# Designing the Northern Ireland Assembly

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In designing the new constitutional settlement for Northern Ireland, the signatories to the Belfast Agreement of 1998 were conscious that they were treading a path littered with failure. Since the introduction of direct rule in 1972, successive governments had attempted to establish a power-sharing administration in the province. The first attempt, in 1974, based upon the Sunningdale Agreement reached the previous year, ended in collapse after five months. In 1975–76, a Constitutional Convention was created to generate a scheme for self-government: it too failed, as did both the 'Atkins initiative' of 1979, named after the then Secretary of State, Humphrey Atkins, and the scheme for 'rolling devolution' devised by his successor, Jim Prior.[1]

The renewed attempt to generate a pact among Northern Ireland's parties that would restore devolved institutions was a protracted affair. Among other things, it required a peace process that was robust and durable, as well as a certain political suppleness among political leaders, whether unionist, loyalist, nationalist, or republican. It also needed the governments in London and Dublin to act in a cooperative, bilateral fashion, as well as an acceptance by the British government of a role for external, primarily American, involvement in the conciliation of Northern Ireland's rival ethno-national communities. Indeed, parity of esteem between national communities was an essential ingredient of the political process. That is, mutual recognition had to be accorded by the respective communities to the legitimacy of pursuing both Irish unification and the maintenance of the Union with Great Britain—provided each goal was sought through the use of exclusively democratic and peaceful means. In effect, it meant giving the people of Northern Ireland the means of expressing their consent about its constitutional future, and that this principle be accepted by both the Irish and the British governments as well as the parties within Northern Ireland.

The sequence of events that led to the Agreement on 10 April 1998 was far from uninterrupted. Moreover, until almost the last moment there was genuine uncertainty whether the negotiations, which had begun in 1996, would succeed. That they did—notwithstanding the subsequent difficulties of implementing the Agreement and the later suspension of devolution in February 2000—is testimony both to the intricacy of the Agreement's design and to the stamina and intelligence of its signatories. It also represents the durability of consociational thinking among key players, in Belfast, London or Dublin.


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To understand the design of the new legislature, it is necessary to explore the provenance of the Agreement itself. One way of doing this is to see British policy since the initial imposition of direct rule as an exercise in variable geometry. There have been two constant elements in the design of policy, the more obvious of which has been a commitment by successive British governments to devolve power to Northern Ireland.[2] The other has been the idée fixe of consociationalism, seen as an off-the-peg model of how divided societies are to be governed and derived from the earlier work of Arend Lijphart.[3] The third element has been rather more variable, although since the Anglo-Irish Agreement of 1985 it has become a cornerstone of the design, namely the so-called 'Irish dimension'. The 1985 Agreement was not simply a means of governing Northern Ireland on something like a bilateral basis (albeit that Dublin's role was, to borrow Garrett Fitzgerald's phrase, less than executive but more than consultative). It also required unionism to accept the Republic's involvement as a sine qua non of any grand political design: a prospect that unreconstructed loyalists and die-hard unionists still refuse to countenance. Thus, although the Irish dimension waxed and waned between 1972 and 1985, it is an essential part of the 1998 Agreement, albeit in a less muscular form than that expressed in the Framework Documents of 1995[4]—and certainly in a less developed mode than that preferred by Sinn Féin. These, then, are the three elements of policy geometry that have converged in the Agreement. However, the confederal aspects of the Agreement render it best understood as an example of 'consociationalism plus'.[5] It is its external dimensions, notably in relation to north-south matters, that complicate the legislative role of the new Assembly.

## *Consociationalism*

In reflecting on the values informing the 1998 Agreement, it is difficult to escape the conclusion that the inertia of consociationalism had prevailed among its signatories. Certainly, the defining features of the consociational model, first elaborated in the Sunningdale Agreement of 1973—which established a local Assembly, a power-sharing grand coalition government and a prospective north-south institution the Council of Ireland—are apparent in the1998 Agreement. While recourse to the model is necessary, however, it is insufficient to capture its complexity, not least because of its integral confederal character and a qualified departure from one of its defining features, the unanimity rule or mutual veto.

