

COMMON SENSE
Northern Ireland - An Agreed Process
Ulster Political Research Group (1987, 1993)

Preface

At the time of writing we are suffering yet another Ulster constitutional crisis, this time provoked by the Anglo-Irish Agreement. Violence, intercommunity strife, polarisation and uncertainty are all at a higher level than at anytime for almost a decade. The 'accord' will not bring peace, stability nor reconciliation to Northern Ireland because it is a contract between two governments and not an agreement between those in the cockpit of the conflict — Ulster Protestants and Ulster Catholics.

This whole document could be used to expound the faults and failures of the Anglo-Irish approach to the Ulster problem but that is not the purpose of this paper. It is enough to say that after more than a year in existence the 'accord' has not won over the support of even one small loyalist group, opposition to the agreement remains absolute. Any scheme which is opposed to such a degree has little or no chance of developing into a solution.

Yet the Anglo-Irish Agreement has at least done two things which may speed movement towards a real internal agreement in Ulster. The increased exposure and examination of Southern Irish society has further increased disillusionment for Ulster Catholics in the prospect of a united Ireland. At the same time Ulster Protestants are increasingly heard to say that whilst they are totally resolved to defeat the Anglo-Irish Treaty they recognise the need for a reasonable and acceptable alternative to the agreement. They recognise that it is not enough to simply say NO. With this in mind the Ulster Political Research Group presents this paper for discussion as one possible alternative.

We are all part of the problem but how many are prepared to be part of the settlement. It costs nothing to think about it.

'Perhaps the sentiments contained in the following pages, are not yet sufficiently fashionable to procure them general favour; a long habit of not thinking a thing wrong, gives it a superficial appearance of being right, and raises at first a formidable outcry in defence of custom. But the tumult soon subsides. Time makes more converts than reason' (Thomas Paine 1776).

INTRODUCTION

Who (in 1969) would have thought that after nearly Twenty years the 'troubles' would still rage unabated with the Ulster Protestant-Loyalist-Unionist community and the Ulster Catholic-Irish Nationalist-Republican community still locked in stalemate? Yet here we are in 1987 with nothing to show for it all but the prospect of looking forward to an ever polarising society brutalised by violence, ravaged by fear and demoralised by economic depression.

HOW LONG CAN THIS GO ON?

The stubborn determination of each community not to 'give in' to, nor be beaten by, the other

ensures that the conflict could continue indeterminately unless we can produce a settlement which removes the main sources of antagonism to each side. In the quest for proposals which may lead to a social and political solution to the Ulster conflict we must first identify the parameters within which such proposals are realistic. Surely by now we recognise that there are limits beyond which each community will not (under any circumstances) retreat nor indeed be forced. It is not always that which is true which is important, but that which is believed to be true. Each community tends to form its impression of the other from the rhetoric and posturing of the most zealous and vocal sections of that group. The trouble with the silent majority is that it is indeed silent, and therefore makes little impression.

WHAT IMPRESSION THEN DOES EACH COMMUNITY HAVE OF THE OTHER?

Ulster 'Protestants' do not fear nor mistrust Ulster 'Catholics' because they are Catholics but because they believe them to be Irish Nationalists — fifth columnists — uncommitted citizens, intent on the destruction of Northern Ireland in pursuit of a united CATHOLIC-GAELIC-IRISH NATIONALIST-REPUBLIC. Loyalists fear that if these Irish Nationalists are allowed any authority or position of 'power' within the political framework of Northern Ireland then they will use that power and authority to undermine, or even overthrow the State to achieve their Nationalist ambitions. For this reason Loyalists have opposed, and will continue to oppose, any proposal or scheme which contains an 'Irish dimension' or which Loyalists believe is contrived by Irish Nationalists to either undermine the 'Union' with Great Britain or bring a United Ireland one step nearer.

