

Smith, Frederick Edwin, first earl of Birkenhead (1872–1930), lawyer and politician by John Campbell

Smith, Frederick Edwin, first earl of Birkenhead (1872–1930), lawyer and politician, was born on 12 July 1872 in Pilgrim Street, Birkenhead, the second of five surviving children of Frederick Smith (1845–1888), estate agent, barrister, and local politician, and his wife, Elizabeth (1842–1928), daughter of Edwin Taylor, rate collector. As a boy F. E. (as he was always known) modelled himself on his father, a swashbuckling political adventurer in his own right, a robust tory, and forceful orator who died at the age of forty-three, just a month after being elected mayor of Birkenhead. He was educated first at a dame-school in Birkenhead, then at Sandringham School in Southport (where he announced, at the age of ten, his intention of becoming lord chancellor), and finally—having failed the entrance exam for Harrow—at Birkenhead School (1887–9). From there he won a scholarship to University College, Liverpool, where he spent four terms (a fact he subsequently suppressed) before winning a scholarship to Wadham College, Oxford, in 1891.

Oxford and early political career

To an unusual extent Smith made his name at Oxford. Wadham enjoyed a golden age in the 1890s: F. E.'s contemporaries included the legendary all-round athlete C. B. Fry, the future Liberal politician John Simon, and the Liberal economist Francis Hirst. Between them they dominated both the rugby field and the union. Despite the handicap of his northern background Smith outshone them all, endowing his bare initials with a glamour which lasted all his life. Tall, darkly handsome, unashamedly ambitious, endowed with a scathing wit and an inexhaustible appetite for life and pleasure, he made himself the epitome of the Oxford Union 'swell'. His verbal duels with Hilaire Belloc were the stuff of Oxford legend. He switched from classics to law and became president of the union in his third year but still managed, by a heroic last-minute exertion, to take a first. The following year he won the coveted Vinerian law scholarship and was elected a fellow of Merton, where he stayed for three years (1896–9), gaining a depth of legal learning that later surprised critics who thought him merely a flashy politician.

Even while sharpening his wit at the Oxford Union, Smith was already active in national politics in the north-west. Billed initially as his father's son, he spoke on tory platforms all over Lancashire as early as the 1892 general election, beating the Orange drum against Irish home rule. When he finally left Oxford in 1899, having eaten his dinners at Gray's Inn and passed his bar finals with distinction that summer, it was to Liverpool that he returned to set up in practice on the northern circuit. He quickly built a brilliant reputation, and many of his impudent retorts to pompous judges passed into legal folklore. ('Mr Smith, having listened

to your case, I am no wiser.' 'Possibly not, m'lud, but much better informed.'; 'What do you suppose I am on the Bench for, Mr Smith?' 'It is not for me, Your Honour, to attempt to fathom the inscrutable workings of Providence.') He began earning fabulous fees; but his sights were firmly set on getting into parliament. He cultivated the local tory boss Archibald Salvidge, and threw himself vigorously into the sectarian disputes which characterized Liverpool politics at this period. When Joseph Chamberlain brought his tariff reform crusade to Liverpool in 1903, Smith seized the opportunity to make a dazzling supporting speech which won him adoption three months later for the working-class constituency of Walton. As a prospective candidate he successfully promoted himself as the champion of the hard-drinking, patriotic working man against the moralizing Liberal coalition of free-traders, pacifists, and temperance campaigners who would curtail his 'harmless relaxations' while selling out Britain's interests to foreigners. In 1906, against the tide of the Liberals' landslide victory, he narrowly held the seat which he continued to hold until the redrawing of boundaries in 1918.

