

Power shared, or shared out?: towards devolution that works

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1. The background

1.1. Parties did not back power-sharing before agreement

The most remarkable effect of the Belfast agreement is that the four main Northern Ireland parties now recognise that power-sharing devolution with a legislative assembly is the only constitutional show in town. During the series of 1990s talks, however, they had various other constitutional preferences from a unitary Irish state through joint, British-Irish authority over Northern Ireland to glorified local government and resistance to everything London proposed (ironically, that came from the ultra-'unionist' party). None of these options had grasped the nettle that violence could only be substituted by new and mutually interdependent relationships between Protestants and Catholics, modelled by political leaders.

1.2. ... but the public did

Yet almost from the introduction of direct rule in 1972, attitudes surveys found repeatedly that power-sharing enjoyed not only majority support but majority support in the majority Protestant community. It was a clear reflection of how the civil-rights movement had won the argument that governance arrangements had to be based on universal norms, notably non-discrimination, and of how an open debate on constitutional options—reflected in the green paper, white paper and act which preceded the all too short-lived power-sharing experiment of 1974—clarified the issues in the public mind, in sharp contrast to the private inter-party negotiations which came to dominate two decades later. The widely accepted stereotype in London and Dublin that Northern Ireland's political leaders merely expressed homogeneously antagonistic 'communities' defied the more complex reality of a large constituency of accommodation, among those of more moderate and overlapping identities, and failed to recognise how political and paramilitary actors stoked and exploited division.

1.3. ... so power not genuinely shared in executive

While the constitutional consensus which has now emerged is much to be welcomed, the difficulty is that the most communalist parties now dominating the government at Stormont were those most hostile to it. And their commitment to the system—and in particular their ability to understand it and make it work in good faith—has been placed seriously in question by the performance of the devolved administration since 2007. This attitude of mistrust was embodied in the St Andrews agreement of 2006 leading to renewed devolution, as it abandoned the partnership which had been the inspiration for the Office of the First Minister and Deputy First Minister—through joint election of the two ministers by the assembly—and introduced an arrangement into the executive whereby the larger communalist party on one side could simply veto a proposal it didn't care for from a minister on the other. Repeated deadlocks have followed—on academic selection, the review of public administration, the future

of the Maze stadium, the Irish language and so on. As a result, a survey commissioned by the assembly in 2009 found only one in five citizens felt the system of government worked well. And that was before the 2010 water crisis ...

1.4. ... and problem of communal designation in assembly

In the assembly, meanwhile, the prospect of Northern Ireland eventually moving towards a more normal system of politics has been indefinitely postponed by the requirement that MLAs 'designate' as a representative of one or other 'community'. And while dressed up in ideological terms, this only varnishes the institutionalisation of sectarianism: since 1998 only one MLA has not designated themselves as 'unionist' or 'nationalist' according to their religious 'persuasion' as Protestant or Catholic (though little persuasion usually comes into that). Democratic politics is all about uncertainty: it is a recognition that there are always alternative options in response to particular problems, depending on what values are brought to bear and the relative strengths of competing arguments, so there must be open debate and a recognition that, after deliberation, any individual's views may change amidst the 'wisdom of crowds'. Communal designation is in that sense profoundly undemocratic, implying that politics can only ever take the form of unchanging ethnic antagonism, or 'war by other means'. Unsurprisingly, both the original first and deputy first ministers following the Belfast agreement, David Trimble and Seamus Mallon respectively, have come to question it with hindsight.

2. The Platform for Change

2.1. Idea of a new politics

[Platform for change](#) is committed to 'a new politics for a new Northern Ireland'. There is a deep yearning to put behind us not just the large-scale violence of the past but also the deep sectarian divisions, intolerance and introversion which still bedevil this society. These prevent us moving forward to a future marked by reconciliation, greater social comfort and the dynamism which our young people expect. While the Good Friday agreement raised deeply felt hopes that a new future lay ahead, disillusionment has grown in subsequent years, with the post-agreement institutions as often in abeyance as in operation. Commitment to the common good has repeatedly been trumped by a partisan political agenda, frustrating widely shared aspirations for the focus to shift to day-to-day economic and social concerns.

