

F. E. Smith and Carson, Casement & Collins

Royal St. George Yacht Club,
Dún Laoghaire

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25 March 2024

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Smith.

Frederick Edwin Smith (from 1922 the Earl of Birkenhead) was a significant figure in British politics between 1910 and 1924. His significance was particularly apparent on the topic of Ireland and its role in British politics. More specifically, his significance can be identified through his personal and professional involvement with three giants of Irish politics: Edward Carson, Roger Casement and Michael Collins.

Smith (generally known as F. E.) played a central role in the anti-Home Rule movement that was reactivated in 1910, and was a leading supporter of Carson's campaign between 1911 and 1914 to block the Third Home Rule Bill and, subsequently, to keep Ulster out of any Home Rule arrangement. He was Galloper Smith who complemented Carson's leadership of the Ulster Unionist cause and prided himself on pronouncing that there was no length to which Ulster could go in resisting Home Rule that he would not support.

In 1916, as Attorney General, Smith prosecuted Roger Casement who had attempted in Germany to set up an Irish Brigade from captured prisoners-of-war and who was arrested in Kerry in April 1916 trying to import guns for the 1916 Rebellion. Smith led the subsequent prosecution of Casement in London notwithstanding the irony of being a supporter of the Ulster Volunteers who, two years earlier, had similarly imported guns into Larne. Smith went beyond the role of prosecutor when he used what he said were extracts from Casement's diaries before the trial to seek to discredit the accused, and, after the trial to dissuade Americans from



seeking clemency for a man who was internationally renowned for exposing human rights abuses by colonial regimes in the Congo and South America.

Finally, in 1921 he was part of the British negotiating team that sat down with the Irish delegation that included Michael Collins for the purpose of seeking agreement on an Anglo-Irish Treaty. His relationship with Collins during those talks was one of the more commented upon aspects of the negotiations, and the subsequent agreement, which both supported, led to criticism and violence from their previous allies, including from Carson who viewed Smith's political transformation on the question of Ireland as treacherous.

Before examining each of these relationships it is important to understand the political environment from which Smith emanated, as it was the politics of Liverpool in the late nineteenth and early twentieth century that formed him and his views on Ireland.

Liverpool.

The population of Liverpool in 1841 included 49,639 Irish born people. That number increased to 83,813 by 1851.¹ These numbers did not take account of the significant numbers who arrived from famine Ireland in Liverpool but who subsequently emigrated overseas. During 1848 the average weekly rate of arrivals from Ireland into Liverpool was 4,861². The negative attitude to this migration (from one part of the United Kingdom to another) was evident from a Leader in the Times of 2 April 1847 which stated:

*“Ireland is pouring into the cities, and even into the villages of this island, a fetid mass of famine, nakedness and dirt and fever. Liverpool, whose proximity to Ireland has already procured for it the unhappy distinction of being the most unhealthy town in this island, seems destined to become one mass of disease.”*³

This was a reference to an outbreak of typhus in Liverpool in 1847 blamed on Irish migrants. These same migrants were also blamed for prominent acts of violence. On 15 September 1849 a young Irishman, Maurice Gleeson, was hanged outside Kirkdale Prison in front of approximately 30,000 people having been found guilty of the murder of Ann Henrickson, her two sons and a servant. The Liverpool

Mail used this murder as an opportunity to condemn Irish immigrants:

*“The Labourers of England are fast sinking to the condition of Irish peasants and paupers. Our warehouses are full and so are our gaols, and an enormously large portion of our population are fluctuating between one and the other...We submit that the State of Ireland is intimately connected with the state of poverty and crime in England. Every assize calendar and every list of criminals in the quarter sessions proves this...”*⁴

It soon became a political charge that the indigent migrating Irish were having a negative impact not just on crime rates in Liverpool but also on the moral wellbeing of the local working-class population. This was justified and explained by reference to the inferior character of the Irish migrant, as noted by The Liverpool Mercury in 1848 which published the following explanation for the difficulties caused by Irish migration:

“It is not to be forgotten too, that much, very much of Irish misery lies beyond the reach of any “remedial measures” of a government, being seated in the character of the Irish people. No government, except by a very indirect and gradual process can change the idiosyncrasies and habitudes of a nation, and convert a slothful, improvident and reckless

¹ Sectarian Violence. The Liverpool Experience 1819-1914. Frank Neal. (1988) Newsham Press. Table 7 Page 9.

² Sectarian Violence. The Liverpool Experience 1819-1914. Frank Neal. (1988) Newsham Press. Table 7 Page 82.

³ The Times, 2 April 1847.

⁴ Liverpool Mail, 7 April 1849.

race into an industrious thrifty and peaceful people...There is a taint of inferiority in the character of the pure celt which is more to do with this present degradation than Saxon domination.”⁵

It didn't take long for this anti-Irish sentiment to transform into sectarian hatred of the Irish because of their religion. On 17 November 1855 the Liverpool Herald, the town's most Orange newspaper, printed a lengthy article entitled "The Curse of Liverpool" which contained the following explanation of the problems faced by Liverpool:

“Let a stranger to Liverpool be taken through the streets that branch off from the Vauxhall Road, Marylebone, White Chapel and the North end of the Docks, and he will witness such a scene of filth and vice, as we defy any person to parallel in any part of the world. The numberless whiskey shots crowded with drunken half-clad women, some with infants in their arms, from early dawn until midnight – thousands of children in rags, with their features scarcely to be distinguished in consequence of the cakes of dirt upon them, the stench of filth in every direction; men and women fighting, the most horrible execrations and obscenity, with oaths and curses that make the heart shudder; all these things would lead the spectator to suppose he was in a land of savages where God was unknown and man was uncared for. And who

are these wretches? Not English but Irish papists. It is remarkable and no less remarkable than true, that the lower order of Irish papists are the filthiest beings in the habitable globe, they abound in dirt and vermin and have no care for anything but self-gratification that would degrade the brute creation...Look at our police reports, three fourths of the crime perpetrated in this large town is by Irish papists. They are the very dregs of society, steeped to the very lips in all manner of vice, from murder to pocket picking and yet the citizens of Liverpool are taxed to maintain the band of roughiens and their families in time of national distress.”⁶

This fear of the Irish papist was no doubt fuelled, in part, by the rise of Irish nationalism through the Young Ireland Movement and also the overthrow of the French monarchy in 1848. As a consequence, there was a significant growth in membership of the Orange Order in Liverpool in the 1850s and, unlike in other parts of Britain, membership in Liverpool was to a large extent drawn from the working classes. Notwithstanding the working class make up of Orangeism, the Conservatives in Liverpool became dependent upon the support of the Orange Lodges. The increase in the size of the Orange Order in Liverpool was apparent from the celebrations on 12 July 1876 when the number of Lodges on parade was approximately 160 and there were between 60,000 and 80,000 people supporting the event. As Neal notes:

“This was the biggest Orange turnout in English history, and was a demonstration of voting power which no local politician could ignore.”⁷

Part of the reason for the growth in Orangeism was the increase in the Irish Catholic population and the improved political organisation of that grouping. When Parnell addressed a Nationalist meeting in Liverpool in 1879 there was a crowd of approximately 20,000 people. More notably, T.P. O'Connor was elected an MP for the Scotland division in Liverpool in 1885, becoming the first Irish Nationalist to be elected outside of Ireland.

It was against this background that the Home Rule election of 1886 was contested. This election saw significant violence between the opposing groups in Liverpool, with Protestant and Catholic men fighting in the streets of Toxteth on 3 and 4 July 1886. This religious divide in Liverpool was clearly reflected in its politics. Conservative support was based on the Liverpool Working Mens Conservative Association which was committed to the Protestant cause and a fierce opposition to Irish Home Rule. In fact, this opposition to Irish Home Rule was to a large extent premised on anti-Catholicism and the defence of the established Church. It made the politics of Liverpool as religiously motivated as politics in Belfast. Alcohol also played a significant role in Liverpool politics at the time. Liberal and non-conformist temperance reformers advocated tee-totalism whereas the Conservatives supported the local brewers. This was another reason why Liver-

pool conservatism gained the support of working men's clubs. The Association was controlled at that time by Aldermen Archibald Salvidge, a local brewer, who was one of the most prominent Conservative Unionist figures in Liverpool. He had a great ability to mobilise the protestant vote in Liverpool to support Tory candidates.

