



## **Between Stability and Collapse: Internal and External Dynamics of Post-agreement Institution-building in Northern Ireland<sup>1</sup>**

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### **Introduction**

On 14 October 2002, the then British secretary of state for Northern Ireland, Dr. John Reid, announced the suspension of devolved government in Northern Ireland as of midnight the same day by an order made under the Northern Ireland Act 2000. Unlike the previous two suspensions, on 11 August 2001 and 21 September 2001 - which were only 'technical' 24-hour suspensions to allow the political parties in Northern Ireland to resolve a deadlock over the decommissioning of weapons in possession of the Irish Republican Army (IRA) and Sinn Féin's membership in the Executive - this latest suspension, similar to the very first one on 11 February 2000, had no time limit attached to it.

Despite assurances of continued commitment to the peace process as a whole from the British and Irish governments and from the political parties in Northern Ireland, the future of the Agreement concluded on 10 April 1998 has once again been put in severe doubt.<sup>2</sup> This current crisis is only one in a long series of impasses in the implementation process of the Agreement since 1998. The difficulties that have occurred since then - and, in a sense, ever since the idea of power sharing as a mechanism to resolve the conflict in Northern Ireland was introduced in the early 1970s - suggest one of the following three explanations as the underlying causes for the failure of power sharing to deliver sustainable peace:

- (1) Power sharing, or at least the particular form it takes in the institutional structures established under the Agreement since 1998, is unsuited as a mechanism for conflict resolution in Northern Ireland.
- (2) At fault are not the institutional structures, on which wide agreement was reached among the conflict parties and which were endorsed in referenda in both Northern Ireland and the Republic of Ireland. Rather, it is the lack of leadership, vision, and skills, primarily among Northern Ireland's politicians and, to a lesser degree, among the governments in London and Dublin, that have resulted in a lasting crisis.
- (3) Certain structural shortcomings of the institutions established under the Agreement have been exacerbated by this lack of leadership, vision, and skills and have, needlessly, led to these institutions' decreasing ability to function.

In my analysis of the situation in Northern Ireland, explanation (3) is the most credible and comprehensive, as well as the one that can potentially point to a way out of the almost permanent crisis in which the Northern Irish peace process has found itself over the past several years. I argue that, while far from perfect, power sharing is the only viable approach to conflict resolution in Northern Ireland, and the Agreement reached in 1998 provides a reasonable framework for such an approach - but only if some of its structural shortcomings are addressed and only if political leaders rise to the challenges that the negotiation and implementation of such a revised agreement would bring with it, so that they begin to put the long-term interests of Northern Ireland before their own short-term constituency interests. This second requirement is a tall order, but its achievement can be significantly facilitated by appropriate revisions to the current

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<sup>1</sup> My thanks to Colin Irwin, John McGarry, Sid Noel, Brendan O'Leary and Peter Shirlow for helpful comments on earlier drafts, as well as to the two editors of this special issue and the anonymous reviewers who helped me clarify my assessment and argument. The usual disclaimer remains.

<sup>2</sup> Rather than engaging in a debate over whether it should be called 'Good Friday Agreement' or 'Belfast Agreement', I will simply use 'Agreement' whenever making reference to this document.

Agreement, combined with the right combination of pressures and incentives from the governments in London and Dublin, and not least in Washington.

There are five parts to my examination of power sharing in Northern Ireland. I begin with a brief outline of the structure of the power-sharing institutions that were set up under the 1998 Agreement. This is followed by a discussion of the rationale behind opting for a power-sharing settlement and the wisdom of adopting the particular institutional design chosen. I then turn to the problems encountered in the implementation and operation process, and examine in particular their underlying causes. Following this, I raise some normative concerns about the institutional structure of devolved government in Northern Ireland from the perspective of whether it is sufficiently democratic. In conclusion, I assess the future of power sharing in Northern Ireland.<sup>3</sup>

### ***Power-sharing Structures Provided by the Agreement***

The Agreement deals with three main issues (1) democratic institutions in Northern Ireland; (2) the North-South Ministerial Council; and (3) the British-Irish Council, the British-Irish Inter-Governmental Conference, and Rights, Safeguards, and Equality of Opportunity.

Concerning democratic institutions, the Agreement provides for the establishment of a 108-member assembly, to be elected by the single transferable vote system (STV) from existing Westminster constituencies. The Assembly exercises full legislative and executive authority over the powers previously held by the six Northern Ireland government departments. Subject to later developments, the assembly could take on responsibility for other matters in accordance with the Agreement. To ensure that all sections of the community can participate in the work of the assembly, and to protect them in their rights and identities, the following safeguards were included: specific procedures for the allocation of committee chairs, ministers, and committee membership in proportion to party strength in the assembly; the primacy of the European Convention on Human Rights (ECHR) and any future Bill of Rights for Northern Ireland over any legislation passed by the assembly; arrangements to ensure that key decisions are taken on a cross-community basis (parallel consent and weighted majority voting procedures); and the creation of an Equality Commission. Crucial for the operation of the Assembly is that its members register their identity as Nationalist, Unionist, or Other, in order to have a measurement of community support for any vote carried out under either the parallel consent or the weighted majority procedures.