2.2. Need for a system that works

But the [platform](#) also points to practical as well as moral concerns. In any government today, ministers must work in a collaborative way to resolve problems which for ordinary citizens cut across the departmental silos. It was intolerable, for example, that there was no single emergency line for distressed householders to ring during the floods of August 2008. There must be a serious debate about how to make the institutions of governance more flexible, so that they are less fragile. Deadlocking vetoes must be replaced by incentives to conciliation: it was simply unacceptable that the executive should fail to meet for five months in 2008 as rising unemployment and spiralling fuel prices cried out

for an effective, collective response. And electors deserve the right to choice between alternative, cross-communal coalition options.

2.3. Moving towards reconciliation

Before the outbreak of violence in 1969, in their different ways the emergence of the Northern Ireland Labour Party and the civil-rights movement hinted at a future for Northern Ireland beyond sectarian antagonism, where it would no longer be a provincial backwater but would join the post-war European mainstream, in which the aggressive nationalism, xenophobia and other forms of intolerance which had led to the most brutal period of violence in human history were contained by a consensual commitment to an individualistic conception of society, where the citizen was protected by democracy, human rights and the rule of law. In Northern Ireland, this simply meant that it could no longer be assumed that an individual Protestant would define themselves merely as a member of the 'unionist' camp but might, say, be socialist (or conservative) and that an individual Catholic need not inevitably define themselves as 'nationalist' out of a defiance of second-class citizenship. There was no communal 'designation' in power-sharing, 1974-style, and indeed no pressure for it—it simply being assumed all round that the executive parties would stand together in the assembly against their fundamentalist opponents. UK government ministers of the day tended to hope that over time a Labour-Conservative realignment would emerge. If Northern Ireland is not to be stuck in a pre-post-conflict limbo of unending ethnic division and intolerance, it is time to return to that modest ambition.

3. International comparisons

3.1. Northern Ireland 'model' not followed anywhere

There has been much talk of exporting the lessons of the Northern Ireland 'peace process' to other ethnic troublespots across the world. Given that the incidence of violence remains higher in the region than in the nearest focus of such attention—the Basque country—and that no country has followed the model of the Good Friday agreement of 1998 despite much political missionary activity in the intervening years around the globe, it is time for a more sanguine reconsideration of Northern Ireland's governance arrangements. Indeed, the Basque country offers, in reverse, a much better model—a government organised around the democratic centre allied to impartial pursuit of the rule of law—for marginalising violence effectively. Conversely, the closest parallel to Northern Ireland, Bosnia-Herzegovina since the earlier Dayton accords of 1995, shows even more starkly the dysfunctional character of all-in government premised on mutual communalist vetoes.

3.2. Integration and inter-ethnic conciliation

Indeed, in the international debate about how best to cope with ethnic conflict, there are two quite distinct views. The conservative approach fatalistically assumes that such conflict—superficially assumed to derive from 'ancient hatreds'—will always be there and that there is no realistic alternative to an elite communal carve-up of power and an indefinitely segregated society. The progressive alternative affirms that such conflict does not come from the ether or

the genes but from the collapse of the state (as in Northern Ireland in 1969 or Yugoslavia in the early 1990s) and that it is socially sustained and reproduced by ethnic political 'entrepreneurs' who benefit from it. In this view, individual identities are complex and variable, developing through relationships with others, and so integration of a divided society is not a utopian ideal but a necessary bulwark against a recurrence of violence following the next shock to the political system. Constitutional arrangements for divided societies should thus incentivise conciliatory behaviour and stimulate inter-ethnic coalition-building.

4. Towards a more flexible system

4.1. Citizens must be able to 'turf the scoundrels out'

It has been argued that Northern Ireland needs an 'inclusive' government for political stability. But this is to confuse the need for a legitimate system in which all parties have equal access to the political community—which was contravened in the past, for example, by the broadcasting restrictions applied to Sinn Féin—with the question of which parties should be in government, to which none has an inherent right in a democratic society. In Macedonia, for example, elections since the 2001 Ohrid agreement which re-established power-sharing after the civil conflict there have seen different combinations of Slav-Macedonian and ethnic-Albanian parties coalesce in power. This principle of alternation is essential if electors are to believe they can enjoy the fundamental democratic right, to 'turf the scoundrels out'—and not find the same scoundrels coming back again. The conservative approach to divided societies—that the only alternative to communal majority rule is grand coalition—depends on a stereotyped view of 'communities' as homogeneous and all-encompassing. Once it is recognised however that there will be *intra*-communal divisions in a divided society, as well as a constituency which will say 'none of the above' to communalist politicians (in the name of liberalism or environmentalism or some other secular value system), different inter-ethnic coalitions become perfectly natural.

