

THE SPECIAL POWERS ACTS OF  
NORTHERN IRELAND

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REPORT  
OF A  
COMMISSION OF INQUIRY  
APPOINTED TO EXAMINE  
THE PURPOSE AND EFFECT  
OF THE  
CIVIL AUTHORITIES (SPECIAL POWERS)  
ACTS (NORTHERN IRELAND)  
1922 & 1933

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## FOREWORD

In the summer of 1934 the attention of the National Council for Civil Liberties was called to the state of affairs existing in the Province of Northern Ireland under the Civil Authorities (Special Powers) Acts (Northern Ireland) 1922 and 1933. The Council sent a number of representatives to Northern Ireland to make investigations. Finally, on a report by the Council's Secretary, who visited in all some twenty towns in Ulster, it was decided that the matter was of such gravity that the Council should set up an independent Commission of Inquiry to take evidence in Northern Ireland and to examine the whole question of the administration and the constitutional validity of the Acts. In the spring of 1935 the following Commissioners were invited to hold an Inquiry:

**CHAIRMAN:** THE LATE EDWARD AYLMER DIGBY, K.C., J.P., COMMANDER R.N. (retired). Mr. Digby was a Bencher of the Middle Temple and a Member of the Admiralty Bar. During the War, after holding various naval commands, Mr. Digby became head of the Otter Department of the Admiralty.

**MISS S. MARGERY FRY, J.P., M.A., LL.D. (Hon.).** Miss Fry was Principal of Somerville College, Oxford, 1926-1931 and was Hon. Secretary to the Howard League for Penal Reform, 1919-1926. Miss Fry is a member of the Treasury University Grants Committee, and was formerly a member of Lord Emmott's Treasury departmental committee on Teachers' Pensions, and was also a member of the Home Office departmental committees on Street Offences and After-care of Prisoners—under the Chairmanship of Lord Macmillan and Sir Isidore Salmon respectively.

**WILLIAM McKEAG.** Mr. McKeag is a Solicitor of the High Court and a director of various companies. He served during the Great War and in Russia with Denikin and Wrangel and was decorated with the Russian Order of St. Stanislaus. From 1931-1935 he represented the Durham Division as Liberal Member in the Imperial Parliament.

EDWARD LANCELOT MALLALIEU, M.A. Mr. Mallalieu is a Barrister-at-Law. From 1931-1935 he represented Colne Valley, Yorkshire, as Liberal Member in the Imperial Parliament. From 1931-1932 he was Parliamentary private secretary to the President of the Board of Education.

MR. NEIL LAWSON, Barrister-at-Law, was appointed Secretary to the Commission.

The Commission sat first in Belfast for the hearing of evidence and subsequently at the House of Commons. Shortly after the Commissioners' return to England, Mr. Digby became seriously ill, which entailed considerable delay in the preparation of the report. He approved the final draft, but his death took place before the report was formally signed by the Commissioners and his name therefore is omitted from the list of signatories.

## INTRODUCTION

In the summer of 1934 the attention of the National Council for Civil Liberties was drawn to the operation and effect in Northern Ireland of the Civil Authorities (Special Powers) Acts, 1922 and 1933. As the result of investigations made on the Council's behalf invitations were extended to the late Mr. E. Aylmer Digby, K.C., Miss Margery Fry, J.P., M.A., Mr. William McKeag and Mr. E. L. Mallalieu, to form a COMMISSION OF INQUIRY with the following Terms of Reference:

- (1) To examine and report upon the Civil Authorities (Special Powers) Acts 1922 and 1933 and the Regulations made thereunder.
- (2) To consider the conditions under which such Regulations may be made and the means whereby the powers thereunder may be and have been delegated.
- (3) To examine and report upon the effects of the Acts and Regulations upon the liberty of the subject and upon political life in Northern Ireland.<sup>1</sup>

It should, at the outset, be observed that the Commission was necessarily confined by its Terms of Reference and had, therefore, to reject material which would have transgressed the limits thereby imposed. Further, the fact that the National Council for Civil Liberties is by constitution precluded from concerning itself with questions involving the liberty of the subject outside Great Britain and its Colonies, has made it imperative for the Commission to disregard factors operative outside this sphere.

Investigations into the subject matter of the inquiry were made on the Commission's behalf by the representatives of the National Council and by a local Committee set up for the purpose in Belfast, drawn from academic, legal and trade-union circles under the chairmanship of Mr. Sam Porter, K.C. As a result of these investigations a mass of material was made available for the Commission, the members of which travelled

<sup>1</sup> The province of Ireland known as Ulster contains nine counties, three of which—Cavan, Donegal and Monaghan—are part of the Irish Free State. The remaining six counties of Antrim, Armagh, Down, Fermanagh, Londonderry and Tyrone, with a total area of 3,351,444 acres and a population of 1,256,651 (1926) form "Northern Ireland," which is commonly thus known as the "Six Counties."

to Belfast to spend a short time in personal investigations. Further visits were made to Northern Ireland by the representatives of the Commission during July and August 1935, during which months the assembling of data and the examination of statements and other material was continued. The Commission and its representatives have thus covered a wide field both geographically and socially.

Although the Commission was heavily handicapped by its dependence upon material furnished voluntarily in response to its invitations and to its representatives' inquiries, and by the difficulty of testing allegations therein made, there was a sufficiency of corroborated evidence for consideration.

The Commission wishes to express its indebtedness to the local Committee referred to for its assistance in collecting material and in facilitating the personal inquiries of the Commission. It wishes also to thank all those members of the Northern Irish public who submitted statements, oral and written, and those who on its behalf undertook the collection and investigation of the available material. Lastly it desires to record its appreciation of the work of its Secretary, to whose keenness, industry and capability are due so much of what may be found to be of value in this Report.

The Commission's report falls into three parts, corresponding with the three sections of the Terms of Reference. For the sake of convenience the Civil Authorities (Special Powers) Acts are hereinafter referred to as the "Special Powers Acts," unless the context otherwise requires.

## PART I. THE SPECIAL POWERS ACTS.

At the outset of this Report it must be stressed that the Special Powers Acts have become part of the *permanent law of Northern Ireland*. Whatever the nature of the legislation upon its first introduction in 1922, it is now clear beyond any doubt that the Commission has to deal with no mere temporary or emergency measure. The permanence and generality of the Special Powers Acts necessitate their treatment upon considerations quite other than those which would apply to the examination of exceptional powers of a purely emergency character.

Northern Ireland's constitutional status is laid down in the Government of Ireland Act, 1920. The Six Counties are subject to the legislative control of the Imperial Parliament in which, as is well known, they have representation,<sup>2</sup> but they have a large degree of sovereignty in domestic matters. The sovereignty of Northern Ireland is limited *ab initio*, by section 4 (1) of the Government of Ireland Act, 1920, which enumerates some fourteen matters upon which the local Parliament has no power to legislate. The Commission finds it necessary to refer to one of these "reserved matters"—viz. *domicile*—concerning which there are grounds for contending that the Special Powers Acts have violated the exception.<sup>3</sup>

Otherwise than with respect to "reserved matters" the Northern Irish Legislature<sup>4</sup> is entitled to make laws for "the peace, order and good government of Northern Ireland." But even this degree of sovereignty is limited by section 5 of the Act of 1920 which provides that laws made in contravention of certain conditions laid down therein shall be *pro tanto* void. *Inter alia*, the section declares any law void so far as

- (a) It gives preference, privilege or advantage or imposes disability or disadvantage on account of any religious belief,
- or
- (b) It takes any property without compensation.

As far as (a) is concerned, the Commission calls attention to the fact

<sup>2</sup> Thirteen members.

<sup>3</sup> Through the practice adopted in relation to Exclusion Orders (see page 19) and to the attachment of conditions to release from Internment (see page 34).

<sup>4</sup> Consisting of a lower House of 52 elected members and a Senate of 26 members.

that the principle of religious equality is enshrined in the Northern Irish constitution and that any display of religious partiality by its Government, whilst not contrary to the *verbis ipsissimis* of the Act of 1920, would be as contrary to the spirit and intention of their constitution as to that of England to-day.

As far as (b) is concerned, there are grounds for holding that such provisions of the Special Powers Acts as purport to empower the taking and destruction of property without compensation are contrary to the express language of section 5 of the Government of Ireland Act 1920, and are *pro tanto* void. The Commission refers specifically to section 11 (3) of the Special Powers Act, 1922 and Regulations 18 and 18c made thereunder.

\* \* \* \* \*

The limits of the legislative power of the Northern Irish Parliament having been outlined, the examination of the Special Powers Acts may be proceeded with. The first of these measures was introduced in 1922 in a state of some emergency (to which the debate occasioned by its passage bears witness) and was intended to be purely temporary. Section 12 of that Act reads:

"This Act shall continue in force for one year and no longer unless Parliament otherwise determines."

The most striking features of the Act of 1922 (each of which will be later examined in detail) were:

FIRSTLY, that the legislature delegated completely to the "Civil Authority" the powers conferred upon them by the Government of Ireland Act 1920, by empowering such authority to take all steps and issue all orders necessary "for preserving the peace and maintaining order."

SECONDLY, that the legislature surrendered its sole power to make and revoke laws to the Executive. This was effected by the grant to the Home Minister of the power to make Regulations:

(a) For making further provision for the preservation of peace and maintenance of order,

and

(b) For varying or revoking any provision of the Regulations.<sup>5</sup>

It was also provided that such regulations should have effect and be enforced in like manner as Regulations contained in the Schedule of the Act.<sup>5</sup>

THIRDLY, that unlimited power was conferred upon the Home

<sup>5</sup> Section 1 (3) of the 1922 Act.



