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DISCUSSION PAPER

~~CONFIDENTIAL~~PARTICIPATION IN GOVERNMENTFOREWORD

This Discussion Paper is the third in a series of Papers designed to pave the way for the Northern Ireland Constitutional Convention. The Government's proposal for such a Convention was announced in July 1974 in the White Paper "Northern Ireland Constitution" (Cmnd 5675), and the Northern Ireland Act 1974 translated this proposal into law. One of the Discussion Papers already published, "The Northern Ireland Constitutional Convention", discussed the form and procedures of the most important issues which the Convention will have to consider. This paper discusses what may be the most fundamental issue of all - devising structures of government which will enable the two communities to live together in Northern Ireland.

~~PREVIOUS DRAFT ALSO MAY REFER TO W/P "FINANCES AND THE ECONOMY"~~

"Power-sharing" is a phrase which has acquired a very distinct and limited meaning in relation to Northern Ireland, - namely the particular form of partnership in government which existed between January and May 1974. But

~~REVIEWED
WEARING~~ power-sharing is not an institution in itself; it is rather a particular concept of government dependent upon consensus and the joint acceptance of responsibility and it can take a number of institutional forms.

~~IN A C. R.C. TO M.L. E.G.C. ON TUESDAY 11~~

Paragraph 45(a) of the White Paper sets out the Government's view:

"history has caused divisions within the Northern Ireland community.

Events of the past few years have amply demonstrated that no part of that community can, let alone should, be coerced into accepting the others' view. Events have also shown that a consensus can be obtained on a basis of serving the interests of the whole community. There must be some

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form of power-sharing and partnership because no political system will survive, or be supported, unless there is widespread acceptance of it within the community. There must be participation by the whole community;"

FIGURE 3

It is clear that some form of joint acceptance of responsibility by both communities is required if Northern Ireland is to have any harmonious future.

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Without it there is no prospect of fulfilling that aspiration of the people of Northern Ireland which overrides all others, that is the desire to live in peace under a just and stable form of government.

A. 77^o L.

It is for the Constitutional Convention, and thereafter for Parliament, to consider what form the sharing of power should take. This paper is concerned, not to reach conclusions, but to shed some light on the problems involved.

A 333 b

But the devising of new constitutions will not solve the problems of Northern Ireland; and constitutions must themselves evolve to take account of changing circumstances whilst preserving fundamental principles. It is against this background that various forms of government, and the methods of participation in government, are discussed in this paper.

A 32-2

It is on the basis that Northern Ireland remains a constituent part of the United Kingdom that this discussion paper is framed.

Finally, there is one overriding consideration. Whatever the new form of government, it will depend above all upon a spirit of goodwill and co-operation between all sections of the community. No system of government, however carefully contrived, will have any hope of lasting success unless there is the will to make it work. // P R E V E N C E

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NORTHERN IRELAND

Discussion Paper

Participation in Government

Chapter 1

INTRODUCTION

1. In Paragraph 45(a) of the White Paper (Cmnd 5675) the Government state that:

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"There must be some form of power-sharing and partnership because no political system will survive, or be supported, unless there is widespread acceptance of it within the community. There must be participation by the whole community".

These words do not lay down some arbitrary "condition" for a settlement. They state a fundamental reality. Whatever the historical reasons for it, political stability of Northern Ireland has been weakened because a large section of its community has lacked a whole-hearted sense of identification with its institutions of government. Some means or other must be found of providing this sense of identification if stability is to be brought to Northern Ireland. Stability cannot, however, be brought by attracting the confidence of only one section of the community - all sections of the community must share confidence in the institutions of government if they are to provide the basis for a stable future.

✓

- A??e
2. It will be for the Convention to consider how this can be achieved. To help it in its work, this paper first reconsiders some of the basic principles. It:

- a) discusses the essential nature of democratic government (Chapter 2); and

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- b) analyses the concept of participation in government (Chapter 3);

A 371 'L' | The paper goes on to consider what actual forms of government could be considered for Northern Ireland. It:

- c) considers the relevance of experience in other countries (Chapter 4)
- d) examines various possible means of safeguarding interests within the community (Chapter 5); and
- e) suggests various methods of securing participation in government under different forms of administration (Chapter 6);

3. In putting forward general ideas in this Discussion Paper and in quoting specific examples of governmental forms and institutional structures, the Government is seeking only to provide basic background information for the benefit of the electorate at large. The specific suggestions put forward and the examples quoted are in no way intended to indicate that the Government is committed to their adoption. Nor is the range of possibilities for future development in the Province restricted to the ground covered in this paper.

QUESTION

1. 3a. 2. b. c. d.

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Chapter 2

THE CONCEPT OF DEMOCRATIC GOVERNMENT

4. The United Kingdom is a democracy and the governmental arrangements made for any part of it must therefore conform to democratic principles, though the institutional forms in which these are expressed may vary between different parts of the United Kingdom. The Shorter Oxford English Dictionary defines "democracy" as -

"Government by the people

that form of government in which the Sovereign power resides in the people and is exercised either directly by them or by officers elected by them

a social state in which all have equal rights

a state or country in which the Government is vested in the people as a whole".

5. Over the centuries there has emerged what may be described as the "Westminster model" of democratic institutions. Like all constitutions, written or unwritten, it has continued to evolve. One of its central features is Cabinet Government. Ministers are appointed and dismissed on the recommendation of the Prime Minister of the day; individually they are answerable to, and are almost invariably members of, Parliament. The Cabinet as a whole operates on the principle of collective responsibility and to remain in office must command the confidence of the House of Commons.

