The Nature of the British-Irish Agreement

It is an academic, personal and political honour to give the ninth John Whyte memorial lecture. It is an academic honour because John Whyte was the most dispassionate analyst of our conflict—and so it is a hard act to follow. Integrating Northern Ireland still conveys his marvellous gift of clarity and common sense in exposition. It is a personal honour because, together with Ernest Gellner, he was the mentor who had the greatest influence on me as a young lecturer. Lastly, it is a political honour. John Whyte worried whether social scientific research on Northern Ireland was worthwhile. Nevertheless, he contributed extensively to public deliberation in defiance of his occasional despair on this matter. He would have been pleased at the extent to which social science, including political science, can be discerned in the making and nature of the Agreement.

The Name of the Agreement

The Agreement of 10 April 1998, ratified in referenda in both parts of Ireland on 22 May 1998, is a major achievement, both for its negotiators and
for the peoples of Ireland and Britain. To make it, many politicians, officials, paramilitaries, and ordinary citizens had been through trials by ordeal. It emerged from a political desert whose only landmarks were failed initiatives. Yet the Agreement that emerged from that desert has no agreed name. It carries no person's name, British or Irish or American, and the names of no roles, be they Prime Ministers, Taoisigh, Secretaries of State, Foreign Ministers, or Party Leaders. Some know it by the place it was made, as the Belfast Agreement, or, more controversially, as the Stormont Agreement. But it was not signed by all of its supporters in the final negotiating chamber, and it was made in many places: in Dublin, London and Washington; in smaller cities, towns and villages; and in airports, aeroplanes, and unofficial communications. Some just know it by its date: the 10 April 1998 Agreement, or the Good Friday Agreement. The former seems too limited, while the latter gives too much credit to Christianity—both as a source of resolution, and as a cause of conflict.

It is also known as the British-Irish Agreement, after the peoples who confirmed it in referendum in both parts of Ireland—though, strictly speaking, only the British in Ireland as well as the Irish in Ireland were asked to vote on it. I prefer to call it the British-Irish Agreement. This name reflects an important fact: the Agreement is the fulfillment of a previous Agreement, the Anglo-Irish Agreement. But we Irish and British know that much more is at issue, and, to avoid giving any further offence to anyone's sensibilities, I will refer simply to the Agreement.

The Institutional Nature of the Agreement

What kind of institutional Agreement is it? The answer for a student of political science is that it is a constitutional agreement, that is, a political arrangement that meets all four of the criteria laid down by A. J. Tomlinson:

(i) cross-community executive power-sharing;
(ii) proportionality rules applied throughout the relevant governmental and public sectors;
(iii) community self-government (or autonomy) and equality in cultural life; and

* This text is an amplification of the ninth John Whyte annual lecture delivered in Belfast on November 36th, 1996. It is indebted largely to a seminar workshop on 'The Good Friday Agreement and the Northern Ireland peace process' organized by C. McGuinness and J. McGarry for the Sunday Times in Belfast and another two articles by the author published in University College London's Constitution Unit (School of Public Policy, 1996), and in Judicial Affairs, 1998. Thanks are especially owed to C. McGuinness, J. McGarry, B. Blackham, P. Chakravarti, J. Cooke, W. Connor, G. Evans, C. Goyder, A. Greer, R. Hallin, D. Haunrath, K. Jasman, J. Hall, T. Hogg, P. Main, M. Managh, M. McGowan, I. McLean, P. Mitchell, T. Smith, M. Quinnip, J. Todd, P. Williams, members of the Constitutional Unit at UCL, members of the Society and Government departments at QUB, IAC and UCD, and many Irish and British political officials.

References will be to The Agreement—Agreement Reached in the Multi-Party Negotiations, no date of publication, no line, no government.
Veto rights for minorities. A consociation is an association of communities—in this case the communities are British unionist, Irish nationalist, and others. A consociation can be created without any explicit consociational treaty to guide it; indeed that has often happened. More often, consociations are the equilibrium outcomes of bargains or pacts between the political leaders of ethnic or religious communities. This Agreement is the product of tacit and explicit consociational thought, and of bargaining, or of what is sometimes called ‘pacting’. But the Agreement is not just consociational, and it departs from Lijphart’s prescription in important respects that have practical implications for Northern Ireland and for regulating ethnic and national conflict elsewhere: it has important external dimensions; it was made with national, and not just ethnic or religious communities; and it has been endorsed by (most of) the leaders and (most of) the people. Indeed, I suspect it is the first consociational pact to have been immediately popularly endorsed by referendum. To be specific: the Agreement envisages an internal consociation built within overarching confederal institutions; it has imaginative elements of co-sovereignty; it promises a novel model of ‘double protection’, and it rests on a bargain derived from diametrically conflicting hopes about its likely long-run outcome, but that may not destabilize it. One supplement must be added to this very lengthy formula. The Agreement is vulnerable both to post-Agreement bargaining and to legality. Let me justify this phrasing.

3One of the makers of the Agreement, Dr David Trimble, the UK Secretary of State for Northern Ireland (1990–5), has an academic consociational heritage—the work on Swiss federal and consociational practices in her education)—after, and at least one of his advisors has had an abiding interest in the subject. Consociational thinking not only fitted part of the background thinking of the UIJ: Lord Parey. It had an impact on the writing of the Framework Documents of 1995, and the ‘novel’ executive formation in the Agreement, based on the UI, were, in part, deeply-influenced consociational coalitional principles used elsewhere in Europe and in the European Parliament.
The Four Consociational Elements

Executive Power-Sharing

At the heart of any consociational arrangement is executive power-sharing. The Agreement creates a dual premiership. Indeed, it can be argued that it establishes two quasi-presidential figures in a revived Northern Assembly: a First Minister and a Deputy First Minister. They have presidential characteristics because, once elected, it is almost impossible to depose them, until the next general election—parliamentarian norms of executive that cannot be destroyed by an assembly except through impeachment, and, in turn, I maintain, that it will be extremely difficult for the Northern Assembly to remove in dual premiers. Let me make this clear through a current illustration. Even if David Trimble's party colleagues were to vote unanimously to depose him from the leadership of the Ulster Unionist Party (UP), he could not be forced to resign his position as First Minister. If he did not wish to go, he could only be deposed if enough nationalists collided with enough unionists to ensure that, if not, so do true, nationalists in the Assembly would have to bring their own Deputy First Minister. This possibility exists because the First Minister and the Deputy First Minister are elected together by the parallel consent procedure (see Insert 1). This procedure requires them to have the support of fifty per cent of registered nationalists and unionists as well as a majority of the Assembly. Critically, this rule gives very strong incentives to unionists and nationalists to nominate a candidate for one of those positions that is acceptable to at least a majority of the other bloc's members in the Assembly. So, even if in the future Gerry Adams leads Sinn Fein into surpassing the thirty-two seats won in the Assembly, unionists will be able to block his nomination as Deputy Chief Minister. Likewise, nationalists can veto an unacceptable hard-line unionist. In the first election for these posts, pro-Agreement unionists in the DUP and the Progressive Unionist Party voted solidly for the combination of David Trimble of the DUP and Seamus Mallon of the SDLP. Naturally, so did the Sinn Fein, deliberately restrained to avoid the First and Deputy First Ministers being chosen by more nationalists than by unionists—an outcome that might have endangered Trimble's status within the unionist public, and a sign of Sinn Fein's maturing avoidance of provocation.

The rules practically ensure that a unionist and a nationalist share the top two posts. The Agreement and UK legislation (the 1998 Northern Ireland Act) make it clear that both posts have identical symbolic and external representation functions. Indeed, they have identical powers; the only difference is in their titles. Here, for example, we will proceed over the "Executive Committee" of Ministers, and have a role in co-ordinating its work. The Agreement does not make it clear whether the two will have any of the existing departmental responsibilities in Northern Ireland—though it might have made sense for them jointly to run, and be served by, the existing Finance
Lower One.

How Will the Assembly and its Cross-Community Voting Rules Work?

The Assembly and its Executive will have full legislative and executive competence for economic development, education, health and social services, agriculture, environment and finance (including the Northern Ireland civil service). Through agreement, the Assembly is able to exercise these functions, and, again through agreement, and with the consent of the Secretary of State and the Westminster Parliament, the Assembly may legislate for any non-devolved function. So, if the Assembly works well, the maximum feasible devolution of government is possible; and a convention may arise in which the Secretary of State and Westminster "rubber-stamp" legislative measures coming from the Assembly with cross-community consent.

