Or as Beckett suggests:

used his immense influence in parliament and in the county to full he might even at this stage, have compelled the King to give way: but in view of the European situation he shrank from such extreme measures; and having satisfied his conscience by resigning office, he felt free to support the new government. (57)

Hence the aspirations of Ireland's majority were unfulfilled, and the Union was weakened from the beginning. For the Union was not between two countries but between Britain and the Protestant Ascendancy who continued to dominate Irish society, whilst the Roman Catholics were left outside the pale of the constitution. Little wonder then, that the aims of the Union to secure a peaceful and lasting settlement to Anglo-Irish relations were not realised. Had Pitt been able to carry emancipation and accommodate the Catholic population within the Protestant Constitution, then perhaps the two traditions of Irish Nationalism that emerged in the nineteenth century - that of Constitutionalism and Revolutionary Nationalism would not have flourished. But the failure of the British State

to accommodate the Irish Catholics within the British Protestant Constitution allowed a new force to take root in Ireland - this was O'Connellism. Daniel O'Connell was a firm anti-Unionist. At his first public speech in January 1800, O'Connell declared that he would prefer:

the re-enactment of the Penal Code in all of its pristine horrors to the Union...I know that although exclusive advantages may be ambiguously held forth to the Irish Catholics to seduce him from the sacred duty which he owes his country, I know that the Catholics of Ireland still remember that they have a country, and that they will never accept any advantages as a *sect* which would debase and destroy them as a *people*. (58)

O'Connell's comment to his 'Boswell' O'Neill Daunt that: 'all the principles of my subsequent political life are contained in my first speech', (59) gives some indication of O'Connell's convictions. His oratory in 1813 was no less passionate, when he asserted:

I have seen Ireland a Kingdom - I reproach myself having lived to behold her a Province...I have an ulterior object; it is the Repeal of the Union, and the restoration to Old Ireland of her independence..(60)

O'Connell's primary objective was that Ireland should have self-government. (61) However, the French Revolution had convinced him change should be brought about by constitutional rather than revolutionary means (62) Indeed O'Connell criticised the Rebellion of 1798 and the Rebellion of Robert Emmet in 1803: of the first he wrote:

'May every virtuous revolutionist remember the horrors of Wexford' Of Emmet he was even more scornful: 'A man who could coolly prepare so much bloodshed, so many murders - and such horrors of every kind has ceased to be an object of compassion.' (63)

Crucially however, whilst accepting that O'Connell believed in the principles of non-violent agitation carried out by constitutional means, implicit in his rhetoric was the threat of revolutionary insurgency if Ireland was not granted her rights. O'Connell was adept at stressing the potential physical power of the masses who gathered at his mass meeting, these he argued, were held in check by his leadership. Should Ireland and the

Irish (Catholic) people not be granted their rights then 'the dark forces of violence' could and would surely be unleashed against the State. (64) This ambiguous language with its implicit threat of direct action was adopted by future Nationalist and Unionist leaders alike. O'Connell without doubt shaped the political future of modern Ireland and established the base on which a democratic tradition could evolve. The vehicle he used was the Catholic Association, which in 1823 O'Connell transcended from an elite organisation to a mass movement. The Association was closely associated with the Catholic Church, with the local priest collecting the 'Catholic Rent'. This ensured that O'Connell's movement was perceived as a sectarian one. The Association was successful because it based its claim on 'British liberal theory, on the idea of contractual government, whereby the crown had the right to a Catholic's allegiance but must in turn observe and respect the liberties of the subject'. (65) The aforementioned passage could just as easily be attributed to Ulster Unionists who based their claim to remain under the jurisdiction of the Imperial Parliament on these very principles. O'Connell's victory at the Clare election of 1828 was a triumph for the advancement of democratic government, as tenants for the first time voted against the wishes of the Landlords: but the sectarianism of O'Connell's election campaign confirmed that he was essentially a 'Catholic leader playing the Catholic card.' (66) The role of the Catholic Church, when priests declared that a vote against O'Connell was a vote against the Catholic religion, (67) ensured that Irish democracy was christened with the mark of sectarianism. The alliance between the Nationalist movement and the Catholic Church was formalised under the leadership of C S Parnell, by that time Irish politics unequivocally polarised along denominational lines: with the majority Protestants opposing any form of Home Rule, and Catholics overwhelmingly supporting the policy. Once again the authority of the British State would be challenged, as militant Nationalism and Ulster Unionism attempted to force the Imperial Parliament to act in accordance with their own particular perception of what constituted justice for Ireland. Again Westminster was cast in the



role of arbiter between rival groups: a role it was ill-equipped for, as will be discussed in the next chapter.

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## CHAPTER TWO

### NATIONALISM V UNIONISM: TWO PERCEPTIONS OF HOME RULE

This Chapter will examine how the two Irish political parties, the Irish Parliamentary Party and the Ulster Unionists Party attempted to attain what each perceived was justice for Ireland during the time of the first and second Home Rule Bills of 1886 and 1893. It begins by looking at the rise of the Irish Parliamentary party, and traces how this initially conservative movement, became a more militant one under the leadership of Charles Stewart Parnell. This Party ostensibly did not sanction the use of violence as a legitimate means of securing its aims, but as will be shown, behind its commitment to the democratic process, was the veiled threat of force, if the Westminster Parliament did not agree to its demands i.e. Home Rule for Ireland. However, as this Party, at least outwardly, moved towards constitutionalism, the Ulster Unionist Party became more militant its determination to resist any attempt by the Westminster Parliament to impose a Dublin Parliament on Ireland. The Ulster Unionists claimed that they represented 'loyal' Ireland, but, if there was an attempt to force them out of the jurisdiction of the Westminster Parliament, and under the authority of a Dublin one, then they would resist, even if that meant taking violent action. This challenged the doctrine of Parliamentary Sovereignty which underpins the British Constitution. How successful was the Westminster Parliament in its attempts to find a peaceful solution to the 'Irish Question' during this time?

#### THE LAUNCHING OF THE HOME RULE PARTY AND THE MAKING OF PARNELLISM.

Isaac Butt founded the Home Government Association in 1870. Butt was initially a defender of the Union, but came to believe that Ireland's interests could best be served

under a federal form of government. This Association like The United Irishmen and Young Ireland sought to unite Protestants, Dissenters and Catholics. It initially appeared to appeal to Protestants concerned at what they regarded as the British Government's concessions to the Catholic population in Ireland. The disestablishment of the Church of Ireland in 1869 alienated many leading Protestants. Gladstone's determination to tackle the injustice of Landlordism with a Land Act forbidding the eviction of tenants who paid their rents, together with their right, at the end of a lease to seek compensation for any improvements to the property during their tenancy was regarded in Ireland as in Britain as an attack on property itself. More crucially however, was the need of Protestants to carve out a role for themselves in a future Catholic Ireland. The 1861 census revealed that three quarters of the population were Catholic, hence demography if nothing else spurred some Protestants to seek a solution to their minority position: no longer could they depend on the British Government now led by the 'Godless' Gladstone to act as a bulwark against rising Catholic and populist opposition. The Home Government Association originally seemed to offer a possibility of establishing a leading role for protestants in a future devolved Catholic dominated Parliament. Sixty members made up the first committee of the Association which met in Dublin in 1870, of these thirty five were Protestants. However, as early as October of that year, Butt was conceding that Catholics now held a small majority on the committee. (1) The Dublin Daily Express, which had initially reported favourably on the new movement, citing it as evidence that the power of the priest was declining, now revised its judgement and called for the 'formation of an anti-ultramontane Irish Party.' (2). The Association attracted constitutional Nationalists and some Revolutionary ones, the latter was represented by The Irish Republican Brotherhood, popularly known as The Fenians. The IRB since its inception on St. Patrick's Day 1858 had advocated Rebellion to achieve its aim, which was articulated in its secret oath: 'to make Ireland an Independent and democratic republic'. (3) Fenianism was without doubt a physical-force movement, which 'from the

beginning repudiated constitutional action.' (4) Its leaders firmly believed that England, 'would never concede self-government to the force of argument, but only to the argument of force.' (5) However, the attempted insurrection of 1867 and its subsequent failure convinced some of its members of the merits of Constitutional Nationalism. From the beginning therefore, the organisation which eventually became the Irish Parliamentary Party was linked to those that advocated separatism and did not rule out violence as a means of achieving it. In April 1875 Charles Stewart Parnell was elected as the Home Rule Member of Parliament for Meath. He was to transform Butt's largely conservative Parliamentary Party to a militant Nationalist one. Parnell, a Protestant Anglo-Irish Landlord, firmly believed that the obstacle to Ireland achieving independence was that since the Act of Union 1801, Irish Landlords had looked to the British State to protect their interests, and maintain their privileged position in Ireland. Their reliance on the British State essentially prevented Irish Landlords from supporting Nationalism, indeed, it was their main reason for opposing it. (6) To quote Parnell:

Deprive this class (the landlords) of their privileges, show them that they must cast themselves in with the rest of their countrymen...(and) the last knell of English power in Ireland has been sounded. (7)

Parnell's vision was not that of land nationalisation as advocated by more radical members of the Land League, rather it was a partnership between "reformed" landlords and a "satiated" class of peasants. This pan-solidarity would increase the potential of nationalism.' . (8) To achieve this it was necessary to tackle the system of Landlordism, and Parnell was to find an effective partner in Michael Davitt. Davitt was released from prison in 1877 after serving seven years of his fifteen year sentence. His crime had been the collection of arms for the Irish Republican Brotherhood, of which he was a member. At the age of five Davitt had witnessed the eviction of his family from their Mayo home. They moved to Lancashire, where at the age of eleven, whilst working in a Cotton Mill,



he lost an arm. Davitt's aim was to form an alliance between the 'open' and 'secret' Nationalist organisations. At Brooklyn, New York on October 26th 1878, (whilst on a lecture tour) Davitt gave a speech criticizing the Home Rule Party: declaring that he regarded it, 'as being what a prominent gentleman, in conversation with him in London, said it was, viz., an organised hypocrisy.' Its leader Isaac Butt, was accused of being incompetent, and he [Davitt] had 'no faith in Parliamentary representation through the Home Rule party, the repeal party, or the disruption party.' However, Davitt declared that upon checking the record of the Home Rulers at Westminster, he believed Parnell to be the best Irish representative in the British Parliament, and acknowledged him as leader.(9) In 1879 Davitt proceeded to agitate for Land Reform: his belief was that the Irish land system and English rule were aspects of each other, therefore: 'The man who struck at one struck the other'. (10) In some respects Davitt was like Wolfe Tone, who looked to the men of no-property to free the Irish Nation from the injustice of British rule. Thus on October 21st 1879 Davitt founded the National Land-League in Dublin with Parnell as its president. The timing of the League's launch was crucial. The relative prosperity of the 1850's and 60's was replaced by agricultural depression following the bad harvests of 1877, 78 and 79, coupled with the import of cheap grain from Russia and North America. (11) As recession took a grip on Irish society, evictions of tenants rocketed, and 'outrages' (the preferred word of the Victorians for acts of violence involving the Irish) escalated. Agrarian violence and secret societies were endemic in Rural Ireland. What made the Land-League different from previous tenant-right organizations was that now there was a political leadership who could mobilise the masses and coordinate a mass national movement. Indeed, it has been argued that the organisation at its most powerful:

could aspire to form a kind of alternative government, at least in the sense of creating and maintaining a large body of farmers who could defy the law with impunity, draw up a plan for their campaign against landlordism, and operate it effectively. (12)

Officially the Land League did not sanction the use of violence, however, coercion, intimidation and violence there was. Those people that did not conform to the dictates of the League were coerced to do so through a range of sanctions varying from ostracism which Parnell publicly endorsed:

When a man takes a farm from which another has been evicted, you must show him on the roadside when you meet him, you must show him in the streets of the town, you must show him at the shop-counter, you must show him at the fair and at the market-place and even in the house of worship, by leaving him severely alone, by putting him into a sort of moral Coventry, by isolating him from the rest of his kind, as if he were a leper of old, you must show him your detestation of the crime he has committed. (13)

to the use of violence, which he (Parnell) did not. But violence and lawlessness there was, as League members 'resorted to lawlessness in the old Whiteboy and Ribbonmen traditions', of burning hayricks and maiming cattle. (14) Parnell's association with what was perceived as a violent organisation did little to endear him or his Party to Irish Landlords, British politicians, or indeed to public opinion in Britain. Moreover, the alliance of Parnell with American Fenians at this time was to further heighten suspicions that Separatism was the ultimate aim of the Home Rule Party, and that the use of violence although not overtly condoned was tacitly defended. John Devoy a leading member of the American Fenian movement, Clan-na-Gael offered support to Parnell on condition that federalism be dropped in favour of self-government; there would be vigorous agitation for peasant proprietorship; purely Catholic issues would be dropped, and the Home Rule Party would act as a disciplined Party in Westminster. (15) The supreme council of the IRB however, rejected a formal alliance of Constitutional and physical-force Nationalism, but it compromised by agreeing that individual Fenians could participate in parliamentary politics. (16) This opened the way for an informal alliance between constitutional and 'physical- force' Nationalism. The controversy surrounding

the extent of the alliance between Parnell and Devoy remains an unanswered question. Devoy claimed, that at a conference in June 1879, Parnell agreed to putting what has become known as the 'New Departure' into effect, i.e., 'in an agreement to push on both Home Rule and the land movements, but to regard them as means to the greater end of freedom to be won, if necessary by armed revolution.' (17) However, both Parnell and Davitt strenuously denied that any such formal alliance had been agreed, and historians generally appear to support the latter's claim. But the fact that whilst on a visit to America in 1880 Parnell collected \$200,000 (18) appears to confirm that there was a strong link between Revolutionary and Constitutional Nationalism. Indeed at a speech in Cincinnati, Parnell himself sounded more like a Fenian than a Home Ruler when he affirmed that he wanted to: 'cut the last link which keeps Ireland bound to England.' (19) Moreover, Davitt's description of Parnell's attitude as: 'one of friendly neutrality to the revolutionary movement', (20) would not have engendered a sense of confidence that Parnell did not espouse separatism as the ultimate aim or ruled out or even condemned the threat of violence as a means of achieving this. Parnell was the master of equivocal speech, he managed to defend the use of force without actually supporting its use. In a speech at Dublin in 1877, Parnell declared:

If they care for retaliation upon those who have never hesitated to exercise every means of coercion and cruelty in their power, I can say this - that the Irish members can help the Irish people to punish the Englishmen who have shown themselves utterly unable to govern this country. Do you conciliate the house-breaker who has broken into your house in the depth of night to rob you of your possessions and cut your throat into the bargain? Do you conciliate the highwayman who stops you on the high road and puts a pistol to your head saying Your money or your life. (21)

As Clayton points out, the above speech could be taken to refer to vigorous parliamentary action, but contained within it was a veiled justification for the use of violence: a justification based on the despotism of government. (22) Parnell was a liberal

parliamentarian, and as such could draw on the right of resistance by citizens, if a Government was perceived to be tyrannical. (23) By portraying England as a tyrannical regime that ruled Ireland through coercion, Parnell could appeal to and justify the extremist elements within the Nationalist Party, whilst still avowing to work within the constitution. In 1880 Parnell succeeded to the leadership of the Irish Parliamentary Party: having already replaced Butt as leader of the more militant Home Rule Confederation of Great Britain in 1877. Henceforth, constitutional, agrarian and physical force nationalism joined together to develop Parnellism. (24) In April 1880 Gladstone became Prime Minister for the second time. Having disestablished the Church of Ireland, and introduced the first Land Bill during his first premiership, he had still not succeeded in his own appointed mission - 'To pacify Ireland'. (25) Hammond makes the point that Gladstone's Government was faced with an immediate problem of 'governing a society in which violence and justice were on one side, and law and power on the other.' (26) Gladstone initially proceeded to try and solve the dilemma with the use of both conciliation and coercion. The latter involved the passing of a Coercion Bill in March 1881, which gave the Viceroy almost unlimited arbitrary powers. Indeed Morley summarised it as 'a Bill that enabled the Viceroy to lock up anybody he pleased and detain him for as long as he likes while the Act was in force.' (27) This was followed a month later by the 1881 Land Act which gave tenants in Ireland the three 'F's - fair rents fixed by arbitration, free sale and fixed tenancies, which the Land-League had been agitating for. (The Act did not apply to leaseholders or those in rent arrears), Parnell, careful to appeal to both wings of his Party - the moderate and the militants, did not denounce the Act outright, but called for some modification to assist tenants in arrears, and for test cases to be tried in the land Courts to allow the league to test the integrity and true value of Act. Gladstone in 1881 showed his contempt of Parnell's reaction to the Land-Act, when at Leeds he declared:

He (Parnell) desires to arrest the operation of the Land Act, to stand as Moses stood between the living and the dead; to stand there, not as Moses stood, to arrest, but to spread the plague...If it shall appear that there is still to be fought a final conflict in Ireland between law on one side and sheer lawlessness upon the other, if the law purged from defect and from taint of injustice is still to be repelled and refused, and the first conditions of political society to remain unfulfilled, than I say, without hesitation, the resources of civilisation are not exhausted. (28)

A week later, Parnell gave an inflammatory reply at Wexford, referring to the "perfidious English Enemy" with Gladstone as 'this masquerading knight errant, this pretending champion of the rights of every nation except the Irish nation' and appealed to the fighting traditions of '98 and '67' (29) (Both insurrections advocated Separatism). On October 13th Parnell was arrested and jailed without trial under the terms of the Coercion Act. However, Parnell's prediction that if he were arrested, 'Captain Moonlight' (a pseudonym for the organisers of agrarian crime) would take his place was soon to prove an accurate one. (30) The incidents of 'outrages' soared, as secret societies increased their coercive and violent activities. (31) Crucially however, these outrages were confined to the South, whilst in the North, Forster, the Chief Secretary enjoyed 'the sympathy of all the loyal population whether Liberal or Conservative.' (32) Forster a proponent for the use of coercion, believed that the arrest of Parnell and other agitators would bring an end to the crisis in Ireland. However by March 1882, it was evident that 'outrages' were still prevalent. Gladstone now become convinced that the imprisonment of Parnell and other members of the league was not the solution to Ireland's and by implication England's problems. In opposition to Forster, Gladstone declared he did not believe the long term solution to be the:

the imprisonment of a handful of agitators, but large scale land and local government reform...Until we have, seriously responsible bodies to deal with us in Ireland, every plan we frame comes to Irishmen...as an English plan...As such it is probably condemned... It is liberty alone which fits men for liberty. (33)

Excellent sentiments indeed, and ones that are identifiable in a liberal democracy, but a more critical analysis could be, that coercion clearly was not working, therefore, the other favoured policy of British politicians - conciliation had to be attempted once more. This was short lived however, as coercion again was imposed following the Phoenix Park murders; when Gladstone introduced such a draconian crimes Bill, that Ireland was effectively under martial law for the next three years. (34) Gladstone may not have shared Forster's preference for coercion as a means of maintaining law and order in Ireland, but whilst Parnell's imprisonment was at the recommendation of Forster, it did have Gladstone's full approval. (35) An illustration perhaps that Ireland's problems tested the tolerance and wisdom of many eminent statesmen who tried to find a solution to 'The Irish Question', only to be forced back on the policy of coercion to maintain law and order. Parnell's release from Kilmainham Prison was secured by an informal agreement; the Government would deal with the question of arrears and tacitly agree to end coercion, and in return Parnell would lend his support to the rectified Act. The latter concluding that if the Act was so amended it would be regarded by the country as 'a practical settlement of the land question and would enable the Irish Party to co-operate cordially for the future with the Liberal Party in forwarding Liberal principles and measures of general reform.' (36) Thus on May 2nd 1882 Parnell, Dillon and other members of the League were released from prison. Many of the more radical members of the League believed that Parnell had betrayed its principles, but to all intent the Land War was over. The failure of the 'No Rent Manifesto' (37) to catch fire was proof that essentially the Land-Law Act was working in favour of the two-thirds of tenants that were not in arrears with their rent or leaseholders. (38) In the first three years of operation, Land Courts fixed over 150,000 'fair rents', (39) as 'tenants voted with their feet'. (40) Parnell's stay in prison did much to increase his standing in Ireland, and he was now undisputed leader of the Nationalist movement. Consequently the question of Land reform became subordinate to that of Home Rule as the Irish Parliamentary Party moved towards

constructive constitutional politics. This was marked by the establishment of the Irish National League in 1882 to replace the defunct Land-League. The former's primary objective was National Self-Government, with Land reform relegated to second place. Emphasis was placed on the National League's constitutional and legal character. This reconstituted organisation was intended to integrate the whole population rather than the sectional interest of farmers. The move towards constitutional politics also allowed Parnell to enlist the support of the Catholic Church. Parnell, like O'Connell before him recognised the importance of the Church as an influential institution to educate and attract the Irish 'Catholic' people to the cause of Nationalism. Parnell largely won the support of the Church's hierarchy when he accepted Catholic claims on education i.e. coming out against the Queen's colleges. Following the Irish Party's alliance with the Catholic Church in 1884 the movement came more and more under clerical influence as Catholic clergy were granted the right to attend Nationalist conventions, and were influential in the selection of candidates. (41) Indeed the number of local Nationalist League meetings presided over by priests rose from thirteen and a half per cent in 1883 to fifty per cent in 1886, (42) and in February 1886 the Church publicly pronounced its support for Home Rule. Walker, quoting Professor Larkin suggests that the link between the Catholic Church and the Irish Parliamentary Party 'had democratic benefits in that it prevented the emergence of an all powerful central party but it did give Irish Nationalism a strong denominational character.' (43) Therefore, whilst Parnell succeeded in establishing an united Nationalist Party in Westminster and Ireland, he did this by excluding most of the protestant population of Ireland. (44) As the Nationalist Party moved towards the right after 1882, with Home Rule replacing Land Reform as the Party's leitmotif, and becoming the panacea for all of Ireland's ills, the Protestant population became increasingly alarmed at the prospect of a future Nationalist/Catholic Government. It did not help that Home Rule was not clearly defined, rather it was 'an abstract concept, portrayed as the fulfilment of centuries of struggle.' (45) The problem

was that the historical struggle was essentially perceived as that between Protestant and Catholic, with one group's success being the other's destruction. Hence for Nationalists the granting of Home Rule may have been the means of righting past wrongs and ending the injustice of British Rule and oppression, but for the majority of the Protestant population it was seen as handing power to their sworn enemies, whose first loyalty was to Rome. The Nationalists were ambiguous as to what exactly Home Rule meant, the minimum demand was an 'Irish Parliament, whatever the powers of that might be', (46) referring to it to most often as simply 'legislative independence'. (47) This very abstraction, however, appeared to add to the Nationalists success: for it allowed for one's own interpretation, thus it could appeal to moderates and militants alike:

There was a transfiguring vagueness about the phase which enabled the most extreme nationalists, as well as the most moderate, to accept it. To moderate men 'Home Rule' meant nothing more than an Irish parliament for the management of Irish affairs in subordination to England. Fenians...saw in Home Rule the beginning of a movement which might possibly end in the establishment of an Irish republic. (48)

The fact that Home Rule was ill-defined and open to interpretation may have been beneficial to the Nationalists success, but this ambiguity did not appeal to Irish Unionists, who believed that Home Rule was the first step to separatism. Moreover under such a Parliament dominated by men of violence and under the influence of the Catholic priests, Ireland would face economic chaos and their [the Protestants] civil and religious freedom would be curtailed. There was a fundamental difference between Irish Unionists and Nationalists on the question of Home Rule, ironically both believed in 'justice' for Ireland, but each had their own interpretation of what was just. What Irish Unionists and Nationalists did have in common however, was that loyalty was contingent on the British State acting in their 'own' particular best interest. As Parnell declared at Wicklow, in October 1885:



that under 85 years of parliamentary connexion with England Ireland has become intensely disloyal and intensely disaffected...Am I not to assume that one of the roots of this disaffection - this feeling of disloyalty - is the assumption by England of the management of our affairs? Give with a full and open hand, give our people the power to legislate upon all domestic concerns, and you may depend upon one thing, that the desire for separation the means of winning separation at least - will not be increased or intensified...It is impossible for us to give guarantees, but we can point to the past; we can show that the record of English rule is a constant series of steps from bad to worse - that the condition of English power is more insecure and more unstable at the present moment than it has ever been. (49)

Parnell concluded the speech by saying that the English statesman 'who grants Ireland full legislative liberty, full power to manage her own domestic concerns, will be regarded in the future by his country men as one who has removed the greatest peril to the English Empire.' (50) It may be suggested that in this speech, Parnell indicates that loyalty is contingent on Ireland receiving an independent legislator. Even if this is granted, however, no guarantees can be given that the people will not at some point in the future desire ultimate separation. Implicit too is the threat that should Parnell's preferred option, that of constitutional means fail to achieve legislative independence, then force is always an option. But perhaps force would not be needed after all? The election of 1885 gave Parnell a sweeping majority in Ireland, which in turn gave him political leverage in the Westminster Parliament. The results of the election were Liberals 335, Conservatives 249, and the Irish Parliamentary Party 86. The Home Rulers crucially held the balance of power in the House of Commons. Moreover, Ireland was about to have a new champion, the 'masquerading knight errant of 1881' was soon be hailed as the Great English Statesman, Parnell spoke of at Wicklow in October of that year, the person that would be strong enough to save the Empire from the peril of a disaffected Ireland.