6. This model has been taken over, with some local adaptations, by various other countries particularly such Commonwealth countries as Canada, Australia and New Zealand. It is not, however, the only model for democratic government. Many of the world's democratic states,

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while recognising the same basic democratic principles, have implemented them through widely different forms, structures and practices. In some cases, as in the USA, the executive branch is outside the legislature; in other cases, such as the Netherlands, Ministers attend the legislature and speak there but are not allowed to be members. Nor is it universally the case that the executive must retain the confidence of the legislature.

7. The process by which members of the executive are selected also varies widely from one country to another. In the United States a directly-elected chief executive (the President) selects the heads of Departments who are answerable only to him though their appointment is subject to confirmation by the Senate. In France there is also a powerful directly-elected President who chooses the Prime Minister.

A very different arrangement exists in Switzerland where the highest governmental authority - the Federal Council - is a collegiate body, elected by, but not dependent upon, the legislature, with its Chairman being only a first among equals and holding that office for one year only.

8. As well as the differences in the constitutional or statutory form of the democratic system in other countries, there are differences, not laid down constitutionally, but having a practical or conventional basis. For example, in very many democracies coalition government is much more usual than single-party government. Within the Commonwealth, Australia and Canada have had, in recent history, periods of coalition government, and in Western Europe at any given time since the Second World War coalition governments would have outnumbered simple majority governments - in the Netherlands, France, Belgium and Italy, for

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example, coalitions are the norm, while in the past few years West Germany has had both "Grand" (ie between the two major parties) and "Little" (ie between one major and one minor party) coalitions.

9. Thus, all democratic countries evolve governmental structures suited to their particular needs. Similarly, there are numerous different means of electing members of the national legislature and there are marked variations between countries as to the way in which democratic control over Government is exercised. In short, the democratic principle is expressed in different ways in different countries, each country shaping its institutions to meet its own special needs. There is no single set of arrangements which alone will satisfy the principle of democracy in Northern Ireland; there is no automatic choice. To provide democracy in Northern Ireland, it is not, for instance, necessary to reproduce the Westminster model - nor is it necessary to reproduce any existing model. Indeed, the wide variety of democratic constitutions throughout the world suggests that the only satisfactory model is one which has been specifically devised to meet the needs and circumstances of the area concerned.

10. Constitutions not only vary widely, but also develop through the years: adaptations continue to be made in the light of changing circumstances, for example changes in the minimum voting age and in electoral boundaries. The composition of the executive or government has, in various countries, from time to time, been varied in accordance with the political realities of the day. The respective powers, influence and function of various parts of the machinery of government similarly change under the pressure of events and time. Few constitutions are completely static.

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11. As well as piecemeal constitutional adaptations, such as those mentioned above, many countries find it necessary, usually at intervals of several decades, to carry out a major revision of their constitution, in order to give their country an up-to-date framework of government in keeping with the requirements of the day, in the light of social changes, developing aspirations, technological progress and new national or regional needs. At present the Netherlands, Belgium and Switzerland are all engaged in such revisions. In the United Kingdom following the report of the Royal Commission on the Constitution the Government have announced their proposal to provide for a system of legislative and executive devolution in Scotland and for new arrangements for Wales.

12. Democracy is not, therefore, one fixed set of rules for government but is a fundamental characteristic finding expression in a considerable variety of forms. No constitution can stand still - rigidity would over the years lead to a disparity between the governmental structures of a country and the contemporary realities to which they ought to be geared. Ideally, constitutional arrangements should have within them the seeds of further evolution, in order to keep abreast of changing circumstances. It is however, of the utmost importance that the changes which may take place should not weaken the essential underlying principles: change should be within the principles, not a change of them.

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Chapter 3

THE CONCEPT OF PARTICIPATION IN GOVERNMENT

WAS "POWER SHARING"

Avoids the use
of "power"

13. The authority exercised by government amounts to the capacity to take decisions and to carry them out. In a democracy this capacity is backed by constitutional and legal right. To participate in the exercise of governmental authority is not only to share in this right and capacity but to share responsibility for the decisions taken and for the consequent executive action.

14. In practical terms, all democracies distribute the exercise of authority between various spheres and at various levels. Thus they protect themselves against that concentration of power in the hands of one individual or group which is the characteristic of dictatorship and tyranny.

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15. Government in the broadest sense include both executive government, and legislative government. Each of these aspects of government can be, and usually is, exercised simultaneously at a number of levels - eg central government and local government.

16. For Northern Ireland, laws have in the past been made both by the Parliament of the United Kingdom at Westminster and by a subordinate legislature at Stormont (first the Parliament of Northern Ireland and then the Northern Ireland Assembly). At a lower level, by-laws or regulations may be made, affecting the lives of various sections of the community, by a number of types of public authority.

17. Again, the executive government for Northern Ireland has, in the past, been conducted by the United Kingdom Government, the Northern Ireland Government (and more recently the Northern Ireland Executive), and the various local government authorities and agencies acting with a greater or lesser degree of independence of Ministerial control.

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 (AND
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18. There is a further aspect of participation - it is found in the concept of accountability. The accountability of Government to the people is a reflection of involvement:

a Government which feels it is required to justify its policies to the community is in practice giving that community an opportunity to influence it. This sense of accountability can be created in a number of ways. It is most commonly produced by the need to levy taxes to finance the work of Government and to decide upon priorities of expenditure (this point is developed further in paragraph 91). A form of Government which does not require the Government of the day to be accountable to the people as a whole is likely to lead to an absence of that partnership between the people and the government which is necessary for an enduring form of Government by consent.

