

A route to stability:

**the review of the
Belfast agreement**

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1. Preface

This is a discussion paper from the think tank Democratic Dialogue. Further copies are available, as hard copy (£2 plus p&p) or e-mail attachment, from DD. Contact Democratic Dialogue, 23 University Street, Belfast BT7 1FY, phone +44(0)2890-220050 or e-mail info@democraticdialogue.org. The paper can also be downloaded from our web site, www.democraticdialogue.org. We would similarly welcome any comments on the paper, by any of these means.

Since mid-1999, Rick Wilford of the School of Politics at Queen's University Belfast and myself have been engaged in a UK-wide project, monitoring the outworking of devolution in the wake of New Labour's constitutional reform programme, co-ordinated by the Constitution Unit at University College London. This project has taken the form of quarterly reports, available at www.ucl.ac.uk/constitution-unit/leverh/monitoring.htm.

In Northern Ireland, where the project has obviously taken specific form in the light of the Belfast agreement and the north-south dimension of the agreement in Ireland, Prof Wilford and I have collated the work of a team of academics from Queen's, the University of Ulster and University College Dublin—Elizabeth Meehan, John Coakley, Greg McLaughlin, Lizanne Dowds and Duncan Morrow (now of the Community Relations Council)—from whose contributions our own thinking has greatly benefited.

At the request of Charlie Jeffery, director of the devolution and constitutional change programme at the Economic and Social Research Council, which has part-funded this research along with the Leverhulme Trust, Prof Wilford and I prepared a paper on 'policy options' for Northern Ireland in the spring of 2003. The paper, to which Prof Jeffery helpfully contributed, was treated as background for a round table organised by DD—and attended by all the main parties in Northern Ireland, as well as academics, civic figures and government representatives—on the 5th anniversary of the agreement in April. This version has been revised in light of the discussion around the table that day.

The paper was originally generated at a time of great political uncertainty, and unfortunately that uncertainty remains, with the failure of the joint declaration published by London and Dublin on May 1st to restore the post-agreement institutions suspended in October 2002. The review of the agreement, pending towards the end of this year, is thus looming ever larger, and it provides the focus for this paper.

What is suggested here are four possible reforms which could restore the prospects for political accommodation and a stable devolved, power-sharing administration. The paper also floats the idea of a new Forum on the Future of Northern Ireland to allow the review of the agreement to be opened up to wider civic engagement.

As with all DD reports and papers, the views expressed are ultimately those of the authors alone. DD gratefully acknowledges the continuing support of the Community Relations Council and the Esmée Fairbairn Foundation in making such work possible.

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Robin Wilson
DD director

2. Executive summary

- Northern Ireland might be described as being in a ‘pre-post-conflict’ situation. Despite and even *because of* the Belfast agreement, sectarian divisions in the region are as wide as ever.
- If political stability is to be won, policy needs to turn from ‘consociationalism’ and crisis-management and towards a focus on integration and a strategic commitment to the emergence of a civil society.
- This will require renewed ‘constitutional engineering’ which moves beyond a conventional political agenda focused on paramilitarism, the army and the police, and who holds ‘sovereignty’ in Northern Ireland.
- The review of the Belfast agreement due late in 2003 provides an opportunity to think outside the conventional box. The paper sets out four reforms which could form the heart of a renewed agreement, each designed to tackle features of the agreement which have (inadvertently) widened rather than limited community divides. We suggest:
 1. recognition of Northern Ireland’s unique constitutional character;
 2. reform of the electoral system to encourage parties to moderate their identities;
 3. removal of the requirement for Northern Ireland Assembly members to register their communal affiliation; and
 4. formation of the executive by inter-party agreement rather than automatic appointment.
- The linking theme is to move from an agreement which used sectarianism as its building blocks to one with an architecture for a more normal, civil society.
- We propose that the vehicle for this process should be a Forum on the Future of Northern Ireland, which would include a wide range of civic as well as political actors, operating in a transparent and deliberative way.

3. Introduction

Looking across a UK now undergoing a radical devolution experiment, unimagined since talk of ‘home rule all round’ in the 1910s before Ireland was partitioned, a paradox immediately presents itself. British governments, Labour and Tory, supported devolution in Northern Ireland throughout the intervening period: for decades they turned a blind eye to human-rights abuses at Stormont, resisted assuming responsibility as the region descended into violent crisis between 1968 and 1972, and as soon as ‘direct rule’ began set about seeking to dismantle it. No concerns here about devolution meaning the ‘break-up of Britain’ or a brake on socialist egalitarianism. Yet, while the Scottish Parliament and Welsh National Assembly, stillborn in 1979 and even now regarded with lukewarm popular enthusiasm, appear irreversible features of the political landscape,¹ devolution at Stormont is in suspension for the fourth time since power was transferred in 1999.

