REFLECTIONS ON SOME THEMES OF CONSTITUTIONAL THEORY: RELIGIOUS LIBERTY, PROPERTY, DEMOCRACY

Thesis presented in part fulfilment of the requirements for the Degree of Master of Arts to the
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(University College, Cork),
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Autumn 1966.

Mode B - Minor Thesis.

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PREFACE

A Constitution is intended to be an expression of the fundamental political philosophy of a nation. It is more than a legal enactment covering a certain range of social institutions. It is a human document based on the fundamental rights and duties of all men and on the particular ethos for which it is intended. It takes into account concrete man, his initiative and his freedom, his folly and his wisdom, his perversity and his generosity. The only doctrine worthy of a Constitution is one which can make authority enter into the context of human freedom, which can show that law is a means to liberty, which can help the individual to develop his personality, and, ultimately, which can spur him on to his ultimate destiny in God.

St. Thomas notes on this point,

> Political ideals will vary according to men's views on human destiny…. Political judgement will be settled by the sort of life a man expects and proposes to lead by living in community. (1)

Political science is autonomous and has its laws and notions of value; but as a human art, the art of governing human beings, politics is dependent on philosophy, for man is above all a thinking being, and also because essentially the ideals of politics - order, justice and liberty - are the incarnations, as it were, of philosophic thought.

A Constitution looks for its inspiration to the social and historical background of the people whose thought it represents. Likewise, constitutional provisions, to be properly understood, must be considered in the light of what might be called the national *esprit de corps*. For this reason, an examination of a constitution's

background is essential to a proper comprehension of its provisions.

In the opening chapter, which is concerned with *religious liberty*, we have confined our investigations to the specific question of religious liberty in its relation to the authority of the State, since this is the most relevant issue in constitutional theory. We have taken for granted that the individual, both from the philosophical and theological standpoints, has this right. Hence, we have not entered into a discussion of these related matters.

The second chapter, dealing with *property* in constitutional theory, resembles the first in its general structure - property rights are considered in relation to State authority. We have considered the theories of some eminent political philosophers of recent centuries and have endeavoured to show the impact which their ideas had on the formation of the Constitutions of countries in which their views were well received.

Finally, a chapter on *democracy* adopts a rather different approach. 'Democracy' is not something which is guaranteed by a State in a number of neat constitutional enactments. It is a spirit which manifests itself in certain characteristic features of government, such as, majority rule, individual rights etc., and it is these forms which we have considered.

A final word is necessary regarding the nature of this enquiry. It makes no further claims than to offer some "reflections" on three major themes of constitutional theory - religious tolerance, property and democracy - with particular reference to the American, French and Irish Constitutions. It does not pretend to be an exhaustive account. The field it covers is too vast and the literature too varied to admit of minute analysis within the scope of a minor thesis.

CHAPTER I

RELIGIOUS LIBERTY IN CONSTITUTIONAL THEORY

Introduction: The Notion of Religious Liberty

The problem of religious liberty is as old as man himself, for, even in his most primitive existence, man has felt within him an urge to worship someone greater than himself. Aside from metaphysical proofs of the existence of God, man, if he reflects, experiences an inadequacy, a certain defectiveness in himself. This has led him to speculate and to ponder on the existence of a Being, who is at once immanent in each thing and transcendent to all things. Once found, man has acknowledged the duty of worshipping and rendering honour to his god.

With the duty to worship God there is a corresponding right. This right is one which pertains to each individual, personally. No individual human being can assume that role of mediator between God and the individual person. Still less can anyone presume to dictate to another the manner of his worship. Man must worship God in a manner befitting a man, that is, as a creature endowed with intelligence and free will. To force a person to worship God in any particular way, not only violates that person's rights, but defeats its own purpose, for worship thus rendered is not free, is not in fact human, properly speaking.

As a matter of historical fact men have generally banded together in some form of common worship, and it is in this case that the problem really arises. Some have called their God Yahweh, others Allah, while others have believed in a multiplicity of deities. Conflict has arisen either where the worship of a particular deity in a specified region was not universal, or where religious groups have met, and used violent means in an effort to force one another

to accept their respective views. An unthinking zeal has often motivated such violence but it must be admitted that other factors have frequently been the cause. Political influences, in particular, have caused sectarian strife. Many a statesman has found it convenient to foster religious differences for his own ends, either so as to weaken his enemies or to offer an excuse for intervention in the affairs of another state. Examples of this kind of interference in religious affairs are numerous, and we hope to illustrate some of them in the following article.

Before proceeding to an historical consideration of the problem we would do well to clarify and define exactly our notion of religious liberty. Perhaps the best definition is that of Louis Janssens,

> It is the liberty, on the one hand, for individuals to profess a personal religious belief in conformity with the conviction of their conscience, and the liberty, on the other hand, for their religious bodies to establish this conviction in practice and to arrange the indispensable means for this purpose. As with all manifestations of liberty of conscience, the decisive elements will be the dignity of the *moral subject*, which is the human person and his condition in *the social order*. (1)

In considering the problem of religious liberty in the context of this essay we must bear in mind that our task is not to establish whether or not man has a right to freedom of religion, but to examine the question of the relationship between this right and the authority of the State. Our aim, therefore, is not to demonstrate the rights and wrongs, whether philosophical or theological, of the right to freedom of religion, but to examine this right in reference to *political* theory. More precisely, we shall treat of this question in relation to the American, French and Irish Constitutions.

Article I Historical Perspective
Section 1 - The Ancient World

The Greeks

As in so many other spheres of knowledge we must return to the Greeks in order to find the roots of present-day ideas. The debt we owe to the Hellenic thinkers is almost incalculable. It has been noted, rightly, that,

> The history of Greek philosophy is, in fact, the history of our own spiritual past, and it is impossible to understand the present without taking it into account. (2)

This is true in the field of religion as it is in that of philosophy.

The early Ionians were constantly in search of "the one in the many", the unifying principle of things, but they never arrived at a knowledge of God which was fully satisfactory even to themselves. Aristotle regarded God as the Prime Mover, while Plato regarded Him as the Supreme Good, and even referred to him as a personal Being. (3) Nevertheless, it is clear that the Greeks' knowledge of God was inadequate and ill-defined. As St. Augustine said, it is "as though we were in quest of physiology and not of theology". (4) Because their religious ideas were in a state of ferment, and because of their innate respect for thought in man, the Greeks were not in the least disposed to any form of religious persecution. One of the greatest classical scholars of modern times has written, "The republics of Greece had performed an imperishable work; they had shown mankind many things, and, above all, the most precious thing in the world, fearless freedom of thought". (5)

The condemnation of Socrates in 399 B. C. can hardly be cited as an example of religious, or even of quasi-religious persecution. Cowardly and despicable though it was, the crime was perpetrated

on political grounds, namely, that, at a time of national crisis, Socrates was creating dissension by the dissemination of his ideas among the young men of his day.

However, as against this picture of respect for thought there is the fact of the extraordinary position which the State occupied in the mind of the Greeks. It embodied what the modern mind understands by the words 'State', 'Church', 'society' and 'government', all unified into a single whole. It was, by modern standards, a very far-reaching organism. When one considers the circumstances of the time, this was quite understandable. Indeed, St. Thomas writes that if the final end of human existence were a purely natural one, it would fall to the State… whose concern in such a case would embrace the ultimate end of man… to determine the forms of religious worship by civil law."(6) The atmosphere fostered by such an all-embracing State was, however, scarcely conducive to freedom of action, whatever about freedom of thought.

Plato held that it was quite unlawful for any individual to attempt to change a custom. Indeed, in Greek political theory the emphasis was very largely on the community at the expense of the individual. Furthermore, the idea was generally accepted by the Greeks that there were really only two classes of people in the world, namely, Greeks and barbarians. Perhaps not without some justification the former had little respect for the culture of the latter. Nevertheless the Greeks did not attempt to foist their religious ideas on others, as much because of impotence as because of a lack of conviction.

Pagan Rome

In Rome, the emperors, generally speaking, were indifferent to religion, considered as such, but, like the Greeks, they did not fail to see its value as a unifying force in the political structure of the State. They were also reasonably well disposed towards the

traditional cults because of their value in improving the moral standards of the populace. The measure of the average Roman's religious convictions is well summed up in the words of the New Testament, where we read of the pro-consul, Gallio, that he "cared for none of those things." (7)

Nevertheless, the emperors realized that religious division could weaken the structure of the Empire, and so they made every effort to extirpate the Jewish and Christian religions while they were yet numerically weak. The cult of emperor-worship was initiated also in an effort to further strengthen the latter's position. The natural theology of the Romans was entirely geared to the interests of the State. St. Augustine, in Book Seven of his *De Civitate Dei*, ridiculed the "civil theology" of Terentius Varro.

Under Roman rule, religious liberty, even in a restricted sense, was out of the question. Religion, such at it was, was entirely subjugated to, and controlled by, the State - a feature of social life which, unfortunately, has outlived the Roman empire, as subsequent history shows.

Section 2 - Christianity

With the advent of Christianity came a distinct break with the past, and nowhere was this break more clearly exemplified than in the new situation arising out of the separation of Church and State. Hitherto it had been impossible to speak of a separation of Church and State, for there was no differentiation between the two. Now, however, the Church insisted on independence of State control as a necessary means of achieving its spiritual mission. This can be seen very clearly from the words of Pope Gelasius I to Emperor Anastasius I in 494 A. D. "Two there are, august Emperor", he wrote, "by which this world is ruled on title of original and sovereign right - the consecrated authority of the priesthood and the royal power". (8) Commenting on this, Fr. John Courtenay

Murray has written, "In this celebrated sentence of Gelasius I… the emphasis laid on the word 'two' bespoke the revolutionary character of the Christian dispensation". (9)

This separation of the two powers had immeasurable significance for the question of religious liberty, for it meant that the individual was no longer answerable to a civil tribunal for his religious beliefs. It meant, too, that the Church was no longer under the thumb of civil authority, and forced to trim its theological sails to suit the policies of the State. The history of Church-State relations in succeeding centuries is inseparably linked to that of religious liberty.

The early Christian Church appreciated the value of this separation and endeavoured to set the seal on it. It was paradoxical that one of the greatest challenges to the moral strength of the Church should come *after* the cessation of persecution. Until the reign of Emperor Constantine the Church was a relatively small, persecuted community which was radically separated from the State. When persecution ceased in all quarters, after the publication of the Edict of Milan in 313 A. D., the Church was in danger of losing much of its distinctly spiritual character through association with the State. As one author notes, "When Emperor Constantius II remarked, 'My will is a canon', the danger was imminent". (10)

In succeeding centuries there were many instances of action being taken against heretics by Christian emperors. Pope St. Hormisdas (514-523) had accepted the offer of Emperor Justin I (518-527) to depose the Monophysite bishops in the East. St. Augustine, too, seems to have been reconciled to the Emperors' persecution of the Donatists. The early Christian Church, then, appeared to be moving towards the establishment of Christianity as the State religion with its full attendant attributes. Many attempts were made to ward off this danger, particularly in the Council of

Nicaea, held in 787, but it must be admitted that, to a large extent, they were not successful.

As a general conclusion to the history in the early Christian Church we can denote three very important features: -

1. Many of the infringements of religious liberty by the Church, and these were not common, were instigated by civil rulers for merely political ends.
2. Where they were counselled by the Church it was generally in a defensive, not in an offensive, capacity. This is particularly clear in the case of the Arians and the Donatists.
3. Where the Church took action against an individual on account of his religious beliefs it was generally in the case of bishops or priests who had fallen into heresy and were thus endangering the spiritual welfare of their congregations.

It would appear also that it was only in very exceptional cases that a non-Christian was forced to accept the Christian religion. Pope Gregory VII (Hildebrand) wrote, "If, moved by a right intention, you desire to lead to the true faith those who are outside the Christian fold, you should use persuasion, not violence". (11) Later on, Pope Gregory IX wrote to the bishops of France on 6 April 1233, "As for the Jews, Christians ought to conduct themselves with the same charity that they would desire to see used towards Christians in pagan countries."(12) Pope Innocent III, writing to the Archbishop of Soles, states, "It is contrary to the Christian religion that a man be forced to become and to remain Christian despite his opposition and against his will". (13)

Section 3 - St. Thomas

Initially, the attitude of St. Thomas to religious liberty appears to be one of stubborn intransigence but, as in so many other cases, if we take the circumstances and environment of his day into account, his position becomes, if not actually acceptable, then at

least understandable. His attitude to heretics is severe, because, to his mind, they are going back on a promise which they have made. "He who fails to fulfil what he has promised sins more grievously than if he had never promised it."(14) The reason is that "acceptance of the faith is a matter of the will, whereas keeping the faith when once one has received it, is a matter of obligation". (15) As a modern writer says, "Indeed, to make a promise is an act of the will, to keep it is one of necessity". (16) To the mind of Aquinas, heresy was not a sincere change of religion arising out of theological considerations, but was basically malicious in character. "Heresy is a species of pride rather than unbelief" (17), and, "It arises from pride or covetousness". (18) He quotes (19) with approval the statement of St. Augustine that "A heretic is one who either devises or follows false and new opinions, for the sake of some temporal profit, especially that he may lord and be honoured above others". (20)

Quite different, however, is his attitude to those who have never known the faith. He recognizes that the act of faith must be a free act, and rejects the use of force as a means of conversion. He acknowledged that, as Cardinal Lercaro says, "A truth imposed is not a truth accepted" (21), or, to quote Louis Janssens,

> A faith imposed by constraint is, then, a contradiction in terms, not only from the viewpoint of the free initiative of God, but also from that of the free acceptance which it implies in man. (22)

As regards the public practice of non-Catholic worship, St. Thomas wrote that, "Those who are in authority rightly tolerate certain evils, lest certain goods be lost, or certain greater evils be incurred". (23)

General View of Church and State

From the twelfth to the fourteenth centuries the policy of the popes was, to a large extent, centred on the task of establishing the

papacy as a supra-national tribunal, which, if necessity demanded, could depose monarchs, and to which the choice of new monarchs was to be referred. A further aim was that the authority of the pope might be invoked to settle the never-ending quarrels which set one petty kingdom at war with another. Also, it was hoped that through the agency of the popes a solid and coherent framework of defence against the Turks might be formulated. Certainly there was no organization besides the papacy even remotely capable of such a task. The policy came nearest to realization under Pope Innocent III, of whom it was written that when he stamped his foot, crowns rattled all over Europe!

Under the reign of Boniface VIII this policy met with stiff opposition from Philip the Fair, King of France. In the Bull *Unam Sanctam*, of 1302, Boniface wrote, "The two swords… the spiritual and the temporal, are in the power of the Church".(24) He refers here to the two swords mentioned in the Gospel.(25) It is interesting to note that, in the allocution *Vous avez voulu* of 7 September 1955, Pope Pius XII, commenting on the teaching of Pope Boniface, said that it was to be considered in view of the circumstances of the time and was archaic in the world of today. (26)

Viewing the social structure of the fourteenth century through the eyes of the twentieth, it is easy to offer glib and superficial criticisms. To understand the situation properly it is necessary to grasp fully what it means to be immersed, as it were, in a Christian society. Medieval Europe had reached the social consciousness of Catholic truth and had a tradition of national Catholic religious unity. Catholicism was regarded as, *iure divino*, the one true religion, so that it was natural to think that it ought to be, by constitutional law, the one religion of the State.

It would follow from this that no other religion would have, *per se*, and in principle, a legal right to public existence and action

within society. A religion that has no right to exist *iure divino* can have no right to exist *iure humano*. Therefore, *per se* and in principle, all false religions ought to be put beyond the pale of public life and social action. The supreme juridical principle - the exclusive rights of truth - is transposed into the legal institution of the one State religion. The juridical consequence is intolerance of all but the one, true faith. Intolerance becomes the rule whenever possible; tolerance whenever necessary. The situation changes when the religio-social situation is pluralistic.

Thus heresy came to be regarded as a criminal offence, as a form of treason, not merely against the common good of the community, but against its most important aspect, the spiritual. To quote Janssens again,

> The unity of the faith was considered as an important element of the common good of this theocratic community. This is why the secular arm, being in the service of the common good, was obliged to punish heretics more severely than forgers, because heresy militated against the spiritual unity of the community, and, therefore, against a much more important element of the common good than that of material interests. (27)

It must also be borne in mind that heretics themselves, as for instance, the Albigensians, showed little leniency towards those who remained faithful.

This alliance of "Throne and Altar" was undoubtedly one of great significance and had far-reaching effects. Whether these effects were beneficial or otherwise is a very debatable point, and advocates of different opinions are numerous. On the one hand we have the statement of Cardinal de Jong that, "The co-operation of Church and State worked for the benefit of both" (28), and also that of Pope Gregory XVI in his encyclical *Mirari Vos*, published in 1832. He wrote that, "This concord has always been as salutary

and as fortunate for the Church as it has been for the State". By contrast a modern author makes the statement that "Political pressure as an instrument of the Gospels is doubly condemned; by the Gospels and by political tradition". (29) Viewing this alliance from the perspective of the present essay we offer the opinion, that, in general, its effects were detrimental to the free exercise of religious convictions.

Section 4 - The Reformation: "Error has no Rights"

As we move towards modern times we find in the Reformation the open proclamation of the now wholly discredited theory that "Error has no rights". Those who attempt to refute this theory on the grounds that error, as an abstraction, is incapable of being the object of rights - since it is a fundamental principle of ethics that only people have rights - fail to hit the mark, for the proponents of this theory are well aware of that fact, and the phrase "Error has no rights" is merely intended to be a popularization of their real position, namely, that people in error have no rights in so far as they are in error. We may safely say that this latter attitude was almost universally accepted in the sixteenth century by Catholics and Protestant alike. Perhaps the only redeeming feature of this whole period of bitterness is the fact that religion was regarded very forcefully as a vital issue in life. Indifference was as unthinkable to the minds of men of this period as tolerance was.

Church and State in the Reformation

It is at this time especially that we can see the full implications of the disastrous policy of the juridical and administrative alliance of Church and State. The two fields of religion and politics were so inextricably bound together as so produce a situation whereby religion was degraded to the level of a plaything, a mere pawn, in the hands of politicians. Kings and princes proclaimed aloud their allegiance to their faith, but whenever a clash between religious and political issues arose, almost inevitably political sentiment won.

It is interesting to note the observation on this point of one who could hardly be considered biased in favour of religion.

> When one examines to-day, with a truly philosophic impartiality, the ensemble of those two great struggles which occurred so frequently between the two powers during the Middle Ages, one quickly recognises that they were almost always essentially defensive on the part of the spiritual power, which, even when it had recourse to its own powerful weapons, often did no more than to wrest nobly for the real maintenance of a just independence, which the real accomplishment of her mission demanded of her, but without being able, in most cases, to do so successfully. (30)

The Reformation in France

If we examine, for instance, the behaviour of the kings of France we find a clear example of this ambivalence, for, while persecuting the Huguenots, supposedly out of zeal for the Catholic faith, they supported the Lutheran princes in their struggle against the Catholic German emperor, knowing fully that, if the former secured a strong position, the perennial Habsburg threat against France would, from the political viewpoint, be neutralized. The basic insincerity of their attitude was made blatantly clear in the massacre of St. Bartholomew's Day, for, when the tocsin sounded from the belfry of Saint-Germain-l'Auxerrois on the morning of 24 August 1572, it heralded the slaughter of two thousand Huguenots, not because they were of a different faith, but because, as Richelieu said, they constituted "a State within a State". If the perpetrators of this massacre had as much enthusiasm for the Catholic faith as they simulated, it would have occurred to them to begin by reforming their own lives, which were far from perfect. To his everlasting discredit Pope Gregory XIII exclaimed, on hearing the news of the massacre, that it was "more welcome than fifty victories of Lepanto". (31)

Spain and the Reformation

We could also cite the example of the infamous Ferdinand Alvarez de Toledo, Duke of Alba, whose name, as Henri Daniel-Rops said, "is everlastingly associated with the bloody drama of the Low Countries". (32) This man, as Viceroy of "His Most Catholic Majesty" King Philip II of Spain, carried on a relentless persecution accompanied by numerous atrocities, all of which were perpetrated in the name of the Catholic religion. There is little room for doubt, however, that his motive in crushing Calvinism stemmed from his realization of the fact that, if religious differences were allowed to accentuate the gulf between the Netherlands and Spain, then the task of maintaining these colonies under the control of the Escorial would be increased enormously.

"Religious liberty, 'that strange and ridiculous thing', as one German chronicler described it, was all the more unacceptable because it led to a kind of conspiracy against the security of States, a conspiracy in which revolutionaries at home were supported by foreign powers". (33) The Duke's motives were almost entirely political, and it is related that the Bishop of Namur confessed that "He [the Duke] had done more harm to religion in seven or eight years than Luther, Calvin and all their henchmen". (34) King Philip himself, with whom Pope Paul IV quarrelled on account of Philip's growing influence in Italy, did not hesitate to use mercenaries to capture Rome in order to bring the pope to terms.

Religion and Politics Interlocked

The preceding examples are chosen out of many instances in which persecution, ostensibly carried on for religious motives, had, in fact, merely political ends. This fact was recognized, even at the time, as can be seen from the words of the Venetian ambassador to Spain,

> It is fair to say that the real master of the Holy Office is the King. He personally appoints the Inquisitors. He uses this

> tribunal to control his subjects, and to chastise them with his characteristic secrecy and severity. The Inquisition and the Royal Council are always in step and constantly assist one another. (35)

As Lord Erskine said at the trial of Thomas Paine,

> When the foundation of this religion was discovered to be invulnerable and immortal, we find political power taking the Church into partnership; thus began the corruptions both of religion and civil power. (36)

Religious Persecution

While bearing in mind the fact of political influence, we must not forget that much of the persecution of that day was carried on sincerely in the name of religion. Thus, Martin Luther could say

> If we have the power we must not tolerate contrary doctrines in the State; and to avoid greater evils those who do not believe must be forced to attend sermons, to hear the Decalogue explained and to obey at least externally. (37)

Pope Clement VIII was even more explicit, "Liberty of conscience for each and every one is the worst thing in the world". (38) Zwingli declared, "It is the Lord Who has commanded, 'Slay the wicked one who is in your midst' (39), to which Calvin added, 'It is lawful to punish heretics and their execution is perfectly in order". (40) His successor, Theodore Beza, wrote, "What is liberty of conscience?" and he answered, "A diabolical dogma". (41) Further east the Russian theologian, Joseph of Volokolamsk, in opposition to Nil Sorsky, wrote,

> To kill a heretic with one's own hands and to kill him through prayer by converting him are one and the same thing. Besides, death is redemptive of heretics themselves; it diminishes their responsibility before God. (42)

Likewise, Philip II, despite his political manoeuvrings, seems to have been sincere when he said, "I would give a hundred lives and my kingdom rather than have heretics for subjects". (43)

To the men of those times, tolerance was synonymous with weakness and liberty with irreligion. Only one exception to the prevailing attitude was found, and this was in the case of St. Thomas More, who wrote in his *Utopia*, in 1515,

> It should be lawfull for everie man to favoure and folow what religion he would, and that he mighte do the best he could to bring other to his opinion, so that he did it peaceablie, gentelie, quietly and soberly, without hastie and contentious rebuking and invehing against other. If he could not by faire and gentle speche induce them unto his opinion yet he should use no kinds of violence, and refraine from displeasaunte and seditious woordes. (44)

Section 5 John Locke

Due, perhaps, to weariness with wars of religion, rather than to any other factor, a more tolerant approach came to be adopted in the century following the Reformation period. Men's attitudes were changing and many came to realize that not merely was it not an evil to refrain from religious persecution, but that it is in fact something good in itself. This change was brought about, to some extent at least, by two factors: -

1. There was a better awareness of the nature of rational belief, and,
2. there was a growing tendency towards the disestablishment of the Churches, whether Catholic or Protestant.

To a large extent this movement centred around John Locke, who, in exile in Holland in 1689, penned his *Letter concerning*

Toleration. With reference to the two points made above we may draw attention to two statements of his document,

1. "Faith is not faith without believing" (45), and,
2. "The Church itself is a thing absolutely separate and distinct from the commonwealth". (46)

It is significant that although Locke advocated religious tolerance he excepted Catholics - though only by an indirect reference - on the grounds that they owed political allegiance to 'a foreign Prince', and could not therefore be loyal subjects of the Crown. He also excepted militant atheists who would endeavour to subvert the religious beliefs of others. Locke's work was translated into four languages in the year of its publication, and was very widely read. Its influence was enormous, and, to a considerable extent, it was as a result of this work that rulers in Europe, from 1689 onwards, enacted legislation aimed at the removal of religious disabilities. In England, the Act of Toleration was passed in the very year of the publication of Locke's work. It granted certain concessions to Catholics, Unitarians and Non-conformists. Several other countries followed suit within the next few decades.

Section 6 The Problem in the Nineteenth Century

Moving on into the nineteenth century the question of religious tolerance was largely centred around the attitude of the Catholic Church. Outside of Catholic circles the principles of religious liberty had been generally recognized, but within the realm of Catholicism, philosophical or theological discussion of the subject was relatively stagnant. In this century also, the question became more fundamentally philosophical, and political influences, though by no means absent, were no longer an overriding factor.

Liberalism

Liberalism, which was the dominant concept in political philosophy in the last century, came in for severe criticism from the popes. Cardinal Newman said of it,

> Liberalism, in religion, is the doctrine that there is no positive truth in religion, but that one creed is as good as another, and this is the teaching which is gaining substance and force daily. It is inconsistent with any recognition of any religion as true. It teaches that all must be tolerated, for all are matters of opinion. (47)

It was in this sense that Popes Gregory XVI and Pius IX understood the term and, as a consequence, condemned it.

Pope Gregory XVI

In his encyclical letter *Mirari Vos*, of 15 August 1832, Gregory XVI wrote,

> From this poisonous spring of indifferentism flows the false and absurd, or rather the mad principle that we must secure and guarantee to each one the liberty of conscience; this is one of the most contagious of errors. (48)

This statement becomes more understandable if we consider the remark which the same pope made to Czar Nicholas I, "Liberty of conscience must not be confused with liberty not to have a conscience". (49) However, the pope seems to have made the mistake of failing to distinguish between the different elements of Liberalism. He seems to have considered it *en masse*, as it were, and to have rejected it *in toto*, without discerning any measure of truth in it. He spoke of it as "Plena illa atque immoderata libertas opinionum - freno quippe omni adempto". (50)

Again, however, one must take into account the circumstances of the time. The political doctrines of Liberalism had been adopted in many countries, and, in most cases, were characterized by an attitude of hostility to Catholicism. What Pope Leo XIII said in his day was equally true in the reign of Gregory XVI.

> It very often happens that, while they profess themselves ready to lavish liberty on all in the greatest profusion, they are utterly intolerant towards the Catholic Church, by refusing to allow her the liberty of being herself free. (51)

As we have seen, Pope Gregory wrote his encyclical in 1832, just two years after a revolt in the Papal States, and so, "It was almost inevitable that Gregory XVI, obsessed with the idea that the Papal States were falling apart under the impact of modern ideas, should confront those ideas with redoubled vigour". (52) From 1820 to 1823 a Liberal government in Spain had suppressed the religious orders, confiscated Church property and forbidden ordinations. Considering these factors, the condemnation of Liberalism by Pope Gregory becomes much more understandable, and indeed, a redeeming feature is the fact that he "refrained from disavowing - as some people had urged him to do - the Belgian Constitution of 1831, based on these liberties and on the principle of separation of Church and State". (53) If further testimony is needed there is the reference of Lecky, the self-confessed rationalist, to "the solemn and authoritative condemnation of religious liberty by a pope, who justly attributed it to the increasing spirit of rationalism". (54)

Pope Pius IX

Pio Nono, one of the favourite targets of anti-Catholic polemicists, found himself in a position similar to that of his predecessor and his reaction to that position followed Gregory's initiative. The only difference between the two popes in this matter was one of degree, for, in the reign of Pius IX, Liberalism had become increasingly anti-Catholic, and Pius's counter-attack was more vigorous than that of Gregory. In December 1864, the pope published his *Syllabus of Errors*, as an appendix to the encyclical letter *Quanta Cura*, which expressly condemned the following three propositions, under the significant title, "Errores ad liberalismum *hodiernum* pertinentes" (55): -

1. It is no longer desirable that the Catholic religion be considered as the only religion of the State to the exclusion of all others.
2. Hence in some Catholic countries provision is laudably made that immigrants coming into the country be allowed the free exercise of their own religion.
3. It is false to assert that freedom to practise any religion whatsoever and the full liberty to express openly and publish all opinions and ideas, tend to corrupt the morals and minds of the people or lead to religious indifference.

Influence of Circumstances

To many observers the Syllabus appears as an intellectual bomb-shell almost without parallel in the history of the Church. It has rightly been noted, however, that: -

> It was a purely ecclesiastical document, not the manifesto it was taken for, and it could be understood only by reference to a whole series of other pronouncements. (56)

The preface to the *Syllabus* pointed out that it merely presented a series of extracts from other papal documents and that, in order to be understood properly, the original works should be consulted. Furthermore, the papal Secretary of State, in reply to a query from the Canadian bishops, stated that the condemnation of Liberalism did not apply to the Canadian Liberal Party, and that Catholics were free to vote for it or not as they chose. The condemnation was not as absolute or as comprehensive as it was made to appear.

In formulating these and other pronouncements Pope Pius's mind seems to have operated on the principle that because anti-Catholic attacks followed, in the order of time, on the *Declaration of the Rights of Man* of 1789, it was, therefore, as a result of that Declaration that these events took place. Such an assumption, while not without a considerable measure of truth, was not entirely accurate. Other factors were involved, such as popular resentment

against social injustice. A wave of revolts had swept over Europe in 1848, and Pope Pius regarded them as an unjustified attempt to overthrow established authority, and as having their source in the doctrine of Liberalism. He was not unreasonable in this for it was in the name of Liberalism that Piedmont revolted and set up a bitterly anti-clerical government. To quote Roger Aubert again,

> Besides this, they [i.e. churchmen] were deeply impressed by the fact - and it was a very impressive fact about 1860 - that wherever the liberals were in power, they had hastened to pass legislation hostile to the Church. (57)

Other factors such as the influence of Rénan's *Life of Jesus*, the growth of Protestantism in the United States, and the atheistic philosophy of Littré also influenced him. In Spain, for instance, liberalism was synonymous with anti-clericalism, and it has been said that the Liberal government there granted freedom to all religions, except the one known to the great majority of Spaniards!

In conclusion it must be said that while the historico-political context makes the papal pronouncements a little more palatable, there remain, nevertheless, some clear defects which cannot easily be overlooked. There is the rather sweeping generalization on the nature of Liberalism, the tendency also to assume that non-Catholics, one coming to know the faith, could not be sincere in rejecting it, and, finally, a failure to take sufficient account of the position of the individual human being in such a question.

Section 7 Modern papal teaching

The statement of Pope Leo XIII that "The tolerance of evil which is dictated by political prudence should be strictly confined to the limits which its justifying cause, the public welfare, requires" (58), is significant in that it summarizes succinctly the teaching of the Catholic Church on religious liberty up to the reign of Pope John XXIII. The Church seems to have regarded the common good as

synonymous with the Catholic good, and taught accordingly. To assume that other religions are evil is to take altogether too much for granted. The very least that can be said in defence of them is that, as Aquinas wrote, "That which is evil can receive the character of goodness on account of reason apprehending it as such". (59)

The Church's teaching rested on the well-known "thesis-hypothesis" concept, the thesis being full State support of the Catholic Church and toleration of the private practise of other religions, and the hypothesis representing full civil tolerance of other creeds, granted because of circumstance or custom. In this regard the Church has rightly been accused of a certain ambivalence, for it can claim religious freedom for Catholics by virtue of the liberal principles of a non-Catholic State, while, in a "Catholic" State, it can deny this same freedom to non-Catholics by virtue of Catholic principles.

This principle has been defended by Cardinal Ottaviani in the words,

> Men who perceive themselves to be in sure possession of the truth are not going to compromise. They demand full respect for their rights. How, on the other hand, can those who do not perceive themselves in the possession of truth claim to hold the field alone, without giving a share to the man who claims respect for his own rights on the basis of some other principle? (60)

Such an attitude bespeaks an insular frame of mind, to say the least. The Cardinal has assumed too readily that non-Catholics "do not perceive themselves secure in the possession of truth".

A more recent development is that of the concept of dogmatic intolerance and civil tolerance. Dogmatic intolerance means that the Church insists on its claim to be the one true Church of Christ,

and does not recognize other Churches as being divine in origin. This is a claim which the Church must make. A well-known Protestant theologian has written, "It is a fact which has to be recognized, that every Church must be dogmatically intolerant". (61) Likewise, "Dogmatic intolerance belongs to the sphere of knowledge and, since it merely recognizes the primacy of truth and logic, injures no one's rights". (62) Occasionally, however, the concept has been interpreted in a very rigid manner, refusing to acknowledge any good or truth at all in non-Catholic religions. The narrowness of the scope of civil tolerance envisaged by the Church until quite recently may be gauged from the statement of Pope Pius XII that,

> The statement that religious and moral error must always be impeded, when it is possible, because toleration of them is in itself immoral, is not valid absolutely and unconditionally.(63)

This is a statement which is capable of being interpreted in different ways, but it certainly does allow much scope to those people whom the majority regard as being in error. Other statements in the same document are not free from ambiguity, such as, for instance, the affirmation that, "Within its own territory and for its own citizens, each State will regulate religious and moral affairs by its own laws". (64) This would seem to give the State very far-reaching scope in its authority.

It is significant that this latter position should have been adopted at a time when another enemy of religious liberty - the union of Church and State - was making a reappearance on the Catholic stage. Thus, a letter of the Congregation of Seminaries and Universities to the bishops of Brazil, dated 7 March 1950, denounced a new type of Catholic liberalism which

> admits and encourages the separation of the two powers. It denies to the Church any sort of direct power over mixed

> affairs. It affirms that the State must show itself indifferent on the subject of religion… and recognize the same freedom for truth and for error. To the Church belong no privileges, favors, and rights superior to those recognized as belonging to other religious confessions in Catholic countries. (65)

This childish lamentation after lost privileges is repulsive to anyone who regards the Catholic Church as a healthy, growing organism, and not as a delicate fossil in need of protection. The one-sided assertion of rights accompanying it is equally distasteful.