Edwardian politics

As one of only 157 demoralized tories facing more than 400 Liberals in the new House of Commons, Smith lost no time in making his mark. His maiden speech on 12 March 1906—one of the most celebrated débuts in parliamentary history—was a masterpiece of impudent satire which made him a star overnight (*Hansard* 4, 153, 12 March 1906, 1014–1023). He was shrewd enough not to try to repeat this first success, but followed it with a sequence of brilliantly argued speeches employing his forensic skills to portray the Liberal government's legislative programme as a series of cynical sops to the various sectional interests which made up its support. His speech on the 1906 Trade Disputes Bill remained the classic exposition of the case against intimidatory picketing and the legal immunity of trade unions right up to the 1980s. His clinical exposure of the anomalies of the education and licensing bills helped destroy the government's will to proceed with them when the House of Lords used its built-in Unionist majority to throw them out. As a sustained assault by a single junior back-bencher on the legitimacy of a government with a huge majority, Smith's achievement between 1906 and 1909 has never been surpassed.

At the same time Smith quickly replicated in London the spectacular success he had already made at the Liverpool bar. He took silk in 1908, and by 1910 was earning more than £10,000 p.a. He represented the soap manufacturer W. H. Lever (Lord Leverhulme) in a lucrative series of cases against the Northcliffe press. He appeared more often than was prudent for Horatio Bottomley. He defended Dr Crippen's mistress, Ethel le Neve (and got her off). He successfully defended the young Arthur Ransome's biography of Oscar Wilde against Lord Alfred Douglas's vindictive libel suit. Strangely, he had no single famous case that made his name, yet in an age of star barristers (Edward Carson, Rufus Isaacs, Edward Marshall Hall) F. E. was the most glamorous of them all.

In 1901 Smith had married Margaret Eleanor Furneaux (1878–1968), daughter of the Revd Henry Furneaux, a classics don at Corpus Christi College, Oxford, and his wife, Eleanor, the daughter of the painter Joseph Severn. They had three children, Eleanor (1902–1945), Frederick Winston Furneaux Smith, later the second earl of Birkenhead (1907–1975), and Pamela, later Lady Hartwell (1914–1982). They lived first at The Grove, Thornton Hough, on the Wirral; then they moved to 70 Eccleston Square, London. In 1907 he bought a modest country house at Charlton, near Banbury, to which over the years he added stables, tennis courts, and a swimming-pool; and in 1913 a palatial London residence, 32 Grosvenor Gardens, which boasted to the world his extraordinary success. These two houses remained his homes for the rest of his life.

When the House of Lords provoked the great crisis of Edwardian politics by throwing out Lloyd George's 'people's budget' of 1909, Smith had only been in parliament three years. But the tory party, though dominated by the landed interest, had always offered opportunity to clever lawyers who made their way by brains alone, and Smith fitted this archetype perfectly. He quickly forced himself to the forefront of the constitutional battle. Privately he thought the peers wrong to reject the budget. But publicly, as a good barrister, he made a brilliant case for their right to do so, turning the 'peers v. people' argument on its head by mounting an ingenious defence of the upper house as the trustee of the popular will against the otherwise unchecked arrogance of the Commons. Unlike the tory peers whose main concern was to preserve their own privileges, Smith saw that the existing composition of the Lords was indefensible. He took his stand on the need for a reformed second chamber, and denounced the government for proposing merely to curb the powers of the upper house, leaving the Commons sovereign in an effectively unicameral system. From this perspective he was keenly interested in Lloyd George's scheme for a grand coalition: he believed that by giving up the Lords' power to veto Liberal legislation the tories could win concessions on issues of greater national importance such as tariffs and defence. The plan came to nothing—Asquith and Balfour were not prepared to split their parties—but Smith's enthusiasm for it foreshadowed his leading role in Lloyd George's post-war coalition.

When the possibility of compromise broke down, Smith joined Carson, Austen Chamberlain, and other 'die-hards' in urging the peers to stand firm against the government's threat to swamp the Lords with new creations. For the rest of his life he maintained that the 1911 Parliament Act was unfinished business which left the constitution permanently unbalanced. Meanwhile his performance in the two general elections of 1910—which destroyed the Liberals' independent majority, leaving the government henceforth dependent on the Irish—forced the new tory leader, Bonar Law, to invite him onto the opposition front bench. At the second general election of 1910 Smith was joined on the tory benches by his brother Harold, who was returned for Warrington. Harold, also a barrister, was never much more than a shadow of his elder brother: he even married F. E.'s sister-in-law Joan Furneaux in 1914 and bought a house near Charlton. He lost

Warrington in 1922 and died in 1924, aged forty-eight. F. E. was hard hit by Harold's death.