It was during the 1880s that Frederick Smith, father of F.E., was elected as a Conservative Councillor and subsequently Mayor of Birkenhead. His tenureship as Mayor did not last long as he died one month after his election as Mayor at the age of 43. His son had greater political success. Having first focused his interest on the Scotland division in Liverpool (held by T.P. O'Connor), F.E. Smith transferred his interest to the Walton division in Liverpool which comprised the whole Eastern side of the parliamentary borough of Liverpool. He was elected to parliament as a Conservative in 1906, defeating his liberal opponent E.G. Jellicoe by 700 votes, in what was otherwise a disastrous election for the Conservatives.

A Conservative candidate in Liverpool could not get his party's nomination or the electorate's support without being seen to be committed to the cause of Orangeism and strenuously opposed to Irish Home Rule. The framing of Smith's politics was pre-determined by the politics of Liverpool and it was predictable that he would align himself so closely with opposition to Irish Home Rule. Surprisingly, however, some of his early political comments suggested that he viewed the Home Rule question as a dull political

⁵ Sectarian Violence. The Liverpool Experience 1819-1914. Frank Neal. (1988) Newsham Press. Table 7 Page 114.

⁶ Liverpool Herald, 17 November 1855. "The Curse of Liverpool".

⁷ Sectarian Violence. The Liverpool Experience 1819-1914. Frank Neal. (1988) Newsham Press. Page 184.

issue that would not arouse much political opposition. Ultimately, this equivocal attitude transformed into militant support of the Unionist cause and, in particular, its Dublin leader Edward Carson.

Carson.

Edward Carson was a remarkable Irishman. Had he never entered politics he would still have achieved renown as the most successful Barrister at the English Bar from the time he became a Queens Counsel in 1894 until he was appointed as a Law Lord in 1921. His political career began when he was elected in 1892 as Member of Parliament for Dublin University, a position he held until December 1918 when he moved constituency and was elected for Belfast Duncairn. Having been Solicitor General for Ireland in 1892 he was subsequently made Solicitor General for England in 1900 and retained that role for 5 years. He then was appointed as Attorney General for England in May 1915 during the First World War but resigned in October 1915 because of government war policy in respect of Serbia. Having been reappointed to the Cabinet by Lloyd George in 1916, he served as First Lord of the Admiralty and then Minister without portfolio until January 1918. When appointed as a Law Lord in 1921 he sat as Baron Carson of Duncairn.

These were remarkable achievements for a man whose father was an Architect and Civil Engineer who had a practice in South Frederick Street in Dublin and who was born at 4 Harcourt Street in February 1854. Having practised as a Barrister in Dublin, Carson moved to London in 1893 where he encountered Smith. When Smith was appointed as a King's Counsel in 1906, he was still very much in the shadow of Carson's extraordinary success at the English Bar and although he



quickly built up a lucrative legal career, it is hard to disagree with the assessment that at the Bar "Smith was a stiletto to Carson's sledgehammer."⁸ It is difficult to overstate the significance and success that Carson possessed at that time as an advocate at the Bar in London.

They both appeared together in the Soap Trust Case which was an action for libel brought by a well-known soap manufacturer, William Lever (also an MP), against popular newspapers which resulted in the largest sum of libel damages awarded in an action of its kind, resulting in the Northcliffe newspapers having to pay total damages of nearly £220,000 in 1907. The original opinion in that case was requested from Smith and was sought on the basis that it was urgent. On being confronted with a large bundle of papers and a tight timeline, he ordered a bottle of champagne and two dozen oysters before

⁸ Lord Birkenhead and the Irish Question, Robert Allen Kester. Masters Thesis to the University of Richmond, August 1973.

drafting what must be one of the shortest legal opinions of all time. It ran to 15 words:

“There is no answer to this action for libel and the damages must be enormous.”

The case, due to last for a fortnight, and in which Carson was very much the lead King's Counsel alongside Smith, settled on the second day after Carson's opening and the cross examination of the Plaintiff. Carson didn't lead any evidence in chief from the Plaintiff, simply presenting him for cross-examination by the Daily Mail whilst informing the jury that the Defendant's counsel could

“cross examine Mr. Lever to his heart's content but that when his time comes I hope he will be able to follow my example and do the same and call as his first witness his own client Lord Northcliffe”.⁹

Carson and everyone else involved in the case knew Northcliffe was never going to get into the witness box, particularly since the Daily Mail had such a weak defence. That claim settled for £40,000 but there were other related libel actions against the Evening News and other Northcliffe newspapers which settled along similar lines and which brought the total amount of damages to nearly £220,000.

The alignment between Smith and Carson in politics became much closer after the January 1910 General Election resulted in a hung parliament. One of the options

subsequently considered was a Liberal-Conservative coalition and some level of limited Home Rule for Ireland within a broader federal Home Rule scheme. One of the first Conservatives to give consideration to this proposal was Smith but it was soon apparent that this did not have the support of Conservative unionism which maintained its unalterable opposition to Home Rule. In a letter to Lady Londonderry on 29 October 1910 Carson condemned those who were ready to fall in with such an idea and identified Smith as one of the weak links:

“F.E. is very full of himself and seems to approve of the Home Rule proposals! What next!”¹⁰

In letters at that time to Austen Chamberlain Smith had described Home Rule as “a dead quarrel for which neither the country nor the party cares a damn outside of Ulster and Liverpool.” As for the proposed scheme of arrangement between the Liberals and Conservatives Smith wrote:

“We cannot carry it through without losing some friends, but I think we should lose very few and those temporarily....We should still be a united party with the exception of our Orangemen; and they can't stay out long. What allies can they find?”¹¹

This dismissive attitude of Smith towards Orangeism and the influence of Home Rule on British politics has been challenged and qualified by Daniel Jackson in

his work on popular opposition to Irish Home Rule in Edwardian Britain. Jackson contends that these quotes of Smith should be discounted as:

“This was written in October 1910, at least two years before the formal reading of the Home Rule Bill, the inauguration of the Ulster Volunteer Force, the Larne gun-running and the Curragh mutiny, and consequently before all those huge demonstrations took place in Liverpool, Glasgow, Newcastle, Leeds, Hyde Park et al. In any case if we accept the Honourable Member for Liverpool Walton's diagnosis of public opinion, it would be difficult then to explain the notoriously calculating Smith's later enthusiasm for the Ulster cause – to the extent of donning riding gear and acting as General Richardson's Galloper at reviews of the UVF in Belfast – without conceding that something of a shift in public opinion had occurred during the first four years of the 1910s.”¹²

The failure to put together a government resulted in a second election taking place in December 1910. It resulted in the Liberals remaining in government but with the support of the Irish Parliamentary Party and a commitment by the government to press on with its Parliament Bill. It passed third reading in the House of Commons in May 1911 and was intended to remove the House of Lords veto. The Bill subsequently passed through the House of Lords in August 1911 and

its enactment paved the way for the introduction of another Home Rule Bill that could now not be blocked by the House of Lords.

Once it became known that a Home Rule Bill was on the government's legislative programme Edward Carson became its most vocal and effective political opponent, becoming leader of Ulster opposition to the Bill. In September 1911 when addressing a large gathering of Ulster Unionists at Craigavon, he described the Bill as

“a tyranny to which we never can and never will submit... It is our inalienable right as citizens of the British Empire [to have the same rights from the same government as every other part of the United Kingdom] and Heaven help the men who try to take it from us.”¹³

More importantly for Ulster Unionism, in Bonar Law there was a leader of the Opposition who was prepared to go to extreme lengths in order to support their campaign.