Minister to delegate the performance or execution of any of his powers under the Special Powers Acts, by the provision that he may:

"delegate either unconditionally or subject to such conditions as he thinks fit all or any of his powers under this Act to any officer of police."<sup>6</sup>

No right to disallow any of the Minister's Regulations was retained by the legislature, which contented itself with a right to *petition* for the revocation of any Regulation, the actual power of revocation resting in the hands of the Executive.<sup>7</sup> The effect of the Special Powers Act was, in the above respects, a resignation of all power, coupled with an unlimited right of delegation, to the Executive. It must, however, be borne in mind that the Northern Irish Parliament was not and is not itself a fully sovereign body, since its legislative power is bounded by the express and implied limitations of the Government of Ireland Act 1920, to which it owes its existence. The question thus arises as to whether or not the Special Powers Act falls within the competence of the Northern Irish Legislature. The Government of Ireland Act 1920 empowered the local Parliament to legislate for the peace, order and good government of the Six Counties. From one viewpoint there is no doubt that the Special Powers Act falls within this qualification. But another view must be considered in order to examine its constitutional validity.

As has been indicated, the 1920 Act from which the Northern Irish Government derives its being and authority entrusts the exercise of such limited sovereign powers as it enjoys to the elected representatives of the people. It is a constitutional question of importance how far, in such case, these representatives are free to over-ride the 'trust' vested in them by making over their sovereign legislative powers to the Executive. The most cursory examination of the Special Powers Acts makes it apparent that they purport to effect an almost *complete delegation of law-making power to the Executive*, and that this delegation covers a considerable portion of the sovereignty conferred upon the Northern Irish legislature by the Act of 1920. There are therefore in the opinion of the Commission some doubts as to the constitutional validity of the Special Powers Acts in their entirety.

To the Special Powers Act of 1922 as it passed into law there was appended a Schedule of some thirty Regulations, many of a drastic character. But the wide powers conferred by the Act and its original Schedule were apparently deemed insufficient. The passage of the Act into law was quickly followed by the issue of a series of Statutory Rules

<sup>6</sup> Section 1 (2) *ibid.*

<sup>7</sup> The legislature may petition the Lieut.-Governor, who *may* accede to or decline the petition—acting in this respect on the advice of the Executive. See also notes on page 39.

and Orders whereby the Home Minister supplemented the Schedule with powers far more stringent than those assented to by the legislature, not without much controversy, a few months previously. It is not out of place to indicate the nature of some of these additions made in 1922 to which the consent of the legislature was neither required nor obtained.

- (1) *Regulation 7A*, empowering military and police officers without notice to close, stop, destroy or render impassable roads, paths, bridges and ferries.<sup>8</sup>
- (2) *Regulation 18A*, empowering the "Civil Authority" to order the evacuation, either temporarily or permanently, of houses and buildings.
- (3) *Regulation 22A*, making it an offence to refuse to answer questions put by a police constable or member of His Majesty's forces on duty.
- (4) *Regulation 23A*, and *B*, empowering the making of Internment and Exclusion Orders by the Home Minister without trial.<sup>9</sup>
- (5) *Regulation 24A*, proclaiming certain named bodies to be unlawful associations.

Examination of the added regulations seems to show that little time was lost by the Executive in obtaining powers far wider than were requested or assented to at the time of the passing of the Act. Indeed, as will appear, amongst the most important of the Regulations are those made by order of the Home Minister without the legislature's assent.

Subsequently to 1922 the Executive have issued *inter alia* the following Regulations:

- (a) *Regulation 18c* (1923), empowering the examination of banking books, accounts, etc., and the confiscation of monies or other property lodged in banks.
- (b) *Regulation 26A* (1930), empowering the Civil Authority to make orders prohibiting the possession or exhibition of films or gramophone records and to search for, seize and destroy such prohibited articles.
- (c) *Regulation 8A* (1931), empowering the prohibition, removal and destruction of monuments and memorials.
- (d) *Regulation 4* (1933), empowering the prohibition of any meeting, public or private, procession or assembly.
- (e) *Regulation 22B* (1933), making it an offence to refuse to answer any questions, however incriminating, in a private examination.<sup>10</sup>

<sup>8</sup> This addition corresponds to Regulation 7 assented to by the legislature; except that under the latter *public notification and warnings* are necessary. The Home Minister's Regulation dispenses with this requirement.

<sup>9</sup> See pages 19—20.

<sup>10</sup> See pages 17—20.

- (f) *Regulation 24C (1933)*, prohibiting the possession or display of republican emblems, flags or colours.

Despite the width of the powers conferred upon the Home Minister by the Special Powers Acts and extant Regulations thereunder it has not been unknown for further provisions to be added to the Schedule to meet special cases which have arisen from time to time. Illustrative of this type of *ad hoc* rule-making is the case of Regulation 22B. In October 1933, shortly prior to the local elections, the Government carried out a "round-up" in which some forty or fifty persons were arrested. No reasons were given for the arrests and no charges were, or, apparently, could be, laid against the men. After they had been detained for some time the Government promulgated Regulation 22B, under the terms of which the men were privately examined. On declining to answer certain questions put to them by the Resident Magistrate conducting the examinations they were charged with 'refusal to answer questions,' and the Magistrate's certificate of such refusal sufficed to secure their conviction and sentence to terms of imprisonment for an offence which was created subsequent to their arrest.<sup>11</sup>

The Civil Authorities (Special Powers) Act 1922 was renewed annually under the Expiring Laws Act until 1928, when the Government introduced a Bill to make the Act permanent. But in the course of the debates on this occasion some misgivings were evinced even by its sponsors, and the Bill, as passed, continued the Special Powers Act *for five years only*. It is not unimportant to recall that the Home Minister supported the Bill with arguments and allegations of fact tending to show the continuance of emergency conditions.<sup>12</sup>

When the five years renewal period expired the Government sponsored the Special Powers Act, 1933, the effective two clauses of which made important changes in the legislation. The first section enables the Home Minister to delegate his powers under the Special Powers Acts to his Parliamentary Secretary in addition to other persons. The second section substitutes for section 12 of the 1922 Act the following :

"The Act of 1922 shall continue in force until Parliament otherwise determines."

*Thereby is accomplished the complete metamorphosis of "Special Powers" from a merely temporary emergency measure into a permanent part of the law of North Ireland. In view of this far-reaching change it is*

<sup>11</sup> See further as to this, pages 17—20.

<sup>12</sup> It appears from the Government of Northern Ireland Parliamentary Reports (Vol. 9, No. 28) that Judges and Recorders had found, at that time and for some two years previously, a remarkable absence of crime and that they had, on a number of occasions, been presented with white gloves, symbolizing the law-abiding character of the districts under their jurisdiction.

not surprising that the Government's spokesman no longer sought to justify Special Powers by referring to existing conditions of emergency; indeed, no such arguments could have been urged since it was undisputed at that time that order had been re-established.

The arguments in fact used to secure the passage of the amendment making Special Powers *permanent*, and therefore *general*, were in direct antithesis to the reasons by which the introduction of the 1922 Bill was excused. Whilst in 1922 Special Powers were professedly intended as pure emergency measures designed to put an end to a state of affairs said to be the negation of law and order, in 1933 the very tranquillity of the Six Counties was advanced as an argument in support of making that temporary legislation permanent.

\* \* \* \* \*

It becomes necessary to conclude the first part of this Report by briefly surveying the contents of the Special Powers Acts. Such survey can best be made by considering the relevant matter under divers heads.

## 1. THE CIVIL AUTHORITY.

Wide powers are conferred in the Acts upon the "Civil Authority." It is therefore necessary to elucidate, firstly, who is thereby indicated, and secondly, what powers such authority enjoys.

- (a) The Civil Authority is primarily the Home Minister of the Northern Irish Government. But as reference to that official's unlimited powers of delegation shows, the "Civil Authority" has a secondary meaning, and thus comprises the Parliamentary Secretary of the Home Department or any officer of the police to whom the Home Minister has delegated all or any of his powers.<sup>13</sup> Certain of the Regulations extend this definition still further by permitting the exercise of the Civil Authority's powers to any person armed with the Home Minister's authorisation. There is in fact no limit to what individuals may be brought under the cloak of the enabling words "Civil Authority."<sup>14</sup>
- (b) The powers conferred upon the Civil Authority, as above described, fall into two classes. Firstly, there are such powers as are conferred by specific regulations—e.g. to impose curfew, or to proclaim as unlawful meetings, associations, newspapers, emblems, etc. Secondly, there are the general powers enjoyed

<sup>13</sup> As to delegation see pages 8—9.

<sup>14</sup> Which may even include *military* officials. Recently also the Inspector-General of the Royal Ulster Constabulary.

by the Civil Authority under the general provisions of the 1922 Act empowering it :

- (i) "to take all such steps and make all such orders . . . as may be necessary for preserving peace and maintaining order.
- (ii) to make, vary or revoke regulations for the preservation of the peace and maintenance of order."

The Commission has already indicated that there are reasons for contending that the Special Powers Acts may be invalid and unconstitutional as being *ultra vires* the limited sovereignty conferred upon the Northern Irish Parliament by Imperial Statute. Suffice it here to state that the almost complete surrender of its legislative powers by that Parliament, together with the unlimited right of delegation conferred upon the Home Minister, constitute the two pillars upon which the Special Powers Acts rest. The vesting of practically unlimited power to govern by decree in the Executive, coupled with the Home Minister's right to delegate all or any of his powers to purely ministerial officials (unused and unfitted, in many cases, to such responsibility as these powers involve) provides a legal basis<sup>15</sup> for the abrogation of representative and responsible government, and thus, the constitutional prerequisite for untrammelled dictatorship. The nature and extent of these powers may perhaps be best described in the words of Mr. Hanna, a present member of the Northern Irish Government<sup>16</sup> :

"The Home Secretary shall have power to do whatever he likes or let someone else do what he likes for him."

## 2. OFFENCES UNDER THE SPECIAL POWERS ACTS.

When considering the operation of the Special Powers Acts it is important to bear in mind that nothing therein provided supersedes the subsisting law and that therefore side by side with "Special Power Offences" there exist all those crimes known to the ordinary law.<sup>17</sup> In this respect the effect of the Special Powers Acts is to supplement existing offences.

