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Mr Burns - B

SCHEME FOR A MODEL OF "CONSENSUS GOVERNMENT"

1. For some time now our policy has been to secure movement "to or towards devolution". The prospects of achieving full devolution of legislative and executive powers still seem remote. "Power-sharing" remains anathema to the Unionist parties; yet "widespread acceptance" (assuming this is a condition we continue to set) certainly cannot be obtained for simple majority rule. It is sometimes suggested that the task of securing widespread acceptance would be easier for a lower tier of government than for a superior one; that some model for a local authority or authorities could be easier to construct and maintain than a "Stormont" model. The reasoning here is not easy to follow. I cannot myself believe that the minority in Northern Ireland would find acceptable the transfer of any really substantial executive powers to an elected local body, whether central or local, without participation or comprehensive safeguards. The current abuse of majority power in some District Councils is just about tolerable because the functions at issue are not, in the wider scheme of things, very important.
2. In any case, much of the debate about "devolution", "integration" or "continuing direct rule" becomes increasingly sterile. These are mere concepts of convenience; not the clear-cut, discrete options they are sometimes assumed to be. Indeed, there is a strong argument that the advocates on the local scene use these terms as coded language for something else. They might be "translated" as follows:-
 - 2.1 "Devolution" means more influence for locally elected people in the management of Northern Ireland's affairs.
 - 2.2 "Integration" means that the inner circle of local politicians, now elected to Parliament, are not in reality very keen about creating in a Northern Ireland administration an alternative source of local power.
 - 2.3 "Continuing Direct Rule" means that local politicians cannot yet be fully trusted with the management of Northern Ireland's affairs, and that British Ministers must for the time being continue to hold the ring.

In this "translated" form, it will be seen that the three concepts are not necessarily mutually exclusive; that indeed a working model could be constructed drawing parts from all three political "kits".

what are looking for is an ideal system which would be

- 3.1 unboycottable - that is to say not capable of being held off indefinitely because some single major political element refuses to participate at the outset;
- 3.2 stable - that is to say capable of sustaining disagreement without collapse of the constitution itself (as happened in 1974);
- 3.3 capable of experimental introduction - so that it could be tried out in a part of the system without simultaneous introduction across the whole area of departmental responsibility; and
- 3.4 capable of development - so that it could be used to stiffen local participation as confidence grows, to a point approaching real devolution of powers.

4. In thinking about whether such a model could be created, I have been influenced by the following considerations, which are of some historical and I would suggest also practical interest.

- 4.1 Before partition, much of the public administration in Ireland was under the direction not of individual political heads of departments but of multi-member "boards".
- 4.2 Section 25 of the Northern Ireland Constitution Act 1973 provided that there would be consultative committees of the Northern Ireland Assembly "to advise and assist the Head of each of the Northern Ireland Departments in the formulation of policy with respect to matters within the responsibilities of his Department", and the political Head of the Department was to act as Chairman of the relevant committee.
- 4.3 By virtue of the legislation setting it up, the Board of IDB has a formal advisory responsibility only, but the guidelines under which the Board operates in practice give it substantial operating responsibility within a carefully prescribed relationship with the Chief Executive, Department and Minister.
- 4.4 Systems of Cabinet Government only hold together through consensus rather than majority voting; and this is particularly true in political societies so deeply divided that only coalition government is possible. If a majority uses its voting power to steam-roller a minority element on an issue of vital importance to it, then the coalition fragments. Consensual systems are a corollary of workable government in deeply divided societies.
- 4.5 While it is common usage to speak of Dr Mawhinney (say) as "Education Minister" or Mr Bottomley as "Agriculture Minister", neither is any such thing in a formal sense.

They operate under the umbrella of the direction and control of each Northern Ireland Department vested in the Secretary of State; and the Department in question responds to the decisions of the "Departmental Minister" because that is how the Secretary of State chooses to exercise his power of direction and control. There are no formal appointments, no "seals of office" here; and I would suggest that it is open to the Secretary of State (consistent with his own ultimate and undivestable authority) to vary if he wishes the way in which Departments are directed and controlled for him and on his behalf.

