

NI Brief

OCTOBER 1994



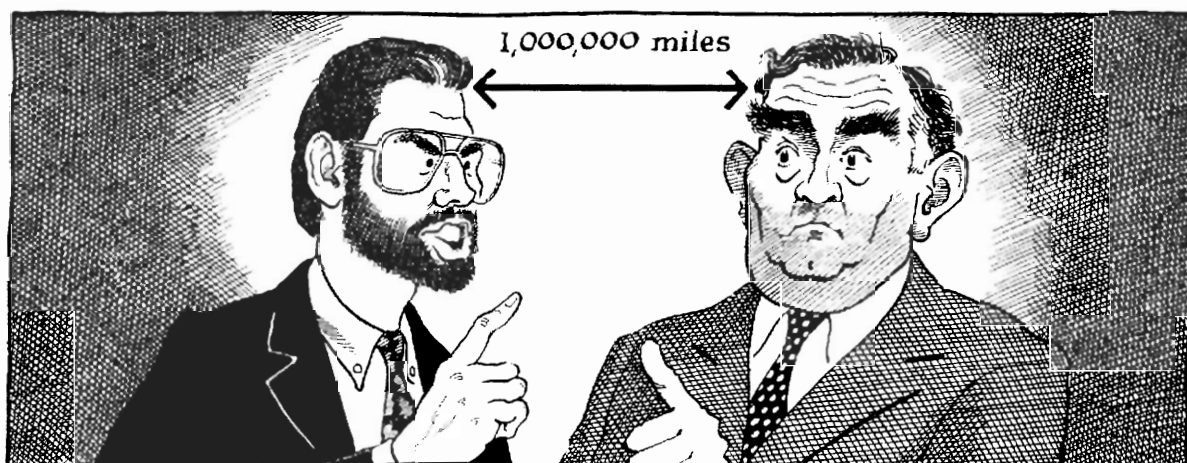
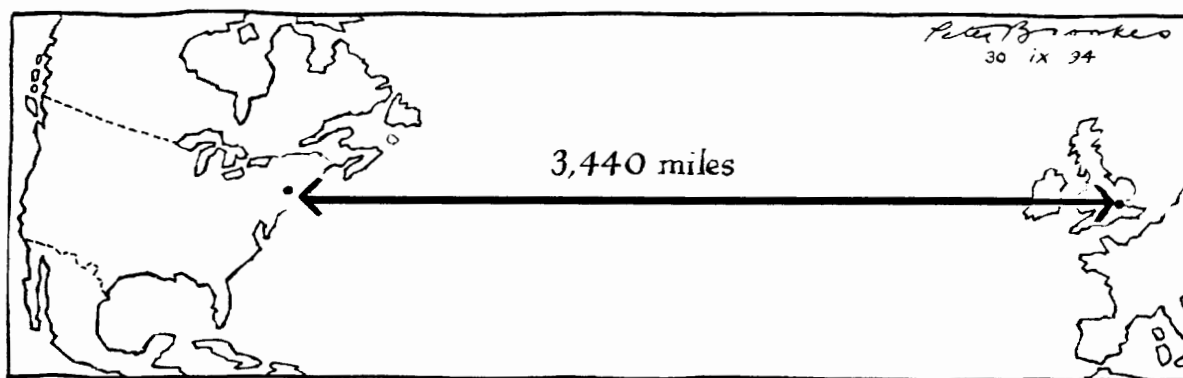
**Building
A New
Model
Ireland**

A PARLIAMENTARY BRIEF SPECIAL ISSUE ON NORTHERN IRELAND



More Trade And More Jobs
How Certain Is A Catholic North?
Different Britain, Different Ireland
What The Nationalists Expect

Could Dublin Afford All Ireland?



ADAMS & MATES MEET IN NEW YORK

Comment Peter Brookes, *The Times*

SECTION FOUR

Framing The Future

The Best Of Both Worlds

ASSUME for the sake of argument that the IRA's cessation of violence is permanent, and that loyalist paramilitaries also terminate their violence. Assume also that the Irish Forum for Peace and Reconciliation helps normalise Sinn Fein and that the possibility then emerges of lengthy constitutional talks between the two governments and democratically mandated parties in Northern Ireland.

The key question will then become 'what is the best possible framework document which the British and Irish governments could produce for discussion?'

In *Explaining Northern Ireland* we provide a five-part answer which is summarised below (John McGarry and Brendan O'Leary, Oxford: Basil Black-

Dr. Brendan O'Leary
*London School of Economics and
Political Science*

well, 1994 forthcoming). The first four ideas should be unexceptionable to British and Irish parliamentarians who recognise that Northern Ireland needs bespoke institutions, whereas the fifth, and most imaginative, will prove more controversial.

1. Consent on Sovereignty. Any framework for resolving conflict in and over Northern Ireland now has to be consistent with the Anglo-Irish Agreement and the Joint Declaration for Peace. It must therefore guarantee that Northern Ireland remains within the United Kingdom

as long as a majority of its population so wishes, and firmly establish that the creation of a unified Ireland will occur if and when a majority in Northern Ireland so desires.

This principle offers unionists their present guarantee while assuring nationalists that they can achieve their long-term goal constitutionally.

The British government must therefore agree that Section 75 of the Government of Ireland Act of 1920 should be modified so that Westminster's sovereignty over Northern Ireland is clearly conditional upon the consent of a majority of the people of Northern Ireland to remain within the Union.

The Irish government must also agree to organise a referendum proposing that Articles 2 and 3 of its Constitution be

amended so that the future creation of a unified Ireland is made conditional upon the consent of a majority of people in Northern Ireland. However, any Irish government which wishes to carry such a referendum, and which wishes to reassure northern nationalists that they will be protected as long as they remain in the UK, must ensure that four other changes discussed below will be guaranteed by the British government.

