

that to hold them endangers a province which, without them, would have a much brighter future. If that perception is there, even if not articulated, then there could be hope that the resistance – as in the case of the abolition of Stormont – would not take a very violent form.

In any case, this option has the advantage, as against others, that it represents something that Britain can actually *do*. It does not require agreement between people who passionately disagree. It does not require the discovery of that fabulous land, the 'agreed Ireland', but it respects the political contours of Ireland as she actually is.

Postscript

The change of government in the Republic (since the above was written) means that the effort to inflate the significance of Anglo-Irish talks is discontinued. But that very discontinuance relieves the FitzGerald government of the special pressure which the Haughey government was under to exercise strict restraint in its public dealings with the British government (for fear of destroying the 'unity under way' illusion). That means that there may be some deterioration in the *appearance* of Anglo-Irish relations. Substantially, I believe, however, that these should benefit for the removal of illusions.

The additional deaths of hunger strikers, and the continued 'greening' of the Labour Party, add to the pressures noted in the above, working against the *status quo*.

A recent *Sunday Times* poll suggests that there may be more hope of a revival of power-sharing than is indicated above. However, the prospects for reviving power-sharing depend, not on what people say to pollsters, but on whom they elect to represent them: the potential sharers of power. There is nothing in the recent local government elections – or in any other *electoral* index – which suggests that the sharing of power between elected representatives of the two communities is on the cards.

9 Ways Forward: The Constitutional Options

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Plan of the Paper

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Introduction

Examination of policy options must proceed on the basis that United Kingdom governments, as the only effective catalytic agents, will exercise their power so as to achieve their own aims in so far as they are not constrained by the effective vetoes enjoyed by both communities on new institutional arrangements in Northern Ireland.

United Kingdom governments aim, in the short run, to diminish terrorist violence and foster inter-community reconciliation. In the mid-term, they seek withdrawal of troops from Northern Ireland and the transfer to Northern Ireland institutions of governmental powers on a basis agreed by both communities, thereby diminishing Westminster involvement and responsibility. In the long run, they wish to disentangle Great Britain from Ireland. They accept that Northern Ireland enjoys the right of self-determination, and would, if inter-community cooperation in devolved government came about, acquiesce in Northern Ireland remaining part of the United Kingdom. However, some form of reunification, to settle the recurring nuisance of Irish nationalist claims, would be preferred, provided this would result in a peaceful Ireland.

Between March 1972 and March 1981 successive United Kingdom governments have sought inter-community agreement on institutional arrangements in Northern Ireland, but power-sharing and the Irish dimension have proved unacceptable to the Unionist community. In 1981 United Kingdom governments are still seeking to structure the political framework (in a favourable economic climate, restructuring of the material basis of Northern Ireland society would also be attempted) so as to alter the two communities' perceptions of their respective interests and interrelationships. The goal is to persuade each side that its traditions and aspirations are not under political threat by the other. Since institutional change in Northern Ireland cannot now be agreed upon or imposed, the best way forward is to attempt to engineer long-term attitude changes in the Unionist community. This could be portrayed as brainwashing but, apart from Realpolitik, it has the justification that the only way of saving lives and improving living conditions in Northern Ireland is the running down of violence to a tolerable level. To effect this, millenarians in both communities must be isolated, a result which inter-community cooperation alone can achieve.

In engineering changes in attitude towards inter-community cooperation, the emphasis will probably shift from new internal Northern Ireland arrangements to top-level Anglo-Irish inter-governmental cooperation. Unionists might then see power-sharing with local choice as

the lesser evil. Few would prefer the risks of micro-state independence under stable conditions. If, ultimately, attitudes of cooperation cannot be elicited or reunification peacefully achieved, then disentanglement will become Great Britain's prime aim, displacing her subsidiary aim of achieving a stable, peaceful Ireland. Some method of giving independence to Northern Ireland will be pursued. Preferably independence will be on the basis of agreement, but provocation of a 'Loyalist' unilateral declaration of independence, or a unilateral withdrawal, is not impossible.

Constitutional arrangements are of limited significance. They depend upon force and community acquiescence, and only in the long term can any constitutional scheme modify inter-community attitudes. Political and economic factors are infinitely more important. Seldom does the legal position dictate outcomes. Rather, the mode in which governments conduct themselves is likely to determine events. For example, Unionist acquiescence in the arrangements under the Northern Ireland Constitution Act, 1973, was destroyed by the way in which the United Kingdom government implemented the Act. Had there been more clarity about the terms of the Sunningdale agreement, had it not been so quickly introduced and had there been more trust of British governments, the Unionist community might have been induced to tolerate power-sharing. Instead, the theoretical possibility of reunification by the back door, introduced by a perfidious British government, was a credible possibility for many Unionists. The restoration of trust between the British government and the Unionist community in particular (as well as between the other actors) is a paramount necessity if Unionists are ever to contemplate cooperating with the Nationalist political leadership in government or with the government of the Republic in general. Again, the conduct of the government of the Republic will affect attitudes in Northern Ireland, irrespective of the fact that under United Kingdom constitutional law the Republic enjoys no power in Northern Ireland. Until such time as consistently firm action is taken by the Dublin government to prevent the Republic being used as a safe base for aggression against Northern Ireland, the Republic will be both hated and feared, and these feelings will be projected on to the Northern Ireland Catholic community. Finally, it cannot be too strongly emphasized that the best of constitutional schemes cannot 'solve' problems of political conflict.

Options for Northern Ireland fall under three broad status categories: continuance of Northern Ireland as part of the United Kingdom; association of Northern Ireland with the Republic of Ireland; and an independent Northern Ireland State. (Some arrange-

ments could apply simultaneously: for example, continuance of Northern Ireland within the United Kingdom and closer association with the Republic.) Within the broad categories, variable governmental patterns can be envisaged. Some institutions may be relevant whatever the governmental pattern, e.g. independent commissions. However, to avoid repetition, I shall deal with institutions under the general form of government where they are most required.

(A) CONTINUANCE WITHIN THE UNITED KINGDOM

1 Self-determination, Union and Reunification

(a) *The guarantee of self-determination*

Since 1920 the people of Northern Ireland have been accorded the right of self-determination. Currently, this right is enshrined in the status declaration in the Northern Ireland Constitution Act, 1973, that Northern Ireland is a part of the United Kingdom and shall not cease to be such without the consent of the majority of the people of Northern Ireland voting in a Border poll.[1] Only heterodox thinkers deny that parliamentary sovereignty permits the repeal of the Act. Nonetheless the guarantee in some form is essential to assuage Unionist fears. In my opinion, there is no possibility that any responsible British government will go back on the principle of self-determination for Northern Ireland. Governments will at intervals reiterate it, as Mrs Thatcher has done in 1981.

The guarantee has other advantages. It provides a convenient mode for conducting a referendum at the discretion of the Secretary of State for Northern Ireland at intervals of not less than a decade. Currently the status aspect of the guarantee is over-emphasized. More public emphasis should be placed on the opportunity that the Border poll machinery gives Nationalists to test whether the Northern Ireland population freely consents to reunification. Thus, despite arguments about the Secretary of State's discretion, the power to frame the question, the mode of counting votes on an all-Northern-Ireland basis, and the disruptive or educational effects of intermittently conducting a referendum on the Border issue, the guarantee can and should be defended as reassuring both Unionists and Nationalists.