The need is open to a forum in which public policy in Ireland, North and South, is made without direct British ministerial involvement—though the British budgetary allocation will be pivotal as long as Northern Ireland remains in the UK.

Assembly members have to designate themselves as 'Nationalist', 'Unionist' or 'Other'. This raises some difficult questions for the middle-class Alliance Party, and other cross-community parties, such as the Northern Ireland Women's Coalition, which have won representation in the new Assembly. If they choose to represent as unionists they increase the number of Unionist members in the Assembly, but with the assump-
tion that they may lose the support of some Catholic voters. If they choose to be 'Other' they may, by contrast, secure their power in critical areas in the Assembly, and run the risk of losing the support of some Protestant voters. In this Assembly they have determined that they are 'Other', though they are for-}

The Assembly, through majority rule, may pass "normal laws", though there is provision for a minority of 25 of the 108 Assembly members, to trigger special procedures. But key decisions—that is, in the passage of domestic legislation, including the budget, automatically have these special procedures that require "cross-community" support. Two rules have been designed.

The first is "parallel consent". This requires, amongst other things, present and voting, both as an overall majority of Assembly members and a majority of both unionist and nationalist members to endorse a proposal. Table 2, which records the number reached by proposed in the June 1998 election, suggests that parallel consent with all members present, willingness of 25 nationalists, and 25 unionists, as well as an overall majority in the Assembly. The second rule is that of "weighted majority". This requires, amongst other things, present and voting, support from 60 per cent of members, that is 63 members when all members vote, or 64, excluding the Yes/No. It also requires the support of 30 per cent of nationalist members and 25 per cent of unionist members. The data in Table 2 suggest that at least 57 nationalists must consent under this procedure, and at least 24 unionists. It also suggests that all nationalists (25) and the minimum necessary number of unionists (25) have the necessary combined support in the Assembly as a whole for any measure passed in this way (58). The same figures strongly suggest that in the first assembly moderate pro-

The cross-community rules are vital, but not entirely predictable in their consequences. The legislation implies that the parallel consent procedure must be attempted first, and, if the weighted majority proce-
dure can be followed. Thus, may not be defied when the eventual Assembly decides its rules of procedure—by cross-community consent. The operation of the cross-community rules depends on just how parties register, but also on how disciplined parties are within the Assembly—the whip. The parties have been invited to express their discipline and unity of the ICTC reflects knowledge of this fact.

The Assembly will have committees scrutinizing each of the departments tracked by Monitors. Committee Chairs and Deputy Chairs will be allocated according to the d'Hondt rule. Each commissioner will be supposed to agree any proposed new law within 25 jurisdiction called by Ministers, and indeed the commissioner can initiate legislative proposals. In consequence, a commissioner dominated by other parties may block the leg-

The text is too wide to reproduce, but is printed in Crucial, a slightly more readable font (here the standard 12-point size).
and Personnel Ministry. The first incumbent has decided instead to have an Economic Policy Unit and an Equality Unit working within their Office.

With one notable exception, David Trimble and Seamus Mallon have successfully and carefully co-ordinated their statements and actions since their joint election, especially in the management of the Devolution crisis in the first two weeks of July and the Omagh massacre of August 1998. They are showing how this new dyarchy will critically depend upon the personal co-operation of the two holders of these posts. The Northern Ireland Act, which has just gone through Westminster’s last procedures, has reinforced their interdependence by requiring that if either the First Minister or the Deputy First Minister causes to hold office, whether by resignation or otherwise, the other shall also cease to hold office” (Article 2(4)(b)). The one major exception to the dyarchy co-operation has arisen over the implementation of the rules for executive formation. Indeed, as I write, there is still a crisis of executive formation.

Unlike some presidents and most prime ministers, neither the First Minister nor the Deputy First Minister formally appoints the other Ministers to the Executive Committee. Under the plain meaning of the Agreement, these posts should be allocated to parties in proportion to their strength in the Assembly, according to a mathematical algorithm, the d’Hondt rule. The rules are simple in their implied consequences. Any party that wins a significant share of seats, and is willing to abide by the Agreement, has a reasonable chance of access to the executive, a salient form of what Lipset calls “grand coalition government”—though it is a coalition government without a coalition agreement.

This is how it should work in law. The d’Hondt rule means that parties get the right to nominate Ministers according to their respective strength in seats. The erosion of confidence is required by the Assembly. It also means that parties get to choose, inside of their strengths, their preferred ministers. An individual minister can be deposed from office, by cross-community rules (see later), but the party that holds the relevant Ministry will be able to appoint his or her successor from amongst its ranks. Parties, of course, have the right to refuse a Ministry to which they are entitled, and may voluntarily exclude themselves from their automatic right to a share in executive power.

The Reconstituting Deadlock

The current crisis of executive formation has arisen for political and constitutional reasons. Politically, it has arisen because...
Trimble has insisted that Sinn Féin must deliver some IRA decommissioning before its members can take seats in the Executive Committee. Under the Agreement, he has no constitutional warrant to exercise this veto; the Agreement does not require price decommissioning on the part of any paramilitaries or of any parties connected to them before executive formation takes place—though it does require parties to use their best endeavours to achieve the completion of decommissioning within two years, that is, by 22 May 2000. Trimble has been given the opportunity to exercise this unconstitutional veto, which has led to a breach in the formal requirements of the Agreement, because the UUP did not make immediate and full executive formation a condition of its support for the Mullen-Trimble ticket for Deputy First Minister and First Minister. The UUP did so because it wished to shore up Trimble's political position. The price has so far been rather high, and it has yet to be regained.

One flexible provision in the Agreement gave Trimble room for this manoeuvre. The Agreement states that there must be at least six 'Other Ministers', but that there can be 'up to' ten. The number of ministries is to be decided by cross-community consent, presumably after the First and Deputy First Ministers agree a proposal, and that has given Trimble the opportunity to delay on executive formation. The more proportional the representation of parties on the Executive. Until 18 December 1998, the UUP held out for a seven-seat Executive under which unionists would have had an overall majority. By contrast, the SDLP argued for a larger Executive in which nationalists would be better represented, and this has now been agreed. The two major parties have now agreed there will be ten Departments—and presumably ten Ministers in addition to the First and Deputy First Ministers. A moot issue in this article goes to press is whether executive formation can now go ahead 'automatically'—given the agreement on the number of Ministers. In principle, that is constitutionally speaking, it should. The UUP should be offered the first Ministry, and if it refuses to choose then the first choice would be passed to the UUP. However, an executive without the UUP would make a nonsense of the Agreement, so Trimble will probably be able to maintain its political veto over including Sinn Féin—unless he has subjected to very powerful pressure from the two governments.

Imagine for the moment that the crisis of executive formation is eventually resolved—Secretary of State Dr. Mowlam hopes that this can be done by 10 March 1999. How will the Executive Committee work? Individual Ministers will enjoy executive powers under existing (UC) legislation, and can operate without collective

*Under the Ministers possibility, if the UUP had not taken its seat the UUP would have had a veto over Departments. This is a majority of departments with just over one-fifth of the vote, a greatly disproportionate situation.*
delegates some its responsibilities to the Executive Committee. The vote is not required for decisions of the Assembly — in practice, agreements within the Executive will minimally require majority support, including the agreement of the First and Deputy First Ministers.

Fostering Binationalism

In short, the constitutional criterion of cross-community executive power sharing is squarely met in the Agreement — though it has yet to be implemented. But there are special features of the new arrangements that differ from previous constitutional experiments in Northern Ireland, and elsewhere. Ministers will take a 'Pledge of Office', not an 'Oath of Allegiance'. This cements the bi-nationalism at the heart of the Agreement: nationalist Ministers do not have to swear an Oath of Allegiance to the Crown or the Union. The Pledge requires Ministers to:

- discharge their duties in good faith;
- follow exclusively peaceful and democratic politics;
- participate in preparing a programme of government, and;
- support and follow the decisions of the Executive Committee and the Assembly.

The duties of office include a requirement to serve all the people equally, to promote equality and to prevent discrimination — which means, according to the doctrine of ministerial responsibility, that civil servants will be bound to run their departments consistent with these obligations. The placing of an Equality Unit within the Office of the First and Deputy First Minister confirms the future organisational and symbolic importance of the commitment to equality. The duties of office also include a requirement that the 'relevant Ministers' serve in the North-South Ministerial Council. In conjunction with other clauses, that should prevent parties opposed to the Pledge from holding any office in the Agreement.