According to the Agreement, a committee for each of the main executive functions of the Northern Ireland administration was established. Chairs and deputy chairs of these committees are allocated proportionally according to the d'Hondt system, while membership in the committees is in proportion to party strength in the assembly. The responsibilities of the committees include scrutiny, policy development, consultation, and legislation initiation functions with respect to the departments with which they are associated. Their powers include considering and advising on departmental budgets and annual plans in the context of overall budget allocation; approving relevant secondary legislation and taking the committee stage of relevant primary legislation; and initiating inquiries and making reports. In addition to these permanent committees, the assembly has the right to appoint special committees as required.

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<sup>3</sup> This analysis draws largely on research conducted in Northern Ireland during the summer and autumn of 2002, and in some sections on previously published work. I am grateful to many people in Northern Ireland, London, Dublin, and Washington for allowing me to interview them, notably John Alderdice, Quentin Davies, David Ervine, Stephen Farry, David Ford, Eilis Haughey, Colin Irwin, Steven King, Allan Leonard, Patricia Lewesley, Chris McCartney, David McClarty, Ned Nolan, and Peter Weir. Six individuals in different locations wished to remain anonymous.



Executive authority on behalf of the assembly rests with the first minister and his or her deputy and up to ten ministers with departmental responsibilities. Following the election of the first minister and deputy first minister on a joint ticket, the posts of ministers are allocated to parties according to the d'Hondt system. An executive committee, comprising all ministers (including the first minister and deputy first minister), handles all issues that cut across the responsibilities of two or more ministers in order to formulate a consistent policy on the respective issue. Ministers have full executive authority in their departments within a policy framework agreed by the executive committee and endorsed by the assembly. Ten departments for the Government of Northern Ireland were agreed among the pro-Agreement parties in December 1998: agriculture and rural development; enterprise, trade and investment (including tourism); health, social care and public safety; finance and personnel; education; employment and learning; the environment; regional development; social development; and culture, arts, and leisure.

Legislation can be initiated by an individual member of the assembly, a committee, or a minister. The assembly can pass primary legislation for Northern Ireland in all areas where it has devolved powers. The passing of legislation is subject to decision by a simple majority of members voting (except for decisions that require cross-community support), to detailed scrutiny and approval in the relevant departmental committee, and to co-ordination with Westminster legislation. Any disputes over legislative competence are to be decided by the courts. In its relations with other institutions, the assembly has to ensure cross-community participation.

A North-South Ministerial Council was agreed upon in order to institutionalize formal relationships between the executive organs of Northern Ireland and the Republic of Ireland. Its responsibilities include consultation, cooperation, and the implementation of decisions on issues of mutual concern. All decisions of the council have to be by agreement between the two sides, and their implementation is subject to approval by both parliaments. Six so-called implementation bodies for the North-South Ministerial Council were agreed in December 1998: Waterways Ireland; the Food Safety Promotion Board; the Trade and Business Development Board; the Special EU Programmes Body; the North/South Language Body; and the Foyle, Carlingford and Irish Lights Commission. Selected aspects of transport, agriculture, education, health, environment, and tourism were additionally agreed as areas of functional cooperation.

Provisions in the third part of the Agreement are only of peripheral consequence for the structure of the power-sharing institutions, although arrangements with regard to rights, safeguards, and equality of opportunity have an impact on their operation.

#### ***Why Power-sharing and why this Particular Institutional Design?<sup>4</sup>***

These two questions are best answered through an examination of the nature of the Northern Ireland conflict and of previous attempts to resolve it.

The conflict is caused by incompatible conceptions of national belonging and the means to realize them. These two different conceptions are, on the one hand, the idea of a united Ireland pursued by Nationalists and Republicans, and, on the other hand, the Unionists' and Loyalists' desire for continued strong constitutional links between the province and Great Britain, within the United Kingdom. Historically, these two conceptions have been associated with two different religions – Catholicism and Protestantism. Religious labels have consequently played a significant role in the

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<sup>4</sup> Further and more in-depth analyses of the 1998 Agreement and the negotiation process leading to its conclusion can be found, among others in Wilford (2001) and Neuheiser and Wolff (2002).

conflict, for they have made possible the systematic pursuit of discrimination and segregation. Yet this has not made the conflict an ethno-religious one; nor have distinct linguistic identities (Gaelic and Ulster Scots) or differences regarding class, culture, and ideology overshadowed the fundamental divide between the two communities over the issue of national belonging. However, what turns these differences into additional dimensions of the principal divide over national belonging is that for decades they have exacerbated polarisation between the two communities in Northern Irish society, leaving little or no room for cross-cutting cleavages, and almost completely eradicating room for a cross-communal political space.

Defining the Northern Ireland conflict thus as an ethnonational one has important implications for its analysis and for the critical examination of any attempt to settle it. First of all, different conflict parties and their relationships with one another need to be defined. Within Northern Ireland, conflict parties act within three political spaces, which are defined in communal or cross-communal terms.<sup>5</sup> The situation there must not be seen in isolation from the United Kingdom and the Republic of Ireland, which are both parties to the conflict as well as its principal mediators, and, as far as the UK is concerned, its principal arbitrator. Increasingly over the past two decades, factors in the international context have become more and more important as well – international connections of paramilitary groups, the influence of diasporas, and the consequences of European integration. In the current peace process, it has especially been the influence of the Irish diaspora in the United States and that of successive American administrations that has had a significant impact on developments in Northern Ireland.

