Church & State

An Irish History Magazine

And Cultural Review Of Ireland And The World

Enoch Burke:

Why He Was Released!

Charles Haughey Re-Assessed

Middle East In The Spotlight!

Aldington v Tolstoy

Augustinian Friars Leave Cork

No. 165 **3rd Quarter, 2026**

Angela Clifford

Liberal Ireland Disgraced!

Enoch Burke's 'Get Out Of Jail' Card!

The Irish Presidency of the European Union started on 1st July and will last for six months, ending at the end of 2026.

Enoch Burke was released from his fifth term of imprisonment on 1st July, after a High Court ruling. When he was released he had served a total of 700 days behind bars on foot of five Judicial rulings.

However this latitude is very much out of keeping with previous judicial rulings. The Courts have been anything but generous to Enoch Burke—the stubborn Christian who refuses to use the preferred pronoun of a precocious pupil! Not only has Burke spent a total of 700 days in various Irish prisons, he has had his very substantial savings confiscated by the Courts in a series of punitive fines.

His imprisonments were—

1. September 2022
2. September 2023
3. Late 2024
4. Late 2025
5. January 2026

As regular readers will know, Burke's heinous crime was a refusal to use the preferred pronoun of a pupil—as opposed to the one corresponding to nature!

There are no rights in Irish law for children to switch genders. So Burke has broken no statute law. But his imprisonments suggest that the judiciary is creating law in this instance, under guise of enforcing the law against trespass!

Despite not having broken the law of the land, Burke has spent five stints in jail and had his bank account emptied of very substantial savings.

In all the years that this magazine has highlighted failings in the administration of Catholic-run schools, there has never been the like!

But this July, there has been a volte face! All of a sudden Burke was expelled from jail! He had not recanted, or softened his stance. So what caused this sudden liberal gesture?

The reason the Judge gave was that Wilson's Hospital School, Burke's place of employment, was closed for the Summer holidays.

But a far more likely explanation is that Ireland's Presidency of the Council of the European Union started on 1st July (and is to last until the end of December).

The Irish Government is very much on tenterhooks and eager to impress its EU colleagues at forthcoming meetings. An indication of the atmosphere in official circles can be gleaned from an article in the Mail On Sunday by Thomas Byrme TD, Minister of State For European Affairs And Defence. He wrote an article in the Irish Daily Mail entitled "*The Irish EU Presidency Is A Generational Moment…*" He wrote:

> "Our Values are part of what makes the EU a good place to live and work"…
>
> "We'll showcase the best of Irish culture across Europe and beyond".

Given these boasts, could it be that the authorities did not relish the prospect of Burke family members picketing the events held on foot of that prestigious position? After all, incarceration for what amounts to 'thought crime' hardly conveys a favourable picture of the Irish State to the European leaders assembling for meetings!

Of course, the actual reason for expelling Burke from detention could hardly be admitted, The thin explanation given is that Enoch Burke would not be picketing at his former place of work, as Wilson's Hospital School will be closed for the Summer.

What a weak arguments! Burke spent the Christmas of 2025/6 in Jail. Schools were on holiday then!

Is this what Liberal Ireland is reduced to? Catholic Ireland was never as contemptible as this!

RTE Report On The Burke Case

High Court Orders Release of Enoch Burke From Prison

The High Court has ordered the release of teacher Enoch Burke from prison.

Mr. Burke has spent almost 700 days in prison since September 2022 for breaching court orders to stay away from Wilson's Hospital School in Co Westmeath.

Mr. Justice Brian Cregan said there had been a "*material change in circumstances*" last May when Mr Burke lost his appeal against his dismissal from the school for gross misconduct.

The judge said additionally the Department of Education had stopped paying his salary and the position was therefore that he had exhausted all internal appeals in respect of his employment,

his dismissal had been confirmed and his employment was at an end.

Further Reports

The Journal reports that Judge Cregan said that, while Mr. Burke was—

> "perfectly entitled to his religious view he is not entitled to his own truth. Every time he says that he is in prison because of his opposition to transgenderism, that is a clear falsehood. The truth is that a court has a duty under the law to set out precisely why Mr Burke is in prison and it has done so in written judgments on each occasion. The truth is that Mr Burke is in prison because he is trespassing on school property."…"

Curiously, Judge Cregan accused Enoch Burke of imposing his own view on Transgenderism on a pupil. But it is the opposite that is the case: the pupil was attempting to control the teacher, and force him to use personal pronouns in clear breach of nature! Here is what *The Journal* reports him as saying:

> "Mr Burke is entitled to his religious views on transgenderism. He is free to shout those views from the rooftops - so long as he remains outside the school gates and does not trespass and disrupt the education of the young pupils at the school."

He also remarked that Mr Burke was a*n*—

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

The judge added that these were the actions of a teacher "*who has completely lost his moral compass*…" [!]

https://www.thejournal.ie/enoch-burke-5-7086890-Jul2026/

Some Comments

Judge Cregan's remarks are slanted, to say the least. What jumps out is his allegation that Enoch Burke wished to impose his views on a pupil. But the reverse is the case: it is the pupil who tried to enforce 'their' views on the teacher! And the fact is: Mr. Burke's views are based on biology, not religion, as the Judge alleged.

A 'Liberal' View In *Irish Times* : Readers' Letter:

"*Enoch Burke Walks Free*

"Without purging his contempt, the High Court is allowing Enoch Burke to walk free from prison. So, justice ignored is no justice at all it would seem? Perhaps I will invoke this precedent the next time I neglect a parking ticket for almost 700 days? – **Des Doris**" (Irish Times 6.7.26).

Some Comments

This *Irish Times* reader's letter shows no sympathy for a teacher who is expected to bow to a pupil's infatuation with the fashion of the moment!

It is oblivious to the fact that three public institutions—the Protestant education authorities, Wilson's Hospital School (Co. Westmeath), and the Courts—have tied themselves into knots defending the indefensible!

There is no law which says that pupils are allowed to 'decide' their sex and force others to comply with that choice!

And any person of reasonable sense will agree that children

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Some web addresses for associated sites—

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

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

Sales:
https://www.atholbooks-sales.org

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get 'notions'. It is hardly a preparation for life if the authorities pander to such whims!

Editor

Teachers' Union?

Eamon Dyas writes:

There's a school near me [in England] where there's been ongoing issues with pupil discipline for over a year. Last November the teachers decided enough was enough and took Union-supported strike action in December.

However, even that didn't generate any effective change in the over-tolerant attitude of management and they threatened strike action again in March.

I understand that the action threatened in March was called off as management finally introduced a new discipline policy that the teachers said they would give a chance to bed in. Here's the Union's report of the events.

https://www.nasuwt.org.uk/article-listing/further-strike-hexham-failure-behaviour-management.html

Editorial Comment:

Irish Teachers' Unions have expressed concern over the handling of the Enoch Burke case, on how the case was managed, and the grounds on which he dismissed.

According to the online edition of the *Irish Times* some time ago (22.1.23, Report by Carl O'Brien):

> "The handling of the Enoch Burke case has caused some concern with teacher unions over aspects of how the case was managed and the grounds on which he was dismissed.
>
> "Mr. Burke, who was employed as a German and history teacher at Wilson's Hospital School, in Co. Westmeath, was formally dismissed from his post on Friday afternoon.
>
> "It follows a disciplinary hearing which took place on Thursday… at the Mullingar Park Hotel in Co. Westmeath, which was disrupted by potests from the Burke family."

Unfortunately, Mr. Burke was not a Trade Union member.

Brendan Clifford

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 1918. 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 1943, 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 by default!

The British case was 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 two States: Rhineland, and Bavaria/North German. 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! [The Germans were excluded from the negotiations, and simply given a 'Treaty' to sign.]

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 1935 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 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 Tri-partite 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 1850 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 else 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! ✻

Just Published!

A Very Political Project: Charles Haughey, Social Partnership, and Ireland's 1990s Economic Transformation: A History

by

Philip O'Connor

395 pp., including sources, footnotes, bibliography and index.
Hardback, €26. Order through: **https://howthfreepress.com**

or from a**mazon.co.uk/amazon.com**

(input:: **A Very Political Project**)

Following years of research in many archives, including those of the Department of the Taoiseach, the NESC, the NAI and the trade union movement, and interviews with many of the key players, this book will appear on 1st September. It provides a radical re-assessment of the Haughey era focused on Haughey's singular socio-economic strategy and how it was implemented successfully from 1987 after previous attempts in the late 1960s and early 1980s. It was that strategy, and not benign domestic or external factors as often claimed, that transformed Ireland economically.

For further information on the book or to pre-order a copy go to howthfreepress.com. The book is also available on *amazon.co.uk* and *amazon.com* by in-putting *"a very political project"*.