How should we appraise the executive design at the heart of the Agreement? The special skill of the designers is that they have created strong incentives for executive powers-sharing and power-division but without requiring parties to have a formal coalition agreement. In these respects, the Agreement differs from the Sunningdale experiment of 1973. But, what some makes of the Agreement not foresee was that failure to timetable the formation of the rest of the
executive immediately after the election of the First and Deputy First Ministers could precipitate a protracted crisis of executive formation.

Amendments to the Northern Ireland Act (1998) could be adopted by the UK Parliament, or by the Northern Ireland Assembly, that would be consistent with the Agreement, to prevent any occurrence of this type of crisis. In future, candidates for First Minister and Deputy First Minister could be obliged to state the number of executive portfolios that will be available in the Executive Committee, and the formation of that Committee should be required within a week. Otherwise, the election of the First Minister and Deputy First Minister should be rendered null and void. That would plug this particular constitutional hole. It may, however, be unnecessary. It is not likely that any future candidates for Deputy First Minister or First Minister will agree to be nominated without a firm agreement from their opposite number on the number of portfolios and the slot of cabinet formation.

Proportionality

Constitutional arrangements are built on principles of proportionality. The Agreement meets this test in three palpable ways: on the executive in the manner already discussed; in the election to the Assembly; and in public sector positions.

All future elections to the 108-member Assembly will use a proportional representation system, the single transferable vote (STV) in six-member constituencies—though the Assembly may choose, by cross-community consent procedures, to deviate from this system in future. The Droop quota in each constituency is therefore 14.3 per cent of the vote, which squeezes the very small parties, or, alternatively, encourages them to form electoral alliances. Thus, the smaller of the two loyalist parties, the Ulster Democratic Party (UDP) led by Gary McMichael, won no seats in the first Assembly election. Conceivably, the rival loyalist parties, the PUP and the UDP, may see the need to coalesce in future to achieve better representation. Very small parties which can gather lower order preferences from across the unionist and nationalist bloc, such as the Women's Coalition, have shown that the system need not preclude representation for small parties amongst the 'Others'.

This system of voting is not what Lijphart recommends for constitutional systems—but it is an advocate of party-list PR systems because he believes they help make party leaders more powerful, and better able to sustain inter-ethnic constitutional deals. Those who would like to see David Trimble in greater control of his party, assuming that that is his problem, might bemoan this form of proportional representation.

*The Droop quota is used as it is in First Vote (N + 1) + 1, where N = Number of Assembly members to be elected.
However, if a region-wide list-system had been in operation in June 1981, the SDLP would have ended up with fewer seats, and less seats than the Sinn Fein. Moreover, SDLP has the great merit of encouraging vote-pooling. As in principle, voters can use their transfers to reward pro-Agreement candidates at the expense of anti-Agreement candidates. Some of the SDLP's and Sinn Fein's voters found 4 reasons to reward David Trimble's Ulster Unionists Party for making the Agreement by giving its candidates their lower-order preferences, and so helped them against Ian Paisley's UUP and Robert McCartney's UUP.

Tables 1 and 2 report the outcome of the June 1998 elections to the third Assembly under the Agreement. The proportionality of the results is evident, both with respect to blocs and with respect to parties. The deviation in seats was compared to the first-preference vote proportionally benefited the pro-Agreement parties—whose candidates gathered support through the transfers of lower-order preferences. The UUP was the principal beneficiary of the transfer of lower-order preferences, and it took its seat share (25.0 per cent) significantly above its first-preference vote share (21.5 per cent)—though these lower-order preferences came from voters who voted 'No' as well as those who voted 'Yes' to the Agreement! The Northern Ireland Women's Coalition was the only widespread beneficiary of lower-order preferences, winning two seats despite a very low first-preference vote share—perhaps because of theð party's successful campaign to increase the number of women who voted 'Yes'. The DUP was still able to win a majority of seats (32.7 per cent) amongst seats won by unionists, a result that was essential for the stabilization of the Agreement.

Proportional rules, combined with accumulative incentives, do not stop the executive, the committee system in the Assembly, or with the electoral system. The Agreement is a system with past and future measures to promote fair employment and affirmative action in the public sector that will, one hopes, eventually ensure a proportional and non-discriminatory civil service and judiciary. The Agreement also provides a representative office force. If it is the task

1 Donald Haugen, An Irish Group: a Conflict, Belfast 1998, pp. 68 ff. The two-party system now favours, to some extent, a First and Deputy First Ministers' request, vote-pooling against Assembly members.
2 The system is also open to anti-Agreement voters, but SDLP and Sinn Fein voters should do their lower-order preferences to Republic of Ireland citizens—should a seat pass as if it were for candidates in Northern Ireland. The list system has already helped a candidate from Italy to be an empty seat in the past. The list system has already helped a candidate from Italy to be an empty seat in the past. Since the early 1990s, this is no longer a seat because if a voter has been eliminated, that seat is given to a new candidate (or two) who wins the most votes in a run-off election. The list also has the great merit of having been used in Northern Ireland for local government elections since 1973, and European Parliamentary elections since 1979—so voters do not need to keep some system.
of the Independent Commission on policing, headed by former Hong Kong Governor Christopher Patten, to ensure the creation of a police service of services that are representative of Northern Ireland. The 1998 consentual model and, indeed, its monogamous policing services must and if the Agreement is to be fully consistent with a conventional model. Democratic consentual culture exist where the rule of majority age is one community are almost the sole recruitment pool to police all of these other communities, a fully representative, and preferably two-tier model of federal and democratically accountable policing, in the best way to ensure that proportional policing supplement the other political institutions of the Agreement.\(^1\)

Consensual Autonomy and Equality

Consensual settlements avoid the compulsory integration of peoples, instead they seek to manage differences equally and fairly. To be liberal or social-democratic, such settlements must also protect those who wish to have their identities contested differently, or not at all.

The Agreement leaves in place the new arrangements for schooling in Northern Ireland in which Catholic, Protestant and integrated schools are to be equally funded. In this respect, Northern Ireland is fully consensual and liberal—only the very small minorities of non-Christian religious beliefs (less than 1 per cent of the population) lack full and equal funding, and it would be generous and just to make such provisions for them whose numbers permit. The Agreement also makes new provision for the equitable use, protection and public use of the Irish language—along the lines used for Welsh in the UK—thereby adding language to educational provision of Irish nationalist culture.\(^1\)

Most importantly, the Agreement mandates the equalization of both major constitutional actors in national communities, that is to British and Irish communities. As is particularly said, as Protestants and Catholics. The European Convention on Human Rights—which is to speak on the protection of collective rights and equality rights—will be supplemented by measures that will give Northern Ireland its own culture-wide Bill of Rights, to protect both constitutional groupings as well as individuals. The wider status of parties to the conflict and some of its long-standing issues, based in London, Belfast, or Dublin, with that field that Northern Ireland could be stable and democratic while being either British or Irish. The Agreement makes Northern Ireland bi-national—and opens up the prospect of a fascinating experiment, not least for the regulation of parades and marches.


\(^{2}\) It is significant that the European Charter for Regional or Minority Languages could be applied by both communities and societies as a basis for regulating the politics of language. See Statement of the Office of the First Minister (Department and Deputy First Minister (Department, 24 November 1998, Annex 2.}

The local dialect report
Table One. The Shares of Blocs in the 1998 Assembly
(*Percentages do not add to 100 because of rounding)

<table>
<thead>
<tr>
<th>Party</th>
<th>Seats Won</th>
<th>First Preference Vote (%)</th>
<th>Seats Won (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nationalists</td>
<td>47</td>
<td>39.8</td>
<td>38.7</td>
</tr>
<tr>
<td>Ulster Unionists</td>
<td>30</td>
<td>25.6</td>
<td>27.7</td>
</tr>
<tr>
<td>&quot;No&quot; Unionists</td>
<td>28</td>
<td>25.6</td>
<td>29.9</td>
</tr>
<tr>
<td>Others</td>
<td>8</td>
<td>9.4</td>
<td>7.4</td>
</tr>
<tr>
<td>Total</td>
<td>108</td>
<td>*100.0</td>
<td>*100.0</td>
</tr>
</tbody>
</table>

Table Two. Party Performance in the 1998 Assembly Election
(*Percentages do not add to 100 because of rounding)