Pope John XXIII

With the advent of Pope John XXIII to the papal throne a definite change took place in the position adopted by the Catholic Church. In his widely-acclaimed encyclical *Pacem in Terris*, the late pope wrote, "Every human being has the right to honour God according to the dictates of an upright conscience and therefore has the right to worship God privately and publicly". (66) His initiative was followed by the Second Vatican Council which, under the leadership of Pope Paul VI, declared, "This Vatican Council declares that the human person has a right to religious freedom." (67) The pilgrim Church had come a long way and now stood firmly and unequivocally for the right of the individual to worship God as his reason showed him.

Article II Religious Liberty in Modern Constitutions

In general it can be said that in modern times, in theory at least, there is a growing recognition of the value of personal liberty, including that of religion, in the life of the State. This, however, is not the case universally. There are yet many countries in which the State supports a particular religion to the exclusion of, or at least, to the neglect of, others. Among these may be listed: -

1. Argentina, which, in the Constitution of 1860, declared that the government "sustains the Roman Catholic and Apostolic worship".
2. Bolivia, in 1880, affirmed that "The State recognises and sustains the Roman Catholic and Apostolic religion, permitting the exercise of other cults".
3. Ecuador, in 1862, stipulated that "No other forms of worship than the Catholic one should be tolerated".
4. Colombia, in 1887, constituted Catholicism as "the religion of the State".
5. Peru, in 1860, established the Catholic religion as "the religion of the nation". (68)

The relevant articles of the Portuguese Constitution read: -

Article 45: The Catholic religion may be freely practised, in public or in private, as the religion of the Portuguese Nation. The Catholic Church shall enjoy juridical personality and may organise itself in conformity with canon law and create thereunder associations or organisations, the juridical personality of which shall equally be recognised.

Article 46: The State shall also ensure freedom of worship and organisation for all other religious faiths practised on Portuguese territory, their outward manifestations being regulated by law, and it may grant juridical personality to associations constituted in conformity with the creeds in question.

Sole. These provisions shall not apply to creeds incompatible with the life and physical integrity of the human person and with good behaviour, or to the dissemination of doctrines contrary to the established social order. (69)

Commenting on this, Cardinal Cerejeira, Patriarch of Lisbon, wrote, "The Portuguese State… permits all cults and does not support an official Church". (70)

Spain, in its Constitution, *Fuero de los Españoles*, ratified in 1945, after consultation with the Holy See, declared Catholicism the State religion, and accorded it official protection. Private worship was permitted to other cults. With reference to this declaration, Cardinal Pla y Daniel said, "It embodies the cardinal points of Christian liberty in opposition to State totalitarianism". (71) While we may not regard the provisions of this Constitution as quite just, the least that can be said of it is that it was honest and forthright in its approach. The same cannot be said for the decree of the Republican government, dated 8 December 1938, stating: -

> The Spanish Constitution, respecting as it does religious beliefs, solemnly establishes freedom of conscience and the right freely to worship and practise any form of religion. (72)

This decree was signed by Señor Manuel Azaña, President of the Council of Ministers, who did not, however, take its provisions very seriously. When Minister of War he declared, "Spain has ceased to be Catholic", and drew the rather illogical conclusion that the practice of the Catholic religion should be prohibited!

> The Burmese Constitution, adopted in 1947, affirmed: -
> The State recognises the special position of Buddhism as the faith professed by the great majority of the citizens of the Union.
> The State also recognises Islam, Christianity, Hinduism and Animism as some of the religions existing in the Union at the date of the coming into operation of this Constitution. (73)

This Constitution shows clearly the impress of the work of Irish jurists who helped in its formulation. Another Asian Constitution, that of Pakistan, declares, "All legitimate interests of the minorities, including the religious and cultural interests, shall be fully safeguarded". (74) The Dutch Constitution of 1815, in Articles 174 to 180, guarantees freedom of religion. (75)

Perhaps the most comprehensive statement on religious liberty is that found in the United Nations General Assembly's *Universal Declaration of Human Rights*, passed on 13 December 1948. Article 18 reads: -

> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. (76)

There are some countries in which freedom of religion is limited to a very narrow scope. Most Arab countries, for instance, have declared Islam to be the State religion and have placed restrictions on Jews and Christians, particularly in regard to the latter's missionary activities. The recent persecution of Christians in the southern Sudan is an example of supposedly religious zeal cloaking political interests. In Scandinavian countries, Lutheranism has been established as the State religion and has been accorded a favoured position. Many of the restrictions on Catholics have been allowed to lapse in recent years, and there has been considerable discussion as to the question of their formal abolition.

In the USSR, the Constitution, though technically granting freedom of religion, is nevertheless hostile to the practice of any formal exercise of worship. It was promulgated by Stalin in 1936. Article 124 reads: -

> In order to ensure to citizens freedom of conscience, the Church in the USSR shall be separated from the State, and the school from the Church. Freedom of religious worship and freedom of anti-religious propaganda shall be recognised for all citizens. (77)

The practical interpretation of this statement is outlined by the Soviet lawyer, Orleansky. He writes: -

> Liberty of religious profession means that the action of believers in the profession of their own religious dogmas is limited to the believers' sphere itself, and is considered as bound up strictly with the religious worship of one or other of the religions tolerated in our State….
>
> Consequently, all propagandistic or hortative activity on the part of churchmen or of religious - and *a fortiori* of missionaries - cannot be considered an activity permitted to them by the laws on religious associations, but is considered as going beyond the bounds of the religious freedom protected by the laws. It becomes, therefore, the object of penal and civil laws, insofar as it is opposed to those laws. (78)

Article III Religious Liberty in the American, French and Irish Constitutions

Section 1 America and Religious Liberty

Contrary to popular opinion, America was not always a haven of peace for the persecuted, nor was it by any means entirely free from the evil of religious oppression. In the very early colonial days, when almost the entire immigrant population was British, the echoes of the European religious wars were heard in America. Bringing with them their deeply rooted religious convictions - and prejudices - the first settlers established themselves on the patterns of their motherlands' society.

In the royal charter granted to Virginia in 1606, Anglicanism was established as the State religion. Soon the colonies of Carolina and Georgia followed suit. The Puritans, who had been under the lash of persecution in Britain, far from conceding religious freedom to others, ensured full protection for their church, while restricting

others, in the colonies of New England, Massachusetts, New Hampshire and Connecticut. (79)

These restrictive enactments were far from being merely theoretical in significance, Many instances of open and bitter persecution of Catholics, and of Quakers in particular, are recorded. (80) Lecky writes,

> In America, the colonists who were driven from their own land by persecution, not only proscribed the Catholics, but also persecuted the Quakers - the most inoffensive of all sects - with atrocious severity. (81)

It must be conceded, however, that once the colonists came to form a social consciousness independent of European bias they altered their legislation to allow full scope to the free exercise of religious beliefs. In this context it is interesting to note the remark of Christopher Hollis, "It was largely from the example of Ireland that the American proponents of religious liberty derived their notion". (82)

Perhaps the inspiration for this observation arose from the fact that the first legislative act assuring religious freedom to be passed in the New World was adopted by the colony of Maryland, at the instigation of its Catholic governor, Lord Baltimore. Even when the very first settlers were setting sail for America Lord Baltimore insisted

> That the said governor and commissioners treat the Protestants with as much mildness and favour as justice will permit. And this is to observed at land as well as at sea. (83)

The Act of Toleration passed by Lord Baltimore and his nine-man Council - six of whom were Catholics - on 25 April 1649, is as follows: -

> Be it therefore enacted - that noe person or persons whatsoever within this Province - professing to believe in Jesus Christ, shall from henceforth bee any waies troubled, Molested or discountenanced for or in respect of his or her religion nor in the free exercise thereof - nor any way compelled to the beliefe or exercise of any other Religion against his or her consent, soe as they be not unfaithfull to the Lord Proprietary, or molest or conspire against the civile Government established or to be established in this Province under him or his heires. (84)

Unfortunately, this bright beginning was destined to be rudely terminated. To quote Lecky again,

> Hopital, and Lord Baltimore the Catholic founder of Maryland, were the first two legislators who uniformly upheld religious liberty when in power, and Maryland continued the solitary refuge for the oppressed of every Christian sect, till the Protestant party who were in the ascendant in its legislature basely enacted the whole penal code against the co-religionists of the founder of the colony. (85)

Matters soon took a turn for the better, however. In 1669, the "Fundamental Constitutions of Carolina", of which John Locke was one of the co-authors, was adopted. This document declared, "No person whatsoever shall disturb, molest, or persecute another for his speculative opinions in religion, or his way of worship". (86) Nevertheless, the same Constitutions provided for the official support of the Church of England as being "the only true and orthodox, and the national religion of all the king's dominions". (87) Locke not only was not responsible for this enactment, but dissociated himself from it in a letter to one of his friends. (88) One of the most disputed questions in American constitutional history is the exact extent of John Locke's influence on political

thought. Copleston writes, "There can be no doubt of his great influence in America", (89) and Jacques Maritain states,

> The French Declaration of the Rights of Man framed these rights in the altogether rationalist point of view of the Enlightenment and the Encyclopedists, and to that extent developed them in ambiguity. The American Declaration of Independence however, marked by the influence of Locke and 'natural religion', adhered more closely to the originally Christian character of human rights. (90)

More recent authors incline to the view that his influence has been over-rated. We shall see more of this later, particularly in relation to private property.

With the passage of time, post-Reformation prejudices began to be felt to a much lesser extent than before and American thinkers came to evolve their own ideas on Church-State relations and associated problems. From these speculations there emerged the idea of a moral union, and a juridical separation, of Church and State. This was something practically unheard of and was radically distinct from the absolute separation of the French Revolution. The vast majority of citizens of the United States were Christians and they believed that legislation should be inspired by Christian principles. They were firm, however, in refusing to go beyond this to the European system of religious establishment. Perhaps they were conscious of the fact that America was, as it were, a new lease of life for a Europe which badly needed revitalization, and they were determined to avoid the mistakes of the past. As Charles C. Pinckney said in the Federal Convention debates on 25 June 1787,

> Our true situation appears to me to be this - a new, extensive country containing within itself the materials of forming a

> government capable of extending to its citizens all the blessings of civil and religious liberty. (91)

They believed in co-operation, not unification, between Church and State.

This is brought out very clearly by an incident related by Fr. Murray. In 1783 the papal nuncio in Paris contacted the United states Ambassador to France, Benjamin Franklin, about the possibility of erecting a bishopric in America, to replace the then existing system whereby American Catholics were subject to an Apostolic Vicariate in London. Dr. Franklin wrote to Congress, which sent him this reply,

> The subject of his application to Dr. Franklin being purely spiritual, it is without the jurisdiction and powers of Congress, who have no authority to permit or refuse it, these powers being reserved to the several states individually.

Later on, the States themselves declared that they had "No authority to permit or refuse such a purely spiritual exercise of ecclesiastical jurisdiction". (92) Fr. Murray comments,

> The good nuncio must have been mightily surprised on reading this communication. Not for centuries had the Holy See been free to erect a bishopric… without all the legal formalities with which Catholic States had fettered the freedom of the Church. (93)

In short, the Founding Fathers realized that, as Jacques Maritain wrote,

> It is not by granting to the Church favoured treatment, and seeking to gain her adherence through temporal advantages paid for at the price of her liberty that the State would give her more

> help in her spiritual mission; it is by asking more of the Church… (94)

It is against this background that the framers of the Constitution declared, in the First Article of the Bill of Rights, passed as an amendment to the Constitution, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof". (95) It must be noted that, as Edward Duff says, "The First Amendment to the Constitution… does not express an ideology. It represents a pragmatic disposition". (96) What the Constitution affirms is, in effect, that religious affairs are outside the jurisdiction of civil authority, and that it has no desire to interfere in these affairs. It does not suggest that one religion is as good as another, or that a man is free to obey his conscience or not as he chooses.

Most State Constitutions soon followed the lead of the Federal Convention by incorporating similar statements into their framework. Thus, the Virginia Statute of Religious Freedom, written by Thomas Jefferson and passed on 16 January 1786, reads,

> II. *Be it enacted by the General Assembly*, That no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion; and that the same shall in no wise diminish, enlarge, or affect their civil capacities. (97)

Similarly, when plans were being laid for the establishment of new States, it was laid down that

> No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments in the said territory. (98)

It was with such enactments as these in mind that Thomas Paine wrote, "The American Constitutions were to Liberty what a grammar is to language; they define its parts of speech, and practically construct them into syntax". (99)

Certainly, it must be acknowledged that, in enacting such a far-reaching constitutional provision, the Fathers of the Constitution acted with great courage, and with confidence in the spirit of their people. There was no precedent to which they could look for support. Church-State relations in Europe served a negative purpose - that of showing an example which should not be followed. It must be added that the history of religious liberty in the United States has fully justified the courage and farsightedness of those early legislators, and has shown an example to other nations, an example which many of them fortunately, have adopted.

Far from weakening religious conviction in the United States, or producing an atmosphere of indifference, as many Europeans observers had predicted, the provisions of the Constitution have strengthened the basis of religious life by showing the individual that he is responsible to God alone for the affairs of his conscience, and by defining more clearly the spiritual character of the Churches' functions. It has made for strong, self-reliant religious bodies and has brought home very clearly to each citizen his personal moral responsibility before God. That religion has benefited greatly by separation from the State in America is, we believe, an undeniable fact, and this fact, in itself, is a more powerful intrinsic argument for separation of Church and State than any amount of intellectual gymnastics - whether by reference to defunct social patterns or to distinctions of thesis and hypothesis

or to "tolerance" - can prove to the contrary. To their credit the Catholic hierarchy in America have consistently supported this separation. (100)

Section 2 France and Religious Liberty

It has been said with a great measure of truth that "France has frequently been the theological battle-ground and the political laboratory of Europe". (101) Certainly, the last two hundred years have seen in France a steady stream of powerful ideas in all spheres of knowledge, the influence of which has been felt far beyond the borders of the country. Modern French history has its roots in the Reformation but does not flower until the Revolution. To gain a proper understanding of the Frenchman's attitude to religious liberty one must go back some time before the Revolution.

One may well ask, "What place did religion have in the life of France in the mid-eighteenth century?" On the surface, the appearance must have been satisfactory. The vast majority of the French people were Catholic, most of them practising, and officialdom was favourably disposed to the Church. To keen observers, however, there were several signs of danger. Theologically, the Church was weakened by the struggles against Jansenism and Gallicanism; philosophically, it failed to answer the criticisms of such men as Rousseau, Voltaire and the Encyclopaedists. Rousseau, with his radical new doctrines, was setting men's hearts on fire with his dreams of liberty, equality and fraternity - dreams which could only be realized in blood. Whether he was conscious of it or not, he provided much of the intellectual artillery which was soon to be directed against the walls of the Bastille. Voltaire, with savage sarcasm and utterly merciless wit, made open mockery of the established order. Among the leaders of opinion, among those who could influence others, the stage was set for a dramatic scene.

Most of all, however, it was in the social sphere that both the aristocracy and the clergy had weakened themselves. The successive wars of Louis XIV had exhausted the country financially, and the burden of this fell on the shoulders of the working class. A multitude of taxes, from which the nobility and clergy were exempt, and forced labour on the roads had prepared the ordinary citizen for a struggle. There was deep and heartfelt resentment against the prevailing social injustice and, when the final break came, the outburst of pent-up feelings made it irrevocable. To the ordinary working-class citizen the nobility and clergy (the higher ranks at least) were simply two branches of a privileged class. Very much of the spiritual character of the Church had been lost through involvement in secular affairs, and, as revolutionaries are not noted for their ability to make subtle distinctions, when violence finally erupted, not merely the clergy, but the French Church and the Catholic religion in France, suffered heavily at their hands. (102)

This latter factor of social injustice was, we believe, the primary element in the Revolution of 1789. To quote a modern historian,

> The contrast between increasing material prosperity on the one hand and social and fiscal inequalities on the other, was, as Tocqueville has luminously shown, one of the main reasons why revolution broke out in France. (103)

Why, we may ask, if the Revolution was so hostile to religion, did it embody a declaration of religious liberty in all of its numerous Constitutions? The answer is very different from that of the United States. It was not out of respect for the individual's conscience, but out of disrespect for religion in any shape or form. It was not so much a question of saying that one religion was as good as another, as of saying that all were equally useless. The spirit of the enactments was entirely rationalistic and secular and implied nothing less than a total rejection of religion. This was

illustrated very clearly on 10 November 1793, when the "Feast of Reason" was celebrated in Notre Dame Cathedral.

Thomas Paine, who was clearly skeptical in religious matters, (104) extolled the Revolution, saying,

> The French Revolution hath abolished or renounced Toleration and Intoleration also, and hath established UNIVERSAL RIGHT OF CONSCIENCE.
> Toleration is not the *opposite* of Intolerance, but it is the counterfeit of it. Both are despotisms. The one assumes to itself the right of withholding liberty of Conscience, and the other of granting it. The one is the Pope armed with fire and faggot, and the other is the Pope selling or granting indulgences. The former is Church and State, and the latter is Church and traffic. (105)

The historian, Lecky, made an interesting observation: -

> In the French Revolution especially we find two tendencies - an intense love of religious liberty and a strong bias towards intolerance - continually manifested. In that noble enactment which removed at a single stroke all civil disabilities from Protestants and Jews, we have a splendid instance of the first. In the exile, the spoliation, and too often, the murder of Catholic priests, we have a melancholy example of the second. (106)

Certainly, the Church suffered heavily during the Revolution. The Civil Constitution of the Clergy was an open attempt to subordinate the Church to the State. This was a logical result of what can be regarded as one of the central themes of the Revolution - the rejection of God and the exaltation of man. The emphasis in all the constitutional documents at this time is on the rights of man. Little or no reference is made to God, and even less reference to the duties of man. This fact did not escape the notice

of Thomas Paine, who, for once, was critical of the Revolution. He writes,

> When the Declaration of Rights was before the National Assembly some of its members remarked that if a Declaration of Rights was published it should be accompanied by a declaration of duties. The observation discovered a mind that had reflected, and it only erred by not reflecting far enough. A Declaration of Rights is, by reciprocity, a declaration of duties also. (107)

This new *laissez-faire* attitude to religion found expression in the Constitutions of the day. Constitution-making seems to have been a favourite hobby of revolutionaries at the time, and, as one faction overthrew another, new Constitutions appeared at regular intervals. In very many cases they followed a basic pattern and some of them quote very largely from their predecessors. It is only necessary therefore to cite a few. Thus, the Declaration of the Rights of Man and of the Citizen of 3 September 1791 declares in Article 11,

"The free communication of thoughts and opinions is one of the most precious rights of man; every citizen, then, may speak, write and print freely, but he shall be answerable for the abuse of this liberty in cases to be determined by law". (108) The first article of the Constitution promulgated on the same day declares that, "The citizens have the right to elect or choose the ministers of their religions". (109) A later Constitution states simply that, "Every man is free in the exercise of his religion". (110)

Not many years later when the short-lived Republic had given way to the imperialism of Napoleon, and when many were reacting against the savagery and radical revisionism of the Revolution there was practically a full return to the pre-Revolutionary *status quo*, to the alliance of *Le trône et l'autel*. In a royal proclamation of 2 May 1814, it was affirmed that, "We desire… to give as a basis for this Constitution the following guarantees: …. Freedom of

religion…" (111) Later in the same year, the Constitution provided that,

> Everyone may profess his religion with an equal liberty, and obtain the same protection for his cult.
> Nevertheless, the Catholic, Apostolic and Roman religion is the religion of the State.
> The ministers of the Catholic, Apostolic and Roman religion, and those of other Christian cults, shall alone receive salaries from the royal treasury. (112)

Clearly, the sentiment of the Comte de Mirabeau had been forgotten. Speaking in the National Assembly on the question of the establishment of Catholicism he declared, "To declare the Christian religion national would be to dishonour it in its most intimate and essential characteristic". (113)

The provisions of the revolutionary Constitutions should make it abundantly clear that there was religious liberty in France, at least after the Reign of Terror had passed. As we have already noted, however, it was a purely secular type of liberty, that type which the popes of the following century censured so severely. It was the liberty to accept or reject God at will. Going beyond a mere juridical ordinance it passed a moral judgment to the effect that religion was radically and absolutely (in the proper sense of the word) a private and not a social affair.

The clearest example of 'political religion' at the time was Napoleon Bonaparte, who boasted, "Never in all my quarrels with the Pope have I touched a dogma". (114) The reason was, as he said himself, that one should "treat the Pope as if he had 200,000 men". (115) While not precisely typical of the prevailing situation it nevertheless closely approximates to that of many of the revolutionary leaders. Their concept of religion was wholly naturalistic. To quote Napoleon again, "I regard religion, not as the

mystery of the Incarnation, but as the secret of the social order". (116)

The cleavage which took place between the Church and the French people at the time of the Revolution was partly the cause and partly the effect of this secular attitude to religion. It was partly the cause in that the higher ranks of the clergy, by associating themselves with the nobility, had alienated themselves from the people. The result of this was that the people lost a proper sense of religious values. It was partly the effect also for when the Revolutionaries enacted *The Civil Constitution of the Clergy*, the latter reacted, not unnaturally, by looking to the king for support. Henceforward, the French Church, with the exception of some men such as de Lammenais, Lacordaire, Montalembert and Ozanam, was royalist in sentiment. Even when the Third Republic was proclaimed after the war against Prussia in 1870-1871, the majority of the clergy adopted a hostile attitude towards the Republic. To his credit, Pope Leo XIII endeavoured to reconcile the French Church to the Republic in the encyclical letter, "*Au milieu des solicitudes*", of 16 February 1892. (117)

It is sufficient to say by way of summary that the Church in France lost contact with the mass of the working-class citizens. The factors entering into this are numerous and involved, and it would be wholly unjust to saddle the Church with all the blame for this situation. There were many in the various governments who had sound personal reasons for fostering this division, and who did so by enacting legislation which was undisguisedly hostile to religion.

In the most recent French Constitution, that of 4 October 1958, there is a noticeable change of emphasis in the wording of certain phrases. Thus Article 2, Paragraph 1, reads,

> France is a Republic, indivisible, secular, democratic and social. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. (118)

Similarly, Article 77, Paragraph 3, declares, "All citizens shall be equal before the law, whatever their origin, their race and their religion. They shall have the same duties". (119)

The Constitution does not declare that citizens may profess any religion they choose in the sense in which the Revolutionary Constitutions did. The suggestion implied in the latter documents was that a man was free, not merely from the civil but also from the moral point of view, to choose any religion he liked, whereas in the present Constitution the affirmation is simply that *from the viewpoint of the State* a person's religion shall not affect his legal standing. The tone is one of restraint, and it lacks the sweeping emphasis on rights which characterized the earlier enactments. The fact that it insists on the duties of citizens is significant, but nowhere is the contrast between the present and the former Constitutions more evident than in the statement that, "It [i.e. the State] shall respect all beliefs". Such an assertion would never have been found in any of the earlier Constitutions.

In conclusion we may say that there certainly is, and has been, religious liberty in France since the time of the Revolution. Lecky wrote that,

> France found herself possesses of a degree of religious liberty which had never been paralleled in any other Roman Catholic country, and which has barely been equalled in the most advanced Protestant ones. (120)

Let us hope, in the future, it may be a more religious concept of liberty.

Section 3 Ireland and Religious Liberty

Ireland forms the third section of our trilogy on religious liberty. Here, the problem was quite different from either America or France. In America, broadly speaking, there was full religious liberty and a juridical separation of Church and State. In France, the "Throne and Altar" alliance was restrictive of religious liberty, while, after the Revolution, there developed a type of liberty which went far beyond the limits of reason. In Ireland, there was for a long time widespread and cruel religious persecution accompanied by attempts to impose an alien Church on an almost universally Catholic people.

It was partly, though by no means entirely due to political considerations, that Elizabeth, Cromwell, and their successors endeavoured by every conceivable means to force the Irish people to abandon their Catholic faith. During the eighteenth century there was a gradual easing of persecution and changes took place in which quite a number of factors was involved.

It must be remembered that it was only with the defeat of the Rebellion of 1641 that English rule became thoroughly consolidated in Ireland. The problem of the exact relationship between the two countries was a subject of much speculation between statesmen. In America, royal charters had been granted to colonies, even in the seventeenth century, allowing for local and regional legislatures. The result had been a steady and coherent move towards independence. The same policy was followed initially in Ireland. Thus, by the late eighteenth century, Grattan's Parliament had secured a large measure of legislative independence for the country. A relatively strong merchant class had developed, and this group was opposed to British domination, for financial, if not for national, reasons.

However, British political leaders were fully aware of this trend. They realized that if the Irish Parliament's power was not checked

Ireland would soon follow the path trodden by America. The Irish Volunteers were a strong, well-disciplined force and so it was apparent that the only alternative to granting Ireland independence was to bring it fully and unreservedly under British control. Thomas Paine's works, and the deeds and writings of the leaders of the French Revolution were well known to the United Irishmen, especially to such as Wolfe Tone, Robert Emmet and James Fintan Lalor. Indeed the whole Irish independence movement was thoroughly permeated with the principles of the Revolution. It must be kept in mind that, at this time, only Protestants in Ireland had the franchise. As Lecky wrote, "It would be scarcely possible to conceive a Legislature with greater inducements to adopt a sectarian policy. Before 1793 it was elected exclusively by Protestants". (121) Protestants held the reins of power - politically, socially and economically - yet they granted the franchise to Catholics who were thus immediately in a controlling position. According to Lecky the rejection by Britain of this extension of the franchise was a contributory cause of the Rebellion of 1798.

The influence of the French Revolution was indeed very strong as can be deduced from Lecky's observation on "the purely national and secular spirit the Irish Parliament had fostered". (122) Another writer, referring to Grattan, stated, "He could not prevent the rise of the United Irishmen, nor save the Irish democracy from Jacobinical principles". (123) The same author pays tribute to Grattan, saying, "In an age of Protestant prejudice, he bravely unfurled the standard of religious liberty". (124)

Meanwhile, William Pitt, the British Prime Minister, realized that concessions of a liberal nature would have to be granted if the proposed Act of Union was not to precipitate a revolt in Ireland. One means which he adopted in furthering his policy was that of conciliating religious feelings. It is quite likely that Pitt was prepared to grant Catholic Emancipation, that is, the repeal of the

penal laws against Catholics, in exchange for a peaceful acceptance of the terms of the new Act.

Two factors stood in the way of this aim. Firstly, King George III was implacably hostile to any such measure. "I would rather", he said, "give up my throne and beg my bread from door to door throughout Europe than consent to such a measure". (125) Secondly, and of greater importance, was the fact that Pitt was willing to grant Emancipation on one condition, namely, that the British government should be allowed to exercise a veto on the appointment of Catholic bishops. To their immense credit, the bishops resolutely rejected this "offer".

This latter problem, which became known in subsequent years as the "Veto" question remained unsolved for a considerable time. Perhaps the only weakness which the hierarchy showed at this period was the acceptance of parliamentary grants for the establishment of Maynooth in 1795. This was another placatory gesture of Pitt's. The practice was discontinued in 1869 with the passage of the Disestablishment Act. Apart from this one point, the hierarchy resolutely opposed the overtures of the British government on the Veto and Establishment questions. It must have been very tempting for a Church which was in such dire financial straits, being rich only in commitments, to be continually pressed to accept government support. To make it still more difficult there was not a country in Europe, whether Catholic or Protestant, in which the Church was not subsidized by State funds. With a tremendous amount of leeway to make up in the matter of Church buildings and educational institutions it took great courage and farsightedness to resist the government pressures. The most difficult pressure to resist came in fact from Rome. The Quarantotti Rescript, as it is now known, recommended acceptance of the government proposals to the clergy. However, the Irish Church held out, and finally, in 1829, the Catholic Emancipation Act was passed - without the Veto.

The Government offers were nothing less than an attempt to gain control over the affairs of the Irish Church. The bishops rightly saw in them a threat to the independence of the Church, an attempt to use the spiritual order as a means of channelling allegiance to the crown. It is worth quoting the bishops' resolutions in full: -

> Resolved - That alarmed at a report than an attempt is likely to be made, during the approaching Session of Parliament, to make a State Provision for the Roman Catholic Clergy of Ireland, we deem it our imperative duty, not to separate without recording the expression of our strongest reprobation of any such attempt, and of our unalterable determination to resist, by every means in our power, a measure so fraught with mischief to the independence and purity of the Catholic religion in Ireland. Resolution of the Irish Catholic Bishops in 1837.
>
> Resolved - That his grace, the most reverend Dr. Murray, be requested to call a special general meeting of the Prelates of all Ireland, in case that he shall have clear proof, or wellgrounded apprehension, that the odious and alarming scheme of a State Provision for the Catholic Clergy of this portion of the empire be contemplated by the government before our next general meeting. Resolution passed in 1841.
>
> Resolved - That the preceding Resolutions be now re-published, in order to make known to our faithful clergy and people, and to all others concerned, that our firm determination on this subject remains unchanged; and that we unanimously pledge ourselves to resist, by every influence we possess, every attempt that may be made to make any State Provision for the Catholic Clergy, in whatever shape or form it may be offered. Resolution unanimously adopted at a meeting of the Irish Prelates in Dublin, 15 November 1843. (126)

No further attempts were made to hinder the work of the Irish Church subsequent to these declarations. It was the utterly uncompromising attitude of the hierarchy, backed by the overwhelming support of their people, that showed the British government in plain terms that no restrictions on religious freedom, under any form, would be tolerated by the Irish people.

The next chapter in the history of religious liberty in Ireland opens with the winning of independence in 1922. What Lecky said of Grattan's Parliament could be said with equal truth of the leaders of the 1916 Insurrection and those who continued their work. He wrote,

> It is worthy, too, of notice that the liberalism of the Irish Parliament was always in direct proportion to its political independence. It was when the events of the American War had infused into it that strong national feeling which produced the declaration of independence in 1782, that the tendency towards tolerance became manifest…. Almost all who were the enemies of its legislative independence were the enemies of toleration. (127)

Those who fought for, and those who led, the independent Irish State had a remarkable love of liberty, both religious and political. Having known the experiences of their forefathers, they had no desire to impose their own creed on those who were now in a weak position. Neither had they any desire, though the vast majority of them were Catholics, to give State support to the Catholic Church. As Aodh de Blácam rightly observed,

> The Gael detests political religion, and his history demonstrates that his attitude in this respect is right for the whole world. For can it be doubted that, had the Irish people identified Church and State, as was done in England, Ireland would have been as easily Protestantised? (128)

It was the native Irish love of freedom rather than any formal, academic theory of liberty which ensured that Ireland, in directing her own affairs, would guarantee religious liberty to all her citizens. It is not cynicism, but realism, to add, however, that the State's hypersensitivity to any kind of religious discrimination by State officials was prompted also by the desire to show the people of northern Ireland that they had nothing to fear from a government of Catholics in Dublin with regard to their religious beliefs.

The Constitution of the Irish Free State, "construed with reference to the Articles of Agreement for a Treaty between Great Britain and Ireland" (129), and signed by both parties on 6 December 1921, is not a very impressive document. It has been described, with a great measure of truth, as an attempt to put the British Constitution in writing. (130) Its provisions, which bear the marks of hasty drafting, are set entirely in the British legal tradition. No reference whatever is made to God, and the British idea of a Parliament with absolute powers is unreservedly adopted. The Draft Constitution, which was subject to revision by the Oireachtas, dealt with the question of religious liberty in Article 8. It declared,

> Freedom of conscience and the free profession and practice of religion are inviolable rights of every citizen, and no law shall be made either directly or indirectly to endow any religion, or prohibit or restrict the free exercise thereof or give any preference, or impose any disability on account of religious belief or religious status… (131)

As can be seen, this is a very sweeping and far-reaching statement. When the Constitution was being discussed it was pointed out that, if it were not amended in some way, the Constitution would prohibit the passage of legislation to curb abuses of the right. It

was decided, therefore, to insert the phrase, "subject to public order and morality" into the Article. When amended it read, "Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen", etc. (132) This was a very necessary clarification.

The Irish Free state Constitution had, by 1937, been amended twenty-eight times, and was beginning to look like some kind of a legal jig-saw puzzle rather than a solemn declaration of a nation's fundamental law. Alfred O'Rahilly described it as,

> A woefully meagre, barren and inaccurate Constitution, which, except in its most objectionable part, has only the status of an Act for establishing a Pig Board, which is completely out of touch with the social and religious ideals of our people…. (133)

This is, perhaps, rather harsh but it is certainly true that the Constitution had got to the stage where further amendment would serve only to disfigure it still more; in short, Ireland needed a new Constitution.

On 1 July 1937, *Bunreacht na h-Éireann* was enacted by vote of the Irish people, and, on 29 December of the same year, it formally came into operation. It opens with an impressive declaration of dependence on God and a pledge to promote the common good of the citizens. It is important that this Preamble should not be regarded as a mere pious platitude but as having paramount significance in the interpretation of difficult points in the Constitution. It sets the Constitution in a Christian framework, and by its reference to the "observance of Prudence, Justice and Charity" offers a guideline for the enactment and interpretation of legislation.

The Constitution's provisions for religious liberty are set out in Article 44, as follows: -

1.1: The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.
1.2: The State recognises the special position of the Holy Catholic Apostolic and Roman Church as the guardian of the Faith professed by the great majority of the citizens.
1.3: "The State also recognises the Church of Ireland, the Presbyterian Church in Ireland, the Methodist Church in Ireland, the Religious Society of Friends in Ireland, as well as the Jewish Congregations and the other religious denominations existing in Ireland at the date of the coming into operation of this Constitution.

2.1: Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.
2.2: The State guarantees not to endow any religion.
2.3: The State shall not impose any disabilities or make any discrimination on the ground of religious profession belief or status. (134)

Many points may be raised in regard to these provisions. We may ask, for instance, whether or not the Constitution is morally "neutral" with regard to religion, or whether it passes any judgment on religion at all. We answer that it does pass a moral judgment: it is not morally "neutral" on the subject of *religion*, but it is morally "neutral" on the subject of *religions*. Article 44,1,1 is a clearly defined moral statement of dependence on God, as is the Preamble to the Constitution. Nowhere, however, does the Constitution attempt to pass a judgment on the relative merits of the various religions in the country. This brings us to Article 44.1.2.