## THE NATIONALIST AND LIBERAL ALLIANCE

Much has been written about Gladstone's conversion to Home Rule. To his critics he was an 'old man in a hurry' anxious to gain office: to his supporters he wanted justice for a small nation, which would also bring stability to the United Kingdom. The view taken here is that he came to the conclusion that ultimately it was not possible to 'govern a hostile population by constitutional means,'(51) without at least attempting to meet their demands, which was for the majority of Irish people Home Rule. Less effective still had been the mixture of coercion and consolidation which had been tried in various degrees during the time of O'Connell and Parnell. This had resulted in an increase in the authority and the popularity of the Nationalist Party in Ireland. The results of the 1885 Election finally convinced Gladstone that Ireland would not settle for less than Home Rule. On the introduction of the Home Rule Bill, Gladstone stated:

I cannot conceal the conviction that the voice of Ireland, as a whole, is at this moment clearly and Constitutionally spoken. I cannot say it is otherwise when five-sixths of its lawfully -chosen Representatives are of one mind in this matter.  
(52)

Writing in 1886 Gladstone reiterated that it was the election result of the 1885 Election that convinced him of the justice of Home Rule for Ireland, since prior to this time:

It had not become the unequivocal demand of Ireland... (53)

Gladstone found the idea of using coercion to govern Ireland abhorrent, and moreover, believed that the British people found it so too. At Westminster the Irish Party's policy of obstructionism had forced the introduction of the closure and the guillotine, procedures Gladstone disliked immensely. Essentially he came to believe that 'Irish violence and English reaction to it was corrupting the whole polity'. (54) Arguing in 1887 Gladstone contended that historically, Ireland had not been justly treated by the English Parliament, despite perhaps the latter's good intentions. Citing various wrongs, such as the failure to

introduce Catholic emancipation following the Act of Union, and drawing attention to the suspension of the Habeas Corpus Act in 1880 as a cure for the agrarian disorders in Ireland. The results of these and other wrongs, were according to Gladstone, that the majority of the Irish population had little faith or felt loyalty towards the law of the land, therefore, they did not feel obliged to obey it. Ireland held a position that was different from that of Scotland and Wales, as regards local concerns: (55)

On this side of the Channel, public authority administers the law in sympathy with the people. On the other side it does not: law wears in Irish eyes a foreign garb; and restraints upon liberty had so late as 1885 become almost habitual. (56)

Gladstone therefore, firmly believed that only an Irish Legislature would satisfy the majority of the Irish people, and encourage them to obey the law. Home Rule would instil a sense of loyalty, since a Dublin Parliament would be governed by the Irish themselves, hence the law would no longer be viewed as foreign. One of Home Rule's most ardent opponents, the constitutional expert A V Dicey, appeared to share Gladstone's perception as to the difficulty of governing a country, where the law did not have the support of the people. As early as 1883 Dicey wrote that:

The strength of the law lies in the support of the mass of persons who live under the protection of the law. In Ireland law has not that support because large classes who never break the law themselves feel no loyalty towards the power by which the law is enforced...Among large classes of Irishmen hatred to the rule of England has become a passion which, like the hatred of a Lombard for an Austrian, of a Pole for a Russian, of a Greek for a Turk, of a French Republican for the Empire, influences the whole judgment of the persons subject for such a sentiment...If a system of government has led to the misery of the governed, and has filled them with ill-will to the sovereign power, there is little wisdom in arguing that the subjects who are filled with discontent ought to be full of happiness and loyalty. The duty of statesmen is patiently to search for the causes and, if possible, discover the remedies for a state of feeling which is of itself a national calamity and peril. (57)

It may be suggested that both Gladstone and Dicey shared the same the goal, a peaceful and 'loyal' Ireland: which in turn would benefit the United Kingdom as a whole; their

fundamental difference was in the best means of achieving this end. Dicey argued that with the exception of trial by jury, Ireland should be governed by the rule of law as applied in other parts of the United Kingdom:

The system of ruling Ireland, like other parts of the United Kingdom, according to the rules of law enforced in the ordinary legal methods, was and is the only satisfactory system. (58)

Dicey's presumption was that Irish grievances would be eradicate or at the least diminished under a good system of Government. But it may be suggested that by the 1880's, Gladstone's perception was the more astute one, since the majority of the Catholic population, or at least their leaders no longer thought in terms of good or bad laws, the law was English law, and therefore, foreign and alien in its composition. It was no longer a question of good versus bad government, it was a question of self government. Gladstone, it may be argued understood this, and maintained that an Irish Parliament, subordinate to Westminster was the best way of securing Irish loyalty and eradicating reversionary Nationalism. If however, England denied Ireland justice, which was for the majority Home Rule, there was a possibility that Nationalist Ireland might be tempted to once again fall back on its tradition of direct action to attain its 'just' demands, either through the threat or use of violence, or by withdrawing from Westminster, and setting up their own Parliament in Dublin, as Sinn Fein subsequently did in 1918. Ireland according to Gladstone, was making: 'a thoroughly constitutional demand - demanding what is, in her own language, a subordinate Parliament, acknowledging in fullest terms the supremacy the of the Parliament of Westminster'. (59) It was better to accommodate this demand by peaceful constitutional means, rather than to once again start the spiral of Irish violence followed by English coercion. However, Gladstone like the majority of British politicians failed to grasp that within Ireland there was another group with very different demands: to a large extend he failed to comprehend the real fears of the Ulster Protestants. Gladstone did not wholly ignore their demands, as is evident by his address

to them when he introduced the first Home Rule Bill:

There is a counter voice; and I wish to know what is the claim of those by whom that counter voice is spoken, and how much is the scope and allowance we can give them. Certainly Sir, I cannot allow it to be said that a Protestant minority in Ulster, or elsewhere, is to rule the question large for Ireland. I am aware of no constitutional doctrine tolerable on which such a conclusion could be adopted or justified. But I think the Protestant minority should have its wishes considered to the utmost practicable extent in any form which they can assume. (60)

Gladstone invited them to make proposals, but this the Ulster Unionists could not do, where would this leave the Southern Protestants? But perhaps more importantly was the fact that by submitting any proposal, they were at least tacitly accepting the principle of Irish Home Rule. This was not possible, since the Ulster Unionist argument was based on their rights to remain within the one 'British Nation'. Home Rule, Gladstone argued was a constitutional demand by the 'Irish Nation', therefore, any acceptance of it, in whatever form, would be a tacit recognition that such a Nation existed, this the Ulster Unionists would not countenance.

#### IRELAND'S RESPONSE TO THE FIRST HOME RULE BILL

The conversion of Gladstone to the policy of Home Rule and his subsequent introduction of the first Home Rule Bill in 1886 acted as a catalyst for Irish Unionism. The elections of 1885 - 86, witnessed the polarisation of Irish politics along denominational lines, and Religion was confirmed as the determining factor of political affiliation. (61) Class and regional differences were set aside as the vast majority of Protestants identified with and supported Unionism, whilst Catholics overwhelmingly supported Nationalism. Unionism as an ideology was a counter one to that of Nationalism. It was formulated in response to the growth of Parnellism and the Gladstonian policy of Irish Home Rule, which together threatened to establish a Catholic dominated Parliament in Dublin. (62) Whereas Irish Nationalists blamed Ireland's past and present ills on British Rule or rather misrule, Irish

Unionists claimed that the Union had served Ireland very well. As was discussed in Chapter one, at the time of the Union 1801; the Protestant ruling class together with the Orange Order had virulently opposed the passing of the Act: claiming that the abolition of the Irish Parliament would (once again) reduce Ireland to the status of colony. However, Irish Unionists had subsequently revised their opinion, and now perceived the Union as almost sacrosanct. In all of Ireland the vast majority of Unionists opposed Home Rule, but Southern Unionists were a scattered (although an influential) minority, making up approximately ten per cent of the population. Unlike their Northern co-religionists they did not, indeed they could not contemplate the use of force as a means of defeat Home Rule. In 1913, Sir Edward Carson, the leader of the Ulster Unionists, informed Bonar Law, that he had consulted with leading Southern Unionist and that:

they had indicated that they were not prepared to agitate strongly against Home Rule as they were afraid of intimidation and damage to their financial interests.  
(63)

Therefore, whilst recognising that Southern Unionists played a significant role in opposing Home Rule by constitutional means, through their association with the Conservative Party, and their propaganda work in mainland Britain, it is Ulster Unionism which will be explored in this section; since it is from this quarter that the threat of armed resistance against the State was articulated, and indeed became a possibility from 1912 onwards. Unionists objections to Home Rule were three fold: Economic, Religious and Constitutional. Unionists could point to the prosperity of the North-East, where there was a thriving shipping and linen industry, largely as a result of the British connexion. Belfast in terms of custom revenue, lagged only behind Liverpool and London. Crucially Ulster was more connected with export markets in Great Britain and elsewhere in the world, than with the internal economy of Ireland. There was therefore, a fear that the dismemberment of the Union would affect the economic gains

made since its inception. The underlying fear was that under a Dublin Parliament, the industrious and prosperous North would be taxed to subsidise the 'backward' South. British Conservative and Unionist Politicians reinforced such beliefs. Arthur Balfour being an example when at Belfast in 1893 he gave a speech stating what Home Rule would mean to Ulster Protestants:

Home Rule means to you that you are to be put under the heel of a majority which, if greater than you in numbers, is most undoubtedly inferior to you in political knowledge and experience. It means that the whole patronage of Ulster is to be handed over to a hostile majority in Dublin. You, the wealthy, the orderly, the industrious, the enterprising portion of Ireland are to supply the money for that part of Ireland which is less orderly, less industrious, less enterprising and less law-abiding. (64)

Rhetoric such as this did little to allay the fears of the Ulster Unionists, indeed it intensified them. But British Unionists were less concerned with the plight of the Ulster Unionists as with safeguarding the integrity of the United Kingdom and the Empire. Ulster was seen as the best means to defeat Home Rule for all Ireland. Ulster Unionists, more than their Southern counter-parts stressed the religious threat of Home Rule, equating it with Rome Rule by another name. They invoked images of past Catholic atrocities, declaring that there would be a repeat of the 1641 massacres. (65) They highlighted the injustice of abandoning 'loyal' protestants to a Catholic dominated Dublin Parliament: believing that this would strike a chord with Protestants in Britain, especially Scotland, 'if we can stir up religious feeling in Scotland we have won the battle...Scotland... is the stronghold of Mr Gladstone; and if we excite this feeling among the Scotch, that they ought not to leave us be destroyed, it will be one of the most important points in our favour.' (66) However, it would be unfair to create the impression that Ulster Unionists used the religious threat merely as means of defeating Home Rule, for there was a very real fear of Catholicism amongst them. The Irish Parliamentary Party's alliance with the Catholic Church was viewed with deep suspicion,

especially since the Church's open support for Home Rule, and its active involvement in the Party. Constitutionally, Unionists' opposition to a Dublin Parliament rested on the belief that their rights as citizens would be violated under a Catholic/Nationalist Irish Government. Unionists maintained that their birthright granted them indivisible rights to remain British citizens. In this they were steadfastly supported by the British Conservative Party. Indeed Lord Salisbury, (the leader of British Unionist Party) declared in 1892, that whilst 'Parliament had a right to govern the people of Ulster, it had no right to sell them into slavery.' (67) For slavery it would be under a Catholic/Nationalist Government dominated by Rome: its leaders were perceived by both British and Irish Unionists, as being disloyal revolutionary traitors, whose sole reason for attending the Westminster Parliament was to secede from it. A Dublin Parliament would be dominated by Fenians, priests and the National League. 'Supported by the votes of an ignorant peasantry and subsidised from America by avowed enemies of the British Empire'. (68) The Nationalists Party's association with the Land League during the land war of 1879-82, was held up as evidence of its lawless and revolutionary nature. In 1888, the Unionist Government of Lord Salisbury attempted to expose Parnell and his Party as revolutionaries and criminals, by appointing a 'Special Commission' to investigate Parnell, his colleagues and 'New Departure'. The commission was made up of three 'English' Judges, even some Unionists expressed their misgivings at the choice of Judges. Whilst the constitutional expert A V Dicey initially disapproved of the 'Commission', believing that 'every man had the right to a trial in the ordinary courts of the land, having no right to demand any other sort of trial. (69) However Dicey along with other Unionists quickly revised their opinion, believing that the findings of the 'Special Commission', (published February 13th 1890 which cleared Parnell of any involvement in the Phoenix Park Murders) offered proof that Unionists were correct in their mistrust of Parnell and his Party. As Dicey wrote to Selborne:



Everything alleged by Unionists, except the direct personal charges against Parnell, seems to me in substance made out. I do not see how any man can now honestly deny that Boycotting is a totally different thing from exclusive dealing, or that the Irish party are collectively responsible for an attempt to carry through a change of law by intimidation & violence. We now know for certain that they are revolutionaries & not constitutional reformers. (70)

The report stated that leading Parnellites were guilty of associating with 'boycotters', 'moonlighters', and inciting to intimidation and to non-payment of rents. 'These acts of incitement had in turn led to outrages'. (71) This offered confirmation (at least in Unionist eyes) as to the true nature of the Irish Parliamentary Party, it was at base, 'lawless' and 'revolutionary'. The Unionists basic argument between the 1880's and 1912 was that Ireland was divided between "loyal" and "disloyal" Ireland. (72) Irish Unionists were the 'loyal' citizens of the Empire, whose only desire was to remain so, they should not therefore be abandoned to the dictates of traitors and conspirators. However, the Liberal Party's support of Home Rule was an indication that Irish Unionists could not rely wholly on the democratic process to protect their rights and freedom. Ulster Unionists, therefore, began to argue that if the British Government legislated to deprive them of their birthright, then as 'loyal' citizens they reserved the right to resist by all means possible. David Miller in 'The Queen's Rebels' explores the apparent 'conditional loyalty' of Ulster Unionism. Miller's contention is that Ulster Unionism is rooted in the Western political tradition of the social contract of the seventeenth century. Political obligation is perceived as a two-way process, whereby loyalty to the Monarch is dependant on the Monarch being loyal to his/her subjects. Miller makes the point that it resembles the Scottish variant of contractors thought and practice:

the proper course for subjects whose king violates his bargain (or refuses to undertake it in the first place) is not to repudiate his regime, but to refuse compliance with his laws and try and coerce him into keeping (or making) the bargain. (73)

For Ulster Unionists therefore, according to Miller, withdrawal of consent to a particular

ruler does not constitute disloyalty to the regime: rather compliance is withheld and coercion is used in order to try to make the ruler act in accordance with the wishes of the people. It may be argued, that if this is the basis of 'conditional loyalty', then far from being unique to Ulster Unionism and 'anomalous in our own day' (74) it shares many of its principles with Nationalism, and has a strong base in political theory generally. Parnell's speech at Wicklow in 1885, which is discussed above, gives a very clear indication that loyalty can be secured, or rather disloyalty can only be avoided if the British State grants Ireland Home Rule. Implicit is the threat to the future of the Empire, if the State does not submit to the wishes of the 'Irish' people. Both Unionism and Nationalism displayed and indeed continue to display 'conditional loyalty' to the British State. But is not all loyalty conditional? Aughey argues that it has to be so, for unconditional loyalty 'would presuppose a people so devoid of self-consciousness and self-interest as to be no longer citizens but mere serfs. Even serfs had recourse to tyrannicide.' (75) It may be suggested that conditional loyalty is not even restricted to either Nationalism or Unionism, but has been displayed at some point by particular groups in almost all societies. As Richard Rose states:

No Government is permanently immune from a challenge to its authority, even though it may come from groups that are small in number among millions of subjects. (76)

Ulster Unionists believed that the British State was acting in a way that was contrary to the well-being and wishes of its citizens during the three Home Rule Bills, and therefore, they, as 'loyal citizens', had a right indeed a duty to resist the authority of the State. On the question of the democratic will of the people, the Nationalists could indeed claim a moral authority to represent the people of Ireland (as discussed above). Eighty six out of a total of one hundred and three seats in the 1885 election appears pretty decisive. However, this was only a decisive majority if one considered Ireland to be a separate

Nation distinct from Britain as the Nationalists did. Unionists claimed that historically Ireland had never been a separate Nation, and that under the Union it was an integral part of the United Kingdom. The Irish Unionists, (supported by the British Conservatives and Liberal Unionists) claimed that the Liberals' defeat in the 1886 and 1895 elections was proof that the majority of the population of the United Kingdom rejected the policy of Home Rule, and confirmed that there was overwhelming condemnation of Home Rule by the majority of the British electorate. By this premise, the Liberal Party had acted against the wishes of the majority of the country by introducing Home Rule. Under these circumstances, it was the British State that was acting unconstitutionally by its intention to force "loyal" citizens to accept a policy that had been rejected by the majority of its people. Moreover, the British State had no right to deprive subjects of their British citizenship, and force them under the authority of what they (the Ulster Unionists) perceived to be a hostile and alien power. Ulster Unionists once again began to articulate their intention to resist the authority of the State. This was not a new phenomenon, as early as 1882 Edward Saunderson, (77) was urging members of the Orange Order to:

drill, arm and don uniforms.' They were told to 'stand by our colours "The orange and the blue", with the good old union jack, and let us drive popery and radicalism before us, as we have done many a time before, and hope to do many a time again.' (78)

Following Gladstone's conversion to Home Rule and his determination to introduce a Home Rule Bill the rhetoric of Ulster Unionists became even more inflammatory. At a meeting of the newly founded Ulster Loyalist Anti-Repeal Union, the fifth Earl of Ranfurly declared:

Let me recommend a change of treatment. Let her [England] drop for a time the remedial plan, and try instead a good thrashing. It will have a surprising effect. The unruly child will become quiet, peaceful and industrious. (79)

If England was prepared to pander to the rebellious child, Ulster Unionists would not stand by and be coerced into relinquishing their British citizenship. In this they were joined by the Conservative, Sir Randolph Churchill, whose famous phrase, 'Ulster will fight and Ulster will be right', became one of the watchwords of Ulster Unionists who were convinced of the justifications of their actions. On the 22nd of February 1886 at Ulster Hall, Sir Randolph urged Unionists to 'wait and watch, organise and prepare, so that the catastrophe of home rule might not come on them "as a thief in the night" or find them unready.' Pledging that 'in that dark hour there will not be wanting to you those of position and influence in England who are willing to cast in their lot with you - whatever it be, and who will share your fortune and fate.' (80) Concluding his speech with the words of a poem, set to ignite the passion and the fighting spirit of the Ulster Protestant population:

The combat deepens: on ye brave,  
Who rush to glory or the grave.  
Wave, Ulster - all thy banners wave,  
And charge with all thy chivalry, (81)

He played the 'Orange Card' (82) with determination and what some would describe as recklessness. His overtures to the Irish Party in the spring and summer of 1885 led many to believe he was sympathetic to the concept of Irish Home Rule. Indeed according to Loughlin, it was the belief that Lord Randolph was 'about to 'betray' Ulster Protestants over Home Rule that moved Colonel Saunderson to re-enter politics in 1885. (83) However, Lord Randolph was fundamentally opposed to the repeal of the Union, he may have been sincere in his belief that reforms were needed in Ireland, but the Union was indivisible. In his electoral address on the 20th June 1886, he vilified Gladstone, claiming that his motive for introducing Home Rule was to gain office, that he [Gladstone] had:

reserved for his closing days a conspiracy against the honour of Britain and the welfare of Ireland more startlingly base and nefarious than any of those other numerous designs and plots which, during the last quarter of a century, have occupied his imagination... This design for the separation of Ireland from Britain, this insane recurrence to heptarchical arrangements, this trafficking with treason, this condonation of crime, this exaltation of the disloyal, this abasement of the legal, this desertion of our Protestant co-religionists, this monstrous mixture of imbecility, extravagance and hysterics... And why? For this reason and this reason and no other: to gratify the ambition of an old man in a hurry! (84)

The words were extreme, and were not representative of the general view of the British Conservative Party at this time. British Conservatives generally deplored the use of force or the threat of it, Lord Randolph Churchill being the exception that demonstrated the rule. (85) But his rhetoric was a portent of what was to come, when a future Liberal Government under the premiership of Asquith introduced a third Home Rule Bill in 1912, then his majesty's loyal opposition accused the Government of selling the constitution to remain in office, claiming that the Liberal Government had destroyed the Constitution by removing the Lords veto: the die-hards going further and declaring that the Government's action had left them no recourse other than the threat of the use of force to defend Ireland and the British Constitution from a 'corrupt parliamentary bargain'. However it may be fair to argue, that during the time of the first and second Home Rule Bills the threat of use of force was generally more rhetorical than real even in Ulster. Although there was talk of resistance to Home Rule, Unionists responded only when they felt threatened. Following the defeat of the first Home Rule, resistance ebbed away, only to re-emerge in 1892, when it became likely that the Liberals would be returned to office and Gladstone would resume his mission, and introduce a second Home Rule Bill. Ulster Unionists, encouraged by British Unionists met the challenge by holding a massive Convention to let the British public:

Publicly and formally know that though loyal to the throne, Ulster unionists protested against any measure that would separate them from their inheritance in the imperial legislature. (86)

On the 17th of June 1892, some 11,000 delegates attended the Convention: where leading Unionist voiced their objections and their intentions to ignore the authority of a future Dublin Parliament. Thomas Sinclair, a Liberal Ulster Unionist spoke of passive resistance:

Fellow countrymen, Mr Gladstone's threat is a serious one, but, nevertheless, we can never falter in our resolve. We are children of the revolution of 1688, and cost what it may, we will have nothing to do with a Dublin Parliament. If it be ever set up we shall simply ignore its existence. Its acts will be but as waste paper; the police will find our barracks preoccupied with our own constabulary; its judges will sit in empty court-houses. The early efforts of its executive will be spent in devising means to deal with a passive resistance to taxation co-extensive with loyalist Ulster. (87)

In March 1893 The Ulster Defence Union was founded with Sinclair as Chairman: its purpose was to organise resistance to Home Rule. Organisations such as this reinforced the development of an integrated party machine, in evidence since the mid 1880's. (88) Although there was talk of arming and drilling, it was to Westminster, or rather to the Conservatives that Ulster Unionists like their Southern co-religionists looked to defend them against Home Rule from 1886 to at least 1910. The Commons might have sacrificed them at the time of the second Home Rule Bill of 1893, when the Bill was passed by a majority of 41, but the House of Lords rejected it by a massive 419-41, the largest majority in its history. The Conservatives were back in power in 1895, and once again the immediate threat (for Irish Unionists) passed, and with it the threat of armed resistance subsided, however, this threat would re-emerge, and indeed become a physical- force, with the formation of the Ulster Volunteer Force in 1913. Ulster Unionists were suspicious of British Politicians, they could not be sure that even the Conservatives would always be their sympathetic allies. It was therefore, essential to build up a coherent and sustainable argument against the policy of Home Rule. In this they were successful, aided, somewhat by the fall of Parnell which caused a split in the

Home Rule Party, but perhaps more significantly by the conduct of the Irish Parliamentary Party during the time of the Boer War, when Home Rulers at Westminster cheered British defeats. Once more the Irish Unionists could point to themselves as representative of 'loyal' Ireland, and to the injustice of forcing 'loyal citizens' who only wished to be left alone to, to submit to a hostile alien power. As already mentioned Ulster Unionists based their rights on being British Citizens, a right codified in the Act of Union. Aughey puts their case succinctly:

it is not in the gift of a government to alter the condition of the Union, for it is not fully theirs to so. It must be willed by those whom a change of the conditions will directly affect. (89)

In other words, the belief that Sovereignty rests with the people, or at least with the majority. But this challenges the doctrine of Parliamentary Sovereignty which underpins the British Constitution. Under this doctrine the State has the right to pass any legislation, even if it affects the rights of citizenship. British citizens have no right under this doctrine to resist the will of Parliament. But as will be argued, in chapter four, when Dicey's concept of Parliamentary Sovereignty is discussed, Parliament has an obligation to give effect to the will of the people. Therefore, it could be argued that the Ulster Unionists, who firmly believed, that they were part of 'One British Nation', had a valid point, when they claimed that Home Rule was not supported by the majority of that 'One Nation'. Therefore, Gladstone did not have the right to introduce a policy which the majority of the electors did not support. Irish Nationalist claimed that Ireland was historically a separate nation, therefore, the majority had indeed given Parnell a mandate to speak for Ireland in 1885. This to a large extent is a circular argument, it very much depends on one's perception of what constitutes a nation. It may be suggested that both the Irish parties gave a valid argument in favour of and against the granting of Home Rule, but each argument was dependant on one's particular perception of Nationhood. This argument is still very much a live issue today, as Ulster Unionists and Irish

Nationalists still debate the issue of Ulster's Nationhood. However, as to the constitutional argument, it is contended that the Ulster Unionists put forward a stronger case: whether Ireland was morally or historically a separate nation, was not the fundamental issue, at least since the Act of Union, she had been constitutionally part of the United Kingdom. Therefore, whilst recognising the 'moral' case for granting Home Rule to Ireland, constitutionally, the Government should not have attempted to impose this policy without the support of the majority. Moreover, if Gladstone recognised the moral imperative of granting Home Rule to Ireland, firmly believing that the election of 86 Nationalist MP's in the 1885 election was proof positive that Ireland had spoken. Then by the same principle, he should have recognised the moral imperative of addressing the fears of the minority population in Ulster, who were equally as committed to remaining citizens of the United Kingdom. As Boyce has argued:

Gladstone was right in 1885 when he identifies the Irish democracy, as it was then constituted, as having spoken clearly and unequivocally for Home Rule; but he ignored the claims of another democracy now on the march, which would resist those claims to democracy. (90)

It may be suggested that Gladstone's failure to adequately address the minority question not only weakened the case against Home Rule, but brought the United Kingdom to the brink of civil war in 1914, as Asquith, the then Liberal leader attempted to carry out the Gladstonian policy of Irish Home Rule, using the same principle of ignoring Ireland's (far from silent) minority. However democracy through practical necessity shares many of the tenets of Utilitarianism: 'The greatest good for the greatest number principle'. Ideally, The State is seen in a liberal democracy as able to assume the role of impartial arbiter between conflicting groups. Although it can not satisfy the demands of all its citizens, there is in a stable political system enough consensus as to allow the majority of citizens to obey the laws of the State whilst disagreeing with a particular policy. But it may be argued, that in Ireland no such consensus existed. The deep sectarian divisions that



separated Protestants and Catholics was reflected in Ireland's political structure. The zero-sum game of winner takes all, epitomised by the battles of 1601, 1641 and 1691, whereby victory for one group gained them (but deprived the other) of rights, privilege, and land was still referred to by all Irish people as though it happened yesterday. All history was regarded as recent history, and the advancement or levelling of one community was perceived as being detrimental to the other. Home Rule although a modest measure, which allowed for an Executive in Dublin responsible to an Irish Parliament, but subordinate to Westminster, which retained direct control of all imperial matters, was viewed by Protestants as the first step towards losing their British citizenship, and all the security that went with it, gained by the toil and even lives of their forefathers. Home Rule for Catholics was regaining their rights as an 'Irish' Nation filched from them by an usurper power and its 'colonial garrison'. British politicians in the main failed to grasp that in Ireland there was a lack of social consensus both between the Irish communities, and indeed between the governors and the governed. The similarity between Unionism and Nationalism is apparent. Both Nationalists and Unionists claimed justice for Ireland, and neither ruled out the use of force as a means of achieving this. However, their perception of what constituted justice was fundamentally different. For Nationalists it was the granting of Home Rule, whilst for Unionists it was the maintenance of the Union: however, a victory for one was seen as disaster for the other. Both were dependant on Westminster to administer justice, although Nationalists might not, at least theoretically, accept the British Parliament's right to legislate for Ireland, they were forced to argue or plead their case in the Imperial Parliament. As has been shown both appeared to display conditional loyalty towards the British State, or was it that the British State was perceived by both groups as being conditional in its loyalty to them? During the second decade of the twentieth century The 'Irish Question' would once more test the British Constitution, when following the 1911 Parliament Act (which abolished the Lords veto), Ulster Unionists claimed that their only recourse from a

tyrannical Government was armed resistance. Their last constitutional refuge gone, and now under the more militant leadership of Carson and Craig, Ulster Unionists began to embark on a course of action that was to rock the foundations of the British Constitution. From 1910 onwards, the conflict would be more bitter, and ultimately the use of force could no longer be dismissed as 'bluff and bluster'. The Imperial Parliament was forced to address the demands of:

Two bodies of Irishmen, who pursued, 'two different ideals'. These were, 'the ideal of a separate Irish Nationality, and the ideal of an Ireland prosperous and ruled with fairness by a Parliament of one United Kingdom. (91)

This was not an easy task for a British Parliament whose:

whole political machinery pre-supposes a people so fundamentally at one that they can safely afford to bicker; and so sure of their moderation that they are not dangerously disturbed by the never-ending din of conflict. (92)

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## CHAPTER THREE

### THE BRITISH CONSTITUTION: FROM OLIGARCHY TO PARTY DOMINANCE

To its supporters the 1911 Parliament Act was a triumph for democracy. It curtailed the Veto of the hereditary House of Lords, and established the elected House of Commons as the dominant one. However, to its critics, the Act removed the checks and balances which were an inherent part of the British Constitution. A Second Chamber was seen, by critics, as essential to check the power of the executive, especially given the political changes that had occurred during the nineteenth century. The Reforms heralded in by the 1832 Act, and subsequent Acts of 1867 and 1884, had resulted in a more democratic franchise, but this was accompanied by the emergence of mass organised parties. One upshot of this was, that by the early twentieth century a Cabinet system of government was able to exert pressure and influence on its members in the House of Commons. The rise of the party system, weakened both Houses of Parliament whilst strengthening the Executive. Thus, it was with some justification that critics of the Act could point to the dangers inherent in the doctrine of 'Parliamentary Sovereignty', (1) which following the 1911 Parliament Act could perhaps be described as 'Cabinet Sovereignty'. Essentially this Act meant that the Government of the day could, provided it had a majority in the House of Commons, pass legislation without an effective check on its power. Critics of the Act argued that Britain now could be classed as an 'elected dictatorship'. However, was the House of Lords justified in portraying itself as the guardian of the constitution? The Lords since the 1860 's onwards had almost constantly legitimized their right to reject Government Bills on the basis that they withheld consent until the judgement of the Nation had been sought on that particular issue, arguing that their rejection allowed the opportunity for a particular issue to be submitted to the electorate. Once the Nation had voted, the Lords (in theory) would accept the will of the people as expressed in the

polls. They appeared to accept (with some exceptions which will be discussed below) that the Nation was Sovereign. When the Conservatives were in power there was little conflict between the two Houses, but when the Liberals held office this was not the case. It is evident that during the Gladstonian premierships there was significantly more rejection of Government Bills. It was however, from 1906 onwards, under the leadership of Lord Lansdowne in the Lords, and under the direction of Arthur Balfour, the leader of the Unionists in the Commons, that the Lords became clearly partisan, by blocking Liberal Government legislation which had formed a major part of the latter's election manifesto. The rejection of major Government Bills effectively circumvented the authority of the Government, despite the fact that the Liberal Government had won a landslide victory in 1906 on a platform of social reforms, and a sustained attack on the Conservative Government's South African policy; that of using Chinese mine-workers, and herding them into compounds. The Lords by their rejection of the 1909 Finance Bill disregarded a precedent of some 250 years, that the Commons should have sole right to grant and refuse supplies. It may be argued that by their intransigence the Lords forced a dissolution of Parliament. Thus, the Liberal Government could justifiably claim, that the Lords could at any time in the future, if their powers were not curtailed, bring down the democratically elected Government of the day, and force a General Election, thus usurping the Sovereignty of the people. The Liberals were therefore, able to fight the General Election of 1910 on the slogan: Who Governs Britain -'Peers or People'? The result of the two elections of 1910 were close, with only two seats separating the two major parties, however, the Liberal Government of the time could expect the support of the Irish Parliamentary Party, and the Socialists, to remain in office. Following the January election, The Unionists alleged that in exchange for the support of the Irish Parliamentary Party in passing the budget of 1909-10, the Liberal Government had agreed to the abolition of the Lords power of veto, which the Irish Parliamentary Party regarded as a prerequisite if a Home Rule was going to be passed. Indeed Redmond, the

leader of the Irish Parliamentary Party, made clear that his Party's support was conditional on the Liberal Government introducing a Bill abolishing the House of Lords power of Veto. As Redmond Stated in the House of Commons, the Irish Party: 'regarded the abolition of the Veto of the House of Lords as tantamount to the granting of Home Rule.' (2) But was the Asquith Government guilty of a 'corrupt bargain' with the Irish Nationalists, as Unionists maintained? Or were the Unionists themselves either partly or wholly responsible for the introduction of the Veto by their determination to use their majority in the Upper Chamber to block Government legislation. Before examining these issues, it is vital to understand the nature and evolution of the British Constitution.