A POSSIBLE MODEL

5. Against this background, I proffer the following model as a basis for discussion:
 - 5.1 The Secretary of State would announce his willingness to introduce more local elected influence into the conduct of Northern Ireland business through an experiment in the management of one or more Northern Ireland Departments.
 - 5.2 The basis of this experiment would be that a "management committee" (avoiding the word "consultative", c.f. the Intergovernmental Conference and the IDB) would be set up for each such Department.
 - 5.3 A management committee would be chaired by an NIO Minister designated by the Secretary of State for that purpose, and its other members would be the Northern Ireland members who have been elected to, and taken their seats in, Parliament or their "alternates" (see below).
 - 5.4 Since a Northern Ireland member of Parliament might have other commitments at a particular time (say in the European Parliament if he doubled as an MEP) he would be entitled to name two "alternates" qualified to attend a particular management committee (although of course only the Member himself or one of these alternates would attend any individual meeting).
 - 5.5 Those qualified to be named as "alternates" would be elected members from the political party of the Member himself; they might be either a fellow MP or a District Councillor.
 - 5.6 The role of the Management Committee would be carefully defined by guidelines set by the Secretary of State, but in essence the system would operate as follows. The object would be to have important decisions about the development of departmental policy (but not individual case decisions) taken wherever possible by consensus. For that purpose a "consensual threshold" would have to be fixed. It would be unreasonable to allow a single MP (to take an extreme example) to exercise a power of

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eto. But the consensual threshold would have to be fixed at such a level as to require support from more than a single political "community".

5.7 The search for consensus on a proposition from a department made to its management committee might have three outcomes. If the consensual test was met and the presiding Minister had no good reason to refer the matter to the Secretary of State, the management committee's decision would in effect be a decision of government policy. Alternatively, the consensual test might have been met but the presiding Minister would nevertheless feel the need to refer the matter to the Secretary of State. This might be because of the sheer importance of the decision; but references on these grounds could be minimised by informal consultation between Minister and Secretary of State before a meeting of the management committee. ("We are facing a very important decision at the next meeting. It might go either way. Are you prepared to live with the decision whatever it may be?") A second category of reference upwards would be in cases where the presiding Minister believed government policy could not/should not accept the decision (eg because it flew in the face of fundamental policy, or risked conflict with UK Departments or the European Community). In such cases the consensual view of the management committee might ultimately have to be overridden; but this would not be done lightly or for insufficient grounds. The number of such cases should be minimised by a clear explanation by the presiding Minister of potential political "no-go areas". All decisions on matters where a committee failed to pass the consensual threshold would be referred to the Secretary of State for decision.

5.8 Such a system would be capable of progressive development. It might begin with one or two departments and be applied in time to all the spending departments (but not, I think, pending actual devolution, to the Department of Finance & Personnel or Central Secretariat. These would have an important part to play in advising the Secretary of State on decisions incapable of being resolved within the management committee system). In time one might consider movement to a system in which a local politician rather than a junior Northern Ireland Office Minister would chair the departmental management committee. This would be a clear move towards devolution.

6. It will be observed at once that such a system would not (while they remain unwilling to take the Parliamentary oath) bring Sinn Fein into any positions of influence. It would also at present exclude the Alliance Party; this would be a pity in many ways, but their main usefulness as a party has always been as a catalyst rather than a main player. The system could be introduced without the participation of all the parties

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represented in Parliament, provided substantial parties from both communities were willing to become involved. Thus, I believe, the UUP and SDLP could work it, even if DUP decided initially to stay out. Failure to reach agreement once the system was in place would not mean a collapse of the system; simply a reversion to decision-taking by the Secretary of State himself in instances where broad local agreement could not be found.

7. This model does not of itself offer any answers to the "Duisburg riddle". I am persuaded that the Agreement impasse can only be broken if the Irish Government were prepared to agree that the SDLP and not themselves should be the effective spokesmen for minority rights in matters purely internal to Northern Ireland. I have suggested elsewhere the idea that certain communal, as distinct from individual, rights might be entrenched in law; and a willingness to contemplate this could be a bargaining-counter in persuading the Irish Government to take a step backwards and accept a role confined to genuinely international and cross-border questions. I can see no reason why the Unionist parties should not live with such a more limited role.

8. You may wish to discuss.

Signed

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