

The 'Bloody and Accursed Empire' Strikes Back: Hugh Mahon's Expulsion from Parliament*

By Dr Jeff Kildea

Introduction

Just after 2.40 on the afternoon of Thursday 11 November 1920 Prime Minister Billy Hughes approached the despatch box of the House of Representatives, which in those days sat in the parliament building in Melbourne. He cast his eyes around the galleries high above the chamber. They were filled to overflowing. Outside in Spring Street at the top of Bourke Street it was a mild Spring day, cloudy but dry. Inside, however, the atmosphere was stormy and electric. The public and the pressmen, tightly squeezed into their respective galleries, fell silent in expectation. Like spectators at the Roman Coliseum they had come to witness an execution, albeit a political one. They would not be disappointed.

In his high-pitched, nasally voice, Hughes read from the piece of paper he held in his hand:

I move –

That, in the opinion of this House, the honorable member for Kalgoorlie, the Hon. Hugh Mahon, having, by seditious and disloyal utterances at a public meeting on Sunday last, been guilty of conduct unfitting him to remain a member of this House, and inconsistent with the oath of allegiance which he has taken as a member of this House, be expelled this House.

For the next 14 hours, interrupted only by breaks for dinner and a midnight snack, the House debated Hughes's motion and a Labor amendment that would have disavowed the parliament's right to try Hugh Mahon. Then, as the dawn glow began to appear in the eastern sky, the Treasurer Sir Joseph Cook rose in his place and, interrupting Labor's Frank Anstey who was in full rhetorical flight, moved the gag. The members of the House divided and voting along party lines 34 to 17, Labor's amendment was defeated and Hughes's motion passed. For the first and only time a member of the House of Representatives had been expelled from the Commonwealth parliament. As depicted by a cartoon in *The Australian Worker*, the House had delivered Mahon's head to Salome Hughes.¹

Putting aside the melodrama and the political theatre so obviously an element of this unique event in the political history of the Australian Commonwealth, the expulsion of the Irish-born Hugh Mahon is rightly regarded today as an injustice or, in the words of the 1984 report of the joint select committee on parliamentary privilege, an "abuse of power by a partisan vote". Yet, in the charged political and sectarian atmosphere of 1920 many Australians, including the electors of Kalgoorlie, saw it otherwise, believing that the parliament did the right thing by ridding itself of a seditious and disloyal member.

In this paper I will examine the events surrounding the expulsion of Hugh Mahon and the context in which those events took place.

The Facts

The public meeting at which Mahon is alleged to have made the seditious and disloyal utterances had been held at Melbourne's Richmond Reserve on the evening of Sunday 7

¹ *The Australian Worker* 18 November 1920, p. 10.

November 1920. The meeting had been called by the Irish Ireland League of Victoria to denounce the English Government's treatment of Terence MacSwiney, the Lord Mayor of Cork, who had died on 25 October after a hunger strike lasting 74 days. Two days earlier Mahon had raised MacSwiney's death in the parliament, only to be met with interjections and the application of the gag. At the Richmond Reserve Mahon, unencumbered by parliamentary procedures, gave vent to his anger at Britain's treatment of MacSwiney and of the Irish generally.

Although Hughes never stated precisely what he alleged were Mahon's seditious and disloyal utterances, the charge against Mahon arose out of a report of the Richmond Reserve meeting that appeared in *The Argus* on 8 November 1920. In that report, journalist FJ Kelly wrote that Mahon had said:

Never in Russia under the worst [rule] of the Czars had there been such an infamous murder as that of the late Alderman McSwiney. They were told in the papers that Alderman McSwiney's poor widow sobbed over his coffin. If there was a just God in heaven that sob would reach round the world, and one day would shake the foundations of this bloody and accursed Empire.

During his speech in support of the motion Hughes emphasised time and again the phrase which appeared in the *Argus* report "this bloody and accursed Empire", reciting to it no less than 14 times. It is worth noting here that the report of the meeting that appeared in *The Age* the same day did not include those words.