The Acts, however, take special cognisance of certain offences known to the ordinary law by providing :

- (a) Punishment by flogging for certain offences relating to the possession and use of fire arms, ammunition and explosives, and for arson or malicious damage.
- (b) Punishment of death for certain other offences, not including homicide, relating to the possession and use of explosives.<sup>18</sup>

<sup>15</sup> Although of dubious validity.

<sup>16</sup> Spoken in opposition to the 1922 Bill.

<sup>17</sup> Regulation 29.

<sup>18</sup> To obtain this result it was necessary to revert to the Explosive Substances Act, passed in 1883.

In addition to providing these drastic punishments for subsisting offences, the Special Powers Acts reveal an abundance of newly created offences in respect of which maximum sentences of 2 years' imprisonment or of £100 fine, or both, may be meted out, of which the following may be given as illustrations :

- (1) Failing to inform the Civil Authority that some other person is acting, has acted or is about to act in contravention of the Special Powers Act. [Section 2 (3).]
- (2) Being or remaining out within a proclaimed area after curfew. (Regulation 1.)
- (3) Selling, removing or secreting property of which the Civil Authority has notified that it has or intends to take possession. (Regulation 8.)
- (4) Doing or attempting any act calculated or likely to cause . . . disaffection among the civilian population or to impede, delay or restrict any work necessary for the preservation of peace or maintenance of order. (Regulation 16.)
- (5) Withholding information from persons carrying out the orders of the Civil Authority or executing duties under the Special Powers Acts. (Regulation 18.)
- (6) Failing to stop and/or answer questions as required by any members of H.M. forces on duty or by any police constable. (Regulation 22A.)
- 7) Possessing or displaying Republican flags, emblems or symbols, etc. (Regulation 24c.)

The possibility of the authorities being unable to lay a charge under any specific provision of the Act or Regulations, despite their apparent all-embracing character, was foreseen and guarded against by section 2 (4) of the 1922 Act, which runs :

"If any person does any act of such a nature as to be calculated to be prejudicial to the preservation of the peace or maintenance of order in Northern Ireland and *not specifically provided for in the regulations*, he shall be deemed to be guilty of an offence against the regulations." (Our italics.)

The possibilities presented by this section defy enumeration. Not only does it give the Executive *carte blanche* to prosecute any person, however innocent of crime, whose activities may not be to their liking, but it violates the fundamental principles of public law. *In countries where the rule of law prevails, it is recognised by all jurists that no man may be prosecuted and punished unless for the contravention of some specific provision of the criminal law.* Section 2 (4), by stretching the limits of guilt beyond certainty or definition, strikes at the very root



of the rule of law, since it permits of criminal activity being defined in accordance with the day-to-day whim or convenience of the Executive. Whilst the authorities thus have a perfectly free hand, unfettered by the letter of the law, to charge those offending their susceptibilities, it must be remembered that the Home Minister has by decree enlarged his powers under Regulation 23 of the original Schedule to give him the right to detain or intern persons for an indefinite period without trial.<sup>19</sup>

### 3. POLICE POWERS.<sup>20</sup>

In addition to those powers conferred upon them by the Special Powers Acts, by virtue of their inclusion in the definition of the term "Civil Authority," the police are entrusted with the performance of specific duties and the execution of named powers under the various provisions of the Act and Schedule. Some examples may be furnished :

- (a) Power of arrest without warrant upon suspicion or for offences under Special Powers Acts. [Section 7.]
- (b) Power to stop and search persons and vehicles anywhere. (Regulations 3 and 21.)
- (c) Power to search premises without warrant. (Regulations 3 and 18.)
- (d) Power to close, stop or render impassable roads, paths, ferries and bridges without warning or notice. (Regulation 7A.)
- (e) Power to stop and interrogate any person. (Regulations 17 and 22A.)
- (f) Power to seize property. (Regulations 3 and 18c.)
- (g) Power to arrest without warrant any person (*inter alia*) suspected of acting, having acted or being about to act in a manner prejudicial to the peace. (Regulation 23.)

When examining these specific powers it should be remembered that, generally speaking, they are exercisable both by the professional police (the Royal Ulster Constabulary) and by the auxiliary lay police (the B Specials).<sup>21</sup> Further, there is no limitation of the exercise of these powers to such times as a policeman is in uniform, or to occasions when he is *on duty*.<sup>22</sup>

It is curious that parts of the Special Powers Acts purport to confer powers upon members of the *armed forces*. The title of the legislation, "Civil Authorities Act," appears to exclude the exercise of "Special Powers" by other than civil authorities, an assumption which is borne

<sup>19</sup> See this more fully treated, pages 19—20.

<sup>20</sup> As to Police Powers in practice, see Part II, page 25.

<sup>21</sup> These bodies are discussed on page 26.

<sup>22</sup> Cf. the powers of military officials which are specifically confined to occasions when they are "on duty."

out by the limits of the Home Minister's powers of delegation (i.e. to any officer of police). But in this respect *the Schedule travels far beyond the Act to which it is appended* by specifically empowering the military authorities to exercise rights and perform duties which from the purport of the Act itself should be strictly confined to civilians.

#### 4. TRIBUNALS.

It may be regarded as a corollary to the character of the Special Powers Act and the nature of the offences created thereby that special Courts should have been set up to deal with offenders. Although such Courts are empowered to award sentences of two years' imprisonment or a £100 fine (maxima) or both, *in no case and under no circumstances can offenders against "Special Powers" claim trial by jury.* By a stroke of the pen the Northern Irish Government has abolished what hitherto has been regarded as a fundamental right of every Briton.

Offences under "Special Powers" are triable summarily by a Court constituted not of Justices of the Peace<sup>23</sup> but of two or more "Resident Magistrates." These judicial officials are of a type special to Northern Ireland and their precise status and qualifications will be later examined.<sup>24</sup> Appeal against conviction by such summary Court lies to a Court of Quarter Sessions. The appellate tribunal consists not, however, of Justices of the Peace but of a Recorder or County Court Judge sitting alone. Thus any possibility of the safeguarding of trial by representatives of the public, whether as jurors or justices, is completely excluded.

Although Regulation 32 empowers the holding of "Special Powers" trials *in camera*, it is proper to indicate that this power does not seem to have been greatly used. It does appear, however, that the latitude given to the authorities by Regulation 34, in selecting the time and place of such trials, coupled with the absence of public notice of their holding, has resulted in such trials being attended by little publicity. Further, *the regulations contain no guarantee that accused persons shall be entitled to legal advice or assistance at or preparatory to trial. In certain cases such right is in fact excluded.*

Treatment of the trial of Special Powers Act offences would be incomplete without reference to Regulation 22B, which provides for the private examination of persons "believed to be capable of giving material evidence or information" concerning any (suspected) offence.<sup>25</sup> Such enquiries are conducted in private by a Resident Magistrate. No other person may be present unless the examiner directs and the right

<sup>23</sup> Recent legislation has abolished all the judicial powers of the Justices of the Peace in Ulster. See page 25.

<sup>24</sup> See Part II, page 24.

<sup>25</sup> The circumstances in which this Regulation was made are explained fully on page 11 *ante*. See also page 17.



of questioning is strictly confined to the Magistrate himself. *The examinee is not entitled to legal assistance at the enquiry.* There is no limit to the field which the questions may cover, and should the examinee refuse to answer any question, however irrelevant or improper, he automatically commits an offence under the Regulations, conclusive proof of which is furnished in the examiner's certificate of such refusal. *Lastly, the Regulation is made watertight by the incorporation therein of a provision which contravenes the basic principles of English Criminal Law.* It is a guiding maxim of British justice that no man may be compelled to incriminate himself or to expose himself to the peril of self-incrimination. This principle, too, receives its *coup de grâce* at the hands of the Northern Irish Home Minister, who has decreed :

"A person examined under this Regulation shall not be excused from answering any question on the ground that the answer thereto may criminate or tend to criminate himself." (Regulation 22B (3).)<sup>16</sup>

The use which has been made of Regulation 22B justifies the complaint which has been widely voiced that the authorities have ignored the basis of Regulation 22B, which is intended to deal with the examination and obtaining of evidence from *witnesses* of offences (actual or suspected) committed by *other persons*. In fact the Regulation has been used in circumstances which make it extremely doubtful whether the authorities desired such "witnesses" to be examined concerning any such offenders. It appears indeed that such examinations have been employed to ascertain *whether the examinee has committed an offence* and for this purpose he is directly questioned in the manner indicated in the last footnote.

It is axiomatic in English criminal law that an accused man is presumed to be innocent until the contrary is proven. This principle finds a reflection in other branches of the law where the maxim '*omnia præsumentur rite esse acta*' raises the strongest presumption of fact against criminal offences having been committed. These principles too have received but short shrift at the hands of the Northern Irish Parliament. Section 2 (6) of the 1922 Act provides :

"Where under the regulations any act done without lawful authority or excuse is an offence . . . the burden of proving

<sup>16</sup> The Regulation provides that his answer shall not be used as evidence against him *except upon certain charges*, including perjury or membership of unlawful association. In practice the witness is thus asked "Are you a member of an Irish Republican Organisation?" If he declines to answer, he automatically commits an offence by his refusal. If he answers "no," untruly, his denial is admissible on a charge of perjury. If he answers "yes" his admission can be used to secure his conviction of the offence of membership of such association. He is thus caught all ways.

that the act was done with lawful authority . . . shall rest upon the person alleged to be guilty of the offence."

The tendency inherent in the above provision is carried still further by Regulation 24 (2) which, after providing that persons having in their possession any document referring to an unlawful association or its affairs shall be guilty of an offence, concludes:

"Where a person is charged with having in his possession any such document and the document was found on premises in his occupation or under his control or *in which he has resided* (our italics), the document shall be presumed to have been in his possession until the contrary is proved."

