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MR CHESTERTON

cc Mr. Spence ✓
Mr. CowlingROLLING DEVOLUTION

I attach a paper on means of staging devolution. I have kept it positive, as requested, but I hope you will not mind my using a covering note to explain why I feel that this idea ought to be consigned to the waste bin.

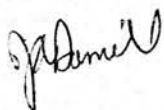
Whatever criteria we were to adopt for deciding upon the type of staging process (see paragraphs 10 to 16 of the paper) there would be serious administrative complications. For a period at least some departments and individual civil servants would find themselves working for two masters. The transitional period between having an Assembly with a consultative role only and full devolution would be confused and wasteful. The atmosphere would hardly be conducive to sound decision-making. Also there would be considerable scope for conflict between NIO Ministers and those elected to the new Assembly. None of these objections would be conclusive if there were sound prospects of this sort of approach bearing fruit. However, I really do not think that this is likely.

If it is decided to proceed with devolution, despite the failure to secure agreement between the parties, then a system of government will either be imposed by HMG or it will be agreed by members of a consultative Assembly. Either way, once any vestige of power is devolved, there has to be a viable means of exercising it, acceptable to the major parties. I do not see that they are going to find it easier to agree on (for the sake of argument) sharing power in relation to water and sewerage than in relation to the whole gamut of transferred services. Also, would running the water and sewerage services prepare the Northern Ireland parties for the more tricky task of taking decisions on the economy, education, housing etc? - I doubt it. The way in which the minority community is to be involved in government is the decisive issue, far more than the substantive matters at stake. Rolling devolution is unlikely to help resolve that central question. Indeed the uncertainty that would surround a gradual transfer of powers might in itself be a de-stabilising factor.

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E.R.

There are of course lessons to be learnt from the experience in 1974. The power sharing Executive fell, not because of the domestic functions that were transferred, but because of attempts to institutionalise the Irish dimension and because of factors beyond the administration's control, ie. the UWC strike. Rolling devolution would not have helped in that case, and it is difficult to envisage it increasing the chances of agreement in present circumstances.



J A DANIELL

28/7

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DEVOLUTION BY STAGES

Introduction

1. The present policy is to seek an acceptable means of devolving power to locally elected representatives in Northern Ireland. Consultations are taking place with the main political parties and other interest groups within the community on the Government's Discussion Document. We have to make provision for the possibility that it will not prove possible to secure the agreement or acquiescence of all parts of the community to any particular model; this might become apparent after weeks of protracted negotiations - or, we could suddenly be faced with a breakdown of the consultation process. In either case, we need to be in a position to activate an alternative plan. This might involve a change of tack, say in the direction of modifying direct rule, or a reaffirmation of the Government's determination to transfer powers to locally elected representatives in Northern Ireland. The purpose of this paper however is to consider a possible way of continuing with the devolution policy.

2. During and after the Conference, there was much speculation about whether the Government had a fall-back plan; a form of devolution which it would simply impose if the parties failed to agree. This was strenuously denied on a number of occasions. It is arguably equally inappropriate now as then to consider imposing a particular model on Northern Ireland without securing agreement. One side of the community or both would probably regard it as unacceptable and engage in a boycott of elections or disruptive tactics. With a significant number of people alienated from the system of government, it could be rendered unworkable either by tactics within the Assembly or on the streets (as with the UWC strike). Another possibility would be to consider a gradualist approach; ie having elections to an Assembly and gradually conferring upon the the local representatives real responsibilities, as they proved able to work together, starting off with the least controversial issues. The remainder of the paper looks at ways in which this might be done.

The criteria for judging the means of bringing about "rolling devolution"

3. The circumstances, in which it is likely that rolling devolution would have to be considered, are likely to be such as to engender a degree of hostility between the Northern Ireland parties and in all probability between them and HMG. Furthermore there would be

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considerable pressure in GB for a change of course, whether in the direction of integration, local government, the Irish Dimension or simply an acceptance that Direct Rule is the answer. A system of rolling devolution would therefore have to be such as to draw diverse groups together and be credible as a working proposition. The first of these points could be met in part by ensuring that, in the initial stages at least, there were no divisive elements in both the functions of the elected body and, more problematically, in its machinery (ie the way in which it discharged its responsibilities whether through an Executive, committees, councils etc.). A more positive inducement to work together is required and this may be found in the concept of gradualism itself; if by making the system work local politicians know that they will gain further responsibilities, that in itself is an incentive to compromise and make concessions to opponents. As for credibility, the most important point is to have a well thought out plan that can be clearly presented, should the need arise.

