

NATIONAL SECULAR SOCIETY

HOME RULE  
AND  
FEDERATION.

WITH REMARKS ON  
LAW AND GOVERNMENT AND INTERNATIONAL ANARCHY;  
AND WITH A PROPOSAL FOR THE  
FEDERAL UNION OF FRANCE AND ENGLAND,  
AS THE MOST IMPORTANT STEP TO  
THE FEDERATION OF THE WORLD.

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BY  
A DOCTOR OF MEDICINE,  
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“The time may come when the aspirations and the wishes of some among us may be realised, and we shall see all the possessions and the colonies of England united in one great federation. When that time comes we may have a great federal authority which will be prepared to take the place, the supreme place, in the government of our Empire which is now occupied by the Imperial Parliament.”—LORD HARTINGTON (*Speech at Norwich, Feb. 27, 1889*).

“Some of us who look with hope to a possible federation of the whole of the dominions now nominally or really subject to British rule, recognise that we shall then have to face the huge difficulty of constitution-making.”—MR. BRADLAUGH (*National Reformer, Feb. 10, 1889*).

THE QUESTION OF  
IRISH HOME RULE.<sup>1</sup>

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I.

As a warm friend of Ireland, though an opponent of Home Rule in the sense of an Irish Parliament separate from that of Great Britain, I may perhaps be permitted here to make a few remarks on the great and complicated Irish question. I know that on this subject I have the misfortune to differ in certain respects from some whose opinion I value very highly and with whom I am anxious to be agreed; but I think that the differences are partly owing to the ambiguity in the phrase "Home Rule" or "local self-government", which is used in at least three widely different senses, and that at bottom we have the same earnest desire—that the supremacy of the Imperial Parliament and the unity of the kingdom should be preserved, and that Ireland should not be separated from Great Britain.

The Irish question has been divided into the three parts of local self-government, or Home Rule, the land system, and social order—including under the first terms not only an Irish parliament, whether on the colonial or the federal model, but also minor forms and degrees of local self-government, and meaning by "social order" compliance with law and the repression of outrages and boycotting; and besides the above there is a fourth question which should, I think, be attentively considered, namely, the Irish Churches, Catholic and Protestant, and their relation to the State. I need scarcely say here, moreover, what Mr. Bradlaugh and Mrs. Besant have so nobly and strenuously contended for, that the population question lies at the very root of the social evils, in Ireland as in all other old countries, and should be carefully taken into account.

The most serious objection to an Irish Parliament, I venture to think, is this—that if such a parliament were "independent", or in other words if it were neither subject to the British Government nor subject along with it to a higher common government, it would make Ireland an independent, separate,

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<sup>1</sup> Reprinted from the *National Reformer*.

or foreign State like France or Holland; while if, on the other hand, it were "dependent" on the British Government, it would put Ireland in an inferior position to that which she now occupies, and it would therefore not content Mr. Parnell and his followers but would be used by them as an instrument for effecting entire separation. Mr. Parnell claims for Ireland "legislative independence" and "the full and complete right to arrange our own affairs, to make our land a nation, and to secure for her, free from outside control, the right to direct her own course among the peoples of the world". But an independent legislature free from outside control could not possibly, as it seems to me, exist in Ireland unless it were entirely separated from Great Britain. The word "independent" sometimes means distinct or detached, but its proper sense, and the sense in which it is evidently here used by Mr. Parnell, is "not dependent" or "not subject to outside control". An independent legislature or government is therefore equivalent to a supreme or sovereign government, and means a government which is not subordinate or subject to the commands of any higher authority. Such a government can only exist in a separate or independent State, for the very meaning of an independent State is a political society consisting of a sovereign government and its subjects, and there cannot be two sovereign governments in the same State. "By 'an independent political society', or 'an independent and sovereign nation'," says Mr. John Austin in his lectures on jurisprudence, "we mean a political society consisting of a sovereign and subjects, as opposed to a political society which is merely subordinate". Mr. W. A. Hunter, M.P., a high legal authority, says also in his work on Roman Law, "Since the time of Hobbes, the proposition that sovereign power is one, that there cannot be two sovereign powers in one State, has become a political commonplace". There may be many distinct legislatures or governments in the same political community, as we see for instance in the United States and in the British Empire, but there can be only one independent and sovereign government to which all the rest are subject, for otherwise the community could not form a single State.

The great majority of Englishmen who are in favor of a separate Parliament for Ireland have, I believe, radically different views and aims on the subject from Mr. Parnell. They do not wish that the Irish Parliament should be independent and free from outside control, which would inevitably have the effect of making Ireland a foreign country. Thus Mr. Bradlaugh holds that there should be a *federal* union in these islands, as in the United States, and that Ireland should be fully and constantly represented in the Imperial Parliament. He said at a Home Rule meeting in St. James's Hall, in

explaining his views on the subject, "Let Ireland share in Imperial legislation. It was asked 'How will you prevent the Irish members from voting on English, Scotch, and Welsh questions?' Let English, Scotch, and Welsh questions go to English, Scotch and Welsh assemblies. Let the Parliament of England be an Imperial Parliament." "I contend", he writes in another place, "that Ireland ought not in any event to be deprived of its fair and constant representation in the Imperial Parliament. As I have often said, my desire is that all local affairs should be withdrawn from the Imperial Parliament and dealt with under wide powers of local self-government." A political community like the United States is often called a composite State and is said to be under a supreme Federal Government. Mr. Austin carefully examines the constitution of the United States with the view of determining where the sovereignty resides, and he shows that all the different legislatures, both State and Federal, form *together* the sovereign government, to which each of these legislatures, taken singly, is subject or subordinate; just as in our own constitution, and in all other cases where the sovereign power is vested not in a single person but in a body of persons, each member of the body, taken singly, is subject to the whole body taken collectively. "In the case of a *composite State* or a *supreme Federal Government*", says Mr. Austin, "the several united governments of the several united societies, together with a government common to those several societies, are jointly sovereign in each of these several societies, and also in the larger society arising from the Federal union. Or, since the political powers of the common or general government were relinquished and conferred upon it by those several united governments, the nature of a composite State may be described more accurately thus: As compacted by the common government which they have concurred in creating, and to which they have severally delegated portions of their several sovereignties, the several governments of the several united societies are jointly sovereign in each and all." To this aggregate and sovereign body, he says, "each of its constituent members is properly in a state of subjection". Under a Federal system, therefore, though the Irish Parliament would be a part of the sovereign body, it would not be independent, but would on the contrary, if taken singly, be in a state of subjection to the whole body; and hence Mr. Parnell has always, I believe, been opposed to the Federal scheme, when regarded as an ultimate aim or policy for Ireland.

The other leading scheme of Home Rule which has been proposed, and of which Mr. Parnell is (or was until lately) an adherent, is that called the *colonial*, from its resemblance to the form of government in many of the English colonies. Under it the Irish members would be excluded from the House of

Commons, or would at most only take part in debates on Imperial questions, and Ireland would have her own legislature for the management of Irish affairs, with an executive or administrative government responsible to it. This is evidently a proposal of a widely different and far more separatist character, repealing as it does the union of the British and Irish Parliaments, and I believe that comparatively very few English Liberals or Radicals are in favor of it. They object to the exclusion of the Irish members, or to their taking part only in certain debates, even if the latter suggestion could be carried out in practice. Mr. Bradlaugh, for instance, says of such a suggestion, "with this part we utterly disagree. We contend that every member of the House of Commons should have equal right, but that purely local questions should be relegated to local assemblies." It was keenly debated in the House of Commons whether the Imperial supremacy would be retained, or whether the two countries would be separated, if the Irish members were excluded, and the controversy evidently turns upon the question whether or not the Irish Parliament would be independent. If it were dependent on the British Government, the supremacy of the latter would be retained and the countries would remain united, but Ireland would be placed in the same intolerable position of inferiority as she occupied prior to 1782; if it were independent, on the other hand, then Ireland as we have just seen would be a foreign country. In the course of the debate, Sir Henry James defined supremacy as "the power of making laws for the whole dominions of the Crown". He also defined sovereignty (which, he said, is another phase of supremacy) as consisting in two things, namely, that a Sovereign Parliament "must be subject to the control or decision of no man or body", and that "it must be able to alter and re-model its own constitution"; and he maintained that if the Imperial Parliament, after the departure of the Irish members, had no longer the power of legislating for Ireland, its supremacy would be gone and the countries would be entirely separated from one another. "I am content", he said, "to take my stand upon the dictum that if you give up the abstract right—and I make no distinction between abstract right and right—of legislation, the country over which you give it up becomes an independent and foreign State". It is true that the two countries would still be connected as regards their *foreign* affairs which would be entirely under British control, but Ireland would here be reduced to the humiliating condition of an inferior having no voice in the management. What tends to obscure this question is the peculiar position of the British Colonies, which are *nominally* dependencies but *really* independent States, connected with the mother-country by a voluntary alliance and not by the legal or compulsory tie

of subject and governor. The eminent judge, Sir James Stephen, lately pointed out that the colonies might separate from this country if they chose, without any attempt being made to retain them by force; and that the superior power nominally reserved, and indeed not unfrequently exercised, by the Imperial Parliament of making laws to bind the colonies is at bottom "merely theory", since no laws would be imposed on them against their will, and if any serious conflict arose the English law would give way. "As to the great colonies" says Sir James Stephen, "it is plain that wherever, as in Canada, South Africa, Australia, and New Zealand, constitutional government has been granted, the grant has involved, as indeed it was meant to involve, the consequence that from that time forth the connexion between such a colony and the British Islands should depend ultimately on the good will of both parties, and that every idea of retaining it by force in any event whatever, and in the last resort, should be definitively renounced. That the Dominion of Canada could, if the Canadian Parliament thought proper, separate from the United Kingdom as effectually and completely as the United States, and that if it determined to do so no civil war would take place, can be denied by no reasonable man." Where countries are connected together but have the power of separating if any of them please, it is evident that their connexion, in its essence, is not a legal or compulsory union but only an alliance, and that they really stand to each other in the relation of free and independent States.

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## II.

But the words "freedom and independence" are used in very different senses when applied to individuals and when applied to States, and this ambiguity of language should be carefully noticed, as it seems to me the source of endless confusion and of the most dangerous errors. As applied to individuals, the words mean freedom and independence *under law and government*, but as applied to States they mean freedom and independence in the *absence* of law and government, or in what jurists call "the state of nature" or of anarchy. The former may be called legal or political, and the latter lawless or anarchical freedom and independence. The wide difference between them will be seen if we reflect that freedom and independence, when the words are used with reference to individuals (as for instance in speaking of a freeborn person or an emancipated slave) are *legal rights* which are protected or secured, like

all other such rights, by means of corresponding *duties* imposed by the law on other persons, forbidding them under penalties to violate the rights in question. "What, for example", says Mr. Hunter, "is the meaning of a 'right to liberty'? It means that all men are bound to abstain from interfering with a man's freedom of action, except in the case where such constraint is authorised by law." "In the civil law", he says again, "duty and right are correlative terms. No duty is imposed except in the interest of some specified person, who thus has a right, and no right can exist except by imposing on another some duty. The subject-matter of the civil law may thus be described as rights and duties."

The position of free and independent States, however, is very different from this. As regards their international relations, or their dealings with one another, independent nations live together in the peculiar kind of anarchy called by Hobbes, Locke, Bentham, and other writers "the state of nature", or the "natural" condition of society; that is to say, the anarchy which does not consist in resistance to, but in the total absence of, law and government. They have no common government, no international laws, and no courts of justice for the settlement of international disputes. In such a state of things, legal right and legal duty do not exist, for there is no government to protect the one or to impose the other. Each nation has to protect itself as best it can by its own strength and resources; and hence the so-called freedom and independence of nations, being unprotected by law, are not legal rights, and are quite spurious and illusory. "As Mr. Locke has well observed," says Blackstone in his Commentaries, "where there is no law, there is no freedom". And in the passage here quoted from his essay on Government, Locke says: "In all the states of created beings capable of laws, where there is no law, there is no freedom; for liberty is to be free from restraint and violence from others; which cannot be where there is not law".

Law and government are by far the greatest and most valuable of all institutions, while anarchy with its attendant war is among the most terrible of evils. So great an evil is the anarchy or "state of nature" existing between independent nations, that it has filled all past history with wars, and the endeavor to put an end to it and to bring mankind under a common government has been a main cause of foreign conquests and the subjugation of vast territories by single States, especially by ancient Rome, and by Russia and England in modern times. But conquest, in addition to the bloodshed and misery it occasions, is attended with the immense evil that it reduces free States to the condition of *dependencies* under a foreign rule; although their subjection is not unfrequently of the greatest benefit to the conquered race if they are much



inferior in civilisation to their conquerors, and the two peoples may in time become united on terms of equality. All nations, like all individuals, should be equal, and have equal political rights, as soon as they are sufficiently civilised to use them with advantage; and therefore the true and ultimate mode of putting an end to the anarchy between nations is not by conquest and the dependency of one State upon another, but by the *legal union* of different States on *equal* terms. Now States cannot be legally united together unless they are brought under the same government, for all laws proceed from government, and a government can only make laws for its own subjects. It cannot establish legal relations between those who are not under its authority and jurisdiction, and thus the unity of a kingdom or empire depends on the unity of its government. "The real unity of a kingdom", says Sir Henry James in the debate already referred to, "must depend upon the unity of its laws. I do not mean by that that there must be an identity of laws. But what I mean is that there must be one power of making laws for a kingdom supposed to be united. It is not the identity of manufacture, it is the identity of the manufacturer that makes the unity of a kingdom." In order, therefore, that two or more free and independent nations should be legally united together, they must have the same government; and to be united on equal terms, each of them must have a share in the government, and a share in proportion to its population. They cannot, as we have seen, be legally united at all unless one of them has the power of making laws for the others; and they cannot be united on equal terms unless each of them has this power and can make laws for the others as well as for itself; that is to say, unless they have a common government and are mutually subordinate to one another. Mutual legislation, and mutual subordination or subjection, are the requisites for a legal union between free and independent States under representative institutions.