The book substantially builds on a PhD awarded by Dublin City University in 2021, though with much added material, not least from Haughey's own papers, and shorn of the thesis's purely academic aspects.

to page 9

The book will be launched on

1st September

by

Mr. Dermot McCarthy,

former Secretary General
of the Dept. of the Taoiseach,
at 6pm
in
Doheny & Nesbitt's, Dublin.

There will be a second launch on

2nd September

by

former Taoiseach,

Mr. Bertie Ahern

at 7pm
in
The Abbey Tavern, Howth.

To attend either (or both!) of these events, register at
https://howthfreepress.com/haughey
or by emailing
howthfreepress@gmail.com

... or simply turn up!

Endorsements for *A Very Political Project*

Prof. Gary Murphy, DCU, author of *Haughey* (Gill 2021):

"Very likely to be the definitive work on the subject... It will in time take its place as a masterpiece of modern Irish scholarship."

The late *Dr. Martin Mansergh*, diplomat, historian, public representative and Special Adviser to Taoisigh Haughey, Reynolds and Ahern:

This book … undertakes the much-needed task of examining the archives on social partnership in great detail … It is the first to enter into the detail of its negotiation and its mechanisms. ... It draws not only on the recollection of participants but on many archives, particularly those of the Department of the Taoiseach, the NESC and the trade union movement. Social partnership ... represented an important alternative to and modification of the dominant free market and anti-statist approach that characterized the era of Thatcher and Reagan ..., which left its imprint for a long time afterwards.

O'Connor's book highlights the value to a country of serious professional political leadership and the determining role of Charles Haughey as Taoiseach between 1987 and 1992 in ensuring the success of social partnership, which he regarded as his most important legacy ...

ical patriotic endeavours of the many individuals involved on all sides in the process of making a success of social partnership, despite many challenges and conflicting interests.

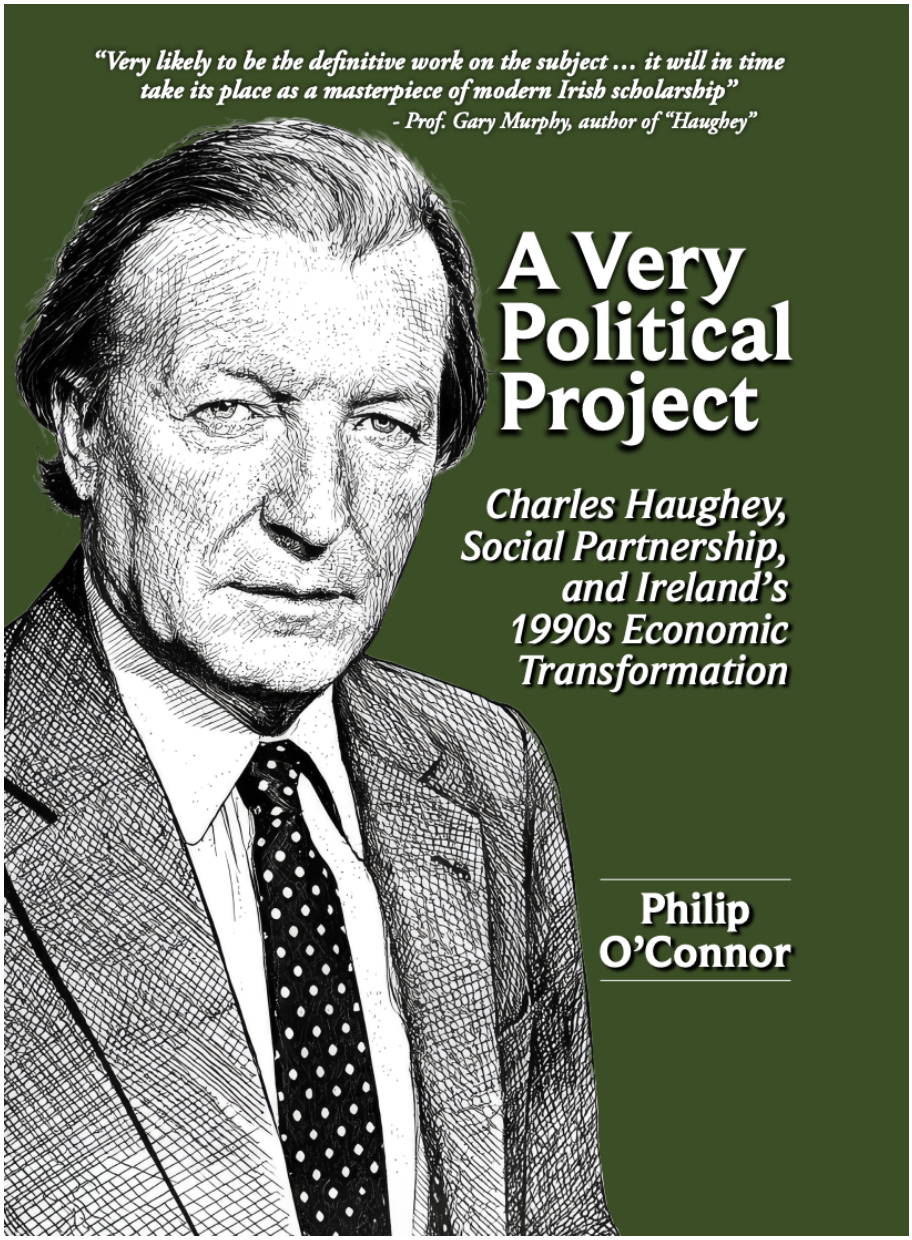
Dr. Rory O'Donnell, former long-time Director of the *National Economic and Social Council* (NESC), the "Senate" of social partnership:

"This is a critical piece of work ... It does several important things:

First it undertakes the much-needed task of examining the archives on social partnership in great detail. This material has been waiting for examination by a trained historian. As someone involved in one aspect of social partnership, its analytical foundations as developed and deliberated in NESC, I can attest that he has accurately captured the essence.

Second, it provides a nuanced analysis of the dynamics of social partnership, involving government actors, industrial relations leaders and key NGO organisations.

Third, and perhaps most important, it places social partnership in the context of Ireland's profound development challenges, both economic and social. The dynamism of the economy in recent decades has the effect of obscuring the



fact that Ireland struggled enormously, through most of the 20th century, to find a path of economic development that would be sufficient to provide employment, end the scourge of involuntary emigration and underpin sufficient social spending to meet the needs of the people. Dr O'Connor has a real understanding of the nature and depth of that challenge, and correctly analyses social partnership through that lens.

An additional, but indirect, value of the book is this: inflation, housing problems and energy transition are creating a new round of distributional tensions between unions, citizens, social organisations and government. This book provides a sophisticated account of the nature of such tensions and one way they were addressed in the past. Anyone who wishes to offer solutions and approaches to our current distributional challenges would be well advised to ponder the evidence and analysis offered by Dr O'Connor."

Buying The Book via: Philip O Connor:

https://www.buythebook.ie/product/a-very-political-project-charles-haughey-social-partnership-and-irelands-1990s-economic-transformation/

Also Available through Amazon:

https://www.amazon.co.uk/s?k=Philip+O%27Connor+%2B+Haughey&crid=1W4UP8NTPV03H&sprefix=philip+o%27connor+%2B+haughey%2Caps%2C122&ref=nb_sb_noss

About Philip O'Connor

The author, Philip O'Connor, is an historian who has worked in the private and public sectors, as a translator, in education at university level, in politics and in employment, training and social policy. He has written various historical articles and books on Irish, German and other topics. See https://www.linkedin.com/in/philip-o-connor-b5b9944/

Editorial

The Middle East In The Spotlight!

Anti-Semitism appears to have reached an all-time high in the world. The Vice-President of the leadership of the democratic world [J.D. Vance] has told the Jewish State in blunt language that it is the most hated country in the world. Only the United States loves it, and shields it against the world, and its affection for it is being put under strain by the Israeli refusal to do what is required of it by the Memorandum Of Understanding established between the US and Iran with regard to Lebanon.

The President asks Israel whether it is necessary for it to destroy every apartment block in Lebanon which it sees a member of Hisbollah entering. That kind of question was never asked by the United States in the Biden years, when Israeli destruction of apartment blocks in Gaza, along with their residents, was on a far greater scale than is now the case in Lebanon.

But others asked the question, and Israel has answered it. It said that, if there was one terrorist in every group of ten that it killed, that made the killing of the ten lawful under the rules of International Law. Putting it another way: Israel is entitled to kill nine Palestinian women and children for every terrorist that it got, and it availed of that right.

That view of the matter was put forcibly by Israeli spokesmen in interviews broadcast in the main News Channels of the world: Sky News and BBC News, and was never challenged to our knowledge. Why is it now being challenged by the Leader of world democracy, with a hint of a threat accompanying it? Because the Leader of world democracy, with Israel as a belligerent ally, set out in February 2026 to obliterate the Iranian State and Civilisation—and its failure to succeed is bewildering to it.