"The Unionists are a majority in Northern Ireland, but their political behaviour there can only be understood if they are seen, as they feel themselves to be, as a threatened minority on the island of Ireland. Theirs are the politics of the besieged. Hence their stubborn refusal to share power with the minority in Northern Ireland, whom they fear as the Trojan horse of the real majority in Ireland, the Catholics." (JOHN HUME SDLP)

Ulster Loyalists live in a state of eternal siege; a people instinctively driven by the overpowering need to defend the frontiers against the enemy without, and to suppress the enemy within. Ulster 'Catholics' generally believe that Ulster 'protestants' wish to preserve an ascendancy society; a religious and political hierarchy from which they are excluded, or 'alienated', for no apparent reason other than that they are Catholics (the symptoms of mistrust and uncertainty are mistaken for bigotry and intransigence). A situation which 'Catholics' resent bitterly, and have increasingly demonstrated that resentment.

CATCH 22

The more Loyalists suspect 'Catholics' of being Irish Nationalists, the more defensive they become and close ranks. The more defensive 'Protestants' become, the more 'Catholics' believe themselves to be excluded and display disaffection and agitation usually through the medium of Irish Nationalism.

In turn 'Protestants' interpret the display of agitation as further evidence that the minority is nothing more than a bunch of 'rebels' and become even more defensive. And so it goes on.

The consequence is a stalemate situation where Protestants feel threatened, and Catholics feel alienated and dominated by a protestant majority. It creates a society that can not move forward, so it does not move. If we are to break this deadlock or if any proposed solution is to stand any serious chance of success then it must attempt to ensure two things: —

1. That Ulster 'Protestants' no longer feel compelled to defend the frontier.
2. That Ulster 'Catholics' support, and play a full role, in society.

Whilst we have no doubt that compromise and accommodation can be reached between Catholics and Protestants in Northern Ireland, it is impossible to compromise on the existence of Northern Ireland itself — it either exists or it doesn't. At present it exists and is a part of the United Kingdom. This situation may not be the whole-hearted wish of everyone in the province but must be recognised to be the wish of most. Surely then this is the logical place to make a beginning.

It is our firm conviction that the vast majority of both religious communities long for peace, reconciliation and the chance to create a better future for their children. But longing is not enough; there must be a mechanism created to harness the love, generosity, courage and integrity of Ulster people in both religious communities and direct its great power towards the light of a new beginning.

In an attempt to create such a mechanism we propose the following:—

(a) Devolved legislative government for Northern Ireland and a written constitution. A set of constitutional laws, agreed by Ulster Catholics and Protestants together which would lay the foundations on which to build a new progressive democracy. An agreement instituted by Ulster people at referendum which can only be changed by Ulster people at referendum.

(b) A modern democratic political structure based on consensus government, proportional representation and shared responsibility.

(c) A Bill of Rights.

(d) A supreme court charged with the responsibility to uphold constitutional law and safeguard the rights of the individual as represented in the Bill of Rights.

There is no section of this divided Ulster community which is totally innocent or indeed totally guilty, totally right or totally wrong. We all share the responsibility for creating the situation, either by deed or by acquiescence. Therefore we must share the responsibility for finding a settlement and then share the responsibility of maintaining good government.

J. McMICHAEL

UNITY IN DIVERSITY

Northern Ireland is not unique because its inhabitants are in conflict. In every age and in every part of the globe, man has confronted man on every issue imaginable. Within comparatively recent times almost every country in Europe has experienced violent struggle because of serious ethnic, religious or class divisions in society. Stalemate, and the gradual acceptance that to continue the conflict was senseless and futile, forced the antagonists to negotiate a variety of settlements. Almost always the settlement took the form of a contract between the various parties (A WRITTEN CONSTITUTION).

Most modern democracies, which have emerged from conflict, are based on the sovereignty of the people. Elected representatives of the various sections of the population negotiated and agreed on what powers the citizens were prepared to devolve to their government, the structures of government and what safeguards to civil liberties were to be incorporated in the constitution. The main provisions of such agreements are often drawn up in one binding document (written constitution) which defines the structures and powers of government and the relationship between the several parts of government and between government and the citizen. In other words, the people lay down the ground rules inside which the politicians and civil servants are expected to operate; A set of rules which form the basic blueprint for society and which can be referred to for guidance when a dispute arises; A set of constitutional laws which can only be changed by the people, usually by means of a referendum. To ensure that no one faction, which may achieve a simple majority, could revoke or change any or all of the agreement it is established practice to employ some mechanism which ensures that the constitution cannot be amended except where there exists a proven consensus for change Generally speaking, for a proposed constitutional amendment to succeed it requires the support of a considerable majority of the parliament (often at least 2/3) and then must be ratified by a majority in a referendum.

