Church & State

An Irish History Magazine

And Cultural Review Of Ireland And The World

Garvaghy Road:

War And Peace!

Enoch Burke: Update

Casement And *The Guardian!*

Aldington v Tolstoy

Finale!

No. 166 **4th Quarter, 2026**

Garvaghy Road: War And Peace!

Reconciliation was not the ground on which peace was made in Northern Ireland in 1998, and reconciliation has not been the result of twenty years of peace under the 1998 Agreement.

"*Reconciliation*" initiatives prior to 1998 had always exercised an aggravating influence on the conflict of communities. Such initiatives were usually the work of Garret FitzGerald—who had a Presbyterian mother and a Catholic father—and therefore could not believe that the conflict of communities in the North was in earnest. It had to be due to some misunderstanding that could be cleared up by reconciliation initiatives!

Charles Haughey took the contrary view. He said that Northern Ireland "*was not a viable political entity*", and that nothing useful could be done within it. It was a contrivance of the British State, and only the British State could do anything about it.

The pseudo-democratic structure imposed by the British State on its Six County region—for reasons that had nothing to do with good government, but provided it with leverage against Sinn Fein in 1920-21—was the cause of the War that broke out in the North in 1970. It was the cause in the sense that the circumstances that brought it about would not have happened if the region, once it had been separated from the rest of Ireland, had been governed as the other regions of the United Kingdom were.

Northern Ireland was never a State. It was incapable of being a State. Whitehall provided all the services of State in it, and still does. But it was set up with a Parliament and Government—which had no business of State to do, and one commentator described as being, for that reason, a "*factory of grievances*".

The *1998 Agreement* scrapped the spurious Statehood of Northern Ireland, set it up as a mere layer of local government within the State, and abolished the democratic principle of Majority Rule within it.

This magazine supported the *1998 Agreement* as a form of Apartheid that was appropriate for the Six Counties, if they were to continue to be excluded from direct government through the party-political democracy of the State. And it acknowledged that the prime movers in this development were the Adams group in the Republican organisation, which put the impractical aim of ending Partition on the long finger in order to deal with the immediate situation in the Six Counties which was the actual cause of the War.

This project was taken on board by John Hume as leader of the SDLP—in defiance of strong opposition from ideologues in the Party—and by Charles Haughey, who was being demonised in the Republic.

And the project was brought to a head and driven home by Tony Blair, who conceded *de facto* that there was reason for the War in the 1921 system, and that those who fought it should therefore no longer be prosecuted as criminals.

Northern Ireland was remade into a system of separation between the two national communities. There would in effect be two electorates, and the representatives of each would have a place as of right in a kind of Government that would have no Prime Minister, and a Parliament in which the principle of legislation by simple majority was set aside.

The Ulster Unionist Party (which at the time was the dominant party on the Unionist side) was intimidated by Blair into submitting formally to the Agreement—but it resisted implementation by demanding surrender of arms by those it continued to call terrorists in the hope of breaking the Republican force that had brought about the change.

After a few years' delay, the Rev. Paisley's Democratic Unionist Party decided to implement the Agreement, and it quickly became the major Unionist party.

The principle of separation has worked well enough for twenty years. Neither governs the other in it, and therefore each is enabled to tolerate the other. It presumes basic antagonism, and manages it. If it somehow led to "*reconciliation*"—to a whittling away of the system of antagonism—there is a third category in which it could express itself—the category of "*Other*". There is an element that says: a plague on both your houses! But, if that element became predominant, it would no longer be "*Other*". It would have to become the one thing or the other.

The consensus on separation which has made the system functional was broken this Summer by the Parades Commission (established in 1998) to authorise an Orange Parade along the mainly Catholic Garvaghy Road. It is hard to believe that this would have been done without a hint from the Government—i.e., the Secretary of State.

Perhaps it was a test to see if "*reconciliation*" was occurring! English liberals see no nationalism but their own—and they are not reflectively aware of their own! It seems to them to be just common sense!

The late Jeremy Paxman made a centenary programme on the Second World War—in which Britain turned a European War into a World War in which 20 million people were were killed and the British Empire undermined itself. His conclusion was that, if Britain had not done what it did, it would have become German-speaking—and that would have been an even greater tragedy!

The right thing for the world was to be English-speaking, and if you are English-speaking, what else can really matter!

The Secretary of State, Chris Bryant, a former Anglican priest, says that the Garvaghy Road confrontation puts him between a rock and a hard place.

The Unionists appeal to the law, which has authorised an Orange March, and say that Sinn Fein committed itself to act

within the law under the 1998 Agreement.

Michelle O'Neill says that Right is Right and that, regardless of law, it can never be wrong to do the right thing, and was seconded in this sentiment by Mary Lou MacDonald, seeking relief from her difficulties in the Republic.

The Secretary of State delivered a sermon about the rock and the hard place at the Labour Party Conference:

"But, Conference there is unfinished business from the Good Friday Agreement. Beneath the compromise meant that many thousands who had lost their loved ones were told that Justice had to wait for another day. They had to let it lie. They have suffered silently ever since, …calming their feelings of anger and revenge, and showing grace and fortitude despite it all. All they wanted was to know what really happened, because they knew no matter what they wanted for themselves, they knew that peace with others was better. We owe them answers. One son told me he sees the man he knows killed his father every single time he goes to the supermarket. But that has never been acknowledged. Another told me [etc, etc].

"Just imagine the trauma people are still living with… Conference, it was wrong that it took decades to get answers for Hillsborough. And it's wrong that so many families, including more than a thousand veteran families, are still waiting for answers in Northern Ireland. That's why I promise that this Government will finally deliver on the unfinished business of the Good Friday Agreement, creating a reformed Legacy Commission, so families in Northern Ireland and Great Britain can get the answers they have so long sought.

"That won't be easy or comfortable. It requires candour, honesty and openness… Of course we must make sure that our veterans aren't constantly dragged through the courts unnecessarily. Repeating a process is reliving it. And we should have the highest bar possible before we ask anybody to do that. And, of course, there is absolutely no equivalence between the lawful actions of our brave armed forces and the deliberate acts of terrorists. We will say that in black and white in the Bill.

"And that's why I pay tribute to my great friend, Hilary Benn. He started this process because he knew you cannot build a strong edifice on weak foundations. And you can't shape our future without understanding our past.

"Yes, absolutely, we need to shake up Stormont. It's crying out for change. Six months into the financial year it's still not got a settled budget… And no one, at least in private, disagrees that there needs to be urgent Constitutional reform in Northern Ireland. Of course, I want to do that cross-party, with the broadest possible consensus. But I do want to take a leaf out of Mo Mowlem's book. Neil Kinnock once said of Mo that, if she had a fault, it was the she entered the room without opening the door first. Too right Mo! We need a few more like you! …So, look, I say to everyone in Northern Ireland politics, Come on folks, work with me. Or, even better, Work with each other and with me. Let's do something remarkable: Strike deals across the party divide. Rise to the challenge. Set aside private gripes for the common good. Because we can achieve far more by our common endeavour than we can by going alone [Applause].

"That way we can build a stronger, more united future for Northern Ireland, in which it doesn't matter what team you support, what language you speak, what band you play in, whether you hate Abba or love Bingo, or keep your poster in the cupboard. Because Northern Ireland is a place where everyone should get a chance to get on. Then every young apprentice, every trained nurse, every small business owner, every plumber or plasterer, every teacher and scientist, every farmer and programmer, will be able to shout out at the top of their lungs: Thank you for your service, thank you for your service, thank you for your service! "

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Some web addresses for associated sites—

Athol Books:
http://www.atholbooks.org
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http://heresiarch.org

There is a great deal of interesting reading. Go surf and see!

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All Correspondence should be sent to:

P. Maloney,
26 Church Avenue, Roman Street, Cork City.
TEL: 021-4676029

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Bryant then dashed off the platform, saying he had to get back to Belfast.

His reference to his predecessor, Hilary Benn, deserves a comment. Benn was a member of the Labour Government that joined the United States in launching an all-out unprovoked military assault on Iraq with the purpose of destroying the State. The Iraqi State system was secularist. The Government included Shia, Sunni and Christian representatives. The reason given for destroying it was that it had nuclear weapons with which it could hit the West within 45 minutes—or wanted to get them.

An attempt was made to get United Nations authority for the War. Russia and China did not object, but France did. The French became "*the stinking cheese-eating monkeys*". The UK and US decided to act on their own and with a *Coalition of the Willing*. The greatest display of *Shock And Awe* ever seen in the world was launched. The regime, weakened by ten years of draconian Sanctions, crumbled rapidly.

The opposition forces in Iraq that were suppressed by the regime were called upon to rise up and take over. The suppressed forces were Islamist.

They responded to the call. As US/UK pounded Iraq to smithereens, Islamic State organised itself for a religious civil war in which there was mass killing for a number of years, and fundamentalism spread throughout the region.

Hilary Benn was questioned about it subsequently. He explained:

> "We gave them their freedom, and it was up to them what they did with it."

But smashing, by means of overwhelming power, a system of state which had drawn all the major social elements together in its functioning, and urging them into anarchic antagonism with one another—that was an act of sheer destruction.

Government must be conducted within the particularities of the region to be governed, even though these particularities may seem to be peculiarities or abnormalities to others.

The *Baath* system in Iraq had its functional logic which took account of circumstances. So has the Six County system established by the 1998 Agreement.

The first attempt at cross-Party Government, Sunningdale in 1974, needed very skilful and delicate handling by the Secretary of State. With the change of Government, a new Secretary of State (Labour) arrived and bungled it.

The 1998 system is much sturdier. It was designed to be foolproof. The chances are that it will prove to be so, if it brings its new Secretary of State into line with its logic.

And, as for "*Justice*", it was something not achievable by law. It was roughly achieved by war between the Nationalist community and the State which had put it into an intolerable position. The British Army said that what it was engaged in was a war. Blair in 1998 admitted *de facto* that what he was settling was a War, and that war does not happen without sufficient reason.

Unfortunately there was strong opposition by 'Constitutional Nationalists, North and South, and by others, to settling accounts officially on the understanding that what was being settled was a public dispute between collective entities by means of war—an activity in which both criminal and civil law are curtailed.

These constitutionalists insist on going back over the War, and treating it as a series of unresolved murders to which law must be applied retrospectively. That way the War is debased into a Feud.

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Enoch Burke: An Update!

Enoch Burke has now lost his job at Wilson's Hospital School.

As reported in the last issue of *Church & State*, the courts released him from Castlerea Prison on 1st July, despite his continued determination to protest his treatment by Wilson's Hospital School—which is run collectively by Protestant denominations, and whose head mistress is Niamh McShane.

The Irish Times reports that Judge Brian Cregan, when releasing him, remarked that Burke was an "*unwelcome intruder*", who was—

> "intent on causing as much disruption to the education of its young pupils as he can, in his campaign against transgenderism" (Ronan McGreevy, 27.8.26).

The Judge added:

> "he is not allowed to… trespass upon school property, enter the school corridors, disrupt the education of the pupils, try to bully and berate security guards and disobey court orders. These are the actions of a teacher who has completely lost his moral compass…" (ibid).

Readers can form their own conclusions as to who has lost his moral compass: the Judge or the Teacher!