The US knew that, when the Iranian religious maniacs overthrew the American-proxy Shah, and the thousands of theology students somehow gained control of the State, persuaded women to dress as nuns, instead of aspiring to be California girls, and established a moral framework for commercial activity—instead of dissolving moral values into commercial values, as nature intended—it established a state that was doomed to destruction because it was incompatible with the rules-based order of the modern world: the post-1945 world that was untidy for a while but that was streamlined into global perfection in 1991—when the collapse of the Soviet Union left us with a uni-polar world.

It was necessary to Western understanding—i.e., post 1991 market-based understanding—to assume that the Iranian theocracy could exist only by breaking the will of the populace by terrorism. (And from where did this Iranian regime of terror draw the force that enabled it to subdue the will of a populace of 80 million? Silly question. They got it from being Evil!)

In 1991 the West freed itself from the obstacle that spoiled the 1945 'rules-based world order': it liberated it from the Russian state that had defeated Europe and subjugated it in 1944/5 and had remained a presence within it.

What was the West going to do with the freedom of action conferred on it with the end of the 'Cold War' so suddenly and unexpectedly in 1990—when Soviet leaders took the routine propagandist idealism

of the West for a reality, and tried to remake itself in its image, and collapsed?

The first thing it did was to make war on the Baath regime in Iraq. That regime had constructed itself as the outpost of Western values in the Middle East. It had forged an actual nationalist movement out of the hodge-podge of peoples and religions that Britain had drawn a line around in 1919 when it brought down the Ottoman Empire, and called it a nation-state. And this Western-oriented Iraq had made war with the Ayatollah's Iran—which was then a revolutionary force—and had fought it to a draw, holding its own people together in the conflict. There was no Shia rebellion in Iraq during its war with Shia Iran.

At the end of that War, Iraq indicated to the US Ambassador that it intended to act against Kuwait, which had been stealing its oil while it had been defending the region from Iranian influence. The Ambassador said that was not a matter of concern to the US. Iraq acted against Kuwait and the West immediately declared that Iraq had acted in breach of 'International Law', and set about destroying it.

Iraq was a friend of the West. Ireland had extensive commercial and other relations with it. But, when Washington and London showed that they intended to make war on it, Ireland apologised and kept out of it.

Why did the West make war on its friend rather than its enemy? Was it because its friend was easier to destroy? It was easier to destroy because it was groping its way towards the creation of a Western-type society and therefore did not stand securely on its own ground. The enemy state, Iran, was different in kind from all the other states in the Middle East. It was not a creation of the victor states of the Great War of 1914. It was ancient Persia, which had resisted many Occupations—including the Anglo-Russian occupation that preceded the Great War of 1914-18. And, of course, the Iraqi oil industry passed into American hands!

Iraq had tried an adaptation to Western ways but found that the only kind of co-operation allowed by liberal-democracy was submission to it. It therefore decided to make a stand on its own ground, uninstructed by the Western Imperialistic Liberal-Democratic 'ideals'—which had always proved to be deceptions in political practice!

It held its own in its war with Iraq, which was acting in effect as a Western proxy. It was contained by Iraqi competence in that war. And the first thing that the West did with the complete freedom of action it gained by the collapse of the Soviet system was make war on its Iraqi proxy and smash it to smithereens in the course of a ten year campaign.

The West—progressively reduced to the United States and its proxies—has eventually, after half a century of resentful brooding, made war on the enemy state in the Middle East: the ancient state that, in its own history has been through many Enlightenments and Counter-Enlightenments, and that has modernised itself for the present moment as a theocracy. This was done by a referendum that was held in the country on 30th and 31st March 1979 to authorise the formation of an Islamic State. The question put was "Do you want an Islamic Republic?" And 97% voted Yes!

As for the West, in the light of the outcome of its war of destruction on Iranian theocracy so far, it must be admitted that it acted wisely in 1991 when it decided to destroy its vulnerable friends, rather than its incomprehensible enemy!

*



We are indebted to Philip O'Connor for drawing our attention to this cartoon!

Stephen Richards

Continued from Spring Issue of Church & State

Aldington v Tolstoy: The Aftermath

The last instalment finished with the jury's verdict in favour of Lord Aldington, the former Brigadier Toby Low, in his 1989 libel case against Count Nikolai Tolstoy (author of *Victims Of Yalta*, and *The Minister And The Massacres*) and the initial defendant, the idiosyncratic Nigel Watts. The last-named has been regarded as, in common parlance, a bit of a loose cannon, but his reactions appear less eccentric when viewed against the background of the British Establishment and the deep magic of the English legal system, both of which he had fallen foul of.

We left the *dramatis personae* variously exulting or reeling in the wake of the verdict and the crushing award of £1.5m in damages (plus the costs bills) that accompanied it. But, while this was the climax of the play, the final act was still to be played out, in all its grinding complexity. In relation to this, as with every other aspect of the drama, I'm indebted to Ian Mitchell, whose brilliant 1998 account of it, *The Cost Of A Reputation* (Canongate), shows him to be as much at home in military history as in legal analysis, all delivered with supreme story-telling verve.

Aldington's victory had come at a cost. Technically speaking his reputation may have been salvaged, but any later historian looking into the behaviour of 5 Corps in the middle two weeks of May 1945 in Carinthia, Austria, with access to the archive material denied to the Defence, will be left in little doubt of the personal responsibility borne by the senior officers, particularly Low and Keightley, for the wholesale deportations into the Soviet and Titoist zones of occupation. This was a war crime committed paradoxically after the cessation of hostilities, under no hostile pressure, and lacking even the excuse of *"we were just obeying orders"*. For, as we have seen, the actions were taken in knowing contravention of orders issued by Field Marshal Alexander and General Eisenhower. Surely it would have been better for Aldington to let the hare sit, in the form of an obscure pamphlet, rather than win this pyrrhic victory. Mitchell indeed calls it A Tarnished Vindication.

Defeated, Not Destroyed

On the day of the verdict Tolstoy declared, *"we are ruined, completely and utterly ruined"*. However, a decade down the line, in March 2000, the *Guardian* revisited the case. After remarking that the *status quo* for Tolstoy was much as it had been in the early 1990s, still ensconced in his Jacobean farmhouse, with a Volvo estate parked in the drive, while Aldington had had to give up his Bentley in favour of a second hand Ford Escort, the writer goes on:

> "But Tolstoy's lifestyle is about to get a significant boost: he has inherited half the £3m estate left by his stepfather, the writer Patrick O'Brian.
>
> "Tantalisingly, the inheritance… is near enough the sum Aldington still reckons he is owed… But Aldington cannot touch the windfall. Tolstoy… filed for bankruptcy in 1990 after losing the libel action. He has now emerged a discharged bankrupt, closing the book on earlier debts.
>
> "Tolstoy's house, owned jointly with his wife, was subject to a bank charge for an outstanding loan. [A secured charge such as this always ranks above all other debts or court judgments.] Well-wishers set up a fund in his wife's name to pay the family's living expenses. The four children completed their educations at private schools, including Eton, and went on to university."

But Tolstoy's attempts to re-open the case had turned out no more successful than the original trial. We'll now look back and review the aftershocks that eventually produced the uneasy millennial calm described by the *Guardian* article.

Decision Time

If Tolstoy was going to appeal the verdict he had only eight weeks to decide. That was the high-risk strategy. The alternative was to declare himself bankrupt and get back to his literary work. He would lose the house but there would be enough money to come and go on. This seemed the safer course, and was in accord with the legal advice he was getting but, following a chance encounter with a journalist, he decided to go for broke and appeal. Watts, about to undergo heart surgery and with no assets to lose, decided to take the safe option, or what he thought was the safe option, as we shall see.

The basis of the appeal was the manifestly excessive award of damages and the overt bias of the trial judge, Mr. Justice Michael Davies. The response by Allen and Overy on behalf of Aldington was twofold. First they not unreasonably asked for security for costs, in the sum of £188,000.00, as here was an impecunious appellant with, as they saw it, an unwinnable case. Their second response a few days later was more interesting, and deserved lengthier consideration than it got. While not conceding the appropriateness of the award, they indicated that, with a view to reaching some closure in the case, their client was willing to make a downward adjustment to £300,000.00, apparently plus costs.

Tolstoy seems to have regarded this as an equally impossible mountain to climb, but surely there could have been some workable arrangement whereby the house would be sold and the remainder paid in instalments?

Anyway, the application for security for costs went ahead and was carefully considered over four days, after which the Registrar concluded there was enough in five of the seven grounds of appeal to allow him to refuse it. Which decision however was immediately appealed by Aldington.