These conditions are fulfilled by the two great and invaluable methods of uniting nations, called the complete union and the federal union; which agree in the cardinal point that they are not mere alliances but real legal unions, since in each of them a single State, consisting of one sovereign government and its subjects, is formed by the junction of two or more separate States. They differ, however, in this respect, that in the complete union the sovereign powers of the State thus formed are vested in a single body of persons, while in the federal union they are divided between several distinct assemblies, which together make up the sovereign government, and each of which, taken singly, is a subordinate or non-sovereign legislative body. It is by means of a complete union, or in other words, by incorporation under one central government (whether consisting

of a sovereign assembly or of a single person or monarch), that the great majority of modern States, such as France, Italy, and the United Kingdom, have been gradually built up out of the host of petty independent kingdoms, principalities, tribes, or clans, perpetually at war with each other, which at early times existed in every part of the world. As to the federal union, which is more complicated, it is of comparatively recent origin, having been first planned and instituted by the eminent men who founded the United States, and it has since been adopted in several other countries, including Switzerland, Canada, and Germany. Under both systems of government in advanced countries, as, for instance, in the United States and the United Kingdom, there is complete political equality between the different states or nations taking part in the union. Thus Ireland has exactly the same political rights and privileges as England or Scotland; she is just as free and independent as they are; each country has a share in the government in proportion to its population, so that they mutually legislate for and are mutually subject to one another; the colonies and dependencies of the empire belong to Ireland no less than to Great Britain, and the one has the same privileges and duties as the other with respect to them; it is not the "British" or the "English" Government and Empire (though often so called for shortness), but the British-Irish Government, and the British-Irish Empire which are common to all the three countries alike, and in which each of them has an equal part and interest. Many Irishmen, however, have sought to sever this connexion, and hold that Ireland has in strict justice a *right* to separate and be independent if she prefers separation to union. Mr. Dicey, professor of law at Oxford, in his work on "England's case against Home Rule", alludes to those "Nationalists who still occupy the position held in 1848 by Sir Charles Gavan Duffy and his friends, and who either openly contend for the right of Ireland to be an independent nation, or accept Home Rule (as they may with perfect fairness) simply as a step towards the independence of their country." Mr. Parnell too, in the passage already quoted, claims for Ireland legislative independence, freedom from outside control, and the full and complete right to manage her own affairs, which are just the distinctive characteristics of a separate and independent State. On the contrary, Mr. Bradlaugh and almost all Englishmen and Scotchmen to whatever party they belong, strenuously deny the right of separation. Some months ago Mr. Bradlaugh said in the House of Commons that "he had preached the doctrine of Home Rule for twenty-five years. He preached it in New York in 1873, when he was attacked by Irishmen in a perfectly friendly spirit, because, though he supported Home Rule, he declared that he would resist separation by force if

force were employed to bring it about." The question as to the true relations between England and Ireland is evidently only a part of a far wider question which concerns every country in the world; namely, is it a good thing for *any* nation, and has any nation a right in morality and justice, to be independent and separate from others, and to have a sovereign government to itself apart? I venture to think that no nation has such a right, but that all nations ought to be legally united together; and that the rights which Mr. Parnell claims for Ireland, of legislative independence, freedom from outside control, and exclusive management of her own affairs, are not a good or a blessing either to Ireland or to any other country, but on the contrary enormous evils to mankind.

The only kind of freedom or liberty which is really a blessing is *political* or *civil* liberty—that is to say, the freedom which exists under the reign of law and government, and whose nature is thus described by Mr. Austin: "Political or civil liberty", he says, "is the liberty from legal obligation which is left or granted by a sovereign government to any of its own subjects". Moreover, before we can call liberty a blessing it must be such liberty as is consistent with the welfare of society, or, in other words, the acts permitted by government must not be of a mischievous character and hurtful to other people. "The liberty", says Bentham, "which the law *ought* to allow of and leave in existence—leave uncoerced, unremoved—is the liberty which concerns those acts only by which, if exercised, no damage would be done to the community as a whole". Now, the liberty of independent States in their dealings with one another is not political or civil, but *anarchical* or *lawless*, liberty, that is to say, the liberty which is unrestrained by government and law; for independent nations, as already remarked, have no common government, and therefore no international laws properly so called, but live together in a state of nature or of anarchy. Hence each nation is free to make war upon others, to oppress them, to violate their rights, to defraud them, and to do them any act, good or bad, which lies in its power, and which it may think conducive to its own interests. Such liberty as this is evidently not a blessing, but an incalculable evil to mankind.

Again, the truly desirable kind of independence and sovereignty is not that which a nation possesses for itself apart, but that which it shares with others, and which, moreover, is coupled with dependence or subjection in such a manner that each sharer in the sovereignty is both independent and dependent, sovereign and subject. The states of the American Union, and the different parts of the United Kingdom, did not lose their sovereignty or independence when they combined together, but shared it with others by forming in each case one

independent and sovereign State. Moreover, it is only in their collective capacity that the supreme governments in England and America are sovereign and independent, while each of their constituent parts or members, taken singly, is dependent or subject to the will of the whole. The countries which really lose their independence by being united with others are *dependencies* such as India, which have no share in the government, and this is an evil which we should seek earnestly though cautiously to remedy till at last we can become united with them on equal terms. But the sovereignty or independence which is shared with others is not an evil but a good, whereas that which is held by a nation for itself apart is anarchical independence and is attended by all the frightful evils and dangers of anarchy; for whenever there is more than one supreme or sovereign government it is evident that the different sovereign governments are in a state of nature or of anarchy with respect to each other. It is independence in *union*, and not in separation, that is a real blessing to mankind.

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### III.

As to the question whether a nation has a *right*, in morality and justice, to be separate from others and to have the exclusive management of its own affairs, it seems to me that in justice nations should be legally united together and that each nation should have a voice in the management of affairs which concern them all. There is a wide difference, as Mr. Mill points out, between those of a man's acts which affect himself alone, and those which affect other people; the former are really his own affairs, and he should be allowed to manage them for himself; but the latter are just as much the affairs of others as of himself, and they have an equal right with him to a share in the management. The most important of the affairs which concern all mankind and in which therefore all should have a voice, are the rules of justice, whose essential character is that they are the rules which forbid a man or a nation to hurt others—to kill or enslave, to rob, cheat, or oppress them. "The moral rules", says Mr. Mill, "which forbid mankind to hurt one another (in which we must never forget to include wrongful interference with each other's freedom) are more vital to human well-being than any maxims, however important, which only point out the best mode of managing some department of human affairs. Now it is these moralities primarily which compose the obligations of justice." Each nation, I venture to think, should have a share in laying down and enforcing the

essential rules of justice not only between nation and nation, but between man and man and between rulers and their subjects, all over the world. The first rights of man, the security of person and property and the fair and equal treatment of individuals, concern everyone deeply, and should be under the common protection of all. But law and government are institutions whose main object is to lay down and enforce the rules of justice among mankind. How then can it be just for a nation, how can a nation have a right, to separate and remain apart from others, when by so doing it puts an end to law and government between itself and them, and thus saps the very foundations of justice?

Instead of seeking to make Ireland "free and independent" in the spurious and anarchical sense of these terms, we ought rather to seek that no country whatever should be independent in this sense, but that all should have the true freedom and independence which can only exist under the reign of government and law. It seems to me that one of the grandest aims ever conceived—indeed, next to the removal of poverty and the other population evils, the very greatest reform that could be effected in human affairs—is to get rid gradually of the present system of independent or sovereign States, which is attended with complete international anarchy, and to substitute for it a system of law and mutual subordination by bringing all mankind under a common government; in such a way that there should be only one supreme or sovereign federal government, of which the national governments in the different countries, together with a general congress composed of representatives from them all, would form parts or members, and to which each of these governments, taken singly, would be subject or subordinate. All States would thus be legally united or confederated with one another, while the component parts of each State would be joined together either by a complete or by a federal union; and the condition of dependencies, in which less civilised races are governed by others more civilised, would gradually be done away with as the backward populations grew in enlightenment, till at length all nations were placed on a footing of political equality, and endowed with equal rights and privileges. This, I believe, is the great goal to which humanity should aspire and is actually tending, as is warmly urged by many of the ablest and most prominent members of the Freethought party, including Mrs. Besant, "D.", Mr. J. M. Robertson, and Mr. W. P. Ball, in late numbers of the *National Reformer*. Mrs. Besant said at the Home Rule Meeting in St. James's Hall: "They hoped that this union with Ireland would be the forecast of a wider union which, in days to come, should bind together every land in one great commonwealth. What the Radicals hoped for was that

every nation might manage its local affairs in its own way, and that over and above every nation there should be one vast Parliament where all should make their voices heard—the Parliament of that English commonwealth which spreads over every part of the habitable globe.” “Can any clear-headed Liberal”, “D.” writes, “doubt for one moment that the future of Liberal politics lies with the development of the Federal idea” ? and he adds, quoting Tennyson, that “The hope of the future lies with ‘the Parliament of Man, the Federation of the World’”. “True federation”, says Mr. Robertson, “is a great ideal—an ideal only to be fully realised, indeed, when nations hitherto armed against each other agree to bury their jealousies”. And in a letter on the subject of the Channel Tunnel, Mr. Ball says, “Possibly the Tunnel might be a good thing in the long run by helping to bring about the United States of Europe. But I should prefer that the United States of Europe brought about the Tunnel by rendering it safe for us.” Imperial federation of England and her colonies has grown rapidly in public favor within the last few years, and would be an immense step in advance, but the federation of independent or foreign nations, between whom there is the risk of war, such as the States of Europe, seems to me of even greater importance. It is not merely for the sake of strengthening the Empire that federation is to be desired, but above all, in order to introduce law and government into the society of nations and do away with the state of nature or of anarchy.

Until there is a common international government among mankind, there can be no international *law*, in the proper sense of the term, nor any *legal* rights and duties between nations, but only *moral* rights and duties; there can be no legal limits to the power of existing sovereign governments over their subjects, nor can the former have any legal rights and duties towards the latter, but only moral rights and duties; in short, the dealings of nations with one another, and of sovereign governments with their subjects must be uncontrolled by law and must remain as at present in a state of anarchy. There can be no legal union between countries which are not under the same government, but only a moral unions; and as regard the latter, it seems to me impossible that nations under different supreme governments should really love and trust each other, for they have no common superior to lay down and enforce the rules of justice between them, to settle their disputes, and redress their mutual wrongs; and therefore, whenever they cannot agree and will not yield to one another, so that a compulsory settlement is needed, their only resource is the terrible expedient of war. How can there be real love and trust between nations who have, as it is called, “the right of making war” on one another, that is to say, war between whom is not

solemnly declared to be a legal crime, and forbidden under threat of punishment by a government able and willing to execute the threat against offenders? The huge standing armies and navies, the wars and dread of war, the oppression of weak States by strong ones, and the hatred, jealousy, and distrust between nations, are really due to the want of a common government and the consequent international anarchy now prevailing over the world.

These considerations are so extremely important that, in order to throw additional light upon the subject, I may perhaps be permitted here to examine a little more closely the essential nature of law and government together with the nature and consequences of anarchy, and to quote, in support of the foregoing statements, a few passages from the writings of the great jurists Jeremy Bentham and John Austin, and also from the celebrated treatises, the "Leviathan" and the essay on "Government", by Hobbes and Locke.

What then are the essentials of law and government? Law may be defined as consisting in a set of commands issued by governments to their subjects, conferring on them rights and imposing on them duties; obedience to these commands being compelled by means of sanctions or threatened penalties which are enforced by the power of the State. Thus Sir Henry Maine in his work on "Ancient Law" observes that "Bentham in his 'Fragment on Government', and Austin in his 'Province of Jurisprudence determined', resolve every law into a *command* of the law-giver, an *obligation* imposed thereby on the citizen, and a *sanction* threatened in the event of disobedience; and it is further predicated of the *command* which is the first element in a law, that it must prescribe, not a single act, but a series or number of acts of the same class or kind. The results of this separation of ingredients tally exactly with the facts of mature jurisprudence." In like manner Mr. Hunter says: "The subject matter of law is commands—general rules intended to govern men in their conduct towards each other. 'Law' may be defined sufficiently for the present purpose as a command of the Sovereign to all persons in given circumstances to do or not to do something, which persons will be visited with some evil by the Sovereign if they disobey." From this definition it will be seen, in the first place, that laws are commands addressed by governments to their subjects, and hence that law is merely the creature or product of government, and where there is no government there can be no law, in the legal or political sense of the word; secondly, that all laws are compulsory, that is to say, they compel people to do or not to do certain acts by the threat of punishments or penalties in case of disobedience; and thirdly, that laws are enforced by an enormous and irresistible power, namely, by

the whole physical force of the community, which is placed, if need be, at the disposal of the government or supreme authority in order to execute its commands. Moreover, since government represents the nation and is chosen under the representative system by the great bulk of the people to make laws for them, the commands of government may be said to be virtually the commands of the nation or commonwealth, as is done by Hobbes in his definition of civil laws. "Civil law", he says, "is to every subject those rules which the commonwealth hath commanded him, by word, writing, or other sufficient sign of the will, to make use of for the distinction of right and wrong: that is to say, of what is contrary or not contrary to the rule".