It appears that, since his release from prison (reported in the last issue of Church & State), Enoch Burke continues to attend outside the school building to protest his dismissal which—as readers will recall—was effectively for refusing to use a pupil's preferred pronoun, as opposed to biological pronoun! Enoch Burke held that to do so was in breach of his religious beliefs.

His principled stand has meant that he has spent over 700 days in jail, had his substantial savings confiscated by the Courts, and now has a debt of unpaid fines of €208,000.

The teacher continues his legal battle, bringing judicial review proceedings against three members of the Disciplinary Appeals Board of the school, the Minister for Education, and the Board of Management of Wilson's Hospital School.

Burke was released from Castlerea Prison on July 1st, despite his ongoing refusal to comply with a court order not to trespass at his former place of work.

In his judgment, Judge Brian Cregan said it was clear Burke was an *"unwelcome intruder"* at the school—

> "intent on causing as much disruption to the education of its young pupils, as he can, in his campaign against transgenderism".

The judge said Burke was entitled to his religious views and is entitled to turn up at the school gates and protest his dismissal, continuing:

> "However, what he is not allowed to do is trespass upon the school property, enter the school corridors, disrupt the education of the pupils, try to bully and berate security guards and disobey court orders. These are the actions of a teacher who has completely lost his moral compass".

Since that ruling, Enoch Burke is reported as "*walking past one of the buildings in the school*". Will that land him in trouble again!

Burke has taken a fresh High Court challenge against a decision refusing to reinstate his employment at the school. And he has been granted permission to bring judicial review proceedings against three members of the Disciplinary Appeals Board, the Minister for Education and the Board of Management of Wilson's Hospital School.

That case has been adjourned until October. ✻

VOX PAT

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Church of England Set Free!

Modesty In Italy?

Dev's Field Glasses!

"SCRAP OF PAPER"—*"neutrality"*

Anthony Blunt

Pregnancy Loss

Church of England Set Free!

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When appointing bishops and archbishops, the Church presents a candidate to the Prime Minister, who then advises the monarch on who to install in the role.

Although the involvement of the Prime Minister in this process has become more of a formality in recent years, legislation still exists that specifically bars Roman Catholics and Jews from exercising this responsibility.

That is why earlier this month Burnham, the first Catholic Prime Minister, transferred the responsibility of advising the King on Church appointments to the Lord Chancellor.

But the Prime Minster said it was—

> "unacceptable for there to be a legislative bar against people of any faith performing all the functions of my office".

The Roman Catholic Relief Act 1829 and the *Jews Relief Act 1858* are the existing laws in question.

When those laws were introduced, they actually eased some of the restrictions on participation by Catholics and Jews in public life.

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Modesty In Italy?

ITALIAN Deputy Prime Minister Antonio Tajani sparked outrage after stating that men should marry less flashy women, wearing longer skirts to ensure reliable motherhood and stability.

The remarks prompted an immediate political backlash and counter-protests from female Italian parliamentarians wearing miniskirts.

The comments from Antonio Tajani, who also serves as the country's Foreign Minister, sparked a furious backlash, with politicians posing in short skirts in protest.

He advocated for a woman—

> "who will be a good mother and stay true to the love she pledges in marriage… the one who perhaps wears skirts that are a bit longer than the others".

Deputy PM Antonio Tajani said he would suggest his son marry a woman "*who wears skirts that are a bit longer than the others*".

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Dev's Field Glasses!

ON April 25th, 1916, Eamon de Valera was in command of Boland's Mill, in armed rebellion against the British Crown, having opened hostilities the previous day. On April 25th 1938, the Prime Minister of England, with a gracious gesture, handed back to the Prime Minister of Eire a pair of field glasses that had been taken from him by the British officer who arrested him 22 years ago

(*Irish Times*, 26 April, 1938)

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"SCRAP OF PAPER"—

Just for a word, *"neutrality"*, just for a scrap of paper, Great Britain is going to make war on a kindred nation…"

(T. Von Bethmann-Hollweg, *Dispatch*, Aug. 4, 1914.)

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Anthony Blunt

The Queen's Man who spied for Russia and the Nazis—In this thrilling book, Piers Blofeld takes advantage of the recent declassification of a rich haul of MI5 papers to explore how Anthony Blunt's treason was covered up for so long. Even though Blunt had confessed to MI5 as early as 1964, the secret was kept from Queen Elizabeth for another decade.

Remarkably, when she was finally told, she did not seem outraged. She had always felt grateful to Blunt for clearing the way to her marriage to Prince Philip, with whom she had fallen in love as a teenager.

In 1945 Blunt had been sent to Germany by MI5 to '*tidy up*' the embarrassing fact that three of Philip's sisters were married to leading Nazis. Four years into her reign, Blunt received a knighthood. More extraordinary, Blofeld thinks that he also passed on information to the Nazis.

New evidence suggests that, in 1944, using codename '*Josephine*', Blunt leaked details of Allied military plans, with the result that thousands of British servicemen and others lost their lives. "*What Blunt did was monstrous*", says Blofeld, "*his actions are unforgivable*".

(*Master Of Lies*, Piers Blofeld, Quercus, €28, 384pp.)

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Pregnancy Loss

Minister Burke moves to introduce Statutory Leave for pregnancy loss

(Dail Eireann,14 July, 2026):

> "The Government has today approved a proposal from the Minister for Enterprise, Tourism and Employment, Peter Burke TD, to draft a Leave for Pregnancy Loss Bill. The Bill will introduce statutory leave for pregnancy loss prior to 23 weeks gestation for the first time under Irish law. Under existing legislation, maternity leave is available for those who experience a loss from 23 weeks gestation and onwards.

Will the *Bill* include loss through abortion?

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Editorial

Democracy *et cetera* !

It has been demonstrated in recent years that the United States is not only the leader of world democracy, but is the foundation on which it exists, and without which it is unlikely that it would exist.

Leaving aside the United States, the democratic world is Europe.

Europe was laid out as a democratic patchwork by Britain and France, at the Versailles Conference of 1919—which was controlled by Britain and France, with Britain in the ascendant over France.

During the next twenty years Europe, with few exceptions, discarded the democratic system—the system of representative government conducted through the conflict of political parties elected on the basis of a general adult franchise.

The conflict of parties in recently-established nation states was found to be incompatible with the maintenance of State authority. The system of party conflict was essentially divisive. It operated by seeking out points of difference, exaggerating them, and depicting the other party as being wilfully destructive. Where the parties were aligned with antagonistic class interests, they acted to intensify them.

The framework of that system was the League of Nations. In principle the League ordered the world into a series of nation-states which governed themselves democratically. The democracy increasingly took the form of a party political antagonism of classes. But a nation is a consensual combination of classes. In order to establish the authority of the national state, the various countries therefore set aside the political system of class antagonism by means of establishing the dominance of national socialist, or fascist, parties—whose purpose was to restore the authority of the State by restoring the consensus of the nation by mediating the class antagonism.

This change was brought about by different ways in different places. In ideological form it began in Italy where Mussolini, a revolutionary socialist before the first World War, brought Italy into the War as a British ally—against the opposition of both the Socialist Party and the Catholic Church—in exchange for a British promise that Italy might take large tracts of bordering Austrian territory if Austria was defeated.

After the War he generalised what he had done as Fascism, which roughly meant a bundle of things—including both nationalism (for which read Capitalism) and Socialism.

In Germany the change was brought about electorally and legally—two things which in the democratic era one might have thought were close to being the same thing, but which in their usage just now are tending to become opposites.

Those currently in authority in the EU—the usurping Commission—seem to have read up on the supposed origin of Democracy in ancient Athens and come to the conclusion that democracy is an anarchic phase of transition between aristocracy and monarchy—meaning that Ms Von Der Leyen is the autocratic Queen!

In Finland the change was enacted by a civil war, which many agree was the closest thing there has ever been to a literal war between classes, in 1917. The capitalist class won, and apparently saw advantage in allying itself with the National Socialist form when it came along.

In Spain the development happened in the course of a military coup d'etat against a Republic which was unable to restrain its widespread Anarchist support from engaging in Voltaire's injunction to "wipe out the infamous thing", the Roman Church. The military coup systematically gathered social support to bring about the establishment of a political order which included the Church, along with a Syndicalist force called the Falange.

The Spanish development was different because of the length of time the military coup took to consolidate itself, and the way it constructed a social regime in the course of securing itself—which it did not have clearly in mind at the start—and the intervention of other European forces, both democratic and Fascist, in the course of the War.

Franco was something different from Mannerheim in Finland, Mussolini in Italy, or Hitler in Germany. Only Horthy in Hungary is in some degree comparable to him. He constructed a viable State in the course of a Civil War, gave it a Fascist structure because that was what was appropriate in the circumstances, and he kept it out of the Fascist War on Russia.

And the presence of Spain (and Portugal) as Fascist states in post-1945 Europe gave the lie to the propaganda description of the War which Britain started as the Anti-Fascist War.

Franco did not give way to any "pro-democracy activism", but he treated his system as an emergency operation in the national interest, and made provision for it to end in a transition to Constitutional Monarchy. And the national state he had constructed was stable enough to ward off an attempt to treat the Civil War as a feud and to treat the regime as a murder gang that must be punished by law.

Europe—newly democratised—was confronted with Fascist Spain in 1945: and let it be. Where did it get the sense to let it be—contrary to the sharp new ideology of the Anti-Fascist moment?

Political experience is accumulated by States and their main components in the course of time. The States of mainland Europe (excluding the Iberian Peninsula) had, since 1919, been a series of fundamentally different things. In 1945 they were the debris of the Fascist war on Communism—which they had failed so spectacularly to win. Spain, though only six years old, was the oldest State—the oldest regime in continuous existence.

The others were post-Fascist States. They had suddenly ceased to be Fascist States by being conquered by Russia, and they had been taken in hand by their military conquerers—Russia and the United States. And, seeing no future for their recent past, they became Pro-Democracy activists. But they were again being set up as States by others—as in 1919.

The Anti-Fascist War—insofar as it deserves the name—began when six countries of Fascist Europe invaded Communist Russia in June 1941. Britain had invented Total War in 1914, but the Fascist War on Russia was the most total war ever fought.

That War was a test of durability. It proved to be catastrophic for the Fascists. But Europe remained loyal to the Fascist cause to the bitter end. There were no democratic revolts in favour of the enemy!

(The apparent exception, the Warsaw Uprising, was actually a Polish attempt to gain control of the city, before the imminent arrival of the Red Army to liberate it: and to keep it out!)

The Anti-Fascist War was a war for Democracy and Freedom. That was generally agreed from 1941 to 1945. The main force of Democracy and Freedom was Communist Russia. That was generally agreed. The Communist system of Democracy took a different form from the Capitalist.

Communism and Capitalism were united in defence of Civilisation! Fascism was a force of Evil that had somehow arisen beyond the parameters of Civilisation—represented by Communism and Capitalism—and was now endangering the whole of civilisation.

Communist Democracy stopped the European Fascist advance at the gates of Moscow at Christmas 1941, broke the Panzers at the battle of Kursk in 1942, organised itself on a very wide Front and fought its way relentlessly to Berlin. Europe was conquered into freedom! Fascism was broken by conquest. Europe must learn to live without it!

But how could States which had been so purposefully fascist, and which had ceased to be fascist only because they had been conquered by Communism, account for things in such a way that they could remake themselves in the instant into functional members of the opposite of the system they had made for themselves?

