THE BLAIR EFFECT

Edited by
Anthony Seldon

Little, Brown and Company

A *Little, Brown* Book

First published in Great Britain in 2001
by Little, Brown and Company

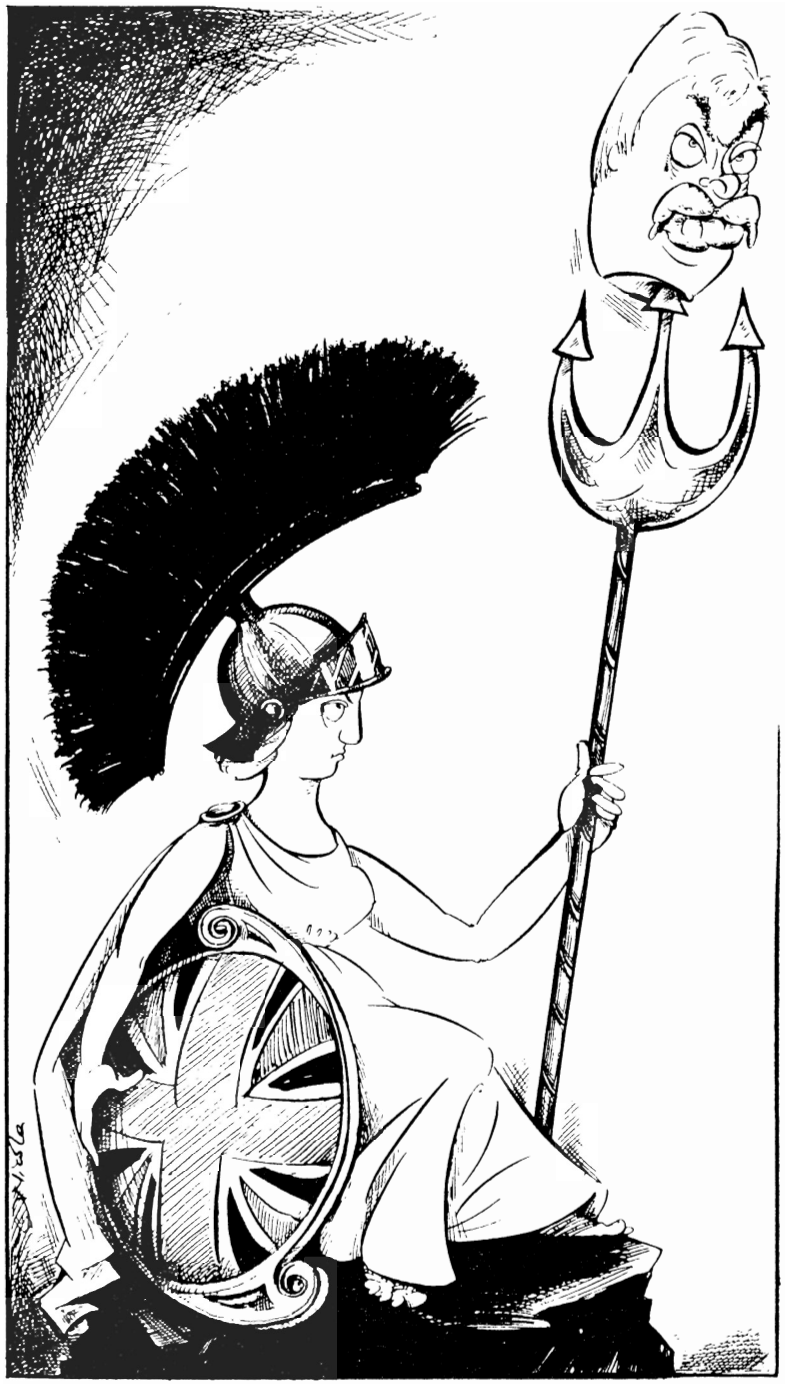
A CIP catalogue record for this book
is available from the British Library.

ISBN 0 316 856 36 3

Typeset in Sabon by M Rules
Printed and bound in Great Britain by
Clays Ltd, St Ives plc

Little, Brown and Company (UK)
Brettenham House
Lancaster Place
London WC2E 7EN

CONTENTS



Perfidious Britannia: Nicola Jenning's response to Mr Mandelson's handling of the Patten Report.

Chapter 21

THE BELFAST AGREEMENT AND THE LABOUR GOVERNMENT

Handling and Mishandling History's Hand

Brendan O'Leary

THE BELFAST AGREEMENT of 10 April 1998, reached within a year of its general election victory, was the most surprising co-achievement of the new Labour government. The new government should not be praised too much, however. Credit was largely owed to others: the two men awarded the Nobel Peace Prize, John Hume and David Trimble, and their party colleagues and advisors; the representatives of republicans and loyalists, notably Gerry Adams, Martin McGuinness, David Ervine and Gary McMichael; two Irish governments, the Fianna Fáil-Labour coalition of 1992–94, and the Fianna Fáil–Progressive Democrat coalition of 1997 – including their officials in Ireland's Department of Foreign Affairs (DFA); and an array of others, including significant Americans. Tony Blair and his colleagues contributed no fresh ideas to the Agreement, despite courtier Charles Leadbetter's claim that it exemplified 'the Third Way'. Most of the ideas were articulated or prefigured before Blair took office. The Labour government's role was that of an enthusiastic first time midwife.

Before History's Hand

The bulk of the design of the political architecture agreed in Belfast on 10 April 1998 originated with Irish nationalists of all hues, within and without the SDLP, Sinn Féin, and the Irish government. Their demands were sculpted into a coherent negotiating package by the Irish DFA, acting under the skilful leadership of diplomat Sean O Huiginn, now the Irish ambassador in Washington, and embedded in the Irish contributions to the Joint Framework Documents (JFDs), agreed by the Irish and British governments in February 1995.[1] The JFDs arose from an established

'three-stranded' negotiating process in which matters internal to Northern Ireland, North-South issues, and East-West issues, were respectively addressed.[2] The JFDs anticipated a power-sharing Assembly and Executive in Northern Ireland, extensive consultative, harmonising and executive functions for an all-Ireland North-South body, and an innovative model of 'double protection' of rights. They also anticipated referendums in both parts of Ireland, the brainchild of Hume, to give expression to Irish national self-determination. The Belfast Agreement was the baby of the JFDs, though its conception and birth were long and painful, and even though it was mildly genetically modified by the Ulster Unionist Party's negotiators, who diminished the powers and autonomy of the proposed North-South Ministerial Council, and added the British-Irish Council.

The outgoing Conservative government deserved little credit for innovative ideas. Fortunately, and partly because of President Clinton's pressure, it avoided its instincts and refused to kill outright the political opportunity created by the antecedents and the materialisation of the IRA cease fire of 31 August 1994. Whitehall's civil servants, but not the local Northern Ireland Office, contributed positively to the agenda for the multi-party negotiations. Quentin Thomas, best known for leading the initial exploratory talks with Sinn Féin's Chief Negotiator Martin McGuinness, was crucial. In drafting the British contribution to the JFDs, he split the differences between the UUP's and the SDLP's preferences for the internal government of Northern Ireland from the previous inter-party negotiations of 1991–92.[3]

Labour's first Prime Minister for eighteen years had no profound agenda on Ireland, North or South – even though much was made of the fact that he had an Irish mother and a Catholic wife. 'New' Labour's role in Opposition had apparently been simple. It had supported the peace process, and offered bi-partisan support for the Major government in its death-throes. Behind the scenes the story was less perfumed. Blair's priority was to win the next general election, and Northern Ireland policy, like all others, was utterly subordinated to that objective. In 1994–95 his closest advisors believed some of Labour's existing policies, viz. support for Irish unification by consent and opposition to the draconian powers in the UK's anti-terrorism legislation, were electorally counter-productive. Not in themselves, but because they thought they were gifts to the right-wing press, identifying Labour with being soft on terrorism, and with political extremism. In fact, polls showed that weakening British sovereignty over Northern Ireland, and indeed troop withdrawal, enjoyed consistent majority support in Great Britain.[4] But Blair's coterie was driven by the fear that the party might appear soft on crime and terrorism. Blair had established himself with the mantra that he would be tough on crime and tough on the causes of crime. In the summer of 1994, apparently on Peter Mandelson's counsel, he unilaterally ditched Labour's policy of seeking Irish unity by consent – without the formal approval of the Party Conference – and

modified the party's stance on the Prevention of Terrorism Act (PTA). Then he supported whatever the Major government did, whatever contradictions it created.[5]

There was a *prima facie* case for Labour's policy shift. Dropping the policy of encouraging unity by consent appeared to move Labour to a neutral stance on the future of Northern Ireland, at odds with the Sinn Féin demand that a British government become a persuader for Irish unity. Thereby it made unionists more likely to enter into negotiations with republicans and others. This *prima facie* case was not, however, the determining factor in the policy shift, though it would be used retrospectively by the leader's spin doctors. The case was also doubtful because the Conservatives were persuaders for the Union, and New Labour's shift meant that both the UK's 'parties of government' favoured maintaining the Union, albeit in different formats and with different intensities, and thereby de-stabilised one of the premises of the republican initiative.

In October 1994 Blair replaced Kevin McNamara in the Northern Ireland portfolio with Dr Marjorie (Mo) Mowlam – an elected member of the Shadow Cabinet. McNamara concluded that Blair deemed him too Old Labour, and too 'fat and bald and green'.[6] His able number two, Jim Marshall, was dismissed. Roger Stott MP, another junior spokesman, who had unintentionally embarrassed Blair when he was Shadow Home Secretary by opposing the PTA, also suffered loss of office, and went into a downward spiral that led to his premature death. Clive Soley MP, a former spokesman on Northern Ireland, soon to be a sycophantic Chairman of the Parliamentary Labour Party, rationalised Blair's policy shifts as designed to support Major against right-wing conservatives opposed to the peace process.[7] That appeared plausible, but it was misleading. The Labour leadership's focus was entirely electoral. Northern Ireland policy was wholly constrained by the objective of minimising enemies in the right-wing press – which supported the right-wing conservatives opposed to the peace process. Blair would take no risks for peace while in Opposition. Notes of meetings with Dr Mowlam record her prosaic and characteristically honest appraisal in 1995: 'They [Blair and Mandelson] think we should be so far up Major's **** that he can never accuse us of not being behind him'.[8]

Removing McNamara, on the pretext that he did not win a place in the Shadow Cabinet elections, eased the Labour leadership's parliamentary relations with the UUP, whom they hoped might one day support them in bringing down the Major government in a parliamentary 'no confidence' motion, or at least remain neutral. Mowlam, in contrast to McNamara, was a reluctant appointee, telling me that she would have preferred the Education portfolio. But she embraced the post with characteristic energy, mental sharpness, and superb networking skills. She had been appointed a junior Northern Ireland frontbench spokesperson by Neil Kinnock in 1988–89, at McNamara's suggestion, and knew the terrain. She was, in

contrast to Blair, not a unionist as far as the Union of Great Britain and Northern Ireland was concerned. She believed that Irish unification by consent was fine in principle but not feasible within this generation. In 1988 with McNamara and others she deliberated over how best to achieve either a negotiated settlement, or, failing that, a system of shared British and Irish sovereignty which would involve a devolved component – work that was later developed and encouraged by Neil Kinnock, and later by John Smith.[9] She had no time for Labour's electoral integrationists – who claimed that bringing Labour's organisation and message to the region would salve working-class divisions and transcend sectarianism and nationalism.[10] In private her sympathies lay with the SDLP, though she found its leader, John Hume, remote and unapproachable.[11] Though many of the UUP's MPs called for McNamara's dismissal, Mowlam was not exactly what they wanted; though some unionists harboured illusions about her. On becoming Shadow Secretary of State she supported the agenda of the emerging JFDs, and endorsed them upon their publication. She was fun and pragmatic, but had settled principles on the peace process: the priority was an inclusive agreement with which peaceful republicans, nationalists and moderate unionists would be content. She was schooled in political science and political anthropology. She was knowledgeable about consociational and federal principles, and had a PhD dissertation on referendums. She was unusually skilled at making warm connections with people, irrespective of nationality, class or sex, and mastered her new brief. She did not go down well with the UUP's older males, for whom the flirtatious Redcar MP was the embodiment of secular, profane, and liberated woman.