The burden of proving innocence imposed upon accused persons in the above instances is also implied in those provisions of the Special Powers Acts dealing with the position of claimants for compensation in respect of property destroyed or confiscated. Even assuming that such powers to destroy and confiscate property are not in themselves illegal and void, as contravening the terms of section 5 of the Government of Ireland Act 1920,<sup>27</sup> they are couched in such terms as to violate the principles referred to above. When the claim is made the authorities are presumed to have acted properly and it is for the claimant to prove that no offence has been committed by *any person* in connection with the property involved in the claim. There are obvious difficulties in the way of obtaining such proof, failure to surmount which will involve persons *admittedly innocent themselves* in the loss of their property without compensation.

## 5. SUSPENSION OF HABEAS CORPUS.

Most serious of all the provisions of the Special Powers Acts are those which may be grouped together as derogating from the personal liberty of the subject by rendering him liable to arbitrary imprisonment. By the principle of Habeas Corpus is generally understood the right of the subject to remain at liberty unless he be detained under charge prior to trial for some alleged crime or under sentence of a judicial tribunal. Further, Habeas Corpus in itself implies the right to apply to the Courts to test the validity of any deprivation of liberty.<sup>28</sup>

Any provision which renders an individual liable to arbitrary imprisonment and at the same time cuts him off from access to the Courts to test the validity of his imprisonment, since it qualifies the principles stated above, may be described as suspending Habeas Corpus. Such suspension is effected by Special Powers in no less than four instances

<sup>27</sup> See page 8 where this view is set up.

<sup>28</sup> Since it is the title of the writ available in remedy.

(a) Detention. Under Regulation 23 any person may be arrested without warrant upon *mere suspicion* of having acted, of acting or of being about to act in a manner prejudicial to the preservation of the peace or maintenance of order, and *may be detained for an indefinite period without charge or trial.* He may not be admitted to bail unless the Civil Authority so directs.<sup>29</sup> He must submit to the taking of his photograph and finger-prints. It is provided that such *detenus* may subsequently be brought upon charge before a Court, in which case they are entitled to twenty-four hours previous notice of the charge upon which they are to be tried. But such person may be detained without any charge whatsoever. *Even should he be notified of the charge to be made against him, if any, there is no provision entitling or enabling him to obtain legal advice or assistance thereon.* The commencement and duration of detention under this Regulation are entirely dependent upon the discretion of the Civil Authority, who, as has been shown, may decide whether or not any charge is to be preferred, or whether or not such *detenu* is to be admitted to bail.

(b) Exclusion Orders. Regulation 23A, added by the Home Minister early in 1922, empowers the Civil Authority in its discretion to make an order prohibiting any person, whether he is domiciled in Northern Ireland or not, from residing in or entering any part or parts of the Six Counties. To such "Exclusion Order" may be attached conditions as to residence or otherwise. Since to prohibit persons from residing in Northern Ireland at all would clearly violate the express terms of the Government of Ireland Act 1920,<sup>30</sup> the practice has been adopted of issuing a common form of Order excluding its recipient from entering into or residing in any part of Northern Ireland other than one small and carefully circumscribed area. This area is selected so as to cut off the recipient of the order from his domestic and social ties and so to drive him by force of necessity from Ulster. *There can be little doubt that the employment of "Exclusion Orders" for this purpose is unconstitutional as violating the provisions of the Government of Ireland Act.*<sup>31</sup> There is no appeal nor any redress against the making of an Exclusion Order. Its recipient is virtually "outlawed."<sup>32</sup>

(c) Internment Orders. Wide as was the power conferred by the Home Minister upon himself under the Regulation last discussed, more far-reaching encroachments upon the liberty of the subject were effected

<sup>29</sup> Such application for bail cannot even be entertained unless the Civil Authority permits.

<sup>30</sup> See page 7.

<sup>31</sup> This view is clearly accurate as far as such orders served upon persons about to disembark in Northern Ireland is concerned.

<sup>32</sup> If he is confined to an area within Northern Ireland he cannot obtain relief against his "imprisonment." If he is excluded from Northern Ireland then his "domicile" is interfered with, as has been indicated, illegally and unconstitutionally.

simultaneously. Under Regulation 23B the Home Minister is entitled to intern any person by order *for any period*. His powers are purely discretionary and are not subject to review by any tribunal, still less to appeal.

The same rules apply to Internment under Regulation 23B as to detention under Regulation 23. *No visitors or communications may be received without the special consent of the Civil Authority.* Any communications which may be sent by or to *detenus* and internees must be perused by the authorities, whilst, as a rule, permitted visitors may only be received in the presence and hearing of an official. *Legal advice and assistance may only be obtained at the goodwill of the authorities.* The commencement and duration of internment are determined by the arbitrary will of the Executive. No Court of Law may entertain any application for relief, since such orders of internment are outside the ordinary law of the land and the remedies thereby provided.<sup>23</sup>

(d) Detention of Witnesses. The Commission has already reviewed<sup>24</sup> the provisions made by the Special Powers Acts for the private examination of persons suspected of being able to give information as to suspected offences, past, present and future. Attention has been drawn to the fact that these powers have been used rather to secure the incrimination of the persons examined than to effect the bona fide procurement of evidence against other persons. It must be observed that the procedure of the Regulation in point would be ineffective (particularly having regard to the purposes for which it has been used) without provision enabling such suspected 'witnesses' to be arrested without warrant and detained pending their 'examination.' This is more remarkable in some respects, than the provisions discussed above, since there is no question of such 'witnesses' being themselves offenders—at least at the time of their arrest—the initial steps being taken against them purely as witnesses.<sup>25</sup>

\* \* \* \* \*

Although differing in certain particulars, the position of individuals subjected to the exercise by the Executive of any of the above four powers is analogous in that:

*Firstly*, his personal freedom is subject to arbitrary interference ;  
*Secondly*, there is no way in which such person can procure the end of his detention since *he can insist neither upon charge nor upon release* ;  
*Thirdly*, no application for release can be made to the Courts on his behalf since no judicial tribunal has cognisance of his position or jurisdiction over him.

<sup>23</sup> The practice of Internment is dealt with in Part II, page 34.

<sup>24</sup> See page 16.

<sup>25</sup> Although they may become offenders during the course of the examination. See pages 16—17.

In the foregoing circumstances it is clear beyond doubt that "Special Powers" effectively suspend Habeas Corpus by :

- (a) exposing persons to peril of arrest and incarceration without charge or limit at the whim of the Executive *and*
- (b) depriving such persons of the right to test the legality of their detention by application to the Courts.

The Commission is unable to accept the accuracy of the observation of the former Attorney-General, Mr. Best, that :

"The Habeas Corpus Act is not interfered with in the slightest way. If a man is arrested, from that moment his liberty is interfered with ; but you must give some reasonable time to the authorities to see what charge is to be preferred and how it is to be proved. . . . There is no suspension of the Habeas Corpus Act here."<sup>38</sup>

It should be stated, however, that this pronouncement was made before the Home Minister added the relevant Regulations to the Schedule whereunder, as has been shown, the liberty of the subject is still further infringed. *In the Commission's opinion the effect of these Regulations is completely to abrogate the principles of Habeas Corpus, which are fundamental to the British Constitution. This fact, coupled with the disestablishment of the rule of law in the Six Counties puts the Executive in a position paralleled only by continental dictatorships.*

## 6. OTHER GENERAL POWERS OF THE CIVIL AUTHORITY.

Reference has been and will frequently be made to the powers generally exercisable by the Civil Authority under the Special Powers Acts. It is, however, convenient at this stage to summarise what appear to be the most important of these powers, beyond those specifically examined in the foregoing paragraphs.

- (a) Power to impose curfew (Regulation 1). This was conceded by the legislature in the original Schedule, but twenty days later the Home Minister added the following words (*inter alia*) to the Regulation:

"A person shall be deemed to be or to remain out between such hours if he is found between such hours elsewhere than at his usual place of abode."

- (b) Power by proclamation to prohibit any meeting, public or private, assembly or procession (Regulation 4).

<sup>38</sup> Mr. Best was later appointed a Lord Justice of Northern Ireland. His use of the words "you must give some reasonable time to the authorities . . ." savours strongly of special pleading when we remember that these detentions without trial have sometimes run to a length of two years.

- (c) Power to prohibit newspapers, cinematograph films, gramophone records, emblems, symbols, flags and colours (Regulations 24, 25 and 26).
  - (d) Power to proclaim any association as unlawful (Regulation 24).
  - (e) Power to order search, seizure and/or destruction of all types of property moveable and immoveable (Regulations 8, 18).
  - (f) Power to order the suspension of coroner's inquests [Section 10].
- Concerning this, it is not uninteresting to note that the then Attorney General, Mr. Best, when sponsoring the 1922 Bill through Committee said :

"We cannot shut our eyes to the fact that there are some areas where the coroners are not in sympathy with us where they are absolutely hostile to us, and the Minister for Home Affairs wishes under these circumstances to be able to prohibit inquests from being held in those particular areas."<sup>37</sup>

\* \* \* \* \*

Democratic representative government such as by Constitution exists in Northern Ireland is based fundamentally upon the consent of the governed. From this consensual foundation of government there flows the recognition and protection by law of rights vested in the individual against the state. Again, it is axiomatic within such political systems that the individual is free and uncontrolled by law save within the sphere of such limitations as *the law specifically* imposes upon him. Under democratic constitutions the individual cannot be deprived of his liberty otherwise than in accordance with the law and under the penalties defined and provided for breaches of the law. Unless he be a law-breaker, he is entitled to the recognition and protection of his liberty, above all against the arbitrary interference on the part of the Executive. From the general freedom of the individual, outside the specific limitations of law, there flows the right of holding and expressing opinion upon all matters, not excluding the conduct of public affairs.

In the considered opinion of the Commission the operation of the Special Powers Acts is contrary to the fundamental principles of democratic government, in that it imperils the rights and freedom of law-abiding citizens. The possession of such powers by the Executive could not fail to affect the right of public criticism and the operation of democratic principles even though such powers were administered with unequivocal impartiality and scrupulous fairness.