Whether Smith was a committed believer in the cause of Ulster Unionism or recognised that his Liverpool constituency gave him no option is a question that is difficult to answer. His previous reference to Home Rule as “a dead quarrel” suggests that his subsequent virulent opposition was more opportunistic than principled. More likely, he recognised that he could not be seen in Liverpool to be lukewarm about the anti-Home Rule stance of Or-

⁹ Carson. H Montgomery Hyde. (1974) Constable. Page 232.

¹⁰ Carson. H Montgomery Hyde. (1974) Constable. Page 279.

¹¹ Carson. H Montgomery Hyde. (1974) Constable. Page 280.

¹² Popular Opposition to Irish Home Rule in Edwardian Britain. Daniel Jackson. (2009). Liverpool University Press. Pages 17-18

¹³ The Times, 27 September 1911.

ange politics that formed such a large part of his support base. Consequently, Smith very quickly became an ardent supporter of the Ulster Unionist cause, even referring to his birthday of 12 July as being a further explanation for his committed support.

Large anti-Home Rule meetings took place not just in Ulster but also in England and Scotland where again Smith and Carson were the lead acts. In January 1912 both of them appeared before a large audience in Liverpool's Sun Hall. Smith warmed up the crowd by reminding them that nothing stood "between Ulster and ruin, but her own determination, and your [Liverpool's] brotherly support." Carson continued by stating that Liverpool had always been true to loyal Ireland and that "you Liverpool men will be behind us all the time, and you will take care that we will get fair play."¹⁴

The following month, February 1912, at a rally outside Belfast in Balmoral Smith pledged the Conservatives to the defence of Ulster. Repeatedly in speeches throughout Ulster and England, alongside Carson, he stated that Home Rule could only be imposed on Ulster at the point of a bayonet and that there were no lengths "however desperate and unconstitutional"¹⁵ to which Ulster would not be entitled to go in resistance.

On 11 April 1912 Prime Minister Asquith introduced the government's Home Rule Bill in the House of Commons, necessary in order for the Liberals to stay in power with the support of John Redmond's

Irish Parliamentary Party. The Bill provided for an Irish parliament established in Dublin with an Upper House and a more representative Lower House. The King would remain Head of State and a Lord Lieutenant, appointed by London, would be his official representative. The Irish parliament would control domestic affairs and the number of Irish MPs in Westminster would be reduced to 42. The introduction of the Bill led to even more vociferous and militant protests from Unionism.

At the Orange Day parade on 12 July 1912 in Cloughfern outside Belfast Smith reverted to some of the language evident in the sectarian Liverpool of previous decades:

"You were asked why you distrust the Nationalist members, and why you are so convinced that the establishment of a Home Rule parliament would be disastrous both to Ulster and the Empire. You answered that it is because you know these men; it is because you have studied their history; it is because you chose rather to believe them over a sustained period where they had every inducement to speak the truth than over a limited period in which they have every inducement to deceive; it is because you know that the spirit of ascendancy, of sacerdotalism and persecution is as active and virulent in their ranks as it was active and virulent when your forefathers met and drove theirs in rout at the Battle of the Boyne...If

I were an Ulster Protestant I would rather be ruled from Constantinople by the Sultan of Turkey than by a politician like Mr. Devlin.... And when the hour comes, as it has come to others, when you are called upon to put everything you hold dear to the hazard, you will go forward to face that future which the inscrutable purpose of the Almighty has in store for you with the quiet confidence of men who have patiently endured until endurance became treason to their race".¹⁶

At the end he was presented with an Orange sash and became recognised, after Carson, as the strongest opponent of Home Rule and the most vocal supporter of Ulster Unionism. Then on 6 June 1914 at the Tyne Theatre in Newcastle 17 May 1914 Smith told the large crowd that:

"Ulster is the only part of Ireland that you can sing "God save the King" without getting your head broken...Ministers who try and use the army will end up swinging from the lampposts of London."¹⁷

At a rally in Blenheim Palace on 27 July 1912 Smith stated that he could "imagine no length of resistance to which Ulster can go in which I should not be prepared to support them."¹⁸ There can be no doubt but that he supported the use of violence in order to stop Home Rule, even if lawfully enacted by the Westmin-

ster Parliament and signed by the King. Again in September 1912 Smith attended a series of parades throughout Ulster at the side of Carson. At one such Belfast meeting Smith said that

"if the Unionists of Liverpool are told that they have no concern with the quarrel, and that they must stand idly by while the liberties of Ulster are usurped, the rifles will go off themselves."¹⁹

They then signed the Covenant together and then sailed to Liverpool for even larger mass meetings, particularly an enormous demonstration in Sheil Park in Liverpool on 30 September 1912. Daniel Jackson described it in the following terms:

"The combined forces of Unionism and Orangeism out on the streets of Liverpool merged to create a stunning aspect, in both scale and colour; indeed, the Liverpool Mercury remarked that the two organisations appeared to have "coalesced in such a way to distribute as evenly as possible the specular benefit of the regalia of the followers of King William."²⁰

A crowd of at least 150,000 attended that event. Carson spoke to rapturous applause and said that "if there is a row I'd like to be in it with the Belfast men, and I'd

¹⁴ Popular Opposition to Irish Home Rule in Edwardian Britain. Daniel Jackson. (2009) Liverpool University Press. Page 54.

¹⁵ F. E. Smith. John Campbell. (1991) Pimlico. Page 326.

¹⁶ F. E. Smith. John Campbell. (1991) Pimlico. Page 327-328.

¹⁷ Newcastle Daily Journal, 8 June 1914.

¹⁸ The Glittering Prizes A Study of the First Earl of Birkenhead. William Camp. (1960) Macgibbon & Kee. Page 77.

¹⁹ Belfast Weekly News, 25 September 1912.

²⁰ Popular Opposition to Irish Home Rule in Edwardian Britain. Daniel Jackson. (2009) Liverpool University Press. Page 78.

like to have you with them. And I will.”²¹ Smith followed him and said that:

“If, and when, it comes to a fight between Ulster and the Irish Nationalists, we will undertake to give you three ships that will take over to help Ulster in our hour of need 10,000 young men of Liverpool.”²²

At this stage his language reached fever pitch when he repeated the threat that if the government ordered the army to march on Ulster “they would be lynched from the lampposts of London”.²³

Notwithstanding this militant and treacherous opposition, the Bill passed its third reading in the House of Commons in January 1913. Undeterred, Smith decided to elevate the military character of his protest when on 19 January 1913 he appeared on horseback alongside Sir George Richardson, a retired Indian Army Officer, to review Ulster’s Volunteer Army that had gathered in Belfast. It was as a result of this event that he earned the nickname of Galloper Smith. Even though the Home Rule Bill had now passed through the House of Commons and Smith was presenting himself as its most virulent opponent, he was making efforts in the background to reach a compromise which involved excluding Ulster from the reach of the Bill. Although Smith had begun the process of converting Carson to this proposal, it was criticised by southern Unionists who were trenchantly opposed to Home Rule for any part of Ireland. Ultimately, the threats of violence from Ulster succeeded and on 9 March 1914

Prime Minister Asquith announced that the Home Rule Bill would be amended to allow the counties of Ulster to opt out of Home Rule but only for a period of six years.

Although the campaign led by Smith and Carson didn’t derail the Home Rule Bill, it did have an impact in encouraging army officers in Ireland to mutiny. March 1914 saw General Hubert Gough, Commander of the Cavalry Brigade at the Curragh and 59 of his Officers, resign having bizarrely been offered an opt out of any military campaign against Ulster in what was an extraordinary and obvious breach of army discipline. This mutiny and threat to parliamentary democracy was given further support as a result of the importation from Germany into Larne of 24,000 rifles by the Ulster Volunteers in April 1914. The men who Carson and Smith had encouraged throughout 1912 and 1913 to acts of violence were now well armed.