The trickery of Democracy—and the European Commission is now close to describing it as trickery—was beyond them in the past. That was why they had become Fascists. How could they now remake themselves backwards into that tricky system, in a condition of subjugation caused by catastrophic defeat by conquest, and account to themselves for how they had brought all this about?

Fascism was an emergency measure for dealing with the fragility in the ultra-democracy of the artificially-constructed 'nation-states' (many of which were not actual nations!) formed by the conquerers in 1919.

It was not ended by internal development. It was broken by conquest and subjugation. It had not run its course as an emergency measure. It was destroyed in mid-course by the Communist/Capitalist alliance formed against Nazi Germany.

In Spain Fascism ran its course as an emergency measure. It continued in Spain for a generation after 1945, and then phased itself into a viable system of party-political democracy.

East of the Pyrenees what happened in 1945 was in many ways a repeat of what had happened in 1919. In 1919 the existing system of Europe was made war upon by the two great Western Empires—the British and the French. When they declared war on it, they declared that it was Evil. And when they won the War, they destroyed its structures—and they scotched the sources of tradition with it—knowing vey well that tradition is closely bound up with State authority.

(A difference emerged between France and Britain in 1920, which led to another War twenty years later! The French, who had borne the main cost of the 1914 War in human and physical terms, plundered and annexed and humiliated defeated Germany with gay abandon, along with the British, in 1919. But, when the French tried to enact measures that would prevent Germany from reviving and taking revenge for the humiliations inflicted upon it, Britain objected that that would not be 'fair'! It insisted that France could not have a Rhine frontier—which would have given it a defensible border—and that the German territorial state should continue—except for Alsace/Loraine going to France and other bits going to Belgium and Poland.

Britain, in its very effective War propaganda (much admired by Hitler) declared that Prussia (its close ally for many centuries!) was established on an evil system, and that in the process of national unification the 'good' German had been infected by the evil of Prussianism.

Whether this was true or false is beside the point. It was the case made by the British propaganda that deluged the world for about six years. Irish Home Rule demagogues—Tom Kettle and Robert Lynd—were to the fore in propagating it. Few voices of dissent were heard. Amongst those few were Roger Casement, who was familiar with the workings of the British State from the inside, in its upper regions, and James Connolly, who was an acute observer of it from the lower regions on the outside.

Both said outright that Britain was making war on a commercial rival and was doing it in a way that would destroy European culture. Both were disposed of in 1916: and so their case was lost be default!

The British case was the the 'pragmatic truth' of 1919. But, when the French wanted to put it into action—by reducing the size of the German state and separating the 'good Germans' from the Prussians—Britain wouldn't have it!

In the German demoralisation of 1919 there was support for partition into Rhineland Bavaria and North German States. But this proposal seemed to set off the British 'balance-of power' instinct—praised by Churchill as an "unconscious" *drive*.

The British Establishment suddenly saw that the disintegration of the German territorial state would restore the dominant position of France in Europe—and make it the main enemy again. So it vetoed the Rhine Border and the Rhineland state: and Hitler's first notable action was his stand against Bavarian secession.

Major Street, the very intelligent Information Officer of Dublin Castle, after writing his books on The Administration Of Ireland in 1920 and 1921, was transferred to the European scene to counter French efforts to take Germany in hand. This was Weimar Germany which, to conciliate Allied propaganda, had obediently made its futile revolution against Kaiserism (a stabilising force in Germany), only to be trampled on still further in the Versailles Peace 'Negotiations'—which took the form of a series of Diktats enforced by a Starvation Blockade!

Britain conspired prudently with 'Weimar' Germany against the restrictions of the Versailles Agreement which it had imposed in 1919. It then acted openly with Hitler in breaking its provisions—beginning with the Anglo-German Naval Agreement of 1934 and culminating in the Munich Agreement of 1938.

British support for Fascism/National Socialism was not problematical for the Empire: it made sense in terms of Power Politics. A resurgent Germany was a check on France and a counter to Soviet power.

The Versailles system established in 1919 was weak and brittle. German democracy lacked any foundation in traditional State authority. It encouraged free expression of actual social antagonism.

It provided fertile ground for growth of the international socialism of Russian Revolution—which conceived of the working class as an international class which was destined to become the generalised ruling class of Europe.

The growth of Communist Parties everywhere was strong enough to suggest that that was a realisable prospect. The counter to it was not literal class war, such as apparently happened in Finland right at the start. It was national-socialism, the purpose of which was to restore the combination of classes in the power structure by means of elements drawn from both sides, and thus establish effective authority in the nation-state.

Churchill—the future hero of the Anti-Fascist War—was, in the 1920s, lavish in his praise of Italian leader Mussolini for finding the anti-dote to International Socialism in National Socialism. And in the early thirties he hoped that, if Britain was ever put in the position in which Germany was put in 1919, it would find a Hitler to save it!

The problem is not why Britain actively supported the Nazi regime in breaking free of the Versailles strait-jacket, and restoring itself as a regional Power facing eastward—as it did by means of the Munich Agreement in 1938. The problem is why, a few months later, it suddenly decided to make war on Germany over the trivial issue of the city of Danzig.

Churchill had nothing to do with this. He was a Great Man, in Platonic form, waiting for his moment—and he could not be choosy when the moment presented itself. He became a Great Man of the Anti-Fascist War, joining Stalin in saving Europe from the force that had saved Europe from Stalin!

But, when he came to write the history of that War, he at least had the grace to sub-title it as An Unnecessary War!

Capitalism and International Socialism joined forces to save Democratic Civilisation from National Socialism. It was an absurdity!

In the final months of the 1939-45 War, as International Socialism was saving Central Europe from National Socialism by conquering it in a war of self-defence, Churchill cast around for ways of making war on his great (un) Democratic ally in the East—which was doing what it failed to do in 1920: spreading the revolution!

The time had come to get to grips with the real enemy—now that the intermediary fascist conflict had been got out of the way. He said frankly that he had always considered Communism to be the real enemy—even when he was obliged to lavish praise on it in public—because, without it, his war of pin-pricks against Hitler Germany would have fallen flat.

Democracy in 1945 existed in two mutually-contradictory forms. The effective form—that broke the power of National Socialism—was the Communist form.

It was democratic in that it enlisted the mass of the people in the construction of an industrial economy, a State, and an Army under the direction of an extensive Party organisation drawn from the populace.

The other form was the Liberal Democratic. It was organised as a system of conflict between a number of ideologically antagonistic parties from which the populace as an electorate chose one of them by vote every few years to form a Government. Between elections the mass of electors went about their private concerns.

The system of liberal democracy in Europe, when restored superficially by the Western Occupying Powers, could not at the outset brand the Russian system as an even greater system of despotic tyranny than the Fascist system had been! If that was the case, what had the War been about?

It took some years of time and forgetfulness to pass, and for a new order of feeling to be generated—appropriate to the paradoxical nature of the outcome of the War, before Western Europe could settle down as a toy-town democracy under the wing of the United States.

(And, at the same time, conditions of life for the working class of Europe were much improved, as compared to the pre-War situation. This had to be done to counter the attractions of the Russian system of production, with its empowerment of the workers.)

The United States was kind to Europe. It shielded it from existential agonising over its recent past—which it had experienced as good, but must now experience retrospectively as evil—and about how quickly and smoothly the social substance of the evil past had become the benificent present.

And it set Europe up in business again, conferring on it effective demand for the output of the greatly increased industrial capacity developed in America during the War.

*

It is said that Hitler expected the Third Reich to last a thousand years. In June 1940 Churchill spoke of the British Empire lasting a thousand years. In Churchill's hands the Empire lasted about three years after that speech!

Britain's 1939 War on Germany had at least an undertone of anti-Fascist purpose. It ended in defeat in June 1940—and therefore therefore led to an increase in the Fascist presence in Europe.

Britain had depended on France to bear the main cost of the War again, as it had in 1914-18. France remembered how Britain had prevented it from making a secure settlement against Germany in 1919-20 and was cautious in its commitment to battle.

Britain did nothing much for ten months after declaring War in 1939. Its small Expeditionary Force idled at the Front during the Autumn, Winter and Spring of 1939/40, as did the very much larger French Army. Germany responded to the Anglo-French declaration of war on it in May 1940. As the weaker force, without command of the resources of half the world at the disposal of the French and British Empires, it had to act energetically, if it was to survive.

It had been given a 'practice war' in September 1939, when Britain and France had drawn Poland into a Tripartite military encirclement of Germany in order to induce the Poles to refuse to negotiate with Germany over the unsustainable position of Danzig. Germany responded to the military encirclement by striking at Poland, in the expectation that Britain (and France), instead of delivering on the military guarantee to Poland, would stand idly by—which is what happened.

Britain provoked the German/Polish War, and made it the occasion for declaring war on Germany. Germany responded to that declaration of war some ten months later and, with the expertise gained in its Polish War, broke the order of the Anglo/French deployment with a feat of Arms.

The British Army rushed into Belgium and then rushed out again, and went home, when it found itself in danger of being cut off from its way home.

The French Army then faced a debacle, after a German breakthrough from the Ardennes Front. France found itself occupied by the State it had declared War upon, and abandoned by the Ally who had led it by the nose into causing that War. Its democratically elected Government decided to negotiate terms of settlement with the State on which it had made war and lost.

Britain declared that the terms of the Anglo-French alliance prohibited France negotiating with the enemy without British approval—even though it had lost the War and Britain had left the battlefield!

The British propaganda denied that the battle had been won by a remarkable German feat of arms, and asserted that the French Establishment was riddled with Fascist Fifth Columnists who had opened the Front to Germany. It broke off diplomatic relations with France, treated it as an enemy, and made War on it—by destroying its Fleet in the first instance, and then by fostering terrorist activity within France under the name of Ungentlemanly Warfare.

Ungentlemanly Warfare was not going to win the War. It had a different purpose: to maximise the German intrusion into French affairs: to make things as difficult of possible for the French to make a viable settlement with the State on which it had declared War, and lost: to degrade the French Government—the Popular Front—into something that could be represented as having opened the Front to the Germans in May 1940.

Fascist Italy was neutral in the War declared by Britain until Britain left the battlefield. There was no necessary unity among fascist states. Fascism was national socialism—the counter to international socialism. Mussolini was a revolutionary socialist who took his movement into the First World War on nationalist grounds, under British urging, and who formulated the merger of Nationalist and Socialist Revolution as Fascism after the First World War—and was highly praised for it by Churchill.

Mussolini remained British in international orientation, even after Britain reneged in 1919 on the promises it had made in 1914 to get Italy into the War. And he was a backer of Austrian Fascism against Germany.

Austrian Fascism was patriotic against Nazism. It was the kind of thing that is represented in The Sound Of Music—but with the fascist character of the hero obscured.

The showdown between the Austrian and German Governments was not between liberal democracy and Fascism. And Mussolini was a backer of Austrian independence—until he began to realise that Britain was subverting the Versailles system by building up Germany against France.

Then, when Britain subverted the Czechoslovak State which it had created in 1919, and allowed it to be dismantled by Germany—and by Hungary and Poland under German authority—and followed this a few months later by bringing about a war on Germany with the intention that France would fight it: and lost that War in May/June 1940, it was not unreasonable for Italy to conclude that Britain was no longer capable of exercising the guiding role in world affairs which it had asserted in its wars against Napoleon, and to assert a position for itself in the post-British order of things.