Controversy on this subsection centres around the phrase "special position." Some have asked whether this implies juridical

recognition of the Catholic Church. That it does not do so is clear both from the enactments of the Oireachtas, and from the decisions of the courts on cases to which this subsection applies. (135) However, a problem remains: if the phrase does not imply juridical recognition, what does it imply? The framers of the Constitution gave their answer to the question in the closing words of the subsection: "… as the guardian of the Faith professed by the great majority of the citizens". What precisely does this mean? Does the Constitution merely acknowledge the fact that the majority of the people of Ireland are Catholic? (136) If this is the only meaning, it is surely irrelevant to a Constitution, which, after all, is not a statistical table. Besides, if this is all this is meant, why does the Constitution use a capital 'F' for the word 'Faith'? This goes beyond statistics. We are forced to the conclusion that this subsection implies, indirectly at least, a moral recognition by the Constitution that the Catholic Church is the one, true Church, and this, we believe, is something outside its scope. The use of the phrase "special position" is not free from ambiguity and the Constitution would be better without it. (137)

Alfred O'Rahilly has written on this point that,

> We have nothing but a piece of neutral scientific statistics expressed in fervent phraseology. I am strongly of the opinion that it ought to be expunged. It does no good whatever to us, and it has already aroused bigoted prejudice in others.

As an alternative he proposes the following outline:

> (1) There is no established or State-endowed Church.
> (2) Liberty of conscience and of religion is guaranteed to all citizens. No one may, by reason of his religious convictions, be limited in such rights as are exercised by other citizens.

(3) All citizens have the right to practise their religion freely, in private or in public, in so far as public order or morality is not thereby affected. (138)

This outline does not differ substantially in content from the Constitution, except for the omission of the provisions of section 1 of the Article. In fact, it appears to be simply a re-phrasing of subsections 1-3 of the second section of the Article.

Subsection 3 of the first section deals with non-Catholic religious bodies, which the State "also recognises". One cannot help feeling that this subsection reveals a certain tendency to relegate these bodies to a secondary position. The fact that they are treated in a separate subsection, and bundled together, *en masse*, suggests this interpretation. One might also ask what provision is made for religious existing in Ireland *after* the date of the coming into operation of the Constitution. This subsection provides only for those which existed in the country *before* the Constitution came into effect. What constitutional provision is made for Baptists, for the Salvation Army, for Seven-Day Adventists, for other religious bodies? It is true, of course, that these bodies have never been molested by the State in the exercise of their functions, but this does not excuse a failure to provide for them in the Constitution. The alternative to an express reference to an enormous list of churches is to drop this provision altogether, together with the preceding subsection. The Constitution should leave out references to particular churches, that is, it should retain section 1, subsection 1, and section 2, subsection 1, and omit the two intervening subsections. The Christian character of the Constitution would not suffer thereby as it is already adequately acknowledged in the Preamble.

With regard to section 2, subsection 1, a single point needs clarification. This is the phrase, "subject to public order and morality". Some have objected to this phrase on the grounds that it

could be interpreted in such a way as to undermine all the preceding guarantees. We must admit, of course, that it could be interpreted in this way. After all, there is nothing, however good, which cannot be abused. However, to any reasonable person, its meaning is clear. It could only be misinterpreted by those who deliberately desire to do so, and if such is anyone's desire, a constitutional device will not hinder or discourage him. Even in a constitution, or perhaps we should say, *especially* in a constitution, a certain measure of trust and confidence must be placed in the integrity of those on whom the task of its interpretation devolves. No legal document, of whatever kind, is so foolproof as to preclude any possibility of misinterpretation.

Besides, it is reasonable to ask that if some such qualifying clause is not employed, do we not make of this right an absolute right? Without this qualification, it would be perfectly lawful for a religious fanatic, openly and without restraint, to insult the religious beliefs of other people. Abuse of the beliefs of others is not an essential elements of any religion, but, without this clause, bigots could claim that they were doing no more than pointing out the falsity of other religions. It is easy to imagine how such a situation could degenerate into a type of religious warfare. We hold, therefore, that this clause is necessary to the Article. It is worthy of note, too, that similar qualifications are made with respect to other rights enumerated in the Constitution. The phrases "in accordance with law", "laws for the regulation and control", "the State may delimit by law", etc. are used frequently in the Constitution to denote that rights are not absolute but must be regulated for the common good. (139) Similar qualifying statements are used in other Constitutions also. (140)

In order to judge this proviso fairly one must consider, as a great American judge, Chief Justice Marshall said, "not so much the form of a statute as its substantial operation". (141) This modification of rights deals with the practical order of things and

must be considered in the light of practical circumstances. As the Comte de Mirabeau said in the debate on religious liberty in Constituent Assembly on 23 August 1789, "You may forbid a worship which interferes with public decency or morals, but you cannot go further". (142) The Constitution goes no further.

We shall consider finally the statement that, "The State guarantees not to endow any religion". (143) This provision, which caused much resentment among members of the organization known as *Maria Duce*, latterly as *Fírinne*, is one of the most important of the Constitution. It is one which is set in the Irish tradition of separation of Church and State. To quote Enda McDonagh, "This religious spirit was combined with a remarkable sensitivity to the distinction between politics and religion, between State authority and ecclesiastical authority". (144) To endow the Catholic religion, or any religion for that matter, would be to hinder it seriously in its work. This provision is clear and concise and should be preserved intact in any proposed revision of the Constitution.

In conclusion, it is worth quoting a comment of the late Cardinal MacRory on the Constitution. Speaking in St. Patrick's Cathedral, Armagh, on I January 1938, he said,

> The Constitution is a great Christian document, full of faith in God as the Creator, Supreme Lawgiver and Ruler, and full also of wise and carefully thought out provision for the upbuilding and guidance of a Christian State. Nothing human is perfect, but the new Constitution is a splendid charter, a broad and solid foundation on which to build up a nation that will be at once reverent and dutiful to God and just to all men. (145)

CHAPTER II

PROPERTY IN CONSTITUTIONAL THEORY

Introduction: Property in the Social Order

It has been recognised from the earliest times that property holds a position of cardinal importance in human society. Political theorists of all ages have dealt with it in their works, for it is a fairly generally accepted principle of social life that he who holds the purse-strings also holds the reins of power. Men have strong feelings about property: they recognise its value, not merely for personal use but also as a source of security. To quote a modern author,

> The 'right of property', it is true, is generally used as a term for a legal right. But in this, as in so many other cases, the legal right is essentially a formulated expression of moral feelings. (1)

This is true, not merely of property, but of other rights as well. By considering how some of the great men of the past regarded property we may clarify some of the issues involved and see some of the influences which went to make up our present day constitutional enactments on the subject

Article I A Historical View of Property

Section 1 Plato

An appreciation of Plato's doctrine on property presupposes an understanding of the general structure of society as outlined in the *Republic*. In this, his best-known work, Plato proposes that society should be divided into three classes, which may be described in a general way as the ruling, the administrative and the working classes. According to Plato, the primary characteristic of the first

two classes would be dedication to duty and a willingness to forego elementary satisfactions in the interest of the community. In order to fulfil their tasks these two classes should not possess private property.

Plato had two reasons for this. Firstly, he wished to obviate the risk of nepotism, and secondly, by providing for these classes in State-run hostels, he hoped to leave them free to devote themselves entirely to their work. As George H. Sabine says,

> So firmly was Plato convinced of the pernicious effects of wealth upon government that he saw no way to abolish the evil except by abolishing wealth itself, so far as soldiers and rulers were concerned. (2)

Plato saw the fundamental importance of property in society and hence he made it the distinguishing feature of the different classes. To refer again to Sabine, "The economic difference was the key to the political distinction". (3)

It is beyond question that Plato laid great stress on the role of property in human life, but it is very questionable whether his treatment of it would have been satisfactory in the practical order. He may have been aware of this himself, for, in the *Laws*, written after the *Republic*, he restored private property while yet retaining severe restrictions on its use. Perhaps the abortive attempt to set up his ideal State in Syracuse, circa 388 B.C., may have influenced him, though some (4) authors have suggested, not without foundation, that Plato never meant the prescriptions of the *Republic* to be taken literally, but that they were intended to be an allegorical demonstration of the virtue of justice.

Clearly, the Platonic concept of property as outlined in the *Republic*, however interesting it may be as a theory, is quite impractical for application to the concrete social order.

Nevertheless, though it was impractical it was by no means devoid of value, as we shall come to see.

Section 2 Aristotle

Aristotle strongly upheld the idea of private property. His main argument for it is based on incentive, that is, that where property is private, there is more interest in it, and it is looked after, while, if property is held in common, each person will expect the next to attend to it, and confusion results. "It is evident, then," he wrote, "that it is best to have property private, but to make the use of it common". (5) He, like Plato, believed in firm State control of social affairs, and he looked to the State to adjust by legislation the inequalities arising out of private property. Referring to the common use of property, he stated, "How the citizens are to be brought to it is the particular business of the legislator". (6) We may be quite sure that an arbitrary exercise of this right would have been unacceptable to Aristotle, who, like his fellow Greeks, envisaged the State as an all-embracing organism in which the individual played no great part.

It is both interesting and informative to compare the theories of Plato and Aristotle. With Plato, the ruling classes had no property while the working classes had; with Aristotle, the positions are simply reversed. The key to the difference lies in their approach. Plato, an idealist, thought out a plan of society in his mind and endeavoured to impose it on reality, while Aristotle, by contrast, worked from reality to theory.

The contribution of these two great thinkers should be measured not so much in terms of the practical value of their theories, but in terms of the setting which they provided for subsequent discussion on the subject. They examined, for example, the question of whether property is a natural or a conventional right; whether man is by nature equal or unequal; whether a man acquires a right to goods by virtue of his work on them - a theory later developed by

Locke - or by simple occupancy or possession; whether property is private or public, and so on. It is within this framework, built by the Greeks, that subsequent discussion moved, and, in looking back over the history of property, one must admit that little advance has been made on the discoveries of the Greeks. Fundamentally, the questions of today are the same as they were in the fourth century B.C. and fundamentally, they still remain unanswered.

Section 3 The Fathers of the Church

It is not generally recognized that the early Fathers of the Church dealt quite extensively with the question of property rights. They were in general agreement that the State could control the exercise of this right, and they granted it (the State) a far greater latitude in this respect than did St. Thomas, or any of the later Scholastics.

Léon de Sousberghe S.J. censures Scholastic authors for failing to take account of pre-Thomistic tradition. In outlining the teachings of the early Fathers he shows how their opinion was that, if the Fall of Adam and Eve had not taken place, all goods would have been held in common. Since, however, it had taken place, human nature has become corrupt and hence inequality results. When the Fathers speak, therefore, of a "natural" equality of goods they seem to be referring to man's condition before the Fall. It follows from this that, according as men approximate more closely to the state of man before the Fall, they will, in the same measure, hold property in common. In the minds of the early Fathers, then, private property is sanctioned by convention rather than by nature. Hence it is the duty of the State to regulate the use of private property.

This identification of the state of nature with man's condition before the Fall is particularly clear in the case of William of Auxerre, who wrote,

> To hold all things in common… was… a precept in the state of innocence, that is, in the state of a properly ordered nature. But in the greedy state of corrupt nature, neither is it, nor can it be, a precept… Whence, that some things should be proper to a person by natural law is, as it were, *by the permission* of nature; but that all things should be common by virtue of natural law is, as it were, *according to the good pleasure* of nature. (7)

Saint Ambrose was a much stronger defender of the theory of the common use of things in nature. He declared,

> Nature gives itself to all in common. Thus God commanded that all things be produced so as to be common to the needs of all and that land itself should be the common possession of everyone. Nature, therefore, produced a common right, while usurpation made it private. (8)

Saint Augustine likewise based private property on positive law, for, in his commentary on the Gospel of Saint John, (Init., D.VIII), we read,

> For by the law of God 'The earth and its fullness is the Lord's.' (Psalm 23.1) God made rich and poor from the same dust… therefore, by human law is it said: 'This house is mine…'
> Take away the laws of the emperor and who can dare to say: 'This is my house, that is my slave, this is my home'? (9)

Saint Clement of Alexandria wrote, "All property which a man has acquired by himself and regards as his own and as not common to those in need, is of its nature unjust". (10)

This was in keeping with the tradition of the early Christians in Jerusalem, who held all things in common. Their belief was that "To impart of one's larger means to those in need as an act of

'humanity'… is not a deed of charity but of justice". (11) It has been truly said that,

> While accepting the institution of private property as a condition of social life, Christianity changed the whole perspective and emphasis of men's thoughts about it, and, what is still more difficult, their instinctive feelings towards it, by teaching the incomparable value of humanity. (12)

It is certainly true that, in the sphere of property, as in so many other aspects of man's life, Christianity brought with it a new approach and a new sense of direction. As is clear from the foregoing citations from the early Fathers, the Christian Church held that property was to be used for the common good. On the questions of whether one might hold property in private the Fathers were divided, but they were unanimous on the manner of its use. But whereas the Greeks regarded it as the function of a legislator to apportion the wealth of the community, the Christians looked rather to the individual's sense of justice and charity. The 'communist' community of Christians in Jerusalem represents the highest point in the practical realization of the ideals set out by the Fathers. According to de Sousberghe, the system eventually collapsed owing to the admission of neophytes who lacked the enthusiasm of their predecessors. (13)

Section 4 Saint Thomas Aquinas

Aquinas's teaching on property represents, in many ways, a synthesis of the ideas of Aristotle and of the Church Fathers. With the latter he held that the ideal was to hold property in common, but he realized that this was not capable of being established as a universal rule. He did not regard property as the fruit of sin and denied that, if man had not fallen, property would have been common to all. With Aristotle he defended private property as the best form of ownership.

For Saint Thomas, private property is based essentially on the *ius gentium*, not on the *ius naturale*. As Alfred O'Rahilly says,

> This distinction [between the individual and the community right to property], though obvious, is important, since it is only property in this generic sense, abstracting from collective and individual forms, that is, according to S. Thomas of natural right. (14)

The same author also notes that, "S. Thomas's defence of private property is based not so much on principles of theocratic right as on facts of social experience". (15) For Saint Thomas these facts of social experience are: -

1) Where there is private property a healthy self-interest ensures full production of goods;
2) With private property each has his own task, and can specialize in it;
3) If each one is content with what is his own, the peace of the State will be ensured. (16)

From the argument for private property Saint Thomas goes on to consider how this right should be exercised. "In this respect", he says, "man ought to possess external things, not as his own, but as common, so that, to wit, he is ready to communicate them to others in their need". (17)

Explaining this, O'Rahilly writes,

> Private property, so far as pertains to production and distribution, is a matter not of absolute abstract right but of experienced necessity; it is not to be assumed *a priori* as self-evident and irrevocable. It can be defended only on the ground that the alternative is less desirable. (18)

While production and distribution are best left in private hands, consumption of goods must be social. De Sousberghe sees this emphasis on the social aspect of property even in the way Saint Thomas formulated his exposition. He writes,

> It is to be noticed that, in the body of question 66, article 2, Saint Thomas does not use the words 'by the law of nature' but simply *it is lawful* (to have property, with regard to the power of procuring and dispensing), one *ought* (with regard to use… to have things in common)".
> "Appropriation is permissive, but use must be in common. This opposition *licet-debet* is in the scholastic tradition, with its marked preference for the aspect of community. (19)

Perhaps the most succinct account of Saint Thomas's doctrine is that given by Thomas Gilby who writes,

> While he agrees that the first principles of Natural Law dictate no particular allocation of property, and postulates no pre-social and inalienable private possession - the divine right of the free-holder in the Lockian sense - he taught that private property is recommended by conclusions to be drawn from the Natural Law. They are not contained in the *ius gentium*, which is taken to represent the ways all or most people accommodate themselves to the needs of social life. These widespread precepts are subsequently shaped and applied by determinate measures of positive law, which may vary from region to region. The particular form of private property adopted in a political community is no more sacrosanct than the customs and civil laws which enforce it, but the institution of private property in general is the arrangement best suited to humane and efficient production. (20)

Such, in brief, is St. Thomas's notion of property. His teaching has been officially adopted by the Catholic Church, and, as we

shall see, is of great importance in the context of the Irish Constitution's provisions on property.

Section 5 Feudalism

During the lifetime of Aquinas and for several centuries afterwards, the question of property was essentially a practical one. There was little philosophical discussion on the point. In the social structure of the time there were, broadly speaking, two great classes, the land owners and the vassals. Since industry, as we know it, was in a nascent state, land was regarded as the only real form of wealth. War was common, and though it did not often break out on a large scale, the frequency and bitterness of hostilities between one tiny city-state, dukedom or barony and another produced an atmosphere of insecurity and unrest. Caught in the cross-currents of internecine strife the small landowner had but one recourse, namely, to secure the protection of a strong power.

Thus, a state of affairs developed whereby the small landowner surrendered his plot of ground to a baron, or, perhaps, an abbot, in return for his protection. As Sabine says, "Feudalism, then, in its legal principles, was a system of land-tenure in which ownership was displaced by something like lease-hold". (21) Gradually, as this process became more widespread, land came to be vested in the hands of two groups - the nobility and the Church. In this we can see the earliest signs of the growing tendency of property-owners to group together, forming a type of syndicate. The pattern of property ownership, hitherto exemplified in the large number of small farms, was giving way to these forces which would soon develop into the large and powerful corporations of the nineteenth century. The first rumblings of the Industrial Revolution were heard, too, in the invention of printing in a rudimentary form by the Dutchman Lourens Coster, in 1450, and its development by a German, Johann Gutenberg. Clearly, the patterns of society were changing and were soon to affect the domain of property.

Section 6 "Communist" communities

It has often been noted that liberal doctrines of property, with their emphasis on their private aspect, and communism, with its emphasis on the collective aspect, in the last analysis, produce the same result, an oligarchy. In the liberal system, where each individual works solely for his own interest, and where "the survival of the fittest" is the guiding principle it inevitably happens that, by diverse means, either fair or foul, certain individuals come to amass an undue proportion of wealth at the expense of a larger group possessed of less business acumen but perhaps better moral principles.

In the Communist scheme of things, where everything belongs, in theory, to "the People", the actual control over, and responsibility for, property is vested in a few. To say, as Communists do, that all property is in the hands of the people is an abuse of terms. As Alfred O'Rahilly says, "this juggling with the word People, first in the distributive sense and then in the collective, is the great fallacy that has overrun the world since the French Revolution". (22)

A consideration of these facts has led some to the conclusion that the dilemma is inescapable, and that, sooner or later, all property must inevitably come into the control of a minority, while others have endeavoured to set up communities in which all goods would be shared not by constraint, but by mutual goodwill. Many such attempts were made, such as that of Etienne Cabet, a French socialist, who established his colony, known as "Icaria" in the United States. He wrote of it,

> In our society there is no opulence but also no poverty…. We enjoy the produce in common, according to the needs of each, on the principles of fraternity and equality, with no special privileges for anyone. We have the sovereignty of the people in

> practice, democracy in principle, liberty in application and an open door to all peaceful reforms. (23)

However, when Cabet, who died in 1856, left Icaria for some time, the Icarians stopped working for the community and seized plots of land for themselves.

Similar attempts were made by Robert Owen, a Welshman, and the French socialist, Fourier, whose communities were known as "phalanstries". These did not last for very long, however. In most cases the citizens of the communities took over the land which they had been given to cultivate and declared it to be their property. Other theorists such as Campanella in his *City of the Sun* (1625), Francis Bacon with his *New Atlantis* (1629), and Sir James Harrington in *Oceana* (1656) outlined their theories which, however, never came to much in practice. Thomas More, a century earlier, had pointed to the heart of the problem of these communities in his *Utopia* (1516), where he wrote,

> … for me thinketh that men shal never there live wealthelye, where all things be commen. For howe can there be abundaunce of gooddes, or of any thing, where every man withdraweth his hands from labour? (24)

England, usually so conservative a country, produced its own property revolutionaries in the Diggers and the Levellers. A favourite theme of the Diggers was, "If you will find mercy, let Israel go free; break to pieces the bands of property". (25) These sentiments did not find a sympathetic hearing among Englishmen. The Levellers "turned the law of nature into a doctrine of individual rights, of which the right to property was inevitably one of the most important", (26) and used it to further their socialist views.

A commentator on the general situation of property in social life might well say, in the jargon of today, that "Winds of change" were blowing. The pattern of property which had remained relatively unchanged for centuries was to undergo an abrupt and rude re-drafting in the eighteenth century. The two great figures in this movement were John Locke and Jean-Jacques Rousseau.

Article II John Locke's Theory of Property

The storm which had been brewing in England for over half a century on the question of the relations between Parliament and King, and especially with regard to the arbitrary financial exactions of "Our Sovereign Lord the King" broke out openly in 1688. In 1690, Locke's *Two Treatises of Civil Government* were published. (27) These treatises provided a justification for the revolution, but since the whole question of property was of such paramount importance Locke rightly felt that a thorough exposé of his views on the subject was essential to a consideration of civil government. He expressed his intention saying,

> I shall endeavour to show how men might come to have a property in several parts of that which God gave to mankind in common, and that without any express compact of all the commoners. (28)

What he endeavoured to do was to base the claim to private property on natural, not on positive, law. The purpose of this was to render property inviolate and to place it outside the reach of any royal usurper.

Locke's argument was based on a theory of labour. He held that, originally, property could not be called private, but that a man, by, as it were, investing his labour in it, for example, by tilling the soil so as to make it fruitful, thereby established his right to it. This right was his by nature, not by civil law or common consent.

> Whatsoever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. (29)

Certain obvious objections could be made to this theory but Locke was aware of these and forestalled then, saying,

> As much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in; whatever is beyond this is more than his share, and belongs to others. (30)

To the merchantmen of 1690 this was a highly acceptable doctrine. It gave a philosophical expression to the experientially-based convictions of the rising English middle-class.

Locke, however, was not unaware of the fact that this acquisition of property by labour was not the actual case in the England of his day. Capitalism had already raised its ugly head in the form of a wealthy land-owning aristocracy. He attributed this state to two factors brought about by convention. One was the growing use of money as a means of exchange,

> There is land enough in the world to suffice double the inhabitants, had not the invention of money, and the tacit agreement of men to put a value on it, introduced (by consent) larger possessions and a right to them. (31)

The other factor was the development of community life. Men

> settled themselves together, and built cities; and then, by consent, they came in time to set out the bounds of their distinct territories, and agree on limits between them and their

> neighbours, and, by laws within themselves, settled the properties of those of the same society. (32)

Locke wished to base the right to private property on natural law, but he saw that, as a matter of fact, it was largely conventional, and, to his mind, nature and convention were two distinct things. He seems to have been a little unsettled in his argument from natural law, for he wrote,

> Thus labour, in the beginning, gave a right to property… men, at first, for the most part, contented themselves with what unassisted nature offered to their necessities; and though afterwards… [men] have, by positive agreement, settled a property amongst themselves in distant parts and parcels of the earth. (33)

Here he shows how the "natural" structure of society yielded place to one based on "positive agreement".

Locke's theory, thus far expounded, shows two defects. Firstly, his theory that labour is the source of the right to property is not deep-rooted enough, for occupancy must precede labour. One must own before one can apply labour. It is not our aim here to decide whether or not occupancy gives first title to property, but it is clear that, in the order of time, occupancy precedes labour, This is a problem which Locke did not solve. Secondly, in speaking of the state of nature, Locke seems to have been attempting to decide on the question of the *temporal* origin of property. Now, even if such an attempt were successful - which is extremely unlikely - it would be of no value, for the task in hand is to establish a *moral* origin of property. The property arrangements of our ancestors do not bind us in any way, and to try to discover their agreements, as Locke does, is both futile and misleading. In short, Locke missed the point at issue.

We have yet to see how far Locke succeeded in his efforts to find a basis for property in natural law. In the first place we must understand what he meant by "nature".

In Chapter I of the *Second Treatise*, entitled "Of the State of Nature", he writes,

> The state of nature has a law of nature to govern it, which obliges every one; and reason, which is that law, teaches all mankind who will but consult it, that, being all equal and independent, no one ought to harm another in his life, health, liberty or possessions. (34)

We conclude from this that if men lived according to the state of nature, property would be secure from interference. Thus far his case seems to be on solid ground.

But now a difficulty arises, since, in the same chapter, we read,

> For 'tis not every compact that puts an end to the state of nature between men, but only this one of agreeing together mutually to enter into one community, and make one body politic. (35)

Why do men leave the state of nature and enter into one body politic? Locke answers,

> The great and chief end, therefore, of men's uniting into commonwealths, and thus putting themselves under government is the preservation of their property, to which in the state of nature there are many things wanting. (36)

He explains what he means by "property." It is "the mutual preservation of their lives, liberties, and estates which I call by the general name, property". (37)

Locke seems to defeat his purpose here for he shows that property has its origin, not in the state of nature, but in a mutual compact which was entered into precisely because of the defects of the state of nature. He is at pains to show that only in so far as property is protected is this compact lawful. (38) Referring to legislators, he says,

> These are the bounds which the trust that is put in them by the society, and the law of God and nature, have set to the legislative power of every commonwealth, in all forms of government. (39)

In spite of demonstrating so effectively (40) the defects of the state of nature he claims that it is the "the law of God and of nature" which prohibits the legislator from infringing on property rights.

Locke's argument for private property is based on mutual compact, not on the natural law as he had endeavoured to show. In what appears to be an attempt to salvage his theory he quite arbitrarily associates property (in the strict sense of the word) with life and liberty which he had shown in the *First Treatise* to be of natural right. (41) By linking the three terms together in this manner he hoped that property (in the strict sense) would share in the natural origin of the other rights. Thus he could claim to have put property outside the range of regal exactions, for, as he said,

> I will not dispute now whether princes are exempt from the laws of their country, but this I am sure, they owe subjection to the laws of God and nature. (42)

What Locke actually did was to show that the king could not, in justice, interfere with property, since his very purpose as ruler of the community which succeeded the state of nature was to protect it, but what he did not show, as he had endeavoured, was that the king might not do this because of the laws of nature. To his

contemporaries, however, it appeared that he had done so. His *Two Treatises* were hailed, more on the Continent than in England, as a veritable philosophic *coup d'état* against the absolutism of the monarchies, particularly that of Louis XIV. Rousseau spoke of him as "the wise Locke" (43), while a modern author declares,

> He was the teacher in logic, in politics, in psychology, as well as in social, religious, economic and even educational philosophy of Condillac, Montesquieu, d'Holbach, in a word, of all the writers of the "Encyclopédie"; he deeply impressed Rousseau himself. (44)

Article III Property in the United States

In dealing with the question of private property in the United States it must be prominently borne in mind that for the greater part of the American people, and indeed for many of their leaders as well, speculative discussions on the nature of property held little interest. Most of these people were of European stock and many had fled from religious or political persecution. Settling down in their new environment and filled with the spirit of the New World they tended to take human rights for granted, and had little time or patience with philosophy. Thus Alexis de Tocqueville wrote,

> I think that in no country in the civilized world is less attention paid to philosophy than in the United States. The Americans have no philosophic school of their own; and they care but little for all the schools into which Europe is divided, the very names of which are scarcely known to them. (45)

The lack of philosophic training, however, did not hinder them in the least from formulating clear statements of property rights such as that incorporated into "The Body of Liberties of Massachusetts Bay",

> No mans cattel [sic] or goods of what kind soever shall be pressed or taken for any publique use or service, unlesse it be by warrant grounded upon some act of the generall court, nor without such reasonable prices and hire as the ordinary rates of the Countrie do afford. And if his cattle [sic] or goods shall perish or suffer damage in such service, the owner shall be sufficiently recompensed. (46)

A later ordinance is no less explicit in the matter of compensation for property taken for public use: -

> No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and should the public exigencies make it necessary, for the common preservation, to take any persons property, or to demand his particular services, full compensation shall be made for the same, and in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, bona fide, and without fraud previously formed. (47)

These documents show clearly the work of a trained mind, and so, while acknowledging the influence of environment, we must not overlook the purely intellectual forces which went into the formation of the American concept of property. As was only to be expected, much, if not all, of America's thought in the early years of its development was, so to speak, on loan, from Britain chiefly, but also from the Continent. Prominent American statesmen and lawyers were well acquainted with the theories of natural right, and, in a general way, accepted them. To quite a modern American author,

> The immediate source of the American theories of natural law was nearly always the writings of the Continental and English jurists and political philosophers of the seventeenth and eighteenth centuries. (48)

An example of this reference to natural rights is found in the writings of one of the most prominent thinkers of the pre-Revolutionary period.

> Tis also certain that property in fact generally confers power, tho' the possessor of it may not have much more wit than a mole or a musquash. And this is too often the cause [sic], that riches are sought after, without the least concern about the right application of them. But is the fault in the riches or the general law of nature or the unworthy possessor? It will never follow from all this, that government is rightfully founded on property alone. What shall we say then? Is not government founded on grace? No. Nor on force? No. Nor on compact? Nor property? Not altogether on either. Has it any solid foundation? any chief corner stone, but what accident, chance or confusion may lay one moment and destroy the next? I think it has an everlasting foundation in the unchangeable will of God, the author of nature, whose laws never vary…. Government is therefore most evidently founded on the necessities of our nature. It is by no means an arbitrary thing, depending merely on compact or human will for its existence. (49)

Both in the speculative and in the practical order, it was, we believe, largely the British tradition of property rights which the founders of the American state incorporated into their fundamental laws. This was the tradition which the bulk of the people had received from their forefathers, who, for the most part, were British.

Early American scholars were well versed in the writings of Continental philosophers, such as *De Jure Belli et Pacis* (1625) of Grotius, *De Iure Naturae et Gentium* (1672) of Fufendorf, Burlamaqui's *Principes du Droit Naturel* (1748), and the *Commentaries* of William Blackstone. They were influenced to a great extent also by the writings of Thomas Paine. This should not lead one to conclude, however, that the Founding Fathers lacked independence of mind on the matter. Thomas Jefferson, the author of the Declaration of Independence, and a staunch anti-federalist was a strong upholder of natural right. Alexander Hamilton, the leading federalist, was always an advocate of firm State control. Benjamin Franklin was an even firmer supporter of State control of property. It has been suggested that it was because of his radical views on this and on other subjects that he was sent to Paris as ambassador while the debates of the Federal Convention were in progress.

In a letter to Robert Morris, Franklin wrote,

> All Property, indeed, except the Savages' temporary Cabin, his Bow, his Matchcoat, and other little Acquisitions, absolutely necessary for his Subsistence, seems to me to be the Creature of public convention. Hence the Public has the Right of Regulating Descents, and all other Conveyances of Property, and even of limiting the Quantity and the Uses of it. All the property that is necessary to a man, for the Conservation of the Individual and the Propagation of the Species, is his natural Right, which none can justly deprive him of: But all Property superfluous to such purposes is the property of the Public, who, by their Laws, have erected it, and who may therefore by other Laws dispose of it, whenever the Welfare of the Public shall demand such Disposition. He that does not like civil Society on these Terms, let him retire and live among Savages. He can have no right to the benefits of Society, who will not pay his Club toward the support of it. (50)

The theory embodied in this statement is far-reaching enough to satisfy the demands of the most advanced socialist. The Constitution of the USSR scarcely goes to this extent. (51) The majority of American statesmen would have disagreed violently with Franklin's views, and would never have given the State such far-reaching authority in property rights. However, these differences of opinion demonstrate that the leaders of the young American nation had well-developed theories of their own with regard to affairs of property.

A problem arises with reference to the intellectual background of these theories, and that is the question of the influence of John Locke. There is very much dispute on this point. (52) We believe that though his influence was indeed great, it has been exaggerated. The most balanced view is probably that of Fr. Newman. The influence of Locke's idea is apparent in the famous slogan of Patrick Henry, "No taxation without representation", and also in the debates on the new Constitution. Locke was the spokesman of the propertied class in England, and argued that it was for those who owned property, not for the king, to decide on how property rights, taxation and so forth should be regulated. His teaching was adopted by many Americans, and when the Federal Convention was engaged in discussing methods of representation, several members suggested that the lower House should represent the people from the standpoint of their property. This was a thoroughly Lockian suggestion.

The secretary of the Federal Convention, William Jackson, noted that in 5 July 1787, Governor Morris, speaking on the question of representation, said,

> He thought property ought to be taken into the estimate as well as the number of inhabitants. Life and liberty were generally said to be of more value than property. An accurate view of the matter would nevertheless prove that property was the main

> object of Society…. If property then was the main object of Govt. [sic] certainly it ought to be one measure of the influence due to those who were affected by the Government [sic]". (53)

Several other delegates concurred in this view. (54) James Wilson, a delegate from Pennsylvania, speaking on 13 July, said,

> He could not agree that property was the sole or the primary object of Governt. & Society. [sic] The cultivation & improvement of the human mind was the most noble object. (55)

Eventually it was agreed that the Senate should consist of two delegates from each State, elected by the Legislatures of the States.

Commentators both within and without the Unites states testified to the great weight of property considerations in America. Alexis de Tocqueville wrote, "I know of no country indeed where the love of money has taken stronger hold on the affections of men", (56) and elsewhere he affirms,

> In no country in the world is the love of property more active and more anxious than in the United States; nowhere does the majority display less inclination for those principles which threaten to alter, in whatever manner, the laws of property. (57)

John Jay, who was Secretary of Foreign Affairs to the Federal Convention, wrote to Washington, on 27 June 1786, that, "Private rage for property suppresses public considerations, and personal rather than natural interests have become the great objects of attention"(58), while "Jefferson bluntly described his fellow-planters as ' a species of property annexed to certain mercantile houses in London'". (59)

This pre-occupation of the Americans with property is one of the factors which has led some authors, notably Charles A. Beard (60),

to put forward the opinion that the men who drew up the Constitution of the United States were a property-owning class serving the interests of property-owners, and that the motivating force of the entire Revolutionary movement was the desire to be free from the restrictive trade legislation of the British authorities.

Perhaps, also, Beard was impressed by the fact that the provisions of American fundamental law emphasize the rights rather than the duties of property. The text of these enactments is as follows: -

> No person shall be… deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation….
>
> Nor shall any State deprive any person of life, liberty, or property, without due process of law. (61)

However, there is no extraordinary emphasis on rights in these provisions. They merely provide the customary safeguards common to most constitutions, and, besides, they would have to emphasize rights to be included in the Bill of Rights. We may note in passing the use of Locke's (and Blackstone's) phrase, "life, liberty and property".