CREATIVELY
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Participation in the legislature

19. Provided the electoral arrangements in a country are sufficiently sensitive, it is to be expected that significant shades of opinion will be represented in the legislative branch of government. Thus, under the system of elections to the Northern Ireland Assembly, the composition of that body can be expected to reflect to a greater or lesser extent the variety of views held by the electorate taken as a whole. It is, of course, the case that, under many constitutions, matters are decided by the voting power of a simple majority in the legislature. Even in such a situation, a minority voice in the legislature has an opportunity to argue the case. Certain systems of government, however, recognising that particular matters affect the vital interests of parts of the community, require a majority on such issues to be made up in a certain way so as to ensure that the

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decision taken commands the support of the community as a whole, and not only of a numerical majority of the members of the legislature.

20. Similarly, in systems of government where the legislature exercises a degree of control over the executive branch of government, a minority can contribute to exercising that control.

~~21 - PARA - 22 - JUDICIAL OFFICES ONLY~~

~~WAS ON~~ 21. Participation in the executive

Since the fall of its Executive in May 1972 Northern Ireland has not had a locally-based central administration. A provincial government or executive, however, forms only a part of the complex structure of modern government. In certain spheres, responsibility is devolved to elected local government; in others, elected, appointed or mixed bodies (some statutory, some not) are in practice responsible in large measures for the operation of major services, subject only to Ministerial control. Such services in Northern Ireland as education; health and personal social services; public house building and management; electricity generation and supply; tourist promotion and servicing; and the provision and administration of the police service are managed by statutory bodies, on each of which both the main communities are now represented.

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22. In other cases, steps have been taken to place important areas of executive government outside the sphere of political or partisan influence, by vesting them in independent persons or agencies.

Examples of this are the conduct of elections (by the Chief Electoral Officer) and the conduct of public prosecutions (by the Director of Public Prosecutions).

? NECESSARY ?

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24. 23. But Northern Ireland is not a sovereign state; it is part of a much larger Kingdom. Any locally-based government in the Province must, therefore, be a regional, rather than a national, government. National issues must inevitably be the responsibility of the United Kingdom Government. This fact has a bearing on the nature of the regional institutions of government, which must reflect the division of authority and the constitutional relationship between regional and central government. At the same time, this factor permits a greater degree of flexibility in government than would be possible in a sovereign state, in which the executive carries full responsibility for decisions affecting every aspect of national life - issues which are the subject of ideological conflicts at national level (for example, management of the national economy and foreign policy) are outside the sphere of regional politics. Political agreements in a regional context have only to be reached on a restricted range of subjects.

25. 24. An additional factor which may reduce the area for political conflict at regional level is the tendency for regionally administered matters to involve management rather than policy-making. But it is precisely those regional services which are of greatest direct concern to the individual citizen. The satisfactory administration of a local service is often of more concern to an individual than truly national issues. The fact that a Northern Ireland regional government can have no responsibility for certain major national issues can at the same time relieve the regional government of potentially divisive responsibilities, and free it to concentrate on what are the problems of most immediate interest to the community they serve.

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~~PARA. 105
now complete~~

25. In the past, the regional government of Northern Ireland has developed along parallel lines with the development of modern government in Great Britain - particularly in relation to the executive. That is to say, there has been a strong central administration controlled by a collective committee or Cabinet. In the circumstances of Northern Ireland, however, the adoption of the Westminster model led to the almost complete concentration of executive power in the hands of a single political party, the Ulster Unionist Party. At every general election from 1921 to 1969 this party secured an absolute majority of the seats in the Northern Ireland House of Commons, and successive leaders of that party were invited by the Governor to form a Government, and did so almost entirely from fellow members of that party.

26. The mechanics of this system of government corresponded to the mechanics of the Westminster model, but the alternation of governing parties which has for long been a characteristic of the British political system, and which has undoubtedly contributed in a marked degree to the stability of parliamentary government in Great Britain, did not exist in Northern Ireland. Given the existence of a permanent political majority in Northern Ireland, the particular form of power-sharing achieved by the Westminster model could not, and did not, operate in the Province. Ultimately it became clear that such a system of government could not command the consent of the permanent minority.

27. The Northern Ireland Constitution Act 1973 provided another model for the government of Northern Ireland. The executive formed under this Act contained representatives of three political parties, and representatives of both the majority and minority communities. It was a system of government which provided for partnership between the

~~"the sharing
of power"~~

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communities and, in the words of the White Paper, (Cmnd 5675) "disproved forever the idea that it is not possible for Protestant and Roman Catholic to work together for the good of Northern Ireland and its people" (paragraph 26). The phrase "power-sharing" has come to be synonymous with this particular form of government: it is not necessarily so. Power-sharing is a much wider concept, and is by no means limited to this particular form of partnership in government.

28. The concept of "government by consent", which is also incorporated in the Constitution Act, is similarly broad. It does not refer only to that system of government which existed between January and May 1974, but refers to a general principle which can be met in any one of a number of ways. Any system of government which attracts the consent of the people as a whole must be counted as government by consent. There is, however, a vital distinction between on the one hand accepting or consenting to the system of government, and on the other hand supporting the actual government of the day. It is quite possible to support the system of government without actually agreeing with the government of the day. Criticism and opposition also contribute to the democratic process - complete conformity, and the appearance of universal approval, is conceivable only in a dictatorship.

29. The experience of recent years in Northern Ireland suggests, however, that there must be participation by all sections of the community in the exercise of power by government if the system of government itself is to be generally accepted. There is no evidence anywhere in the developed democratic world to suggest that such a sizeable minority community, acutely aware of its different

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itself ?

identity and traditions, could be permanently excluded - however legitimately under the prevailing electoral and institutional arrangements - from the processes of running affairs at the highest level and at the same time be expected to identify with those processes and with the community as a whole.

