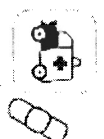


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# THE IRISH TIMES

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OPINION

Thursday, October 4, 2001

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## Reid should not allow a new unionist boycott

If unionists boycott the Executive, Britain should either redistribute their ministries to nationalists or call fresh elections, argues **Brendan O'Leary**

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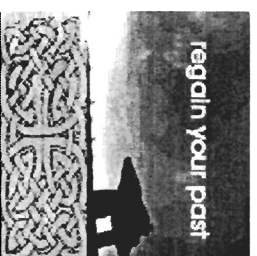
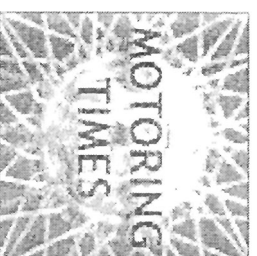


On June 15th, 1999, Dr Marjorie Mowlam, the then Secretary of State for Northern Ireland, introduced an emergency standing order in the Northern Ireland Assembly. The order required that a well-formed Executive must include at least three registered unionists and at least three registered nationalists.

This rule was not negotiated as part of the Good Friday agreement, and indeed was the first technical breach of the agreement's provisions by the UK government. Dr Mowlam introduced the standing order in response to David Trimble's then declaration that he and his UUP would boycott Executive formation until decommissioning was initiated by the IRA (a commitment about which he subsequently proved flexible).

Mowlam wanted an executive that would work, but had set an unwelcome precedent, departing from the agreement in order to save it. The logic of the agreement was to create incentives for parties to take up their ministerial entitlements: the novel d'Hondt process was a mechanism to encourage inclusion, and to discourage boycotts. If parties excluded themselves their entitlements would go to other parties, including parties representing the other bloc.

Dr Mowlam's order is no longer valid, i.e., it is not part of the law of the UK, or the standard operating procedures of



the Assembly. To introduce any such order the Secretary of State for Northern Ireland would have to table fresh legislation at Westminster.

Reflect now on what happened in September 2001. Ten positions for political parties in Northern Ireland were available to be filled on the new police board - deliberately designed to be the same number as ministerial positions in the Northern Ireland Executive. They were to be allocated by the d'Hondt process - which awards offices to parties in proportion to their numbers of elected members, and in sequential order of strength.

The SDLP decided to take its entitlements. Sinn Féin, dissatisfied with the UK government's failure fully to implement the Patten Report (or the UK's failure fully to demonstrate its legislative intention to do so), decided to boycott the board. The current Secretary of State, Dr Reid, nevertheless decided to run the d'Hondt process, as he was legally entitled to do. Consequently, because of Sinn Féin's boycott, nationalists are now under-represented on the police board, while unionists are over-represented.

Now project forward. The Secretary of State has been told by David Trimble that if the Assembly does not shortly agree, by cross-community consent, to declare Sinn Féin ministers in breach of their pledges of office, and thus remove them from office, then he will order his party's ministers to leave the Executive. Trimble knows that the SDLP, committed to the inclusive logic of the agreement, will not vote for Sinn Féin's exclusion - just as the UUP will not vote for the DUP's exclusion. So Trimble knows the motion will fail.

He then expects the Secretary of State to oblige him by suspending the agreement's institutions, and initiating a review of the agreement. He does not, apparently, expect Dr Reid to exercise the two logical and constitutional options open to him.

His experience has apparently convinced him that UK governments in extremis respond to unionist boycotts rather than uphold the new constitutional order.

The first option suggests that the Secretary of State, as co-guardian of the agreement, should publicly indicate that in the event of a boycott or resignation from the Executive - by any party - he will ensure that the Executive is filled, according to the legally established d'Hondt process, by those parties' nominees who are willing to serve. After all, that is what he has just done in filling the police board.

This would mean, if the DUP chose to keep its ministries,

that unionists would now be under-represented on the executive, and nationalists over-represented - a situation that would be magnified if the DUP also withdrew its ministers. A public indication that Dr Reid will follow this path might give Trimble and his colleagues pause for thought. They can hardly complain. After all, what is sauce for the goose is also sauce for the gander.

This is not an argument for legality for legality's sake: it recalls that a central point of the Belfast Agreement was to create boycott-proof institutions in the North.