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<sup>37</sup> Government of Northern Ireland Parliamentary Reports Vol. II, No. 2, col. 159.

## PART II. THE SPECIAL POWERS ACTS IN PRACTICE

The consideration by the Commission of the second paragraph of its terms of reference, with which this Part of the Report is concerned, involves the separate treatment of three matters :

*Firstly*, the conditions under which Regulations under the Acts may be made ;

*Secondly*, the practice whereunder the powers are delegated ; and

*Thirdly*, the practical use which is made of "Special Powers."

### A. CONDITIONS UNDER WHICH REGULATIONS ARE MADE.

The law-making powers conferred upon the Civil Authorities by the Special Powers Acts have already been subjected to detailed examination. Assuming at this stage the validity of such powers (which, as has been seen, there is reason to doubt) the legislation itself imposes an express limitation upon their exercise. This is to be found in the proviso to Section 1 (1) of the 1922 Act which runs :

"Provided that the ordinary course of law and avocation of life and the enjoyment of property shall be interfered with as little as may be permitted by the exigencies of the steps required to be taken under this Act."

Whilst this proviso makes it clear that ordinary law and individual liberty guaranteed by it are entirely subordinated to the Special Powers Act, it indicates that important considerations were present to the minds of the Government draftsmen and the legislature when that Act was formulated and passed.

*Firstly*, it was anticipated that Special Powers would affect 'law-abiding citizens' as well as law-breakers ;

*Secondly*, the Acts were clearly intended for use only when *exceptional and emergency conditions* rendered it imperative ;

*Thirdly*, Special Powers were in character *supplemental* to the ordinary law which was, in general, to be maintained.

These deductions from the language of the proviso are amply borne out by a study of the debates attending the passage into law of the 1922



Act. At the time it was clearly stated by the Government spokesmen that the Act was intended to confer powers of extraordinary stringency as a *purely temporary and emergency measure*. Despite occasional disorders it cannot be said that the special circumstances alleged to have existed when the Act was passed in 1922 prevail to-day. With their disappearance the very basis of the legislation vanished. This fact lends weight to the oft-voiced criticism that the Government was not justified in turning the exceptional Special Powers Acts into permanent legislation of general applicability and in promulgating additional Regulations so greatly enlarging their scope. In fact, it is true to state that, despite their title and the proviso referred to, the Special Powers Acts have now become of general application. *Far from supplementing the ordinary law upon matters vital to the liberty of the subject they have superseded it.*

## **B. DELEGATION AND EXECUTION OF POWERS UNDER THE ACTS.**

Attention has already, in Part I of this Report, been drawn to the wide powers of delegation conferred upon the Home Minister. In the execution of the Special Powers Acts (excluding members of H.M.'s forces upon whom, as has been shown, certain specific tasks devolve<sup>38</sup>) three main bodies are concerned. These are the Resident Magistracy, the Police Forces and the Home Office. The legal position of these bodies under the Acts has been examined ; it remains to deal with their actual functioning.

### **(1) The Resident Magistracy.**

The functions performed by the Resident Magistracy under the Special Powers Acts are both judicial and administrative. In addition to being entrusted with the important task of carrying out private examinations of witnesses under Regulation 22B (see *ante*) a Resident Magistrate is empowered to 'proclaim' any public or private meeting, assembly or procession. Further, Resident Magistrates in their capacity as Justices of the Peace, or as persons specially authorised by the Civil Authority, may exercise other powers of an executive character under the Regulations. It is to be questioned whether it is desirable for those officials, in whom exclusive jurisdiction over Special Powers offences is vested, to be required or empowered to perform other functions of an administrative or executive nature under the same Regulations. It is obvious that the combination of such powers tends to make the position of a Resident Magistrate incompatible with his judicial capacity.

More serious is the fact that, accepting the necessity for summary

<sup>38</sup> i.e. the British army maintained by the British Exchequer.



trial (i.e. dispensing with juries), jurisdiction over offences was vested in the Resident Magistracy rather than in the ordinary Justices of the Peace.<sup>39</sup> Legal qualification, theoretical or practical, is unnecessary for the office of Resident Magistrate, and three of the eleven present-day occupants of that position are bare of such qualification. Whereas formerly some balance was present in appointments to the Resident Magistracy between the two leading religious sects of the Northern Irish community,<sup>40</sup> to-day the eleven officials number amongst them but one Roman Catholic. More than a half of the Resident Magistrates are now ex-police or ex-military officers. The conditions for the appointment of the two Magistrates for the City of Belfast itself provided that such appointees must either be existing Resident Magistrates or have special legal qualifications. Strong criticism was evoked by the action of the Northern Irish Government in 1924 in appointing a high police official to a county magistracy and then, on that qualification, nominating him for the Belfast vacancy, for which, but for this preliminary, he would not have been qualified. Lastly, it must be noted that the tenure of the office was until 1935 at the will of the Executive and that its occupants were therefore liable to arbitrary removal.<sup>41</sup>

Considering the foregoing facts, it is difficult to escape the conclusion that jurisdiction was vested in the Resident Magistracy neither because of their special legal or personal qualifications, nor because of their independence of the Executive or their aloofness from political persuasions.

## (2) The Police.

The legal position of the police under the Special Powers Acts has been examined in the foregoing Part of this Report. In the consideration of the practical application of police powers different standards must, to some extent, be applied to the two sections into which the local police forces fall. As has been noted, these sections are the Royal Ulster Constabulary (the professional force), and the B. Specials (the auxiliary force), respectively.

The status of the Royal Ulster Constabulary differs vastly from that

<sup>39</sup> Last July the Northern Irish Parliament passed a law under which all the judicial functions of the Justices of the Peace are abolished and in which all summary jurisdiction is now vested in the Resident Magistracy. This measure evoked considerable criticism and opposition even in quarters normally favourably inclined towards the Government.

<sup>40</sup> According to the figures of the 1926 Census roughly one-third are professing Roman Catholics as the following table denotes :

Roman Catholics	..	..	420,428
Presbyterians	..	..	393,374
Protestant Episcopalians	..	..	338,724

<sup>41</sup> The law has been recently changed, so that the tenure of Resident Magistrates has been rendered more secure.

of the regular police forces in England. The R.U.C. is under the direct control and authority of the central Northern Irish Government and is independent of the local authorities. *The connection of the police force and the Ulster Home Office is therefore intimate.* The R.U.C. are an armed body; not only do the individual police carry revolvers and carbines, but the force is equipped with armoured cars and machine-guns.<sup>42</sup>

The B. Specials, who comprise the bulk of the auxiliary Constabulary, present quite different features from the regular police. More than four times as numerous as the R.U.C.,<sup>43</sup> the B. Specials are a trained and organised force having control of or access to official stores of firearms and ammunition. Their average total cost to the Northern Irish taxpayer is £40,000 annually.<sup>44</sup> In practice membership of the B. Specials is confined to persons professing the Protestant faith who are also members of the Orange Order—that is, to supporters of the Unionist Party. Apart from the use made of the B. Specials for Special Powers Act purposes, it is widely alleged that the Government maintains this large body of auxiliaries for partisan electoral objects. It is, indeed, difficult to see that the condition of the Six Counties to-day justifies the continuance of the present embodiment of the B. Specials.

The wide powers entrusted to the Police under the Special Powers Acts have already been discussed. The objections to the delegation of powers involving arbitrary interference with private persons and their property, or calling for the exercise of a fine degree of discretion, to members of the police force are obvious. In a different category are complaints, widely voiced, as to the manner in which police powers under the Acts have been exercised, with respect to which many statements were submitted to the Commission. Whilst the difficulties with which the police may have to deal must not be discounted it does appear that the following complaints, *inter alia*, are legitimately entertained against the R.U.C.

(a) *Partisanship.* There are strong grounds for adhering to the view that the police do not act impartially as between the Orange bands on the one hand and those sections of the community against whom their activities may be directed from time to time on the other. Frequently when the meetings of left-wing political organisations have been rendered impossible by Orange rowdiness the police have stood by and tolerated such conduct. Again, there is abundant material to indicate that favouritism is displayed by the police to Orange processions and

<sup>42</sup> The Special Powers Acts confer upon the R.U.C. powers which are military in their nature.

<sup>43</sup> On December 31st, 1933. R.U.C. all ranks, 2,791; B. Specials, all ranks, 1,2052. (Home Office Services Report 1933, pages 63—65.)

<sup>44</sup> 1934-5, £42,902; 1935-6, £35,527 (Services Estimates 1935-6, page 65).

demonstrations on occasions when clashes between them and Catholic or left-wing sympathisers have eventuated. To some extent this apparent partiality may be due to a feeling of impotence rather than to a desire (particularly on the part of the ordinary rank and file of the R.U.C.) to show favouritism, for there is no doubt that Orange hooliganism often reaches such a pitch as to require the most drastic use of force to suppress it. But even if this feeling does play some part in producing the effects of partiality, it is difficult to escape the conclusion that the attitude of the Government renders the police chary of interference with the activities of the Orange Order and its sympathisers.<sup>44</sup>

(b) *Powers of Interrogation.* Attention has already been drawn to the wide powers of interrogation exercisable by the police under various Regulations scheduled to the Special Powers Acts. Several cases were brought to the Commission's notice in which these powers appear to have been abused. These cases presented certain noteworthy features.

Persons arrested and detained, whether under charge or not, have been subjected to interrogation, frequently of many hours' duration, by large numbers of police. The prisoner having been questioned as to his name, address and movements by one squad of police, is passed on again and again to other squads by whom the process is repeated. During interrogation the prisoner is surrounded by his questioners, and unsatisfactory replies may produce blows. These interrogations are often held late at night and are carried on until the prisoner's strength is well nigh exhausted. It is unnecessary to stress the objections which may be urged to such methods. Information furnished in such circumstances would be so notoriously unreliable that such interrogations cannot be regarded as genuine attempts to elucidate facts. It is difficult indeed to imagine any motive other than that of intimidation for such practices.