It is now apparent that many of those anti-Home Rule protests in Britain were more about the politics of Britain rather than that of the United Kingdom. As has happened in more recent times, the Conservative party used Ulster Unionism for the purpose of promoting its own electoral interests in Britain. As Daniel Jackson has noted:

“Bonar Law exploited the prominence of Home Rule by playing the Orange card to get elected. Even the ultra-loyal UWUC [Ulster Women’s Unionist Council] suspected that it

was “allowing itself to be made the tool of the English Conservative party...who have no regard for Ulster except as a lever for securing their own return to power”. In fact, it is arguable that the Unionist leaders deliberately kept the issue at fever pitch to make the most of public opposition. Carson himself admitted to the Tory MP William AS Hewins in July 1913 that “he had known for a long time that the government would not force Home Rule on Ulster. So it is all play acting.” This was an act conducted with remarkable chutzpah. Even F.E. Smith (a private Atheist) was cynical enough to ask an Assembly of Orangemen: “If we are not prepared to die for our faith, in the name of God and of men what is there we would die for?”²⁴

Notwithstanding his opportunism and cynicism, the virulence of Smith’s opposition to Home Rule and his sectarian attitude towards those in Ireland who supported it had a significant impact in promoting and achieving partition and establishing what would later become Northern Ireland.

²¹ Liverpool Courier, 1 October 1912.

²² Liverpool Courier, 1 October 1912.

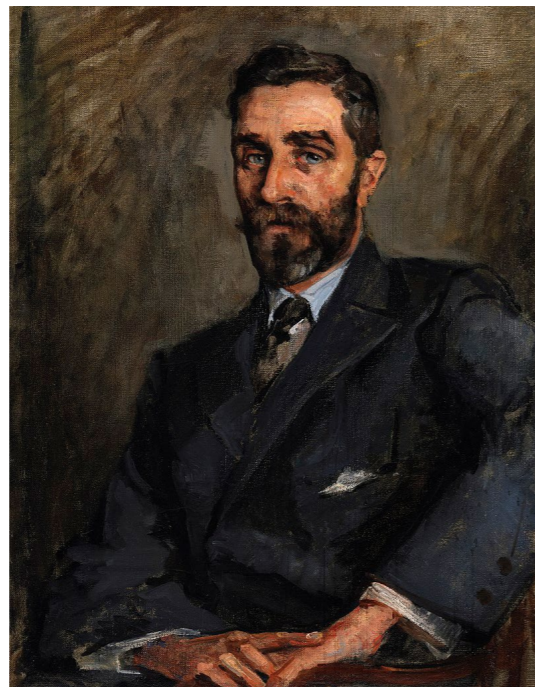
²³ F.E. Smith. John Campbell. (1990) Pimlico. Page 331.

²⁴ Popular Opposition to Irish Home Rule in Edwardian Britain. Daniel Jackson. (2009). Liverpool University Press. Pages 247-248.

Casement.

At the outbreak of war in 1914 Smith joined the government as Director of the Press Bureau. He would now be visiting Liverpool and other northern cities not with Carson but with his great friend Winston Churchill (then a Liberal) as a means of generating support for the war. He was the only Unionist in the liberal government but, dissatisfied with his separation from Unionist backbenchers, resigned from government in September 1914. Soon however, a national government was formed by Asquith and Bonar Law. Churchill, then a hate figure for Conservatism and Unionism, was removed from government. Carson was made Attorney General and Smith became Solicitor General, receiving a Knighthood. Subsequently in November 1915, after Carson resigned, Smith was appointed to the office of Attorney General and became a full Cabinet member.

In April 1916 Sir Roger Casement was arrested at Banna Strand having sought to import arms from Germany for the benefit of the Irish Volunteers, imitating in many respects the importation of guns previously achieved by the Ulster Volunteers. Casement had served for many years in the British Diplomatic Service and had exposed shocking exploitation of natives in the Belgian Congo and in rubber plantations in South America. This earned him a Knighthood in 1911. Having retired from the diplomatic service on grounds of ill health, he absorbed himself in the cause of Irish independence. After the war commenced he visited Germany in the hope of securing German support for the establishment of an Irish brigade from Irish prisoners of war who had been



captured by Germany whilst they served in the British Army. His efforts were unsuccessful in that he only recruited approximately 50 Irishmen.

Having been arrested, Casement was not summarily executed like the other leaders of 1916 but instead was sent to England to stand trial on a charge of high treason. His trial commenced in London on 26 June 1916 before the Lord Chief Justice, Lord Reading, and a jury. The prosecutor was Attorney General Smith. It was ironic that Casement was being prosecuted for the importation of arms and high treason by a person who had previously supported the importation of arms and treason against his own government.

Casement needed lawyers to defend him which was problematic since he was being prosecuted in London. His first cousins, Gertrude and Elizabeth Bannister, sought the assistance of Alice Stopford Green, an Irish nationalist supporter, to support Casement during his trial. She recommended the solicitor George Gavin

Duffy who agreed to represent the prisoner but he could not secure the services of a King's Counsel from the English Bar and consequently wrote to his brother-in-law, Alexander Sullivan, who practiced as a barrister in Dublin.

Sullivan had never practiced in English Courts and his status as a Serjeant afforded him no senior status before the English Courts, not even being permitted to occupy the front benches occupied by King's Counsel at the English Bar. Although Smith had asked the Lord Chancellor, Lord Finlay, to appoint him as an English King's Counsel so that there would be no disparity between prosecution and defence, this was refused. Sullivan took on a very difficult and weak brief whilst also facing the inevitable prejudices and anger of a British establishment (and London Jury) that was at war. The fact that his client was a knight and a former employee of Britain's Diplomatic service made his task even more difficult. Although his closing speech to the jury is competent and presents the broad picture explaining Casement's actions, Sullivan was a very deferential and obsequious advocate, as was apparent when he collapsed after an unusual and inappropriate intervention from Lord Reading during his closing speech.

A trial in London before an English jury during a time of war was inevitably going to result in Casement's conviction. A bench of Viscount Redding, Mr. Justice Avery and Mr. Justice Horridge was never going to be receptive to Sullivan's argument that his client intended to use the Irish Brigade for the purpose of opposing Ulster opposition to the Home Rule Bill.

Even before the trial commenced, supporters of Casement were warned off speaking out in his defence as a result of the production of what were described as his diaries. There were also attempts made to contaminate Casement's legal team. Before Serjeant Sullivan arrived from Ireland Casement's Junior Counsel, Artemus Jones, was handed a typed copy of the diaries and was given a message on behalf of the Attorney General that he wished Serjeant Sullivan to read them. In his own memoir, *The Last Serjeant*, Sullivan gave the following account of how the diaries were used by Smith in advance of the trial:

“Before I arrived in London for the trial I received a number of communications that puzzled me. I am still unable to fathom them. The Home Office wrote that, as requested by the Attorney General, they would allow me to inspect Casement's Diary which was in their possession. It was not in evidence and in my opinion never could be in evidence. The Attorney General wrote to say that in his opinion I should go over and inspect it. Finally he wired me that an official would be in attendance at the Home Office day and night to show me the Diary when I called. I did not go. As I sat in Court waiting for the arrival of the Judges, Sir. Travers Humphreys, then a Junior, handed me an envelope which he said the Attorney General desired should be put into my hands as it was a copy of the Diary. I never opened it, but handed it to Artemus Jones, one of my Juniors. The Attorney General later asked him if I had read it, and he answered that I had not but that he had. The At-

*torney General became furious and threatened Jones that he would be reported to his benchers for concealing it from me – which, of course, he had not done... I think that Freddie Smith, AG, was anxious to play down the prosecution so as to mitigate the growing hostility of Americans. Once launched, it was impossible to abandon proceedings, but I think that he wanted me to plead “guilty but insane”. That was quite impossible.”*²⁵

Smith is also alleged to have shown the diaries during the trial to the Irish Attorney General, James O'Connor. Bulmer Hobson in *The Accusing Ghost*, written much later in 1956 and without it ever been publicly confirmed by O'Connor, says that O'Connor told him that he attended the trial whilst in London on a business trip and after he had left the Court Smith, who he hardly knew, came running down the corridor after him calling out:

*“Here O'Connor, I want to show you something. He then handed O'Connor a photostat of a page of the indecent diary. O'Connor had no political sympathy with Casement but he was shocked and disgusted at the impropriety of the Attorney General of England peddling dirty stories in this way about a man he was prosecuting on a charge of treason.”*²⁶

In opening the prosecution²⁷ to the jury, Smith described Casement's actions in the way that he viewed much of life and politics, namely a game:

“The prisoner, blinded by a hatred to this country, as malignant in quality as it was sudden in origin, has played a desperate hazard. He has played it and he has lost it. To-day the forfeit is claimed.”