## THE NATURE OF THE CONSTITUTION AND THE REFORM BILL OF 1832

Cable defines the British Constitution as:

a set of constantly changing assumptions about the nature of the state, the balance of powers within the State and the scope for permissible change. (3)

The British Constitution, therefore, is a flexible one, it is, theoretically, able to adapt to meet particular needs at a given time. One example being the Bill of Rights passed in 1689, which established a protestant constitution, and set limits on the Crown's power, when the raising of money without Parliamentary consent, and the maintenance of a standing army in peacetime were made illegal. These limits were deemed necessary by the Whig politicians of the day following their removal of James II, and the establishment of William and Mary as Constitutional Monarchs. However, the personal powers of the monarch were still considerable. The Crown still had the right to choose ministers and influence opinion in parliament by means of placemen and patronage. (4) The eighteenth century constitution was often praised as being a perfectly balanced system between a royal executive and a parliamentary legislature. The powers of the

Monarch were, however, slowly diminished by conventions and precedents, which form a large part of the Constitution and by 1830, according to Smith:

the influence of the Crown in the form of patronage controlled by the monarch had almost disappeared as a political force. The radicals and reformers of the time were well aware that the real obstacle to their objectives lay in the Upper Chamber. (5)

The weakening of the Crown was perhaps inevitable given the nature of the British political structure since the Glorious Revolution, which established a balance between the monarch and parliament but subject to the supremacy of parliament. The flexibility of the British Constitution allowed for this transfer of power to occur without the threat of further conflict between the Crown and Parliament. The 1832 Reform Bill was viewed a watershed in British politics - it displayed that Parliamentary reform was indeed possible: essentially the 'system of nomination was replaced by the principle of the election.' (6) The Reform Act of 1832 by today's standards were extremely moderate. (7)

But crucially as Allyn states:

It appealed to the unfranchised as an excellent first instalment, it impressed the Whigs as being so radical in character that they were able to persuade themselves - though they failed to persuade their opponents - that it ensured a permanent settlement of representation. (8)

The Tories however, appeared to realise the long term implications of granting reforms, that once a single concession was made, then more and more would be demanded. (9) But the changing social and economic structure of the nineteenth century meant that reforms were both necessary and inevitable. (10) The 'massacre' of British citizens by Yeomanry troops at Peterloo in 1819, perhaps an early indication that Parliamentary reform was crucial, if force and coercion was to be avoided against the growth of postwar radicalism. Both the Whigs and the Tories feared the dangers of democracy, but the

Whigs recognised that the demands of the new towns to be represented had to be addressed. They hoped to wipe out the worse examples of the rotten boroughs, without destroying aristocratic government. (11) The Tories were [in this instance] more far-sighted. Grey and Russell may have spoken of the reforms as a final settlement, but once began more and more would be demanded. Yet was there an alternative given the economic and social changes which had occurred since the onset of the Industrial Revolution? As Professor Gash put it: 'What the Tories said was true; but what the Whigs did was necessary.' (12) The passing of the Reform Bill caused conflict between the House of Lords and House of Commons and involved the question of political authority: Was the elected Government of the day free to pass legislation or was the final decision to be taken by the unelected Upper House? At this time the connection between the Lords and Commons was close, the peers for the most part having served an apprenticeship in the commons; and both Lords and Commons were recruited from much the same class of people, and included 'spokesmen of almost every shade of Whig and Tory opinion.' (13) The House of Lords had great influence over the Commons - the Peers through patronage controlled a large number of Commons seats. Indeed Croker estimated, that in 1827:

22 peers returned 150 MPs by '*direct nomination*'...(14)

In essence political power was inter-linked to the landed aristocracy; the predominance of the landed gentry in Society was reflected in the political system. This was viewed as a positive reflection, since it lessened the possibility of conflict between the two houses, and also guarded against the possibility of other interests gaining influence in the lower house. (15) But, according to Hanham, the general election of 1831 and the ensuing reform crises 'isolated the Lords alike from the monarch, the ministry, the Commons and public opinion.' (16) The House of Lords rejected the Reform Bill on the 8th October

1831 by a majority of forty one, despite the fact that the Government had secured a majority at the recent General Election. Essentially they [The Lords] 'challenged the country to a fight'. (17) The Lords decision outraged the people, 'The Times', on the 10th October, spoke of the 'just indignation of the people.' and a placard in Bond Street stated '199 versus 22,000,000!', whilst Macaulay declared, that 'the contest was now between an insolent oligarchy on the one side and infuriated people on the other.' (18) However, Lord Grey the Liberal Prime Minister, was adamant that the Reform Bill would be put on the statute book, and sought to make the Upper House accept the peoples' decision through the creation of peers. This involved an appeal to the King to create as many new peers as was required to ensure that the Bill passed the Upper House. In essence this would weaken the position of the Lords, since this precedent could in theory be introduced by future governments of whichever political persuasion. The Conservatives argued, that this was unconstitutional, but the Whigs could counter this argument, by referring to the precedent which occurred during the reign of Queen Anne, when twelve Tory peers were created to pass the Treaty of Utrecht in 1713. (19) King William IV, however, was reluctant to acquiesce and initially refused, consequently Grey's Government resigned, and Wellington was called to form a new administration, but failed due to the hostility of the country and the House of Commons. (20) The King then sent for Grey on May 15th 1832, and consented to create sufficient new peers as to allow the Reform Bill to pass the House of Lords. In order to avoid this measure, the King used his influence with leading Tory peers, and the Bill was passed on the 3rd June 1832, when Wellington and a hundred peers absented themselves or walked out of the Upper Chamber without voting. (21) The peers and Tories claimed that the Government had acted unconstitutionally by threatening to 'swamp' the Upper House. However, it is worth noting Lord Grey's answer to Wellington's claim that he had acted unconstitutionally by forcing the King to create peers:

one of the uses of vesting the prerogative of creating new Peers in the Crown is, to prevent the possibility of recurrence of those evils which must otherwise result from a permanent collision between the two Houses of Parliament; and this danger was rendered imminent by the opposition made to the Reform Bill by the noble Lords on the other side of the House. And, I ask what would be the consequences if we were to suppose that such a prerogative did not exist, or could not be constitutionally exercised? The Commons have control over the power of the Crown by the privilege, in extreme cases, of refusing the supplies; and the Crown has, by means of its power to dissolve the House of Commons, a control upon any violent and rash proceedings on the part of the Commons; but if a majority of this House is to have the power, whenever they please, of opposing the declared and decided wishes of both the Crown and the people, without any means of modifying that power, then this country is placed entirely under the influence of an uncontrollable oligarchy. I say that if a majority of this House should adversely to the Crown and Commons, and was determined to exercise that power without being liable to check or control, the Constitution is completely altered and the government of this country is not a limited monarchy; it is no longer my Lords, the Crown, the Lords, and Commons, but a House of Lords - a separate oligarchy - governing absolutely the others. (22)

These words appear to anticipate the conflict that arose between the two Houses following the Liberals landslide victory in 1906, when the House of Lords, either in partnership or at the instruction of the Unionist opposition attempted once again to overrule the wishes of the electorate - eventually resulting in Asquith adopting the same tactics as Grey to defeat the intransigence of the Lords. Although the First Reform Act did not significantly alter the composition of either of the Houses of Parliament, in as much, that the landed gentry continued to be the most strongly represented in both houses, it did highlight the limits of the Lords, and brought into question, 'how far they could go in defying the claim of the reformed House of Commons to speak for the nation.'(23) The House of Lords was still influential, but its position had been altered by the Reform Act. As Bagehot in 1867 indicated:

Since the Reform Act the House of Lords has become a revising and suspending House. It can alter Bills; it can reject Bills on which the House of Commons is not thoroughly in earnest-upon which the nation is not yet determined. Their veto is a sort of hypothetical veto. They say, we reject your Bill for this once, or these twice, or even these thrice; but if you keep on sending it up, at last we won't reject

it. The House has ceased to be one of latent directors, and has become one of temporary rejectors and palpable alterers. (24)

The Lords had become in effect a deliberating and revising chamber, what Bagehot describes as a 'chamber (with in most cases) a veto of delay, (with in most cases) a power of revision, but with no other rights or power.' (25) Bagehot firmly believed that the House of Lords should take its direction from the House of Commons as the nation's spokesman. However, when Bagehot wrote *The English Constitution* in 1867, he could not have envisaged the Constitutional crisis that lay ahead in the twentieth century, when the Lords' rejected the Liberal Government's 1909 finance Bill, which challenged the Commons sole right to grant and refuse supplies. The Lords at this time were not prepared to accept the role ascribed to them by Bagehot, that together with the Monarchy the Upper Chamber formed the 'dignified' part of the Constitution.

Whether the Reform Bill set a precedent of consulting the people on specific political issues is difficult to determine. Some politicians, and the King virulently opposed an appeal to whom they referred to as an 'excited' people. Indeed, King William IV himself, refused a dissolution in 1831 on the grounds that if:

'what is called an appeal to the people' were made 'when a spirit of agitation which has long been in progress has been much increased by the introduction of the Bill and the discussion upon it, this country would be thrown into convulsion from Land's End to John O'Groats House.' (26)

Macaulay put the case thus:

Half the logic of misgovernment lies in this one sophisticated dilemma: If the people are turbulent, they are unfit for liberty; if they are quiet, they do not want liberty. I allow that there are great objections to legislating in troubled times. But reformers are compelled to legislate in times of excitement, because bigots will not legislate in times of tranquilly. (27)



However, influential politicians such as Sir Robert Peel were firm critics of such appeals. Whilst debating the question of Catholic emancipation, Peel argued that against such appeals he:

should always set his face; believing, as he did, that the deliberate wisdom of Parliament was better calculated to weigh maturely the important bearings of any great question, than the general opinion of parties everywhere. (28)

Peel made his position clear when he warned the Reformed House of Commons of the danger of setting a precedent of bowing to popular demand, it would, he reasoned:

form a fatal precedent, one to which his Majesty's Government might again and again recur for the purpose of procuring assent to other measures, which, in obedience to popular clamour, they might bring forwards. (29)

However, in 1834, Peel himself drafted an address to the people, under the title of the Tamworth Manifesto: declaring that he was prepared to accept the Reform Act of 1832.

The Reform Bill had, according to Peel:

constituted a new era; and it was the duty of a Minister to declare explicitly, first whether he would maintain the Bill itself, and, secondly, whether, he would act upon the spirit in which it was conceived. Peel declared that he was prepared to maintain the Bill as a final and irrevocable settlement of a great constitutional question; and if willingness to adopt the spirit of the Bill did not involve more than a fair review of existing institutions and redress the abuses and grievances without infringing on established rights, he and his colleagues were prepared to subscribe to those principles. (30)

By his address to the people Peel appeared to recognised that Grey's Reform Act had indeed ushered in a new era, Peel, although finding it distasteful conceded that the Reform Bill had necessitated an address to the People. Thus, it could be argued, that the 1834 election was a marked advance towards perhaps not democracy; but certainly towards an era of popular politics, which necessitated an appeal to the people to secure

their votes. Nomination and patronage were still prevalent, but crucially the electorate was also beginning to be seen as significant, as Politicians at least began to recognise the need to address them. Edward Lytton Bulwer put the point succinctly, when he stated: 'Remember that you are now voting for things, not men for the real consequences of your reform.' (31) However, as will be argued, during the nineteenth century politicians in general did not hold the view that a party should set out its intended policies and commit itself to implementing them once elected.

#### THE DOCTRINE OF THE 'MANDATE' IN BRITISH POLITICS

The question of the 'moral competence' of Parliament to pass legislation that would fundamentally alter the fabric of the British Constitution without having submitted the proposal to the electorate was raised by Disraeli in response to Gladstone's proposals for the disestablishment of the Church of Ireland in 1868. Disraeli argued, that whilst he had no doubt Parliament had the power to do so, but morally it should not:

Sir, there is a moral exercise of power as well as a technical, and when you touch the principles on which the most ancient and influential institutions are founded, it is most wise that you should hold your hand unless you have assured yourselves of such an amount of popular sympathy and support as will make your legislation permanent and beneficial. (32)

In this he was supported by Lord Salisbury who advised the House of Lords to reject Gladstone's Bill, stating that his 'fellow peers should disregard the majorities in the house of commons and reject this crude and violent measure.' (33) Salisbury argued that whilst it was the Lords' duty to yield to the sustained convictions of the country, this differentiated from supporting the majority in the House of Commons. Moreover, he reasoned that on some past occasions, the Lords had been more representative of the Nation's opinion than the elected lower house. It was therefore, necessary to ascertain the opinion of the electorate before the Bill could and should be passed. (34) Hence, The

Lords rejected the Suspensory Bill with a pledge to accept the election results. The newly enfranchised electorate subsequently returned Gladstone's ministry with a majority of 112, consequently Disraeli resigned and Gladstone took office, and proceeded to introduce The Irish Church Bill (based on the Suspensory Bill) thus fulfilling his election promise. This according to Erskine May, was: 'the first acknowledgement of the truth that a ministry in reality derives its commission from the electorate.'<sup>(35)</sup> However, it was not without difficulty that the Lords stuck to their pledge to abide by the decision of the people, as expressed in the general election. But advising acceptance of the Bill, Salisbury argued, that whilst:

there is a class small in number, and varying in kind, in which the nation must be called into council and must decide the policy of the Government. It may be that the House of Commons in determining the opinion of the nation is wrong; and if there are grounds for entertaining that belief, it is always open to this House, and indeed it is the duty of this House, to insist that the nation shall be consulted. (36)

When however, the Nation had been consulted, as it had been on the Irish Church Bill, it was the duty of the Lords to accept the verdict of the people:

Now, I am jealous of any language which may seem to trench on the prerogative of this House, and I have tried to guard my words against any interpretation which should seem to imply that, in the ordinary course of legislation, there is any inferiority between one House of Parliament and the other. But one of the rare occasions to which I referred has now occurred. The opinion of Scotland and Ireland, and may I say Wales is passionately in favour of this measure of disestablishment. England, though more doubtfully and languidly, is also in favour of the same measure...I can conscientiously come to no other conclusion than that the nation has decided against Protestant ascendancy in Ireland, and that this House would not be doing its duty if it opposed itself further against the will of the nation. (37)

Salisbury after a fierce debate, eventually led thirty six Conservative peers into the government lobby, and the second reading passed 179 to 146, only the second time in a

generation that the Conservative leadership in the Lords had been defeated in a division. Salisbury therefore, conceded that when the House of Commons clearly represented the will of the electorate, the House of Lords was obliged to give way. This gave the Lords the moral and the constitutional justification for rejecting a Government Bill, that it [The Lords] did not believe represented the determined will of the electorate. By this premise, once the people had been consulted, the Lords' were morally obliged to give way. But what if after submitting a policy (which the Lords virulently disapproved of) the Government held a majority in the House of Commons, would the Lords bow to the will of the electorate? Apparently not: in 1893 the Upper Chamber rejected Gladstone's Second Home Rule Bill despite the fact that the Liberals had won a General Election the previous year, on the specific issue of Irish Home Rule. As Stead has written:

For sixty years it had come to be regarded as part of the unwritten law of the constitution that the house of lords should bow to the will on the nation upon any measure after that will had been ascertained by an appeal to the country. In 1893 the house of commons, fresh from a general election which turned upon the question of home rule, sent up a home rule bill to the house of lords, which promptly threw it out by a majority of 419 -41. (38)

However, Salisbury did not accept that Gladstone had received a mandate from every part of the country on the question of Home Rule for Ireland. In an article in 1892 he argued that:

If it were to be argued that the election had indeed turned on home rule, it would have to be recognized that England and Scotland had voted against the project. Without their consent no project of constitutional revision of this scope should take place. The lords must ensure that no such fundamental change shall be introduced into our ancient polity unless England and Scotland are assenting parties to it. (39)

This involved the concept of a 'predominant partner' among England, Ireland, Scotland and Wales. And although in the above mentioned article Salisbury was referring to the

need to acquire the support of both England and Scotland before Home Rule should be granted, Weston makes the point that by 1894, Salisbury was referring to England alone as being the 'predominant partner'. (40) Lord Rosebery took up Salisbury's rhetoric on the matter, when he succeeded Gladstone as leader in March 1894. In his first speech as Prime Minister, he stated much to the chagrin of many Liberals, and the anger of Irish Nationalists, that:

Before Irish home Rule is conceded by the imperial parliament, England as the predominant member of the partnership of the three kingdoms will have to be convinced of its justice and equity. (41)

This interpretation suggests, that English votes should be regarded as superior to that of the Celtic electorate: if there was only one 'British Nation', then each vote should have counted equally in an unitary state. In 1895 Salisbury introduced another argument, which involved the actual majority of a Government. Gladstone only had a majority of forty in the House of Commons, and was dependant on the support of the Irish Parliamentary Party in the House of Commons, therefore, Salisbury wrote, that whilst Gladstone had:

on more than one occasion proposed measures of vast scope affecting the organic integrity of the empire and the interest of great classes, not until 1893 did he do so without an enormous majority at his back. (42)

By this premise the House of Lords could not only reject Government Bills that, it believed did not have the support of the Country, it could also justify rejecting a Bill that had been put before the electorate, if there was not an overwhelming majority in favour of the policy. This gave the Lords arbitrary powers to decide what exactly would be a reasonable majority. Moreover, it ensured that England as the 'predominant partner' in terms of demography alone would most certainly have an advantage over the Celtic

fringe. That being said, the election results of 1895, when the Liberals were defeated, appeared, at least from the perspective of the Unionists, to vindicate the Lords decision to reject the Second Home Rule Bill of 1893; it certainly confirmed Salisbury's belief, that on certain issues the Lords were more in tune with the peoples' wishes than the elected lower chamber. Indeed, following the Unionists' second election victory in 1900, an anonymous writer in the 'Quarterly Review', stated:

the last two general elections had revealed conclusively how deeply the public mind was impressed by Salisbury's defence of the house of lords as 'a democratic necessity' .and as 'the only alternative to triennial or even annual parliaments' and by 'his practical demonstration of this proposition when, at his instance the house [of lords] saved Great Britain from Irish dictation by rejecting the home rule bill. (43)

Evidently there was a need for a second chamber to check the powers of an increasingly powerful Executive, however, the House of Lords at times, and as will be argued, increasingly after 1906, disregarded the will of the people, in favour of protecting the interests of the Conservative Party. By so doing it seriously jeopardised its own defined role, as the guardian of the Nation. In the nineteenth century, the doctrine of a 'peoples mandate' was a relatively new one, and the House of Lords was not alone in ignoring the principle, indeed politicians who sought office often disregarded it. Gladstone whilst campaigning in 1885, may have spoken in terms of securing the peoples mandate: 'The work is ready, the workmen are ready, and only await the mandate of the constituencies to proceed with it,' (44) but Home Rule as a policy was not submitted to the electors. During the election campaign of 1885 Gladstone, according to Emden, used 'non-committal phraseology', (45) contending that Ireland should have as much self government as was consistent with the integrity of the 'United Kingdom', but the main theme of his election speeches were on domestic issues, such as local self government and registration. (46) Thus the electorate, and indeed the majority of the Liberal Party,

were unaware of Gladstone's intention to introduce a Home Rule Bill, therefore, Gladstone could in no way claim to have secured a mandate for his Irish policy. It was on this matter of principle that Lord Hartington refused to join the Cabinet, and charged Gladstone with fighting the general election under false pretences. His contention was that Gladstone had misled the electorate, hence the Liberals did not have the moral authority to introduce self-government for Ireland. Lord Hartington in a speech to the House of Commons made his position clear:

I am perfectly aware that there exists in our Constitution no principle of the mandate. I know that the mandate of the constituencies is as unknown to our Constitution as the distinction between fundamental laws and laws which are of inferior sanction. But, although no principle of a mandate may exist, I maintain that there are certain limits which Parliament is morally bound to observe, and beyond which Parliament has morally not got the right to go in relations with the constituents. The constituencies of Great Britain are the source of power, at all events in this branch of Parliament; and I maintain that, in the presence of an emergency which could not have been foreseen, the House of Commons has no more right to initiate legislation, especially immediately upon its first meeting, of which the constituencies were not informed, and of which the constituencies might have been informed, and as to which, if they had been so informed, there is, at all events, the very greatest doubt as what their decision might be. (47)

Hartington went on to argue that had Home Rule been put before the electorate, the Liberal Government may not have been in a position to form a Government:

Well, Sir, it is not possible for any Member of this House to say that, if it had been known at the time of the last General Election that the first work and task of the present Parliament was going to be the entire resettlement of the relations between Great Britain and Ireland - the creation of a statutory power, with the sole legislative power in Irish affairs, and with complete control over the Irish Administration and Executive - it would not be possible for any of us to maintain that the result in numberless elections in this country might not have been very different from what it was; and that, instead of being placed in the minority in which they find themselves now, right hon. Gentlemen sitting on the other side of the House might not have found that they commanded a large majority. Well, then, Sir, I say that I must protest at the outset against the competence - the moral competence, for I do not deny the Constitutional competence - of this Parliament, in the presence of no adequate emergency, to initiate legislation such as that

which is involved in the proposal unfolded to us last night by my right hon. Friend...(48)

Gladstone reply was that this was an 'extraordinary doctrine':

My noble Friend complains that this is a question which has not been referred to the people. I should like to know what is the upshot of that observation? What does it mean? I think it can hardly mean anything else than this - that the Government had committed a fault in bringing forward this question at the present time, because it had not brought the matter under public consideration at the General Election. It seems to me that is an extraordinary doctrine. I want to know where it is to be found laid down by any Constitutional expert? (49)

Theoretically Gladstone was right in his interpretation, but Hartington had already conceded the point that within the Constitution there was no legal requirement for a mandate, crucially, Hartington raised a more fundamental issue, that of the obligation of a Government to consult the electorate on an issue, in which there was a reasonable doubt as to whether the House of Commons represented the will of the Nation. (this very important principle will be discussed in chapter 4, when Dicey's concept of political sovereignty will be examined.) Although it may be conceded that during Gladstone's time, the doctrine of the 'mandate' was still relatively new, when the third Home Rule Bill was introduced in 1912, the Liberals had fought the election of 1910 on the specific principle of who governs - 'Peoples or Peers'. Therefore, as will be argued in chapter five, it is difficult to understand or defend Asquith's decision not to submit the Home Rule issue to the Nation. However by that time, the Executive was in such a strong position, that it could not be compelled to put its policies before the electorate. This was due in no small part to the rise of mass disciplined parties, from the 1880's onwards, which ensured that the British system of Government would, henceforth, be a Party dominated one.

## THE RISE OF THE PARTY IN BRITISH POLITICS



The rise of disciplined mass parties from the 1880's onwards strengthened the executive and weakened the legislature. The Reforms in the electoral system that occurred during the nineteenth century resulted in a dilution of the power of the aristocracy, this is not to say that their influence was completely or even significantly eroded, but the extension of the franchise, the redistribution of seats together with the introduction of the secret ballot, meant that increasingly members of parliament depended on the support of the electorate rather than the patronage of the landed aristocracy. Following the 1832 Reform Bill party structures in the House of Commons were relatively weak, indeed, between the 1830's and the 1880's party cohesion was very low, and Governments had difficulty controlling the Commons. On less than 30 per cent of all issues did 90 per cent of either party vote together. (50) With the rise of organised mass parties however, the executive was able to exert greater control over the legislature. As Lenman has argued:

Acting on an electoral mandate, parties became the autonomous institutions within the constitution, rather than Parliament itself. (51)

The 1880 saw a significant shift in the way Liberal and Conservative candidates were chosen. 'Liberal local associations chose candidates on condition that they adopt the party programme', prior to this time, 'there had been no arrangement by which candidates had become pledged to a uniform party programme.' (52) The Conservatives soon realised that this disciplinary measure was effective, and adopted much the same strategy. (53) The introduction of a pledge for Parnellite parliamentary candidates in 1884 is illustrative of how important a disciplined parliamentary party was regarded by politicians at that time. According to Bew, this pledge, allowed candidates 'no conscientious reservations of any kind.' (54) Thus, in the latter part of the nineteenth century disciplined mass parties emerged. Party organisations essentially allowed the executive to dominate the House of Commons. It would however, be misleading to suggest that individual Members of Parliament did not exercise some autonomy, and vote

according to their principles from the 1880's onwards. The defeat of the first Home Rule bears witness to this; in all ninety three Liberals voted against the Government, and the Bill was defeated by thirty votes. Parliament was subsequently dissolved and the issue was submitted to the electorate. Yet Party discipline in parliamentary voting was significantly greater, and generally the party leadership had control over its back-benchers. Indeed Lenman argues that the emergence of mass parties in the later nineteenth century allowed:

their leaders to tame both the electorate and the Commons. Executive power, working through a whipped majority, could dominate the lower house of the legislature. Such checking power as survived in the House of Lords was undermined by the increasingly archaic and indefensible nature of its membership, and then broken for ever by a hostile majority in the Commons in 1911 which forced through a statute removing the ability of the Lords seriously to block legislation. (55)

The emergence of disciplined parties together with the introduction of the 'closure' in 1882, without doubt allowed a concentration of power in the hands of the executive. The 'closure' was first used following the obstructive tactics of the Irish members of the House, involving a vote on a coercion bill. The Irish members kept the House in session for 41 consecutive hours. The speaker, after consultation with the Leader of the House and the Leader of the Opposition, brought the debate to a close. In 1883, the Speaker was given formal powers to close a debate, from 1887 this became an integral part of Commons procedure. 'Governments could at last draw up a timetable for legislation, with a reasonable expectation that they would be followed.'(56) The Parliamentary Reforms that occurred during the nineteenth century resulted in a strong executive and a weakened legislature. The Cabinet had immense influence over its party members. The changes in the procedure of the House of Commons such as the introduction of the closure, and the establishment of standing committees, especially after 1907 further

facilitated the executive, but weakened the autonomy of the lower house. Critics could with some justification point to the need for an effective second chamber to curb or at least check an increasingly powerful executive. However, was the House of Lords by this time, a chamber that guarded the rights of the Nation or did it protect the interests of the Conservative Party?

