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Source: *British Journal of Political Science*, Apr., 2002, Vol. 32, No. 2 (Apr., 2002), pp. 193–220

Published by: Cambridge University Press

Stable URL: https://www.jstor.org/stable/4092216

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Explaining the Northern Ireland Agreement: The Sources of an Unlikely Constitutional Consensus

DONALD L. HOROWITZ*

Advocates of one or another set of institutions for new democracies have typically neglected the question of adoptability. The omission is especially evident in institutional prescriptions for the reduction of ethnic conflict in severely divided societies. These have been advanced with little regard for obstacles likely to be encountered in the process of adoption. Yet adoption is problematic. Processes of negotiation and exchange open the possibility of mixed outcomes reflecting the asymmetric preferences of majorities and minorities. The Northern Ireland Agreement of 1998, however, is a glaring exception, for it produced institutions that are intended to be clearly and consistently consociational. An examination of the process by which the agreement was produced suggests that the coherent outcome in Northern Ireland was the result of some very special conditions conducive to a consensus on institutions that spanned party lines. These conditions are unlikely to be widely replicable, and the fact of consensus does not imply that the agreed institutions are apt for the divided society whose problems they are intended to ameliorate.

There are two main approaches to interethnic conciliation in severely divided societies that operate along democratic lines. One approach is for those ethnically-based parties most willing to compromise to join together and, by joining, to fend off the uncompromising extremes. The other approach is to include the extremes in a dispensation that aims to sap the conflict of its vitality by providing an opportunity for those who have opposed the prevailing system of ethnic politics to participate in transforming it. The first approach attempts to marginalize the extremes by displaying to the public the benefits of compromise. The second aims to co-opt the extremes and include them as participants in and beneficiaries of compromise.

The inclusive second approach is more ambitious than the first, for it is premised on a desire to put the conflict to rest, if not to end it altogether. For this, the participation of those who pursue the conflict most vigorously, often

by force of arms, is judged to be necessary. By contrast, the approach of the compromising middle usually assumes that progress on the conflict will be incremental and that the continuing appeal and opposition of the extremes will be a constraint on the ability of each side to compromise. This approach aims at multi-ethnic government without sacrificing the principle of majority rule. The other approach aims at an inclusive multi-ethnic regime by dispensing with the idea of government on one side and opposition on the other.

The Northern Ireland Agreement of 1998 constitutes a decisive shift from the first mode of conciliation to the second. Previous attempts at conciliation, most notably the 'power-sharing government' of 1973–74, had been premised on the assumption that moderate unionists and moderate nationalists should join together against those who were unwilling to co-operate with the other side. Previous attempts having been deemed to have failed, the parties that consummated the Good Friday agreement opted, perhaps paradoxically, for the more maximal, more inclusive approach.

The agreement produced in Belfast is strongly consociational. It provides for a grand coalition, power sharing by proportional inclusion of parties in the executive, a certain amount of cultural autonomy (particularly in education and language), and group vetoes to assure Protestant and Catholic communities that important decisions will only be made with the broad consent of representatives of the relevant community.[1] The agreement is lush with group guarantees of the sort advocated by proponents of the consociational approach to ethnic conflict management[2] – so many, in fact, that the agreement is capable of fostering immobilism in a crisis. Yet in two ways the agreement departs from what has become the standard consociational prescription.

The first respect in which the agreement departs from consociational theory relates to group vetoes. In order 'to ensure key decisions are taken [in the Assembly] on a cross-community basis', those 'key decisions requiring cross-community support' require either 'parallel consent', meaning that they are supported by majorities of both unionist and nationalist delegations, or 'a weighted majority', defined as comprising at least 60 per cent of all members voting, plus at least 40 per cent 'of each of the nationalist and unionist delegations' voting.[3] In order to ascertain whether these requirements have been met, all members of the Assembly must, at the outset, declare themselves to be 'nationalist, unionist or other.'[4] Consociational theory assumes that, in conflict-prone polities, political parties generally represent the groups in conflict, but it generally does not require that they do so.[5] Consociational

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[1] See Brendan O'Leary, 'The British–Irish Agreement: Consociation Plus' (unpublished paper, London School of Economics, 13 May 1998).

[2] See, for example, Arend Lijphart, *Democracy in Plural Societies* (New Haven, Conn: Yale University Press, 1977).

[3] Agreement Reached in the Multi-Party Negotiations, Strand 1, art. 5 (10 April 1998).

[4] Agreement, art. 6.