Costs, Lies, And Sun Alliance

Now we turn back to Nigel Watts. His main quarry all along had been Sun Alliance, and he was sufficiently exercised to go along with his brother Richard to the Sun Alliance AGM on 16th May 1990. But this wasn't unconnected to the question of security for costs. At that time Aldington's appeal was still undetermined. The Chair, Sir Henry Lambert, was given an absolute rollicking, which it must have been as upsetting for him to experience as it's hilarious for us to read. The point was, if Aldington was indeed being bankrolled by Sun Alliance, then the issue of his costs and security therefor was, as the

Americans would say, *"moot"*, because he would have no costs.

But, for all the cajoling and the taunts, Sir Henry was not to be drawn, beyond an admission that some *"very small amount indeed"* had in fact been spent to this end. Richard Watts showed that he wasn't the only family member with a gift for invective:

> "I think where Lord Aldington is involved in this may be that you were also at Winchester. And I must remind you that you're meant to be running a public company, and you're accountable to the shareholders. We're not running some Old Boys' Club for the benefit of ex-Wykehamists."

These strictures were all the more merited in light of the fact that Sun Alliance was entering upon a solvency crisis of its own. But Lambert had done his work well. For, when the appeal was heard in July, there was no evidence before the court that the Respondent, Aldington, had had all his costs to date paid by the unwitting shareholders of Sun Alliance. If that had been out in the open six months previously, it might have made Allen and Overy's compromise offer more attractive. Aldington by now had already started lying to the media about the costs situation, making out that he was desperate to get his trial costs paid, and omitting to mention the £30,000.00 damages he had already received from Tolstoy's publishers in relation to The Minister and the Massacres, and the near prospect of further damages from the Daily Telegraph for Peter Millar's article, another £15,000.00. As ever, the late Christopher Booker acted as cheerleader. So, if Aldington was able to conceal the truth about his trial costs, what chance would there be of Tolstoy convincing the court that his opponent was going to have his future costs covered?

A Judicial Roadblock

In the event, the hearing (before Sir Stephen Brown, and Lord Justices Russell and Beldam) didn't go well. Russell remarked that the question of Sun Alliance's financial backing for Aldington was neither here nor there, which was surprising, given that the hearing was meant to be about Aldington's costs jeopardy. The court seems to have decided as a matter of policy that Tolstoy's substantive appeal on the merits would be stillborn. From their written rulings it appears that they hadn't attempted to read much of the transcript, apart from the judge's summing-up. It might have been more credible if the appeal judges had concluded that, on balance, Tolstoy's grounds of appeal didn't meet the tests of substance, but their language verged on the contemptuous, as if their junior colleague who had found for the contrary position was less like an erring brother and more like a raving lunatic. Once again the false certainty of judicial rhetoric had raised its ugly head.

The only concession from the court was the reduction of the amount Tolstoy would have to find, from £188,979.00 to £124,500.00. But that sum had to be found within 14 days. Tolstoy's request for an extension of time was refused—

> "on the ground that it might upset Allen and Overy's timetable for the preparation of Bundles for the appeal proper. [Tolstoy] was also ordered to pay Aldington's costs in this and the Adams hearing to a total of £22000.00" (Mitchell).

At around the same time Aldington was dishonestly making use of the trial verdict as a pretext for writing to public libraries up and down the country threatening them with legal reprisals if they continued to stock Tolstoy's The Minister And The Massacres, which of course was unconnected with the case. Several ignored him and some of the Scottish librarians replied defiantly. The Librarian at the Bodleian on the other hand put in a notably cringing and subservient response.

The standard letter from Allen and Overy stated as fact that the book was libellous, which no court had found. Some fake authenticity was added by the inclusion of what Watts and Tolstoy called a forged backing sheet linking the two disparate sets of proceedings. David Mackie of Allen and Overy in conversation with Mitchell the following year claimed that that this was *"a mistake – not the first clerical error this firm has made"*. If so, it was a mistake without any negative consequences.

Unintended Consequences

By the autumn of 1990 our old friend Brigadier Cowgill, co-author of the Interim Report of September 1988 [see previous articles] published, seemingly at his own expense, 1,000 handsomely bound copies of his Final Report, in two volumes. From this it appeared that the Distone Order, the subject of much furious denial up to then, had indeed been issued to 5 Corps. It was too late for this to do Tolstoy any good and, because Cowgill was not now going to go into J'accuse mode, he got away with it: but if Tolstoy had published anything similar, the full force of the contempt undertakings would have come down on him.

However, the novelist Robert Harris wrote a mildly critical review of the Report in the *Sunday Times*, where he talked of the whitewashing of war criminals, and was promptly sued for his pains.

But Cowgill's vanity project rebounded unexpectedly on Aldington. It was the starting-gun for one of Tolstoy's supporters, described by Mitchell as *"a dogged, determined Slav"*, who decided to trawl through all the three hundred PRO files referred to by Cowgill, amounting to some 10000 separate documents.

We have noted that FO 1020/42, with all its explosive content, had become unavailable, on secondment from the PRO to the Foreign Office, and temporarily *"lost"*, but this independent researcher uncovered a stick of dynamite that was powerful enough, or should have been, to blow the whole case sky-high.

Throughout the trial the defence had been trying to chip away at Aldington's evidence that he flew out of Austria in the early morning of 22nd May. If his evidence crumbled at that point, it would not only be fatal to his credibility but would place him in the danger zone, because, as Mitchell states, *"whoever was BGS at 5 Corps on the afternoon of 22 May was the person who played the principal role"*. His only defence then would have been the *"just obeying orders"* one which, as we have seen, was problematic, even in the absence of the documents that would have established actual insubordination.

That this was more than some pious hope for the Defence is clear from the remarks of Judge Michael Davies himself, who had shown himself to be disgracefully partisan. Perhaps in the knowledge that defence counsel was beating his head against the wall on this point, he had declared that the date of departure was "to put it at its lowest, a very, very crit*ical part of the evidence in this case"*.

The file the Slav researcher had unearthed was WO 218/248, the War Diary of the 2 GHQ Liaison Regiment, which was a communication centre through which all the various signals and orders emanating from the army divisions were collated and then passed on to General Mark Clark. About the file Mitchell says this:

> "It takes the form of a log, filled in hour by hour. The signals are numbered consecutively and are dated and signed. Above each one is written the identity of the source, the formation whose Phantom unit had made the report……WO 218/248 is not a big

file, although, being handwritten, some entries are more legible than others. But it is easily used because of the way it is organised…..the signals from each unit are grouped together and clearly differentiated from those of other units. One of the most clearly legible in the whole file is a note which, at first sight, turns the whole trial on its head."

This was the note: *"BGS left 5 Corps for England on FLIAP on 23rd May*".

Unexpected Outbreak Of Peace

Watts, alerted by Tolstoy, now did as he'd always done: he fired off a pamphlet, to Sun Alliance. This resulted in a motion by Allen and Overy for contempt of court. Their problem was that the injunction didn't cover this new allegation of perjury, but they got round this because Watts, with customary recklessness, had included with the pamphlet a copy of Serena Booker's off-the-cuff memo to Alistair Horne, in which Aldington had been described as being *"as slippery as a box of eels"*. So that amounted to republication of the libel, and Watts should be committed to prison.

The application was heard in January 1991 before Mr. Justice Macpherson, later Lord Macpherson of the famous Report, and hereditary clan chieftain. Watts had packed his pyjamas and toothbrush in case of the worst but, in the event, the judge heard him out and made a technical finding only, combining that with an order for costs. Watts had literally got out of jail, but, not content with that, he lodged an appeal.

His offer of £10,000.00 in full settlement having been turned down, Watts was now in addition the subject of bankruptcy proceedings, which he resisted, and, adjudged bankrupt, he appealed that as well. He had made himself familiar with the *White Book*, a compendium of the Rules of the Supreme Court of Judicature in England and Wales, hung around the Civil Appeals Office in the Strand, and was *"on helpfully chatty terms with some of the senior clerks"*. Those were the dying days of the highly skilled and professional cadre of court officials, willing to engage constructively with the legal profession and the public equally.

Of his many Affidavits (now called *Statements of Truth* in England, but happily surviving in both Irish jurisdictions) it was the one he filed on 8th February 1991 that hit the bull's eye. This is the relevant section:

> "The effect of this new evidence is that it establishes beyond reasonable contention that Aldington was BGS [Brigadier General Staff] throughout 22 May, contrary to what he categorically stated at the trial and on which his case rested. Therefore he was responsible for the minutes of the Corps Commander's Conference which decided on the policy to shoot at the Cossacks and furthermore makes apparent his failure as BGS to fulfil his duty to advise his commander that the use of force had not been authorised."