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Chapter 4

THE EXPERIENCE OF OTHER COUNTRIES

30. Northern Ireland is by no means alone in facing the problem of a division among its people. It is, therefore, helpful to consider the experience of other countries which have dealt, and are still dealing, with problems having at least some similarities with those in Northern Ireland. No two sets of national or regional circumstances are ever exactly parallel and it is unlikely that any constitutional devices used elsewhere could be introduced into Northern Ireland without amendment or introduced there at all without first studying the surrounding circumstances which contribute to their success in their countries of origin. There are, however, bound to be general lessons to be learned from the experience of others in this field and the examples quoted are intended to outline some of the possibilities which are open, and to stimulate thought and comment about practical ways in which specific aspects of the Northern Ireland problem might be tackled.

31. In Europe, the Netherlands, Belgium and Switzerland are relatively near neighbours and are at a comparable stage of economic and cultural development. They are all larger than Northern Ireland but none of them is so large that the problems are of a totally different scale. It is worth considering how these countries, each of which has had its own problems, have managed to achieve, despite underlying difficulties and tension, "joint and stable" societies.

32. First, however, it must be stressed that there is a fundamental and most important difference: in none of these countries is there the same internal conflict of national identity as exists in Northern Ireland. The Flemings and Walloons of Belgium each have a separate

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cultural identity, but they are united in their national identity as Belgians; similarly, none of the German, French or Italian language groups of Switzerland seeks to break off from the Confederation or to pull Switzerland into political amalgamation with Germany, France or Italy. In Northern Ireland there are basic tensions of a different and distinctive character. A religious division is accompanied by, but not wholly synonymous with, a profound cultural divide with some of its citizens stressing the "Britishness" and others the "Irishness" of their sympathies and aspirations. But this division is not a simple one, for all those who would emphasise their "Irishness" would not necessarily favour Irish political unification immediately or, under certain circumstances, at all.

33. Despite this uniqueness of Northern Ireland, there are lessons to be learnt from the constitutions and practices of other European countries. The appendix to this paper briefly describes problems which have been faced by the Netherlands, Belgium and Switzerland and summarises ways in which constitutional changes and developments have both reflected divisions in the community, and helped to overcome them; it is intended to be illustrative rather than comprehensive and does not, therefore, seek to present a complete analysis of the countries concerned, nor a complete summary of their constitutions. Particular constitutional provisions in these countries are mentioned further at appropriate points in the ensuing chapters of this paper.

APPENDIX
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"was" "privately" "protection"

Chapter 5

STATUTORY SAFEGUARDS

(45) —

Section

Review

34. In many countries the constitutional clauses and practices used to ensure the acceptance of government throughout the community are reinforced by measures designed to protect the individual and the collective interests of their citizens, whether they form a minority or a majority in the community. Although extensive steps have already been taken in Northern Ireland to preserve and protect the rights of individuals, it is proper to consider again whether any further steps could usefully be taken to secure the rights of citizens individually and collectively.

35. The range of protections and safeguards provided by way of special constitutional and legal provisions broadly include the following:

- (a) entrenched clauses in the constitution;
- (b) special civil rights legislation;
- (c) a Bill of Rights;
- (d) the establishment of special monitoring bodies;

36. Entrenched Clauses are clauses in an Act or Constitution, which cannot be revoked or amended by a simple majority but only by a majority so weighted as to ensure that the proposed change has the support of at least some of those whom the original clauses were designed to protect. Alternatively, provision might be made for a referendum to be held either automatically, or at the request of a certain member or members of the legislature. Trinidad provides an example of such a provision requiring a 75 per cent majority in their House of Representatives in certain circumstances while in Kenya a 90 per cent vote is required in some cases in their senate.

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4-3

37. A slightly different device has been adopted in Belgium to enable a part of the community to protect itself from legislation damaging to its fundamental interests. The Constitution provides for a blocking mechanism by which three-quarters of either language group (Flemish or French) in Parliament can refer back to the Council of Ministers, in which the two language groups are guaranteed parity, any proposed legislation considered seriously harmful to inter-communal relations. This protects both communities not only against the repeal or alteration of existing provisions, but also against the introduction of unacceptable provisions on completely new matters. Mechanism has never yet been used since its introduction in 1971.

4-4

38. A further device is to safeguard particular communities' interests by requiring, for the abolition or amendment of certain provisions, the consent of those for whose benefit they exist. The constitutions of India and Nigeria contain examples of such safeguards.

4-5

39. Finally, under this heading, there is the question of reserving the right to legislate on certain matters to Parliament at Westminster. Matters of national importance will, of course, have to be reserved in this way - and this is in itself a safeguard for all in Northern Ireland - but it would also be possible to 'reserve' additional matters which are sensitive in Northern Ireland as an alternative to 'entrenching' them. Alternatively, the agreement of Parliament, or of the Privy Council, could be required before the local legislature could legislate on the points in question.

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Regardless of this, the supreme authority of the Parliament at Westminster to legislate on all matters for Northern Ireland provides a continuing safeguard.

51

40 Civil Rights Legislation

Civil Rights legislation passed in the United States of America

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✓ in the 1960s has had the effect of considerably improving the social and economic position and has met at least some of the aspirations of the black minority. The Race Relations Act passed at Westminster in 1968 is another example of how legal protection against discrimination or repression can be provided for the individual and thus for minority groups.

(62)

41. Bills of Rights

✓ Bills of Rights in various forms have been known since Magna Carta in 1215. A current example is that in force in Canada since 1960 which describes the rights and freedoms which are declared to exist and requires that every law be construed so as not to infringe them. In Switzerland, one of the main areas considered by a Commission on the amendment of the Constitution, which has recently reported to the Federal Council, is the addition to that Constitution of a comprehensive catalogue of human, political and social rights.

In the Netherlands, too, proposals for constitutional reform include the recodification of human rights.