Sullivan defended Casement on the basis that the law under which he was prosecuted did not apply because the treason statute of 1351 should apply only to seditious and treasonous acts committed within the realm of England. Therefore, since Casement's alleged acts were committed in Germany, it could not apply to him. It was not a persuasive argument particularly since the prosecution produced a statute from the reign of Henry VIII which provided for treason outside of the realm.

In his closing speech Sullivan sought to give to the jury an overview of recent events in Ireland which, he believed, would put Casement's actions in their appropriate context. He said that what Casement did was no different to what Ulster Volunteers had done in arming themselves with guns imported into Larne:

“Observe the state of affairs [in Ireland] as you have it proved in evidence. There was in the North of Ireland an armed body of men ostensibly marching about...in Bel-

fast, deliberately originated with the avowed object of resisting the operation of an act of parliament which had the approval of the rest of the country. They armed, and nothing was said to them; they drilled, and nothing was said to them; they marched and counter marched; the Authorities stood by and looked at them. The police were powerless. They had great forces behind them, great names and men of high position. Imagine the feeling in the country...[if]...the County of Kerry there came a rumour of the police being powerless, the civil power being paralysed, the civil government practically abdicated – there came a rumour that all that stood between peace and the rifles of those men, his Majesty's army, might not perhaps be relied upon.”

This part of his closing speech was interrupted by the Lord Reading who asked Sullivan where was the evidence of this before the Court. Smith, recognising that the Judges's point is always the best point, emphasised this argument by stating there were only uncorroborated statements about the importation of rifles into the North of Ireland. Sullivan abjectly caved into this criticism by stating:

“I pass from that at once. If I have been carried away too far I am exceedingly sorry.”

He then broke down, sank into his seat and buried his head into his hands. The following morning he didn't turn up and instead his unfortunate Junior, Artemus Jones, informed the Court that Serjeant Sullivan “was in a condition this morning which does not permit of his appear-

ance in Court.” Smith then commenced his closing speech to the jury. In response to what Sullivan had stated about internal Irish politics he said:

“Gentlemen, you can sweep away all these belated afterthoughts and sophistries about old Irish politics and the volunteers in the North of Ireland. They were never in his mind when he made those speeches, they never inspired the appeals he made, they had no relation to it, and, as I have said, they are afterthoughts when it is necessary to attempt to exhume some defence, however remote, from the facts in which the prisoner finds himself.”

Casement was convicted of high treason and was permitted to give a speech from the Dock. Some of his speech highlighted the perversity of being prosecuted by a man who had himself supported the importation of guns into Ulster. He said:

“My Counsel has referred to the Ulster Volunteer Movement, and I will not touch at length upon that ground save only to say this, that neither I nor any of the leaders of the Irish Volunteers who were founded in Dublin in November 1913 had to quarrel with the Ulster Volunteers as such who were born a year earlier. Our movement was not directed against them, but against the men who misused and misdirected the courage, the sincerity and the local patriotism of the men of the north of Ireland. On the contrary we welcomed the coming of the Ulster Volunteers, even while we deprecated the aims and intentions of those English men who sought to

²⁵ The Last Serjeant. AM Sullivan. (1952) MacDonald. Page 272.

²⁶ The Glittering Prizes A Study of the First Earl of Birkenhead. William Camp. (1960) Macgibbon & Kee. Page 115.

²⁷ Casement was prosecuted alongside Private Daniel Bailey, one of the few recruits to his ill-fated Irish Brigade.

pervert to an English party use – to the mean purposes of their own bid for a place and power in England – the objectivities of simple Irish men. We aimed at winning the Ulster Volunteers to the cause of a United Ireland...

If, as the right honourable gentleman, the present Attorney General, asserted in his speech at Manchester, nationalists would neither fight for Home Rule nor pay for it, it was out of duty to show him that we knew how to do both....

If small nationalities were to be the pawns in this game of embattled giants, I saw no reason why Ireland should shed her blood in any cause but her own, and if that be treason beyond the seas I'm not ashamed to avow it or to answer for it here with my life....The difference between us is that the Unionist champions chose a path they felt would lead to the woolsack; while I went a road I knew would lead to the Dock."

This was a reference to Smith's ambition to become Lord Chancellor and must have made uncomfortable listening for Smith, even in the very welcoming environment of Lord Reading's Court. Casement continued:

"And the event proves we were both right. The difference between us is that my "treason" was based on a ruthless sincerity that forced me to attempt in time and season to carry out in an action what I said in word – whereas their treason lay in ver-

bal incitements that they knew need never be made good in their bodies. And so, I am proud to stand here today in the traitor's Dock to answer this impeachment than to fill the place of my Right Honourable Accusers."

At this, Smith smiled and muttered to one of his assistants "Change places with him? Nothing doing." He then rose and left the court room with his hands in his pockets. This contemptuous response revealed a deeply unpleasant and nasty aspect to his character, a factor noted by his main biographer who described his response to the speech of Casement as follows:

*"This graceless insult to a defeated antagonist whose courage he would in other circumstances have admired stands as a more serious blot on his handling of the case than any of the more sinister allegations made against him. It was coarse, it was crude, it was callous, and it was sadly characteristic of F.E. in one of those recurrent fits of boorishness which call in question the claims made for his great generosity of spirit."*²⁸

On completion of his speech Casement was sentenced to death. An appeal took place on 17 July 1916 with Smith again leading for the Respondent Crown and Serjeant Sullivan fit again for Casement. It was during this trial that John Lavery painted his trial of Casement which contained all the main characters, with Smith in prominence and Casement as the central figure. The appeal was rejected by

Lord Darling and his colleagues, with Sullivan again being his deferential and obsequious self in what were even more inhospitable surroundings that did not afford the Appellant any prospect of success.

A further appeal could be brought to the House of Lords but it was dependent upon receiving leave of the Attorney General. This was refused by Smith who thought there was no substance in the point raised by the Defence. Gavan Duffy was furious at this refusal and, in a statement published in the Times on 28 July 1916, he protested that such a decision was left in the hands of F.E. Smith "whose antecedence in Ulster are well remembered". The only remaining chance for Casement was that the British Cabinet would advise the King to exercise the Royal prerogative in favour of life imprisonment. Appeals for clemency came in from many notable people including George Bernard Shaw and Sir Arthur Conan Doyle but to no avail.

It has been suggested that Smith used the diaries in order to prevent support for clemency but there is limited evidence substantiating this. What is not open to doubt however is that agents within the Foreign Office did circulate what were alleged to be typed copies of the diaries to associates in Washington so that they could be shown to influential figures in Irish and Catholic groups. We also know that in a conversation with the American Ambassador, Walter Hines Page, after the conviction Asquith asked if he had seen the diaries and told him that "You need not be particular about keeping it to yourself." It is unquestionably the case that the British Government used the diaries as a means of discrediting the cam-

paigned for clemency for Casement. Smith was part of that campaign but probably no more involved than any other Cabinet member. What we do know however is that five years later in February 1922 Smith, during the Anglo Irish negotiations, showed the alleged original diaries to Michael Collins and Eamon Duggan who subsequently confirmed they had seen them.

²⁸ F.E. Smith. John Campbell. (1990) Pimlico. Page 413.

Collins.

