The British-Irish Agreement: Power-Sharing Plus

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There will be at least six 'Other Ministers', but there can be 'up to' ten. The number of ministries will be decided by cross-community consent, presumably after the First and Deputy First Ministers agree a proposal. The more Ministries there are in the Executive Committee then the more proportional the representation of parties on the Executive.

Ministers will enjoy executive powers under existing legislation, and can operate without collective responsibility - save where the Executive Committee and the Assembly have agreed a broad programme, and save where they are obliged to engage in cross-departmental activities. No method of reaching agreement within the Executive Committee is specified, but the programme has to enjoy cross-community support in the Assembly - in practice agreements within the Executive will minimally require majority support including the agreement of the First and Deputy First Ministers.

Lijphart's criterion of cross-community executive power sharing is clearly met in the Agreement, but there are special features of the new arrangements that go beyond previous consociational experiments. Ministers will take a 'Pledge of Office', not an 'Oath of Allegiance'. This cements the bi-nationalism that is 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, to follow exclusively peaceful hnd democratic politics, to participate in preparing a programme of government, and to 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. They also include a requirement that the 'relevant Ministers' serve in the North-South Ministerial Council, a duty that in conjunction with other clauses, will prevent parties opposed to this aspect of the Agreement from taking Ministerial office in good faith. The special skill of the Agreement's designers is that they have created strong incentives for executive power 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. Although the new Agreement has been wryly described by Seamus Mallon as 'Sunningdale for slow learners' this is not the only respect in which it departs from that ill-fated experiment.

Proportionality
Consociational arrangements are built on principles of proportionality. The Agreement meets this test in three clear ways: on the executive (see Appendix 2); in the elections to the Assembly; and in public sector positions.

All future elections to the 108 member Assembly will be elected using a proportional representation system, the single transferable vote, STV, in six member constituencies - though the Assembly may choose to change from this system later. The Droop quota in each constituency is therefore 14.3 % of the vote, which squeezes the small parties, or, alternatively, encourages them to form electoral alliances4. 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.

The Droop quota used in STV is (Total Vote/N+l) +I, where N = Number of Assembly members to be elected.

This system of voting is not what Lijphart recommends for consociational systems - he 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 consociational deals. However, STV has the great merit of encouraging 'vote-pooling'5: voters, can in

Agreement parties - whose candidates accrued support though the transfers of lower order preferences. The UUP was the principal beneficiary of lower order preferences taking its seat share (25.9%) significantly above its first-preference vote-share (21.3%). The Northern Ireland Women's Coalition was the most widespread beneficiary of lower-order preferences, winning two seats despite a very low first-preference vote share. The transfers by voters amongst the pro-Agreement candidates, thought not as significant as had been hoped, performed one very important task: they converted a bare 'Anti-Agreement' majority of the first preference vote (25.5%) within the unionist bloc of voters into a bare 'Pro-Agreement' majority (27.7%) amongst seats won by unionists, a result that was essential for the stabilization of the Agreement.

The proportionality rules combined with accommodative incentives do not stop with the electoral system. The Agreement envisages a representative police force. It will be the task of the Independent Commission on policing, headed by former Hong Kong Governor Christopher Patten, to ensure the creation of a police service or services that are representative of Northern Ireland. The RUC's mono-national culture or its monopoly on policing services is ending.

The Agreement is also consistent 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.

Communal Autonomy and Equality

Consociational settlements avoid compulsory integration of peoples; instead they seek to manage differences equally and justly. The Agreement leaves prlae newparrangments tfr pscholicg
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changed its constitution to ensure that the North-South Ministerial Council will be able to exercise island-wide jurisdiction in those functional activities where unionists are willing to co-operate.

The North-South Ministerial Council will function much like the Council of Ministers model 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 (say, agriculture or education) on 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 will be responsible for implementing decisions taken in at least six, as yet unspecified, areas. These will be decided during a transitional period between the Assembly elections and October 3 1, and are currently under discussion. The Agreement provides an Annex that lists 12 possible areas for implementation, ranging from agriculture to education and tourism.

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 ~ireachtas%re asked 'to consider' developing such a forum.

Nationalists wanted the North-South Institutions to be established by legislation from Westminster and the Oireachtas. Unionists preferred that they be established by the Northern Ireland Assembly and its counterpart in Dublin. This was one serious obstacle to agreement, and the document produced on Good Friday split the differences between the two positions. The North-South Council and the implementation bodies are to be brought into existence by British-Irish legislation, currently being processed. During the transitional period it will be for the Northern Ireland executive and the Republic's government to decide, by agreement, how cooperation should take place, and in what areas the North-South institutions should cooperate. Once this body of work is agreed, the Northern Ireland Assembly will be unable to change it, unless both communities there consent.