The dynamics existing among and between these different internal and external actors can explain why a power-sharing dimension is crucial for any settlement to succeed. More generally, the need for power sharing can be derived from demographic and political power balances in Northern Ireland. Without a formal commitment to power sharing, the Nationalist/Republican community would, in all likelihood, have remained permanently excluded from the executive process in Northern Ireland for the foreseeable future, as was the case when a traditional majoritarian system of government was operated in the province between 1921 and 1972. Not to include any provision for power sharing in a peace agreement would thus make it unlikely, if not impossible, that Nationalist or Republican representatives would sign up to any deal. At the same time, the setting-up of a collective executive branch of government as part of the power-sharing institutions (as opposed to, say, a committee-only system to run Northern Ireland) was of highly symbolic value for Nationalists and Republicans, provided that it ensured their mandatory inclusion in it.

This *conditio sine qua non* imposed on the peace process from one community is reflected in similar conditions put up by the other. In exchange for agreeing to the institutionalization of power sharing, Loyalists and Unionists demanded security guarantees - in other words, a proven (and, via the Mitchell Principles of Non-violence, enforceable) commitment by Sinn Féin and the IRA to follow exclusively democratic means in the pursuit of their political strategies. This has become manifest, in particular, in the Unionist emphasis on decommissioning as a precondition for the workability of the institutions in their current form.

The specifics of the agreement concluded in 1998, which go far beyond many power-sharing arrangements operating elsewhere, can be explained by looking at both the previously failed, or partially successful, attempts to settle and/or manage the conflict, and by taking into account the different pragmatic and symbolic needs of the individual communities and the political parties within them.

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<sup>5</sup> The cross-communal space is ambivalent. Even though the two main parties in it, the Alliance Party and the Women's Coalition have the aspiration to bridge the communal divide, their political outlook is mostly towards the retention of the existing constitutional links with Great Britain.



To begin with the former, after the violent unrest in the late 1960s and early 1970s and the subsequent imposition of direct rule on Northern Ireland, a first attempt was made at establishing a power-sharing government. This happened after a consultation process in 1973 and was followed by elections in Northern Ireland, which returned a two-thirds majority for a subsequently formed coalition of the Unionist Party, the Social Democratic and Labour Party (SDLP), and the Alliance Party. These three parties and representatives of the British and Irish governments then met in December 1973 at Sunningdale to hammer out the details of formalized cross-border cooperation at the executive and legislative levels between the Republic of Ireland and Northern Ireland. The resulting Sunningdale Agreement became a major bone of contention both inside and outside the Northern Ireland Assembly. When a general strike against the new institutions in the spring of 1974 brought the province to an almost complete standstill, the executive resigned amidst increasing sectarian violence, at which stage the British government reintroduced direct rule.

The major lesson learned from this early failure of power sharing was that there could be either power sharing in Northern Ireland or cooperation with the Republic, but not both. While subsequent power-sharing/devolution schemes did not amount to much, an Anglo-Irish Agreement was concluded in 1985. It excluded political parties in Northern Ireland from the ensuing process of cooperation between the two governments. While this newly found level of trust and collaboration marked a significant step forward in British-Irish relations, it did little to resolve the conflict in Northern Ireland. Nevertheless, it established a reasonably efficient framework of conflict management and thus contributed to paving the way towards the 1998 Agreement. The experiences accumulated over more than two decades of attempts at conflict management thus form one part of the background against which the Agreement concluded in 1998 must be seen.

In addition, the different pragmatic and symbolic needs of individual communities and the political parties representing them at the negotiation table also considerably shaped the specific form that the Agreement finally took. Many of the safeguards that are built into the Agreement, including the specific voting procedures in the assembly and the need for the assembly to approve any decision taken by the North-South Ministerial Council, satisfy both communities' need to be able to exercise a veto over issues that they consider of particular importance for their own communal interests. The choice of the d'Hondt principle for the appointment of individual ministers to the executive was required to ensure cross-communal representation without excluding any of the major parties in each communal party bloc. However, this was also necessary from a more pragmatic standpoint, namely, to avoid protracted bargaining over executive appointments. Having STV as the electoral system was meant to satisfy the demand for relative proportionality in the composition of the Assembly while at the same time strengthening the moderate centre by allowing the indication of preferences on the ballot paper and thus, it was hoped, encouraging cross-communal vote transfers between supporters of moderate parties.

The establishment of both the North-South Ministerial Council and the Council of the Isles sought to address specific 'external' dynamics. North-South cooperation was one of the key demands of the Nationalist and Republican community, while the Council of the Isles is a mechanism that, from a Unionist and Loyalist perspective, facilitates the anchoring of this specific Irish dimension in the broader context of the British Isles. It thus carries a distinct notion of strengthening the links between Northern Ireland and other parts of the UK (even if the council also includes the Republic of Ireland).

Clearly, this is not a comprehensive list of all the specifics of the institutional design provided in the Agreement. However, it lists the most important and to some extent the unusual elements. What is important to note is that this design was not arbitrary or accidental. It was arrived at after tough and drawn-out negotiations, even though successive drafts of the Agreement were almost exclusively produced by civil servants in the Northern Ireland Office in cooperation with their counterparts in the Irish Foreign Ministry and negotiated between them and the major players: the Ulster Unionist Party (UUP) the SDLP, and Sinn Féin. This is not to say that it was the only possible outcome, but rather that all the parties that eventually signed up to it, regardless of the actual amount of their involvement into the negotiations leading up to it, invested considerable time and effort to arrive at this particular result. The complexity of the compromise that was reached in April 1998 and the difficulty of reaching it are but a taste of what lies ahead for the negotiators and facilitators if they embark on a review of the Agreement.

