

Internal Talks: The Approaches of the Unionist and Alliance parties to possible internal structures for Northern Ireland

1. The purpose of this paper is to provide a summary of the varying approaches of the two main Unionist parties and of the Alliance to the internal political structures of Northern Ireland. Previous attempts to find an agreed basis for the establishment of such internal structures have identified the key issues as:
  - the form of administration to be established ("full-blown" devolution versus the more restrictive "administrative devolution");
  - the basis on which a devolved executive might be constituted (majority cabinet style government versus a "power-sharing" arrangement); and
  - the range of powers to be devolved to a Northern Ireland administration, in particular the question of the transfer of functions in the security and legal area.
  
2. The paper has been separated into two components. Because of its more immediate relevance, the first component (paragraphs 2-17) deals with the evolving approaches of the parties in the period since the signing of the Anglo-Irish Agreement. As these more recent approaches cannot, however, be fully understood without some knowledge of the parties' previous positions on these core issues, the second component (paragraphs 18-42) attempts to summarise the evolution in their thinking in the period between the aftermath of Sunningdale (1974) and the signing of the Anglo-Irish Agreement (1985).

(A) Post Anglo-Irish Agreement

3 The period since the Anglo-Irish Agreement has been largely characterised by protest politics on the part of the Unionist parties and has, therefore, not been a fertile period for any fresh thinking or new proposals on the above-mentioned three key issues. With the exception of the Unionist Task Force Report ("An End to Drift") of June, 1987, the only recent indications of evolving approaches among Unionism are those revealed in the course of public statements or media interviews. (While there have been some references in the media to the OUP/DUP joint proposals for internal government structures, which were apparently outlined in the Paisley/Molyneaux letter of 28 August, 1985 to the British Prime Minister, the precise contents of this communication have never been fully revealed). The Alliance Party, however, produced a major document on its governmental proposals ("Governing with Consent") in October, 1988.

Form of Administration to be established

4. This issue continues to be a matter of contention/debate primarily within the ranks of unionism; the establishment of the "Campaign for Equal Citizenship" and the incipient organisation of the Conservative Party in Northern Ireland has increased the profile - if not the support - of the integrationist lobby in Northern Ireland. Although the DUP and UUP leaders have managed to set aside the question during the course of their combined anti-Agreement campaign (and during the period of the talks about talks with Mr. Brooke), there clearly is a profound - if latent - division between the option favoured by Molyneaux (administrative devolution) and the full-blown legislative and executive devolution advocated by Paisley. (Comment: While full-blown devolution would lead to the creation of a parliamentary type Assembly,

with legislative powers in prescribed areas and an Executive Government answerable to it, administrative devolution would merely involve the establishment of a Council/s which had certain supervisory/scrutinising powers in regard to the administration of the more important local government functions; it would have no competence in the initiation of legislation). There are no indications that the two leaders have reached a common approach on this question and the round-table talks may provide the occasion when these latent divisions are finally exposed.

5. The Report of the Unionist Task Force of June 1987 (whose purpose was, inter alia, to ascertain what consensus existed among the unionist community for alternatives to the Anglo-Irish Agreement) essentially avoided the question of the preferred form of administration; in the document, "An End to Drift", which it presented to the DUP and UUP leaders, the Task Force state:

"Our opinion survey confirmed that the policy of total integration continues to attract substantial support in the Unionist community. However, the survey also confirms our view that the Whitehall establishment is strongly opposed to such a course and that devolution is the more attainable objective"

and

"We believe that only a government representative of and answerable to the people of the province can properly understand and respond to the continuing terrorist campaign. Devolved government therefore is our objective and whilst we hope this will prove attainable within the context of the United Kingdom,

Unionists would be wise and prudent to anticipate that it might not".

6. The fact that the authors of the Report (McCusker, Robinson and Millar) were vague as to the form of devolution they would advocate probably reflected the lack of trust between them and Molyneaux/Paisley on this issue and, in particular, their tactic of not giving the two leaders an overt reason for rejecting the Task Force Report out of hand.
7. The Alliance Party's 1988 proposals clearly opt for an administration based on the devolution of both executive and legislative powers. The Assembly would be a single chamber body with 85 members (5 per constituency) elected on the basis of PR (STV). The Executive would be appointed by the Secretary of State but would have to undergo a test of acceptability to the Assembly before taking office.