Amid the exceptional bitterness of party conflict in 1910–14 Smith maintained close friendships across the political divide. From the moment he entered the house he had found a soulmate in his fellow adventurer Winston Churchill (then a Liberal). They attacked each other with relish in public, while enjoying one another's company in private. At the height of the constitutional crisis they founded their own dining club—the Other Club—composed of a dozen of the most congenial members from each party, with a leavening of writers and artists. 'Nothing in the rules or intercourse of the Club', rule 12 declared, 'shall interfere with the rancour or asperity of party politics' (Coote, 20). The Other Club epitomized Smith's approach to the great game of life and politics. Though quintessentially a product of the Edwardian era, the club survived the First World War, F. E.'s death in 1930, and Churchill's thirty-five years later, and still exists today.

Though still disdained by many tories as a jumped-up provincial lawyer, Smith worked hard over the next three years to position himself as Law's heir apparent. He presented himself as a progressive modern Conservative, the heir to the Disraelian tradition of tory democracy. To that end he contributed to various journals a stream of essays collected in 1913 under the title *Unionist Policy* (he had already published in 1909 a volume of his speeches). Building on his opposition to the sectional politics of the Liberal government and his own party's shameless abuse of the upper house to try to block them, he developed a lofty theory of inclusive unionism which should bind all classes in a contract of patriotic unity. He supported the payment of MPs, to allow Labour members to sit in parliament without being dependent on the unions. He supported proportional representation, to end the polarizing distortions of the existing electoral system. He supported Lloyd George's national insurance scheme and advocated a minimum wage. With a number of other younger tories he founded the Unionist Social Reform Committee, which published mildly progressive reports on such matters as the reform of the poor law and working-class housing. 'A contented proletariat', he wrote, 'should be one of the first objects of enlightened Conservative policy' (F. E. Smith, *Unionist Policy*, 1913, 1–20).

The price of social security was military service. Smith's progressive toryism closely reflected Lord Milner's campaign for national efficiency, arising out of the failures of the South African War and apprehension of a coming trial of strength with Germany. Smith had no illusions on this subject. He saw international relations as a Darwinian struggle in which Germany was perfectly entitled to challenge Britain's supremacy, and warned that Britain would only retain its possessions if it was prepared to fight for them. He himself joined the Oxfordshire yeomanry—though the training he received at weekend camps with Churchill and other congenial companions was decidedly more convivial than strenuous.

The same belief that force ultimately ruled underlay his opposition to women's suffrage. At one level his attitude was simply the protection of male privilege. Characteristically, however, he rationalized his case on a more philosophic basis, arguing that 'votes are to swords exactly what bank notes are to gold—the one is effective only because the other is believed to be behind it' (*Hansard 5C*, 19, 11 July 1910, 66). On issues such as temperance or national service, men would not accept being outvoted by the weaker sex. Up to 1914 he scornfully opposed the suffragists' demand. To his credit, however, he recognized that the women's contribution to the national war effort destroyed his argument. In 1917 he found himself as attorney-general charged with piloting through parliament the bill that gave women over thirty the vote.