Furthermore according to *The Argus*, Mahon had also described the police in Ireland as "spies, informers, and bloody cut-throats" and "murdering thugs".

Following Mahon's speech, the *Argus* article set out the text of the resolutions passed at the meeting, one of which was in the following terms:

That this mass meeting of Australian citizens, in view of the policy of oppression and tyranny pursued by the English Government in Ireland, and which has brought eternal disgrace upon the whole British Empire, of which Australia forms a part, pledges its support to any movement for the establishment of an Australian republic.

Within a short time of the *Argus* appearing on the streets of Melbourne, Protestant, loyalist, Orange and ex-service organisations began a campaign of "righteous indignation" over Mahon's speech, denouncing the member for Kalgoorlie as a danger to the Empire and to the peace and harmony of the community. Public meetings were called to protest Mahon's sedition and to affirm the loyalty of the Australian people to the Crown and the Empire. For months afterwards resolutions continued to be passed around Australia reproaching Mahon and congratulating the government on its firm and decisive action.

Australians today might find it difficult to understand what the fuss was all about. But it must be remembered that 1920 was one of the most corrosive years in the long history of sectarianism in this country. NSW Attorney General Edward McTiernan described the events during that year as "a veritable hurricane of sectarianism". The Irish War of Independence, which began in 1919, intensified in 1920, with Australian newspapers carrying lurid reports of atrocities on both sides, particularly following the introduction of the Black and Tans in March. In Australia itself a series of events exacerbated chronic sectarian tensions: in May the government determined to deport Father Charles Jerger provoking Catholic protests around the country, including one at Moore Park in Sydney which, according to *The Daily Telegraph*, attracted 150,000 people; in July Sister Ligouri fled from her convent in Wagga Wagga and placed herself under the protection of the Orange lodge igniting a bitter controversy that was played out in the courts and in the NSW parliament as well as in newspapers across the

country; in August the Royal Navy hijacked Archbishop Mannix from the ocean liner taking him to Ireland and off-loaded him in England, provoking angry protests by Irish Catholics around the world and especially in Australia. The Mahon affair must be seen in the context of these events at home and in Ireland.

Parliament's power to expel a member

In strict legal terms the parliament had the undoubted power to do what it did in expelling Hugh Mahon. This was accepted by both sides of the House. Labor's Frank Brennan said in the debate:

There is in this Parliament undoubted power to expel an honorable member. Like other British Parliaments, it is master of its own membership, the guardian of its own honour, and the controller of the conduct of its members. That I do not deny. It is not open to question.²

Even though this was the first such case in the Australian federal parliament, by 1920 there were many precedents in other parliaments operating under the Westminster system. Since the Restoration in 1660, almost 60 members had been expelled from the House of Commons.³ In New South Wales three members of the Legislative Assembly had been expelled, including the infamous Irish Australian Paddy Crick, who had turned up drunk in parliament once too often and, after defying the Chairman of Committees, violently resisted the Serjeant-at-Arms who was directed to remove him. The Victorian parliament had expelled five of its members, the most notorious occasion being in 1901 when Irish Australian Edward Findley was expelled for conduct outside the House, namely, republishing in his magazine *Tocsin* an article from a Dublin paper that had described King Edward VII as an "old and bald-headed roué ... the old and worn out descendant of a race of scoundrels and practical professors of hideous immorality...this unutterably abominable person".

Twenty-five years before Findley's expulsion, another Irish Australian, James McKean, was expelled from the Victorian parliament for having slandered the Assembly, by claiming among other things that members came into the House 'staggering drunk'. While defending a client in court, the Belfast-born McKean allegedly said, "Call such a drunk and immoral lot of individuals legislators? Why, the lowest in Collingwood are not so near so bad as they". He did not contest the by-election and his seat of North Gippsland was won by another Irishman, Charles Gavan Duffy.

So, the real question was not whether the House had the power to expel a member for conduct outside the House, but whether it was justified in exercising its undoubted power in the circumstances of the case before it.

What did Mahon say in his speech?