The paradox has a simple explanation. ‘Home rule’ was first envisaged for Ireland as a whole as a way to offload a problem which constantly beset British politics. Identified, however, with Catholic Ireland, home rule culminated in the partition of the mainly Protestant north-eastern counties and, with it, the ‘lock-in’² of the Catholic minority. Devolution to Northern Ireland was then imposed against a reluctant majority to insulate the British political class from Ireland as a whole even while *de jure* responsibility remained for part of it. After ineffectual parliamentary and, occasionally, paramilitary opposition, the Catholic community found a powerful political voice in the 1960s with the civil-rights movement, destabilising Protestant ‘unionism’ and eventually precipitating a Westminster takeover and a commitment that renewed devolution would be on a power-sharing, not monopolistic, basis.³

But agreement in 1973-74 was partial and brief, mainly due to disagreement over the arrangements linking the two parts of the island, and it was not until the Belfast agreement of 1998⁴ that devolution was once more attempted. Yet this was not the embodiment of some autonomist ‘settled will’ as for example in Scotland: rather, it was the product of a constitutional stand-off in which unreconstructed communalist aspirations—to retain or abolish the Irish border—were locked in enduring antagonism.

¹ Curtice, John (2002), ‘Devolution, the union and public opinion: report prepared for the House of Lords Committee on the Constitution inquiry into “Devolution: inter-institutional relations in the United Kingdom”’, Strathclyde: Strathclyde University

² Horowitz, Donald L (2001), *The Deadly Ethnic Riot*, Berkeley and Los Angeles: University of California Press

³ Northern Ireland Office (1972), *The Future of Northern Ireland: A Paper for Discussion*, and (1973), *Northern Ireland: Constitutional Proposals* (Cmnd 5259), Belfast and London: NIO

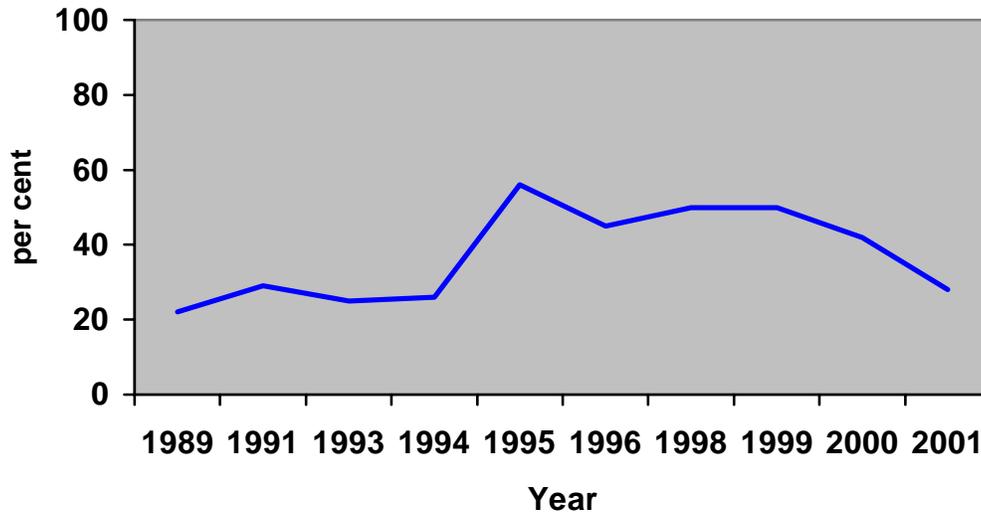
⁴ Northern Ireland Office (1998), *The Agreement: Agreement Reached in the Multi-Party Negotiations*, Belfast and London: NIO

This is the 'terrible beauty' of the agreement: it kept the alternative options alive and as a result left two mutually exclusive futures open and unreconciled.

4. Replenishing the ‘factory of grievances’

For this reason devolution to Northern Ireland *per se*, even power-sharing devolution *per se*, does not diminish intercommunal divisions. Indeed, evidence from the annual Northern Ireland Life and Times Survey of public attitudes shows a sense of deterioration in recent years (Figure 1) and a diminishing optimism about future harmony (Figure 2),⁵ as well as a tendency for younger citizens to adopt less moderate stances.⁶ In the era marked by the fall of the Berlin wall as a symbol of ideological confrontation, Northern Ireland has accumulated, at the last official count, 37 ‘peace walls’ separating hostile ‘communities’, up from 15 in 1994.⁷ The ‘brawl in the hall’ among assembly members at Stormont which accompanied the ending of the third suspension in November 2001 has been matched on the streets by recurrent clashes at sectarian interfaces.