The question of consent likewise underpinned Smith's attitude to the last great crisis of Liberal England—Ulster's resistance to Irish home rule. Again he took up an apparently extreme position, acting as Carson's 'galloper' at the torchlight processions and parades of volunteers which culminated in the signing of the Ulster covenant in September 1912. All his antecedents impelled him to this allegiance: even his birthday was the anniversary of the battle of the Boyne. At a time when Bonar Law was warning the government that 'there are things stronger than parliamentary majorities' (speech at Blenheim, 27 July 1912), Smith was bound to take the same line; and characteristically he did not hold back. But as usual his position was more thoughtful than at first appeared. In supporting Ulster's defiance he was trying to convince the Liberal government to take seriously the message that Ulster could not be coerced. By the same token he recognized that the rest of Ireland could not be coerced either. He did not, like most Unionists, see Ulster as a convenient device to block home rule, but conceded Ireland's right to self-government, so long as the government conceded Ulster's equal right to be excluded. He was one of the first prominent politicians in either party to advocate partition.

In the Commons, Smith brilliantly exposed the anomalies of the 1912 Home Rule Bill and mercilessly denounced the Liberals' cynicism in rediscovering home rule after 1910 only because they were once more dependent on Irish votes for their majority. He regarded its imposition in these circumstances—with the Lords no longer able to refer it to the people as they had done with Gladstone's 1893 Home Rule Bill—as a constitutional outrage. Far from promoting civil war, his purpose was to prevent a bloodbath by convincing the government—beginning with his friends Lloyd George and Churchill—that Ulster's determination to resist was deadly serious. By the summer of 1914 the government was beginning to get the message. Viewed in this light, Smith's championing of Ulster was both realistic and constructive.

Law officer in wartime

On the outbreak of war in August 1914 Smith was appointed to the spectacularly inappropriate job of press censor. He was not a success, and lasted only a few weeks. Instead of joining his regiment, however—the Oxfordshire yeomanry, with whom he and Churchill had enjoyed playing soldiers before the war—he secured another incongruous appointment as recording officer to the Indian troops arriving in Europe to fight on the western front. This was a convenient posting which enabled him to observe conditions in the trenches from a position of some personal comfort behind the lines; it exposed him to justified criticism that he was shirking the military duty he was keen to urge on others.

Smith was rescued from this embarrassment by the political crisis of May 1915, which forced Asquith to broaden his government. In the resulting coalition Smith became solicitor-general and, six months later, on Carson's resignation, attorney-general with a seat in the cabinet. This was the turning point in his career: henceforth he was in government for most of the rest of his short life. At the same time, becoming solicitor-general diverted him from the political mainstream into the backwater of the legal offices. From this moment his chance of becoming tory leader or prime minister faded. Thus the war derailed his career as it did so many others. He was compensated with the law officer's traditional knighthood, and became known for the next three years by the unaccustomed title of Sir Frederick Smith.

As attorney-general, Smith was largely occupied with advising the government on matters of international law, conducting cases before the prize court, and prosecuting offenders under the Defence of the Realm Act. But by far the biggest case with which he had to deal was the prosecution for treason of Sir Roger Casement, charged with inciting Irish soldiers to mutiny against the crown. Eighty years on, the conviction and execution of Casement continues to arouse extraordinary odium. In view of his own active identification with Ulster before the war it is questionable whether Smith should have conducted the prosecution himself at all. More important, it is widely believed that Smith conspired to blacken Casement's name by circulating his homosexual diaries, in a vindictive determination to secure a conviction. In fact there is no reputable evidence to associate Smith with the circulation of the diaries. The evidence is rather that he thought their use by the Foreign Office to prejudice opinion against Casement 'a ghoulis proposal' (Reid, 410). He had earlier offered them to the defence to assist a plea of insanity in mitigation of the death sentence. Certainly he wanted to secure Casement's conviction; but he was very apprehensive of the effect on neutral (that is, American) opinion of hanging him. Criticism of Smith's conduct of the Casement trial does not stand impartial scrutiny.

Immersed in his legal functions, Smith played no part in the political crisis of December 1916. Asquith's replacement by Lloyd George, however, brought him much closer to the centre of government. Though not a member of the war cabinet, he was increasingly entrusted with additional functions, including a

mission to the United States, in the course of which he travelled some 15,000 miles from coast to coast, addressing forty-eight meetings in five weeks. During his absence he was awarded a baronetcy (24 January 1918). As victory neared, he was closely concerned with the question of how Germany and individual Germans should be punished. Smith favoured a tribunal to try the leading war criminals, starting with the Kaiser; doubtless he saw himself as chief prosecutor. When the Kaiser escaped to the Netherlands, however, it proved impossible to charge lesser scapegoats, and the idea lapsed.