63 - UNITED KINGDOM TREATY ACT 1972

NEW

42. Northern Ireland, too, has benefitted from special measures to protect human rights. In addition to the general protection given to every individual by the law, the Northern Ireland Constitution Act 1973, and to a lesser extent the Government of Ireland Act 1920, prohibited legislation as well as individual actions which discriminated on religious or political grounds. Special provision was made for legislation to be tested before the Privy Council if it was alleged to be discriminatory; and a person who believed himself to be the victim of discrimination by a public body was given the right to bring a court action against that body.

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43. The 1973 Act also created the Standing Advisory Commission on Human Rights to advise on the adequacy of the law in preventing discrimination on religious or political grounds and providing redress.

63
44. A Bill of Rights, however, raises difficult questions. If it is to be more than a simple declaration of rights and is to have legal effect, then machinery for its enforcement must be devised, and a workable relationship must be made between it and the complex body of existing statute and common law.

64
45. Special Monitoring Bodies

The protection of individuals and minority groups against the state is assured in many countries by the establishment and operation of special institutions such as the Office of the Ombudsman (Sweden), the Race Relations Board and the Office of the Parliamentary Commissioner for Administration (Great Britain). Monitoring bodies for Northern Ireland need not be internal: they could be a part of, or appointed by, or responsible to, the United Kingdom Government or Parliament.

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46. In Northern Ireland there are already several bodies in this category - for example, the office of the Parliamentary Commissioner for Administration, the Commissioner for Complaints. Special administrative arrangements have also been made to take account of the desirability of fostering better community relations.

66
47. Statutory safeguards of the sort described in preceding paragraphs, some of which already exist in Northern Ireland, can play a useful role in a constitutional settlement. Their very existence should encourage all sections of the community to undertake an active part in public life at all levels. In themselves, however, they are

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not enough for they do not provide directly for that partnership in government without which any constitutional settlement is unlikely to command widespread support throughout Northern Ireland. This paper therefore goes on now to consider a number of forms which that partnership might take.

PARA 66 - 69 ON SPECIAL REPRESENTATION
OF MINORITY GROUPS IN THE LEGISLATURE -
TRANSFERRING TO NEXT SEC - PARS 62 - 66 ~~PARAS 62 - 66~~

PARS 60 - 61 ON DIRECT DEMOCRACY -
TRANSFERRING TO NEXT SEC - PARS 66 - ~~67~~

PARS 62 - 63 , LIVING PARS - OMITTED

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Chapter 6

FORMS OF PARTICIPATION IN GOVERNMENT

48. Northern Ireland is an integral part of the United Kingdom, and its status as such cannot be changed unless there is a majority vote for such a change at a poll held for the purpose. At the Border Poll held in March 1973 the majority of the electorate voted decisively against any such change. The patterns of government considered in this Paper are, therefore, confined to patterns of government within the United Kingdom.

(b) 4

49. The various ways in which participation and partnership in government can be achieved naturally depend on the particular form of government which is adopted. Before examining the question of participation, it is appropriate to consider briefly what are the main possible forms of devolved government. There are at least three possible forms:

- (a) a devolved Northern Ireland legislature and administration, such as the former Assembly and Executive, having either the same powers, or greater or fewer powers;
- (b) a small regional government machine, with executive powers largely further devolved to government agencies on a "functional" basis; or
- (c) sub-regional governments, possibly on the model of the Swiss cantons, that is to say with political and executive power moved to a very localised level.

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These broad descriptions of possible forms of devolved government take no account of the many variations which could be devised.

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It is, however, beyond the scope of this paper to explore possible permutations, but it is important to stress that future forms of government for Northern Ireland will undoubtedly lead to at least two levels of government - central government by the United Kingdom Government, and at least one level of regional government, perhaps with local government as a third level.

Participation in a regional government with extensive devolved legislative and executive powers

~~revised~~

65 — 50. The first possibility referred to above envisages a form of participation in which the responsibility for running the affairs of the Province - framing its laws as well as carrying on the executive government - would be shared between the majority and minority communities.

65 — 51. There are two aspects of this - participation in the legislature and participation in the executive.

66 — 52. Special representation of minority groups in the legislature

This has been a feature in various countries. In the Lebanon, for instance, the distribution of seats in the legislature as between

the different religious denominations is prescribed by law. In Fiji a complex system of multiple electoral rolls ensures that

the indigenous inhabitants are not unfairly dominated by the numerically superior Indian settlers. In other cases a limited

number of seats in the legislature are filled by nominated members.

For example, in Mauritius, after an election to the legislative Assembly, its membership is completed by a number of "best losers" from any racial group underrepresented and by others appointed on the basis of both party and community.

67 -

53. Perhaps the commonest means of affording protection to minority groups in the exercise of legislative power is by the use of a second chamber either wholly or partly nominated. In Switzerland, for example, the cantons, irrespective of their size, have equal representation in the Council of States, which has the same powers as the lower chamber. In Belgium elected provincial councils nominate one-third of the Senate which again has the same powers as the lower House. As a variation of the use of a second chamber, the constitutions of some countries provide, over and above the main legislative body, for separate communal chambers or councils which have final authority in such community affairs as education and religious and linguistic matters. (1)

68 -

54. A strong system of Parliamentary committees, particularly where the chairmanship is filled by a representative of the minority, can also go some way towards protecting minority interests.

69 -

55. All of these devices have the effects of affording minority groups some measure of protection which they could not otherwise expect in the realm of legislative power but it must be recognised that, unless they give the minority absolute parity, they do not in themselves prevent legislation being carried in the last resort by the representatives of the majority community.