<table>
<thead>
<tr>
<th>Party</th>
<th>Seats Won</th>
<th>First Preference Vote (%)</th>
<th>Seats Won (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>SDLP</td>
<td>24</td>
<td>21.0</td>
<td>22.2</td>
</tr>
<tr>
<td>Sinn Fein</td>
<td>18</td>
<td>17.3</td>
<td>16.6</td>
</tr>
<tr>
<td>Other Nationalist</td>
<td>0.1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>UUP</td>
<td>28</td>
<td>21.0</td>
<td>26.9</td>
</tr>
<tr>
<td>DUP</td>
<td>7</td>
<td>2.5</td>
<td>1.8</td>
</tr>
<tr>
<td>UUP</td>
<td>4</td>
<td>1.2</td>
<td>-</td>
</tr>
<tr>
<td>Other &quot;No&quot; Unionists</td>
<td>0.3</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>DUP</td>
<td>20</td>
<td>18</td>
<td>18.5</td>
</tr>
<tr>
<td>UKUP</td>
<td>5</td>
<td>4.5</td>
<td>4.6</td>
</tr>
<tr>
<td>Other &quot;No&quot; Unionists</td>
<td>3</td>
<td>3</td>
<td>2.3</td>
</tr>
<tr>
<td>Alliance</td>
<td>6</td>
<td>6.4</td>
<td>5.9</td>
</tr>
<tr>
<td>Women's Coalition</td>
<td>2</td>
<td>1.7</td>
<td>1.9</td>
</tr>
<tr>
<td>Other</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

The Agreement does not neglect the non-racial dimensions of local politics, nor does it exclude the "Others" from what I have heard described as Alliance party circles as a quagmire communal deal. All aspects of unjustified social equalities, as well as inequalities between

---

1 Prof. Stan, Belfast

Languages could be the policies of last resort. Few American
the national communities, are recognized in the text of the Agreement, and given some means of institutional redress and monitoring. The Agreement addresses national equality, the allegiances to the Irish and British nations, and social equality, which is to say, other dimensions that differentiate groups and individuals in Northern Ireland: religion, race, ethnic affiliation, sex, and sexuality.

Equality issues, be they national or social, are not left exclusively to the local parties to manage and negotiate, which might be a recipe for stalemate. Indeed, under the Agreement, the UK Government has created a new statutory obligation on public authorities: they will be required to carry out all their functions with due regard to the need to promote equality of opportunity in relation to people's religious background and political opinions; and with respect to their gender, race, disabilities, age, marital status and sexual orientation. This commitment entails what Dr. Christopher McCrudden labels 'mainstreaming equality'. The UK Government is also establishing a Human Rights Commission tasked with an extended and enhanced role, including monitoring, the power to instigate litigation, and drafting a tailor-made Bill of Rights for Northern Ireland.

Certain doctrinaire new-right libertarianism and some rigid socialists converge in complaining that consociational arrangements necessitate internationalize and freeze national and sectarian identities. Their fears are not entirely without merit, but their reactions generally display utopianism, myopia and tact partnership. Utopianism is evident in the axiom that identities as historically developed as those in Northern Ireland can be rapidly channeled into more desirable individualists or class identities through mass endorsement of classical liberal or socialist ideology. Myopia is evident in the failure to recognize that consociational settlements can, and indeed should, be transitional—by providing an escape valve and making secure the presently dominant identities they may assist in diminishing their public salience, and permitting a deeper passion to flourish. And tact partnership is evident in those areas of consociation who either recommend Northern Ireland's complex integration into British politics or alternatively commend immediate Irish unification as the best solvent of national or sectarian passions.

Minority Veto Rights

The final dimension of a consociational settlement is the protection of minorities through giving them veto rights. The Agreement fulfills this criterion in the Assembly, in the courts, and through enabling political appeals to both the UK and Irish Governments.

The Assembly has cross-community procedures (parallel consent, weighted majority and petitions procedures—see Insert 3) that protect nationalists from unionist dominance. Indeed, they do so in such a comprehensive manner that, before the election of the First
the test of the de facto and mun-
ificently, the allegations on
which it is based, are
only to be
considered in Northern
Ireland.

At least by the terms of the
Agreement, the Government has
promised to give the people to
the extent to which they will
be regarded as loyalists, and
protected in the Act of
Assent. This

riddle label 'loyal-
ists' is also
established as a
valid and coherent
group; and it is
indeed

some rigid societal
characteristics neccessary
identities. The
terms are generally
right. Any attempt to
fully develop these would
require a more substantial
statement of policies than
the future to
be
and would need to
be
in the most present
committing their public
to
thought. And one
solution to the
either
requests in Britain
has been

separation in the
Confederal and Federated Emirates of the Agreement

The Agreement is not only internally consensual but also confed-
eeralizing and federating. This meeting of internal and external
interests marks a step in the history of the British and Irish
Agreement, and it has been established to ensure
that others will also be engaged in their activities and create that the new
relationship does not exclude them. It is to be hoped that these
borrowed rights will be respected.

Confederations exist when political jurisdictions voluntarily
delegate powers and functions to bodies that can exercise power
across all jurisdictions. The Agreement creates two such confederal
relationships. The Agreement has multiple federative dimensions if it
is agreed that a federal relationship exists when there are at
least
two separate rates of government over the same territory, and when neither rate can unilaterally alter the constitutional capacities of the

other. 15

The All-Ireland Confederation Relationship

The first relationship is all-Ireland in nature: the North-South Ministerial Council (NSMC). When established it will bring together those with executive responsibilities in Northern Ireland and in the Republic. It was to be established after the Assembly had come into being and had completed a programme of work to establish the Council—the specific deadline for that body of work to be agreed passed on 31 October. That date passed without agreement, because no executive has been formed in Northern Ireland to engage with its counterpart in the Republic. In consequence, the signatures to the Agreement were in breach of their treaty obligations. That opened the entire Agreement to constitutional challenge in the Republic—enabling, in essence, any aggrieved citizen to argue for the repeal of the old Articles 2 and 3 of the Irish Constitution on the grounds that the UK is in breach of its treaty obligations.

The Governments and the parties in the North by-passed the crisis of executive formation by continuing to address the body of work in continuing dialogues with the pre-Agreement parties. By 28 December, the parties in the North agreed on six implementatory bodies for the following functions—inland waterways, food safety, trade and business development, special EU programmes, the Irish and Ulster Scots language, and agricultural and marine matters; and they agreed on six areas for functional co-operation including some aspects of transport, agriculture, education, health, the environment, and tourism—where a joint North-South public company is to be established.

What was intended by the Agreement was clear. Nationalists were concerned that if the Assembly could outlast the North-South Council, it would provide incentives for unionists to undermine the latter. Unionists, by contrast, feared that if the Council could survive the destruction of the Assembly, nationalists would seek to bring this about. The Agreement is a tightly written contract with penalty clauses. Internal co-operation and external co-operation go together. The Assembly and the Council are ‘mutually interdependent’; one cannot function without the other. Unionists cannot destroy the Council while retaining the Assembly and nationalists cannot

15 My discussion is entirely a necessary extension of a federal system. Whether it is justified is more problematic. Normally, people express a federation to have self-governed units of government that are co-governing within the centre—throughout most of the territory of the state in question. However, any system of constitutionally entrenched autonomy for one region makes the relationship between that region and the state functionally equivalent to a federal relationship. My thanks to John Cunliffe, Robert Hazell and Paul Mitchell for discussion of these matters.
destroy the Assembly while keeping the Council. If the Assembly does not cease the Council, it will in effect destroy itself—enabling, in the extreme case, any citizen in Northern Ireland to argue for the suspension of the Northern Assembly until the North-South Ministerial Council is established.

The North-South Ministerial Council is the means by which nationalists hope to persuade unionists of the attractions of Irish unification, and it will, if established, satisfactorily link Northern nationalists to their preferred nation-state, albeit without the range of ambitions the Northern nationalists would have preferred. Consequently, with the Agreement, the Irish Government has agreed to change its constitution to ensure that the North-South Ministerial Council will be able to exercise island-wide jurisdiction in those functional activities where nationalists are willing to co-operate.

The North-South Ministerial Council will function much like the Council of Ministers in the European Union, with ministers having considerable discretion to reach decisions, but remaining ultimately accountable to their respective legislatures. The Council will meet in plenary format twice a year, and in smaller groups to discuss specific sectors—e.g., agriculture, or education—which a regular and frequent basis. Provision is also made for the Council to meet to discuss matters that cut across sectors and to resolve disagreements. In addition, the Agreement provides for cross-border or all-island ‘implementation’ bodies—which means the same as ‘executive’. These are to be responsible for implementing decisions taken in the six areas specified above.