#### 1906-1911 - DEMOCRACY OR A CORRUPTION OF THE CONSTITUTION?

The Liberals were returned to power in 1906, winning a landslide victory, with a majority of 129 over all other parties but Balfour, the leader of the defeated Unionist Party made his position clear; he intended that the Unionists should continue to effectively rule the country through the predominantly conservative Upper House. In a speech at Nottingham on January 15th 1906 Balfour unequivocally outlined what his policy was going to be, even though his Party, and he himself had been voted out of office, it was , he said:

the bounded duty of each one whom he addressed, to do his best to see that the great Unionist Party should control, whether in power or whether in Opposition, the destinies of this great Empire. (57)

Asquith later wrote that, he believed that this was in effect:

a claim that a Party which had just been almost contemptuously repudiated by the electorate should still, through the only agency at its disposal, the House of Lords, reassert and retain its political prominence. (58)

The ensuing conflict between the two houses was to prove Asquith right. Campbell-Bannerman's administration might enjoy a decisive majority in the House of Commons, but in the House of Lords the Unionists had a substantial one. Of the 602 peers, only 28 described themselves as Liberals, and according to Jenkins, 'this number included a few who were uncertain in their support of the Government as was Lord Rosebery.' (59) In

reality the Upper Chamber was a Tory bastion. Their ascendancy had been assured since the time of Pitt's Premiership, when over a period of seventeen years 140 peers were created. The Home Rule Bills of 1886 and 1893 had further alienated Liberal peers. Lord Rosebery himself stated that Home Rule 'threw the great mass of Liberal Peers into the arms of the Conservative Party.' (60) The period of Conservative rule between 1895 and 1905 saw little conflict between the two houses, however, when the Liberals resumed office the conflict between the Lords and Commons reached new heights, culminating in the former's rejection of the 1909 Finance Bill. That the Unionist Party in the Commons played a significant part in fuelling this conflict is evident. According to Dutton, throughout the years of opposition after 1906:

The Unionist party came close to breaching and at times almost certainly did breach accepted conventions of constitutional propriety. (61)

The correspondence between Balfour, and Lord Lansdowne makes it clear that the Unionists intended to use the Conservative dominated Upper House to veto Liberal legislation. Lansdowne, (the Conservative leader in the Lords) in a memorandum proposed a closer relationship between the leaders of the Opposition in both Houses:

'The opposition is lamentably weak in the House of Commons and enormously powerful in the House of Lords. It is essential that the two wings of the army should work together, and that neither House should take up a line of its own without carefully considering the effects which the adoption of such a line might have upon the other House.' Lansdowne concluded the memo, 'I should myself be inclined to propose that he (Balfour) should institute a not too numerous Committee, including, say, four or five members of each House, who might meet in his room at the House of Commons, once a week at least, for an exchange of ideas...As a 'House of Lords' delegation I would suggest Lord Halsbury, Lord Cawdor, Lord Salisbury, and myself. (62)

In a reply to Lansdowne on April 13th Balfour put the case:

I conjecture that the Government methods of carrying on their legislative work will be this; they will bring in Bills in a much more extreme form than moderate members of the Cabinet probably approve: the moderate members will trust to the House of Lords cutting out or modifying the most outrageous provisions : the left wing of the Cabinet...will be consoled for the anticipated mutilation of their measures by the reflection that they will be gradually accumulating a case against the Upper House, that they will be able to appeal at the next election for a mandate to modify its constitution. The scheme is an ingenious one, and it will be our business to defeat it as far as we can. I do not think the House of Lords will be able to escape the duty of making serious modifications in important Government measures, but, if this is done with caution and tact, I do not believe that they will do themselves any harm. (63)

Balfour recognised the danger of this course of action, as is evident by his reference to the fact, that the Liberals would at the next election seek a mandate for modifying the powers of the House of Lords, but so convinced was he, of the Liberals ineptitude to Govern, he was prepared to follow this drastic course of action. Henceforth, the Lords were no longer the guardians of the nation, so much as the guardians of the Opposition, and that Party's determination to control the destinies of the Empire, even when out of office. This set the trend for the years to come, as Jenkins states:

Occasionally Balfour and Lansdowne instructed the peers to make a tactical show of restraint. More frequently they suppressed their delicate susceptibilities and encouraged a slaughter of Liberal bills on a scale from which their more robust predecessors, the Duke of Wellington or Sir Robert Peel would have recoiled.(64)

One example of their Lordships' belligerence - the amendment and subsequent rejection of the Education Bill, prompted Campbell-Bannerman to utter the words:

the resources of the House of Commons are not exhausted, and I say with conviction that a way must be found, a way will be found, by which the will of the people expressed through their elected representatives in this house will be made to prevail. (65)

Hence, the reform of the House of Lords was once again on the political agenda. The concept of reforming the Lords was not a new one, indeed during the debates concerning

the Reform Bill of 1884, Joseph Chamberlain had described the peers as the representatives of a class: 'who toil not, neither do they spin', whilst Morley declared, the Lords must be 'ended or mended'. (66) Lord Rosebery, when Prime Minister, declared, 'Nearly if not quite half of the Cabinet is in favour of a Single Chamber. The more prominent people in the Liberal Party appear to be of the same opinion.' (67) The case for reform became more urgent after 1906, when the Lords continually blocked Government Bills that had formed part of their election programme, and which therefore, crucially had received the peoples' mandate. In a speech to the House of Commons on 24th June 1907, Campbell-Bannerman as Prime Minister, introduced a resolution, that the power of the House of Lords should be restricted:

in order to give effect to the will of the people as expressed by their elected representatives, it is necessary that the power of the other House should be so restricted by law as to secure that within the limits of a single Parliament the final decision of the Commons shall prevail. (68)

The C-B veto plan, as it came to be called, involved the introduction of a suspensory veto. Prior to the announcement of the C-B veto plan in the Commons, Asquith and other Cabinet colleagues formulated a more moderate plan, known as the Ripon plan, whereby, disputes between the two houses would be settled by a joint sitting, in which all the members of the Commons, but only 100 members of the House of Lords would be allowed to vote. (69) Campbell-Bannerman rejected this plan, arguing:

'The representation of the peers to 100 would be hard to justify... The scheme suggests a return, with modifications, to the old plan, of formal Conferences between the two Houses, but an assembly of 770 persons was too big for a Conference.' Moreover, 'It will be a multitude, a mob. Unless the Government can count on a working majority of about 70 the scheme will break down.' (70)

Campbell -Bannerman, according to Berstein feared that:

the party would not accept a proposal which did not assure the ultimate supremacy of the Commons when the two Houses came into conflict whatever the size of the Liberal majority. (71)

Added to this must be Campbell-Bannerman's conviction, that ultimately if Liberalism was to survive, then a veto must be introduced. Jenkins quotes Spender, who claimed that in 1907:

'the Prime Minister saw only two courses before the Government, either to accept these conditions ( veto on all major aspects of Liberal policy) and be content with the minor legislation and administrative changes which were within the boundaries imposed by the House of Lords, or to go boldly forward and challenge that House.' According to Spender, Campbell Bannerman, 'was never in doubt about the choice between those alternatives. Submission, he believed would be death to Liberalism; and a long term of inglorious office on the sufferance of the House of Lords was the last thing that he contemplated either for himself or his Government.' (72)

However neither scheme was immediately pursued, but the two alternative plans were resurrected in 1910, when there was deadlock between the two Houses. Weston has argued, that Asquith was the main author of the Ripon plan, and might have favoured this scheme rather than the more extreme C B veto plan which the Liberal Government ultimately adopted in 1910, but the: 'project had to be discarded in the emergency created by the lords' rejection of the Finance Bill'. (73) Asquith succeeded Campbell-Bannerman as leader in 1908, and Lloyd George became Chancellor of the Exchequer, henceforth, the Liberals embarked on a more radical programme of social reform, known as "new Liberalism". To pay for these reforms, together with an increase in military expenditure, Lloyd George proposed to introduce innovative tax measures. On April 29th 1909 Lloyd George introduced the 'Peoples Budget' to the House of Commons. In essence the Budget was to tax the rich to pay for social reforms and national defence. Lloyd George proposed to raise income tax and introduce a super tax on incomes of £5000 per annum,

an increase in death duties, liquor licenses were to be heavily taxed, together with new land taxes. Lloyd George stressed that:

This [Mr Emmott] is a war Budget. It is for raising money to wage implacable warfare against poverty and squalidness. I cannot help hoping and believing that before this generation has passed away we shall have advanced a great step towards that good time when poverty, and the wretchedness and human degradation which always follow in its camp, will be as remote to the people of this country as the wolves which once infested its forests. (74)

The Liberals saw the Budget as fair, 'it forced the two great monopolies - the liquor trade and the landlords - to contribute something to the nation in return for the privileges it had conferred on them.' (75) Redmond for the Irish Nationalists strongly objected to it, claiming that it was very unjust to Ireland. Serving notice, that his Party would oppose it on every possible opportunity:

so far as this Budget is concerned, the Government must expect to meet the vigorous opposition of the Irish Party. (76)

And when the Finance Bill was given its Second Reading in June 1909, the Irish Nationalists voted against the Bill, but the Government still had a majority of 366 - 209. This was not a crucial vote, as the Government enjoyed an overwhelming majority at that time, however, it could be argued, that this was a timely reminder for Asquith and the Liberal Government, that the Irish Nationalists were prepared to vote against their informal allies should they deem it advantageous to their cause - that of securing Home Rule for Ireland. The majority of peers abhorred the Budget proposals: there were angry denunciations made, claiming that the measures amounted to confiscation and robbery. The Duke of Beaufort at a function in Cirencester publicly declared his wish 'to see Winston Churchill and Lloyd George in the middle of twenty couple of dog hounds.' (77) Although Dutton argues that



the general consensus of recent historiography is that the Chancellor had no devious plan in introducing his budget to goad the Unionist peers into rejection and thus towards constitutional and electoral suicide. (78)

A contemporary analysis by Spender, written in 1920, of the Chancellor's views would indicate that Lloyd George was happy to do battle with the Upper Chamber:

The Liberal Cabinet as a whole, refused to believe that the Lords would throw out the Budget, and it was steadily set about through the summer of 1909 that Mr. Balfour and Lord Lansdowne, were in favour of passing it. But Mr Lloyd George persisted in believing the contrary. "They will throw it out all right!" he would always say cheerfully enough; and the only shadow that would pass over his face would come when some one would half convince him to the contrary. (79)

It may be suggested, therefore, that whilst perhaps, Lloyd George, did envisage the intransigent attitude of the Lords towards the Budget proposals, but his rhetoric toward the landed classes would indicate that he revelled in the conflict. Lloyd George did little to alleviate or allay the fears of the Peers; who judged the Budget as introducing socialist measures, regarding it as an 'attack' on property. Lloyd George's famous speeches at Newcastle-on-Tyne in October inflamed the anger of the Peers, with passages such as:

Should 500 men, ordinary men chosen accidentally from among the unemployed, override the judgement -the deliberate judgement - of people who are engaged in industry which makes the wealth of the country. (80)

Jenkins puts the point well:

however fanciful may be the theory that Lloyd George had originally framed his Budget with the principal object of exciting the peers, there can be no doubt that he and Mr Churchill and some others were now extremely anxious that rejection should take place. (81)

Whilst it may be too simplistic to suggest that the Liberal Government deliberately goaded the peers to reject a Finance Bill, given that the Liberal Government could not be

sure that they would win. However, Asquith's Birmingham speech in September would indicate that he was not prepared to compromise on the issue, and was aware of the consequences:

Amendment by the House of Lords, is out of the question. Rejection by the House of Lords is equally out of the question...Is this issue going to be raised? If it is, it carries with it in its train consequences which he would be a bold man to forecast or foresee. That way revolution lies. (82)

The simmering conflict between the Upper Chamber and the Liberals when in Government was about to erupt into open hostilities, as the Lords prepared for the first time in 250 years to reject a Finance Bill. The Unionists and Peers claimed that the Bill was not strictly a 'Money Bill', as it included licensing and land valuation provisions which were not strictly financial, and which had been submitted to the Lords as ordinary legislation and had subsequently been rejected by the Upper House in 1907 and 1908. Lansdowne argued that 'tacked' on to the Finance Bill were a number of extraneous matters; the House of Commons had become increasingly guilty the practice of 'tacking' and this fully justified the House of Lords in reviving the right to reject a money bill which had been expressly conceded in the Commons arguments of 1689. Moreover, the Bill contained many novel features that had not received the sanction of the voters, therefore, Lansdowne declared: 'this House is not justified in giving its consent to this Bill until it has been submitted to the judgment of the country.' (83) However, there was dissension among the Conservative Peers, with Balfour of Burleigh, accurately predicting the consequences of rejection:

If you are to establish a system whereby this House or any other authority has the right to establish a referendum as it is called - a reference to the people in matters of finance - you would spoil and destroy the control of the other House of Parliament over the Government, and would make, I venture to say, perhaps the most momentous change in the Constitution, as it has grown up, which has been made in the whole history of that Constitution...My Lords, if you win, the victory

can be at most be a temporary one. If you lose you have altered and prejudiced the position, the power, the prestige, the usefulness of this House. (84)

This warning went unheeded, and on November 30th 1909 the Lords rejected the Bill by 350 to 75. The Government on the 2nd December successfully passed a resolution in the Commons:

That the action of the House of Lords in refusing to pass into law the financial provision made by this House for the service of the year is a breach of the Constitution and a usurpation of the rights of the Commons.(85)

The resolution passed by 349 - 134. By refusing Supply, Jenkins argues, the Lords had forced the Government to dissolve Parliament, the Upper Chamber had:

taken it upon themselves the right of deciding when a Government could carry on and when it could not, when a Parliament should end and when it should not. It was a claim which, if allowed, would have made the Government as much the creature of the hereditary assembly as of the elective assembly. (86)

Interestingly however, the first speaker of the House Sir James Lowther, (Later Viscount Ullswater) who subsequently under the Parliament Act had the duty of deciding which acts constituted money bills claimed that the Finance Bill was not a money bill. Writing in 1925, he stated:

The celebrated Finance Bill of 1909 which was the immediate cause of the Parliament Act, would not have come under the provision of Clause I, Sec 2 of the Parliament Act, as a 'Money Bill,' for it contained a number of provisions which were not within the definition of that clause and section. (87)

However, the ambiguity of defining a Money Bill together with the right of rejection by the Upper Chamber was sufficient to allow the Liberals to claim that the Peers had acted unconstitutionally, by usurping the rights of the Commons. Their Lordships decision to

reject the Finance Bill, given the Liberal Government's majority in the Commons, ensured that a General Election would be called, its result ensured that Lord Reay's prediction would come true, when he urged the Lords not to 'forget the lesson of history, that 'oligarchies are seldom destroyed and more frequently commit suicide.' (88) Their rejection of the 1909 Finance Bill paved the way for their Lordships power of Veto to be limited by statute. Within eighteen months Bagehot's definition of the Lords as a chamber with (in most cases) a veto of delay was assured when the 1911 Parliament Bill abolishing their Lordships power of Veto was passed.

#### THE PASSING OF THE 1911 PARLIAMENT ACT - A CORRUPT PARLIAMENTARY BARGAIN?

The first election of 1910 resulted in the Liberals losing over 100 seats. The Liberals now held 275 seats whilst the Unionists held 273, crucially the balance of power was held by the Irish Parliamentary Party (71 under Redmond's leadership) and the Labour Party, which had 40 seats. The controversy surrounding the passage of the 1911 Parliamentary Bill appears to be as important as the actual Bill itself. The Unionists charged the Liberal Government with entering into a 'corrupt parliamentary bargain' with the Irish Parliamentary Party. Redmond had made his Party's position clear, that in return for his Party's support in the election of January 1910, the Liberal Government was expected to introduce a Suspensory veto, which he regarded as a prerequisite for the passing of a Home Rule Bill. Indeed Asquith, at the Albert Hall on December 10th 1909 stated:

We shall not resume office and we shall not hold office unless we can secure the safeguards which experience shows us to be necessary for the legislative utility and honour of the party of progress...We are not proposing the abolition of the House of Lords or the setting up of a single Chamber, but we do ask, and we are going to ask, the electors to say that the House of Lords shall be confined to the

proper functions of a second Chamber. The absolute veto which it at present possesses must go... (89)

Moreover, as Spender has written, the Election was to be fought on three main issues:

the absolute control of the Commons over finance, and the maintenance of Free Trade, and the effective limitation and curtailment of the legislative powers of the House of Lords. (90)

The 'mandate' for which Asquith asked in this, and other speeches in the campaign covered all issues and sought authority for the curtailment of the legislative as well as the financial powers of the House of Lords' (91) There was a general belief that Asquith had secured a promise from the King, that should the Liberals win the forthcoming election, the King would exercise his royal prerogative and create sufficient peers as to allow the passage of a veto bill through the Upper Chamber. It transpired that no such undertaking had been given. Indeed, Lord Knollys, the King's private secretary, had informed Asquith's private secretary five days after Asquith's Albert Hall speech, that:

the King had come to the conclusion that he would not be justified in creating new peers (say 300) until after a second general election...The King regards the policy of the Government as tantamount to the destruction of the House of Lords and he thinks that before a large creation of peers is embarked upon or threatened the country should be acquainted with the particular project for accomplishing such destruction as well as with the general line of action as to which the country will be consulted at the forthcoming election. (92)

When Asquith informed the House of Commons on February 21st 1910, that he had not sought or been given any guarantees:

I am supposed to have intended to convey, what I certainly never said, that a Liberal Ministry ought not to meet in a House of Commons unless it had secured in advance some kind of guarantee for the contingent exercise of the Royal Prerogative...I tell this House quite frankly that I have received no such guarantee, and that I have asked for no such guarantee. (93)

Redmond reminded him unequivocally that the Irish Nationalists had supported the Liberals at the last Election because of their promise to curtail the House of Lords power of Veto.

'we supported the Government heart and soul at the last election. We supported the Government because the pledge on Home Rule was supplemented by a pledge on which we regarded from our point of view as more important still -- namely, the pledge which was given with reference to the veto of the House of Lords. We regarded the abolition or limitation of the veto of the House of Lords as tantamount to the granting of Home Rule to Ireland.' Mr Balfour: Hear hear.(94)

Quoting from the Prime Minister's Albert Hall Speech, (see above) and also from a speech made by Lloyd George, in which the Chancellor declared:

For my part, I would not remain a member of a Liberal Cabinet one hour unless I knew that Cabinet had determined not to hold office after the next General Election unless full powers are accorded to them which would enable them to place on the statute Book of the realm a measure to ensure the limitation of the Veto. (95)

Redmond maintained that these pledges were taken to mean that if necessary the Prime Minister might rely on the Royal Prerogative to enable him to pass a Veto Bill through Parliament this year Redmond informed Asquith that:

if the Prime Minister is not in a position to say that he has such guarantees as are necessary to enable him to pass a Veto Bill this year, and if in spite of that he intends to remain in office and proposes to pass the Budget into law and then to adjourn - I do not care for how long or how short - the consideration of the Bill dealing with the veto of the House of Lords, that is a policy which Ireland cannot and will not uphold. (96)

In the first months of 1910, the Liberal Cabinet was deeply between vetoists and reformers, and in early February, 'the suspensory veto plan, ostensibly party policy on the House of Lords question, seemed in danger of being discarded in favour of some reform scheme, never sanctioned by the party'. (97) Moderates advised reform, arguing that the

implementation of the C B plan (see above) curtailing the Lords, power of Veto would result in a single chamber government, and argued that this would be opposed by the majority of moderate electors. However, radicals urged the introduction of a suspensory veto, it would appear that the latter proposal was supported by the rank and file of the Party. The Veto was also supported by the Labour Party, with Keir Hardie declaring that:

Ministers were returned not to reconstitute but to destroy the House of Lords. (98)

The Cabinet ultimately decided to introduce a Suspensory Veto, and on February 28th, Asquith announced in the Commons that he would ask the House:

to declare that in the sphere of legislation the power of veto, at present possessed by the House of Lords, shall be so limited in its exercise as to secure the predominance of the deliberate and considered will of this House within the lifetime of a single Parliament...His Majesty's Government-regard the placing with all possible promptitude upon the Statute Book of provisions which will set this House free of the veto of the of the House of Lords, not only as the first condition of the legislative dignity and utility of the House of Commons, but as our own primary and paramount duty. (99)

And on March 29th, Asquith declared that the Government as a first and urgent step would have:

to deal with things as they are, and in particular, to deal with the House of Lords as it is, and to prevent a repetition of the unconstitutional raid of last year into the domain of finance...to secure as against the House of Lords, that the wish of the people, as expressed by the mature and reiterated decisions of their elected representatives, shall in all legislation be predominant. We I have I think at the same time, to provide by adequate safeguards that the elected House shall not outstay its authority and purport to act as the exponent of a public opinion which it no longer represents. (100)

Asquith later summarised the three resolutions that were proposed:

1. To disable the House of Lords from rejecting or amending Money Bills.

2. To provide that any Bill which had passed the House Commons and been rejected by the Lords in three successive Sessions should become law, provided (a) that the Bill was sent up from the Commons at least one month before the end of each Session, and (b) that at least two years should have elapsed between the first introduction of the Bill and its being passed by the House of Commons for the third time.

3. To limit the duration of Parliament to five years. (101)

In committee Unionists raised objections to the resolutions. The first could be open to 'tacking' as had occurred in the 1909 Finance Bill. Amendments were suggested for the second resolution, to exclude such Bills as those, affecting the Parliamentary franchise, affecting the prerogative rights and power of the Crown and for the delegation of administrative and legislative power to subordinate parliaments with the United Kingdom. The latter was evidently an attempt to prevent the passing of a Home Rule Bill. The Liberal Government's resolutions were introduced in the Commons on April 14th 1910, with Asquith declaring the Government's intentions should the House of Lords reject the Bill:

If the Lords fail to accept our policy, or decline to consider it as it is formally presented to the House, we shall feel it our duty immediately to tender advice to the Crown as to the steps which will have to be taken if that policy is to receive statutory effect in this Parliament. What the precise terms of that advice will be (an Hon member: 'Ask Redmond')- I think one might expect courtesy when I am anxious, as the head of the Government, to make a serious statement of public policy-what the precise terms of that advice will be it will, of course, not be right for me to say now; but if we do not find ourselves in a position to ensure that statutory effect shall be given to that policy in this Parliament, we shall then either resign our offices or recommend the dissolution of Parliament. Let me add this, that in no case will we recommend a dissolution except under such conditions as will secure that in the new Parliament the judgement of the people as expressed at the elections will be carried into law. (102)

The Unionist were outraged, Balfour responded by claiming that Asquith would in effect destroy the Constitution:



I am not going to dogmatize on the Constitution, and say that no circumstances can within the imagination of man arise in which it might not be the duty of the Prime Minister to go to the Sovereign, and ask for what are euphemistically called guarantees, which I believe translated into plain English means the nomination of five hundred unfit gentlemen for the honour of seats in the House of Lords. (Several Hon. Members: Why unfit?) But while I do not dogmatize as to the conditions under which it might be right for a Prime Minister in extreme circumstances to destroy the Constitution, of which he ought to be guardian, I say quite clearly that the idea of anticipating such advice by months, by clearly announcing to the House of Commons and the country that in certain unknown and undefined contingencies he is going to suggest that which is nothing short of the destruction of the Constitution, is I think beyond the idea of duty, which any predecessor of the right Hon. Gentleman has held. He has bought the Irish vote for his Budget, and has bought it successfully. The price he has paid is the price of the dignity of his office, and of the great traditions which he, of all men, ought to uphold. (103)

In a letter to 'The Times' newspaper, Asquith defended the charges made against him by Balfour, arguing that there had been no meeting between Redmond and himself during the period between the Government's decision and his statement in the Commons. Moreover, the Government's decision was 'as welcomed by the majority of their followers as it was to the Nationalists, and if a decision so taken brings in its train a substantial block of support in the division lobby there is nothing inimical to the best traditions of parliamentary practice in that.'(104) The fact that the Liberals in 1907 under the leadership of Campbell-Bannerman proposed the introduction of a Veto, fearing more moderate reforms would not be accepted by the Party would appear to substantiate Asquith's argument as to the popularity of the Veto proposal. It is evident however, that the Liberal Cabinet was divided, as whether to proceed with the Veto or Reform of the Upper Chamber, but had little room for manoeuvre, if it was to secure the support of the Irish Party. As Weston argues:

in the first months of the any idea of replacing the C - B plan with the Ripon plan had to be abandoned when the Liberals became dependant on Irish support as a result of the January election. (105)

Although Roy Jenkins puts up a credible counter argument, stating that:

Minority Governments usually have to compromise with their principles to a far greater extent than did Asquith in the early months of 1910. (106)

The Irish Parliamentary Party's insistence that the Government introduce the veto in exchange for the latter's support in passing the Budget was without doubt a major factor in the Cabinet's decision to introduce the veto proposal. Granted that it was unlikely that the Irish Party would have voted against the Liberal Government, given the Unionists hostility to Home Rule, but this was a possibility, as Asquith himself realised, this is confirmed by his correspondence to the King on February 10th 1910, in which he informed His Majesty that, T P O'Conner had written to Morley stating:

as a certain fact that the Irish party led by Mr Redmond would vote against the Budget unless they were assured that the passing of a Bill dealing with the Veto of the House of Lords during the present year'. 'The Cabinet' Asquith stated 'were of course agreed that no such assurance could or would be given. It is quite possible, therefore, that on the enactment of last years Budget, the Government may be defeated in the House of Commons by the combined votes of the Unionist and Nationalist parties.' (107)

Evidently, if the Liberals wished to avoid a General Election and the possibility of losing office, then a 'bargain' had to be struck. Whether, this was a 'corrupt bargain', as Unionists claimed is not so clear? The Liberals were committed to a programme of Social Reforms as set out in their election programme of 1906, which had received an overwhelming mandate from the electorate. However, a number of these Bills had been blocked by the Upper Chamber; it was, therefore, in the Liberal Government's interest to introduce legislation which would curtail the veto of the Lords. Moreover, the mandate which Asquith had sought in the January election was the curtailment of the Lords power of veto. The indecisiveness of the Liberal Cabinet in the first months of 1910, as to whether to introduce the veto, lent weight to the Unionists' arguments, that the Liberals had ultimately opted for the veto proposal as a means of securing Redmond's support for

the passing of the Budget. It was apparent that the Irish Party had to justify its support of an unpopular budget in Ireland, it could only do this on the basis that sacrifices had to be made in order to reach 'the promised land' (Home Rule), indeed land was at long last in sight, following the Liberal Government's introduction of the veto proposal. Hence, when Asquith reintroduced the Budget on April 18th 1910, it passed the House of Commons, (under guillotine closure) on the 28th April, the Irish members, with the exception of the Dillon faction, voting with the Government. The Lords subsequently passed it, accepting the doctrine of the 'mandate'. (108) The Government was still very much committed to restricting the Lords Veto, but, the death of King Edward VII on May 7th, however, led to a desire to spare the new King from a constitutional crisis, and a constitutional conference was suggested, and subsequently held. The Government was represented by: Asquith, Birrell, Lloyd George, and Lord Crewe, and the Unionists by Balfour, Austin Chamberlain, Lords Lansdowne and Cawdor. The Conference lasted throughout the Summer and Autumn but no settlement was reached. Newton, Lansdowne's biographer has written that the conference broke down on the question of Home Rule:

'On October 16, the Conference broke off on the difficulty of Home Rule. Mr Balfour proposed that if a Home Rule Bill was twice rejected by the House of Lords, it should go to a plebiscite, Mr Lloyd George, whilst admitting the reasonableness of this, said it was impossible for the Government to assent.' The Government offered a counter proposal that 'a general election should intervene on the next occasion on which a Home Rule Bill, having passed the House of Commons, was rejected by the House of Lords - but only on this one occasion: and that Home Rule Bills if introduced afterwards should be treated like ordinary Bills.' (109)

This of course the Unionists could not agree to, and Asquith announced the breakdown of the Conference to the Commons on November 18th, and his intention to dissolve Parliament and call a General Election. Asquith reiterated that the Government would accept no amendments:

It is not, as I have said, in the stage which matters have now reached, a question of amendment or transformation. It is a question of acceptance or rejection as a whole...The time has come for this controversy which obstructs the whole path of progressive legislation to be sent for a decisive arbitrament to the national tribunal. (110)

Dissolution was deferred for ten days to allow the Government Bill together with the alternative reforms proposed by Lord Lansdowne, to be submitted to the Lords. The Lords were not about to acquiesce in curtailing their own powers, and Parliament was dissolved on the 28th November. However, the result of the December Election was almost identical to that of the January one, therefore, the Liberal Government proceeded with the veto Bill, which eventually passed the House of Lords on August 10th 1911. But not before an embittered battle, which was not confined to the Liberal Coalition versus the Unionists and Lords, but revolved around divisions among Unionist themselves. The majority for the passing of the Bill was only 17 (131 to 114). (112) The "die hards" (111) as they became known were virulently opposed to the passing of the Bill, believing it would remove the last constitutional safeguard against an increasingly powerful executive, and would without doubt lead to Irish Home Rule. Indeed some of the more militant right wished to resist its passing, and 'damn the consequences.' As J L Garvin, editor of 'The Observer', put it: 'Pass the Veto Bill and all constitutional security disappears'. (113) However, as has been argued, the House of Lords was not an effective check against the powers of the House of Commons, rather it ensured that the Conservative Party remained the dominant Party even out of office. A crucial factor, which may have persuaded the Unionist leadership to allow the Bill to pass, was the disclosure that the King had (the previous November) secretly agreed to Asquith's request, to use his Royal prerogative and create sufficient peers to allow the Bill to pass the Lords, should the Liberals win the next election. The King's agreement had been attained in November 1910, but kept secret until the following summer. Asquith had

advised the King on November 15th (prior to his announcement in the Commons on the 18th November, that Parliament was to be dissolved) that:

His Majesty's Ministers cannot take the responsibility of advising a Dissolution unless they may understand that, in the event of the policy of the Government being approved by an adequate majority in the new House of Commons, His Majesty will be ready to exercise his Constitutional powers, which may involve the Prerogative of creating Peers, if needed, to secure that effect shall be given to the decision of the Country. (114)

The King informed Asquith on 16th November, that:

he felt he had no alternative but to assent to the advice of the Cabinet. (115)

The King's agreement was revealed to Balfour and Lansdowne on the 20th July 1911, when Asquith drafted Balfour a letter indicating that the King had indeed consented to exercise his Prerogative to create sufficient peers as to allow the Parliament Bill to pass.