70 -

56. Direct Democracy

A further protection for minorities in legislative government could be the institution of direct democracy on the model of the Swiss

(1) In Belgium, for example, Cultural Councils, which consist of the two parliamentary chambers divided into two bodies according to language, have power to legislate on cultural matters, the use of language and, to a limited extent, matters of education. In the discharge of these functions they have authority to dispose of money voted to them annually by Parliament.

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Referendum and Initiative system. This provides both for obligatory referenda or certain restricted matters, mostly government proposals for constitutional change, and also for a referendum on any Federal legislative measure if, within three months of its passage, any individual can obtain the signatures of 30,000 eligible voters; in each case the proposed law must be approved not only by an overall majority of the voters but also by an overall majority of the cantons. In addition, under the Popular Initiative, any individual who can gather 50,000 eligible signatures - roughly 0.7 per cent of the electorate - can put to a national referendum his own legislative proposal; in Westminster terms this extends the procedure of the Private Member's Bill to the population at large.

- 61 -- 57. Direct democracy assures a measure of participation in government to all citizens and groups, but of necessity only a restricted measure. In practice, there is a limit on the number of referenda which can be held and there is a limit on the effect which a numerical minority can have in a referendum. Furthermore, a minority not represented in executive government, or not represented in the legislature, could not call on the support of an administrative machine to frame laws or develop policies. The advantages of direct democracy lie mainly in its monitoring and "braking" functions, rather than in its initiatory, and therefore participatory, functions. One of the most limiting aspects of direct democracy is that on any issue which caused community polarisation - and it is precisely in relation to such issues that minority protection would be most vital - a minority would still be at the mercy of the voting power of the majority when it came to decision by plebiscite.

~~CONFIDENTIAL~~The Executive

- 65 - 58. There are two principal ways in which participation in the executive branch of a strong regional government might be achieved: through a committee system or through seats in a "Cabinet" or "Executive".
sought after?

The Committee System

- 66 - 59. There are basically two main types of committees systems: those which would have mainly monitoring role and those which would themselves exercise executive functions.
- 66 - 60. A typical example of the monitoring role would be consultative committees set up to advise and assist the political head of Government Departments in the formulation of policy and in matters related to the day-to-day running of the relevant Department. This was, in fact, the system established under the Northern Ireland Constitution Act 1973. Departmental committees - one for each main Stormont Department - were set up. The membership was agreed between the party Whips, but the committees as a whole were required by statute to reflect the respective strengths of the parties in the Assembly. There were five to eight members on each committee. The Chairman of each committee was the Head of the relevant department - ie the "Minister" concerned - who could submit proposals for legislation to his committee, take advice from them, or be asked by them to explain policy or to justify particular actions of his department.
- 67 - 61. The executive committee would act in a corporate sense as a Minister. The Committee would directly control the department concerned: the Chairman would be the committee's spokesman, whereas

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in the consultative system the "Minister" would only be required to consider the committee's advice. In a system where "Ministers" are accountable to the legislature (which is not always the case), the difference between the consultative committee and the executive committee might in practice be one of emphasis. Within either type of committee system a device could be built in which would give minority participation through the committee membership or through the chairmanships - perhaps by proportional representation on the committees and/or the rotation of chairmanships.

- 68 - 62. The main argument in favour of a strong departmental committee of either type is that it diffuses power over a wide section of public representatives, thus softening the divisions which otherwise exist between those who are exercising power and those who are not. The effect of this could be greatly to weaken the concept of Opposition as understood in the Westminster Parliament, but the high degree of importance attached to Opposition in the United Kingdom is not by any means universal.
- 69 - 63. In Switzerland, for example, there is no Opposition in the Westminster sense, and the concept of debate is entirely different. Yet, by other means than those in use at Westminster, proposed legislation is subjected to exacting scrutiny. Proposed legislation, having been first sent to the cantons for comment and possibly amended as a result, is remitted to the appropriate committee of each legislative chamber before being debated by either body as a whole. Having discussed the proposed law in private with the appropriate Minister, senior officials and, if they so wish, with outside experts, the committee then transmits it to the chamber as a whole in the form of a paper giving on one side the text and, on the other, suggested amendments by the committee, whether from

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the majority or a minority.

70 - ~~NAME OF NORTHERN IRELANDS COMMITTEE~~

71 - 64. The main practical problem to be faced in a departmental committee system is that it could be cumbersome in its day-to-day working. It can be argued that, where quick administrative decisions are often called for, a committee discussion could prove too slow-moving. But it is in this way that decisions are taken in international organisations (such as the EEC) and in local government, involving in many cases in Great Britain operations fully comparable in scale with those in Northern Ireland.

"Cabinet" systems

72 - 65. The other main way in which a minority can take part in Government is by being guaranteed by statute a place in a collective executive composed of ministerial heads of Departments. Executive governments are not invariably elected by, and dependent upon, their legislatures. In the United States of America, for example, the Chief Executive - the President - is directly elected and appoints his own Cabinet. Such a system provides some scope, which may otherwise be lacking, for the Chief Executive (or whoever selects the members of the government) to include in his Government representatives of minority interests, though subject of course to the need for an executive whose members can work together effectively and on the basis of an agreed programme.

73 - 66. Alternatively, under the half-way house of the Dutch system, members of the executive are not members of the legislature but a Government defeat in Parliament usually results in attempts to form a new administration or in fresh elections. The composition of an effective government with such a relationship to the legislature

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would thus have to have some regard to the distribution of parties in Parliament.

74 - 67. A further possibility would be an executive accountable to, and drawn largely from, the legislature but also comprising some members appointed from outside it by the head of the Government or, in consultation with him, by the authority which appointed the Government as a whole. Such members could represent minority interests, though there would remain the problem of forming an executive which would have effective authority as a whole and in which, the representatives of the minority would play an effective part.