(b) *Commitment to union*

The principle of self-determination must be contrasted with a commitment to permanent union between Great Britain and Northern Ireland, which has not existed since 1920. No declaration of a positive

desire for permanent union with Northern Ireland has been made by United Kingdom governments. An opposite declaration, that Great Britain is *not* committed to permanent union, would be seen by the Republic and Nationalists as a positive step towards reunification. In 1972 the Green Paper on 'The Future of Northern Ireland' implicitly recognized that United Kingdom governments were not so committed.[2]

(c) Commitment to reunification

The failure expressly to state non-commitment to permanent union, and the further failure to declare the existence of a positive desire that Ireland should move to ultimate reunification, are the result of judgments by successive United Kingdom governments that such statements would inflame Unionist opinion. Privately they have given assurances to governments of the Republic, the last of which was presumably given in the Thatcher-Haughey discussions in Dublin in December 1980. Such diplomacy is dishonest and counter-productive. It occasions uncertainty, which gives rise to conduct based on extreme speculations. It would be far better publicly to declare a long-term commitment by United Kingdom governments to the reunification of Ireland if, but only if, the people of Northern Ireland freely consented. Indeed, Unionists would prefer that the truth were told them, so that they could intelligently re-evaluate their own position and priorities.

2 Integration

Integration, as envisaged by those who urge it, means permanent incorporation of Northern Ireland into the United Kingdom on exactly the same basis as any other part of Great Britain. Although equality of treatment for Northern Ireland seems just, analysis shows that such a policy is impolitic on a number of grounds. The permanency aspect is unacceptable to Nationalists and the Republic. Intergration would defeat the purpose of the Macrory reforms[3] (which was to prevent local discrimination in the housing, education and health fields), and would leave local authorities, that have not been unknown to abuse their powers, unsupervised. If standards of representation are on a par with Scotland and Wales, there would be 21 Northern Ireland MPs at Westminster, raising the spectre of an Irish balance of power in the Commons. This would be unacceptable to both major British parties, even if the Conservatives had a net addition to their majority (assuming 14 Unionists and 7 SDLP MPs). Furthermore, since electoral laws should be uniform, local authority elections would no

longer be conducted on the single transferable vote proportional representation (STV PR). Many Unionists, too, oppose integration, seeing Westminster as sole decision-maker, whereas devolution permits significant decisions to be made in Northern Ireland and provides an elected body opposed to reunification.

3 Direct Rule

Apart from the five-month period of the power-sharing Executive in 1974, Northern Ireland has, since March 1972, been under the direct rule of the Secretary of State for Northern Ireland so far as civil government is concerned. Other Cabinet Ministers also have responsibilities for Northern Ireland, notably the Secretary of State for Defence and the Chancellor of the Exchequer, and the Foreign Secretary has a particular involvement because of UK relationships with the Republic.

Subject to his responsibility to parliament, the Northern Ireland Secretary exercises executive and legislative functions under interim provisions, annually renewable. Akin to the Governor of a Colony, the Secretary of State has the powers of the former Northern Ireland Executive and certain United Kingdom supervisory responsibilities, and may make Orders in Council.

Direct rule has advantages. It is the least unacceptable mode of government for both communities, which acquiesce in it as neither frustrating their aspirations nor causing them to feel threatened. Thus a concurring majority exists about the acceptability of direct rule, not as the form of government most preferred, but as tolerable in default of agreement on new institutions. From a United Kingdom standpoint, direct rule neutralizes much inter-community competition for power, ensures little opportunity for public sector discrimination, and leaves policy options open.

On the other hand, if direct rule becomes a semi-permanent arrangement, the relative absence of democracy in Northern Ireland requires new institutional arrangements.

(a) Parliamentary reform

There is, up to a point, a 'Scottish Office' pattern of devolution at present, with the Secretary of State and his civil servants dealing both with local government and with aspects of central government, such as commerce, industrial development, planning, transport, agriculture, health and social services. But no equivalent parliamentary procedures and machinery secure protection for distinctively Northern Ireland

interests. Parliament itself has been unable to act as a satisfactory democratic alternative to the former devolved Stormont parliament.

Northern Ireland parliamentary business is relatively neglected. Northern Ireland legislation cannot be adequately debated or amended. Subordinate legislation is not democratically scrutinized. Northern Ireland administration is inadequately supervised, and there exists a chasm in communications between the Northern Ireland Office and Members of Parliament at Westminster. The Northern Ireland Standing Committee neither has adequate supervisory powers nor meets often enough.

Some simple procedural reforms[4] would ensure better government for Northern Ireland, and less dissatisfaction at its deprivation of democratic machinery. One such reform would be the establishment of a Northern Ireland Select Committee with wide-ranging powers, including power to sit and debate in Northern Ireland. This committee would be able to consider and amend draft Orders, and to scrutinize subordinate legislation.

The desire of the minority community to affect decision-making is unlikely to be met by the increase from 12 to 17 Northern Ireland MPs in the next election. Without STV PR there is no guarantee of proportionate representation for the minority. Furthermore, the minority, seeing the increase in MPs as strengthening ties with Great Britain, has opposed it. STV PR for Northern Ireland Westminster elections would not be unacceptable to Unionists, and it would mitigate Nationalist objections, but PR is a mode of election rejected by the two major British parties because of its precedent effect for other Westminster constituencies.

(b) Local government

The side-effects of the suspension of Stormont, subsequent to the local government reforms suggested in the 1970 Macrory Report, require remedy. With the disappearance of devolved government institutions, only an emasculated lower tier of District Councils (without rating powers) and nominated regional area boards for education, health and personal social services remained. Major 'local authority services' are centrally run by civil servants acting under the authority of the Secretary of State and are free from democratic scrutiny, while public corporations, such as the Housing Executive, are not even subject to parliamentary accountability.

The creation of a Northern Ireland Council, controlling top-tier services, would forestall protests at lack of democracy, and partially fill

the political vacuum. But retransfer of powers to small local authorities would provide opportunities for prejudice, oppression and corruption. Of this the Secretary of State is aware, insisting that he retain supervisory powers at all local government levels.[5]

The problem of participation cannot be 'solved' by giving control of services to the overall minority in areas where they are a local majority, rather than by giving them a sense of power at the centre. The demographic scatter makes it impossible to divide Northern Ireland into areas of homogeneous population without 'minority' problems in each unit. (Incidentally this shows the impracticability of internal cantonization or 'federation': in Northern Ireland conditions, there are risks of oppression, balkanization, and ungovernability, with some units declaring a UDI.)

Minority participation in decision-taking could be ensured by allocation of chairmanships and committee seats to parties in proportion to their representation in Council, by special representation for minority parties on each committee, or by weighted voting at Council and committees.

4 Devolution

Attempts to reach intercommunal agreement on the retransfer of powers to a local Assembly and Executive on conditions acceptable to United Kingdom governments and both communities have failed (1972-4 - Darlington, Sunningdale and the power-sharing Executive; 1974-5 - the Northern Ireland Convention; 1977 - initiatives for talks; and 1979-81 - the Atkins Conference initiatives). The problem is that democratic majority rule is rejected by the Nationalist community, and governmental power-sharing with the minority is rejected by the Unionist community, as is recognition of the 'Irish dimension'. The prospects of reaching agreement on devolution remain remote.

United Kingdom governments recognize that 'unless the minority community feels able to accept, and identify with, the institutions of government in Northern Ireland there is little prospect of political stability in the province.'[6] They will not proceed with majority community support alone. Yet failure does not diminish the necessity of pursuing agreement on retransfer of executive and legislative powers to Northern Ireland bodies. Anxiety for agreement should not, however, tempt the making of novel and risky constitutional arrangements. Mr Atkins was fortunate that his proposals were unacceptable to Unionist politicians. The blocking Council of the Assembly, with the Opposition disproportionately represented, was a recipe for continuous

veto and intervention by the Secretary of State to prevent administrative chaos.[7]

(a) *Majority rule*

Majority rule means the re-creation of a Northern Ireland Assembly and Executive operating a cabinet government system in which power is exercisable by the party or coalition of parties commanding a majority in the Assembly. A range of constitutional machinery also needs to be considered to ensure non-discrimination and to protect minority interests by permitting the Opposition to influence or check legislation and administrative action.

