BUILDING GOVERNMENT INSTITUTIONS IN NORTHERN IRELAND

—STRAND ONE NEGOTIATIONS
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—IMPLEMENTING STRAND ONE
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—STRAND ONE NEGOTIATIONS

The Good Friday Agreement was the culmination of almost two years of multi-party negotiations designed to resolve difficult relationships between the two main communities within Northern Ireland, between North and South and between Ireland and Great Britain. The three-stranded approach had already been in use for some time as a format for discussion. The multi-party negotiations in 1997-98 secured Sinn Féin’s reluctant acceptance of a Northern Ireland Assembly, which the party had earlier rejected, as a quid pro quo for significant North-South bodies. Despite the traditional nationalist and republican slogan of “No return to Stormont”, in the negotiations the nationalists needed as much devolution of power as possible if their ministers were to meet counterparts from the Republic on more or less equal terms on the proposed North-South Ministerial Council. Notwithstanding historic tensions between constitutional nationalists and republicans, the SDLP’s success in negotiating a cabinet-style executive, rather than the loose committee structure favoured by unionists, helped ensure there would be a substantial North-South Ministerial Council, as sought by both wings of nationalism.

BUILDING GOVERNMENT INSTITUTIONS IN NORTHERN IRELAND
—IMPLEMENTING STRAND ONE

Though bearing some similarity to the new devolved institutions in Scotland and Wales, those in Northern Ireland are in important respects unique. The existence of the institutions depends on the will of Westminster, but politicians in Belfast were given large discretion in working out the details of the scheme. The number of departments was of great political significance, since on it depended the degree of representation of the four main parties. In return for an arrangement relatively favourable to nationalism, nationalists agreed to a less ambitious array of cross-border bodies. The new departments were created on the basis of careful compromise, with political criteria overriding administrative ones. The balance sheet to date would suggest that, notwithstanding tensions on specific issues, the Executive, the Assembly, and the Assembly’s committees have been working effectively and to the satisfaction of a large portion of the population.

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Steven King is adviser to David Trimble, MP, MLA, and a long-standing commentator on Northern Ireland affairs. He is a columnist with the Belfast Telegraph and honorary secretary of the Irish Association. He has been an Ulster Unionist Party activist for several years. A political science graduate of Queen’s University, Belfast, he has recently completed a doctoral thesis on *Charles J Haughey and the Northern Ireland Question 1957-92* at the University of Ulster.
Traditional Irish republicanism has been crudely if pithily expressed in the slogan, “Six hours, six divisions, six counties”. Traditional unionism was encapsulated by Sir James Craig’s famous phrase, “Ulster is ours: what we have we hold.”

The bitter lesson many have learnt from 30 years of conflict in the North is that the situation is far more complicated than their favourite shibboleth suggests. It is not simply a question of the relationship between the two parts of the island, or between the British and Irish governments, or the two communities in the North, or the Irish government and northern nationalists, or the British and the unionists, or any other bilateral combination. There is a complex set of relationships involved, with constant interaction between the different components.

The beauty of the three-stranded approach was that it simplified and clarified the tasks facing those who wanted to set the conflict on a path towards resolution.

- **Strand One**: Given that Northern Ireland was likely to exist for a considerable time to come and the majority of its inhabitants wished it to continue on a permanent basis, how could it be governed in a way that ensured justice and equality for both sides of the community?

- **Strand Two**: Ireland was a small island divided by a line on a map, so what was the right and proper relationship between its two component parts and how could the unionist desire to maintain the status quo be reconciled with nationalist ambitions for the ultimate achievement of unity by peaceful means?

- **Strand Three**: The British and Irish governments had a close interest in the situation in Northern Ireland but continuing conflict threatened their security, their democratic values and their respective exchequers, so what kind of permanent arrangement could be established between these two sovereign states to facilitate a harmonious relationship between the warring factions in the North and help guarantee a basic level of peace and stability?

II

Twenty years ago the republican Bobby Sands died on hunger-strike. Seven days later his fellow-republican Francis Hughes succumbed. A week after that five British soldiers were killed when their armoured car was blown up at Bessbrook, Co Armagh. Anyone who remembers those days with young men fasting to death or get-
ting blown up, amid the ever-present fear of civil war, would not wish to relive them. I recall WB Yeats's phrase from a previous time of trouble: “The nightmare rides upon sleep.” We should not undervalue the present comparative peace and stability in the North nor should we allow it to make us blasé and complacent about the future. Many people today may not even have been born then and all I can say to them as a member of a generation whose lives were overshadowed by the conflict is “Don’t let the peace slip away”.