The North-South Ministerial Council differs from the Council of Ireland of 1974, and not just in name. There is no provision for a North-South joint parliamentary forum, as there was in the Sunningdale Agreement of 1973, but the Northern Assembly and the Irish Oireachtas are asked to consider developing such a forum. Nationalists wanted the North-South Council to be established by legislation from Westminster and the Oireachtas to emphasize their autonomy from the Northern Assembly. Unionists preferred that it be established by the Northern Ireland Assembly and its counterpart in Dublin. The document produced on 10 April 1998 split the

---

11 The Agreement does not mention what happens if both jurisdictions, and therefore the Agreement itself, collapse. In my view, what would happen is that the Northern Ireland would be governed, as at present, by the British government with input from Dublin through the British-Irish intergovernmental conference. The two Governments would likely pursue the promotion of national equality, inclusive in the employment 328 between Catholics and Protestants, and the reform of policing, and eventually with a reasonable prospect of creating a single police force. If the Agreement’s core promises were not established thereby, legal challenge to the implementation of changes in Annex 2 and 3 of the Republic’s constitution is likely to be successful. Grammatus applied to the Agreement would as well be borne in mind.

This is an abridged version of the Agreement. For the full version, see the Irish Parliament, Dublin, and English. Stated Text.
differences between the two positions. The North-South Council and the implementation bodies are to be brought into existence by British-Irish legislation. During the transitional period — now extended beyond 31 October — it is for the Northern Ireland executive and the Republic's government to decide, by agreement, how co-operation should take place, and in what areas the North-South institutions should co-operate. Once this body of work is agreed, the Northern Ireland Assembly will be unable to change it, unless both communities there consent.

An Open Question

The question of what scope and powers these North-South institutions will have remains open-ended. The Agreement does, however, require a meaningful Council. It states that the Council 'will' (not 'may') identify at least six matters, where, 'existing bodies' will be the appropriate mechanisms for co-operation within each separate jurisdiction, and at least six matters where co-operation will take place through cross-border or all-island implementation bodies. Agreement on these matters has now occurred.

The Agreement also links Ireland, North and South, to another confederation, the European Union. It requires the Council to consider the implementation of EU policies and programmes as well as proposals under way at the EU, and makes provisions for the Council's views to be 'taken into account' at relevant EU meetings. It is perhaps significant that one of the implementation bodies will address special EU programmes.

The signatories to the Agreement have promised to work 'in good faith' to bring the North-South Council into being. There was not sufficient good faith to prevent the first meeting, the timetable scheduled in the Agreement, but that has now been resolved. The signatories are required to use 'best endeavours' to reach agreement and to make 'determined efforts' to overcome disagreements in functions where there is a 'mutual cross-border and all-island benefit'.

The crisis over executive formation may, however, have long-run consequences. The Agreement explicitly envisaged a timetable that would have enabled an interministerial Northern executive to establish itself and make binding agreements with the Republic's ministers. Once, North-South co-operation was agreed, any future unionist majority in the Assembly would not be able formally to block it — since any scaling back of the Council's powers would require the consent of both nationalists and unionists. Nationalists are beginning to fear

13 The possibility of a unionist Minister refusing to serve on the Council will appear to some as very great, given that unionist parties which oppose the Agreement, especially the tacs, are, in principle, eligible for ministerial portfolios. However, this may be ruled out in practice participation in the North-South Council has been made an 'essential responsibility' attaching to relevant posts in the two Administrations. 'Relevant' means...
that the crisis of executive functions will throw the entire context of North-South co-operation open to the view of both "no majority" and soft "yes minorities" in the Assembly—which is now due to have a full life by March of 1990.

But, again, let us imagine that this crisis is eventually overcome. If that happens, then several current facts will support the new constitutional confederalism. F. the expansive prosperity of the Republic's Celtic Tiger establishes deep roots,18 Northern Ireland's Ministers and civilians, of whatever background, should see increasing benefits from North-South co-operation. And, as the European Union continues to integrate, there will be pressure for both parts of Ireland to co-operate, given their shared peripheral geographical position, and similar interests in functional activities such as agriculture and tourism, and in having regions defined in ways that attract funds.19

The British-Irish Confederation Relationship

There is a second weaker confederal relationship established by the Agreement. It affects all the islands of Britain and Ireland. Under the new British-Irish Council, the two sovereign Governments, all the devolved governments of the UK, and all the neighbouring island dependent territories of the UK, can meet, agree to delegate functions, and may agree common policies. This proposal meets many concerns over recuperity in functions—and provides a mechanism, through which they may in future be linked to the UK even if Northern Ireland becomes part of the Republic of Ireland.

Unionists originally wanted any North-South Ministerial Council to be subordinate to a British or East-West Council. This has not happened. There is no hierarchical relationship between the two Councils. Indeed, there are two textual warrants for the claim that the North-South Council is more important and far-reaching than its predecessor, any portion of which is subject to North-South co-operation. This leaves yet the possibility that a politician opposed to the North-South Council might take the view that such a view as more "good faith" and more "good faith", although in much agreement. Since these requirements are presumably subject to judicial review, it means it is unlikely that pluralist politicians, like the Labour or Peter Bone, would be able to take part in the North-South Council, even if it were possible. One of the requirements for membership of the Executive is that Ministers must support all decisions of the European Community, and they can be removed if they do not—though there is no specific requirement for them to be members of the Executive as well.

The Republic's preparedness has, of course, been subject to its distribution, but terms are unlikely simply to work, even if there is recommendation within the European Union's internal and regional fund.

18 The Agreement suggested that Northern Ireland's, in principle, every similar thing with the Republic, if it was to remain within the EEC, provided over time a new agreement in the Assembly, and the Secretary of State and the Westminster Parliament amended 1995 on Northern Ireland. As they have doing this possibility by devolving currency in a "reserved manner".19
British-Irish counterpart. The Agreement requires the establishment of North-South implementation bodies, while leaving the formation of East-West bodies a voluntary matter. While the Agreement states explicitly that the Assembly or North-South Council cannot survive without the other, it makes no equivalent statement concerning the British-Irish Council.

The development of this confederal relationship may be stymied by an Irish governmental reluctance to engage in a forum where it may be outnumbered by at least seven other governments—of Westminster, Scotland, Wales, Northern Ireland, Jersey, Guernsey, and the Isle of Man—though rules may develop to ensure the joint dominance of the sovereign governments. The British-Irish Council may, however, flourish as a policy formulation forum, especially if the devolved governments of the UK choose to exploit it as an opportunity for intergovernmental bargaining within the UK, or to build alliances with the Irish Government on European public policy—in which case it will give added impetus to other federalist processes.

A UK-Northern Irish Federalizing Process

The Agreement is the penultimate blow to unitary unionism in the UK—already desired by the 1977-78 referendum and legislative acts establishing a Scottish Parliament and Welsh Assembly. But does the Agreement simply fall within the rubric of devolution within a decentralized unitary state? Arguably not. Two Unions make up the UK: the Union of Great Britain and the Union of Great Britain and Northern Ireland. The constitutional basis of the latter Union is now very distinctly different to the former.

The Agreement is a treaty between two states, and is based on Irish national self-determination as well as British constitutional convention. The UK officially acknowledges in the Agreement that Northern Ireland has the right to join the Republic, on the basis of a local referendum, and it recognizes, in a treaty, the authority of Irish national self-determination throughout the island of Ireland. Moreover, the Agreement's institutions are being brought into being by the will of the people of Ireland, North and South, and not just by the people of Northern Ireland—recall the interdependence of the North-South Ministerial Council and the Assembly. Consequently, the UK's relationship to Northern Ireland, at least in international law, is explicitly federal because the Westminster parliament and executive cannot, except through breaking treaty obligations, and except through denying Irish national self-determination, exercise power in any manner in Northern Ireland that is inconsistent with the Agreement.

This federalizing process will be enhanced if the UK and Northern Irish courts treat Northern Ireland's relationships to Westminster

46 The formation of an English Parliament would be the last blow.

as akin to it character—a 1921-1972 Ireland is too has created expanded its as of the Secret open-ended; the Welsh r remaining w that within that Westm mately interm Ireland is its recesses of th

Irish Feder:

The Agreement Ireland—1st North-South South, as the nation, then statute's theory not wrong in South Conn

Neither the i nor, when the firm will of the people's diversity of Ireland shall sent of a i a island (this Constitution jointly enjoy sself-determin self-determin is entirely co

Irish unifica and electoral 1st share of t of any eve

See John McOxford 1997, 0 Fos-de-SteVe; t Coum; Parh.
as akin to those of the former Dominions—which had a federal character—as they did in the period of the Stormont Parliament (1921-1972). Moreover, the nature of devolution in Northern Ireland is not closed by the UK's 1998 Northern Ireland Act. The Act has created an open-ended mechanism for Northern Ireland to gain national autonomy from the rest of the UK—albeit with the consent of the Secretary of State, and the approval of Westminster. No such open-ended provision has been granted to the Scottish Parliament or the Welsh Assembly. In short, maximum feasible autonomy while remaining within the Union is viable, provided there is agreement to that within the Northern Assembly. Legitimacy Diez's words will insist that Westminster's sovereignty in Northern Ireland remains ultimately intact, but, if the Agreement is drawn, the political development of a federal relationship between the UK and Northern Ireland is assured for the medium-term—whatever is said in the dry recites of the Constitution's amended regime.

