

Steps towards a constitutional compromise

THREE clichés stop thought about Northern Ireland. The first declares that the region is incomprehensible, the second that it is insoluble. The third is the acceptance by intelligent people of the dogma of indivisible sovereignty: the idea that a territory and its population must be part of just one state's legal authority.

Indivisible sovereignty is an ideological commitment shared in different ways by the British and Irish governments, and by republican and loyalist paramilitaries. It explains why most British and Irish politicians and commentators demand that the other state abandon its claim to sovereignty, and why Northern Irish politicians and paramilitaries seek to persuade or coerce the other community into accepting the jurisdiction of their preferred nation-state.

The UK's claim to sovereignty over Northern Ireland is successively expressed in the Government of Ireland Act of 1920 (Article 75), the Ireland Act of 1949, and the Northern Ireland Constitution Acts of 1973-4 and 1982. It is the understanding of the British government that the Anglo-Irish Agreement does not qualify its sovereignty, but provides a procedure through which ownership of Northern Ireland might one day be changed.

The Republic, in contrast, claims Northern Ireland as part of its national territory in its 1937 Constitution (Articles 2 and 3). It is the understanding of the Irish courts that the Anglo-Irish Agreement does not qualify this claim. The re-

integration of the national territory (Northern Ireland) remains a constitutional imperative.

In the Agreement neither state abandoned its constitutional claim. Instead, they agreed that Northern Ireland's constitutional status could not be changed without the approval of a majority of its population, but they did not agree on what its present status is. Resolving Northern Ireland surely requires both governments to agree that status; and the sane solution would recognise Northern Ireland as a special constitutional region of both the UK and the Republic of Ireland. In plain words, both governments should recognise the mutual validity of each other's constitutional claim.

This, of course, would merely be the first step towards a stable and just settlement for Northern Ireland, but its attractions are obvious. Both peoples of Northern Ireland would gain because their national identity would be respected by full citizenship of their preferred nation-state; and both would lose because their national aspiration would be accomplished through sharing land and power.

The most powerful argument for sharing sovereignty is that it compares favourably with the other options. It is superior to repartition because it is acceptable to a larger number of people. It is better than independence because it is more politically defensible and economically feasi-

ble. It is more workable than Irish unity.

For the Republic, shared sovereignty would be easier to manage, both politically and economically, than the unification of Ireland. It would be much more acceptable to Irish nationalists than the status quo. Shared sovereignty would also protect Unionists against the threat of demographic erosion — plainly evident in the latest census returns. If sharing sovereignty is desirable now, when nationalists are a minority within Northern Ireland, it would be equally just if and when Union-

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ists became a minority in the region.

Provided a declaration of shared sovereignty was accompanied by appropriate changes in the Irish Constitution and in British law, Unionists could be assured that the new arrangements would not be a staging-post to Irish unification. Shared sovereignty should also offer better security for all, since the two governments would have both legitimacy and power in tackling republican and loyalist paramilitaries.

Sharing sovereignty offers an answer to the analysis of the Northern Ireland conflict as a clash of national identities. It is the logical goal towards which the 1985 Anglo-Irish Agreement pointed, whether

or not the signatories intended that in 1985.

It is also the point on which various forces are converging: Unionists' refusal to be part of an Irish Republic; nationalists' insistence on their national identity and a say for the Irish government as well as full civic equality; the declining enthusiasm in the Republic for outright or immediate unification; and the readiness of Great Britain to become more detached from Northern Ireland without abandoning all say in how it should be managed.

Support for shared sovereignty has been emerging. At the New Ireland Forum in 1984 all the constitutional nationalist parties showed interest in it. The forum suggested a system of joint direct rule, but did not resolve how to make it workable, democratic and accountable. An independent British inquiry chaired by Lord Kilbrandon responded to the forum in late 1984. The majority recommended that a five-person executive govern the region, consisting of two representatives appointed by the UK and Irish governments and three elected representatives from Northern Ireland.

This model had defects. It might appear to some to maintain British sovereignty over Northern Ireland without acknowledging an equal Irish share, and did not adequately address legislative, judicial, economic and constitutional requirements. However, the dialogue

prompted by the forum and the London inquiry marked an intellectual through in the search for a historical promise. John Hume's Social Democrat and Labour Party recently proposed something similar in the inter-parliamentary agreement which broke down last year, albeit a sixth executive member, a European Community representative, for whom compelling justification was offered.

Although negotiations over Northern Ireland move at a snail's pace, pressures are emerging which focus on how to share sovereignty. This is not a strange fact. British and Irish governments cannot pool sovereignty in the European Community, and will do so more extensively if the Maastricht treaty is passed; there are examples of "condominiums" in modern history, and a democratised condominium could be made to work accountably, giving the peoples of Northern Ireland maximum self-government and an irrevocable legal identity. There are many questions about how heads of state, taxation, public expenditure, economic management, international parliamentary representation might be shared, but they can and should be answered if and when negotiations resume about the government of Northern Ireland.

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