

THE NORTHERN IRELAND EXECUTIVE
SOME RETROSPECTIVE CONCLUSIONS

1. The Northern Ireland Executive lasted for some five months, from January to May 1974. Although this represented a very brief period over which to judge a major constitutional experiment and innovation, some trends and factors were apparent to those more directly involved. It is the purpose of this Note to identify some of these trends and factors.

PUTTING THE EXECUTIVE TOGETHER

2. The Act of 1973 allowed, and the White Paper which preceded it clearly envisaged, a somewhat detached role for the Secretary of State. After the Assembly elections, the Secretary of State was to "discuss with representatives of the parties how devolution on a basis of government by consent may take place" (para 51). The objective of these discussions would be "to seek an agreed understanding which the United Kingdom Government can with confidence recommend to Parliament as a fair and viable basis for the devolution of power" (para 53). When an "agreed understanding" had been reached, "it would be the intention to make appointments in accordance with that understanding." These appointments (to be Heads of Departments) would be "formal" (para 72).

3. Underlying this phraseology was a high degree of uncertainty as to how power-sharing could best be achieved in practice. The Green Paper had identified at least four possible means:-

- (a) "Entrenched government", whereby certain minority elements must by constitutional requirement be included in a government.
- (b) "PR government", whereby all substantial elements elected to the legislature would, in proportion to their strength there, secure representation in a government.
- (c) "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.
- (d) "Weighted majority government", whereby an incoming government would require the endorsement of the legislature not by a simple majority, but by a majority so weighted as to make necessary a broad range of support.

4. However, the Green Paper (para 61) also recognized "in the use of some of these devices, an inherent danger that any major political element could choose, for its

own purposes, to bring the system to a standstill." This danger clearly influenced the decision not to incorporate in the Act any specific mechanism for power-sharing, but rather a formula or interlocking series of formulae (Assembly support → electoral support → wide acceptance throughout the community → government by consent.) The decision may well have been wise, since the composition of the Assembly, once elected, could have throttled the experiment at birth.

5. It was, however, still possible for the parties to discuss not the formation or the balance or the personnel of an Executive but the basis on which it might be formed. It was, for example, open to them to say to the Secretary of State "the overwhelming view is that representation should be proportionate". This would have enabled the Secretary of State to adopt a detached, quasi-gubernatorial role when it came to the actual appointments. Events took a different course. The "loyalist" groups refused to enter any discussions based on the 1973 Act, and even the major parties willing to consider power-sharing in principle showed no sense of urgency in getting together. For some time the Faulkner Unionists and the SDLP danced an elaborate minuet with the Secretary of State, and it took a great deal of behind-the-scenes intervention to bring them and the Alliance Party into proper discussions under the Secretary of State's chairmanship. While the talks would probably never have started at all without him, and if started would have made little headway, the direct intervention had two damaging implications:

- (a) It brought the Secretary of State into the foreground of Executive-making, thus giving ground for the myth that the Executive were simply his "creatures".
- (b) It gave the loyalists a chance to present what was going on as a "deal" arrived at behind closed doors by a select coterie.

In retrospect, I believe it would have been wiser to proceed on the basis of "vacant seats at the table" from the beginning and once the Executive was formed to keep places empty for the loyalists. Instead the impression was created that the position was sewn up for four years.

6. The self-exclusion of the loyalists had the effect of bringing the SDLP into the Executive in greater strength than would otherwise have been the case. In one sense this was highly convenient, because it allowed all the top personalities of the party to be accommodated (and there would have been obvious dangers in leaving, say, a Paddy Devlin outside). But the strength of SDLP participation, not just in numbers but in terms of offices, undoubtedly came as something of a shock to many of the Protestant community. At a stroke, the SDLP seemed to be in control of the

"commanding heights" of government; of commerce and industry, of housing, of the social services. The Unionists, who in any case were less skilled as publicists, took on less generally conspicuous Departments. Agriculture and Education were areas of specialised interest. Finance's influence had no public visibility, Information as a portfolio was a non-event, and Roy Bradford's prestigious-sounding Department of the Environment embraced the unglamorous realities of roads and railways, water and sewerage. In the public mind, the Executive from the start was dominated by the SDLP.