[5] Responding to the objection that consociational guarantees might entrench ethnicity and make it more difficult to overcome ethnic divisions, Arend Lijphart has made it clear that it is up to the political parties to decide whether and when to declare any group affiliation. The 'segments,' he says, can 'define themselves' (Arend Lijphart, *Power-Sharing in South Africa* (Berkeley: University of California Institute of International Affairs, 1985), pp. 68–9).

practice, by contrast, has sometimes provided groups with explicit recognition and made their representatives the bearers of explicit group guarantees. The Northern Ireland Agreement is firmly in the latter category.

Obviously, this method of enforcing group vetoes makes it more rewarding to be a member of one of the two named communities and puts pressure on those politicians and parties aiming to be multi-ethnic or nonethnic – in Northern Ireland, the Alliance party and the Women's Coalition. If, in a crisis, one of those parties should wish to block an ill-conceived measure and could only do so by declaring a unionist or nationalist affiliation, it would be put to the choice of risking a split in its ranks or forgoing the exercise of a power conferred on those who have declared their affiliations. By disadvantaging unaffiliated legislators, the agreement violates their interest in pursuing politics in their own way on terms of equality with other political actors. There may be serious questions about whether disadvantages conferred on legislators who are neither unionist nor nationalist conform to the nondiscrimination requirements to which the United Kingdom government is subject.[6]

The second departure from consociational prescriptions concerns the electoral system. Consociationalists generally prefer list-system proportional representation, in order to attain thoroughly proportional legislative delegations of parties representing the various groups, so that power and position can be allocated proportionately. As consociational arrangements are premised on 'a cartel of elites',[7] list-system PR is preferred also because it is thought to give central party leaders considerable latitude to enter into intergroup compromises.[8]

On both counts, the single transferable vote (STV), adopted for Northern Ireland, is not a perfect fit. In a situation of party proliferation, the likelihood that some seats will be won on vote transfers – that is, on lower-order preferences – creates at least the possibility of disproportional outcomes if proportionality is measured by first preferences of voters.[9] The fact that STV is a constituency-based electoral system also means that, unlike national-list PR, central party officials need to share authority with representatives elected at the constituency level, for local electorates will wish to support candidates who are

[6] See Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5, 4 November 1950, Article 14; and Protocol No. 1, ETS No. 9, 20 March 1952, Article 3. The Convention prohibits discrimination on grounds of political opinion, among other things, and the Protocol guarantees free elections that 'ensure the free expression of the opinion of the people in the choice of the legislature'. Read together, the two provisions might render problematic the differential treatment of legislators who are neither declared unionists nor nationalists.

[7] Arend Lijphart, 'Consociational Democracy', *World Politics*, 21 (1969), 207–25.

[8] For a critique of the consociational assumption that ethnic group leaders are likely to be more enlightened than their followers, see Donald L. Horowitz, 'Self-Determination: Politics, Philosophy, and Law', *NOMOS*, 39 (1997), 421–63, p. 439.

[9] That is not to suggest that proportionality should be judged on the basis of first preferences alone. See Burt L. Monroe, 'Fully Proportional Representation', *American Political Science Review*, 89 (1995), 925–40.

familiar and congenial to them. Constituency elections also open the possibility that electorates that oppose interethnic compromise will be able to blunt the accommodative efforts of cartels of central party leaders.

Of course, the occasional need of candidates to rely on vote transfers for the margin of victory opens the possibility of agreements between moderate parties of the respective groups to exchange preferences and bolster moderate candidates across group lines. This propensity, however benign from the standpoint of other theories of the electoral foundations of interethnic accommodation,[10] would, if it came to pass – which, in the event, it did not – support the position of the middle at the expense of the extremes. If so, it might well derogate from the proportional inclusion of all parties that is so central to consociational thinking. If, to secure the advantage of vote transfers and compete more effectively with other parties, parties representing unionists and nationalists went one step further and created a pre-election multi-ethnic coalition, such a less-than-maximal coalition would be consistent with multi-ethnic majoritarian government but thoroughly inconsistent with the inclusive, anti-majoritarian design of the grand coalition. These variable possibilities raised by STV are thus at odds with predictable ethnic representation and the all-embracing coalition cherished by consociationalists.

Despite these deviations from consociational theory, the main thrust of the Northern Ireland arrangements remains, as indicated, rather strongly consociational. The provisions of the Good Friday Agreement are, for the most part, mutually consistent and interlocking.