### ***Implementation Problems***

The referendum held in Northern Ireland on the Agreement on 21 May 1998 saw a 71 per cent 'Yes' vote, with an overwhelming majority of Nationalists and Republicans and a much smaller majority of Unionists and Loyalists endorsing the compromise reached. Subsequent elections confirmed this difference between the communities. The Nationalist SDLP and the major Republican party, Sinn Féin, both represented the undisputable pro-Agreement attitudes of one community (even though their rationales for doing so differ between the SDLP's view of having achieved a long-term if not permanent settlement and Sinn Féin's assumption that the Agreement is merely a stepping stone towards Irish reunification). For their part, the generally pro-Agreement UUP and Progressive Unionist Party (PUP) faced stiff opposition from an almost equal number of assembly members representing the Democratic Unionist Party (DUP) and a small number of other anti-Agreement Unionists. Both cross-communal parties, the Alliance Party and the Women's Coalition, represented decidedly pro-agreement attitudes.

### **Inter-community and Intra-community Dynamics**

With the return of power sharing to Northern Ireland, intracommunity dynamics acquired a whole new dimension. Electoral support became more important, and it became more profitable for a larger number of people. As one of my interview subjects (an assembly member) put it, 'A relatively high and regular salary, an office at Stormont, staff who work for you and the status you acquire as an assembly member do not necessarily corrupt you, but they make you want to keep all these things and you are suddenly prepared to walk the extra mile to retain the support of your electorate.' However, what he also admitted was that the willingness to put in this extra effort did not necessarily extend to all assembly members and 'did not mean that there was automatically a greater preparedness to compromise and make concessions to ensure the survival of the very institutions that deliver all these perks.'

This, however, is not necessarily a contradiction. The situation in Northern Ireland is such that all political parties compete for a strictly limited pool of votes within their own political space. There is a relatively clearly defined number of Unionists and Loyalists and the same is true of Nationalists and Republicans. Cross-over voters between the two are extremely rare, even though the electoral system in Northern Ireland would easily allow, and was adopted to facilitate, vote transfers between supporters of moderate parties across communal boundaries. However, to the disappointment of the moderate centre, 'vote transfers between UUP and SDLP were only around 10 per cent either way – this is not enough for us to promote compromise and emphasize that we have more in common with 'them' than with other parties in our own community, even though this might well be the case.' Quite apart from the fact that one reason for this low number of transfer votes may be the lack of a targeted campaign to encourage transfer votes, it also shows that the emphasis of (electoral) politics has decidedly shifted from intercommunity to intracommunity competition. With the dominant view



being that there are too few chances to attract voters from the other side, election campaigns become intracommunity events and lead to increasing polarization and radicalization, essentially strengthening hardliners at the expense of moderates in each community. The lack of transfer votes thus becomes a self-fulfilling prophecy, underlining, once again, how different aspects of structure and agency interact to the detriment of a successful and sustainable implementation of the Agreement.

Another likely consequence of the increased significance of intracommunity competition and their impact on the growing intercommunity polarisation is that the political space in which cross-community parties can operate and gain votes becomes ever smaller, and there is a very real risk that both the Alliance Party and the Women's Coalition will be squeezed out of or substantially reduced in their presence in the assembly if there is no significant change in the political climate before the next election.

While these overall dynamics of polarization hold true for both communities, their underlying reasons are somewhat different. In the Nationalist and Republican community, the problem is not the split between pro- and anti-Agreement factions, since both Sinn Féin and the SDLP are supportive of it. However, Sinn Féin has overtaken the SDLP in the number of seats won in the last general elections for Westminster, and this has triggered renewed fears among Unionists that Sinn Féin will become the strongest party after the next elections for the Northern Ireland assembly, making it virtually impossible to form an executive. The reasons for the growing support for Sinn Féin are various. According to most of the people I interviewed, they are perceived (and in fact are) the younger and more dynamic party; they have more charismatic leaders, who command respect and loyalty in their community; and they have managed to turn two very difficult ministries – health and education (which together account for about 60 per cent of the total budget of Northern Ireland) – into a true public relations asset so that, much more than the SDLP, they are seen as delivering government. Sinn Féin also benefit from their public commitment to the Agreement and the peace process, especially among members of the younger generation, who have no personal experience or recollection of some of the worst IRA violence. At the same time, the electoral and political pressure under which the SDLP found itself within its own community was aggravated by a crucial lack of cooperation from the UUP. More engagement between them, and more joint political initiatives coming from the first minister and deputy first minister, would not only have helped increase governmental efficiency, but it would have improved the perception and public visibility of the SDLP. The increasingly hawkish stance taken by David Trimble as UUP leader - and thus implicitly as first minister – has contributed to the erosion of support for the SDLP and bolstered support for Sinn Féin. The irony of this situation is that the UUP may well benefit from this strategy and outpoll the DUP again at the next elections to the assembly; but it will achieve this by greater hostility to the Agreement and greater 'robustness' in its approach to Sinn Féin and the IRA. This, in turn, will benefit Sinn Féin at the polls, and the UUP will probably find itself without an 'acceptable' partner for the joint ticket of first and deputy first minister.