In December 1918 Smith was re-elected to the House of Commons for the West Derby Division (Walton having been abolished) and soon after became part of Lloyd George's coalition government when he was appointed to the office of Lord Chancellor and made Baron Birkenhead. Casement's prediction that he had pursued the Woolsack had come to pass. As Lord Chancellor he was required to give his appraisal of the ongoing War of Independence in Ireland. In a debate on 22 May 1919 in the House of Lords he described the 5 years up to that date as being:

*“Five years of tragic disaster for the union between Ireland and Great Britain, and of discouragement to those who have worked for the establishment of better relations between the two islands.”*²⁹

However, he was developing an understanding of the unpopularity of British rule in Ireland and its consequence for ongoing government from London:

*“There is no use closing our eyes to the fact that the great majority of Irishmen today are in open rebellion against the people of this country. Murder is not only common, but it is commonly approved. It excites no reprobation among an overwhelming number of the supporters of the Sinn Féiners.”*³⁰



He had developed an awareness that Sinn Féin would accept nothing but an Irish Republic; that “the Ulstermen will never go into an Irish Republic”, and that neither party wants partition. Nonetheless, notwithstanding his recognition that this was a political problem he concluded that:

*“At this moment the only policy which it is proper to announce... is that we will, by the assertion of any degree of force that may be necessary, protect life in Ireland and maintain order....I believe that is the policy which needs to be pursued. There are alternatives which no reasonable person will dismiss, which no-one at this moment will propose.”*³¹

This final sentence appears to be probably the first indication on his part that political engagement with Sinn Féin and those participating in the War of Indepen-

dence in Ireland would at some stage be necessary.

By May 1920 circumstances in Ireland had become even more serious as was apparent in Smith's response to ongoing criticism within British politics about the situation in Ireland. He noted:

*“that we should be well advised to face the situation which awaits us with the knowledge that a body of desperate men, a body of well organised men, and a body of able men have banded themselves together to challenge the strength of this country and to shrink from no means which will enable them to make good what they call their self-determination and their independence.”*³²

He then pointed out the strategic importance of Ireland to the British Empire and how permitting Ireland to secede would be similar to the United States of America permitting southern secession during its Civil War. And to those fomenting dissent and violence in Ireland he warned:

*“If my voice can reach those who have banded themselves together in courses so desperate, I would advise them that while they tell us that they hate the British Empire, it has never been found by any nation, still less by any section of a nation, wise to despise either the strength or determination of the British Empire.”*³³

He appeared incapable of understanding the Irish Republican movement and suggested that Bolshevik influence and propaganda had played a significant part in Ireland, although he did concede that it was not true to say that the whole Irish movement was Bolshevik in character. The military campaign against British Rule in Ireland was viewed as an attempt by the revolutionary forces of the world to undermine “the traditional, historic home of stability and order in the world [that] finds its centre and heart in these islands.”³⁴ He also linked events in India and Egypt with Ireland and suggested that these were designed for the purpose of:

*“gradually substituting for those varied and ordered system of government which civilisation has adopted for centuries, and which we believe the world has finally assented to, a rule of dictatorship by a few men, seizing by violence the reins of power and holding them when seized by continued acts of murder and violence.”*³⁵

The legislative proposal that next occupied Smith as Lord Chancellor was the progression of the Government of Ireland Bill through the House of Lords from November 1920. This was the Bill that proposed the partition of Ireland and the establishment of parliaments in Southern and Northern Ireland. He recognised that the establishment of separate parliaments was not an ideal arrangement but that it was dictated by the condition of the present situation in Ireland. He acknowledged

²⁹ House of Lords Debate, 22 May 1919.

³⁰ House of Lords Debate, 22 May 1919.

³¹ House of Lords Debate, 22 May 1919.

³² House of Lords Debate, 6 May 1920.

³³ House of Lords Debate, 6 May 1920.

³⁴ House of Lords Debate, 5 August 1920.

³⁵ House of Lords Debate, 5 August 1920.

that a single parliament would be “infinitely preferable” and that the Bill “recognises the possibility of a United Ireland, and supplies a simple and effective means by which union can be brought together by the two parliaments.”³⁶ He returned to the “stormy and bitter controversies” of 1914, obviously conscious of the militant role he had played in the campaign prior to the 1914 Bill, and proceeded to describe Ulster as containing a population that is “overwhelmingly protestant” and “in its main attributes resembling far more closely the population of Scotland than the population of the south of Ireland”, thus leading to what he viewed as only two alternatives, namely continuing with Ulster representation in London or giving Ulster its own parliament. He relied upon a letter he had received from Carson in which Carson noted that, although retention of the Union was the soundest policy but impossible to secure, it was “in the interest of Ireland, Great Britain, and the Empire that the only solution of the question is to accept the present Bill and endeavour to work it loyally.”³⁷ His verbose and meandering peroration on the second reading of the Government of Ireland Bill is worth recalling, particularly where he stated that he hoped the Bill:

“may succeed where the dominant personality of O’Connell, the burning eloquence of Gladstone, and the iron will of Parnell were splintered and broken in failure. If this should happen, how immense would be our contribution to the stability and greatness of these do-

*minions!...History will record of our generation that we inherited indeed a mighty empire but that it was menaced abroad by a powerful and most resolute enemy, while at home it was enfeebled at its very heart by a plague spot of disaffection and sedition. And in such an event the annals of that history will record on a shining page that we – our generation – after 5 years of martial vicissitude, broke in rout the foreign enemy, and, having done so, here at our doors recaptured in a nobler conquest this island of incomparable beauty, and, in doing so, became reconciled to a people so individual in its genius, so tenacious in love or hate, so captivating in its nobler moods.”*³⁸

On 29 September 1921 Lloyd George invited Éamon de Valera to send officials to London “with a view to ascertaining how the association of Ireland with a community of nations known as the British Empire might best be reconciled with Irish aspirations.” De Valera agreed and ultimately an Irish delegation led by Arthur Griffith and including Michael Collins went to London. In advance of the talks commencing civil servants in the Lord Chancellor’s office prepared notes on each of the Irish delegates. Their description of Collins was as follows:

“Michael Collins (Catholic) “Minister of Finance”; one of the four men forming the physical force inner circle; was a clerk in the London Guarantee Office in Lombard

*Street; full of physical energy; quick thinker; a Cork man, therefore impetuous and rather excitable; the strongest personality of the party; claims influence which at this juncture will be exercised on the side of moderation; fought in the 1916 Rebellion.”*³⁹

The British negotiating team included Lloyd George, Austen Chamberlain, Smith and Churchill. Churchill’s account of the importance of Smith to the negotiations is worth recalling:

*“The attitude of Lord Birkenhead [Smith]...was...of the utmost importance. He was prominently and peculiarly connected with the resistance to Home Rule. He had been in comradeship with Sir. Edward Carson; he had used to the full those threats of civil war which had played their part in the 1914 phase of the Irish conflict. There was no man who would have gained greater personal advantage by opposing the Irish settlement; and none who would suffer more reproach by sustaining it. He now appeared, in the teeth alike of his past and future, as its most aggressive conservative supporter. The Irish Free Staters always felt that they owed him their gratitude – and they are right.”*⁴⁰

On 30 October 1921 Griffith and Collins went to Churchill’s house where Collins and Smith appeared to hit it off. Over drinks, Collins told them about his

encounter with the British Forces in Ireland. Forrester in his biography of Collins *The Lost Leader* says that a very real friendship developed between Collins and Smith even though Collins had tried to have him assassinated in the previous year. Austen Chamberlain claimed that Birkenhead had managed to enter into Collins’s mind, won his sympathy and secured his confidence. He also recognised that without the rapport between Smith and Collins “we might never have reached agreement”.⁴¹

We know from *Peace by Ordeal* that Collins sat directly opposite Austen Chamberlain and Smith during the Treaty negotiations. Pakenham describes Smith as looming large in Irish Nationalists imagination as a sinister, even satanic power:

“Carson’s Galloper in 1914, he had more recently been foremost in the public reiteration that the rebels must be crushed by force. The South thought of him as a materialist, with what political altruism he possessed used up in fierce allegiance to the British crown; full of contempt for what was small, and callousness towards what was suffering; ... and there could be no doubt in that if he wished to assert an unwelcome authority, he possessed every requisite gift....nor was there anything to reassure in his frontal combination of offensive weapons; the patronage, the nonchalant impromptu exposition, the world famous repartee. Nor in the

³⁶ House of Lords Debate, 23 November 1920.