In fairness to America and her "Sons of Liberty", we must, while conceding that most of Beard's evidence is factual, disagree with him, in part, at least, when he comes to draw conclusions from those facts. Esmond Wright, a prominent historian of our own day, cites an impressive list of authors who have found fault with Beard's position, and adds his own testimony,

> Historians have now some hesitation in accepting the indictment of mercantilism… Bancroft's simple view of it as the cause of the Revolution is no longer tenable… There is now abundant evidence that it was not primarily for mercantile reasons that the Americans revolted. (62)

This view is upheld by the majority of modern historians, notably Samuel E. Morison. (63)

The strongly individualistic character of Americans, which has remained so much a part of their tradition since the Revolution, is manifested in their great respect for personal property. This helps to explain the reluctance of Americans to accept State control over private enterprise, and the reticence of legislators to enact laws providing for social benefits for the aged, the unemployed, or the under-educated. It is only in recent years that the Americans' intense dislike for State interference in these matters has relaxed to some extent.

The pattern of property-holding in the United States has remained basically unchanged since the days of the Revolution. Private property continues to be the mainstay of American economic life, and, in exercising control over property, the State must still tread carefully, and avoid any appearance of handling the sacred cow too roughly!

Nevertheless, when threats to the public welfare became apparent, owing to the abuse of property, both Federal and State governments have taken strong action. In America, these dangers arose where large corporations or trusts were formed and gained a monopoly over certain markets. The reaction of the public authorities was admirable. Recognizing the threat to the rights of the individual posed by these trusts, they enacted legislation which did not destroy these corporations, but effectively brought them to heel.

One method was for the Government to set itself up as a corporation in the same market. This was the case in a recent dispute between the Federal administration and the aluminium corporations, a dispute which arose out of a decision of the

corporations to increase the price of aluminium by half a cent per pound, or ten dollars for an American ton. The Federal administration felt that this would bring about an undue increase in Government expenditure, particularly in regard to defence contracts. The aluminium corporations cut back their prices when the Government threatened to dump a Federal stockpile of some three hundred thousand tons of aluminium on the open market at a drastically reduced price. (64) Methods such as those just described are, of course, devised simply to meet the immediate demands of an urgent situation. They are not regarded as setting a standard pattern. The usual procedure is to deal with these problems through legislation. The first instance of such legislation was the Interstate Commerce Act, signed by President Grover Cleveland in 1887. This was directed against railroad monopolies in particular. The Sherman Antitrust Act of 1890 forbade all combinations which would hinder interstate trade. Similarly the Elkins Act of 1903 made it incumbent on railroad and shipping firms to publish their rates.

Under President Theodore (Teddy) Roosevelt, popularly known as the "trust-buster", the Hepburn Act was passed in June 1906. This gave the Interstate Commerce Commission powers to prohibit mergers between the railroads, the shipping lines and the coal companies. One of the most important pieces of legislation was the Federal Reserve Act of 23 December 1913. This empowered the government to control the issue of currency by private banks. At its passage, President Wilson spoke the significant words,

> Control must be public, not private, must be vested in the government itself, so that the banks may be the instruments, not the masters, of business and of individual enterprise and initiative. (65)

President Wilson was acknowledging the truth of what John Quincy Adams, a previous occupant of the White House, had said

in 1776, "The balance of power in a society accompanies the balance of property". (66)

The American system of private property and free enterprise had certainly served the nation well. The tremendous economic development of the United States was due, in large measure at least, to this system. It can truly be said that the American approach to this and to similar questions was inductive. They did not rigidly attach themselves to any particular position, but kept an open mind so as to benefit by changing circumstances and social patterns. While they relied, in the main, on private initiative, they welcomed State support in such projects as the Tennessee Valley Scheme and others of a similar nature. Likewise, at the present time, legislatures are well equipped to deal with any infractions of the laws on property control.

Article IV Rousseau on Property

Jean-Jacques Rousseau (1712-1788) was born in Geneva into a family which had been Protestant for generations. He travelled widely in his youth, taking employment whenever he could find it. In his lifetime he poured out a great stream of works on social questions, works which, in many ways, spurred on those who led the French State in the years of the Revolution. Notable in these works is the emphasis on emotion rather than reason.

In his *Discourse on Inequality among Men*, published in 1755, he advances the opinion that men were never happier than when living in primitive society. Like Locke, he seemed to believe that "a state of nature", such as he described, did actually exist at some time. He accepted the Stoic myth of the Golden, Silver and Iron Ages of man. In this state of nature, all property was held in common, and the fruits of nature were adequate for everyone.

This happy state did not last, however. Through a series of accidents men discovered the use of fire and iron, and began to cultivate corn. A desire for property took hold of men, and, once this corruption had set in, it triggered off a chain reaction so that soon men were everywhere seizing land and calling it their own.

> From the moment one man began to stand in need of the help of another, from the time when it appeared advantageous to any one man to have enough provisions for two, equality disappeared, property was introduced, work became indispensable… slaving and misery were seen, before long, to germinate and grow up with the crops. (67)

It is quite clear that Rousseau regards the desire for property as the prime factor in the destruction of man's happy state in nature.

> The first man who took it into his head to put a fence around a piece of land and say, 'This is mine', and who found people simple enough to believe him, was the real founder of civil society… What crimes, wars, murders, wretchedness and horror the human race might have been spared, if only someone had torn up the stakes or filled in the ditch and cried out to his neighbours, 'Do not listen to this impostor; you are lost if you forget that the fruits of the earth belong to all and that the earth itself belongs to none'". 68)

What Rousseau condemns here, in fact, is not property itself, but the abuse of it by men. Since the happy state of nature has been destroyed by property, which now comes to have a dominant influence over men, society is formed by the desire to protect property. The claim to property is based on labour.

> This origin is all the more natural since it is impossible to conceive the idea of property arising from anything other than manual work; for one can see that, in order to acquire things

> which he has not made, a man can only add his work to them. It is work alone which gives him a right to the produce of the earth he has cultivated, gives him also a claim to the land itself, at least until harvest-time, and so on, year after year; this constant possession thus easily develops into property. (69)

The similarity between Rousseau's position and that expounded by Locke is very striking. There is the same reference to a state of nature, which collapsed owing to the greed of men, and the same insistence that the State is founded for the protection of property. Another similarity is the claim that property rights are based on labour. Locke set a limit to property rights, saying that a man could lawfully own only what he could use. Rousseau expressed the same idea, saying that the poor could say to a rich man,

> You ought to have the express and unanimous consent of the human race to appropriate for yourself more of the common stock than you needed for yourself. (70)

Finally, and again like Locke, he regards property rights as being based on convention, and refers to property as "a human institution".(71) The ideas "du sage Locke" (72) have indeed a striking prominence in his writings.

The next difficulty which presents itself to men in their new-found state of property is that of accounting to the poor for inequality. The rich know that, as soon as the poor learn how they have been deceived, they will revolt and cast off the lordship of the rich. Accordingly, the latter conceived the most carefully considered plan which ever entered into the human spirit". (73) This plan was to persuade the poor to accept their lot in the interest of the common good, for the preservation of society and in the interests of order. Simple men were deceived by this plot and "All rushed to their chains, thinking that they had secured their liberty". (74)

In this way,

> They destroyed their natural liberty beyond hope of recovery, established for ever the law of property and of inequality, turned a clever usurpation into an irrevocable right, and, for the benefit of a few ambitious men, for evermore subjected the whole human race to work, to slavery and to misery". (75)

In writing this work, Rousseau had in mind the French landed class of his own day. The *Discours sur l'Inégalité* was a bitter outcry against the social injustice prevalent at the time. It represents an attempt, though admittedly not a very successful one, to trace historically the origin of inequality. Though imagination rather than historical research guided him, Rousseau nevertheless succeeded in portraying vividly a picture which was an allegorical representation of the history of inequality in property. It was this romantic quality of illustration which captured the hearts of Frenchmen, and, though it is unlikely that anyone believed that such events actually took place, people were powerfully stimulated and aroused by the thought which underlay the work.

P. J. Proudhon, writing in 1840, declared, "Property is robbery" (76), an expression with which Rousseau, writing the *Discours sur l'Inégalité*, would have heartily agreed. For him it merely emphasized what he had written elsewhere, that, "Everything is good as it comes from the hands of the Author of Nature; but everything degenerates in the hands of men". (77) However, Rousseau's ideas on property, as indeed on other subjects also, changed rapidly - something which is not surprising in one of his temperament. The man who could preface an essay on civil society with the words, "Let us now begin by setting aside all facts, since they have nothing to do with the question" (78), clearly was not using reason as his guide-line. It has been said that

> The theme of Rousseau's essay [the *Discours sur l'Inégalité*] was that of Genesis, a restatement of the Protestant doctrine of the Fall of Man in the speculative terms of eighteenth-century anthropology. (79)

Within eight years his thought had developed from an individualistic to a highly socialistic concept of property. One author has said of him that,

> Beginning as an anarchist in revolt against all social coercion, he came in time, as Plato had done, to a conclusion which made the State everything and the individual nothing. (80)

In 1758, just three years after the publication of the *Discours sur l'Inégalité*, he produced his *Discourse on Political Economy*. In this work he completely avoided any reference to the historical origins of property. It represents the high-water mark of his individualism, and shows, more than any other work, the influence of Locke. The first reference to the doctrine of the General Will are found here also, for, on the death of a property owner, all his rights fall into abeyance, and the disposition of his property is left in the hands of "the General Will". In the *Political Economy*, he refers to property as "the most sacred of all the rights of citizenship and even more important, in some respects, than liberty itself". (81) He also speaks of it as "The true foundation of civil society". (82)

In 1762, Rousseau's best-known work, *Du Contract Social*, made its appearance in Geneva. The first official reaction to this work in France was the issue of a warrant for his arrest. Jean-Jacques, however, having once had a taste of prison life, and having no desire for a second turn, made a speedy exit to Switzerland. The opening words of the first chapter show Rousseau's ability to dramatize a situation: "Man is born free", he wrote, "and everywhere he is in chains". (83)

The substance of his work is that the individual, by entering society, surrenders all rights to it, and that the community, as a sovereign body, is the sole source of law and morality. It repudiates the idea that the individual has any moral responsibility, and affirms that the community is the only body which has moral existence. Applied to the domain of property it meant that the individual had no right whatever to property, that all property is vested in the State. The *Social Contract* is the cemetery wherein Rousseau buries his former individualism. He reiterates his socialistic theories in the *Proposal for a Constitution for Corsica* and in *Émile* (1762).

In so far as he attempted to offer a systematic treatise on social questions, Rousseau was not an original thinker. He admits in his *Letters from the Mountain* that,

> Locke, Montesquieu, the Abbé of Saint-Pierre, have dealt with the same subjects, and often with the same liberty, to say the least. Locke, in particular, has treated them with exactly the same principles as I. (84)

To Hobbes he owes the notion of the sovereignty of the people and the subordination of the Church to the State. Montesquieu, too, influenced him strongly. However, many authors regard him as an original thinker. Confusion in the interpretation of Rousseau is inevitable. Some ask, "Did he champion individualism?", or "Was he a socialist?", and the only answer seems to be that he was a supporter of these two currents of thought at different times of his life. It is possible to present a plausible case for almost any theory about Rousseau merely by shuffling quotations. Like Saint Paul, though in a very different sense, "He became all things to all men". It is the opinion of Sabine that, "Rousseau's political philosophy was so vague that it can hardly be said to point in any specific direction" (85), while Joad calls him "a psychological hedonist"

(86), and Voltaire referred to his works as "a code of anarchy". (87)

Perhaps the best commentary is that of Kingsley Martin, who writes,

> His books were an attempt to objectify his own conflicts - conflicts which commonly originated within himself but which always seemed to be, and sometimes in fact were, the outcome of social corruption and State intolerance. Thus the key to Rousseau's philosophy lies in the *Confessions* where he portrays himself as a man of good instincts, good intentions and friendly disposition driven to knavery, buffoonery and misanthropy by the artificiality and falsehood of society. Each of his books is therefore an attempt to explain and resolve the miseries and humiliations of thwarted men - and Rousseau assumed that his own difficulties were typical - in an unjust and unequal society. His books contain numerous formal inconsistencies which are explicable only in the light of his emotional experience. The clue to Rousseau's works is his own psychological history. (88)

It is reasonable to ask what influence Rousseau had on the world which succeeded him. Some authors exaggerate his importance, as, for instance, Émile Blémont, who says, "Without him the Unites States would probably not be a republic". (89) It is very doubtful whether Rousseau had any great influence there, though G. D. H. Cole says,

> When the American Colonies revolted from Great Britain and sought for a theoretical foundation for their independence and for a practical constitution as its embodiment they took… their first principles largely from Rousseau's *Social Contract*. (90)

The Founding Fathers of the United States were hard-headed pragmatists who would have had little patience with Rousseau's

romantic peregrinations through a multitude of social theories. Undoubtedly, they knew of Rousseau and had read his works, but, apart from an occasional similarity (91) between a statement of one of the American leaders and some of Rousseau's ideas, there is little evidence to suggest that the United States looked to Rousseau for support in its search for a fundamental law for the nation.

Rousseau's influence on France, the country of his adoption, was great, however. Many of the basic ideas of his writings were incorporated into the texts of the many post-Revolutionary Constitutions. Even this does not go unchallenged, however. George Jellinek writes,

> The Declaration of 26 August 1789 was formed in contradiction to the *Social Contract*. The work of Rousseau, it is true, exercised a certain influence of style on some formulations of this Declaration; but the thought of the same Declaration necessarily has its origin in a different source. (92)

This same author claims that the French *Declaration of the Rights of Man and of the Citizen* was more influenced by the example of the Bill of Rights of the United States Federal Constitution as well as those of the Constitutions of individual American States. (93)

It is an undeniable fact, however, that, in some cases, Rousseau's more prominent statements were inserted, almost *verbatim*, into the new French Constitutions. For example, we read that, "The law is the expression of the general will". (94) Surely it cannot be claimed that the similarity between this statement and the affirmation of Rousseau that, "The general will is always a law" (95) is merely a coincidence. The statement of the present French Constitution that "National sovereignty belongs to the people" (96) is also reminiscent of Rousseau. In many cases, however, the ideals which Rousseau upheld, though not implemented in the practical sphere, served as the underlying driving force behind the

men who led the Revolution in France, and whose task it was to re-shape the destinies of that nation in the years successive to the Revolution.

Article V Property in France

The French Revolution is an historical event of great significance in the question of property. Even the most cursory examination of the events which took place in France in and after 1789 cannot fail to reveal that property was a central factor in political discussion. Its importance was widely recognized as much for its influence in the socio-political sphere as in that of the nation's economic life. As in other countries, discussion on the subject centred largely on the recurring problem of whether property was a natural or a conventional right.

During the seventeenth century, France had gone through a lean intellectual period, and the bulk of its ideas, both social and cultural, consisted of gleanings from the harvests of foreign fields. Where property was concerned, there was written indelibly on the minds of Frenchmen the writings of John Locke, whom they regarded, rightly or wrongly, as a defender of natural rights.

When the Third Estate, on 17 June 1789, declared itself to be the National Assembly of France, it was faced with the unenviable task of restoring to its proper condition a country which had run close to bankruptcy for several years. The confiscation of property, and especially that of the clergy, both religious and secular, presented itself as a suitable remedy. (97) On 4 August 1789, the Assembly declared that feudalism in France was at an end. This has been called "the Saint Bartholomew's Day of Property". (98) The action of the Assembly precipitated a wave of confiscation which was the forerunner of a new pattern of social life, not only of France, but of Europe as well.

Commenting on the Assembly's action, one author has written,

> Meanwhile the Revolution found landed property locked in the bonds of feudalism, and, by the sole fact that it abolished this abuse, it set property free. (99)

It is open to debate whether or not the Revolution really set property free, but it certainly did set free a torrent of pent-up thought whose outline we will now endeavour to trace.

In the winter of 1788-1789, a group of prominent Frenchmen drew up the celebrated *cahiers de doléances*, [lists of grievances] the keynote of which was, as Paschal Larkin says, "that property and liberty are inviolable rights which the State is bound to respect". (100) This declaration was the focal point of the discussions which followed. Like James Madison in the United States, they realized that "the most common and durable source of faction has been the various and unequal distribution of property". (101) Their intention was to resettle feudal territories so as to establish a just and equitable balance of wealth.

It is important to bear in mind that the leaders of the Revolution did not wish to sweep away all property rights. Unlike a certain contemporary ruler (102), they did not apply the principles of "instant socialism". What they aimed to do was to destroy the ancient privilege-laden feudal system which still prevailed, and to replace it by a system which would broaden the popular basis of property. This would necessarily involve a certain amount of confiscation but they were willing to compensate for this. These were the aims of the moderate group, prominent in which were such men as Cazalè and Lasource, who based their theories on natural law. In August 1789, they wrote,

> Property being an inviolable and sacred right, no one can be deprived of it, except in the case of a public necessity, or some

> obvious need which is legally recognised, and subject to the condition of a just and pre-paid indemnity. (103)

However, as the Assembly came more and more under the influence of extreme groups this theory was abandoned and in its place the notion of conventional right succeeded. The Comte de Mirabeau, who is regarded as an exponent of the idea of conventional right, though a moderate one, said on 8 August 1789, "What we call property is nothing but a right to rent". (104) In November 1789, Church property was confiscated. Evidently, as one author remarked, "Theories of property were obviously weapons which men picked up and discarded as the needs of battle dictated". (105)

The Constitution of 1791 marked a further stage on the road from royalism to republicanism. Under its provisions France was to be a constitutional monarchy, or, as some have called it, a "crowned republic". Meanwhile, property was theoretically regarded as a natural right of man and was affirmed to be so in terms reminiscent of Locke.

> The end of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security and resistance to oppression. (106)

Article 17 of this Declaration repeats without alteration the safeguards of property outlined in Article 17 of the 1789 Declaration. It is indicative of the state of affairs at the time that the document which could state, "The Constitution guarantees the inviolability of properties, or the just and pre-paid indemnity of those for which the public good, lawfully established, demands this sacrifice" (107) could also assert, in the next clause, that, in effect, Church property had been confiscated without indemnity. It is clear that theory was tailored to suit practice rather than practice

being the result of a theory formulated in disinterested philosophical speculation.

Subsequent political disturbances led to the establishment of the Girondins as the leading parliamentary group. By contrast with the Constitution of 1791, that of 1793 advocated an extreme form of republicanism which supported the right to property in the strongest terms, while avoiding the question of whether property was a natural or a conventional right. Though never put into practice, the provisions of the Constitution with regard to property were legally established in a law of 18 March which decreed the death penalty for anyone who would propose an agrarian law. On 31 March the same penalty was decreed against anyone who would advocate the violation of property. Since the decree of 4 August 1789 abolishing feudalism, there had been numerous violations of property, particularly in the provinces. Many of the peasants had understood the decree to mean that egalitarianism had become law. They saw, as one M. de Cormenin did, that,

> Without the violation of property, it is impossible to produce equality, for until the entire community has a share in the land, there must be an aristocracy of wealth. (108)

The Constitution itself provided that,

> The right of property consists in this that every man is the master to dispose at his own will of his goods, his capital, his revenues and his trade.
> Every man is free to use his capacities, and his time, but he is not allowed to sell himself, his person is not an alienable property. (109)

This latter provision was deemed necessary in view of the belief of some peasants that they, in their persons, were the property of the landlord.

By June of 1793 the Girondins had been ousted and replaced by the Jacobins, who set about the task of formulating a theory which they hoped would provide a cloak for the widespread expropriations in which they were involved. They expressed their views in the words,

> The right of property is that which pertains to every citizen to enjoy and to dispose at will of his goods, his revenues, the fruit of his work and his trade. (110)

Art. 19 of the same Declaration makes provision for compensation in the usual manner. It would appear that the rights of citizens were being proclaimed ever more loudly in proportion to the measure in which they were being denied in practice.

Perhaps the feature which this Constitution had most notably in common with its predecessors was the brevity of its duration. A veritable epidemic of constitution-making had swept France, so that it is related of a certain traveller that, on asking a bookseller for a copy of the French Constitution, he was told, "We don't sell periodicals".

On 2 August 1795, (or 5 Fructidor, An. III, as the Revolution knew it), a new Constitution was promulgated for the people of France. It declared,

> The rights of men in society are liberty, equality, security, property…. Property is the right of a man to enjoy and to dispose of his goods, his revenues, the fruit of his work and his trade. (111)

Again, property appears to be clearly safeguarded.

Similar, and at times, identical expressions were used in later French Constitutions and legal enactments with regard to property. This is especially clear in those of 1814, 1830 and 1848.(112) The present French Constitution, promulgated on 4 October 1958, makes no mention of property rights, and indeed, so preoccupied were its authors with the intricacies of parliamentary procedure, that they scarcely dealt with the question of human rights at all, beyond stating in the Preamble that,

> The French people hereby solemnly proclaims its attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, reaffirmed and complemented by the Preamble of the Constitution of 1946. (113)

If we attempt to pass a final verdict on the manner in which the Revolution regarded property we quickly become aware of a distinct clash of opinion. Proudhon wrote, "Property is robbery! That is the war-cry of '93! That is the signal of revolution!"(114) It is not an exaggeration to say, however, that Proudhon was apt to see things through a biased spectrum, and that his research was not without prejudice. Nevertheless it must be granted that, as far as concerns the practical attitude of the Revolution towards property he was to a large extent correct. Theoretically, however, the Revolution at all times supported property and regarded it as an inalienable right. It had a sublime disregard for the enormous discrepancy between theory and practice, so evident at the time.

Other authors, judging the event in the light of official declarations could say with Eugène Blum that, "It can be said without a paradox… that the Revolution established among us the right to property".(115) In a similar vein of thought, another author offers the opinion that, "The Revolution always considered individual property as the corner-stone of the social structure". (116)

Judged from the philosophical standpoint the French Revolution cannot be said to have improved or clarified man's understanding of property rights. It left the question of its being a natural or a conventional right unresolved. However, it did serve to show very powerfully how important property is in the social order. Likewise it illustrated clearly that no facile solution can be adequate for the problem, and that anyone who posits in arbitrary fashion what he believes to be an ultimate and all-sufficing diagnosis clearly does not gauge properly the depth of the problem.

From the legal viewpoint the Revolution made one very noteworthy contribution. It established laws for the regulation of the right of testamentary disposition. In the *Code Napoléon*, a large number of scattered decrees were brought together and worked into an intelligible scheme. Among the provisions of the Code was that by which, in the absence of a will, property was to be divided equally among the children. (Art.745) Article 918 restricted a father's right of disposal in inverse proportion to the number of his children. (117) To some extent at least these laws were the fruit of the Revolutionary passion for equality. "Every institution of entailment is abolished for the future", declares one of these laws. (118) These legal enactments were undoubtedly beneficial in many cases, though they have been criticized on the grounds that, when applied to ownership of land, they produced a multiplicity of small, uneconomic farms. (119)

The Revolution carries us forward to the late nineteenth century where, in radically changed and rapidly changing social conditions, the entire question of property took on a new importance and a new perspective. The Industrial Revolution changed the face of Europe as much as, if not more than, did the French Revolution, and nowhere is this more evident that in the ever-present problem of property.

Article VI Papal Teaching

In 1891, Pope Leo XIII published the encyclical letter *Rerum Novarum*. Among its most important features was an outline of the Catholic Church's teaching on property rights. A clear statement of the Church's position was needed, for, at the time, there were two hostile groups contending with one another for supremacy in the social order. On the one hand, economic liberalism, inspired by the doctrines of the Manchester school, championed the ruling classes, and, flying the banner of *laissez-faire*, was creating a small group in possession of enormous wealth, while the vast majority of people struggled long hours every day to obtain the most meagre subsistence. On the other hand, that type of socialism which today we call Communism, was coming into prominence largely as a reaction against the conditions fostered by liberalism. Feeding on the discontent and resentment of the working class it went to the very opposite extreme of liberalism and, finding expression in the writings of Karl Marx and Friedrich Engels, demanded the complete abolition of private property.

Rerum Novarum was a calm and reasonable exposition of traditional doctrine applied to the needs of the time. In it, Pope Leo based the right to property on natural law. "Private ownership, as we have seen, is the natural right of man". (120) He had outlined this position quite clearly already in an earlier encyclical, *Quod Apostolici Muneris* of 28 December 1878, in which he stated, "For the Socialists wrongly assume the right of property to be of mere human invention", (121) and referred to "The right of property, sanctioned by the law of nature". (122) Faced with the dilemma involved in the tension between Capitalism and Socialism, Pope Leo endeavoured to solve the problem by suggesting that private ownership of property should be extended as widely as possible. This wide distribution would be a safeguard for the individual against domination either by the State or by a monopoly of wealthy property owners. Furthermore, it would ensure a healthy economic

growth for the State, and be a source of personal pride and security to the individual.

From the purely theoretical point of view it must be granted that the solution offered by Pope Leo was the best one. It preserved the elements of truth in the two opposing systems, and placed the individual and the State in mutually satisfactory and acceptable positions. But it must be borne in mind that the question of property cannot be viewed entirely from a theoretical standpoint. It is a practical problem as well. Social and economic factors were involved. The economic structure at that time did not favour a multiplicity of small farms or businesses. The development of complex managerial methods and manufacturing processes had made the formation of large companies and groups of companies inevitable. This is something which has become much more widespread in our own day, but, even in 1891, the trend towards this type of property grouping was well established.

In a situation such as this it is very difficult to realize Pope Leo's desire for an extension of ownership. It is true, of course, that today, the share capital of most big companies is in private hands, but this can be very deceptive. It seems to solve the problem but in fact it does not solve it, for the *control* of this capital - and from the practical point of view it is the control which matters - is held in the hands of a few directors. These are elected by the shareholders on the basis of one share, one vote. But, in practice, since most shareholders know little, and, it must be admitted, quite often care little, about the social aspect of property, the general practice is to delegate the outgoing directors to vote by proxy in the election of the new directors. Therefore, in spite of the democratic appearance of things, property remains largely in the control of a few. Some very informative statistics are provided on this point by Alfred O'Rahilly in his *Social Principles*. (123) The alternative to this form of property control is State control, though, if not properly used, this could aggravate, rather than alleviate, the problem. Pope

Leo, fearing the extremes of socialism seems to have been reluctant to acknowledge this, and, in the light of the statements of socialist leaders of his day, his hesitancy was quite understandable.

In 1931, Pope Pius XI, in his encyclical *Quadragesimo Anno*, concentrated largely on the practical problems of social life at the time, and, in a particular way, on the question of property. He clearly recognized the dangers of the system to which we have just referred. He wrote,

> It is patent that in our days not wealth alone is accumulated, but immense power and despotic economic domination are concentrated in the hands of a few, who, for the most part, are not the owners but only the trustees and directors of invested funds, which they administer at their own good pleasure. (124)

His answer to the problem presented by this fact was a two-fold one. Firstly, basing his teaching on natural law and on the Aristotelian-Thomistic tradition, he acknowledged that the State can exercise its powers to control the use of property.

> Provided that the natural and divine law be observed, the public authority, in view of the true necessities of the common welfare, may specify more accurately what is licit and what is illicit for property owners in the use of their possessions. (125)

Secondly, the pope recognized that if economic control was added to the powers of the State, it could be used in such a way as to constitute an even greater threat to an individual than ordinary monopolism. Consequently, Pope Pius advocated the system of corporate ownership on a vocational basis. (126) This system had been tried, with a good deal of success, in the early years of Mussolini's rule. Under this arrangement, both workers and owners would share in management and in the control of the firm's resources. Wage agreements would be agreed for a specific period

and these agreements would have the binding legal force of a contract. Accordingly, both strikes and lockouts would be forbidden. (A modified form of this type of agreement is in operation in Sweden at the present time.)

This form of ownership, that is, the corporative form, is not very widely adopted in our own time, perhaps because of its unfortunate historical association with the political institutions of Fascism and Nazism. This association, however, should not prevent us from examining the idea of corporative ownership anew. If adopted, the corporate associations could act as a kind of "third power", that is, as a buffer between the demands of the individual and of the State.

In examining papal teaching we find a marked trend to protect the individual against the encroachment of property owners, and an emphasis on the duties as well as the rights of property. Of historical interest in this context is the Bull, *Inducit Nos*, of Pope Sixtus IV, dated 1 March 1476, allowing small farmers to appropriate land for their use in time of famine.

> With apostolic authority we decree and ordain that henceforth for all time, any person… may lawfully break up, plough and till… one-third of any holding or estate which he selects… Let him only ask for the permission of those concerned, even though he may not obtain it, but the decision of the Arbitrators or any one of them is sufficient authority. (127)

A declaration such as this must have provoked some forthright criticism from the property owners of the Papal States!

In the Church's most recent encyclical on the social order, *Mater et Magistra*, Pope John XXIII reiterated that the right to private property is based on natural law.

> The right of private ownership of goods, including productive goods, has a permanent validity. It is a part of the natural order, which teaches that the individual is prior to society and society must be ordered to the good of the individual. (128)

He argued in favour of private property on the basis that it safeguards the individual's freedom. "The exercise of freedom finds its guarantee and incentive in the right of ownership". (129)

Changes of circumstance have necessarily brought about a change in the manner in which this right is exercised and in the purpose of work. On this latter point we can see clearly the effect of changing circumstances on the Church's position. Pope John wrote,

> Furthermore, the modern trend is for people to aim at proficiency in their trade or profession rather than the acquisition of private property. They think more highly of an income which derives from work than of an income which derives from capital and the rights of capital. (130)

By contrast Pope Leo wrote,

> It is surely undeniable that, when a man engages in remunerative labour, the impelling reason and motive of his work is to obtain property, and thereafter to hold it as his very own. (131)

By considering these statements we can see that the Church has endeavoured to uphold certain principles which it considers to be fundamental while yet making an appropriate allowance for changing social conditions. It has consistently upheld the right to private property while insisting that these rights must be exercised for the benefit of all. Likewise it recognises that owners of property should see to its just distribution but that, should they fail

to do so, the State is fully justified in intervening on behalf of the citizens.

In few countries have the papal encyclicals received more attention than in Ireland, and, as we shall see, their influence on the Irish Constitution is profound. This is particularly clear in that section which deals with property rights, as we shall now endeavour to show.

Article VII Property in Ireland

In the nineteenth century there were two streams of thought in Ireland on the subject of property. There was the position of the wealthy landed class who accepted the English liberal doctrines without reservation. In the *laissez faire* concept they found a semi-philosophic justification of ideas which they were determined to hold. If these ideas, when formulated into a practical policy, led to mass evictions in the country or starvation labour in the cities then the answer was that supply and demand were merely finding their proper level. The rights of capital were everywhere being emphasized, the duties were unheard of.

On the other hand, the Irish Nationalist tradition had always shown a strong tendency towards social reform. In the early half of the nineteenth century, demands for the re-allocation of property were based on the theories of the French revolutionaries. Men like Wolfe Tone and James Fintan Lalor particularly drew their inspiration from France. In the *Irish Felon*, of 8 July 1848, Lalor wrote,

> The earth, together with all it spontaneously produces, is the free and common property of all mankind, of natural right, and by the grant of God - and all men being equal, no man, therefore has a right to appropriate exclusively to himself any part or

> portion thereof, except with and by the *common consent* and *agreement* of all other men. (132)

There is a striking similarity between this statement and certain passages of Rousseau's *Discours sur l'Inégalité*. (133) It must be remembered that, when these men thundered against private property, what they had in mind was the abuse of private property, for they saw nothing else but the abuse of it. To many of them the existing social conditions seemed to be entirely the product of the system of private property. This clamour for social change was part and parcel of their nationalism. They saw, quite rightly, that a mere change of political institutions without change on the social level was less than half the battle.

Towards the close of the century two new factors entered into the problem. Firstly, while the influence of the French Revolution began to fade, particularly as the Fenian movement weakened, that of Marx and his fellow-socialists began to take its place. Secondly, a succession of Land Acts in 1881, 1885 and 1903 had settled a large number of families in relative comfort on their own land, and had mollified a great deal of discontent.

The socialistic trends which began to emerge in the later decades of the nineteenth century manifested themselves in the writings of James Connolly. In his work, *Labour in Ireland*, Connolly referred to "Karl Marx in his great work on 'Capital'". (134) It is very doubtful, however, if Connolly went as far as Marx did in his theories of socialism. He spoke, for instance, of "the crude Communism of 1848" (135), while another Irish leader, Devin Reilly, who declared himself a socialist, affirmed,

> We are not Communists - we abhor communism for the same reason we abhor the poor law systems, and systems founded on the absolute sovereignty of wealth. Communism destroys the

> independence and dignity of labour, makes the working man a State pauper and takes his manhood from him". (136)

If Connolly did lavish praise on Marx it is quite likely that he did not realize the full implications of Marx's doctrine. He was not a professional philosopher and did not speak the language of philosophy. It is a reasonable judgment that Connolly, who always showed great love for justice and who championed the down-trodden working class, was merely calling for radical reform - and it was badly needed - but that in doing so he employed phrases which conveyed the impression that he was bent on the destruction of every vestige of the existing social system. It was natural that he should react against the injustice of capitalism by going to the opposite extreme. He would have agreed with Aodh de Blácam that,

> Hitherto, in the interests of capital… the rights of private property have been one-sidedly emphasised… The *obligations* of property have been obscured and the rights of the community ignored. (137)

Connolly believed that it was his duty to emphasize the duties of wealth.

It must be noted also that Connolly was not deceived by the materialism of Marx. To quote Robert Lynd,

> Socialism with him was not a means towards a vast cosmopolitan commonness. It was a means towards a richer individual life both for human beings and for nations. True Internationalism, he saw, involved a brotherhood of equal nations as well as a brotherhood of equal citizens. (138)

Perhaps the best verdict on James Connolly was one which was offered quite recently, namely, that "He spoke the language of Pope John in the vocabulary of Karl Marx". (139)

Patrick Henry Pearse, the best-known of the leaders of the 1916 Rising, formulated a theory of property in an article entitled, "The Sovereign People". It is possible that he was influenced to some extent by Connolly, though he wrote, "I am nothing so new-fangled as a socialist or a syndicalist". (140) Connolly was inspired by internationalism, Pearse by nationalism. National sovereignty, the right of a people work out their own destiny, was the dream which Pearse strove to realize for the people of Ireland. He was well aware, however, that political sovereignty without economic sovereignty was a mere shadow of the reality. "I claim", he wrote, "that the nation's sovereignty over the nation's national resources is absolute",(141) but added, "Such sovereignty… is subject to the laws of morality". (142)

Pearse argued that since sovereignty belonged to the people, the resources of the nation, which were essential to that sovereignty, should also belong to the people. "I do not disallow the right to private property", he declared, "but I insist that all property is held subject to the national sanction". (143) What this could mean in practical terms is not easy to decide, but it could be maintained, on the basis of the traditional scholastic distinction between production, distribution and consumption, that Pearse, while allowing production to remain in private hands, would have established State control over distribution and consumption. Whether his ideal, if realized, would have meant something such as this, it is clear that Pearse did advocate a strong measure of State control.