Much of the debate centred around the words which Mahon was alleged to have used at the Richmond Reserve meeting. The government's case was based largely on the report in *The Argus*. However, in support of the accuracy of that report, Hughes also relied on five statutory declarations. But only one of those declarations was made by a person who had been at the meeting.

² CPD 11 November 1920, pp. 6422-3. For a discussion of the parliament's power of expulsion see Enid Campbell, "Expulsion of Members of Parliament", *University of Toronto Law Journal*, Vol 21 No 16, 1971, pp.15-43.

³ <http://www.election.demon.co.uk/expulsions.html>.

On 10 November three journalists from *The Argus* made declarations to the effect that the *Argus* report had been transcribed from FJ Kelly's notes and that Kelly had told them that his notes comprised an accurate report of what Mahon had said. One of the journalists made a second declaration actually annexing Kelly's notes. But curiously Kelly himself did not make a statutory declaration. The only eye witness to do so was Reginald Nelson Carrington of *The Age* who set out what he described as "an extract from my notes" of Mahon's speech. What is interesting about the extract is that it includes the following words:

The worst rule of the damnable Czars was never more infamous. The sobs of the widow on the coffin would one day shake the foundations of this bloody and accursed Empire.

Yet these words did not appear in the report as published in *The Age* on 8 November. The editor could have omitted those sentences from the published report, not foreseeing how critical they would become. But it is a curious omission. It is not as if those words were mere surplusage or lacked colour. Indeed they are of a kind that editors usually love to quote. However, we will never know. Carrington did not annex his notes to the statutory declaration and the reliability of the extract was never tested as he was not brought before the bar of the House to be questioned by members.

Most critically, the government never produced Kelly or a statutory declaration by him. In response to persistent calls by Labor members for the government to produce him, the Treasurer Sir Joseph Cook said, "We cannot get him",⁴ suggesting that the government had been trying to do so, but without success.

The elusive Mr Kelly was in fact a reporter for Melbourne's Catholic weekly newspaper *The Advocate* who also used to supply articles on Irish affairs to *The Argus*. Given the sectarian overtones of the case, Kelly may well have gone to ground, either voluntarily or at the insistence of his employer. This seems to be implied by the interjection of a government member Hector Lamond, who said, "It is useless to try to hide Kelly seeing that his handwriting is in evidence".⁵

The prime minister seems also to have considered the possibility that Kelly was being kept under wraps by Mahon's supporters. After reading the statutory declarations Hughes drew attention to the fact that the reports of the Richmond Reserve meeting which had appeared in the two Catholic newspapers *The Advocate* and *The Tribune* published on the day of the debate did not use the expression "this bloody and accursed Empire". Rather, they used "this bloody and cursed despotism" and "this bloody and infamous despotism", phrases which, though critical of British policy in Ireland, did not have the overtone of an insult to the Empire.

After informing the House of the omission, Hughes then claimed that *The Advocate* "should have been published to-day at noon. It was not published until 3.30 pm. Why? I have in my hands the report of what Mr Mahon said as taken by FJ Kelly, the same reporter who supplied the report to the *Advocate*".⁶ By these remarks, Hughes seems to have implied either that Kelly had been suborned or that the reports in the Catholic papers had been sanitised and that the change to the story had somehow delayed the *Advocate*'s publication. In other words, Mahon's supporters, not the government, were responsible for the absence of this critical witness. Labor member Frank Brennan attempted to defuse the prime minister's conspiracy

⁴ CPD 11 November 2012, p. 6447.

⁵ CPD 11 November 2012, p. 6421.

⁶ CPD 11 November 2012, p. 6421.

theory by saying, “the publication which he said was not issued until 3.30 pm to-day has been in my pocket since yesterday”.⁷

Yet, despite the obvious deficiencies in the government’s case, the fact remains that at no stage before, during or after the debate did Mahon specifically deny he had used the words “this bloody and accursed Empire”.