Blair's support for whatever Major did had one negative consequence. After the IRA ceasefire of 31 August 1994, and its reciprocation by loyalists six weeks later, there was a long hiatus of eighteen months, and no rush to start the inclusive negotiations for parties with democratic mandates that had been promised by Major and Albert Reynolds's joint declaration of December 1993. Instead Sinn Féin was put in quarantine in the UK. The blockage to negotiations was simple: Unionists and some Conservative MPs strongly opposed negotiations commencing without prior decommissioning of its weapons by the IRA and without a declaration that its ceasefire was permanent. The blockage strengthened as Major's majority diminished. Blair did not offer, and Major apparently did not seek, his support to bypass these obstacles to negotiations, even though there would have been a cross-party majority in the Commons for such an initiative. The blockage eventually won a name, viz. 'Washington 3', after a clause in a speech made by Secretary of State, Sir Patrick Mayhew, in March 1995, which demanded some prior decommissioning before inclusive negotiations.

The Irish government, under Taoiseach Reynolds (1992–94), and most Irish nationalists, north and south, took the view that the IRA ceasefire was permanent, and that decommissioning should be left until negotiations

were completed. The two governments, steered by Irish officials and with American good offices, agreed to establish an international body, composed of former US Senator Majority Leader George Mitchell, Canadian General Jean de Chastelain, and former Finnish Premier Harri Holkeri, to propose ways out of the impasse. On 23 January 1996 they did the obvious, but in lucid and effective language. They proposed six peaceful and democratic principles to which parties to the negotiations would be obliged to commit themselves. They also proposed that 'parallel decommissioning' begin *during* the negotiations rather than *before* (the British suggestion) or *after* (the Irish suggestion).[12] Major responded by appearing both to accept and reject the Report. If prior decommissioning was not to happen, a certainty, then he would call for elections to a Forum, playing fast and loose with a clause in the Report,[13] so that parties would have mandates for negotiations, and then decommissioning could be handled as Mitchell had proposed. This was playing with fire. It required Sinn Féin (and the SDLP), who already had mandates, to legitimate a new forum, and thereby the status of Northern Ireland, in advance of negotiations, and to agree to elections which they regarded as an excuse for delaying engagement.[14]

Blair supported Major's manoeuvre. Their myopic consensus had predictable consequences: the IRA went back to war, bombing Canary Wharf on 9 February 1996, killing two British citizens. It was a re-start of bombing to force negotiations to begin, rather than a complete republican exit from their new strategy. But the breakdown of the IRA ceasefire deeply damaged the peace process, both in the short and longer run. It heightened distrust all around, and confirmed unionist presumptions that the ceasefire was purely tactical. The same events confirmed republican suspicions that the British political class would behave as perfidiously and as slowly as it could, despite the good offices of international mediators. Fortunately, however, the IRA's bombing campaign in 1996–97 was limited, both in the sense of being largely confined to small scale operations in Great Britain, and in its impact on the public (with several IRA personnel proving incompetent).[15] Elections to the Forum took place in May. Sinn Féin increased its vote share significantly – see Table 1 – while the unionist vote fragmented, a significant pointer for the future.[16] Negotiations, in principle open to the top ten parties with democratic mandates, began in June 1996, with Sinn Féin excluded. Negotiating teams were separated from the Forum, and nationalists boycotted the Forum. The negotiations remained procedural until the Westminster elections were called in May 1997. In Northern Ireland – see Table 2 – they led to a further rise in Sinn Féin's vote share, and confirmation of the thesis that the vote for overtly unionist parties was in secular decline.[17]

The functional, but not entirely intended, consequence of Blair's constant following of Major was mildly to relax the UUP's fear of a new Labour government. Its London supporters started to have fond memories of the Callaghan premiership, and of Callaghan's royalist, unionist and

Table 1 Parties' Shares of the Vote and of Seats in the 30 May 1996 Elections

Party	Votes (%)	Seats	(%)
UKUP United Kingdom Unionist Party	3.7	3	(2.7)
DUP Democratic Unionist Party	18.8	24	(21.8)
UDP Ulster Democratic Party	2.2	2	(1.8)
PUP Progressive Unionist Party	3.5	2	(1.8)
UUP Ulster Unionist Party	24.2	30	(27.3)
APNI Alliance Party of Northern Ireland	6.6	7	(6.4)
Lab (Northern Ireland) Labour	.8	2	(1.8)
NIWC Northern Ireland Women's Coalition	1.0	2	(1.8)
SDLP Social Democratic and Labour Party of Northern Ireland	21.4	21	(19.1)
SF Sinn Féin	15.5	17	(15.5)

Election System: PR-list system (using the Droop quota, followed by d'Hondt, equivalent to pure d'Hondt) with two seats guaranteed to the top ten parties (four parties achieved representation solely through this mechanism). Deviation from proportionality was quite high, ($d = (1/2) \Sigma [s_i - v_i] = 7.85$) and led to the DUP winning more seats than the SDLP on a lower share of the vote.

Source: O'Leary and Evans (1997).

Table 2 Parties' Shares of the Vote and of Seats in Westminster Elections, 1997

Party	Votes (%)	Seats	(%)
UKUP United Kingdom Unionist Party	1.6	1	(5.6)
DUP Democratic Unionist Party	13.6	2	(11.1)
UDP Ulster Democratic Party		–	
PUP Progressive Unionist Party		–	
UUP Ulster Unionist Party	32.7	10	(55.6)
APNI Alliance Party of Northern Ireland	8.0	–	
SDLP Social Democratic and Labour Party of Northern Ireland	24.1	3	(16.7)
SF Sinn Féin	16.7	2	(11.1)

Election System: Plurality rule in 18 single member districts.

Source: O'Leary and Evans (1997).

brutish Secretary of State, Roy Mason. This worried the party's Irish nationalist sympathisers, but they were relaxed because Mowlam had the key portfolio, and was patently the best prepared prospective office holder since the post was invented in 1972. Blair privately promised Irish officials that once elected he would deliver; he did not disappoint.

Taking the Cards Dealt by History

In the summer of 1997 the new government, with Blair and Mowlam at the helm, orchestrated the renewal of the IRA's ceasefire as the first significant

non-economic initiative of the new regime. They correctly judged that the IRA's campaign had been intended to persuade the UK government to change its stance, and to force Sinn Féin's entry into negotiations, rather than to dictate the outcome of the negotiations. The government's judgement would make Sinn Féin's entry into negotiations possible, and was preceded by a speech made by the new Premier in Belfast to assure unionists of Blair's commitment to maintaining the Union as long as a local majority so wished. He declared that 'A political settlement is not a slippery slope to a united Ireland',[18] and that he did not expect the latter within his lifetime. The message was intended to keep the UUP at the negotiating tables while bringing Sinn Féin to join them. It would succeed. 'The settlement train is leaving', Blair told republicans, 'I want you on that train . . . So end the violence now.'[19]

The Labour government facilitated the eight parties which would make the Agreement – the UUP, the loyalist PUP and UDP, the SDLP, Sinn Féin, the Alliance, the Women's Coalition and (Northern Ireland) Labour. It was not distressed by Paisley's DUP and McCartney's UKUP decision to withdraw from the negotiating process after Sinn Féin was admitted – it eased the making of the Agreement. The government's unsung hero would prove to be Minister of State Paul Murphy, the future Secretary of State for Wales, who chaired long months of negotiations about negotiations between the summer of 1997 and the spring of 1998. The crucial performance of the new government, especially of its Premier, was to exhort, cajole and persuade the UUP, and its leader David Trimble, to negotiate and make the Agreement. Trimble had succeeded James Molyneaux after the latter's resignation – the production of the JFDs had been a green bridge too far for his party colleagues. He had been elected because he was seen as a hard-liner, the 'hero of Drumcree', and the brightest of the UUP's Westminster MPs.[20] He was also sensitive, underconfident, prickly, and terrified, sensibly, that he might face the fate of previous UUP leaders who had decided to accommodate Irish nationalism, such as Terence O'Neill, Brian Faulkner and Bill Craig. The government's delicate task, with its Irish counterpart, was to encourage Trimble to negotiate on the basis of the JFDs while enabling him to maintain that he had repudiated them. Blair's charm mattered. Trimble had sworn he would not fall for the same trap as Molyneaux, i.e. seduction through bilaterals with Number 10. Instead he resolved always to be accompanied by party colleagues when he met the PM. This was a resolution that Blair would wear away, partly because Mowlam's relations with Trimble deteriorated radically.

Blair's government got off to a good start with the Irish government and its officials, and neither Blair nor Mowlam displayed the same sensitivities to America's benign interventions as their Conservative predecessors.[21] This ensured that there were three governments strongly mission-committed to the success of the negotiations. The replacement of the rainbow coalition in Dublin (1994–97) with a new Fianna Fáil led coalition

invigorated the Irish commitment because the new Taoiseach, Bertie Ahern, enjoyed the confidence of Northern nationalists, unlike his predecessor, Fine Gael's John Bruton.[22] The British and Irish governments' decisions to act through Senator Mitchell, the chair of the negotiations, when they concurred, and their decision to set a deadline for completing the negotiations,[23] were important components in delivering a successful outcome.

When the IRA renewed its ceasefire in July 1997 Mowlam took responsibility for monitoring it with the understanding that Sinn Féin would join the negotiations in September if the IRA's conduct withstood scrutiny. At Mitchell's initiative in August the two governments established an Independent International Commission on Decommissioning, chaired by de Chastelain. This was intended to facilitate the UUP's acceptance of Sinn Féin's presence at the negotiations, and, tacitly, to enable decommissioning to be parked while other substantive issues were addressed. In September Sinn Féin signed up to the Mitchell principles. Despite the provocation occasioned by an IRA statement that it did not accept the Mitchell principles and was not a party to the talks,[24] and a bomb planted by the dissident republican faction, the Continuity-IRA, the UUP, flanked by the loyalist parties, agreed to participate in negotiations with Sinn Féin.

A tacit division of labour developed. The Prime Minister was seen as more empathetic to unionists, the Secretary of State to nationalists – a correct perception. This would mean that in the final negotiations of April 1998 Blair's role was visibly more important, since nationalists bargained on behalf of themselves with the back-up of the Irish government, whereas the unionists looked to Blair for sympathy. Before and during the negotiations Blair and Mowlam overrode the timidity of some of their ministerial colleagues, accepting that the full-scale release of all paramilitaries on ceasefire must form an essential component of the peace process. Mowlam in particular displayed political courage and *nous* in visiting the Maze prison to calm loyalist paramilitaries in January 1998, earning the sobriquet 'Mighty Mo'. In the new year the two governments produced 'Heads of Agreement', prefiguring the eventual settlement, while Mowlam and Mitchell successfully managed temporary suspensions of the UDP and Sinn Féin from the negotiations because of violations of their ceasefires by the UDA and the IRA respectively.

The final negotiations were held in late March and April 1998, with a deadline of Thursday 9 April. Strand One, the internal government of Northern Ireland, was negotiated head-to-head by the SDLP and the UUP, with the SDLP making the proposals, and the UUP choosing to reject them or accept them. In Strand Two Blair and Ahern agreed to dilute the powers and scope of the proposed North-South Ministerial Council previously agreed by their officials to meet Trimble's and the UUP's requirements. They resisted an explicit linkage between inclusive executive formation in the North and prior decommissioning by the IRA. In Strand Three the governments negotiated constitutional and other peace and confidence-

building measures, sometimes with loyalists and republicans. The Agreement was finally produced on 10 April, Good Friday, but not without difficulties. Jeffrey Donaldson MP of the UUP walked out because he was not satisfied that the Agreement required decommissioning before executive formation, and two independent commissions had to be established on policing and the administration of criminal justice because the parties could only agree their terms of reference. Nevertheless the Agreement was made, and justified Blair's comment that he had felt the hand of history upon his shoulder. Now what was required was to have it endorsed in referendums and implemented, without fear or favour.