4.2. An opposition to hold the executive to account

It is worth stressing that the way government is formed in Northern Ireland, by application of the d'Hondt proportionality rule, is not only unique in the world but was also the product of a very specific compromise in 1998. With the Democratic Unionist Party absent from the talks and SF still resisting devolution, only the Ulster Unionist Party, the SDLP and Alliance were seriously involved in the discussions—concluded in just one evening, in sharp contrast to the months of consideration in 1972-73—on executive formation. The UUP then opposed a power-sharing executive, favouring instead individual departments being headed by chairs of the relevant assembly committee, these chairs to be distributed (as in the European Parliament) by d'Hondt to ensure proportionality to party strengths. The SDLP insisted on veto power within an executive, having previously advocated a complicated system of quasi-joint authority in which the assembly would only be consultative. The compromise was an executive formed by d'Hondt, underpinned by the mutual-veto arrangements made possible by communal designation in the assembly. One unwitting effect was that the assembly was to have no significant opposition to scrutinise and challenge the

executive on its performance. The ironic result was an executive-dominated system very similar to that at Westminster—when the point of devolution was to be able to do things differently—with the assembly largely reduced to a debating chamber.

4.3. *Need for collective responsibility*

All governments must operate by collective responsibility, as otherwise the 'joined-up' responses citizens expect become impossible and ministers can be tempted to go on populist solo runs for partisan advantage not in the public interest. Thus, for example, when under the prior period of devolution the draft budget unveiled in 2000 had, as required by the Good Friday agreement, been endorsed by the executive, in the assembly parties outside of that of the finance minister attacked the rate increase proposed. Rates have been frozen during the second period of devolution, progressively undermining the essential revenue-raising power of the devolved administration. By contrast, the 1974 power-sharing executive recognised at its very first meeting that it could only operate by collective responsibility and, unlike the first and particularly the second more recent periods of devolution, the atmosphere around the cabinet table was remarkably good: at one point the UUP minister for education proposed integrating the education system and the SDLP as well as Alliance agreed.

4.4. *Idea of agreed coalition*

These clear deficiencies in the devolved governance arrangements can be remedied by a new system for executive formation, which would not throw out the still infant baby of power-sharing with the bath water of poor constitutional design. Debate has been stymied by the desire expressed by the DUP to move to a 'voluntary' coalition, which Catholics interpret as a qualified form of majority rule, while SF has resisted any change to the current mandatory arrangements, which Protestants interpret as requiring the party to be in power regardless of popular feeling. The way through is an *agreed* coalition, which would put the onus on parties after an election to come together across the sectarian divide in a genuine spirit of conciliation. This would reward those parties which were most accommodating, including in proposing as ministers individuals whom they knew would command broad support from their potential colleagues in government. A requirement that such an executive command the support of a weighted majority in the assembly could provide a safeguard of equal political citizenship. (This idea was widely supported in the early 1970s discussions but was dropped by the then British prime minister only in favour of the ability of the Northern Ireland secretary to say 'you, you and you' in appointing the executive at the time.) But the executive parties would unite around a Programme for Government and would operate within the framework of collective responsibility in its implementation, thus ensuring a stable cross-sectarian administration. Individual parties could then choose to go into opposition on programmatic grounds, with a view to challenging the government and being at the heart of an alternative coalition after a subsequent election. This would be a much more flexible system of power-sharing and—as in Macedonia which has had continuous power-sharing since Ohrid—it would ironically be more stable, being adaptable, than the rigid but thus brittle arrangement which has seen so much postponement, suspension and abrogation since 1998.