Though it may be criticised for its rather contrived character, consociationalism does embody the politics of accommodation. Its four key characteristics—cross-community power-sharing, the proportionality rule, segmental autonomy and the mutual veto—are designed to effect governance within a divided polity and a society where majority rule is untenable. Each of the model's features is present in the new

Agreement, although majoritarianism is provided for in relation to 'non-key' decisions within the Assembly, both as a plenary body and in its committees. Lijphart did not intend consociations to be ends in themselves, but rather that they could provide a means of moving towards a more 'normal' mode of competitive politics in the medium to longer term. In the shorter run, a heavy premium is placed on mutual trust and confidence, initially among the relevant elites, which—ceteris paribus—descend to envelop contending communities. In this respect, one may depict consociationalism as trickle-down politics. This interpretation does, however, beg at least one question: whether political leaders can deliver their followers, as Brian Faulkner and pro-Sunningdale unionists discovered to their cost in 1974. Faulkner's readiness to implement the Sunningdale Agreement led to his loss of the leadership of the Ulster Unionist Party, the fragmentation of unionism and a near insurrection in the form of the Ulster Workers Council strike in May 1974. The strike, arguably called more against the proposed Council of Ireland—which never met—than against the principle of power-sharing, paralysed the province and spelled the end for both the coalition government and Faulkner's political career.

Despite that earlier failure, and intervening attempts to engineer social transformation in Northern Ireland by means of what has been styled 'inverted consociationalism',[6] the consociational template did structure the logic of choice in designing the new legislature and its executive arm. Part of the attraction of consociational democracy is that its rules are rational in that they seek to eliminate uncertainties, anxieties and threats among contending elites by building in decision-rules and procedures which eliminate recourse to simple majoritarianism. Yet, this is true only up to a point in the case of the decision-rules proposed for the Assembly.

Although a comparison with Sunningdale is a beguiling attraction, the 1998 Agreement is a subtler political bargain than its predecessor. Besides the massively changed context created by the IRA's initial (and later breached) 'cessation of military activities' at the end of August 1994 and the subsequent cease-fires by the major loyalist paramilitary organisations, its political inclusiveness, it is rendered unique by the mandatory provision for north-south institutions and the creation of the British-Irish Council. The commitment to an equality culture, a new regime of human rights, reform of the criminal justice system as well as of the RUC, and the accelerated prisoner release scheme, all further compound the singularity of the Agreement reached on 10 April 1998. Its endorsement on both sides of the border by referendums also gave it the popular support that had never existed for the Sunningdale package. Recall, too, that the referendum in the Republic of Ireland in May 1998 legitimised the proposed changes to Articles 2 and 3 of its 1937 Constitution. These replaced the irredentist claim to the 'six counties'

with an aspiration to unite the people of Ireland, a change that the Irish government had refused to implement in 1973 during the negotiations on the Sunningdale Agreement.

If one considers the irreconcilable goals of undiluted unionism and atavistic republicanism, the fact that there was an Agreement in 1998 shows that much was ceded by each side in the negotiations. In particular, Sinn Féin's position altered significantly during the talks. It began by opposing: a local, effectively partitionist, Assembly; the proposition that north-south bodies would be accountable to such an Assembly; and any change to the Irish Constitution that involved removing the formal territorial claim to Northern Ireland. It relinquished each of these negotiating planks. Correspondingly, a majority of Ulster Unionists accepted the principle of power-sharing with reconstructed (that is, decommissioned) republicanism; the integral nature of institutionalised cross-border bodies with executive powers; the review of the RUC; an accelerated prisoner-release scheme; and the contingency of Northern Ireland's place within the UK (the principle of consent having become the constitutional imperative on both sides of the border).

The bargained nature of the Agreement is clear from the interweaving of each of its three institutional strands: within Northern Ireland, between north and south, and between east and west. Its designers clearly understood that if any one of the strands was to unravel, the wider fabric would fall apart. Of course, the bargain was much more than an exercise in institution building. At root, it was intended to build mutual confidence between rival communities, hitherto in short supply. In particular, the premium placed by pro-Agreement unionists on the decommissioning issue indicated that the trust would have to be hard won by the republican movement. In the event, it was the failure by the IRA to embark on the decommissioning process that led to the suspension of devolution in February 2000, an option the Secretary of State deemed preferable to the resignation of David Trimble and his three cabinet colleagues.