Nevertheless, 'Hang the Kaiser' was a popular cry at the 'khaki' election held in December 1918. Smith's old Walton seat was abolished by boundary changes; but he was comfortably returned for neighbouring West Derby. Never one to undervalue himself, he now demanded a seat in the new cabinet. But Lloyd George had no place to offer him—except the woolsack. This would mean giving up the House of Commons and any hope of becoming prime minister. At least as important to F. E., it would also mean giving up his earning potential at the bar, the only way he could support his extravagant lifestyle. Against this, he had always had the ambition to be lord chancellor. To achieve it at the age of forty-six would make him the youngest holder of the office since Judge Jeffreys. The opportunity was irresistible. The appointment raised a storm of protest. The king asked Lloyd George to think again. The *Morning Post* (11 Jan 1919) complained that it was 'carrying a joke beyond the limits of a pleasantry'. Generally Smith was thought to lack both the legal authority and the moral character for the woolsack. But he was determined to confound his critics—and he succeeded.

Lord chancellor

Smith took the title Lord Birkenhead (3 February 1919), and instantly invested his decaying industrial birthplace with the glamour that formerly attached to his initials. Capitalizing on his youth and energy he consciously set out to be a memorable lord chancellor, as he explained to a dinner at Gray's Inn (9 May 1919):

I think perhaps I have the advantage—it is the only advantage I claim—over the great Bacon that I excel him in levity. I think in relation to Brougham I may perhaps claim that I excel him in gravity. (Campbell, 468)

Or, as he expressed it on another occasion, 'Should I be drunk as a lord or sober as a judge?' (F. W. Hirst, *In the Golden Days*, 1948, 106). In fact he was both. He was determined not to change his hedonistic lifestyle (a row quickly broke out over the refurbishment of his official apartments). He relished the magnificence of the office, but was impatient of the ceremonial flummery, the knee-breeches, and the long hours sitting on the woolsack. He very quickly quashed doubts about his legal ability: this was when his years of academic law at Merton paid their dividend. He firmly defended the independence of the judiciary against political encroachment. His judgments were greatly admired, and he pushed through an

important agenda of reforms. At the same time he brought an informality to the office and a whiff of brimstone to the soporific proceedings of the Lords. And on occasion—particularly as he began to get bored with the job and realized that no further advancement was open to him—he began to disgrace himself in public. He had always been a formidable drinker, but before the war ambition ensured that he could hold his liquor. Once he became lord chancellor he had no realizable ambition left. Admiring anecdotes still clustered around his name—his witty sallies were repeated from mouth to mouth; but increasingly they were prefaced with the observation that the lord chancellor had ‘dined well’. In drink he could be rude and bullying. So in the end some of the doubts about his suitability were vindicated.

Nevertheless Birkenhead achieved his ambition of being remembered as a great lord chancellor. His judgments in a large number of complex commercial cases, delivered with force and lucidity, have stood the test of time. He showed a bold willingness to overthrow precedent in cases where he considered the law anachronistic—for instance, in allowing money to be left to Roman Catholic communities for the purpose of having masses said for the souls of the dead in *Bourne v. Keen* (1919). In his only judgment on a criminal appeal, *Director of Public Prosecutions v. Beard* (1920), he set an important precedent himself by disallowing drunkenness as a mitigating factor in rape leading to murder. In several painful divorce cases he displayed remarkable humanity. His most agonizing judgment was in the celebrated case of Archdeacon Wakeford, a canon of Lincoln, convicted of adultery under ecclesiastical law: after minute examination of the evidence Birkenhead reluctantly led the judicial committee of the privy council to reject the archdeacon's appeal.