Within Unionism, the major problem is that there is very deep scepticism about whether all the concessions that the Unionists (in their view) have made in the Agreement have paid off in terms of an end to IRA violence and a genuine commitment by Sinn Féin to the peace process and to democratic politics. Although the IRA (and, for that matter, the Ulster Volunteer Force (UVF) as well) have maintained their ceasefires, with the result that the number of deaths from sectarian violence has decreased since 1998, nevertheless violence remains a feature of Northern Ireland society. The violence, as many Unionists and Loyalists told me, is believed by many in their community to be orchestrated by paramilitaries on both sides, including the IRA. However, orchestrated violence in the form of rioting and clashes between hostile mobs is not its only

manifestation. The number of non-fatal shootings and assaults has dramatically increased since 1998 (from 216 in 1998 to 330 in 2001), and around 60 per cent are committed by Loyalist paramilitaries. It also needs to be noted that the majority of these acts are directed at members of the paramilitaries' own community or at rival paramilitary groups within it, such as the feud between the UVF and its main rival, the Ulster Defence Association (UDA).

Against this background of continued violence, four events have been particularly damaging: the uncovering of an alleged IRA gun-smuggling operation in Florida; the arrest of three suspected IRA members in Colombia (subsequently charged with training Marxist guerrillas); the break-in at the Special Branch offices at Castlereagh Police Station in Belfast, during which sensitive documents were stolen, which is attributed to the IRA; and the uncovering of an alleged spy ring operated by Sinn Féin and the IRA at the Northern Ireland Office. Regardless of the substance of any of these incidents, they have confirmed the fears of a majority of Unionists and Loyalists, who had already been wary of the commitment of Republicans to peaceful democratic politics, and they have triggered the latest crisis and the suspension of the devolved institutions in Northern Ireland.

The decreasing trust that Unionists have in the institutions to which the UUP signed up in 1998 has undermined the electoral support which the party used to command and has made the position of its leader extremely difficult, for he is fighting a two-front battle in his community: against challenges to his authority within his own party, and against the threat of being outpolled by the DUP. However, part of the problem - in fact, the main reason, according to many people of the I interviewed - is that David Trimble and the UUP have failed to demonstrate a clear commitment to the institutions established under the Agreement, and they have not sold the advantages of the Agreement to their own community. As one Unionist interviewee noted, it is difficult and potentially counterproductive to 'emphasize over and over again that the Union has been secured and that there is an IRA ceasefire' when the price for this has been to sit in government with Sinn Féin. But it is equally true, as another Unionist put it, that 'the advantages of devolved government for Unionists go beyond securing ties with Britain and having achieved an IRA ceasefire and subsequently the beginning of decommissioning.'

Making local decisions locally may sound banal, but better representation of farmers and fishermen, and of tourism and other sectors of industry, have brought direct benefits to the people of Northern Ireland, as have the ability to establish direct contacts with Washington and Brussels and open offices there, and the ability to coordinate directly with Dublin the harmonisation of cross-border policies. To some extent, the problem for many Unionists is to accept that these are things won in exchange for power sharing, even though they benefit Nationalists and Republicans too. Thus, many Unionists and Loyalists perceive the situation as one in which they have given more and received less when comparing themselves with Nationalists and Republicans. It is obviously unhelpful in such a situation when one party, the DUP, because of its lack of commitment to the power-sharing institutions established in 1998, puts most of its efforts into discrediting its partners in government and attempts to prove that the institutions, at least in their current form, are inoperable and disadvantageous for Unionists and Loyalists. Even though the DUP has more recently softened its goal from destroying the institutions to reforming them, it has electorally benefited the most from Unionist and Loyalist fears about power sharing and consequently it has done nothing to alleviate these fears.

Thus, the persistence of intercommunity differences within the institutional framework provided by the Agreement has exacerbated intracommunity party competition, which since 1998 has hardened opposition among Unionists and Loyalists to the institutions created under the Agreement. The lack of Unionist and Loyalist support for the



Agreement remains the gravest threat to its future. This, however, is not to put all blame on the political elites of this community. Republicans have contributed a great deal to Unionist and Loyalist fears. While there may have been 'lack of appreciation of how significant a step it was for the IRA to actually begin decommissioning,' as one Unionist Assembly member admitted, recent events have made it at best difficult for Unionists and Loyalists to believe that Republicans are genuinely committed to peace.

#### The Ambiguous Role of the Institutions: Delivering Devolved Government vs. Delivering Peace (and Decommissioning)

In contrast to devolution in other parts of the United Kingdom, such as Scotland and Wales, devolution in Northern Ireland was more a by-product of conflict resolution than part of a comprehensive devolution strategy. The fundamental goal of implementing a specific and very different form of devolved government in Northern Ireland was to provide the framework for a political process in which a conflict about different conceptions of national belonging could be de-escalated below the threshold of violence and, in the long term, be fundamentally transformed. This explains the complexity of the institutions in Northern Ireland and the multitude of safeguards built into their operation.