This wasn't the only new evidence that was emerging, although some of the rest was indicative rather than conclusive, in view of the retention by the Foreign Office of FO 1020/42. But the wind had now started to blow in a worrying direction, and Lord Aldington was smart enough to have sniffed it. Within a fortnight he had performed a volte face. The £10,000.00 offer he had previously rejected with scorn was suddenly more attractive! The form of words entered into was pretty watertight, or seemed so. The money was to be paid "in full and final settlement of the judgment and orders and any liability howsoever arising before today's date. Which could involve any payment by [Watts] directly or indirectly to Lord Aldington". The polemical campaign against Aldington was to end, and Watts undertook not to communicate with him. All pending appeals were to be abandoned. And Watts's bankruptcy was annulled.

This was all formalised before Mr. Justice Hoffman on 20th March 1991. This looked to be a wise pragmatic settlement in the best traditions of English civil litigation. Neither party could have imagined how the buried hatchet might possibly rise to the surface, and to understand how this could come about we have to return to consider Tolstoy's situation.

Cat Among The Pigeons

Having failed to come up with the required security for costs, Tolstoy's substantive appeal necessarily failed. At this point he received a demand from Allen and Overy for £300,000.00 (the lesser sum, interestingly), to be paid within seven days. He replied with an offer of £16,750.00 in full and final settlement. On this, predictably, not being taken up, he filed for bankruptcy, in the Autumn of 1990.

But Tolstoy then decided to instruct a fresh firm of solicitors, Schilling and Lom, who came up with a very clever wheeze. Now that Aldington had settled with Watts, they wrote to Allen and Overy asking them to agree that, as a necessary consequence, their client had also settled with Tolstoy. Their reasoning was that, as two defendants were jointly liable on foot of the judgment, the £10,000.00 paid by Watts (in reality by Watts's mother) had operated to effect settlement of Tolstoy's debt as well, because the judgment was indivisible.

David Mackie of Allen and Overy would agree no such thing. *"Indeed he said that Lord Aldington had not 'settled' with Watts, but merely agreed to limit his recovery to £10,000.00"*. To put it into a legal category, the so-called settlement amounted merely to a covenant not to sue for the full amount, so long as Watts observed certain conditions. On this view, Watts wasn't safe at all. All that his payment had achieved for him was to get him entangled potentially in a very nasty thicket of Common Law jurisprudence, the doctrine of Contribution, to some extent codified in an Act of 1978. Arguably, and to put it briefly, under this principle, if Tolstoy's Trustee in bankruptcy were able to rustle up a sum such as £20,000.00 from Tolstoy's assets, then Watts would be open to an action from the Trustee to match that (albeit the Trustee would in effect be acting as agent for Aldington, contrary to the terms of the settlement!).

The upshot would be that Watts would have to pay another £10,000.00 to stay even. In the event, the question was academic because the amount of available funds in the kitty was declining rapidly, and the Trustee had his own costs to come out of it.

Leaving this question buried deep in the thicket, Schilling and Lom started to query the amount actually owing under the judgment. It was clear by now that the claim for costs was disingenuous, because it would involve Aldington obtaining a huge sum which Sun Alliance had already paid out on his behalf. Rather than submit to a discovery application which would reveal the gory details, Aldington quickly abandoned his claim for costs altogether, apart from those incurred in the application for security for costs.

Groundhog Day

We're now in the Spring of 1992. Despite having chosen to go down different paths, Watts and Tolstoy, like Siamese twins, found themselves in the same courtroom yet again.

As for Watts, the only reason he was there was to try to obtain a Declaratory Judgment on the back of the terms of his settlement, to put him in the clear so that he could get on with his life.

Tolstoy was there to argue that, by virtue of the Aldington-Watts Settlement, he was in the clear as well, so his bankruptcy could be set aside.

The judge, Mr. Justice Morritt, started by saying that he had had some previous,

but non-professional, acquaintance with Aldington, and it was a matter for the parties if they wished him to recuse himself. A retired American lawyer who was present advised Watts and Tolstoy astutely, "Stop the trial, dammit. Get a judge who knows none of the parties". But they elected to proceed.

Their interests ran in parallel. According to Charles Gray for Aldington, it would be absurd to think that his client would have intended to give up his possible claim for £1.5m for a mere £10,000.00—forgetting perhaps that his client had already blithely given up most of that sum by openly stating he was prepared to settle for £300,000.00.

Watts was having none of this. With his characteristic nose for humbug he responded by saying that the abandonment of his appeal alone had been of the utmost value to Aldington, as its continuance would have exposed the latter to being found out in "a most grave perjury". This was an implied reference to the newly ascertained date when Aldington left Carinthia. Says Mitchell, who was present:

> "At the word 'perjury' Gray shot out of his seat as if his gown had caught fire. This new evidence, he objected, had been considered by the Court of Appeal and discarded as worthless. Not so, said Watts loudly, this was newer evidence than that. Before things could liven up Mr. Justice Morritt said firmly that he was not going to allow such issues to be ventilated in his Court. Watts was forced to leave Gray's riposte uncorrected. Gray sat down as ordered but continued to shuffle about angrily for some time. Had he not made this misleading interjection and Morritt not then curtailed the discussion… he [Morritt] might have learned just how valuable a 'consideration' Lord Aldington had received by Watts dropping his application for leave to appeal the libel judgment. But he never did."

Legal Windmills!

His written judgment released two weeks later, was confusing. On the face of it, it looked as if Aldington had lost. Watts was protected from any further claim, and the debt was held to be one and indivisible, not severed by Tolstoy's bankruptcy. And it looked as if Tolstoy now had the protection of this umbrella, which was the opposite of Aldington's intention. But the judgment was actually in Aldington's favour, on the very narrow point that, as the settlement was conditional upon Watts ceasing certain behaviours, it couldn't be said to be *"final"*, at least not in the sense that Watts was contending for. Both naturally lodged appeals.

It should be noted that, in arriving at this decision, Morritt had totally ignored the impact of the contra proferentem rule: the rule that, faced with any ambiguity in a term of a contract of agreement, the party drafting it should not be given the benefit of the doubt. This applied *a fortiori* in the case of Watts, who wasn't a lawyer and had not had the benefit of legal advice—though, even if he had had, it mightn't have made much difference, given that the lawyers didn't seem to understand it! Watts the *"barrack-room lawyer"* had forcefully argued this point, but it was ignored by Morritt in his judgment.

Matters now took on an even more surreal quality, reminiscent of the Age of Aquarius song of the 1960s, Windmills of your Mind by Alan and Marilyn Bergman, with which most readers will be familiar. We can't hope to go down these rabbit holes at all comprehensibly. Suffice to say that Aldington now made an application for costs pursuant to the judgment. Straightforward enough, one might think. But, in the meantime, what had happened was that he had retained another firm of solicitors, Herbert Smith, for the express purpose of suing Allen and Overy, seemingly on the advice of David Mackie, himself a partner in Allen and Overy. One might surmise that the giving of such advice would vitiate any relevant professional indemnity policy. As detailed below, in the event, the Solicitors' Indemnity Fund agreed to pay out, and not only for the supposed negligent work of Allen and Overy but also to cover Herbert Smith's costs for their not very back-breaking efforts on Aldington's behalf, which came to £12,000.00.

Anyway, Aldington's claim was for payment of the costs he had incurred in defending his interpretation of the Watts settlement. An affidavit was duly supplied by a junior solicitor at Allen and Overy in early June 1992 to say that their client was indeed out of pocket. This was contradicted in another affidavit sworn the following month by John Kendall, Mackie's successor, to the effect that Allen and Overy had "agreed to bear the costs of this work". Quite apart from the contradiction, this doesn't make sense, because what was actually happening was that they were agreeing to forgo their own costs. Counsel's fee might have been the only money they were paying out. So, once again, there were no relevant costs.

But even that turned out to be codswallop, and Kendall must have known it to be such, because he had already received a letter from the solicitors for the professional indemnity fund, Lovell White Durrant, confirming the sum would be paid out of the fund. Even this doesn't make sense, as the fund shouldn't be indemnifying solicitors against a shortfall in costs from their own client, which have become irrecoverable due to the solicitor's negligent advice or action. So the lyrics of the Bergman song are indeed apposite.

Moral Hazard (Lack Of)!

A forlorn effort was made later in the Summer to try to convince the court there was an important distinction between costs 'of' Lord Aldington and the costs 'incurred by him', a distinction which was swiftly put to bed by Tolstoy's counsel, whose view was endorsed by Mr. Justice Morritt. As Mitchell points out, if Kendall had come clean about the involvement of the Indemnity Fund, his client might have had a better chance of getting an order for costs, because the court was left with the impression that Allen and Overy had simply written them off. Anyway, the costs application went down in flames, with costs to the defendants, and with the additional benefit to Tolstoy that he couldn't now be pressed to reveal the role of his own *'maintainer'*, Lord Portsmouth, as there were no costs to meet.