Britain was no longer capable, after June 1940, of fighting the War which it had declared but, because it was not in danger of occupation, and its Navy was still the most powerful in the world, it did not need to end the War it had declared by making a settlement.

It kept Europe unsettled by means of pin-pricks. One of these pin-pricks was its intervention in the Italian/Greek War. The Italian and Greek states were both Fascist. Britain offered military assistance to the Greeks because Italy had joined forces with Germany in the other War as the Anglo-French front was collapsing.

The Fascist Greek dictator, General Metaxas, refused the offer of British military assistance because he did not need it, and because acceptance would automatically bring Germany into his War on the Italian side—which was, of course, the British purpose. But Metaxas died. The offer of British assistance was pressed on his successor, who was not worldly-wise. The offer was accepted. Greece became a Front in the British War on Germany.

The German route to Greece was through Yugoslavia. Yugoslavia split apart at a touch. The various peoples in it had been thrown together by Britain in 1919 with scant regard for national cohesion. Lloyd George's maxim was:

> "The whole state of society is more or less molten and you can stamp upon that molten mass almost anything as long as you do it with firmness and determination".

But this kind of thing is easier said than done. Yugoslavia dismantled itself easily into its component parts and they aligned themselves militarily against one another within the framework of the general War that Britain was intent on bringing about by drawing others into it.

British success in spreading its War to the Balkans in April 1941 probably had the very far-reaching effect on the post-War Settlement of Europe by delaying the European assault on Russia for a month. If the assault had been launched a month earlier, and had reached Moscow before Winter set in, and the Soviet State had retreated beyond the Urals, the subsequent course of events would have been different.

A factor in the German decision to make War on Russia was that a victory in Russia would bring about a settlement with Britain, and end the uncertainty that hung over Europe.

There were only two forces in the world capable of doing battle with Germany as it had become in June 1940: America and Russia.

American democracy was determined not to be lured into another European War, and Russia was not going to risk itself in an offensive War. So Britain's only hope lay in Russia being attacked. That happened in June 1941 by Germany invading and its East European allies joining in. The exceptional barbarity of the following years—the extermination of Poles and Jews—was concentrated in the hinterland of the European advance.

If Europe had won, and Russia was put out of the game, Britain would have made a settlement with Germany—it is not suicidal, though it likes to pretend that it would rather be wiped out than violate a principle! And if Europe failed to win in Russia, then the outcome was inevitably an expansion of Communist power across Europe.

With Russia giving a good military account of itself, the only way of preventing that outcome was to find a way of drawing in the only uncommitted Power, the USA. And that is, presumably, why Churchill seconded a US ultimatum to Japan in 1941—and lost the Empire that was intended to last for a thousand years!

For a few hundred years Japan had been living peacefully within its own borders—'*navel gazing*', as we now put

it—when American warships visited it in 1853 and told it it must enter the world market, or else . . . !

Britain had done the same thing with China—but by means of actual war—ten years earlier. [The story of how Britain got China hooked on opium, disabling the country and garnering huge super-profits is beside the point here! It was the Chinese Communist Party which expelled the Imperialists and put the country on a sound footing! Ed.]

The Japanese authorities saw that peaceful self-sufficiency was no longer allowable, so it geared itself up for Imperialist Capitalism: and proved to be good at it. It formed a mutually-beneficial alliance with Britain, and helped to secure the British Empire in the Far East.

The United States, by systematically extending westward expansion, had come to regard the Pacific area as its sphere of influence. It was irked by the Anglo-Japanese Treaty of 1902 and, after Britain became its debtor in the First World War, demanded that Britain should end its alliance with Japan—or ellse face a direct challenge to its naval power.

Britain did not renew its Japanese Treaty, and the Japanese were denied racial equality in the Versailles system—though it was one of the victors of the Great War. Then, in 1941, the British Empire seconded an American demand that Japan must desist from certain of its Imperialist activities.

Japan, forced into the imperialist system by American warships, decided to fight for its life against the American/British ultimatum, and it pulled the plug on the British Empire in the Far East!

And, perhaps with a sense of poetic justice, we can note that Britain's botched Great Power manipulations in World War 2, which forced it to look to the USA to pull its chestnuts out of the fire, had the unintended consequence that the USA gradually forced Britain to disengage from its Empire, and to defer to the new world role adopted by its erstwhile colony!

Brendan Clifford

Casement And *The Guardian*!

Rory Carroll, a Dubliner educated in Blackrock College and Trinity College and therefore a very educated person, has written a book about Casement which is neither mere fact nor mere fiction but touches on both, as is the way with propaganda. He is the Foreign Correspondent of the Guardian, which used to be the Manchester Guardian.

Carroll was interviewed about his book by Pat Kenny on Newstalk radio in early August. The memorable thing he said about Casement was that he was a hero of the British Empire who turned against the Empire in its hour of need in 1914 because of something that had disturbed him about the Boer War a dozen years earlier. This conveyed the notion that Casement was an imbalanced person.

Casement viewed the world in much the same way as the Manchester Guardian did under its famous Editor, C.P. Scott. Both Casement and Scott saw that the directing element in the Liberal Government were making secret preparations for a war of destruction on Germany, jointly with France and Russia, and both thought it would be a fundamentally bad thing.

Casement published articles about what the Foreign Secretary, Sir Edward Grey, was up to behind the scenes. This was long before the matter was made clear by Grey's Declaration Of War.

John Dillon, Deputy Leader of the Irish Home Rule Party, tried to alert the Liberal back benches, by means of questions in Parliament, to the secret arrangements for war being made by Lord Grey—who until the very last moment denied that he had made any such arrangements. And, when he revealed that he had made them, he insisted that the State was in honour bound by them.

After the European war broke out, Scott saw that Gray would make use of the Belgian issue to bring into it, and he published Editorials arguing that there was no Treaty requiring Britain to enter the War, in the event of a German march on France through Belgium, and that to do so would be disastrous.

Casement did not change his mind when Grey on August 4th did what Casement had said he was planning to do. A British war on Germany would be a Crime Against Europe, and he would not participate in it just because the Government declared it (a course taken by the Manchester Guardian and other 'right-thinking' people).

Volte Face!

Manchester Guardian,
30th July, 1914:

"Englishmen are not guardians of Serbian well-being, or even of the peace of Europe. Their first duty is to England and to the peace of England… But though our neutrality ought to be assured, it is not… Sir Edward Grey walks deliberately past opportunities of saying that we are and will be neutral in the quarrel of Europe…

"This official reticence is in striking contrast with unofficial garrulity. The Times, whose influence in our foreign affairs has always been for evil, …exhorts us to patch up our difficulties about Home Rule in Ireland in order that we may be better able to see fair-play between Austria and Servia. Who made us the arbiters of 'fair play' between Austria and Servia, and what conceivable interest have we in subordinating any British interest whatever to so entirely gratuitous a task? …Rather than be guilty of this madness, there is no constitutional measure of revolt which Englishmen ought not use who think more of their duty to their own country than of the real or imaginary interests of the Russian autocracy [Tsardom]…

We are friends with every Power in Europe. Why give preference to one friend over another? Because, says the Times, it is our settled interest and traditional policy to uphold the balance of power in Europe. Away with that foul idol, as [John] Bright called it, which lost England the great lead in popular liberties that it had gained at the beginning of the 18th century and brought about the most terrible tragedy in our history, the quarrel with revolutionary France. But if we must worship the idol, how should we serve it better by throwing our influence on the side of [Tsarist] Russia than on the side of Germany?…"

Manchester Guardian,

1st August, 1914 :

"Russia has ordered general mobilisation. Germany has proclaimed martial law throughout the Empire… We advise Englishman that they have no sympathy to spare for Europe… For there is in our midst an organised conspiracy to drag us into the war…

Manchester Guardian,

3rd August, 1914:

"On The Brink

"…On Sunday Germany declared war on Russia. Early next morning her troops invaded Luxemburg, and in the course of the day they are alleged to have crossed the French frontier at two points not specified. The war party in England will use these facts to work up feeling against Germany as the aggressor and violator of international law; but sober Englishmen… will not let German military opinion of what is necessary affect their judgment of what is best for England. Germany was not free to choose; whether war was to come depended not so much on what she did as on what Russia meant to do. Having convinced herself, and not without cause, that Russia meant war, she conceived that her policy was one for soldiers to determine on purely military grounds… Germany's position is graver than it has been since the days of the great Frederic. With the genius and brilliancy of France on the one flank and the overwhelming numbers of Russia on the other she felt herself fighting against odds for her very existence…

"The British Cabinet sat all day on Sunday discussing what the policy of this country ought to be. As we write we do not know what decision has been reached. But we are, if possible, more convinced than ether that duty and interest alike demand that this country should not make itself an accessory to the crime against reason and human happiness that is beginning…"

Manchester Guardian,

5th August 1914:

"England declared war upon Germany at eleven o'clock last night. The controversy therefore is now at an end. Our front is united… it will be a war in which we risk almost everything of which we are proud, and in which we stand to gain nothing… Some day we shall all regret it.

But, in the meantime, while waiting for the outcome of the Government's "crime against reason and humanity" to prove it right, the Manchester Guardian decided to eat its words, discard both moral and *realpolitik* considerations, and indulge in reckless warmongering propaganda with the best of them.

But its famous Editor, C.P. Scott, made a kind of mental reservation. He would not himself write the war-mongering Editorials that he authorised. He deputed that to his Assistant Editor, C.E. Montagu.

A Comment

Montagu's war-mongering propaganda was so effective that he recruited himself into the Army, even though he was middle-aged! He quickly became a thorough-going militarist, in the fundamental sense that he loved being in battle in the trenches.

Scott possibly thought that, by declining to take part in the dirty work of writing the lying propaganda, he was saving himself for the job of restoring the integrity of Liberalism after the War—of patching up its lost integrity. But, by the end of the War, the great Liberal Party was in ruins. It turned out to be the case that you could not give the world a shake and turn it upside down for others without turning it upside down for yourself as well!

The *Manchester Guardian* was a pillar of the State in 1914. It was the voice of the capitalist order of things, coming from the source of Capitalism. By 1919 it was just another rag.

Rory Carrol is the outcome of C.P. Scott's great self-denial of August 1914.

Germany Before The ICJ

Hearings at the International Court of Justice (ICJ) in a case of immense importance—albeit one that has received limited media coverage—concluded a short while ago. The case concerns Germany's responsibility for supporting and being complicit in genocide in Palestine, as well as for Israel's violations of international law, including apartheid.

While this case is crucial for Palestine, its significance extends far beyond that; it represents a major development in international law and could—without exaggeration—have global repercussions.

The importance of the case lies in two fundamental aspects:

- For Palestine: A successful outcome would trigger a political and legal earthquake for Germany. Germany views support for Israel as part of its "state doctrine," yet this very doctrine is now leading it to become a party to genocide—ironically, after Germany itself previously committed genocide. Naturally, the impact would extend to other nations that support Israel.

- Beyond Palestine: This is the first case before an international court where a state is accused based on its support for another state (whether through arms, funding, or other means) in the commission of crimes and violations of international law. Previous cases targeted the states directly committing the violations, rather than third-party states that provided support without being directly involved in the acts themselves—even though, without such support, carrying out or sustaining those violations in the same manner might not have been possible (Syria being a prominent example).