However, different priorities among the parties committed to the Agreement, and even more so among all the conflict parties, meant that very early on in the implementation process of the Agreement - and in fact even before the institutions were properly set up - they had become hostages of a political process in which division and distrust, rather than shared vision and joint commitment, dominated political strategy and tactics. For most Republicans and many Nationalists, the symbolism of the institutions, especially the executive and the North-South Ministerial Council, made them an easy object for political bargaining (or, more cynically speaking, blackmail) in the hands of Unionists. Undoubtedly, this strategy worked to some extent. Each major crisis and each suspension of the institutions resulted in progress on the decommissioning front. However, what has not been seen, or has not been seen clearly enough, is that there was a price to be paid in terms of an increasing disillusionment among Republicans and Nationalists, leading many of them to wonder 'whether Unionists will ever share power fairly and accept sitting in government with Nationalists and Republicans,' as one Nationalist phrased the widely shared frustration over 'Unionist obstructionism.'<sup>6</sup>

On the one hand, it is only right and proper that Unionists insist that all parties in government abide by the Mitchell Principles of Non-violence and that 'it is unacceptable that one party in government has a private army at its disposal that it can use in the political bargaining process.' Regardless of whether and which formal or informal links exist between Sinn Féin and the IRA, the linking of decommissioning to the functioning and survival of the executive, the assembly and the North-South Ministerial Council was, in the words of one Loyalist, 'a disastrous mistake on the part of Unionism, as it enabled Republicans to determine the pace of progress and blame any lack thereof on Unionists.'

From this perspective, the power-sharing institutions in Northern Ireland created under the Agreement have become a 'political football used by various parties for anything but the delivery of good governance.' The inability to separate the two purposes of devolution - achieving sustainable peace and delivering good governance - sufficiently from one another is particularly felt among parties in the cross-communal space. It has also led to a situation in which both the public perception of the institutions and the

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<sup>6</sup> The illegal banning of Sinn Féin ministers from attending meetings of the North-South Ministerial Council imposed by First Minister David Trimble is perhaps the most obvious example in support of this view.

views that many senior politicians on both sides of the communal divide have towards them are essentially negative.

Trying to turn the institutions into an instrument to achieve decommissioning before delivering governance has dealt several serious blows to the implementation process. It raised hopes among Unionists and Loyalists that were unlikely to be fulfilled in the short term and thus exacerbated their underlying fears of having been sold out to Sinn Féin and the IRA. At the same time, Republican intransigence to accept early on that decommissioning was part of the spirit, if not the letter, of the Agreement has played into the hands of Unionist hardliners. The verdict is still out on whether this has fatally undermined any chance of resolving the Northern Ireland conflict through the establishment of a power-sharing government as envisaged by the Agreement.

#### The Role of the Governments: Addressing Issues vs. Accommodating Parties

It would be unfair, however, to blame only the political parties in Northern Ireland for the successive crises that the Agreement and thus the entire peace process has faced. At the very least, the British government, in its handling of the difficulties of the peace process, has facilitated patterns of political behaviour among the parties in Northern Ireland that were far from conducive for constructive crisis management.

The major criticism that must be levelled at the British government and its partners in Dublin and Washington is that they have absolved the parties in Northern Ireland from taking responsibility for their actions, either individually or collectively. By threatening and executing suspension on four occasions and eventually first postponing and then cancelling the elections to the Northern Ireland Assembly scheduled for May 2003 (before calling them for 26 November 2003), the government in London took responsibility for the failures of individual parties and politicians, as well as for the institutional shortcomings exacerbated thereby, rather than forcing them to address these in a constructive manner. For example, rather than dealing with the fact that the voting system in the Assembly could all too easily be used to create a deadlock, the Alliance Party was pressured to redesignate three of its members as Unionist to create a large enough 'Unionist' majority to elect David Trimble and Mark Durkan as first minister and deputy first minister in November 2001.

The other problematic aspect of British government policy in this context is that the government too often tried to salvage the peace process by making concessions to individual parties. This tactic has worked quite successfully until now, but it reinforced behaviour patterns, seeking individual reward for specific parties rather than for collective bodies, such as the executive. While this strategy of engaging individually with the political parties further undermined any sense of collective responsibility among those sitting together in the executive, 'it also led to a process of escalating demands, pointing to the last concession made to the other side, and thus already implying the next round of individual bargaining.' While it would obviously be wrong to blame the British government directly for all the problems in the peace process, it is not unrealistic to assume that some of the underlying structural and personal shortcomings could at least have been minimized in their impact by different policies. In the end, this might not have prevented the need for a review of the institutions created under the Agreement, but it could have provided for an environment more conducive to such a review's successful conclusion and implementation.

An additional factor that has played a role but can only be considered briefly here is the changing nature of U.S. engagement in the Northern Ireland peace process. Under the first and especially the second Clinton administration, American influence was very public and high-profile, in addition to the more private (almost covert, but nevertheless effective and overall positive) impact that both the Administration and the Irish diaspora in the United States had. Under George W. Bush this has decidedly changed, and the balance is now much more towards low-profile engagement, which continues



but does not always carry the same weight. While the events of 11 September 2001 and its consequences clearly played a role in securing the first ever act of decommissioning by the IRA, they have also subsequently led to a reprioritization of foreign policy agendas and resources. Moreover, the persisting problems with the Northern Ireland peace process have produced an increasingly high level of personal frustration on the part of leading actors in the United States and have facilitated U.S. disengagement.<sup>7</sup>

### ***Normative Concerns (and Their Pragmatic Implications)***

The structure of the power-sharing institutions in Northern Ireland raises five principal normative concerns from the point of view of how democratic this system of government actually is. On top of these normative concerns, the lack of some basic democratic mechanisms also has some very acute pragmatic implications that cast serious doubt on the long-term sustainability of this system of government.