## *The Assembly*

The constraints of a divided society are manifest in a number of key features of the Assembly's consociational design. For example, each of the 108 Members of the Legislative Assembly (MLAs) elected by Single Transferable Vote proportional representation, must designate him/herself either as a 'Nationalist', a 'Unionist' or 'Other'.[7] Suchself-ascription is required to allow application of the tests of cross-community support in what the Agreement describes as 'key' decisions. These, including the election of the Assembly's Presiding Officer (Speaker), the determination of its standing orders, the planned 'programme for government' and the budgetary procedures, are subject to two alternative special voting procedures, each designed to realise

the principle of bicommunalism: 'parallel consent' and 'weighted majority'.[8] The Agreement also provides for a 'Petition of Concern' through which 30 MLAs can designate an issue as a key decision, thereby triggering the cross-community voting procedures.

The special voting procedures, another reflection of consociationalism's characteristic proportionality rule, were first employed for the twinned election of David Trimble and Seamus Mallon as First and Deputy First Minister Designate at the inaugural meeting of the shadow Assembly on 1 July 1998.[9] Their joint election epitomised the power-sharing character of the Agreement: they were intended to be co-equals, enjoying a shared status that exemplified accommodatory politics.Until December 1999, when two junior ministers were nominated jointly by Trimble and Mallon, the First and Deputy First Ministers were the only members of the Executive Committee subject to a vote in the Assembly. The remaining ten were nominated by the relevant (four) parties (as were their preferred departments) through the application of the d'Hondt rule.[10] They did not require the endorsement of the Assembly, although they could be removed by a resolution proposed by at least 30 MLAs and obtaining cross-community support. In such circumstances, the minister (or indeed any party that loses the Assembly's confidence) would be excluded from office for not less than twelve months. This device provides a potential check on ministerial autonomy, offsetting the possibility that a department could be turned into a party fiefdom and, as with 'key' decisions, underlines the model of partnership that is intended to infuse the new institutions. A bloc vote by unionist MLAs (the only 'grouping' capable of mustering a simple majority) would be insufficient to exclude a minister. Should an incumbent be excluded, his/her successor would be nominated from within the ranks of the same party. If, however, a party loses the confidence of the Assembly, then d'Hondt is reapplied: the Executive seats would be reallocated to that party with the next highest number of MLAs or, in the event of a tie, the party with the higher number of first preference votes cast at the Assembly election of 25 June 1998

## *Assembly committees*

The legislative competence of the Assembly is consistent with prior attempts to devolve power to Northern Ireland. The 1998 Act provides for its authority to be primarily in 'transferred' matters, that is those functions administered by the six Northern Ireland Departments that had evolved under the direct rule regime (as re-engineered by the inter-party agreement of December 1998). The Assembly is not designed to be a mere legislative cipher or rubber-stamp for the Executive Committee. In addition to its more conventional legislative and scrutinising roles, 'statutory committees' (a term deliberately chosen to convey the various roles: scrutiny, policy advice, and part of the legislative process) enjoy considerable authority. These committees are charged to 'advise

and assist' each of the departments with which they are associated 'in the formulation of policy': in addition, they may initiate primary legislation. Legislative authority will not, then, be vested solely in the proposed Executive Committee but shared by the committees, whose chairs and deputy chairs are also appointed to reflect the Assembly's composition. Given ten departments, a total of 20 chairs and deputy chairs were nominated by the parties (ministers are excluded). In making their nominations, they were constrained by the principle that they should 'prefer committees in which they do not have a party interest': this prevented nominations drawn from the same party as the relevant minister—a further means of realising the power-sharing principle.

However, no provision was made in either the Agreement or the Northern Ireland Act 1998 for the Office of the First and Deputy First Ministers to be subject to a statutory committee. This issue proved highly contentious when the draft standing orders were debated in March 1999, spilled over into the short period of devolution, and was not fully resolved at the time of suspension. During its shadow phase, the Assembly's committee on standing orders (itself jointly chaired by a unionist and a nationalist) had proposed the creation of a 'Committee on Conformity with Equality Requirements' that would test any policy or legislative proposal against the statutory obligation to promote equality of opportunity. Given that an 'Equality Unit'[11] constitutes one element of the Office of the First and Deputy First Ministers (subsequently called the Office of the Centre), this meant that a close working relationship would develop between the Unit and the proposed Committee.