More serious were cases reported to the Commission in which boys and young persons were subjected to interrogation by numbers of police, and appear frequently to have been removed to police barracks for such purpose. The same objections, *a fortiori*, may be urged to such practices.

(c) *The Right of Search.* The searching without warrant of houses in working-class districts is one of the powers most frequently exercised by the police under the Special Powers Acts. A great deal of information was submitted to the Commission as to the manner in which such searches are conducted. Whilst there are, no doubt, cases in which a search is conducted in an orderly manner, in the bulk of instances

<sup>44</sup> The contrast between the attitude of the Government concerning police conduct in certain incidents arising out of the Royal Jubilee when "Orange" houses were raided and their normal attitude is most striking. (See Government of Northern Ireland Parliamentary Report, Vol. XVII, No. 46.)

brought under the Commission's notice searches were made by bodies of armed police who have on occasions threatened inhabitants with their firearms. It appears to be recognised that such searches, which are of constant occurrence, should take place in the dead of night and should be marked with brutality and violence. Cases were reported to the Commission of property being taken or damaged and of infants and invalids being disturbed, if not roughly handled. It is not unknown for the same house to be subjected to consecutive searches on the same or successive nights. Perhaps the most remarkable feature of the searches under Special Powers described to the Commission has been the fact that in almost every case the police departed empty handed and that the occupants of the houses searched were never charged under Special Powers or otherwise.<sup>46</sup>

(d) *Maltreatment of Prisoners.* Whilst from the material before the Commission it does appear that there is now no general physical ill-treatment of persons subjected to detention under Special Powers, specific instances of brutality, two involving youths, cannot be ignored. Physical violence is sometimes offered to prisoners under Special Powers, who by reason of the conditions of their imprisonment have little or no opportunity of complaint or recompense. The fact that *detenus* under Special Powers have no right to be brought before a Court tends to facilitate any tendency towards physical ill-treatment by lessening the chances of its discovery.

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Generally speaking, and bearing in mind the matters last discussed, the Commission found that complaint of the aggressive and minatory attitude of the police was widespread. It can be little doubted that to some extent such attitude is not uninfluenced by the wide powers delegated to the police under Special Powers legislation. The right to stop, to interrogate, to arrest without warrant on the barest suspicion of the vaguest offence, to enter upon and to seize private property<sup>47</sup> conferred upon any policeman, coupled with the absence of effective machinery for the protection of private rights or for redress against arbitrary action by the executive and administrative authorities, cannot but tend to cultivate an attitude of aggressiveness which easily degenerates into abuse and intimidation, or in extreme cases into police terrorism.

### (3) The Home Minister's Department.

The close alliance between the police and the Home Minister's Department alike in the administrative field and under Special Powers

<sup>46</sup> The absence of convictions under Special Powers Acts for offences involving violence is one of its most significant features.

<sup>47</sup> See these powers detailed in Part I, page 15.

has already been indicated. It is not unexpected—since any responsibility for the exercise of Special Powers rests upon the Home Minister—that he supports and protects the police against criticism, for it is upon them that ultimate reliance for the effectiveness of Special Powers must be placed. Despite this it would be neither fair nor reasonable to attribute blame to the Home Minister for those general abuses of police power to which attention has been called but for the fact that there appear to be, *ab externo*, grounds for such attribution. Apart from the responsibility of the party in office since 1921, for the policy pursued since its establishment by the Government,<sup>48</sup> three factors may be indicated as supporting the view that the Home Minister's Department is directly implicated in the abuse of their powers by the police, of which the Commission finds widespread complaint.

Firstly, persons detained under Special Powers have complained to the authorities regarding prison conditions for *detenus*, generally, and regarding their personal treatment in particular. Prisoners seriously ill have been kept at work or have not been put upon proper diet. On some occasions individual complaints have been rectified, but the general complaint of harsh treatment and bad conditions, which on the materials before the Commission does not appear to be unjustified, prevails.

Secondly, the raiding and searching of houses (arising out of which there have been so many complaints of violence and brutality) appear to have been frequently carried out in the presence of a representative of the Home Minister's Department. At least one case was brought to the notice of the Commission where considerable damage of a malicious character was done to property by a raiding squad of police accompanied by a Home Office official. It is impossible in these circumstances to absolve the Home Minister's Department from some degree of responsibility for the complaints levelled against the police arising from these raids.

Thirdly, several authenticated instances were reported to the Commission where clearly violent breaches of the law had been committed and brought to the notice of the proper authorities. Two cases may be cited :

- (a) On the occasion of a (fruitless) raid upon his father's house a youth was arrested and taken for interrogation to police barracks. There he was subjected to searching interrogation and when his replies apparently failed to satisfy his questioners he was assaulted and badly beaten by two policemen. He was later released and immediately obtained a medical certificate of his injuries. Complaint to the authorities produced the promise of an inquiry but nothing further.

<sup>48</sup> The consequences of this policy are indicated in Part II C, pages 31—32.

- (b) A religious procession in the country was proceeding along its route when it was fired upon from some nearby cover. The assailants made off leaving a number of cartridge cases on the ground. Owing to the system of control and registration operative in the Six Counties the tracing of ammunition is not a superhuman task. The cases were handed to the authorities with a request for investigation into the source from which they had emanated. Nothing further was heard of the matter.

### C. THE POWERS IN PRACTICE.

Although instances of the practical use and effect of Special Powers may have appeared from the foregoing, the Commission considers it necessary to devote a special section of their Report to the operation of the Acts. The mere citation of illustrations of the use of Special Powers would not however, present a true picture. It is necessary, for the sake of perspective as well as for completeness, briefly to describe such contemporary conditions as might call for the application of Special Powers before dealing with their practical use.

#### (1) Conditions of Use.

As the Special Powers Acts were primarily designed to cope with disorder it is opportune to examine such incidents as are productive of disorder and unrest in Northern Ireland to-day. These may be classified under three heads :

(a) *Religious.* Ulster has always been noted for its sectarian troubles, which to a large degree are a legacy from a troubled past. Examination reveals that to some extent religious and party-political cleavages in the Six Counties follow identical lines,<sup>49</sup> which supports the view that the sectarian issue is not unaffected by political considerations.

Whilst it cannot be doubted that incidents of grave disorder have arisen, even recently, from what appear, superficially at least, to be sectarian issues, it does not suffice to dismiss such instances as mere incidents of a time-honoured sectarian feud. For one reason, the sectarian cleavage in Ulster appears to have little basis in social or economic reality. Although professing different faiths, there is little or no difference in the standards and modes of life, in the economic and social conditions, in aspirations and ambitions of the Protestant and Catholic members of the working classes. Amongst the middle and upper classes, while there may be some social differentiation, economically the members of the opposing sects meet more or less upon an equal footing. Thus, for

<sup>49</sup> There are important exceptions to this, particularly in working-class areas.



example, land constantly changes hands between them despite the opposition of certain extreme political spokesmen.<sup>50</sup>

Although there have been instances of disorder which may perhaps be partly attributed to religious motives,<sup>51</sup> a greater number of incidents cannot be so explained. Such, for example, are the occasions on which organised bands of "Orangemen" or "Protestant Leaguers" have interfered with working-class meetings and demonstrations of a non-party character or have been permitted riotously to terrorise working-class districts or to stone the offices and clubs of labour organisations. Whatever the true explanation of the activities of these sectarian partisans be, it is interesting to remark that the Northern Irish Government has made but little use of its drastic Special Powers against the Orangemen and their sympathisers.<sup>52</sup>

The close relations maintained by the Government's leading members with the Orange Order, coupled with the little use made of Special Powers against activities notoriously productive of disorder, provides some show of reason for the view that the Government permits the perpetuation of, rather than seeks to quell, sectarian troubles. This view is by no means contradicted by the record of the Unionist Government in Northern Ireland apart from the Special Powers Acts. The widespread allegations of "placing" in Government offices, the fact that important judicial and official positions (e.g. County Court Judgeships) are largely withheld from practising Catholics, the maintenance of the "B" Specials,<sup>53</sup> the personal ties between the Executive and the Orange Order, and the frankly sectarian speeches made even by Ministers,<sup>54</sup> are all disquieting features of the political life of the Six Counties. Coupled with the electoral "reforms" introduced by the Government some years

<sup>50</sup> The suggestion that these Catholic land purchases are arranged as part of a secret conspiracy "from Rome," is not sufficiently serious to warrant attention.

<sup>51</sup> Such as incidents of sacrilege; or the interference with Catholics journeying to the Dublin Eucharistic Congress in 1932, against which no effective steps were taken.

<sup>52</sup> The serious disorders of July 12th-18th 1935 arose directly from the "Orange" celebrations of the Battle of the Boyne Anniversary, which the Government not only omitted to take steps to ban or control, but facilitated by the raising of an existing ban on all processions. It is not without importance that before this ban was raised the Grand Master of the Orange Order, Sir Joseph Davison, a prominent Unionist, indicated the intention of the Order to defy the ban if it were not raised before the "12th." The actual celebrations were supported by the presence and participation of all the leading members of the Government, including the Home Minister who had raised the ban.

<sup>53</sup> See page 26.

<sup>54</sup> Thus Lord Craigavon speaks of "a Protestant Parliament for a Protestant people"; while Sir Basil Brooke (Minister of Agriculture) in a public address on July 12th, 1933, said: "Many in this audience employ Catholics, but I have not one about my place. Catholics are out to destroy Ulster with all their might and power." In March 1934, referring to his former statement, Sir Basil said: "When I made that declaration on last Twelfth I did so after careful consideration. What I said was justified. I recommend people not to employ Roman Catholics, who are 99 per cent disloyal . . . I will continue to criticise and take what action I can."

ago—i.e. the abolition of proportional representation and the re-arrangement of the constituencies<sup>55</sup>—these tendencies make it difficult to contradict the assertion that the Unionist Government's policy has resulted in the inflammation of religious bigotry and the aggravation of sectarian differences amongst the Northern Irish community.<sup>56</sup> If this be the case, the non-use of Special Powers in the sectarian field takes on a deeper significance. Whatever be the true explanation of these matters it is at least clear that the existence and perpetuation of Special Powers cannot be legitimately justified or excused by reference to sectarian disorders.