The three strands may be a fascinating abstraction but we should never forget that they were rooted in the need to restore and maintain normality in people’s lives and remove the threat of anarchy and civil strife. The terrible example of the Balkans shows how a relatively placid situation can deteriorate rapidly and dramatically into all-out conflict, with tragic consequences for thousands of people. The recent release of state papers in the Republic underlines how close we came to a similar disaster in 1970.

The guiding principle and overarching rubric for the operation of the three strands was the axiom “nothing is agreed until everything is agreed”, and I am fascinated to see this phrase cropping up even in the world of industrial relations these days. Ultimately none of the strands can be separated because they interrelate and interact with one another.

The 1985 Anglo-Irish agreement of course was strictly a strand three operation. But it had and was intended to have implications for strands one and two. A very senior civil servant with a distinguished record in relation to the North described it in Irish as gunna chun cleamhnais. Bluntly speaking, it was the shotgun for a shotgun wedding between nationalists and unionists. We all remember now the years of “Ulster says no” and mass unionist protests against “the hated Anglo-Irish diktat”. Happily Her Majesty’s Government—whatever other compromises it may have made—did not retreat on the fundamental principle that representatives of Dublin would have a presence in the North and an oversight of how the place was governed. Critically, the Irish civil servants remained in their so-called “bunker” at Maryfield, on the outskirts of Belfast.

The three strands were a central feature of the Brooke-Mayhew talks of 1991-92. Seen in the light of events at Castle Buildings six years later, these talks appear like a mere curtain-raiser, the minor match preceding the Big Game. While the political associates of the paramilitaries waging war on the ground were not invited to attend, nevertheless certain unwritten taboos were broken. Irish ministers came to Stormont to talk across the table with unionist representatives and the unionist leader James, later Lord, Molyneaux led a delegation to Dublin Castle to discuss North-South relations. The fact that the Brooke-Mayhew process failed to bring about a resolution of the conflict was hardly surprising, since key parties to the conflict were absent, but the talks laid the groundwork for the later and more successful encounter in Castle Buildings.

Leon Trotsky wrote somewhere that if he had not been in Russia in 1917 the revolution would still have taken place, but without Lenin it could never have happened
at all. It is hard to find similarities between Lenin and Mr Albert Reynolds but you have to ask yourself, if he had not come on the scene as Taoiseach in February 1992 would the republican and loyalist paramilitaries ever have been brought in from the cold? The Downing Street Declaration of December 1993, despite the ambivalent public response it received from the republican side, was the key vehicle for this. Every schoolchild knows how it led to the IRA and loyalist ceasefires and eventually, after many ups and downs, to the formal opening of multi-party talks in June 1996, followed by the arrival of Sinn Féin at the negotiating table over a year later on 10 September 1997. The initial breakthrough came two weeks afterwards, on 24 September, when unionists, loyalists, nationalists and republicans agreed to launch discussions based on the three strands.

The Irish Minister for Justice, John O'Donoghue expressed the new mood of optimism that night when he declared: “It is no exaggeration to say that a ray of light shines across the entire island of Ireland and will lift the hearts of all its inhabitants.” In the short term, his optimism was a little misplaced. Even on the day that this agreement was reached there was a hiccup or two. The unionists and loyalists wanted reassurance on the decommissioning of paramilitary weapons and on the principle that Northern Ireland’s constitutional status could only change with the consent of a majority of its inhabitants. It seemed that these obstacles had been overcome, but there was a late difficulty with the SDLP which meant that final agreement was only reached at a meeting in their party rooms at Castle Buildings involving the UUP and the loyalist parties. Sinn Féin had been getting the lion’s share of media attention on the nationalist side but now the SDLP was flexing its muscles and demonstrating that (a) there could be no agreement without them and (b) there could be an agreement without the direct involvement of Sinn Féin.

Recalling these events afterwards, republicans said privately that they had wanted to get into the talks much earlier than September 1997: the Canary Wharf bomb of February 1996 may have ended the ceasefire but Sinn Féin was anxious to return to the political process as soon as possible. It was 15 months before they made it, by which time the “sufficient consensus” rule for decision-making had been agreed among the other parties, which meant that agreements did not require the formal consent of Sinn Féin. Politically it was a serious setback for Adams and company.

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1 “The talks had the purpose of achieving a new beginning for relationships within Northern Ireland, within the island of Ireland and between the peoples of the two islands, and to agree new institutions and structures to take account of the totality of relationships: those within Northern Ireland (to be addressed by Strand One of the negotiations); those within the whole island of Ireland (Strand Two); and those between the two Governments and the two countries more generally (Strand Three)” —Northern Ireland Office website, http://www.nio.gov.uk/ptalks.htm [2000-06-12].