Figure 1: proportion of respondents who think that relations between Protestants and Catholics are better now than 5 years ago

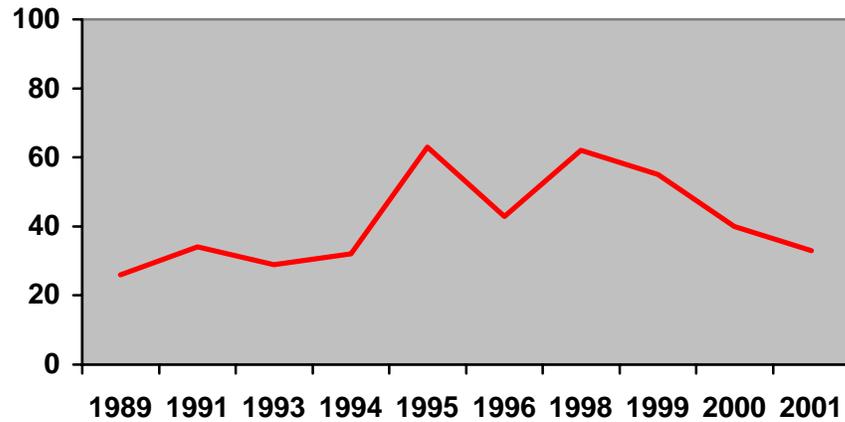


⁵ We are indebted to Lizanne Dowds for this graphic information.

⁶ as noted by Prof Bernadette Hayes at the DD round table

⁷ NIO admission to BBC's *Newsnight* in early 2003; Jarman, Neil (2002), *Managing Disorder: Responding to Interface Violence in North Belfast*, Belfast: Office of the First Minister and Deputy First Minister

Figure 2: proportion of respondents who think that relations between Protestants and Catholics will be better in 5 years time



While violence is running at a much lower level than in the early 1970s the number of violent incidents has, according to police statistics, been on a rising trend after an initial decline following the paramilitary ceasefires of 1994, though there was a welcome drop in the last year (Figure 3).⁸

Figure 3: shootings and bombings in Northern Ireland by year

SECURITY-RELATED INCIDENTS 1993/94 - 2002/03

	Shooting Incidents	Bombings*		Incendiaries*	
		Incidents	Devices Used	Incidents	Devices Used
1993/94	426	278	303	104	135
1994/95	272	132	146	20	24
1995/96	65	-	-	7	7
1996/97	140	50	65	7	7
1997/98	245	73	91	6	6
1998/99	187	123	229	20	20
1999/00	131	66	86	5	5
2000/01	331	177	206	9	22
2001/02	358	318	407	5	6
2002/03	348	178	226	8	8

* Includes explosions/ignitions and detonations.

The Northern Ireland economy performs poorly relative to the rest of the UK—a fairer comparison than the (former) Celtic Tiger given the region is part of the same macroeconomic sphere. Though it did marginally catch up towards the UK average in the early 1990s, owing to the ‘automatic stabiliser’ of a large public sector in Northern Ireland amid falling private consumption in Britain, the ‘peace dividend’ heralded by the

⁸ Police Service of Northern Ireland (2003), Report of the Chief Constable, 2002-03, Belfast: PSNI; Dominic Bryan points out that these data need to be interpreted cautiously—as with all crime statistics, they depend on whether events are reported and, if so, how they are categorised.

1994 ceasefires did not materialise as the decade wore on (Table 1).⁹ On this reckoning British ministers might be advised to desist from constantly upbraiding the citizens of Northern Ireland for not appreciating how much better things have become.

Table 1: GDP per head in Northern Ireland as proportion of UK average

1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
73.8	76.4	77.6	78.7	79.8	81.5	80.1	80.1	77.7	77.5

⁹ National Statistics (2001), *Regional Trends No 36*, The Stationery Office

5. Entrenching division

A ‘blip’ of polarisation after the Belfast agreement might have been dismissed as a case of the shock of the new. But, five years, four suspensions, three very polarised elections and one postponed rendezvous with the electorate later, the sobering conclusion must be that at best the agreement has had a neutral effect on communal division—and, at worst, that perversely it has exacerbated it. How could this be?

The agreement is based on the ‘consociationalist’ model of ‘constitutional engineering’ for divided societies.¹⁰ This entails a ‘grand coalition’ of representatives of that society’s ethnic groups, a ‘mutual veto’ arrangement between them, autonomy for these groups from each other and a proportionate distribution of public employment. It has been suggested that ‘consociationalism’ has more often been advocated than acted upon¹¹ and its principal advocate, Arend Lijphart, would now claim that only Belgium, Switzerland and Northern Ireland conform to the model.¹² But Belgium lacks an ‘inclusive’ grand coalition¹³ and Switzerland’s grassroots democracy is the antithesis of an élite-dominated system.¹⁴ Which leaves Northern Ireland—so often touted as an example for ethnic conflicts elsewhere¹⁵—as the remaining case of a model developed in the 1970s but which has more recently come under sustained criticism.¹⁶

The fundamental problem with consociationalism is that it rests on precisely the division it is supposed to solve. It assumes that identities are primordial and exclusive rather than malleable and relational: high fences, in other words, make good neighbours! Hence its rarity: if consociationalism derives from consensus rather than conflict (as it did in the Netherlands) it will tend to wither away to intercultural civility; if it is a response to conflict it will tend (as in Belgium) to reinforce communal separation. A fundamental condition of consociationalism is an overarching allegiance to the shared polity which counteracts these centrifugal forces: in the recurrent rounds of inter-party talks in

¹⁰ Lijphart, Arend (1977), *Democracy in Plural Societies*, New Haven: Yale University Press

¹¹ Horowitz, Donald L (2001), ‘The Northern Ireland agreement: clear, consociational, and risky’, in John McGarry (ed), *Northern Ireland and the Divided World: Post-Agreement Northern Ireland in Comparative Perspective*, Oxford: Oxford University Press

¹² Lijphart, Arend (2002), ‘The wave of power-sharing democracy’, in Andrew Reynolds (ed), *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy*, Oxford: Oxford University Press

¹³ The most recent general election has once more seen the large Christian Democrat party excluded from power in favour of a left-liberal coalition.