2. Proportionality and Power Sharing. The two governments must agree that any devolved assembly shall be based upon proportional representation. Proportionality rules must be used to elect the assembly – STV, which is well established in Northern Ireland, is the obvious system to use.

Proportionality rules must also be used by the assembly to establish its committee structures and chairs. The technical Sainte-Laguë rule, which is the fairest for small parties, should be used – in this way both Sinn Féin and the Alliance party will get a stake in the system. The same method should be used to elect the executive.

Proportionality rules will not be enough to ensure the consent of northern nationalists to any new constitutional order because for the present they still mean simple majority rule by unionists – one of the major political causes of conflict in the Stormont years.

Therefore power sharing will also be required, though it need not apply to everything. The assembly could be prevented from bringing down the executive it elects before the expiry of the life of the assembly – as is the practice in Switzerland, a political system built on power sharing. The executive could also be required to proceed by consensus in specified areas of policy.

The two governments must agree that the more power that is devolved to Northern Ireland the better, including the management of finances and security. This move will ensure greater incentives for politicians to participate in and work any new system.

We would argue that, at the limit, the Northern Ireland Office and the Secretary of State for Northern Ireland should be abolished, and their functions carried out by the new executive and committee chairs. The Foreign Secretary, the Home Secretary and the Attorney General could carry out British responsibilities in the intergovernmental conference.

3. Parity of Esteem and Treatment. Any settlement consistent with the Joint Declaration for Peace requires the two major national communities to enjoy full parity of esteem and treatment. To this end a Bill of Rights will be necessary which will protect collective cultural rights as well as individual human rights.

This Bill of Rights must be interpreted by a Northern Ireland Supreme Court, the decisions of which may in turn be adjudicated at the European Court in Strasbourg. As in Canada citizens should receive public support to challenge the constitutionality of legislation. The two

governments must elaborate the implications of equality and parity of esteem for the two major traditions. They must entail important symbolic changes: for example, a Northern Ireland Police Service, rather than the Royal Ulster Constabulary; and a Northern Ireland Judicial Commission, rather than Crown Courts.

They may also require changes in the recruitment and composition of the police and senior judiciary – for example staff from the Garda Síochána could be seconded to the police until Catholic recruits are present in sufficient numbers in the reorganised service.

Economically a firmly entrenched commitment to fair employment is required, including affirmative action where necessary. All public policy will need to be evaluated by its implications for equality and parity of esteem.

Culturally a continuing commitment to equal provision for all kinds of primary and secondary education (including both integrated and denominational schools) will be necessary. The cultural insignia of both national traditions must also be equally protected or equally unused.

4. British, Irish and European Dimensions. British and Irish institutional dimensions are necessary – and it will be

The two governments must agree that the more power that is devolved the better

best if it is established that these will survive any future transformation in the status of Northern Ireland. The intergovernmental conference established by the Anglo-Irish Agreement must remain, though its scope and functions must be redefined.

The inter-parliamentary tier of the Agreement must be expanded to include members of the Northern Ireland Assembly as well as representatives from Westminster and Dáil Éireann.

The priority here is to establish all-Ireland cross-border co-operation and British-Irish co-operation especially in police functions affected by the European Union. The establishment of such bodies need not mean any erosion of either state's sovereignty.

A rolling series of cross-border agencies should be set up, in some cases modelled on the European experience, e.g. commissioners should be appointed by their respective jurisdictions for fixed periods to carry out technocratic tasks. These commissions should be either UK-Republic bodies or Northern Irish-Republic agencies will make more sense.

5. Double Protection. Finally, the two governments must establish mechanisms for protecting a constitutional settlement of the above kind. The best step

to take here is to give the intergovernmental conference the role of safeguarding the constitutional settlement. In this way each community will be reassured that it has the protection of its respective nation-state.

Each government in the intergovernmental conference should be empowered, after legal remedies have been exhausted, with the right to veto any law or measure of public policy, which it deems fundamentally to threaten national, religious or human rights in Northern Ireland.

This mechanism will ensure that northern nationalists can be confident that there will be no return to the Stormont nightmare. It may be objected that unionists will see this as an intrusion by the Irish government in the affairs of Northern Ireland, and therefore tantamount to joint sovereignty.

The answer to this objection is threefold: first, this protection mechanism does not positively involve either the British or Irish states in directly governing Northern Ireland, but rather provides a check against a possible internal abuse of power; secondly, this protection must apply to both communities (e.g. protecting unionists against a perverse legal verdict); and, finally, to be balanced this mechanism must be institutionalised so that it would survive any change in the sovereignty of Northern Ireland.

In short, the British government must have the same role in protecting the British community if and when Northern Ireland became part of a federal Ireland as that which the Irish government should have now as long as Northern Ireland remains part of the United Kingdom.

This double protection should be further enhanced in the following way. It should be constitutionally established that whatever arrangements are now agreed for the governance of Northern Ireland would continue to apply if and when Northern Ireland voted to join a federal Ireland.

The entire constitutional package would be transferable, apart from the fact that the two governmental protectors of the constitutional arrangements would change places (a different one would now be sovereign and the other would be a protector of its national community).

These five ideas are consistent with the Anglo-Irish Agreement and the Joint Declaration for Peace. They offer a constructive way forward. They improve upon the *status quo* for northern nationalists while reassuring unionists that if and when they become a minority they will receive the same protection to which northern nationalists should now be entitled.

They should be considered carefully by British parliamentarians from all parties. PB

Brendan O'Leary is author of numerous books including 'The Politics of Antagonism: Understanding Northern Ireland' (London: Athlone Press, 1993).