The simmering dissatisfaction within the Assembly about the limited accountability of Trimble and Mallon's Office afforded by the above Committee boiled over shortly after the devolution of powers. On 6 December, the standing orders committee revisited the matter and, instead proposed two new standing committees to oversee much of the work of the Office: the Equality, Human Rights and Community Relations Committee and the European Affairs Committee. The motion for the two cross-cutting committees, akin to those in the Welsh Assembly, was passed, and a week later a draft order was tabled for a third committee to examine and report on the Office's remaining functions, thereby making it fully accountable to the Assembly. However, the First and Deputy First Ministers tabled an amendment, seeking to revoke the two committees agreed on 6 December and replace them with a single Committee of the Centre to report on a limited range of functions carried out by their Office. Their intention was to insulate the external/confederal aspects of their remit from the focused scrutiny of a standing committee. As Mallon said: 'It is essential that discussions which take place in determining the decisions reached by the Executive Committee, or the negotiating position for the Northern Ireland admin-

istration in relation to the North-South Ministerial Council or the British-Irish Council, should remain private.'

The Trimble/Mallon view was that such matters were more properly dealt with on the floor of the Assembly than in a committee room, but it drew opposition from a wide range of parties, including Sinn Féin and the Democratic Unionist Party (DUP), appalled at the limited scrutiny it afforded. Nevertheless, the combined weight of Ulster Unionist Party (UUP) and SDLP members ensured that the wish of the First and Deputy First Ministers prevailed. Thus, there was only one committee, and that with a limited remit. Among its initial tasks was a role in the 'mainstreaming' of equality of opportunity required by the Agreement. It would scrutinise legislative proposals, whether referred by the Executive Committee or the statutory committees (voting on a cross-community basis) to test its consistency with statutory equality requirements. Equality is further safeguarded by the requirement to seek the view of independent Northern Ireland Human Rights Commission, also created under the terms of the Agreement, on whether legislative proposals are compatible with the European Convention on Human Rights or any future Northern Ireland Bill of Rights, also flagged by the Agreement. And, of course, there is further protection through the courts, which can overrule Assembly legislation on grounds of inconsistency.

The Committee's oversight of proposed legislation, whether it emanates from the Executive Committee, a committee or an individual member, meant that it would work in harness with the Equality Unit mentioned above. The latter's responsibility includes ensuring that in the formulation and review of policies and in their delivery departments and other public bodies will comply with 'Policy Appraisal for Fair Treatment', first implemented as a set of administrative guidelines in 1994 and made a statutory duty by the Northern Ireland Act 1998. Sifting policies and legislation through this net is further proof of the intention to mainstream equality of opportunity.[12]

With the exception of a decision to refer matters to the Committee of the Centre, other matters before the statutory committees will be decided by simple majority (no single party having a majority). However, where a committee is considering a key decision, any recommendations it makes, and on whatever basis, will be subject to the Assembly's special voting procedures. All non-key decisions will be resolved in the Assembly on the basis of a simple majority vote, although MLAs, through a 'Petition of Concern', could designate the matter a key decision, thus activating the cross-community voting rules.

The ordinary memberships of the statutory committees were formally allocated by the Assembly's Business Committee (chaired by the Speaker), although effectively by party whips on a proportional basis. Each has eleven members, including the chair and deputy chair. Proportionality meant that the opportunity to exercise executive patronage

was narrowed, though not entirely foreclosed. The First and Deputy First Ministers were able to nominate junior ministers to the departments, including their own, but no formula was specified in either the Agreement or the Northern Ireland Act 1998 for the nomination procedure, unlike the application of the d'Hondt rule for ministers and committee chairs and deputy chairs. This, too, caused a row in the Assembly. Section 19 of the Act provides that the First and Deputy First Ministers may at any time determine that a number of members should be appointed as junior ministers and the functions they should exercise. In December 1999, Trimble and Mallon tabled a joint determination for the appointed of two such ministers to their Office, subject to a simple majority vote in the Assembly. However, the party identities of the two nominees—UUP and SDLP—angered the other parties which spoke of 'jobs for the boys' and a 'closed shop' for the UUP and the SDLP. Trimble and Mallon argued that the junior ministers had to command their confidence—which would have been sorely tried had they nominated members of the DUP and Sinn Féin. The nominations were eventually endorsed by 49 votes to 38, the UUP and SDLP voting en bloc.