7. In order to arrive at the balance which the negotiating parties would accept, some highly dubious jobs were created. Information is essentially a tool serving government and the Departments as a whole; I believe that the designation of a Minister in this area gets in the way. The Office of Executive Planning and Co-ordination did not exist as such when its Head was appointed, and although attempts were made to find Mr McGrady a useful role, it was always an uphill struggle. Law Reform was a nebulous portfolio, although in Mr Napier there was the rare case of a politician actually interested in such issues. Mr Fitt's role as Deputy Chief Executive was also nebulous and ill-defined. Mr Faulkner at his level and I at mine bent over backwards to bring him fully into all the big issues, but he was an elusive man to incorporate into any machine.

I think, too, that there really is a basic incompatibility between being a Westminster MP and a member of an Executive. It is very difficult to justify in modern conditions a visibly part-time membership even of a provincial administration. This would have been much more apparent if a departmental Head had secured election to the House of Commons (and two tried to do so at the February General Election). Moreover, a distinctly questionable situation would have arisen if we had had a member of the Executive, to some extent privy to government thinking, sitting as an Opposition back-bencher at Westminster.

SUNNINGDALE

8. The pressures to produce an agreement, almost any agreement, between those involved in the discussions was intense. These were particularly apparent at Sunningdale. In retrospect it is quite obvious that the Unionists were persuaded to accept more than they could conceivably "sell". No-one wished at that stage to play the part of preventing or delaying the appointment of an Executive. The time-scale was too compressed; the physical arrangements not conducive to the careful soundings which parties should take before they accept controversial commitments. There was always

confusion in the public mind between the Constitution Act and the Sunningdale Agreement. This allowed the loyalist politicians to allege that the public did not support power-sharing.

THE EXECUTIVE IN OPERATION

9. In operation, the Executive was by and large harmonious. The strains which developed in its final phase were due to conflicts of personality as much as of ideology. No-one with inside experience would accept the argument that such a system is intrinsically unworkable.

10. There were, however, some major difficulties. The greatest was that, while the leaders coalesced, the three parties behind them did not do so in any meaningful sense. Members of the Executive and the Administration were exposed day by day to the problems of others and increasingly came to understand and make allowances for them. In the Assembly parties there was no comparable process. Only once, to my knowledge, did back-bench delegations meet. There was always a conflict between conventional ideas of Cabinet or Executive confidentiality and the need to be sure one's party came along. Undoubtedly elements of the Executive on occasion told their Assembly parties more about what was going on in the Executive than would have been contemplated under normal Cabinet conditions. Even so, Executive members and Assembly party could easily get adrift, as the cliff-hanging experience of the Sunningdale re-negotiations demonstrated. Beyond the Assembly parties, the party activists in the country were even less well-informed and less receptive to the necessary compromises and accommodations.

11. Throughout the Executive's life its leading SDLP members visited Dublin very frequently and the public were aware of this. Moreover, the Irish Government and the Department of Foreign Affairs in particular maintained a special relationship with them. I believe that the intention of the SDLP was to use these channels to educate the Dublin Government in certain realities as they saw them, but the known existence of this "special relationship" caused many Protestants to question the commitment of the SDLP to the interests of Northern Ireland as a primary concern.

12. The Executive was slow to swing into apparent operation. Very understandably, NI Office Ministers had avoided major policy decisions as far as possible in the final period of direct rule. It then took time for the Statement of Aims and the policies of individual Heads of Departments to be worked up into new legislative proposals and programmes. This meant, however, that the Assembly

during its brief life dealt with little legislation of real substance, and only towards the end was there evidence of major initiatives, eg on "shared schools".

13. Another apparent factor was the exclusion of the Executive from the "law and order" field. Throughout its life, security issues remained those of most pressing interest to the constituents of Assemblymen, notwithstanding the division of responsibilities, and events during the UWC strike threw into high relief the inability of any "government" without any law and order powers to act for itself even within a limited sphere.

14. Finally, one was conscious throughout of two great weaknesses in the system. The first was that the withdrawal of any substantial element or even of an important individual member was likely to end not merely the current Executive but the system as such. Secondly, and an associated point, the Executive was not answerable to any ordinary process of discipline or regulation as operated by a Prime Minister in Cabinet. Particular individuals were able on occasions to behave in ways which would have led any Prime Minister in a Cabinet system to sack them.

CONCLUSIONS

15. Not all of these trends can necessarily be countered in any new system. But there would be merit in looking for arrangements which will keep the Secretary of State detached, avoid appointments to "non-jobs", and be seen to be fair to the various parties. One must try to avoid the accusation that people have been misled by ambiguities. And if there is to be a "next time", efforts ought to be made to produce real, solid business from the start.

KPB, 19/7/74