As head of the judiciary Birkenhead took drastic measures to speed up divorce hearings, even sitting himself to clear the backlog of cases that had built up during the war. In the face of strong legal protectionism he carried the County Courts Act (1919), extending the common-law jurisdiction of the county courts to new areas of litigation, and the Administration of Justice Act (1920) which relaxed a number of outdated conventions. His attempt to streamline the assize system was thwarted by local interests. But his greatest monument as a law reformer was carrying a vast and comprehensive Law of Property Act (1922), bringing the law of property into the twentieth century by finally abolishing such medieval hangovers as copyhold tenure and gavelkind. This was a measure which had been in the legislative pipeline for more than twenty years. Birkenhead never pretended that he had done more than provide the political momentum to complete the work of others. But he did claim that ‘We have by the Act established some contact with sanity in dealing with land’ (Campbell, 486).

More than most lord chancellors, Birkenhead was a key member of the government, one of the prime minister's most trusted colleagues. In cabinet he spoke rarely, but with an authority which compelled respect. ‘He was cautious as well as sagacious’, Lloyd George remembered, ‘remarkable for his lucidity and

brevity ... a master of words' (Birkenhead, *Frederick Edwin, Earl of Birkenhead*, 2, 1935, 12). He brought all his advocacy skills to the government's cause in the House of Lords: one of his greatest speeches was a courageous condemnation of imperialist Tories who made a hero of General Dyer, the officer responsible for the Amritsar massacre. He also campaigned eloquently for reform of the divorce law. Citing heartbreaking cases of women trapped in long-dead marriages, he argued that once divorce was admitted on any grounds it was nonsense to allow it only for adultery, as if the sexual relationship was the most important part of marriage. Cruelty, desertion, drunkenness, and insanity should equally be allowed as grounds to end a marriage. Despite the opposition of the bishops, a bill introduced by Lord Buckmaster carried the Lords, but was defeated in the Commons.

Birkenhead's greatest contribution as lord chancellor, however, was his part in the signing of the treaty which created the Irish Free State in December 1921. Ireland had moved on since 1914. By the Government of Ireland Act (1920) the government had accepted the logic of partition and established a home-rule parliament for the six counties of north-eastern Ulster, sited at Stormont. In the south, however, Sinn Féin refused to accept partition or home rule: they declared a republic and set out to drive the British from Ireland by terror and assassination. The government responded by sending the notorious Black and Tans to suppress them. For two years Birkenhead defended 'the assertion of force—force in its most extreme and vigorous application' (*Hansard 5L*, 44, 22 Feb 1921, 117). When Lloyd George changed tack and invited de Valera for talks he was sceptical; but ultimately—consistent with his attitude before the war—he accepted the principle of offering the south dominion status, if Sinn Féin would accept it. With his record as a leading opponent of home rule, Birkenhead was the pivotal figure. On the one hand it fell to him, with Austen Chamberlain, to persuade the Unionist Party to swallow a settlement which many saw as giving in to terrorism. By chance the party conference was held in Liverpool that autumn: Birkenhead persuaded his old mentor, Alderman Salvidge, to back the negotiations. On the other hand, he played a crucial role in persuading the Irish to compromise their demand for a thirty-two-county republic. In particular he forged a surprising bond of mutual trust with the IRA leader, Michael Collins. Collins believed he had signed his own death warrant by signing the treaty; he was indeed assassinated eight months later. He also predicted that 'Birkenhead may have said an end to his political life' by signing the treaty (R. Taylor, *Michael Collins*, 1968, 152); and this too was not far from the truth. Bitterly attacked by Carson and other old colleagues in the Lords, Birkenhead made a powerful defence of the treaty, looking forward to Ireland taking its place as a self-governing dominion within the empire; but Unionist die-hards never forgave what they regarded as his treachery.