## *Mutual veto/unanimity*

The Agreement provides for the unanimity rule, or mutual veto, characteristic of consociational design, in relation to the procedures of the Executive Committee. A four-party voluntary coalition (UUP, DUP, SDLP and Sinn Féin) seems an unlikely setting within which the convention of collective responsibility could take root. Given the DUP's antipathy towards the Agreement in general and, in particular, to Sinn Féin's participation in government, there was no prospect that full meetings of the Executive Committee would take place, nor did they during the ten weeks of devolution. This has raised some intriguing questions about its intended operating procedures, although there is clear guidance in the Agreement/Act, especially in relation to key decisions and the operations of the North-South Ministerial Council.

For instance, the Executive is charged by the Agreement to 'provide a forum for the discussion of, and agreement on, issues which cut across the responsibilities of two or more ministers, for prioritising executive and legislative proposals and for recommending a common position where necessary' (theexample cited in relation to the latter is external relationships). In addition, it 'will seek to agree each year, and review as necessary, a programme incorporating an agreed budget linked to policies and programmes, subject to approval by the Assembly, after scrutiny in Assembly Committees, on a cross-community basis'. The Agreement also states that 'Ministers will have full executive authority in their respective areas of responsibility, within any broad programme agreed by the Executive Committee and endorsed by the Assembly as a whole'. All ministers, as a condition of their appointment, must also

affirm the terms of the 'Pledge of Office' set out in the Agreement. This requires them to 'participate with colleagues in the preparation of a programme for government'; to 'operate within that 'when agreed within the Executive Committee and endorsed by the Assembly'; and 'to support, and to act in accordance with, all decisions of the Executive Committee and the Assembly'.

The Pledge reinforces the interlocking relationship between the Executive and the Assembly. Moreover, and this seems paradoxical given the inclusion of emphatically anti-Agreement parties in the Assembly, the lack of a formal (let alone loyal!) opposition underlines the uniqueness of the Northern Ireland case. In particular, the refusal of the DUP's ministers to sit alongside their Sinn Féin counterparts in the Executive Committee, unless and until there was full and verifiable decommissioning by the IRA, threatened to create gridlock rather than to facilitate such government. (However, the First and Deputy First Ministers' meetings with the DUP's two ministers independently of those with the other eight ministers did appear to work relatively smoothly during the brief (first?) phase of devolution.)

## *Programme for government*

During its shadow phase between July 1998 and early December 1999 little attempt was made by the then prospective Executive to discuss, let alone agree, a programme for government. Apart from an initial exploratory meeting in January 1999, involving the party's policy advisers at which civil service briefing papers were tabled, and a follow-up 'brainstorming session' later that month, no substantive progress was made towards a common programme.[13] Habituated to opposing the Northern Ireland Office and one another, both within and across the political divide, the process of agreeing a programme for government confronted the parties with a steep learning curve. During the shadow phase there was a 'Transitional Programme' prepared by the Northern Ireland Office for MLAs, a digest of information on the policy agendas of the departments. The parties were also faced with a raft of policy proposals from the team of direct-rule ministers, including a regional economic strategy, a regional planning strategy and reform of the health sector.

The prospective Executive also inherited the government's expenditure plans for Northern Ireland for 1999–2000 to 2001–02, announced in December 1998. This followed the Comprehensive Spending Review initiated by the government in 1997 with its additional £1.4bn for Northern Ireland. During the early stages of the Review, the then Secretary of State, Mo Mowlam, consulted the parties, district councils, trades unions, industry and commerce, the voluntary and community sectors, on which expenditure programmes should be given priority. After the Review, she decided on a further round of consultation with Trimble and Mallon and with the shadow Assembly. This was an