It is important to note that the hearings held by the Court over the past few days did not yet address the merits of the case. Instead, this stage was dedicated to examining Germany's objections regarding the Court's jurisdiction to hear the case in the first place—including Germany's argument that the Court cannot adjudicate the matter without Israel being a party to the proceedings. The Court is expected to issue its decision regarding these objections within the next few months. Should it decide to proceed with the case, it will then consider whether Germany bears responsibility for violating the Genocide Convention in relation to Gaza.

Finally, I would like to conclude with a note of pride: our organization, Law for Palestine, is participating in this case as counsel and advisor within the legal team representing Nicaragua before the International Court of Justice. For us, this is both a significant responsibility and a great honor.

From a post on Facebook:

We are indebted to Eamon Dyas for bringing this report to our attention on 16th September. Ed.

Stephen Richards

Continued from Summer Issue of *Church & State*

Aldington v Tolstoy: *Finale !*

If my last piece on the Aldington-Tolstoy Trial was entitled "The Aftermath", then I suppose this must be the aftermath of the aftermath! We had jumped from the Court of Appeal hearing in November 1993 (on the financial implications for the co-defendant when the other enters into a purported full and final settlement) to the reckless behaviour of Nigel Watts in early 1995, poking the bear through a series of ever more scathing letters and pamphlets.

As always I'm heavily reliant on the superb *The Cost Of A Reputation* by Ian Mitchell (Canongate, 1998), which is the source of any unattributed quotations.

Once More Unto The Breach!

In late 1993 Tolstoy still had his house, it's true, and by then the Prince of Liechtenstein had weighed in to revitalise the Defence Fund, so the family was no longer living off "the jars at the back of the cupboard", so it would have been advisable for him to try to move on with his life and concentrate on potentially remunerative literary work.

That he was unable to take this course was because he no longer had the energy needed to sustain long-term imaginative focus; and that was because the tribulations of the previous few years had knocked the stuffing out of him.

And, at an even more fundamental level, he still wasn't prepared to concede defeat to someone he considered to be, at the very least, a dishonourable opponent who had got his result by trickery and perjury. Added to which, the same man was still trying to get him evicted.

So, what about the prospects of a late appeal, on the basis of the damning documentation that had been withheld at the original trial?

According to his counsel at the original trial, Richard Rampton, there wasn't *"a snowball's chance in Hell"* of a further appeal being successful. The test for allowing a re-hearing, based on new (or hitherto unavailable) evidence, was a very stringent one, in English law at least. The evidence must demonstrate fraudulent conduct by a party. But Tolstoy's new solicitors, the ever-ingenious *Schilling and Lom,* came up with a plan to circumvent this. The way to cut the Gordian knot would be *"to sue Lord Aldington for fraud, on the basis that the 1989 verdict had been obtained by perjury"*.

One might wonder, in passing, why it was decided not to go to the police with a criminal complaint. In relation to serious criminal conduct, such as perjury, which undermines the integrity of the legal system, there's no time limit.

Readers will remember that in 1987, just a couple of years before the Aldington Case, Jeffrey Archer had been awarded damages of £500,000.00 against the Daily Star, which had run a story claiming that Archer had paid for sex with a prostitute, Monica Coghlan.

It wasn't until twelve years later, when Archer was planning to run for Mayor of London, that his own story unravelled. Admittedly in his case he'd been guilty of perjury on a spectacular scale, having arranged for a former associate to construct a false alibi for him, although the alibi was never actually used in court!

At Archer's criminal trial at the Old Bailey in 2001, however, the false alibi was one of the main means of establishing beyond reasonable doubt that he'd told a whole series of lies in the 1987 civil case. Not only was he convicted, and sentenced to four years, but his conviction opened the door to a civil action by the *Daily Star* to recover the entirety of the damages paid out, plus two sets of costs.

If the new approach was to be a civil action for fraud, I don't see how the same logic wouldn't have suggested a criminal prosecution first, which would have required no greater weight of evidence. The only difference, I suppose, would be that, in the Civil Case, the standard of proof would be on the balance of probabilities; and in the case of Lord Aldington the evidence, while compelling, wasn't quite so irresistible as in the Archer Case.

But I suspect the main reason was that Aldington, while arguably a miscreant of a much deeper dye than Archer, who, after all, was lying simply to save his marriage and his political skin, wasn't a pantomime villain of the same order. The tabloid press and its readers had hardly heard of him. There would be no howls from Fleet Street when someone of appropriate seniority in the Director of Public Prosecution's office quietly smothered the complaint under cover of a bland emotionless letter or memo.

At least with a civil action, the Plaintiff can take charge of the proceedings, and would have a fighting chance, or so Schilling and Lom must have reasoned.

Perils And Pitfalls

On 21st February 1994, the Writ was served, and the Statement of Claim followed. In the Common Law jurisdictions, the dilemma always arises about how much detail to include in the Pleadings. If, for the sake of clarity, some or other of the allegations are omitted, then, if they happen to crop up in the course of the evidence, it can make the Plaintiff team look shoddy at best, and, at worst, disingenuous. So the advice is always, when in doubt, to throw the kitchen sink at it, which is what happened.

There was certainly plenty of highly relevant evidence, but, as Mitchell comments, all of this—

> "served only to diffuse the light Tolstoy was trying to shine on the relationship between the full body of evidence of what happened in 1945 and that presented to the Court in 1989."

Readers will remember the key dispute during the Trial concerned the date when the then Toby Low had flown out of Austria. As mentioned in my most recent article, the trial judge, Michael Davies J., casting caution to the winds, had underscored how critical this question was, while doing his best to pour cold water on any later date than 22nd May.

Post-trial, evidence had come to light in the shape of the "Phantom Signal" that the correct date was 23rd May. So, with that in mind, Aldington filed a replying Affidavit on 29th March, in which he stated, *inter alia*:

> "I have not been in any doubt since I first acquired a copy of the [Phantom] Log in June 1992 that it did not establish that I left Austria on 23 May; in these circumstances… any rational person would say that the log entry can safely be disregarded as evidence of my having left Austria on 23 May, given that otherwise I would have had to have made up (and perjured myself) about [my departure date] for no readily comprehensible reason".

To which *"any rational person"* can only respond by saying *"Eh?"*

Suppose I'm charged with breaking a window in Oxford Street on 22nd May, and an independent person confirms I was still in London on that date, it's hardly a defence for me to respond by saying—

> 'my evidence in court that I had left the city that morning must be believed because otherwise I'd be guilty of perjury'!

Indeed, the appearance of the Phantom Log was the main reason Aldington had been induced, for very good and valid causes, to fold his tent by accepting £100,000.00 from Nigel Watts, ostensibly in full and final settlement.

Aldington then went on to tell an outright lie, in what was supposed to be a Sworn Statement, a lie which even the slipperiest eel in the box might have disdained. This relates to the vital file FO 1020/42, which we've discussed at length:

> "If, in a case of this sort, the matter can be re-opened simply because the losing party has found on the open shelves of the Public Records Office material which was there throughout, it is difficult to see how there can be any finality in this litigation, now or in the future."

It hadn't been on the open shelves of the Public Record Office for a lengthy period leading up to and beyond the trial, which Aldington well knew, as he had accessed it in the Foreign Office, and used parts of it for his own purposes, while it was denied to Tolstoy.

> "All these arguments [put forward by Aldington] seemed so transparent that Tolstoy went to court in a relatively confident frame of mind. But a warning bell sounded when he learned that the Judge was a new boy on the Bench, Mr. Justice Collins. Collins is a soft-featured Old Etonian who, Tolstoy learnt with dismay, had been severely criticised in the Scott Report for allegedly withholding evidence from a court while still a barrister.
>
> "Collins, while acting as prosecuting barrister in the Ordtech Case (about the sale of artillery fuses to Iraq), was alleged to have maintained that the Government had no documents relevant to the Defence Case when in fact it had several. Shades of FO 1020/42, Tolstoy thought.
>
> "Tolstoy's gloom deepened when he learned that the case was to be heard 'in Chambers'… rather than in open court. Tolstoy could have objected but he was advised not to as the Judge might take that as evidence that he had issued his Writ purely for publicity purposes and strike his action out. In a sense he had done that, because, since the gagging injunction, a court was now the only forum where he could present the new evidence he had gathered without risking jail."

This is very astute from Mitchell, but I wonder if he could have gone further, and suggested that Tolstoy was the recipient of poor advice, not for the first time. It's possible, if not perhaps probable, that the presence in court of a couple of interested-looking journalists might have moderated the Judge's behaviour.

What's Another Day?

To return to the issue of the date: put simply, if Aldington had been out of town from early on 22nd May, he would have missed the crucial *"shoot the Cossacks"* Conference on that day. That was why 22nd May had been his final answer on the point, which he had previously wavered on somewhat.

But, by the Trial, he'd realised how vital it was, and the date got set in stone. It would have been obvious to proverbial man on the Clapham omnibus that Aldington's evidence was at the very least liable to be tainted by considerations of self-preservation. But it wasn't obvious to Collins. In the course of Tolstoy's counsel, Alun Jones, opening the case, the Judge interrupted with the faux-naif enquiry:

> "Are you suggesting the Lord Aldington cynically made up the details of his journey home"
>
> "Well, yes, m'lud. That's rather the point of this case, don't you know? The Plaintiff's alleging fraudulent behaviour on the part of the Defendant! But of course, if belted earls and ex-MPs and Brigadiers always tell the truth then we might as well go home!"

That should have been the response! But, of course, the words weren't spoken, only thought, with probably a few expletives thrown in!

As for the evidence in the Phantom file, this was hearsay and, for all the judge knew, there might be other entries on the file supporting Aldington's contention.

This was brazen partisanship by Collins, and a shameless twisting of the Rules of Evidence. Surely an entry in a military log has a certain probative value! To argue otherwise would invalidate just about every trial of military or governmental misconduct, from Nuremberg onwards! And, of course, Aldington was free to produce any counter-indicative records, if they existed.

Here is an actual exchange between Collins and Charles Gray, counsel for Aldington who proposed the following:

> "If the Phantom signal had appeared at the trial, Lord Aldington would have said 'It's ridiculous' and the jury would have believed him."
>
> "That I have no difficulty with. The jury would already have believed Lord Aldington was telling the truth by the time Phantom would have been produced at the trial."

But of course any cross-examining counsel worth his salt would have opened up the date of departure by eliciting a dogmatic response ("Are you absolutely sure you couldn't be wrong"? and so on), and then would have been able to hit him with the Phantom log.

Any Fraud Won't Do

The Judgment, which was delivered on 16th December 1994, lived up to the calamitous expectations of the Plaintiff. Collins went so far as to assert that the Definition Order (signed by Toby Low on 21st May) wasn't in breach of the Yalta Agreement.

This Order, the reader may recall, effectively elided the distinction between Soviet nationals and others. And, just to stamp out any remaining embers of merit in the Plaintiff case, Collins went on to attempt to narrow down the type of fraud that would have to be shown if the Plaintiff were to be successful. Any fraudulent evidence would have to be central to the case.

Now, it's sensible to suggest that parties to litigation aren't going to perjure

themselves on secondary issues. The psalmist may aver that "the wicked go astray as soon as they be born, speaking lies", but lies are measures of last resort in a court of law, if only because of the severe consequences when you're caught out. The very exposure of the lie tends to indicate that it was about something important, so in that sense the lying witness defines the centrality of the fraud for the court.