Guarantees are the hallmark of the agreement, which contains a number of maximal aspirations. Among these are the various provisions signalling the complete political equality of the two communities: the more or less equal status of the first and deputy first ministers, the provision of legislative committee chairs and deputy chairs selected in a manner calculated to assure their origin in different groups, 'community balance' on public bodies, 'resolute action' to promote the Irish language, 'a police force representative of the community as a whole' and a recognition of 'the full and equal legitimacy and worth of the identities, senses of allegiance and ethos of all sections of the community', epitomized in the powerful phrase 'parity of esteem'.[11] These are the sorts of issue that divided societies struggle over and on which governments of the moderate middle try to make incremental progress. The agreement purports to resolve them at a stroke – subject, of course, to a long, no doubt contested, process of implementation. The language of the agreement is the language of guaranteed rights to equality.

Since the new arrangements are more ambitious than the measures that had

[10] See Donald L. Horowitz, *A Democratic South Africa? Constitutional Engineering in a Divided Society* (Berkeley: University of California Press, 1991), pp. 184–203.

[11] See, respectively, Agreement Reached in the Multi-Party Negotiations, Strand 1, art. 5, 7, 8; Agreement: Rights, Safeguards and Equality of Opportunity, Human Rights, art. 5; Agreement: Economic, Social and Cultural Issues, art. 1(v); Agreement: Policing and Justice, art. 1; Agreement: Rights, Safeguards and Equality of Opportunity, art. 4.

been attempted without success on previous occasions in Northern Ireland, their adoption requires careful explanation. It is as if failure, having yielded despair, then gave rise to the sheerest optimism. Consociational agreements are very hard to reach. This fact is not as notorious as it deserves to be. In severely divided societies outside the West, consociational arrangements (the assertions of their proponents notwithstanding) are about as common as the arctic rose.

The difficulty of adopting accommodative institutions in a society prone to severe conflict can be approached at several levels. These are worth enumerating, for they indicate just how exceptional the Northern Ireland Agreement is.

At the most general level, it stands to reason that parties pursuing ethnic conflict will generally find it difficult or unattractive to pursue settlement of the conflict. Of course, agreements to resolve – or, more likely, provide an orderly framework in which to pursue – conflicts do occur, but they occur only at certain times, when the incentives of the parties have been altered dramatically. Phrases such as the 'hurting stalemate' suggest the exceptional character of these events.[12] A more specific obstacle is blatantly obvious. Majorities that have power do not wish to share it. They especially do not wish to share it with members of groups against whom they entertain at least some, and perhaps a great deal of, antipathy, usually mixed with fear.

Even when the disposition to reach agreement is present, however, there are great constraints on reaching an agreement as coherent as the Northern Ireland Agreement is. The multiplicity of parties to the negotiation implies that satisfying the parties will produce a *mélange* of provisions, some of which will inevitably contradict others or blunt their effects. In the Northern Ireland negotiations, this ought to have been a particularly severe constraint, given the presence at the Belfast meetings of (1) two sovereign governments, (2) representatives of armed internal opponents on both sides, (3) at least two parties contending for the political leadership of each community, and (4) two parties claiming to belong to no community and aspiring to transcend such affiliations altogether. Furthermore, the characteristic mode of agreement is negotiation – give and take – a mode conducive to agreement via the exchange of incommensurables but assuredly not conducive to coherence of the product.

Finally, there is a truly profound set of impediments in the systematically asymmetric preferences of the parties to agreement in severely divided societies. Typically, minorities want guarantees; they often believe, in prospect, that they will be happy with consociational arrangements, because they do not trust majoritarian institutions. At independence, the Turks in Cyprus wanted and received (briefly) a consociational regime; the Tamils in Sri Lanka demanded and were denied elements of such a regime. Majorities, by contrast, want majority rule. It takes an unusual concatenation of circumstances to induce

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[12] See I. William Zartman, 'Conflict and Resolution: Contest, Cost, and Change', *Annals of the American Academy of Political and Social Science*, 518 (1991), 11–23.

majorities to part with majority rule in favour of explicitly nonmajoritarian institutions of a consociational sort.

