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NATIONALITY IN RELATION TO THE BRITISH COMMONWEALTH OF NATIONS.

THE "British Empire" is now "an association of free nations"—legal recognition of this fact has been given by the form in which the Treaty of Versailles was signed, and now again by the Irish Treaty. It follows inevitably that each nation has the right, if not the duty, to mark out its own "nationals." To do so is merely to fill in the necessary details of the picture of which the outlines are already drawn unalterably. The old definition of "British nationality" contained in the British Nationality and Status of Aliens Acts, 1914–1918, which leaves Australia and Canada in exactly the same position as Northumberland or Cornwall, is out of date. At the same time we have to avoid defining the relationship of the individual to his "nation" in the same language and by the use of the same term as that which defines his relationship to the association itself as a whole and to the monarch who embodies the unitary principle of that association. We cannot keep the term "nationality" to express two quite different things, namely, membership of the component "nation" and membership of the group. If "nationality" is the appropriate name for membership of the nation, we need a new term for the relationship of the individual person to the whole group.

We have to develop an appropriate terminology for expressing our new and complex relations. In building up this terminology it is more important to express accurately the true facts of our internal British Commonwealth relationships and to give satisfaction to the legitimate and legalised aspirations of our own members, than to have too scrupulous a regard for the formulæ of diplomacy. If we were to follow those formulæ slavishly the argument might be brought forward that the word "nationals" (French "nationaux") is now well established in international dealing to indicate membership of anything that is one "persona" in international law, and, with reference to international relationships, so long as the British Empire is for any purpose whatever a unit in international affairs, no other expression can be adopted without causing the greatest confusion and uncertainty. But the time for this argument has gone by. We have already

committed ourselves to a use of the term "nations" for the various partners in the British Commonwealth, and we must, therefore, use the expression "nationality" for the relation which exists between an individual and the member of the British Association of Free Peoples, *i. e.* Great Britain, Ireland, Canada, Australia, etc., to which he happens to belong.

Again, had we been still free to make a choice, it might have been argued that we ought to start from the relationship in which the individual stands to the monarch as the unitary principle of the group, a relationship expressed by the term—consecrated by the common law and by immemorial usage—"British subject." But, while there is no reason for discarding the term "British subject" as at any rate one method of denoting the individual member of a nation of the British Commonwealth, there is no substantive in common use corresponding to "subject" as "nationality" corresponds to "national"; we cannot well speak of "British subjecthood," and, in fact, the Irish Treaty has already supplied the term of which we are in search when it speaks of the "common citizenship" of Great Britain and of the Irish Free State, an expression which must be understood as referring to the position of individual members of the two communities concerned, and not to the communities themselves. The Irish Free State is not a "citizen": but the individual Irishman has the rights of citizenship. It is true that at first sight it seems easier to think of a "city" in modern times as a component part in a wider organism, and as a matter of history the use of the words "citizen," "citoyen," in American and French constitutional law is a legacy of the inspiration which the eighteenth century derived from Greek and Roman history, but the word has noble traditions and we need not embark on pedantic etymological criticism.

But the Canadians must abandon the use of the term "Canadian citizen" introduced into the Canadian Immigration Act 1910, and definitely adhere to the terms "Canadian national" and "Canadian nationality" which their Act of 1921 has adopted.

This is not to say that it will be necessary or desirable to put all the new constitutional arrangements into the form of an imperial law, but it is desirable that new legislation on British, or any part of British "subjecthood," nationality, or citizenship which is inconsistent with the new arrangements should not be passed in any part of the British Empire. For this purpose further inter-British-national discussion is necessary and some proper understanding should be reached.

Thus the Canadian Acts already referred to—the Act of 1910, which defines a “Canadian citizen,” and the Act of 1921, which has added to that definition of Canadian citizen new definitions of “Canadian national” and “Canadian nationality”—need reconsideration with a view to a harmonious treatment of the whole question. A cardinal feature of any permanent settlement must surely be to get away from the vicious legacy of the practice of local naturalisation, and to secure that all individual nationals of the associate nations are citizens of the whole Commonwealth. On this point the Canadian Act of 1921 needs careful consideration, as it seems (though this clearly was not the intention of its authors) that a person may in the future be a Canadian national who is not a British subject, the enactment making Canadian nationality descend in the male line through an unlimited series of generations though born out of Canada and out of the British Empire. Also the reference that the Act makes to what it in substance calls “a national of the United Kingdom under the law of the United Kingdom,” was premature when enacted and, if the Irish Treaty is adopted, will be *ipso facto* out of date. Similarly the new legislation suggested in South Africa should await a general Conference. At such a Conference the Mother Country will have to bring up the question of amending the British Nationality and Status of Aliens Act by safeguarding the rights of the associated nations to define what classes of British subjects—or “British citizens”—are to be their “nationals”: this will give an opportunity for reconsidering the use of the word “nationality” to express the relationship of the individual to the whole British Commonwealth.

It should be added that henceforward it will be necessary for our diplomatists in any treaty or arrangement with foreign Powers to be on the watch for any ambiguity which may creep into a treaty or agreement by the use of the word “nationals” or “ressortissants.” The greatest care will always have to be exercised to make it clear whether the class of persons referred to is the whole mass of British subjects or citizens or only the “nationals” of some particular associated nation. It is believed that it was the neglect of this precaution in the scheme for the Court of International Justice which in fact led to the legislative action taken by Canada in 1921. The scheme ought, of course, to have made it quite clear that the word “nationaux” was used on behalf of the British Empire in such a sense that each associated nation had its own “nationality.” We need not, however, greatly regret what has happened if the result will be to bring the matter

up in such a form that it may be discussed, let us hope, at the next British Conference.

It will be seen from what has gone before that the writer considers that the form of the oath for members of the Irish Legislature prescribed by Article IV. of the Irish Treaty is of grave constitutional importance, because (a) it confirms and recognises what the Treaty of Versailles had already established—viz. the constitution of the “British Empire” as a group of “nations,” and (b) it supplies a gap in the British constitutional terminology by using the word “citizenship” to express the relationship to the “group of nations forming the British Commonwealth of Nations” of individual members of each nation within the group. This is perhaps a work of sufficient importance even for a form of oath.

There is, however, a tendency in some quarters to go further and find in this oath an implication that the individual Irish national is in a relationship to the unifying principle of the British Commonwealth of Nations different from that of his fellow-citizens in Canada, Australia or Great Britain. The oath has no such implication or effect. It is the oath of a newly elected legislator, *i. e.* of a person already a member of the nation and the Commonwealth taking up a special function in the nation and the Commonwealth, not the oath of a person adhering for the first time to a nation and through that nation to the Commonwealth—such as is the oath of allegiance taken by an alien on naturalisation. It is analogous to the oath taken by a recruit on enlistment—an oath which leaves his nationality, even if he be an alien (aliens can of course be enlisted in H.M. Forces), exactly where it was. Historically the parliamentary oath of allegiance in the British Parliament was only introduced for the House of Commons in 1610 and for both Houses in 1679 (Anson's *Law and Custom of the Constitution*, Part I, 2nd Edition, Oxford, 1892, p. 59). Its introduction made no change in the relationship of the ordinary British subject to his sovereign.

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