You don't need to be a lawyer to understand these things. In the case of Collins, it appears that being a lawyer helped him to not understand them!

And it's not for a High Court judge to expand or narrow the scope of legal categories and make up the law as he goes along.

Anyway, Collins held (in direct contradiction to the Trial Judge) that the date of Aldington's departure wasn't "a decisive issue", so it wouldn't have mattered if he'd been satisfied on the balance of probabilities (which he wasn't) that the correct date actually was 23rd May.

In his judgment Collins seems to have treated the case as if it were a substantive appeal against the verdict, whereas it was a totally separate action, alleging that Aldington had committed perjury in the course of his evidence—although of course the cases were factually linked.

But technically Tolstoy wasn't asking for the judgment to be set aside, just for a finding that Aldington's evidence had been in part tainted by obvious falsehood, with damages and costs to follow.

That distinction perhaps wasn't totally clear, and it's possible that Schilling and Lom were being somewhat oversubtle, or that they credited the Bench with more subtlety than it possessed.

Insult To Injury!

So the action was duly dismissed, and costs awarded to Aldington. But extraordinarily, acceding to an application by Gray, Mr. Justice Collins ruled that 60 per cent of the costs be met by Schilling &and Lom, presumably to teach them not to get any more uppity ideas into their heads!

This was surely an act of pure malice. Even more surprisingly the costs order was upheld on appeal, albeit on slightly different grounds. Inferior and superior courts might cross swords on technical points but it all amounted to the same thing, because Aldington always came out on top.

Just to complete Tolstoy's humiliation the Judge acceded to another application by Gray, this time that the judgment, including the costs order, be published. So, it was imperative that the case be heard in private but that the judgment be made public! At the same time it was ordered that the transcript of the hearing be destroyed. The rationale for this astonishing ruling was quite simple. Had this precautionary step not been taken, then Tolstoy, or indeed Watts, would have been free to refer to the public record of the trial, in which the details of the perjury would have been disclosed. Any other reference to Aldington's mendacity would have been precluded by the gagging order from the original trial.

Mitchell has also written about some of the 'Show Trials' in the old Soviet Union. Loath as one may be to admit it, it's hard not to observe a certain commonality between the two judicial systems in relation to the erasure of inconvenient records.

High Noon For Watts

This was the background to Watts's last flurry of pamphleteering in early 1995, described in my previous article. Tolstoy had been seen to, and now it was necessary to hoover up Watts as well.

It will be recalled that Watts was living very dangerously in the Spring of 1995, facing committal for contempt. We left him at the point when he had obtained leave for an adjournment of the application to give him time to get legal aid. But the date rolled round, and 27th April saw him once again in jeopardy, before Mr. Justice Morland. Watts made no attempt to ingratiate himself with the Judge, quite the opposite, while Gray, now in his element again, asked for the maximum term of imprisonment as per the statute: two years.

Gray didn't quite get his wish, as he wouldn't have expected to, but he got pretty close to it. Imprisonment for contempt does happen, but usually just for a week or so. It caused some surprise when Tommy Robinson was sentenced to 18 months recently, for conduct perhaps more egregious than that of Watts! Anyway, Watts got 18 months, and was taken off to Pentonville.

Even though he was transferred to an open prison after a week, he still had ample cause to be disheartened about his situation. The prospects for an appeal didn't look bright. Then, after six weeks, he got word from the Official Solicitor that he would be considered for early release, but only if he made an abject show of apology and submission. The Emperor Henry IV at Canossa comes to mind! And, in the meantime, Tolstoy was showing no interest in him or his fate.

Around this time, the fiftieth anniversary of VE Day was being commemorated with some remnants of imperial swagger. Mitchell aptly draws attention to the well-timed book by Richard Overy, Why The Allies Won, in which the author paid tribute to the 60,000 or so UK civilians who had perished, mostly in the Blitz.

> "But the victims of 5 Corps numbered 70000, possibly half of whom sooner or later died in captivity. When the anniversary of that tragedy came around two weeks later almost nobody mentioned it. The single exception was Nigel Nicolson."

On the anniversary itself, 22nd May, Watts appeared before the Court of Appeal. He apologised to the court but "would not extend the apology to Lord Aldington personally, though he had been advised to do this too".

The Limits Of Abasement

This wasn't good enough for the Court, although Lord Justice Russell made it clear that Morland had been "manifestly in error" as regards the sentence, so he cut it in half, to nine months.

For the next month Watts brooded in his cell. The pressure from his wife and family to eat humble pie strove with his visceral refusal to countenance the thought of an apology to the man he viewed as a war criminal, a liar, and a persecutor of him and his family. But, at last, on Friday 23rd June, he swallowed the bitter pill, submitting the following letter to the court:

> "Dear Lord Aldington,
>
> I wish to apologise to you for my breach of the injunction in this matter. I wish to express regret for any embarrassment that my breach has caused to you or your family. I wish to offer to you and the Court my assurance that I will respect the rule of law in the future and will not breach any of the injunctions granted at the end of the libel trial in 1989.
>
> Yours sincerely, **Nigel Watts**".

This could be said to be a minimalist apology, but it was the most the Watts could bring himself to say. It certainly wasn't enough for Aldington, who insisted that Watts accept *"the validity of the 1989 judgment"*, and also that his allegations (of perjury and so on) were "entirely unfounded".

The presiding judge, Latham J., wasn't

going to led down this vengeful path, and adjudged that Watts had duly "purged" his contempt. So he could resume his painting career.

Mitchell reckons that of the three parties to the litigation, all of whom were damaged by it, Watts was the least damaged, and came *"closest to achieving his declared aim"*.

The Final Frontier

Just a few weeks later, in July 1995, Tolstoy's part in the litigation also reached its finale, in the European Court of Human Rights (ECtHR). This was by way of a two-pronged Appeal against the verdict, an Appeal which had been gestating since 1991.

It must be remembered that, until 1998, the ECHR had no direct application to domestic UK law: that is, while the domestic courts may have been able on occasion to take it into account, they were under no duty to apply the then current interpretive standards of the ECtHR to the cases they were adjudicating. In those days the ECtHR featured in our discourse rather in the context of Signatory States bringing other Signatory States before it, and specifically the Irish Republic bringing cases against the UK.

Tolstoy argued first that the gagging orders imposed by the Trial Judge constituted a disproportionate interference with freedom of speech, one of the core freedoms enshrined in the Convention; and, secondly, that the exorbitant award of damages was an unfair punishment. The Court held against him on the main point of principle, the freedom of speech part, but upheld his damages argument.

This very limited victory had no consequences in re-visiting the terms of the damages award, but Lord Justice Bingham, of Ulster stock, and one of the most impressive judges of modern times, seized upon the ruling later in 1995 with a view to reining in the excesses of libel juries.

Surveying The Wreckage

The legal system is replete with capricious judges and wrong-headed juries; and the State, probably rightly, concentrates whatever spasmodic corrective efforts it makes exclusively on miscarriages of justice in the criminal area. So, on one reading, this whole saga was just another best-forgotten exhibition of bluster and sleight of hand by a whole gallery of Judges, desperate to prevent awkward questions being asked about possible British complicity in War Crimes.

Mitchell is well aware that there's little appetite for the redress of the type of wrongs perpetrated against the defendants in this trial, but he wonders if the history couldn't be re-opened on the ground of State Complicity in the withholding of vital evidence from the Defence, as we've discussed, combined with the according of privileged exclusive access to Aldington.

He closes his Epilogue as follows:

> "Behind these particular questions lies the larger, more general one: does official Britain interfere with the courts in politically sensitive trials? If it does, then the 'British justice' which the Cossacks and Jugoslavs sought the protection of in May 1945 is as much an illusion today as was the Communist goodwill which 5 Corps sought, fifty years ago, to buy with the lives and liberties of 70000 tragically trusting foreigners."

The point is well made, except that Mitchell previously made it clear that the victims of Aldington and Keightley had become somewhat less trusting as time went on.

Aldington survived the publication of Mitchell's book by only two years: though, through his trusty enforcers Allen and Overy, he was breathing out threats and slaughter both pre- and post-publication. Following Aldington's death in December 2,000, Nigel Nicolson ventured a rueful piece in the *Daily Telegraph*, recounting something of his own experience as a witness for Tolstoy, whose friend he had been.

He also discloses in his article that he'd been a friend of Toby Low as well, whom he'd admired in the War; and after the War they continued as neighbours in the Kent countryside, and were both Conservative MPs, continuing on friendly terms until, of course, the libel case severed their relations permanently.

Friends Disunited!

It's worth quoting NIcolson as an example of a decent fair-minded English gentleman trying to square the circle, which must have been a difficult task in light of Mitchell's book:

> "On leaving the witness stand I found myself, to our mutual embarrassment, alone with him in the law court lavatory. I said, 'Toby, I'm afraid you must be finding all this a great strain'. He replied, 'I'm not accustomed to being called a murderer by an old friend', and walked out.
>
> "My reservations about Tolstoy's hyperboles also strained my friendship with him. He thought me a feeble supporter of his campaign, specially after he lost the case. As recently as June this year, when we visited together the scenes of the massacres in Slovenia, I implored him to give up his pursuit of Aldington and his claim that he had unjustly lost the action…
>
> "I do not absolve Aldington from all guilt in the affair of the Cossacks and Yugoslavs. He claimed in retrospect that if he had known what their fate would be, he would have given different orders, but he did not know. Nobody had told him. This was because the warning that we repeated again and again in writing… never penetrated to him beyond Divisional Headquarters; but, as Chief of Staff to [5 Corps] it was his business to find out. He should have visited us, seen for himself what was happening at the railway station, heard our lies [i.e. the lies told to persuade the Yugoslavs to get on the trucks and trains], and then advised his Corps Commander that we were in breach of the Geneva Convention and the traditions of the British Army in betraying men to whom we had granted asylum. He did none of this. But the most of which I would accuse him is negligence and indifference. He wanted to tidy things up before he went home on leave. He did not feel the need to enquire too closely into the fate of 70000 men who in many cases had fought against our allies.…
>
> "I hope that Nikolai Tolstoy will act generously now that Aldington is dead, admit that he overstated his charges against him, and that the jury's verdict was not unfair… He has won a great moral victory by drawing attention to a monstrous crime. Let him now rest his case."

But Tolstoy was having none of it, as we see from his acidic rejoinder a week later in the Letters column. He mocks Nicolson's wish that no more relevant material be disclosed, which—

> "seems to be an unusual approach to historical research, but perhaps that was the way it was taught at Balliol between the wars."

As for Nicolson's admission that he and his fellow-officers had told deliberate lies to prisoners of war and refugees, in breach of the Geneva Convention, Tolstoy has this to say:

> "Why he did not refuse to obey so plainly unlawful an order is left unexplained. What he does suggest, however, is that Aldington 'should have visited us' to find out what was

happening, and advise his Corps Commander that the operations should be halted. He did not do so, Mr. Nicolson tells us, because he was not being kept fully informed.

"Earlier Mr. Nicolson mentions that he was at the time a long-term friend of Aldington's. Is one permitted to enquire why he did not take advantage of this relationship to convey the vital information himself? Or are questions as well as answers no longer permitted to be posed on this subject?"