Building Institutions or a House of Cards?

The Agreement was endorsed in both parts of Ireland, with a 95 and a 71 per cent 'Yes' vote in the South and North respectively. Blair, posing as a fully fledged unionist, was successful in persuading at least some unionists to vote 'Yes' – though he also gave hostages to fortune inconsistent with the text of the Agreement, he had almost done the same on the day of the Agreement in an ambiguous letter to Trimble, who suggested that the Prime Minister agreed that decommissioning of its weapons by the IRA 'should' commence before the new Executive could be formed with Sinn Féin's participation. The 'should' was indicative: the text of the Agreement, by contrast, did not warrant Trimble's position, or that of Blair in some of his later statements, and, in any case, the words of a UK Premier are not law, outside the ranks of New Labour. After the Agreement was made and ratified in the two referendums Mowlam helped override obstruction from some of her Northern Ireland Office's officials and ensured that the full content of the Agreement was eventually faithfully reflected in the Northern Ireland 1998 Act.[25] But in general the Blair government would prove much better at managing the making of the Agreement than in managing its successful implementation.

In part, of course, this was because implementation was more difficult. The government could not be faulted, initially, on the hours it put in. Blair was astonished at the time he had to devote to Irish matters, and so were his advisors. At one stage, Jonathan Powell, to his chagrin, ended up trying to micro-manage the Drumcree dispute, occasioned by the Orange Order's demand that its members should be able to parade down the Garvaghy Road without the prior consent of local (mostly nationalist) residents. The government's difficulties in implementation were not, of course, entirely of its own making. The deep polarisation that the Agreement occasioned within the unionist bloc as a whole, and more particularly within the UUP, were obviously not Labour's responsibilities. In the elections to the new Assembly in June 1998 – see Table 3 – the SDLP outpolled the UUP, the 'No Unionists' performed slightly better than they had in the referendum,

and Trimble's Westminster parliamentary colleagues mostly opposed the Agreement. Trimble's responses to these intra-unionist crises were to be a key source of tension in the Agreement's implementation. Republican (and loyalist) dilatoriness on the matter of decommissioning would be another.

The proportionality of the election results was evident, both with respect to blocs and with respect to parties. But the deviations in seats won compared to the first preference vote benefited the pro-Agreement parties. The UUP was the principal beneficiary of the transfer of lower order preferences taking its seat share (25.9 per cent) significantly above its first-preference vote-share (21.3 per cent) – though these lower order preferences came from voters who voted 'No' as well as those who voted 'Yes' to the Agreement. The net transfers by voters to the pro-Agreement candidates, though not as significant as had been hoped, converted a bare 'Anti-Agreement' majority of the first preference vote (25.5 per cent) within the unionist bloc of voters into a bare 'Pro-Agreement' majority (27.8 per cent) amongst seats won by unionists, a result that was essential for the Agreement's (partial) stabilisation. The Labour government could hardly be faulted for the palpably evident intra-unionist divisions, but it would significantly contribute to the difficulties in implementing the Agreement, not least in managing its own responsibilities, and the new institutions. This would become especially manifest in a series of unilateral and ill-judged actions, inactions and public lies on the part of Peter Mandelson who replaced Dr Mowlam as Secretary of State in October 1999.

Table 3 The June 1998 Elections to the Northern Ireland Assembly

Party/Bloc	First preference vote (%)	Seats	(%)
SDLP	22.0	24	(22.2)
SF	17.7	18	(16.7)
Other nationalists	0.1	–	
All nationalists	39.8	42	(38.9)
APNI	6.4	6	(5.5)
Women's Coalition	1.7	2	(1.8)
Other 'Others'	1.3	–	
All Others	9.4	8	(7.3)
UUP	21.0	28	(25.9)
PUP	2.5	2	(1.8)
UDP	1.2	–	
Other Yes Unionists	0.3		
All Yes Unionists	25.0	30	(27.7)
DUP	18.0	20	(18.5)
UKUP	4.5	5	(4.6)
Independent No Unionists	3.0	3	(2.8)
All No Unionists	25.5	28	(25.9)

Source: O'Leary (1999). Per cent figures for votes and seat shares rounded to one decimal place.

Mandelson was Blair's best known and least liked confidante, his Prince of Darkness. In 1999 Blair wanted to rehabilitate him after his sins committed in the Notting Hill housing market with the pockets of Geoffrey Robinson. He hoped Mandelson's appointment would spare him endless unionist deputations – largely occasioned by their refusal to engage Mowlam, who had been suffering from treatment of a benign brain tumour, and had, partly in consequence, become immensely popular, more popular than the PM, but whom some UUP MPs nevertheless treated with a mixture of political and sexist disdain. Mowlam had wanted to be promoted to the Foreign Office, which Blair would not entertain, and at one stage contemplated requesting that she have Mandelson as her deputy. Mandelson saw Northern Ireland as the route to his rehabilitation – given that other ministers would be happy with his 'relegation'. He also thought of it as a route to the ministry he most coveted, the Foreign Office. He had once been friendly with Mowlam – they had holidayed together in Spain – but now was said to regard her as 'terminally undisciplined'.[26] He, by contrast, tended to be terminally disloyal to past friends, commitments, and the truth. In the spring and summer of 1999 he and his associates, including Labour's unionists, started to damage Mowlam's reputation in the press in much the same manner as they had once defamed David Clark, when Mandelson had coveted his Cabinet position.

Mandelson came to Northern Ireland with no obvious preparation in Opposition, unlike Mowlam, though his more credible supporters, such as Donald MacIntyre of the *Independent*, span the line that he had made programmes on the region for *Weekend World* in his days as a TV producer. That at least was accurate. Some in the UUP, including Trimble, called for Mandelson's appointment – much as some had once called for Mowlam to replace McNamara. The DUP, by contrast, were not pleased: 'we do not want a sodomite' as one of its typically homophobic members put it to me.[27] Blair calculated that it was more important to calm Trimble and his party than to continue with the balanced ticket of a soft unionist PM and a soft nationalist Secretary of State. Indeed 'saving Trimble to save the Agreement' would become the government's priority in 1999–2000. The world was told that Mandelson possessed remarkable negotiating skills and diplomatic finesse. This was not evident in his opening parliamentary statement when he described himself as Secretary of State for Ireland – rather than Northern Ireland. He would also quickly demonstrate that he lacked one important element of the normal job description of a normal Foreign Secretary, the capacity to get on with and be appreciated by foreigners. If Blair deserves credit for making the Agreement with Mowlam, as he does, then he must also share with Mandelson the blame for mismanaging its implementation.

The Nature of the Agreement(s)

The Belfast Agreement, incorporated in the British-Irish Agreement, an international treaty in 1999, was an exemplary constitutional design. Internally it was 'consociational'.[28] Externally it established confederal relationships, and prefigured imaginative federalist relationships and a novel model of double protection. If the Agreement fails debate will arise over whether flaws in its design or in its implementation were the principal factors. The rest of this chapter anticipates that debate. By contrast, if the Agreement is fully successful, albeit outside of its scheduled timetable and its own agreed procedures, I hope it will become an export model for conflict regulators. What follows appraises the Agreement's novelties, possible design flaws, and the contributions of Labour's decision-makers to its implementation. Three evaluative arguments are advanced:

1. The Labour government correctly grasped that the conflict required external as well as internal resolution, and realised that the sovereignty and self-determination disputes needed to be resolved. But it failed to follow through on its treaty commitments, and broke international law when it unilaterally suspended some of the Agreement's institutions between February and May 2000, and thereby destabilised the Agreement by making all its provisions and commissions negotiable.
2. The novel dual premiership, designed by the major moderate parties, the SDLP and the UUP, in the heat of the negotiations, has proved its major institutional weakness, suggesting, paradoxically, that moderates are not always the best designers or caretakers of power-sharing systems.
3. The Labour government's, especially Mandelson's, mismanagement of policing reform has severely threatened the stability of the Agreement, and, thereby, the prospects of peace.

These propositions require a prior analysis of the Agreement as a 'constitution'.

A Consociational Federacy

The Agreement met all four standard consociational criteria:[29]

A. Cross-community executive power-sharing. This was manifest in:
1. The creation of a quasi-presidential dual premiership, elected by a concurrent majority of unionists and nationalists in the Assembly, and expected to preside over

2. The inclusive grand coalition ten-member executive cabinet of ministers, whose portfolios are allocated according to the d'Hondt voting procedure.

B. Proportionality norms. These were evident in:
1. The d'Hondt procedure used to determine the composition of the cabinet – which resulted in five unionists (three UUP, two DUP) and five nationalists (three SDLP and two Sinn Féin) holding ministries between November 1999 and February 2000, and again from May 2000;
2. The electoral system (the Single Transferable Vote in eighteen six-member districts) used to elect the Assembly;
3. The d'Hondt procedure used to allocate Assembly Members to Committees with powers of oversight and legislative initiative; and
4. Existing and additional legislative provisions to ensure fair and representative employment, especially throughout the public sector, and the promise of a representative police service.

C. Community autonomy and equality. These commitments were evident in:
1. The official recognition of 'unionists', nationalists' and other's political identities, notably in the Assembly's cross-community consent procedures, and in a declaration of 'parity of esteem' between the communities and a promise of 'rigorous impartiality' in administration from the current and possibly future sovereign states;
2. The decision to leave alone the existing separate but recently equally funded forms of Catholic, Protestant and integrated schooling;
3. The renewed outlawing of discrimination on grounds of political or religious belief;
4. The replacement of an oath of loyalty to the Crown with a pledge of office for Ministers;
5. The establishment of a Human Rights Commission tasked with protecting individual equality and liberty, and identity rights;
6. The entrenchment of vigorous equality provisions, eventually incorporated in Section 75 of the Northern Ireland Act (1998);
7. The promise of better legislative and institutional treatment of the Irish language and Ulster Scots – both of which became languages of record in the Assembly; and
8. The promise of a civic forum, and 'participatory norms of governance', to facilitate the representation of voices that might not be heard purely through electoral or party mechanisms.[30]

D. Veto rights for minorities and mutual veto rights. These were evident in:

1. The legislative procedures in the Assembly which require 'key decisions' to be passed either with a *concurrent majority* (under the 'parallel consent' procedure) of registered nationalists and unionists, or with a *weighted majority* (60 per cent majority including the support of at least 40 per cent of registered nationalists and registered unionists);
2. The mutual interdependency of office-acquisition and maintenance by the First Minister and Deputy First Minister; and of the running of the Northern Ireland Assembly and the North-South Ministerial Council; and
3. The legal incorporation of the European Convention on Human Rights and Freedoms in UK public law and (the promise of) other legal enactments to give Northern Ireland a tailor-made Bill of Rights.

The Agreement led to a devolved government,[31] with full executive and legislative competence for economic development, education, health and social services, agriculture, environment and finance (including the local civil service), though plainly it is constrained by both UK and EU budgetary and other policies in these domains. Non-devolved powers remain with Westminster and the Secretary of State, who continues to be appointed by the UK Premier. The form of devolved government originally envisaged few limits on Northern Ireland's capacity to expand its autonomy. Through 'cross-community agreement' the Assembly is entitled to agree to expand its competencies; and, again through such agreement, and the consent of the Secretary of State and Westminster, the Assembly is empowered to legislate for non-devolved functions. Security functions, policing and the courts, were not devolved, but could be if sought by 'cross-community' consent. Maximum feasible autonomy was therefore within the scope of the local decision makers. A convention may have arisen in which the Secretary of State and Westminster 'rubber stamped' the legislative measures of the Assembly. Indeed public policy in Ireland, North and South, might eventually have been made without direct British ministerial involvement.