> To insist upon the sovereign control of the nation over all the property within the nation is not to disallow the right to private property. It is for the nation to determine to what extent private

property may be held by its members, and in what items private property shall be allowed". (144)

It must be noted, too, that Pearse did not use the phrase "State control", but always employed the word "nation". How, we might ask, is the nation to manifest its will if not through the State? Pearse does not seem to have answered the question.

In spite of his great emphasis on the nation's right over property he did not lose sight of the purpose of property. He wrote,

> The nation is under a moral obligation so to exercise its public right as to secure strictly equal rights and liberties to every man and woman within the nation. The whole is entitled to pursue the happiness and prosperity of the whole, but this is to be pursued exactly for the end that each of the individuals composing the whole may enjoy happiness and prosperity, the maximum amount of happiness and prosperity consistent with the happiness and prosperity of all the rest. (145)

In the Democratic Programme adopted by Dáil Éireann on 21 January 1919, the writings of Pearse were quoted, and the Dáil pledged itself to fulfil his dream of full national sovereignty. "We affirm", it stated, "that all right of private property must be subordinated to the public right and welfare". (146) Within the next two or three years, however, drastically changed circumstances did much to dampen the enthusiasm of earlier years. In the Free State Constitution no mention was made of property rights. As far as this question was concerned there was a full return to the *status quo*. Apart from a steady programme of land re-allocation in which most of the remaining estates of the gentry were bought over and distributed to local farmers, and some rather feeble efforts at providing proper social services, little was done to put into practice the teachings of men like Connolly and Pearse. It must be admitted, of course, that these two men had not formulated

their theories in a very precise way and that they were unacquainted with the intricacies of economic life. The ideal of an economically self-sufficient State, which was fostered by the nationalist tradition, was an economic delusion to which leaders of the State clung for many years.

In our present Constitution, which was adopted in 1937, property is treated in Article 43, as follows: -

> 1.1The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.
> 1.2 The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath and inherit property.
> 2.1 The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice.
> 2.2 The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good. (147)

This statement adheres very closely to the pattern outlined in papal encyclicals, and has almost the appearance of a transcription from a scholastic textbook. The reference to "the natural right" clearly points to an acceptance of the traditional concept of natural law. A modern Irish lawyer says that, "The Constitution adopts the Thomistic conception of the Natural law as the expression of the Eternal law in a free rational creature". (148)

Alfred O'Rahilly, commenting on the foregoing provisions, says,

> Article 43, on the right of private property is rather prosy, and fails to emphasize the correlative duty of the owner. I hope I am not egoistic in saying that I still prefer my article. (149)

As an alternative he suggested the following: -

> (1) The right to hold private property is guaranteed; its extent and limits are to be defined by law. The right to hold private property, like other rights, implies a correlative duty, and it must not be exercised to the detriment of the community.
> (2) The right of alienation, bequest and inheritance is guaranteed without prejudicing the fiscal claims of the State and its right to limit the alienability of the homestead, and to abolish entails and anti-social restrictions.
> (3) Expropriation of private property may be effected only by legislation, for the benefit of the community, and with compensation. (150)

This formula is a little more concise but it is to be noted that it makes no reference to natural law, and this would have considerable significance in court cases on the matter, for it has been noted that the courts are much more favourably disposed to protect the individual in what concerns those rights which the Constitution defines as "natural". Dr. O'Rahilly's own treatment of the subject is certain lengthy enough if we include the remaining five propositions which he enunciates in elaborating on the basic provision. (151)

The Constitution makes a clear distinction between the right itself and the manner of its exercise, and this has drawn adverse comment from at least one author, who writes,

> A classic example of giving a right with one hand and taking it back with the left may be found in Article 43 of the Irish Constitution, which deals with the right to private property. The

> Article begins with these encouraging words… [he cites Article 43.1.1]. It continues with a clause calculated to lift up the heart of the most old-fashioned capitalist… [he cites Article 43.1.2]. But the next two sentences are likely to disappoint… [he cites Article 43.2.1 and 2]. The Constitution of Yugoslavia goes hardly further than this… (152)

However, if the above-mentioned distinction is invalid we can only conclude that the right to property and the manner of its exercise must be co-extensive. This would surely lead to abuses far greater than those which Dr. Wheare imagines to exist in the Irish Constitution. This Article does not abuse the individual's right to property. The State could conceivably abuse the individual's right, but Dr. Wheare seems to forget that the possible or hypothetical abuse of something does not thereby take away its use. Section 2 of the Article is simply an expression in constitutional language of the legal maxim, "Sic utere tuo ut alienum non laedas". (Use what is yours in such a way as not to injure another.)

The objection does raise a point, however. It has sometimes been objected that a constitutional guarantee of private property amounts to relatively little in practice, for, on the one hand, it is very unlikely that any Constitution will allow the right of property to be an absolute one, while, on the other hand, it is equally true that no Constitution will unreservedly deny the right. What Constitutions say, in effect, is that individuals have the right to private property but that this right can be exercised only within certain limits set by the laws of the State. The argument then is that, from the practical standpoint, it is these laws, and not the Constitutional guarantees, which count.

As against this position it must be noted that a Constitution embodies, not the entire law of a nation, but its fundamental law. To expect a detailed and minute elaboration of a nation's laws in a Constitution is to misunderstand what a Constitution represents. Its

aim is to emphasize certain basic elements of law and to indicate the pattern which other laws should follow. Besides, few constitutions are vague and uncertain in tone, but, on the contrary, definitely do enact certain positive provisions.

The Irish Constitution, for example, "guarantees to pass no law attempting to abolish the right of private ownership". (153) The courts, in the Sinn Féin funds case, explicitly rejected the view, put forward by the Attorney General, that the sole purpose of this provision was merely to prohibit the total abolition of private property. The judgment of the courts was that the purpose of the Article was the protection of property rights, and, that while the State could "delimit" the exercise of this right, such a delimitation could not go so far as to constitute what would morally be a deprivation of property. (154)

Constitutional enactments, therefore, far from being meaningless generalizations, do in fact exercise very important influence. Besides, it is understood that the laws which elaborate on constitutional provisions should be informed by the spirit of the Constitution. One has only to look back over the last thirty or forty years of Irish legal history to see how often important legal issues centred round the interpretation of statements in the Constitution. (155) Any citizen can question the constitutionality of a law in the courts, and if he succeeds in demonstrating that a particular law is unconstitutional, then that law is automatically regarded as null and void. He cannot do this if there are no guarantees of rights in the Constitution to which he may refer. Constitutional guarantees, therefore, are truly meaningful.

CHAPTER III 'DEMOCRACY' IN CONSTITUTIONAL THEORY

Introduction

Our treatment of the concept of democracy must necessarily differ from that of either religious liberty or private property. A constitution can guarantee either of these two rights in a single phrase, but it would be absurd to suggest that a constitution should guarantee democracy. It is true, of course, that most modern constitutions affirm that the State is democratic, but whether it is democratic or not depends not on this simple statement but on the entire structure of the constitution.

Many factors enter into a consideration of democracy in constitutional theory, such as the principle of majority rule, the separation of powers, relations between the individual and the State, the problems of democracy in the face of new economic and social forces, and so on. We shall attempt to deal with some of these problems on this essay.

The first task before us is to endeavour to clarify our notion of democracy, for this is essential to an intelligent consideration of the problem.

Article I The Meaning of Democracy

Section 1 The term 'Democracy'

The difficult in defining such a fluid concept as democracy is widely recognised. Indeed, one is tempted to think that this difficulty is one of the few points on which political philosophers have agreed. One author has remarked that

> It is hardly an exaggeration to say that the term democracy is used nowadays in so many different senses that it has ceased to

> possess any agreed definite meaning, and if this erosion goes on much longer, democracy will soon come to stand for almost anything that one can be politically for or against. (1)

George Bernard Shaw speaks of "the jealousy of official power and desire to do what we like which we call Democracy" (2), while Arnold Toynbee declares that,

> In the mid-twentieth century Westernizing world, the mixture [of personalism and socialism] whatever it might be, was invariably labelled 'Democracy', because this term… had now come to be an obligatory shibboleth for every self-respecting political alchemist. (3)

In a similar vein of thought an Irish author writes that, "The vogue of democracy has become so sacred that, all over the world today, to appear to reject it is to court ostracisation". (4) Jacques Maritain affirmed that, "The word 'democracy' lends itself to so many misunderstandings that from the speculative point of view it would perhaps be preferable to find a new word". (5) To attempt to define democracy by assessing the political character of those states which claim to be democratic is equally frustrating, as has been clearly shown by one who has undertaken a thorough study of this aspect of the problem. (6) However, though it is unlikely that a wholly satisfactory definition of democracy will ever be formulated, we can at least discern certain fundamental characteristics which may be taken to form something of a common denominator with which to work. A brief excursion into the realm of history may be of service here.

Section 2 The Greeks

Etymologically, the term 'democracy' stems from two Greek words, *demos*, meaning the people, and *kratos*, meaning rule. Greek democracy flourished in the fifth century B.C., with Athens

as its focal point. Under this form, the inhabitants of the *polis* assembled approximately once a week to regulate the affairs of the community. Officials were chosen by lot for a fixed term of office and could not be elected for two consecutive terms. This assembly fulfilled the functions of a modern government. However, the arrangement was not as satisfactory as it might at first seem to be. It left itself open to domination by demagogues and, in actual fact, it soon gave way to tyranny. Neither women nor slaves had a voice in the assembly, so less than half the adult population was capable of exercising influence. It is interesting to note in passing that meetings similar to those of the Greeks are still held in the Swiss *Landesgemeinden*, and in the town assemblies of New England. A writer in our own time has suggested that this method be revived. (7)

The Greek contribution to political thought is far greater in significance than its practical forms might suggest. A modern historian writes,

> We had no choice but to take Greece as our starting point. There, political thought came to birth, and in conditions strikingly similar to those in Europe at the present day. This political thought - especially the hierarchy of forms of government as outlined by Socrates, completed by Plato and corrected by Aristotle - conditioned our own political thinking down to the French Revolution. We can see the proof of it in Thomas Aquinas, in Montesquieu, in Jean Jacques Rousseau. (8)

It was Aristotle who first designated politics as a science distinct from ethics. To him also is due the credit for distinguishing between the legislative, the executive and the juridical aspects of government. (9) In his *Politics* he clearly outlined the different functions of authorities and it is his system which has prevailed to the present day. Writing of the Greeks, D. H. Cole says, "Thus, at the very beginning of political theory all the great questions that

have perplexed later ages are raised at once". (10) Though many texts could be cited from both Plato and Aristotle in deprecation of democracy it must constantly be borne in mind that when they criticized it, they were thinking in terms of the Athenian democracy which was little better than ochlocracy at times. (11)

Section 3 Saint Thomas

The basic idea emerging from the Greeks is that democracy is a government by the people. What precise form this government should take is largely the focal point of subsequent discussions on the matter. Saint Thomas spoke of democracy as a "tyrant writ large" (12), though it appears that, in this context, he is thinking in terms of Greek democracy. From other texts it is not unreasonable to draw the conclusion that Saint Thomas was a supporter of present-day ideas on democracy. Thus we read,

> Two points should be observed concerning the healthy constitution of a state or nation. One is that all should play a part in the governing; this ensures peace, and the arrangement is liked and maintained by all. The other concerns the type of government; on this head the best arrangement for a state or government is for one to be placed in command, presiding by authority over all, while under him are others with administrative powers, yet for the rulers to belong to all because they are elected by and from all. Such is the best policy, well combined from the different strains of monarchy, since there is one at the head; of aristocracy, since many are given responsibility; and of democracy, since the rulers are chosen by and from the ruled. (13)

Saint Thomas here shows a strong affinity with the democrats of our own time, and clears himself of the charge of being a blind supporter of the feudal system. Far from supporting the notion of the Divine Right of Kings, he writes that, "If men have both a just

cause and the power, and if the common good does not suffer, they would be right in promoting sedition and they would sin if they did not do so". (14) It seems clear, therefore, that the formative years of present-day democracy may be traced back to the Greeks, through the Scholastics.

Section 4 Further Developments

It must be conceded, however, that the Scholastic theory of government as formulated by Saint Thomas remained simply on the level of a theory and did not achieve any practical realization for centuries. For quite a long time political issues centered on the struggle between the empire and the papacy, and in England alone were steps taken to broaden the basis of government. The *Magna Carta*, signed by King John in 1215, was very far from being a blueprint for a democratic constitution, but, by placing restrictions on the king's authority, it did at least take a step in the right direction. Similarly, the Revolution of 1689, giving the upper classes some share in government, did help to further the movement, though it would be a mistake to regard it as signalling the establishment of a democracy. As Carlton Hayes has noted,

> In their admiration for the English government, many popular writers have fallen into the error of confounding the struggle for parliamentary supremacy with the struggle for democracy. Nothing could be more misleading. The "Glorious Revolution" of 1689 was a *coup d'état* engineered by the upper classes, and the liberty it preserved was the liberty of nobles, squires, and merchants - not the political liberty of the common people. The House of Commons was essentially undemocratic. (15)

The gradual evolution which had been in progress for centuries finally burst forth in the new political structure founded in America.

Section 5 America

Across the Atlantic, other changes were taking place which were to be highly significant for the future of democracy. There, the colonists, angered by the restrictive policy of the British government had revolted successfully, and set about the task of establishing their own State. They had already had a considerable degree of experience in this field, for local assemblies had long been established. An early American writer refers to Massachusetts in 1633 as "enjoying… a government as democratical as that of Unterwalden". (16) He also notes that, "For the first years of its separate existence, Connecticut was a pure democracy, the people meeting in primitive assemblies". (17)

Initially, the States agreed on the Articles of Confederation which united them in a loose association. Of these Articles a United States government publication has this to say, "In its six-year span, the Confederation of the Thirteen Original States had made a consistent record of failure and ineptitude". (18) Realizing that the Articles were inadequate, the thirteen States sent delegates to a Federal Convention, the purpose of which was to review them. In fact, however, the delegates soon appreciated that a completely new document was needed. They abandoned the Articles and set about the task of drawing up a new Constitution.

The men on whom this duty devolved were no radical visionaries aiming at setting up an egalitarian State. They were sober-minded, conservative men of property to whom the word "democracy" had unpleasant connotations of mob rule and social chaos. This should account for the fact that the word "democracy" does not occur once in the text of the U. S. Constitution.

In the Federal Convention debates, a delegate from Connecticut, Mr. Sherman, opposed the election of the Federal Legislature by the people, and insisted that it should be done by State legislatures. "The people", he said, "(immediately) should have as little to do as

may be about the Government. They want information and are constantly liable to be misled". (19) Mr. Gerry, a delegate from Massachusetts, added that, "The evils we experience flow from an excess of democracy. The people do not want virtue, but are the dupes of pretended patriots". (20) He affirmed that, "He was still, however, republican, but had been taught by experience the dangers of the levelling spirit", (21) Governor Randolph was equally emphatic,

> Our chief danger arises from the democratic parts of our constitutions. It is a maxim which I hold incontrovertible, that the powers of government exercised by the people swallow up the other branches. None of the constitutions have provided sufficient checks against the democracy. (22)

Other delegates expressed similar views. (23)

As far back as 1669, when John Locke and his associates drew up the Fundamental Constitutions of Carolina, democracy was regarded with suspicion. The Constitutions were adopted, in the words of the Preamble, "That we may avoid erecting a numerous democracy". (24) On 20 September 1786, Louis-Guillaume Otto, the French *chargé d'affaires* in New York, wrote to the Foreign Minister in Paris that, "This latter article [the abolition of the Senate, advocated by Shay] attacks the very foundation of the Constitution, and tends to establish a real democracy, after the manner of Pennsylvania". (25)

James Madison, one of most prominent members of the Convention, and a future president, wrote,

> A pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. (26)

Elsewhere he refers to "the turbulent democracies of ancient Greece". (27) This latter reference is the key to the problem of why a nation, which today so loudly proclaims its allegiance to the principles of democracy, in its earlier years could condemn it so forcefully. When the Founding Fathers spoke of democracy, they were thinking in terms of Greece.

Even in later years, after the French Revolution, people were sensitive in the use of the term. The writer of the article on America quoted above reminisces, "I very well remember the time when a Democrat was held in pious horror" (28), and speaks of "Democrats, or men who, like the French of that period cut the throats of women and priests". (29) "The people [of Connecticut] are, even now, a little tender of being called Democrats". (30)

It would be a great mistake to think that the American leaders, because they spoke derogatively of democracy, were not in fact democrats in the present-day sense of the term. They established a type of government which we regard today as democratic. It was fundamentally Christian in origin. Jacques Maritain writes,

> The very name democracy has a different ring in America and in Europe…. In America, where, despite the influence wielded by the great economic interests, and where it has never lost its christian origin, this name conjures up a living instinct stronger than the errors of the spirits which prey upon it. In Europe it conjures up an ideal scoffed at by reality, and whose soul has been half devoured by the same errors. (31)

Another author proffers the opinion that,

> It was English Puritanism that established political freedom as a principle in Modern Europe. From the British Isles this tradition was transferred to the New England States of America, where

> many new institutions of political freedom were founded…. American Democracy cannot be completely understood except in relation to this religious-protestant background". (32)

The measure of attention paid by the American leaders to European political philosophers is a question much discussed by scholars. Grotius, Fufendorf, Burlamaqui, Montesquieu and John Locke are those usually mentioned in this context. The question of Locke's influence has been treated already. (33) Other philosophers are also regarded as influential. Alfred O'Rahilly writes,

> There is strong historical evidence… that it is to the great Jesuit protagonist of James I (Suarez) that England and America primarily owe the conception of democratic government".(34)

Another claims pride of place for Robert Bellarmine.(35) G. D. H. Cole writes,

> When the American colonies revolted from Great Britain and sought for a theoretical foundation for their independence and for a practical constitution as its embodiment, they took the forms and arrangements of their new Republic largely from Montesquieu's interpretation of the English Constitution, but their first principles largely from Rousseau's *Social Contract*. (36)

We cannot agree with this position, however. The socialist doctrines expounded by Rousseau in the *Social Contract* were the direct antithesis of the American individualistic tradition. Rousseau, we believe, is the very last political philosopher to whom the framers of the Constitution would have referred.

C. E. M. Joad remarked that, "Paine's views are strongly represented in the American Declaration of Independence". (37) Among all these, however, the influence of Locke stands out in a

special way. His celebrated phrase, "Life, liberty and property" recurs in constitutional documents in America. (38)

Section 6 France

Up to the time of the Revolution France was an absolute monarchy. The reign of Louis XIV, which lasted seventy two years, was autocratic and centralized. There had been no paving of the way for democracy as there had been in England. No outlet had been found for the new ideas which were springing up in the works of Jean-Jacques Rousseau, Voltaire and the Encyclopaedists. The philosophers of the Enlightenment, influenced strongly by the writings of Locke and Hobbes, were undermining the authority of the king. It was no wonder that Louis XIV could say, "Après moi, la déluge".

Disputes continue as to the exact extent of English influence in the thought of the Revolution, but, when one considers that practically every French philosopher of note in the decades prior to the Revolution had visited England and made contacts there, it would seem reasonable to conclude that English thinking and political experience was of decisive influence. (39) One author, at least, regards the American Revolution as the source of inspiration for the French. (40) Of importance, too, was the Reformation which had shaken the spiritual unity of Europe and had produced in France a rationalistic, secularized mode of thought.

The idea of sovereignty which the royalty of France held prior to the Revolution was that expounded by Jean Bodin in his *Six Livres de la République*, published in 1576. He described sovereignty as "the absolute and everlasting power of a republic" (41), and the chief characteristic of this sovereign State was "the power to make laws for all in general and for each one in particular without their consent". (42)

The doctrine of Jean Jacques Rousseau, as outlined in the *Social Contract*, was in many ways the antithesis of Bodin's work. Rousseau insisted that sovereignty was based entirely on the consent of the people, but, in common with Bodin, he completely rejected the Christian teaching of a moral law to which all, both individually and socially, were bound to conform. The idea of authority stemming from God was rejected in favour of the new trinity of Liberty, Equality and Fraternity. So fundamental was this cleavage with the past that several prominent authors speak of democracy as being, basically, of two kinds - that stemming from Christianity and that having its origin in the French Revolution. (43)

Jacques Maritain, for instance, writes,

> The French Declaration of the Rights of Man framed these rights in the altogether rationalist point of view of the Enlightenment and the Encyclopaedists, and to that extent enveloped them in ambiguity. (44)

J. P. Mayer adds that, "The freeing of the Democratic conception from its religious foundations was of great significance during the French Revolution". (45)

What was it about the *Social Contract* - "the gospel of modern democracy", as it has been called (46) that so attracted men? Above all else, we believe that it was the hope of freedom, a hope which Rousseau disappointed despite his assertions to the contrary. Jacques Maritain, writing on this point, says that the problem before Rousseau was how to find "a form of association by which each being united with all should yet obey only himself, and still be as free as before" (47), and the solution to the problem was the social contract - "a pact concluded by the deliberate will of sovereignly free individuals whom the state of nature formerly held in isolation and who agree to pass into the social state". (48)

The guiding light of the social state is the General Will, which is "the common self's own will, born of the sacrifice each has made of himself and all his rights on the altar of the city". (49) What the General Will is, is hard to say definitely. It is not the will of the majority, not the sum of individual wills (50), but, whatever it is, it dominates the individual, utterly swamps the last vestiges of the self, and elevates the State to the rank of a god. (51)

Rousseau imbued this work with an almost religious character, but this must be understood properly, for, to quote Maritain, "If Rousseau sometimes repeats classical formulas which make God the source of sovereignty, he does so either illogically or because he deifies the will of the people". (52) Another author writes, "The common will is a figment, a piece of mysticism where mysticism is least appropriate, and, in practice, a stick for the backs of minorities". (53)

How democratic was France as a result of the changes which had taken place? It would seem that the people had really little to say in the conduct of affairs since, within a period of fifteen years, the mode of government had changed from an absolute to a constitutional monarchy, from there to an absolute democracy and then on to an imperial dictatorship. All this was done in the name of the people, which suggests that though various political theories may have been debated hotly in regard to their relative merits, yet when the time came for the practical consummation of these ideas, theory (and morality) were thrown to the winds, and expediency became the trustworthy *vade mecum* of political leaders.

Section 7 A Definition of Democracy

The classic definition of democracy is that given by President Abraham Lincoln in his celebrated address on the occasion of the opening of the National Cemetery at Gettysburg on 19 November 1863. He defined democracy as, "Government of the people, by the

people and for the people". (54) This definition has met with severe criticism from people who regard it as more of a catch-phrase than an accurate definition. H. Gigon writes, "Such a definition is so vague and ambiguous as to be quite misleading" (55), while another author declares, "The celebrated principle 'Government of the people, by the people, for the people' sounds pleasantly but has little definite significance" (56).

The modern Irish historian, James Hogan, says, in a peculiar phrase, that, "Government of the people is a tautology, a needless repetition" (57). He does not seem to have adverted to the fact that the word 'of' can be understood as indicating the origin of something. An example of this is found in a speech of Chief Justice John Marshall to the Virginia Convention on 10 June 1788. He said, "It is the people that give power and can take it back. What shall restrain them? They are the masters who give it, and *of* whom their servants hold it". (58) Here, the word '*of*' indicates the source of the authority. Abraham Lincoln's use of the word, then, was not a tautology but designated the people as the source of political authority. In other words, he was enunciating the doctrine of popular sovereignty.

Similarly, Professor Hogan criticizes the phrase 'for the people', saying that it has "no definite meaning" (59). His argument is that "In the absence of an objective standard of morality such as Catholicism… such terms as 'good', 'interest' and so on, have no definite meaning". (60) However, from this one is led to the doubtful conclusion that outside of Catholicism one cannot distinguish between what is good and bad for a people. "This being so…. what seems good to one may seem bad to the other and *vice versa*" (61). This seems a rather skeptical attitude. One may well ask: "How does the formula apply in practice?" Now it is obvious that governments will differ in what they consider to be good for their citizens: for example, the Irish government favours foreign investment, while the Turkish government does not. This fact,

however, in no way militates against the principle of government *for* the people. All it means is that social and economic conditions in Ireland differ from those in Turkey, consequently necessitating different government policies in the two countries. Our contention, therefore, is that the expression 'for the people' is a meaningful one.

In dealing with the formula 'by the people', Dr. Hogan writes, "In fine, the acid test is the rule of men by themselves, the presumption being that the people as a whole can and should direct the process of government" (62) We heartily concur with this view. The same author rightly points to an ambiguity in the practical realization of this ideal. Direct democracy, as known to the Greeks, is impractical in the present social structure. We must, therefore, be content with representation, but, however good this may be, it is nevertheless a substitute for a truly authentic democracy. As Christopher Dawson says,

> No doubt it is theoretically possible to conceive a democracy without parties, after the fashion of the old Swiss democracies of the original Forest Cantons. But this is so remote from practical politics, that we can afford to ignore it. (63)

However, this fact of the need for representation does not lead us to conclude that, as Denis O'Keeffe, says, "Government by the people in any intelligible sense is impossible in modern representative democracies". (64) Parliamentary representation is an intelligible form of government by the people. It is true, of course, that under the representative system, a high measure of centralization, and the abuse of the party system, whereby the party becomes more of an imposition on the people than a representation of them, can obscure the element of popular control. But such abuses do not obliterate the essential usefulness of a system of representation.

An argument still arraigned against any form of democracy is that ordinary people either have not the right or have not the skill to govern. Edmund Burke wrote,

> As to the share of power, authority, and direction which each individual ought to have in the management of the State, that I must deny to be amongst the direct original rights of man in civil society, for I have in my contemplation the civil social man and no other. It is a thing to be settled by convention. (65)

There is much of the "swinish multitude" (66) mentality about this passage, the implication of which seems to be that ordinary people are on a low level, both morally and intellectually, and hence that the less power they have the better.

Against the theory that ordinary people are incapable of governing, we quote C. E. M. Joad,

> It is better, in other words, that a man should do a good job badly than that he should not be given a chance to do it at all, for it is only by doing it badly that he will learn to do it well. (67)

We shall conclude this article by defining democracy in the words of Jacques Maritain, "Democracy is the regime wherein the people enjoy their social and political majority, and exercise it to conduct their own affairs; or, better still, to say that democracy is "Government of the people, by the people, for the people". (68)

It is significant also that this definition of Lincoln's has been inscribed bodily into the text of the present French Constitution. (69)

Beyond all the intricacies of definitions and the subtleties of various forms of government there remains a fundamental truth, which James Hogan has admirably expressed,

> These are merely external forms into which may be breathed a spirit of life or of death…. For it is not by votes or constitutions or parliaments but by their philosophy of life that rulers and rules are bound together in a common purpose and common tasks. (70)

Article II The Concept of National Sovereignty

Section 1 A General Conspectus

A very important point in any discussion on democracy is that of its moral origin. Christians have consistently held that all civil power has its source in God, and they base this attitude on the text of the Gospel, "Thou wouldst have no power at all over me unless it were given to you from above". (71) Lord Percy of Newcastle writes that, "It is unthinkable that any human being should claim to exercise them [i.e. the functions of civil authority] except by divine commission" (72) This view has been taken up and defended by several popes, by Leo XIII, in particular. In the encyclical letter, *Immortale Dei*, of 1 November 1885, we read,

> As no society can hold together unless some can be over all, directing all to strive earnestly for the common good, every civilized community must first have a ruling authority, and this authority, no less than society itself, has its source in nature, and has, consequently, God for its author. Hence it follows that all public power must proceed from God. (73)

This Christian doctrine of the divine origin of civil authority was important for - among other things - its relation to the doctrine of the sovereignty of the people. This doctrine, advanced by theorists of the French Revolution, was very frequently atheistic in character. It claimed an absolute and unqualified authority for the people in matters of government. Pope Leo XIII condemned it as

"a doctrine… which lacks all reasonable proof and all power of insuring public safety and preserving order". (74)

In spite of the indubitable fact that the pope was thinking primarily of an atheistic concept of sovereignty there nevertheless seems to be a certain lack of precision in certain phrases which tends to give the impression that the concept of popular sovereignty, atheistic or otherwise, was being condemned. He regrets that,

> Society… does choose nevertheless some to whose charge it may commit itself, but in such wise that it makes over to them not the right as much as the business of governing, to be exercised, however, in its name. (75)

Likewise, he deplores "the opinion… that princes are nothing more than delegates chosen to carry out the will of the people". (76) The few, rather grudging, concessions to the spirit of democracy do little to improve the picture:

> Neither is it blameworthy, in itself, in any manner, for the people to have a share, greater or less, in the government: for at certain times, and under certain laws, such participation may not only be of benefit to the citizens, but may even be of obligation. (77)

In a later encyclical he declares, "It is not of itself wrong to prefer a democratic form of government, if only the Catholic doctrine be maintained as to the origin and exercise of power". (78)

We believe that the primary flaw in Pope Leo's thinking was that it involved a generalization which failed to give due credit to the merits of other schools of thought, though he specifically rejects this charge, saying, "We have on other occasions, and especially in Our Encyclical Letter, *Immortale Dei*, in treating of the so-called

modern liberties, distinguished between their good and evil elements".(79) Yet, in this very same encyclical, he writes that, "These followers of Liberalism deny the existence of any divine authority"(80), and also, "Many there are who follow in the steps of Lucifer…. Such, for instance, are the men…. who, usurping the name of liberty, style themselves Liberals". (81) This was true of some, but not of all, liberals. This same tendency to generalize is noticeable in the use of the word "separation", in dealing with Church-State relations, and in the use of the word "liberty" with regard to the problem of the choice of religion.

Having dealt with non-Catholic views on democracy, Pope Leo went on to offer a positive Christian programme in the apostolic letter, *Graves de Communi*, of 18 January 1901. The purpose of the letter was to give a definitive papal interpretation to the expression "Christian Democracy". Some Catholics had objected to the term, "since it seemed by implication to covertly favour popular government". (82) Pope Leo made his position clear when he said,

> It would be a crime to distort this name of *Christian Democracy* to politics, for although democracy, in its philological and philosophical significations, implies popular government, yet in its present application it is to be so employed that, removing from it all political significance, it is to mean nothing else than a benevolent and Christian movement in behalf of the people. (83)

Christian Democracy, therefore, in the eyes of Pope Leo XIII would seem to be a social, and not a political, movement. This position was taken by his successor, Pope Saint Pius X, as may be seen from his *Motu Proprio* on Christian Democracy (84). Pope Pius XI reiterated the view in the apostolic letter, *Quae Nobis*, of 13 November 1928, (85). The tone of these letter provides a sharp contrast to an earlier ecclesiastical pronouncement. Cardinal

Chiaramonti, who later became Pope Pius VII, said in a Christmas sermon in 1797,

> The democratic rule which is now introduced among us [that is, the Cisalpine Republic] is not opposed to the principles which I have set forth. It is not against the Gospel…. Do not think that the Catholic religion and the democratic form of government are irreconcilable. When you are wholly Christians you will be excellent democrats… (86)

Napoleon described this as "a Jacobin sermon". (87)

Prior to the French Revolution, Catholic thinking on the question of popular sovereignty was almost unanimous in asserting that the authority of rulers was derived from God through the people. Alfred O'Rahilly expounds this view in a splendidly documented article in which he lists over sixty authors prior to Suarez and another sixty after him, all of whom upheld the doctrine of popular sovereignty. He quotes Nicholas of Cusa as a typical example.

> Every Constitution is rooted in natural law and cannot be valid if it contradicts it…. Since all are free by nature, all government, whether by written law or a prince, is based solely on the agreement and consent of the subject. For if by nature men are equally powerful and free, true and ordered power in the hands of one can be established only by the election and consent of the others, just as law also is established by consent…. It is clear, therefore, that the binding validity of all constitutions is based on tacit or express agreement and consent. (88)

In another article he demonstrates effectively that Protestant countries - England in particular - were the most outspoken supporters of the notion of the Divine Right of Kings (89). Within the Catholic Church, by contrast, democratic ideals were developing through the influence of ecclesiastical practices such as

the holding of Councils of the Church and the election of superiors in religious orders. This view is corroborated by a modern historian, who writes, "The case for representation as an intrinsic part of all good government was first elaborately stated in the conciliar theory of Church government". (90)

Many questions about the manner in which civil authorities receive their power remain open to elucidation. It may be asked, for example, whether the people, in vesting the authorities with power, merely designate them or transfer the power to them. The early Scholastics considered it as a transfer taking place in time after the fact of popular sovereignty. The people, they held, had sovereignty prior to the establishment of rulers, both temporally and ethically. This problem of transfer and designation can be understood in two ways: firstly, the word 'transfer' can be taken to mean an unreserved relegation of authority to the rulers, while 'delegation', by contrast, can be taken to mean a reserved, qualified appointment by the people of a ruler; secondly, 'transfer' may be interpreted as the handing over of authority to the ruler on the part of the people, whereas in 'designation' the people merely nominate the ruler and God gives him Authority.

Taken in the former sense, it would appear that the people should delegate, not transfer, authority. Taken in the latter sense, to transfer would seem to be the more reasonable approach. In brief, the question is whether God confers authority on the person whom the people choose, or whether the people, by the authority which God has given them, invest the ruler with power. In other words, the problem is to determine the extent of the people's mediatorship between God and the ruler. One of America's foremost political theorists, John A. Ryan, has written, "Ruling authority, divinely sanctioned, comes into existence as a necessary consequence of the nature and end of human beings". (91) This does not appear to answer the question directly, but the onus of the statement would appear to be on "human beings". We do not accept the attitude that

there is little to choose between the two positions, for, in the case of designation, the people choose, but do not confer authority, while, in the case of transfer the people choose and do confer authority. This latter standpoint appears to be more consonant with man's nature as a trinity of thought, of will and of action. Alfred O'Rahilly concurs with this view, saying, "We must reject as misleading and inaccurate the recently resuscitated theory that the people do not transfer power but merely designate the recipients". (92)

Section 2 Sovereignty in America

The American Constitution, adopted in 1787, provides us with an excellent example of a balanced outlook on national sovereignty, based on a recognition of the authority of God and confirmed by a substantial tradition of democratic feeling. Jacques Maritain writes that "The founders of the American democracy were guided both by a Christian philosophy of life and by the Lockian tradition much more than by the ideas of Rousseau"(93). Other authors see Christian influence particularly in the Declaration of Independence of 4 July 1776. (94)

This balanced outlook is exemplified in the writings of James Otis. At a time when popular resentment against British rule was yet embryonic he could declare, "The sum of my argument is, that civil government is of God: that the administrators of it were originally the whole people: that they might have devolved it on whom they pleased" (95). A somewhat similar sentiment was expressed by Patrick Henry, the author of the celebrated dictum "No taxation without representation", when he moved the Resolution,

> That the General Assembly of this colony have the only and sole exclusive right and power to lay taxes and impositions upon the inhabitants of this colony, and that every person or persons

> whatever other than the General Assembly aforesaid has a manifest tendency to destroy British as well as American liberty. (96)

It is only fair to add, however, that the Resolution was not passed, since relations between the colony and Britain were still amicable.

