

# Lawyers' view of the Anglo-Irish Agreement

IN the past decade the authors of this legal commentary on the Anglo-Irish Agreement have played a very significant role in the formulation of public policy on Northern Ireland in both Britain and the Republic. They have become a two-person legal think tank, living embodiments of the best of the "two traditions", regularly firing off rational arguments in refreshingly clear language which is always devoid of rancour or malice. In their admirable *Ireland: A Positive Proposal* they counselled politicians and the public against simplistic solutions to Western Europe's longest-running nationality conflict and advocated an agreement between Britain and Ireland which anticipated much of what was signed at Hillsborough in November, 1985.

Their new short book, completed before the Official Review of the Agreement was published in May, 1989, is primarily a legal commentary on and annotation of the articles of the Hillsborough

**THE ANGLO-IRISH AGREEMENT: Commentary, Text and Official Review.** By T. Hadden and K. Boyle. Sweet & Maxwell, London/Edwin Higel, Dublin. 92 pp. £7.95 in UK.

By **Brendan O'Leary**

accord. It is written with their customary lucidity and insight. It also includes brief discussions of the background to the Agreement, the International Fund for Ireland, extradition, a summary of "reactions and achievements" and a set of prescriptions for restoring momentum to the Agreement.

The annotation of the Agreement is very helpful and should be read by all concerned about Northern Ireland. The authors favour revision of Articles 2 and 3 of the Irish Constitution to make

them more obviously compatible with Article 1 of the Anglo-Irish Agreement. They are sufficiently realistic to point out that such a change is not likely to come soon and that even if it were it would be insufficient to solve all the multiple quarrels on this island. They also declare cryptically that in the initial negotiations of the Agreement there was some discussion of trading a change in Articles 2 and 3 of the Irish Constitution in return for a more direct Irish role in the government of Northern Ireland. We must await Garret FitzGerald's memoirs for a fuller account of these negotiations.

The authors also probe Article 4(b) of the Agreement: "It is the declared policy of the United Kingdom Government that responsibility in respect of certain matters within the powers of the Secretary of State for Northern Ireland should be devolved . . . on a basis which would secure widespread acceptance throughout the community. The Irish

government support that policy." They suggest that the wording imposes no obligation on either government not to change this policy. A very moot point, as the lawyers say.

Hadden and Boyle state that the provisions on devolution were insisted on by the Irish side, which is true, but fail to point out that the curious wording "The Irish government support that policy" was intended to make it easier for unionists to accept agreed devolution. The idea, according to the politicians and officials I have interviewed in Dublin and London, was that devolution would be more palatable to unionists if it was stated to be UK government policy that merely happened to be supported by the Irish Government.

The authors' analysis of the International Fund for Ireland, while very exact, is confined to legal matters and the innocent reader could be forgiven for assuming that there has been no political controversy over its

management. However, their discussion of extradition is not guilty of this charge and provides a very useful précis for the layperson.

It is in their discussion of "reactions and achievements" that the limits of legal statecraft are evident. The authors can be forgiven for not discussing the issue of fair employment in more depth because their book preceded the recent legislation in Westminster. However, a much fuller discussion of the Agreement's impact in Britain, Northern Ireland and the Republic will be demanded by any general reader.

It is perhaps significant that the only mistakes in the book are made in this section. It is not true that the only dissent from the general consensus in favour of the Agreement in Westminster was from Unionist MPs and a small group of Tory MPs; some Labour MPs also refused to support the Agreement; there was an Irish general election in February 1987 not 1988; finally, the reaction to

the Agreement amongst unionists was more complex and differentiated than this book suggests — the burst of enthusiasm for "integrationism" is not evaluated.

As Hadden and Boyle affirm, nothing in the Agreement or international law precludes the possibility that Hillsborough might be transcended by a new, wider agreement. Moreover, nothing in principle prevents both governments from working the Agreement more effectively, in ways which they suggest.

If Mr Brooke's latest initiative in Northern Ireland prompts a new agreement, which incorporates a constitutional power-sharing settlement in Northern Ireland together with a Bill of Rights, Professors Hadden and Boyle will be well satisfied and will deserve much credit for their measured intellectual contribution to a better Ireland. However, they know better than most that false dawns are as common as political murder in Northern Ireland.