¹⁴ We are indebted to François Grin, formerly of the European Centre of Minority Issues, for this point.

¹⁵ A highly symbolic instance was the ‘war and peace’ summit between the US president, George W Bush, and the British prime minister, Tony Blair, at Hillsborough, Co Down, in April 2003. Amid war in Iraq, Mr Blair commended the Northern Ireland experience with a view to the ‘roadmap’ to peace in the middle east, but making no substantive connections between what are in fact contrasting scenarios. See the comments by the DD research associate David Russell cited in the *Washington Post* (April 9th 2003).

¹⁶ Wilson, Robin (2003), ‘Northern Ireland: what’s going wrong’, London: Constitution Unit (UCL) and Belfast: Institute of Governance (QUB)

Belgium no one is at the table to speak for the common good, which is thus repeatedly sacrificed to a further carve-up between the separate Walloon and Fleming regional/communal institutions.¹⁷

¹⁷ Cartrite, Britt (2003), 'Contemporary ethnopolitical identity and the future of the Belgian state', *Nationalism and Ethnic Politics* 8, 3: 43-71

6. Four difficulties

In his classic text¹⁸ on ‘constitutional engineering’, Giovanni Sartori contends: ‘If you reward divisions and divisiveness ... you increase and eventually heighten divisions and divisiveness.’ The outworking of the Belfast agreement has confirmed Sartori’s claim. There are four features of the agreement which arguably have entrenched sectarian division:

- the either-or **constitutional** choice between a United Kingdom and a United Ireland;
- the single-transferable-vote **electoral system** for the assembly;
- the requirement of **communal registration** for assembly members; and
- the use of the d’Hondt rule for **executive formation**.

New Labour figures have been inclined to claim that they have resolved the Northern Ireland **constitutional** conundrum with the Belfast agreement — a ‘remarkably settled consensus about the constitutional questions that have dogged the last thirty years’, as the former Northern Ireland secretary Peter Mandelson breezily affirmed to British and Irish parliamentarians in February 2000.¹⁹ But the ‘consent’ principle underpinning the agreement—that Northern Ireland is part of the UK but only for as long as a majority there so desires—was also at the heart of the 1973 propositions (though it was not then fully accepted by Dublin in the sense of removing its territorial claim over the north) and, indeed, by way of vote in the old Stormont parliament, was enshrined in the 1949 Ireland Act following the declaration of a republic south of the border. In essence, it was the basis of partition itself. It does nothing to disentangle Protestantism from unionism or Catholicism from nationalism, as the civil-rights movement subtly sought to do, and thus to mitigate intercommunal conflict.

It also does nothing to establish overarching allegiance to a shared polity, and so Northern Ireland ‘remains a deeply divided society’, with nationalists and unionists still wedded to their ‘maximum demands’.²⁰ Yet after three decades of membership of the European Union, Northern Ireland is inextricably entwined in a ‘variable geometry’ of relationships with the rest of Ireland, the rest of the UK and the rest of Europe, in a continent defined by ‘multi-level governance’ and porous borders. Either/or ‘sovereignty’

¹⁸ Sartori, Giovanni (1997 [1994]), *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes*, Basingstoke: Macmillan, p72

¹⁹ Speech to British Irish Inter-parliamentary Body by the secretary of state for Northern Ireland, Peter Mandelson MP, Northern Ireland Information Service, February 14th 2000

²⁰ Wolff, Stefan (2003), ‘The peace process since 1998’, in Jörg Neuheiser and Stefan Wolff (eds), *Peace at Last? The Impact of the Good Friday Agreement on Northern Ireland*, Oxford: Berghahn Books

choices are in this situation remote from reality.²¹ Indeed, it was highly unfortunate that Northern Ireland stood aloof from the network of ‘constitutional’ regions across the EU which came together to address the work of the Convention on the Future of Europe (the assembly did not even have a European affairs committee, unlike the Dáil, the Scottish Parliament or the Welsh National Assembly). If anything, the priority should be to enhance the region’s democratic autonomy by, for example, the acquisition of tax-varying powers (remarkably popular, according to the NILTS data). Improving its ‘fiscal effort’ would encourage a much less mendicant public-expenditure culture.²²

The STV **electoral system** for the 108-member Northern Ireland Assembly is also not new: it was used for the 78-member 1973-4 precedent. Indeed, the expansion of the number of seats per constituency from five to six during the negotiations, at the behest of the Progressive Unionist Party and the Northern Ireland Women’s Coalition—to try to procure seats for the unpopular ‘loyalist’ paramilitaries—exacerbated the basic problem. This is that STV requires candidates to secure only a minority of votes—in this case just over 14 per cent—to reach the ‘quota’ required for election. They can therefore succeed simply by mobilising their core constituency.