Given all these considerations, if an agreement could be reached in a divided society like Northern Ireland, one might expect, at most, a compromise that followed a number of different approaches to conflict reduction simultaneously. The price of agreement would be the partial accommodation of the parties' conflicting preferences. In comparable circumstances, Fiji adopted a new constitution in 1997 that did exactly that. In deference to the wishes of representatives of the Indian minority, it provided for a small dose of consociationalism. All parties with at least 10 per cent of the seats in parliament were permitted to join the cabinet. If all took up the invitation, there would be a grand coalition, but the constitution provided for no group vetoes, no ethnic autonomy, and no other consociational features. The constitution also provided some weak electoral incentives to interethnic accommodation. Although these were watered-down versions of the electoral system recommended by an independent constitutional review commission, their thrust was to produce a multi-ethnic government of the middle. And, finally, the constitution contained a strong residual dose of majoritarian institutions, demanded by the Fijian majority. Asymmetric preferences did, indeed, produce an agreement with no clear direction.[13]

This propensity to mixed outcomes as a result of negotiation raises the central question of this article. In spite of the formidable obstacles to a coherent constitutional plan – and the Northern Ireland Agreement surely qualifies as constitutional – how was the agreement consummated? What accounts for its strongly consociational features, and what accounts for the two exceptions to consociational principles? Why, despite the exceptions, is the agreement so coherently consociational?

COHERENT CONSOCIATIONALISM: HYPOTHESES AND A SKETCH OF FINDINGS

A look at the generic obstacles to agreement suggests the direction of a possible explanation – or several explanations – for the agreement.[14] Either Northern Ireland does not fall into the category of societies that habitually find it difficult to pursue settlement of ethnic conflict, or the process by which the agreement was produced was not a negotiation, with its characteristic constraints on coherence, or the parties to the negotiation did not entertain the usual divergent

[13] Constitution (Amendment) Act 1997 of the Republic of the Fiji Islands, 25 July 1997. Despite the mix of provisions and the majority thrust of the arrangements overall, Fiji nevertheless elected a multi-ethnic government of the moderate middle in 1999. That government was overthrown a year later when a paramilitary band invaded parliament. How all that happened is a fascinating story, but what needs emphasis here is the constitutional mix produced by the asymmetric preferences of the Indian minority, outsiders, and the Fijian majority.

[14] The answers advanced here are based mainly on a series of interviews with negotiators conducted in Belfast and London in 1999.

preferences. Several hypothetical possibilities all follow logically from the obstacles-to-agreement argument, but some are more plausible than others.

1. Northern Ireland is no longer really a severely divided society. Its antagonisms have softened so significantly that each side's fear of and antipathy towards the other side has diminished markedly, making pursuit of the conflict less exigent.
2. Despite appearances, the agreement did not result from a negotiation at all. It was dictated by external powers, who were not obliged to split any differences with respect to Northern Ireland's internal political arrangements, since their own preferences about them did not diverge.
3. The problem of asymmetric preferences – majorities favouring majoritarian institutions, minorities favouring guarantees – is mitigated by the fact that Northern Ireland is not really divided into majority and minority. Perhaps because of demographic change or because of divisions within groups, Northern Ireland is a thoroughly heterogeneous society.
4. Although the agreement was not an external imposition, the number of participants in the negotiation was, effectively, fewer than might be thought. The agreement is, therefore, not so much the product of a negotiation as it is the product of a planning process.
5. Although group preferences may have diverged before and during the negotiations, they were overcome by statesmanship, the desire to produce an agreement best for everyone. (Statesmanship figures strongly in consociationalists' explanations for the adoption of consociational arrangements.)

These are the most logical hypotheses that could be deduced from the fact that a coherent agreement was reached despite the many obstacles to the achievement of such an agreement. That they are logical, however, does not make them correct. There is evidence confirming some, evidence disconfirming others, and evidence supporting additional reasons for consummating the agreement that could not be deduced from the bare facts of consummation despite the generic obstacles. Out of this configuration emerges the outline of an explanation, to be followed by a fuller display of the evidence for it.

1. A Transformed Northern Ireland

The Northern Ireland conflict has certainly become softer over time. Survey data attest to the increasing disposition of people in Northern Ireland to regard members of other groups as 'ordinary people' like themselves and to express a wish to live together; in addition, there is a growing tendency to intermarriage.[15] In a 1996 survey, in response to a question about whether the

[15] On 'ordinary people', see Ken Heskin, *Northern Ireland: A Psychological Analysis* (Dublin: Gill and Macmillan, 1980), pp. 32–7, 43. On intermarriage, see John Darby, *Northern Ireland: Managing Difference* (London: Minority Rights Group, 1995), pp. 15, 24–5; Valerie Morgan *et al.*, *Mixed Marriages in Northern Ireland* (Coleraine: University of Ulster Centre for the Study of Conflict, 1996), pp. 4, 15–18.