For these reasons and others had the Agreement been fully implemented and developed Northern Ireland would have become a specimen of what Elazar terms a 'federacy'.[32] A federal relationship exists where there are at least two tiers of government over the same territory, and when neither can unilaterally alter the constitutional capacities of the other. Such a relationship is a necessary element of a federal system, but whether it is sufficient is controversial. Normally a federation has sub-central units that are co-sovereign with the centre throughout most of the territory and population of the state. Plainly it would be premature to call New Labour's reconstructed UK a federation. But any system of constitutionally entrenched autonomy for one region makes the relationship between that region and the centre functionally equivalent to a federal relationship, and following Elazar, I call such a region – and its relationships with the centre – a federacy. The term 'federacy' captures how Irish nationalists understood the Agreement's institutions.

Through standard legislative majority rules the Assembly is empowered to pass 'normal laws', though there is provision for a minority, of 30 of the 108 members, to trigger procedures that require special majorities. Controversial legislation, 'key decisions', including the budget, require these special procedures demonstrating 'cross-community' support. Two rules, parallel consent and weighted majority, were designed for this purpose (see D1 above). There is also one super majority rule, which was not explicitly concurrent, cross-community or consociational. The Assembly is entitled by a two-third resolution of its membership, to call an extraordinary general election before its four-year term expires. This was agreed by the parties, after the Agreement, in preference to a proposal that the Secretary of State should have the power to dissolve the Assembly.

This distinctive consociation, or consociational federacy, as it would and should have become, challenges the conventional wisdom of the post-1945 political science of ethnonational questions. For a long time 'external' self-determination, in law and political science, as well as political practice, was accepted solely as a once only right of colonial territories. The Agreement was, in part, a striking rejection of this wisdom. It contained agreed procedures on how a border might be changed, or rather abolished. The Agreement accepted the legitimacy of an irredentist aspiration: the desire of the Irish nation in both parts of Ireland to unify in one state, though its realisation was made conditional upon the consent of majorities in both current jurisdictions, and the recognition of the aspiration was accompanied by the removal of an irredentist territorial claim-of-right in the 1937 Irish Constitution. The Agreement, like the negotiations that preceded it, contained recognition by the UK of the right of the people of Ireland, North and South, to exercise their self-determination to create a united Ireland. The UK has never officially recognised Northern Ireland as a colonial territory, but its employment of the language of self-determination in the making of the Agreement was an interesting departure. In addition, the Agreement established elaborate cross-border arrangements explicitly seen by nationalist parties as mechanisms to facilitate national reunification. Lastly, the Agreement contained features of an externally protected minority rights regime, a tacit 'double protection model' – laced with elements of co-sovereignty, and designed to withstand major demographic and electoral change. The UK and Irish governments promised to develop functionally equivalent legal protections of rights, collective and individual, on both sides of the present border, promising protection to Northern Irish nationalists now on the same terms that would be given to Ulster unionists if they ever become a minority in a unified Ireland. National communities were to be protected whether they were

majorities or minorities, irrespective of the sovereign statcholder – whence the expression 'double protection'. The two governments affirmed that 'whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with *rigorous impartiality* on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of *parity of esteem and of just and equal treatment* for the identity, ethos and aspirations of both communities' (*author's emphases*).

If conventional post-war political science was correct, then all these linkages, between an internal consociational settlement and measures that envisaged the possibility of a transformation in borders and of sovereignty regimes, should be the key sources of instability in the Agreement, raising expectations amongst a national minority and arousing deep fears amongst the local national majority. Indeed for nearly ten years after the collapse of the 1973–74 Sunningdale settlement it was an axiom of faith amongst UK policy-makers that an internal consociational agreement – power-sharing – should be reached without an external agreement – an Irish dimension. Alternatively, it was held that an internal agreement should precede an external agreement. This thinking was reversed in the making of the Anglo-Irish Agreement. Recognising that the absence of an Irish dimension facilitated republican militancy, the two governments established an intergovernmental conference, giving the Irish government unlimited rights of consultation over UK public policy on Northern Ireland, while encouraging the local parties to agree internal power-sharing. This combination of external and internal arrangements and incentives, 'coercive consociation', was unacceptable to unionists, in the short term. But since they could not destroy the Anglo-Irish Agreement, through strikes, paramilitarism, civil disobedience or conventional parliamentary tactics, unionists eventually negotiated the Belfast Agreement in return for the modification of what they regarded as deeply unsatisfactory external arrangements.

Northern nationalists certainly had their expectations raised, and unionists certainly had, and still have, anxieties about the Agreement's external dimensions, but both the making of the 1998 Agreement and its stalling in 2000 suggest that the post-war wisdom of political science needs revision. Consociational arrangements can be effectively combined with cross-border regimes, which enable a change in sovereignty, without engendering massive instability. The 'No Unionists' who rejected the Agreement did not like its external features, but they focused their rhetorical fire on the prospects of gunmen getting into (the internal) government, terrorists being released early from jail, the failure to secure the decommissioning of (republican) paramilitaries' weapons, and on those parts of the Agreement, including proposed policing arrangements, which implied the full equality of nationalists with unionists within Northern Ireland. By contrast the 'Yes

Unionists' trumpet some of the external aspects of the Agreement, pointing out that the Agreement had led to changes in the Irish Republic's constitution, which now requires the active consent of majorities in both parts of Ireland before Irish unification, and claiming that they had 'negotiated away' the Anglo-Irish Agreement of 1985. 'Yes Unionists' defend the cross-border institutions as minimal rational functional co-operation between neighbouring states, and observe, correctly, that they had succeeded in trimming down the more ambitious cross-border institutions advocated by the Irish government, the SDLP and by Sinn Féin. In short, the primary unionist concerns with the Agreement, and which materially contributed to its unilateral partial suspension by the UK in February 2000, and its current instability, cannot reasonably be said to have lain with its external dimensions.

Con/federalising Arrangements

Confederations exist when political units delegate powers and functions to bodies that can exercise power across their jurisdictions, while retaining veto and opt-out rights. Two confederal relationships were established under the Agreement: the North-South Ministerial Council and the British-Irish Council.

The North-South Ministerial Council (NSMC) brings together those with executive responsibilities in Northern Ireland and in the Republic. Nationalists were concerned that if the Assembly could outlast the NSMC, it would provide incentives for unionists to undermine the latter. Unionists, by contrast, worried that if the NSMC could survive the destruction of the Assembly, nationalists would seek to bring this about. The Agreement was a tightly written contract. Internal consociation and all-Ireland external confederalism went together: the Assembly and the NSMC were made 'mutually interdependent'; one could not function without the other. Unionists were unable to destroy the NSMC while retaining the Assembly, and nationalists were not able to destroy the Assembly while keeping the NSMC. The NSMC satisfactorily linked northern nationalists to their preferred nation-state. The Irish government successfully recommended a change in its constitution to ensure that the NSMC, and its delegated implementation bodies, would be able to exercise island-wide jurisdiction in those functional activities where unionists were willing to co-operate. The NSMC functions much like the Council of Ministers in the European Union, with ministers having considerable discretion to reach decisions, but ultimately accountable to their respective legislatures. The NSMC meets in plenary format twice a year, and in smaller groups to discuss specific sectors on a 'regular and frequent basis'. Provision was made for the Council to discuss matters that cut across sectors, and to resolve disagreements. In addition, the Agreement provided for 'implementation' bodies. The scope

of these institutions was somewhat open-ended. The Agreement, however, required a meaningful Council. It stated that the Council '*will*' (not 'may') identify at least six matters, where 'existing bodies' will be the appropriate mechanisms for co-operation within each separate jurisdiction, and at least six matters where co-operation will take place through implementation bodies. The latter were subsequently agreed to be inland waterways, food safety, trade and business development, special EU programmes, the Irish and Ulster Scots languages, and aquaculture and marine matters. The parties further agreed on six functional areas of co-operation – including some aspects of transport, agriculture, education, health, the environment and tourism, where a joint North-South public company was established.

The NSMC differed from the Council of Ireland of 1974. The name change was significant: a concession to unionist sensibilities. There was no provision for a joint parliamentary forum but the Northern Assembly and the Irish *Oireachtas* were asked 'to consider' one. Nationalists wanted the NSMC established by legislation from Westminster and the *Oireachtas* – to emphasise its autonomy from the Northern Assembly. Unionists wanted it established by the Northern Assembly and its counterpart in Dublin. The Agreement split these differences. The NSMC and the implementation bodies were brought into existence by British and Irish legislation, but during the transitional period it was for the Northern executive and the Republic's government to decide how co-operation should take place, and in what areas the North-South institutions should co-operate. Once agreed, the Assembly was unable to change these agreements – except by cross-community consent. The signatories to the Agreement promised to work 'in good faith' to bring the NSMC into being. There was not, however, sufficient good faith to prevent the first material break in the timetable scheduled in the Agreement occurring over the NSMC – but this was patently a by-product of the crisis over executive formation and decommissioning. The signatories were required to use 'best endeavours' to reach agreement and to make 'determined efforts' to overcome disagreements over functions where there is a 'mutual cross-border and all-island benefit'.

A second weaker confederal relationship was established, affecting all the islands of Britain and Ireland.[33] Under the new British-Irish Council (BIC) the two governments of the sovereign states, and all the devolved governments and neighbouring insular dependent territories of the UK, can meet, agree to delegate functions, and may agree common policies. This proposal met unionists' concerns for reciprocity in linkages – and provides a mechanism through which they might in future be linked to the UK even if Northern Ireland becomes part of the Republic. Unionists originally wanted the NSMC subordinated to a British-Irish, or East-West, Council. This did not happen. There is no hierarchical relationship between the two Councils. Two textual warrants suggest that the NSMC

is more far-reaching than the BIC. The Agreement required the establishment of North-South implementation bodies, leaving the formation of East-West bodies a voluntary matter, and stated explicitly that the Assembly and NSMC were interdependent, making no equivalent provision for the BIC.

The Agreement opened other linkages for Northern Ireland, one within the UK, and another possibility with the Republic, which held federalist as opposed to confederalist promise. The Agreement, unlike Scottish and Welsh devolution, was embedded in a treaty between two states, based on the UK's recognition of Irish national self-determination. The UK officially acknowledged that Northern Ireland has the right to join the Republic, on the basis of a local referendum, and it recognised, in a treaty, the authority of Irish national self-determination throughout the island of Ireland. The Agreement's institutions were brought into being by the will of the people of Ireland, North and South, and not just by the people of Northern Ireland – recall the referendums and the interdependence of the NSMC and the Assembly. In consequence, under the Agreement, the UK's relationship to Northern Ireland, at least in international law, in my view, has an explicitly federal character: Northern Ireland had become a federacy. The Westminster parliament and executive could not, except through breaking its treaty obligations, and except through denying Irish national self-determination, exercise power in any manner that affected Northern Ireland's autonomy inconsistent with the Agreement. The author first composed this last sentence immediately after the Agreement was made. Plainly the suspension of the Agreement by Mandelson in February 2000 showed that the UK's authorities did not feel constrained by its reasoning.

The Agreement also opened federalist avenues in the Republic – one of the most centralised states in Europe. The Irish government and its people did not abandon Irish unification. Instead it became 'the firm will of the Irish nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions, recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people expressed, in both jurisdictions in the island' (from the new Article 3). Irish unification cannot be precluded because of present demographic and electoral trends – which have led to a steady rise in the nationalist share of the vote across different electoral systems. The unification envisaged in the re-drafted Irish Constitution is, however, now different. It no longer resembles a programme of assimilation. The Republic is bound to structure its laws to prepare for the possibility of a con/federal as well as a unitary Ireland. Northern Ireland is a recognised legal entity within the Irish Constitution, and its elimination as a political unit is no longer a programmatic feature of *Bunreacht na hEireann* (Constitution of Ireland).