2 The rules of procedure agreed in Sinn Féin’s absence laid down that “A proposition would be deemed to have sufficient consensus when supported by participating political parties which, taken together, shall have obtained a majority of the valid votes cast in the elections held on 30 May 1996 and which between them represent a majority of both the unionist and nationalist communities in Northern Ireland respectively and which also constitute a majority of the participating political parties.” Since the SDLP had obtained a majority of nationalist votes cast in the Forum elections, Sinn Féin’s support was not required for sufficient consensus to be achieved.
and a price would be paid further along in, for example, the talks on setting up the cross-Border bodies over a year later.

III

The period from then until the end of 1997 has received little attention by comparison with the first three or four months of 1998. It was a highly-significant time although most of the important events took place behind closed doors. In the first place, there was a split in the IRA. People like to quote the writer Brendan Behan’s quip that the first item on any republican agenda was always a split, but the Provisionals had remained essentially united since they were born out of the rift with the Official IRA in late 1969. Even the political breakup in 1986 over abstentionism which led to the formation of Republican Sinn Féin seemed to have little or no implications at paramilitary level at the time although we would see the eventual emergence of the Continuity IRA, which first came to public notice after the 1994 ceasefire by the Provisionals.

The activities of the republican movement are perpetually shrouded in mystery but we are told that there was a convention in Co Donegal in October 1997 where, according to my information, the peace strategy was challenged by dissidents but the majority of those present decided to support the existing leadership. Although the number of resignations was said to be quite small, they included some very experienced paramilitary activists including the Provisional IRA’s quartermaster general. Thus was born the Real IRA and, had we but known it, the foundations for the Omagh bomb tragedy of August 1998 were laid at that time. Remember that, on entering the talks in early September, Sinn Féin had signed up to the Mitchell Principles of democracy and non-violence, including a commitment to “exclusively peaceful means” and the “the total disarming of all paramilitary organisations”. This was such a sensitive matter that an IRA representative had to give a highly-controversial interview to the Sinn Féin paper An Phoblacht disclaiming any responsibility for but not actually denouncing these gestures by the movement’s political wing.

So it was a difficult time for the Sinn Féin leadership, with relatively little room to manoeuvre. Meanwhile the multi-party talks had been going on since June the previous year with little or nothing to show for it. The credibility of the entire process was at stake. The SDLP was becoming impatient and, on the unionist side, there was so much opposition to the presence of republicans in the talks that Trimble and his lieutenants would not even say “Hello” to Sinn Féin in the corridors, much less negotiate with them face-to-face. There was the amusing incident where a unionist delegate, in order to avoid making small talk with the Sinn Féin president, actually retreated into a cubicle in the men’s room and locked the door, thereby provoking the Adams quip, “Now that’s what I call a siege mentality.” The atmosphere at Castle Buildings was heated and the talks chairman, George Mitchell, recalls in his book, Making Peace (Mitchell, 1999) how he appealed to the parties to “moderate their words” because inflammatory rhetoric only hampered the task of reconciliation. It was an early example of the former US Senator’s conciliatory role and his
efforts to introduce a note of civility where there had previously been only bitterness.

Mitchell recalls that a consensus developed among all the participants to the effect that a list of key issues needed to be drawn up—essentially the detailed agenda for the talks. The talks were unwieldy, with about 50 or 60 people around the table, so Mitchell set up a working group at the beginning of December 1997 consisting only of the party leaders and their deputies. He recalls that there was a meeting of minds between the SDLP and the Ulster Unionist Party. A list of issues was set down on paper: the unionists later insisted this was a hard and fast agreement but the SDLP disputed this interpretation. Sinn Féin was not yet ready to accept a Northern Ireland Assembly, although Martin McGuinness had indicated publicly he was prepared to discuss it along with everything else including the union with Britain. Whatever its formal status, the list drawn up between the SDLP and the UUP did include an assembly—but not in any format or context that appealed to Sinn Féin, which was feeling the heat from its dissidents at the time.

Critically, the Irish Government did not go along with the agreed list out of concern that Sinn Féin would walk out of the talks. This was a daring political move which was not appreciated by everyone in the SDLP. Some in that party were already peeved at the way Dublin and London appeared to be developing a relationship with Trimble in parallel with and outside the talks.

