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Papers**

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Dublin must need to temper support for nationalists in search for compromise

Tom Hadden and Kevin Boyle outline what politicians and people in the South can do to help reach a settlement in the North

WHAT ARGUED yesterday that the best way forward in Northern Ireland might be to take the principle of self-determination which is built into the Downing Street Declaration seriously and to give the people in Northern Ireland a real choice between the three or four rational and acceptable options. But what can politicians and people in the South do to assist?

It is common in situations where territory is disputed between two states for those in the adjacent state to give more or less unqualified support to "their people" on the wrong side of the border. Since the violence broke out in 1968, Irish governments and people have naturally wanted to support the position adopted by Northern nationalists.

What such a policy was necessary, particularly in the earlier stages, to defend the civil rights of the western community, it is clear in hindsight that it has not proved to be the best way to achieve an acceptable compromise.

It can be argued that the two most promising initiatives on the North have been fatally undermined by the desire on the part of the Government to get the best possible deal for Northern nationalists and not to make concessions opposed by their leaders. A major factor in the failure of the power-sharing package agreed at Sunningdale in 1973 was the insistence by the Government and the SDLP on the creation of a people of Ireland with significant powers.

A major factor in the failure of the Anglo-Irish Agreement of 1985 to deliver peace and stability was the refusal of the Government to concede any change to Articles 2 and 3 of the Constitution.

In the new political environment in the South following the Joint Declaration, a better approach would be for the Government to establish a

more neutral position and to exert its influence on Northern nationalists to accept a compromise in the same way that the British government is said should be expected to put some pressure on nationalists. The basis for such a balanced approach by both governments is their commitment in the Joint Declaration. The Government can act now despite the opposition of Northern nationalists, to establish the principle of consent by removing the provisions in its Constitution which are offensive to nationalists publicly because they deny them the legitimacy to exercise that consent. This would require the amendment not only of the notorious territorial clause in Articles 2 and 3 but also of the provisions on self-determination for the Irish people in Article 1.

In parallel, the British government should now act to recognise the Irish identity and allegiance of Northern nationalists, as proposed in the O'Hair Report, and to meet the agreed principles of the Joint Declaration on self-determination and consent into the constitutional law of Northern Ireland.

A possible way of replacing the conflicting claims in *Burroughs* as *McEneaney*, in the Government of Ireland Act and in the Northern Ireland Constitution Act 1973 with an identical set of provisions which could be adopted in both British and Irish law is set out in the accompanying table. These parallel provisions could be adopted by both states now without prejudice to the status of an eventual settlement.

Such an initiative is undertaken by both governments should assuage Mr Reynolds's fears that a referendum in the Republic would not be followed. It would also provide a clear framework for any referendum in the North, as suggested yesterday, and for progress in the talks between the Northern Irish parties.

HOW THE CONSTITUTIONAL CONFLICT MIGHT BE HANDLED

(A) Current constitutional provisions

Burroughs as *McEneaney* 1937

1. The Irish nation hereby affirms its inalienable, indefeasible and sovereign right to choose its own form of government, to determine its relations with other nations and to develop its life, political, economic and cultural, in accordance with its own genius and traditions.

2. The national territory consists of the whole island of Ireland, its islands and territorial seas.

3. Pending the reintegration of the national territory, and without prejudice to the right of the Parliament and Government established by this constitution to exercise jurisdiction over the whole of that territory, the laws enacted by that Parliament shall have the like effect and extent of application as the laws of Northern Ireland and the like extra-territorial effect.

* i.e. the 26 counties of the Irish Republic

** Under section 1(1) of the Irish Free State (Consequential Provisions) Act 1952 the 1937 Act applies only to Northern Ireland

Another important step might be for the Government to criminalise seriously the proposal which the Irish Unionists have made for reciprocal North-South institutions. The first preference of Northern nationalists is for institutions like the above Council of Ireland which in some ways, whether ideologically or in practice, assert the principle of Irish unity. But that is precisely the issue on which nationalists are not prepared to compromise.

A major step forward could be achieved if the Government would

Government of Ireland Act 1920

1(2) For the purposes of this Act, Northern Ireland shall consist of the parliamentary counties of Antrim, Armagh, Down, Fermanagh, Londonderry and Tyrone, and the parliamentary boroughs of Belfast and Londonderry.

75. Notwithstanding anything contained in this Act, the supreme authority of the Parliament of the United Kingdom shall remain unaffected and undiminished over all persons, matters and things in (Northern) Ireland and every part thereof.

Northern Ireland Constitution Act 1973

1. It is hereby declared that Northern Ireland remains part of Her Majesty's dominions and of the United Kingdom and it is affirmed that in no event will Northern Ireland or any part of it cease to be part of Her Majesty's dominions and of the United Kingdom without the consent of the majority of the people of Northern Ireland voting in a poll held for the purposes of this section in accordance with Schedule 1 of this Act.

into that the principle on which shared institutions for the whole island of Ireland might develop is that of mutual recognition and respect and that any such structures would not contradict or undermine the principle of consent by the people of Northern Ireland to association.

This principle of reciprocity and mutual recognition was accepted as far back as 1952 for the Peace Policy Commission and was the basis of the structures proposed by the US-

(B) A possible reformulation for use in both jurisdictions

1. The territory of the island of Ireland is divided into two parts, the state of Ireland and Northern Ireland. The state of Ireland consists of the area over which the laws of Saorstát Éireann apply, its islands and territorial seas. Northern Ireland consists of the six parliamentary counties of ... its islands and territorial seas. (The citizens of the state of Ireland hereby express their aspiration to the coming together of the people of the island of Ireland and the unification of the island by consent and agreement of the people of both parts of Ireland.)

2. The people of the island of Ireland alone hereby affirm that they alone shall have the right to choose, by agreement between the two parts respectively, their own form or forms of government, to determine their relations with the other part, with (Great Britain) (with the United Kingdom), (and with other states), to develop their natural resources and to pursue their own political, economic and cultural traditions.

3. Northern Ireland at present forms part of the United Kingdom of Great Britain and Northern Ireland by the will of the greater number of its citizens. It is affirmed that at any time in the future a majority both of the people of the state of Ireland and of Northern Ireland voting freely and democratically and without coercion in concurrent polls held in accordance with the schedule to this Constitution consent to the unification of the island of Ireland or to any other constitutional arrangement covering the whole island of Ireland. The Government of the United Kingdom (hereinafter) shall introduce the legislation necessary to give effect to that arrangement.

(Northern Ireland Constitution Act) Irish Constitution

over Unionists in the Strand 2 talks in Dublin in 1992. In practice, the current cooperation between North and South is a growing range of activities from education, the environment, business and tourism, to sports on this basis.

This approach puts large numbers of men and women in touch with their counterparts North and South and it is much more likely to promote reconciliation and lead to the development of enduring institutions and political economic benefits.

than any attempt to create or impose a political blueprint. A realistic model might be the evolution of European co-operation which developed on a pragmatic and open-ended basis rather than with prearranged agenda.

That, too, is implicit in the Downing Street Declaration, but it needs to be put into practice.

Tom Hadden and Kevin Boyle's book, *Northern Ireland: The Choice* is published by Pion.