The word "law", as Mr. Austin points out, is used in four widely different senses, which are often blended and confounded with one another but should be carefully distinguished. There are, in the first place, the laws, strictly and emphatically so called, which are set or prescribed by governments to their subjects; secondly, the laws or rules of morality which are set by public opinion; these laws together with the foregoing constitute law or morality as it *is*, and may be either good or bad, wisely or unwisely framed; thirdly, the moral law, or morality as it *ought to be*, that is to say, the standard of right to which legal and moral rules ought to conform, and must conform if they are to merit approbation; and, fourthly, the scientific laws, which are only called laws in a metaphorical or figurative sense, as they are not rules for conduct but uniformities or invariable relations existing between natural phenomena. The first and second classes of laws, which it is particularly important here to distinguish, are called respectively by Mr. Austin *positive law* and *positive morality* and are thus defined by him. "The essential difference", he says, "of a positive law (or the difference which severs it from a law which is not a positive law) may be stated generally in the following manner. Every positive law, or every law simply and strictly so called, is set by a sovereign person, or a sovereign body of persons, to a member or members of the independent political society, whereof that person or body is sovereign or supreme. Or (changing the phrase) it is set by a monarch or sovereign number to a person or persons in a state of subjection to its author." Of positive morality, or the laws imposed by opinion, he says: "No law belonging to the class is a direct or circuitous command of a monarch or sovereign number in the character of a political superior"; and he adds, "The character or essential difference of a law imposed by opinion is this: that the law is not a *command*, expressly or tacitly, but is merely an *opinion* or *sentiment*, relatively to conduct of a kind, which is held or felt by an uncertain body, or by a



determinate party". Positive law gives rise to *legal* rights and duties, but positive morality only to *moral* rights and duties, or in other words, to rights which are not protected and duties which are not enforced by the State. Now the rules which guide and influence sovereign governments in their dealings both with foreign nations and with their own subjects are not positive law but positive morality merely. "For example", says Mr. Austin, "the so-called law of nations consists of opinions or sentiments current among nations generally. It therefore is not law properly so called." The same may be said of those parts of constitutional and administrative law which concern the acts of the supreme government itself, and not of its political subordinates; in short, the conduct of sovereigns, whether they be single persons or bodies of persons, and whether in their foreign or their domestic relations, is not under the control of law but only of morality and public opinion.

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#### IV.

The difference between *political* society, in which there exists a government, and *natural* society, or society in the state of nature, in which there is no government, is described as follows by Bentham and Austin, the latter of whom points out also the distinction between an independent political society, such as the United Kingdom, and a subordinate political society, or dependency, such as India, in the former of which the government is sovereign and independent, while in the latter it is subject to the control of another and higher government. "When a number of persons (whom we may style *subjects*)", says Bentham in his "Fragment on Government", "are supposed to be in the *habit* of paying *obedience* to a person, or an assemblage of persons, of a known and certain description (whom we may call *governor* or *governors*) such persons altogether (subjects and governors) are said to be in a state of *political society*". On the other hand, "When a number of persons are supposed to be in the habit of *conversing* with each other, at the same time that they are not in any such habit as mentioned above, they are said to be in a state of *natural society*". In criticising some remarks of Blackstone, Bentham says also: "If by 'a state of nature' a man means anything, it is the state, I take it, men are in or supposed to be in before they are under *government*, the state men quit when they enter into a state of government, and in which, were it not for government, they world remain". As examples of men living together in a

state of nature or of anarchy, without any common government, Bentham instances not only tribes of savages amongst themselves, but also all independent nations and governments in their foreign or international relations. Thus he speaks of "the kings of France and Spain" as being "in a *perfect* state of nature with respect to each other", and observes that the Spanish provinces of the Netherlands, having effected their independence, "are now in a state of nature with regard to Spain". In fact, all men are in a state of nature in relation to those who do not belong to the same political society with themselves; to all who are under a different supreme government to their own, they are foreigners or aliens.

The following is the definition of sovereignty and independent political society given by Mr. Austin. "The superiority which is styled sovereignty", he says, "and the independent political society which sovereignty implies, are distinguished from other superiority and from other society by the following marks or characters. 1. The *bulk* of the given society are in a *habit* of obedience or submission to a *determinate* and *common* superior; let that common superior be a certain individual person, or a certain body or aggregate of individual persons. 2. That certain individual, or that certain body of individuals, is *not* in a habit of obedience to a determinate human superior. Or the notions of sovereignty and independent political society", he continues, "may be expressed concisely thus: If a *determinate* human superior, *not* in a habit of obedience to a like superior, receive *habitual* obedience from the *bulk* of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent. To that determinate superior the other members of the society are *subject*; or on that determinate superior the other members of the society are *dependent*." As to the distinction between an independent and a subordinate political society, Mr. Austin says: "By 'an independent political society' or 'an independent and sovereign nation', we mean a society consisting of a sovereign and subjects, as opposed to a political society which is merely subordinate; that is to say, which is merely a limb or member of another political society, and which therefore consists entirely of persons in a state of subjection". And with regard to a society in the state of nature or anarchy, he says: "A natural society, a society in a state of nature, or a society independent but natural, is composed of a number of persons who are connected by mutual intercourse, but are not members, sovereign or subject, of a political society. None of the persons who compose it live in the positive state which is styled a state of subjection." He shows that from the absence of a common international government, independent nations are really in a state of nature with regard to one another, and

thus the so-called law of nations or international law is not properly law at all. "Society formed by the intercourse of independent political societies", he says, "is the province of international law or of the law obtaining between nations. For (adopting a current expression) international law, or the law obtaining between nations, is conversant about the conduct of independent political societies, considered as entire communities. Speaking with greater precision, international law, or the law obtaining between nations, regards the conduct of sovereigns, considered as related to one another. And hence it inevitably follows that the law obtaining between nations is not positive law; for every positive law is set, by a given sovereign, to a person or persons in a state of subjection to its author." In a similar manner Sir James Stephen says: "It is because nations have no common superior that international law commonly so called is not really law at all, but only a form of morality". Mr. Austin divides the existing systems or forms of society into the four classes described above, namely, "societies political and independent, societies independent but natural, society formed by the intercourse of independent political societies, and societies political but subordinate". The great object of those who aim at the federation of mankind, is gradually to change the existing systems and to unite all nations into one independent political society, consisting of a sovereign federal government and its subjects, so that there should be no longer any foreigners or aliens, and that a true international law should put an end to war and secure peace and justice throughout the world.

It should be remarked that by "the sovereign", jurists commonly mean the *sovereign government*, whether it consists of a single person or a body of persons. In Europe the only single persons who are sovereigns in this, the true sense of the word, are the Emperor of Russia and the Sultan of Turkey, while all the other royal and imperial persons, though members of the sovereign bodies, and though their actual shares in the sovereignty vary greatly in different countries, are, when considered singly, not really sovereigns but subjects. The constitutional king or emperor in a so-called limited monarchy does not differ in this cardinal point from the president of a republic, and is really subject to the assembly which has the power to limit him. "Unlike a monarch in the proper acceptation of the term", says Mr. Austin, "that single individual is not sovereign, but is one of the sovereign number. Considered singly, he is subject to the sovereign body of which he is a limb. Limited monarchy therefore is not monarchy." Each member of a sovereign assembly, taken singly, is subject to the assembly itself, taken collectively, and can be bound by laws enacted by the whole. He is thus at once a sharer in the

sovereignty and a subject, a political superior and inferior; and this constitutes a most important difference between governments of one and of many persons. "In the case of a monarchy or government of one", says Mr. Austin, "the sovereign portion of the community is simply or purely sovereign. In the case of an aristocracy or government of a number, that sovereign portion is sovereign as viewed from one aspect, but is also subject as viewed from another." Under the representative system of government, moreover, the whole body of electors are virtually sharers in the sovereignty, and form, as it were, an ulterior sovereign behind the immediate or legal sovereign. Thus, in England, the legal sovereign is the assembly composed of the Queen and the two Houses of Parliament; but the House of Commons, by far the most powerful branch of the legislature, is itself elected by the constituencies, who are thus the ultimate controlling body in the State, and whose desires and mandates are sure in the end to be obeyed. "The electorate", says Mr. Dicey, in his lectures on the Law of the Constitution, "is, in fact, the sovereign of England". One of the immense benefits of the representative system is, that it does away with any degradation connected with habitual obedience to the commands of a political superior. Political subjection is only degrading when it is one-sided, as in the subjects of an absolute monarch or in a dependency ruled by another country; but when the position of superior and inferior is reciprocal, and when each person commands as well as obeys, and is at once a sharer in the sovereignty and a subject, there is no degradation to any one, nor anything repugnant to the great principle of equality between all mankind. The nation itself is author of the laws which every one is obliged to obey.

Every sovereign government, whether it consists of a single person or a body of persons, is absolute and uncontrolled by law, or, in other words, it is in a state of nature or of anarchy with regard both to foreign nations and to its own subjects. This is a necessary consequence of its being supreme, and not subject to the commands of any higher government. "It follows from the essential difference of a positive law, and from the nature of sovereignty and independent political society", says Mr. Austin, "that the power of a monarch, properly so called, or the power of a sovereign number in its collegiate and sovereign capacity, is incapable of *legal* limitation. A monarch or sovereign number bound by a legal duty, were subject to a higher or supreme sovereign; that is to say, a monarch or sovereign number bound by a legal duty were sovereign and not sovereign. Supreme power limited by positive law is a flat contradiction in terms." In like manner Blackstone says of sovereign governments that "there is and must be in all of them a supreme, irresistible,

absolute, uncontrolled authority", that is, an authority which is not and cannot be limited by positive law. A sovereign government is controlled, not by law, but only by morality and public opinion in its dealings with its subjects, and has no *legal* rights and duties towards them, but only *moral* rights and duties. "Independence of political duty", says Mr. Austin, "is one of the essentials of sovereignty", and he observes further that a supreme government "has no legal rights (in the proper acceptation of the term) against its own subjects. To every legal right there are three several parties; namely, a party bearing the right; a party burthened with the relative duty; and a sovereign government setting the law through which the right and duty are respectively conferred and imposed". It is powers, and not legal rights, that a sovereign government possesses in respect of its subjects. On the other hand, subjects have no *legal* rights but only moral rights, together with legal and moral duties, towards the supreme government. Thus Mr. Austin says, "As against the government itself you can have no legal right", and "as against the sovereign there can be no right". Wherever subjects have legal rights against their government, it is because the latter is not sovereign but subordinate to another and higher government; as is the case, for example, with the different legislatures in the United States, each of which is subordinate or habitually obedient to the Constitution enacted by them all, and with the executive or administrative government in this country (often called emphatically "the Government") which habitually obeys the will of Parliament. "The power of Parliament", as Mr. Bradlaugh lately remarked, "is unlimited, but the powers of the executive are not unlimited".

As to the supreme powers or the powers belonging to a sovereign government, Mr. Austin observes that they are infinite in number and kind, and that the modes in which they may be shared among the different members of the sovereign body are also infinite; thus he describes them as "the political powers infinite in number and kind, which, partly brought into exercise, and partly lying dormant, belong to a sovereign or state". Some of these powers are exercised by the supreme government itself while it delegates others to political subordinates, as for instance to the executive authorities and to the judges. The branch of law which deals with the powers, rights, and duties of the supreme government and its political subordinates is commonly divided into *constitutional law* and *administrative law*; the former of which determines the constitution or structure of the government, that is to say, it determines who shall bear the sovereignty, and also, if the government consists of a number of persons, how the supreme powers shall be shared among them; while the latter deter-

mines the ends to which, and the modes in which, the powers shall be exercised, either by the government itself or by its subordinates. Now it is evident from the foregoing remarks, that the parts of constitutional and administrative law which concern the acts of the supreme government itself, though included in legal treatises, are not properly law at all, but merely rules set by morality and public opinion, like the so-called law of nations. "As against the monarch properly so-called, or as against the sovereign body in its collective and sovereign capacity", says Mr. Austin, "the so-called laws which determine the constitution of the State, or which determine the ends or modes to and in which the sovereign powers shall be exercised, are not properly positive laws, but are laws set by general opinion, or merely ethical maxims which the sovereign spontaneously adopts". "Against the monarch properly so called", he says also, "or against the sovereign number in its collegiate or sovereign capacity, constitutional law and the law of nations are nearly in the same predicament. Each is positive morality rather than positive law. The former is guarded by sentiments current in the given community, as the latter is guarded by sentiments current amongst nations generally." The individual members of a sovereign assembly may indeed be bound by laws, but not the assembly itself. "Considered collectively, or considered in its corporate character", continues Mr. Austin, "a sovereign number is sovereign and independent; but considered severally, the individuals and smaller aggregates composing that sovereign number are subject to the supreme body of which they are component parts. Consequently, though the body is inevitably independent of legal or political duty, any of the individuals or aggregates whereof the body is composed may be legally bound by laws of which the body is the author." The only possible way to bring the existing sovereign governments, while preserving their equality and real independence, under the control of law, and to give them legal rights and legal duties towards their subjects as well as towards foreign nations, is to make them all members of, and subordinate to, one supreme federal government: whereby the collective wisdom and justice of the common central authority might remedy the defects of local authorities, and the tyranny of national rulers over their subjects, together with revolutions and civil wars, might be effectually prevented in every country of the world.