Irish Federalizing Processes

The Agreement also opens federalist avenues in the Republic of Ireland—heretofore one of the most centralized states in Europe. The North-South Ministerial Council is seen by nationalists, North and South, as an embryonic institution of a federal Ireland; first confederation, then federation after trust has been built. This stepping-stone theory is most loudly articulated by 'no unionists', but they are not wrong in their calculation that many nationalists see the North-South Council as transitional—Sinn Féin says so, Fianna Fáil says so.

Neither the Irish Government nor its people abandoned Irish unification when they endorsed the Agreement. Indeed, it has become the firm will of the Irish nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions, recognizing that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people expressed, in both jurisdictions in the island (from the now provisional Article 3). The amended Irish Constitution therefore officially recognizes new jurisdictions that jointly enjoy the right to participate in the Irish nation's exercise of self-determination. Unification is no longer linked to 'amortisation' and is entirely compatible with either full confederation or federation.

Irish unification cannot be precluded because of present demographic and electoral trends—which have led to a steady rise in the nationalist share of the vote across different electoral systems. The course of any eventual unification envisaged in the re-drafted Irish
Constitution is now very different. It no longer has anything resembling a programme of assimilation. Respect for the diversity of identities and traditions: connects with both constitutional and confederal logic. The Republic, I maintain, is bound by the Agreement to structure its laws, and to protect the rights of its citizens, to prepare for the possibility of a confederal as well as a unitary Ireland. The Agreement recognizes Northern Ireland as a legal entity within the Irish Constitution. So its eventual absorption or elimination as a political unit is no longer a programmable feature of the Agreement. The Agreement also envisages the subjection of both jurisdictions in Ireland to the same regime for the protection of individual and group rights—a situation entirely compatible with a subsequent formal confederate or federation.

It is perhaps worth speculating on what might happen if a minority emerged for Irish unification within Northern Ireland. If nationalists acquired local majority support within Northern Ireland, it would not necessarily be in their interests to promote the region's immediate administrative and legal assimilation into the Republic. They would then have an interest in preserving Northern Ireland as a political entity within a federated Ireland—after all, they would be a local majority. So would the governing coalition in the Republic, whose calculations might be disturbed by the entry of Northern participants. Conversely, some unionists faced with this prospect might prefer a unitary Ireland as the lesser evil—calculating that their chances of being key players in government formation in a bigger state might protect them better than being a minority in Northern Ireland. But that is simply one possible future.

Meanwhile, we all know that the confederal dimensions of the Agreement are not merely Irish or of 1921 Britain. They will evolve within a European Union which has its own strong confederal relationships, and many ambitious federalists. There will be no obvious organizational contradictions that will arise from this extra layer of confederalizing, and they might help to transfer some of the heat from binary considerations of whether London or Dublin controls a given issue.

Double Protection and So-Sovereignty

The subtext of the Agreement goes well beyond standard constitutional thinking. This is its tacit 'double protection model'—faceted with elements of co-sovereignty. It is an agreement designed to withstand major demographic and electoral change. The Agreement promises to entrench the identical protection of rights, collective and individual, on both sides of the present border. In effect, it promises protection to Northern nationalists now on the same terms that will be given to Ulster unionists, should they ever...

---

*Constitution of Ireland, Dublin 1937, as amended.*
become a minority in a unified Ireland. Communities are to be protected whether they are majorities or minorities, and whether sovereignty lies with the UK or the Republic—whence the expression 'double protection'.

The two states nor only promise reciprocity for the local protection of present and future minorities, but have also created two intergovernmental devices to protect these communities. One is the successor to the Anglo-Irish Agreement; the intergovernmental conference that guarantees the Republic's government access to policy formulation on all matters not (yet) devolved to the Northern Assembly or the North-South Ministerial Council. The other is the British and Irish Council. If Irish unification ever occurs, the Republic's government would find it politically impossible not to offer the British government reciprocal access in the same way.

It is important to note what has not happened between the two sovereign Governments. Formal co-sovereignty has not been established. Unionists claim that they have removed the 1985 Anglo-Irish Agreement in return for conceding a North-South Council. This claim is, at best, exaggerated. Under the new Agreement, the Irish government will retain a say in those Northern Irish matters that have not been devolved to the Northern Assembly, as was the case under Article 4 of the Anglo-Irish Agreement. And, as with that agreement, there will continue to be an intergovernmental conference, chaired by the Irish Minister for Foreign Affairs and the Northern Ireland Secretary of State, to deal with non-devolved matters, and this conference will continue to be serviced by a standing secretariat. The new Agreement, moreover, promises to 'intensify cooperation' between the two governments on all-Island or cross-border aspects of rights, justice, prison and policing—unless and until these matters are devolved to the Northern executive. It is true that there is provision for representatives of the Northern Assembly to be involved in the intergovernmental conference—a welcome democratization—but they will not be able to block the two governments from acting within their remits. The Anglo-Irish Agreement fully anticipated these arrangements. Therefore, it is more accurate to claim that the Anglo-Irish Agreement has been fulfilled, than it is to say that it has been removed.

The Military and Political Nature of the Agreement

The inspirational nature of the Agreement is complex, but accurately matches the conceptual categories I have deployed. There is no need to evolve new terms for what has been agreed—except, perhaps, for what I have called the 'double protection' model. The Agreement is wide-ranging, multilateral, and has something in it for everyone who

---

signed it. Its institutions address the 'concealment' of relationships between nationalists and unionists in Northern Ireland, between Northern Ireland and the Republic, and between Ireland and Britain. It is neither a victory for nationalists, nor for unionists. Both can maintain their central aspirations, their core identities and project or express, better their interests. But describing constitutional architecture as one thing; informal political reality is often very different.

The Agreement may be an immensely subtle institutional construction but everyone asks: Is it a house of cards, vulnerable to the slightest pressure? Is it vulnerable to the play of either Orange or Green cards by hard-line loyalists or republicans, or to miscalculations by soft-line politicians? Will its successful implementation prove more difficult than its formulation? These are not foolish concerns, far from it, as the events at Drumcree 4th July, the response at Oraghmore in August, and the continuing crisis over executive formation and decommissioning jointly reveal. However, there are reasons to be cautious about the robustness of these institutions if we analyze the military and political nature of the settlement. There are also reasons to be cautious.

The Agreement on Ending the Armed Conflict

The Agreement is a political settlement that promises a path to several armed conflicts, and thereby creates a peace settlement, though, formally speaking, no military or interministerial organizations negotiated the Agreement. The Agreement encompasses decommissioning, demilitarization, police reform and power sharing. It addresses these issues in the central articles, and in plans that, though all these issues are interlinked, are not explicitly tied to the construction of one of the new political institutions.

Decommissioning

The Agreement is clear on decommissioning. No paramilitaries that abide by the Agreement have to engage in formal surrender to those they opposed in war. The Independent International Commission on Decommissioning, chaired by Canadian General John de Chenuclay, is to assist the participants in achieving 'the total disarmament of all paramilitary organisations. The parties that (formally) represent paramilitary organizations in the negotiations are required to 'use any influence they may have to achieve the decommissioning of all paramilitary arms within two years following endorsement in referenda North and South of the Agreement and in the context of the implementation of the overall settlement'.

The italicized passages clarify the termination point for decommissioning, not the moment of commencement, and they make it clear

that decommissioning structures reform. It starts to do so in the North, not the South, and even in a negotiated settlement it may evidence merely the beginning of a formal decommissioning process. It is difficult to see how the paramilitaries would act if they had both parts of the Agreement.

De-Militarization

The Agreement on Ending the Armed Conflict series of 'normalizations' as an emerging threat. This refers to the normalization of the political parties and the regularization of the political parties by the implementation of the Agreement. It is a recognition that the political parties and the political institutions are central to the implementation of the Agreement.