When the matter was first raised in the parliament on 9 November 1920, Hughes read the *Argus* report of the meeting and asked Mahon whether it was substantially accurate. Mahon declined to answer him, saying in effect that he was not answerable to the House for what he said outside it.⁸ The next day Mahon wrote to the prime minister a letter in which he questioned the accuracy and completeness of the *Argus* report, but he did not in terms deny any specific words in that report. On 11 November Mahon chose not to dignify the proceedings with his presence, absenting himself from the sitting.

Furthermore, five of Mahon’s parliamentary colleagues, four of whom spoke in the debate, had been at the Richmond Reserve meeting. Yet none of them categorically denied that Mahon had used those words. One of them, Labor leader Frank Tudor, dealt with the issue in his speech, but in a somewhat equivocal manner. He said:

If I were called as a witness, I could not swear that the honorable member gave expression to those sentiments which have been set forth in the *Argus*. ... I say, in regard to the whole of the statements attributed to the honorable member ... that I cannot swear that those statements were made.⁹

Another, Frank Brennan, bypassed the question by telling the House that he was not going to assist the government to make its case by giving his version of what Mahon had said.¹⁰ Neither Mick Considine, who spoke for 40 minutes in the debate, nor Lou Cunningham, who spoke for over an hour, even mentioned what was said at the Richmond Reserve meeting.¹¹

On top of that, we know that the accounts of Mahon’s speech appearing in *The Advocate* and *The Tribune* were available by the time of the debate and they did not include the word “Empire” in the phrase which was central to the government’s charge. As we have seen, Hughes seized upon that omission as evidence in support of his conspiracy theory. Yet, none of the Labor speakers, including those who had heard Mahon’s speech, sought to rebut the government’s case by tabling the reports in the Catholic papers, which were much more detailed than that in *The Argus*, and claiming they were a more accurate account of what Mahon had said.

Curiously, Frank Brennan who had undermined a key part of the prime minister’s conspiracy theory concerning the alleged delay in publication of *The Advocate*, did not go on to say that Mahon had not in fact used the words attributed to him in that newspaper’s report. To use a metaphor from Sherlock Holmes, the hound did not bark, leaving open the inference that the

⁷ CPD 11 November 2012, p. 6421. *The Advocate*’s editor also rejected Hughes’s claim, giving an “absolute denial” to Hughes’s assertions (*The Advocate* 18 November 1920, p. 19).

⁸ CPD 9 November 1920, p. 6283-4. His actual response was more colourful: “[I]f any man gets up here to catechise me about language that I have used, or am reported to have used, outside this House, I say to him, politely, but firmly and decisively, that he can go to the devil”.

⁹ CPD 11 November 1920, p. 6392.

¹⁰ CPD 11 November 1920, p. 6424.

¹¹ CPD 11 November 2012, pp. 6402-9; 6448-55. The fifth MP who had been at the Richmond Reserve meeting, Parker Moloney, did not speak on the motion and the Hansard records that when the vote was taken Moloney was paired, so it may have been that he was unavailable to participate in the debate.

government's none too subtle charge of bowdlerisation against the Catholic papers was not wide of the mark.

Rather than answer the government's case directly, the Labor Party's approach throughout the debate was that it was for the government to prove the accuracy of the *Argus* report. Were it a case being heard in a criminal court that would have been a perfectly reasonable approach, for in such cases an accused has the right to remain silent. It is for the prosecution to prove its case beyond reasonable doubt and if the prosecution fails to do so then the court may dismiss the charge without the accused ever having to put forward a defence. But this was not a case that was being tried in a criminal court and, in any event, Mahon had already elected to break his silence. When Hughes first raised the matter in parliament on 9 November, Mahon at first declined to answer him – literally telling him to go to the devil. Yet the next day Mahon chose to respond to the prime minister by letter. But in doing so he chose not to deny specifically the accuracy of the *Argus* report.

Whatever might have been the situation in a court hearing a criminal charge, in the political arena and in the court of public opinion it was not unreasonable in all the circumstances of this case for government members and ultimately the public to conclude that Mahon had said the words which *The Argus* had attributed to him.