(116) A similar letter was sent to Lord Lansdowne, the effect on the latter was particularly devastating, and he advised Unionist Peers at a meeting in Lansdowne House on 21st July that the House of Lords could no longer offer 'effectual resistance'.

(117) It was as with Grey some eighty years earlier, the Royal Prerogative was used as an effective threat to ensure the supremacy of the Commons. Even Dicey who along with the 'die-hards', virulently opposed the passing of the 1911 Parliament Bill, arguing in 1910 that the:

'resolutions accepted by the House of Commons are intended to paralyse, and, should they pass into law, will paralyse the legislative authority of the House of Lords.' They would 'confer uncontrolled authority on the House of Commons.' Moreover, 'The absolutism of the House of Commons means the limitless power of the party which possesses a parliamentary majority.' (118)

ultimately urged its passing as the lesser of two evils. In a letter to 'The Times', in July 1911, he wrote Sir,

The advocates of "resistance" are in truth, as things now stand, the advocates of complete surrender. To give the Coalition an excuse ardently desired by Ministers for packing the House of Lords with a majority of Home Rulers, radicals, and Socialists is madness. (119)

Hence, as had occurred some eighty years earlier in 1832, the conflict between the two Houses resulted in a defeat for the Upper chamber. Balfour, claimed that the Government had acted unconstitutionally by advising the King as regards the creation of peers, and moved a Vote of Censure against the Government on August 7th 1911. Asquith however, could draw on a relatively recent precedent, that of Grey's during the first Reform Bill, indeed it was Grey that Asquith cited, when replying to Balfour's charge:

If a majority of this House - that is the House of Lords - is to have the power whenever they please of opposing the declared and decided wishes both of the Crown and the people without any means of modifying that power, then this country is placed entirely under the influence of an uncontrolled oligarchy. (120)

Crucially Asquith argued that the Bill had twice been before the people, in January 1910 and again in December 1910, it therefore, in his (Asquith's) assumption had been deliberately approved by the electors. Citing perhaps one of the Bill's most ardent opponents, A V Dicey, Asquith quoted:

The point at which the Lords must yield or the Crown must intervene is properly determined by anything which conclusively shows that the House of Commons represents on the matter in dispute the deliberate decision of the nation. (121)

These words became significant a short time later, when their author, A V Dicey would argue, that Home Rule as a policy did not represent the deliberate will of the Nation, and

as such the Crown had a duty to intervene to force the Commons to ascertain the verdict of the Nation. Dicey maintained that the 1911 Parliament Act had destroyed what he termed, 'our last effective constitutional safeguard', (122) as prior to this Act the Lords had the legislative right, and the obligation to reject Bills they felt did not have the support of the Nation, until the peoples' wishes had been sought. The 1911 Parliament Act effectively removed that power, thus conferring on the present and all future House Commons the power of what Dicey called an absolute legislative dictatorship. (123) Although there appears to be a general consensus that the 1911 Act did not fundamentally alter the position of the Lords, it merely put into statute law the convention which the Lords had tacitly accepted since 1832: 'that if the House of Commons supported by the people, was determined on a measure the Lords would accept it.' (124) But it could be argued that the 1911 Bill did indeed revolutionise the Constitution. Although Smith argues in the above passage that the position of the Lords was not changed, in the same paragraph he goes on to argue that:

the Act removed the basis of the doctrine of the 'mandate' by not requiring that contentious measures should be submitted to the people, but it contained certain safeguards for the Lords which ensured that the House of Commons would not rule unchecked. Thus, the veto remained in effect for a period of two years, during which time the Commons had to debate and pass the bill three times.(125)

However, as a result of this Act, the balance of the British Constitution was fundamentally changed. A Government now had the power to pass into law any legislation provided it enjoyed a majority in the lower house. The rise of the Party system enabled a Government (which had a majority) to effectively dominate the Commons and push through legislation which perhaps did not have the support of the nation. As a result of the 1911 Parliament Act the Liberal Government was given the power to pass the Welsh Disestablishment Act and the Home Rule Act in 1914, within the lifetime of a single parliament. The controversy surrounding the latter, perhaps not

only drawing attention to the importance of the Act, but also to the risks involved in the doctrine of Parliamentary Sovereignty, which makes all political institutions subordinate to Westminster. Under this doctrine, Parliament is supreme - it can in theory make new laws or repeal any existing laws which it deems necessary. However, following the 1911 Parliament Act, power was now no longer, even theoretically, shared by the two Houses of Parliament, or even resided with House of Commons, but de facto lay with the Executive. What this effectively meant was, that the Government of the day could if had a majority in the House of Commons, introduce Bills which involved major constitutional changes without any check on its power. Dicey again made the position clear:

Every Statute, past, present or to come, and every law, whether contained in the Statute Book or not, is now rendered subject to the sole and despotic authority of the present coalition or of any faction which may attain a majority by whatever means in the House of Commons. (126)

Arguing from a contemporary position, Dicey evidently did not have the benefit of hindsight, that Smith possessed when claiming that the Act did not alter the position of the Lords and Commons. Dicey gave an argument of the potential of the Commons, or more appropriately the majority within it to act as an elected dictatorship. The Act lowered the duration of Parliament from seven to five years, to counteract claims that the House of Commons might no longer represent the will of the people. However, under the terms of Parliament Act, a Bill could become law within the lifetime of a single parliament, hence, it is suggested, that the lowering of the duration of parliament was not as significant as it appeared. Dicey's contention that in essence the Government could act in whatever manner it wished, to amend or repeal laws was shown to be justified in 1949, when a new Parliament Act further restricted the Lords Veto to a period of one year, thereby once again strengthening the power of the executive even further. The real significance of the Parliament Act became apparent a short time after its passage, when a



minority of 'loyal British citizens' - the Ulster Unionists claimed that their only recourse against an unsympathetic government was active resistance. That His Majesty's Opposition, or at least a faction of it, including its leader, Andrew Bonar Law, supported them in this cause furthers the argument that the Act itself was somehow flawed. It did remove certain safeguards for the people, in that it removed the necessity to submit major constitutional changes to the electorate. Sir Edward Carson put it succinctly when at a Unionist meeting at Craigavon on 23th September 1911 he affirmed :

Mr Asquith, the Prime Minister, says that we are not to be allowed to put our case before the British electorate. Very well. By that determination he drives you in the ultimate result to rely upon your own strength, and we must follow all that out to its logical conclusion. (127)

The 1911 Parliament Bill allowed the Liberal Government to force the third Home Rule through parliament without referring the matter to the Nation, despite the fact that it had clearly not formed a major part of its manifesto in the two elections of 1910. In a Country that sets no limit on Parliamentary authority, there is a need for some effective check on Government authority. But as Lenman has argued, the 'sole surviving check on executive power was one which was indefensible both in its composition and latterly in the use it made of its power. The House of Lords was Tory-dominated and hereditary by definition'.(128) Reform of the Upper Chamber was therefore crucial, but the Liberal Government's decision to proceed with the suspensory veto rather than a more modest proposal, ensured that the dominance of Party would prevail. Thus the issues surrounding the third Home Rule Bill of 1912, were as O'Day has argued, 'much larger than Ireland: it concerned the nature of governmental authority and legitimacy. The fight over Irish Home Rule symbolised a more fundamental crisis. Could ephemeral political majorities, perhaps elected to Parliament for entirely different reasons, impose an apparently objectionable minority policy on the whole country without resistance.' (129) Ultimately the 1911 Parliament Act allowed this possibility to become a reality. Unionist

such as Dicey argued, that the passing of a Home Rule by virtue of this Act was devoid of moral authority, since it would be attained without the assent of the Nation. (130) This brought into focus what was or at least what should be the limitation of Government authority under the British Constitution? These issues will be discussed in the next two chapters.

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## CHAPTER FOUR

### THE PEOPLES V PARLIAMENT: THE DICEYAN PERSPECTIVE

The controversy surrounding the introduction of the third Home Rule Bill in April 1912 involved wider political issues than the granting of a devolved Parliament to one part of the United Kingdom; it raised questions as to what was, or at least should be the limitation of Government authority and whether the British Constitution offered sufficient safeguards to its citizens. This was a moral constitutional crisis, which it will be argued, involved two fundamental issues. The first issue concerned what Bogdanor has described as 'Conflicting Conceptions of Democracy'. (1) Did the Liberal Government of the day have the right to introduce a Home Rule Bill, which Unionists argued, involved an organic change of the British constitution without ascertaining the verdict of the people? Unionists argued, it did not, since there were reasonable grounds to believe that this policy did not have the approval of the majority of the people. Home Rule, they (the Unionists) argued, had not formed a major part of the Liberal Party's manifesto in the two elections of 1910, therefore, it had not been submitted to the people, who were the ultimate Sovereign. Unionists therefore, argued, that if Home Rule was passed by virtue of the 1911 Parliament Act it would be a breach of the Constitution. The Liberal Government's argument was that as the elected Representative of the people, it had the right to implement this policy which had formed part of their political programme since 1891. Home Rule therefore, they argued, had formed a plank in the two of elections of 1910, and as such had received the sanction of the people. Under the doctrine of Parliamentary Sovereignty, the Liberal Government certainly had the power to pass the Act, but was this a corruption of the spirit of the Constitution? The second issue involved the question of political morality; Did the Liberal Government of the day have the moral right to deprive a section of the United Kingdom, the Ulster Unionists of

their British Citizenship? It is accepted that under the terms of Home Rule all the people of Ireland would still be classed as 'British Citizens' and Subjects of the Crown, but it is suggested that the lack of discourse regarding the concept of citizenship itself essentially meant that this fact was largely ignored at the time of the crisis. Moreover, it will be argued, that citizenship entails wider issues than merely being classed as 'British Subjects'; it involves Parliament's obligation to protect a subject's civil, economic and religious freedoms. The Ulster Unionists believed that under a Dublin Parliament these rights would be infringed or endangered, therefore, they argued that the Liberal Government did not have right to force them out of the Westminster Parliament and under the jurisdiction of their historical enemies, the Irish Nationalists? It is hoped, that by separating these two issues, which at the time of the crisis became intrinsically linked a clearer understanding of the Constitutional arguments for and against the granting of Home Rule by virtue of the 1911 Parliament Act can be ascertained, and this will, hopefully, shed some light as to what is or at least should be the legitimate authority of Parliament, not only constitutionally but morally as well. This chapter outlines A V Dicey's, argument that a Home Rule Bill passed by virtue of the 1911 Parliament Bill would lack constitutional authority, since it would be done without the sanction of the Nation. It further looks at the recommendations made by Dicey to persuade or force the Liberal Government to dissolve Parliament and appeal to the people. The next chapter examines how these ideas fared in the party battle over Home Rule.

Dicey without doubt helped legitimize Unionists arguments between 1912 -14: that the passing of a Home Rule Bill by virtue of the 1911 Parliament Act was devoid of political morality because it did not have the consent of the electorate and it would lack constitutional authority since the Act would:

violate the principle that no Bill which changes the foundations of the Constitution should pass into law until it has obtained, directly or indirectly, the assent of the electors. (2)

However, in what is generally regarded as one of the most influential books on the British Constitution, written by Dicey in 1886, he stated that Parliament had that right, arguing:

'A Bill reforming the House of Commons, a Bill for abolishing the House of Lords, a Bill to give London a municipality...are each equally within the competence of Parliament...' Once passed each will be 'An Act of Parliament, and cannot be annulled by any other power.' (3)

This would appear to contradict Dicey's argument that Parliament did not have the right to pass into law a Bill, any Bill, whether it involved an organic change to the Constitution or not, for the Constitution made no distinction. Therefore, any Bill that Parliament passes, however, it is passed can not be deemed unconstitutional:

Parliament is, from a merely legal point of view, the absolute sovereign of the British Empire, since every Act of Parliament is binding on every court throughout the British dominions, and no rule, whether of morality or law, which contravenes an Act of Parliament, binds any court throughout the realm. (4)

Dicey himself appeared to acknowledge this. Writing to Milner in March 1914:

I have not the least doubt that if the Home Rule Act is passed, defiance of it will be crime and probably treason. I can go good way in defending this action on the part of the Ulstermen. About the part to be taken by Englishmen after the passing of the Home Rule Act, I have my doubts. (5)

Dicey did not elaborate why there should be a difference between obedience to the Act on the part of Ulster as opposed to England. If the Act was unconstitutional, and he could contemplate defiance of it as legitimate on the part of Ulster, then why not on the part of England? Dicey it could be argued, gave a somewhat sounder argument as the

fundamental principle of English Democracy, which was he argued, 'that a law depends at bottom for its enactment on the assent of the nation as represented by the electors'. (6)

How does this argument stand up to Dicey's concept of Parliamentary Sovereignty?

Parliament's authority is from a legal stand-point limitless:

The Sovereignty of Parliament is (from a legal point of view) the dominant characteristic of our political institutions...The principle of Parliamentary sovereignty means neither more nor less than this, namely, that Parliament thus defined has, under the English constitution, the right to make or unmake any law whatsoever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament. (7)

Moreover, the British political system of Representative Government essentially means that the people play no effective part in the decision making process, this becomes the responsibility of the members of parliament who are the legitimate representatives of the people. As Dicey goes on to argue:

Electors have no legal means of initiating, or sanctioning, or of repealing the legislation of Parliament No court will consider for a moment the argument that a law is invalid as being opposed to the opinion of the electorate; their opinion can be legally expressed through Parliament, and through Parliament alone. (8)

Crucially however, Dicey goes on to qualify this by drawing a distinction between legal and political sovereignty:

the essence of representative government is, that the legislature should represent or give effect to the will of the political sovereign, i.e. of the electoral body, or of the nation. (9)

When therefore, there were reasonable grounds to believe that the House of Commons did not represent the will of the Nation, a Government, had an obligation to dissolve and seek the verdict of the people. This in essence was Dicey's argument at the time of the third Home Rule Bill, that the House of Commons did not represent the will of the

Nation, or rather there was a reasonable doubt. Following the 1911 Parliament Act, a Government could no longer be compelled by the House of Lords to seek the verdict of the people, as was the case prior to this time. Although Dicey readily admitted that since the Reform Act of 1832 the House of Lords should generally yield to the House of Commons:

no man of sense had since 1832 ever supposed that the Upper House could reject or ought in fact to reject permanently any Bill passed by the House of Commons as the undoubted representative of the Nation. (10)

An effective Second Chamber was still a crucial component of Parliament to guard against the tyranny of Government (11) It ensured argued Dicey:

on the one hand that the deliberately formed will of the country shall be carried into effect, and on the other hand, that hasty, inconclusive, hesitating wishes of the nation shall, at any rate as regards matters of primary importance, not be carried into effect. (12)

By this premise, the House of Lords not only had the right to reject any Bill that had not been submitted to the electorate, but it had the right to reject Government legislation, which has been put before the Nation, if there was an inconclusive result in a General Election. Dicey defended this position on the basis that the Lords sometimes represents more closely the wishes of the Nation. Citing as an example the Lords rejection of the Second Home Rule Bill in 1893, which as has been discussed, was introduced immediately after an Election had been fought on that specific issue; Dicey like Salisbury claimed that the Liberal Party's defeat in the 1895 election justified the Lords decision to reject the Bill. When an appeal was made to the people they rejected the policy, thus vindicating the decision of the Lords. Moreover, the refusal of the Liberal Government (Gladstone wanted to go the polls, but he colleagues would not allow it) was an admission on the part of the Liberals, that 'the Peers and not the majority of the House of

Commons represented the will of the Country.' (13) In 1911 when Home Rule had once again become a live issue, Dicey returned with vigour to this example, since it

was the solemn condemnation by the people of the United Kingdom of the whole policy of Home Rule. This condemnation should never be forgotten; it is of infinite significance, it means that at a great crisis in the fortunes of England, the hereditary House of Lords represented, whilst the elected House of Commons misrepresented the will of the nation.(14)

By combining these two issues Dicey was making a case for the need for an effective Second Chamber, and also drawing attention to the fact, that when the people had been consulted on the question of Home Rule in 1886 and 1895, they had decisively rejected it. Unionists argued, Home Rule had not been put before the electorate in 1910, since it had been largely ignored by the Liberal Party, in favour of the issue of the Lords, therefore, the Liberals could not claim that the Bill was supported by a majority of the electors. However, it is worth noting, that Dicey also makes provisions for the rejection of a Home Rule Bill, even if it had formed a major part of the Liberal Party's election programme. If there was no clear majority in favour of either Party, then by this premise, the Lords could once again justify rejecting the measure. This argument would almost certainly ensure that the Lords would retain its arbitrary powers, and retain its internal veto, even in the face of a Government majority. What would constitute a clear majority? This, it could be argued, would be left very much to the discretion of the Lords, as it was at the time of the Second Home Rule Bill. As discussed in Chapter three, the Lords rejection of the Second Home Rule Bill was on the basis that it did not represent the clear wishes of the Nation. But which people? Was it the 'Predominant Partner' which Salisbury and Dicey spoke of England? If so, England was to have the final word in determining national policy. But one can disagree with the specific argument, whilst recognising that it does raise a valid question, it brings into focus the



underlying dangers of the British Party system of Government, which relies on a House of Commons majority, especially in a country which sets no limits on Government authority. As Dicey argued the party system allowed for the:

possibility...which no one can dispute of a fundamental change passing into law which the mass of the nation do not desire. (15)

Moreover, as a result of the emergence of this system, the House of Commons was no longer 'the *deliberative* assembly of *one* nation, with one interest, that of the whole', which Burke had spoken of, (16) it had by 1890, Dicey reasoned:

ceased to be a body of men to whom the electors confide full authority to legislate in accordance with the wisdom or the interests of the members of Parliament. It is really a body of persons elected for the purpose of carrying out the policy of the predominant party. (17)

And a group, according to Dicey, 'always exists primarily for the attainment of its own special object.' (18) Taking as an example a Government which did not have an overall independent majority in the Commons, Dicey hypothesized that it could perhaps, agree to pass a Bill which was of significance to another party, in exchange for the latter's support for the Government's general policy, so allowing the Ministry to remain in office. A coalition formed on this basis would not represent the deliberate will of the Nation or indeed the House of Commons, but the interests of a faction. (19) Dicey in 1910 published an article declaring that he believed, that the present [Liberal] Government was such a coalition. To remain in office the Liberals had to satisfy the different demands of the groups' that made up this coalition. For example, the Budget satisfied the Socialists, but was detested by the Irish Parliamentary Party, but the latter was to be appeased by the promise of Home Rule. This at times, argued Dicey, came close to corruption. (20) Home Rule by this premise was not the deliberate will of the Nation but the deliberate

will of the Irish Parliamentary Party. The 1911 Parliament Act had allowed for the unlimited power of Party, As Lord Selborne argued:

Under the cloak and pretence of the issue of 'the rights of the people versus the peers,' the people are being robbed by the House of Commons of their Constitutional power to say the last word in great national issues, and the Prime Minister of the day is being lifted into the position of a dictator. (21)

The abolition of the Lords power of Veto essentially meant that a Government could introduce a policy not supported by the Nation but rather in the interest of a faction. The Parliament Act, Dicey argued enabled 'a party or a coalition of parties, to usurp the sovereignty of the nation'. (22) There had been, prior to 1911, Dicey argued, one effective check on the powers of the Commons:

The legislative authority of the House of Lords meant, and was up to 1911 understood to mean, that the House had the power, and was under obligation to reject any Bill of first rate importance which the House reasonably and *Bona fide* believed to be opposed to the permanent will of the country. (23)

Dicey conceded that in the past the Lords had been partisan, in that it had:

represented not too much, the conservatism of the nation, but quite a different thing, the interest as the Conservative Party. (24).

But, argued Dicey, the Liberal Government by its insistence to introduce the Veto, rather than implement reforms had removed the last, though admittedly imperfect Constitutional safeguard. (25) The 1911 Parliament Act conferred on the present and every subsequent House of Commons, 'an absolute legislative dictatorship. England now is Governed by one Chamber alone'. (26) Dicey had highlighted the dangers of curtailing the Lords power of veto as early as 1895 when he warned against the introduction of such a measure, 'because it would make a majority of the House of Commons omnipotent.' (27) Drawing a distinction between a proposal to pass a Bill passed by the

Commons but rejected by the Lords becoming law within the lifetime of a single Parliament, and one by which a Bill became law in the next Parliament, Dicey drew attention to the vital difference, the one 'increases the power of a party and party managers. The other is an attempt, though an unsatisfactory and lame attempt, to increase the authority of the Nation.' (28) As discussed, under Dicey's definition of representative Government, when there was reasonable doubt as to whether the House of Commons represented the will of the people, the Government should dissolve Parliament to seek the verdict of the people. There was, Dicey argued, reasonable grounds to suspect that Home Rule was not supported by the majority of the Country, therefore, the Government had an obligation to submit the Bill to the nation. This Dicey argued the present Coalition would not do:

As long as its members stick together, as the expression goes, 'as thick as thieves,' they have technically the power to pass the Home Rule Bill. They have been offered an appeal to the people and the offer has been refused. What more, I ask can we do? (29)

How then was the Government to be forced to adhere to the spirit of the Constitution? The solution for Dicey, was that this could be done through the powers of the Crown. The King still held the constitutional right to dismiss a ministry that commanded a majority in the House of Commons and appoint a different one, thus forcing an appeal to the people. (30) It was true that the King should always act on the advice of his ministers, but these ministers need not be the present ones. (31) Writing in 1914, Dicey contended that:

Unionists believe that this Home Rule does not command the support of the electorate. The conduct of the Government leads me to suspect that they share this opinion. Many honest Home Rulers, however, believe that the electors are so tired with parliamentary intrigues that they give an apathetic assent to Home Rule in the hope that they may never hear of it again. There is here a fair difference of

judgement. Its very existence proves that an appeal to the people is a necessity. Let the appeal be made by Mr Asquith, if he is content to make it...If Mr Asquith resists every form of appeal to the people, let it be made through any other minister empowered to make it to ascertain the will of the nation. (32)

Dicey was adamant that the King had the right to dissolve Parliament in order to ascertain the will of the Nation.

The legal right of the King to dissolve Parliament is absolutely unquestionable... Good Parliamentary precedents support my doctrine. (33)

In 1784 and again in 1834 the King had used his prerogative and dismissed a government which had the support of the House of Commons. Although the results were different, as in 1784 there was a decisive verdict in favour of Pitt, who had been brought into office by the King against the will of the House of Commons. Whereas, in 1834 Peel and Wellington (who had been brought into office by the wishes of the King against the wishes of the House of Commons) suffered a defeat. (34) Crucially however, both these examples, according to Dicey, was proof that the King had a right 'to appeal to the nation in order to know whether the nation really supported the policy of the Ministers, or in other words of a parliamentary majority whose wishes may or may not coincide with the opinion of the electorate.' (35) 'The aim of a dissolution is not to veto any Bill. Its proper aim is to make sure that a Bill of importance is really and in truth approved by the nation'. (36) In a letter to the Times in 1914, Dicey wrote:

'On this matter I write with some little confidence. My "Law of the Constitution" ...contains an examination of the constitutional doctrine as to the dissolution of Parliament...My opinion as to the occasions on which a dissolution may rightly take place has, as far as I know, never been assailed and assuredly has never been controverted by any writer of authority.' Moreover, 'One may add that the whole current of modern constitutional custom involves the admission that the final decision of every grave political question now belongs, not to the House of Commons, but to the electors as the representatives of the Nation.' (37)

Dicey's private correspondence with the Bonar Law highlights his firm belief that this was course of action was constitutional:

To my mind we have one course open to us, and one only: that is openly and avowedly to agitate for a dissolution, and raise the perfectly legitimate cry of an appeal to the people. This may be done by petition and the like. To give real effect to such a movement the Unionist leaders should announce that they are willing at any moment to take office for the purpose of carrying through a Dissolution. (38)

Bonar Law's replied that he also believed that the Sovereign undoubtedly still possessed the constitutional right, and indeed had a responsibility to act on it:

in my opinion it ought to be made clear to His Majesty that he has this responsibility, and that if his Ministers force him into this position where he has to decide between allowing Home Rule to go through, and choosing other Ministers and giving them the right of dissolution they will be putting him in an absolutely impossible position, for the result will be that whatever course he takes half his subjects will think he acted wrongly. (39)

This was the advice that Bonar Law had given his Majesty in May 1912.(40) However Asquith, the Prime Minister, whilst conceding that the King still had the right to dismiss his ministers and appoint new ones, argued that there was a long and established tradition 'that in the last resort, the occupant of the Throne accepts and acts upon the advice of his ministers. This safeguarded the old maxim - 'the King can do no wrong', it ensured that however, objectionable particular Acts may be to a large section of his subjects, they cannot hold him in any way accountable, and their loyalty is (or ought to be) unaffected.