On this matter, any change would be inevitably delayed (as boundaries would have to be redrawn). And it would be critical that the legitimacy of any other system were clearly established before its introduction. But often cited is the alternative vote—effectively STV with single-member constituencies—as it requires candidates to secure a majority to be elected. Thus, in heterogeneous constituencies with rival parties in each ‘community’, AV incentivises all parties to pitch for transfers from conciliatory voters on the ‘other side’, while giving the latter a clear tactical voting option. It can even stimulate cross-communal pacts to emerge as the basis for power-sharing governing coalitions (see below). Long advocated by the ethnic-conflict expert Donald Horowitz,²³ it has been borne out in ethnically divided societies in south Asia, where its use has spread from Australia.²⁴

In Northern Ireland, by contrast, elections have become entirely communalised affairs, rewarding intra-ethnic outbidding as the only competition²⁵ (though the first-past-the-post majoritarian system for the 2001 Westminster election saw some tactical voting by Catholics to keep out anti-agreement unionist candidates). This has marginalised issues

²¹ Wilson, Robin (2001), ‘The politics of contemporary ethno-nationalist conflicts’, *Nations and Nationalism* 7, 3: 365-384

²² Heald, David (2003), *Funding the Northern Ireland Assembly: Assessing the Options*, Northern Ireland Economic Council research monograph 10, Belfast: NIEC

²³ Horowitz, Donald (1985), *Ethnic Groups in Conflict*, Berkeley: University of California Press

²⁴ Reilly, Benjamin (2001), *Democracy in Divided Societies: Electoral Engineering for Conflict Management*, Cambridge: Cambridge University Press. It should be noted, however, that Reilly takes a benign view of the exercise of STV in the 1998 assembly election.

²⁵ Ruohomaki, Jyrki (2001), *Two Elections, Two Contests: The June 2001 Elections in Northern Ireland*, Belfast: Democratic Dialogue

related to social class—one UUP MLA once parodied the former premier Lord Brookeborough in calling the new Stormont ‘a middle-class parliament for middle-class people’—and squeezed out any discussion of gender equality. While the Welsh National Assembly achieved gender parity in the May 2003 elections and the Scottish Parliament came close, there has been no move in Northern Ireland to use the Westminster legislation allowing of women-only shortlists to redress the huge imbalance in political representation in the region: just 14 per cent of the outgoing MLAs were female, a similar proportion to that in the Dáil.

The requirement for **communal registration**—that all assembly members (MLAs) register upon election as ‘unionist’, ‘nationalist’ or ‘other’—stems from the stipulation in the agreement that there be ‘parallel consent’ through concurrent majorities in the ‘nationalist’ and ‘unionist’ blocs for some critical decisions. In particular, the crucial joint election of the first and deputy first minister (by implication one ‘unionist’, one ‘nationalist’), the first step in executive formation after an assembly election, can only be taken by this mechanism.

This provision goes beyond even Lijphart in entrenching division. It smacks of a ‘benign *apartheid*’ (though *apartheid* could never have been benign) out of sync with the idea of a shared government—never mind the shared society advocated in the review of community relations, held up under the devolved administration but progressed under direct rule.²⁶ And it verges on the racist by blotting out any axes of identity formation other than that between Catholics and Protestants. As one of the ‘other’ MLAs put it, it means being *other-ised*. It fails to recognise that Northern Ireland is now a ‘multi-cultural, multi-ethnic and multi-faith’ society, in which the smaller faith communities can act as a ‘cement’ between the two big blocs.²⁷

In his analysis of the intercommunal violence in north Belfast of recent years, Neil Jarman points out that whereas in the past sectarian division ‘may have been seen as something to be worked against, confronted and challenged’, latterly ‘it is increasingly seen as the inevitable basis for the political future of Northern Ireland, with the “two tribes” thesis copper fastened within the terms of the Agreement and within systems and structures of the Assembly’.²⁸ Comparative research on power-sharing in Northern Ireland and Lebanon, involving interviews with politicians in Belfast and Beirut, has thrown up an interesting contrast: in the latter case but not the former for the most part, interviewees expressed a moral queasiness about acting as communal rather than public representatives, and aspired to a day when that would not be so.²⁹

²⁶ Office of the First Minister and Deputy First Minister (2003), *A Shared Future: A Consultation Paper on Improving Relations in Northern Ireland*, Belfast: OFMDFM

²⁷ Dr Mamoun Mobayed, who was born in Damascus and has lived in both parts of Ireland, made this point at the DD round table.

²⁸ Jarman, *op cit*, p17

²⁹ We are indebted to David Russell for this finding.