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## V.

The great and permanent cause of government—the cause which has given rise to governments in the past, maintains them at present, and will ultimately, it may be hoped, unite all nations under a common federal government—is the perception of the enormous evils attendant on the state of nature or anarchy, and a wish to escape from these evils. “The only general cause of the *permanence* of political governments, and the only general cause of the *origin* of political governments”, says Mr. Austin, “are exactly or nearly alike. Though every government has arisen in part from specific or particular causes, almost every government must have arisen in part from the following general cause, namely, that the bulk of the natural society from which the political was formed were desirous of escaping to a state of government from a state of nature or anarchy.” I may quote also the words of Thomas Hobbes, the powerful thinker who has done more than almost any other to throw light on the theory of government, and of whom Mr. Austin says: “I know of no other writer (except our great contemporary Jeremy Bentham) who has uttered so many truths, at once new and important, concerning the necessary structure of supreme political government, and the larger of the necessary distinctions implied by positive law”. In his “Leviathan” (a figurative title by which he means a Commonwealth or State) Hobbes says: “The final cause, end, or design of men, who naturally love liberty and the dominion over others, in the introduction of that restraint upon themselves in which we see them live in Commonwealths, is the foresight of their own preservation and of a more contented life thereby; that is to say, of getting themselves out of that miserable condition of war, which is necessarily consequent to the natural passions of men, when there is no visible power to keep them in awe, and tie them by fear of punishment to the performance of their covenants and observance of the laws of nature”. In like manner the illustrious philosopher, John Locke, in his work on Civil Government, observes that “the end of civil government” is “to avoid and remedy these inconveniences of the state of nature, which necessarily follow from every man being judge in his own case”. No one has explained more clearly than Hobbes and Locke the evils of the state of nature or of anarchy; the former of whom deals chiefly with the anarchy, or absence of a common government, existing among savages and between independent political societies, while the latter draws attention also to the evils and dangers of the other kind of anarchy, namely, that consisting in the absolute power, uncontrolled and uncontrollable by law, which, as we have seen,

is possessed by all sovereign governments over their own subjects.

The chief evils of the state of nature arise from the want of a provision, such as government essentially is, for securing *peace* and *justice* among mankind. There is a want of a known and settled law or rule of justice, and of a sufficient power to compel obedience to it. Men's judgments with regard to right and wrong conduct differ widely, and are very often erroneous; and therefore, as in numberless cases they cannot agree on what is just, the only way to settle disputes and to keep the peace between them, is that an umpire or arbiter should be appointed to lay down beforehand and apply to each particular case the rules of justice, and that all parties should agree to abide by his decisions. "As when there is a controversy in an account", says Hobbes, "the parties must by their own accord set up, for right reason, the reason of some arbitrator or judge, to whose sentence they will both stand, or their controversy must either come to blows or be undecided for want of a right reason constituted by nature; so is it also in all debates of what kind soever." Moreover, since it is not mere advice or exhortation, but the compulsory settlement of disputes and redress of injuries, that are required from the arbiter, he must have sufficient power to compel obedience to his laws and sentences by the punishment of those who disobey them: for as Blackstone observes, "nothing is *compulsory* but punishment". What is needed therefore, to secure peace and justice in human society, is a supreme authority, or government, which all are obliged to obey, and which can lay down, apply, and enforce the rules of justice. Where no such authority exists to restrain the passions of mankind, and where each person is free to do to others whatever lies in his power, and is himself judge in his own case of what is just, there can be no real justice or real peace for anyone, but a perpetual war or the dread of war. "In the nature of man", says Hobbes, "we find three principal causes of quarrel. First, competition; secondly, diffidence" (that is, distrust or suspicion); "thirdly, glory. The first maketh men invade for gain; the second, for safety; and the third, for reputation. The first use violence to make themselves masters of other men's persons, wives, children, and cattle; the second, to defend them; the third, for trifles, as a word, a smile, a different opinion, and any other sign of undervalue, either direct in their persons, or by reflexion in their kindred, their friends, their nation, their profession, or their name. Hereby it is manifest that during the time men live without a common power to keep them all in awe, they are in that condition which is called war: and such a war as is of every man against every man. War consisteth not in battle only. For as the nature of foul weather lieth not in a



shower or two of rain, but in an inclination thereto of many days together; so the nature of war consisteth not in actual fighting, but in the known disposition thereto, during all the time there is no assurance to the contrary. All other time is *Peace*. Whatever therefore is consequent to a time of war, where every man is enemy to every man; the same is consequent to the time, wherein men live without other security than what their own strength and their own invention shall furnish them withal." It will be seen that in the above passage Hobbes includes under the term "war" not only actual fighting, but also the *dread* of war and the constant *danger* of it, as the characteristic evils of the state of nature or of anarchy.

A similar account of the evils arising from the want of a government is given by Locke. Men, he says, are led to quit the state of nature, and to "unite for the mutual preservation of their lives, liberties, and estates, which I call by the general name, property. The great and chief end therefore of men's uniting into commonwealths and putting themselves under government is the preservation of their property. To which in the state of nature there are many things wanting. First, there wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong. Secondly, in the state of nature, there wants a fair and indifferent judge, with authority to determine all differences according to the established law." Such an impartial judge is evidently needed to prevent men from being judges in their own cases, when they are so apt to be blinded by passion or self-interest. "That 'no man shall be judge in his own cause' (that is, in any matter in which he is interested)", says Mr. Samuel Warren in his Introduction to Law Studies, "is a great fundamental principle in the administration of justice". Locke continues: "Thirdly, in the state of nature, there often wants power to back and support the sentence when right, and to give it due execution. They who by any injustice offend, will seldom fail, where they are able by force, to make good their injustice; such resistance many times makes the punishment dangerous, and frequently destructive, to those who attempt it. To avoid these inconveniences, which disorder men's properties in the state of nature, men unite into societies that they may have the united strength of the whole society to secure and defend their properties and may have standing rules to bound it; by which every one may know what is his." In the state of nature no one knows clearly what is his and what another's, what is *mine* and *thine*, for there is no government either to define the rights of each individual or to protect them.

We have seen that, according to Bentham and Austin, the state of nature not only exists, or has at one time existed,

among savage tribes, but prevails at present over the whole world between independent political societies in their dealings with one another. Independent nations have no common government, no international law properly so called, nor any judges or courts of justice for the compulsory settlement of international disputes and redress of wrongs; but each nation is itself judge in its own case as to what is just towards others, and has absolute liberty to make war upon them and to do them any other harm within its power, unrestrained by the fear of legal punishment. Among nations the anarchy is between commonwealth and commonwealth, just as among savages it exists between man and man or between families. This is pointed out by Hobbes and Locke, who show that the effects of such a state of things are essentially similar to those described above, and that it necessarily leads to a want of real justice and of real peace, as well as of mutual love and trust, between nations, and to what may be called the condition of "war", if we understand by this term not only actual hostilities, but also the dread and danger of war, and habitual preparations against it. Thus Hobbes says, after referring to the anarchy among savages: "But though there had never been any time wherein particular men were in a condition of war, one against another; yet in all times, kings and persons of sovereign authority, because of their independency, are in continual jealousies, and in the state and posture of gladiators; having their weapons pointing and their eyes fixed on one another; that is, their forts, garrisons, and guns upon the frontiers of their kingdoms; and continual spies upon their neighbors; which is a posture of war". "And as small families did then", that is, among barbarous communities, he says in another place, "so now do cities and kingdoms, which are but greater families, enlarge their dominions upon all pretences of danger and fear of invasion or assistance that may be given to invaders, and endeavor as much as they can to subdue or weaken their neighbors by open force or secret arts." And again, in speaking of the liberty of independent states in their dealings with each other, he says that this "is not the liberty of particular men, but of the commonwealth, which is the same as that which every man then should have, if there were no civil laws nor commonwealth at all. And the effects of it also be the same. For as amongst masterless men there is perpetual war of every man against his neighbor, no inheritance to transmit to the son nor to expect from the father, no propriety of goods and lands, no security, but a full and absolute liberty in each particular man; so in states and commonwealths not dependent on one another, every commonwealth, not every man, has an absolute liberty to do what it shall judge, that is to say what that man or assembly that representeth it shall judge most conducive to

their benefit. But withal, they live in the condition of a perpetual war and upon the confines of battle, with their frontiers armed and cannon planted against their neighbors round about." The terrible truth of this may be seen from the history of Europe, which has never ceased to suffer either from actual war, or from the dread and danger of it, and where the vast standing armies, far larger and provided with far deadlier weapons now than at any former time, are calculated to amount to about ten millions of men.

Locke points out in like manner the state of nature existing between independent rulers, and draws attention to the only effectual remedy for war and security for peace among mankind, namely, a common government. "Since all princes and rulers of independent governments, all through the world", he says, "are in a state of nature, it is plain the world never was, nor ever will be, without numbers of men in that state". With regard to war and the means of preventing it, he says that "force, or a declared design of force upon the person of another, where there is no common superior on earth to appeal to for relief, is the state of war. To avoid this state of war (wherein there is no appeal but to heaven, and wherein every the least difference is apt to end, where there is no authority to decide between the contenders) is one great reason of men's putting themselves into society and quitting the state of nature; for where there is an authority or power on earth from which relief can be had by appeal, there the continuance of the state of war is excluded, and the controversy is decided by that power." And as to peace, he observes that "civil society" is "a state of peace, amongst those who are of it, from whom the state of war is excluded by the umpirage which they have provided in their legislative for the ending all differences that may arise amongst any of them". In civil society, peace is further secured by forbidding under penalty all force or violence except in self-defence; and then too, only while the wrong is being actually committed, and there is no time to appeal to the law for assistance or redress. Men are not allowed forcibly to redress their own wrongs, or what they conceive to be their wrongs, and to exact any penalty they please, but must in all cases appeal for redress to a court of justice. "When the wrong is consummated, when the mischief is done", says Mr. Hunter, "it is never lawful to resort to force; the peaceful remedy of an action or criminal accusation can alone be employed. But if the invasion of my right, or the attack on my person is not completed, as a general rule force may be used in defence." Real peace, like real justice, real liberty, and real independence, can only exist under the reign of government and law; whereas the so-called peace which alternates with open strife in the state of nature or anarchy, and which is

accompanied by huge armaments and by hatred, jealousies, and distrust between nations, is but a veiled form of war.

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## VI.

We now come to the great permanent remedy for war and the other evils arising from the state of nature or anarchy, namely, the formation of a *common government*. The anarchy prevailing at the present day is not between individual men or single families as among savage tribes, but between independent political societies in their dealings with one another; and what is needed to put an end to it is the political union of different nations and of different sovereign governments, by methods which have already been repeatedly employed with success in building up the existing states and empires of the world. Whether between individuals or between nations, a true legal or political union is always essentially the same process, and consists in submitting all wills, and entrusting the whole strength of society, to the will and direction of *one* sovereign government, composed either of a single person or of one or more bodies of persons acting collectively, so as to avoid that division of wills and of physical force which leads to war and to the appalling evils characteristic of the state of nature or anarchy.

Thus Hobbes says, in describing the generation of a Commonwealth among a society living in the state of nature: "The only way to erect such a common power as may be able to defend them from the invasion of foreigners and the injuries of one another, and thereby to secure them in such sort as that by their own industry and by the fruits of the earth they may nourish themselves and live contentedly, is, to confer all their power and strength upon one man, or upon one assembly of men, that may reduce all their wills, by plurality of voices, into one will; which is as much as to say, to appoint one man or assembly of men to bear their person; and every one to own and acknowledge himself to be the author of whatsoever he that so beareth their person shall act, or cause to be acted, in those things which concern the common peace and safety; and therein to submit their wills, every one to his will, and their judgment to his judgment. This is more than consent or concord; it is a real unity of them all in one and the same person, made by covenant of every man with every man; in such a manner as if every man should say to every man, 'I authorise and give up my right of governing myself to this man, or to this assembly of men, on this condition, that thou

give up thy right to him and authorise all his actions in like manner'. This done, the multitude so united in one person is called a *Commonwealth*."

In a similar manner Blackstone observes that harmony of wills "can be no otherwise produced than by a *political* union; by the consent of all persons to submit their own private wills to the will of one man, or of one or more assemblies of men, to whom the supreme authority is entrusted; and this will of that one man, or assemblage of men, is, in different states, according to their different constitutions, understood to be *law*".