But, even accepting that the government had established that Mahon had said those words, that was not in itself sufficient to justify Mahon's expulsion from the parliament, for the motion charged that Mahon's words amounted to "seditious and disloyal utterances".

Did Mahon's speech contain "seditious and disloyal utterances"?

The term "seditious and disloyal utterances" as used here, was not the subject of any Commonwealth statutory definition at the time of the Mahon debate.¹² Nevertheless, sedition was a concept well known to the law dating back centuries. Generally speaking, the law of sedition:

prohibits words or conduct deemed to incite discontent or rebellion against the authority of the state. Traditionally, for a word or activity to be seditious it must be said, written or done with a 'seditious intention'.¹³

¹² By chance, that was about to change, at least with regard to the word "seditious". The *War Precautions Act Repeal Bill* was introduced on 18 November 1920 and debated on 22 November 1920. The sedition provisions, which formed but one part of the repeal bill, were modelled on those in the Queensland *Criminal Code 1899*, which in turn were modelled on British common law. In the debate on the sedition clauses of the repeal bill there was no reference to the Mahon expulsion. So it is unlikely that the Mahon case had influenced the government's decision to legislate for sedition. Of much more concern to the government was the Bolshevik revolution and its impact on radical socialist activity in Australia. Despite the Hughes government's concerns in this regard, the first prosecution under the federal sedition law was not until 1948 during the Cold War (*Burns v Ransley* (1949) 79 CLR 101). Interestingly, however, the government in the 1920 repeal bill defined "seditious intention" to include something not found in the Queensland legislation, namely, "to excite disaffection against the connexion of the King's Dominions under the Crown". This seems to have been aimed at the situation in Ireland, which was the background to the Mahon expulsion.

¹³ Australian Law Reform Commission, *Fighting Words: A Review of Sedition Laws in Australia*, Report 104, July 2006, p. 47. The classic definition of "seditious intention" is set out in *Stephen's Digest of the Criminal Law*, 1887 as quoted in *Fighting Words* at p. 48: "A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of, Her Majesty, her heirs or successors, or the government and constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to excite Her Majesty's subjects to attempt, otherwise than by lawful means, the alteration of any matter in Church or State by law established, or to incite any person to commit any crime in

The elements of the law of sedition have traditionally been ill-defined and the language used by the courts to describe the concept of seditious intention has been vague. Historically sedition has been used to punish a wide range of behaviour and its use has been influenced by the prevailing political climate and the degree of public support for the state.¹⁴

If the boundaries of what amounts to sedition in the legal context are imprecise, they are positively elastic in the political context. Consequently, it might be said that one man's sedition is another man's patriotism. And that is basically how the two sides approached the question during the debate on the expulsion motion. The government claimed that Mahon's speech fomented ill-will and hostility against the British Empire; the Labor Party countered that it was the anguished cry of a man distressed at the injustices occurring in his native land.

In order to make the government's case that Mahon's words constituted "seditious and disloyal utterances", Hughes throughout his speech used hyperbole and emotive language. The government's case in this regard can be summed up in these words from Hughes's speech:

[T]he gravity of [Mahon's] offence can hardly be overestimated. He has publicly denounced, in most violent and intemperate language, this Empire, upon whose integrity and power our national safety and very existence depend. He has incited citizens of the Commonwealth, subjects of the King, to pass resolutions for the dismemberment of the United Kingdom, the disruption of the Empire, and for the establishment of a Republic in Australia. ... What he has done amounts to treason to Australia, and makes him unfit to sit here as a member of the Australian Parliament.¹⁵

However, two of the three government speakers moved well beyond the *Argus* report and read into Mahon's alleged words far more than the report itself could reasonably be said to convey. Hughes claimed it was part of a "world-wide conspiracy" to disintegrate the British Empire,¹⁶ sentiment with which the Nationalist member George Maxwell agreed. He said that he was not prepared to sit with a man who had denounced the empire he serves "as 'bloody and accursed' – so accursed and bloody that it does not deserve to live ... the sooner it is disintegrated the better". Where, one might ask rhetorically, did the *Argus* report suggest Mahon said any of that?