I can still clearly remember the black day of December 16th at Stormont when it was clear that the talks were breaking up for Christmas without agreement and with little apparent reason for optimism. It has since emerged that Downing Street, reflecting Prime Minister Tony Blair’s concern at the lack of momentum in the talks, had begun even before Christmas to draft a document which, following intense consultation with Dublin and the other parties, saw the light of day on 12 January as the *Propositions on heads of agreement*.

**IV**

In classic Irish republican theory, which regarded the North as an illegitimate “statelet” and “failed political entity”, there was no place for Strand One or an elected six-county assembly. But the Propositions Document, as it was called, made clear that, just because republicans had come into the talks, this did not mean Strand One was going out. The assembly was listed bluntly and emphatically as an element of any proposed agreement. There were items of comfort for republicans, but the broad thrust of the document was such as to reassure unionists and persuade them to stay in the talks. Small wonder that a senior republican negotiator reportedly “had to be tied down” and that there were reports also of growing anger among the republican grassroots, already disturbed by a wave of loyalist counter-assassinations which followed the murder of the dissident loyalist leader, Billy Wright, at the end of the previous month. An interesting and creative new dimension was the British-Irish Council, a forum for all the parliaments and assemblies of
these islands, which was seen as a gesture to the unionists to counterbalance the proposed North/South Ministerial Council and allied agencies.

Painful as it was, republicans had to swallow the concept of an assembly, as their more farsighted leaders must always have known they would be obliged to do. The debate then took a curious and interesting turn. Whereas one of the traditional republican and broad nationalist slogans over the years had been “no return to Stormont”, it gradually began to emerge that nationalists needed a strong governmental institution in the North in order to ensure that the North/South Ministerial Council would have real substance. Nationalists wanted a Scottish-style assembly with legislative powers but unionists favoured the Welsh administrative model. Nationalists in turn wanted a cabinet-style structure so that fully-fledged ministers would meet at council level with their counterparts from the Republic; unionists proposed a system of assembly committees whose chairs would meet only occasionally to agree budget allocations.

Thus Strand One and Strand Two were crucially interlinked. Republicans had taken an arm’s length approach to Strand One and, anyway, the unionists would not talk to them about this or anything else. It was left therefore to the SDLP to make the deal on which so much else depended. As we move forward into Holy Week at Castle Buildings, we find the UUP and SDLP edging towards a deal in Strand One for a power-sharing cabinet administration in the North. The one major problem was the stance of the unionist MP for Lagan Valley, Mr Jeffrey Donaldson, who had become very involved in the negotiations since Christmas and was vehemently opposed to concluding an agreement unless there was prior decommissioning of weapons by the IRA. He had to be got out of the way and he was: sidetracked to a meaningless discussion with the Irish Attorney General, David Byrne, about constitutional issues which had already been agreed. In his absence, the two main parties rapidly reached agreement and when Seamus Mallon returned to his party’s offices with the glad tidings he received an embrace from his colleague Brid Rodgers which was famously recorded in silhouette by the television cameras.

Sinn Féin, which had been so reluctant to become involved in strand one with all its unhappy associations, now benefited from the agreement between the UUP and SDLP that ministers in the new administration would have real clout. It all happened very quickly and was consummated with considerable adroitness under the overall direction of Prime Minister Blair and the Taoiseach, Bertie Ahern. By the time conservative elements in the unionist delegation realised what was happening, it was too late. I have chronicled elsewhere the encounter between the republican leader, Martin McGuinness and the Taoiseach’s adviser, Dr Martin Mansergh where McGuinness enquired what was the problem with the unionists; he had heard it was “this, this and this”. Dr Mansergh replied half-humorously, “It’s you, Martin”, and went on to explain how it was gradually beginning to dawn on the unionists that they would have to go into government with Sinn Féin (de Bréadún, 2001: 136).
V

This is not the occasion to deal with the difficulties and obstacles in the implementation of strand one as part of the Good Friday agreement but I should like to finish by drawing some conclusions. One of the surprising aspects of the negotiations was the manner in which a strong six-county assembly became critical to nationalists and even republicans—although they could not always admit it, much less boast about it. Of course no nationalist would have wanted any such body if it were conducted under the old rules. It was crucially important that the new assembly should be imbued with the culture of equality which had been developing in the North and was already being reflected in legislation introduced over the years and in the Sinn Féin equality agenda, which was important in bridging the gap between the ultimate demand of republicans for a unitary state and the day-to-day situation of nationalists on the ground.

The way the cabinet structure fitted in with the nationalist agenda for a meaningful and substantive relationship between North and South was also quite telling. Standing back from it, can we even draw the formerly heretical conclusion that a strong Northern Ireland with weighty institutions run on the basis of equality and sufficient consensus is good for nationalists and likely to lead to a merger with a strong southern state at some stage; whereas a weak “province” with token governing bodies favours unionists and may even reflect a tendency towards psychological withdrawal into a new enclave of North-East Northern Ireland?