Nicolson himself died at home at Sissinghurst in 2004 aged 87. It's puzzling that he should have chosen to backtrack at this time. While it's certainly possible that the overblown rhetoric of the fatal pamphlet that went out under Watts's name may have justified a finding of libel on narrow grounds, this view of Aldington as somehow having been passively borne along by a process he would surely have put an end to if he'd been in full possession of the facts does considerable violence to the narrative.

Where Are They Now?

Tolstoy is still with us, and in reasonable health I believe, aged 91. He has continued to contribute articles and letters to newspapers here and there, but his only substantial literary achievement over the past three or four decades has been his two-volume biographical homage to his stepfather Patrick O'Brian. It would have been far better for him if he'd chosen not to intermeddle as a party in the litigation, and had confined himself to appearing as an expert witness for the Defence. It was his misplaced sense of honour, abetted perhaps by a touch of vanity, that induced him to venture into the lobster pot.

I haven't been able to find out if Nigel Watts is living or dead. If still alive he must be nearly of an age with Tolstoy. Colourful, indomitable and bloody-minded, he gives the story something of the feel of a Nordic saga, where the gods and heroes relentlessly pursue their doom. He seems to have been able to see through the stale forms, faux-dignity, pedantic niceties and evidential acrobatics than can be all too characteristic of the judicial system, even in its most lofty manifestations, and to penetrate the servile hypocritical calculus that underlies it. (And space forbade me to say much about his appearances at Sun Alliance AGMs.)

The defendants appear to have been particularly unlucky in their judges. There are always some independent spirits, like Lord Denning (in his better moments), Lord Bingham, and further back, giants like Lord Reid and Lord Atkin (Aldington's stepfather!).

In Northern Ireland we've been blessed in more recent times with judges, such as McCloskey, Girvan and McAlinden, who have shown themselves to be impervious to the siren voices of realpolitik, and to have no compunction about embarrassing the Powers That Be where necessary.

Reprise

The very gestation process of Mitchell's book, and its post-birth reception as recounted by him, is to some extent a replay in microcosm between the same forces that had been ranging around for most of the previous decade. Mitchell tells us about this in an Afterword, which presumably was added to the second and subsequent editions of the book.

His own story begins in the Spring of 1991, when he was sitting in the study of his cottage in Islay, and mulling over possible interview subjects for a small-circulation literary magazine he edited, called Topical Books.

Suddenly Nikolai Tolstoy's name flashed into his mind, and he began to remember that there had been a huge kerfuffle a year or two previously over the libel trial.

It turned out his subject was only too willing to meet for a chat. Far from being in the pit of remorse and defeatism, Mitchell discovered that Tolstoy was—

"full of bounce and fight. This is not surprising when the full outrage of his story is told."

By way of courtesy he sent copies of the relevant issue to Aldington and Cowgill. The latter responded with a copy of his own "Final Report", a copy of the Court of Appeal judgment (in the security for costs aspect) and a somewhat bristling covering letter.

Interviews with Cowgill, and also with Booker, followed, but Aldington held aloof. Mitchell followed up with an eight-page article in the next issue, entitled, *"Foreign Deaths and British Honour"*, and this is when sparks began to fly, in the form of a stern letter from Allen and Overy to his London distributors, containing an "unveiled threat" that the company was going to fall foul of the Court Injunction against speaking about the case!

The only factual issue raised was in connection with the Definition Order, which Mitchell had described as *"unauthorised, illegal and inhumane"*. Bu the distributors were duly spooked. The magazine itself now seemed to be on death row.

Next Cowgill's solicitors got in on the act. The article was *"gravely"*, *"highly"*, and *"grossly"* defamatory in its portrayal of their client, even though this portrayal had been mostly in Cowgill's own words, accurately reported!

The real object of course was not to have the matter ventilated in court but to have all talk of it smothered in advance. This was done by threats to the bookshops, Waterstones and Dillons.

Michell recalls that Dillons showed a lot more spunk than Waterstones, but eventually they gave way. It was clear that any future issues of the magazine that referred to the matter at all, even by giving an accurate account of the pressures that had been applied to it, would be blacklisted. There had been no court order. So Mitchell describes this as *"private censorship"*.

From that time on Mitchell determined to attend all court hearings where possible, in the course of one of which he had an unpleasant encounter with the Aldingtons in a lift. By this stage the Guardian, in Alan Rusbridger's time as Editor, began showing some interest in the proceedings. Their reporter, Richard Norton-Taylor, was the recipient of an admission from an anonymous MoD official that he had been instructed to assist, first Cowgill, and then Aldington in the latter's preparation, including with the removal of certain papers from the Public Records Office, a process which *"started in a small way, then it got out of hand"*.

Topical Books was still on life support, and so Mitchell decided to take the bull by the horns and contact Aldington, who answered jovially, "You can't have people writing scurrilous stuff on Skye" (sic). But why, if Mitchell's articles were in Contempt of Court, hadn't he received any threatening letters himself?

"Mr. Mitchell, the first rule of libel is that you never sue anyone who hasn't got any money."

"How do you know I haven't got any money?"

"Oh, I've had you checked out."
"What do you mean by that?"
"I'm not telling you."

Tolstoy And Portsmouth

Tolstoy then re-entered the frame, with a suggestion to Lord Portsmouth that Mitchell be engaged to prepare an expanded version of his two magazine pieces, and Mitchell agreed.

The story expanded in the telling, and by mid-1995, two and a half years later, Mitchell had produced what was in effect the first draft of his book. The manuscript was delivered to Tolstoy, who at first was delighted with it. But, as he read on, he became increasingly disenchanted, until he finally gave up.

He didn't like how he was portrayed, and complained of factual errors, declining however to provide a list of them. He would approve the project only if he was tasked with re-writing the text to his own specifications, was named as co-author, and was granted half the royalties.

Failing that, he would do his best to see that the book never came out.

And he failed to return the manuscript!

Lord Portsmouth was having none of this. He wasn't prepared to sacrifice the righting of an historic wrong on the altar of Tolstoy's self-regard. So, the final version of the manuscript went out to several publishers. Predictably, like the dinner guests in the Gospels, *"they all with one consent began to make excuse"*. A Director in John Murray made the following comments:

> "One of the clearest lessons from your book is that the law is unpredictable. Besides libel, there are other matters like contempt lurking in the background."

During the lull that followed Mitchell got wind that Christopher Booker was preparing his own book on the subject, The Looking-Glass Tragedy. In light of this unwelcome development, Portsmouth took the decision to have the book privately published, at his own expense.

By virtue of the Defamation Act of 1996, printers would no longer be liable in defamation actions, as long as they had no actual knowledge of any potential issues. So, in the belief that ignorance was bliss, Mitchell got in touch with printers in Glasgow.

But what if the men on the shop floor began reading the book? He was reassured by the reply that "unless the book is about either Rangers or Celtic they won't even look at it". The publication date was to coincide with Booker's.

At the suggestion of the novelist Robert Harris, it was decided to approach a PR firm as well, Colman Getty, who were very sympathetic but wary that they too (however unlikely the prospect) might be caught by the legal drag-nets. They were eventually persuaded, but only on the basis of an indemnity provided by Portsmouth, conditional upon Portsmouth and Mitchell being permitted to take over the defence of any action brought against the PR firm.

Then, just on the eve of publication in October1997, came a letter from Goldsmith and Co., instructed by Tolstoy, demanding pre-publication access for scrutiny, both before and after submission to a suitable libel counsel!

But Mitchell and Portsmouth were ready for him. Complimentary copies were made available for instant distribution to MPs and the media, with a view to forestalling any application for interlocutory relief by Tolstoy: for, if the book was already in the public domain, the horse would have left the stable.

If anybody was anxious to get the book suppressed, they would have to go about it the hard way.

Tolstoy later underwent a further *"180-degree turn"*, bestowing several accolades on the book, before once again making some vitriolic criticisms of Mitchell's framing of the narrative.

Hear No Evil!

The press reaction was muted. Review articles were butchered into a series of bland cliches, while the BBC omitted even to give the book a mention. And it had no presence in any bookstores.

Lord Portsmouth once again rode to the rescue, first with Hatchards in Picadilly. A faxed indemnity seemed to satisfy them.

The rather upper-class booksellers, Heywood Hill in Mayfair, were happy to take a consignment too. After all, Aldington was hardly going to sue the Cavendishes, who owned the business. This was helpful but hardly enough. Eventually Portsmouth declared:

> "This is very sinister. If need be, I will indemnify every bookshop in the country."

Andrew Roberts's *encomium* in the *Sunday Times* probably helped to stiffen some spines in the newspaper world, even though it too suffered some editorial tinkering.

There was now a lively debate about the issues raised, leading to Booker (possibly riled by the Roberts article) returning to the fray, describing Mitchell as a *"conspiracy theorist"*.

The title of his own book was explained by him in the *Daily Mail* of 22nd November, 1997:

> "What these sensation-mongers and cheap moralists see in it bears very little relation to what really happened in Austria in that far-off summer. Blinded by their own righteousness, what they see is really only a reflection of themselves."

Mitchell's attempts to persuade the new Labour Lord Chancellor, Lord Irvine, whom he knew socially, to take an interest in his book because of the possible "legal malpractice" it revealed came to nothing. When he enquired from Richard Rampton, Tolstoy's former counsel, about the judges generally, the response was:

> "Won't read it. Not interested".
>
> "Not one of them?"
> "
>
> Bingham might, and I'm certain Davies will want to know what you have said about him. But beyond that, I doubt if any of them will look at it"

That seems to say it all!

The Starvation Blockade On Germany In The Great War.

A Summary by Angela Clifford of Two Definitive Works by **Eamon Dyas**: *Blockading The Germans* and Starving The Germans.

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Angela Clifford

Part 19 Of Extracts, Chapter Eight:

Inspired Interpretation Of Law
continued

The Constitution Of Eire/Ireland

Judge Gavan Duffy was not an eccentric but a trail-blazer. Others may not have had his coherent ideological vision—or at least they did not articulate it on the bench—but they followed where he led. And what is most striking about Duffy's activity is perhaps not what he did but the way he did it. Though he was a kindred spirit of de Valera, his style was much bolder and more forthright. De Valera moved in a fog, and rarely said exactly what he was doing, while clarity was Duffy's element.

Between Duffy and Vatican II there were the following substantial legal innovations in the Catholic direction.

Mayo-Perrot (1955-58)

The Mayo-Perrotts got a divorce in England where they were domiciled. The wife was awarded costs. The husband came to the Republic. The wife tried to get a judgement in the Irish courts that the husband should pay her the costs awarded by the English courts. Under established practice she should have got the judgement as a matter of course. But the High Court decided to break with established practice because the costs had been awarded in a divorce case. Justice Murnaghan said:

> "A Court in Ireland can scarcely be expected to lend its active support to the enforcement of a law which it regards as repugnant to the Republic's own distinctive policy" (Irish Reports, 1948, p339).

The Supreme Court upheld this ruling on appeal in 1958. McGilligan, appearing for the plaintiff, argued that since a foreign divorce was valid in Irish law, where the couple were domiciled abroad, it was inconsistent to discriminate against the costs awarded by a foreign court because they were awarded in a divorce case.