The first concern relates to the very mechanism of suspension. This is problematic from two angles. First, it was not part of the original agreement concluded in 1998, but was subsequently rushed through parliament in February 2000 to enable the then secretary of state for Northern Ireland, Peter Mandelson, to suspend the institutions, pre-empting the resignation of David Trimble after just three months in office. Second, it makes a mockery of a political process that supposedly brings government closer to the people of Northern Ireland but in fact depends on the consent of the central government, which at any time can revoke the powers it transferred to the democratically elected politicians in Northern Ireland in institutions that have been approved in a referendum by more than 70 per cent of the people there.

Obviously, the pragmatic rationale behind introducing suspension was to give the British government a means to step in and prevent the serious damage to the peace process that would result from the collapse of the institutions. On the other hand, the existence of this failsafe device has perhaps not focused the minds of politicians in Northern Ireland hard enough on making the institutions work within the existing framework, and has 'allowed the creation of crises in which one could prove that one remained a true believer in the cause, Republican or Unionist.'

The second and third normative concerns are closely linked and relate to the peculiar way in which the executive is appointed. While it is normal for power-sharing systems to prescribe cross-communal participation at least in the executive branch of government, it is less common that the d'Hondt rule is operated in these circumstances. In Northern Ireland, its application means two things: that there is virtually no opposition, certainly no effective opposition, and that it is close to impossible for the electorate to vote the parties that are now in government out of it. Unless there is a dramatic shift in public opinion, the current institutional design means that for the foreseeable future the same four parties will form a governing coalition by default. I earlier on explained the pragmatic rationale behind this institutional choice, but this does not mean that one should ignore its implications. At the very least, this set-up means that there is very little real need for a joint program of government and subsequent collective commitment to its implementation.

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<sup>7</sup> According to one US informant, the lack of any progress after months of intense negotiations, led US special envoy Richard Haas to 'drop out' of the Northern Ireland process after March 2002. This interview occurred before the recent re-engagement of the US in the peace process.

This and two further normative concerns, namely, a very real possibility for the creation of party fiefdoms in individual departments<sup>8</sup> and the *division* rather than the *sharing* of power in the executive, also mean that there is only very limited collective or individual accountability in the executive and that the political process in the institutions is dominated by the executive. While executive domination is generally a feature that is favoured, if not required, by proponents of the consociational variety of power sharing, because it allows political elites to make necessary compromises without immediately exposing themselves to wider accountability, in the context of Northern Ireland it has had the opposite effect - of making political elites less prepared to compromise. In fact, by effectively guaranteeing the same four parties a place in government for the foreseeable future, sectarian divisions in the institutions, and by extension in society, have been entrenched rather than broken down, making compromise across the communal divide not only less necessary and desirable but in fact potentially dangerous in terms of compromising a party's electoral support.

It is the very idea of consociational power sharing to put limits on majoritarian democracy by implementing institutional designs that guarantee minority representation and include safeguards protecting minorities against abuse by majorities. The particular design of institutions in Northern Ireland was an attempt to address the concerns of both communities there. From that perspective it was a necessary condition for the peace process to move forward. Subsequently, this same design has proved difficult to implement and operate, throwing the future of the entire peace process in doubt. More fundamentally, the question is whether the political parties in Northern Ireland can find a way forward, or whether the optimism expressed on the conclusion of the Agreement in 1998 was premature.

### ***The Future of Power-sharing in Northern Ireland***

#### Resolving Existing Problems within the Current Institutional Framework or Renegotiating the Current Framework to Resolve Existing Problems?

This question is crucially linked to the outcome of the next elections. As it proved impossible to overcome the most recent impasse before the elections scheduled for 26 November 2003, the elections that will now take place will resemble much more the 1996 Forum election than the 1998 Assembly elections, i.e., they will determine the strength of mandate with which parties enter into the post-election review of the Agreement. In all likelihood, the elections will lead to a different balance of power between the major parties, possibly with the DUP and Sinn Féin returning as the strongest parties. It is, at best, very difficult to see how such a balance of power could possibly lead to a stronger and more stable set of institutions which satisfies all the parties involved the review.

Nevertheless, it is possible to determine a number of conditions under which success might be possible after all, including above all the restoration of a minimum of trust among the political parties so that they can actually re-engage with one another on a broad and inclusive basis. The review of the Agreement would then have to address its structural flaws, with the aim of restoring an inclusive and representative political process that is not devoid of safeguards, but in which safeguards cannot be used to destroy the same political process. If such an outcome could be achieved - and this is obviously a big *if* - the prospect of continued power-sharing might be less daunting for all those involved and for the people of Northern Ireland.

Even though there is only a minimal threat of a resumption of large-scale paramilitary violence, there are clear limits to the time during which a window of opportunity for a review of the Agreement will remain open. All political parties therefore must act

<sup>8</sup> The problem of party fiefdoms could be relatively easily resolved if the assembly committees assigned to each of the executive departments took a more active role in monitoring ministerial performance.



responsibly and constructively or face the serious possibility of the ultimate collapse of the current peace process. Joint efforts of the governments in London and Dublin, as well as in Washington, will also be required in this process and should aim at facilitating sensible compromises between the political elites, while at the same time re-engaging with the broader public in Northern Ireland and helping the parties at the negotiation table win the support of their respective constituencies. Simultaneously, opportunities must be constrained for those conflict parties that are not committed to a peaceful resolution of the underlying conflict or who show a serious unwillingness to negotiate in good faith.