A considerable portion of most written constitutions relates to the protection of civil liberties and the relevant constitutional articles are commonly known as a Bill of Rights. For example the first nineteen articles of the Federal Republic of Germany define specific basic human rights.

Where a written constitution is established it is regarded as a morally and legally binding document Should a government seek to introduce any measure which is regarded by any citizen or group of citizens to be in breach of the contract then that measure can be challenged through the courts. The judiciary has the power to overrule even an act of parliament if it is judged to be unconstitutional.

THE UNITED KINGDOM AND THE WINDS OF CHANGE

The constitution of the United Kingdom is mainly an 'unwritten' one. It consists of the collection of all acts of parliament, parliamentary conventions and case law which exists at any one time. Parliament is absolutely sovereign and any statute can be passed or repealed by a simple majority in both Houses at Westminster It is in fact an elected dictatorship.

The parliament of the UK. could abolish jury trials, permit imprisonment without trial, abolish the welfare state, or enact an Anglo-Irish treaty without askance of, or accountability to anyone. No law enacted by parliament can be challenged, not even by the courts. There is no set of laws or rules to control the conduct of government

This system of government has been successful for hundreds of years for a number of reasons which are no longer as valid as they once were; the United Kingdom was the centre of a vast economic empire which ensured that all parts of the kingdom shared relative prosperity; there existed a reasonably accepted balance of power between central and local government; the populace still had faith in the parliamentary process

Yet, even in Great Britain, the winds of change are gathering force Economic decline, racial tensions, massive unemployment, the breaking down of the two-party system and the growing dissatisfaction with increasing centralised authority are creating pressures and strains beyond the experience or capability of the present centralised political system.

"The greatest threat to the balance of powers and civil liberties in Britain comes not from a potential dictator but from a succession of government measures forced by pressure of circumstances which can be individually justified but which add up to a steady diminution of freedom". (ALAN BEITH - LIB/SDP ALLIANCE)

There are growing demands for regionalisation in England, a devolved legislative assembly for Scotland is imminent, devolved administration for Wales will follow while electoral reform to PR. and a Bill of Rights are inevitable All these reforms, and many others, are on the political agenda and many in Great Britain recognise that the present constitution is totally inadequate to cope with this new set of circumstances.

"I have reached the conclusion that our constitution is WEARING OUT Its central defects are gradually coming to outweigh its merits. I envisage nothing less than a written constitution for the United Kingdom". (LORD HAILSHAM, THE LORD CHANCELLOR)

The United Kingdom is undoubtedly moving towards regionalisation and such a situation would require a written agreement defining the relationship between the various parts of this kingdom and how they should be governed.

An opportunity exists for Northern Ireland to be in the vanguard of the coming age of constitutional reform within the United Kingdom. Where there is no change there is no democracy.

CO-DETERMINATION

(An Agreed Process Of Government For Northern Ireland)

Northern Ireland is a geographical and political entity and the majority of its citizens wish it to be part of the United Kingdom This is one fundamental reality of the situation Another fundamental reality is that Northern Ireland will never realise political and social stability until there is consensus on how it will be governed. We in Northern Ireland cannot remain isolated from the progressive changes in political practice and thinking developing in Europe generally and in the UK. in particular. The hour has arrived for the representatives of the various Ulster minorities to appraise the situation pragmatically and talk to each other with a view to agreeing a process of government for Northern Ireland and entering into a contract with each other which both defines and guarantees that agreement Others have done it before us, now it is our turn.