Not many years later, however, the same Assemble published its Bill of Rights which was to serve as a blueprint for the subsequent Federal Bill of Rights appended to the United States' Constitution. The first two articles of this declaration are significant in the context of the problem under consideration.

1. That all men are by nature equally free and independent, and have certain inherent rights, of which when they enter into a state of [sic] society, they cannot by any compact deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.
2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them. (97)

Article 2 quoted above is repeated *verbatim* in the *Declaration of the Rights of the Commonwealth or State or Pennsylvania* (98). Likewise, the Declaration of Independence declares,

> We hold these truths to be self-evident… that to ensure these rights, governments are instituted among men, deriving their just powers from the consent of the governed (99).

The theory of government being based on natural law rather than simply on human consent was not universally accepted. John Taylor, who drew fire from James Madison (100), criticized John Quincy Adams, a future president, saying, "Mr. Adams's political

system deduces government from a natural fate; the policy of the United States deduces it from Moral liberty" (101). What John Taylor is criticizing is not quite clear. He may mean 'natural law', but if he does, it should be pointed out that natural law in no way militates against mortal liberty. It must also be noted that the framers of the Constitution were strongly imbued with the theories of natural law, and natural right. (102)

The Federal Constitution itself is not so explicit on this point, for in it we read,

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives. (103)
> The executive power shall be vested in a President of the United States of America. (104)
> The judicial power of the United States shall be vested in one Supreme Court. (105)

While it is true that these three powers are usually referred to the people in a Constitution, it would be unreasonable to assume, that because this is not done here, it therefore implies a rejection of the idea of popular sovereignty. The most that can be drawn from it, by way of inference, is that the idea was not formulated in any academic way in the minds of the Constitution-makers. It is our opinion that it was taken for granted as an obvious assumption.

Section 3 Sovereignty in France

The French Constitution deals extensively with this point. The tradition handed down by Rousseau, and carried on in the numerous Revolutionary Constitutions is enshrined in this document also. It can fairly be said that the idea of national sovereignty is one of the few fundamental political principles with which the Constitution deals adequately. Only the first four

Articles deal with questions other than those of parliamentary procedure. Even in these Articles much is taken for granted by the general statement that,

> The French people hereby solemnly proclaims its attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, reaffirmed and complemented by the Preamble of the Constitution of 1946. (106)

This is elaborated on in the provisions of Article 3, as follows,

> National sovereignty belongs to the people, which shall exercise this sovereignty through its representatives and by means of referendums. No section of the people, nor any individual, may attribute to themselves or to himself the exercise thereof. Suffrage shall be direct or indirect under the conditions stipulated by the Constitution. It shall always be universal, equal and secret.
> All French citizens of both sexes who have reached their majority and who enjoy civil and political rights may vote under the conditions to be determined by law. (107)

Article 4 declares that "Political parties and groups… must respect the principles of national sovereignty and democracy" (108). Another point of interest is the provision of Article 89 that, "The republican form of government shall not be subject to amendment". (109)

The Constitution here makes it quite clear that it regards the concept of national sovereignty as fundamental to the structure of the State. But the overall picture which one receives of this document is that it was hurriedly prepared, and with an eye to current problems, rather than to any long-term vision of the national good. This is understandable when one considers the

circumstances of its origin, but it leaves one in doubt whether it will remain for long in its present form. Certainly, amendments or redrafting should deal in greater detail with such problems as individual rights, social legislation, and the power of the president.

Section 4 Sovereignty in Ireland

In the Constitution of the Irish Free State we read, "All powers of government and all authority, legislative, executive and judicial, are derived from the people…"(110) No reference is made to any divine origin of authority, a fault which was corrected in the Constitution of 1937. Article 6, Section 1 affirms that,

> All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State, and, in final appeal, to decide all questions of national policy, according to the requirements of the common good. (111)

Article 1 declares, "The Irish nation hereby affirms its inalienable, indefeasible, and sovereign right to choose its own form of Government". (112)

Democracy in Ireland is tributary to two primary sources. The first source is in the theories of Locke which passed over through the channels of the pro-British Ascendancy, and which never really came to anything more than an intellectual weapon in the defence of the propertied and privileged class - a very restricted notion of democracy indeed! To quote Professor Saintsbury, "The essential disgustingness of democracy to a born Tory cannot be uttered, though it might be spluttered"! (113)

The second source - one of greater importance - has its origin in the theories of Theobald Wolfe Tone and the United Irishmen. As Enda McDonagh says,

The democratic creed is a marked characteristic of the father of Irish revolutionary nationalism, Wolfe Tone and his United Irishmen…. Paine's book had great influence with Tone and his spiritual heirs. (114)

Patrick H. Pearse adds, "Tone sounded the gallant *reveille* of democracy in Ireland. The man who gave it its battle-cries was James Fintan Lalor". (115)

In his *Autobiography*, Tone writes,

> In a little time the French Revolution became the test of every man's political creed, and the nation was fairly divided into two great parties, the Aristocrats and the Democrats (epithets borrowed from France), who have since been measuring each other's strength, and carrying on a kind of smothered war, which in the course of events, it is highly probable, may soon call into energy and action.
> It is needless, I believe, to say that I was a Democrat from the very commencement… (116)

The First Dublin Society of United Irishmen, in their inaugural meeting, held in the Eagle Inn, Eustace Street, on 9 November 1791, welcomed

> The present great era of reform… when all government is acknowledged to originate from the people, and to be so far obligatory as it protects their rights and promotes their welfare". (117)

It is difficult to know whether or not the type of democracy supported by Tone was secular in character. It probably did not lack a measure of anti-clericalism, but this does not affect the

matter in any significant way. Our own opinion is that Tone's democracy was not secularistic.

The eminent historian, Lecky, writing of the Repeal movement says, "They invariably based their claim on the broad principle that the form of government in any country should be determined by the majority of its inhabitants". (118) This and other evidence, we believe, makes an incontrovertible case of the opinion that the Irish people always had a strong sense of national sovereignty, set in a democratic context, and a sense of duty towards God. As Éamon de Valera said in a broadcast on the Constitution, "The sovereignty resides in them as their inalienable and indefeasible right…. The people and the people alone are the masters". (119)

The concept of popular sovereignty which must be recognized by any permanent civil authority is taken as a primary principle at the bases of the American, French and Irish Constitutions. It is a concept which is closely related to many others in the science of government. But it is one which is capable of being actualized in diverse modes, as we shall see when we come to consider the structure of the three Constitutions more closely. Akin to this concept is the important principle of majority rule which we shall now briefly consider.

Article III The Principle of Majority Rule

Section 1 The Problem involved

The principle of majority rule, which is of such fundamental importance in a democracy, has been described as "the divine right of fifty-one per cent". (120) It is an accepted democratic principle that if fifty-one per cent of citizens vote for a particular measure and forty-nine per cent vote against it, the fifty-one per cent deserve to have their way. But is this principle to be accepted universally and without reservation? Is respect for minority rights not an inherent factor in democracy, or is it merely a generally

accepted adjunct thereto? If democracy is in its essence government by the people, does it mean that the minority can be consistently ignored or even suppressed in the name of the majority? Edmund Burke seemed to think so. He wrote,

> Of this I am certain, that, in a democracy, the majority of the citizens is capable of exercising the most cruel oppressions upon the minority, whenever strong divisions prevail in that kind of polity, as they often must, and that oppression of the minority will extend to far greater numbers, and will be carried on with much greater fury, than can almost ever be apprehended from the dominion of a single sceptre. (121)

Burke is not alone in this view. A modern author writes that, "Fifty-one per cent of a nation can establish a totalitarian regime, suppress minorities and still remain democratic" (122), and also,

> It should be self-evident that the principle of majority rule is a decisive step in the direction of totalitarianism. By the sheer weight of numbers and by its *ubiquity* the rule of 99 per cent is more '*hermetic*' and more oppressive than the rule of 1 per cent". (123)

If by 'democracy' we mean the democracy of Jean Jacques Rousseau, then these statements certainly stand as valid. As Joseph Keating said, "There is nothing really incompatible between democracy as conceived by Rousseau and his modern followers and the totalitarian State". (124) The Roussellian concept of democracy closely resembles Mussolini's definition of totalitarianism: "Everything in the State and for the State, and by the State; nothing outside or above or against the State". (125)

An example may be of assistance here. Hitler had the support of a substantial majority of the German people, and in their name he suppressed the Jewish minority. Can he still be called a democrat?

It would be a travesty of democracy to answer in the affirmative. Only by the narrowest interpretation of the phrase 'for the people' can this be justified. Any government, be it democratic or otherwise, must aim at the good of the community, and this is not synonymous with the good of the majority. Fundamental rights of individuals and minority groups are, we believe, guaranteed in the expression 'for the people'. No unprejudiced and fair-minded ruler would persecute a minority on behalf of a majority, and still believe himself a democrat. The phrase is open to misinterpretation, but only by those who deliberately wish to misinterpret it. Besides, the case of fifty-one per cent whose will invariably is the opposite of the forty-nine per cent is largely a hypothetical one. All of this, however, does not prevent a majority from taking firm - though not unfair - action against a minority, if the latter exceed their rights.

Christopher Dawson reassures us, saying.

> Actually, the type of democracy which developed in Britain and America, as well as many of the smaller countries of Western Europe, has been based not on the solidarity of the general will, but on the rights of minorities, the freedom of minority opinion and the existence of a constitutional opposition. (126)

Most States have provided against the contingency treated above by measures such as the adoption of a Constitution in which fundamental rights are guaranteed, as well as by allowing the constitutionality of an Act to be tested in the courts. In Switzerland, the citizens have the power of *initiation*, that is, of introducing a Bill to Parliament once it has gained the signatures of thirty thousand voters. A second House of Parliament is also generally recognized as a further check on the power of the ruling group. This system of checks has the support of many prominent authors. (127)

Section 2 America and Majority Rule

Americans pride themselves on the carefully crafted system of checks and balances which is such an important feature of their political structure. The purpose of this system is to ensure that no group within the bounds of the State shall ever be in a position to exercise political oppression over minorities. Some examples of this system are worthy of note. David Cushman Coyle, a well-known American writer, has summarized them as follows: -

> The President, for instance, may veto an act of Congress. The act then goes back to Congress and cannot become law unless both houses pass it again by a two-thirds vote.
> The Congress can sometimes block many kinds of presidential action, including the use of his constitutional powers as Commander in Chief, by refusing to provide the money.
> The Senate can veto a treaty negotiated by the President. All the important officials of the Administration and all federal judges are appointed by the President, subject to the consent of the Senate.
> The Constitution fails to provide that the Supreme Court could nullify acts of Congress as unconstitutional, but the logic of events has allowed the courts to assume that power. (128)

This system is an invaluable aid to the protection of the rights of individuals and minority groups. Nevertheless, it is sufficiently flexible to allow for the speedy passage of effective measures to guarantee the safety of the State in time of danger. It bears out the testimony of an American author that, "The United States is a constitutional democracy with the accent on the word constitutional". (129)

Section 3 France and Majority Rule

The French Constitution provides for a similar system of checks, though it treats of individual rights only in a rather summary way. Articles 34 to 51 inclusive deal with relations between the

Parliament and the Government. These provide for a bi-cameral legislature, and assign to the President a wide range of powers, which give him a decisive voice in government policy. Articles 56 to 63 provide for a Constitutional Council which acts as a kind of supreme Senate.

> The decisions of the Constitutional Council may not be appealed to any jurisdiction whatever. They must be recognized by the governmental authorities and by all administrative and judicial authorities. (130)

In this latter capacity, the Constitutional Council is similar to the Privy Council in Britain. To it also falls the task of determining the constitutionality of Bills. (131)

Section 4 Ireland and Majority Rule

Speaking of Britain, an American author says, "No country has ever gone further towards accepting the principle of absolute majority rule". (132) He hastens to add, of course, that the rights of individuals are effectively guaranteed, not so much by legal restraints as by the moral consensus of the population. In Ireland, from the constitutional point of view, there are two great checks on the power of the Dáil.

One of these is the provision that,

> The President may, after consultation with the Council of State, refer any Bill to which this Article applies to the Supreme Court for a decision on the question of whether such Bill or any specified provision or provisions of such Bill is or are repugnant to this Constitution or to any provision thereof. (133)

The Bills to which this article does not apply are Money Bills, Bills for the amendment of the Constitution, and Bills which must be passed speedily in the interests of public safety. (134)

On two occasions the President availed himself of the power invested in him under the provisions of the foregoing Article. The *Offences against the State Act* of 1939 had been found unconstitutional by the Supreme Court. In 1941, it was re-introduced into the Dáil in a slightly amended form. On being passed by the Dáil, President Douglas Hyde referred it to the Supreme Court, which found it constitutional. It did so "by a bare majority". (135) In 1942, the same President referred the *School Attendance Bill* to the Court. On examination, it was found to be unconstitutional, and was thus rendered null and void. (136)

Private citizens have also, on occasion, tested the constitutionality of Bills in the courts. (137) Likewise, every proposal to amend the Constitution must be placed before the people in a referendum. (138) Similarly, any Bill can be tested by the people if a sufficient number of members of both Houses of the Oireachtas receive the President's consent for a referendum. (139) It is disappointing to note that the *Initiative*, which was acknowledged in the Free State Constitution (140), was dropped from the 1937 Constitution.

The second check on the power of the Dáil is the establishment of the Senate. At the present time, an upper House of Parliament has come to be regarded as a characteristic feature of a democracy. In most cases its purpose is merely to limit the power of the lower House, though, in the United States, the Senate has authority to overrule the House of Representatives on several points. In Ireland, the Senate has adequate powers to protect minorities. A well-known Cork jurist has written of it,

> A Second Chamber is intended to tell the people and their representatives when they are wrong even though they are not in a position to put them right. It is intended as a safeguard for human rights against the encroachments of the executive and the majority in the House of Representatives. It is intended to save the people from their passions. (141)

The Constitution assigns considerable powers to the Senate: -

> Every Bill initiated in and passed by Dáil Éireann shall be sent to Seanad Éireann and may, unless it be a Money Bill, be amended in Seanad Éireann, and Dáil Éireann shall consider any such amendment. A Bill other than a Money Bill may be initiated in Seanad Éireann, and if passed by Seanad Éireann, shall be introduced in Dáil Éireann. (142)

These provisions, we believe, are adequate for the protection of individual rights, though, it does happen that if a Government is determined to have its way, it can generally succeed, by one means or another, in securing its ends. In Ireland, for example, the Seanad rejected two Bills passed by the Dáil. These were the *Abolition of the Oath* Bill, and the *Prohibitions of Uniforms* Bill. The latter Bill dealt with the question of the wearing of uniforms by members of certain rather Fascist-leaning youth organizations. Mr. De Valera reacted by speedily passing the *Abolition of the Senate* Bill, on 29 May 1936. (143) Perhaps he had in mind the statement of the Abbé Sieyès in the French National Assembly, that, "If a Second Chamber dissents from the First, it is mischievous; if it agrees with it, it is superfluous". (144)

It may not be amiss here to consider more closely the function of the Seanad in Irish parliamentary life. The manner of its composition is significant in that it represents one of the few attempts to realize the ideal of a "Vocational" democracy. Its

purpose is to achieve a suitable balance in the scales of political power. Article 18 of the Constitution provides for it in these words,

1. Seanad Éireann shall be composed of sixty members, of whom eleven shall be nominated members, and forty-nine shall be elected members.
3. The nominated members of Seanad Éireann shall be nominated, with their prior consent, by the Taoiseach….
4. The elected members of Seanad Éireann shall be elected as follows: -
1. Three shall be elected by the National University of Ireland.
2. Three shall be elected by the University of Dublin.
3. Forty-three shall be elected from panels of candidates as hereinafter provided.
7.1 Before each general election of the members of Seanad Éireann to be elected from panels of candidates, five panels of candidates shall be formed in the manner provided by law containing respectively the names of persons having knowledge and practical experience of the following interests and services, namely:
1. National Language and Culture, Literature, Art, Education and such professional interests as may be defined by law for the purpose of this panel;
2. Agriculture and allied interests, and Fisheries;
3. Labour, whether organised or unorganised;
4. Industry and Commerce, including Banking, Finance, accountancy, engineering and architecture;
5. Public Administration and social services, including voluntary social activities. (145)

Article 19 declares that

> Provision may be made by Law for the direct election by any functional or vocational group or association or council of so many members of Seanad Éireann as may be fixed by such law in substitution for an equal number of the members to be elected

from the corresponding panels of candidates constituted under Article 18 of this Constitution. (146)

The reasons for constituting the Second House in this manner are readily apparent, for, as Ralph Sutton says,

> There are many people in the country who are anxious to participate in its government and who could make a most valuable contribution of experience and intelligence to any assembly but who, for one reason or another, would never be able to attend the Dáil. First of all, there are those who could not spare time from their employment, business or profession sufficient time to be satisfactory and useful members of a representative assembly and serve their constituents adequately; secondly, there are those whose ability will only be appreciated in a limited circle and who could never have sufficient appeal to be elected by popular vote. (147)

Likewise, there is the added feature that in a Senate of this nature people will be freed from the dilemma of whether to vote for the man or the party. Ideally, it should be a house in which party politics are set aside in preference for a disinterested endeavour to offer a positive contribution. Unfortunately, in Ireland, the Senate, through the instrumentality of the Panel Members' Acts of 1937, 1947 and 1954, is dominated by the Dáil, and its members are very largely former Dáil deputies. The fault seems to lie with the method of nomination, which gives a decisive measure of control to Dáil members and to County and Borough Councils. This fact prevents any really effective contribution to public life being made by the Senate.

The very notion of "Vocational" democracy is one which has given rise to some controversy. James Hogan is opposed to it, but, when speaking of it, he seems to be referring primarily to the Communist and Fascist systems under which, in theory at least, the

State will eventually disappear in favour of social groups such as trades unions and employers' organizations. (148) Others speak more favourably of it, for example, E. Cahill, who writes, "The deputies for the governing assembly should at least to a considerable extent be the representatives of the organic units of which the State is made up… viz., the municipalities, labour unions etc. (149) Concurring with this is the view of the present Bishop of Down and Connor, that,

> Voluntary organisations within the State fill an important and necessary role. They are the best sign of a healthy democratic spirit, of the will actively to cooperate with the legislature and fill up what is wanting to it. (150)

Section 5 Conclusion on Majority Rule

Majority rule is rightly regarded as a key feature of democratic government. Some authors have seen in it *the* distinguishing characteristic of democracy. Thus, C. F. Strong writes,

> By democracy we mean 'that form of government in which the ruling power of a State is legally vested, not in any particular class or classes, but in the members of a community as a whole'. (151)

In our day majority rule can find its only feasible expression in representation, that is, in the selection by the public body of substitutes who will act on their behalf. These representatives, meeting in common, form the parliamentary body. It is interesting to note that the French word *parlement* is derived from *parler*, to speak, and *-ment*, signifying together. How many people would wish to see a little more emphasis on the 'together' and a little less on the 'speak'! Arnold Toynbee writes that,

> It is a matter of common knowledge that, as the nineteenth century passed into the twentieth, all the peoples of the Earth became possessed of an ambition to clothe their political nakedness with parliamentary fig-leaves. (152)

It is true that this process was accentuated at the dawn of the new century, but it had been going on for some time in Britain and the United States as well as in France. Toynbee speaks of "The English political invention of Parliamentary Democracy". (153) The seeds of this growth were set in Greece and Rome, however.

It would be a grave mistake to regard the establishment of parliaments as being synonymous with the establishment of democracy as we have already noted. (154) It has truly been said that "Democracy… can never come about by itself. One cannot go to sleep and expect democracy. It is a task requiring unremitting effort". (155) Thus we can see from the following table that the evolution of democracy was a gradual one. In England,

Slave trade was abolished in	1808
Slavery itself was abolished in	1833
The Reform Bill for middle-class voters	1832
The Reform Bill for lower-class voters	1867
The Reform Bill for more lower-class voters	1884
Women's voting established	1919
Power of the House of Lords curbed	1911
Plural voting abolished	1948

In the United States, likewise, the picture was one of gradual development: -

Importation of slaves prohibited	1808
Three anti-slavery amendments passed: -	
1. Slavery abolished (Amendment XIII)	1865
2. Citizenship for Negroes (Amendment XIV)	1868

3. Votes for Negroes (Amendment XV)	1870
Women's voting established (Amend. XVII)	1913
Direct election of Senators (Amendment XIX)	1920
Civil Rights Bills	1961-1965
Civil Rights Amendment (Amend. XXIV)	1964

It is evident that, in this system of checks on majority rule, the responsibility for their proper functioning depends largely on the general public and its representatives. It is up to them to use or to abuse the system. Here, as in other aspects of governmental problems, the distinguishing feature of democracy emerges more clearly, namely, its implicit trust in human nature. G. K. Chesterton recognized this when he said,

> In short, the democratic faith is this: that the most terribly important things must be left to ordinary men themselves…. The mating of the sexes, the rearing of the young, the laws of the state. This is democracy; and in this I have always believed! (156)

Article IV The Separation of Powers

Section 1 The History of the Theory

The notion of the separation of powers, that is, of the distinction between the legislative, the executive and the judicial branches of government has long been recognized as a feature of a democratic regime. Its purpose is an important one, namely, the avoidance of any undue concentration of power in any particular sector of political life. The idea traces its origin even as far back as Aristotle, who wrote,

> Now there are three things in all states which a careful legislator ought well to consider, which are of great importance to all, and which, properly attended to, the State must necessarily be happy; and, according to the variation of which the one will

> differ from the other. The first of these is the public assembly; the second, the officers of the State;… the third, the judicial department. (157)

In medieval times, the most outstanding exponent of the theory was Marsiglio of Padua. He referred to

> The three essential points of all democratic doctrine: that the legislative power belongs to the people; that the legislative power establishes the executive power, and that it judges, changes or deposes it, if it fails in its duties. (158)

The best-known upholder of the theory was the French lawyer, Montesquieu, who, as G. D. H. Cole says, "is chiefly remembered for his doctrine of the separation of powers, soon to become of vast practical importance in the Constitution of the United States". (159) John Locke, too, added his voice in support. (160)

At the present time, however, the belief that this separation protects individual liberties is not accepted without question. Alfred O'Rahilly opines,

> The separate allocation of delegated functions… judicial, legislative and executive… is now seen to be of little help to liberty; it is merely an example of the economic law of the division of labour. (161)

By contrast, E. Cahill regards it as one of the characteristic features of a democracy. "Legislative, executive and judicial powers should be separated as in the United States", he says. (162)

A former Prime Minister of France, Pierre Mendes France, though not speaking directly of the question, writes that "Democracy lies in the correct balance of power. In itself such a balance is democracy". (163) The most obvious need for

separation of power is in the case of the judiciary, for it is easy to imagine the position of a defendant finding himself charged by the State, and tried before a judge whose future career depended on a condemnation. Indeed, the use of the courts for political purposes is generally accepted as the hallmark of a totalitarian regime. The public, therefore, are rightly sensitive about the possibility of an abuse of judicial authority. Quite recently a leading Irish daily newspaper, in an editorial headed "Wigless Judges", pointed to unwelcome trends in Irish legislation in this regard. It reads,

> The beginning of the trend can perhaps be traced to the apparently innocuous power to 'fine on the spot' given to the Gardaí in the latest Road Traffic Act. It has reached its latest flowering in the County Registrar's authority to settle disputes under the new Landlord and Tenant Bill. We need not bandy about the Constitution; it is saved in both cases…. since the Garda can be refused and forced to take his case to court, and the Registrar is found in the end conducting an arbitration rather than a trial. Yet the fact remains that each is fixed with a *judicial* function, determination of where lies in a given set of facts. Thus is democracy that little bit eroded. Thus, in little things, does danger reveal itself. As the lawyer put it, the precedent is bad. (164)

Section 2 Separation in the United States

In the United States, largely through the influence of Montesquieu, the principle of separation is ensured by the opening words of each of the first three Articles of the Constitution. Thus, Article 1, Section 1, reads, "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives". Article 2, Section 1, states, "The executive power shall be vested in a President of the United States of America". Article 3, Section 1, makes provision for the judiciary in the words, "The judicial power

of the United States shall be vested in the Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish".

This feature of the American political structure has its origins in the early days of the Union's establishment. Thus we read in the Virginia Bill of Rights,

> That the legislative and executive powers of the state should be separated and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burthens of the people, they should at fixed periods, be reduced to a private station, return into that body from which they were taken, and the vacancies be supplied by frequent, certain, and regular elections, to be again eligible or ineligible, as the laws shall direct. (165)

While it may be said that the distinction between the judiciary and the other two powers is clearly defined, the same cannot be said so readily for the two powers themselves. In the United States, however, the distinction is clear-cut, in theory, at least. It has been said that "The President's relations with Congress are a mixture of the struggle for power between the executive and the legislative and the complicated struggle for political advantage".(166) This is nearer to reality than any idea of an absolutely rigid distinction between the three powers. The President has the title of Chief Executive. He appoints the Cabinet, the incumbents of which are not members of Congress. They have no power to introduce legislation, and indeed, though the President has this power, he does not normally exercise it himself. In normal circumstances. the legislation is introduced by Congressmen, though this is frequently at the instigation of the President.

Section 3 Separation in France

In France and Ireland, by contrast, the executive and the legislative branches of government are closely interwoven. The party system is strong, and where a party has a majority of seats its leader is automatically elected Prime Minister, and chooses his Cabinet out of his own party. This Cabinet is responsible, therefore, both for legislation and for execution. It is answerable to the Parliament for its conduct of affairs, unlike the United States, where Cabinet members are not responsible to Congress, except when charged with irregularities in their administration. This latter system is not as democratic as the former, since the executive branch, which affects people so personally in their daily lives is too remote from their control.

In France, the structure is in many ways similar to the Irish system. The judiciary is independent, while the legislature and executive are only relatively so. With regard to the judiciary it is laid down that "The President of the Republic shall be the guarantor of the independence of the judicial authority…. Magistrates may not be removed from office". (167) It is also enacted that, "The judicial authority, guardian of individual liberty, shall ensure respect for this principle under the conditions stipulated by law". (168) The principle referred to is that "No one may be arbitrarily detained". (169) The importance of an independent judiciary is thereby firmly stressed.

The functions of the Government is expressed in the brief provisions of Article 20:

> The Government shall determine and direct the policy of the nation. It shall have at its disposal the administration and the armed forces.
> It shall be responsible to Parliament under the conditions and according to the procedure stipulated in Articles 49 and 50. (170)

The Parliament, which shall "comprise the National Assembly and the Senate" (171), has the power of legislation. "All laws shall be passed by Parliament". (172) Provision, however, is made for exceptional circumstances under the terms of Article 38, namely, that "The Government may, in order to carry out its program, ask Parliament to authorize it, for a limited period, to take through ordinances measures that are normally within the domain of law". (173) This concession is very wisely restricted by further provisions of the same Article. Another welcome clause in the Constitution is the ruling of Article 39 that, "The Premier and the members of Parliament alike shall have the right to initiate legislation". By making provision for what the British system terms "Private Members' Bills" the French Constitution makes a generous contribution to the democratic spirit of the opposition. However, it is disappointing to find that this Article loses much of its force by the ruling that,

> Bills and amendments introduced by members of Parliament shall not be considered when their adoption would have as a consequence either a diminution of public financial resources, or the creation or increase of public expenditures. (174)

This is somewhat offset by the declaration that "One meeting a week shall be reserved, by priority, for questions asked by members of Parliament and for answers by the Government". (175) In conclusion, we may say that, while the independence of the judiciary is of cardinal importance, the relations between the executive and the legislature are sufficiently close to ensure a healthy sense of responsibility in Government affairs.

Section 4 Separation in Ireland

In the Irish Constitution the judiciary's independence of the other two powers is ensured by the provision that,

All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and law. No judge shall be eligible to be a member of either House of the Oireachtas or to hold any other office or position of emolument.

A judge of the Supreme Court or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his removal. (176)

The executive and legislative powers are distinguished rather than separated. The Constitution provides that "The executive power of the State shall, subject to the provisions of this Constitution, be exercised by or on the authority of the Government". (177) Likewise, it is decreed that "The Government shall be responsible to Dáil Éireann". (178) All the members of the Cabinet must be members of one or other of the Houses, and not more than two of these may be Senators. (179) The appointment of Senators to the Cabinet is rare in Ireland. As party loyalty is strong, any Government commanding a majority is assured of a clear mandate to pass the legislation necessary to carry out its programme. A weakness in the system is the failure to provide for the initiation of legislation by individual deputies.

Article V Individual-State Relations in Democratic Government

From the standpoint of the individual a man's relationship to the State falls under two broad categories - his rights and his duties. We shall first consider the rights.

Section 1 The Rights of Man in a Democracy

Democracy claims to have the protection of individual rights as one of its fundamental aims. No other political philosophy lays so much stress on the individual. Indeed, it has been written that, "The central assumption of democracy…. is…. that all our political

standards of value are determined, in the last resort, by the individual".(180) This, however, is an exaggeration of the truth, for, although the importance of the individual should not be shrouded over, it is equally important not to underestimate the significance of the community. A more balanced view is that of Fr. James, who writes,

> Inasmuch as democracy has helped to keep alive this moral intuition of the value of human personality, be it said immediately, democracy has done service to the cause of Christianity. (181)

At all times, but especially in our own day, it is becoming an increasingly difficult task to reconcile the rights and the needs of the individual with the just demands of the community. As a modern politician says,

> In our efforts to establish the Rule of Law we are motivated in the first place by our need for *personal freedom*, by a convention that only insofar as human communities are able to establish a framework of law for regulating social intercourse, and weaving the complex patterns of relations between the individuals and groups of which society is made up into an orderly fabric, can that measure of freedom which each man needs, if he is to lead a truly 'human' existence, be achieved. (182)

Another author reiterates this view in a more concise form,

> It is perhaps the most difficult of all the problems of practical politics to arrive at that precise balance between the individual freedom which is necessary for a dignified human life and that guidance by the State which is necessary to rescue modern industrial societies from the chaos of competition. (183)

It has been said that "The most remarkable difference between the Christian and the pagan social systems is the conviction that the State is neither absolute nor all-embracing". (184) This is very true, and it is undeniable that the popes have been among the most staunch defenders of individual liberty. Nowhere does this emerge more clearly than in Pope John XXIII's encyclical letter, *Pacem in Terris*. In it we read, "The dignity of the human person involves the right to take an active part in public affairs and to contribute one's part to the common good of its citizens". (185) In the same letter, Pope John quotes his predecessor, Pope Pius XII,

> The human individual, far from being an object, and, as it were, a merely passive element in the social order, is in fact, must be and must continue to be, its subject, its foundation and its end". (186)

Finally, we are left in no doubt as to the importance which Christians attach to personal liberty by the statement that, "The human person is also entitled to a juridical protection of his rights, a protection that should be efficacious, impartial and inspired by true norms of justice". (187)

These are a few among innumerable texts which could be cited to show the respect which Christianity, from its earliest days, has rendered to the human person. This truth has been well expressed by a former Vice-President of the United States. "The idea of freedom", he says, "…. is derived from the Bible with its extraordinary emphasis on the dignity of the individual". (188) And he concludes in a rather effusive encomium, "Democracy is the only true political expression of Christianity". (189)

The main body of the text of the United States Constitution does not deal with fundamental tights. These are dealt with in the first ten amendments, which are now known as the *Bill of Rights*. These were all passed in 1791 to satisfy the grievances of those who felt that the Constitution as it stood was inadequate to protect the rights

of individuals. The most important guarantees are: - freedom of religion, of speech, of the press, and of peaceful assembly. The right of citizens to bear arms is guaranteed, as is the right to an open trial, with a jury, if the case demands it. Similarly, the individual is protected against the seizure of his property, the unlawful search of his house, and any undue detention without trial. (190) It would seem, therefore, that Burke was wrong when he said that, "America never dreamed of such absurd doctrine as the Rights of Man". (191)

We agree with the statement that,

> The Constitution and the amendments to it, of themselves, comprise a record of popular self-government which shows both virtues and faults. They also demonstrate that sound principles of administration can be adapted to any set of conditions which may arise, provided that the people - who hold the reins of power - should their responsibilities and work together in a spirit of compromise and cooperation. (192)

Individual rights are treated in a rather haphazard fashion in the French Constitution. Article 2 declares that the French Republic "shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs". This provision is repeated in almost identical terms in Article 77, with the added clause that, "They [i.e. the citizens] shall have the same duties". The principle of Habeas Corpus is guaranteed in Article 66, "No one may be arbitrarily detained". The only specific reference made to fundamental guarantees is that in Article 34, which deals with "The fundamental guarantees granted to civil and military personnel employed by the State". This leaves quite a lot to be taken for granted - an unsatisfactory feature of any Constitution.