5. Getting there

5.1. *Parties signal willingness to co-operate*

All parties will contest the assembly election on their individual manifestos. But it would greatly enliven the election debate if each party was to indicate its willingness to collaborate with particular parties in a post-election executive, including by highlighting potential areas of common policy ground. The current executive, while in theory a coalition of five parties, is in effect dominated by two, the DUP and SF, as such decisions as have been made have emerged via often laborious negotiations between special advisers to their ministers. It is obviously in the partisan interest of the marginalised parties to see if they can find a basis for genuine pre-election co-operation—to prevent the election being a ‘sham fight’ between the DUP and SF as to whether Martin McGuinness should or should not be first minister. But it would also be in the public interest for there to be a clear choice in May 2011 between maintenance of the current alliance of political convenience and the prospect of an executive led by the parties grouped around the centre ground. Such a relationship could be cemented by highlighting policy concurrences and/or commonality on reform of the governance arrangements. An obvious initial step would be for them jointly and publicly to endorse the Platform for Change at a joint press conference—that would certainly create a media and public stir and change the electoral dynamic straight away. At the very least, they should agree together to call for a reform of the legislation implementing the St Andrews agreement providing for the first minister position automatically to go to the largest party in the assembly: this only serves to sustain sectarian competition and to facilitate authoritarian politicians on either side who want to marginalise dissenting views in their ‘communities’.

5.2. *Transfer arrangements?*

A bolder step would be for parties to advocate, to varying degrees of explicitness, transfer arrangements in this single-transferable-vote election. There has been very little cross-sectarian transfer activity since the assembly was established but this is a classic case of the ‘prisoner’s dilemma’, where what is rationally in the mutual interests of the more accommodating parties does not materialise because of the wider political atmosphere of mistrust. Part of the problem here is the electoral system. STV was only chosen in 1998 because it had been used in 1973, only then because it had been introduced in 1921, and only then because its co-designer was British—not necessarily a perfect recommendation! It is hardly used elsewhere in the world and has encouraged assembly elections to be segregated (and macho) battles as to which party is ‘top dog’ in each political ‘community’: with success depending on securing just one seventh of the vote (in a six-seat constituency), the incentives favour candidates appealing for a communal core vote rather than feeling obliged to reach across the sectarian divide. The additional-member system (as used in Scotland and Wales) or the alternative vote (as now being canvassed for Westminster) plus a proportionality top-up (‘AV+’ as it is called) would be superior in this regard, while sustaining proportionality. An independent review of the system should be sought.

5.3. *A Bill of rights and minority protections*

The idea of a bill of rights for Northern Ireland, which first emerged in the 60s from the reformers of the time—including the trade union movement—was always conceived to provide protection for the Catholic community against discrimination by what had been a Protestant-dominated state. Individual rights enjoyed by all have since been introduced into UK law via incorporation of the European Convention on Human Rights. What was left for a bill of rights to do was to meet what the Belfast agreement called the ‘particular circumstances’ of Northern Ireland—that issue of minority rights, which could of course theoretically be applied to the Protestant community were there ever to be a formal transfer of sovereignty over Northern Ireland from London to Dublin. But this was undermined by the mutual-veto arrangements elsewhere in the agreement: an analysis of the parallel situation in Belgium by the Council of Europe’s legal arm concluded that *neither* the Flemings nor Walloons there were entitled to minority protection as a result. So it is no surprise that efforts to draft a Northern Ireland bill of rights have come to nought. If, however, the governance arrangements were to move away from a stress on vetoes to an emphasis on partnership—with or without a weighted-majority safeguard—a simple bill of rights, incorporating the Council of Europe Framework Convention for the Protection of National Minorities and its Charter for Regional or Minority Languages into Northern Ireland law, could provide a new floor of equal political citizenship.

6. Conclusion

The Belfast agreement has sometimes been described as if it were the only constitutional arrangement that could be envisaged for Northern Ireland. And in terms of the broad brush—devolution to a legislative assembly, power shared in an executive, guarantees of human rights including equal opportunities, and a cosmopolitan disposition to the wider Irish, British and European contexts—it is. It secured the 71 per cent mandate in 1998 (and the companion mandate in the Republic of Ireland) as a result. But few who voted in the referendum were exercised by—or indeed even understood—the detail of the d’Hondt rule. Yet the devil lies in such provisions, and poor drafting has bedevilled the performance of politics in the region in the intervening years. While politicians willing to work together in the spirit of the agreement—and there have been good examples of those—could have overcome its deficiencies, constitutions need to be effective for political sinners as well as saints. In the short term, the current arrangements can be worked within to foster greater inter-party co-operation and to offer leadership towards a wider reconciliation. On that foundation, a reform of the governance system could be pursued to place it on a firmer long-term footing—to ensure power is genuinely shared, not just shared out.