respondent was 'in sympathy' with 'unionism' or 'nationalism', 28 and 17 per cent of the sample replied affirmatively, but half of all respondents refused even to indicate sympathy with either side.[16]

Nevertheless, this glass is scarcely full. Moderates may outnumber hard-liners, but they also feel fear and a sense of continuing, protracted conflict.[17] Although by the mid-1990s a distinct 'Northern Irish' identity had gained ground among Catholics, at the expense of the 'Irish' identity, a separate 'British' identity had been growing among Protestants, at the expense of both 'Irish' and 'Ulster' identities.[18] People overwhelmingly vote ethnically; many, particularly on the unionist side, voted against the agreement in the referendum that followed it; many support parties that were opposed to negotiating with the extremes, and others support Sinn Féin, a party that was unwilling, until the last moment, to agree that Northern Ireland could have its own government at all. Undoubtedly, the reduction of antagonism is a favourable background condition to the agreement, but the conflict, in its political aspect, is still very much alive. If the conflict had really gone soft, people would not fear majoritarian institutions, and nonethnic or multi-ethnic parties, whose support has not grown over time, would do much better than they do.

2. Imposition

The internal dimensions of the agreement (Strand 1) were not imposed externally. The governments of the United Kingdom and the Republic of Ireland took strong positions on Strand 2 (relations of Northern Ireland and the Irish Republic) and Strand 3 (relations of Ireland to Britain), but Strand 1 was negotiated among internal participants. As an official of the Northern Ireland Office remarked, the British government cared only that the parties agreed; for the most part, it did not care what they agreed to.[19] This position, which is characteristic of third parties eager for a solution but not themselves required

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[16] Geoffrey Evans and Brendan O'Leary, 'Frameworks and Futures: Intransigence and Flexibility in the Northern Ireland Elections of May 30 1996', *Irish Political Studies*, 12 (1997), 23–47, p. 28.

[17] In 1996, fully 82.7 per cent of survey respondents agreed with the statement that 'religion will always make a difference in Northern Ireland' (Allan Leonard, 'The 1998 Agreement: A New *Modus Operandi* or a Traditional *Modus Vivendi*' (paper prepared for the Postgraduate Conference, University College, Dublin, 18 June 1999, p. 16)).

[18] Brian Girvin, 'Nationalism and the Continuation of Political Conflict in Ireland,' in Anthony Heath *et al.*, eds, *Ireland North and South: Perspectives from Social Science* (Oxford: Oxford University Press, 1999), pp. 369–99, at pp. 389–90.

[19] The same was not wholly true of George Mitchell, the American chair of the negotiations. From time to time, he did take some positions on internal issues, but they tended to be unfriendly to the strongest and arguably redundant consociational devices, such as the 'parallel consent' provision contained in Strand 1, art. 5. Nevertheless, he did not impose anything, and his objection was, obviously, neither decisive nor in the direction of full-blown consociationalism. Unless otherwise indicated, all unattributed remarks and quotations are drawn from my field notes. Interviews were conducted on the basis of a promise of anonymity.

to live with that solution, was, in a modified way, shared by the Irish government, which assisted the negotiators of the Social Democratic and Labour Party (SDLP) but did not dictate terms to them.

Two qualifications need to be interposed. First, the British government had repeatedly signalled unionists that they had to come to *some* terms or risk an agreement between the Irish and British governments. This certainly put pressure on unionists but did not predetermine what, if anything, they would agree to. Secondly, both governments had advanced suggestions about internal governing arrangements in documents produced in previous years. At earlier stages, notably the Framework Documents of 1995,[20] the British and Irish governments did advance some ideas of their own. These were not wholly lost in the Agreement, but neither did they pre-empt other ideas in any way. Often what both governments did on earlier occasions was to distil, record and publish ideas and, by recording and publishing them, preserve them, so they were available for invocation when the time came. Still, the product that emerged at Belfast was agreed by the internal parties.