In answering the government's charge, most Labor members confined themselves to the argument that the matter should be dealt with by a court and not the parliament. However, some Labor members did address the implications of Mahon's alleged words, speaking of Ireland's right to self-determination and arguing that Mahon's public support of that right was neither seditious nor disloyal. They said that if Mahon had used intemperate language it was understandable given the atrocities being inflicted on the people of Ireland.

But the government had a second string to its bow, accusing Mahon of advocating an Australian republic. George Maxwell claimed, "The honorable member said in effect, 'Let us

disturbance of the peace, or to raise discontent or disaffection amongst Her Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects."

¹⁴ ALRC, *Fighting Words*, p. 48. On the history of sedition in Australia, see Michael Head, 'Sedition — Is the Star Chamber Dead?' (1979) 3 *Criminal Law Journal* 89, 93–9; Laurence W Maher, 'The Use and Abuse of Sedition' (1992) 14 *Sydney Law Review* 287; Laurence W Maher, 'Dissent, Disloyalty and Disaffection: Australia's Last Cold War Sedition Case' (1994) 16 *Adelaide Law Review* 1; Roger Douglas, 'The Ambiguity of Sedition: The Trials of William Fardon Burns' (2004) 9 *Australian Journal of Legal History* 227, 247–8.

¹⁵ CPD 11 November 1920, p. 6384.

¹⁶ CPD 11 November 1920, p. 6389.

so far as Australia is concerned, cut ourselves adrift and establish a republic”¹⁷. But the *Argus* report does not support that allegation. Mahon did not speak in favour of the republican resolution nor did he support it. In fact, according to *The Argus*, Mahon and the other parliamentarians had left the meeting when that resolution was passed.¹⁸ Not one to let the facts get in the way of a political attack, Hughes, nevertheless, supported his allegation of sedition by accusing Mahon of advocating the separation of Australia from the Empire and the Crown.

In all the circumstances, it is difficult to see how, as a matter of law, Mahon’s words as reported in *The Argus* amounted to “seditious and disloyal utterances”. But the case was not being conducted in a court of law before an unbiased judge and a jury of reasonable citizens. What was occurring was essentially a political show trial. In other words, why let the facts get in the way of the desired result. As Mahon had correctly stated in his letter to Hughes, the minds of government members were already made up. This was confirmed by *The Argus*, which on the morning of the debate reported that the caucuses of both the Nationalist Party and Country Party had the day before approved Mahon’s expulsion.¹⁹ As noted by some of the Labor speakers, Mahon was being tried by a stacked jury that had cheered when the prosecuting counsel opened the government’s case.

Was Mahon’s speech of such a nature as to justify Mahon’s expulsion?

Taking the *Argus* report at its highest it is difficult from today’s perspective to see how, even in political terms, Mahon’s speech justified his expulsion. But, is it appropriate for us to judge the political issue by today’s standards? We have not recently emerged from a war in which 60,000 Australians died fighting for that same empire which Mahon had described as “bloody and accursed”. Unlike many Australians in 1920, we do not regard an independent Ireland as a threat to the security of the United Kingdom. Nor do we share the same concerns that many Australians then felt about the nation’s security, believing their defence to depend utterly on the continued strength of the British Empire. In our lifetime perhaps the closest analogy is the period of the Cold War when many Australians then believed that our security from the advance of Communism depended on the continued strength of the United States. Those who expressed anti-American views were often accused of being communists and fellow travellers and some were kept out of employment in universities and government departments.

But even taking into account the sentiments of the times, the hyperbole with which the government prosecuted its case makes it difficult to conclude that the government had acted reasonably in expelling the member for Kalgoorlie. Not content to rely on Mahon’s reported words themselves, the government loaded them with all the fears, anxieties and indignation of an insecure and grieving nation that was riven by sectarianism.

Should the matter have been determined by the House or the courts?