³⁷ House of Lords Debate, 23 November 1920.

³⁸ House of Lords Debate, 23 November 1920.

³⁹ The First Earl of Birkenhead. Smith. (1959) Eyre and Spottiswoode. Page 150.

⁴⁰ The Aftermath. WS Churchill. (1941) MacMillan. Pages 316-317.

⁴¹ Down the Years. Austen Chamberlain. (1935) Cassell & Co. Pages 145-146.

Herculean physique which dwarfed all the Irishmen except Collins.⁴²

The growing campaign against settlement within Unionist newspapers and from former colleagues such as Carson was confronted by Smith who, according to Lloyd George, was “fighting splendidly”.⁴³ At this stage Carson was now a Lord of Appeal in the House of Lords and was considering coming off the Bench in order to fight any proposed settlement. Thomas Jones, Lloyd George’s Secretary, describes as painful and stormy the meeting between Smith and Carson when Smith persuaded him to stay as a Judge and to have faith that the government would not betray Ulster Unionism. He also confronted the politics of Liverpool which similarly was opposed to any settlement. In Tunbridge Wells on 26 November 1921 Smith gave a speech about what they were trying to achieve in any settlement. He commended Griffith and Collins and questioned those who sought a military solution:

“It’s very easy to say we ought to raise an army and conquer Ireland. If the only means of obtaining peace in Ireland proved to be by force of arms...no British government would shrink. But I would like to ask: When that is attained and by what expenditure of blood and treasure I do not know, how much nearer would we be to having a contented Ireland?”⁴⁴

Although it is hard to think of people with more different perspectives on British imperialism and the rights of small nations, Smith seemed to develop a close relationship with and extract some level of confidence from Collins. Austen Chamberlain in a letter to the Daily Telegraph on 29 March 1932 repeated his claim about Smith having a significant influence on Collins:

“It was not the least of Birkenhead’s services that he did enter into Michael Collins’s mind, won his sympathy and secured his confidence. The very fact that to him life was a gallant adventure created a link between him and Michael Collins without which we might never have reached agreement.”

The Glittering Prizes notes that on more than one occasion Smith and Collins drank each other under the table and that:

“This Bonhomie undoubtedly helped to wear down Collins’s resistance, and allowed Lloyd George to persuade him, at the most crucial moment of negotiations, to abandon the demand for a Republic and accept dominion status.”⁴⁵

Even though there was division within the Irish delegation, contributed to no doubt by Lloyd George’s focus on Griffith and Smith’s marking of Collins, on 6 December 1921 the Treaty was signed by Griffith, Collins and Barton for the

Irish and Lloyd George, Smith, Churchill and Chamberlain for the British. Others signed shortly afterwards. The oath which became the most contentious part of the Treaty was finalised by Smith and Collins. It is Churchill who recorded that Smith after signing the Treaty said: “I may have signed my political death warrant,” whereupon Collins replied: “I may have signed my actual death warrant.”

The Treaty was debated in the House of Lords on 14 December 1921 and Carson was scathing in his condemnation of the government and in particular his old marching partner Smith:

“Of all the men in my experience that I think are the most loathsome it is those who will sell their friends for the purpose of conciliating their enemies, and perhaps still worse, the men who climb up a ladder into power of which even I may have been part of a humble rung, and then, when they have got into power, kick the ladder away without any concern for the pain, or injury, or mischief, or damage that they do to those who have helped them to gain power.”⁴⁶

In his reply Smith said he regretted that Carson had “proscribed me from a friendship which had many memories for me, and which I deeply value.” He then reverted to type by suggesting Carson’s contribution “would have been immature upon the lips of a hysterical school girl.” He also emphasised that the only alternative to settlement was total war and asked

whether the alternative is that the war should be resumed. If so, he said:

“There is no one listening to me who does not know that at the conclusion of that war, with memories a thousand times more bitterly inflamed, you would then...have to enter into negotiations with these people, to define the conditions under which they and we will live our lives in these islands.”⁴⁷

In a letter to a friend in Ireland written on the morning the Treaty was signed Collins said:

“I believe Birkenhead may have set an end to his political life. With him it has been my honour to work.”⁴⁸

He was correct in this analysis as after the Treaty Smith was appointed as Secretary of State for India in 1924, never again to play a front line role in British politics. His excessive consumption of alcohol must also have contributed to his exclusion, even allowing for the tolerance that existed at that time for heavy drinking.

In 1922 Smith continued to respond in the House of Lords to the concerns of Unionist Members who were dissatisfied with the outcome of the Treaty and what they viewed as the abandonment of southern Unionism. In a debate on the situation in Ireland on 14 February 1922 he recounted to the House of Lords his interactions with Michael Collins and how Collins was apprehensive that attempts may be made by violence in Ireland by those who

⁴² Peace by Ordeal. Frank Pakenham (1972) Sidgwick and Jackson. Page 106.

⁴³ Lloyd George, A Diary. Frances Stevenson. (1971) Hutchinson. Page 236.

⁴⁴ Lloyd George, A Diary. Frances Stevenson. (1971) Hutchinson. Page 236.

⁴⁵ The Glittering Prizes A Study of the First Earl of Birkenhead. William Camp. (1960) Macgibbon & Kee. Page 142.

⁴⁶ House of Lords Debate, 14 December 1921.

⁴⁷ House of Lords Debate, 14 December 1921.

⁴⁸ Michael Collins. Rex Taylor. (1958) Hutchinson. Page 189.

opposed the Treaty to destroy the provisional government. Smith had also highlighted how he had been in contact with both Sir James Craig and Collins for the purpose of eliminating unrest in what he referred to as “the borderland”.⁴⁹ He proposed that there should be liaison officers operating on either side of the border, a suggestion that he said was supported by Collins. He believed that he had convinced Collins and Craig about the benefit and need for their cooperation:

*“I think I’m not too sanguine in detecting hope of cooperation upon these matters, at least between these two men, which affords greater prospect of a specific outcome from the difficulties of the moment than I had ventured to entertain until now. And for what it is worth, I can only repeat to your lordship the reassurance, based upon my own personal conviction, that, just as Sir James Craig is in an extremely trying and anxious position, so Mr. Collins is in an extremely trying and anxious position; and I believe that he is doing his best to carry out the letter and spirit of his obligation.”*⁵⁰

The Treaty’s provision of a Boundary Commission and its ultimate uselessness to the Free State raises the question as to whether it was knowingly put forward by Smith and others as a proposal that would not work but would fool the Irish delegates into thinking that territory in Northern Ireland would ultimately become part of the South. Collins had been given

verbal assurance by Lord George that the question of Ulster territory should be left to a Boundary Commission and that the Commission would be bound to award the South territory from Northern Ireland which would make the continuation of Northern Ireland unlikely. In respect of the recently established Northern Ireland, Collins stated that he had been assured by Smith that if Ulster refused to join the rest of Ireland, the Boundary Commission would leave Ulster with only four counties and thus unable to function.⁵¹

Smith denied in the House of Lords that any such assurance had been given to Collins but in 1925 he admitted that the Treaty “would never have been signed without Article 12” relating to the Boundary Commission. John Campbell in his biography of Smith questions whether he was a party to deliberately deceiving Collins and answers it as follows:

*“It is more likely that in his anxiety to win the Treaty he allowed himself to hope that the irreconcilable could be reconciled....Like Collins with his “first step”, he thought the Treaty would create its own momentum, and this justified a degree of ambiguity for the present.”*⁵²

The vitriol of Carson’s attack on the Treaty and what he viewed as the humiliating policy of the government was again focussed directly on Smith on 8 March 1922 in the House of Lords in a debate on attacks against members of the Royal Irish Constabulary. Carson asked what

steps the government was taking to protect their lives. What offended Carson most about the Treaty was the rapid way in which it was done and the effect it had on those men in the RIC who he believed had been effectively abandoned. In response Smith berated Carson for his attack on the government but also seemed to emphasise the entitlement of England to consider its own interests when appraising its governance of Ireland:

*“The noble and learned Lord is an Irish man. He is at this moment pursuing, and has for many years pursued, a career in England. When we are told, in a speech overloaded with somewhat exhausted adjectives, of the humiliation to which all Englishmen are exposed, we may at least feel ourselves entitled to say that the English nation – which has not been accounted throughout the centuries, either under this or any other government, to be the careless custodian of the honour of England – in dealing with this problem of Ireland is entitled to consider its own difficulties, its own duties and its own resources.”*⁵³

He then emphasised to Carson that the majority of people of England supported the Anglo-Irish Treaty.