The task of formulating an agreed process for Northern Ireland will not, we recognise, be an easy one It will be fraught with difficulties and will require political statemanship. Yet, if the various factions agree to embark on this great endeavour, an opportunity would be created by which 'Ulster Catholics' and 'Ulster Protestants' could co-determine the very nature of their society; how it would be shaped, and how it would be governed

We propose the following steps as a mechanism to create that opportunity:— Formulating the Constitution

1. The Secretary of State for Northern Ireland would invite all political parties to discuss the principle of creating a written constitution and subsequent form of government
2. If the various parties agree in principle, the Secretary of State would call an election for the parties to seek a mandate from the electorate for their attendance at a constitutional conference.
3. On a day decided in advance of the election, the newly elected representatives would convene the conference.
4. The Chairman of the conference would be appointed by the Secretary of State but must be ratified by the conference.
5. The conference would require expert assistance to prepare its draft constitution. It may consider inviting experts from the Commonwealth, the E.E.C., and the U.S.A. to act as advisers and observers
6. The draft constitution would be ratified by the Conference, then it would be put to the people for acceptance by means of a referendum. We recommend that the constitution should not be implemented, (nor amended once it has been ratified) unless it commands the support of not less than 2/3 of the voters in a constitutional referendum.
7. If the constitution is ratified by the people of Northern Ireland and the Westminster Parliament it would automatically become law and the conference would dissolve.
8. Elections would be held to the structures of government according to the articles of the constitution.
9. Northern Ireland would continue to return members of Parliament to Westminster using the present franchise

WHAT WOULD A CONSTITUTIONAL CONFERENCE DO?

The conference will be faced with the task of debating and resolving the most fundamental issues inherent in constructing a modern, pluralist and progressive democracy.

• GOVERNMENT

— Perhaps the most difficult task facing the conference will be to agree on how Northern Ireland

is to be governed;

— How should central and local government be structured?

— What powers should be given to the various parts of government?

— How and when would elections take place?

— What would be the relationship between the government of Northern Ireland and the government

at Westminster?

A political structure which we believe may attract a wide consensus of support is outlined below.

• STRUCTURE OF GOVERNMENT

The people of Northern Ireland would elect representatives to a legislative assembly to govern on their behalf over all matters excepting those matters reserved by the Westminster parliament (e.g. national defence, and foreign affairs). The assembly would govern within the terms of the new constitution. Because Northern Ireland would have its own written

constitution the people of Northern Ireland would, in many respects, be negotiating the Act of the Union not to weaken that Union but to bring to it a more realistic and stable relationship.

• ELECTIONS

Elections to the legislative assembly and to local government councils would be held every four years using proportional representation, multi-constituency representation system of voting, as currently used in Northern Ireland.

• ASSEMBLY

The assembly would be the only body in Northern Ireland with the authority to legislate. Seats on each of the assembly committees would be appointed in such a way that each committee would directly reflect the proportional strength of the parties within the assembly. Committee Chairmen would be appointed using the same principle. (If a political party obtained 30% of the seats in the assembly, then that party would automatically be entitled (as far as it is arithmetically possible) to 30% of the seats and chairmanships of the committees).

An illustration of how committee chairmanship could be allocated can be found on page 6.

• EXECUTIVE

Seats on the executive government committee would be allocated (as far as it is arithmetically possible) using the same principle of proportional representation within the assembly. (An illustration of how appointments to the executive committee could be allocated can be found on page 6).

The acceptance of the practice of proportionality at all levels of government would change the very nature of politics in Northern Ireland. For the first time the people would effectively and directly determine the make-up of the executive by their votes. Coalition is now the practice rather than the exception in modern pluralist societies. We have become so accustomed to equating democracy with majority rule that we tend to forget that majority rule is democratic only when there is alteration in office or when there is broad consensus for it. Majority rule in deeply divided societies is likely to be profoundly undemocratic, and the only democratic system is one

that allows participation in government by coalition of all groups, majority and minority, on a more or less permanent basis. In such a coalition agreement a duty would be placed on the minority participants to clearly demonstrate their unreserved support for the constitution, the political institutions of the state and law and order.

• THE ELECTION OF AN EXECUTIVE AND OF COMMITTEE CHAIRMEN

(The following is a selected and edited part of a paper by Sidney Elliot — Q.U.B.).