Externally Protecting the Agreement

The two states signed a treaty and created two intergovernmental devices to protect their respective national communities. The most important was the successor to the Anglo-Irish Agreement's, viz. the new British-Irish inter-governmental conference (BIGC) that guarantees the Republic's government access to policy formulation on all matters not (yet) devolved to the Northern Assembly or the NSMC. The Irish government retains rights of consultation in those Northern Irish matters that have not been devolved to the Assembly, as was the case under Article 4 of the Anglo-Irish Agreement, and as with that agreement, there continues to be an intergovernmental conference, chaired by the Minister for Foreign Affairs and the Northern Ireland Secretary of State, to deal with non-devolved matters, and it continues to be serviced by a standing secretariat. The new Agreement, moreover, promised to 'intensify co-operation' between the two governments on all-island or cross-border aspects of rights, justice, prison and policing (unless and until these matters are devolved). There is provision for representatives of the Assembly to be involved in the intergovernmental conference – a welcome parliamentarisation – but they will not have the same status as the representatives of the governments of the sovereign states. The Anglo-Irish Agreement fully anticipated these arrangements, so it is as accurate to claim that it has been fulfilled as to say it has been deleted.

Formal joint sovereignty over Northern Ireland was not established, but the governments guaranteed the Agreement, and embedded it in an international treaty. Irish officials had been wary since the early 1990s of trading likely irreversible constitutional changes in exchange for institutions that might share the same fate as the Sunningdale settlement. That is why they argued that the Agreement should be incorporated in a treaty. The official Irish belief, and the Irish nationalist belief, was that the Agreement, like Northern Ireland's constitutional choice between membership of the UK and the Republic, now rested on the consent of the Irish people, through the joint act of self-determination of the North and South. The UK government would not, on this view, have the authority to do anything that was not legitimate under the Agreement's procedures. The UK government, under Mowlam, shared this understanding. Under Mandelson it did not. In February 2000 Mandelson obtained from the UK Parliament emergency statutory powers to suspend the Assembly and Executive. In doing so he acted in classic Diceyian fashion, using the doctrine of parliamentary sovereignty to arrogate to himself the power of suspension – which had not been granted in the making of the Agreement, or in its (UK) legislative enactment. The UK government's officials knew that suspension would breach the formal Agreement – because in the summer of 1999, when both governments contemplated a suspension mechanism, Mowlam's officials proposed that the treaty that was about to be signed by the two governments, which incorporated the Belfast Agreement, should be amended, to make it compatible with suspension. No such amendment was made.

Mandelson's justification of suspension in February 2000 was that it was necessary to save the First Minister, David Trimble. His threat to resign because the IRA had not delivered on decommissioning, in advance of the deadline mandated by the Agreement, would have become operative in an environment in which 'Yes Unionists' no longer commanded an absolute majority of the registered unionists in the Assembly.[34] Therefore, it was feared, Trimble could not have been resurrected as First Minister if he did resign. This reasoning was false: the Assembly, by weighted majority, was entitled to pass any measure to amend its current rules for electing the dual premiers, and to send this measure to Westminster for statutory ratification. So there was a mechanism, within the Agreement, under which Trimble could have regained the position of First Minister. But even if Mandelson's justification was true, which it was not, for the reason just given, the suspension was an unconstitutional and a partisan act. It was unconstitutional in Irish eyes because the suspensory power had not been endorsed with cross-community consent through the negotiation of the Agreement, or in the referendums, or in the UK's legislative enactment of the Agreement. It was partisan because neither the Agreement, nor the Mitchell Review of the Agreement that took place in late 1999, required Sinn Féin to deliver decommissioning by the IRA because of a new deadline set by the leader of the UUP. The then formally agreed deadline for decommissioning required all political parties to use their best endeavours to achieve full decommissioning by 22 May 2000.

One passage of the Agreement referred to procedures for review if difficulties arose across the range of institutions established on the entering into force of the international treaty: 'If difficulties arise which require remedial action across the range of institutions, or otherwise require amendment of the British-Irish Agreement or relevant legislation, *the process of review will fall to the two governments in consultation with the parties in the Assembly. Each government will be responsible for action in its own jurisdiction*' (italics mine). The italicised passages, read in conjunction with the whole Agreement, suggest that the UK government was obligated formally to consult the parties in the Assembly and the Irish government over obtaining any power of suspension, and that any remedial action required the joint support of the two governments, especially as regards their treaty. That each government would be 'responsible for action in its own jurisdiction' was not taken by the Irish side to mean that the Westminster Parliament had unilateral discretion to alter, amend, suspend or abolish the institutions of the Agreement. It merely meant that for agreed remedial action there would not be joint sovereignty but rather parallel legislative procedures.

The central purpose of the UK's agreement to delete section 75 of the Government of Ireland Act of 1920, and of the Irish state's agreement to

modify Articles 2 and 3 of the Irish Constitution, had been to show that both states were engaged in 'balanced' constitutional change, confirming that Northern Ireland's status as part of the UK or the Republic rested with its people alone. The UK's Diceyians, including Ulster Unionists, have obviously interpreted the UK's deletion of section 75 of the Government of Ireland Act as meaningless because in their eyes Parliament's sovereignty remains intact in a given domain even when it removes a statutory statement which says it remains intact! Irish negotiators obviously should have been more careful: the UK's 'constitution' is Ireland's British problem. Had the Agreement fully bedded down perhaps Northern Ireland status as a federacy would have developed the status of a constitutional convention – the UK's mysterious functional poor cousin of constitutionality.

The suspension had four messages. First, it made plain that every aspect of the Agreement is vulnerable to Westminster's sovereignty. Everything in the Agreement – its institutions, its confidence building measures, its commissions, the promise that Irish unification will take place if there is majority consent for it in both parts of Ireland – is revisable by the current Parliament, and any future Parliament, and that Parliament's Secretaries of State, irrespective of international law, or the solemn promises made by UK negotiators in the making of, the Agreement. No UK parliamentarian can look an Irish nationalist or republican in the eye and say that Northern Ireland's status and its institutional arrangements rest upon the consent of its people. By its actions the Westminster Parliament has affirmed that it regards its sovereignty as unconstrained by the Agreement. Had it sought and obtained the assent of the Northern Assembly – by cross-community consent – to its possession of the power of the suspension that would have been a different matter. It did not. Even if the Secretary of State's motives were entirely benign – and that has been questioned – his decision to obtain the power of suspension destroyed the assumptions of nearly a decade of negotiation.

Second, the suspension spells out to official Irish negotiators, and Northern nationalists, the necessity, in any new round of major negotiations, of entrenching Northern Ireland's status as a 'federacy', perhaps in the same manner as the UK's courts are instructed to make European law supreme over law(s) made by the Westminster Parliament, through full domestic incorporation and entrenchment of the relevant treaty. Without such protection the Agreement cannot be constitutionalised consistently with Irish national self-determination, North and South. This will require Ireland's negotiators to require Westminster to repeal the suspension Act and to declare that its sovereignty is circumscribed by the Agreement.

Third, unionists must, eventually, consider the constitutional consequences of suspension. The 'Yes Unionists' embrace of the doctrine of parliamentary sovereignty forgets that they may one day suffer from the consequences of the sword they urged Westminster to deploy. What Westminster did on unionists' behalf it may take from them tomorrow – including membership of the Union. Mandelson's action means that the Union does not rest on the consent of its component parts, but rather upon Westminster's say so: Westminster is free to modify the Union in any way it likes, for example, through full-scale joint sovereignty over Northern Ireland with the Republic, or through expelling Northern Ireland from its jurisdiction.

Lastly, the suspension spells a blunt warning to the Scottish Parliament and the Welsh Assembly – bodies created with smaller proportions of popular support and lower electoral turn-outs than their Northern Irish counterpart. Sovereignty remains indivisibly in Westminster's possession: even under 'modernising' New Labour.

The Dual Premiership

Among its institutional novelties the Agreement established two quasi-presidential figures, a dyarchy, to preside over an Executive formed through the d'Hondt allocation process.[35] An executive presidency is an executive that cannot be destroyed by an assembly except through impeachment; the dual premiership has presidential characteristics because it is almost impossible to depose the two office-holders, provided they remain united as a team, until the next general election. The First and Deputy First Minister are elected together by the *parallel consent procedure*, an idea that flowed out of the making of the Agreement which required propositions to have the support of a majority of parties, including parties representing a majority of nationalists and of unionists. The carry-over of this concurrent rule of negotiation into the election of the two premiers gave very strong incentives to unionists and nationalists to nominate a candidate for one of these positions that was acceptable to a majority of the other bloc's members. It also meant that the respective unionist and nationalist moderates were guaranteeing their control of these positions. In the first elections for these posts in *designate* or *shadow* form pro-Agreement unionists in the UUP and the Progressive Unionist Party, who between them then had a majority of registered unionists (thirty out of fifty-eight), voted solidly for the combination of David Trimble of the UUP and Seamus Mallon of the SDLP. Naturally so did the SDLP, which enjoyed a majority among registered nationalists (twenty-four out of forty-two). (The 'No Unionists' voted against this combination, while Sinn Féin abstained).

The Agreement and its UK legislative enactment, the Northern Ireland Act (1998), made clear that both posts had identical symbolic and external representation functions; indeed both have identical powers; the sole difference is in their titles: both preside over the 'Executive Committee' of Ministers, and have a role in co-ordinating its work. Their implicit and explicit co-ordinating functions, as approved by the Shadow Assembly, were elaborated in February 1999. A Department of the First and Deputy

First Ministers was created. It was to have an Economic Policy Unit, and an Equality Unit, and was tasked with liaising with the NSMC, the BIC, and the Secretary of State on reserved and excepted UK powers, EU/International matters, and cross-departmental co-ordination.

The prime ministerial dyarchy is quasi-presidential, because neither the First nor the Deputy First Minister formally appoint the other Ministers to the Executive – save where one of them is a party leader entitled to nominate the Ministries to which his party is entitled. Posts in the Executive are allocated to parties in proportion to their strength in the Assembly, according to a mechanical rule, the d'Hondt rule. The rule's consequences were simple: any party that won a significant share of seats and was willing to abide by the new rules established by the Agreement had a reasonable chance of access to the Executive. It creates a voluntary grand coalition government because parties are free to exclude themselves from the Executive Committee, and because no programme of government has to be negotiated in advance. The design created strong incentives for parties to take their entitlement to ministries because if they did not the seats would go either to their ethno-national rivals or to competitors in their own bloc.

This dual premiership critically depends upon the personal co-operation of the two holders of these posts, and upon the co-operation of their respective majorities (or pluralities – under the weighted majority rule). The Northern Ireland Act (1998) reinforced their interdependence by requiring that 'if either the First Minister or the Deputy First Minister ceases to hold office, whether by resignation or otherwise, the other shall also cease to hold office' (Article 14 (6)). This power of resignation has been strategically deployed by both elected office holders.

In the summer of 1999 the SDLP's Mallon resigned as Deputy First Minister (designate), complaining that the UUP were 'dishonouring' the Agreement, and 'insulting its principles' by insisting upon decommissioning before executive formation. He did so to speed an inter-governmental review of the implementation of the Agreement. The question immediately arose: did Mallon's resignation automatically trigger Trimble's departure from office, and require fresh elections to these positions within six weeks? The Initial Presiding Officer's answer to this question was that it did not, because the Assembly was not yet functioning under the Northern Ireland Act. This answer was accepted, and in November 1999 Mallon's resignation was subsequently rescinded with the assent of the Assembly with no requirement that the two men would have to re-stand for office.

Shortly afterwards, however, when the Assembly and Executive came fully 'on line' in November 1999, and ceased to be in designate form, David Trimble was to use the threat of resignation, helping thereby to precipitate the suspension of February 2000. He wrote a post-dated resignation letter to the chairman of his party who was authorised to deliver it to the Secretary of State if Sinn Féin failed to achieve IRA movement on the decommissioning of its weapons – in the form of

'product' – within a specified period after the Ulster Unionist Party had agreed to full-scale executive formation. As we have seen, the fear that this resignation would become operative was the proximate cause of the Secretary of State's decision to suspend the Assembly.