Locke says also in describing the formation of a Commonwealth: "This is done whenever any number of men, in the state of nature, enter into society to make one people or body politic, under one supreme government; or else when one joins himself to and incorporates with any government already made; for hereby he authorises the society, or, which is all one, the legislative thereof, to make laws for him as the public good of the society shall require; to the execution whereof his own assistance (as to his own decrees) is due. And this puts men out of a state of nature into that of a Commonwealth, by setting up a judge on earth with authority to determine all the controversies and redress the injuries that may happen to any members of the Commonwealth; which judge is the legislative or magistrate appointed by it." He adds that "whosoever out of a state of nature unite into a community, must be understood to give up all the power necessary for the ends for which they unite into society to the majority of the community, unless they expressly agreed in any number greater than the majority". The rule that if opinions differ among the members of a sovereign body, the majority or some other fixed proportion must decide, is evidently needed to secure the unity of will and action which is indispensable for the purposes of government.

From the necessity of submitting all wills and entrusting all power to one man or one assembly (or to any number of assemblies, at any distance apart, provided they act together by a majority of their body and arrive at joint decisions or enactments) in order to avoid the division of wills and of the forces of society; and from the fact, already noticed, that the power of a monarch properly so called or of a sovereign assembly cannot be limited by law, there arises the great inherent evil and danger of *government*, which, like the opposite evil of anarchy, has caused such countless miseries to mankind, namely, the abuse of their immense powers by rulers to plunder and oppress their subjects. This evil, though it has always to be most carefully guarded against, is far more severely felt under an absolute monarchy, which was the earliest form of government as the simplest way of obtaining one supreme will,

and which still prevails in most of the backward countries of the world. Thus Locke says, in replying to the advocates of monarchical rule: "I shall desire those who make this objection to remember that absolute monarchs are but men; and if government is to be the remedy for those evils which necessarily follow from men's being judges in their own cases, and the state of nature is therefore not to be endured, I desire to know what kind of government that is, and how much better it is than the state of nature, where one man, commanding a multitude, has the liberty to be judge in his own case, and may do to all his subjects whatever he pleases, without the least liberty to anyone to question or control those who execute his pleasure? and in whatsoever he doth, whether led by reason, mistake, or passion, must be submitted to?" "If it be asked", he says again, "what security, what fence is there in such a State against the violence and oppression of this absolute ruler? the very question can scarcely be borne. To ask how you may be guarded from harm or injury on that side where the strongest hand is to do it, is presently the voice of faction and rebellion; as if when men, quitting the state of nature, entered into society, they agreed that all of them but one should be under the constraint of laws, but that he should still retain all the liberty of the state of nature, increased with power and made licentious with impunity." In a sovereign assembly, though its power is as great as that of a monarch, being absolute and unlimited by law, Locke points out that there is this great safeguard against oppression, that each of the members, taken singly, is a *subject*, and is himself amenable to the laws which the assembly enacts. When the people, he says, found that monarchs abused their power, they "could never be safe nor at rest, till the legislative was placed in collective bodies of men, call them senate, parliament, or what you please. By which means every single person became subject, equally with other the meanest men, to those laws which he himself, as part of the legislative, had established." An even greater security against oppression under the representative system is that the constituencies, who form the bulk of the nation, are themselves virtually authors of the laws by which they are to be governed. Mr. Mill shows that in the representative system (though he points out grave defects in it as now existing, especially the want of a fair proportional representation of minorities and the denial of a share in the suffrage to women) the sovereignty, or ultimate controlling power, is really vested in the entire community, and that this is far superior to any other form of government. "There is no difficulty in showing", he says, "that the ideally best form of government is that in which the sovereignty, or supreme controlling power in the last resort, is vested in the entire

aggregate of the community; every citizen having not only a voice in the exercise of that ultimate sovereignty, but being, at least occasionally, called on to take an active part in the government by the personal discharge of some public function, local or general". From these improvements in government and from the growing feelings of brotherhood and of common interest between all mankind, aided powerfully by easier means of communication, the obstacles to the political union of nations have greatly diminished, while the beneficial effects of such union on the relations of governments, not only to each other but to their own subjects, cannot, I think, be exaggerated. The oppression of subjects by their rulers is largely due to the absolute power, uncontrolled and uncontrollable by law, which resides in every supreme government, whether it consist of a single person or a body of persons; and to reduce the evil as far as possible, there should be only *one* supreme or sovereign federal government, of which the existing legislatures in the different countries would be members (or might, if it were thought preferable, elect a part while the people elected the other part, of the members), and to which each of them, taken singly, would be subject or subordinate. In this way the national governments would be no longer isolated from one another, as at present, or sole judges in their own cases; but the common judgment and authority of all would be brought to bear on all, and oppression by local rulers, as well as rebellion among subjects, might be legally controlled and prevented in every part of the world.

A legal or political union between two or more independent states should be carefully distinguished from a mere *alliance*. An alliance is an agreement between them, while remaining separate states, that is, while remaining under different sovereign governments, to co-operate for certain purposes; all the acts of each of them, including the continuance of the alliance or its dissolution at any time, being determined by the will of its own government. A political union, on the other hand, is an agreement between them to unite together into one state, that is, to have one and the same sovereign government, by whose will all their acts, including the continuance of the union or its repeal at any time, are to be determined. Though an alliance is often very valuable for temporary purposes, it has no effect in putting an end to the state of nature or anarchy existing between independent communities. "It is not every compact which puts an end to the state of nature between men", says Locke, "but only this one of agreeing together mutually to enter into one community and make one body politic; other promises and compacts men may make one with another, and yet still be in a state of nature." In an alliance there are *different* supreme governments, or supreme wills, each claiming

obedience from its own subjects among the allied nations, which is the state of nature or anarchy; whereas in a political union there is only *one* supreme government with claim to obedience from the whole united people, and this submission of all wills to one is, as we have seen, the essence of government. Some alliances, of a more complicated character than others and intended to be more permanent, are particularly apt to be confounded with true political unions, and among them Mr. Austin instances the confederations of states existing in his time in Switzerland and in Germany before the formation of the present federal governments in these countries. Mr. Dicey also describes as a "permanent alliance rather than a union" the dual system of government in Austria-Hungary, which resembles in its main features the bond now connecting together the two kingdoms of Norway and Sweden. The distinction between a system of confederated states, like the former Swiss and German confederations or the dual system of Austria-Hungary, and a composite state or supreme federal government such as that of the United States of America, is thus pointed out by Mr. Austin. "A *composite state* and a *system of confederated states*", he says, "are broadly distinguished by the following essential difference. In the case of a *composite state*, the several united societies are one independent society, or are severally subject to one sovereign body; which through its minister the general government, and through its members and ministers the several united governments, is habitually and generally obeyed in each of the united societies, and also in the larger society arising from the union of all. In the case of a *system of confederated states*, the several compacted societies are not one society, and are not subject to a common sovereign; or (changing the phrase) each of the several societies is an independent political society, and each of their several governments is properly sovereign or supreme." The agreement to form the Confederation at the beginning, and the subsequent resolutions passed by it, are not enforced on the different governments or on their subjects by the collective will of the whole, but are *spontaneously* adopted by each government and enforced upon its own subjects. "In short", continues Mr. Austin, "a system of confederated states does not essentially differ from a number of independent governments connected by an ordinary alliance. If in the case of the German or the Swiss Confederation, the body of confederated governments enforces its own resolutions, those confederated governments are one composite state, rather than a system of confederated states. The body of confederated governments is properly sovereign; and to that aggregate and sovereign body, each of its constituent members is properly in a state of subjection." As to the dual government of Austria-



Hungary, Mr. Dicey says, after giving a detailed account of it: "The Austro-Hungarian system is therefore briefly this: two separate states, each having a separate administration, a separate parliament, and separate bodies of subjects or citizens, are each ruled by one and the same monarch; the two portions of the monarchy are linked together, mainly as regards their relations to foreign powers, by an assembly of delegates from each parliament, and by a ministry which is responsible to the delegations alone, and which acts in regard to a limited number of matters which are, of absolute necessity, the common concern of the monarchy." He says also that "the Hungarian Diet has, as such, no legislative authority in Austria, and the Reichsrath has no legislative authority in Hungary." The dual system of Austria-Hungary is really an alliance or agreement between two separate states, under different supreme governments, to manage together their foreign affairs and all matters relating to war and to finance; both countries having the same emperor, who though not a monarch or a sovereign in the true sense of the terms, but only a member of each of the two sovereign bodies, has considerably more political power, according to Mr. Dicey, than royalty possesses in England.

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## VII.

A true political union, on equal terms, between two or more independent states, can only be effected by uniting together into one their different sovereign governments, in such a manner that each state shall have a share, proportional to its population, in the common government thus resulting. The union of nations under a common supreme government, whether on a footing of equality or on that of sovereign and subordinate states, and whether by conquest or by mutual agreement, has already been carried out to such an extent in the course of ages, that, according to the Government Year Book for 1888, "the chief independent countries of the world, arranged on the basis of their nominal forms of government", are now only forty-four in number, eight of them being absolute monarchies, while the others have more or less fully developed representative institutions. "Theoretically", says the writer after giving a list of them, "thirty-six out of the forty-four states just enumerated are under various forms of popular government, having representative institutions, and executives based upon contracts between the governing and the governed". The most important difficulties now standing in the way of the equal political union of nations and its immense benefits, seem to me

to be the very backward condition of some populations, the existence of absolute monarchies, the distances of nations from one another, and difference of language. The last two of these, however, may be surmounted by some adaptation of the invaluable principle of *federal* government; as we see, for instance, in the United States, which are nearly as large as the whole of Europe, and where the local State legislatures, though far distant from one another, make up together one sovereign body; and in Canada, where a million and a half of French colonists are united with three millions of English under the same federal constitution and on terms of complete political equality. Absolute monarchies, on the other hand, though they may favor the reduction by conquest of many nations under the dominion of one supreme ruler as in Russia, are, I think, incompatible with their union on equal terms, the only conditions on which civilised states can be expected voluntarily to unite with one another. This follows from the essential character of an absolute monarch as contrasted with a sovereign assembly. "The difference between monarchies or governments of one and aristocracies or governments of a number", says Mr. Austin, "is of all the differences between governments the most precise and definite, and in regard to the pregnant distinction between positive law and morality incomparably the most important". An absolute monarch is purely sovereign, and cannot be bound by law; whereas each member of a sovereign assembly, taken singly, is a *subject*, and may be bound by laws enacted by the whole. By uniting therefore on equal terms with another government, a monarch ceases to be sovereign, becoming a member of a sovereign body, and thus amenable to the control of law. What is commonly called a "limited monarchy", as Mr. Austin points out, is not really monarchy at all, but is "one or another of those infinite forms of aristocracy which result from the infinite modes wherein the sovereign number may share the sovereign powers". A limited monarch, such as the Emperor of Germany or the Queen of England, is not a monarch or a sovereign in the true sense of these terms, but a member of a sovereign assembly, and either is or may be made, like the president of a republic, amenable to laws passed by the whole body. Limited monarchy is therefore no barrier to the equal political union of independent states, as is clearly shown by the fact that four kings, together with reigning princes, grand dukes, and others, are included in the great federal union forming the German empire. Amenability to law, it should be remarked, is a matter of the utmost importance, for one of the chief ends of civilisation is to bring mankind universally under the dominion of law and government, so that all acts whatever (except those of a supreme government in its collective capacity) should be either permitted, or

enjoined, or forbidden by law. This end has been attained in our own and other countries with regard to subjects or citizens, but not with regard to their rulers or to the mutual intercourse of different nations. As observed by Montesquieu, the relations of mankind in society may be divided into those existing either between subject and subject, or between subjects and their government, or between one sovereign government and another. Now it is only the relations of subject to subject, and of a subject towards his government, that have been brought under the dominion of law; whereas the relations of the existing supreme governments towards their subjects, and of one supreme government to another—as we have already seen—are quite uncontrolled by law, or in other words, are in a state of nature or anarchy. If all nations could be united under a common federal government, as is urged by those who aim at the federation of mankind, the reign of law, whether between individuals, between nations, or between national rulers and their subjects, would be universal, and the only acts which would, of necessity, remain exempt from legal control would be those of the supreme federal government itself.