One concern of nationalists was that if the Assembly could outlast the North-South Council, it would provide incentives for unionists to undermine the latter. Unionists, by contrast, worried that if the Council could survive the destruction of the Assembly, nationalists would seek to bring this about. The Agreement is a compromise and a tightly written bargain. Consociation and confederalism go together: the Assembly and the Council are 'mutually interdependent' and one cannot function without the other. Unionists cannot destroy the Council while retaining the Assembly, and nationalists cannot destroy the Assembly while keeping the council7.

The question of what scope and powers these North-South institutions will have naturally remains somewhat open-ended. Some of this is to be decided by the Northern Ireland executive and the Republic's government during the transition. The Agreement does, however, envisage a meaningful

"he collective name in Gaelic for the two chambers of the Irish Parliament, Dail Eireann and Seanad Eireann. ' The Agreement does not mention what happens if both institutions, and therefore the Agreement itself, collapses.
Effectively, however, 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 parity of esteem, reductions in the employment gap between Catholics and Protestants, and the reform of policing; and eventually shift towards direct co-sovereignty over the region. Unionists opposed to the Agreement would do well to bear this in mind.

role for the Council. It states that the Council 'd' (not 'may') identify at least six matters, where 'existing bodies' will be the appropriate mechanisms for cooperation within each separate jurisdiction, and at least six matters where cooperation will take place through cross-border or all-island implementation bodies. These matters are unspecified but presumably they could include the usually-mentioned subjects, including agriculture, transport, tourism, and education. The Agreement also 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. In

cannot survive without the other, it makes no equivalent statement concerning the British-Irish Council.

The Agreement also

Government making further deals over their heads with the Irish State, and have some prospect of persuading northern nationalists that the new reconstructed Union offers a secure home for them.

The beauty of the Agreement is that both nationalists and unionists have sound reasons for believing

Appendix 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 will be able to expand 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,

procedure can be followed. That, however, will have to be clarified when the transitional Assembly decides its rules of procedure - by cross-community consent! The operation of the cross-community rules will depend on how parties register, but also on how disciplined parties are within the Assembly whence the widespread fears that have been expressed about the discipline and unity of the

Insert Two. The Mysterious Work of Viktor d'Hondt in Belfast.
Viktor d'Hondt is the best answer to the Trivial Pursuit challenge to name a famous Belgian. He was a mathematician who devised a proportional method that is used for many purposes, including allocating political offices according to the shares of seats held by parties in the European Parliament. The method works by iteration, using a simple series of divisors, 1, 2, 3 etc. Rules like this are needed because assembly-persons do not come in convenient fractions.

The table below shows how the allocation works, assuming parties have the seats displayed in Table 2 (above) and assuming all parties are willing and entitled to take their seats. The party with the largest number of seats, the UUP, would get the first Ministry, and then its seat share would then be divided by 2 seat-share. We then look for the next largest number of seats, held by the SDLP, and they. get the second Ministry. In Table 3 below 10 Ministries are allocated. The numbers in square brackets in the M columns indicate the order in which parties win Ministries of their choice, whereas S is the number of seats each party has during each stage of the allocation.

Table 3. The Distribution of Ministries (assuming all parties use their entitlements)

In this scenario unionists are entitled to five Ministries (3 UUP and 2 DUP) and nationalists get five (3 SDLP and 2 SF). If, by contrast, the First Minister and Deputy First Minister decide that there should only be six Ministries then unionists would have three (2 UUP, 1 three

There is only one important ambiguity in the Agreement about how the d'Hondt 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 UUP would start the allocation with 27 seats and the SDLP 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 most reasonable reading of the text, then allocations would proceed as in the above examples.

The d'Hondt rule is also to be used to allocate Committee Chairs and Deputy Chairs. It would be fair to do so with 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 d'Hondt rule will be used to allocate all committee places. I am assuming that that will happen - in which case some committees may not have unionist majorities.

It is also rumoured that the UUP and the SDLP will agree the creation of junior ministers - presumably also to be allocated places on the d'Hondt rule. If so, then every major pro-Agreement party will have most of its members 'having prizes' of one sort or another - something which can only assist the cementing of the Agreement, and will provide incentives for a shift of posture on the part of ambitious 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 mould. Perhaps that is also to the good.