How should we appraise the executive design in the Agreement? The skill of the designers/negotiators was to create strong incentives for executive power-sharing and power-division, but without requiring parties to have any prior formal coalition agreement – other than the institutional agreement – and without requiring any party to renounce its long-run aspirations. The dual premiership, by contrast, was designed to tie moderate representatives of each bloc together, and to give some drive towards overall policy coherence. It was intended to strengthen moderates and to give them significant steering powers over the rest of the executive. The d'Hondt mechanism, by contrast, ensured inclusivity and was carefully explained to the public as achieving precisely that. Distinctive coalitions could form around different issues within the Executive, permitting flexibility, but inhibiting chaos (given the requirement that the budget be agreed by cross-community consent).

In these respects and others the Agreement differed positively from the Sunningdale experiment of 1973. Yet the Executive, and the dual premiership in particular, have proven unstable – and for reasons that go beyond the holders' personalities. Two causes have mattered: the precariousness of the 'Yes Unionist' bloc, and the potency of the resignation weapon available to each premier. Arguably the inter-moderate party deal was a weak spot in institutional design. Had the first and deputy first premiership been allocated according to the d'Hondt procedure, and had parties which threatened not to take up their Executive seats, simply lost access to Executive power, then there would have been very strong incentives for the Executive to be sustained, especially if the Secretary of State had decided to take a hands-off approach to any threats of non-participation in the Executive.

Using the d'Hondt rule to allocate the dual premierships, with the same Mitchell-inspired ministerial pledge of office, perhaps modified by a rule that one premiership had to go to the unionist party with the highest number of seats and the other to the nationalist party with the highest number of seats, would, however, have had the consequence of making more likely the future success of harder-line party leaders, such as Paisley or Adams. That, of course, was one motivation behind the construction of the dual premiership. However, the prospect feared by the moderates may not have spelled disaster: the prospect of the highest offices might have further moderated the stances of the respective hard-line parties. It is a heretical thought.

What was not foreseen was that failure to timetable the formation of the rest of the Executive immediately after the election of the premiers would precipitate a protracted crisis of executive-formation. Trimble availed of

this loophole to prevent executive formation until November 1999. If the Agreement survives, amendments to the Northern Ireland Act (1998) could be adopted by the UK Parliament, or by the Assembly, to prevent any recurrence of this type of crisis. In future candidates for First and Deputy First Minister could be obliged to state the number of executive portfolios that will be available, and the formation of the Executive should be required immediately after their election. That would plug this particular constitutional hole. It may, however, be unnecessary. It is unlikely that future candidates for First and Deputy First Minister will agree to be nominated without a firm agreement on the number of portfolios and the date of cabinet formation.

The crisis of executive formation, which dogged the implementation of the Agreement between June 1998 and November 1999, arose for political and constitutional reasons. Trimble insisted that Sinn Féin deliver some IRA decommissioning before its members would take their seats in the Executive: 'no government before guns'. Under the text of the Agreement, Trimble had no warrant to exercise this veto:

1. No party can veto another party's membership of the Executive, though the Assembly as a whole, through cross-community consent, may deem a party unfit for office (it has not done so).
2. The Agreement did not specify a starting date for decommissioning though it did require parties to use their best endeavours to achieve the completion of decommissioning within two years, that is, by 22 May 2000;
3. Any natural reading of the Agreement mandated executive formation as the first step in bringing all the Agreement's institutions 'on line'.

Trimble's concern was to appease critics of the Agreement within his own party, and he was initially facilitated in exercising this tacit veto by the UK and Irish governments who were sympathetic to his exposed position. One flexible provision in the Agreement gave Trimble time to stall. The Agreement stated that there must be at least six 'other Ministers', but that there can be 'up to' ten. The number of ministries was to be decided by cross-community consent and that gave an opportunity to delay executive formation. It would be December 1998 before the parties reached agreement on ten ministries.

In mid-November 1999 it looked as if the crisis over executive formation would finally be resolved. The UUP accepted that the running of the d'Hondt procedure to fill the cabinet could occur after the *process* of decommissioning began – with the IRA appointing an interlocutor to negotiate with the IICD – while actual decommissioning, consistent with the text of the Agreement, would not be required until after executive formation. Senator Mitchell in concluding his Review of the Agreement,

and with the consent of the pro-Agreement parties, stated that 'Devolution should take effect, then the executive should meet, and then the paramilitary groups should appoint their authorised representatives, all on the same day, in that order'. This was an honourable resolution to what looked like becoming a fundamental impasse – though the Ulster Unionist Council fatefully rendered it problematic. To get their support Trimble offered the previously cited post-dated resignation letter to become operative within a specified period not negotiated under the Mitchell Review. The IRA did not deliver, at least not in the way that Mandelson believed was required; suspensory powers were obtained and used. Had the Agreement been followed to the letter the parties in the Assembly could have determined by cross-community consent that Sinn Féin and the PUP were not fit for office because they had not used their best endeavours to achieve comprehensive decommissioning. That avenue was not deployed.

Suspension did not completely save Trimble from the wrath of his party: 43 per cent of whom voted for a stalking horse to replace him, the Reverend Martin Smyth MP. Trimble remained leader but bound by a mandate for reformation of the Executive that neither the UK government or republicans seemed likely to deliver. The 'Yes Unionists' had failed decisively to rout the 'No Unionists', partly through misjudgement and mismanagement, and partly through the over-representation of 'No' and 'soft Yes' unionists amongst the UUP's activists as opposed to its voters. Their failure was, of course, rendered more likely by the republican position on decommissioning. They were locked in a ghetto of insecurity – determined that, at best, the decommissioning of their weapons would be the last or joint last act of implementation.

In May 2000, however, republicans promised to deliver a 'confidence-building measure', viz. inspections of some of the IRA's arms dumps, by two international observers, Cyril Rhamaposa, the former ANC negotiator, and Marti Ahtisaari, the former Finnish General and Premier. It also seemed clear that they would re-engage with the Independent IICD. In return Trimble promised to lift his resignation threat and Mandelson took the Executive and Assembly out of suspended animation. It was agreed that completing decommissioning be delayed for one year. Republicans appeared to be engaging in the decommissioning process in return for the restoration of the Executive, side-payments for their prisoners and those still facing extradition, and for assurances on demilitarisation and police reform: Mandelson appeared vindicated in the eyes of his supporters. Blair gave assurances that the UK government would implement the Patten Commission's proposals on policing, which Trimble was known to oppose. Trimble warned republicans to engage with the IICD; republicans warned Mandelson to deliver on his obligations under the Agreement, and that takes us to the present crisis over executive maintenance and policing reform.

Policing Reform and Spinning out of Control[36]

The institution building of the Belfast Agreement was flanked by confidence building processes involving ceasefires by paramilitaries, the release of their incarcerated prisoners, and commitments to protect human rights, entrench equality, demilitarise the region, assist in decommissioning, and the reform of the administration of justice and policing. As I write just four of these items await full or effective beginnings in implementation: decommissioning by paramilitaries; the reform of the system of criminal justice; demilitarisation; and policing reform. These items are inter-linked. Full demilitarisation and full decommissioning are mutually interdependent. And decommissioning is seen in republican circles as conditional on the UK government fulfilling its promises to implement the Patten Report on policing, given in May 2000.

The Labour government initially welcomed the Patten Report for charting 'the way forward in the interests of all'. Blair, Mandelson, and the 'Explanatory Notes' issued by the Northern Ireland Office accompanying the Police Bill put before the UK Parliament in the spring of 2000, flatly declared their intention to give effect to Patten's 175 recommendations. That was not true, and is still manifestly not true. The UK government also implied, usually in off-the-record briefings, that it could not implement the Patten Report in full because of the 'security situation'. This position, in dissembling contradiction with its official one, would have had credibility if the necessary preparatory steps to implement Patten in full when the security situation was satisfactory had been taken. They were not.[37]

Policing was so controversial that the parties to the Agreement could not concur on future arrangements.[38] They did agree the terms of reference of a Commission, eventually chaired by Christopher Patten, a former minister in the region and now a European Commissioner. To have effective police rooted in, and legitimate with, both major communities was vital to the settlement. Eight criteria for policing arrangements were mandated in the Commission's terms of reference. They were to be impartial; representative; free from partisan political control; efficient and effective; infused with a human rights culture; decentralised; democratically accountable 'at all levels'; and consistent with the letter and the spirit of the Agreement. The Patten Commission engaged in extensive research and interaction with the affected parties, interest groups and citizens, and published its report in September 1999. It did not, and could not, meet the hopes, or match the fears, of all, but the Commissioners undoubtedly met their terms of reference.[39]

The Patten Report was a thorough, careful and imaginative compromise between unionists who maintained that the existing RUC already met the terms of reference of the Agreement and those nationalists, especially republicans, who maintained that the RUC's record mandated its disbanding. However the Police Bill presented to Parliament in the spring of 2000 was

an evisceration of Patten, and condemned as such by the SDLP, Sinn Féin, the Women's Coalition, the Catholic Church, and non-governmental and human rights organisations, such as the Committee on the Administration of Justice. It was also criticised by the Irish government, the US House of Representatives (H. Res 447, 106th Congress), and Irish Americans, including President Clinton.[40] The veracity of the critics' complaints can be demonstrated by comparing some of Patten's recommendations with the original Bill:

1. Patten recommended a neutral name, the Northern Ireland Police Service. The Royal Ulster Constabulary was not a neutral title so it was recommended to go. Patten also recommended that the display of the Union flag and the portrait of the Queen at police stations should go. Symbols should be 'free from association with the British or Irish states'. These recommendations were a consequence of Patten's terms of reference, the Agreement's explicit commitment to establishing 'parity of esteem' between the national traditions, and the UK's solemn commitment to 'rigorous impartiality' in its administration. The original Bill, by contrast, proposed that the Secretary of State have the power to decide on the issues of names and emblems.
2. Patten recommended affirmative action to change rapidly the proportion of cultural Catholics in the police. Even critics of affirmative action recognised the need to correct the existing imbalance – in which over 90 per cent of the police are local cultural Protestants. The original Bill reduced the period in which the police would be recruited on a 50:50 ratio of cultural Catholics and cultural Protestants from ten to three years, requiring the Secretary of State to make any extension, and was silent on 'aggregation', the proposed policy for shortfalls in the recruitment of suitably qualified cultural Catholics.
3. Patten proposed a Policing Board consisting of ten representatives from political parties, in proportion to their shares of seats on the Executive, and nine members nominated by the First and Deputy First Ministers. These recommendations guaranteed a politically representative board in which neither unionists nor nationalists would have partisan control. The original Bill introduced a requirement that the Board should operate according to a weighted majority when recommending an inquiry, tantamount to giving unionist and unionist-nominated members a veto over inquiries, i.e. partisan political control, and a direct violation of Patten's terms of reference.
4. Patten avoided false economies when recommending a downsizing of the service, advocated a strong Board empowered to set performance targets, and proposed enabling local District Policing

Partnership Boards to engage in the market testing of police effectiveness. The original Bill empowered the Secretary of State, not the Board, to set performance targets, made no statutory provision for disbanding the police reserve, and deflated the proposed District Policing Partnership Boards, because of assertions that they would lead to paramilitaries being subsidised by tax-payers.

5. Patten proposed that new and serving officers should have knowledge of human rights built into their training, and re-training, and their codes of practice. In addition to the European Convention, due to become part of UK domestic law, the Commission held out international norms as benchmarks (Patten, 1999, para 5.17). Patten's proposals for normalising the police – through merging the special branch into criminal investigations – and demilitarising the police met the Agreement's human rights objectives. The original Bill was a parody. The new oath was to be confined to new officers. No standards of rights higher than those in the European Convention were to be incorporated into police training and practice. Responsibility for a Code of Ethics was left with the Chief Constable. Patten's proposed requirement that the oath of service 'respect the traditions and beliefs of people' was excluded. Normalisation and demilitarisation were left unclear in the Bill and the Implementation Plan.
6. Patten envisaged enabling local governments to influence the Policing Board through their own District Policing Partnership Boards, and giving the latter powers 'to purchase additional services from the police or statutory agencies, or from the private sector', and matching police internal management units to local government districts. The original Bill, by contrast, maintained or strengthened centralisation: the Secretary of State obtained powers that Patten proposed for the First and Deputy First Ministers and the Board, and powers to issue instructions to District Policing Partnership Boards; and neither the Bill nor the Implementation Plan implemented Patten's proposed experiment in community policing.
7. Patten envisaged a strong, independent and powerful Board to hold the police to account, and to replace the discredited Policy Authority (Patten, 1999: para 6.23). The police would have 'operational responsibility' but he held to account by a powerful Board, and required to interact with the Human Rights Commission, the Ombudsman and the Equality Commission. The Bill watered down Patten's proposals, empowering the Secretary of State to oversee and veto the Board's powers, empowering the Chief Constable to refuse to respond to reasonable requests from the Board, and preventing the Board from making inquiries into past misconduct.

