

# Agreement is not devolution in unitary state

Thu, Oct 11, 2001

John Bruton accuses me (Irish Times, October 8th) of being tolerant of the IRA's failure to decommission; of not understanding the Belfast Agreement, and of mischief-making by calling for fresh Assembly elections. He is wrong, and has tried to smear me.

There is one outright distortion in his response. He implies that I see the current policy choice as immediate elections or a suspension and review. The options include elections with or without a review, or a suspension with a review.

In the writings to which he refers I consistently observe there is a time-tabled obligation to achieve comprehensive decommissioning, originally specified for May 22nd, 2000 - later postponed within a review of the agreement for a further year.

It is right to hold Sinn Féin, the PUP and UDP to account for the failures to begin decommissioning. The methods for holding them to account in the agreement are through elections, through the Assembly, and, if necessary, through a review and legal instruments - but not through suspension, a power not envisaged in the agreement. It is he who misunderstands the agreement. The people of Ireland, North and South, did not vote to give Westminster untrammelled sovereignty over Northern Ireland and the institutions of the agreement, and were not told they were doing so.

The UK negotiators of the British-Irish agreement of 1999 sought to make suspension compatible with it, but this was not agreed by the Irish Government. No doubt things might have been different if Mr Bruton had been Taoiseach.

Both governments agreed to balanced constitutional change. That required Ireland to modify Articles 2 and 3, and reciprocally required the UK to repeal the Government of Ireland Act 1920 - which had violated the right of the people of Ireland to self-determination - while affirming Northern Ireland's place as part of the UK as long as a majority so wished.

UK commentators, unionists and Mr Bruton interpret the agreement merely as "devolution within a unitary state". But the UK acknowledged Northern Ireland's right to join the Republic, on the basis of a local referendum, and recognised, in a treaty, the authority of Irish national self-determination.

That was not all. The UK's treaty signature cannot simply be construed as meaning that Westminster's sovereignty overrides the agreement itself. The agreement's institutions were brought into being by the will of the people of Ireland, in concurrent referendums, and not just by the people of Northern Ireland, in an exercise presented as the rectification of the denial of self-determination in 1920.

The functioning of the Assembly was made interdependent with the functioning of the North-South Ministerial Council, a cross-Border and all-Ireland body in the joint and co-equal jurisdiction of the Irish Government, established by treaty. Ireland did not grant the UK a unilateral right of suspension - that's partly why a review mechanism was agreed.

The agreement was to ensure that Westminster would not exercise power in any manner in Northern Ireland inconsistent with it.

Westminster's unconstrained authority applied only to explicitly excepted and reserved functions, and Westminster was required, in the very passage that Mr Bruton cites, to "legislate as necessary to ensure

the United Kingdom's international obligations are met in respect of Northern Ireland", which includes its relations with Ireland, and the North-South Ministerial Council. Any changes in the exercise or division of competencies envisaged by the agreement require due review, of the two governments and the Assembly parties, and appropriate legal processes.

The British-Irish agreement specified that 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" (emphasis added).

So, the UK government was obliged formally to consult the parties in the Assembly and the Irish Government about obtaining any power of suspension. Any remedial action required the joint support of the two governments, especially as regards their treaty. The UK did not do this. That each government would be "responsible for action in its own jurisdiction" did not mean that Ireland recognised that Westminster 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. If the UK's suspensions are considered legal by the Irish State why has it not recognised them? In part, because there is no wish to open the State to legal challenge from Irish citizens who would be able to argue that such recognition was illegal.

Mr Bruton forgets that the suspension power was originally deployed to try to force Sinn Féin and the IRA to deliver decommissioning ahead of the time-tabled obligations, at the demand of the UUP- which previously had failed to fulfil many of its obligations under the agreement in 1998-9 - and to satisfy a UK government then intent on breaching its commitments on police reform. So it is he who is partial in his tolerance: whereas he can only see republican violations of the agreement, I can also see UK, unionist and loyalist violations.

Suspension is damaging because it makes every aspect of the agreement, in principle, vulnerable to Westminster's sovereignty: 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 that what he thinks Ireland's negotiators agreed? He signally fails to accept that Dr Mowlam's standing order of June 1999 materially changed the rules for executive formation agreed by the parties, outside any review of the agreement. That is why it was, as I said, a technical breach. I agree it was well-motivated, but it was not within the letter of the agreement. If it had been, why did the UK not make it part of the law governing the Assembly?

My point is that it is best to work within the agreement to save it, not outside it. The relevant passage Mr Bruton cites (Strand One para 5 ), is immediately followed in clause 5(a) by a plain language specification of the d'Hondt process I was defending. Perhaps he doesn't understand that. He seems not to realise that the agreement was designed to encourage power-sharing among those who wanted to share power and to inhibit boycotts.

Of course, a voluntary agreement cannot work without mutual voluntary co-operation. But, Mr Bruton seems happy to see Sinn Féin exclude itself from the police board, and to have its seats taken by others, including unionists, but not happy to see the same rules applied to the Executive.

I am consistent: I want the same rules applied to all. I want inclusive power-sharing for nationalists and unionists and the same veto-rights for all with significant mandates, and the same consequences for exercising boycotts.

I support fresh elections, with or without a review, not to make mischief, but because I think that is, regrettably, the most likely way to ensure that the agreement is implemented fully - especially on decommissioning, but also in other respects.

I may be wrong, but I am not motivated, as Mr Bruton implies, by tolerance for what he calls passive terrorism. What Northern Ireland judges have told Mr Trimble applies equally to Mr Bruton: one must not break one part of the agreement to ensure that another is successfully implemented.

Finally, the Northern Ireland Minister of State, Jane Kennedy (Letters to the Editor, October 9th), has been misled by the editing of my article. My draft, subsequently edited, explicitly said that Sinn Féin's boycott of the police board meant that politically elected nationalists were now under-represented on the board. That remains true.

I agree it is regrettable that Sinn Féin has boycotted the board. It is equally regrettable that her colleagues and predecessor inhibited the full implementation of the Patten Report. I look forward to seeing her and her colleagues at last completing the legislative and managerial work necessary to implement that report.

Brendan O'Leary is professor of political science at the London School of Economics and visiting professor of political science at the University of Pennsylvania