It was also quite telling how despite their rivalry, the SDLP success in the strand one negotiations also benefited Sinn Féin. Whereas republicans have tended to view constitutional nationalists as a danger to their cause because their demands were more moderate, in this case the achievement of the moderate nationalist demand for an internal power-sharing cabinet contributed to achieving the aspiration for a substantial North/South Ministerial Council, which was shared by nationalists and republicans alike.

REFERENCES


It is not my intention here to probe the decommissioning/devolution debate as it has evolved over the last three years or to give the Ulster Unionist interpretation of those events. Instead, I want to deal with the mechanics of government: how we turned what is essentially a political document—the Belfast agreement—into a devolved administration in Northern Ireland. I want to do this with reference to the parallel—but not congruent—devolution to the Scottish Parliament and the National Assembly of Wales. Hopefully, by examining strand one of the Belfast agreement in this way, we can reach some conclusions about what devolution to Stormont represents—and does not represent—constitutionally and politically for the United Kingdom state. Subsequent lectures in the series will hopefully elucidate what the agreement means for British-Irish, North-South and European relations.

In the 1997 General Election in the UK, one of the key distinctions between the Labour and Conservative parties was their attitude to devolution. Unlike the Conservatives, Labour was committed to referenda on devolution in Scotland and Wales, and to an examination of devolution within England. Both parties were, however, committed to devolution to Northern Ireland in the context of a political agreement arising from the talks process begun in 1996.

Progress as far as Scotland and Wales were concerned was rapid. Referenda endorsed the devolution arrangements proposed by New Labour in September 1997 within six months of Tony Blair coming to office, in the Welsh case by a very narrow margin. Devolution did not become a reality for Scotland and Wales until 1 July 1999, though, more than 21 months later.

In Northern Ireland the timescale was shorter. The referendum of May 1998 was followed the next month by elections to a new assembly. The devolution of powers occurred on 2 December 1999, just 18 months later. Regardless of the arguments about when devolution to Stormont should have occurred, therefore, in the context of the devolutionary project in the UK we did well.

The second thing to say is that Northern Ireland has a comparatively large assembly, with 108 members representing 1.7 million people, whereas the Scottish Parliament has 129 members for five million people and Wales just 60 members to represent 2.5 million. While Northern Ireland’s devolved institution must, necessarily, accommodate a very wide range of political perspectives, we are somewhat over-represented. The cost of resourcing 108 members has been a significant popular criticism of the institution and it will be necessary to examine the size, powers and structure of local government as well as the unelected boards and agen-
cies which flourished under direct rule. Interestingly, though, all 297 of the devolved MSPs, AMs and MLAs are white (just as all the members of the Dáil are white), which raises a question about how “inclusive” we have actually managed to be.

II

While the structures for the Scottish and Welsh administrations were decided at Westminster, those for Northern Ireland were delegated to the First and Deputy First Ministers, David Trimble and Seamus Mallon, who were elected at the new assembly’s first meeting on 1 July 1998. As well as agreeing the number of posts and the distribution of executive responsibilities between those posts, the First Minister and Deputy First Minister were charged with preparations for the North/South Ministerial Council, the British-Irish Council and the consultative Civic Forum.

Agreement on these matters was finally reached and the First Minister and Deputy First Minister’s report was approved by the Assembly in February 1999. The agreement had spoken of up to 10 ministers with departmental responsibility as well as the First Minister and Deputy First Minister. But Northern Ireland under direct rule had just six departments. The nature of the d’Hondt system of allocating ministerial portfolios meant that different numbers of departments—and consequently ministers—had considerable political implications. The different permutations are set out in table 1.

Table 1: Distribution of executive seats by size of executive

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Note: The figures under each party are quotients resulting from d’Hondt calculations. Abbreviations and Assembly seats: UUP—Ulster Unionist Party (28 seats); SDLP—Social Democratic and Labour Party (24); DUP—Ulster Democratic Unionist Party (20); SF—Provisional Sinn Féin (18).
As may be seen, even numbers of ministers—6, 8 or 10—always produced equal numbers of nationalists and unionists, while odd numbers—7 or 9—created a unionist majority on the Executive. If the anti-agreement unionists—who fought the Assembly election together—had formed themselves into one technical group in the Assembly all the permutations would have resulted in a unionist majority. Moreover, importantly in unionist eyes, 6 or 7 ministers meant only one Sinn Féin minister while 8, 9 or 10 meant two. Nationalists desired equality, but only 10 ministers created an SDLP majority over Sinn Féin. Thus the argument, such as it was, was between 6 ministers (only one Sinn Féiner and equal numbers of nationalist and unionist ministers) or 10 ministers (two Sinn Féiners but an SDLP majority). Political expediency meant that 10 was preferred but the SDLP were required to pay a price in terms of the number and scope of cross-border implementation bodies. The agreement had spoken of at least six bodies and unionists were determined to keep it at six although a separate tourism agency was created as well.