3. A Territory with No Majority

Northern Ireland has a Protestant majority, but this is a declining majority. Protestant rates of voter participation are also lower than Catholic rates, and Protestant support is more fragmented, because it is distributed across a larger number of parties than Catholic support is. During the time the agreement was being negotiated, moreover, there was good reason to anticipate greater electoral co-operation between the SDLP and Sinn Féin in the future than in the past. Sinn Féin's growing legitimacy as a participant in the peace process and in the normal politics that was expected to follow should facilitate SDLP–SF electoral arrangements. Previously, the two parties had habitually competed against each other. Now, they could be expected to exchange preferences under the STV electoral system. By contrast, the Ulster Unionist Party (UUP) and the Democratic Unionist Party (DUP) had often felt the need to co-operate electorally where failure to do so might produce the victory of a nationalist candidate on a split unionist vote. Henceforth, however, the divergent orientations of UUP and DUP towards the agreement would probably widen the gap between them and foster competition rather than co-operation.[21] Further- more, some Protestant voters (like some Catholic voters) support the multi-ethnic Alliance party. For all these and other reasons, it has been predicted that the unionist bloc would soon be an electoral minority, albeit the largest minority bloc, in Northern Ireland.[22] Although Protestants will continue to be

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[20] *A Framework for Accountable Government in Northern Ireland* (Belfast: Her Majesty's Stationery Office, 1995).

[21] For the background, see Brendan O'Leary and Geoffrey Evans, 'Northern Ireland: La Fin de Siècle, the Twilight of the Second Protestant Ascendancy and Sinn Féin's Second Coming', *Parliamentary Affairs*, 50 (1997), 672–80, pp. 676–8.

[22] O'Leary and Evans, 'Northern Ireland', p. 678.

a majority for a long time to come, unionists may not be. (In the 1998 elections that followed approval of the agreement, unionist parties received only about half of the vote.) Since minorities want guarantees, unionists, like nationalists, might now favour a consociational regime.

4. Effective Reduction of Participants

The formal presence of two governments, outside mediators, and a great many political parties at the negotiation masks the process by which the internal aspects of the agreement were actually handled. As just noted, the two governments did not set the internal agenda. Two unionist parties, the DUP and the United Kingdom Unionist Party (UKUP), had left the negotiations when Sinn Féin was admitted to them after it declared a ceasefire. Because it did not concede the legitimacy of a Northern Ireland government at all until it acceded to the agreement, Sinn Féin played an inert role in the negotiations. There also emerged a tacit alignment of the two largest parties, the SDLP and the UUP, against the smaller remaining parties, some of whose demands diverged from those of the larger parties. The Belfast meetings may have looked like a convention, but in the end they were really a *tête-à-tête*. Under these conditions, coherence is easier to explain.

5. Statesmanship

There are many varieties of statesmanship. There is the statesmanship that says, 'I shall do the right thing, no matter what its effect is on me and the parochial interests I represent, indeed even if the effect on us is adverse.' Then there is the statesmanship that says, 'I shall do the right thing, even though it is not, at this moment, in my interest or in the interest of those I represent; inasmuch as my vision does not permit me to see what will be in our interest in the future, I shall choose those arrangements I can live with, come what may.' And, again, there is the statesmanship that says, 'I shall do the right thing, because although its effects on us will be negative in the short run, I can see that they will be positive in the long run.' These three need to be disentangled.

The first version, which might be called self-abnegating statesmanship, saintly or suicidal, depending on one's point of view, is generally not in evidence in interethnic negotiations in societies such as Northern Ireland. It requires larger-than-life, Gandhian figures, who rarely inhabit the halls of power. It certainly was not visible in the negotiations that led up to Good Friday 1998.

The second variety, a Rawlsian or 'veil of ignorance' statesmanship, is occasionally visible in gatherings devoted to the future of divided societies.[23] It was present in Nigeria in 1978, when a Constituent Assembly met to craft constitutional provisions to avert future ethnic conflict, the identity of the

[23] See John Rawls, *A Theory of Justice*, rev. edn (Cambridge, Mass.: Harvard University Press, 1999), pp. 118–23.

victims of which was uncertain. This species of statesmanship may have been present at some points in the long Northern Ireland negotiations. No doubt many protracted events of this sort are punctuated by such epiphanies, but they are probably experienced by too few participants to make them decisive. In any event, the veil of ignorance was not conspicuous at the conclusion of the Belfast meetings, when the contours of Strand 1 were finally crafted.

The third form of statesmanship, however, the statesmanship of variable time horizons, was much in evidence in Belfast. Leaders of the Ulster Unionist Party were willing to accept arrangements crafted to benefit nationalists, in part because they were thought to be beneficial in the future, in the event that unionists, rather than nationalists, should find themselves in the minority in Northern Ireland.[24] Today, the UUP might still prefer majority rule, but it will concede consociational guarantees, because it may need them tomorrow. So what seems like a concession, viewed from the perspective of the current balance of power, combines with the prospect of minority status in the future (Hypothesis 4) to produce the most modest of the three forms of statesmanship, a present-day altruism grounded in a future self-interest. This is the veil of ignorance with a peep hole.