75 - 68. It is also theoretically possible that the whole executive could be directly elected.

76 - 69. There are a number of ways in which an executive drawn from and dependent upon an elected legislature may be formed, for example⁽¹⁾

70. Entrenched government whereby certain minority elements must by constitutional requirement be included in a government. This course could present very difficult problems of definition, and impede the development of non-sectarian party structures.

Constitutional guarantees of this type could not be given to particular political parties, which are liable to change in shape, emphasis, support and even name.

X
✓
(1) The hypothetical models discussed here in paras 70-76 were outlined in HMG's Discussion Paper "The Future of Northern Ireland", published in 1972 (see pages 27 and 28).

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The Belgian Constitution makes no reference whatsoever to parties as such but to the linguistic communities (Flemish and Walloon) which since 1970 have been guaranteed parity in the Council of Ministers (or Cabinet), regardless of their numerical importance in Parliament. In Northern Ireland, it is difficult to see how entrenchment could be other than on the basis of religion. In practice, it would be difficult to avoid the use of separate electoral rolls, which very many people would regard as a repugnant and retrograde step, more likely to perpetuate community divisions than to heal them. It must be recognised that checks and balances do not in themselves guarantee successful government, if a spirit of co-operation and trust between the communities is absent or breaks down.

- ✓ 76 — 71. Proportional Representation government, whereby all substantial interests elected to the legislature would, in proportion to their representative strength, secure representation in a government. This course would, however, exclude the possibility of any Opposition, as currently understood, in the legislature and would not be made easier by the very broad range of political opinion.
72. The lack of a Westminster-type Opposition need not be a factor which would rule out this type of shared government. There are those who hold that because of Northern Ireland's position within the United Kingdom, economically as well as constitutionally, and because of the fact that many Northern Ireland policies have been based on the aim of parity with Great Britain, government in Northern Ireland is much more a management function. Thus

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"Opposition" can take the form of back bench criticism of the administration's day-to-day running of the Province's affairs, rather than the role of the Westminster Opposition as an alternative government. It might also be argued that in any coalition government the situation is the same.

Q.D. — 73. The same tendency can be seen in Switzerland. There the supreme executive body of the Confederation, the Federal Council, is elected by the Federal Assembly. Elections are held every four years but in practice a Federal Councillor once elected is normally repeatedly re-elected until he himself decides to stand down. The Swiss Constitution ensures that the Council has a representative character by stating that no Canton may provide more than one of the seven Federal Councillors; in addition the Federal Assembly by custom conducts the elections on the basis of "voluntary proportionality". Under this principle the three largest Cantons each provide one Federal Councillor, the French and Italian speaking Cantons together provide two or three Federal Councillors, and the overall composition of the Council is roughly proportionate to the strength of political parties in the Federal Assembly.

Q.I. — 74. Bloc government, whereby the party or parties commanding a majority in the legislature would be required to coalesce with the party or parties commanding a majority of the minority. This would ensure some residual opposition, and make possible the exclusion of small irresponsible groups on the extreme wings of politics, but in practice would be apt to prove a somewhat complex, inflexible and artificial device.

Q.2 — 75. Weighted majority government whereby an incoming government would require the endorsement of the legislature not by a simple

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majority, but by a majority so weighted as to make necessary a broad range of support. In order to ensure that support would not come from representatives of a single community, the percentage required could hardly be less than 75. The requirement for a weighted majority could be applied solely to the endorsement of a government and subsequent votes of confidence, or to a wider range of parliamentary business.

63 - 76. This is perhaps more of a blocking mechanism than a positive system or executive government since, whilst it would provide a certain degree of protection for the minority, it would not guarantee them active participation in the governmental process.

64 - 77. These are four of the main ways in which a Cabinet-type executive drawn from and dependant upon an elected legislature might be formed so as to provide a degree of partnership in Government. They are not necessarily the only possible arrangements - it might be possible, for instance, to devise arrangements which would combine the features of more than one of these four systems, or it might be possible to devise variants of any of the systems.

65 - 78. The provisions of the Northern Ireland Constitution Act 1973 do not for instance, fall directly into any of the four categories. The Act requires the executive government of Northern Ireland to be of such a nature that, having regard to the support it commands in the Assembly and to the electorate on which that support is based, it is likely to be widely accepted throughout the community and that having regard to these matters there is a reasonable basis for the establishment of government by consent. The actual form which this took when the first Northern Ireland Executive was appointed on 1 January 1974 was the sharing of Ministerial' offices between three different political parties,

between the ~~Government~~ the ~~Greater~~ part of the community and

had support from both sides of the traditional divide in Northern Ireland. The circumstances which led to

the fall of the Northern Ireland Executive in May 1974 have already been described in the White Paper "Northern Ireland Constitution". (Cmnd 5675). These circumstances underline the need for the very widest possible agreement throughout the community to be reached on the system of Government itself, before agreement is attempted and compromises made on the policies to be implemented within the new framework - for the situation which led to the fall of the Executive arose less from opposition to the system of government than from dislike of a particular aspect of the Executive's policy, namely the Sunningdale Agreement.

*"was based
- on opposition to"*

86 - 79. In most countries in which coalition governments are the norm, inter-party diplomacy and protracted discussion and bargaining, often extending over weeks or even months, usually precede the formation of a government. In both Belgium and the Netherlands, for example, the Crown frequently relies upon an "Informateur" who reports on possibilities before appointing a "Formateur" to take the lead in forming a new Government.

A "Functional" Solution.

87 - 80. Another variation in the type of administration which would be theoretically possible in a "devolved" situation would be "functionalism" - that is to say, the giving of much more of the responsibility for the administration of the

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Provinces services to government agencies.