It is important to note that the discussions on departments leading to agreement on 18 December 1998 was informed wholly by political—rather than administrative or policy—considerations, just as the negotiation of strand one leading to the Good Friday agreement was almost solely informed by political considerations. How many departments Northern Ireland actually needed was not a factor.

Only once the figure 10 had been arrived at did the UUP and SDLP turn to what areas of responsibility each department should have. There are some curiosities: the wonderful Laganside development of Belfast falls under Social Development rather than under Regional Development or Enterprise, Trade and Investment, for instance, while the Fire Authority seems a strange adjunct to the responsibilities of the Minister of Health and Social Services.

If the 18 December agreement represented a maximalist conclusion on departments and a fairly minimal one on cross-Border implementation bodies, the First Minister and Deputy First Minister decided to ignore the clause of the agreement raising the possibility—though not the certainty—of a Department of Equality. The UUP had been resistant because our intention all along had been to take an economic portfolio as our first choice under d'Hondt. Responsibility for equality—a key area of dispute between nationalists and unionists—would then be open for a nationalist to take and given that we knew the SDLP had an equal interest in an economic portfolio, open to Sinn Féin.

However, it was only when the UUP raised the possibility that the DUP—who had a pick of portfolios before Sinn Féin (in the pages of the Irish Times, incidentally)—might take Equality before Sinn Féin could lay hands on it and take a minimalist interpretation of equality, the SDLP retreated and responsibility was allocated to the Office of First Minister and Deputy First Minister, thereby, hopefully, mainstreaming equality of opportunity throughout the administration.
III

Whatever the number, name and responsibilities of each of the departments, legislatively the structure builds upon that of the Northern Ireland Constitution Act 1973 and before it, the Government of Ireland Act 1920. The distinction between transferred, reserved and excepted powers is preserved. Moreover, the list of excepted matters for which the Assembly cannot legislate is in the control of Westminster, as is the Northern Ireland Act 1998 itself. As regards reserved matters such as criminal justice and policing, they can be legislated for by the Assembly only with the consent of the Secretary of State and, occasionally, with the permission of Westminster; or, by Westminster alone; or, by becoming a transferred (devolved) matter by way of Order-in-Council at Westminster and with the cross-community consent of the Assembly.

In Scotland, however, non-devolved matters (those which in Northern Ireland are exclusively excepted to Westminster) can be devolved via legislation at Holyrood and Westminster. The powers of Holyrood are, therefore, much more open-ended than those of Stormont. While Scotland might be in a quasi-federal relationship with Westminster, Stormont is most definitely not—hence, perhaps, the distinction between the Scottish Parliament and the Northern Ireland Assembly.

Although Irish nationalists might like to conceive of the Assembly being sovereign at least in terms of the matters it explicitly deals with, this is not the case. Not only is the power to make law for Northern Ireland retained by Westminster but Westminster alone is in charge of what the Assembly may legislate on, unlike in the Scottish case. While the people of Northern Ireland might be, for all intents and purposes, sovereign with regard to the question of which state we belong to, our Assembly has no sovereignty. This was, of course, demonstrated when the Assembly and Executive were suspended in February 2000. That the Scottish Parliament could be similarly suspended is unthinkable.

IV

Returning to the structure of government departments in Northern Ireland, there is a broader implication for the nature of government action than the decision not to create a separate Department of Equality. The Departments, whatever their names, are not thematic. The Department of Health for instance provides certain services and has certain functions. It deals with the curing of illness. It has responsibility for a Health Promotion Agency, but health is the product of many factors such as living standards, lifestyle, housing, road safety, diet and so forth. Bairbre de Brún can decide how many hospitals there are, for instance, but improving the health of people in Northern Ireland (which is pretty poor by UK standards) is only quite partially within her remit.

The problem is made even more acute by the fact that the Executive is made up of four very different parties. The degree of collegiality is not what it would be in a single-party government or even a coalition like that which exists in Scotland or Wales.
or in the Republic. Moreover, one party, the DUP, operates on a semi-detached basis and was always likely to do so, at least initially—a likelihood expressly acknowledged in the agreement by the provision to send alternative ministers to North-South meetings if an individual minister refused to attend.