(b) *Economic*. In striking contrast to the neglect of the Government to employ Special Powers in the prevention or suppression of incidents arising out of sectarian disorder has been the use of Special Powers on occasions arising out of economic crises. In reaction to prevailing low wages, inferior social conditions and chronic unemployment,<sup>57</sup> there has been a rising tide of feeling in the Northern Irish working class in favour of sinking superficial and sectarian differences, which have been productive of so little benefit to them in the past, and by united action to gain strength in the pursuit of their legitimate aspirations, decent wages and improved conditions. These tendencies have been sometimes more and sometimes less marked. At times the movement towards unity in the struggle for these aims has attained tremendous force, as in October 1932 during the Out-relief Workers' strike. Whilst at other times the Six Counties have enjoyed a seeming freedom from 'labour unrest,' it appears that the activities of those interested in organising the employed and unemployed members of the working-class has continued. It is striking that the Northern Irish Government has freely employed Special Powers in dealing with incidents arising from the natural revulsion of the working-class against their depressed conditions. Not only have important incidents such as the October 1932 strike seen the use of Special Powers in their full force and measure, but there is abundant evidence of the daily use of such powers against individuals active in the working-class movement, particularly on its left wing. Domiciliary visits, searches, interrogations, detentions and Exclusion Orders appear, in this way, to have been freely employed.

(c) *Political*. Much of what has been stated above as to the sectarian issue and its relation to the Special Powers Act may be fairly applied

<sup>55</sup> It is one of the most bitter grievances of the Roman Catholic minority that these "reforms" were designed to prevent their effective representation in provincial and local government. Whatever the motive of these "reforms," there is no doubt of their effect.

<sup>56</sup> Worthy of record in this connection is the rumour that it is intended to secure limitation in the numbers of Roman Catholic students admitted to Queen's University.

<sup>57</sup> Unemployment, particularly in Belfast, has been heavy. An idea of the general conditions of the working-class may be furnished by the fact that the infant mortality rate of Northern Ireland was 82 per 1,000; as compared with 71 per 1,000 in the Irish Free State; and 65 per 1,000 in England and Wales (1932 figures).



to incidents arising from political difference, which apart from those previously considered are to-day of but rare occurrence.

There is a large body of opinion in the Six Counties in favour of a United Ireland not confined to those professing the Roman Catholic faith. This opinion tends to find outlet, particularly in Belfast, in secret support of Republicanism. Special Powers are freely employed by the Government against persons known or suspected to entertain Republican sympathies, whether or not they are members of organisations such as the Irish Republican Army, 'proclaimed' under the Special Powers Acts. These Powers have, in fact, been so used as to deprive the Republican movement of all lawful modes of conducting propaganda or of engaging in legitimate political activity. Not only are its newspapers, emblems, colours and associations proscribed under Special Powers, and its supporters intimidated or penalised, but through recent changes in the electoral law its candidates are prevented from standing for election as they refuse to undertake to take their seats if elected.<sup>58</sup>

## (2) Instances of Special Powers in Practice.

No history of the operation of Special Powers would be complete without reference to the important power of *internment without charge or trial* under Regulation 23B, which was added to the Schedule of the 1922 Act by the Home Minister shortly after its passage into law. Under this Regulation the Home Minister empowers himself upon police recommendation to intern for an indefinite period any person who is *suspected* of acting, having acted or being about to act in a manner prejudicial to the peace and maintenance of order in Northern Ireland.<sup>59</sup>

Regulation 23c (also added by the Minister) makes the following provisions (*inter alia*) for internees :

- (a) No visitors without the Civil Authority's sanction ;
- (b) No communications to be sent or received without the Civil Authority's consent ;
- (c) Any communications to be first examined by officials.

The fact that internees under the above Regulations are not persons against whom any charge has been, will or could be made, but are merely "suspected" in some vague way of action or intention inimical to peace and order, lends point to denial of the right to see or communicate with legal advisers. There is no appeal against internment, nor mode for obtaining reason or redress therefor. *It is unnecessary to stress that such power is in flagrant violation of the principle of English law that no man shall be deprived of his liberty by arbitrary act of the executive and that no man shall be denied access to the courts.* The Regulation under review

<sup>58</sup> The consequences of this are alluded to in Part III, page 39.

<sup>59</sup> The legal conditions of this are more fully discussed in Part I, page 20.

confers upon the Executive ample power to govern without law and in face of the elementary principles of justice.

Although within recent years no use appears to have been made of the power of Internment,<sup>60</sup> it has been preserved and, as has been shown, made permanent in 1933. It is therefore not irrelevant to describe the conditions under which the power was formerly used and could be to-day revived by the Executive.

Little time was lost after the addition of Regulation 23B to the Special Powers Act, in making use of it. The Executive proceeded forthwith to "round-up" some hundreds of its political opponents—drawn even from the most peaceful parts of Ireland—and to intern them as 'suspects,' in the majority of cases for two years. No charges were ever laid against most of these internees, nor were reasons ever furnished for the Government's action against them, either in their Orders of Internment or otherwise. The internees were almost entirely men of unblemished reputation drawn from all classes of society. Without distinction of age<sup>61</sup> the bulk of them were first confined upon an old hulk, the *S.S. Argenta*, in Larne Harbour, under the worst possible conditions, with little opportunity for work, exercise or even reading. As a result many of the internees underwent considerable suffering with permanent adverse effects upon their health. Some of them were released upon conditions, the most common being that they should leave Northern Ireland for a specified period;<sup>62</sup> many however, refused release on such terms, holding that they were entitled as innocent men to their liberty, or suspecting that the acceptance of such conditions would enable the Government to keep them permanently out of Northern Ireland. During 1924-5 most of the internees, who had meanwhile been moved from the prison hulk to other places of confinement, were released. Since this date the power of Internment has not been much used, although it remains to-day a permanent part of the law of Northern Ireland. One particularly striking and, in the Commission's view, disgraceful case was that of Mr. Cahir Healy, Nationalist Member of the Northern Ireland Parliament and until recently a Member of the British House of Commons, a well-known pacifist. He was detained under the conditions described above for no less than two years. No charge was ever preferred against him. He was only released when the matter was raised in the Imperial Parliament.

Of the modern applications of Special Powers typical instances are

<sup>60</sup> In its place the Government appear to have widely used the power of detention without trial, which is similar in effect to Internment and operates under the same conditions. See this power described in Part I, page 19.

<sup>61</sup> There were a number of minors amongst them.

<sup>62</sup> Some were offered conditions even more obnoxious. See, e.g. Government of Northern Ireland Parliamentary Reports, Vol. 9, No. 28.

the 'round-ups' periodically made by the Government, examinations under Regulation 22B, the issue of Exclusion Orders<sup>63</sup> and the 'proclamation' of meetings, organisations, literature and the like.<sup>64</sup>

The method of 'rounding-up' practised in Northern Ireland under Special Powers does not greatly differ from similar practices carried out in countries under Fascist rule. Late at night or in the early hours of the morning, armed police in protected lorries swoop upon a selected district and there proceed to enter and search houses without a warrant, rousing the inhabitants of the area and frequently accompanying their search with brutality and damage to property. At the same time the occupants of the houses are interrogated, and if their replies fail to satisfy, are haled off to police barracks for further questioning.<sup>65</sup> Usually such searches, said to be "for arms," and interrogations are equally barren of results. But often the object of the raid is not to search for arms but to collect 'suspects.' On such occasions as many as fifty and more men and youths have been carried off in lorries, without warrant, for detention at the pleasure of the Civil Authority, for a longer or shorter period. Most often these men are released, never having been charged and without reason, apology or excuse.

Since the addition of Regulation 22B to the Special Powers Act, prosecutions for refusal to answer questions in private examinations have been common.<sup>66</sup> As has been hitherto indicated, the circumstances of such prosecutions and the provisions of the Regulation awaken strong suspicion that such private examinations have been conducted not with a view to obtaining evidence from 'witnesses' of the actual or suspected crimes of others, but to secure the conviction of the examined 'witness' himself.

Informative instances of the newer Special Powers are those Regulations directed against the possession or display of Republican emblems or colours. Persons discovered, on a search of their house, to be in possession of even one of such articles have been prosecuted, while the flying of the Free State flag on such occasions as athletic and sporting contests with teams from across the Border has been punished. Other instances of the use of Special Powers against the Republican Movement are furnished by the banning of all their newspapers and political organisations; while even cultural and athletic societies and clubs are subjected to constant police interference if they are suspected of harbouring Republican sympathisers.

One of the most used of Special Powers to-day is the making of Exclusion Orders under Regulation 23A.<sup>67</sup> The circumstances in which

<sup>63</sup> See page 19.

<sup>64</sup> See page 22.

<sup>65</sup> For the description of these interrogations see page 27.

<sup>66</sup> See Part I, pages 16-17.

<sup>67</sup> As to the conditions and practice of such Orders, see Part I, page 19.

this power is exercised and the practice followed in relation thereto have been previously discussed. It remains to stress that such Orders, by reason of their form and content, operate as they appear to be designed to do, as Deportation Orders. This fact leaves the constitutional validity of such Orders even more open to question.

For the purpose of illustrating more specifically the contents of this part of the Report, the Commission deems it desirable to conclude with a brief summary of a selection of typical cases (other than those previously referred to) illustrating the operation of the Special Powers Acts.

1. A, an unemployed workman, was with others responsible for the organisation of a deputation of unemployed to the local authority for the purpose of obtaining payments of out-relief. The demonstration from which this deputation was to proceed was 'proclaimed' by the Home Minister. A's work on behalf of the unemployed was continued until, shortly afterwards, he was served with an Exclusion Order, as a consequence of which he was forced to leave Northern Ireland.