Government is the organ, and the only legitimate organ, by which *compulsion* or *force* is employed in a community. It not only lays down in its laws or commands the duties of each individual, but *compels* him to perform them and to abstain from mischievous acts, or acts which are hurtful to other people. "The general object of all laws", says Bentham, "is to prevent mischief". Law does not exhort or entreat, but always compels, and the manner in which it exercises its compulsion is by the threat of *punishments* or *penalties* to be inflicted on those who disobey. Thus Mr. Mill observes that "penal sanction is the essence of law". In like manner Sir James Stephen says: "The distinctive and special characteristic of all law and government is force—coercion in some one of its shapes. It is this which draws the line between law and advice, between government and speculative discussion." He points out also that no other compulsion than that authorised by government (excepting of course the compulsion coming from public opinion or from one's own conscience) can rightfully be exercised over any individual; and that "the first principle of the supremacy of the law of the land is that it is the only form of coercion . . . which ought to be brought upon all, whether they like it or not". It is true that the great majority of people suffer no inconvenience from this legal control, feeling it as little, to use Mr. Hunter's striking simile, as "the weight of the atmosphere", because they are convinced in the main of the justice of the laws and have a voice in making them; but the control or compulsion exists nevertheless, and is absolutely indispensable to the happiness and

security of society. However willing or desirous men may be to abstain from mischievous acts, no free choice is given them in the matter, for it is felt that society cannot be sufficiently protected against such acts without the compulsion exercised on all persons alike, willing or unwilling, by the fear of legal punishment if they offend. If a man has not a sufficient love of justice and regard for the interests of his fellows to keep him from crime, he must be deterred from it by the fear of punishment; and, moreover, just laws are well known to have a most powerful effect in *making* men just, and giving them a genuine love of virtue for its own sake. These truths are well understood with regard to a particular society, and are quite as applicable to the great society of nations. Every national government in its dealings with other nations and with its own subjects ought, like every private individual, to be under the control of law as well as of morality and public opinion. It should be bound by compulsory rules, laid down and enforced by a common authority, not to injure other nations or to oppress its subjects. Now, a common authority, armed with the irresistible power which is needed to enable it to lay down and enforce the laws, is obtained in each community by the political union of all the citizens—or, in other words, by the submission of all wills and all physical force to the will and direction of *one* sovereign government—and in like manner in the general community of mankind such an authority can only be obtained by the political union of all the nations. A mere alliance between separate states is of no avail; what is needed is a legal or compulsory union under one sovereign government; for nations which are not under the same supreme government can have no *legal* relations, but only *moral* relations, to each other. The laws of one independent state have of themselves no validity whatever in another, though they are often, from motives of comity, allowed to take effect, or speaking more accurately, are spontaneously adopted by the courts of justice in trying cases between citizens of different states who are under different systems of law. Thus the eminent American judge, Story, in his work on "The Conflict of Laws", says: "It is plain that the laws of one country can have no intrinsic force, *proprio vigore*, except within the territorial limits and jurisdiction of that country. Whatever extra-territorial force they are to have is the result, not of any original power to extend them abroad, but of that respect which from motives of public policy other nations are disposed to yield them." This absence of any power to exercise legal compulsion over independent states, and of any code of international law prescribed by a common authority, seems to me the essential cause of wars and revolutions. Force or compulsion is so indispensably needed for the settlement of disputes in which the parties can-

not agree, and for the prevention and redress of injuries, that if it cannot be applied in a legal form it is sure to be resorted to in another. War, conquest, and the oppression of weak states by strong ones, are the barbarous and arbitrary methods, in the absence of a common superior, for effecting this compulsion between nations; while political union, law, and a common government where disputes can be settled by the voice of a majority, are the peaceable and civilised means for compelling one nation to be just to another and national rulers in every part of the world to abstain from tyranny over their subjects.

To form an equal political union and common government between independent states, it is the real and not merely the nominal rulers of each state who must be united together into one sovereign body. Now under the representative system, the form of government which is rapidly tending to become universal among civilised communities, the real rulers are the elected representatives of the nation. "The meaning of representative government", says Mr. Mill, "is that the whole people, or some numerous portion of them, exercise through deputies periodically elected by themselves, the ultimate controlling power, which, in every constitution, must reside somewhere". In England the real government is very different from the nominal one, and is in fact representative: for although by constitutional law the Crown has the power of refusing assent to Bills which have passed both Houses of Parliament, and also of appointing the members of the executive or administrative government, yet by custom and constitutional morality these powers have become practically obsolete, the Crown's veto not having been used since 1707, in the reign of Queen Anne, and the executive government being really appointed and removable by, or in common phrase being "responsible to", the House of Commons. "The constitutional morality of the country", says Mr. Mill, "nullifies these powers (of the Crown), preventing them from being ever used; and, by requiring that the head of the administration should always be virtually appointed by the House of Commons, makes that body the real sovereign of the state." In a similar manner Mr. Dicey says: "The executive of England is in fact placed in the hands of a committee called the Cabinet. If there be any one person in whose single hand the power of the state is placed, that one person is not the Queen, but the chairman of the committee, known as the Prime Minister." Moreover, the House of Lords, though nominally possessed of equal legislative powers, acts rather as a checking or restraining body to secure further discussion of disputed questions, and is really subordinate to the House of Commons, to whose will it is obliged sooner or later to conform. "The British government", says Mr. Mill, "is thus a representative government in the

correct sense of the term : and the powers which it leaves in hands not directly accountable to the people can only be considered as precautions which the ruling power is willing should be taken against its own errors." Mr. Dicey observes that the various rules and customs of constitutional morality, or as he calls them "the conventions of the constitution", which have been established in this country by the growing influence of the constituencies and have gradually changed the government in reality though not in name, "have all one ultimate object. Their end is to secure that Parliament or the Cabinet which is indirectly appointed by Parliament, shall in the long run give effect to that power which in modern England is the true political sovereign of the State--the majority of the electors, or (to use the popular though not quite accurate language) the nation." "The conventions of the constitution", he says again, "now consist of customs which (whatever their historical origin) are at the present day maintained for ensuring the supremacy of the House of Commons, and ultimately, through the elective House of Commons, of the nation."

Since, therefore, the elected representatives of the people are the real rulers in this and other countries having popular forms of government, an equal political union of such countries can only be effected by uniting their representatives into one sovereign body; whether that body consist of a single assembly as in the United Kingdom, or of several distinct assemblies acting collectively as in the United States. Nations, in fact, are politically united under the representative system in exactly the same way as the different parts of the same nation, namely, by bringing their representatives together into one supreme governing body, so that all matters requiring a compulsory settlement may be decided, not by war and violence or by diplomatic pressure, but by fair and open discussion and the vote of a majority. Thus the essential articles in the treaties of Union between England and Scotland, and between Great Britain and Ireland, are those which joined together their Parliaments, declaring in the former case that "The United Kingdom shall be represented by one Parliament", and in the latter, "That there shall be one Parliament, styled the Parliament of the United Kingdom of Great Britain and Ireland". On the other hand, the demand which is, or was, put forward by Mr. Parnell and the Nationalist Party for an Irish Parliament, to be formed by the withdrawal of the Irish members from the House of Commons, seems to me not really a demand for Home Rule, but for the separation of the countries. Home Rule properly so called means, I think, the rule of local legislatures, of a subject or subordinate character and possessing a delegated authority, in countries which are united with others on equal terms under the same supreme government. Countries

which are under different supreme governments are separate from one another; and a common supreme government, on equal terms, between states with representative institutions, can only be obtained by joining their representatives into one sovereign body. If their representatives are separated, the countries cannot be united on equal terms, but must either be separate from each other or united on the footing of sovereign and subordinate states, a form of union which would never again be tolerated between Great Britain and Ireland, and is fast becoming quite impracticable between any civilised nations. The great English colonies such as Canada and Australia, which have legislatures of their own, are only nominally subject to the English rule, and are really and essentially, as we have already seen, independent states which are connected with the mother country by a voluntary alliance, and have the power of separating from her if they please. To withdraw the Irish members from the House of Commons seems to me, therefore, really equivalent to the separation of Ireland from Great Britain.

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### VIII.

Nations which are independent and separate from others are not said to have "Home Rule", but only those nations which are politically united with others under a constitution of a peculiar kind. Every country which can properly be said to have Home Rule must, I think, like one of the states in the American union or in the German empire, be under two governments, namely, a common supreme government in which it has a share together with other states by the union of their representatives in one sovereign body, and a local subordinate government, composed exclusively of its own representatives, for the management of its domestic affairs. A *dependency*, if it has a legislature of its own, is often said to have Home Rule, but improperly, as it seems to me, or at least in a widely different sense of the term, for the legislature in such a case is subject to the government of the dominant country, in which the dependency has no share. Mr. Austin observes that all the laws made by a subordinate legislature require the consent or approval of the supreme legislature, and "derive their validity from its express or tacit authority. For either directly or remotely the sovereign or supreme legislator is the author of all law". But if the above definition is correct, and if independent and separate nations, as well as dependencies, though possessing parliaments of their own, cannot rightly be said to have "Home Rule", it follows that neither Ireland nor

the British colonies have ever yet had Home Rule in the true sense of the word; for Ireland up to the time of the Union was either a dependency of England or an independent nation, and the colonies, as we have seen, are nominally dependencies, but really and virtually independent states. In speaking of laws enacted by subordinate legislatures, Mr. Austin says: "Such were the laws made by the Irish Parliament before that Act of the British Parliament which acknowledged the independence of Ireland (1719-1782). In fact and practice, the Irish legislature (consisting of the King and the Irish Houses of Parliament) was in a state of subjection to the supreme legislature of Great Britain; that is to say, to the same King and the British Houses of Parliament." Neither Ireland nor the colonies could properly be said to have Home Rule in their relations with this country, unless they not only had local legislatures but were fully and fairly represented in the supreme imperial legislature, or in other words, unless they were *federated* with Great Britain.

Home Rule properly so called is thus identical with *Federalism* or the federal system of government. As to the very different system of government often called "the colonial form of Home Rule", in which countries having parliaments of their own are *not* represented along with others in a common supreme parliament, it should not, I think, be spoken of as "Home Rule" at all, since the countries in this case are necessarily either dependencies or independent and separate states. The federal form of Home Rule is the one advocated by Mr. Bradlaugh and I believe by the great majority of Englishmen and Scotchmen, as well as Americans, who are in favor of a separate Irish parliament; and it is the only kind of Home Rule to be desired among civilised nations, who should be united as equals, and not on the footing of dependencies and sovereign states. Inequality is only justifiable in dealing with backward and uncivilised populations, till they are sufficiently advanced to have equal political rights. The federal system, which was first introduced in the United States and has since been modified in other countries, especially in Germany, seems to me one of the greatest discoveries ever made, and of an importance to human happiness which cannot possibly be exaggerated; for it supplies the means of uniting independent nations under a common government, so as to do away with the state of nature or anarchy now existing between them, and to put an end to war. It fulfils the three main conditions of a satisfactory political union, for it unites nations legally and effectively by bringing them under the same sovereign government; it unites them on equal terms, by joining their representatives in one supreme body, and thus giving each nation a share in the government proportional to its population; and moreover it



secures to them the advantages of *self-government* or government exclusively by their own representatives, wherever this is thought desirable, by allowing them to retain their national legislatures for the management of their domestic affairs. Each nation is thus placed under a general supreme legislature composed of its own representatives along with those of other states, and a local subordinate legislature composed of its own representatives exclusively. The advocates of Federation hold that Home Rule in the above sense, or as meaning Federalism, ought to be extended over the whole world; and that all nations, besides having their national rulers, should be united together under one supreme federal government. The federal system is so important and so different in some respects from the government with which we are acquainted in this country that it deserves an attentive consideration.

The form of federation existing in the United States seems to me to differ in one very important point from that which has been adopted in Germany; namely, that in the former country the sovereign government consists, as already remarked, of all the State legislatures acting collectively, and that the general legislature or Congress, composed of the Senate and the House of Representatives, together with the President, is a subordinate body; whereas in Germany the Diet or general legislature, composed of the Bundesrath, the Reichstag, and the Emperor, is itself the sovereign government. This will appear, I think, if we consider the powers possessed by these bodies, and also the distinction between supreme and subordinate political powers, and between a sovereign and a subordinate government. Thus Mr. Austin observes with regard to political powers: "Of all the larger divisions of political powers, the division of these powers into *supreme* and *subordinate* is perhaps the only precise one. The former are the political powers, infinite in number and kind, which, partly brought into exercise and partly lying dormant, belong to a sovereign or state. The latter are the portions of the supreme powers which are delegated to political subordinates." Mr. Dicey in pointing out the signs or marks which distinguish a sovereign government, such as the English Parliament, from a subordinate government, such as Congress or a state legislature in the United States, says: "These then are the three parts of parliamentary sovereignty as it exists in England; first, the power of the legislature to alter any law, fundamental or otherwise, as freely and in the same manner as other laws; secondly, the absence of any legal distinction between constitutional and other laws; thirdly, the non-existence of any judicial or other authority having the right to nullify an Act of Parliament, or to treat it as void or unconstitutional". As to "the marks or notes of legislative subordination" he says: "These signs by which

you may recognise the subordination of a law-making body are, first, the existence of laws affecting its constitution, which such body must obey and cannot change; hence, secondly, the formation of a marked distinction between ordinary laws and fundamental laws; and lastly, the existence of some person or persons, judicial or otherwise, having authority to pronounce upon the validity or constitutionality of laws passed by such law-making body". Sir Henry James also, in a passage already quoted, reduces the distinctive marks of a sovereign government to these two—that it "must be subject to the control or decision of no man or body", and that it "must be able to alter and remodel its own constitution". Judging by these marks or tests, we can see at once that the American Congress is a subordinate government, whereas the German Diet appears to be a supreme or sovereign assembly. The Constitution of the United States (a written document which was agreed to as the fundamental law of their union by all the States in 1787-1789, soon after they acquired their independence of Great Britain) creates Congress and grants to it certain legislative powers strictly defined and limited, and creates also a supreme court of justice, with jurisdiction in all cases arising under the constitution and with an authority, which has not unfrequently been exercised, to declare void any law passed by Congress in excess of its powers; and moreover, changes in the constitution cannot be effected by Congress, but only by a majority of three-fourths of the state legislatures. Such changes or amendments may be proposed either in Congress or in a convention called by the States, and if approved of there, must be sent for ratification to all the state legislatures, and must be ratified by three-fourths of these bodies, before they are adopted. Hence Mr. Dicey observes that "the legal sovereignty of the United States resides in the majority of a body constituted by the joint action of three-fourths of the several States at any time belonging to the Union". On the other hand, although Germany also has a written constitution, adopted in 1871, which distributes the various powers and departments of legislation between the Diet or federal government and the State governments, there is, I believe, no judicial body corresponding to the Supreme Court in the United States with authority to declare void any act of the Diet, but the latter is itself judge in disputes between the States, and may settle them, if need be, by federal legislation; and the Diet, moreover, has itself the power of changing or amending the constitution. Thus the German Constitution (which is given in full in the Government Year Book for 1888) says: "Litigations between several States, in so far as they do not concern private rights and are not thereby within the competence of ordinary tribunals, will be adjudged by the Bundesrath, on the

demand of one of the parties. Disputes concerning the constitution, where there is no authority competent to decide such disputes, must be amicably adjusted by the Bundesrath, on the demand of one or other of the parties, and if this cannot be effected, they must be determined by federal legislation. Changes in the constitution are to be effected by Acts of the Assembly; but such modifications must receive in the Bundesrath the support of a majority of two-thirds of the representative votes." It thus appears to me that the German Diet, like the English Parliament, or like all the state legislatures in the United States acting collectively, is a sovereign government, and, as such, possesses powers which cannot be limited by law.