8. Patten was consistent with the terms of reference and spirit of the Belfast Agreement. The original Bill was not, being incompatible with the 'parity of esteem' and 'rigorous impartiality' in administration promised by the UK government. Manifestly it would not encourage 'widespread community support' since it fell far short of the compromise that moderate nationalists had accepted and that Patten had proposed to mark a 'new beginning'.

What explains the radical discrepancy between the Patten Report and the original Bill? The short answer is that the Northern Ireland Office's officials under Mandelson's supervision drafted the Bill. They appeared to 'forget' that the terms of reference came from the Belfast Agreement, and that Patten's recommendations represented a rigorous compromise between unionists and nationalists. They treated the Patten Report as a nationalist report, which they had to modify as benign mediators. Although Patten warned against 'cherry picking' the Secretary of State and his officials believed that they had the right to implement what they found acceptable, and to leave aside what they found unacceptable, premature, or likely to cause difficulties for pro-Agreement unionists or the RUC. The Bill suggested that the UK government was: determined to avoid the police being subject to rigorous democratic accountability; deeply distrustful of the capacity of the local parties to manage policing at any level; and concerned to minimise the difficulties that the partial implementation of Patten would occasion for Trimble, by minimising radical change to mere reforms of the RUC.

Under pressure Mandelson beat a partial retreat, whether to a position prepared in advance only others can know. Some have speculated that he designed an obviously defective Bill so that nationalists would then be mollified by subsequent improvements. That is to make the characteristic error of endowing him with greater political intelligence than his record suggests: all that the defective Bill achieved, according to Mallon, was to 'shatter already fragile faith in the government's commitment to police reform'.

Accusing his critics of 'hype', 'rhetoric', and 'hyperbole' Mandelson promised to 'listen' and to modify the Bill. He declared that he might have been too cautious in the powers granted to the Policing Board. Indeed the government was subsequently to accept over sixty SDLP-driven amendments to bring the Bill more into line with Patten. The Bill was improved in the Commons and Lords, but insufficiently. The quota for the recruitment of cultural Catholics is now better protected. The Policing Board has been given power over the setting of short-run objectives, and final responsibility for the police's code of ethics. Consultation procedures involving the Ombudsman and the Equality Commission have been strengthened, and the First and Deputy First Ministers will now be consulted over the appointment of non-party members to the Board. The weighted majority

provisions for an inquiry by the Board have gone. Yet any honest appraisal of the Act must report that it is still not the whole Patten; it rectifies some of the original Bill's more overt deviations, but on the crucial issues of symbolic neutrality and police accountability, vital for a 'new beginning' it remains at odds with Patten's explicit recommendations.[41]

Symbolic neutrality

Patten wanted a police rooted in both communities, not just one. That is why he recommended that the name of the service be *entirely* new: The Northern Ireland Police Service. The Act, because of a government decision to accept an amendment tabled by the UUP, styles the service 'The Police Service of Northern Ireland (incorporating the Royal Ulster Constabulary)'. The Secretary of State promised an amendment to define 'for operational purposes', to ensure that the full title would rarely be used, and that the parenthetic past generally be excluded. He broke this commitment at Report Stage. Mandelson was mendaciously misleading in declaring that he was merely following Patten's wishes that the new service be connected to the old and avoid suggestions of disbanding. Patten proposed an entirely new and fresh name, and proposed linkages between the old and new services through police memorials, and *not* the re-naming adopted by the government. We will see whether, as critics fear, there develops a police with two names, the Police Service and the RUC, just as Northern Ireland's second city has two names, Derry and Londonderry.

Patten unambiguously recommended that the police's new badge and emblems be free of association with the British or Irish states, and that the Union flag should not fly from police buildings. The Act postpones these matters. Avoiding responsibility, the government has passed the parcel to the local parties to reach agreement while providing reassuring but vague words in Hansard. Since Mandelson had already ruled that only the Union Jack, albeit just on specified days, should fly over the buildings of the devolved administration, nationalists lacked faith that he would deliver on cultural neutrality and impartiality.

Why do these symbolic issues matter? Simply because the best way to win widespread acceptance for police reform was to confirm Patten's promised new beginning by following his proposed strategy of symbolic neutrality.[42] Full re-naming and symbolic neutrality would spell a double message: that the new police are to be everyone's, and the new police are no longer to be primarily the unionists' police. This symbolic shift would mightily assist in obtaining representative cultural Catholic recruitment and in winning consent for the new order amongst nationalists as well as unionists. Not to follow Patten's recommendations in these respects has spelled a double message: that the new police is the old RUC re-touched, and linked more to British than Irish identity, i.e. a recipe for the status quo ante.

Oversight and accountability

Patten recommended an Oversight Commissioner to 'supervise the implementation of our recommendations'. The Labour government – under pressure – put the Commissioner's office on a statutory basis, which it did not intend to do originally, but confined his role to overseeing changes 'decided by the government'. Had Mandelson and his colleagues been committed to Patten they would have charged the Commissioner with recommending, now or in the future, any legislative and management changes necessary for the full and effective implementation of the Patten Report. That they refused to do so speaks volumes. Patten recommended a Policing Board to hold the police to account, and to initiate inquiries into police conduct and practices. Mandelson in effect prevented the Board from inquiring into any act or omission arising before the eventual Act applies. This was tantamount to an undeclared amnesty for past police misconduct, not proposed by Patten. Personally I have no objections to an open amnesty, but this step was dishonest, and makes it much less likely that 'rotten apples' will be rooted out, as promised. The Secretary of State will additionally have the authority to approve or veto the person appointed to conduct any present or future inquiry (clause 58 (9)). Patten also recommended that the Ombudsman should have significant powers (Patten, 1999: para 6.42) and should 'exercise the right to investigate and comment on police policies and practices', whereas in the Act the Ombudsman may make reports, but not investigate (so it is not a crime to obstruct her work). The Ombudsman is additionally restricted in her retrospective powers (clause 62), again circumscribing the police's accountability for past misconduct.

Mandelson suggested his critics are petty, arguing that they are ungrateful, pointing out just how much he has done to implement Patten, and how radical Patten is by comparison with elsewhere. This 'spin' is utterly unconvincing. The proposed arrangements effectively seal off past, present and future avenues through which the police might be held to account for misconduct, e.g. in colluding with loyalist paramilitaries or covering up assassinations; and are recipes for leaving the police outside the effective ambit of the law. And be it noted: Patten is not radical, especially by the standards of North America. Canada and the USA have long made their police democratically accountable and socially representative. Patten is only radical by the past standards of Northern Ireland.

There is a small ray of hope here: if the implementation plan on policing brings the government strongly into line with Patten then there may be the promised 'new beginning'. But failure to deliver on police reform, as proposed by Patten, in my judgement is likely to herald disaster, in two forms. Its weakest form is taking shape. Without quick and radical steps by the Labour government the SDLP, Sinn Féin and the Catholic Church are unlikely to recommend that their constituents consider joining the police, and may well boycott the Policing Board and District Policing Partnership

Boards – even though pressure is being exerted on them, including by Patten, to accept 'Patten life'. That will leave the police without Patten's promised 'new beginning', lacking full legitimacy with just less than half of the local electorate. Over three hundred police were killed in the current conflict, but outsiders tend to forget that the outbreak of armed conflict in 1969 was partly caused by an unreformed, half-legitimate police service, responsible for seven of the first eight deaths. In its strongest form disaster will de-couple nationalists and republicans from the Agreement, and bring down its political institutions.[43] Failure to deliver Patten will mean that Sinn Féin will not even try to get the IRA to go further in decommissioning than their current arrangements for the inspection of arms dumps. The argument has already been advanced in republican circles that the UK government has reneged on a fundamental commitment under the Agreement so the IRA must not disarm, leaving nationalists to be policed by an unreformed service. Given Sinn Féin's response to what the UK government has done with the Patten Report, the IRA will, in any case, find it difficult to prevent further departures to the Real and Continuity IRAs, except by refusing to budge on arms. In turn, however, that will lead to a repetition of unionist calls for the exclusion of Sinn Féin from ministerial office, with further threats of the UUP's withdrawal from the Executive.

More generously disposed analysts might believe that Mandelson's conduct on Patten was motivated by the need to help Trimble and the UUP who are in a precarious position. It was, in part. 'Saving David' may account for the tampering with Patten's proposals on symbolic matters, but it hardly accounts for the blocking of the efforts to have a more accountable service – here the Secretary of State succumbed to lobbying by security and his civil servants, presumably concerned, amongst other things, to avoid the unearthing of past and present scandals. But whatever his motivation, he forgot, again, that it was not his role unilaterally to abandon or re-negotiate the Agreement, or the work of Commissions set up under the Agreement, either on his own initiative, or at the behest of any party.

Avoiding a Meltdown?

In January 2001 it was difficult to avoid pessimism about the prospects for the Agreement. The passage of the Police (Northern Ireland) Act in November 2000 had left the SDLP, Sinn Féin and the Irish government strongly dissatisfied. Even though the final Act was better than the original Bill it was still 'Patten lite'. The IRA had not formally re-engaged with the IICD, partly, it seemed, to put pressure on Mandelson to deliver on Patten and de-militarization – though it did facilitate a second inspection of its arms dumps. The UK government was refusing to move fast on de-militarization because of its security concerns, especially about dissident republicans, who were strongest in areas which have historically been vigorously republican – and where there is the greatest demand for demilitarization. The discipline of loyalist paramilitaries was breaking down: there was internal feuding, and sections of the UDA were targeting vulnerable Catholics with pipe-bomb attacks in predominantly unionist towns.

On top of all this David Trimble had decided to play executive hardball. At the end of 2000, besieged by internal party critics demanding a fast exit from the executive because of the IRA's obstinate stance on decommissioning, he decided to take what was called proportionate action. Acting on poor legal advice he availed of a technical clause in the Northern Ireland (1998) Act and refused to nominate the two Sinn Féin Ministers to carry out their obligations under meetings of the North-South Ministerial Council. Sinn Féin's two Ministers, Bairbre de Brun and Martin McGuiness, and the deputy First Minister, Seamus Mallon, announced they would test the legality of Trimble's decision in the courts. Trimble's lawyer justified his action as intended to put pressure on Sinn Féin to get the IRA to deliver on its obligations. Judge Kerr ruled Trimble's action unlawful on 30 January 2001, partly because Trimble could not inhibit or frustrate one part of the Agreement, cross-border co-operation, to ensure progress on another, viz. decommissioning. He also ruled that Trimble had acted beyond his powers. Trimble immediately decided to appeal. When ministers take one another to court in any coalition government, prospects for co-existence look ominous.

The political stalemate and legal showdown suggested an acrimonious and messy meltdown. However, on 24 January 2001 something unexpected happened. Peter Mandelson was forced to resign as Secretary of State because of events that had nothing to do with Northern Ireland. He was replaced by Dr John Reid, the former Secretary of State for Scotland. The DUP were not distressed at Mandelson's departure; the UUP's reaction was more cautious – some felt they had lost a friend at court. But his exit left nationalists, republicans and the Irish government almost as happy as Labour's backbenchers, and hopes were restored that a final deal could be reached.

Plainly at least four things have to be done if the Belfast Agreement and the supplementary prime ministerial and joint governmental statements of May 2000 are to be successfully implemented, in whole.