(41) The ambiguity of the British Constitution allowed each side to justify their decisions in accordance with its own perception of what was the constitutional position of the King, and indeed the legitimate limitation of Governmental authority. In the United Kingdom, under the system of Constitutional Monarchy which had evolved since the Glorious Revolution, the role of the Monarch has been essentially to 'reign not to

rule', but yet again this relies on precedent, and can be open to interpretation, as it was at the time of the third Home Rule Bill, when some Unionists, including Bonar Law, claimed that the King not only had the right to dismiss his existing ministers and appoint new ones as a means of forcing a General Election, but the Monarch still had the power to Veto a Government Bill. In this instance Dicey was more cautious, writing To Bonar Law, he explained:

Your are perfectly right in holding that the so-called "veto" of the King is still in existence though it has never I believe been really used for more than two centuries. But I, as a constitutionalist, most earnestly deprecate its being even mentioned at present or referred to. As things stand it would give no advantage, not given by a Dissolution, and would involve the King in a controversy which would probably lead to the abolition of the prerogative which may on some unforeseen occasion save the state from great peril. (42)

This was perhaps a recognition by Dicey, that if the King as the unelected Sovereign attempted to Veto a Bill by a Government, which in the last analysis was the elected representative of the sovereign body i.e. the Nation, it had better be on an issue more fundamental than even the Union itself. For if the Monarch was to lose on the issue of Home Rule, then just as the Liberal Government had gone to the country in 1910 on the question who governs 'Peoples or Peers', they could surely do so again with the slogan, who governs 'Peoples or King'. The Monarch's prerogative could be curtailed by statute, further increasing the power of Party.

It may be argued that Dicey set out a very sound constitutional argument against the passing of Home Rule by virtue of the 1911 Parliament Act. In a Representative democracy the legislature should be seen to be giving effect to the will of the Nation. However, this doctrine only became important to Dicey and the Unionists, when they had lost what was in effect their internal veto against such Bills as Irish Home Rule. Although Dicey gives a credible argument for a need for Second Chamber to protect the

Nation against the possible 'tyranny of government', the weakness of the argument in the realm of practical politics was that the House of Lords itself was biased in favour of the Conservative Party, made evident by its rejection of the Liberal Government Bills between 1906 -1910. Although, Dicey conceded this, and advocated reform, the Lords by their intransigence had made the Asquith Government determined to introduce the Veto. With the effective emasculation of the Upper Chamber, it was argued by Dicey and the Unionists at the time of the third Home Rule crisis, that the Crown was now the only effective means of ascertaining whether, the legislature represented or gave effect to the will of the political sovereign, 'i.e. of the electoral body or of the nation'. (43) Dicey maintained that the Liberal Government was usurping the power of the Sovereign body, i.e. the people. Dicey's principle was perhaps sound, but the United Kingdom was not as yet a democratic state in any real sense, there was still a limited franchise, despite its extension during the nineteenth century. Therefore, to speak of the 'will of the people' was a relatively new concept within the British Constitution. But it was the age of popular politics, and politicians more and more were forced to consult the electorate with a view to secure their vote, rather than rely on patronage. This had given rise to the party system of Government, and Dicey, it could be argued, raised fundamental questions that were and still are of the utmost importance, as regards the lack of constitutional safeguards for the people under a Party system of Government. At the time of the third Home Rule these lack of safeguards, although not new became evident, when the Ulster Unionists challenged the Liberal Government's moral and constitutional authority to place them under the jurisdiction of a Dublin Parliament, which they (the Ulster Unionists), together with the British Unionists claimed was not the deliberate will of the electors, but the will of a faction, the Irish Parliamentary Party. And, as Dicey virulently argued: 'Unionists are prepared to bow to the will of the nation: but we are not prepared to succumb to the will of a faction.' (44) The crisis surrounding the third Home Rule Bill, revealed critical weaknesses in a Constitution that relies heavily on precedents, that can

on occasion be open to different perceptions. These issues will be discussed in the next chapter within the context of the 'Ulster Crisis', when these differing conceptions of democracy tested the British Constitution to its limit.



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## CHAPTER FIVE

### THE THIRD HOME RULE BILL JUSTICE FOR: FOR IRELAND OR A BREACH OF THE CONSTITUTION?

The this chapter examines how Dicey's constitutional arguments fared in the Party battle over Home Rule during the 'Ulster Crisis' of 1912 -1914. It also explores the Ulster Unionists' claims, that the Government of the day did not have the moral or the constitutional right to deprive them of their British Citizenship.

#### THE LIBERALS V UNIONISTS - TWO INTERPRETATIONS OF THE CONSTITUTION

The British Unionists' constitutional argument at the time of the third Home Rule Bill was that the Bill had not been submitted to the electorate as a clear issue in the two elections of 1910. The Unionists, therefore contended, that the Liberal Government was attempting to pass legislation that would fundamentally alter the fabric of the British Constitution without the sanction of the electorate, who were Sovereign. The Unionists argued, that before such a change should take place the Government needed a clear 'mandate' from the people, since there was a reasonable doubt as to whether the Country supported Irish Home Rule. In essence, the Liberal Government was exceeding the bounds of its legitimate authority. However, the Liberal Government claimed that Home Rule had been part of its official party programme since 1891, and as such had indeed formed part of its manifesto in the two elections of 1910, therefore, it had been put before the Country and received its sanction. As discussed in chapter three, the concept of the 'mandate' was, and continues to be an ambiguous one within the British Constitution. Although politicians spoke in terms of the 'mandate' of the people, they generally felt free to ignore the doctrine when it was deemed expedient to do so. As Birch has argued:

The truth is that Liberal and Conservative leaders have invoked the principle when political conditions made this tactically appropriate, but have felt free to ignore it in other circumstances. (1)

However, by 1912 the question of the 'mandate' had become somewhat more of an issue in British politics. The emergence of the Party system inevitably necessitated a party putting its programme before the electorate, therefore, politicians increasingly claimed to have received the 'peoples mandate' for their policies. But Unionists claimed, that it was not sufficient that a policy which involved an organic change in the British Constitution should merely have been included in a list of proposals? Home Rule, the Unionists argued, had not formed a major part of the Liberals manifesto of 1910. The data would appear to support the Unionists' argument, for as Birch has argued: 'the two elections of 1910 were dominated by specific issues, that of January by the rejection by the Lords of the Government's 1909 budget, and that of December by the proposal to curtail the powers of the House of Lords.' (2) Evidently, Home Rule had not been one of the major issues of the 1910 elections, but it had formed a part of the Liberal Party's programme, therefore, the Liberal Government could claim it had been before the Country, but it could not claim that Home Rule had been set before the nation as the one clear issue. On the 7th August 1911, when calling for a vote of censure on the Liberal Government as regards the creation of peers, Balfour set out what was to become the Unionists argument throughout the crisis:

I do not suggest, of course, that the right hon. Gentleman did not read out a sentence, prepared in the Cabinet, at the end of 1909, in which Home Rule was mentioned...but I do say explicitly in the presence of hon. Gentlemen, all of whom are capable of checking and correcting my facts, that it was never brought before the constituencies of this country as the great and critical issue. (3)

To which Asquith replied:

the right hon. Gentleman has chosen to introduce the topic, Home Rule. I will undertake to say there was not a single speech made by a single right hon. Gentleman on the Front Bench opposite in the course of the general election of 1910 in which he did not warn the country about Home Rule, and no one in clearer terms other than the right hon. Gentleman. (4)

The following day, Bonar Law was contemptuous of Asquith's claim that Home Rule had been a major issue in the elections of 1910, and even more furious, at the Prime Minister's argument that the Unionists had ensured it was an issue. On What grounds do they make that statement? Boner Law asked:

One argument has been used which is so contemptible that I would not have referred to it but for the fact that it has been used by the Prime Minister. It was that we made admissions in our speeches. I tried to make it an issue over and over again, at least a dozen times in Manchester, and I was met by cries: That is not the issue that is the bogey (5)

Churchill argued, that he had referred to Home Rule seventeen times in Manchester, to which Bonar Law retaliated, 'Yes and the right hon. Gentleman carefully chose to leave it out of his election speech.' (6) These statements have been quoted at length, since they set the scene for what was to become one of the most bitter constitutional crisis of the twentieth century. Asquith's stand was that as the democratically elected Government of the day, the Liberals had the perfect constitutional right to introduce a Home Rule Bill. Moreover, according to Jalland, the Liberals were acting on a 'fundamental principle, which the majority of the party had held since Gladstone's introduction of the first Home Rule Bill: 'Home Rule took its place beside Free Trade as a fundamental item of faith in the Liberal creed. But, the fanatical zeal of Gladstone and the crusading spirit of the Liberal converts were replaced by the more stoical spirit of obligation.' (7) Indeed Home Rule was introduced as part of a set of secondary proposals in the Liberals' Newcastle

programme of 1891, therefore, it was reasonable for Asquith to argue, that it was part of the Party's official programme. Crucially however, the limitation of the powers of the House of Lords was embodied as part of four main principles. (8) However, Asquith went to the Country for a second time on this specific issue in the Autumn of 1910, although it had been put before the electorate in the previous January election. He justified his decision on the basis, that:

The death of King Edward, and the well-intended but abortive parleyings between Party leaders which followed, had postponed the decision, but had in no way transformed the character, or relaxed the urgency, of the Constitutional issue. Since the electors in January, had given us authority to proceed upon the lines of a Suspensory Veto, our plan had been definitely formulated in the shape of a Bill. It seemed to us to be only fair, both to the country and the Crown, that we should be fortified by a fresh verdict of the Electorate before we entered upon the final stage of the struggle, with the contingency, even the probability, that it might in the last resort, be necessary to invoke the exercise of the Royal Prerogative to give effect to the popular will. (9)

If Asquith felt he needed the fresh verdict of the electorate on an issue that had been previously put before them some eleven months earlier, which might lead to the involvement of the Crown in politics, it is difficult to understand or defend his reluctance to put Home Rule before the Country, given the fact that the situation was now more dire still, and was sure to involve the Crown, as the British Unionists supported the Ulster Unionists threats to resist the Bill by the use of force if it was passed without a General Election having taken place. Not since the seventeenth century had Britain faced such a constitutional crisis. A contributory factor for Asquith calling an election before introducing a Bill curtailing the veto of the Upper Chamber may have been the King's indication that he felt unable to agree to use the Royal Prerogative for the creation of peers before the Nation had been consulted on the issue. Thus, Asquith was essentially forced to put the issue to the people, as the Upper Chamber would not have agreed to curtail its own powers, however, the 1911 Parliament Act essentially meant that the

Government could no longer be compelled to put Home Rule or any Bill before the Nation. As discussed in chapter three, The January election of 1910, returned 275 Liberals and 273 Unionist candidates, but the former could expect to rely on the support of 40 Labour and 82 Irish Nationalists, which was given on certain conditions, such as the abolition of the Lords power of veto, which the Irish Parliamentary Party regarded as being a prerequisite for the passing of Home Rule. The Unionists from this time onwards consistently argued, that Home Rule was part of a 'corrupt parliamentary bargain' between the Liberal Government and the Irish Parliamentary Party. Redmond, the Unionists claimed, was using his Party's political leverage to secure Home Rule for Ireland, as Blake has argued:

From now onwards it was the normal Conservative Party line to declare that the Government's actions were wholly dominated by an immoral bargain with Redmond, whereby the latter contrary to his true convictions agreed to support the Budget in return for a promise by Asquith to destroy the veto of the House of Lords and to carry Home Rule. This belief was sincerely held, and it goes far to explain the extraordinary bitterness which soon began to mark party politics. (10)

The Unionist Party firmly believed that a Home Rule Bill did not represent the will of the nation, rather it represented the interest of the Irish Parliamentary Party. However, the Unionist Party was hardly a Party that had been historically concerned with giving effect to the will of the nation, so much as securing its own dominance through the unelected House of Lords. But, this does not detract from the fact that Asquith could at this point have gone to the Country, not so much to quell the Unionists claims, but as a matter of principle to ascertain whether Home Rule did indeed have the support of the nation. It may not have satisfied the Irish Parliamentary Party, if the Liberals had lost the election, or indeed the Ulster Unionists if the Liberals had won, but it could be argued, that in 1911 or early 1912 an election would have increased the moral authority of the Liberal Government to carry Home Rule, if it had been returned to office. It may also have



contained the issue, and forced each of the Irish parties to accept a compromise. Asquith was no doubt right, when he informed the King in September 1913, that if Home Rule (which had been the political attainment of four fifths of the Irish people for over thirty years) failed to become law, Nationalist Ireland would resort to physical force, and Britain would be forced to resort to employ the same methods to maintain order:

'It is not too much to say that Ireland would become ungovernable - unless by the application of the forces and methods which would offend the conscience of Great Britain, and arouse the deepest resentment in all the self-governing Dominions of the Crown.' And moreover, If 'such an election resulted in a majority for the Government, and the consequent passing of the Irish Bill next session, the recalcitrance of North-East Ulster would not in any way be affected. Sir Edward Carson, and his friends have told the world, with obvious sincerity, that their objections to Home Rule have nothing to do with the question whether it is approved or disapproved by the British electorate.'<sup>(11)</sup>

By this time the situation had deteriorated, Ulster Unionists had signed the 'Ulster Covenant', pledging to use 'all means necessary to defeat the present conspiracy to set up a Home Rule Parliament for Ireland'. <sup>(12)</sup> This was followed in January 1913 by the uniting of all the Ulster Volunteers into a single paramilitary force to be known as - 'The Ulster Volunteer force', under the leadership of the experienced retired army officer, George Richardson, with James Craig as staff officer. This physical force movement was soon matched by a parallel one in the South, when more militant Nationalist groups such as Sinn Fein and the Irish Republican Brotherhood, dissatisfied at Redmond moderation, formed the 'National Volunteers' in November 1913, Redmond himself, took control of this force the following summer. But it may be suggested, that if Asquith had taken a more pro-active approach in 1911, rather than to rely on Redmond and Birrell's claims, that Ulster was involved in a game of 'bluff and bluster', then a compromise would have been more attainable. It would at least have gone some way to dispelling the Unionists' claim that the Liberal Government was using its Parliamentary majority to deprive a loyal

section of the United Kingdom of their 'British citizenship' without putting the matter to the Country. That the Prime Minister refused to do so, gave the British Unionist Party a powerful propaganda weapon which they used to good effect. This is not to say that the British Unionist Party was acting wholly without principle, it did sympathise with the plight of the Ulster Unionists, but it may be fair to suggest that Ulster was essentially regarded as the best means of forcing the Liberal Government to call General Election, or convince the King to dissolve Parliament. This in turn would save the Union, which would secure Ulster's position within the United Kingdom. Ulster Unionists would most certainly not have adhered to the will of the majority, if a Liberal Government had been returned to office, but an election would have isolated them from the British Unionist Party, and it was from this Party's support that Ulster's position was strengthened. However, Asquith proceeded to introduce a Home Rule Bill, without calling a General Election, firmly believing that this would be a fair settlement of the 'Irish Question', but fair for whom?

#### HOME RULE - A FAIR AND FINAL SETTLEMENT?

Asquith introduced the third Home Rule Bill for Ireland on April 11th 1912. The terms of the Bill were relatively modest, just as the Bills of 1886 and 1893, it gave the Dublin Parliament only limited powers; defence and foreign affairs were to remain under the jurisdiction of Westminster, as was customs and excise, moreover, under clause three of the Bill, the Irish Parliament was prohibited from making laws to establish or endow religion. However, Irish Protestants believed that separation was the ultimate aim of the Nationalists Party, with Home Rule merely being the first stage towards Irish Independence. Furthermore, Ulster Unionists were convinced that once Ireland would be independent, it would without doubt be a Catholic nation. The leader of the Irish Parliamentary Party at the time of the third Home Rule crisis was John Redmond, who

like Parnell before him, seemed to be committed to achieving Home Rule by constitutional means. He also appeared to accept the terms of the of the Bill as a final settlement. Speaking of an 'Union of Hearts', declaring at the time of the Bill, that he like Parnell before him was no separatist:

'We on these benches stand precisely where Parnell stood. We want peace with this country. We deny that we are separatists, and we say we are willing as Parnell was willing, to accept a subordinate Parliament created by Statute of this Imperial Legislature, as final settlement of Ireland claims.' Moreover, on the question of religion, Redmond declared that 'we in Ireland regard no insult as grievous as the insult that we, as a Nation are intolerant in matters of religion.'(13)

Therefore, on the face of it, a Home Rule Bill posed little threat, either to the status of the people of Ireland, who would remain 'British Citizens, or to their rights, since a Dublin Parliament would not in any way challenge the supremacy of Westminster. However, like Parnell, Redmond was not above using militant and anti-English rhetoric when it was deemed expedient to do so, as is shown in his pamphlet of 1902, disclaiming the:

'moral or legal or constitutional right of the English parliament to legislate for Ireland.' Moreover, Fraud, robbery and murder have characterised the English usurpation of our country'; and the Irish submitted to this English usurpation of the government only 'because we have no adequate means for successful resistance; but we loath English rule, and we will take no part in the jubilation of the coronation.' (14)

If Ireland only tolerated English Rule because it was forced to do so, then surely if and when the opportunity arose, Ireland would attempt to free itself from the Imperial Parliament's jurisdiction? This was the fear of Ulster Unionists, and indeed British Unionists, who remained convinced that separation was the ultimate goal of the Irish Nationalist Party. That once a Dublin Parliament would be established, independence

would soon be demanded, after all had not their [the Nationalists] former and revered leader Parnell, (who Redmond claimed was no separatist) declared

no man has the right to fix the boundary to the march of a nation. No man has a right to say to his country "thus far shalt thou go and no farther", and we never attempted to fix the *ne plus ultra* to the progress of Ireland's nationhood, and we never shall.(15)

Moreover Parnell, declared at the time of the 1885 election that the Party was fighting on 'a platform with one plank, Irish Independence'. (16) Indeed in Ireland at the time of the third Home Rule crisis, there were Nationalist groups such as Sinn Fein (Ourselves) which openly advocated separatism? Arthur Griffiths' criticism of the terms of the third Home Rule Bill illustrates the discontent of more militant Nationalists towards the Irish Parliamentary Party's acceptance of such a modest Bill.

The definition of the third Home Rule Bill as a charter of Irish liberty is subject to the following corrections: The authority of the proposed Parliament does not extend to the armed man or the tax-gatherer. It is checked by the tidal waters and bounded by the British Treasury. It cannot alter the settled purposes of the Cabinet in London. It may make laws, but it cannot command the power to enforce them. It may fill the purse, but it cannot have its purse in its keeping. If this be liberty, the lexicographers have deceived us...The measure is no arrangement between nations. It recognises no Irish nation. (17)

Arthur Griffiths (who relinquished his membership of the IRB in 1906) advocated a policy of 'passive resistance' based on Hungary's struggle against Austrian rule. Irish representation at Westminster should be withdrawn, and a parliament set up in Dublin where English Acts would be obstructed. Separation was clearly Sinn Fein's ultimate goal, whilst the Irish Parliamentary Party may not have officially adopted or 'overtly' sanctioned this policy, Ulster Unionists still firmly believed that this was their covert policy. Moreover, the Home Rule Party was still associated with 'lawlessness' and

disloyalty, as the veteran Liberal Unionist, Thomas Andrews declared, when he moved a resolution welcoming Carson as their leader, at the Unionists' mass meeting of September 23rd 1911:

We will never never bow the knee to the disloyal factions led by Mr. John Redmond... We will never submit to be governed by rebels who acknowledge no law but the laws of the Land League and illegal societies. (18)

It may be argued, that Redmond faced the same problem as Parnell before him, that of having to appeal to both wings of the Party - constitutional and militant nationalism, he also had to appear reasonable to British Politicians. Therefore, his rhetoric had to be pitched to whichever audience he was addressing: this dichotomy and ambivalence in language as to what Home Rule really meant did little to alleviate the fears of Ulster Unionists, that Home Rule would eventually transpire into an Independent Ireland. Hence, Ulster Unionists argued, that the Westminster Parliament did not have the right to force them under what they perceived to be a future hostile Independent Parliament, believing that Home Rule would be an infringement of the civil and religious freedoms. It differed from ordinary legislation, since it essentially involved the concept of citizenship. As Morris has argued in his analysis of metropolitan union political theory:

The Home Rule Bill in this view was no ordinary piece of legislation. It was *fiat* affecting the very status of citizenship. The right of insurrection which writers like St Loe Strachey invoked had as its premise the Lockean argument that, by rejecting the claims of the northern Unionist to the maintenance of their constitutional position, the government was severing the bonds of consent which linked the Ulstermen to Westminster, so returning them to a pre-political state of nature. With termination of Ulster's constitutional obligation to the sovereign power a right of resistance rose against the illegitimate coercion of the government. Put simply the argument amounted to this proposition: though I must obey the Captain of the Boat while I am on the boat, I think I have a moral right to resist being thrown overboard. (19)

This analysis is supported by Miller, who has argued, that Ulster Unionists believed that as loyal citizens they should obey ordinary laws, but Home Rule would be 'no ordinary law for it would negate their citizenship.' (20) However, citizenship is a somewhat ambiguous concept within the British Constitution; people have no rights codified in law. Under the doctrine of Parliamentary Sovereignty, the people are essentially dependant on Parliament for their rights and liberties including their rights as citizens. Technically therefore, Parliament has the right to enact or repeal any law, even if that law involves a fundamental change in an individual's or section's citizenship. This graphically illustrates one of the major defects of the British Constitution, that in reality under the doctrine of Parliamentary Sovereignty, there is no concrete safeguards for the people. Under the terms of the three Home Rule Bills, however, there would be no change in an individual's citizenship as all the people of Ireland would remain British citizens, and subjects of the Crown, as indeed they did between 1921 - 1949, when Ireland left the Commonwealth and became a Republic. But, in 1949, all the people of Southern Ireland became Irish citizens, therefore, the Ulster Unionists perception that Home Rule was merely the first step towards an Independent Ireland was substantiated. Had Ulster come under the jurisdiction of a Dublin Parliament in 1921 its people would have become Irish citizens some twenty eight years later. In this at least, the Ulster Unionists claim, that Home Rule did involve the question of citizenship was a correct one. Just as importantly in 1914, the Ulster Unionists did not believe that the Westminster Parliament would or could offer sufficient protection against the possible curtailment of their civil, economic and religious freedoms under a devolved Parliament. As Dicey pointed out, the Irish Cabinet would be appointed by an Irish Legislature, with Westminster having no part in its selection. Any leader could, therefore, become Prime Minister, provided he enjoyed the confidence of the Irish Parliament, and he and his colleagues would have the authority which belongs to a Parliamentary Executive. (21) Clearly, given the overwhelming majority enjoyed by the Irish Parliamentary Party in Ireland, the Executive

would be a Nationalist one. Dicey goes on to give examples of the powers which would be held by a future Dublin Parliament:

'For the Irish Parliament can, subject to certain Restrictions...' pass any law whatever, 'for the peace, order and good government of Ireland, in respect of matters exclusively relating to Ireland or some part thereof'. Moreover, under the new constitution, 'the Irish Parliament may enact a Coercion Act applying say to Ulster, or may repeal the existing Crimes Act.' (22)

Evidently, Dicey believed a Dublin Parliament held little safeguards for Ireland's minority population, i.e. the Protestants. In his book, 'A Fool's Paradise' published as a criticism of the 1912 Home Rule Bill, Dicey made clear the Unionists position:

We detest the Home Rule Bill, moreover, because it inflicts upon Ulster an intolerable wrong; for it takes from the Protestants of that part of the United Kingdom the right to be really and directly governed by the Imperial Parliament, and by the Imperial Parliament alone. (23)

Ulster Unionists truly believed 'that Westminster Sovereignty under the Home Rule Bill would be a mere sham which the Irish parliament would dispose of at the earliest possible opportunity.' (24) It was, therefore, vital to protect their rights and liberties by any means available. Hence, in September 1911 Edward Carson made plain his plan of action, when at a meeting in Craigavon he declared:

We must be prepared the morning Home Rule passes, ourselves to become responsible for the government of the Protestant province of Ulster. We ask your liberty at the meeting of the Ulster Unionist Council to be held on Monday to discuss there this matter, and to set to work to take care so that at no time and at no intervening space shall we lack a Government in Ulster which shall be a Government either by an Imperial Parliament or by ourselves. (25)

Two days later this course of action was essentially ratified by the Ulster Unionist Council, which claimed that Home Rule had not been submitted to the judgement of the electors as a clear issue, therefore, the Council reasoned, that the country had given no

mandate for it. If the Government attempted to enact such a measure it would be in the Council's judgement 'a grave if not criminal breach of constitutional duty.' (26) A commission of five was appointed to take immediate action in the case of an emergency, and to draw up a Constitution for a Provisional Government, to come into operation if Home Rule was enacted, and would remain 'until Ulster shall again resume unimpaired her citizenship in the United Kingdom'. (27) It may be evident (with hindsight) that these men would resist any attempt to coerce them under a Dublin Parliament, for they firmly believed that their rights and freedoms would not be protected whatever safeguards were put into the Bill. The Ne Temere Decree of 1908, in which it was ordained that marriages between Catholics and Protestants not solemnised by the Catholic Church were null and void, was taken as proof that this (their interpretation) was the correct one. Under clause 3. of the third Home Rule Bill, included to protect an individual's religious freedom, and guard against such decrees as the Ne Temere, the Irish Executive was prohibited to make any religious ceremony a condition of the validity of any marriage. However, Carson when addressing the House of Commons on the subject of the guarantees on religious freedom made the point:

What becomes of your elaborate provision that they are not to be allowed to endow any religion? They will tell you that there will be no open persecution. Of course not. Nobody suggests that anybody will go and shoot a man because he is a Protestant or Catholic or *vice versa*. That is not the way it is done, and nobody is afraid of that...No, Sir it is the working of the institution for political or religious purposes and objects, and that no guarantee set up by any Parliament can prevent. (28)

The safeguards which the Bill proposed were essentially seen as 'paper ones', Ulster Unionists therefore, believed, that a Home Rule Bill would essentially endanger their rights and freedoms, and as 'British Subjects', they had a right to expect the British State to protect those rights. From the Ulster Unionists perspective, therefore, it was the



Liberal Government that was acting disloyally by their attempt to deprive loyal British citizens of their birthright, and all the protection that went with it. Moreover, under the British Constitution, people are not only citizens of parliament, they are subjects of the Crown. As Carson informed Asquith some time after the crisis, if he had been arrested he would have pleaded guilty, and stated:

My Lord Judge and gentlemen of the jury: I was born under the British flag, a loyal subject of His Majesty the King. So much do I value this birthright that I was even prepared to rebel in order to defend it. If to fight, so as to remain, like yourselves, a loyal subject of His Majesty, be a crime, my Lord and gentlemen of the jury, I plead guilty. (29)

Ian Paisley expressed traditional Unionists thinking succinctly in 1975, when he declared:

If the Crown in Parliament decreed to put Ulster into an United Ireland, we would be disloyal to Her Majesty if we did not resist such a surrender to our enemies. (30)

This was essentially the argument put forward by the Ulster Unionists at the time of the third Home Rule Bill. This argument was made possible because of the ambiguity of a person's status within the United Kingdom. Historically British people were regarded as subjects of the monarchy, however, as the absolutism of monarchy was superseded by constitutional monarchy, the people became subject to the laws of Parliament as opposed to the dictates of the Crown. Hence, the argument put forward by Ulster Unionists that they are subjects of the Crown, not citizens of Parliament is an antiquated one, but it is nevertheless a somewhat reasonable one, given the ambiguous position of the Crown within the British Constitution. Ultimately however, citizens or subjects have a duty to obey the laws of Parliament, but Parliament also has a duty to protect the rights of its citizens. The Liberal Government of 1912 was, according to Ulster Unionists, failing to secure their fundamental rights which, they believed, would be violated under a

Nationalist Government. Therefore, why did Asquith choose to dismiss their very real fears, and indeed their threats of resistance rather than seek a compromise? According to Spender, Asquith, believed that Home Rule for the whole of Ireland was the ideal to be aimed for, and 'though circumstances might require it to be modified or compromised, the Government should not start by admitting it to be impossible.' (31) In early 1912 the Liberal Cabinet had discussed the Ulster Question, and the possibility of allowing Ulster counties to contract out of the Bill should they wish to do so. Indeed both Lloyd George and Winston Churchill favoured some kind of 'special treatment' for Ulster, but were unable to persuade Asquith and their Cabinet colleagues who were committed to the Gladstonian concept of Home Rule for all-Ireland. As Asquith wrote to the King:

the Government held themselves free to make changes, if it became clear that special treatment must be provided for the Ulster Counties, and that in this case the Government will be ready to recognise the necessity either by amendment or by not pressing it (the Bill) on under the provision of the Parliament Act. (32)

This letter would indicate that the Government recognised that the Ulster Unionists had a case for 'special treatment', but were not prepared to address their grievances unless forced to do so. As Churchill recalled: 'We had been met by the baffling argument that such a concession might well be made as the final means of securing a settlement, but would be fruitless till then.' (33) To quote Spender again:

Asquith's view was that the solution would be found in the characteristic British way of compromise after debate and argument. In this he undoubtedly failed to reckon with the Irish temperament, whether in the north or south, which regarded settlements of the British type as either surrenders or betrayal. (34)

The historical relationship between the Catholic and Protestant people of Ireland did not lend itself easily to compromise through dialogue. Compromise, it may be suggested is possible in a society where there is a high degree of social consensus among the people,

as in mainland Britain. In Ireland, it may be suggested, that this consensus was in evidence only among each group i.e. Irish Nationalists or Unionists, it was not present throughout society. This made finding a fair and final settlement that would be accepted by each group a very difficult one, since it was not a question of compromise, rather what was seen as victory for one was regarded as a death-knell for the other. John Dillon quoted a pamphlet written by James Craig, in which the latter stated:

'In dealing with the Catholic Church, two things must be remembered - first there can be no such thing as equality, for if you are not top dog she will be' Dillon added 'This is the spirit of Ulster Unionism. They want to be top dog.' (35)

This perhaps lends support to the theory that there was not one 'Irish Nation' rather there was two. Redmond for the Irish Nationalists would not countenance such a possibility.