I *Legislative safeguards*

(i) Westminster's overriding sovereignty could be expressly reserved. To reassure the minority, parliament would retain supervisory power, and there would be no Speaker's rulings restricting debate or any convention that legislation on transferred matters required consent of the Northern Ireland Executive.

(ii) Constitutional amendments would be reserved for parliament, thereby removing controversial powers from any Assembly.

(iii) Only limited spheres of power would be transferred to an Assembly: e.g. agriculture, employment, commerce, housing, transport, water, planning, health, social security and education. Westminster would remain responsible for foreign policy, defence, economic policy and powers whose exercise in Northern Ireland would be potentially controversial: e.g. elections, policing and courts.

(iv) The STV PR electoral system, introduced in 1973, could be retained to ensure proportionate minority representation in any Assembly.

(v) An upper chamber - elected, either in part or in whole, directly or indirectly - might correct minority under-representation. But this would involve duplication of the functions of other institutions and unnecessary expense.

(vi) A Constitutional Council of the Assembly could, where discrimination is alleged, exercise powers of delay or reference back to the Assembly, the Secretary of State or parliament.

(vii) To ensure that particular measures enjoyed support from both communities, Assembly voting procedure might require approval by a specified number of MPs. If weighted voting were required for all measures, there would effectively be legislative power-sharing by way of the threat of veto, thereby contradicting the notion of majority rule. Weighted voting requirements, rather than encouraging compromise,

tempt blocking action and Catholic solidarity against traditional community enemies, thus risking deadlock, majority frustration and ultimate separation of the communities. Under no circumstances should there be 'communal' characterization of the mechanism, because communal representation deepens divisions.

(viii) Confidence votes, with weighted voting, when the Executive takes office and at intervals thereafter, have been suggested.

(ix) Powerful Assembly Select Committees could investigate and scrutinize departmental estimates, advise the Executive, and act as a committee stage for Assembly measures. Committee memberships might be allocated proportionately or be equally distributed between parties in government and Opposition. But Nationalists would not regard proportional Select Committee membership in conjunction with majority rule as justifying their participation in the Assembly.

(x) External safeguards, such as the recourse to the courts, are possible. Recourses could be initiated by the resolution of a specified number of MPs alleging discriminatory legislative or administrative action. Judicial recourse is cumbersome, expensive and can stultify government. Decisions by a politically responsible authority, such as parliament or the Secretary of State, are preferable. Recourse to these could come from the Assembly or on the Secretary of State's own initiative.

(xi) Public participation in sensitive decision-making is advantageous, and is probably essential under the self-determination guarantee. It would be wise to confer legitimacy (in Northern Ireland eyes) on any retransfer of power to a local Assembly or Executive by conducting a referendum. Requirements might be more stringent than those of the Scotland Act, 1978, necessitating approval by a two-thirds majority. By contrast, it would seem dangerous to put the initiative for a referendum into public hands in an unstable country, where frequent political campaigns would further inflame public opinion and provoke disorder.

II *Executive and institutional safeguards*

(i) Three United Kingdom Secretaries of State would retain significant supervisory roles: the Secretary of State for Northern Ireland would supervise matters reserved to parliament and transferred matters; the Secretary of State for Defence would continue to exercise functions; and the Foreign Secretary would scrutinize events in Northern Ireland and influence policy decisions.

(ii) To give local representatives a voice in security matters and a sense of identification with the forces of law and order, an Advisory

Council of leading Assembly members would advise the Northern Ireland Secretary.

(iii) The Secretary of State could be able to delay and reverse administrative action and legislation.

(iv) The Secretary of State would have default and reserve powers in the event of deadlocks in Assembly or Executive.

(v) The independent commissions which supervise the recruitment, training, promotion and transfer of Northern Ireland civil servants and local government employees would remain.

(vi) Safeguards for good administration and equal treatment, such as the Parliamentary Commissioner for Administration, the Northern Ireland Parliamentary Commissioner for Administration and the Commissioner for Complaints, would continue. Jurisdiction over the Royal Ulster Constabulary ought to be conferred upon one of these offices.

(vii) In Northern Ireland, where suspicion and mistrust of the good faith of those in authority are rife, the forces of law enforcement would have to accept fully publicized accountability, at whatever cost in time and aggravation. An independent Army/Police Complaints Commission, including some lay members, would be established. It would have its own full-time professional staff, who would be obtained on secondment from other police forces and units not stationed in Northern Ireland. The new Commission's professional staff would investigate complaints and then either send the papers to the DPP or, if they decided not to do so, report publicly on their findings. Complaints would need to be dealt with expeditiously, and a six months' time-limit for the whole process would be imposed on Commission and DPP. Present practice undermines public confidence. What is now necessary to obtain an inquiry into alleged RUC or army abuses is an acrimonious outcry, after which an *ad hoc* investigatory committee is appointed.

(viii) The Standing Advisory Commission on Human Rights, with advisory power on the effectiveness of the law in preventing discrimination on grounds of religious belief or political opinion, has in practice examined the human rights field, and made recommendations for reform. It could be replaced by a Commission for Human Rights also enjoying powers to investigate generally and in individual cases, to bring legal proceedings, to undertake research and educational activities, and to replace the Northern Ireland Community Relations Commission, which was abolished in 1975. Enforcement action would not be by criminal sanctions, which are counter-productive of good inter-community relations: conciliation is a better mode, and the

model of the Race Relations Act, 1976, already utilized for the Fair Employment Agency, might be suitably adapted.

(ix) A justiciable Bill of Rights, unamendable by the Assembly, would assist in the creation of confidence in impartial administration, particularly important in Northern Ireland where the Nationalist community insists on the maximum standard of civil liberties. The Standing Advisory Commission on Human Rights has summarized the arguments for a Bill of Rights.[8] Because of the difficulties in drafting a new Bill acceptable to all ideologies, it would be easiest to adopt the European Convention with its current limitations. Such a Bill of Rights would be regarded as a minimum standard, so that no lesser degree of protection, but often more than that specified, would be accorded to individuals. A department within the Northern Ireland Office would constantly re-evaluate legislative and executive measures in order to assess whether these were not only necessary but also reasonable in a democratic society, and whether less severe measures could be substituted. Furthermore, seven years having elapsed since the Gardiner Report, an independent committee might review the operation of the emergency in Northern Ireland.[9]

III *Judicial protections*

(i) The independent judiciary would remain under Westminster authority in respect both of legislation concerning the judicial system and of judicial appointments. Public confidence in the judicial system would be enhanced if the courts were no longer involved in enforcement of emergency legislation and the modified procedures in the 'Diplock Courts' had been abolished.[10]

(ii) Effective enforcement of the Bill of Rights requires machinery to ensure legal aid in appropriate cases.

(iii) The principles of judicial review of administrative action could be modified to extend judicial powers of intervention, and an administrative court could be established.

(iv) The independent Director of Public Prosecutions for Northern Ireland would continue to supervise criminal prosecutions.

(v) In order to provide safeguards for the individual, the law concerning police powers and criminal procedure requires general revision after the emergency ends. There is, however, immediate need to declare inadmissible any statement obtained by threats or force. Wide publicity could be given to the administrative duties of police interrogators so as to restore confidence in the RUC.