In 1984 a joint select committee of the Commonwealth parliament inquiring into parliamentary privilege took a dim view of the Mahon case. In its report the committee said:

The Mahon case focuses on the danger inherent in the present system - the abuse of power by a partisan vote. This danger can never be eradicated and the fact that the only

¹⁷ CPD 11 November 1920, p. 6441.

¹⁸ *The Argus* 12 November 1920, p. 6.

¹⁹ *The Argus* 11 November 1920, p. 7.

case in federal history when the power to expel was exercised is a case when, we think, the power was demonstrably misused is a compelling argument for its abolition.²⁰

The committee recommended that the power of expulsion be removed from the parliament. The recommendation was adopted and s 8 of the *Parliamentary Privileges Act 1987* abolished the power. But it was not only the Mahon case that led the committee to this conclusion. The committee observed that the Constitution contained provisions relating to disqualification of members convicted of wrongdoing and that the parliament had other powers at its disposal to discipline members. But in addition, the report stated:

In principle, we think it wrong that the institution to which the person has been elected should be able to reverse the decision of his constituents. If expelled he may stand for re-election but... the damage occasioned by his expulsion may render his prospects of re-election negligible.²¹

In other words, in a modern democracy parliament is not an old boys' club where the members get to blackball a member they dislike, which was essentially the line that George Maxwell had taken. He argued that he and his colleagues had a power to expel "when we find that a member of this House has conducted himself in a way that renders him, in our opinion, unfit to occupy his place here ... I cannot sit with such a man".²² James Fowler, the third government speaker, concluded his speech saying that Mahon was "not worthy to remain any longer a member".²³ Hughes said a similar thing: "We must purge ourselves of such a man. He is unworthy to remain a member of this Parliament".²⁴

On the other hand, Labor's leader Frank Tudor proposed an amendment which stated that the parliament was not "a proper tribunal to try a charge of sedition arising from the exercise of civilian rights of free speech at a public assembly of citizens". Given the way in which the government prosecuted its case in this instance, Tudor was not far off the mark and the matter should not have been determined by the House, certainly not in the manner it was.

The Kalgoorlie By-Election

The final chapter in the saga occurred on 18 December 1920, when the electors of Kalgoorlie cast their votes in the by-election to fill the vacancy caused by Mahon's expulsion. Despite the confident predictions of Mahon's Labor colleagues during the debate that the electors would return the member for Kalgoorlie, Mahon was defeated by 443 votes: 8,382 to 7,939 by the Nationalist candidate George Foley following a campaign that was dominated by the issue of empire loyalty.

Some have suggested that the whole point of the exercise was to replace a Labor member with a Nationalist and that Mahon by his intemperate speech had presented Hughes with an opportunity too good to miss. During the debate Labor's TJ Ryan said that the motion was "stage managed in order to return a supporter for the Government from Kalgoorlie so that they will not have such a risky existence as they have at present, dependent as they are, on the

²⁰ Joint Select Committee on Parliamentary Privilege, Final Report October 1984, Parliamentary Paper No 219/1984, para 7.94.

²¹ Ibid. Both Findley and Mahon lost the by-elections to fill the vacancies in their seats.

²² CPD 11 November 1920, p. 6440.

²³ CPD 11 November 1920, p. 6433.

²⁴ CPD 11 November 1920, p. 6387.

vote of the honorable member for Capricornia (Mr Higgs)".²⁵ In 1919 Higgs had been elected as a Labor candidate but in 1920 had defected to the Nationalists after being expelled from the Labor Party.²⁶

Although at the December 1919 elections Labor had won only 26 seats out of a total of 75, the government's nominal majority was inherently unstable. The Nationalists had won 38 seats and anti-Labor candidates endorsed by the Australian Farmers' Federal Organisation had won another 11. Members of the latter group formed the Country Party in January 1920.²⁷

Although the Country Party members were anti-Labor they did not always support Nationalist economic policies and on occasions during 1920 they voted with the Labor Party against the government. The most notable occasion was on 15 October, less than a month before Hughes moved Mahon's expulsion, when a censure motion on the budget proposals moved by the Country Party leader William McWilliams, was defeated by only four votes. The government only survived because five Country Party members failed to vote in favour of their leader's motion.