But it surely cannot be right to carry forward into the indefinite future a fatalistic acceptance of what is at root a division based on nothing more than sectarian socialisation (there was only one Catholic ‘unionist’ in the outgoing assembly and there were no Protestant ‘nationalists’). To do so would reduce democracy to demography and endlessly postpone reconciliation.

Moreover, communal registration has had a perverse effect. Demanded by the nationalist SDLP, it has given legitimacy to anti-agreement unionists who always ignored Catholic opinion and can continue to do so—on the premiss that any agreement not supported by a majority of unionists carries no authority. It also means that the votes of communally registered members are more equal than the ‘others’ (which are irrelevant to the parallel consent process) and it required the bizarre ‘redesignation’ of liberal Alliance MLAs (as well as one NIWC member) as ‘unionist’ to secure the re-election of David Trimble as first minister and so end the suspension of the institutions in 2001.

It would be highly unlikely that any secure power-sharing coalition would be undermined by issue-by-issue communal voting (there was no such protective provision in 1974). But a purely numerical weighted-majority requirement (60 or 65 per cent) could remain as a guarantee against ethnic lock-in, without the risk of entrenching communalist alignments and mindsets or of making government unworkable.

Finally, the arrangements for **executive formation** by application of the d’Hondt proportionality rule are unique. They arose, in the final days of the talks leading up to the agreement, from the spatchcocking together of Ulster Unionist proposals for Welsh-style devolution with committee chairs distributed by d’Hondt (as in the European Parliament) and SDLP calls for executive power-sharing. They are unique because they reduce the executive effectively to a ‘holding company’ for a series of largely autonomous ministerial ‘fiefdoms’, an arrangement which it was anticipated ‘may well lead to deadlock’.³⁰

Collective responsibility is for the most part absent and the executive has thus failed to supply the cement between otherwise mistrustful political factions. Indeed, post-agreement negotiations centring entirely on securing two ministerial seats for Sinn Féin required the number of departments to be increased from six to 10—‘chopped-up government’ as one former permanent secretary describes it, with serious consequences for the ability of departments even to spend their financial allocations.³¹

³⁰ Laver, Michael (2000), ‘Coalitions in Northern Ireland: preliminary thoughts’, paper delivered at a Democratic Dialogue round table on the prospective Programme for Government of the devolved administration

³¹ Heald, *op cit*

This is a good example of how ‘evidence-based policy-making’ has been sacrificed to ideological considerations. Devolution could have been used to commission more policy research, make more use of experts (including expert practitioners) and ask new questions. But on health, for example—the highest priority of citizens, according to the NILTS data—the emphasis remained primarily on how many hospitals had acute functions rather than on ill health and its relationships to social exclusion.³²

Moreover, by making the mistake common in ethnic conflicts of failing to distinguish inclusion in the ‘political community’ from inclusion in government, the arrangements left the assembly bereft of any effective opposition to challenge executive dominance (all but 16 MLAs belong to the four executive parties).³³ As one party adviser put it, ‘ministers are basically accountable to no one’. The committees should be the prime locus of democratic accountability, but MLAs have tended to behave as party animals rather than committee creatures in this regard. This has not been helped by cumulative mandates: 60 of the 108 members in the suspended assembly, including two ministers, were simultaneously district councillors, stimulating what one former committee chair called a ‘very intense localism’.

The Fianna Fáil moderniser Noel Dempsey has initiated the removal of the dual mandate in the Dáil; unfortunately Jane Morrice of the NIWC failed in her similar attempt in the assembly. It was also unfortunate that suspension stopped progress on the review of public administration. Empowered local government would have an important role in enhancing public engagement.

The weakness of the assembly *vis-à-vis* the all-inclusive executive was mirrored by the lack of engagement of the citizenry by the political institutions. The Civic Forum, as one of its post-agreement advocates put it, was ‘stillborn’—‘balkanised’ into 11 sectors and 11 voluntary-sector sub-sectors—while the mooted north-south consultative forum was ‘downscaled’. One west Belfast voluntary-sector representative said that for some politicians devolution had meant ‘our time has come’ (and he didn’t mean that in the sense of ‘tíocfaidh ár lá’). The assembly web site was markedly impoverished by comparison with its Scottish counterpart.³⁴

Assembly committees could have moved to a ‘conferencing’ *modus operandi* to open up their activities. For example, no committee during the lifetime of the assembly managed to achieve the public engagement of the inquiry into DIRT tax avoidance by the public accounts committee of the Dáil. An *ersatz* form of executive engagement—endless ‘consultation’ papers—mostly induced fatigue and cynicism. One simple reform would be for publications schemes under the Freedom of Information Act to commit

³² Dr Ann-Marie Gray made these points to the DD round table.

³³ Wilford, Rick and Robin Wilson (2001), *A Democratic Design?: The Political Style of the Northern Ireland Assembly*, London: Constitution Unit (UCL)

³⁴ as ESRC-funded research by Liz Fawcett effectively demonstrated

departments to making public not just their decisions post-consultation but also their reasoning in the light of representations made.³⁵ Arguably, this is already implicit in section 75, schedule 9 of the Northern Ireland Act 1998.