(vi) To diminish community fears, it is desirable to move as quickly as possible from army enforcement of order to acceptable civilian

policing, since the mere presence of soldiers causes alarm and raises hostile folk-memories.

(vii) Conversely, to assist in their task of restoring peace, certain powers could be accorded to the security forces: data collection, subject to safeguards, could be more widely permitted; indemnities could be given to policemen and soldiers acting in good faith; and legal power to interview any suspect could be regularized.

(b) *Power-sharing*

Since 1972, United Kingdom governments have recognized that:

A temporary minority reconciles itself to opposition by the knowledge that it has enjoyed a period in government before and will do so again. A large permanent minority – if it represents not just a party or a political view, but a whole community – is likely, if it sees no prospect of a genuine chance to share in the direction of affairs, to oppose not just the Government of the day, but the whole system of government itself.[11]

To ensure a wider consensus, United Kingdom governments have suggested 'participatory democracy', whereby the proportionality principle would be applied to executive government as well as to the legislature. This might produce concurrence by a majority of both communities in new arrangements and result in a stable coalition. The problem is that power-sharing is currently unacceptable to Unionists. In addition: 'For a system of the kind described above to work, there would need to be a willingness on the part of the majority to join in working the system, and a general spirit of give-and-take within the Executive.'[12] Successful power-sharing requires sustained willingness to work the system. Complex, protracted inter-community bargaining, uncertainty and speculation cannot be avoided.

I *A power-sharing Executive within an Assembly*

Proportional control of executive power could be brought about in various ways.

(i) There could be indirect election of the Executive by the Assembly with each party electing members in proportion to its own share of Assembly representation; or the Secretary of State could be empowered to appoint a broad-based Executive which, in his view, 'having regard to the support it commands in the Assembly and to the electorate on which that support is based, is likely to be widely accepted throughout the community'.[13] The latter mode allows flexibility, but involves the Secretary of State, and is dependent on an informal

coalition being negotiated before appointments are made.

(ii) Allocation of portfolios could be by the Secretary of State after inter-party bargaining, or by alternating choice by parties, or by offer of specified Departments to the parties ranked by size.

(iii) The Executive could submit itself to regular Assembly confidence votes. This would require successful inter-party bargaining, but raises problems of weighted voting and deadlock.

(iv) Executive decision-making would have to be by weighted voting if the minority were not to be potential prisoners of the majority. But this, too, risks deadlock.

(v) The Assembly Select Committees might have directional roles *vis-à-vis* Department chairmen. Each head would be chairman of his functional committee and subject to committee guidance when exercising departmental functions.

II *An Executive outside the Assembly*

A semi-independent Executive, not drawn from Assembly members, can operate provided it secures approval of annual estimates. Bargains with the Assembly would be required for implementation of any legislative programme. Such an Executive facilitates elite bargaining, which is more difficult to achieve in the limelight of the more numerous Assembly. The danger is that deals can be repudiated by the leaders' communities, as happened in the case of the Sunningdale agreement.

Such an Executive could either be appointed by the Secretary of State, or be directly elected by list-system PR, thereby permitting party choice of Ministers. Portfolio allocation would be by alternating party choice or by offer of specified Departments to the parties ranked by size.

(c) *Corporatist models*

Corporatist models have been suggested to depoliticize issues and shift community attention to common economic interests. One model consists in appointing a body of representatives of employers and unions to decide economic matters. Another is to increase the number of functional statutory bodies. The appointment of persons by the Secretary of State, after nomination by an interested professional or local representative body, in part satisfies the power-sharing principle. Already there are many such bodies to run commercial public undertakings (e.g. transport), to remove contentious responsibilities from the political sphere (e.g. housing allocation), or to ensure local involvement in administration (e.g. education or health). The objection is that such bodies are not subject to effective democratic control or proper

financial accountability – defects in the past dramatically exhibited by the Northern Ireland Housing Executive, which has written off massive deficits, mismanaged its affairs, and ignored the Advisory Housing Council. The nominated regional area boards, which since 1972 have controlled education, health and social services, have not satisfied the desire for democratic control. Furthermore, such boards or advisory bodies have no political legitimacy, and hence are politically ineffective. Thus the Secretary of State's Advisory Council, consisting mainly of non-political figures of goodwill representing various community interests, could not fill the political vacuum left by Stormont's disappearance. Finally, such boards cannot exercise real power because their budgets are determined by the United Kingdom government.

(B) ASSOCIATION WITH THE REPUBLIC

Self-determination and British decisions not to impede the realization of Irish unity, were it to come about by consent, have already been mentioned. The greatest change in British policy was the announcement in 1972 that it was 'necessary' to take into account 'the Irish dimension', the 'unfinished business' of the unification of Ireland.[14] It was also emphasized that how Northern Ireland was governed as part of the United Kingdom was not for Northern Ireland alone to determine, and that membership of the United Kingdom involved accepting Westminster sovereignty – and by implication Westminster-imposed arrangements.[15] How might these be applied?

1 Coercion

Coercion and imposed reunification by decision of the Westminster parliament is legal, according to orthodox views of sovereignty. In practice it is impossible to implement without much bloodshed, and the ultimate outcome is very doubtful. Coercion into Ireland is unwanted by actors other than groups like the IRA. Unionists insist their assent is required. Northern Ireland Nationalists fear pogroms in the East Belfast salient and in Catholic enclaves. And the Republic fears the spread of violence into its own heartland.

2 Anglo-Irish Cooperation, with Northern Ireland Remaining Part of the UK

Top-level cooperation between the United Kingdom and the Republic,

in as many spheres as possible, seems likely to be pursued. The extensive governmental policy studies agreed upon by Mrs Thatcher and Mr Haughey indicate this. Cooperation is supposed to expand in connection with power supplies, tourism, transport, communications, customs and excise, agricultural policy, marketing and industrial development, especially in western areas. EEC contexts, particularly financial aid for development regions, will be highlighted. It is hoped that such cooperation will emphasize to Ulstermen their common interests in regional aid being concentrated in the most needy community areas and in perpetuating the Common Agricultural Policy. They would realize that Northern Ireland would have a more effective say in EEC decision-making as part of the Republic.

Other forms of functional cooperation might be expanded: cross-Border security might be improved. If internal Irish politics and insistence on neutrality permit, there could in a longer-term context be common security and defence arrangements to reduce cross-Border threats.

The establishment of United Kingdom–Republic institutions could occur, such as a common law-enforcement area, with a common court exercising certain criminal jurisdiction. This would avoid the difficult extradition problems occasioned by the Republic's Constitution in respect of offences of a 'political character'. Mistrust of each other's judicial system has resulted in little invocation of the extended jurisdiction against terrorists. Effective institutions in this connection would secure some Unionist goodwill.

3 A Condominium

In 1972 the Social Democratic and Labour Party advocated an Anglo-Irish treaty establishing a condominium over Northern Ireland as a prelude to a united Ireland established by all-Ireland referendum. While a National Senate, drawn equally from the Northern Assembly and the Dublin parliament, would 'plan the integration of the whole island . . . and agree on an acceptable constitution for a New Ireland', Britain and the Republic would jointly administer Northern Ireland through two Commissioners, an Assembly and an Executive, reserving to themselves the areas of security, policing, defence, foreign affairs and finance.[16]

United Kingdom governments have always insisted that Northern Ireland is a matter inherently within the domestic jurisdiction and have resisted attempts to internationalize the problem. It is inconceivable that any United Kingdom government would, even in part, surrender

sovereignty to another state acting within the domestic jurisdiction, or subject internal United Kingdom action to Irish veto, or continue defence and financial responsibilities without sole power. Even if agreement on formal institutions of closer association between Northern Ireland and the Republic is reached, the United Kingdom is unlikely to limit its freedom of action by condominium-type arrangements. It would implement any arrangements by direct transfers of power to the 'New Ireland'.