4. There are other points to take into account. In particular, there are the problems of administrative viability, co-ordination, accountability and financial control. A scheme for rolling devolution by its very nature means that, until the process is complete, responsibility for "transferred matters" will be split between Westminster and a local Assembly; and the dividing line between the two will shift in stages. There will have to be machinery for deciding upon the allocation of resources between "Westminster" services and locally controlled services; also for co-ordination where action on matters that are under the direct control of the Secretary of State has implications for areas which are the responsibility of the local body and vice versa. A comparable problem has arisen in the past at the interface between the security forces and civil departments, where on occasions there have been difficulties, even though all concerned have shared the same political masters. We must also bear in mind the position of the Northern Ireland Civil Service. It will be important to avoid a situation where individuals find themselves working to two political masters; indeed it would be awkward if any Northern Ireland department were to be subject to political direction from two sources. Any scheme for rolling devolution, if it is to be viable, must involve the least possible amount of re-organisation within the Northern Ireland Civil Service.

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The framework

5. Given the agreement which existed at the Conference on a number of important points, there are certain features which can with confidence be built into any system of rolling devolution. Thus, there would be an Assembly elected by STV; it might start off with no powers but the ultimate stage in the devolution process would be for it to have the power to legislate on transferred matters as in 1974, with its members, either individually or in committee, having executive responsibility for the Northern Ireland departments. The real question revolves around the nature of the stages by which we would progress from having an Assembly with a consultative function only to one which had full legislative and executive powers as in 1974.

Legislation

6. There are two basic ways in which the necessary legislation can be framed, and a number of variants in between. The first approach would be to produce a detailed and specific Bill, providing for the Assembly, stating what powers it would exercise when the devolution process was complete and detailing the intermediary stages to be passed through on the way; each stage could be activated by Order in Council. Such a Bill would lay down the way in which the Assembly, its Executive and its Committee were to be organised and define the role of each at the various stages. This would have the advantages of our being able in advance to devise machinery to take account of some of the problems described in paragraph 4 above and of enabling each stage to be activated with a minimum of further preparation. It has the disadvantage of inflexibility. The other approach is for the primary legislation simply to provide for the election of the Assembly and from within it an Assembly leader and committee chairmen. The actual transfer of power and machinery for exercising that power could be matters for negotiation once the Assembly had been elected and could be provided for by statutory instrument, subject to affirmative resolution. This would provide sufficient flexibility to enable us to proceed at the rate and in the manner most likely to secure agreement.

The first stage

7. The Assembly, once elected by PR, would have a number of immediate preoccupations. First, there would be a chairman or speaker to elect and standing orders to be formulated; this in itself would give an

prepared to co-operate in making the system work. Given the advisory function of the Assembly, there would be a need to elect committees to shadow the work of the NI departments, probably with each member of the Assembly having one committee post. Each committee would be representative of the Assembly as a whole. The means of electing committee chairmen would be crucial. If it were left to each committee to elect its own chairman, the likelihood is that each chairman would represent the majority community; it would be preferable for the Assembly as a whole to elect a panel of committee chairmen by PR(STV), thus ensuring some minority representation. This would be of considerable significance if at some subsequent stage it were decided to give Committee chairmen, as a group, quasi Cabinet functions. As committee chairmanships are likely to constitute an area of some controversy between the parties, it might be better for the committee structure to be clearly spelt out in legislation.

8. In addition to organising its business procedures and advising the Secretary of State on the exercise of his responsibilities within Northern Ireland, the Assembly might concern itself with coming to an agreement on the form that devolved government would take. There is a danger of this leading to a repetition of the saga of the Convention Report; but this might be avoided if the Secretary of State initiated discussions with party leaders drawn from the Assembly, enabling them to report back on the progress of discussions. It is arguable that there would be little point in proceeding with the staged transfer of real responsibilities unless there were a measure of agreement within the Assembly on the means by which that power should be exercised. If members of the Assembly proved able to work together within the committee system, organised their proceedings satisfactorily and were able to agree on a framework for devolution, then the way would clearly be open for further progress. If not, it will be for consideration whether to carry on regardless, hoping by dint of HMG's single mindedness and force of public opinion to bring the parties into line, to remain at stage 1 for a specified period, or to abandon the project and proceed with another option.

9. We have identified three ways of proceeding with further stages in the rolling devolution process:-

- (i) a gradual increase in the range of subjects over which the devolved Assembly has full legislative and executive powers;

- (ii) give the Assembly responsibility for all transferred matters from the outset, but gradually widen the range of powers which it has over those matters;
- (iii) provide for NIO Ministers and Parliament at Westminster to have powers in parallel with the Assembly.

Devolution staged by subject matter

10. The problem here would be to identify the least controversial areas of government which could be devolved in the initial stages. In Northern Ireland decisions which tend to cause disagreement between the communities are those which concern individuals, such as housing and those which involve the allocation of resources between different parts of the Province. The difficulty is that one way or another, that covers the work of all the Northern Ireland departments.