The prospect of individual fiefdoms was recognised in the agreement in the pledge of office, requiring ministers to participate in the preparation of a programme for government and to operate within the framework of that programme (which the DUP have done at arm’s length despite their denials). However, the Northern Ireland Act went further than the agreement by creating the Office of the First Minister and Deputy First Minister, which is a government department and not just a clearing-house for the two respective office-holders. As well as equality (as already mentioned) it has responsibility for relations between the Executive and external bodies and, crucially, cross-departmental co-ordination. Whether the Northern Ireland Act 1998 fully and accurately represents the agreement's spirit of an administration which is as much cabinet government as it is ministerial government is debatable, however.

Furthermore, the Office of First Minister and Deputy First Minister has two junior ministers within it with remits for economic policy and equality, another provision not in the agreement itself but contained in the Northern Ireland Act. The decision to create these two posts and allocate them to the UUP (Dermot Nesbitt) and the SDLP (Denis Haughey)—and not to the DUP and Sinn Féin—illustrated that while the Executive might have the appearance of inclusivity, it has a central core based around the more moderate unionist and nationalist parties respectively. That position was confirmed by the decision of the First Minister and Deputy First Minister and voted through the Assembly by UUP and SDLP votes that the statutory committee scrutinising their department would be constrained as to the areas it can probe. Most importantly it prevents the committee, containing as it does both DUP and Sinn Féin members, from inquiring as to the First Minister and Deputy First Minister's and the Executive's negotiating positions vis-à-vis the North/South Ministerial Council and the British-Irish Council.

Another distinction between the Act and the agreement is in relation to the departmental statutory committees. The committees are much more powerful than those at Westminster or in Holyrood, Cardiff or in the Dáil, which have powers of scrutiny only. They have a policy development role as well as the power to initiate legislation and to take the committee stage of bills. Not anticipated in the agreement, however, was the provision that the chair of each committee should come, where possible, from a different party from the departmental minister. This is intended as a check on the Executive and a further safeguard against ministerial fiefdoms and departmental silos.

The committees became the focus of attention in the initial period of devolution when the Minister of Health decided in favour of allocating maternity services in Belfast to the Royal Victoria Hospital in her own West Belfast constituency while the Health Committee had opted for siting it at the City Hospital in South Belfast, a mixed area. A blow was dealt to the spirit of co-operation between ministers and
their committees envisaged in the agreement, even if the minister was technically within her rights. Since then, the Executive has agreed that it will operate on the basis of consensus. Moreover, while the minister’s decision was subsequently overturned in court, she could decide on a site but only resource it with the Assembly’s approval. I think all parties would agree that it was not the new institution’s finest hour but that in the second period of devolution a greater atmosphere of collegiality has existed between the parties, the first period always having a sense of unreality and transience about it.

A quite different check on the Assembly and Executive is the Joint Ministerial Committee. This is a consultative, not executive, body dealing with consideration of non-devolved matters which impinge on devolved responsibilities and vice versa. Its effect is to co-ordinate policy across the UK. It is a further centralising check on the devolved assemblies over and above the Westminster Parliament itself. It can be seen as an attempt to partially claw back to London some of the power given away to the regions. Its existence is further proof that the UK is not developing in a federal direction, at least as far as Northern Ireland is concerned. How the JMC operates in the circumstance of a Conservative government at Westminster and a Labour-led administration in Holyrood, however, could have implications for the future shape of government in the UK. While we might have devolution “all round” in the sense of devolution to Scotland, Wales and Northern Ireland, it is on the basis of variable geometry and the likelihood of the UK becoming federal or even properly quasi-federal—“devolution all round” as it was envisaged by some a century ago—is remote.

It is possible at this stage to come to some tentative conclusions. First, while the implementation of strand one was informed by devolution to Scotland (the Northern Ireland and Scotland Acts received Royal Assent on the same day), the nature of devolution to Northern Ireland is quite different and does not suggest a federal arrangement. Moreover, the Assembly does not have tax raising powers other than to determine the regional rate. Second, the size of the Assembly—and the very existence of a provincial legislature—has implications for the size and functions of local government and the quango structure. Unwittingly, the Conservatives pre-empted devolution in Scotland and Wales by reforming local government there in the early 1990s by moving to unitary authorities. Third, the structures of government have been devised according to political, not administrative or policy, requirements. Fourth, the all-inclusive consociational structures envisaged by the agreement have not materialised, with a UUP/SDLP axis emerging instead. Fifth, the relationship between the Assembly and ministers, between ministers themselves, and between ministers and their statutory committees has been resolved to some degree but the source of real power is opaque.