6. Lessons and Residues of History

No set of plausible hypotheses, true to the logic of hypotheses as informed, *a priori* deductions, would have seen the history of Northern Ireland as a causal element contributing to a consociational agreement in 1998. History, especially in societies such as Northern Ireland, is generally inertial: it provides many reasons to avoid new departures. History rules out more than it rules in, and in most divided societies it creates deposits of distrust that undergird reluctance to take leaps of faith. For these reasons, the starting hypotheses stop at five.

In Northern Ireland, however, history actually pointed the negotiating parties towards an agreement – and a consociational one at that. The relevant history had two faces.

One face consisted of the *lessons* of history, what the participants believed their history showed. These putative lessons did two things. First, they narrowed the view of the participants of the range of acceptable solutions to their problem. This was particularly true on the nationalist side. Secondly, they created a feeling of urgency about arriving at an agreement. This was particularly true on the unionist side.

For nationalist politicians, Northern Ireland's history showed that internal solutions alone were inadequate. This point is not pursued further here, since the focus is on the internal arrangements. Two other main lessons were derived by SDLP leaders from history. History showed that failure to include the extremes would render accommodation impossible, and it showed that only a

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[24] The arrangements were also acceptable to a majority of the UUP because they were thought to benefit the party in its struggle against Ian Paisley's Democratic Unionist Party.

carefully contrived web of guarantees would be sufficient to produce a durable, accommodative dispensation.

For unionist politicians, history provided a sense of a ticking clock. In their view, the position of unionists was eroding. This erosion was a function of the sense of Ulster Protestants as a besieged group, declining on several fronts, some of which have already been mentioned: demography, voter turnout, and support from the British government. For DUP politicians, the same sense of siege created a determination to reject any agreement. One stops decline by digging one's feet in. For UUP leaders, it created a strong impetus to seize the moment, particularly after the DUP had made its position clear. There was then no competitive advantage to be had in mimicking DUP rejectionism. Party positioning combined with the felt lessons of history to incline the UUP to accept an agreement whose contours were desirable on other grounds, some of which have already been reviewed.

There is, then, an asymmetry in what history taught the participants. It taught SDLP leaders what parties needed to be included in an agreement and what specific shape an agreement ought to take. It taught UUP leaders that this was an appropriate moment to grasp such an agreement.

These were lessons of history only in the sense that they were what history seemed to show, not, of course, what it necessarily did show. Most people find the lessons of history to be fewer and narrower than the sum of plausible readings of history. A good case can be made that at least some of the historical lessons derived by the participants in the Belfast process were, at best, contestable and perhaps misconceived altogether. This was particularly the case for the lessons derived from the failure of earlier power-sharing arrangements, a point elaborated later. What matters in explaining the agreement, however, is the filtered history of those who made it.

Northern Ireland history had another face as well: the sum of all previous proposals. Like a number of severely divided societies, Northern Ireland had experienced periodic attempts to produce agreement. The attempts had produced stalemate or failure. But each such attempt, going back at least to the Sunningdale talks of 1973, had left a residue of general ideas and concrete proposals. Through a process of natural selection, so to speak, some ideas and proposals had survived in much better health than others. Since the Anglo-Irish Agreement of 1985, there had been a spotty but, in some sense, more or less continuous conversation of sorts about various lines of possible settlement. These conversations intensified with the Brooke–Mayhew talks of 1991–92, whose termination left a strong impression of what would and would not be acceptable, an impression fortified by the Framework Documents of 1995.

When the negotiations began in 1996, the slate on which the participants endeavoured to write was so crowded with formulations, some underscored and some crossed out, that there was not all that much room to do a complete revision. Even the terms on which the Belfast negotiations were themselves conducted created a precedent that could be invoked in crafting the agreement.

In short, there had been so much experience of the same general sort before

the Belfast proceedings that the residues of prior disagreements and agreements had, right at the outset, narrowed the options that would receive serious consideration. This is an additional reason why those proceedings cannot really be characterized as bargaining or exchange. It is more accurate to say they were characterized by filtering of the past, rather than negotiation. There was a good deal of tacit consensus – or, perhaps better, convergence – before the process began. Strand 1 was essentially crafted on the final day of the negotiation, beginning on the day before Good Friday. It was possible to achieve agreement in the last twenty-four hours because so much had been done in the last twenty-four years.