#### New Structures for Internal and External Power Sharing?

On the basis of the foregoing analysis, it is possible to point to some key revisions that are, in my opinion, necessary to ensure greater stability in any reformed power-sharing institutions in Northern Ireland. The following remarks are based on the assumption that a restoration of power-sharing institutions, regardless of their specific design, will be aimed at resolving the underlying conflict of national belonging between two communities with diametrically opposed visions in this respect. This also means that the conflict must be truly settled, in the sense of giving people a sense of permanence and predictability of their political future, rather than placing them in a situation in which the possibility of fundamental change on the basis of a decision taken by a 50% + 1 'majority' hangs over them like a sword of Damocles. This will require rethinking power-sharing designs both on an internal and an external level.

On the internal level, two key changes appear to be necessary: in relation to the d'Hondt rule and to the parliamentary voting system. For the d'Hondt rule there are two options: either to scrap it completely or to extend it to the appointment of the first minister and deputy first minister. Scrapping it would mean that instead of mandatory representation in the executive of all those parties with a sufficiently high number of votes, a voluntary coalition would be able to run Northern Ireland with only one condition imposed on it, namely, that it had to be cross-community (i.e., include at least one party from each of the two communities). This would greatly enhance the accountability of ministers to the assembly and also to the electorate, and it would mean that a sense of collective responsibility within the executive would be strengthened. It would probably also mean that neither Sinn Féin nor the DUP would form part of any executive in the near future, but it would increase opportunities for the smaller cross-community parties and at the same time create an effective opposition in the assembly. Such a redesign would have to be complemented by provisions for a constructive vote-of-no-confidence. Yet despite some of its apparent advantages, it is relatively easy to see why significant parts of the current political elite in Northern Ireland would find it difficult to go down this path.

The alternative to scrapping the d'Hondt procedure is to extend it to the appointment of first minister and deputy first minister. Again, this would have to be complemented by the qualification that the strongest party overall nominates its candidate for the position of first minister, while the strongest party in the other community nominates its candidate for deputy first minister. This way, representation in the two posts remains cross-communal (i.e., even if the two strongest parties overall are from within the same community, each community will obtain only one of the two top posts). This might be more appealing to Sinn Féin and the DUP, in that it would not require them to vote for each other's candidate, as is the case under present arrangements. The UUP, too, might find this aspect attractive, especially if the party outperforms the DUP again at the November 26 elections. For the SDLP, this scenario is clearly the least promising in terms of its future participation in government, if, as is generally predicted, Sinn Féin will overtake it in the assembly elections. However, the problem with this change lies elsewhere, namely, that the parties would have to agree to it and agree to deliver their

constituencies with them. With the clear implication that this might give Sinn Féin not only renewed representation in the executive but also one of the two top posts within it, it would be difficult for any Unionist leader to sign and sell such a deal. Nevertheless, in combination with some of the other reforms suggested below, this could be a possible way forward, since it would reflect an increasing desire for stronger separation among significant parts of Northern Ireland's population and their political representatives.

In terms of changing parliamentary voting procedures, it would be a constructive step forward if the parallel consent mechanism for key decisions was removed and replaced with qualified majority voting, with a sufficiently high threshold (e.g., three-fifths or two-thirds of assembly members present and voting). This would still ensure that no decision could be taken against significant opposition in one of the two communities. It would also mean that the principle of designation could be removed - a small but significant symbolic step towards breaking down sectarian divisions in the Assembly.

In order to increase their acceptability and long-term contribution towards lasting peace in Northern Ireland, these reforms of power sharing at the internal level would have to be combined with revisions of the current arrangements at the external level. If the United Kingdom and the Republic of Ireland formally moved to some form of joint authority over Northern Ireland<sup>9</sup> an additional level of safeguards would be introduced for both communities, something that they are unlikely to achieve under the current institutional design, which includes a mechanism for potentially changing the constitutional status of Northern Ireland from membership in the United Kingdom to unification with the Republic of Ireland. Yet, Nationalists and Republicans can never be sure that they will muster the necessary majority to achieve this, nor can Unionists and Loyalists be sure that they will always have enough support to prevent it from happening. Thus, formal external power sharing, if added to a revised internal formula, would accomplish two things: it would make internal revisions less painful by adding another layer of governance addressing community-specific concerns, and it would establish a sense of (satisfactory) permanence, predictability, and security for both communities, regardless of any actual or impending changes in the demographic balance between them. Combined with the proposed revisions at the internal level, this would also facilitate further separation of the two communities and simultaneously aid their closer individual integration into the nation-states of their choice (i.e., the United Kingdom and the Republic of Ireland). Such a revised combination of internal and external power sharing would therefore actually address the underlying conflict of national belonging in a much more effective way than either form of power sharing can on its own. Both forms may individually be able to contain the conflict in a relatively effective way over some period of time, but the history of conflict resolution in Northern Ireland, from Sunningdale to the Anglo-Irish Agreement and to the Agreement of 1998, shows that there are limits in their ability to make a significant contribution to its long-term resolution. This is perhaps the most important lesson to draw from the current crisis and the previous failures, and its implications should be seriously considered if power sharing is indeed to have a future in Northern Ireland.

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<sup>9</sup> On this widely under-researched mechanism of conflict resolution, see Wolff (2003). On its application to Northern Ireland, see O'Leary et al. (1993).