88
that decommissioning is linked to the implementation of the overall settlement—including the establishment of the governance structures (North, North-South and East-West), and to police reform. That is why David Trimble’s demand that Sinn Féin achieve a start to decommissioning by the IRA before executive formation in the North is regarded as a breach of any reasonable interpretation of the text of the Agreement. Without executive formation in the North, none of the formal institutions of the Agreement that require the co-operation of the local parties can get underway. Sinn Féin has nominated a representative to the International Commission; it has issued a statement to the effect that the war is over; and it has for the first time issued an outright condemnation of other republicans—of the Real IRA, whose members carried out the Omagh bombing, it is even accusing IRA in its organization of a cease-fire and political negotiations in Spain. Evidently, David Trimble and some of his senior colleagues are prepared to regard this activity as sufficient evidence of good intentions. Each move by Sinn Féin, pure has spurred the IRA to request more. On the basis of current promises, only one obvious resolution of this crisis presents itself: executive formation to be announced in the morning, material progress or the decommissioning to be announced in the afternoon. This resolution would mean that both the IRA and Sinn Féin could maintain that they had kept to the letter and spirit of the Agreement. But, for now, both parties remain locked in escalating balkanization.

De-Militarization, Police Reform and Prisoner Release

The Agreement promises and the UK government has begun a series of phased developments to de-militarize Northern Ireland. "Normalisation" is explicitly promised this year deployment of paramilitaries and numbers, and the removal of security implications and emergency powers are pledged "consistent with the level of overall threat". There is also a commitment to address personal firearms regulation and control—an extraordinary provision of Northern Ireland’s citizens, mostly Protestants and unionists, have legally held lethal weapons. 61

It was decided to address police reform through an Independent Commission. 62 It must report by the summer of 1999. Its terms of reference require it to propose how to establish a police service that is "representative, rationally assessed, professional, effective and efficient, fair and impartial, free from partisan political control; accountable...[and]...conforms with human rights norms." 63 This Commission is to report a year before decommissioning is to be finished. It is difficult to believe that the choice of this timing on the part of the makers of the Agreement was an accident. Plainly, the

61 The Agreement, p. 24, para 9.2
62 See McGrory and Liberty, Policing Northern Ireland.
63 The Agreement, p. 37, para 11.1-2.
public outline of police reform is intended to be available as a confidence-building measure for nationalists before the major part of republican decommisioning can be expected. Bringing forward this outline fast might be one way to resolve the crisis of executive formation—though the necessary radicalism of police reform will be difficult for David Trimble and his colleagues to swallow.

The early release of paramilitary prisoners sentenced under scheduled offences, and of a small number of army personnel imprisoned for murders of civilians, has been proceeding with less disruption than might have been anticipated. Measures to assist the victims of violence have helped ease the pain occasioned in some quarters by these early releases. The early release scheme has also worked to clearing time-scales for some ultra-paramilitary organisations, for example, the Loyalist Volunteer Force, to agree to establish a cease-fire in order to benefit their prisoners, and in the case of the UVF, to open the first of what is hoped to be a series of decommissioning moves.

**The Political Nature of the Agreement**

So there is an agreement on how to unwind the military and paramilitary conflict. Movement is taking place on some dimensions, but not on others. Before we address the state has no final resolution, let us examine briefly, the political nature of the Agreement. The Agreement is based on multiple forms of recognition—including recognition of the balance of power. It is an act of statesmanship, but it is also based on hand-marked calculations, not point-count.

**Recognition.** The Agreement is an act of recognition between states and national communities. The Republic of Ireland has recognized Northern Ireland’s status as part of the United Kingdom, subject to the implementation of the Agreement. The United Kingdom has recognized the right of the people of Ireland to exercise their national self-determination, albeit conjointly and severally. It has confirmed that Northern Ireland has the right to secede, by majority consent, to unify with the Republic of Ireland. The Republic of Ireland has recognized British political identity. The United Kingdom has recognized Northern nationalism as a national minority, not simply as a cultural or religious minority, and as part of a possible future Irish national majority. The two states have recognized the paramilitaries that have organized cease-fires as political agencies. It has not required them to surrender to their respective authorities and has accepted the release of their prisoners on the assurances of their organizations’ cease-fires. The paramilitaries on cease-fires have, with some minor exceptions, recognized one another. Authorities have recognized nationalists as nationalists, not simply as Catholics or as the minority. Nationalists have recognized unionists as unionists, and not just as Protestants. Nationalists and unionists have recognized “selves—who are they, whether nationalists or unionists. There is just no issue of recognition—contemporary
Northern Ireland would warm the cockles of Hegel's and Charles Taylor's hearts.48

The Agreement also rests on recognition of a balance of power. The Anglo-Irish Agreement of 1985 led to a new but ultimately productive stalemate. Republicans were left with no immediate prospect of securing electoral growth and their military capacity to strike the British 'paved' justified. Loyalists reorganized in the late 1980s and by the early 1990s were able to raise the costs of sustaining violence within the republican constituency. Unionists discovered the limits of just saying: 'No' as British or bi-governmental initiatives occurred over their heads. These was a military stalemate and a political stalemate. But there were also structural changes beneath the frozen surface that were noted by John Whyte in his last essay.49 These included, greater equality of opportunity and self-confidence amongst nationalists, and a shift in the demographic (and therefore electoral) balance of power between the communities—perhaps, these changes undermined the fact that any political settlement could not retain nationalists in a subordinate status. The initiative of John Hume and Gerry Adams constructively responded to this new stalemate. Much work had to be done before their initiative bore fruit.

The Bargain. There is a bargain at the heart of the Agreement. Nationalists have endorsed it because it promises them political, legal and economic equality now, plus institutions in which they have a strong stake, while the possibility of Irish unification later. They get to co-govern Northern Ireland, rather than being simply governed by either unionists or the British government. Moreover, they get this state of government with pre-nexes of further reforms to redress past legacies of direct and indirect discrimination. Republicans in Sinn Fein and the IRA can fight a long war that they could not win, and could not lose, for a long march through institutions in which they can reasonably claim that only their means have changed, not their end: the termination of partition.

Nationalist support for the Agreement is not difficult to comprehend. For them it is a very good catch every day. But why did the loyalists and the loyalists parties make this constitutional plus bargain? This part with the nationalist devil? The drams and latent threats of Tony Blair and Bill Clinton, the diplomacy of George Mitchell, and the process of multi-party inclusive negotiations, are not enough to account for David Trimble's decision to lead his party where it was most reluctant to go, nor do these factors allow for his intelligence.

In my judgement, the unionists who supported the Agreement were concerned not so much to end the IRA's long war, but rather to protect and safeguard the Union. They calculated correctly that only by being generous now could they reconcile nationalities to the Union, and protect themselves against possibly seismic shifts in the balance of demographic power. Unionists would get a share in self-government now, avoid the prospect of a British Government making further deals over their heads with the Irish State, and have some prospect of persuading Northern nationalists that a newly reconstructed Union offers a secure home for them. They made an Agreement to avert something worse.

Later, Recognizing identities and interests are necessary but not sufficient conditions of a constitutional settlement, ideas, however loosely understood or flexibly deployed, were also important in the making of the Agreement. Their development, dissemination and impact is harder to trace, but that does not mean the task cannot be accomplished. Fresh language and policy learning were evident in the making of the Agreement—though so were policy obstinacy and recalcitrance within the highest echelons of the dying Major government and of the spread-eagled rainbow coalition in Dublin during 1995-97. The contents of the ideas were many and varied—including politicians, public officials and many unofficial advisers. Defining the sources of the conflict in national terms—rather than as arising from religious extremism or terrorism—we vital. Without this shift, the Anglo-Irish Agreement, the Framework Documents of 1995, and the Agreement itself would not have been possible. Intimations and intimations of changes elsewhere—the end of the Cold War and its repercussions, political change in South Africa and the Middle East—all had their local register. The traditional explanations of the causes of the conflict had increasingly ceased to move the local participants—and many were open to compromises and political institutions that would mark a shift from the limitations of either London's or Dublin's conceptions of good governance.

The beauty of the Agreement as a bargain is that both nationalists and unionists have sound reasons for their respective assessments of its merits, that is for believing that they are right about the long term. They cannot be certain they are right, and so they are willing to make this elaborate settlement now. But is it, in Year's phrase, a terrible beauty? Will the Agreement wither and die once it has become apparent who is right about the long term? That possibility cannot be excluded, but that is why the Agreement's architecture appeals careful inspection. It is not just a type of constitutional model, like that of Lebanon, vulnerable to the slightest demographic transformation in the make-up of its constituent communities.