induction into the realities of governing for the parties, although the government recognised that the expenditure plans could/would change subsequently. Work on the programme was continued by the First and Deputy First Ministers Designate. In reporting on this to the shadow Assembly in mid-January 1999, they set out their shared agenda for the programme, albeit in understandably broad terms. Their priorities were: 'to address the needs of the most vulnerable and disadvantaged; to imbue the community with a sense of enterprise and self-reliance; to tackle educational disadvantage; and to put behind us the tragic years of trauma and separation'. In words reminiscent of New Labour, they continued: 'We want to agree upon and implement a programme for government that will succeed in delivering efficient, accountable and transparent government and enable us to achieve economic growth and development, the benefits of which will be shared throughout the entire community.'[14] However, the deepening impasse over decommissioning, fraying relationships among the pro-Agreement parties and the unflinching posture of the DUP towards the Agreement effectively stymied the prospect of an agreed, budgeted programme for the new departments. Shortly after the conclusion of the Mitchell review of the implementation of the Agreement in mid-November, and in the immediate wake of the transfer of powers on 2 December 1999, work on the programme for government was renewed in earnest. However, by this stage the Executive had no alternative to adoption of the spending plans bequeathed by the Northern Ireland Office.

## *North-South relationships and the mutual veto*

The difficulties involved in devising a programme for government are compounded by Strand Two of the Agreement, which seeks to institutionalise the relationship between Belfast and Dublin. The negotiations on this north-south (confederal) dimension was a protracted (and at times acid) affair. Its outcome was six new cross-border implementation bodies and a further six matters for cooperation through existing bodies in each country.[15] Though the detail of structures and functions of these bodies is significant, of interest here is their standard operating procedures and their consistency with the consociational template. The first, perhaps paradoxical, point to note is the seeming inconsistency with that template. The Pledge of Office in the Agreement requires ministers 'to discharge in good faith all the duties of office'. Given the indispensability of the North-South Ministerial Council, one might conclude that participation in it by local ministers was not an option. Indeed, the Agreement stipulated that such participation is an 'essential responsibility' for them. However, the same paragraph also states: 'If a holder of a relevant post will not participate normally in the Council, the Taoiseach in the case of the Irish Government, and the First and Deputy First Minister in the case of the Northern Ireland Administration, to be able to make alternative arrangements.' This enabled the

DUP's members of the Executive Committee to boycott the Council without, on the face of it, breaking the Pledge of Office.

Though politic, even expedient, the provision sits uneasily with the intention to facilitate inclusive government that is a hallmark of consociationalism. It meant that only three of the four parties in the Executive would participate in the Council, allowing, potentially, the DUP to frustrate at least some of its business because its agenda must be agreed, as must all decisions, by Northern Ireland ministers and their counterparts in the Republic. Moreover, any Council decisions that are 'beyond the defined authority of those attending' must achieve the consent of both the Assembly (on a cross-community basis) and of the Irish parliament. There is, in effect, provision for a reciprocal veto on each side of the border, although it seemed clear that the North-South Ministerial Council would enjoy a measure of autonomy, provided its participants could agree on the adoption of common policies and their implementation.

## *The East-West dimension*

The North-South Ministerial Council is one aspect of the Agreement's confederal character. The other is contained in Strand Three which deals with the British-Irish Council and the British-Irish Intergovernmental Conference. The Intergovernmental Conference (which subsumes the Anglo-Irish Intergovernmental Council and Intergovernmental Conference established by the 1985 Anglo-Irish Agreement) has attractions for both the unionist and nationalist communities. For the latter, it underpins the binationalism of the Agreement by providing for the continuing involvement of the Irish Republic in the internal affairs of Northern Ireland. Equally, unionist anxieties that a new Anglo-Irish agreement might evolve into some form of joint authority were assuaged, since the Conference did not entail a derogation of sovereignty by the British government.

The remit of the Intergovernmental Conference is to foster 'bilateral cooperation at all levels on all matters of mutual interest within the competence of both governments', essentially those that are not to be devolved in the first instance. These include prisons, policing and criminal justice, issues upon which the Republic's Minister for Foreign Affairs, as 'co-chair' alongside the Secretary of State, 'may put forward views and proposals', given the Irish government's 'special interest in Northern Ireland'. Both governments will 'intensify cooperation on the all-island or cross-border aspects of these (non-devolved) matters' and any decisions it makes will be on an agreed basis. Indeed, the Agreement commits them to 'make determined efforts to resolve disagreements'. Unanimity is clearly the rule for participants.