11. One possibility would be to identify those functions which are primarily concerned with decisions that affect the community as a whole, the management of large capital programmes and parity services. Road building, water, sewerage, social security, public works, environmental health, and energy are possibilities. The Assembly and the relevant committees could be given responsibility for legislation upon and running these services at an early stage. If this worked, then the areas of responsibility could gradually be widened. Among the last subjects to be devolved might be housing, location of industry, responsibility for overseeing local government, etc. Under this scheme, departmental boundaries would not have a bearing on the stages at which various subjects were devolved; thus roads would be one of the first subjects to be given to the Assembly and housing one of the last. This is to be expected given that most departments have controversial and non-controversial items as part of their responsibilities. However, there would be problems of co-ordination and senior management could be placed in a most awkward position, having two political masters. This might be overcome through adroit use of the committee system. Each departmental committee of the Assembly would be concerned with the whole range of its department's activities, either in an executive capacity or in the advisory role. The committee or the chairman would therefore be in a position, in conjunction with the NIO Minister concerned to exercise the necessary co-ordination function. Also, the committee chairmen could form a panel, which in conjunction with NIO Ministers would co-ordinate inter-departmental activity and fulfil a sort of Cabinet role.

12. In administrative terms, it would be tidier if each stage in the devolution process were to consist of a transfer of responsibility for whole departments from Westminster to an Assembly. DHSS might be one of the first to be transferred and DOE one of the last. However, such a process would not, except in the broadest terms, meet the requirement of ensuring that non-controversial topics were the first to be devolved and contentious matters the last.

Devolution staged according to powers

13. An alternative way forward is a staged increase in the powers available to the Assembly in relation to a fixed range of subjects. This could be done by isolating the powers available to a legislature and executive and devolving them in turn. The following are examples of identifiable categories of responsibility:

- (i) making subordinate legislation;
- (ii) taking executive decisions and allocating resources within individual departments;
- (iii) taking executive decisions which require collective approval because of their inter-departmental implications;
- (iv) allocating resources between departments;
- (v) passing primary legislation.

There would be dangers in staging devolution by allocating the five responsibilities above to a Northern Ireland Assembly separately and over a period of time. It would appear paternalistic with Westminster leaving relatively unimportant tit bits for the local politicians with a promise of more later if they behave themselves. The scope for inconsistent and contradictory policies is considerable; it would be highly embarrassing if the Assembly/^{refused} to make subordinate legislation that followed on naturally from primary legislation passed by Westminster. For government to be efficient the five elements have to be planned and co-ordinated in a cohesive way by one power structure.

Parallel powers for UK and Northern Ireland institutions

14. It is possible that the objections to devolution staged according to powers could be overcome if rolling devolution were looked upon as a process of change in the relationship between local institutions of government and Westminster rather than as simply shifting chunks of work between the two. Thus, the Assembly would have real responsibility at an early stage for all transferred matters and in all five areas described in paragraph 13 above. The staging would be a matter of gradually increasing the local Assembly's independence of action in all areas, while reducing the role of Westminster and NIO Ministers.

15. There would be an Assembly and committee system with full legislative and executive powers. In parallel however, the Westminster Parliament would retain the power to legislate by Order in Council and NIO Ministers would have overriding executive power in relation to the NI departments. In the early days, while the Assembly was organising itself, NIO Ministers would continue to run the departments and essential legislation would be taken at Westminster. As time went on Ministers would consult the relevant committees over executive decisions and proposals for legislation; increasingly, areas of responsibility would be delegated to the committees with Ministers distancing themselves from the decision-making powers. As for primary legislation, the Assembly would be encouraged to take on full responsibility for this at the earliest opportunity. From this point on, Westminster would only override the Assembly or introduce legislation by Order in Council in the most exceptional circumstances. Once the devolved institutions had proved their durability over a reasonable period of time, the Direct Rule legislation contained in the Northern Ireland Act 1974 would be repeated.

16. While Westminster and Belfast institutions of government were running in parallel, the Secretary of State would assume a supervisory or Presidential role. His office would be particularly concerned with ensuring that Northern Ireland civil servants had clear political directions and were not subjected to conflicting pressures from the Direct Rule team on the one hand and the local administration on the other. From an administrative point of view, this form of rolling devolution would be difficult and inefficient. However, it does have the advantage of Westminster being able to take over the reins with a minimum of fuss should the local administration run into difficulties. Also, if it were to bring about a successful transition to a form of

devolution, then the temporary administrative inconvenience would have been worth suffering.

Conclusion

17. One of the three approaches described above or a combination of the elements of each of them might possibly provide us with a way forward in the event of failure to secure agreement in the current round of talks. However, if action along these lines is taken, it will have to be in the full knowledge of the obvious practical difficulties. Rolling devolution is not something that can be devised and necessary legislation introduced at short notice. If it is to have any chance of working, then a plan will have to be drawn up in full consultation with members of the Northern Ireland Civil Service who would have to work with it on a day to day basis.

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