Declaring that:

Ireland for us is one entity. It is one land...Our ideal in this movement is a self governing Ireland in the future, when all her sons of all races and creeds within her shores will bring their tribute, great or small, to the great total of national enterprise and national statesmanship and national happiness. Men may deny deride that ideal; they may say it is a futile and unreliable ideal, but they cannot call it an ignoble one. (36)

Ulster Unionists dismissed claims that Ireland was one Nation, neither did they claim, that Ulster represented a separate nation, for as Buckland has argued, they had 'a very hazy sense of nationality', they neither felt themselves to be truly British or Irish, but he goes on to argue, 'Ulster Unionists were absolutely certain that they were different from the Catholic majority of Ireland.' (37) Therefore, Asquith's decision to adopt the Gladstonian line of Home Rule for all of Ireland was perhaps done with the best of intentions, but very little understanding of the deep divisions and suspicions that existed in Ireland. Ulster Unionists regarded a Dublin Parliament as a threat to their very basic rights of citizenship. Irish Nationalists on the other hand, perceived Home Rule without

the inclusion of Ulster as a mutilation of the one 'Irish Nation', and a betrayal of all its (the Nationalists) past struggles to attain justice for its people. Birch has written of Asquith:

His approach to government was marked, on the one hand, by a belief that discussion and negotiation would eventually produce a solution that would be accepted by all parties and, on the other, by an intense dislike of any violent or unconstitutional action...He had little understanding of the position of a minority which felt so strongly about an issue that it was prepared to break the rules in its campaign for what it considered to be its rights. (38)

This approach did not lend itself well to accommodating the differing demands of two militant groups, each of which was convinced it had justice on its side. Asquith, could not comprehend that a minority would use force against constitutional Government, he therefore did not believe in possibility of civil war.(39) Perhaps Asquith himself came to realise his limitations too late, when he remarked in July 1914: 'Aren't they a remarkable people? And the folly of thinking that we can ever understand, let alone govern them!' (40) In the realm of practical politics alone, it was not a shrewd move to underestimate the problems of Ulster. It may be suggested that had Asquith offered Ulster some form of exclusion at the outset, this would most definitely have gone some way to thwarting the British Unionist argument about the injustice coercing Ulster out of the Westminster Parliament, without at least appealing to the electorate, who were, theoretically at least, Sovereign. However, at this time, Asquith refused to believe that 'loyal British subjects' would resist the will of Parliament, by force of arms. It was even more inconceivable that the British Unionist Party - the Party of law and order would support them in this course of action. Irish Nationalists had a history of violence, but talk of civil war from a 'loyal' section of the United Kingdom was altogether a different matter. Therefore, Asquith may have reasoned that eventually the Ulster Unionists would have accepted the terms of the third Home Rule Bill if the Government kept its resolve. However, the

support of the British Unionist Party for Ulster's campaign of resistance, if Home Rule passed without a General Election made that an improbability.

#### BRITISH UNIONISTS - GUARDIANS OF THE CONSTITUTION?

Following the passing of the Parliament Bill in August 1911, the Conservative Party, especially the 'die - hards' had become dissatisfied with the Party's leadership. They could not forgive Balfour and Lansdowne for allowing the Bill to become law. It was this group that was most vocal in calling for Balfour's resignation, with Leo Marxse, the Editor of the 'National Review' coining the phrase BMG (Balfour must go). (41) Balfour resigned in November of 1911, resulting in a leadership contest between Walter Long and Austin Chamberlain, the success of either would have split the party, Bonar Law emerged as a 'unifying' candidate. Bonar Law's more combative 'new style' appealed to the more militant right wing of the Party, frustrated by the passing of the 1911 Parliament Act, they had already begun to turn their attention towards resisting Home Rule by force if needs be. Bonar Law made his position clear:

We can imagine nothing which Unionists in Ireland can do which will not be justified against a trick of this kind...you will not carry this Bill without submitting it to the people of this country and if you make an attempt you will succeed only in breaking our parliamentary machine. (42)

Therefore, from the outset Bonar Law's commitment to supporting Ulster in its threat as regards the use of force to defeat Home Rule, was made on condition that the Bill would become law without a General Election taking place. As Robert Sanders wrote in his diary '[Bonar Law] has said both publicly and privately that in...case [of an election] he would not support resistance. There he differs from Carson'.(43) Blake supports this view, 'Bonar Law's appeal to force was made only on the assumption that the Liberals were going to impose Home Rule without holding another General Election.' (44) This

highlights the fact, that Bonar Law's main aim throughout his campaign of resistance was to force the Liberal Government to hold a General Election. This is not to say, that Bonar Law did not sympathise with the people of Ulster, as his correspondence reveals:

These people look upon their being subject to an executive Government taken out of the Parliament in Dublin with as much horror, I believe, with more horror, than the people of Poland ever regarded their being put under subjection by Russia: they say they will not submit except by force. (45)

But his over-riding aim was to secure a General Election, as he told the House of Commons On January 1st 1913, if the Government sought and received a mandate from the people, then as leader of the Unionist Party he would no longer encourage the people of Ulster in their policy of resistance, but:

if you attempt to enforce this Bill, and the people of Ulster believe, and have a right to believe, that you are doing it against the will of the people of this country, then I shall assist them in resisting it. But if you put it before the people of this country as a clear issue, then it is a problem for Ulster, and not for me...So far as I am concerned, if it is submitted to the people of this county as a clear issue, so long as I speak for the Unionist Party I shall do nothing to encourage them in resisting the law. (46)

The strategy of the threat of armed resistance as a legitimate means to defeat Home Rule was a dangerous course of action, but Bonar Law adopted it in an attempt to convince the Liberal Government that a General Election was preferable to civil war. As he wrote to Dicey:

I need not say to you how fully I realise the seriousness of the position, and no one is more conscious than I that it is very easy to get up cheers of party followers by extreme speeches, but that in the long run we will be judged by the wisdom of the course we take. In my deliberate opinion, however, the best chance of avoiding civil war, or something very like it, is to convince the Ministers that we are in earnest, and that if they attempt to carry this through under present

conditions they will find themselves face to face with the resistance of more than half a nation. (47)

George Dangerfield, in what has become one of the most influential books on the period, has described the actions of the Conservative Party as a rebellion, 'and the most disagreeable thing about this rebellion was that it was set on foot in the name of Loyalty.' (48) Whilst it is accepted that there was a good deal of expediency in the actions of Bonar Law, as the party he inherited was essentially divided on the issue of tariff reform v free trade and also contained a militant right wing spoiling for a fight: Bonar Law may well have regarded the defence of the Union as the best means of uniting the Party, as the British Unionist Party was firmly committed to the maintenance of the Union, after all that is why it had been formulated in 1886. (49) However, the Unionists held strong ideological convictions as well. The United Kingdom for Unionists, was seen as an organic whole, a 'seamless garment' with the supremacy of the Westminster Parliament pivotal to maintaining Britain's powerful position within the Empire. At a time when the British Empire's powerful position seemed to be challenged, an Independent Ireland, with a 'disloyal' Nationalist Government was a strategic nightmare should an European War break out. (50) Crucially Unionists argued, that if Britain lost control of Ireland it would be the first step to the break up of the Empire. As Carson later argued:

If you tell your Empire in India, in Egypt and all over the world that you have not got the men, the money, the pluck, the inclination and the backing to restore order in a country within twenty miles of your shore, you may as well begin to abandon the attempt to make British rule prevail throughout the Empire at all. (51)

As Asquith however, pointed out when introducing the third Home Rule Bill, some countries in the Empire had already received self government, therefore, the granting of Irish Home Rule as such was: 'a process in strict accordance with the spirit and tendency of our Imperial development.' (52) As has been discussed however, Ireland was viewed

differently: Unionists virulently distrusted the Irish Nationalists, and Ireland's proximity to mainland Britain made it strategically important. Moreover, they (the Unionists) firmly believed that the Liberal Government was in collusion with the Irish Parliamentary Party, and this 'corrupt bargain' not only threatened the dismemberment of the Union but it had already destroyed the balance of the Constitution. Therefore, they (the Unionists) believed they had no other recourse against the tyranny of Government, other than to resort to unconstitutional action to defend the Constitution, and save the Union. One such measure, which the Unionists considered, reveals how far the Party was prepared to go to secure an election was the proposal to tamper with the Annual Army Act, regarded as 'one of the cornerstones of the constitution'. (53) The Annual Army Act dated back to the Glorious Revolution of 1688, (54) its purpose was to prevent an arbitrary executive - in those days the King from using the Army to destroy the liberties of the Nation. Each year the Bill was put before Parliament to legalise the existence of the Armed forces for the coming twelve months. If Parliament refused to pass the Act it would in effect nullify the legal status of the Army. (55) As Blake succinctly put it: 'The entire basis of military discipline would disappear if the Army Act was rejected'. (56) Crucially however, the Act like any other could be rejected or amended by Parliament, since the Constitution rests on Parliamentary supremacy. The 'die hards' had discussed this measure as a possible future strategy (should the Parliament Bill become law) in the summer of 1911. As Edward Gouling informed Garvin: 'It is quite forgotten', but must be kept secret that the Expiring Laws, which have to be renewed each year are not subject to the Veto. Nor the Army Annual'. (57) However, it was Bonar Law himself which brought the matter to the public's attention, when anxious that the 'die-hards' should not block the passing of the Parliament Bill, believing that swamping the Upper House with Liberal Peers would be more injurious than the Passing of the Bill, as the latter offered the possibility of delaying contentious legislation for two years, this at least, preserved a glimmer of hope. He wrote in the 'Times' on July 26th 1911:



[The Lords] can delay for instance the Expiring Laws Continuance Bill or the Army Annual Act, and such action on their part would undoubtedly make the continuance of the Government impossible and compel an election...It might or might not be wise to use this power, but if I am right in thinking that the House of Lords would have the means of compelling an election before Home Rule became law, that surely is not a power which ought to be lightly abandoned. (58)

Lord Selborne brought the matter up again when he suggested to Bonar Law in July 1912 that the Government might be brought down, if the Lords refused to pass the Annual Army Act. (59) Evidently the possible rejection or amendment of the Act was not something that Unionists considered in the heat of the moment or lightly, it had clearly been contemplated as an option for some time. However, it was only seriously considered by Bonar Law when all other avenues (save civil war) were rapidly closing. Bonar Law's intention was to amend the Army Act in the House of Lords to prevent the use of troops in Ulster should the Government try to coerce the Ulster Unionists. Adams argues, that Bonar Law never intended to veto the Act. (60) However, as Blake has pointed out, Unionist leaders were aware that should the Government refuse to accept the amendment, the Lords could refuse to pass the Act, thus depriving the present Government use of the Army for two years. No Government could carry on under those circumstances, and therefore, a general election would have to be called.(61) Evidently this was the Unionists aim, frustrated at the Government's continual refusal to consent to call a general election. on the issue of Home Rule. Thus at a shadow cabinet meeting on February 2nd 1914, Bonar Law proposed that should the Home Rule Bill be passed under the terms of the Parliament Act, the Army Act should be amended in the House of Lords to prevent the Army being used in Ulster to suppress resistance to the Bill. This was a grave measure, but one which was supported by Dicey:

Every one can of course see the objections to which this course is open, still I confess that the legal power either of the Crown or the House of Lords may in my

judgement be rightly and in that sense be constitutionally used for the purpose of forcing an appeal to the electors. (62)

This measure, however, did not enjoy unanimous support amongst Unionists. As Sanders noted in his diary:

most of the whips are against it, and on the whole the feeling in the party is against it. The Scotchmen say it would be fatal to Unionist hopes in Scotland. Curiously enough Ronald McNeill says it would be most unpopular with the Orangemen who say they have no quarrel with the Army. The one strong point is that it must force an election, and it is rather hard to see how to enforce one otherwise. (63)

Although Sanders notes the disadvantages, it is clear that the one over-riding advantage of tampering with this Act, would be the forcing of a General Election. However, Bonar Law was throughout anxious to retain an United Party, therefore, this may have made him reluctant to initiate such an action without the support of the whole Party. Stewart has argued, that this is why Bonar Law dropped the plan in March 1914. (64) But its very contemplation reveals that by 1914, Bonar Law was looking for any avenue to avoid civil war, perhaps, although not openly admitting it, realising that if such a situation arose, the British Unionist Party would not be totally absolved. It had actively encouraged Ulster in its campaign of armed resistance, but had qualified its support by asserting that if an election took place, which revealed that a majority of the country was in favour of Home Rule, they would not give 'active' support' to Ulster in their campaign of resistance. It is suggested that this course of action was not only a dangerous one, but a reckless one on the part of the leader of the British Unionist Party. Asquith was quite correct when he wrote to the King:

It is true that the Unionist Leaders in Great Britain have intimated that, in such an event, they would not give 'active countenance' (whatever that may mean) to the defiance of the law. But what effect can that have on men who have been encouraged to believe, and many of do believe, that under Home Rule their liberties and their religion would be in jeopardy? (65)

It has been written, that Bonar Law had little knowledge of Ireland, but Ulster he knew well. (66) It may be suggested therefore, that Bonar Law should have considered more carefully the course he embarked on in 1912. If he knew the character of the Ulster people, then he surely should have realised, even if an election was called, and the Liberals were returned to office, the Ulster Unionists would not have abided by its results. Asquith may have been at fault in refusing to put Home Rule before the electorate in 1911-12, but Bonar Law should also take some of the responsibility for the events that occurred thereafter. To ignite the already inflamed passions of the Ulster Unionists with rhetoric which referred to the Liberal Government as:

a revolutionary committee which has seized by fraud upon despotic power. In our opposition to them we shall not be guided by the considerations, we not be restrained by the bonds, which would influence us in ordinary political struggle...I can imagine no length of resistance to which Ulster will go, in which I shall not be ready to support them, and in which they will not be supported by the overwhelming majority of the British people. (67)

was irresponsible to say the least. To the Ulster Unionists it was not a matter of violating the 'spirit of the constitution' it was a question of citizenship, they were hardly going to adhere to the spirit of a constitution that they were being driven out of. Therefore, to speak in terms of no longer actively supporting Ulster in its campaign of resistance if an election was called offered little safeguard against the possibility of Civil War. Bonar Law and the 'die-hards' active agitation without doubt strengthened the Ulster Unionists resolve and belief in the early stages of the crisis at least, that Home Rule could be defeated by the threat of direct action.

#### THE ROLE OF THE KING IN THE THIRD HOME RULE CRISIS

In chapter four, Dicey's argument as to the Constitutional powers still possessed by the Crown were discussed - namely that the King still had the right to dismiss his ministers and appoint new ones, and also, although Dicey did not support the use of the King's use of the veto at the time of the 'Ulster Crisis', he nevertheless believed the Crown still possessed this right, and might on some future occasion be called upon use it. Evidently, dismissal of his ministry, was a more temperate course than the refusal of the Royal Assent, since the latter would in essence be a veto, by the unelected Sovereign against the elected representatives of the Nation. Unionists however, considered both in an attempt to force the Liberal Government to dissolve Parliament and put Home Rule before the Country. The preamble of the 1911 Parliament Act stated that:

it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation (68)

The Constitution was therefore, according to Unionists in suspense, since it lacked its customary checks and balances. Hence, the King was seen as being the sole surviving check on the powers of the Executive until the Reform of the Upper House was carried through. Sir William Anson, in a letter to 'The Times' put the point succinctly:

The Government have taken advantage of a combination of groups in the House of Commons to deprive the Second Chamber of its constitutional right to bring an appeal to the people on measures of high importance which have never been submitted to the consideration of the electorate. While this part of our constitution is in abeyance they are passing legislation which will shortly lead to civil war. Our only safeguard against such a disaster is to be found in the exercise of the prerogative of the Crown...It really comes to this, that if the King should determine, in the interests of the people, to take a course which his Ministers disapprove, he must either convert his Ministers to his point of view, or, before taking action, must find other Ministers who agree with him. (69)

The King himself, according to Nicholas, agreed in principle that a General Election should be called before Home Rule became law, but he also realised the Prime Minister 'would not agree to a dissolution, and would tender his Government's resignation, and that at the ensuing election many Liberal Candidates would seek to divert attention from the threatened coercion of Ulster by accusing the Crown of interfering in party issues.' (70) Moreover, the King believed that the 1911 Parliament Act had affected the position of the Crown, as he wrote to Asquith:

As I regard it, the King alone can compel a Government to refer to the Country any measure which hitherto would have been so referred by the action of the Lords. (71)

But Asquith was adamant that the Parliament Act had affected only the relationship between the two Houses, and the King's position had been unaltered, claiming that:

The Parliament Act was not intended in any way to affect, and it is submitted has not affected, the Constitutional position of the Sovereign. It deals only with differences between the two Houses. When the two Houses are in agreement (as is always the case when there is a Conservative majority in the House of Commons), the Act is a dead letter. When they differ, it provides that, after a considerable interval, the thrice repeated decision of the Commons shall prevail, without the necessity for a dissolution of Parliament. The possibility of abuse is guarded against by the curtailment of the maximum life of any given House of Commons to five years. (72)

However, these were the very terms that Unionists, such as Dicey objected to, since, a Bill any Bill would become the Law of the Land within the lifetime of a single Parliament. In real terms, the considerable interval, Asquith spoke of was largely immaterial: a Bill would become law, as was now the case with Home Rule, without the Government being compelled to call a General Election. Was it, therefore, constitutionally or more important perhaps, morally acceptable that the King, should remain neutral as his people drifted towards civil war? Asquith maintained that it was,

since as it guarded against the old maxim 'the King can do no wrong'. However objectionable a policy might be, the people could not hold the King responsible. (73) The King replied that he accepted Asquith's proposition that the Sovereign should act on the advice of his ministers, but he felt that in this particular instance:

the people will, rightly or wrongly associate me with whatever policy is adopted by my advisers, dispensing praise or blame according as that policy is in agreement or antagonistic to their own opinions. (74)

Moreover, as the King told Asquith in February 1914, that in his opinion, Ulster would never, no matter what guarantees were given, consent to be placed under a Dublin Parliament, and if negotiations failed civil war might be the outcome. A General Election would reveal whether the Government did have a mandate for Home Rule, and thus relieve both the Prime Minister and himself of responsibility for what followed. Asquith replied again that an Election would settle nothing, and 'the responsibility would rest, not with the King, but with his Ministers.' The answer the King gave was both profound and astute: :

that, although constitutionally he might not be responsible, still he could not allow bloodshed among his loyal subjects in any part of his Dominions without exerting every means in his power to avert it. Although at the present stage of the proceedings he could not rightly intervene he should feel it his duty to do what in his own judgement was best for his people generally. (75)

Asquith, stated that he hoped this did not imply that the King intended to refuse his assent to the Bill, this had not been done since the reign of Queen Ann, and would 'inevitably be disastrous to the Monarchy.' He conceded that the King still had the power to dismiss his ministers, but if this was to be done, it should be done, quickly before the new Session had began. The King told him that he had no intention of dismissing his ministers 'although his future action must be guided by circumstances.' (76) The King

evidently felt that the Crown still possessed the Constitutional right to refuse the Royal assent and also the power to dismiss his Ministers. Quoting Bagehote, the King had written to Asquith in the previous September:

The Sovereign too possess a power according to theory for extreme use on a critical occasion, but which in law he can use on any occasion. He can *dissolve*.(77)

One can only speculate as to whether the King would have used either of these powers at the time of the third Home Rule Bill, since the outbreak of the First World War intervened. However, it may be suggested that the crisis surrounding the third Home Rule Bill reveals the Crown still possessed these prerogatives, and indeed he considered using them. Asquith's claim that the Monarch by acting on the advice of his Ministers absolved him of responsibility was, constitutionally correct, but was it morally acceptable? Would the King have been justified in passing into law a Bill which might have plunged the United Kingdom into civil war, without ascertaining positive proof that this Bill was supported by the country? The King at the time of the third Home Rule crisis was faced by a dilemma. The Ulster Unionists did not ask for a separate parliament as did the Irish Nationalists, they merely asked to remain subjects of the Crown. They asked to remain within the British Constitution, and claimed that the suspension of the Constitution allowed a transient Government to remove their British Citizenship, did Parliament now mean the Government? It is suggested that after the 1911 Parliament Act de-facto it did, but what constitutional check was there against the excesses of this now omnipotent body? Was it reasonable to argue, that the King whom the Unionists now claimed, was the sole guardian of the constitution, could avoid responsibility by acting on the advice of his ministers, who flatly refused to put a contentious Bill to the Country? As has been argued, under the British Constitution, the people are subjects of the Crown, as well as citizens of Parliament. It could be argued,

therefore, that there is a duty on the part of the Crown to protect its subjects. And even though under constitutional monarchy, Parliament is supreme, the Crown still retains its Royal prerogatives to be used in very grave circumstances. Their execution would perhaps be detrimental to the Crown, but nonetheless, under Dicey's definition of representative democracy, if there is reasonable doubt as to whether the House of Commons, or rather the Government represents the will of the people, and it will not dissolve to put the matter to the judgement of the country, then the King has the constitutional right indeed the duty to force his ministers to do so. As Dicey argued in 1914, 'a Dissolution or an appeal to the nation may constitutionally and rightly in some cases be carried out in opposition to the will of a powerful Minister supported by a large majority of the House of Commons.' (78) 'If you say that this is not a good law then you in fact lay down the monstrous proposition that from the House of Commons, and from a Ministry supported by the House of Commons, the King has no means of appealing to the nation.'(79) This according to Dicey, was a political error in the time of George III. Now in the time of George V, it was 'an odious political heresy.' (80)

We each and all of us now admit that, though the House of Commons may represent or may misrepresent the people, the political sovereignty of the country belongs to the electors. (81)

Jennings has argued very much against this principle:

'It is neither practical nor desirable that an election should be held whenever it is suspected that a particular decision is not approved. The electorate is asked to approve not a particular decision but a course of policy.' And speaking more specifically about the crisis under discussion, he states: 'even if a fundamental change of policy is made without a mandate, all the considerations urged by Mr Asquith suggests that it is not for the King to intervene, except by warnings and protests. It is inevitable that a Sovereign who dismisses ministers or compels them to resign should be regarded as the ally of the Opposition, and as such made the subject of attack.' (82)



Jennings, it may be argued, gives a reasonable constitutional argument in that he highlights the supremacy of the House of Commons as the elected representative of the people. His argument also protects the impartiality of the Crown in the realm of politics. However as discussed above, King George V lent more towards Dicey's analysis of the Crown's Prerogative, and more importantly to its duty to protect its subjects. The King, it is suggested also appeared to support Dicey's view as regards the use of the Royal Veto. This is revealed by a letter he drafted to Asquith on July 31st 1914, although never sent, due to the imminence of the First World War. The King stated:

Much has been said and written in favour of the proposition that the Assent of the Crown should be withheld from the measure. On the other hand, the King feels strongly that extreme course should not be adopted in this case unless there is convincing evidence that it would avert a national disaster, or at least have a tranquillizing effect on the distracting conditions of the time. There is no such evidence. (83)

Clearly the King himself held that the Crown still possessed the power to dismiss his ministers and also in very extreme circumstances to withhold the Royal Assent. This study supports such a view, in a Country which sets no limits to Parliamentary authority, there are little enough safeguards against the excesses of Government, especially since the passing of the 1911 Parliament Act. The right to dismiss a ministry must if ever only be used in very grave circumstances, and the use of the veto must be even more circumspect. However, these conventions are perhaps a small if imperfect political safeguard against the dominance of a powerful Executive, which may misrepresent the will of the electors, and refuse an appeal to the Sovereign body i.e. the Nation. There is no doubt that the King's mediation went some way in persuading the parties that it was vital to seek a 'settlement by consent'. The King reasoned that civil war might be averted if Ulster was excluded from the Bill. In the autumn of 1913, therefore, Asquith finally

seemed to realise that the threats of resistance on the part of Ulster Unionists could no longer be dismissed as 'bluff and bluster', despite Redmond's assurances (as late as October 1913) that: 'all their extravagant action, all the bombastic threats, are but indications that the battle is over'. (84) Bonar Law and Carson also moderated their position somewhat by their acceptance at least to consider Ulster exclusion rather than the defeat of the Home Rule Bill in its entirety. It is evident that the intervention of the King was instrumental in persuading the parties to modify their intransigent positions.