None of this presented Aldington in a good light. He could be accused of having dishonestly claimed two sets of costs which had actually been discharged by outside bodies, Sun Alliance and now the Solicitors' Indemnity Fund. He had backed down only when the facts started to come out. Watts wasn't slow to discern an opportunity to take advantage. His complaint to the Solicitors Complaints Bureau was judged to be outside their remit, which was limited to policing complaints by clients against their own solicitors.

Next he applied to the Bar Council, alleging that Gray had been involved in a "*criminal conspiracy: fraudulently obtaining a costs order*", in response to which Gray issued a simple denial. Watts then asked for seven specific questions to be put to Gray, exposing the impossibility of the latter's feigned ignorance. At this stage the Bar Council declined to play ball. Ultimately, about a year after Watts's complaint, a reply was received from the Committee of the Bar Council confirming that no action would be taken: "The reason for the Committee's decision may be summarised by saying that Mr. Gray denied your allegations".

So that was all right then!

An appeal from this decision to the Legal Services Ombudsman (who was

Gray's next-door neighbour in Ladbroke Grove) turned out to be fruitless, as his office simply issued a meaningless adjudication in Gray's favour.

Another avenue was to appeal to the then Lord Chancellor, Lord Mackay of Clashfern, whose office had jurisdiction over delinquent judges, given that Gray sat as a part-time Recorder. Apparently this was no go also, as Gray had been acting as a barrister at the relevant time, not as a judge. Presumably if Gray had been engaged in shoplifting this would also be irrelevant as he wouldn't have been sitting as a judge at the time!

So Watts fell back on his customary last resort: he compiled a 'lurid' eight-page pamphlet, published two years later in 1994, targeting the various Establishment figures who had conspired with one another to prevent the truth from coming out.

It could be said that, from mid-1992, the legal relations among the parties had been plunged into a morass of confusion. In May 1992 Watts and Tolstoy jointly attended the AGM of Sun Alliance in a vain attempt to prise out of the Chairman the hard facts about the facilities they had extended to Aldington. Was it a loan? If so, what were the repayment terms? Had Aldington made any reimbursement out the proceeds of his other libel cases? Could the amount be tied down? They were simply stonewalled.

Going back to Morritt's original substantive judgement, we recall that Watts and Tolstoy had lodged appeals. Aldington applied for security for costs in relation to this appeal as well. Tolstoy objected on the basis that there was a fair chance that these costs also were going to be covered by the Indemnity Fund. Allen and Overy quickly backed down rather than have to disclose the relevant documents.

The appeal process against Morritt's original judgment itself chugged on, with a date set for November 1993. Pending this, Watts sent in an offer to Allen and Overy:

> "In the circumstances I offer to your wretched client one penny in contempt and full settlement of any liability howsoever arising from Count Tolstoy and myself."

This failed to elicit any response. Meanwhile Aldington was still claiming in interview that he had paid £300,000.00 out of his own pocket, which was a demonstrable lie, and which enraged Watts still further.

Closing Of Ranks

It looked as if there might be a ray of hope for Watts and Tolstoy, brought about by another slip-up by Allen and Overy in a pre-hearing affidavit. This drew their attention back to the Hoffman Ruling of March 1991 annulling Watts's bankruptcy. Watts ended up writing to Hoffman with a request to clarify the precise ground of the annulment. The reply came that it was probably on the basis the debt had been paid in full, which was the answer the defendants wanted to hear.

The full hearing at the Court of Appeal duly went ahead on 16th November 1993, four years from the original trial, before three eminent Lord Justices: Neill (of Neill On Defamation, later edited by Tolstoy's former counsel, Richard Rampton), Steyn (later a leading Law Lord), and Simon Brown. The proceedings managed to be both mind-numbingly dull and highly confusing.

The upshot for the defendants was as bad as it could possibly have been. Whereas Morritt had held that the settlement with Watts must have been either a complete release or a covenant not to sue subject to certain conditions, according to Neill it was neither. It was instead a partial release, under which Aldington's rights against Tolstoy were impliedly reserved. The implication had to be imported into the terms to reflect the presumed intentions of the parties.

Well, Aldington may have had intentions like that, but nobody thought to ask what Watts may have intended the terms to mean. According to the courts, whatever they meant, they didn't mean what they seemed to mean.

According to Steyn it was a release, but not the type of release that would absolve Watts from liability. So what exactly was Watts supposed to have got for his £10,000.00? According to Simon Brown, it was a release subject to a condition subsequent, whatever that was supposed to mean! Why in reason would Aldington have been willing to settle his whole action for a measly £10,000.00? We've already answered that question, but none of the judges was interested in asking it.

The law was sort of in the way of the desired destination, because the historic position had been that just as two or more defendants were 'jointly and severally liable' for the judgment, by the same token the judgment debt was indivisible, so that, when a Plaintiff compounded with one of them *'in full and final settlement*', that did away with the debt. Steyn deemed this rule to be absurd and illogical and didn't see why the court should be bound by it, which seems more like an example of palm tree justice than an honest attempt to thread a path through Common Law jurisprudence.

As Mitchell comments, *"the judges could not agree on the law, only on who it favoured"*.

A Brief Future Snapshot!

Leave To Appeal was of course refused. Tolstoy was sinking into depression, partly caused by worry over his desperate financial state (although there was to be one last desperate attempt at vindication), but Watts, all thought of his undertakings now out the window, was stung into a series of ever more provocative jibes, in the form of letters and pamphlets sent out to all and sundry detailing the moral Aldington's moral obloquy and the corruption of the legal system that was protecting him.

We're now jumping forward over a year, skipping over some important twists in the story, which we should come back to. Anyway, Allen and Overy eventually filed a motion to have Watts committed to prison for contempt. There was only a week's breathing space before the application was to be heard, on 7th April 1995, before Mr. Justice Garland. Watts asked for a 13-week adjournment, vigorously opposed by Charles Gray. The judge was sympathetic to the adjournment, provided Watts would desist from his verbal harassment in the meantime. Mitchell takes up the story:

> " 'No', said Watts, who began packing his books and papers into his plastic holdall. 'Are you leaving us, Mr. Watts?' the Judge asked. 'Yes sir'. 'Your liberty is in peril' said the Judge.
>
> "Watts looked unperturbed. At that the Judge caved in and granted a three-week adjournment. But that might not be long enough to get legal aid organised, protested Watts. Garland then offered to write to the legal aid office himself asking that an emergency certificate be granted 'in the interests of justice'. Watts asked when he would do so. 'I will sit here and write it now', Mr. Justice Garland said tiredly, 'if someone will give me a piece of paper'."

But, when the matter came up for full hearing, it was before the decidedly more hard-boiled Mr. Justice Morland!

I think this would be a good spot to pause, on this cliff-hanger, because there seems to be enough here for one further, final instalment, especially as my chronology has got slightly muddled due to my obsession with Watts. After that I promise not to try the patience of my readers any more. ✻

Angela Clifford

Part 18 Of Extracts, Chapter Eight:

Judicial Review
continued

The Constitution Of Eire/Ireland

A. The Tilson Case

The well-established legal position was that the marriage promise, required by the Catholic Church of the non-Catholic partner, had no force in law. The father had exclusive legal right to determine the religion of the children. (The exclusive right of the father was modified in British law in 1925, but Free State law did not follow suit because, other things being equal, the Catholic view was that the father was undisputed head of the family. [NB: this was the general view at the time, ed.])

In the Tilson case, a Protestant father of a large family, who had given the required promise, decided to have some of the children brought up as Protestants after all, and made arrangements for this to be done. As the law stood there was no doubt about his legal right to do so. But the Catholic mother took him to Court, and Duffy ruled in her favour, and decreed that the promise was legally binding.

He gave two grounds for this ruling: that Article 42.1 of the Constitution gave "*parents*", not the father alone, the right and duty to provide for the religious and moral education of their children; and that religion holds the place of honour in the State according to the Constitution, and that therefore the marriage promise "serves the social order in Ireland". In the course of the judgement it was established that "religion" meant Catholicism:

> "I come to the Irish Constitution. We are a people of deep religious convictions. Accordingly, our fundamental law deliberately establishes a Christian constitution; the indifferentism of our decadent era is utterly rejected by us. The Irish code marks a new departure from time-honoured precedents which are not ours and gives us a polity conceived in a spirit and couched in a language unfamiliar to the jurisprudence which dominated the United Kingdom of Great Bri*tain and Ireland*" *(Irish Reports*, 1950, p13).

After referring to the Preamble and describing Articles 41,42 and 44 as "*voicing the cherished convictions of a pious people who revere the Christian moral order*", Duffy remarks:

> "Thus religion holds in the Constitution the place of honour which the community has always accorded to it in public opinion. The right of the Catholic Church to guard the faith of its children, the great majority, is registered in our fundamental document, while non-Catholics are assured that their principles shall be respected" (p14).