2. B, a young man, was returning home with friends from a social gathering late one evening. He was arrested and taken into custody. His finger-prints and photograph were taken and he was ill-treated whilst in custody. After being detained for twenty-six days by the police, who declined to state the reason for his arrest, he was released, no charge having been made nor any reason for his arrest being stated.

3. Three Northern Irish unemployed were delegated from the Unemployed Workers' Movement (a lawful body) to the Free State frontier to meet a delegation of unemployed from Dublin. Early on the morning following their departure from Belfast (on foot) they were arrested by the local police and interrogated. After a few hours' detention they were released and ordered to leave the town. On arriving in the next town they were ordered to leave within two hours on pain of arrest. The police confiscated certain literature. No charge was laid against the persons concerned.

4. In the night of October 12th/13th, 1932 (during the Out-relief Workers' strike) a large body of armed police descended upon Quinn Street, where they proceeded to force their way into the houses and to compel the male inhabitants, irrespective of age, with threats and actual force to go into the street. There they were forced to work for several hours without proper clothing, in many cases in the rain, replacing cobble stones which had been torn up during a clash between police and strikers on the previous day. Amongst the victims of this action was a well-known Nationalist citizen.

5. Sean Murray, the Secretary of the Northern Irish Communist Party (not an unlawful organisation) was about to address an indoor

public meeting, which had been widely advertised and had not been proclaimed as unlawful, when police officials entered the building and served him with an Exclusion Order. Murray attempted to address the meeting when he was seized by a police officer who drew his revolver and assaulted Murray with it, threatening to fire. Murray was then taken to the station and placed aboard a train bound for Dublin, notwithstanding that the Exclusion Order permitted him to reside in a part of Co. Tyrone.

6. A Protestant landowner and ex-officer of the British Army was served with an Exclusion Order. The Home Minister offered to suspend the Order provided that an undertaking prepared by him was signed. The terms of this document are worth quoting :

"For reasons connected with my family and private affairs, I have decided that I cannot take any further part in public affairs in Northern Ireland, and I now undertake . . . not to take any further part in public life here and to keep the peace while the Exclusion Order is in force."

7. D was arrested following a raid on his house. He was later charged with being in possession of a photograph of an Easter lily, purchased in Belfast, and sentenced to two months' imprisonment.

8. A Catholic student of Queen's University was arrested on the occasion of a search of his father's house. He was detained for some weeks without charge. As his University Degree examination was approaching the academic authorities offered to permit armed police to sit in the room with the student if he were permitted to sit for his examinations. The Home Minister refused this offer, and the student was therefore unable to sit for his examinations. Subsequently he was charged with an offence relating to the keeping of firearms or explosives. The charge was summarily dismissed and the student set free at once.

9. Certain Nationalists organised protest meetings against the 'round-up' of a large number of Republicans shortly before the holding of elections. The meetings were broken up by police and the organisers arrested. The meetings in question had not been banned nor had they given rise to disorder.

### PART III. THE EFFECTS OF THE SPECIAL POWERS ACTS.

Two considerations have guided the Commission in formulating its conclusions upon the effects of the Special Powers Acts. These are :

*Firstly*, as clearly appears from this Report, Special Powers are intended for use and are in fact used. Whilst some Regulations are doubtless held in reserve, and of the others some are more and some less practised, it must be remembered that when in 1933 the Act was made permanent and general all the powers thereunder were preserved and perpetuated.

*Secondly*, although some powers are less drastic than others, while some might in certain circumstances be considered not unreasonable, the Commission finds it impossible to treat Special Powers otherwise than as a whole. That some powers are less objectionable than others is not the Commission's concern, both because it cannot consider the Special Powers Acts except as an indivisible entity and because it is to the basic principles of the legislation that its present observations are directed.

It is sometimes said that the Northern Irish Government is confronted with unusual difficulties, particularly those arising from sectarian disorder. But even accepting that these difficulties are not of the government's perpetuation, the Commission cannot conceive circumstances which would justify the embodiment of such drastic powers as are contained in the Special Powers Acts into the permanent law of the land. Nothing in the material before the Commission shows the existence in Northern Ireland to-day of conditions which the ordinary criminal law, properly enforced, would not suffice to control.<sup>48</sup> The fact that the Northern Irish Government has adopted and put into practice the machinery of dictatorship contained in the Special Powers Acts lends support to the widely voiced contention that the Executive has conducted public affairs not in the interests of the community as a whole but in those of a narrow circle of its supporters, and that it has usurped its position and powers to aggravate and perpetuate sectarian disorder to this end. The non-use of Special Powers in the sectarian issue, to which attention has been previously drawn, strikingly illustrated by events in Belfast last year, cannot but strengthen this opinion.

These considerations being borne in mind, before proceeding to indicate the apparent consequences of Special Powers on political life in Northern Ireland, it is necessary to underline the conclusions drawn upon the principles and practice of the Acts as they have been indicated in the previous pages of this Report.

<sup>48</sup> Careful consideration of the events of last July leads to conclusions which rather strengthen than weaken this assertion. See page 31 and footnote No. 52.



Whether the legislation be viewed as a whole or in its particular applications, it is impossible to escape the conclusion that there are two pillars upon which the whole structure of Special Powers rests. These are :

1. The present derogation from the sovereignty of Parliament by the surrender, to such a degree, of its law-making powers to the Executive.<sup>69</sup>
2. The annihilation of the rule of law by the substitution of the arbitrary power of the Executive for the legally defined and protected rights of the subject.

Jurists have hitherto regarded the sovereignty of Parliament and the rule of law as the two cardinal principles of the British Constitution. The Northern Irish Government in abrogating them has ravished the heritage for which generations of Britons have fought and suffered. The Special Powers Acts, the basis of a legal dictatorship, are a vital link in the chain which has been forged around the freedom of the community of Northern Ireland.<sup>70</sup>

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It remains to state in summary form the Commission's conclusions, which are :

*Firstly*, that through the operation of the Special Powers Acts contempt has been begotten for the representative institutions of government.

*Secondly*, that through the use of Special Powers individual liberty is no longer protected by law, but is at the arbitrary disposition of the Executive. This abrogation of the rule of law has been so practised as to bring the freedom of the subject into contempt.

*Thirdly*, that the Northern Irish Government has used Special Powers towards securing the domination of one particular political faction and, at the same time, towards curtailing the lawful activities of its opponents. The driving of legitimate movements underground into illegality,<sup>71</sup> the intimidating or branding as law-breakers of their adherents, however innocent of crime, has tended to encourage violence and bigotry on the part of the Government's supporters as well as to beget in its opponents an intolerance of the "law and order" thus maintained. The Government's policy is thus driving its opponents into the ways of extremists.<sup>72</sup>

<sup>69</sup> As has been shown (page 9) the legislature has not even reserved the right to revoke or repeal the Civil Authorities' orders and regulations. It is only the theoretical possibility of the repeal of Special Powers in whole or part which prevents the sovereignty of Parliament from being as obliterated in law as it is in fact.

<sup>70</sup> Assuming the constitutional validity of Special Powers, as to which see fully page 9.

<sup>71</sup> See pages 33—35.

<sup>72</sup> The fact that the Government's opponents have not been driven to adopt a



*Fourthly*, that the Northern Irish Government, despite its assurances that Special Powers are intended for use only against law-breakers,<sup>73</sup> has frequently employed them against innocent and law-abiding people, often in humble circumstances, whose injuries, inflicted without cause or justification, have gone unrecompensed and disregarded.

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The Commission, in the light of these conclusions, believes that the operation of the Special Powers Acts has the most widespread effect upon political life in Northern Ireland. The existing conditions of rule—secured by the supercession of representative government and the abrogation of the rule of law and the liberty of the subject, the bases of Special Powers—cannot be described otherwise than as totally un-British.

It is clear to the Commission that the way to the re-establishment of constitutional government, the prerequisite of law and order in democratic communities, can be paved only by the repeal of the Special Powers Acts. Wherever the pillars of constitutional rule, Parliamentary sovereignty and the rule of law are overthrown there exist the essential conditions of dictatorship. It is sad that in the guise of temporary and emergency legislation there should have been created under the shadow of the British Constitution a permanent machine of dictatorship—a standing temptation to whatever intolerant or bigoted section may attain power to abuse its authority at the expense of the people it rules.

(Signed) MARGERY FRY  
E. L. MALLALIEU  
WM. McKEAG

NEIL LAWSON, *Secretary of the Commission.*

policy of systematic violence, but rather to repudiate such course, is one of the hopeful features in the present state of Northern Ireland. But at the same time there can be no doubt that large numbers of persons, particularly amongst the youth, who would normally owe allegiance to the constitutional Nationalist party, are being driven into the Republican movement.

<sup>73</sup> See for example the following :

"No law-abiding citizen in the whole of the North of Ireland is subject to-day to any harassment by reason of the existence of the Act. It does not affect the law-abiding citizen ; it only operates against the law-breakers."  
—SIR DAWSON BATES, Government of Northern Ireland, Parl. Rep., Vol. IX, No. 28.

"The only people who need to have any fear whatever of this measure being on the Statute Book are the evil-doers."  
—VISCOUNT CRAIGAVON, Government of Northern Ireland, Parl. Rep., Vol. IX, No. 30.

"No person has been inconvenienced by this law who had a right to full liberty. Nobody *will* be inconvenienced by this law who has a right to full liberty . . ."  
—MR. HANNA, Parliamentary Secretary to the Ministry of Home Affairs, Government of Northern Ireland, Parl. Rep., Vol. IX, No. 31.

"The operation of the Civil Authorities Act in no way interferes with the liberty of anyone who is prepared to obey the law and who does not seek by unconstitutional means to subvert the Constitution."  
—VISCOUNT CRAIGAVON, Government of Northern Ireland, Parl. Rep., Vol. XVII, No. 39.