The second option open to the Secretary of State is to do what Trimble wants least, to call a fresh set of Assembly elections. Trimble's resignation as First Minister, and his failure or inability to be re-elected with a nationalist co-equal deputy within six weeks of that resignation, mandates such elections.

Dr Reid has twice chosen to avoid this option so far by using a legal expedient. He has operated an interpretation of the Suspension Act 2000 that has enabled him to execute one-day suspensions which have extended the period required for elections of new First and Deputy First Ministers by 12 additional weeks.

This legal expedient was not understood or deliberated on by the Westminster Parliament when it passed the Suspension Act. In any case, as I have argued, with the approval of many of the Irish officials who negotiated these matters, the entire Suspension Act is a breach of the agreement and the British-Irish Treaty, which incorporated that agreement.

Dr Reid therefore confronts extraordinary difficulties, but has, thankfully, signalled, that he will not use the one-day suspension process again. He now must take great care to act constitutionally and politically to defend the agreement, fully, impartially, and without fear or favour. Should he fail to do so, and if he once again demonstrates British partiality towards unionists in the running of the agreement's institutions, he will dangerously reinforce the prejudices of every soft nationalist as well as every diehard republican.

What should he do? He should make it plain, as a matter of principle, that the d'Hondt allocation process was designed both to include all parties in the Executive which had obtained significant electoral mandates and took their pledges of office, and that it was intended to create strong incentives for parties to participate.

In consequence, he should say, publicly, that he will respond to any ministerial resignations in exactly the

same way as he did in filling the places on the police board, by letting the law take effect.

Second, he should make it clear that failure on the part of the Assembly to elect a First Minister and a Deputy First Minister within six weeks of the last suspension will lead to fresh elections. He may, reasonably, make one qualification, within the logic and the letter of the agreement through a Review that would not require a suspension.

He may say that he will listen and act on any resolution of the Assembly, passed by weighted majority (60 per cent, including 40 per cent of registered unionists, and 40 per cent of registered nationalists), that requests a new procedure to be enacted in primary legislation for electing the First and Deputy First Ministers - provided that that new procedure has the support of a weighted majority of the Assembly.

These suggestions lead to outraged but ill-considered responses. They take the form of two questions: "What about decommissioning?", and "Won't this strategy play into the hands of Sinn Féin and the DUP, and won't the moderates, the SDLP and the UUP lose out"

These are fair questions, and they can be answered. Decommissioning is an obligation under the agreement. Decommissioning by the IRA is rightly something for which Sinn Féin can be held to account. Its initiation looked likely earlier in the summer before Trimble played his resignation card: a gambit that predictably inflamed republicans. It is beginning to look likelier again, partly against the backdrop of the fall-out from the September 11th horrors in the USA, though loyalist violence inhibits the IRA (because it fears its constituents will interpret its actions as surrender).

Fresh Assembly elections will concentrate the minds of Sinn Féin and the IRA and force the issue. If the IRA initiates decommissioning during the elections, calls for the new government to exclude Sinn Féin will lose their force among moderate unionists, and Sinn Féin will benefit electorally.

If the IRA does not initiate decommissioning during the elections, and if the UK government duly spells out its legislative commitments on police reform, Sinn Féin will suffer electorally, and the SDLP will be willing to contemplate its future exclusion.

In any case, because of the operations of the Single Transferable Vote, I expect the SDLP to perform better in seats won than Sinn Féin - provided the UK government

focuses on supporting the agreement without fear or favour, and provided the prospective new SDLP leader, Mark Durkan, has a good campaign .

But what about the unionist side? If the IRA initiates decommissioning that will politically disarm objections to sharing government with Sinn Féin. If it does not, then the DUP may well do better than the UUP in the elections. If that happens the DUP would then face Trimble's choice: to work the institutions, with one of its nominees as First Minister, or refuse to do so, and thereby precipitate a review of the agreement.

Informed civil servants should tell Dr Reid that his review scenarios are these: either a review now, which will not deliver decommissioning, or the possibility of being forced into one later when there might have been IRA decommissioning.

The voters and the local parties should be forced to choose responsibly, and bring greater candour into local politics.

The voters will have to decide whether to reward anti-agreement candidates and parties; or to reward moderates, or hardliners willing to make deals work.

The Secretary of State must not be a biased arbiter or a weather-vane. He should allow the parties to test their policies with the public.

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