Any devolved government in Northern Ireland faces formidable problems which might be delayed by dispute about how to constitute itself. Given the degree of segmented distrust the use of an electoral device might be recognised as fair and have the merit of being automatic. This paper, therefore, seeks to apply one of a number of well known electoral formulae to the selection of an Executive and committee chairmen.

An electoral mechanism must determine two things, namely, the party composition of the membership of the assembly and the allocation of specific offices and departments between

them. The approach illustrated below requires the Assembly to elect the required number directly to a specific post.

To illustrate the effect of the electoral formula some assumptions have to be made. It is assumed here that there will be ten executive seats and that it will reflect the current civil service departmental organisation. The departments are therefore assumed to be — Administration of Justice, Economic Development, Agriculture, Environment, Health & Social Services, Education, Finance & Personnel. In addition, it is assumed that there will be a Chief Executive, a Deputy Chief Executive and a Minister without Portfolio (perhaps to keep an eye on reserved matters). (*We have substituted the office of whip suggested by Mr. Elliot in his paper, with that of an Administration of Justice).

For the purpose of illustration the party representation and share of the vote is assumed to be that prevailing in the Assembly in October 1 982. The method requires the direct election of each post in the Executive by the 78 members of the Assembly. The political representation in the Assembly is 26 Official Unionists, 21 Democratic Unionist, 14 Social Democratic & Labour, 10 Alliance, 5 Sinn Fein, 1 Ulster Popular Unionist and 1 Independent Unionist.

D'Hondt Rule

The votes of each party are divided successively by 1, 2, 3, 4, etc. and put in a table. The choice of seats on the Executive is then allocated in order of the largest numbers.

TABLE 1

DIVISOR	OUP	UDUP	SDLP	APNI	SF	UPUP	INDU
1	26*	21*	14*	10*	5	1	1
2	13*	10.5*	7 *	5	2.5	0.5	0.5
3	8.7*	7*	4.7	3.3	1.7	0.3	0.3
4	6.5*	5.3	3.5	2.5	1.3	0.3	0.3

Hence the party composition of the Executive would have been 4 OUP, 3 DUP, 2 SDLP, 1 APNI, and the order of election as follows: —

TABLE 2

	*		
1st CHOICE	26	OUP	CHIEF EXECUTIVE
2nd CHOICE	21	UDUP	DEPUTY CHIEF EXECUTIVE
3rd CHOICE	14	SDLP	ADMINISTRATION OF JUSTICE
4th CHOICE	13	OUP	ECONOMIC DEVELOPMENT
5th CHOICE	10.5	UDUP	AGRICULTURE
6th CHOICE	10	APNI	ENVIRONMENT
7th CHOICE	8.7	OUP	HEALTH & SOCIAL SERVICES
8th CHOICE	7	UDUP	EDUCATION
9th CHOICE	7	SDLP	FINANCE & PERSONNEL

The same method would elect the chairmen of committees.

- **A BILL OF RIGHTS**

This would be an essential part of the constitution. All local political parties (except Sinn Fein) have accepted, at least in principle, the need for a Bill of Rights in Northern Ireland. The conference could formulate its own set of articles relating specifically to basic human rights or it could agree to adopt the European Convention on Human Rights into the constitution. Obviously nothing could be entered into the constitution which would adversely affect the rights of other citizens in the United Kingdom or EEC.

- **ADMINISTRATION OF JUSTICE**

The conference would formulate a set of articles in the constitution dealing specifically with the administration of justice; specifying the various courts, their structures, powers and jurisdiction; the mechanism for appointing judges and their term of office. Because the judiciary will become the supreme arbiter between the people and government it is obvious that there will be a need for the creation of a supreme court qualified and competent to deal with issues relating to constitutional law and human rights.

EQUAL CITIZENSHIP

POLITICAL PARTIES OF GREAT BRITAIN

It is not widely known that the main British political parties (i.e. Conservative and Labour Parties) do not permit Ulster people to join these parties. The SDP allow Ulster people party membership but refuse to organise candidates in Northern Ireland. The Liberal party alone does not exclude either membership or organisation in Northern Ireland.