This hefty shove towards Anglo-Irish cooperation, welcomed by the nationalist and republican communities, is much more acceptable to unionists than the Inter-Governmental Conference established by the

1985 Anglo-Irish Agreement. There are three reasons for this. Its meetings will be attended by relevant members of the Executive Committee; they will also be able to participate in the triennial reviews of the 1998 Agreement conducted under the aegis of the Conference; and fit will be unable to override the democratic institutions created by the Agreement. It was the accessibility to and relative transparency of this aspect of the Agreement that made it more palatable for pro-Agreement unionists. Moreover, the prospect that policing may be devolved to Northern Ireland—an objective endorsed by the Patten report—will be generally welcomed by MLAs, although their reasons for so doing may well differ.

The British-Irish Council is the final confederal aspect of the Agreement and one that was of particular interest to unionist negotiators. It brought together representatives of the British and Irish Governments, the Scottish Parliament, the Welsh and Northern Ireland Assemblies, representatives of the Channel Islands and the Isle of Man, thereby realising a broadened, all-islands scope to the Agreement. Within this institutional framework, the representatives were to discuss, consult and exchange information on matters of mutual interest. However, it was intended as more than a rather grand talking-shop. Members, on a bilateral or multilateral basis and subject to approval by their own elected institutions, could agree common policies and their implementation in fields including transport, agriculture, health, education and culture. In this way, the Council supplied potential substance to the 'totality of relationships' first essayed during the Thatcher-Haughey summits of the early 1980s. Although it met for the first time in early December 1999, as did the North-South Ministerial Council, the British-Irish Council appeared to be the least developed of the Agreement's institutions. Of undeniable attraction to the pro-Agreement unionists, who saw it as a vehicle for better integrating cooperation with other elected representatives, especially in Britain, the suspension of devolution halted its operation. If direct rule again becomes more or less permanent, it is unlikely to survive, while the North-South Ministerial Council will wither on the vine.

## *Conclusion*

Though the trajectory of its underlying values can be traced back to 1973, none can deny the novelty and subtle complexity of the 1998 Agreement. Bolstered by a new regime of human rights and a commitment to a culture of equal opportunity, it has something for (nearly) everyone. Steeped in a pluralist, inclusive philosophy, it was an imaginative attempt to move from zero-sum to positive-sum politics. For its proponents, whether nationalist, republican, loyalist, unionist or other, it proved a difficult bargain: as David Trimble put it in commending support for the Agreement at the referendum in May 1998, 'It's as good as it gets'.

How 'good' it can become remains largely untested, since the ten-week phase of devolution, from 2 December 1999 to 11 February 2000, was tantalisingly brief. Although too short a period to agree and unveil the programme for government, the new ministers had taken to their respective briefs with enthusiasm, while the Assembly's committees had prepared their agendas for scrutinising the departments. In addition, the Assembly's initial legislative programme was announced at the end of January by David Trimble, albeit that it was relatively uncontroversial and designed to match parity with relevant British legislation.[16] During the devolved period the Assembly had also nominated the chairs and deputy chairs of its committees by proportional representation and had elected three Deputy Speakers by means of cross-community voting.[17] The Assembly's longer shadow phase that had begun on 1 July 1998 had also demonstrated the preparedness of members from all parties to work together, as they cooperated in a variety of shadow committees including the Committee to Advise the Presiding Officer, the Committee on Standing Orders and the Shadow Assembly Commission. Two ad hoc committees were also established during this period, one to examine the procedural consequences of devolution, the other to examine the future of the port of Belfast. Though relatively modest, such instances indicated that in some areas the Assembly's members were able to engage with one another on a cooperative basis.

Controversy, however, was never far from the surface. During the devolved phase, the Assembly rejected the recommendations of the Patten report for the reform of the Royal Ulster Constabulary and voted against the decision made by one of Sinn Féin's two ministers to site Belfast's maternity services in a hospital based in her own constituency of west Belfast, rather in the adjoining constituency of south Belfast. Moreover, at the final session of the Assembly held three days before it was suspended, the DUP made its third attempt to exclude Sinn Féin from holding ministerial office on the ground that it was not committed to non-violence and exclusively peaceful and democratic means. The DUP's motion, by way of a Petition of Concern, narrowly failed to attract the 30 signatures required to trigger the Assembly's cross-community voting procedures.