It is that fifth point—the obscure nature of power—which might have to be looked at when the Assembly is reviewed, as it must be under the agreement alongside all the other institutions. Many unionists had doubts about the workability of the new
structures at the time of the referendum. They believed it was programmed to gridlock and fall. Indeed, the history of similar experiments in other countries such as Cyprus and Lebanon is not a happy one. However, whatever the disagreements—principally amongst unionists—about the agreement, there is broad popular support for the Assembly as an institution, with unionists and nationalists believing that its existence has a positive effect on the economy and a belief that were it to collapse the effect on living standards and the prospects for peace would be very negative indeed.

There has been a spirit of co-operation between the parties within the Assembly and the Executive, even if disagreements remain sharp about wider questions regarding implementation issues. Even the DUP have engaged with Sinn Féin on the Assembly committees and their ministers are working within a Programme for Government devised with Sinn Féin input. For many unionists, Sinn Féin in government even if decommissioning had begun is akin to the serpent entering the Garden of Eden, but there is at least a sense that if decommissioning could be resolved the institutions for all their cumbersome nature could work, albeit they could be improved with some refinements to make collective responsibility stronger.

There is a sense, then, that the Assembly has worked. Perhaps a proper judgement should wait until we see its effects on living standards over, say, five years or its effects on mortality rates or on housing conditions or whatever. But, even in the absence of full DUP co-operation, a legislative programme, a budget and a programme for government have been devised and approved. It would be helpful if some unionists concentrated on the benefits of nationalists and republicans having to take responsibility for Northern Ireland rather than the “immorality” of Sinn Féin in government—but that change of perspective is slowly coming, I believe.

The Assembly has not been overburdened with legislation and much of what it has had to deal with has been concerned with keeping parity with the rest of the Kingdom: no bad thing in unionist eyes. The Civic Forum—albeit not technically an institution—has been low profile thus far too. Moreover, the funds simply do not exist for all the populist measures Holyrood has been able to adopt.

However, while implementation of strand one has placed strains on relationships, three years later all the parties are still “in”, a remarkable feat for a Northern Ireland institution in the context of the last 30 years. Parties such as Sinn Féin and the DUP do operate as government and opposition simultaneously, by voting against the budget agreed at Executive level, for instance. That happens too at a lower level with UUP and SDLP members of committees deviating from lines that they are subsequently whipped into accepting on the floor of the house. But, for all that, Northern Ireland does have an administration—I hasten to add not a “government”—which is providing some palliative relief from the troubles.

Perhaps one of the best things to happen for the Assembly—every cloud has a silver lining—has been the foot and mouth outbreak. The Agriculture Minister—whatever the criticisms made of her Department in the Republic—is widely believed to have made a good fist of the crisis. The ability of the Executive to develop its
own regime of controls distinct from mainland UK is widely appreciated and understood, even by anti-Agreement unionists.

The Assembly and its structures were conceived according to political priorities. It is appropriate, therefore, that it be judged politically. It should not be judged according to whether it represents a particularly democratic or efficient form of government which it probably does not, even if it is a superior one to direct rule. It does give Northern Ireland’s divided society an alternative locus, and the possibility of lifting the political debate above issues of nationality. Undoubtedly, the strand one institutions are more highly regarded by nationalists than by unionists, even if the Assembly sits at Stormont.

However, if the institutions provide nationalists with an alternative focus for their affections, that is to the benefit of unionists in the long-term. It is well known that Seamus Mallon has difficulty pronouncing the words “Northern Ireland”. It is less well known that Brid Rodgers occasionally refers to the Government of the Republic as “the Irish”. If Northern Ireland through its institutions—if not as a concept—can attract the loyalty of nationalists, if it can pull itself out of the economic quagmire the troubles drove it into, if it can be seen to deliver to nationalists as well as unionists, it has a rosy future. The institutions might not be perfect, they might not be working perfectly, but those who would say Northern Ireland is a “failed political entity” are very few indeed these days. Northern Ireland has not just the recognition of the Irish state but it has a degree of cross-community popular legitimacy. Whatever yesterday’s census finds or does not find, therefore, unionists can look into the third century of the Union with a degree of certainty that did not exist in 1972 or 1985 or even 1993. Someone was quoted in the Irish Times after the agreement as saying “Ulster is dead, long live Northern Ireland”. Whoever it was might not have been too far wrong.