Although we canvass for a written constitution to define the authority of government and therefore political parties, we believe the party system to be an essential part of the process of government and change.

As we see it, the Ulster people will be able to affect their society through the constitution, the local assembly and Westminster, but without the freedom to participate in the British party system, an integral part of the political process will be denied to them. For it is through the party system that Ulster people of all political persuasions can assert influence at Westminster, whether it is through the ruling party or opposition. After all, the parties will all seek to be represented in the devolved assemblies of Scotland and Wales.

Ulster people may well find it strange that British political parties suggest that we turn away from sectarianism', yet refuse to provide organised alternatives for the Northern Ireland electorate.

When the constitution for Northern Ireland is settled we would hope that the political divisions between the parties would be based on social and economic doctrine rather than Unionist versus Irish Nationalist or Catholic versus Protestant. To that end it would be beneficial if the national political parties grasped the nettle and helped to bring about the necessary transition by becoming organisationally involved in Northern Ireland.

CONCLUSION

A written constitution would not be a magic formula to solve all the problems of Northern Ireland overnight. But it would provide an agreed morally and legally binding contract between the various peoples of this province; a foundation on which to build a new pluralist society. The rest will depend on the integrity and statesmanship of the political leaders of this community.

The fact that Northern Ireland's 'status' within the United Kingdom could not be changed without the consent of at least two thirds of those voting in a referendum would raise the siege on 'Ulster Protestants' and create a new atmosphere of security and stability conducive to reconciliation and political development. A Northern Ireland existing by consent would remove the need to constantly defend the psychological border.

Our proposals do not in any way deny any section of the community its aspirations. Any group which aspires to a united Ireland, an independent Ulster or any other constitutional change may achieve its objective if it commands a broad consensus of support for change.

"No sane person could wish to change the status of Northern Ireland without the consent of the majority of its people. That would be a recipe for disaster and could, I believe, lead only to civil war, that would be destructive of the life of people throughout our island".

(Dr. Garrett Fitzgerald — Irish Times, 20th November 1985)

It is our contention that it would be a recipe for disaster and probable civil war if the 'status' of Northern Ireland were to be changed without the consent of the majority of each of the two main communities.

The fact that the new political structure, ensuring consensus and coalition, and the constitutional articles protecting basic human rights could not be revoked or changed without the support of at least two thirds of those voting in a referendum, would dispel the fear of exclusion felt by the 'Ulster Catholic' community and allow all minorities to play a full and productive role in our society.

FOR PERHAPS THE FIRST TIME IN THE HISTORY OF NORTHERN IRELAND THE SAME PROTECTIVE MEASURE COULD BE MADE TO WORK FOR BOTH PROTESTANTS AND CATHOLICS. THAT PROTECTIVE MEASURE WOULD BE THEIR MUTUALLY AGREED CONSTITUTION.

Such a settlement by consent, would release those in political life from the treadmill of 'border' politics and allow them to use their various talents to tackle the real enemies which confront and terrorise the whole community:— Social deprivation, economic recession, unemployment, the need for more housing and the breakdown of respect for law and order. To overcome such formidable obstacles Northern Ireland will need a coalition of all the talents and resources that Ulster people can provide.

"LAW IS NOT WITHOUT MORAL INFLUENCE: IT SETS A STANDARD FOR BOTH THE PUBLIC AND THE POLITICIANS... SO TO WRITE THE COALITION IDEA INTO THE FORMING OF A GOVERNMENT IN PLACE OF THE PRESENT GOVERNMENT VERSUS

OPPOSITION IDEA WOULD IN ITSELF BE QUITE A STEP FORWARD".
(Sir Arthur Lewis-Nobel Prize Winner)

The pragmatic alternative to co-determination is to fight a bloody civil war and let the victor dictate the rules by which we will live.

What we propose will probably be described by some as idealistic, ambitious, fraught with difficulties and even dangerous to attempt: but so then has anything that was ever worth doing. The most dangerous thing to do, and unfortunately the most politically popular, would be to do NOTHING.

Published by:
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