1. The two Governments and the pro-Agreement parties must agree that the remaining items for effective implementation, including decommissioning, police reform, criminal justice reform, and demilitarisation, are resolved to their mutual satisfaction. This will require Blair and Reid to unravel at least some of Mandelson's stances on policing reform.
2. Republicans will have to move from the inspection of the IRA's arms dumps to accomplish wholly credible disarmament.

3. Action and discipline is required from the major loyalist parties and paramilitary organisations – whose obligations on decommissioning tend to be forgotten in UK circles.
4. Lastly, the UUP must be satisfied with republican action on decommissioning, and accept that the UK government has obligations to deliver on demilitarization and the full-scale reform of criminal justice and policing – in ways that are against their preferences.

It is a tall order – though not impossible. We will know soon whether a final deal can happen. There is continuing public support for the Agreement, including, on balance, amongst unionists.[44] There are two tacit deadlines on current negotiations: the next one that the UUP may try to impose, and the beginning of the next UK general election. The pro-Agreement parties have an interest in tying up such a final package before the Westminster election, because without it the UUP is likely to be damaged at the polls. There is, however, one agreed deadline, June 2001. Meeting that will require more trust and multi-lateral co-operation than has so far been evident. New Labour's one constitutional miracle is in mortal danger, but not in the same danger as when it was under the custody of its Prince of Darkness. If the Agreement does collapse then Blair and Mandelson will have to take a full measure of responsibility for their part in endangering what Blair and Mowlam helped put together.

Notes

1 Brendan O'Leary, 'Afterword: What is Framed in the Framework Documents?' *Ethnic and Racial Studies*, 1995, 18 (4): 862–72.

2 The origin of most of the ideas for the internal government of Northern Ireland, in Strand One, also stemmed from Irish nationalists, led by the SDLP, and advised by Irish officials and others.

3 See Brendan O'Leary and John McGarry, *The Politics of Antagonism: Understanding Northern Ireland*, Athlone, 1996, pp. 327–69.

4 One article, confirming this proposition, was made available to Labour's leadership, viz. Brendan O'Leary 'Public Opinion and Northern Irish Futures', *Political Quarterly*, 1992, 63(2): 143–70.

5 For a mildly jaundiced but accurate overview see Brendan O'Leary, 'The Conservative Stewardship of Northern Ireland 1979–97: Sound-Bottomed Contradictions or Slow Learning?' *Political Studies*, 1997, 45(4): 663–76.

6 See Julia Langdon, *Mo Mowlam: The Biography*, Little, Brown & Company, 2000, p. 269.

7 According to Langdon, Soley was 'acting as a secret and unacknowledged emissary between the Conservative British government and the leaders of Sinn Féin', p. 271 ff. In fact he was one of numerous channels through which Sinn Féin attempted to persuade the UK's parties of government that they were serious about negotiations.

8 Personal notes kept in my capacity as advisor to Mr McNamara and Dr Mowlam, 1988–1995.

9 See *inter alia* Brendan O'Leary, Tom Lyne, Jim Marshall and Bob Rowthorn, *Northern Ireland: Sharing Authority*, Institute of Public Policy Research, 1993.

10 McNamara's salvo against Labour's electoral integrationists led the party's unionists to argue that he was unfit for office, see Kevin McNamara *et al.* 1992, *Oranges or Lemons? Should Labour Organise in Northern Ireland?* Westminster, House of Commons: the Authors. Electoral integrationists were especially salient amongst Scottish MPs (convinced that the Scottish sectarian question was the same as the Irish national question), members with communist pasts, those influenced by Ireland's Workers' Party, and those who are Northern Irish cultural Protestants. They campaigned against McNamara, much as they would later campaign against Mowlam, by the politics of 'malicious gossip', a trait they shared with New Labour's principal apparatchiks – for a sharp statement see Ken Follett, *Observer*, 2 July 2000.

11 Evidence of her empathy with Irish nationalists was manifest in her willingness to use Ken Livingstone to inform her of Sinn Féin's positions, and her (rejected) proposal to Blair that Livingstone become part of her ministerial team at the NIO, *Mo Mowlam*, p. 4.

12 George J. Mitchell, John de Chastelain, and Harri Holkeri, 'Report of the International Body on Arms Decommissioning (The Mitchell Report)', 1996. For the Senator's account of matters see George J. Mitchell, *Making Peace*, updated with a new preface from the 1999 edition, University of California Press, 2000, especially chapter 3.

13 The International Body's text had suggested elections if they were widely agreed, viz. 'If it were broadly acceptable, with an appropriate mandate, and within the three-strand structure, an elective process could contribute to the building of confidence'. An elective process was not 'broadly acceptable' to the SDLP and Sinn Féin.

14 Mitchell puts matters with characteristic tact: Major's response 'wasn't support, but it wasn't exactly a dumping. It was a temporary sidestep to get to negotiations by a different route', *Making Peace*, p. 39.

15 At a meeting with Adams and McGuinness in 1997–98 Blair is said to have told them that he would do everything he could to find an agreement, 'But if you ever do a Canary Wharf on me, I will never talk to you again', Andrew Rawnsley, *Servants of the People: The Inside Story of New Labour*, Hamish Hamilton, 2000, p. 123. The irony would not have been lost on them. Canary Wharf prompted the two premiers, Major and Bruton, to specify the date on which negotiations would begin, and the modalities through which negotiations would take place. A year and half's relative inaction by the UK government after the IRA's ceasefire ended three weeks after the bomb. None other than Tony Blair supported the two governments' rapid volte-face.

16 For the details, and the state of public opinion at that time, see Geoffrey Evans and Brendan O'Leary, 'Frameworked Futures: Intransigence and flexibility in the Northern Ireland Elections of May 30 1996, *Irish Political Studies*, 1997, 12: 23–47.

17 Brendan O'Leary and Geoffrey Evans, 'Northern Ireland: La Fin de Siècle,

The Twilight of the Second Protestant Ascendancy and Sinn Féin's Second Coming', *Parliamentary Affairs*, 1997, 50: 672–80.

18 Speech by the Prime Minister, Belfast, 16 May 1997.

19 Ibid.

20 For a hasty biography of the UUP leader see Henry MacDonald, *Trimble* Bloomsbury, 2000, and for a critical notice see Brendan O'Leary, *Sunday Business Post* (Dublin), 13 April, 2000.

21 For a treatment of the Clinton administration on Ireland see Conor O'Clery, *The Greening of the White House*, Gill & Macmillan, 1996; he does not miss the significance of the Morrison delegation, Clinton's undeclared 'envoy'. See also Mitchell's *Making Peace*, passim.

22 Irish Labour leader, Dick Spring, Tánaiste (deputy prime minister) 1992–97, was an essential figure in shaping the Agreement's focus on the protection of rights in both parts of Ireland.

23 The legislation establishing the Forum envisaged its termination in May 1998. Though it did not require the negotiations to be concluded by that date the government argued that since the negotiators' mandates stemmed from their elections to the Forum it was the authorised deadline.

24 *An Phoblacht* (Republican News), 11 September 1997.

25 Some NIO officials sought to dilute or block the potentially far-reaching equality clauses, mandated by the Belfast Agreement, and now embedded as section 75 of the 1998 *Northern Ireland Act*. Mowlam was critical in blocking these efforts. Her conduct was in striking contrast to that of her successor who allowed his officials to dilute the proposals of the Patten Commission.

26 *Sunday Telegraph*, 27 July 1997, cited in *Mo Mowlam*, 8.

27 Ian Paisley had once run a campaign to 'Save Ulster from Sodomy'; his party is notoriously homophobic.

28 See Brendan O'Leary, 'The Nature of the Agreement', *Fordham Journal of International Law*, 1999, 22: 1628–67, and 'The Nature of the British-Irish Agreement', *New Left Review*, 233: 66–96.

29 Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration*, Yale University Press, 1977.

30 See Christopher McCrudden, 'Mainstreaming Equality in the Governance of Northern Ireland', *Fordham International Law Journal*, 1999, 22: 1696–1775.

31 Northern Ireland's devolution arrangements may be contrasted with those of Scotland and Wales, described in Iain McLean's chapter. In Northern Ireland inter-party power sharing and proportionality are required and UK Labour has no party interest at stake. The Northern Ireland Assembly is larger and more powerful than the Welsh National Assembly and may, by the agreement of its blocs, expand its autonomy to the same degree as the Scottish Parliament, and indeed beyond. Northern Ireland's autonomy is both more open-ended, and more constrained. It is tied to the all-Ireland North-South Ministerial Council. It has a specified right of secession, to join a unified Ireland. See also Robert Hazell and Brendan O'Leary, 'A Rolling Programme of Devolution: Slippery Slope or Safeguard of the Union?', in Robert Hazell (ed.), *Constitutional Futures: A History of the Next Ten Years*, Oxford University Press, 1999, pp. 21–46.

32 Daniel Elazar, *Exploring Federalism*, University of Alabama, 1987.

33 The NSMC also linked Ireland, North and South, to another confederation, the European Union. It required the Council to consider the implementation of EU policies and programmes as well as proposals under way at the EU, and made provisions for the Council's views to be 'taken into account' at relevant EU meetings.

34 The resignation of one UUP member from the party whip meant that 29 'Yes Unionists' exactly matched 29 'No Unionists' in the Assembly.

35 For a fuller discussion of the d'Hondt allocation process see O'Leary, *The Nature of the Agreement*.

36 I draw on evidence I presented, viz. 'Why Failing to Implement the Patten Report Matters', Testimony for the Hearing of the Commission on Security and Co-operation in Europe (the Helsinki Commission), entitled 'Protecting Human Rights and Securing Peace in Northern Ireland: The Vital Role of Police Reform', Friday 22 September 2000, International Relations Committee Room, Raeburn Building, Washington DC.

37 Despite the Omagh atrocity of 1998, the key indicators of political violence demonstrate that the security situation has been much better in the period since 1995 than it was in the period running up to 1994, and significantly so by comparison with the entire period of fully active conflict which preceded the first IRA ceasefire (i.e. 1969–1993). The death toll during 1995–99 more than halved by comparison with 1990–94.

38 See John McGarry and Brendan O'Leary, *Policing Northern Ireland: Proposals for a New Start*, Blackstaff, 1999. A former Irish prime minister, Dr Garret FitzGerald has described policing in Northern Ireland as having the status of Jerusalem in the Israeli-Palestinian peace process, 'Watering Down of Patten Unnecessary', *Irish Times*, 12 August 2000.

39 See Christopher Patten *et al.* (1999) *A New Beginning: The Report of the Independent Commission on Policing for Northern Ireland*, Belfast and London, September. See also Brendan O'Leary, 'A Bright Future and Less Orange (Review of the Independent Commission on Policing for Northern Ireland)', *Times Higher Education Supplement*, 19 November 1999.

40 I described it as betraying Patten's 'substantive intentions in most of its thinly disguised legislative window-dressing', Brendan O'Leary, 'What a Travesty: Police Bill is Just a Parody of Patten', *Sunday Business Post*, 30 April.

41 For the defects in the Bill and the accompanying implementation plan with regard to community policing see Paddy Hillyard of the University of Ulster, 'Police Bill is Not Faithful Reflection of Patten', *Irish Times*, 2 August 2000.

42 An alternative path, legitimate under the Agreement, would have been to pursue a fully bi-national symbolic strategy (McGarry and O'Leary 1999). However even if the police were to have both an English and Irish title in each case the name should be neutral: Northern Ireland Police Service or Coras Siochana Thuaisceart Eireann.

43 The careful and detailed denunciation of Mandelson by Mitchel McLaughlin, Sinn Féin's leading moderate, suggests the depth of the crisis, 'The Mandelson Factor', *Belfast Telegraph*, 1 December 2000. It specifically accuses Mandelson of failing to deliver on explicit commitments and obligations.

44 See e.g. Geoffrey Evans and Brendan O'Leary, 'Northern Irish Voters and the British-Irish Agreement: Foundations of a Stable Consociational Settlement?' *Political Quarterly*, (71): 78–101.