- 88 - 81. The administrative pattern in Sweden, for example, is to have only a few, and very small, central Ministries which deal principally with overall policy, while the day-to-day management of affairs is largely in the hands of state agencies, each in charge of a basic segment of administration. This system goes somewhat beyond the British concept of nationalised boards for commercial bodies since it includes such agencies as a National Schools Board and a National Labour Market Board. (although there is some comparison between the latter and the recently formed Manpower Services Commission in the United Kingdom). With certain adaptations to meet local conditions it might be worthy of consideration in Northern Ireland where, it can be argued, the role of government is more a matter of management than of the formulation of original policies. Agencies might be set up on a provisional basis or they might be divided into area boards to provide for some degree of localisation. The heads of these agencies might either be directly elected, or indirectly elected (for instance by local authorities); or they could be nominated (by local authorities, by government, or by appropriate interests). Whatever arrangements were decided, there could be scope for the active participation of both communities in the agency system of administration.

- 89 - 82. In Northern Ireland, the fact that individual candidates for an "agency system" were only being elected for public service within a very narrow field of activity might change the nature of the choice being made.

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Q 2 - 83. From the point of view of minority participation, a crucial factor would be the degree of localisation which could be achieved within each "functional segment" of administration. The less "political" atmosphere might make the sharing of positions of power such as chairmanships a less divisive issue.

Q 3 - 84. An agency system would raise some fundamental and practical difficulties. It pre-supposes that enough people of sufficient calibre would be willing to take part in a narrow and specialised field of activity. Careful consideration would need to be given to the relationships between agencies and the regional legislature and care would have to be taken to ensure that the regional government itself had sufficient functions to be viable. The upheaval of introducing such a new system into the Province would also pose considerable practical problems, particularly in the wake of the recent major re-organisation of local government.

Sub-regional Governments

Q 4 - 85. This would involve the maximum devolution of power within Northern Ireland to a number of strong, multi-purpose, elected authorities. // The argument in favour of this is that there are two communities in Northern Ireland who do not appear to be capable of reconciliation in a single regional government: they should, therefore, be allowed to live and administer themselves separately as far as possible. Some powers and functions could, however, be left to a regional government (which might itself incorporate some form of

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partnership).

✓ 86. In practice, the new elected bodies would have the powers and functions of the former authorities, plus perhaps those of some specialist boards (eg water boards), as well as some powers and functions hitherto exercised by the regional government. They could also be given limited legislative powers, exercisable either on a small range of subjects or, on a wider range, within a framework of legislation laid down by central government.

✓ 87. These authorities would, in the everyday lives of the people living in their areas, represent "government" almost in its entirety in that they would administer the whole range of major services in accordance with local demand and need. Such a system would give each community a considerable measure of autonomy in areas in which each enjoyed a substantial majority. Control of the regional government would be a separate matter.

✓ 88. Sub-regional administrations would, however, give rise to many thorny problems. For example, the drawing of boundaries would be a particularly difficult task. Political and religious considerations would frequently be at odds with the demands of geography and economics and the criteria of administrative good sense. Because the new sub-regions would be more powerful than local government had ever been before, minorities within the new areas might feel themselves to be all the more threatened. It could however, be argued that the new authorities need not necessarily be ruled exclusively by the majority; consent to partnership might conceivably be

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easier to obtain at local level than at central government level - indeed there are already examples of this in Northern Ireland.

90. As regards the scope for participation by all sections of the community, the three broad patterns of devolved government, namely a strong regional administration, a "functional" solution and sub-regional government are not mutually exclusive. It would be possible, for instance, to combine some aspects of sub-regional government with some of a "functional" solution. Similarly, elements of one or both might find a place in a system of strong regional government.

Accountability

(*Answers page 16*)

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91. Whatever form of government is adopted for Northern Ireland, the Parliament at Westminster will remain the supreme legislative authority within the United Kingdom. Any future system of government in Northern Ireland must allow for this. There is also another field of accountability which is crucial to the future of good government in Northern Ireland. This is the accountability of those who govern to those whom they also serve - not merely those who elected the Government of the day but the population at large. In the rest of the United Kingdom the need to levy taxes to finance government decisions leads to a form of genuine accountability: not only must the government account to Parliament for its expenditure, and receive Parliament's approval to the levying of taxes; it must also, in practice, justify its policies and

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the decisions on priorities involved, to the public at large since, ultimately, those policies are likely to be reflected in the level of taxation imposed. The constitutional arrangements for Northern Ireland have in the past meant that the government in Northern Ireland has had relatively modest powers of taxation, and that the major decisions on the level of taxation in Northern Ireland, as in Great Britain, have been determined by the United Kingdom Government. Governments in Northern Ireland have not, therefore, had this same accountability. Financial accountability is essential: no system of government which fails to recognise this is likely to endure.

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CONCLUSIONS

92. The aim of this paper is to stimulate discussion both before and during the Convention. It is not, and is not intended to be, a comprehensive analysis of all the forms which the future Government of Northern Ireland might take; it is intended instead to set out some ideas about what is likely to be the most important element in whatever arrangements are made, namely the creation of a positive opportunity for [Northern Irish men and women] to join together in the administration of their country. ~~Government the will~~
~~" the desire of the people~~

93. There is, however, one condition which is basic to the survival and effectiveness of any device or scheme for the government of Northern Ireland - the will to make it work. If there is not the will, if there is not a unity of determination to operate the system, then even the most ingenious and fair-minded system will fail. But if the whole community in Northern Ireland can find the will to work together then a system of Government can be found to which all can subscribe. It is for the Constitutional Convention to consider what this system of Government might be, and to recommend a system which will find room for everyone in the community to subscribe wholeheartedly to it.