In the Irish Constitution, a special section entitled "Fundamental Rights" is devoted to providing for the protection of personal liberty, under the headings of Personal Rights, The Family, Education, Private Property, and Religion. (193) Broadly speaking, the content of these Articles may be summed up in the words of Article 40:

> The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.
> The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen". (194)

Section 2 The Duties of Citizens in a Democracy

We have spoken of the rights of citizens in a democracy. However, it is equally important to speak of the duties of citizens. Any political system depends on its citizens for life and support, and the worth of a system may be measured by the moral fibre of the people. This is especially true of a democracy. Very much is left to the personal decision of individuals, and, in the case of government officials, the responsibility is a heavy one. Of all systems democracy is the most open to abuse, but this likewise can also be most easily checked by a vigilant community. An efficient and co-ordinated administration, a sound financial structure and so forth are powerful aids to any government, but the indispensable prerequisite is an intelligent, vigorous and morally strong public opinion. It has rightly been said that, "The true ideals of democracy are impossible of attainment unless the individual citizen realizes and accepts his duty to the State". (195)

Other prominent authorities have insisted on this point with equal vigour. Pope John XXIII wrote that, "In social relations man should exercise his rights, fulfil his obligations and, in the

countless forms of collaboration with others, act chiefly on his own responsibility and initiative". (196) And, in another document, he states that "Experience has shown that where personal initiative is lacking, political tyranny ensues". (197) It has rightly been said that, "All genuine democracy starts with an act of faith in the abiding good sense and good will of the average man and the mass of common humanity". (198) Another well-known author writes, "Democracy rests in theory and in practice on the character of each and every person - all depends in the long run on the quality of the citizens". (199) Another publication notes that democracy, in practice, "means a people willing to take upon themselves the burden as well as the privilege of government". (200)

Perhaps the most comprehensive statement of all that has been said has been made by the former French Prime Minister, Pierre Mendes France,

> A country's political and economic institutions cannot make a democracy by themselves; they are no more than a framework for it. Neither are all the organisations I have been talking about, even if they must become more or less institutional, a democracy. The most deeply and sincerely democratic government can (and should) acknowledge, encourage and support them, but it cannot create them out of nothing, or compel them to work; in any case that would be the reverse of democracy.
>
> The truth is that there is no democracy without democrats at work. Democracy is first and foremost a state of mind, and it has to be voluntary or nothing. What makes up this attitude of mind? The answer is, primarily a deep concern with the future of the community to which we belong and a desire to take part in it at every level of understanding, decision and action; secondly, it is the feeling that no human life is complete if it is limited to the horizon of a single individual; it is the conviction, also, that this is not the best of all possible worlds, that reason and justice

> should hold a greater sway than they do and that their triumph is worth fighting for. (201)

And he continues,

> The citizen is a man who does not leave it to others to decide his fate or that of the community as a whole. Because democracy depends fundamentally on the will of the citizens, because it implies a constant effort, it can never come about by itself. One cannot go to sleep and expect democracy. It is a task requiring unremitting effort. Just as it cannot come about by itself so it can never be perfect. There is no such thing as a democracy that has been successfully achieved once and for all. It is a goal for the future, something which is always just over the horizon. But because it can never be fully achieved, democracy is always being threatened. It is threatened by its opponents, naturally, but much more seriously by the carelessness or apathy of the citizens themselves. Only they can keep it alive, by carrying it along from day to day in a constant communal movement towards progress. (202)

These observations of M. Mendes France really go to the heart of the problem inherent in democracy, namely the problem of maintaining and fostering a lively public interest in, and concern for, government. However, merely to deliver an eloquent exhortation to the public is not sufficient. A government can actively foster the development of the democratic spirit by creating conditions favourable to its growth. These are many in number and we shall examine some of them in the succeeding article.

Article VI Democracy in the Modern World

Section 1 Liberty, Equality, Fraternity

From the earliest times equality has been recognised as a powerful incentive to good relations in a community. Aristotle wrote that, "The wider the foundation, the securer the building and it is ever best to live where equality prevails". (203) Many centuries later, Aquinas wrote, "Equality comes at the terminus of justice and lies at the base and origin of friendship". (204) However, this concept of equality must be properly understood. It is not what has been called derisively "social engineering", (205) nor is it a blind refusal to face the fact that, in very many ways, people are not equal. To quote St. Thomas again, "By nature, all men are equal in liberty, but not in other endowments". (206) The key to the difficulty is to be found in the distinction, made by Jacques Maritain, between equality of fact and equality of right. (207)

The failure of many of the "communist" communities, such as Etienne Cabet's "Icaria", was due, in part at least, to a rigid adherence to the idea of equality. (208) As Denis O'Keeffe said, "Political equality is a means rather than an end. The end is the common good and the possibility of living the best type of life. It is idle to discuss the value of equality as it were *in vacuo*." (209) An intelligent concept of equality must be salvaged from amid much revolutionary rubble. As Chesterton said, "The world is full of Christian truths run wild". Equality is one of them, and on this point James Hogan has written,

> No one in his sane senses has ever seriously maintained the proposition that all or most human beings are, or ever will be, possessed of exactly equal and similar abilities. What the democratic principle of equality really affirms is the unity and equality of man's specific nature in virtue of which men have in common certain basic propositions, rights, duties, and interests. (210)

An intelligent approach to the problem, such as James Hogan offers, can be a powerful stimulus to the democratic spirit of a nation. "The task of an enlightened democracy", writes Denis O'Keeffe, "is not so much to ensure equality as to ensure that the inequality which is incidental to all life in society will be the right kind of inequality". (211) Historically, however, equality, together with its twin sisters of the French Revolution, liberty and fraternity, has rarely been realized in a satisfactory manner. Liberty, without fraternity, leads to inequality, or, as Dostoyevsky said, "Unlimited freedom leads to unlimited tyranny". Likewise, equality, without fraternity, leads to the exclusion of liberty. What is needed is a correct balance between the two. James Hogan writes that, "Liberty and equality are reconcilable in terms of fraternity". (212) Looking back over the last two centuries we can see that liberty was the theme song of the liberals of the nineteenth century, while equality was the war-cry of the Communists. Fraternity was forgotten, perhaps because, to some of the leaders of the day, it had too Christian a connotation.

The Christian concept of brotherly love was ignored, and with it the unity of democracy broke down. It is interesting to note what Léon Trotsky had to say, "Democracy is a paraphrase of the Christian religion, a secularized version of Christian mysticism". (213) Arnold Toynbee describes democracy as "a smoke-screen to conceal the real conflict between the ideals of Liberty and Equality". (214) In the same context he writes,

> The only genuine reconciliation between these conflicting ideals was to be found in the mediating ideal of Fraternity, and, if man's social salvation depended on his prospects of translating this higher ideal into reality, he would find that the politician's ingenuity did not carry him far, since the achievement of Fraternity was beyond the reach of human beings so long as they

trusted exclusively to their own powers. The Brotherhood of Man stemmed from the Fatherhood of God.(215)

Lecky opines, "In the democratic union of nations we find the last and highest expression of the Christian ideal of the brotherhood of man". (216)

These considerations should convince us of the truth of the principle that man's life is a unity, and that when he begins to achieve an integrated philosophy of life, then democracy comes a step closer to its full realization. Many difficulties hinder this realization, and their pattern is steadily changing. A consideration of some of these dangers would not be out of place here.

Section 2 Democracy or Technocracy?

"For forms of government let fools contest,
Whate'er is best administered is best".
(Pope)

One of the most outstanding features of modern government is the growing complexity of its organisation and administration. The task of government is steadily growing more and more technical, more highly skilled, more professional. The problem involved in this is to maintain the position of the ordinary man in the street as the basis of government. In many areas of government, such as finance, foreign policy, law reform etc., the average man finds himself altogether out of depth, and his reaction is to put his trust in someone in whom he has confidence and give him a relatively free hand. This is not an unmixed evil. If the person of his choice is reliable, both morally and professionally, then the future will be reasonably assured, but if the person chosen is unfitted for the task then a serious problem presents itself.

It is not enough to be able to remove the official from his position - the individual must be able to exercise more immediate control. How this control can be reconciled with coherent, integrated, long-term planning such as modern social and economic conditions demand, is a problem not easily disposed of. Upon the solution to this question depends the problem of whether or not the political future of mankind is to be handed over to a selected band of technocratic automatons, or whether the man in the street will remain in control. In other words, the problem is whether or not democracy, in the full sense of the word, is able to meet the challenge of man's changing environment, or whether it must give way to a technocracy. This thought has provided the theme for such works as George Orwell's *Nineteen Eighty-Four* and *Animal Farm*, and Aldous Huxley's *Brave New World*.

The problem is one which has occupied men for a long time, and one author goes so far as to say that Aristotle foresaw it. Speaking of the Athenian city-state, he wrote, "The problem of a democracy is to unite popular power with intelligent administration, and the latter is not possible by a large assembly". (217) Patrick Pearse, too, wrote a brilliant satire in technocracy in his "Murder Machine". (218) Arnold Toynbee likewise saw the problem and wrote,

> In the trembling balance in which personal liberty and social justice were being weighed against one another, the spanner of technology had been thrown into the anti-libertarian scale. (219)

Alfred O'Rahilly writes,

> The legislature debates and criticizes, but it does not govern; it is the executive, with its army of functionaries, which acts and which in time of crisis supersedes both parliament and judiciary. Today, in spite of Montesquieu, the executive is the real and primary government. (220)

Another author writes, "Today the great political parties are enormous business corporations selling administration". (221)

James Connolly wrote, perhaps unrealistically, that, "As Democracy enters in, Bureaucracy will take flight". (222) By contrast, a modern historian writes,

> But there cannot be two powers, two '-cracies' in a nation; a democracy and a bureaucracy. One kills the other. One *has* killed the other, for bureaucracy is stronger than democracy. (223)

This growing uneasiness with the power structure of modern government is reflected both inside and outside parliamentary debates. In Ireland, Dáil deputies have been critical of what they regard, not without foundation, as a domination of the government by civil servants, while, in the United States, the problem has likewise received notice. (224)

A partial solution to the problem may be found in a greater measure of decentralization of authority and recognition of the value of local government. This solution, by its very nature, is one which must spring from the people directly, not from the government. Other powerful aids are an extension of educational facilities, the intelligent use of the right to vote coupled with a vigorous and fair-minded expression of the rights of free speech and a free press. The importance of a well-organized public opinion with full local participation in and support for community projects are likewise very important. (225) This viewpoint has been well expressed by Dr. Philbin, Bishop of Down and Connor, in an article in *Studies*: -

> The description "government by the people" supposes that the citizens retain more than the mere power to call their rulers to

> account at certain intervals; its spirit is realized only when the people generally make their voice heard and take some kind of active participation in the management of public affairs. If they resign all initiative to their political leaders, they are retreating from the democratic idea. They should at times supply the directive voice and impulse behind policies and they should regularly cooperate with the work of the administration and facilitate its processes. (226)

An active and intelligent popular participation in government, such as that envisaged by Dr. Philbin, would go a very long way towards solving the problem of political leadership. James Hogan seems to concur with this view, as may be seen from his statement that, "In proportion as a community approaches in practice to being an authentic democracy the problem ripens towards a solution". (227) One of the foremost members of the American Federal Convention, Gouverneur Morris, wrote to George Washington that, "No Constitution is the same on paper and in life. The exercise of authority depends on personal character". (228)

Section 3 Résumé

By way of conclusion to this essay, we shall endeavour to point out in summary form some of the main features of democracy. Several authors have attempted this and, although they disagree on some points, it is nevertheless true to say that, in general, there is a considerable measure of agreement between them. Thus James Hogan writes,

> The sum and the substance of the three main principles which are implied in a theory of democracy… [are] first… that just government presupposes the consent of the governed. The second principle is… that popular consent is properly expressed by means of an individually exercised act of choice by election. The third principle… is that for the purpose of selecting and so

> ultimately controlling their rulers and legislators *all* the adult members of the community shall be accounted as equal in right and capacity. (229)

Further on in the same work he offers the opinion that three tests may be applied to determine whether or not a State is democratic. These are: -

1. Can the government be removed without recourse to violence?
2. Is the judiciary independent?
3. Is there freedom of thought, of speech, and in voting? (230)

Similarly, though in a more comprehensive manner, E. Cahill lists those characteristics which he regards as fundamental to the practical realization of the democratic spirit. We present them here in the following summary form: -

1. A strong local government, with well-organized subsidiary societies such as trades unions, vocational groups, development associations etc.
2. A compulsory vote.
3. Majority rule, tempered by a Constitution, a second chamber, provisions for referendums, and initiation of Bills directly by the people.
4. Separation of powers.
5. Published accounts of ministerial achievements.
6. Auditing of party funds.
7. A well-controlled civil service.
8. The suppression of secret societies.
9. A free press. (231)

This outline is quite a useful one, and though we find ourselves in agreement with the bulk of it, there are some points which we feel obliged to question. We do not agree that voting should be compulsory. A refusal to exercise the right to vote is more often than not the fruit of indifference, it is true, but, nevertheless, there

are times when it can show passively a discontent with all of the candidates open to election, or, likewise, dissatisfaction with the entire system of government. It avoids the farcical results produced in some compulsory elections, as, for example, when the United Arab Republic was to be formed from a union of Egypt and Syria. The officially announced results were 99.99% in favour in Egypt and 99.98% in favour in Syria. Similarly, a Russian voter, presented with a list of candidates drawn exclusively from the Communist Party, can show his resistance by refusing to vote. Finally, we must add that a democracy is based on the *free* consent of intelligent persons, and to institute compulsory voting in a democracy would be undemocratic. The idea is reminiscent of Rousseau's theory of forcing a man to be free.

Neither can we agree with the proposal to suppress secret societies. The mere fact of a society's being secret is not in itself sufficient justification for its suppression. Of course, we will be reminded that a society preserves its secrecy for a particular purpose, not merely for the sake of being secret. This is a different matter, however. In so far as a secret society's activities constitute an infringement of law they should be punished in the ordinary course of affairs. This would apply not merely to overt physical actions inimical to the good of the community but also to any preparations - even though these might only be in nascent form - for such acts, since these constitute a moral threat to the common good.

There will always be evil in society, and to expose this evil to the public view where its malevolence can be fully appreciated - or where it can state its case, if it has one - is, we believe, the most satisfactory solution. Suppression will not work, for the simple reason that a secret society, if suppressed in one form, can easily reappear in another. Examples of this abound even in our own time. It is better to allow these societies to remain in existence, while keeping a close watch on their activities, and punishing them

for any infractions of the law. From the moral point of view we believe that, in general at least, secret societies should not be suppressed - we grant that there may be cases where this is necessary - but that, so long as they keep within the bounds of the law, - and to take an oath of secrecy is not in itself illegal - they should not be molested by the State. From the practical point of view, we believe that, in a democratic society, the greatest enemy of secret organizations should be, not the police, but a vigorous, well-informed and morally strong public body. We agree with the observation of Jacques Maritain,

> In any event I am convinced that a democratic society is not necessarily an unarmed society, which the enemies of liberty may calmly lead to the slaughter-house in the name of liberty. (232)

Pope Saint Pius X said on one occasion, "In our times more than ever before the chief strength of the wicked lies in the cowardice and weakness of good men." (233)

The proposal to audit party funds is certainly a welcome one and should produce some interesting material for debate. However, unless the people have the power of *initiation* we think it unlikely that such a proposal will ever become law. Political parties can agree on some things!

Jacques Maritain regards four characteristics as essential to a commonwealth of free men, namely: -

1. It should be *personalistic*, that is, it should have respect for the rights of individuals, based on the inviolable dignity of the human person.
2. It should be *communal*, that is, the public or common good of the citizens should be its aim.

3. It should be *pluralistic*, which means that it should respect and foster lesser societies. (234)
4. It should be *theistic*, that is, it should be based on a belief in God, though not necessarily a Christian belief, and that this belief should permeate the lives of all citizens. (235)

For this reason he favours a moral, though not a juridical link between Church and State.

These considerations, brief though they are, form at least the basis on which a democratic society can be built. In conclusion, we quote Walter Lippmann's apt expression of ideal democratic government,

> The prime business of government, therefore, is not to direct the affairs of the community, but to harmonize the direction which the community gives to its affairs. (236)

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1. Louis Janssens, Liberté de conscience et liberté religieuse, Paris, 1964, p.171: Elle est la liberté, d'une part, pour les individus de professer une foi religieuse personelle en conformité avec leur conviction de conscience, et la liberté, d'autre part, pour leurs communautés religieuses de mettre en pratique cette conviction et de disposer des moyens indispensables à cet effet. Comme pour toutes les manifestations de la liberté de conscience, les éléments décisifs seront ici la dignité de *sujet moral* qu'est la personne humaine et sa condition d'*être social*".
2. J. Burnet, "Philosophy" in The Legacy of Greece, ed. by Richard W. Livingstone, London, 1942, p.93.
3. Timaeus, 37, in The Dialogues of Plato, trans. by B. Jowett, Oxford, 1924, Vol. III, pp.455,456.
4. De Civitate Dei, Book VI, chap.8, Everyman edn., London, 1950, Vol. I, p.188.
5. J. B. Bury, History of Greece, 3rd edn., London, 1959, p.836.
6. Cf. De Regimine Principum, Book I, Chap.14; in Opuscula Philosophica, (Marietti edn), Rome, 1954.
7. Cf. Acts XVIII, 14-17.
8. Cited by John Courtenay Murray, We hold these Truths, London, 1961, p.202.
9. Ibid.
10. Cited by Thomas Owen Martin, "The Independence of the Church", in The American Ecclesiastical Review, Vol. CXXII, No.1, (January 1950), p.39.

11. Cited by Giacomo Cardinal Lercaro, "Religious Tolerance in Catholic Tradition" in The Irish Ecclesiastical Record, Vol. XCIII, No.5 (May 1960), p.291.
12. Cited by Jeremiah Newman, Studies in Political Morality, Dublin, 1962, p.337, n.1.
13. Ibid.
14. S.T., II, II, ques.10, art.6 in corp.
15. Ibid., art.8 ad 3.
16. Louis Janssens, Liberté de conscience et liberté religieuse, Paris, 1964, p.177, n.2, "En effet, faire une promesse est un acte de volonté, la tenir est une necessité".
17. S.T., II, II, ques.11, art.1.
18. Ibid., ad 3.
19. S.T., loc. Cit.
20. De Utilitate Credendi, Chap.1.
21. Cardinal Lercaro, op.cit., p.288.
22. Op. cit., p.177: "Une foi imposée par la contrainte est donc une contradiction dans les termes, non seulement du point de vue de la libre initiative de Dieu, mais aussi de celui de le libre adhésion qu'elle suppose chez l'homme".
23. S.T., II, II, ques.10, art.11 in corp.
24. Cited by J. C. Murray, "The Problem of Religious Freedom" in Theological Studies, Vol. 25, No.4 (December 1964), p.560.
25. Matt. XXVI.52, Luke XXII.38.
26. Cf. J. C. Murray, loc. cit.
27. Louis Janssens, Liberté de conscience et liberté religieuse, Paris, 1964, p.179, commenting on S.T. II, II, ques. 11, art. 3: "L'unité de la foi était considerée comme un élément important du bien commun de cette communauté théocratique. C'est pourquoi, le bras séculier, étant au service de ce bien commun, devait punir plus sévèrement les hérétiques que les faux-monnayeurs, parce que l'hérésie attentait à l'unité spirituelle de la commanuauté et, partant, à un élément du bien commun beaucoup plus important que les intérêts matériels".

28. Cited by Albert Dondeyne, Faith and the World, Pittsburgh, 1963, p.257.
29. Michael Novak, The Open Church, London, 1964, p.360.
30. Auguste Comte, cited by G. Van Noort, Christ's Church, Cork, 1961, p.367.
31. Cf. Henri Daniel-Rops, The Catholic Reformation, trans. by John Warrington, London, 1963, p.170.
32. Ibid., p.188.
33. Henri Daniel-Rops, op. cit., p.152.
34. Ibid., p.190.
35. Cited by Henri Daniel-Rops, op. cit., p.155.
36. Full text in the International University Course, Nottingham, (no date), Section 1, p.204.
37. Cf. Henri Daniel-Rops, The Catholic Reformation, trans. by John Warrington, London, 1963, p.150.
38. Ibid., p.183.
39. Ibid., p.150.
40. Ibid.
41. Ibid., p.151.
42. Ibid., p.151, n.1.
43. Ibid., p.155.
44. Sir Thomas More, Utopia, translated from the Latin by Raphe Robynson, edited by J. Rawson Lumby, Cambridge, 1935, p.146.
45. John Locke, Letter concerning Toleration, Appendix to The Second Treatise of Civil Government, ed. by J. W. Gough, Oxford, 1946, p.127.
46. Ibid., p.135.
47. Address on receiving the *biglietto*, (1879); cited by R. S. Devane, The Failure of Individualism, Dublin, 1948, p.187, n.1.
48. Cited by Roger Aubert, "Religious Liberty from 'Mirari Vos' to the 'Syllabus', in Concilium, Vol.7, No.1, (September 1965), p.50.
49. Ibid., p.51.
50. Ibid.

51. Encyclical letter, "Libertas, praestantissimum" 20 June 1888, in The Great Encyclical Letters of Leo XIII, 3rd edn., New York, 1903, pp. 158, 159.
52. Cf. Roger Aubert, "Religious Liberty from 'Mirari Vos' to the 'Syllabus', in Concilium, Vol.7, No.1, (September 1965), pp.49, 50.
53. Ibid., p.50.
54. W. E. H. Lecky, History of the Rise and Influence of the Spirit of Rationalism in Europe, London, 1910, Vol.II, p.69.
55. Cf. Henricus Denzinger, Enchiridion Symbolorum, Friburgi, 1937, nn.1777-1779, p.490. (Italics mine).
56. Sr. M. Imelda O. P., "Progress and Liberty of Conscience; Pius IX and the Syllabus of Errors", in The Tablet, Vol.219, No. 6517, (17 April 1965), p.430.
57. Roger Aubert, op. cit., p.52.
58. Encyclical letter, "Libertas, praestantissimum" 20 June 1888, in The Great Encyclical Letters of Leo XIII, 3rd edn., New York, 1903, pp. 158, 158.
59. S.T., I, II, ques.19, art.5 in corp.
60. Alfredo Cardinal Ottaviani, "Church and State: Some Present Problems in the Light of the Teaching of Pope Pius XII", in The American Ecclesiastical Review, Vol. CXXVIII, No.5, (May 1953), p.329.
61. Cited by Max Pribilla, "Dogmatic Intolerance and Civil Tolerance" in The Month, Vol.4, No.4, (October 1950), p.252.
62. Ibid.
63. Address to the National Convention of Italian Catholic Jurists, 6 December 1953, in Catholic Documents, XV, (September 1954), pp.15,16.
64. Ibid., p.14.
65. Cited by Cardinal Ottaviani, op. cit., p.331.
66. Pacem in Terris, CTS edn., London, p.10.
67. Full text in The Documents of Vatican II, ed. by Walter M. Abbott, London, 1966, pp.675-696.
68. This list is given by Jeremiah Newman, Studies in Political Morality, Dublin, 1962, p.202.

69. Cf. letter of A. de Castro e Abreu, Portuguese ambassador to Ireland, in The Irish Times, 30 November 1965.
70. Cited by Jacques Maritain, The Rights of Man and the Natural Law, London, 1945, p.19, n.1.
71. Cited by Ivor Kenny, "Spain and the Separation of Church and State", in Christus Rex, Vol. XI, No.3, (June 1957), p.603.
72. Cited by E. Allison Peers, Spain, the Church and the Orders, London, 1939, p.207. Cf. also pp.138-146 and 155-158.
73. Cited by Jeremiah Newman, op. cit., p.428, n.2.
74. "Pakistan's New Constitution", in The Commonwealth Digest and World Economic Review, Vol.3, No.6, (June 1963), p.166.
75. Text in The Universal Declaration of Human Rights and its Predecessors, ed. by Baron F. M. van Asbeck, Leiden, Holland, 1949, pp.59-61.
76. van Asbeck, op. cit., p.95.
77. van Asbeck, op. cit., p.79.
78. Cited by Alfredo Cardinal Ottaviani, "Church and State: Some Present Problems in the Light of the Teaching of Pope Pius XII", in The American Ecclesiastical Review, Vol. CXXVIII, No.5, (May 1953), pp.332, 333.
79. For a detailed account, see Edward Duff, "Church and State in the American Environment: an Historical and Legal Survey", in Studies, Vol. XLIX, No.195, (Autumn 1960), pp.231-233.
80) Cf. John L. Stoddard, "Persecution for Heresy by Catholics and Protestants", Chapter XX of Rebuilding a Lost Faith, London, 1922, pp.202-210.
81) W. E. H. Lecky, History of the Rise and Influence of the Spirit of Rationalism in Europe, London, 1910, Vol.II, pp.42-43.
82) Christopher Hollis, "Easter 1916", in The Tablet, Vol.220, No.6568, (7 April 1966), p.415.
83) Cited by J. H. Crehan, "Catholic Toleration in Maryland (1649)", in The Month, Vol. CLXXXV, No. 969, (April 1948), p.209.
84) Basic Documents in American History, ed. by Richard B. Morris, Princeton, New Jersey, 1956, pp.21-22.

85) Lecky, op. cit., Vol.II, p.53.
86) Article CIX of "The Fundamental Constitutions of Carolina (1669)", in Old South Leaflets, No.172, published by the Old South Association, Boston, (no date), p.19. Cf. also Articles XCV to CVIII, pp.16-19.
87) Ibid., Article XCVI, pp.16-17.
88) Ibid., p.17, note.
89) Frederick Copleston, A History of Philosophy, London, 1959, Vol. V, p.140.
90) Jacques Maritain, The Rights of Man and Natural Law, London, 1945, p.45.
91) The Records of the Federal Convention, revised edn. by Max Farrand, Yale, 1937, Vol. IV, p.28. Cf. also Vol. I, p.402.
92) Cf. John Courtenay Murray, We hold these Truths, London, 1961, p.71.
93) Ibid.
94) Jacques Maritain, op. cit., p.19.
95) Text of Constitution in A Government by the People, U. S. Information Service, Washington, 1962, pp.90-102.
96) Edward Duff, "Church and State in the American Environment: an Historical and Legal Study", in Studies, Vol. XLIX, No.195 (Autumn 1960), p.240.
97) Basic Documents in American History, ed. by Richard B. Morris, Princeton, New Jersey, 1956, p.42.
98) "The Northwest Ordinance", cited by Richard B. Morris, op. cit., p.46. For other similar documents, cf. S. E. Morison, Sources and Documents illustrating the American Revolution, (1764-1788), and the formation of the Federal Constitution, Oxford, 1923, pp.149, 178.
99) Thomas Paine, The Rights of Man, Everyman edn., London, 1935, p.77. (The work was dedicated to George Washington).
100) Cf. Edward Duff, op. cit., pp.238, 239.
101) J. M. Cameron, "Catholic Myths and French Politics", in The Dublin Review, No. 458, (4th quarter 1952), p.32.

102) For a fuller account, cf. Auguste Maydieu O.P., "The Influence of St. Thomas on French politics" in Blackfriars, Vol. XXVIII, No.330, (September 1947), p.396.
103) J. A. Marriott, Six Ages of European History, London, 1915, Vol. VI, The Remaking of Modern Europe (1789-1878), p.14. Cf. also Henri Sée, La France économique et sociale au XVIIIième siècle, Paris, 1925, Chapitre III, "Le clergé", pp. 53-70.
104) Cf. The Rights of Man, Everyman edn. London, 1935, p.67: "All religions are in their nature kind and benign, and united to principles of morality".
105) Ibid., p.65.
106) W. E. H. Lecky, History of the Rise and Influence of Rationalism in Europe, London, 1910, Vol. II, p.68.
107) Thomas Paine, op. cit., p.98.
108) Déclaration du 3 Sept. 1791, cited by Léon Duguit et Henry Monnier, Les Constitutions et les principales lois politiques de la France depuis 1789, cinquième édition, Paris, 1932, p.1: "La libre communication des pensées et des opinions est un des droits les plus précieux de l'home: tout citoyen peut donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté dans les cas déterminées par la loi".
109) Ibid.: "Les Citoyens ont le droit d'élire ou choisir les Ministres de leurs cultes".
110) Projet de Déclaration des Droits Naturels, civils et Politiques des Hommes, en Constitution Girondine, 15 et 16 février 1793, (l'an II de la République); cited by Duguit, op. cit, p.36: Art. 6, "Tout homme est libre dans l'exercice de son culte".
111) Déclaration du Roi du 2 mai 1814, cited by Duguit, op. cit., p.182: "Nous voulons… à donner pour base à cette constitution les garanties suivantes: -… La liberté des cultes…"
112) Articles 5-7 de la Charte Constitutionelle du 4 juin 1814, cited by Duguit, op. cit., p.185: "Chacun professe sa religion avec une égale liberté, et obtient pour son culte la même protection. Cependant la religion catholique, apostolique et romaine est la religion de l'Etat.

Les ministres de la religion catholique, apostolique et romaine, et ceux des autres cultes chrétiens, reçoivent seuls des traitements du trésor royal".
113) Address, "Against the Establishment of Religion" in The International University Course, Nottingham, no date, Section 5, p.301.
114) Cited by Robert Aubrey Noakes, "Napoleon's Attitude towards Religion", in The Month, Vol. CLXXVII, No.919, (January-February 1941), p.33.
115) Ibid.
116) Ibid.
117) Translated as "Allegiance to the Republic" in The Great Encyclical Letters of Leo XIII, 3rd edition, New York, 1903, pp.249-263.
118) The French Constitution, English translation by the Press and Information Division, French Embassy, New York, 1958, p.4.
119) Ibid., p.31.
120) W. E. H. Lecky, History of the Rise and Influence of Rationalism in Europe, London, 1910, Vol.II, pp.68-69.
121) Lecky, op. cit., Vol.II, p.122.
122) Ibid., Vol.II, p.124.
123) Daniel Owen Madden (1845), cited in Ireland - from Grattan's Parliament to the Great Famine (1783-1850): a Documentary Record; compiled and edited by James Carty, Dublin, 1949, p.49.
124) Ibid., p.50.
125) Cited by James Carty, op. cit., p.101.
126) For full text and commentary, cf. The Dublin Review, Vol. XVI, No. XXXI (March 1844), pp.186-220. Cf. also Ibid., Vol. XII, No. XXIII (February 1842), pp.250-278, article entitled "Peel's Government".
127) W. E. H. Lecky, History of the Rise and Influence of Rationalism in Europe, London, 1910, Vol.II, pp.122-123.
128) Aodh de Blácam, Towards the Republic: A Study of New Ireland's Social and Political Aims, Dublin, 1918, p.88.

129) The Irish Constitution, explained by Darrell Figgis, Dublin, no date, p.63.
130) Donal Barrington, "The President and the Council of State", in The Irish Monthly, Vol. LXXX, No.944 (February 1952), p.44.
131) Darrell Figgis, op. cit., p.66. The Article goes on to forbid discrimination on religious grounds with regard to schools, and provides for compensation for the diversion of ecclesiastical property to public use.
132) Leo Kohn, The Constitution of the Irish Free State, London, 1932, Appendix, p.390.
133) Alfred O'Rahilly, Thoughts on the Constitution, Dublin, 1937, p.23.
134) Bunreacht na h-Éireann, Dublin, 1942, pp. 144-146. The remaining three subsections of the Article (2.4 - 2.6), deal with the problem of State aid to schools, the right to ecclesiastical property, and the right to compensation if such property is appropriated for public use.
135) Cf. J. M. Kelly, Fundamental Rights in the Irish Law and Constitution, Dublin, 1961: "Religious Freedom", pp.184-190.
136) In 1961, 94.7% of the citizens of the Republic were Catholic. In all Ireland, 74% were Catholic.
137) Alfred O'Rahilly, Thoughts on the Constitution, Dublin, 1937, p.65.
138) O'Rahilly, op. cit., p.57.
139) E.g. Articles 40.4.1; 40.5; 40.6.1; 43.2.1 and 2.
140) The French Constitution, Title I, Article 3, para.4. The American Constitution, Amendments, Articles III, V, and XIV. Cf. also Declan Costello, "Natural Law and the Irish Constitution", Studies, Vol. XLV, No. 180 (Winter 1956), p. 406, and the French Declaration of 3 September 1791, cited on p.44 of the present work.
141) Cited by Donal Barrington, "Personal Liberty", in The Irish Monthly, Vol. LXXV, No. 948 (June 1952), p.229.
142) Cited by Archibald Alison, History of Europe, 7th edn., London, 1847, Vol. II, p.153.

143) Section 2, subsection 2.
144) Enda McDonagh, "Church and State in the Constitution of Ireland", in The Irish Theological Quarterly, Vol. XXVIII, No. 2 (April 1961), p.133.
145) Full text of his address is in the Irish Catholic Directory and Almanac, Dublin, 1939, p.614. For comments of other bishops, see same, pp.614, 623.

Chapter II Property in Constitutional Order, pp. 58-111.
1) E. Westermarck, The Origin and Development of Moral Ideas, London, 1917, Vol. II, p.51.
2) George H. Sabine, A History of Political Theory, New York, 1937, p.57.
3) George H. Sabine, ibid.
4) Rousseau regarded it as the greatest treatise on education ever written; Hegel supported the view that it was simply an exposé of the Greek moral theory.
5) Aristotle, Politics, Penguin edn., London, Book 2, Chapter 5, p.63.
6) Ibid.
7) William of Auxerre, Summa Aurea, Lib. III, tract 7, Cap. 1, fol. 170: cited by Léon de Sousberghe, "Propriété 'De Droit Naturel', et Thèse Néo-Scolastique et Tradition Scolastique", Nouvelle Révue Théologique, Tome LXXII, No. 6 (juin 1950), p. 584: "Omnia esse communia… fuit… praeceptum in statu innocentiae sive in statu nature bene dispositae. Sed in statu cupiditatis naturae corruptae non est praeceptum, nec debet esse… Unde aliqua esse propria est de iure naturali quasi *ex permissione* naturae; sed omnia esse communia est de iure naturali quasi *ex beneplacito* naturae".
8) Saint Ambrose, De Officiis, 1.1. Chap.28, cited by de Sousberghe, op. cit., p.582, n.3: "Natura omnibus in communi profudit. Sic Deus generari iussit omnia ut pastus omnibus communis esset, et terra foret omnium quaedam communis

possessio. Natura igitur ius commune generavit, usurpatio vere fecit privatum".
9) Cited by de Sousberghe, op. cit., p.583: "Nam iure divino 'Domini est terra et plenitudo eius' (Psalmus 23.1). Pauperes et divites Deus de uno limo fecit… iure ergo humano dicitur, 'Haec villa mea est…' Tolle iura imperatoris et quis audet dicere, 'Haec villa mea est, meus est iste servus, haec domus mea est'?" Cf. also Epistola CLIII.6, and Sermo L. 2 cited in A. J. Carlyle, "The Theory of Property in Medieval Theology", in Property: its Duties and Rights, Historically, Philosophically and Religiously Regarded, Gore, Hobhouse et al., London, 1913, p.125.
10) Quis dives salvebitur?, no.31, Migne, PG, VIII, 541-543; cited by Alfred O'Rahilly, "S. Thomas's Theory of Property" in Studies, Vol. IX, No.35 (September 1920), p.343, n.6.
11) Vernon Bartlett, "The Biblical Idea of Property" in Property: Its Rights and Duties, London, 1913, p.107.
12) Ibid., p.95.
13) de Sousberghe, op. cit., p.584.
14) Alfred O'Rahilly, "S. Thomas's Theory of Property " in Studies, Vol. IX, No.35 (September 1920), p.338. Cf. Summa Theologica, II, II, question 66, article 2 ad 1.
15) Ibid., p.342.
16) Summa Theologica, II, II, question 66, article 2 in corp. Cf. also Aristotle, Politics, Penguin edn., London, Book II, Chapter 3, p.58.
17) Summa Theologica, II, II, question 66, article 2 in corp.
18) Alfred O'Rahilly, op. cit., p.341.
19) Léon de Sousberghe, "Propriété 'De Droit Naturel', et Thèse Néo-Scolastique et Tradition Scolastique", Nouvelle Révue Théologique, Tome LXXII, No. 6 (juin 1950), p. 585: "Il est à remarquer que, dans le corps de la ques. 66, art. 2, saint Thomas n'emploie pas les mots 'ex iure naturae', mais simplement *licet* (quantum ad potestatem procurandi et dispensandi habere propria), *debet* (quantum ad usum… habere res ut communes).