Chief Justice Maguire said he did not think that foreign divorces were valid in Irish law and invoked the Constitution: "Article 41.3.3. seems to me clearly to be designed to double-bar the door closed in sub-section 2" (41.3.2 is the ban on divorce legislation, while 41.3.3 is the equivocal formulation on foreign divorce which I have described in a previous issue). In his view, Article 41.3.3 recognised that a divorce "may be valid in the country where it has been obtained, but… it denies any validity here" (p344).

Judge Kingsmill Moore, a Protestant, agreed with the judgement on costs, but disagreed with Maguire's views on foreign divorce. He thought that the inherited law recognising foreign divorce was consistent with the Constitution. The inherited position was that a person who had a foreign domicile might get a foreign divorce which would be valid in Irish law, and he might remarry in Ireland. Kingsmill Moore recognised that a person who got a foreign divorce while holding Irish domicile could not remarry in Ireland; but that, in the latter case the person could remarry abroad and that marriage would be valid in Ireland (p349).

Since the status of foreign divorce was not the issue being judged, these were mere statements of opinion: obiter dicta. The matter did not come up for judgement until 1971, after Vatican II had begun to bite: and Justice Kenny ruled in agreement with Kingsmill Moore's opinion, whilst not expressing a view with regard to Northern Ireland divorces, or the validity of divorces for those resident, but not domiciled abroad. That ruling was upheld by the Supreme Court in 1975, in cases where both parties are domiciled in the country in which the divorce was obtained.

Nicolau's Case (1964/5)

An Irish Catholic woman had an illegitimate child in London by a Cypriot of the Greek Orthodox religion. The man wanted to marry. The woman wouldn't marry him unless he became a practising Catholic. He started taking instruction but did not make much progress. (The Greek Orthodox Church is very different from the Catholic or Protestant Churches. It is not very theological, and it does not proselytise. It is an element in the national culture of the Greeks, unselfconsciously interwoven with other elements of the culture, and it is much more effectively oriented on actual family life than Irish Catholicism is.)

The mother went to Ireland with the child. (She wouldn't leave it for the father to bring up in case it wouldn't be raised a Catholic.) The father came to visit her some time later. The child was nowhere to be seen. He discovered that she had put it out for adoption. With great difficulty he found out enough detail to initiate legal action to try to stop the adoption.

When it eventually came to court, the court ruled that he had no rights whatsoever in the matter as the father; that, in fact, he was not the father; and that the child was not the child. In fact, there is no such thing as a family, if there has been no marriage. (For an account of measures taken to break up non-marital families over the years, see Church & State, No. 19.)

The matter was clearly regarded as important as eight senior judges all concurred: George Murnaghan, Thomas Teevan, Seamus Henchy in the High Court; and Chief Justice O Dalaigh (later President), Cahir Davitt (President of the High Court), Cecil Lavery (ex TD), Kevin Haugh and Brian Walsh of the Supreme Court). Some of these made names for themselves as 'reformers' and judicial 'activists', but on the fundamental question of the family the judges backed up Catholic morality. Gavan Duffy, if he had been alive, would not have quarrelled with their conclusions, which followed interpretations he had made in illegitimacy cases, though he would perhaps have regretted that their arguments were not put in religious terms.

Article 41.1.1 of the Constitution says:

> "The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law."

Although this has a strong aura of the biological about it, the Court ruled that the natural family in not a family at all. Instead of being "antecedent and superior to all positive law" in the normal meaning of those words, the Irish family is, by judicial ruling, a construct of positive law. The judicial ruling is that without marriage there is no family. A father by mere blood relationship is not a father. He is presumed to have no relationship with the child.

Justice Murnaghan said in the High Court: "the Constitution recognises only 'the family' founded on the institution of marriage".

Justice Henchy added:

> "no union or grouping of people is entitled to be designated a family for the purposes of the Article [41 on the family] if it is founded on any relationship other than that of marriage. For the State to award equal constitutional protection to the family founded on marriage and the 'family' founded on an extra-marital union would in effect be a disregard of the pledge which the State gives in Article 41.3.1, "to guard with special care the institution of marriage"; while Judge Teevan feared that the legal recognition of illegitimate family rights "would lead to some form of legally recognised concubinage", and if there was an overlapping legitimate family then "Article 41 would have an equivalent care and concern for him, his mistress and their illegitimate offspring and for him his wife and their legitimate offspring" (p589-604).

Clearly unthinkable!

But did illegitimate father have natural rights, if not legal rights, to their children, under Article 40, where the State guarantees "Personal Rights"? Teevan thought not, and cited Gavan Duffy as his authority:

> "It remains finally to deal with the submission that, if the natural father was devoid of legal rights over his illegitimate child prior to the enactment of the Constitution, he had natural rights (which is quite true) which are included in those natural personal rights accorded legal recognition in the Constitution… If there was any such intention one would expect it to have been expressed… Were it open to infernece it would not have escaped the searching mind of Gavan Duffy P. in the case of "In re M. an Infant" (p605).

The case went to the Supreme Court in 1965 and Walsh read out the agreed judgement of the Court.

Walsh rejected the argument for Nicolau that—

> "the law of this country recognised as a personal legal right the right of the father of an illegitimate child to its custody, inferior only to that of the mother, while alive, and after her death superior to that of any other persons…"

Nicolau challenged the Adoption Act (1952) provisions that left it to the discretion of the Adoption Board whether to hear the natural father when making an adoption order, and which excludes all relatives traced through the father from consideration, as unconstitutional but Walsh dismissed the allegation of "discrimination against the natural father" with an argument that lumps together caring and non-caring natural fathers:

> "an illegitimate child may be begotten by an act of rape, by a callous seduction or by an act of casual commerce by a man with a woman, as well as by the association of a man with a woman in making a common home without marriage… and as, except in the latter instance, it is rare for a natural father to take any interest in his offspring, it is not difficult to appreciate the difference in moral capacity and social function between the natural father an the several persons described in the sub-sections in question" (p641).

The Constitution pledges the State to treat its citizens equaly with due regard to moral capacity, social function etc. Because some natural fathers are not paternal, the Supreme Court allows a blanket provision against all natural fathers—as though the fathers in the other categories would be wishing to be "heard" in Adoption Cases. It is not even a matte of the Adoption Board being forced to follow the views of these fathers! (the reference in the last sentence of the judgement is to the various categories who are entitled to be 'heard by the Adoption Board, which include relatives on the mother's side and ministers of religion.)

Walsh rejected that the father had—

> "any natural right, as distinct from legal rights, to either the custody or society of that child and the Court has not been satisfied that any such right has ever been recognised as part of the natural law. If an illegitimate child has a natural right to look to his father for support that would impose a duty on the father but it would not of itself confer any right upon the father…"

(If the court was not prepared to recognise any right sfor the father, it might have considered the rights of a child to be brought up by its natural father. After all, it admitted: "An illegitimate child has the same natural rights as a legitimate child though not necessarily the same legal rights" (p642).

The Nicolau ruling of 1965 was confirmed by a majority ruling of the Supreme Court in G. v An Bord Uctala in 1978.

Despite grandiose declarations on the family, non-marital families have no protection as such from the Constitution and their common law rights have in fact been undermined by it. Any rights they have are purely as individuals,the family relations they may form do not count in a court of law.

This is particularly important in view of the fact that divorce is not allowed within the Republic and that there therefore the increasing numbers of second unions formed in these more relaxed times find no protection in law. People can not regularise their non-marital relationships and the courts support official morality by not developing common law protections. Children of non-marital relationships are still heavily penalised (May 1987) in matters such as succession rights.

To Be Continued

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The Desmond Rebellion

THERE was never a war in Ireland that brought more misery in its train than that of the *Desmond Rebellion*. By the time it petered out, the most fertile of Munster land witnessed a kind of famine it had not seen before. Edmond Spenser described the survivors:

> "Out of every corner of the woods they came creeping forth upon their hands, for their legs could not bear them: they looked like anatomies of death…" ("*A View Of The Present State Of Ireland*" 1596).

The mighty Gerald of Desmond, who had been the principal figure of the uprising, was hunted like an animal, death never far behind him. Near Kilmallock, soldiers came upon his bed while it was still warm. Nearby the hunted Earl and his wife clung to the bank of a swollen river, only their heads out of the water. Soon afterwards he sent his wife away so that she would not witness the end.

On the morning of 11th November 1583, they rushed in and seized him. A soldier broke his arm with an axe as he cried out in agony,

"I am the Earl of Desmond,
save my life".

"Thou hast killed thyself long ago",

snarled an O'Moriarty and, dragging him outside, they struck off his head which they thereupon sent to Dublin to be forwarded to London for the admiration of the Virgin Queen.

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ZION: A hill in ancient Jerusalem, the royal residence of David and his successors; (fig.) the ancient Hebrew theocracy, the Church of Christ, the heavenly Jerusalem, heaven, used as a name for a Nonconformist chapel.

Zionism, n.

A movement for re-colonising the Holy Land with Jews.

Zionist, n. Zionwards, adv.

(The Waverley Modern English Dictionary 1926)

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Ireland Abstains as UN designates slave trade *"gravest crime against humanity"*

"The United Nations General Assembly this week voted to designate the transatlantic slave trade as *"the gravest crime against humanity"*, in a move supporters say could advance calls for reparative justice" (RTE, 28.3.2026).

The Resolution was adopted by 123 votes to three, with 52 abstentions. The United States, Israel and Argentina voted against, while Ireland joined EU member states in abstaining.

In a statement to RTÉ's *This Week*, a spokesperson for the Department of Foreign Affairs said Ireland recognised slavery and the transatlantic slave trade as "*appalling episodes in the history of humanity*", marked by "*immense tragedy, brutality and inhumanity*".

However, the spokesperson said, the text of the resolution raised significant concerns:

> "The text put to the General Assembly for a vote was challenging in a number of respects",

they said, pointing in particular to language suggesting a "*hierarchy amongst atrocity crimes*", as well as elements considered inaccurate or inconsistent with international law.

> "For these and other reasons, Ireland and our EU partners were not in a position to vote in favour",

the statement added, describing the decision to abstain as reflecting—

> "profound respect for the subject matter and its complexities".

Despite being non-binding, the vote at UN headquarters in New York proved contentious.

Opponents, including the United States, argued the Resolution risked creating a hierarchy between historical atrocities and raised legal concerns around reparations.

The Resolution does not refer to other slave routes in Africa, including across the Sahara or the Indian Ocean, but highlights the scale and brutality of the transatlantic trade, including what it describes as the "*racialised chattel enslavement of Africans*" and its lasting legacy.

Supporters, led by Ghana, said it marked an important step towards recognition, remembrance and potential reparations.

The Department of Foreign Affairs said it remains committed to international efforts to address the legacy of slavery and tackle contemporary forms of human trafficking and exploitation.

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Celtic Temperament:

"The Celtic temperament leaps to the weight of a feather; and you have sullen depression, or irresponsible gaiety, murderous disloyalty or more than feudal fealty, in swift and sudden alterations"

(Patrick Augustine (Canon) Sheehan (1852-1913): *Glenanaar*).
See: *Dictionary of Irish Quotations*, Sean Sheehan, Mercier Press Ltd. Cork.1993).

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Church of England Set Free!

The British Government has introduced a Bill to end antiquated laws preventing Roman Catholic or Jewish Prime Ministers from being involved in the process of making Church of England appointments.

It was among the first pieces of legislation to be introduced to Parliament under Prime Minister Andy Burnham, himself a Catholic, who has called the current laws "*unacceptable*".

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