Basis on which a Devolved Executive might be Constituted

8. In the aftermath of the Agreement and the protest campaign, this question has received very scant attention from the political parties. It is interesting to note, however, that in the Task Force Report of June, 1987 presented to Molyneaux and Paisley there is a rather oblique reference to power-sharing. The authors urged the two Unionist leaders to signal that no matter (their emphasis) "could or should be precluded from any negotiations" to find a "reasonable alternative" to the Agreement. In this connection, they recommended that the leadership should "draw public notice to plans and proposals you have previously offered as a base for negotiation". They went on to state:

"Specifically in this regard we have in mind the Catherwood Plan in which both Unionist parties abandoned pure majority rule as the price for Devolution (emphasis added) ....."

(The "Catherwood Plan" of October 1985 is outlined in paragraphs 35-37.)

9. The positions of the two Unionist parties on this issue in recent years would appear - to judge from the statements and comments of their various spokesmen - to be at least confused if not actually divided. Within the UUP Molyneaux, as recently as January, 1990, stated that a power-sharing administration would be a "puppet Government" and referred to such an arrangement as "unworkable". On the other hand, Ken Maginnis and John Taylor have made public comments which suggest that they are amenable to power-sharing.

10. In the DUP Paisley continues to vehemently reject "power-sharing as of right". Peter Robinson's remarks, however, suggests that he adopts a more flexible and pragmatic line; while he has rejected power-sharing on the Sunningdale model, he has hinted of a willingness to consider "more imaginative" arrangements which might overcome "some of the difficulties that have existed in the past". In an interview with Frank Millar in March, 1989 Robinson said:

"We will be looking for structures that will be stable regardless of the composition of the Assembly, and we will be looking for a structure which will give a meaningful role for any minorities that exist.

And those of us who have no desire to discriminate against any minority will have no concern as to how

CAIN: Sean Farren Papers (https://cain.uilster.ac.uk/sean\_farren/)

*which  
minorities exist  
what is DUP's  
understanding of  
minority in  
this context  
N110*

*Any doubt  
as to the  
existence of  
minorities*

far-reaching the mechanism may be to ensure that there is fair-play within those new structures"

11. The Alliance Party position on the constitution of a devolved Executive was set out in their 1988 document, "Governing with Consent". The Alliance propose that the Executive would:

- be drawn from and answerable to the Assembly;
- be appointed by the Secretary of State; and
- would require to be accepted by the legislature (which would necessitate the support of "at least 70% of the members of the Assembly")

12. Under the Alliance proposals the Secretary of State would appoint and transfer power to an Executive if he is satisfied that an administration can be formed which:

- (a) is widely representative of the community as a whole;
- (b) reflects, so far as practicable and subject to (c) below, the balance of parties in the Assembly; and
- (c) includes no person who supports the use of violence for political ends.

Range of Powers to be Devolved

13. Molyneaux's advocacy of administrative devolution (and his parallel demands for the establishment of a Northern Ireland Select Committee at Westminster and an end to the Orders in Council legislative procedure) would suggest that the range of powers to be devolved under an UUP

scheme would be quite modest; probably no more than the functions currently discharged by the Northern Ireland Government Departments (essentially internal socio-economic matters) and the regional Area Boards (Education, Health and Social Services and Housing).

14. The DUP - and in particular Peter Robinson - have, however, displayed a keen interest and concern in regard to the range of powers to be devolved to a Northern Ireland Administration, particularly in the security area. In the above-mentioned interview with Frank Millar (published in the Irish Times on 20 March, 1989) Robinson said:

"I think it would be wrong of anyone to attempt to get devolution in Northern Ireland and to sell the people short by not attempting to get the full range of powers which obviously would include powers in the security field."

15. When Millar raised the issue of the difficulty (for unionists) of SDLP participation in an administration which had responsibility for security, Robinson responded as follows:

"I think that it will be incumbent upon anybody who has any position of responsibility in Northern Ireland not only to offer their full support to the security forces in Northern Ireland - and that is just not the RUC, it includes the other agencies of law and order as well, including the Ulster Defence Regiment - it will be incumbent upon them to encourage their supporters to give that same degree of support to the security forces and, indeed, to join those security forces".