4 Involvement of International Institutions

Similar United Kingdom objections exist to involvement of the United Nations. No United Kingdom government would wish to see United Nations Blue Berets in Northern Ireland, bearing in mind the political composition of the Security Council and the General Assembly, and the pressures on the Secretary-General, who would be in charge of peace-keeping or other operations. It would also be regarded as a dangerous precedent for nationalists in Scotland and Wales, where United Kingdom governments are determined never to permit secession.

It has also been suggested that negotiations between the United Kingdom and the Republic might be promoted within the framework of the EEC. But this would be seen as an undesirable precedent by EEC states with their own minority problems. In any case, it is not 'good offices' that are required as between the United Kingdom and Ireland: it is changes in Unionist opinion and in internal Irish arrangements and attitudes. Only in the economic context of EEC cooperation could the EEC prove helpful.

5 Changes in the Republic

If the Republic changed certain laws and practices, Ulster Protestants might begin to consider the advantages of closer association. Their minimum demands would be as follows.

The removal from the Republic's Constitution of Articles 2 and 3, or even amending them (for example, by making prior consent of the Northern Ireland electorate a pre-condition of the exercise of the jurisdiction of the Republic over the province), is regarded as essential, but seems impossible, since any change requires approval by referendum in the Republic. Family law reform is not subject to the same objection. Although an Act now authorizes limited sale of contraceptives, the absence of divorce law, the criminality of abortion, the prohibition

on non-Catholic parents adopting Catholic children, and the Catholic Church's *Ne Temere* decree, which requires children of mixed marriages to be brought up as Catholics (and is enforced by the Irish courts), are seen by Protestants as denying them the right to personal moral choices. Secular state schooling also requires expansion. Article 8.2 of the Republic's Constitution needs symbolic amendment to make English equal official language. The rules demanding civil servants to be proficient in Gaelic will need amendment. Authoritarian censorship legislation should be repealed. Broadcasting directives to Radio Telefis Eireann need reconsideration. Social welfare payments (pensions, widow's pensions, unemployment assistance and child benefits) compare unfavourably with those in Northern Ireland.

6 Formal Association with the Republic

(a) Confederation

Technically, confederation exists when two independent states by treaty make institutional arrangements under which common organs make recommendations subject to ratification by national organs, or when common executive agencies are established. Thus confederation between Northern Ireland and the Republic could exist only if Northern Ireland became an independent state. However, cooperative arrangements, entered into on Northern Ireland's behalf by the United Kingdom, could lead to similar effects. Likely to begin at the Anglo-Irish level and in EEC contexts, cooperation between Northern Ireland elected bodies and the Republic would develop as it did between 1940 and 1968. An intergovernmental Council and inter-Assembly-Dail Council, but without the ambiguous possibilities of Sunningdale arrangements, are medium-term possibilities. Such primitive all-Irish institutions would show whether Northern Ireland and the Republic could work together and consider their mutual interests. The long-term consequences could be decisions for continued cooperation in an Irish confederation, union or federation, or with Northern Ireland remaining part of the United Kingdom. Alternatively, cooperation might break down and Northern Ireland might seek independence.

(b) Federation

A federal system of government, with regional and central units each retaining some sovereignty, each coordinate and not subordinate to each other, and each enjoying certain exclusive competence, provides a framework wherein units and centre can compromise. For federation

there must be a constitutional guarantee ensuring relative permanence to centre and units.

Northern Ireland might enter a federation as an equal partner, but would find unacceptable the suggestion of the Provisional IRA that Ireland should consist of four regions (Ulster, Connaught, Munster and Leinster). Unionists would at best have a bare majority in historic Ulster, and would be a permanent minority in the federal assembly. If power-sharing to protect the minority is now a pre-condition of the restoration of democratic government in Northern Ireland, would not power-sharing at the federal level be demanded by Unionists in the context of a federation? Would STV PR voting be retained when governments of the Republic have expressed a desire that their own system should disappear? Should there be weighted voting, federal parliamentary committees, and enhanced constitutional protection of human rights? How would cultural and traditional issues of national identification such as language, education, flags, national holidays and celebratory occasions be dealt with?

Several assemblies and numerous public representatives would prove over-expensive for a small country. Rather than proliferating assemblies and members, the 'Northern' and 'Southern' representatives in the federal assembly might, sitting separately, constitute regional assemblies. An extremely rigid procedure for constitutional amendment would be necessary to prevent the addition of further regions and changes adverse to Northern Ireland interests. Other sensitive decisions relate to the allocation of powers, e.g. security, law and order, which would have to be transferred from the Westminster parliament. Northern Ireland would probably insist, too, that education, health services and control of her own civil service were regional. Fiscal arrangements and assurances on fair shares of revenue would involve complex negotiations. In short, it cannot be over-emphasized that the making of a potentially successful federal constitution would be a long-term exercise of massive complexity, requiring lengthy bargaining, and a spirit of compromise hitherto unknown in Ireland.

(c) *Union*

Union is the creation of a single sovereign state in which power is centralized, while powers held by any local units are held at the sufferance of the central authority, which can from time to time alter all governmental arrangements. In practice a unitary state may function federally, and permit devolution of power by way of extensive delegations of legislative and executive power to local bodies.

Union in the Irish context has meant the reintegration of Northern Ireland into the Republic under the 1937 Constitution, although modern Irish governments recognize that wholesale revision of the Constitution would be necessary. Functional federalism (with extensive devolution to Northern Ireland bodies) and central power-sharing (not now practised in the Republic) would make reunification less unpalatable to Unionists, but union is so remote that discussion is premature.

7 **Citizenship and Dual Nationality**

When states have been granted independence, Westminster has provided for citizenship of the new state for all inhabitants, at the same time denying citizenship of the United Kingdom and Colonies to persons who have no claim to citizenship other than birth, registration or naturalization in the new state. To avoid Northern Ireland fears that this would happen after 'reunification', it has been suggested that the provisions of the Ireland Act, and of the British Nationality Act as now re-enacted in the most recent United Kingdom citizenship legislation, should remain. In effect Irish citizens, once in the United Kingdom, enjoy the same rights as British subjects. Dual nationality is also permitted by United Kingdom law, so that all persons born in Northern Ireland or descended from a father born in Northern Ireland, as well as many citizens of the Republic, enjoy both United Kingdom and Colonies' citizenship and that of the Republic. An alternative suggestion is that, even after reunification, Northern Ireland residents should have the right to claim either Irish or British citizenship and to hold either a British or an Irish passport.

(C) **AN INDEPENDENT STATE**

1. **Agreed Independence**

Independence can be negotiated only if the United Kingdom is convinced that both Northern Ireland communities agree to this. Most Unionists desire the continuation of union in order to preclude a united Ireland, and to ensure financial provision for parity of social welfare standards. Only a few extremists on the Protestant side see independence as a desirable preliminary to 'a night of the long knives'. While the IRA shares this latter view, most Nationalists fear that despite any agreed initial constitution, they would become a permanently powerless minority in an independent Ulster.

Furthermore, any United Kingdom government would take into account the views of the United States government, of EEC member states, and those of the Republic, which would be opposed to an independent Northern Ireland, because of the risks to Nationalists in Northern Ireland and because 'reunification' might never then follow. If, despite Irish views, independence were granted, the Republic could veto EEC membership for the new state. The United Kingdom could not in these circumstances give sufficient financial aid to make Northern Ireland economically viable. Poverty in independent Northern Ireland would be widespread, and social dissatisfaction might disrupt the new state.