The Irish treaty was just one factor in the alienation of Conservatives from the Lloyd George coalition. Another was the pervasive smell of corruption in public life—arising particularly from the sale of honours—and the government's increasingly autocratic style, epitomized above all by the lord chancellor. Stories of his boorishness and bullying behaviour multiplied, while his regular steps in the peerage—from Baron Birkenhead in 1919, through viscount (15 June 1921), to the earl of Birkenhead (28 November 1922)—only swelled his self-importance. Since the war his views had become steadily more reactionary: obsessed by the threat of Bolshevism, he supported Lloyd George's attempt to merge his Coalition Liberals with the Tories in a single anti-socialist party. When that failed he continued to insist that the coalition must be maintained indefinitely, dealing brutally with anyone who expressed a different view. When Tory MPs voted at the Carlton Club in October 1922 to end the coalition, they were revolting as much against the arrogance of their own leaders as against Lloyd George.

Indian summer

Out of office, Birkenhead drew fresh notoriety by repeating, with provocative relish, his neo-Darwinian view of international conflict. 'The world', he told the students of Glasgow University (7 November 1923), 'continues to offer glittering prizes to those who have stout hearts and sharp swords' (*America Revisited*, 1924, 200). Five years after the war conventional piety demanded lip-service to the League of Nations: Birkenhead was denounced from pulpits and pacifist platforms up and down the country. Both his lordly lifestyle and his robust philosophy were out of tune with the homely bromides of Baldwin's Conservative Party. (At this time he was also conducting a love affair with Mona Dunn, the daughter of an old Canadian friend of Lord Beaverbrook.) Nevertheless, when the Tories were returned to office in October 1924 after the short-lived experiment of the first Labour government, Baldwin was anxious to reunite the party. To the disapproval of the moralists he brought back into his government not only Austen Chamberlain as foreign secretary and Churchill as chancellor of the exchequer, but also Birkenhead as secretary of state for India.

Despite his speech in the Amritsar debate, Birkenhead's view of India was thoroughly reactionary. He did not believe that Indians would soon, or ever, be fit for self-government: he had no regard for Indian politicians and believed the Hindu-Muslim divide to be unbridgeable. His main purpose was to block any further extension of the degree of Indian participation in provincial government granted in 1919 by the Montagu-Chelmsford reforms. To this end he accelerated the appointment of the statutory commission to assess the progress of the reforms—to make sure it was not left to a possible Labour government—and appointed his old Wadham contemporary Sir John Simon as its chairman. But in practice the secretary of state was little more than a figurehead: the day-to-day government of India was the responsibility of the viceroy, from 1926 the much more liberal Lord Irwin. Birkenhead was not stretched by the India Office. His

parliamentary private secretary recalled that 'We seemed to play an awful lot of golf' (private information).

Birkenhead did, however, play a full part in the Baldwin cabinet. When he could be persuaded to focus his mind upon a problem the penetration and lucidity of Birkenhead's judgement, his legal authority, and his drafting skill still commanded the admiration of his colleagues. Baldwin used him to arbitrate on interdepartmental disputes, for instance between the Treasury and the Admiralty over the building of cruisers. He also took a prominent role in the government's negotiations with the TUC to try to avert the general strike. Here again, however, he was now a thorough die-hard. His pre-war concern for a 'contented proletariat' had hardened into blunt insistence that the miners must be taught the facts of economic life. He strongly supported the 1927 Trades Disputes Act, which punished the trade unions by requiring members to 'contract in' to the political levy instead of contracting out; and also the home secretary's clumsy raid on the premises of the Soviet trade delegation, alleged to be a nest of spies ('I breathe quite differently now that we have purged our capital of these unclean and treacherous elements'; Campbell, 788).