The leading characteristics of federalism are summed up as follows by Mr. Dicey, who has given a most valuable exposition of this system and other matters relating to government in his "Lectures on the Law of the Constitution" and in "England's case against Home Rule". "A Federal Constitution", he says, "must from its very nature be marked by the following characteristics. It must, at any rate in modern days, be a written constitution, for its very foundation is the 'Federal pact' or contract; the constitution must define with more or less precision the respective powers of the central government and the state governments, of the central legislature and of the local legislatures; it must provide some means (*e.g.*, reference to a popular vote) for bringing into play that ultimate sovereign power which is able to modify or reform the constitution itself; it must provide some arbiter, be it Council, Court, or Crown, with authority to decide whether the Federal pact has been observed; it must institute some means by which the principles of the constitution may be upheld, and the decrees of the arbiter or Court be enforced against the resistance (if need be) of one or more of the separate states". He says also in another place: "The essential characteristics of federalism—the supremacy of the constitution—the distribution of powers—the authority of the judiciary—reappear, though no doubt with modifications, in every true federal state." This description, however clearly it explains the form of government existing in the United States or in Switzerland, is not, I venture to think, equally applicable to the German Constitution, which, by making the Diet a sovereign body, seems to me a most important and valuable modification of the federal system. The essence of federalism in my opinion is the existence of a common supreme legislature, in which all the federated states are duly represented, together with local subordinate legislatures, consisting solely of local representatives, in the different states; while the other remarkable feature in the American Government, namely, that the sovereign power is vested in all the state legislatures taken together, and that Congress is a

subordinate body, unable to change its own constitution and subject to the control of a legal tribunal, does not appear to me to be necessarily or essentially a part of federalism. Governments which are not federal, such as the English Parliament, might in like manner be made subordinate bodies and might have their powers limited, if the constituencies who elect them chose to retain the legal sovereignty in their own hands. Mr. Austin points out that although the trust held by the House of Commons for the constituencies is at present enforced only by moral sanctions, it might be enforced by legal sanctions; and that for this purpose, a law or written constitution would need to be passed by the constituencies themselves, who would thus form an ulterior legislature. If such a constitution were enforced by the courts of justice, the legal sovereignty of the country would then reside in the constituencies or electors, and not as at present in Parliament. "In order that the members of the Commons House might be bound legally and completely to discharge their duties to the Commons", says Mr. Austin, "the law must be made directly by the Commons themselves" with the assistance of the king and the lords, or, in a republic, by the Commons alone. In that case, "the King and the lords with the electoral body of the Commons, or the electoral body of the Commons as being exclusively sovereign, would form an extraordinary and ulterior legislature". This is exactly what has been done in the United States and in Switzerland, where the body of the electors, or of the State legislatures, have tied down the federal government by a constitution enforced by the law courts, and have kept to themselves the ultimate sovereign power. But this electoral sovereignty seems to me unessential to federalism, and in many respects a less advantageous principle than parliamentary sovereignty. It unduly limits or cripples the power of the central legislature in a country, and makes the government more complicated; and also, as Mr. Dicey shows in a striking passage, it vests the legal sovereignty in an inactive and non-apparent body, and renders any change in the constitution a matter of much difficulty, especially in the United States, where so large a majority as three-fourths is required for the purpose. "From the necessity for placing ultimate legislative authority in some body outside the Constitution", says Mr. Dicey, "a remarkable consequence ensues. Under a federal as under a unitarian system there exists a sovereign power, but the sovereign is under a federal state a despot hard to rouse. The sovereign of the United States has been roused to serious action but once in the course of ninety years. But a monarch who slumbers for years is like a monarch who does not exist. A federal constitution is capable of change, but for all that a federal constitution is apt to be unchangeable."

If Congress were made supreme, these evils would be obviated; and I believe that the best means for securing the rights of the people throughout the world is not by any plan of electoral sovereignty, however valuable it may be in some respects, but by uniting the nations under one supreme federal government, whose combined authority could protect the people of each country from tyranny or oppression by their national rulers. One advantage of making Parliament supreme is that, as Hobbes remarks, "there needs no writing", or in other words, a written constitution is not needed for a sovereign government, because its powers are infinite and cannot be limited by law; and a constitution of this kind, which defines the delegated powers and can be enforced by the law courts, would be required only for subordinate bodies. Even where a written constitution assigns to a supreme government, as well as to its subordinates, certain functions or makes other conditions, the supreme government cannot be *legally* bound by these conditions, since it can change the constitution. For all these reasons it appears to me that parliamentary sovereignty is not only compatible with federalism but is the principle which might best be adopted in the federal union of different states.

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## IX.

If Parliamentary sovereignty were adopted as a part of federalism, and if the central legislature were made supreme, a federal government such as that of the United States would resemble much more closely a unified government as in England, and they would differ chiefly in the extent of the powers delegated to subordinate bodies. The question of Irish Home Rule would then be narrowed to the inquiry as to what powers should be delegated to a subordinate body or bodies in Ireland by a supreme parliament in which that country was fairly represented: for the so-called "colonial form of Home Rule", in which the Irish members would be excluded from the Imperial Parliament, seems now to be very generally abandoned. In a letter to Mr. Rhodes in last June, Mr. Parnell says; "I think you have correctly judged the exclusion of the Irish members from Westminster to have been a defect in the Home Rule measure of 1886"; and in the following July, Sir George Trevelyan observed that "two years ago the mass of the people were not willing to exclude Irish members from the English Parliament. Now the Liberal party were ready to keep those members". All parties are agreed, moreover, that the "minor representative bodies", which according to Mr.

Mill "ought to exist for purposes that regard only localities", as, for example, Town Councils, and the newly created County Councils, are of the greatest value, and that the latter should be extended to Ireland also as soon as circumstances permit. These minor bodies are the third kind of government by local representatives to which the term "Home Rule" has been applied, though it is usually reserved for the larger and more important assemblies coming under the designation of parliaments or legislatures. The real question at issue, therefore, in respect to Home Rule, is whether or not there should be a separate Irish Parliament on the federal model; and it should be borne in mind that while a state legislature in the United States is independent of Congress, and is a member of the ultimate sovereign government, the Irish parliament would be purely subordinate or subject to the Imperial parliament, supposing the latter to continue as at present a sovereign body. As regards the question of an Irish parliament, which lies at the bottom of the recent controversies, I confess it appears to me that the present system of unified government in these islands is a preferable one. Unification seems to me better than federation, except in cases where the countries to be united are very distant from one another, or where their inhabitants speak different languages, and it is chiefly, I think, by overcoming these two great obstacles to political union that the federal system is such an incalculable blessing to mankind. It also renders invaluable service as a first step by uniting together independent nations who, though near neighbors and having the same language, would not, for various reasons, consent to give up their national legislatures and to form at once a unified government, but who may in course of time see cause to do so, and to become thoroughly incorporated with one another. A single parliament is a more complete union than a plurality of parliaments, and in cases which admit of it, seems to me to have several important advantages.

Mr. Dicey points out, as in his opinion two of the chief drawbacks or dangers of federalism, the divided allegiance of the citizens, who owe obedience both to the central government and to the government of their own state, and the want of sufficient power in the central legislature to protect unpopular minorities in the different states. "Federalism", he says, "has in its very essence, and even as it exists in America, at least two special faults. It distracts the allegiance of citizens and, what is even more to the present point, it does not provide sufficient protection for the legal rights of unpopular minorities". To these causes, he considers, were greatly due the terrible civil wars in the United States and in Switzerland, from the history of which countries it will be seen that "the two most successful confederacies in the world have been kept

## DRAWBACKS AND DANGERS OF FEDERALISM.

together only by the decisive triumph through force of arms of the central power over real or alleged State rights." A signal instance of the want of sufficient protection for minorities and oppressed classes, is that Congress had no power to abolish slavery in the Southern States, and its total abolition could only be effected at the close of the civil war by a special amendment of the Constitution. It seems, indeed, to be the chief defect of the federal system as compared with a unified government, that the primary rules of justice, the rules for the security of person and property, which concern every one, and which all should have a voice in framing, are not discussed and settled by the representatives of the whole people collectively, but only by the representatives of each separate state; so that the common will of all is not brought to bear on all, and laws passed by particular states may be completely opposed to the feelings of justice and morality in the great majority of the nation. This defect, however, might to a great extent be remedied if the central government were made sovereign or supreme, and if it were to lay down a set of conditions in the written constitution granted to each subordinate legislature, to prevent the latter from oppressing any class or any individual of its subjects. Such a set of conditions, commonly called a "bill of rights", exists in the written constitution of every single state in the American Union, though it is there inserted by the body of local electors and not by the central government.

Another feature of federalism which seems open to objection is its tendency unduly to multiply the number of parliaments and of legal systems, thus increasing the labor and cost of legislation, and at the same time making law and government more complicated. In the United States there were originally thirteen and are now thirty-eight States, each of which has a parliament of its own, consisting, like Congress, of a Senate and a House of Representatives, together with a governor and executive staff; and this seems a large proportion, even when we consider the vast size of the country, which is nearly as extensive as the whole of Europe. Moreover, each of the State parliaments has substantially the same functions, namely, to lay down and administer the great bulk of the civil and criminal law, or in other words, to deal with all subjects of legislation and administration except the comparatively small number—including foreign affairs, the army and navy, national finance, the currency, the post-office, the bankruptcy laws, and other matters—which are delegated to Congress or to the President by the constitution. "The powers not surrendered to the Government of the United States", says Mr. Sterne, a barrister of New York, in his "Constitutional History of the United States", "are much more extensive and much more immediately related to the rights of the individual, and therefore affect him

more closely, than the delegated powers of the Federal Government. In all his functions as a citizen—in his amenability to the deprivation of life and liberty by the criminal law, in the assertion or denial of his rights through the civil administration of justice—the State, with but few exceptions, has absolute control over the life, liberty, and happiness of its subjects.” Thus the work entrusted to the State legislatures is performed thirty-eight times while that entrusted to Congress is only performed once. In England all affairs, both foreign and domestic, are managed by one parliament; but if Ireland had a legislature of her own on the federal model, there would need to be at least three and not improbably five parliaments in the United Kingdom; for the Irish members at Westminster could no longer take part in the domestic legislation of England and Scotland, and to confine them to debates on Imperial questions has been shown to be impracticable. The only resource, therefore, would be to have a parliament for the management of domestic affairs in Great Britain also, or possibly in each of the three countries, England, Scotland, and Wales, as well as in Ireland, and to deal with Imperial questions in a separate assembly, as is done in all federal countries. Besides the difficulty of defining the spheres of the central and the local legislatures, which gives rise to frequent litigation under a federal constitution, another source of complexity is the multitude of legal systems created by the different parliaments: and the branch of jurisprudence called “private international law” or the “law of domicile”, which is due to the difference of legal systems and deals with the rights and duties of persons living in other countries or states than their own—as, for instance, of Scotchmen residing in France, and even in England, since English law differs from Scotch law—is well known to be a very important and intricate one. The American Chief Justice Story, whose work on the “Conflict of Laws” is devoted to this subject, says: “The jurisprudence, then, arising from the conflict of the laws of different nations, in their actual application to modern commerce and intercourse, is a most interesting and important branch of public law. To no part of the world is it of more interest and importance than to the United States, since the union of a national government with already that of twenty-six (now thirty-eight) distinct states, and in some respects independent states, necessarily creates very complicated private relations and rights between the citizens of these states, which call for the constant administration of extra-municipal principles”. The above seem to me some of the chief objections to the adoption of federalism between Great Britain and Ireland, but they do not apply to its past history in the United States, where the federal system has rendered the most immense services, and, consider-



ing the size of the country and the international jealousies at one time existing, is probably the only kind of common government which the states would have consented to enter into, or which would have held them together.

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## X.