2 Unilateral Withdrawal or a UDI

A cynical British government, bent on cutting its losses, might decide to risk the consequences of complete withdrawal from the province, estimating that these were containable in Great Britain, that the possibility of an offshore Cuba was remote, and that it did not care if there were a 'Franco-type Spain' next door. Such reaction might be provoked by renewal of high levels of violence in Northern Ireland or extensive violent campaigns in Great Britain. With such a scenario, the United Kingdom might behave as it did in Palestine, or, by threatening coercion of Northern Ireland into a United Ireland, it might provoke a unilateral declaration of independence by 'Loyalist' extremists. Some British politicians, who can look with hindsight at imperial withdrawal from outposts of empire, urge that 'the Irish' be given 'notice', and that there should be ultimate unilateral withdrawal. Such a risk was successfully taken for far-flung lands. But Northern Ireland is twelve miles distant at its nearest point. No responsible British government could abdicate moral responsibility in this way or, indeed provide such inducements for nationalist terrorism in Scotland and Wales.

3 Boundary Changes and Population Exchanges

While Northern Ireland remains part of the United Kingdom, boundary redrawing seems unlikely. Little advantage can be gained: population scatter is such that even were local option permitted (each District Council area voting whether to remain part of the United Kingdom), the Catholic proportion of the population would drop only from 34.7 per cent to 28.1 per cent. Furthermore, boundary changes would be unacceptable to Unionists who would see adjustments as a

'first instalment', while any Irish government would have to insist that adjustments were 'without prejudice' to Irish jurisdictional claims. This would exacerbate Unionist fears. Generous state land-purchase schemes, leading to population exchange, could not solve the problem, both because of ideological commitments and because Irishmen are deeply attached to their homes. In today's society, such compulsion is unthinkable.[17]

Agreement on boundaries for an independent Northern Ireland would also be difficult. Any Irish government would face political problems in agreeing, because some of its jurisdiction would have to be renounced, an issue which has not arisen since 1925.[18] Only if there were genuine inter-community agreement on a constitution with a battery of safeguards for the Nationalist minority, would Ireland then reluctantly accept boundary changes.

In other kinds of independence (following on a UDI or unilateral United Kingdom withdrawal) boundaries would be forcibly redrawn, leaving a smaller unstable Northern Ireland, probably consisting of Antrim, parts of counties Londonderry, Tyrone and Armagh, and North Down.

Problems of mixed population would continue. Protestants in the areas lost to Northern Ireland would leave for the new state. Pressure would then build up to expel the Catholics remaining in Northern Ireland in order to make room for 'refugees'. Security problems would also persist: unless 'purified', Northern Ireland would still provide a Nationalist loch in which IRA fish could swim.

Notes

- [1] Section 1 and Schedule 1. The Ireland Act, 1949, section 1 (2), had provided that Northern Ireland or any part thereof should not cease to be part of the United Kingdom or of the dominions without the consent of the parliament of Northern Ireland, but this section was repealed by section 41 and Schedule 6 of the 1973 Act.
- [2] Northern Ireland Office, *The Future of Northern Ireland. A Paper for Discussion* (HMSO, London, 1972). See especially paras. 42 (b), 77, and 79 (a).
- [3] The diagnosis and proposed remedies were set out in *Cmd. 546. Report of the Review Body on Local Government in Northern Ireland* (HMSO, Belfast, 1970). For the changes, see C. Palley, 'The Evolution, Disintegration and Possible Reconstruction of the Northern Ireland Constitution', 1 (1972), *Anglo-American Law Review*, 368 at 427-33.
- [4] For further details, see C. Palley, 'Constitutional Solutions to the Irish Problem' in *Current Legal Problems 1980* (London, 1980), pp. 135-7.
- [5] *Cmd. 7763. The Government of Northern Ireland. A Working Paper for a Conference* (HMSO, London, 1979), para. 29 and Models D, E, and F.

- [6] *Cmnd. 7590, The Government of Northern Ireland: Proposals for Further Discussion* (HMSO, London, 1980), para. 41.
- [7] *ibid.*, paras. 56-62.
- [8] *Cmnd. 7009. The Protection of Human Rights by Law in Northern Ireland* (HMSO, London, 1977).
- [9] *Cmnd. 5847. Report of a Committee to consider, in the context of civil liberties and human rights, measures to deal with terrorism in Northern Ireland* (HMSO, London, 1975). Lord Shackleton subsequently reported on the use of exclusion, and powers of arrest and detention, under the Prevention of Terrorism Acts. See *Cmnd. 7324. Review of the Operation of the Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1976* (HMSO, London, 1978).
- [10] Jury trial was in great measure suspended following a Commission headed by Lord Diplock. See *Cmnd. 5185. Report of the Commission to consider legal procedures to deal with terrorist activities in Northern Ireland* (HMSO, London, 1972). Implemented by the Northern Ireland (Emergency Provisions) Act 1973, c. 53, emergency powers were amended in 1975 (following the Gardiner Report) and are currently to be found in the Northern Ireland (Emergency Provisions) Act 1978, c. 5.
- [11] Northern Ireland Office, *Government of Northern Ireland: A Society Divided* (HMSO, London, 1975), para. 8.
- [12] *Cmnd. 7950*, para. 52 (1980).
- [13] Section 2 (1) (6), Northern Ireland Constitution Act 1973.
- [14] *The Future of Northern Ireland*, para. 76.
- [15] *ibid.*, para. 75.
- [16] *ibid.*, pp. 74-82.
- [17] Cromwell's Act of Settlement tried in 1652 to solve the Irish problem by land and population exchange. In exchange for the proportion of their lands that remained, it required those transplanted to accept lands of equal value 'in such places in Ireland, as the Parliament for the effectual settlement of the peace of that nation, shall think fit'.
- [18] For the Irish Free State's acceptance of the boundary and the great financial concessions by the United Kingdom, see Thomas Jones, *Whitehall Diary*, vol. 3, ed. K. Middlemas (London, 1971), pp. 236-46. *Cmnd. 2757. Heads of the ultimate Financial Settlement between the British Government and the Government of the Irish Free State* (HMSO, London, 1926) shows the United Kingdom waived article 5 of the 1921 Treaty (thereby releasing the Irish Free State from its share of the Public Debt), compromised its claims for property damage arising out of the civil war, and dropped claims for the value of property taken over by the Provisional Government. It indicates that United Kingdom governments will find or waive massive financial sums to settle the Irish problem.

Comment on Chapter 9

Keith Kyle

Dr Claire Palley's display of the constitutional options open to the British government in Northern Ireland, and of the melancholy prospects of the derailment of all of them, might seem to justify the long-run wish, which at the outset she attributes to United Kingdom governments, of wishing 'to disentangle Great Britain from Ireland'. However, by the end of the paper, when she comes to dispose, rather summarily, of the two scenarios which she sees as possibly leading to this result, the fulfilment of this wish has become a remote and contingent possibility. The two scenarios in question suppose either a unilateral British decision to pull out, as in India or Palestine, or a unilateral declaration of independence by Northern Ireland in response to a British attempt to promote a united Ireland. 'Some British politicians, who can look with hindsight at imperial withdrawal from outposts of empire,' she says, 'urge that "the Irish" be given "notice", and that there should be ultimate unilateral withdrawal... but Northern Ireland is twelve miles distant at its nearest point. No responsible British government could so conduct itself as to abdicate moral responsibility.'