Arrangements requiring all parties aspiring to government to come to reciprocal arrangements, as in Scotland and Wales, with executive formation dependent on assembly support, would shoehorn parties into accommodatory gestures, rather than engaging in the Pavlovian ‘blame game’. With fewer and more rationally organised departments, the focus would be less on how many ‘bums on seats’ each party held. As the former permanent secretary suggested, those parties agreeing to coalesce could then be required to sign up to a broad policy platform for the duration of the assembly, as a signal of their willingness to perform as a collective greater than the sum of its ministerial parts. Senior ministers could then chair executive sub-committees across the main challenging areas—such as sectarianism or social inclusion—so that ‘joined-up’ government was pursued.

Making the precise coalition structure—as against the principle of power-sharing itself—voluntary would have the interesting effect psychologically of placing responsibility for the success of devolution in the hands of the citizens, rather than as hitherto the party and paramilitary élites. For it would be very clear to voters in advance of an election that voting for parties that refused to assume seats in government or insisted on maintaining paramilitary links—both of which, let it be recalled, are incompatible with the ‘pledge of office’ in the agreement—would make executive formation impossible. Failure of those elected to form a government would also give the electorate a chance to punish parties at the further election that would then ensue. And no party could be sure that it could threaten to bring the house down by withdrawing from government just because it did not find the arrangements convivial. The corollary, of course, is that voters would no longer have the luxury of voting for the most stridently nationalistic (including ‘unionist’) politician on their side of the sectarian divide, only then to blame the political class for the continuation by default of direct rule.

³⁵ Prof Robert Hazell, head of the Constitution Unit and an experienced former civil servant, made this point at the DD round table.

7. The way ahead

This paper has, notably, not focused on the conventional Northern Ireland political agenda—paramilitarism, the police and the army and, more widely, whether the agreement has ‘copper-fastened partition’ or is a stepping-stone towards inexorable Irish unification. The fact that this *is* the conventional political agenda is itself the problem: the Northern Ireland political class is not incentivised by the current arrangements to turn its collective mind away from the question of who holds ‘sovereignty’ over the region and, relatedly, who exercises a ‘monopoly of legitimate force’. Yet until it does political stability is likely to remain illusory, while the cycle of ‘hopes rise for breakthrough’ / ‘new crisis for peace process’ headlines repeats itself. If so, the citizens of the region will continue to endure sub-optimal governance, as major economic and social challenges are not given focused attention and intercommunal division bedevils the effective functioning of the public sphere.

The agreement itself provides for its own review, four years on from when it ‘comes into effect’. That might have been thought to have been after the referendums north and south in Ireland in May 1998, but official thinking seems to be tending to December 1999, when power was devolved formally and the parallel constitutional change took effect in the republic. This would suggest the conference between the assembly parties and the governments in London and Dublin—the format for the review—would take place towards the end of 2003. Since some of these parties would be anti-agreement—the Democratic Unionist Party demands its ‘renegotiation’—tension would be inevitable. But it would be short-sighted to constrain the review to a photocall formality, as it does offer an opportunity, *within the terms of the agreement itself*, to make any necessary changes to engender future stability.

Indeed, there is every reason to bring on the review to fill the vacuum created by the current impasse, which otherwise looks set to continue. Without changes such as are suggested in this paper, staging the postponed assembly election in the autumn could only lead to further political failure, with no executive established and suspension thus indefinitely renewed.

The review should, *inter alia*, consider the agreement through the lens of communal division. This could assist, in the process, in clarifying the issues a bill of rights for Northern Ireland should address. Currently the debate is bogged down, with (as one insider put it) unionists expressing hostility to what they see as a zero-sum game and nationalists exerting pressure without backing this with detailed proposals. Yet the reason why a bill of rights has seemed a good idea for Northern Ireland ever since the civil-rights movement, over and above incorporation of the European Convention on Human Rights, is that it could play a conciliatory role if the particularistic rights claims made in

the region were addressed in the context of universal human-rights standards.³⁶ This should be seen alongside the expected white paper on a single equality bill for Northern Ireland in the autumn—there is already an act to this effect in the republic.³⁷ In the long run a merger of the Human Rights Commission and the Equality Commission would allow a powerful institution to emerge that could get a stronger grip on the rights-and-equality ‘agenda’, which otherwise lacks any clear to-do list.

Sartori³⁸ makes another claim relevant to Northern Ireland when he argues that consociationalism tends to assume that political *élites* are the only significant actors and thus tends to lead to an imbalance between state and civil society. Moreover, Anathosh Varshney has compellingly demonstrated how in India civic networks have the capacity to constrain the divisive activities of Hindu and Muslim ethnopolitical entrepreneurs.³⁹

Apart from the substance of the review, it is thus equally important to engage not just political but also the sometimes leavening civic actors in the debate. One way of doing so would be to widen and extend the review, *via* what might be called a Forum on the Future of Northern Ireland (following the recent composite European example). The forum would be open to the parties and governments, of course, but would include representatives of the trade unions, business (including farmers), the voluntary sector, the churches and academic experts, with an independent chair. It would be charged with approaching in an open and reasoned way the issues which have proved intractable when reduced to a private, partisan arm-wrestle during the successive rounds of talks convened by London and Dublin.