Though still only in his mid-fifties, Birkenhead now cut a rather pompous figure on the public stage: the cartoonist David Low caricatured him as Lord Burstinghead. Yet his energy was still astonishing. He was in constant demand as a speaker, to audiences ranging from the Royal Society of Medicine to the Motor Cycle Trades Benevolent Fund dinner. He poured out a prolific stream of books of varied quality: serious historical and literary essays—*Points of View* (2 vols., 1922), *Law, Life and Letters* (2 vols., 1927), and *Turning Points in History* (1930); popular law—*Famous Trials of History* (1926) and *More Famous Trials* (1928); and some frank potboilers—*The World in 2030* (1930) and *Fifty Famous Fights in Fact and Fiction* (1932). Though denied the chancellorship, he was still an Oxford legend and spoke frequently at the union; he patronized university athletics and raised funds for the British Olympic team in 1924 and 1928. He delighted in inviting clever young Oxford men—friends of his son Freddie—to Charlton for strenuous days of tennis, golf, and talk. 'Good though the tennis was', Sir John Masterman recalled, 'the talk was better; his was, I am convinced, the most powerful mind with which I have ever been brought into contact' (J. Masterman, *On the Chariot Wheel*, 1975, 166). In this high summer of his life, still a senior cabinet minister, presiding over his little court at Charlton, dispensing generous but demanding patronage to young admirers, F. E. was in his element.

In October 1928 Birkenhead left the government, pleading poverty. He could not support his family on a cabinet minister's salary. In the easy-going climate of the coalition he had supplemented his salary by journalism; but Baldwin's new puritanism had closed that option. When Birkenhead objected, his acquiescence was bought with a discreet subsidy from Conservative Party funds, amounting to £10,000 over two years from 1926: remarkable testimony to the value Baldwin

placed on his services. But in 1928 the subsidy was not renewed. His friends found him a number of lucrative directorships (including ICI and Tate and Lyle); but he did not enjoy them very long. After years of abuse his powerful constitution suddenly cracked; his health rapidly declined, and he died of bronchial pneumonia at his London home, 32 Grosvenor Gardens, on 30 September 1930, leaving his family mainly debts. After cremation at Golders Green, his ashes were buried at Charlton on 4 October; there was a memorial service at Westminster Abbey on 6 October.

As F. E. Smith before the First World War and Lord Birkenhead after it, F. E. was one of the most vivid public personalities of the first third of the twentieth century, loved and loathed in equal measure by those who enjoyed the warmth of his friendship or suffered the sting of his tongue. He had an unpleasant streak of arrogance, but he was most highly regarded by those who knew him best. He cultivated the reputation of a cynical adventurer; but behind the cavalier façade he was a more constructive politician than he is often given credit for, as he demonstrated before 1914 in relation to both the House of Lords and Ulster. Diverted into the legal departments by the war, he routed his critics by rising to the challenge of the woolsack: he proved an outstanding lord chancellor, both as judge and as law reformer. Above all, it was his statesmanship and political courage that made possible the Irish treaty of December 1921. That is his most solid achievement. His true immortality, however, is preserved in a hundred well-loved legal anecdotes: more than anyone else F. E. in his prime embodies the golden age of the English bar.

JOHN CAMPBELL

Sources

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Likenesses

Nibs, caricature, lithograph, 1911, NPG □ E. Knapp, drawing, 1914, Barber Institute of Fine Arts, Birmingham □ W. Stoneman, photograph, 1919, NPG [see *illus.*] □ H. Mann, oils, c.1921, Wadham College, Oxford □ C. Sheridan, bronze bust, 1924, Gray's Inn, London □ R. S. Sherriffs, ink caricature, 1929, NPG □ O. Birley, oil copy, NPG □ J. Lavery, oils, Gray's Inn, London □ B. Partridge, ink and watercolour caricature, NPG; repro. in *Punch* (7 Nov 1927) □ B. Partridge, ink and watercolour caricature, NPG; repro. in *Punch* (21 May 1928) □ G. Philpot, oils, Gray's Inn, London □ Spy [L. Ward], caricature, lithograph, NPG; repro. in *VF* (16 Jan 1907)

Wealth at death

£63,223 1s. 6d.: probate, 25 Feb 1931, *CGPLA Eng. & Wales*

John Campbell, 'Smith, Frederick Edwin, first earl of Birkenhead (1872–1930)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004, by permission of Oxford University Press.

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