16. The Alliance Party proposals of 1988 suggest that the three-tier categorisation of powers (i. e. "excepted", "reserved" and "transferred" matters) adopted in the 1973 Act should also apply to any new arrangements. (The basis for this categorisation of functions is outlined in paragraph 47.) While the effective competence of the Assembly would - in the first instance at least - only extend to transferred functions, the document proposed that the Northern Ireland legislature should also have an advisory role in relation to both reserved and excepted matters.
17. The Alliance Party proposed that powers over security, including the police and criminal law, should - as in the 1973/74 experiment - be a reserved function. The document stated:

"We would hope that as the devolved system progressed and took roots and as public confidence in the institutions grew, it would be possible to devolve security powers. But we think that to transfer these powers at the outset would be unwise and would place an almost intolerable strain on the new institutions".

In addition, the document expressed scepticism about the practicality of diffusing political control over the security function by having the Army controlled by Westminster and the police by the Assembly.

(B) Pre-Anglo-Irish Agreement

18. Between 1974 and 1985 the main constitutional parties had an opportunity to outline their formal and considered positions on three occasions:

- The Constitutional Convention (1975-76)
- The Constitutional ("Atkins") Conference (1979-80)
- The Northern Ireland Assembly (1982-86)

19. A clear comparison between the positions of the political parties on the above-mentioned key issues is complicated by a number of factors: the DUP and UUP participation in the 1975/76 Convention was as part of the anti-Sunningdale umbrella unionist coalition (UUUC); the UUP refused to participate in the "Atkins" Conference in 1979/80; and the SDLP did not attend the Assembly of 1982-86. Consequently, as one is not comparing like with like, it is difficult to draw unqualified conclusions concerning the evolution of each party's thinking.

Form of Administration to be established

20. The Report of the Constitutional Convention (1975) was effectively adopted by the UUUC majority (involving UUP, DUP and the now defunct Vanguard party). It proposed a devolved regional assembly and executive; the legislative would be unicameral and would be elected on the prevailing British system of franchise (i.e. first past the post). The Alliance Party - as a result of the failure of the 1973/74 devolved arrangement - backed away from the concept of a devolved executive; they proposed instead that for a period of time "the system of local administration should be based on departmental committees of the Parliament".
21. By the time of the 1980 "Atkins" Conference the UUP/DUP common position on the question of the form of administration had come apart. Under the leadership of

Molyneaux (who succeeded as leader in 1979) the UUP moved progressively towards a more integrationist stance. Molyneaux's adherence to the concept of administrative devolution had in fact been articulated in a speech he made in the House of Commons in December, 1976 when he argued that legislative devolution was fundamentally a threat to the Union:

"It is the direct selection of a body with legislative powers which launches the part concerned on the slippery slope towards separation - a slope on which there is no logical stopping place".

and;

"The devolution which matters and has always mattered in Ulster is not legislative but administrative devolution. .... It is the lack of control over the application and execution of the law which places our citizens at a crying disadvantage compared with all of the rest of the United Kingdom".

22. The 1979 Conservative Party Election Manifesto favoured the administrative devolution approach by proposing the establishment of a Regional Council for the government of Northern Ireland. Once in office, however, the Conservative Government brought forward proposals which, inter alia, included the devolution of both executive and legislative powers. As the UUP felt that the Government had reneged on their Manifesto commitment, they refused to attend the subsequent Constitutional ("Atkins") Conference.
23. The Northern Ireland ("Prior") Assembly, 1982-86, provided a full opportunity for the different approaches of the Unionist parties to be measured. The UUP adopted

an ambivalent, but essentially negative, approach to the Assembly which reflected internal tensions between the devolution and integration tendencies within the party. The UUP submission to the Assembly "The Way Forward" argued that a return to the Stormont-type executive and legislative devolutionary arrangement brings to the surface the "ultimate irreconcilable objectives" of both communities (majority rule cabinet versus power-sharing executive) and so is not possible to attain. It concluded that in such circumstances:

"every effort should be made to provide for a devolved administration in Northern Ireland in which majority and minority representatives can participate without prejudice to their position on the constitutional question".

24. In this context, the UUP set out their proposal for administrative devolution:

- The Northern Ireland Assembly would be an administrative body for the whole of Northern Ireland;
- The functions and powers of the existing Northern Ireland Departments would be transferred to the Assembly and Committees would be established to examine and give advice on each function; and
- There would be no Executive but a General Purposes Committee would co-ordinate and provide an initial sounding-board on Committee views.

25. The DUP initial submission to the Assembly "The Future Assured", proposed the establishment of a devolved executive and legislative administration. In a later submission (titled "Legislative Devolution as a Way

Forward") in September, 1984 the DUP proposed that consideration be given to pursuing the attainment of one element of devolved power in advance of the other - i.e. legislative before executive - as "a means of ultimately attaining both". In this scenario, the Assembly would:

- have the power to scrutinise and adopt Westminster legislation;
- enjoy some powers to initiate legislation which could be vetoed by the Secretary of State (this veto could, in turn, be over-ruled by a 70% vote of Assembly members).