There are incentives for each bloc to accommodate the other, precisely in order to make its vision of the future more likely: in other words, both have reasons to act creatively on the basis of self-fulfilling prophecies. The treat of the double protection model is that it uses
the paza for whatever gets it wrong about the fortune. The confederali-
ing and federalizing possibilities in the Agreement ensure that both
national communities will remain linked, come what may, to their
preferred nation-states. Moreover, the Agreement does not preclude
the parties agreeing at some future juncture to a fully-fledged model of
British and Irish co-governance in and over Northern Ireland.

There will, of course, be difficulties ahead, but Northern Ireland has a
new, if slightly precarious and slightly unblessed, bi-national super-
majority. The Assembly and its Executive Committee can work, and
become mechanisms for accommodating the diverse peoples of the
North. There will be difficulties in agreeing a budget and a broad
programme of government, and die-hards or kill-hards will be
hoping to capitalize on them. Managing the twilight of the second
Protestant ascendancy in Irish history, and the re-nationalization of
militant republicanism, are not easy tasks, but the Agreement may
deliver many impossibilities before its first birthday.

The Politics of the Transition Games of Unlikely Partners and the
‘Temptations of Legalism’

Before the optimistic picture can materialize, much work remains to
be done. The Agreement’s political entitlement requires that some
short-term advantages-maximizing and game-playing temptations be
avoided. At the heart of this Agreement lie four internal political
forces—the SDLP and the UUP amongst the historically moderate
nationalists and unionists, and Sinn Féin and the PUP amongst the
now more moderate republicans and loyalists.32 Maintaining the
Agreement requires that political forces eschew formal or informal
collusion partners while preserving their bases. Considerations of
brevity oblige me to focus on just two of these constellations.

The UUP is the most likely short-term maximizer and game-player.
The party split most under the impact of the making of the
Agreement. It lost votes to the ‘no unionists’, and it has lost some fur-
ther councillors that were elected on its platform. The temptation of
its leaders is to re-negotiate the Agreement in the course of its imple-
mentation. That way they can hope to re-edit the party, and draw off
support from the ‘yes no’ camp amongst unionists. The UUP would
have preferred an Agreement which was largely internal to Northern
Ireland, and which involved them co-governing Northern Ireland
without the formal participation of Sinn Féin. Consequently, the
UUP’s most tempting game plan is to use the decommissioning issue
to split what their supporters see as a pro-nationalist bloc. If they

32 In the new disposition there are now eight options: 1) one for the Agreement:
nationalists, republicans, ‘yes unionists’, yes by first and second. These are against ‘no
unionists’, ‘no hardline’ and ‘no republicans’. The former are on what Mairies used to call
an ‘infinitely’ alliance of necessities.”
achieve decommissioning they may reckon that they will split the republican base of Sinn Féin—and they can live with that; and, if they do now, they may think that they can sabotage the more radical agenda of the Agreement if they can retain British support on the issue of decommissioning. The temptation of the UUP is overtly post-Agreement negotiation, motivated by an opportunity that is aggravated by perceived political weakness. The signs of this game will be a phoney 'legalism', adversarial and petty-minded interpretation of the Agreement, postponement and prevarication, and brinkmanship. These signs may appear familiar.

The other constellation is republicans. Republicans, too, may be tempted to engage in game-playing, of a different kind. They can and may insist on the full letter of the Agreement to sustain their constituency and their long-term political strategy, even if the insistence creates great difficulties for the SNP and the SDLP, their internal partners. They may think they have in each way bet. If the UUP delivers on the Agreement, well and good; if the UUP does not deliver, then Sinn Féin will position itself to ensure that any costs get the blame for its non-implementation. For hard-line republicans, non-implementation of the Agreement may provide a pretext for a return to war. In contrast, softer-liners will argue that any return to violence could only be sanctioned if governmental or loyalist forces were responsible for the first military breach, and many softer-liners would argue that republicans would have more to gain electorally both within Northern Ireland and the Republic through remaining a wholly constitutional opposition to a defunct Agreement. Sinn Féin may, ironically, be tempted by hard legalism—extending the full letter of its contract with the UUP, at the risk of damaging the internal political coalition that made the Agreement.

To survive, this constitutional and confederal agreement therefore requires three things. First, immediate, daily, vigorous and continuing British and Irish oversight to encourage the Agreement’s implementation before it is thwarted by a constitutional time bomb in a Dublin Court. Though the Republic’s referendum result enables the Irish Government to enact some delays in implementing the Treaties that will complete the Agreement—and thereby activate the proposed changes to Articles 2 and 1 of its Constitution—the Supreme Court is unlikely to maintain that constitutional delay in establishing the Northern Assembly and the North-South Ministerial Council is compatible with what was endorsed by Irish citizens. The two governments must continue their available case—from theoretical appeals, through to politicians’ salaries and expenses—to avoid such a juridical mess. Second, progress requires an immediate and to what appears to be a new extra-administrative principle being espoused by some officials in the Northern Irish Office that is that any disagreements over the meaning of the Agreement and its legislative configuration or UK law must be subject to cross-community consent procedures. If this does become official wisdom, then it will be an
The Mysterious Week of Ulster's Troubles in the Giblee

Victor J. Hool is the only answer to the Troubles. He has always been known for his opposition to the idea of partition and his support for unity. His leadership has been able to bring peace to the region.

The Irish Parliament, on the other hand, has struggled to address the issues facing the country. The recent elections have shown a divided electorate, with many voters choosing not to support any of the mainstream parties. This has led to a lack of stability in the government.

Table 1: The Distribution of Ministers (assuming all parties use their full entitlement)

<table>
<thead>
<tr>
<th>Group</th>
<th>UUP</th>
<th>DUP</th>
<th>PUP</th>
<th>SF</th>
<th>UAP</th>
<th>APH</th>
<th>NINZ</th>
<th>IPPD</th>
<th>SDLP</th>
<th>SP</th>
</tr>
</thead>
<tbody>
<tr>
<td>UUP</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>DUP</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>PUP</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>SF</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>UAP</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>APH</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>NINZ</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>IPPD</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>SDLP</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>SP</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

As the government is facing many challenges, it is important for all parties to come together and work towards a solution. The recent negotiations have been promising, and it is hoped that a lasting peace can be achieved.

As the government is facing many challenges, it is important for all parties to come together and work towards a solution. The recent negotiations have been promising, and it is hoped that a lasting peace can be achieved.
In this scenario, unionists are entitled to five Ministries (3 DUP and 2 SDLP) and nationalists get five (3 SDLP and 2 SNP). By contrast, the First Minister and Deputy First Minister have decided that there should only be six Ministries, and unionists would have three (2 DUP and 1 TUV) and nationalists would have three (2 SDLP and 1 Sinn Féin). If they had opted for seven, the DUP’s negotiating preferences, then there would be four unionist Ministries and three for nationalists. What happened to the DUP does not take its Ministers because it will not accept the obligations of office. The results are shown below. If there are to be ten Ministers, then the DUP would win one more Ministry and the Alliance would win a Minister. Nationalists would keep the same number of Ministries as before but impose their position in the ‘peaking order’, that is, the choice of ministers.

Table Four. The Allocation of Ministries (with a DUP by-election or exclusion)

<table>
<thead>
<tr>
<th></th>
<th>DUP</th>
<th>SF</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>2</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>4</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>5</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
</tbody>
</table>

There is only one important ambiguity in the Agreement about how the O’Hondra rule will operate. Two possibilities exist. Either the First and Deputy First Ministers count as part of the allocation of Ministers, or they do not. If they do count, then, in the examples above, the DUP would start the allocation with 21 seats and the SNP with 23. In some possible scenarios, this method would have the important consequence of helping other parties. But if they do not count, as I think is the more reasonable reading of the text, then allocations would proceed as in the above examples.

The O’Hondra rule is also to be used to allocate Committee Chairs and Deputy Chairs. It would be fair to do so, as the figures resulting from the subtraction of Ministers from parties’ seats in the Assembly, but the Agreement is not clear on this. It is also not clear if the O’Hondra rule will be used to allocate all Committee places. I am assuming that that will happen—on which case some Committees may not have unionist majorities.

The DUP and the SDLP have provisionally agreed the creation of junior ministers—presumably to be allocated places on the O’Hondra rule. If so, then every major pro-Agreement party will have some of its members having partial or no seat or another—something which can only assist the continuing of the Agreement, and will provide incentive for a shift of posture on the part of anti-Agreement Assembly members. It will also mean that the new Assembly is likely to have a rather small part of its membership free for standard adversarial parliamentary debating in the classical Westminster model. Perhaps this is also to the good.