Still, Ireland is separated by sea from Britain (Britain being from now onwards employed to refer to what is quaintly referred to in Ireland as 'the mainland'), and there is a general, though rather shallow, feeling that the whole island ought to be a separate political unit. To an Englishman, there seems much more in common between the different types of Irishman than there is between any of them and the English. And if they were put to it to say which type of Irishman was more alien, it would seem to many Englishmen that the answer was the Northern Irish Unionist/Loyalist/Protestant. The Northern Protestant's suspicions are therefore broadly correct that an Englishman's concept of sovereignty does not instinctively encompass Northern Ireland. (I say Englishman advisedly, because I am not so sure about Scotland, nor am I confident what impression would have been created in the world if a divisive politico-religious issue had torn apart the centre of Glasgow.) There is no intense feeling that its possession or loss would affect our concept of ourselves. The concept underlying Mr James Molyneaux's remark, in answer to 'Brits Out'

slogans directed against the security forces in Northern Ireland, that 'We are the Brits' did not receive any great answering echo.

The explanation for this situation is bound up with the role of religion in Northern Irish politics, which, it is safe to say, is wholly repugnant to contemporary British manners. It should not be forgotten that many British people who have been obliged by the crisis of the last twelve years to examine Northern Ireland on the spot for the first time in detail started out, if biased at all, with an anti-Catholic bias. At least until the time of Pope John the natural regression of polemical adjectives was 'reactionary, clerical, fascist . . .'. It is due partly to the able political leadership of the Roman Catholic minority in the North and partly to a recognition of the actual facts of the Northern situation that much of the subsequent comment in the media so astounded and outraged Loyalist sentiment. But the real culture-shock for newcomers to the Belfast and Derry scenes was to encounter the extent and virulence of group prejudice, on both sides, with the groups being identified by religious label and Protestants appearing as the aggressor. Contrary to what initial anti-Catholic biases there almost certainly were, that culture-shock effectively fixed a gulf between Britain and 'our side', the majority community in Northern Ireland. That gulf is reinforced, though it is by no means wholly accounted for, by the activities of the Rev. Ian Paisley.

It is not widely understood to what extent of flexibility - at the expense, some would think, of principle - the British authorities have been prepared to go to promote an accommodation, any accommodation. One well-known instance, for which Mr Whitelaw has publicly apologized, was the virtual (though not nominal) granting of political status to the men confined in Long Kesh. This was strongly criticized by the Irish government, who have never acknowledged the validity of the 'political status' claim. Indeed, in the 1970s, part of the tension between Dublin and London lay in Dublin's fear that the British government was going to buy peace in the North at the expense of democracy in Ireland.[1] Another example has been the repeated efforts, so polemically characterized by Mr Enoch Powell, to mould and fashion the recalcitrant form of Ian Paisley into the shape of a re-born and constructive statesman. It has been that unprejudiced search for a way out that has led to periodical rumours and scares which have added together various incommensurable pieces of evidence to suggest that Britain was planning to move out altogether. To be fair, there has been rather less of that under this administration, which may be partly due to the suspicion that the head of it may be a genuine Unionist - though it should never be forgotten that Ulster Unionism in its modern

shape was born (in 1905) amidst a sense of Tory betrayal.[2]

The following features seem to me to determine the political situation at present:

(1) A sense of intellectual exhaustion following the very great concentration of effort and mobilization of goodwill that lay behind the Sunningdale initiatives. One may have criticisms of detail, but the power-sharing formula then proposed was and is still the best solution which the best brains can produce, and that some variation of consociational rule still offers the most plausible way out.[3] As far as the British government and parliament are concerned, it remains the preferred method.

(2) The British troops essentially remain to defend the Catholic population, out of whose ranks come the people who denigrate and murder them. They are prevented from leaving by the passive non-cooperation of the Protestant population, which in the majority refuses to implement the form of government considered suitable for them by the overwhelming majority of the parliament of the country to which they say they wish to belong. Some Catholics abuse the British by deeds; some Protestants abuse the British by words, which gain validity from the widespread belief that they could be translated, should occasion arise, into violent deeds.

(3) The moderate Roman Catholic (*de facto*, not *de jure*) party, the SDLP, slides uneasily between, on the one hand, measures to bring nearer the reunification of Ireland and, on the other, methods to advance a consociational system of power-sharing in Northern Ireland. In so far as it is offered real prospects of getting the power-sharing, it is willing to play down united Ireland. It resumes lusty advocacy of united Ireland when its efforts over power-sharing are proving so futile that it is in danger of losing all political support.

(4) The demand by the SDLP leader, Mr John Hume, is that Protestant/Loyalist leaders should be put into the same kind of dilemma that he has been in all along, and thus under a comparable compulsion to reach agreement. The method he suggests is the 'withdrawal of the unilateral guarantee', by which is meant cancellation of the British pledge that the status of Northern Ireland, or any part of it, shall not be altered unless with the consent of the majority of the population. It is easy enough to see what Mr Hume is seeking to achieve - namely, to find a lever to dislodge the Unionists from their posture of sitting pretty - but difficult to see how this lever would produce that result. It is, however, possible to imagine how a variation of the proposal might be incorporated into a plan for political action.

(5) This leads to the heart of the matter. There is absolutely no

guarantee that any political solution that could be contrived is going to stop the IRA violence. It did not stop with the establishment in 1974 of a power-sharing government. That is not a conclusive argument because the power-sharing government was not allowed to stay in being long enough for it to be seen whether a sustained demonstration of goodwill by the majority community would result in the withering away of the minority community's tolerance for the IRA to the point at which its operations were no longer feasible. Nevertheless there remains a large area of doubt as to the worthwhileness of any political initiative with a high risk element. On the other hand, there remains the prospect of the *status quo* miserably deteriorating, not least in the eyes of foreigners. A political action policy means taking up the calculated risk of arousing and facing down the wrath of the Northern Ireland Protestant.

(6) Mrs Thatcher may have already decided to do this. Certainly the emphasis on the developing bilateral relationship of the two sovereign governments of Britain and Ireland might suggest it. One of the most insufferable characteristics of the relationship between Belfast and London has all along been the impression given in some Belfast circles that Dublin must be treated by the whole of Britain as a mortal enemy, and relations with the Republic of Ireland as the equivalent of relations with the Soviet Union. It should be made abundantly clear on all appropriate occasions that there is no place in the United Kingdom for that type of opinion; that so long as Northern Ireland chooses of its own will to remain in the union its foreign policy in regard to Ireland consists in treating the Republic as an exceptionally friendly neighbour with whom there are, and will in all likelihood continue to be, the closest and most intimate collaboration as between like-minded nations who are partners in these Isles and in the EEC. When the two Prime Ministers agree to study the 'totality' of these relationships, the word means precisely what it says, 'every aspect' including the handling by Britain of the problem of Northern Ireland. Britain is absolutely entitled to take that view, and the two per cent of the electorate who live in the North of Ireland are in no way entitled to veto such a policy. Dr Palley severely criticizes Mr Haughey and Mrs Thatcher for not making public the extent of their mutual commitments in Dublin in late 1980. 'Such diplomacy', she says, 'is dishonest and counter-productive. It occasions uncertainty which gives rise to belief and conduct based on extreme speculations... Indeed Unionists would prefer that the truth be told them...' I do not in fact know how far Mrs Thatcher's assurances to Mr Haughey about Britain's ultimate aims went, nor am I certain about Mrs Thatcher's own view of the future of

Northern Ireland or of the degree of priority and risk she is prepared to take to alter the political *status quo*. But I would agree that, if the decision has been taken for a general political initiative (for which the Atkins efforts were merely a clearing of the undergrowth), Mrs Thatcher should not remain coy for long.