L'appropriation est permissive, la mise en commun nécessaire. Cette opposition *licet-debet* est dans la tradition scolastique, avec sa préférence marquée pour la formule de communauté".
20) Thomas Gilby, Between Community and Society: A Philosophy and Theology of the State, London, 1953, pp.268-269.
21) George H. Sabine, A History of Political Theory, New York, 1937, p.215.
22) Alfred O'Rahilly, Social Principles, Cork, 1948, p.34.
23) Dorothy M. Pickles, Introduction to Politics, London, 1964, p.209.
24) Sir Thomas More, Utopia, trans. by Raphe Robyson, ed. by J. Rawson Lumby, Cambridge, 1935, p.63.
25) Cited by George H. Sabine, A History of Political Theory, New York, 1937, p.493.
26) Ibid., p.491.
27) Modern historical research has shown conclusively that the Two Treatises were written several years before this, possibly as far back as 1681.
28) The Second Treatise of Civil Government, ed. by J. W. Gough, Oxford, 1946, §25, p.15.
29) Ibid., §27, p.15.
30) Ibid., §31, p.17.
31) Ibid., §36, p.19.
32) Ibid., §38, p.21.
33) Ibid., §45, p.24.
34) The Second Treatise of Civil Government, §6, p.5.
35) Ibid., §14, p.9.
36) Ibid., §124, p.62. He enumerates the qualities which were "found wanting" in §124-§126, pp.62-63.
38) Ibid., §134, p.66, §§ 137,138, pp.68-70, and §171, p.85 et passim.
39) Ibid., §142, p.71.
40) Ibid., §124-§126, pp.62-63.
41) The First Treatise of Civil Government, §22.
42) The Second Treatise of Civil Government, §195, p.96.

43) Rousseau, Émile or Treatise on Education, trans. by William H. Payne, New York, 1909, p.23.
44) J.Vialatoux, Philosophie Économique, Paris, 1933, p.126, "Il fut le maître, en logique et en politique, en psychologie comme en philosophie sociale, religieuse, économique, pédagogique même, de Condillac, de d'Alembert et de Diderot, d'Helvétius, de d'Holbach, de toute l'Encyclopédie; il s'imposa à Rousseau lui-même".
45) Alexis de Tocqueville, Democracy in America, trans. by Henry Reeve, London, 1838, Vol. III, p.1.
46) Art. 8, "The Body of Liberties of Massachusetts Bay", December 1641, in Basic Documents in American History, compiled by Richard B. Morris, Princeton, New Jersey, 1956, p.13.
47) Article 2, "The Northwest Ordinance", 13 July 1787, cited by Richard B. Morris, op. cit., p.47.
48) Benjamin F. Wright, American Interpretations of Natural Law, Cambridge, Mass., 1931, p.7.
49) James Otis, "The Rights of the British Colonies asserted and proved", Boston, 1764: cited by S. E. Morison, Sources and Documents illustrating the American Revolution and the formation of the Federal Constitution, Oxford, 1923, pp.4-5.
50) Letter 1461 to Robert Norris, 25 December 1783: cited by Richard McKeon, "The Development of the Concept of Property in Political Philosophy: A Study of the Background of the Constitution", in The International Journal of Ethics, Vol. XLVIII, (1938), pp.353-354.
51) Cf. Articles IX and X in The Universal Declaration of Human Rights and its Predecessors, ed. by Baron F. M. van Asbeck, Leiden, Holland, 1949, p.73.
52) Cf. the following: -
Frederick Copleston, History of Philosophy, London, 1959, Vol. V, p.140.
M. B. Crowe, "The Rights and Duties of Wealth" in Studies, Vol. LV, No. 218, (Summer 1966), p.176.

R. S. Devane, The Failure of Individualism, Dublin, 1948, pp. 137-139.
J. W. Gough, Introduction to The Second Treatise of Civil Government, Oxford, 1946, p.xxxvi.
George Jellinek, La Déclaration des Droits de l'Homme et du Citoyen: Contribution à l'Histoire du Droit Constitutionel Moderne, Paris, 1902, p.83.
C. E. M. Joad, Guide to the Philosophy of Morals and Politics, London, 1938, p.489, n.1.
Paschal Larkin, Property in the Eighteenth Century with Special Reference to England and Locke, Cork, 1930, p.145.
Jacques Maritain, The Rights of Man and Natural Law, London, 1945, p.45; The Twilight of Civilization, trans. by Lionel Landry, London, 1946, p.42.
Moorhouse F. X. Miller, "Bellarmine and the American Constitution", in Studies, Vol. XIX, No. 75 (September 1930), pp. 368, 370.
Samuel E. Morison, "Sons of Liberty" in The Readers' Digest, February 1966, p.195.
Jeremiah Newman, Studies in Political Morality, Dublin, 1962, pp.348-356, especially p.352.
Richard Schlatter, Private Property: The History of an Idea, London, 1951, p.193.
Michael Tierney, "Aristotle's 'Politics' in Western Tradition", in Studies, Vol. XXXV, No.139 (September 1946), p.339.
Benjamin F. Wright, American Interpretations of Natural Law, Cambridge, Massachusetts, 1931, p.10.
53) The Records of the Federal Convention, ed. by Max Farrand, Yale, 1937, Vol. I, p.533.
54) Mr. Butler, on 5 July, ibid., Vol. I, p.529. Mr. Rutlidge, Mr. King and Mr. Davy, speaking on 6 July, ibid., Vol. I, pp.534, 541, 542, respectively.
55) Ibid., Vol. I, p.605.
56) Alexis de Tocqueville, Democracy in America, trans. by Henry Reeve, London, 1838, Vol. I, p.45.

57) Ibid., Vol. IV, p.193.
58) Cited by S. E. Morison, Sources and Documents illustrating the American Revolution, (1764-1788), and the formation of the Federal Constitution, Oxford, 1923, p.214.
59) Cited by Esmond Wright, Fabric of Freedom (1763-1800), London, 1965, p.18.
60) Charles A. Beard, An Economic Interpretation of the Constitution of the United States, New York, 1913.
61) Amendments, Article V and XIV, Section 1. Text in A Government by the People, United States Information Service, Washington, 1962, pp. 98, 99.
62) Esmond Wright, Fabric of Freedom (1763-1800), London, 1965, p. 37. In opposition to Beard, he cites, on pp.177-187, E. S. Corwin, who, in 1914, criticized Beard's statistics; Robert L. Schuyler, The Constitution of the United States, 1927; Charles Warren, The Making of the Constitution, 1929; and Robert E. Brown Jnr., who questions the validity of Beard's research in Charles Beard and the Constitution, 1956.
63) Samuel E. Morison, "Sons of Liberty", in The Readers' Digest, February 1966, pp.163-204.
64) Cf. Gilbert Burck, "LBJ and the aluminium affair", in The Sunday Times, 13 February 1966, p.55.
65) Cited in An Outline of American History, by the U. S. Information Service, Washington, 1948, p.63. Cf. also Ibid., Chapter VI, "The Era of Expansion and Reform", pp. 52-63. For the influence of these measures abroad, see W. Friedmann, Introduction to World Politics, London, 1960, Appendix III, p.349, on the Coal and Steel Community (1956).
66) Letter to James Sullivan, 20 May 1776; cited by Richard McKeon, "The Development of the Concept of Property in Political Philosophy: A Study of the Background of the Constitution", in The International Journal of Ethics, Vol. XLVIII, (1938), pp.357.
67) Discours sur L'Origine et les Fondements de l'Inégalité parmi les Hommes, introduction by F. C. Green, Cambridge, 1941, p.76:

"Mais, dès l'instant qu'un homme eut besoin du secours d'un autre, dès qu'on s'aperçut qu'il étoit utile à un seul d'avoir des provisions pour deux, l'égalité disparut, la propriété s'introduise, le travail devint nécessaire… bientôt l'esclavage et la misère germer et croître aves les moissons". Cf. also Rousseau's Confessions, Penguin edn., London, p.362.

68) Ibid., p.65: "Le premier qui, ayant enclos un terrain, s'avisa de dire, 'Ceci est à moi', et trouva des gens assez simples pour le croire, fut le vrai fondateur de la société civile… Que de crimes, de guerres, de meurtres, que de misères et d'horreurs n'eût point épargnes au genres humain celui qui, arrachant les pieux ou comblant le fossé, eut crié à ses semblables, 'Gardez-vous découter cet imposteur; vous êtes perdus si vous oubliez que les fruits sont à tous, et que la terre n'est à personne'".

69) Ibid., p.79: "Cette origin est d'autant plus naturelle qu'il est impossible de concevoir de l'idée de la propriété naissante d'ailleur que de la main-oeuvre; car on ne voit pas a que, pour s'approprier les choses qu'il n'a point faites, l'homme y peut mettre de plus que son travail. C'est le seul travail qui, donnant droit au cultivateur sur le produit de la terre, qu'il a labourée, lui en donne par conséquent sur le fonds, au moins jusqu'à la récolte, et ainsi d'année en année; de qui, faisant une possession continue, se transforme aisément en propriété".

70) Ibid., p. 83: "Vous fallait un consentement exprès et unanime du genre humain pour vous approprier sur la subsistence comme tout ce qui alloit au-delà de la vôtre".

71) Ibid., p. 96: "Une institution humaine".

72) Ibid., p.74.

73) Ibid., p. 84: "conçut enfin le projet le plus réfléchi qui soit jamais entré dans l'esprit humain".

74) Ibid., p. 85: "Tous coururent au-devant de leurs fers, croyant assurer leur liberté".

75) Ibid., p. 85 "Détruisirent sans retour la liberté naturelle, fixèrent pour jamais la loi de la propriété et de l'inégalité, d'une adroite usurpation firent un droit irrévocable, et, pour le profit de

quelques ambitieux, assujettirent désormais tout le genre humain au travail, à la servitude et à la misère".
76) P. J. Proudhon, What is Property?, trans. by Benjamin R. Tucker, London, (no date), Vol. I, First Memoir, Chap. I, p. 37 and passim.
77) Rousseau, Émile or Treatise on Education, trans. by William H. Payne, New York, 1909, Book I, p.1.
78) Discours sur L'Origine et les Fondements de l'Inégalité parmi les Hommes, introduction by F. C. Green, Cambridge, 1941, p.23: "Commençons dont par écarter tous les faits, car ils ne touchent point à la question".
79) Kingsley Martin, French Political Thought in the Eighteenth Century: A Study of Political Ideas from Boyle to Condorçet, London, 1929, p.198.
80) Kingsley Martin, op. cit., p.196.
81) De l'Économie Politique, in Oeuvres Complètes, Éditions Hachette, Paris, 1883, Tome III, pp.293-294: "Il est certain que le droit de propriété est le plus sacré de tous les droits des citoyens, et plus important, à certain égards, que la liberté même".
82) Ibid., "La propriété est la vrai fondement de la société civile".
83) Du Contrat Social ou Principes du Droit Politique, ed. by C. E. Vaughan, Manchester, 1918, p.4: "L'homme est né libre, et partout il est dans les fers". See also Rousseau's Confessions, Penguin edn., London, pp.529-540, 545, especially p.530.
84) Lettres écrites de la Montagne in Oeuvres, Éditions Didot, Paris, An. IX (1801), Vol. VIII, Lettre VI, p.282: "Locke, Montesquieu, L'abbé de Saint-Pierre, ont traité les même matières, et souvent avec la même liberté tout au moins. Locke en particulier les a traités exactement dans les mêmes principes que moi". Cf. also his Confessions, Penguin edn., London, p.563-4.
85) George H. Sabine, A History of Political Theory, London, 1937, p.593.
86) C. E. M. Joad, Guide to the Philosophy of Morals and Politics, London, 1938, p. 511.

87) Cited by J. A. R. Marriott, Six Ages of European History, Vol. VI, The Remaking of Modern Europe (1789-1878), London, 1915, p.19.
88) Kingsley Martin, French Political Thought in the Eighteenth Century: A Study of Political Ideas from Boyle to Condorcet, London, 1929, p.195.
89) Cited in Rousseau, Émile or Treatise on Education, trans. by William H. Payne, New York, 1909, Appendix, p.312.
90) G. D. H. Cole, "Theories and Forms of Political Organisation" in An Outline of Modern Knowledge, London, 1931, pp.714-715.
91) Cf. for example, The Records of the Federal Convention, revised edn. by Max Farrand, Yale, 1937, Vol. I, p.533.
92) George Jellinek, La Déclaration des Droits de l'Homme et du Citoyen: Contribution à l'Histoire du Droit Constitutionel Moderne, Paris, 1902, p.12: "La Déclaration du août 1789 se fit en contradiction avec Contrat Social. L'oeuvre de Rousseau a exercé, il est vrai, sur quelques formules de cette Déclaration, une certaine influence de style; mais l'idée de la Déclaration même provient nécessairement d'une autre source".
93) Jellinek, Ibid., Chaps. II, III and V, especially Chap. III. "La Déclaration Française s'est inspirée des "Bill of Rights" des colonies d'Amérique du Nord".
94) Art. 6, Déclaration des Droits de l'Homme et du Citoyen, 3 September 1791, cited by Léon Duguit et Henry Monnier, Les Constitutions et les principales lois politiques de la France depuis 1789, cinquième édition, Paris, 1932.
95) Du Contrat Social, ed. by C. E. Vaughan, Manchester, 1918, Livre II, Chap. III, p.24: "La volonté générale est toujours droite".
96) The French Constitution, English translation by the Press and Information Division, French Embassy, New York, 1958, Title I, Art.3, p.4.
97) For various estimates of the wealth of the clergy, cf. Henri Sée, La France Économique et Sociale au XVIII siècle, Paris, 1925, Chap. III, "Le Clergé", pp. 52-70, and J. M. O'Sullivan, "The

Gallican Church and the National Assembly" in Studies, Vol. I, No.1, (March 1912), pp. 52-64.
98) J. A. R. Marriott, Six Ages of European History, Vol. VI, The Remaking of Modern Europe (1789-1878), London, 1915, p.21.
99) A. Esmein, Éléments de Droit Constitutionel Française et Comparé, septième édition, Paris, 1921, Tome 2, p.531: "La Révolution trouva cependant la propriété foncière engagée dans les liens de la féodalité, et, par le seul fait qu'elle supprimait cette denière, elle l'affranchit".
100) Paschal Larkin, Property in the Eighteenth Century with Special Reference to England and Locke, Cork, 1930, p.213.
101) James Madison, The Federalist or The New Constitution, Everyman edn., London, 1922, Paper X, p.43.
102) General Ne Win of Burma.
103) La Déclaration des Droits de l'Homme et du Citoyen, 26 août 1789, Art. XVII, cited by Eugène Blum in La Déclaration des Droits de l'Homme et du Citoyen, quatrième édition, Paris, 1909, p.9: "La propriété étant un droit inviolable et sacré, nul ne peut en être privé, si ce n'est lorsque la nécessité publique, légalement constatée, l'exige évidemment, et sous la condition d'une juste et préalable indemnité".
104) Cited by Archibald Alison, History of Europe, 7th edn., London, 1847, Vol. II, (1789-1814), p.143.
105) Richard Schlatter, Private Property: The History of an Idea, London, 1951, p.223.
106) Déclaration des Droits de l'Homme et du Citoyen, of 3 September 1791, cited by Léon Duguit and Henry Monnier, Les Constitutions et les principales lois politiques de la France depuis 1789, cinquième édition, Paris, 1932, p.1: Art.2. Le but de toute association politique est la conservation des droits naturels et imprescriptibles de l'Homme. Ces droits sont la liberté, la propriété, la sûreté, et la résistance à l'oppression".
107) Duguit, op. cit., p.3: "La Constitution garantit l'inviolabilité des propriétés, ou la juste et préalable indemnité de celles dont la nécessité publique, légalement constatée, exigerait le sacrifice".

108) M. de Cormenin, "France and Decentralization" in The Dublin Review, Vol. V, No. X (October 1838), p.328.
109) Projet de Déclaration des Droits Naturels, civils et politiques des hommes, Constitution Girondine, 15-16 février 1793, cited by Duguit, op. cit., p.39: "Art. 19. Le droit de propriété consiste en ce que tout homme est le maître de disposer à son gré de ses beins, de ses capitaux, de ses revenues et de son industrie.
Art. 20. Tout homme peut engager ses services, ses temps; mais il ne peut se rendre lui-même: sa personne n'est pas une propriété aliénable".
Art. 20 is repeated as Art. 18 of the Constitution of 24 June 1793, and as Art. 15 of the Constitution of 5 Fructidor, An. III (22 August 1795).
110) Déclaration des Droits de l'Homme et du Citoyen, of 24 June 1793, cited by Duguit and Monnier, op. cit., p. 68: "Art. 16. Le droit de propriété est celui qui appartient à tout citoyen de jouir et de disposer à son gré de ses biens, de ses revenus, du fruit de son travail et de son industrie".
111) Déclaration des Droits de l'Homme et du Citoyen in Constitution de la République Française, cited by Duguit and Monnier, op. cit., p.79: "Art. 1. Les droits de l'homme en société sont la liberté, l'egalité, la sûreté, la propriété.
Art. 5. La propriété est le droit de jouir et de disposer de ses biens, de ses revenues, du fruit de son travail et de son industrie".
112) Cf. Proclamation des Consuls de la République du 24 Primaire, an. VIII, (15 December 1799), in Duguit and Monnier, op. cit., p.129.
Déclaration du Roi, du 2 mai 1814, in Duguit and Monnier, op. cit., p.182.
Acte Additionel du 22 avril 1815, in Duguit and Monnier, op. cit., p.197.
Constitution of 1830, in Duguit and Monnier, op. cit., p.213.
Art. 544 of the Code Napoléon, 6 février 1804, cited by Eugène Blum, La Déclaration des Droits de l'Homme et du Citoyen, quatrième édition, Paris, 1909, p.301.

113) The French Constitution, English translation by the Press and Information Division, French Embassy, New York, 1958.
114) P. J. Proudhon, What is Property?, trans. by Benjamin R. Tucker, London, (no date), Vol. I, p.38.
115) Eugène Blum, La Déclaration des Droits de l'Homme et du Citoyen, quatrième édition, Paris, 1909, p.294: "Peut-on soutenir sans paradoxe… que la Révolution a fondé parmi nous le droit de propriété".
116) A. Esmein, Éléments de Droit Constitutionel Française et Comparé, septième édition, Paris, 1921, Tome 2, p.537: "La Révolution a toujours considéré la propriété individuelle comme la pierre singulaire de l'édifice social".
117) Cited by Paschal Larkin, Property in the Eighteenth Century with Special Reference to England and Locke, Cork, 1930, p.229.
118) Bulletin des Lois, No. 308 (12 May 1835), cited by M. de Cormenin, "France and Decentralization" in The Dublin Review, Vol. V, No. X (October 1838), p.311: "Toute institution de majorats est interdite à l'avenir".
119) Ibid., pp. 313, 314. The Irish laws of inheritance have recently been altered, bringing them more into line with the French rather than with the British tradition by the Succession Act, passed by the Oireachtas in July 1966. We have been unable to obtain a copy of this Act as we are informed that it is not yet in print.
120) Rerum Novarum, 15 May 1891, trans. as "The Condition of the Working Classes", in The Great Encyclical Letters of Leo XIII, 3rd edn., New York, 1903, p.221.
121) Quod Apostolici Muneris, trans. as "Socialism, Communism, Nihilism", in ibid., p.30.
122) Ibid., p.23.
123) Alfred O'Rahilly, Social Principles, Cork, 1948, Chaps. III, IV, pp.23-35.
124) Quadragesimo Anno, 15 May 1931, CTS edn., London, 1946, §105, p.39.
125) Ibid., §49, p.19.
126 Ibid., §§91-95, pp.35-36.

127) Cited by Alfred O'Rahilly, Social Principles, Cork, 1948, p.44. Cf. also p.45.
128) Mater et Magistra, 15 May 1961, CTS edn., London, 1962, §109, p.31.
129) Ibid., and §111, p.32. Cf. also O'Rahilly, op.cit., p.31.
130) Ibid., §106, p.30.
131) Rerum Novarum, in The Great Encyclical Letters of Leo XIII, 3rd edn., New York, 1903, p.210.
132) Cited by P. H. Pearse, "The Sovereign People" in Political Writings and Speeches, Dublin, 1924, p.359.
133) Cf. Discours sur L'Origine et les Fondements de l'Inégalité parmi les Hommes, introduction by F. C. Green, Cambridge, 1941, pp. 65, 83.
134) James Connolly, Labour in Ireland, Dublin, 1920, p.304.
135) Ibid., p.185.
136) Cited by James Connolly, ibid.
137) Aodh de Blácam, Towards the Republic: A Study of New Ireland's Social and Political Aims, Dublin, 1919, p.49.
138) Robert Lynd, in the Introduction to Labour in Ireland, p. xx.
139) This opinion was, we believe, offered by Alfred O'Rahilly at a recent civic ceremony in Dublin.
140) P. H. Pearse, "From a Hermitage", in Political Writings and Speeches, Dublin, 1924, p.176.
141) "The Sovereign People", ibid., p.338.
142) Ibid.
143) Ibid., p.340.
144) Ibid., p.339.
145) Ibid., p.336.
146) Cited in Irish Historical Documents, ed. by Edmund Curtis and R. B. McDowell, London, 1943, p.319.
147) Bunreacht na h-Éireann, Dublin, 1942, pp.142-144.
148) Vincent Grogan, "The Constitution and Natural Law", in Christus Rex, Vol. VIII, No. 3 (July 1954), p.202.
149) Alfred O'Rahilly, Thoughts on the Constitution, Dublin, 1937, p.70.

150) Alfred O'Rahilly, op. cit., p.58.
151) Ibid., pp.58-59.
152) Dr. K. C. Wheare, Modern Constitutions, London, 1951, p.62.
153) Bunreacht na h-Éireann, Dublin, 1942, Article 43.1.2.
154) Cf. Declan Costello, "Natural Law and the Irish Constitution", in Studies, Vol. XLV, No. 180 (Winter 1956), p. 413.
155) Cf. Donal Barrington, "Personal Liberty", in The Irish Monthly, Vol. LXXX, No. 948, (June 1952), pp.226-230. And ibid., No. 949 (July 1952), pp.268-272. Also, Declan Costello, op. cit., pp.403-414; Colum Gavan Duffy, "The Irish Constitution and Current Problems", in Christus Rex, Vol. XII, No.2 (April 1958), pp.99-121; John Maurice Kelly, Fundamental Rights in the Irish Law and Constitution, Dublin, 1961, pp.124-139.

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1) James Hogan, Election and Representation, Cork, 1945, p. xxxvii.
2) G. B. Shaw, The Intelligent Woman's Guide to Socialism, Capitalism, Sovietism and Fascism, London, 1937, Vol. II, p.422.
3) A. Toynbee, A Study of History, abridged edn. by D. C. Sommervell, London, 1960, p.899.
4) Jeremiah Newman, Studies in Political Morality, Dublin, 1962, p.340.
5) Jacques Maritain, The Twilight of Civilization, trans. by Lionel Landry, London, 1946, p.41. For an almost identical statement by the same author, cf. The Rights of Man and Natural Law, London, 1945, p.31.
6) R. S. Devane, The Failure of Individualism, Dublin, 1948, p.173.
7) Erik von Kuehnelt-Leddihn, Liberty or Equality: The Challenge of our Time, ed. by John P. Hughes, London, 1952, p.94: "Yet as a result of the many inventions of modern times direct democracy could today be realized in a large nation also. It would certainly be

feasible to install black and white push-buttons in every household, which could work by inserting a latch-key…." And he adds, "We have not made this proposition as a joke!" (p.95)

8) Count Gonzague de Reynold, "Democracy and History", in The Dublin Review, No. 468 (2nd quarter 1955), p.158.

9) Cf. Politics, Book IV, Chapter XIV, 1298a, Everyman edn., London, 1939, p.132.

10) D. H. Cole, "Theories and Forms of Political Organisation" in An Outline of Modern Knowledge, 1931, p. 704.

11) Cf. for example, Aristotle, Nicomachean Ethics, trans. by F. H. Peters, (11th edn.), London, 1909, Book VIII, Chapter X, 3 and 6; Plato, The Republic, trans. by H. D. P. Lee, London, 1955, Book VIII, §§ 6,7.

12) De Regimine Principum, I,1; in Opuscula Philosophica, (Marietti edn), Rome, 1954.

13) Summa Theologica, I, II, ques. 105, art. 1.

14) Commentary on the Politics of Aristotle, V, 1; cited by Alfred O'Rahilly, "The Democracy of St. Thomas", in Studies, Vol. IX, No.35 (March 1920), p.7, n.1.

15) Carlton Hayes, A Political and Social History of Modern Europe, New York, 1922, Vol. II, pp.292-293.

16) An anonymous contributor to The New Monthly Magazine and Literary Journal, Vol. XXXII, No. CXXX (October 1831), p. 299. The article is entitled "America".

17) Ibid. In 1615, King Charles II granted a charter to Connecticut, which, until 1818, continued to be the sole Constitution of the State.

18) A Government by the People, Washington, 1962, p.9.

19) The Records of the Federal Convention, revised edn. by Max Farrand, Yale, 1937, the debate of 31 May 1787,Vol.I, p.48. The word "immediately" was inserted in the text afterwards.

20) Ibid.

21) Ibid.

22) Ibid., pp. 26-27.

23) Ibid., pp. 49, 51, 123, 132.

24) The Fundamental Constitutions of Carolina, (1669), Old South Association, Boston, Massachusetts, (no date), p.1.
25) Letter cited by S. E. Morison, Sources and Documents illustrating the American Revolution, (1764-1788), and the formation of the Federal Constitution, Oxford, 1923, p.221: "Ce dernier article attaque la basse même de la Constitution, et tend à établir, à l'instar de l'Etat de Pennsylvanie, une démocratie parfaite". (This work will henceforward be cited as Sources and Documents).
26) James Madison, The Federalist or The New Constitution, Everyman edn., London, 1922, Paper X, p.45.
27) Ibid., No. XIV, p.62.
28) "America", in The New Monthly Magazine and Literary Journal, Vol. XXXII, No. CXXX (October 1831), p. 298.
29) Ibid.
30) Ibid., p.299.
31) Jacques Maritain, Christianity and Democracy, trans. by Doris C. Anson, London, 1945, pp. 20, 21.
32) J. P. Mayer, "Democracy and Party in the Modern Mass State", in The Dublin Review, No. 419 (October 1941), pp.134-135.
33) Cf. pp.78-79 and footnote 52 of Chapter II of this thesis.
34) Alfred O'Rahilly, "Suarez and Democracy" in Studies, Vol. VII, No. 25 (March 1918), p.21, n.1.
35) Moorhouse F. X. Miller, "Bellarmine and the American Constitution", in Studies, Vol. XIX, No. 75 (September 1930), pp.361-375.
36) G. D. H. Cole, "Theories and Forms of Political Organisation" in An Outline of Modern Knowledge, London, 1931, pp.714-715.
37) C. E. M. Joad, Guide to the Philosophy of Morals and Politics, London, 1938, p.542.
38) Cf. "Declaration and Resolves of the First Continental Congress", 14 October 1774, cited by S. E. Morison, Sources and Documents.
39) For Locke's influence, cf. Jeremiah Newman, Studies in Political Morality, Dublin, 1962, pp.352-353.

40) George Jellinek, La Déclaration des Droits de l'Homme et du Citoyen: Contribution à l'Histoire du Droit Constitutionel Moderne, Paris, 1902, Chapitre III, "La Déclaration Française s'est inspirée des 'Bill of Rights' des colonies de l'Amérique du Nord".
41) Cited by Andrew Beck, "The Notion of Sovereignty", in The Month, Vol. CLXXVII, No. 923 (September-October 1941), p.431: "La puissance absolue et perpetuelle d'une République".
42) Ibid., "La puissance de donner loi à tous en général et à chacun en particulier sans le consentement…"
43) Among these are R. S. Devane, The Failure of Individualism, Dublin, 1948, p.141; James Hogan, Election and Representation, Cork, 1945, pp.15, 16; Jeremiah Newman, Studies in Political Morality, Dublin, 1962, pp.394; Lord Percy of Newcastle, The Heresy of Democracy: A Study in the History of Government, London, 1954, Chapter 1.
44) Jacques Maritain, The Rights of Man and the Natural Law, London, 1945, p.45.
45) J. P. Mayer, "Democracy and Party in the Modern Mass state", in The Dublin Review, No. 419 (October 1941), p.134.
46) J. A. Marriott, Six Ages of European History, London, 1915, Vol. VI, The Remaking of Modern Europe (1789-1878), p.18.
47) Jacques Maritain, Three Reformers: Luther, Descartes, Rousseau, London, 1928, p.132.
48) Jacques Maritain, op. cit., p.133.
49) Ibid., p.134.
50) Cf. Du Contrat Social ou Principes du Droit Politique, ed. by C. E. Vaughan, Manchester, 1918, Book II, Chapitre III, p.24: "Il y a souvent bien de la différence entre la volonté de tous et la volonté générale."
51) Ibid., Book I, Chapitre VI, p.13: "L'aliénation totale de chaque associé aves tous ses droits à toute la communauté". Cf. Ibid., Book I, Chapitre IX, p.18 and Book II, Chapitre IV, pp.25-28.
52) Jacques Maritain, op. cit., p.136.
53) Claud Sutton, Farewell to Rousseau: A Critique of Liberal Democracy, London, 1936, Introduction, p.vii.

54) Full text in the International University Course, Nottingham, (no date), Section 6, pp.265-266.
55) H. Gigon, Thunder over Europe, London, 1937, p.11.
56) Denis O'Keeffe, "Democracy: An Analysis", in Studies, Vol. XXVIII, No. 110 (June 1939), p.189.
57) James Hogan, Election and Representation, Cork, 1945, p.12.
58) Full text in the International University Course, Nottingham, (no date), Section 6, p.290. (Italics mine).
59) James Hogan, op. cit., p.12.
60) Ibid., p.12.
61) Ibid.
62) Ibid., p.13.
63) Christopher Dawson, "Democracy and the Party System" in The Month, Vol. CLXXXI, No.944 (March-April 1945), p.127.
64) Denis O'Keeffe, op. cit., p.189.
65) Edmund Burke, Reflections on the Revolution in France, ed. by F. G. Selby, London, 1910, p.65.
66) Ibid., p.88.
67) C. E. M. Joad, Guide to the Philosophy of Morals and Politics, London, 1938, p.790.
68) Jacques Maritain, Christianity and Democracy, London, 1945, p.47. For an almost identical definition, cf. Joseph Keating, "The Death-Knell of Autocracy", in The Month, Vol. CLXXXI, No. 944 (March-April 1945), p.395. C. E. M. Joad defines democracy as a "method of government under which every citizen has an opportunity of participating, through discussion, in an attempt to reach voluntary agreement as to what shall be done for the good of the whole". (Op. cit., p.807)
69)) The French Constitution, English translation by the Press and Information Division, French Embassy, New York, 1958, Title I, "On Sovereignty", Article 2, Paragraph 5, p.4.
70) James Hogan, Modern Democracy, Cork, 1938, p.15. Cf. also Fr. James O.F.M. Cap., "The Future Democracy?" in Bonaventura, (Autumn 1937), p.82, and Reform or Revolution?, Cork, 1938, p.44.

71) John XIX, 2 (Confraternity translation, Old Edition).
72) Lord Percy of Newcastle, The Heresy of Democracy: A Study in the History of Government, London, 1954, p.22.
73) "Immortale Dei", in The Great Encyclical Letters of Leo XIII, 3rd edn., New York, 1903, pp.108-109. Subsequent quotations from Pope Leo's encyclicals refer to this work.
74) Ibid., p.123.
75) Ibid., p.120.
76) Ibid., p.123.
77) Ibid., p.127.
78) Encyclical, "Libertas, praestantissimum", cited on p.162.
79) Ibid., p.136.
80) Ibid.
81) Ibid., p.145.
82) Graves de Communi, p.481.
83) Ibid., p.482.
84) In The Irish Ecclesiastical Record, Vol. XV (1904), pp.175-180.
85) In The Irish Ecclesiastical Record, Vol. XXXIII, No.2 (February 1929), pp.212-215.
86) Cited by Robert Aubrey Noakes, "Napoleon's Attitude towards Religion", in The Month, Vol. CLXXVII, No.919, (January-February 1941), p.26.
87) Ibid., p.27.
88) Nicholas of Cusa, De Concordantia Catholica, II, 14, Basel, 1565, p.730; cited by Alfred O'Rahilly, "The Catholic Origin of Democracy", in Studies, Vol. VIII, No. 29 (March 1919), p.13.
89) Alfred O'Rahilly, "The Sources of English and American Democracy", in Studies, Vol. VIII, No.30 (June 1919), pp.189-209. For a different view on this subject, cf. J. P. Mayer, "Democracy and Party in the Modern Mass State", in The Dublin Review, No. 419 (October 1941), pp.134-135.
90) George H. Sabine, A History of Political Theory, New York, 1937, p.286.

91) John A. Ryan, "Comments on the 'Christian Constitution of States' (Immortale Dei)", in The State and the Church, New York, 1922, pp.26-27.
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