Later, one of the non-voting Country members, Henry Gregory, explained to the parliament that he had missed the vote through inadvertence. The others, however, may have deliberately refrained from voting to avoid forcing the government to resign.

Although Hughes had on that occasion been able to stare down the Country Party, his government's vulnerability to the farmers' group was readily apparent.²⁸ But his government's survival was not only challenged by the votes of the Country Party. Within the Nationalist Party were members who were bitterly opposed to Hughes. His survival was dependent on the votes of potential renegades such as Watt, Fowler and Higgs.

Consequently, the opportunity to pick up another seat for the Nationalist Party at the expense of Labor cannot be ruled out as a motivating factor in Hughes determination to have Mahon expelled.

Falling foul of Australian sentiment

Nevertheless, the result in the by-election and the widespread support for the government's actions suggest that the government had acted in accordance with the mood of the country. An incident more than a decade later, following Mahon's death on 28 August 1931, indicates the strength of feeling on the issue.

On the first sitting day after Mahon's death, Prime Minister Scullin moved in the House of Representatives a condolence motion. As is customary for such motions members observe the old adage "never speak ill of the dead" and in this case members from both sides spoke in support of the motion, including Billy Hughes who described Mahon as "a man of high ideals and great capacity ... of strong convictions, and with him love of country was an all-

²⁵ CPD 16 September 1931, p. 4.

²⁶ On 15 January 1920, between the elections and the opening of parliament, Higgs was expelled from the Labor Party by the Queensland Central Executive for going against party policy during the election campaign. He then became a supporter of the Nationalist government.

²⁷ The defection of Higgs reduced Labor to 25. However, on 2 June 1920 the Court of Disputed Returns overturned the victory of Edwin Kerby the Nationalist candidate for the seat of Ballarat. At the following by-election David McGrath won the seat for Labor thus restoring its numbers to 26.

²⁸ In fact, in the following year, on 14 April 1921, Labor and Country members did combine to defeat the government on a procedural motion.

absorbing passion”.²⁹ However, one member, Roland Green, the Country Party member for the NSW seat of Richmond broke with convention by telling the House he did not desire to be associated in the expression of regret to be sent to Mahon’s widow. He called attention to the fact that Mahon had been expelled from the House, which, in Green’s words, was because he “fell foul of Australian sentiment”.

It was not personal animus that motivated Green to speak out. Having been first elected to parliament in 1922, it is unlikely Green ever met Mahon. Even so, the member for Richmond did have a personal reason to be resentful. He had served at Gallipoli and on the Western Front and had lost a leg fighting for the same Empire that Mahon had so caustically denounced. This point would not have been lost on members when Green, having delivered his broadside, shuffled out of the chamber on crutches. But to attribute Green’s protest to the anguish he may personally have felt in the light of his own situation is to misunderstand Green’s motivation in breaking with convention.

Green was speaking for all those Australians still suffering and still grieving for the great loss which the nation had endured in a cause they considered just. Rightly or wrongly, in their eyes, Mahon’s words implied that that sacrifice had been for a “bloody and accursed Empire” whose deeds were comparable with the worst excesses of Czarist Russia. To Green, Mahon’s words still rankled more than a decade after the event – they were still unforgiveable even after Mahon’s death.

Conclusion

Today we can see clearly the injustice done to Hugh Mahon by his expulsion on a trumped up charge determined by a partisan tribunal. Fortunately, it cannot happen again – at least in the federal parliament. But that is a judgment we make more than 90 years after the event. But we should not lose sight of the fact that those times were altogether different and in seeking to understand this particular episode in the history of our nation we need to recognise that in 1920 many Australians, including a slim majority of electors of Kalgoorlie, saw things otherwise, believing that the parliament did the right thing by ridding itself of a member who dared to attack the British Empire in whose defence 60,000 Australians had so recently died. For them it was right and just that the Empire should strike back as it did.

²⁹ CPD 11 November 1920, p. 6437.