Articles 41 and 42

> "redolent as they are of the great papal Encyclicals in *pari materia*, formulate first principles with conspicuous power and clarity.
>
> "The strong language of these articles arrests attention; it must have been chosen of set purpose, because the grave subject-matter demanded that Ireland to-day should define her position in unequivocal terms. Thus, for religion, for marriage, for the family and the children, we have laid our own foundations. Much of the resultant polity is both remote from British precedent and alien to the English way of life…
>
> "…the home is the pivot of our plan of life. The confused philosophy of law bequeathed to us by the nineteenth century is superseded…" (pp14-15).

Duffy referred to the written promises of the partners which enabled the marriage to take place and remarked that he would "*have welcomed*" "*expert evidence on the directly relevant Canons of the Code of Canon Law*" (p17).

> "Perhaps the relevant Canons were part of the old Common Law and are again part of it now that no Reformation law remains to suppress their vigour. Possibly the constitutional recognition of the special position of the special position of the Catholic Church would authorise our Courts to take judicial notice of Canon Law; but I cannot decide those questions without full debate. Observe that Canon Law is pertinent to the issue as being the key to the ante-nuptial agreement" (p17).

Duffy is here laying down a marker for future development, but sees that there has to be debate before Canon Law is absorbed into the legal system. When that was fully accomplished, Irish precedents would return to pre-Reformation English Common Law, where Catholic Canon Law determined decisions in many areas of social life; was civilly enforceable, in fact.

The ante-nuptial agreement "*serves the social order in Ireland*", for—

> "a judicial theory, which… would freely allow a father to spoil his children's birthright by uprooting their creed at his pleasure in plain defiance of his gravest express obligations undertaken as husband and father, can find no place in a jurisprudence moulded to fit the Constitution of Ireland."
>
> "Let us reflect for a moment on the situation as it presents itself to a Catholic and a Protestant who propose to marry under the law of Ireland: they must contemplate a permanent union and nothing less… their children will have a constitutional right to religious instruction, which the parents will be bound to provide; for the Catholic parent that teaching will have to be instruction in the Catholic faith and in no other…" (p18, [nb: this was before the Divorce Referendum of 1995 that legalised divorce, and that of 2019 which significantly eased requirement for obtaining one]).
>
> "…an order of the Court to secure the fulfilment of an agreement, peremptorily required before a 'mixed marriage by the Church whose special position in Ireland is officially recognised as the guardian of the faith of the Catholic spouse, cannot be withheld on any ground of public policy by the very State which pays homage to that Church" (p19).

Quite correctly, Duffy takes the constitutional requirement to honour and pay homage to religion, as being in fact one to do these things to the Catholic Church.

The suggestions of Professors Whyte and Boule that Duffy was a maverick to whom the other judges paid little heed is demonstrated to be ridiculous by the appeal in the Tilson case.

Duffy's ruling was challenged in the Supreme Court, where the husband's counsel agued that:

"The special position of the Roman Catholic Church… does not give to that Church any rights over and above those to which Protestant Churches are entitled under the Constitution" (Irish Reports, 1950, p25).

The mother was represented in the Supreme Court by the Attorney-General, who argued that:

"in view of the prominence given to religion in the Constitution, an agreement such as was signed by the parties in this case should be held to be binding" (p27).

The Supreme Court judgement was:

"1. Under the Constitution both parents have a joint power and duty in respect of the religious education of their children and if they together make a decision and put it into practice it is not in the power of either parent to revoke such decision against the will of the other.

"2. An ante-nuptial agreement made by the parties to a marriage, dealing with matters that will arise during the marriage and put into force after the marriage, is effective and of binding force in law.

"3. The former rule that the father has a right to break an ante-nuptial agreement as to the religion in which children of the marriage will be brought up has no place where the power of control over the religious education of the children… has been exercised; such a power is a joint power and is not revocable by one of the parties alone" (as summarised in *Irish Reports*).

This ruling was made by majority decision of the Court. Justice Black, a Protestant, dissented because, even though the judgement is carefully phrased so as to appear to give legal force to ante-nuptial promises, regardless of which religion they favour, the whole context of the case and the manner in which it was conducted caused him to doubt, even in his judicial capacity, that such was the case.

The suggestion of Professors Whyte and Boyle is further disproved by the fact that in 1957 (In re May, Minors), Duffy's ruling was extended when the President of the High Court, Cahir Davitt, basing himself on the Tilson ruling, found that, where no ante-nuptial promise was actually made, one is implied. This was in a case where the father left the Catholic Church. A legal contract was inferred from the fact that two Catholics had got married in a Catholic ceremony, and had started raising their children as Catholics.

For all the attempts by Vatican II apologists to explain away Gavan Duffy, ante-nuptial agreements remain legally enforceable.

B. Maguire's Case (1944)

The position on charitable bequests under the law taken over from Britain was that an activity had to be of public benefit to count as a charity. A religious order might count as a charity if was doing something of discernible public benefit, but not if it was devoted to private meditation. (The issue is not the right to donate money, but how the donation is to be regarded legally with regard to taxation, the beneficiaries of wills, etc.)

A Sister of Mercy left money to establish a Convent of Perpetual Adoration in Lisnaskea—that is, a private establishment devoted to the adoration of a large Communion wafer displayed on an altar in a Monstrance. The bequest had to go to Court to get validated as charitable.

Duffy had indicated in 1942, in an article on law reform (*Irish Law Times*, 3.1.42) that the law on charity needed redefining. He suggested that the Dail should legislate a new definition. When it neglected to do so, he did it himself in this case.

His ruling was based on two counts.

1. "I shall waste no time in establishing… that the cloister is a powerful source of edification", "in this Catholic country"; and, 2. that pre-Reformation Common `law took anything that was a gift to God to be a charitable bequest:

"The common law knew the Mass. The common law knew the Blessed Sacrament. The common law knew the adoration of the Blessed Sacrament. Therefore I know them judicially. The doctrine known to the common law is the doctrine of the Catholic Church. In my judgment, a testamentary gift to found a convent for the perpetual adoration of the Blessed Sacrament is, beyond all doubt, a gift charitable at common law, because it is a gift to God, a gift intended to perpetuate the worship of God.

"And that conclusion is in harmony with the Constitution enacted by the Irish people "In the Name of the Most Holy Trinity… to Whom, as our final end, all actions both of men and States must be referred"…"

(*Capuchin Annual*, 1944, p188-204).

And, despite the veneer of liberal sophistication acquired during the past twenty years [written in 1987], that remains the law.

(In making this judgement, Duffy had fun with a decision under the British administration (1912) that a bequest to the *Dublin Home For Starving And Forsaken Cats* was charitable, "*for cats are useful to man*". This brings out the point I have been making about how law is interpreted in the light of values outside the law.)

The Maguire Judgement was published in the very representative and influential *Capuchin Annual* (1944) under the title, *An Epoch-Making Judgment*. The Editor, Nicholas Barron, commented:

"This was a courageous step, but one that is so right as to cause wonder at its not having been taken earlier. Since we are a people who have never broken with Christendom, our legal philosophy cannot be a true one if it is founded upon the principles of those who broke away. The path of our future development in this intricate branch of the law has been defined by this judgment. It is a path which is consonant with our national assurance of the reality of the things of the spirit, and with our heritage as a Catholic people."

C. COOKE v CARROLL (1945)

It was attempted to call the Paris Priest of Ballybunion in a seduction case. (The girl's mother prosecuted a man for seduction.) Neither party objected to the priest giving evidence. But the priest refused, and was fined £10 in a lower court.

The existing state of the law was that not even communications in the Confessional were privileged at law, even though the British administration had in practice been treating them as privileged. Duffy here established a priestly privilege that went far beyond the Confessional. He held that the priest's—

"refusal to give evidence was justified and was not a contempt of Court, the Court expressing the view that communications made in confidence to a parish priest, in a private consultation between him and certain of his parishioners, are privileged, and that such privilege cannot be waived by a party thereto without the consent of the priest" (Summary in *Irish Reports*, 1945, p515).