Were the governments to shy away from such a suggestion, it could be independently convened. Democratic Dialogue would be willing to ask as an honest broker in this regard. After all, in securing all-party attendance at its round table on the agreement, it has gone further than either government has managed to do.

Looking at what features, in retrospect, may have inadvertently exacerbated tension, and how integrative incentives might be established, four reforms suggest themselves:

- a refocusing from the procedure for constitutional *change* towards a new and positive statement of Northern Ireland’s constitutional *character*, recognising that the region will exist for some time to come as a unique intercultural entity, while removing any barriers to the competences it may deploy in conjunction with its

³⁶ The DD research associate Michael Hamilton has arrived at a sophisticated set of answers to the parades controversy by just this method. His paper will shortly be published by DD.

³⁷ We are grateful to Evelyn Collins, chief executive of the Equality Commission, for highlighting this.

³⁸ *op cit*

³⁹ Varshney, Anathosh (2002), *Ethnic Conflict and Civic Life: Hindus and Muslims in India*, New Haven: Yale University Press

- southern neighbour—thereby advancing reconciliation within Northern Ireland and in Ireland as a whole;
- a reconsideration of the electoral system for the assembly, rather than plumping for STV, with a view to encouraging parties to compete by moderating identity, or even to pool votes, rather than adopting antagonistic postures—AV plus a proportionality top-up would be one option⁴⁰—allied to a more compact assembly;
 - removal of the requirement for communal registration, to ensure all assembly votes are equal and to allow cross-sectarian alignments to emerge—perhaps with a secular weighted-majority requirement for what are currently defined as potentially controversial ‘key’ decisions, though in the expectation that a more stable administration would act as a cross-communal assembly majority; and
 - executive formation to be *via* inter-party agreement rather than automatic appointment, with ministers having to secure weighted-majority support from the assembly (akin to the Swiss Federal Council) or to match a bill-of-rights requirement for egalitarian ‘fair participation’ (this could be the basis for a ‘minimum winning coalition’), thereby rewarding conciliatory behaviour between/among parties that commit themselves to the wider public interest—and in the process rationalising the number of departments to favour ‘joined-up’ government.

Most of these reforms⁴¹ would require amendment of the Northern Ireland Act 1998—though so would implementation of the joint declaration which the London and Dublin premiers failed to secure all-party support for on the anniversary of the agreement.⁴² The detail suggested here is, however, less important than what such reforms would try to achieve. The goal would be to move from an agreement which made a Faustian pact with sectarianism—even paramilitarism—for reasons of short-term *Realpolitik* to a more stable and enduring architecture which can build good governance and, over time, allow Northern Ireland to make the transition to a ‘normal’, civil society. Whether that process culminated over time in the unification of Ireland or the rendering of the border as merely an immaterial line on a map could be safely left for others to decide.

There are, of course, thinkable alternatives entirely outwith the agreement’s parameters, but these are more thinkable than do-able. Direct rule could be indefinitely maintained, but this would condemn Northern Ireland perpetually to the status of a mendicant, quasi-colonial ‘satrapy’, while Scotland, Wales and eventually the English regions moved to varying degrees towards autonomous self-government.

⁴⁰ suggested in private correspondence by Donald Horowitz

⁴¹ though not a reduction in the number of departments, which the 1998 act set at ‘up to 10’

⁴² We are indebted to Stephen Farry of the Alliance Party for this point.

A united Ireland could be secured in the medium term, albeit with optimistic assumptions about demographics and nationalistic assumptions about the homogeneity of Catholic constitutional choices; but it would be neither practicable nor ethically desirable if the border were simply to become, as post-unification Germans would say, ‘a wall in the head’, corralling an alienated Protestant minority in the same manner as Catholics were mistreated by partition. And no government in Dublin would countenance it—never mind the cost of replacing the ‘Westminster subvention’ that keeps Northern Ireland afloat.

Joint, British-Irish authority over Northern Ireland would allow that cost to remain overwhelmingly with the UK exchequer for the present, but it would further entrench sectarian division by incentivising communal appeals for support to supposed patrons in London and Dublin, which already have a disturbingly infantilising effect on Northern Ireland political behaviour—what Horowitz has called an ‘auction mentality’.⁴³ One former minister complained: ‘We have become the most over-indulged group of politicians in the world. We should be ashamed of ourselves.’

Given the alternatives, shared democratic responsibility and empowerment within the region, a commitment to ‘ever-closer union’ with the republic, engagement with policy networks in Britain and a cosmopolitan disposition towards Europe and the world represent the only feasible avenue, for all the citizens of Northern Ireland, to a civilised and modernised future.

⁴³ Horowitz, ‘The Northern Ireland agreement ...’, *op cit*, p341