(7) The one decision that has already in effect been announced is a negative one - the decision not to break down the apparatus of regional government in Belfast and thereby pretend that Northern Ireland is the same as Yorkshire. There are no takers for Mr Enoch Powell's solution. The Thatcher administration has emphasized the esoteric character of this 'province', whose political life in no way corresponds with our own.

(8) If it should be decided that on balance a high-risk political initiative was worthwhile as the alternative to rattling along the same old way, it will need to contain a combination of the following features:

(i) Use of every opportunity to emphasize the closeness of relations between Britain and Ireland and the intermixture of their interests.

(ii) The reaffirmation by Britain of the statement made by the government at Sunningdale about British support for any future wish of the majority of the Northern Irish people to become part of a united Ireland. This should be reinforced by adding that Britain would regard it as being in her own interest if the two parts of Ireland were to come together.

(iii) The 'unilateral guarantee' should not be formally withdrawn. But it should be pointed out at the same time that no one parliament can bind another, and that in the last analysis the Northern Ireland majority would depend for their status on the will of the British people. And the British people, it should be said, would increasingly be unable to understand the absence of any awareness of reciprocal duty owed by the majority community in Northern Ireland to the union of which they were such assertive members. Wanting to be British should include a willingness to participate in the form of government - namely, power-sharing of some kind - that seems suitable to the British parliament for a region with Northern Ireland's characteristics. This would not be delivered as an ultimatum with a time-limit. It would be delivered as a statement of opinion, endorsed, one would hope, by both sides of the House of Commons, about the probable consequences of future actions.

(iv) At suitable points in this process, either or both of two devices could be employed to sharpen the issues involved. The first is use of the referendum in Northern Ireland. This is a device, permitted by present statute, that might be used for putting the outlines of a consociational

('power-sharing') form of devolution to the people over the heads of still recalcitrant party leaders, or for securing popular ratification of an agreement provisionally (and perhaps sullenly) reached. The second device is agreement between the governments of Britain and Ireland, in the context of examination of the totality of their relations, that at the next Border poll in Northern Ireland the voter might be confronted with at least the outline of a definite scheme for a united Ireland. This would call for work to be done on the basis of a completely new Irish constitution, which would clearly not be dominated by Catholic social ideas and family law, and would incorporate a major element of devolution in regard to the North. Ideally the elected representatives of the people in both sections of Ireland should be engaged in drawing up such a document. As far as the majority community of the North is concerned, that is too much to be hoped for. But it should be made plain that the operation had the whole-hearted sponsorship of the British government, so that the people of Northern Ireland should be confronted with a real choice (as opposed to the option of an implied acceptance of the constitution of the present Republic).

(9) The most careful orchestration of the political initiative would clearly be required. The orchestration should be international, with the United States and the EEC especially; bilateral, with the government of the Irish Republic; bipartisan (in the House of Commons); and on the spot in Northern Ireland in the use and timing of various moves. It would not for example be expedient to proceed with a Border poll, however elaborately prepared, if by then there existed power-sharing ministers or committee chairmen, since this would involve them in taking opposite sides in the campaign. Power-sharing would have to be presented as the best means, for the time at least, of laying aside the question of reunification.

(10) It could be that none of these measures would work or would be thought worthwhile. There are then two options: to drift on and perhaps eventually to yield with a sigh to the integrationists, thus buying for keeps all Northern Ireland's problems; or *repartition*.

The case for repartition is as follows:

(i) It is a classic solution of an international boundary dispute between two sovereign states when, as at present, the state in possession does not feel that its national *kudos* is especially bound up with the need to retain the present boundaries.

(ii) Creggan, the Bogside, Strabane, Newry and Crossmaglen are places which evidently would be happier in the Republic of Ireland and will remain discontented in the United Kingdom.

(iii) To that extent the weight of international pressure on Britain would be lessened. There would be no danger of an IRA prisoner being elected to the British parliament.

(iv) In the face of a complete breakdown in relations between London and Dublin, the move could be a unilateral one. British sovereignty could, by a given date, be withdrawn and the Irish Republic would presumably feel obliged to assume the responsibility.

(v) While Unionists living in the territories concerned would object very loudly, it could be said that it was their own fault, since Britain had been driven to this pitch by the Unionists' persistent failure to contribute to power-sharing.

The case against repartition runs on these lines:

(i) There is no constituency in Ireland for such a solution and no party which would be satisfied with it. The idea has been raised on various occasions and found no backer.

(ii) There is no claim by the Irish Republic for repartition because the case is for the unification of the whole island. Therefore support for violence would not diminish; and the dispute between the two countries would not be laid to rest.

(iii) There is no neat territorial division between Protestants and Catholics. Any repartition would involve the transfer of substantial numbers of Unionists to the Republic, and would appear to sanction the final rejection of the aspirations of the large proportion of Northern Roman Catholics, who would remain within the truncated North, mainly in Belfast. This might provoke renewed violence and panic.

(iv) The problem would remain of how the smaller Northern Ireland was to be governed. The case for integration would be considerably strengthened. That might still seem a poor option for the United Kingdom.

Notes

- [1] K. Kyle, 'Why Dublin Fears a Coup if the British Leave Ulster', *The Times*, 3 September 1975.
- [2] P. Buckland, ed., *Irish Unionism, 1885-1922* (HMSO, Belfast, 1972), pp. 201-5. The incident that gave rise to the establishment of the Ulster Unionist Council in March 1905 was a plan to devolve local government powers to a central Irish Council. It was unofficial, but had received some assistance from Sir Antony MacDonnell, the Under-Secretary at Dublin Castle, who was a Roman Catholic. This caused a major outcry.

- [3] Consociationalism is a type of democracy that is sometimes prescribed in severely divided or plural societies. The power-sharing proposals of 1973-4 in Northern Ireland would be an example. See Arend Lijphart, *Democracy in Plural Societies* (Yale University Press, 1977).

10 Summary of the Discussion

David Watt

The first and fundamental issue which the conference considered was why the influence of the past is so particularly strong in Ireland. The implicit assumption of the question was immediately challenged by the counter-claim that the British were obsessed with their imperial past, and that many other countries had a strong shared sense of history. But in the end it seemed to be agreed that the amount of interest in and knowledge of the past in Ireland was greater, if one took all levels of society, than in Britain, and had a peculiar intensity of emotion both among Protestants and among Catholics.

Various explanations were offered for this. The romantic nationalism of the nineteenth century was clearly a strong influence. Moreover, this was a nationalism that was the more powerful for being half suppressed. The miseries of the present were soothed, and even justified, by the glories of the past. It was suggested that, whereas the nationalisms that burgeoned on the European continent during the nineteenth century were centred upon identity of language, in Ireland language would not serve this purpose - hence the concentration on religious differences. Catholicism itself was seen as a factor which increased historical awareness in the South. An historical dialogue was involved here, and indeed the Catholic view of history itself - summarized as 'We had it all once, we should have it all again' - had historical resonance. A final element was thought to be what was called 'the vengeance factor' - a sense of grievance and disinheritance, stronger perhaps among Irish Americans than in the Republic of Ireland itself, but still turning non-Protestant minds on both sides of the border back into history.

Turning to the past itself, the conference concentrated mainly on post-1914 history. The first set of issues was connected with the fact, surprising in the light of subsequent history and present-day mythology, that partition was so easily accepted in the South in 1921. One explanation which found a good deal of support was the simple incomprehensibility of the notion of partition at that time. Before the break-up of the Austro-Hungarian Empire, partition was a novel concept. The Irishman of fifty years ago, while accustomed to thinking of the Protestant North as being in an important sense separate, could not