The Irish Free State Agreement Bill was a legislative requirement of the Treaty settlement and came before the House of Lords on 16 March 1922. Carson was again despondent about what he viewed as abject surrender by the British gov-

ernment to the demands of Irish Republicans:

*“The Secretary for State for the Colonies—a very apt person, having regard to his antecedents, to send there to put them down—stated openly and broadly: “It is not a question of argument; it is not a question of right or a question of wrong; those have no consideration for me at all. It is a question of Michael Collins. What would he say to us?” Mr. Collins is not only paramount over England, but he is paramount over right, paramount over wrong, paramount over logic; and that is the only thing the Colonial Secretary was thinking about.”*⁵⁴

Carson was also dismissive about the ambiguity of an oath that had been finalised by Smith and Collins:

“You have a kind of Oath in this Bill. It is a wonderful piece of draftsmanship. It really is one of those curious compromises which men think they can make by paper and ink, so that you can be half loyal and half disloyal, and then each of you has had a triumph. The man who wants to be loyal says: “Oh! look at the Oath,” and the man who wants to be disloyal says: “Oh! look at the Oath,” and both are equally satisfied. My Lords, there is no compromise in loyalty. You are either loyal or you are not loyal, and all this that you take the trouble and

⁴⁹ House of Lords Debate, 14 February 1922.

⁵⁰ House of Lords Debate, 15 February 1922.

⁵¹ A History of Ireland under the Union. PS O’Hegarty. (1952) Methuen. Page 754.

⁵² F.E. Smith. John Campbell. (1990) Pimlico. Page 584.

⁵³ House of Lords Debate, 8 March 1922.

⁵⁴ House of Lords Debate, 16 March 1922.

*expense of printing is mere eye-wash.”*⁵⁵

Smith responded by suggesting England should be supporting the work that Collins and Griffith had undertaken, and that it was preferable to have this turbulent work carried out by Irish rather than English soldiers:

*“I say, from the English point of view, that if there are to be disorders among the turbulent fellow-countrymen of the noble and learned Lord it is not we who are making these disorders. We have been paying for them by the expenditure of blood and money for many years, for many generations. We paid for them in the days of Queen Elizabeth, and even before her time. Does the noble and learned Lord really imagine that if someone had presented Queen Elizabeth with this alternative—if they had said to her: “Would you rather send Lord Essex and British troops to put down the turbulent population of the South of Ireland or would you rather deal with a man who is prepared, with Irish troops, to do it for you; who is prepared to acknowledge allegiance to yourself and who will relieve you of further anxiety and responsibility in the matter”—that she would have hesitated? I know what that sagacious statesman would have said in the first place”.*⁵⁶

He then predicted how Queen Elizabeth would have responded had she been told

that Collins and Griffith were attempting to do the work of English soldiers in seeking to quell Ireland, and how he was rejoicing at their efforts:

*“She would have said she would at least try it before she sent her own expedition, and look with infinite pleasure on every illustration from Ireland that Mr. Collins and Mr. Griffith are attempting to place themselves, under great difficulties, at the head of such forces as are available in order that they may restore law and order among the countrymen of the noble and learned Lord. I, as an Englishman, rejoice to see them making this effort.”*⁵⁷

Smith concluded by challenging Carson's description of a recent speech of Collins. He praised Collins for the way that his speech taunted de Valera and his friends which he said was a process which always gave him satisfaction:

“The noble and learned Lord quoted from a speech Mr. Collins made the other day in Dublin as if there was something detestable and treacherous to the Treaty in it. I ask your Lordships to read it tomorrow ... I absolutely deny that there was anything which implied the slightest disloyalty to the Treaty in the passage quoted from Mr. Collins' speech. He was taunting Mr. de Valera and his friends—a process which always affords me satisfaction—and what he was saying was:

*“Yes, you are Republicans now, because under the arrangements made by us the British Army is going, and it is easy to proclaim the Republican doctrine in the streets of Dublin; you were not Republicans when I was, and it is I who, by the Treaty which I have made and by which I stand, have made it possible for you to be Republicans to-day.” It was a bitter taunt, but it was in no way unworthy of the part which Mr. Collins has played. I wish that some of your Lordships who read the Irish papers would read the whole of the speech which Mr. Collins delivered... I would venture to predict that any one of your Lordships who reads the whole of that speech, delivered by a man without political education and so far as I know without very much other education, will consider that it is a speech which, whether you examine the form of its literary expression, or its judgment of affairs, no member of this House need be ashamed of having delivered, and I cannot but think the noble and learned Lord referred to it without having read it.”*⁵⁸

John Campbell notes that Smith never ceased to pay tribute to the courage and integrity of both Griffith and Collins and suggests that he tried to go to Dublin for Collins's funeral but was prevented by fog at the Airport. That would have been a mad adventure but is evidence of his respect for and proximity to Collins.⁵⁹

⁵⁵ House of Lords Debate, 16 March 1922.

⁵⁶ House of Lords Debate, 16 March 1922.

⁵⁷ House of Lords Debate, 16 March 1922.

⁵⁸ House of Lords Debate, 16 March 1922.

⁵⁹ F.E. Smith. John Campbell. (1990) Pimlico. Page 583.

Legacy.

Smith had intense but limited engagement with each of the three Irishmen. He was intensively involved with Carson in their joint political struggles to derail the Third Home Rule Bill and protect Ulster Unionism through measures that exceeded what was constitutionally permissible. He interacted with Casement for less than two months in the summer of 1916 and secured his execution whilst maintaining a contempt for his adversary. Similarly, he had a short engagement with Collins, lasting approximately three months, which resulted in Collins signing a treaty that would inevitably be opposed by those in Ireland who sought a Republic.

What distinguished his engagement with Collins from the two others was that by 1921 Smith appreciated the impracticality of British governance of Ireland when most Irish people were opposed to British rule. This change in political outlook, for which he was heavily criticised by former colleagues, was the most honest and least opportunistic part of Smith's engagement on Ireland. The imperialist and colonial demeanour so evident in his relationship with Carson and Casement was gradually eroded as a result of the reality of the War of Independence and the legitimacy of the Irish demand for self-government.

Roger Casement was executed in 1916. General Collins died in action in 1922. Their legacy is independent Ireland. Carson and Smith died of natural causes. Their legacy is Northern Ireland. A century on, those different legacies can now

be appraised objectively and, hopefully, fairly. That is for another day.

Although Casement and Collins sacrificed their lives, Carson and Smith merely sacrificed their friendship. Ultimately, even that was repaired and they appear to have settled their differences. One rainy night in the late 1920s Smith was waiting for his car at the entrance to the House of Lords. Carson saw him and shouted: "Jump in, F.E., and I'll drive you home." Smith did, and for some minutes they sat in silence having previously not spoken since the Treaty. Smith eventually interjected:

"You know Carson, some of the things you've said hit me pretty hard."

"You surprise me," said Carson.

"Yes, and perhaps you don't know why they hit me so hard."

Carson shook his head.

"It was because they were so damnably true."⁶⁰

⁶⁰ Carson. H. Montgomery Hyde. (1974) Constable. Page 488.