Basis on which a Devolved Government might be Constituted

26. While the form of devolved administration was essentially an issue that divided the Unionist parties, the question of the basis on which a devolved government/executive was constituted was one which marked a fundamental division between the two Unionist parties, on the one hand, and the SDLP and - to a lesser extent - the Alliance Party on the other. Both the Constitutional Convention of 1975 and the Constitutional ("Atkins") Conference of 1979-80 failed largely because of the apparent irreconcilable positions on this question.
27. The conclusions of the Final Report of the 1975 Constitutional Convention (which was effectively adopted by the UUUC majority) exclusively reflected the views of the anti-Sunningdale Unionist parties:
- The formation and operation of the executive "should conform to the practices and precedents of the Parliament of the United Kingdom";

- The leader of the largest parliamentary party should be invited to form a government and s/he should not "be compelled to include members of any particular party or group" in that government; and
- A statement that "no country ought to be forced to have in its Cabinet any person whose political philosophy and attitudes have revealed his opposition to the very existence of that State"

28. Since the Alliance Party proposed an interim form of administration based on parliamentary committees, it did not have to confront the crux issue of the question of power-sharing in the executive; its proposal, aimed at securing cross-community representation in government, was that the Chairmen and membership of these parliamentary committees" would be determined by a proportional system which would reflect different party strengths".

29. While the Convention Report reflected the UUUC's categoric rejection of power-sharing, it is interesting to note that during the proceedings at least some elements of the Unionist leadership (in particular William Craig of Vanguard) seriously considered some type of national interest/emergency coalition which would allow the Unionist parties and the SDLP to participate in Government without sacrificing unionism's principled objections to "power-sharing by right". However, grass-roots unionist opinion quickly showed its hostility to this idea, the UUUC leaders - in particular Paisley - retreated to their usual hard-line positions, Craig was forced to resign as Vanguard leader and his party subsequently split.

30. While, the UUP did not participate in the Constitutional ("Atkins") Conference, 1979-80, it is interesting to note that the party's evolving commitment to administrative devolution had certain implications for the power-sharing debate. Molyneaux argued that the issues of power-sharing and wide-spread acceptance were more amenable to settlement within the relatively modest context of administrative devolution; it was legislative devolution, he argued, which:

"raised the dilemma between the irreconcilable ultimate objectives in Ulster and rendered insistence upon majority rule as essential to one side as it was unacceptable to the other".

31. Notwithstanding this (perhaps ingenuous) argumentation, the question of power-sharing proved to be the crux issue on which the short-lived "Atkins" Conference revolved; no agreement could be reached as the SDLP and Alliance insisted on power-sharing and the DUP adhered to the principle of majority-rule. After the demise of the Conference, the DUP issued a twelve point rejection of power-sharing as an option for Northern Ireland. Reciting many of the usual arguments against the principle of power-sharing it maintained, inter alia, that

- it made "collective responsibility" impossible;
- the opposition of the majority to the concept could not be overcome; and
- it could not work in Northern Ireland since - unlike Belgium - "one of the parties with whom power would have to be shared does not support the Constitutional status of Northern Ireland and,

indeed, is working to establish the sovereignty of a foreign state over the territory".

32. In the course of the Constitutional ("Prior") Assembly, 1982-86, both Unionist parties tabled proposals which indicated the evolution of their policies on the question of the constitution of the government/executive. The UUP proposal on administrative devolution made no provision for any form of power-sharing arrangement. It did assert, however, that:

"Minority participation would be encouraged by the absence of a Cabinet government with its concomitant requirement of a dependable constant majority. The absence of any party with an overall majority in the foreseeable future would necessitate those compromises and bargains between participating parties which are the essence of real politics".

33. The DUP proposals confronted the issue more directly. While they repeated their traditional arguments against executive power-sharing, they also contained an implicit partial recognition of the fact that Northern Ireland did not represent a "normal" political society; this recognition took the form of a suggestion for a "Council of the Assembly" composed equally of pro and anti-Government supporters. Through certain delaying powers the Council would act as a check on the operation of an executive derived from a single community. In addition, the DUP submission argued (however implausibly) that under the "majority rule" system there would still exist the possibility of a power-sharing arrangement occurring since no one Unionist party would win over 50% of the vote.