In the course of giving judgement, Duffy remarked that the British administration had observed the secrecy of the Confessional "*tacitly and from sheer necessity*", because "*the Catholic Church was too strong in this country*" (p523). And—

"In a State where nine out of every ten citizens to-day are Catholics and on a matter closely touching the religious outlook of the people, it would be intolerable that the canon law, as expounded after the Reformation in a Protestant land, should be taken to bind a nation which persistently repudiated the Reformation as heresy…

"The Irish parish priest… is regarded as being truly the spiritual father of his people… [He has] an extraordinary moral authority…

"…wherever intimate confidence exists between parish priest and people, it wears a sacred character of immense potential benefit to the community, both to resolve the most delicate problems of life and to shield the flock from public scandal in things of shame, and… the community appreciates the value of the relation and wishes it to be preserved and fostered for the common weal…

"Setting pseudodox aside, I must treat the law here at the date of the Constitution as *tabula rasa*…

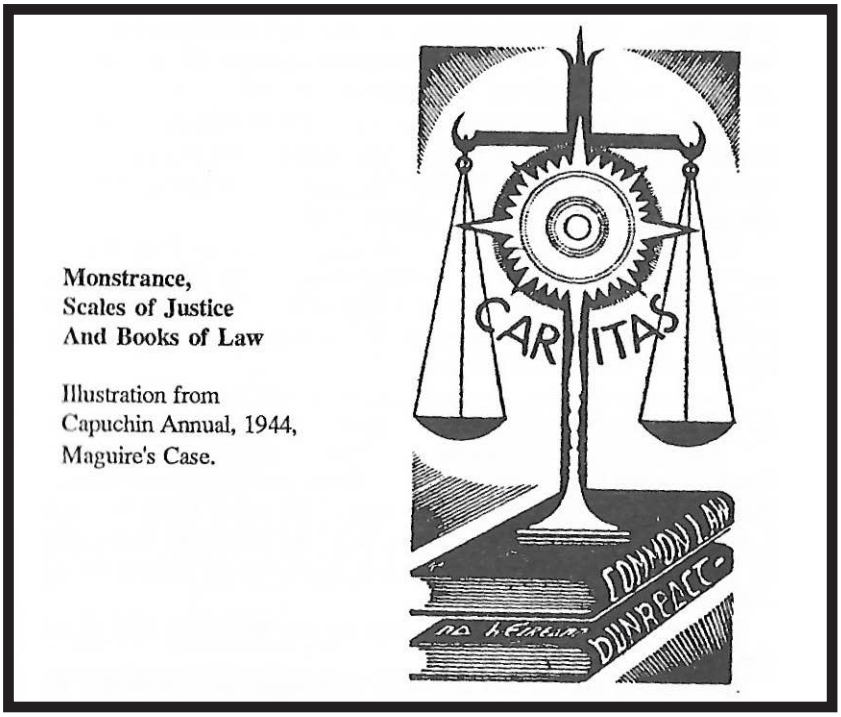
"But, treating the question as one of substantive law, I hold that the emergence of the national Constitution is a complete and conclusive answer to the objection that I have no judicial precedent in favour of the parish priest…" (pp519-23; pseudodox is false opinion or doctrine).

D. Schlegel v. Corcoran And Gross (1942)

Corcoran wanted to sell his inherited dental business to Gross, a dentist, including the lease on the premises rented from Mrs. Teresa Schlegel. She refused to transfer the lease on the ground that Gross was a Jew, and prosecuted when they went ahead despite this. The defendants argued that this refusal was unreasonable in terms of the 1931 *Landlord and Tenant Act* and contravened Article 44 of the Constitution, which said that the State might not impose any disabilities on the ground of religious belief.

Duffy ruled that it wasn't the State which was imposing the disability in this instance, and that the State was not required to prevent religious discrimination by private individuals.

Duffy pointed of of the widowed Teresa Schlegel that: "*Like her husband, she is Irish and a Catholic*", and that "*Her protective measures were justified*", because the premises were on the ground floor of the house in which she lived. He quoted her as saying *"I could not have an anti-Christian living in the house where I live"*. Not only was Gross Jewish, said Duffy, but "*the practice… may… develop a Jewish complexion*".



Monstrance, Scales of Justice And Books of Law

Illustration from Capuchin Annual, 1944, Maguire's Case.

Using words in a strangely inverted meaning, he said:

> "Mrs. Schlegel… will be condemned off-hand as utterly unreasonable by those broad-minded censors who do not hesitate to judge her from the latitude of their own catholic philosophy of life…"

He declared that her refusal to rent property to a Jew—

> "…has been characterised as a caprice and as mere prejudice; but caprice is not the right word for an anti-Semitism, which, far from being a peculiar crotchet, is notoriously shared by a number of other citizens; and, if prejudice be the right word, the antagonism between Christian and Jew has its roots in nearly 2,000 years of history and is too prevalent as a habit of mind to be dismissed off-hand, in a country where religion matters, as the eccentric extravagance of a bigot."

And he expressed the opinion that "*it is not unreasonable for a lady to protect the amenities of her residence*". After all—

> "no one, I suppose, will deny that she might safely reject a Hottentot… though he happened to be a civilised specimen, but I want to put the case of some not obviously repulsive assignee [of the lease]."

The Act of 1931—

> "implied… a stipulation for the reasonable protection of the good citizen against an obnoxious newcomer", and "Mrs. Schlegel may fairly claim a reasonable latitude in so very personal a matter…" (Reports, 1942, p19-26).

It remains the law in the Republic that religious and racial discrimination my be practised by the public—only the State may not discriminate on religious grounds, according to the Constitution (44.2.3). And, in recent years, English Nazi groups have published material from a Dublin address to escape the provisions of the British *Race Relations Act*.

It appears to have been unnecessary for Mrs. Schlegel to specify the fact that Gross was a Jew in order to deny him the lease. There are always devious ways of doing these things. It seems that her object was to make anti-Semitic propaganda. And the depth of Irish neutrality in World War II is indicated by the fact that, while the liquidation of Jewry was proceeding on the Continent, Irish law ruled, in favour of a Schlegel against a Gross, that anti-Semitism was not only legal, but was respectable, and perhaps even commendable.

to be continued

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Padraig O Horgain

Augustinian Friars Leave Cork

The Augustinian friars held a closing Mass at St. Augustine's Church, Cork on 12th July 2026 after nearly 800 years in the city.

A date of petition for approval to open a foundation in Cork was made in 1272, so it can be assumed that, after planning and building, the church would have been opened between 1275 and 1285.

The Priory was recorded as St. Austin'sin 1545, and as St.Augustine's in 1610. It became known as the "Red Abbey" because of the local red sandstone used.

Despite being dissolved in 1541, it was occupied by the friars until at least the Rebellion of 1641.

In 1644 all priests and friars were expelled from the city and the Red Abbey was taken over by the Protestant Dean of Cork, Richard Boyle.

In 1778, despite the objection of the Catholic Bishop, the Order went ahead and built a chapel in what is now known as St. Augustine's Lane (where the Wallace sisters had a shop and, more important, a safe house for the IRA during the War of Independence).

The Bishop suspended the community but the case went to Rome and the friars prevailed.

The new church was opened in 1781 and it was extended in 1872. The current church structure replaced the church built in 1872, and was built in 1942 and was further extended in 1972.

Now we go to the closing Mass.

The closing Mass was scheduled for 11.30 am, and the present writer entered the church at 10.30am, and found it to be half full at this time. By 11.15 am the church was crowded, with hundreds of people standing at the back of the Church, along the walls; and people in wheelchairs with their carers in the centre aisle, leading to the main altar.

As more and more people arrived, they sat on the floor around the altar and wherever they could find a space.

Four choirs and three soloists took part. The chief celebrant was Fr. Paddy O' Reilly, Prior Provincial of the Order in Ireland. He said during his homily that there "will be no bulldozers moving in here", and this was met with prolonged applause. He also said that negotiations about the future of the building were ongoing but that he could not elaborate.

Holy Communion was distributed by the priests and lay-people (about ten people in all): and such was the crowd that there was not sufficient hosts for the congregation of approximately two thousand.

The choirs sang throughout the Mass a beautiful selection of hymns. Following the last hymn there was a brief pause and then the massed choirs began singing the Cork anthem, "*The banks of my own lovely Lee*".

To a man (or woman), the congregation stood and thundered out the words with all the passion, pride and all other emotions that stir the human heart.

It was incredible and for some people emotionally overwhelming.

At the conclusion of the Mass, the present writer spoke with some people and the following are a selection of the comments made to him:

"Heart breaking—we are losing all that we hold dear".

"I suppose the Capuchins will be next"
[ie: The Capuchin friars of the Church of the Holy Trinity]".

"It was what held us together".

A summary of this day in Cork:

Sadness.

Memories.

'Some hide their crosses': Jerusalem Nun Highlights Israel's growing anti-Christian problem

When a foreign nun was the victim of violent physical assault in Jerusalem last month, local activists and clergy say they were shocked but not surprised. In the past few years, anti-Christian incidents have surged in Israel – illustrating how a small minority of insular and mainly ultra-religious nationalist or ultra-Orthodox Jews are becoming increasingly emboldened to act out their anger and hate.

We are indebted to *Gwydion Williams* for this story, which featured on *France 24*, 15 May 1026