The capacity of the Agreement's institutions to provide effective government and a stable, if interim, political settlement in Northern Ireland remains a potential rather than tangible reality. In particular, the ability of members of the Assembly to work in tandem with the Executive Committee in agreeing a programme for government provides a severe test for Northern Ireland's consociational democracy. Indeed, the same is true of the four-party Executive itself. Accustomed to 'oppositionism', both in relation to one another and to the direct-rule regime, its composition seems ready-made to implode. Arguably, the close attention to institution building that is a hallmark of consociationalism, complete with its concern for proportionality and related checks

and balances, including the unanimity rule, also deflects its proponents from thinking about the substance of policies. Albeit carefully crafted, and hard-bargained, the Agreement does have a rather narrow institutional focus, and yet it is more than an instance of orthodox consociationalism. The fact that its signatories agreed to set in train reform of the police and the criminal justice system, and to endorse a free-standing Equality and Human Rights Commissions, means that the process of social transformation in Northern Ireland will survive—even if the institutional expressions of the Agreement, including the Assembly, suffer the same fate as their predecessors.

1 For previous attempts to restore devolution see R. Wilford, 'Regional Assemblies and Parliament' in P. Mitchell and R. Wilford (eds), *Politics in Northern Ireland*, Westview Press, 1998.
2 In Opposition, both Conservatives and Labour contemplated alternatives. In its 1979 election manifesto, the former proposed revitalisation of local government; between 1981 and 1994 the latter adopted a policy of Irish unity by consent.
3 A. Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*, University of California Press, 1968; and 'Consociational Democracy', *World Politics*, 1969, p. 21.
4 There were two such Documents: *A Framework for Accountable Government in Northern Ireland*, produced by the British government, and *A New Framework for Agreement*, produced by the British and Irish governments, HMSO, 1995.
5 R. Wilford, 'Epilogue' in P. Mitchell and R. Wilford (eds), op. cit.
6 R. Wilford, 'Inverting Consociationalism? Policy, pluralism and the Post-Modern' in B. Hadfield (ed), *Northern Ireland: Politics and the Constitution*, Open University Press, 1992.
7 When Monica McWilliams and Jane Morrice, the Northern Ireland Women's Coalition's MLAs signed the roll at the first meeting of the shadow Assembly in July 1998, they designated themselves as 'Nationalist, Unionist, Other'. In the face of objections from other MLAs, notably the DUP, they redesignated themselves as 'Inclusive Other'. The standing orders adopted by the shadow Assembly in March 1999 allow change of a party's designation once in the life of an Assembly on 30 days written notice to the Presiding Officer.
8 'Parallel consent' requires a majority of those present and voting, including a majority of those designated as unionists and nationalists. A 'weighted majority' requires 60% of those present and voting, including 40% of both unionists and nationalists.
9 Sinn Féin abstained from the vote endorsing the Trimble/Mallon ticket.
10 Establishment of ten departments was an exercise in parity of ministerial esteem. The Executive had six unionists (four UUP, including the First Minister, and two DUP) and six nationalists (four SDLP, including the Deputy First Minister, and two Sinn Féin). See *New Northern Ireland Assembly Report*, 15.2.99 for a list of departmental functions.
11 The Agreement had suggested that the Assembly might create a Department of Equality.
12 The Agreement committed the British government to create a statutory obligation on public authorities in Northern Ireland 'to carry out all their functions with due regard to the need to promote equality of opportunity in relation to religion and political opinion; gender; race; disability; age; marital status; dependants; and sexual orientation'.
13 At the 'brainstorming session', participants got a copy of the programme for government agreed by the Irish Fine Gael, Labour Party and Democratic Left coalition in 1994. The intention was to demonstrate the possibility of brokering such a programme.
14 *New Northern Ireland Assembly Report*, 18.1.99.
15 The six implementation bodies are inland waterways; food safety; trade and business development; special EU programmes; language; aquaculture and marine matters. The six matters for cross-border cooperation are: transport; agriculture; education; health; environment; and tourism.
16 It included bills on ground rents, inter-country adoption, street trading and child support, and bore no relation to the intended programme for government.
17 The committees included Audit, Business, Procedures, Public Accounts, and Standards and Privilege. The Deputy Speakers come from the UUP, SDLP Women's Coalition.