#### ULSTER EXCLUSION

For British Unionists, Ulster exclusion was not the goal, Ulster was the means of securing a General Election, the mere fact that Bonar Law contemplated a settlement on the lines of exclusion, was therefore, not greeted by unanimous approval. The British Unionists 'had concentrated on the grievances of Ulster, not because they really wanted separate treatment for Ulster, but because they wished to stop Home Rule entirely.' (85) Bonar Law's secret talks with Asquith had already made the more militant wing of the Party suspicious, Willoughby de Broke, expressed his mistrust of a leadership that had 'already given away the Constitution and countenanced the Parliament Act.' (86) But generally British Unionists were moderating their position. More importantly perhaps was Carson's disclosure, to Bonar Law, that 'he believed that a settlement on the lines of excluding Ulster would not be seriously opposed by the Southern Unionists'. (87) As Bonar Law told Lansdowne:

If this really represents the position... it seems to me obvious that we are not justified in risking civil war for the sake of people who will take no risks, even of a financial kind for themselves. I must say therefore, that I am more hopeful than I was of a settlement of that kind. [exclusion of Ulster] (88)

Lansdowne did not like this idea much: 'We may be driven to the kind of settlement you have in view but I cordially dislike the idea and I feel sure that it would be a bad

settlement and one that would be pregnant with trouble.' (89) But according to Dutton, Carson's revelation as to the position of Southern Unionist convinced Bonar Law of the imperative of at least trying to find a 'settlement by consent.' (90) 'From an electoral point of view, moreover, nothing could be worse for the party than being put in the position of refusing an offer which the electorate would regard as fair and reasonable.' (91) Hence the British Unionists moved towards compromise. But compromise was not going to be easy, since Ulster was not the homogeneous Protestant province that Ulster and British Unionists liked to portray:

The real reason why in my opinion the Ulster question should be kept to the front is that, whether the cause be religious (or not), and I do not think it greatly matters, the population there is homogenous and determined to be treated in the same way as the citizens of the United Kingdom.. In my opinion, from every point of view, they have the right to take that attitude. (92)

This was a powerful image of an homogeneous community being driven out of the Constitution, but it was not an accurate description of the province of Ulster. Only in the four counties of Antrim, Armagh, Londonderry and Down was there a Protestant majority: Antrim, Armagh, Londonderry and Down was there a Protestant majority: Tyrone and Fermanagh were mixed, whilst Catholics were in the majority in the counties of Cravan, Monaghan and Donegal. Indeed following the by-election in Londonderry City in January 1913, the Parliamentary representation of Ulster was Nationalists 17 MP's and Unionists 16. Ulster was not therefore, a homogenous community, it was a divided one. Therefore, the portrayal of Ulster as a Protestant preserve was somewhat misleading. As Asquith pointed out to the King:

The total population of the area concerned is little over 1,000,000. It is divided between Protestants and Roman Catholics - and in that part of the world political and religious differences roughly coincide - in the proportion of seven to three (Protestants 729,624. and Roman Catholics 316,406). In two of the four counties (Armagh and Londonderry) the Protestant preponderance is not greater than six to

five. It is not, therefore, the case of a homogeneous people resisting change to which they are unitedly opposed. On the contrary, there will be a considerable and militant minority strongly in favour of the new state of things, and ready to render active assistance to the forces of the executive. In the remainder of Ulster, and in the three other provinces of Ireland, there will be an overwhelming majority of the population on that side of the law. (93)

This indeed was the real problem, Ulster was a mixed community, and it was this, that eventually prevented a solution, since the area of exclusion could not be agreed upon. As Churchill remarked following the break down of the Buckingham Palace conference in July 1914: 'the Conference lost itself in the muddy by-ways of Fermanagh and Tyrone'. (94) In November 1913, Lloyd George proposed the temporary exclusion of Ulster with automatic inclusion at the end of a fixed term. This argued Lloyd George would prevent immediate violence, since Ulster Unionists were unlikely to rebel against a change which would not affect the status of Ulster for several years. Moreover, the time limit would ensure that two general elections would be held before Ulster inclusion, therefore, the matter could be put before the electorate. (95) This is essentially the scheme which was put before Parliament on March 9th 1914, when Asquith moved the Second Reading of the Home Rule Bill, and announced his intention to bring in an amendment bill for the exclusion of those Ulster counties that wished to 'opt out' of Home Rule for six years. The opt out clause would, argued Asquith allow 'the various areas of Ulster to determine for themselves whether or not they will come into the operation of the Bill.. Moreover, the six year period would allow sufficient time :

'to test by experience the actual working of the Irish Parliament'... Moreover, 'to ensure, also, that before that period of exclusion comes to end there shall be a full and certain opportunity for the electors of the whole of the United Kingdom, both Great Britain and Ireland, with experience to pronounce whether or not that exclusion shall come to an end. (96)

Bonar Law asked whether: 'at the end of six years the counties which have the option now are not to have it for themselves?' (97) Asquith made it clear that after a period of six years, unless the Imperial Parliament decided otherwise, the counties would be included. (98) Carson would not, indeed could not, accept such a proposal. As he told the Commons:

I know very well that the motto of every Government...is: 'peace in our time, O Lord.' But you do not get rid of the difficulty by [delaying] it to-day or tomorrow, or a year hence, or be it six years hence. The difficulty will remain, and Ulster will be a geographical and physical fact, and the feelings of loathing and horror of your Bill, the feelings of your threats to these men which have driven them to combine themselves together in a federation to try and stay in this Parliament and under this Parliament, that feeling will grow and be taught to their children from generation to generation. Do not tell me and the North of Ireland that they readily forget these things. No, Sir, the difficulty will be not be less after six years, but it will be greater...Take away the time limit, and instead put the limit of Parliament as elected by the people whenever they may determine, having regard (sic) to the feeling of Ulster itself, and then I shall go to Ulster and I make that offer to the right hon. Gentleman. (99)

Redmond for the Nationalists accepted Ulster exclusion reluctantly, stating that: 'The Prime Minister promised on the first night of the Session that he would make new proposals with the object, if possible of conciliating Ulster opposition. To-night he has fulfilled that promise, and in my view he has gone to the very extremest limits of concession'. (100) However, O'Brien took a more militant stand, claiming that, Bonar Law should be a little more jubilant 'over his victory to-night in the official recognition of his new Orange Free State.' (101) That afternoon Carson left the House of Commons and headed for Belfast, there were many who believed that he intended to set up a Provisional Government. Compromise in the traditional British way did not seem attainable, and this tried the patience of the more radical members of the Liberal Government. Winston Churchill, frustrated by the Unionists' rejection of the

Government's exclusion proposal gave an inflammatory speech at Bradford on March 14th, stating:

If Ulster is to become a tool in party calculations; if the civil and parliamentary system under which we have dwelt so long, and our fathers before us, are to be brought to the rude challenge of force; if the Government and Parliament of this great country and greater Empire are to be exposed to menace and brutality; if all the loose, wanton, and reckless chatter we have been forced to listen to these many months is in the end to disclose a sinister and revolutionary purpose; then I can only say to you: 'Let us go forward together and put these grave matters to the proof!' (102)

The Cabinet three days earlier (March 11th) had decided to take what were described as preventative measures, should the U V F attempt a coup. As Asquith informed the King:

Some considerable time was given to a discussion of the military situation in Ulster, suggested by the latest series of police reports, which indicate the possibility of attempts on the part of the 'Volunteers' to seize by coups de main, police and military barracks, and depots of arms and ammunition. (103)

However, Unionist leaders took these measures together with Churchill's speech as signs that the Government meant to coerce Ulster. Whether or not there was a 'plot' to coerce Ulster is still a matter of debate, but the crucial thing to bear in mind is that the Ulster Unionists at the time genuinely believed there was one. Newspaper reports indicated that arrest warrants were to be issued. Stewart gives one such an example: 'The Observer' on the 19th March 1914, stated that the Government were determined to issue about 200 warrants for the arrest of the leaders in Ulster, but the warrants were not to be executed by the police until the receipt of a codeword, which was to be changed every Sunday. (104) He goes on to give further examples of how the idea of a 'plot' was fuelled. (105) The actual details, it may be argued, are less important than the fact that the Ulster Unionists and indeed many of the Right in Britain were convinced that the Government meant to use the Army to coerce Ulster. Crucially this was the impression gleaned by many Army

officers in Ireland. The controversy surrounding the actual events of the Curragh which began on March 21st 1914, when Brigadier-General Gough and fellow officers of 3rd Cavalry Brigade threatened to resign rather than move against Ulster, and actually extracted a written assurance from the Cabinet that the Army would not be used to enforce Home Rule on Ulster are well documented elsewhere (and will not be gone into detail here) (106), other than to contend, that the Unionists rhetoric throughout the 'Ulster Crisis', that the Army would not obey the Government, if it was ordered to use force against the Ulster Unionist must inevitably have contributed to the decisions taken by the Army officers at the time of the Curragh incident. Perhaps the most important being the British Covenant of March 1914, which stated:

We hereby solemnly declare that, if the Bill is so passed, we shall hold ourselves justified in taking or supporting any action that may be effective to prevent it being put into operation, and in more particularly to prevent the armed forces of the Crown being used to deprive the people of Ulster of their rights as citizens of the United Kingdom. (107)

Dicey expressed his concerns as to the claims of some British Unionists, such as Amery, who believed and stated that officers in the army had a legal right to resign their posts as a protest against an attempt which they condemn, to coerce Ulster:

This I believe is a mistake. There are certainly cases which seem to me strongly to imply that an officer in the army has no right of resignation whatever. This I believe to be common law, and I feel to be common sense. (108)

Quoting Carson's letter to the 'Times' on December 4th 1913, 'The plain truth is that the English nation will never stand tampering with the Army'. (109) However, the Unionists' rhetoric throughout the campaign, that the Army would not shoot 'loyal' citizens together with the their contemplation of tampering with the Annual Army Act, the latter measure, even gaining the support of Dicey without doubt from the Officers perspective, lent support to their course of action to resign rather than march on Ulster. The actual events

surrounding the Curragh incident, lasted probably until March 30th, when Asquith took on the office of Secretary of State for War, and the following Saturday, April 4th, addressed a meeting at 'Ladybank' and uttered the famous phrase, 'The Army shall hear nothing of politics from me, and in return I expect to hear nothing of politics from the Army'. (110) The ramifications of this incident were profound for the Government. It essentially meant that the Government could no longer contemplate using the military to force Home Rule upon Ulster, despite Asquith's negation of the 'peccant paragraphs' on March 25th. Prior to the Curragh incident the Government could claim that as a last resort it could use the Army to impose Home Rule in Ulster, however, following the debacle it could no longer make this claim. (111) Asquith himself stated this as early as March 22nd:

The military situation has developed...and there is no doubt if we were to order a march upon Ulster that about half the officers in the Army-Navy is more uncertain-would strike. The immediate difficulty in the Curragh can, I think, be arranged, but this is the permanent situation, and it is not a pleasant one. Winston is all for creating a temporary army *ad hoc*-but that of course is nonsense. (112)

The use of the Army would most certainly have been a last resort for the Liberal Government, the image of Home Rule being forced on 'loyal' British subjects at the point of a gun was hardly likely to appeal to British public opinion, (113) moreover, by contemplating using the Army to coerce Ulster, whilst refusing to put Home Rule before the Country, the Liberal Government to a large extent forfeited its moral authority. It gave the advantage back to the Unionists, who could claim that the Government was prepared to use the Army rather than the ballot box to enforce its policy of Home Rule on a reluctant section of the United Kingdom. The question of coercing 'loyal' citizens out of the British Constitution poses a moral and emotive question: and very much depends on whether the Liberal Government accepted in good faith the assurances of the Irish Parliamentary Party that Home Rule would be a final settlement. If that was so, then it



could defend itself on the basis that Home Rule would not in effect change the Ulster Unionist status, they would still be British citizens, irrespective of the fact, that subsequently the Ulster Unionists perception was the correct one. However, from the perspective of the Ulster Unionists it was a question of citizenship, and it may be suggested, that it was not acceptable that the Liberal Government should have used its Parliamentary majority to impose Home Rule on Ulster. As the King asked Asquith:

Is there any precedent in our Country for such a change [Home Rule] to be made without submitting it to the Electorate? (114)

Dicey may have been an ardent Unionist, but he gave a sound constitutional argument against the passing of the third Home Rule Bill by virtue of the 1911 Parliament Act, that when there is reasonable grounds to suspect that the House of Commons does not represent the will of the electorate, it should dissolve to seek the verdict of nation, Therefore, it is argued, that the Government did indeed exceed its legitimate authority, by not submitting Home Rule to the Country. The crisis surrounding the third Home Rule reveals weaknesses in the British Constitution, the main one being that the Party in power has the potential to pass a Bill which fundamentally changes the fabric of the Constitution and even an individual's citizenship without submitting the issue to the nation. However this raises an equally important point, does the nation have the right to determine the fate of a minority? Mill warned against the 'tyranny of the majority', therefore, should Ulster's citizenship be determined by the majority? The 'Ulster Crisis' raises more fundamental issues than the granting of a devolved Parliament to Ireland, it reveals clearly the lack of safeguards in a Constitution that does not fundamentally protect the rights of minorities, or even provides safeguards for any of its citizens. The third Home Rule Bill revealed that the British Constitutional 'system lacks a concept of entrenched rights beyond the reach of the current parliament' (115). The doctrine of Parliamentary Sovereignty was thus shown to be a dangerous one, in that it did not

sufficiently safeguard the rights of British citizens, that individuals or groups essentially depended on Parliament for their rights and liberties. Westminster learnt very few lessons from the 'Ulster Crisis', from 1921 onwards the Ulster Unionists once again took up their position of Protestant Ascendancy, as Ulster essentially became a one party state, the Westminster Parliament could have intervened, but it chose not to. Thus reinforcing the Catholic/Nationalists historical perception that Protestant Ascendancy and the British State were the twin pillars of injustice. Today in Ulster, each side is still seeking its own perception of 'justice' and Westminster is still being called upon to act as impartial arbiter, a role it is still seemingly ill-equipped for. In the last analysis the 'Ulster Question' will probably be settled not by compromise, but by the numbers thesis, if the demographic trends continue, there will be a Republican majority in Ulster in the not too distant future. Under the terms of the Government of Ireland Act of 1920, a change in the constitutional position of Ulster can only be attained with the assent of the majority, this will most certainly lead to the unification of the one 'Irish Nation', as the Catholic population vote to end what they perceive to be an unjust State. Will a then minority Unionist population abide by the decision of the majority? This is doubtful to say the least, given Ireland's history of sectarian conflict and its tradition of direct action, together Ulster's present culture of paramilitarism. This culture of sectarian violence is graphically set out by the Sunday Telegraph's correspondent, Jenny McCartney:

The paramilitary beatings continue, but no one really talks much about them now. They go unclaimed and largely unremarked. The days when a vicious beating from a gang of men in balaclavas could draw a condemnation from President Clinton are long gone: today, it might not even make the domestic lunchtime news. (116)

This is the legacy of partition, it is also the legacy of Westminster's indifference to its 'Irish Question'. Whether, a solution can be found to the 'Ulster Question' is yet to be seen

as the resonances of not only the 'Ulster Crisis', but of Ireland's history are felt today, as Westminster continues to try to find a solution to what is effectively its 'British Question'.

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## CONCLUSION

It is evident that any regime finds it difficult to successfully accommodate the differing and opposing demands of a divided society; conflict resolution is never an easy, and often a thankless task. The 'Irish Question' is one such example, which has tested the British Constitution since it has called on the Westminster Parliament to satisfy the differing ideals and aspirations of two conflicting groups, the Irish Nationalists and the Ulster Unionists. In essence it has tested the British theory that all political issues can be resolved by Parliament through debate and compromise. This theory has not lent itself well to finding a solution to the 'Irish Question', or what is now referred to as the 'Ulster Question'. Both Gladstone and Asquith held the belief that Ireland's minority population - the Ulster Unionists would obey the supremacy of Parliament. Prior to 1911 at least, it seemed incomprehensible, despite all the violent rhetoric and practical preparations from as early as 1882 (1) that the Ulster Unionists would carry out their threat of armed resistance against the forces of the State. Gladstone and Asquith, were convinced that a solution would be found by constitutional means; in this they failed to comprehend that when dealing with a divided society, compromise is not easily attainable. The historical relationship between the Protestant and Catholic people of Ireland meant that victory for one was seen as the destruction of the other. A Dublin Parliament, from the perspective of the Ulster Unionists, would be controlled by the Irish Parliamentary Party, and as has been shown, this Party was associated with 'revolutionary' and separatist groups. Moreover, its links with the Catholic Church, was seen as evidence that Home Rule would to all intents and purposes mean rule by Rome. It is suggested that from 1886 onwards the Ulster Unionists built up a strong moral case against being essentially forced out of the British Constitution and under a Dublin Parliament. They based their case on the rights of citizenship. Although as has been argued, Home Rule would not have changed their status as British citizens and subjects of the Crown, citizenship is more or less valueless, unless Parliament is able to adequately protect an individual's rights and

freedoms. The Ulster Unionists believed that the safeguards contained in the Home Rule Bills, such as the provision that a Dublin Parliament would not be allowed to endow any religion would not be sufficient protection against the possibility of discrimination. (2) As Dicey argued, under direct rule Westminster, as the supreme legislative body could pass or repeal any law throughout the United Kingdom, however, the granting of an Irish Parliament, albeit on purely Irish affairs, would in Ireland, abolish 'the actual and effective control and authority of the Imperial Parliament.' (3) Irish Protestants could, therefore, argue, that whatever safeguards were put into a Home Rule Bill, it would not be sufficient to protect their rights and freedoms. Indeed, this is was the argument put forward by Carson at the time of the third Home Rule Bill:

What becomes of your elaborate provision...it is the working of the institution for political or religious purposes and objects, and that no guarantee set up by any Parliament can prevent. (4)

Indeed as Dicey argued:

The positive characteristic [of the British Constitution] is the absolute and effective authority of the Imperial Parliament throughout the length and breadth of the United Kingdom....Any law affecting the United Kingdom not only lawfully may, but can in fact, be changed by the Imperial Parliament. (5)

Under a unitary State, Parliament had the authority to pass laws in all parts of the United Kingdom, but a Home Rule Bill, if passed would establish 'a dual control in Ireland.' (6) This the Ulster Unionists believed would be detrimental to their rights. The British Constitution relied on a tacit agreement to respect the rights of minorities therefore by forcing the them under a Dublin Parliament, the Liberal Government was, according to Unionists, ignoring this principle. (7) The Liberals could however, make the counter claim, that by denying the Nationalist population in Ireland (which were four fifths of the population) its devolved Parliament, which had been their unwavering goal since at

least 1885, the Unionists were ignoring the rights and aspirations of the majority of the 'Irish Nation.' It is evident that both the Irish Nationalists and the Ulster Unionists from their own perspectives, could claim that morally each had a strong case for and against the granting of Home Rule. The weakness of their argument lay in the fact, that neither essentially recognised, or more accurately would acknowledge the just claims of the other. Ireland for the Nationalists was one entity one Nation, of which Ulster was an integral part, whilst for Ulster Unionists, there was a denial that Ireland had ever been a separate Nation: it was perceived or at least promoted as an integral part of the United Kingdom, codified in the Act of Union. Gladstone and Asquith's decision therefore, to introduce Home Rule, from the Ulster Unionists perspective, was the negation of their Birthright. During the time of the first and second Home Rule Bills, Ulster Unionists could feel secure that even if the House of Commons abandoned 'loyal subjects of the Crown', the Upper Chamber would protect their rights. However, the passing of the 1911 Parliament Bill changed the political landscape, and highlighted how little concrete safeguards the British Constitution holds for its citizens. The third Home Rule Bill revealed that the British Constitutional 'system lacks a concept of entrenched rights beyond the reach of the current parliament'. (8) Moreover, Miller goes on to argue that, the Lords power of veto forestalled for a time, but its abolition revealed:

the stark reality of modern British politics that a citizen's sense of security in his fundamental rights depends totally on his sense of co-nationality with the whole people who constitute the body politic. That the system has worked so well within Great Britain itself is testimony to the self- perceived homogeneity of the people of that island. (9)

The doctrine of Parliamentary Sovereignty works well in a society that perceives itself as socially homogenous. This is not to say that British society itself was homogenous, there were cultural and regional differences, but there was a sufficient social consensus among

the people to ensure a stable political system. As discussed in chapter two, Balfour put the point well, when he stated that our:

whole political machinery pre-supposes a people so fundamentally at one that they can safely afford to bicker, and so sure of their moderation that they are not dangerously disturbed by the never-ending din of conflict. (10)

The Ulster Unionists may not have identified fully with the British people, but it is suggested that they perceived themselves better protected under a British Protestant constitution, rather than as a minority in a future Catholic State. Essentially, at the time of the third Home Rule Bill, the reality of the difficulties of dealing with a divided society was laid bare, as the Liberal Government pushed ahead with its determination to introduce Home Rule in the face of the threat of armed resistance, not only from the Ulster Unionists, but also from a faction of the British Unionist Party, which claimed that the Government was exceeding the bounds of its legitimate authority. Gladstone's decision to introduce a Home Rule Bill in 1886, without having submitted the policy to the electorate in the recent General Election split the Liberal Party, when Hartington accused him of exceeding his moral authority, by introducing a Home Rule Bill, which had not been referred to the people. Charging Gladstone with introducing a Bill which would involve an organic change in the Constitution without a 'mandate' from the people. Gladstone referred to the 'peoples' mandate' as an 'extraordinary doctrine, not laid down by any constitutional expert'. (11 ) Under the doctrine of Parliamentary Sovereignty, Parliament, can enact or repeal any law, since it is the supreme governing body, and an examination of the Constitution during the nineteenth century reveals that generally, politicians did not feel obliged to submit to or adhere to a set of election policies. This was not the role of Parliament, its members were representatives of the whole Nation, rather than the representatives of their constituents. But the electoral reforms that occurred during the nineteenth century, such as the extension of the franchise and the

redistribution of seats, was accompanied by the emergence of mass disciplined parties, which were obliged to seek the support of the electorate to gain office. This is not to say, that the United Kingdom was in any real sense a democratic state, there was still a limited franchise, but the move from oligarchic to popular politics had began . It became more prevalent for politicians to speak in terms of 'the peoples mandate'. This doctrine assumed more importance following the passing of the 1911 Parliament Act which curtailed the House of Lords power of veto. Prior to this Act, for a Bill to become law it needed the consent of both Houses of Parliament, however, thereafter, a Bill would become law, after two years, even if rejected by the Upper Chamber, the crucial point being that a Bill would become law within the lifetime of a single parliament. This in essence, meant that a Government could not be compelled to put a Bill, any Bill before the electorate. The danger of this was articulated by Balfour, when he argued, at the time of this debate in February 1910:

take care that whatever changes are introduced into the constitution to see that it is not the sport of a chance majority. (12)

The reality was however, the Constitution offered little concrete safeguards for its citizens, the Lords may have portrayed themselves as guardians of the electorate, but they had been culpable in ignoring those rights. Traditionally, Unionists legislation passed the Lords with very little difficulty, but this partisanship reached new heights between 1906 and 1910, as the leader of the Conservative Party in the Commons, Balfour fulfilled his pledge that the Unionists should govern Britain and the Empire, even out of office. Government Bills were blocked, despite the fact that the Liberal Party had received an unequivocal mandate for their policy of social reforms in 1906. The Unionists' argument in 1912 that the Liberal Government did not have a 'mandate' from the people, since Home Rule as clear issue had not formed a major part of the Liberals' election

programme in the two elections of 1910 had a somewhat hollow ring to it. However, it did raise the fundamental issues as to what was or at least should be the limitation of Governmental authority. The Liberals could indeed claim that Home Rule had formed part of its official programme since 1891, but as has been argued, so too had the curtailment of the House of Lords powers. Asquith however, went to the Country for a second time on this issue in 1910, the Liberals fought the election on the question of who governs, 'peoples or peers'. The Liberals could claim, that as the democratically elected Government of the people, it had the right to pass a Home Rule Bill. However, Dicey's argument, that when there is a reasonable doubt as to whether the House of Commons represents the deliberate will of the electorate, a Government should dissolve to seek the verdict of the nation is a powerful one. The crisis surrounding the Third Home Rule Bill, brought into focus the possibility that Parliament could give effect not to the will of the electorate, but to the determined will of a faction, that might hold the balance of power at Westminster. This was the Unionists' contention, that Home Rule did not represent the will of the nation, rather the interests of the Parliamentary Party. The pre-World War One Constitutional crises revealed that Parliament essentially meant the Government of the day. Not the revered balanced constitution Dicey spoke of:

the Queen, the House of Lords, and the House of Commons; these three bodies acting together may be aptly described as "the Queen in Parliament", and constitute Parliament. (13)

These three interlinking parts are what made up a balanced Constitution, but as Freeman wrote in 1872:

I may mark a change of language which has happened within my memory... We now familiarly speak... of the body of Ministers actually in power, the body known to the Constitution but wholly unknown to the law, by the name of 'the Government'. We speak of 'Mr Gladstone's Government' or 'Mr Disraeli's Government'. I can myself remember the time when such a form of words was



unknown, when 'Government' still meant 'Government' by King, Lords and Commons. (14)

This change in language was representative of powerful changes in the British Constitution. The balanced Constitution was replaced by the domination of Government, which essentially meant the dominance of a Party. The Liberal Government insistence on introducing a Home Rule Bill without consulting the nation, was the affirmation of this change. Should Asquith therefore, have submitted Home Rule to the verdict of the people? This study has argued, that yes the Liberal Government should have dissolved Parliament and put the Bill to the people. It is not suggested, that the Ulster Unionists would have adhered to the verdict of the electors, for the Ulster Unionist Council made it plain, that:

it is incompetent for any authority, party or people to appoint as our rulers a government dominated by men disloyal to the Empire and to whom our faith and traditions are hateful (15)

However, by refusing to put the Bill before the Country Asquith to a large extent forfeited the Government's moral authority, it is accepted that technically, under the doctrine of Parliamentary Sovereignty the Government had the power to pass the third Home Rule Bill without reference to the people. But this very power reveals critical weaknesses in a flexible constitution that sets no limit on the authority of Parliament, which after 1911 meant the Government of the day. Essentially, the British Constitution with its doctrine of Parliamentary Sovereignty allows the Party in power to largely determine what is constitutional. That is the danger of a flexible constitution that sets no limits to the authority of Government. The unassailable power of the Executive has been a recent subject of much debate, as both under the Thatcher and the Blair Government, the House of Commons has almost become irrelevant. Moreover, Blair has been accused of adopting a presidential style of leadership. The resonances of the 1911

Parliament Act are still felt today aptly captured in the words of Selborne, written at the time of the crisis:

Under to cloak and pretence of the issue of the rights of the people versus the peers, the people are being robbed by the House of Commons of the Constitutional power to say the last word in great constitutional issues, and the Prime Minister of the day is being lifted into the position of a dictator. (16)

Tony Blair today continues to pursue his 'moral crusade' against the 'forces of terrorism', Parliament was recently recalled to discuss the matter, and there is an attempt outwardly at least to build up a consensus. It is argued, that in the end, Blair will follow his own preferred course of action, irrespective of the opposition of some MP's or the public, but the fact that Blair did recall Parliament, even if only to debate the matter, and he is attempting to gain public support for his action, shows that there is a limitation to Parliamentary Sovereignty, or more accurately today, Governmental authority. The Prime Minister would not wish for mass demonstrations against the Government's policy, if it can be avoided. To quote Dicey, sovereignty: 'is limited on every side by popular resistance'. (17) It is argued, that the third Home Rule Bill reveals in one sense the limitless authority of Government, but it also highlights its limitation. The Ulster plan of campaign, the threat of active resistance, was partially successful, since it did gain special treatment for Ulster. Today, the British State is still limited in its ability to deal effectively with what has now become known as 'The Ulster Question'. It is still limited by the threat of popular resistance, this is the difficulty of finding a solution to a divided society. However, Westminster learned little from the Ulster Crisis of 1912 - 1914, for after 1921, it retreated to its historical position of non-intervention in Irish Affairs. As early as 1922 the Craig Government abolished PR at local Government level, this was followed at National level in 1929, and ensured that the Unionist Party won every election between 1920 -1969. The Catholic population was discriminated against in spheres such as housing, and employment. As McGarry and O'Leary have argued:

'Hegemonic domination was cemented by systematic discrimination'. (18) Carson's words at the time of the third Home Rule Bill, echoed not against the Protestant people of Ulster, but against the Catholic minority:

What becomes of your elaborate provision...it is the working of the institution for political or religious purposes and objects, and that no guarantee set up by any Parliament can prevent. (19)

Westminster could have intervened, it had the legislative powers to do so, but successive Governments chose to ignore 'The Ulster Question' it was conveniently left out of British politics, until media coverage in the 1960's forced the Government to address the issue. By then it was largely too late, each side had retreated into their entrenched historical positions, the Nationalists believed that they would never attain justice under the British Constitution, whilst the Unionists clung on to their rights of British citizenship. Today the British Government is still attempting to find a solution to its 'Ulster' or rather its 'British Question', and it is still limited in its options by the threat of resistance from either community.

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- 2 See for example Carson's address to the Commons - Introduction of the Home Rule Bill 11th April 1912 Hansard fifth series vol 36 cols 1429-1443
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- 6 A V Dicey A FOOL'S PARADISE: BEING A CRITICISM ON THE HOME RULE BILL OF 1912 (1913) p96
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- 14 Edward Freeman 1872 cited in G Marshall and G C Moodie SOME PROBLEMS WITH THE CONSTITUTION (fourth revised ed) 1967 p60
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- 17 A V Dicey LAWS OF THE CONSTITUTION op cit p79
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