The large and increasing numbers, in different countries, who advocate federation as the only true remedy for war, for huge armaments, and for the other evils arising from the want of a common international government, propose therefore that all nations should be federally united together. In other words, they hold that all nations should gradually be brought under one supreme federal government, consisting of representatives from each of them, who would legislate on the subjects affecting them all in common; and that they should also have subordinate national governments, consisting exclusively of national representatives, for the management of their internal or domestic affairs. M. de Laveye in his recent work on the Balkan Peninsula, which has been translated into English, describes the federal system as "theoretically the best form of government", and says of it: "This form of government allows the formation of an immense and even indefinitely extensible State, by the union of forces, without sacrificing the special originality, the individual life, the local spontaneity of the provinces which compose the nation". Under a federal system, if it were extended throughout the world, all the existing sovereign governments would become subordinate or subject to a common supreme government; while the number of subordinate legislatures or governments would depend on various circumstances, and would in the long run, I venture to think, be chiefly determined by the consideration already alluded to, namely, that nations who are very distant from one another or who speak different languages should have separate parliaments of their own, but that for near neighbors speaking the same language it is in several important respects a great advantage to have one unified parliament. The common international government might be elected by the nations in the same manner as the federal legislatures in the United States or in Germany: that is to say, supposing it to consist of two Chambers, one of them might be chosen by the national governments and the other by the body of the people; each State sending to both Chambers, as in Germany, a number of representatives approximately in proportion to its population. This would apply, however, only to civilised or advanced communi-

ties, between whom there should always be completely *equal* federation. Backward and semi-civilised populations, on the other hand, could not have equal political rights, since their vast numbers would enable them to outvote all others; but it seems to me extremely desirable that no people whatever—much less the great nations of Asia, some of whom are in many respects highly polished, and are at the present day rapidly increasing in enlightenment under the influence of Western ideas—should be treated as a mere dependency of another State. All nations should, I think, be *federated* together, that is, they should all have a share both in the common supreme government and in the national government of their own country; but with backward communities the federation could at first only be on *unequal* terms, gradually changing to equality as the inhabitants grew in civilisation. The difficulty now felt in giving the great dependencies a share in the government arises from the weakness and isolation of the dominant States, who fear to lose their ascendancy; but if the latter were themselves federated with one another this difficulty would disappear, and all nations could be represented both in the central and in the local legislatures in such measure as justice and the real interests of each people might require.

The common supreme parliament, though containing representatives of all the nations, would not necessarily be larger than other parliaments, even if it consisted only of a single body, as its size would depend on the proportion of members to the populations who elected them. It would doubtless consist, however, not of a single assembly but of several assemblies in different parts of the world, who would act *collectively* and legislate by a majority of their whole number, like the State legislatures in the United States when they exercise their sovereign powers; an arrangement by which the difficulty of uniting very distant countries might be overcome and a fuller representation could be allowed to each people. The other great difficulty, arising from difference of language, might also be surmounted by this means; and wherever different nationalities were included in the same legislature each member should be allowed to address the assembly in his own language, as is the rule at present in several legislative bodies. In Canada, for example, where a million and a half of French inhabitants are federally united with three millions of English, either language may be employed in the Dominion Parliament; in the Cape Parliament, as mentioned in the Government Year Book for 1888, Dutch may be spoken as well as English; in the Hungarian Diet the deputies from Croatia may use their native tongue; and in Switzerland, where about a fourth of the people speak French, and nearly two-thirds German, both languages can be employed in addressing the Federal Assembly.

In Austria, which, apart from Hungary, seems to be really a federal State with a large share of the sovereignty vested in the Emperor, the nationalities are more mixed than in any other country of Europe, and there are seventeen local parliaments, many of them transacting their business in distinct languages, in addition to the common central parliament, or Reichsrath, in which, I believe, only German can be employed. Though there would doubtless be numerous difficulties in government from these and other causes, the experience of federal countries shows that they admit of being overcome by a spirit of fairness and mutual concession, together with a steadfast respect for law; and even at their greatest they do not seem to me to bear comparison with the difficulties consequent on the "state of nature" or of anarchy now existing between independent nations, and the perpetual risk of war. At present, international questions are not treated by the methods of law and government at all, but by secret diplomacy and other methods characteristic of the state of anarchy; whereas if mankind were federated, secret diplomacy would be done away with, and international affairs, like all others, would be openly discussed by parliament and the press, and settled in a legal and constitutional manner by the vote of a majority.

It is evident that a change of such vast extent as the federal union of all nations could only be effected by successive steps, and by the gradual federation of independent countries with each other, and of sovereign states with their dependencies, throughout the world; but I cannot think its final accomplishment so distant and so extraordinarily or insuperably difficult as is often supposed. If the dreadful calamity of another European war be averted, there seem good reasons for believing that great progress will be made before long in this direction. The junction of the numerous separate states in Italy and in Germany, in the one case by a complete and in the other by a federal union (which are really the same at bottom, since both consist in the fusion of two or more supreme governments into one, and in the formation of a single independent and sovereign state), has shown in the most striking manner the enormous benefits of political union; and Mr. Freeman, the distinguished historian, speaks of the change thus effected as "the greatest event of our times". If the states in Italy and in Germany have united together, and thereby greatly increased their strength and national importance, their security from attack, and the feelings of sympathy and brotherhood among the people as fellow-countrymen, why may not other European states unite with like results? Many of our most eminent politicians, both Liberal and Conservative, have declared themselves in favor of a federation between Turkey, Greece, Bul-

garia, and other countries of the Balkan Peninsula; which shows that they regard as perfectly feasible the union of nations who are separated by the widest differences in religion and in language, and by the memory of ages of war and oppression. M. de Laveleye warmly advocates a Balkan Confederation as the true solution of the Eastern question, and says that it is desired by the people of the countries themselves as well as by Austria-Hungary and by the English Liberals. "This solution, so just and natural", he says, "has been for many years advocated by the English Liberals. It is the only one which is conformed to the right of the populations to govern themselves, and which avoids giving a dangerous preponderance to one of the two large neighboring empires." What hinders the execution of this project is no want of feasibility, but the opposition of Russia, whose aim for generations has been to keep Turkey and the neighboring states weak and divided, so that she may seize the magnificent city of Constantinople.

Other countries whose federation seems especially desirable at present, and comparatively easy to effect from their near neighborhood and the identity or affinity of their languages, are the three Scandinavian kingdoms of Norway, Sweden, and Denmark; the kingdoms occupying the third great peninsula of southern Europe, Spain and Portugal; and the numerous independent Spanish republics in North and South America, whose separation from one another, and the state of nature or anarchy thus produced between them, have led to the most frightful evils in the shape of constant wars and revolutions. Political union is evidently most needed and most easily carried out between contiguous nations and those having the same language, from the frequency of their intercourse together; and hence each people should strive above all to be united with their nearest neighbors and with those akin to themselves in race and language in other parts of the globe. It is also much easier to effect a federation between a sovereign state and its dependencies than between independent countries, for the former are already united under the same government, and to the dependencies federation is a manifest gain; while it is not less important to the interests of the dominant state, for in the present day, when the great ideas of national equality and the equal rights of nations are spreading far and wide, no empire can long be held together on the footing of a sovereign state and dependencies, but if not federated will assuredly fall to pieces. This tendency to promote federation shows the great value to mankind at large, and not merely to the dominant nations themselves, of vast empires such as those of Russia and England. The policy which the truest friends and admirers of Russia would wish to see her pursue is not to engage in aggressive wars which might end in her own overthrow, but legally

and peacefully, or without revolution, to change by degrees her present absolute monarchy into a constitutional and representative system of government, and to *federate* her immense dominions. In England the extraordinary importance of Imperial Federation, or, in other words, the federation of the British Isles with their colonies, and eventually with India and the other great dependencies, is recognised by statesmen of all political parties, and Lord Rosebery lately declared the hope of its accomplishment to be "the dominant passion of his public life". The colonies themselves are desirous of being federally united with the mother country; and meanwhile, as stated in the Government Year Book, "the federation of colonial groups into dominions has made good progress. The confederation of British North America is all but complete. That of Australasia is accomplished in part; and in all probability the South African settlements will follow suit." It is not for themselves alone, but for mankind, that Russia and England would federate their empires, since other nations would doubtless sooner or later be admitted, and urgently invited, to join the federation.

But of all political unions, that which seems to me most important at present, and most ardently to be desired, is the federal union of France and England. The statesmen who could bring it about would render an inestimable service to both countries, and inaugurate a new era of peace and fraternity, for in itself and by its probable consequences it would go far towards making the federation of mankind, instead of a remote ideal, an actual and accomplished fact. The advantages to this country of such a union, and the weight of the reasons in its favor, cannot, I think, be exaggerated. The French are our nearest neighbors; they are one of the bravest and most powerful, and at the same time most highly cultivated, quick-witted, and charming nations on the face of the earth; a nation whom any people might be delighted to have as fellow-countrymen. From its proximity to England, France is the country with which we must always have most frequent intercourse, and with which therefore a union is most of all required; Paris and London are nearer together than any other great capitals, and indeed if the project of a Channel Tunnel were carried out, as could safely be done if the countries were united, the journey from London to Paris might be performed, without the discomforts of a sea voyage, in about seven hours. Our language, though of Teutonic origin, has become since the Norman Conquest so intimately mixed with the French that the latter is easier for an Englishman to acquire than German, and there are probably twenty persons among us who know French for one who is acquainted with any other continental language. The strength and resources of the two countries if united

would be twice as great as of either of them singly; France would gain England, and England would gain France; and what is particularly important for countries having distant possessions of such enormous extent (since the colonies and dependencies of each nation would then belong to both) their combined navy would have nothing to fear from any foreign foe. Moreover, the paramount reason for every political union, whether of individuals or of nations, is that it puts an end to the state of nature or anarchy previously existing between them, and substitutes for it the reign of government and law. Mr. Dicey remarks that a separation from Ireland would entail upon England three great evils, namely, a defeat and surrender of her traditional policy, a loss of power, and "the incalculable evil of the existence in the neighborhood of Great Britain of a new, a foreign, and possibly a hostile state". Is not the separation of France and England exactly in the same way an "incalculable evil" to both countries?

It appears to me that the union of France with the United Kingdom would tend to settle the Irish question and to bring about a thorough and permanent reconciliation with Ireland; that it would strengthen the foundations of the Empire, whose maintenance is of such vast importance, and for whose complete security against any hostile attack England urgently needs a partner; that it would render feasible Imperial Federation or federation with the colonies, and not improbably also a federal union with our kinsmen and former fellow-countrymen in the United States, both of which objects, however ardently to be desired, are at present surrounded with difficulties that seem to me insuperable; and that it would enable a share in the government, in the form of an unequal federation, to be granted without danger to India and the other great dependencies. It would do more than almost anything else to convince the Irish Nationalists that *separation* from Great Britain is neither practicable nor desirable, and that "national independence", in the sense of a separate supreme government, is only another name for the state of nature or anarchy between nations, and opposed to the most vital interests of all. Indeed, if we consider the matter closely, it will appear, I think, that political union and government are not at bottom founded on what can properly be called a *contract* or *consent*, but on a *moral duty*, namely, the duty of the minority, when opinions differ, to yield to the majority (which does not mean that the less numerous nation should yield to the more numerous, but that the minority of both nations taken together should yield to the majority) since this is at once just in itself, and the only way to secure peace among mankind. Moreover, France has at different times been allied with Ireland, and was for centuries the ally of Scotland, in their wars against England; and she is a Roman Catholic

country, and a country of peasant proprietors, which circumstances might be expected to aid in overcoming the hostility of the Irish priesthood and the Irish peasantry, and in enabling them to obtain the fullest satisfaction of all their legitimate rights and demands. As regards the federation of England with the colonies and with the United States, it seems to me that an insurmountable obstacle to this at present is the unwillingness of the latter countries to incur the risk of being involved in European wars, and obliged therefore, like the nations of Europe, to maintain huge standing armies and navies. Mr. Washburne, late Minister of the United States in France, observes: "It had been the traditional policy of our Government to keep out of all entangling alliances with foreign governments". Mr. Sterne also, a barrister of New York, from whose work I have already quoted, says: "Unlike the nations of Europe, the United States has no neighbor sufficiently powerful to affect its policy or to modify its constitution. It requires no standing army: and so long as England performs the police duties of the seas, it requires but little of a navy." Why should the United States, whose standing army is only twenty thousand strong, and why should the colonies, mix themselves up with the politics of a continent groaning under the weight of ten millions of armed men? But if France and England were united, the situation would be entirely changed. Their union would be a guarantee for peace, insomuch that both the colonies and the United States might safely federate with them, thus adding immensely to the strength and security of the confederation and promoting the spread of liberal ideas and representative government throughout the world. One very powerful motive for union arises from the peculiar circumstances of Canada. The French are already federally united with the English in Canada, and if they were similarly united in Europe the colony would be attracted with double force to the two mother countries; while the United States also has long been urgently desirous of federating with Canada, and it is evident that the only way to satisfy all these deeply-rooted desires is by the federation of all the four countries together. This would secure peace in Europe, not only by the union of so many powerful and peace-loving nations, but by showing how much greater results can be obtained by political union than by the terrible weapons of war. If all wars and conquests are to end sooner or later in federation, why not rather *begin* with federation and spare these horrors and miseries to mankind?

Whatever other nations may do, however, our own policy in my humble opinion should be to seek a federal union with France. It would lighten our difficulties, lead to peace and concord, and tend most powerfully to promote federation and to solve the problems of government in every part of the world.

I would conclude with the words of the great thinker, Thomas Hobbes, who may be regarded as in many respects the founder of the true theory of law and government, and who says that "the condition of mere nature, that is to say, of absolute liberty, such as is theirs that neither are sovereigns nor subjects, is anarchy and the condition of war", whereas "all other time is *Peace*".

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