34. The Alliance Party argued that it was essential to establish political institutions commanding majority support in both sections of the community; to this end, they proposed a scheme by which the Assembly could elect (by PR) a Chief Executive and a panel of Chairmen of Committees, each of whom would act as a Minister in charge of a particular Government Department. The scheme also envisaged a mechanism for a political appeal by an aggrieved minority from the Assembly to the Westminster Parliament.
35. Before concluding consideration of the Assembly it is worth noting the "Catherwood" proposals of October, 1985. These were hurriedly elaborated within a week and clearly reflected the panic felt by the Unionist parties in the Assembly at the evolution of the concurrent Anglo-Irish talks. The status of the proposals was never clear: there was confusion as to whether they were intended to coexist with the product of the Anglo-Irish talks or to supplant that process; the Assembly's Devolution Committee only endorsed the proposals "as providing a working basis for fruitful negotiations"; and, in the aftermath of their publication, the UUP and the Alliance stressed that they had not agreed to the proposals themselves.
36. Catherwood proposed that the range of legislative and executive responsibilities exercised by the 1974 Executive should be exercised by the Assembly and a devolved administration answerable to it. On the key issue of the constitution of the Executive, it was proposed that initially it would require a vote of confidence of 2/3rds of the Assembly; the second Executive would require a vote of 55% and subsequent Executives would only require a simple majority. It was also proposed that the administration might "for convenience" use a party list system for allocating posts

under which each party in order of size would successively choose executive posts for themselves.

37. The "Catherwood" proposals - which in a sense represented the then outer-limit of what unionism was prepared to concede - were not attractive to nationalists. The voting thresholds for setting up an Executive were too low to ensure the involvement of minority representatives. In addition, the progressive reduction of the threshold and its elimination after two administrations (on the grounds that "by then the experience of people working together would enable the normal democratic processes to operate") was clearly not acceptable.

#### Range of Powers to be Devolved

38. The Northern Ireland Constitution Act, 1973 had divided the range of powers relating to the government of the North into 3 categories:

Executive Powers; All of these functions were reserved to Westminster (the Crown and UK Parliament, foreign affairs, defence, taxation, appointment and removal of judges/DPP, electoral issues, coinage and special powers for dealing with terrorism).

Reserved Powers; These were matters initially reserved to Westminster but which might at a later date be transferred to a local Parliament (court matters other than appointments, maintenance of public order, criminal law and prosecutions - including North-South extradition - oaths and certain trade, transport and communications matters).

Transferred Powers; The residual matters were transferred to the devolved administration (environment, housing, local government and planning, health and social

services, commerce, finance other than taxation, legal affairs and law reform, education and agriculture).

39. The 1973/74 arrangements differed from the previous Stormont administration in two respects:
- (a) Its financial powers were more restricted; it had no competence in the area of taxation; the separate Northern Ireland Exchequer was abolished; and the determination of the Northern Ireland share of the overall British revenue was now made exclusively by the Treasury in London.
  - (b) Its powers in the security domain were severely limited. While the Stormont administration controlled the police, the 1974 Executive had no competence in the area of law and order which was a reserved power.
40. Between the Constitutional Convention of 1975 and the Northern Ireland Assembly of 1982-86, there seems to have developed a view among the DUP that a future devolved administration must have some competence in the security area. In the 1975 Convention the UUUC proposed that the functions to be devolved be on the Stormont model including law and order/internal security. The Alliance proposed that the "regional legislative competence" should include internal policing, criminal law and prisons.
41. The UUP paper submitted to the Northern Ireland Assembly (1982-86), "The Way Forward," did not discuss the question of the devolution of security powers - perhaps because it was not easily reconcilable with the party's overall prescription for administrative devolution. The DUP submission "The Future Assured" did, however, address the question of the role of the devolved administration

vis-a-vis security matters. While it accepted that full security powers would not be conferred upon local institutions in the immediate future, it suggested that the Assembly might be given power to appoint members to the Northern Ireland Police Authority and to debate the Chief Constable's Annual Report.

42. The main DUP proposal, however, was that the devolved Executive have some consultative role in regard to security issues. The document stated:

"Most important of all, some procedure must be devised to directly involve the Northern Ireland Government in the day-to-day control of security matters. . . . . Thus we suggest that the Leader of the Northern Ireland government should be involved along with the Secretary of State, the Chief Constable and the GOC in the regular discussions which take place on security matters."

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