UNDERSTANDING THE AGREEMENT

The overall argument, then, is that the consummation of the agreement cannot really be attributed to the softening of the Northern Ireland conflict, although this may have contributed to the willingness of the parties to try diligently to reach *some* agreement, and it cannot be attributed to any imposition by the British or Irish government. Nor was the agreement the result of statesmanship, if that term is intended to connote a serious display of altruism or group sacrifice for a wider good. Rather, the agreement can be explained by the microenvironment of the negotiation and the macroenvironment of the whole history of attempts to ameliorate the conflict. The reduction in the effective number of participants, the fact that one of them had a sense of foreboding that induced a desire to agree and countered what might otherwise have been its aversion to consociational guarantees, while the other had absorbed a particular view of what amelioration demanded: these foundations of a coherent agreement were sufficient to overcome the usual obstacles to any agreement, to a coherent agreement, and, in particular, to a consociational agreement.

It is now time to produce evidence from the Belfast negotiation that warrants these conclusions. What the evidence shows is that the residues of history provided a stock of ideas from which to draw and supported a significant (but not perfect) consensus on the direction of the appropriate arrangements. The lessons of history narrowed the range of what was viewed as acceptable. The process by which choices were made did not involve bargaining and negotiation but consensus between only two parties, one of which wanted guarantees for the present and the other of which wanted guarantees for the future.

An Unmajoritarian Majority

A necessary, but not sufficient, condition to explain the agreement lies in the political apprehension felt by unionists as the twentieth century drew to a close. Unionists had long felt abandoned by Britain, as embarrassingly parochial country cousins, even throwbacks to the religious wars of earlier centuries. In a poignant, if illogical, display of frustration, an Ulsterman had once responded to a taunt by an English bystander at a demonstration by shouting, 'We're more

British than you British!' The feeling of abandonment was officially confirmed when the British government declared in 1995 its intention to be 'rigorously impartial' in dealing with Northern Ireland's two communities.

Pressed by the British government to make concessions, unionists were chastened by the Labour victory in the 1997 Westminster election. That victory was sufficient to free the new British government, as the outgoing Conservative government was not free, of the need to rely on unionist votes for its majority, and it brought to power a Labour party with what was, for unionists, a rather more threatening policy on Northern Ireland. To the declining majority and political fragmentation of Ulster Protestants must be added, therefore, their general pessimism at the time of the Belfast negotiations.

A good many Protestants were also tired of violence. In this, they did not differ from Catholics, but, remarkably, among those who were most war-weary were representatives of loyalist parties, those whose roots were in the Protestant paramilitaries. As early as a decade before the Good Friday Agreement, a loyalist party affiliated to the largest Protestant paramilitary had responded to the Anglo-Irish Agreement of 1985 by advocating a devolved government in Northern Ireland, based on proportionality and safeguards for the two communities. This position was received poorly by mainstream unionism, but it had been the product of consultation with nationalist politicians. By 1998, the view of the parties tied to loyalist paramilitaries was that a way out of the violence had to be found. That way had to embrace those involved in the violence, including Sinn Féin. Equally, the loyalist parties were not opposed to a North–South dimension, especially if it gave nationalists some comfort, provided it was balanced by an Irish–British connection, as indeed it was in the agreement. In view of these positions, more liberal by far than those advocated by the DUP and in some respects more liberal than what the UUP had contemplated, it is not surprising that the two loyalist parties campaigned in favour of the agreement in the referendum of May 1998. The liberality displayed by the loyalist parties was useful to the UUP when the time came to make an agreement that would be denounced as a sellout by the DUP.

It was, however, a liberality born of apprehension. It has been observed previously that Protestants in Northern Ireland were a majority that had the fears of a minority, as indeed they are in Ireland as a whole.[25] Among loyalists, there was a sense in the 1990s that unionist leaders were presiding over the dissolution of the union with Britain. James Molyneaux, the former UUP leader, had proved to be, by turns, a stubborn negotiator and then, in 1995, a person who conceded too much. Ian Paisley, the DUP leader, knew only how to say 'no' in a way that reinforced negative feelings about Ulster Protestants in Britain.

Perhaps most importantly, loyalists and unionists shared the view that, had appropriate concessions been made earlier, larger concessions could have been avoided later. Had the Council of Ireland proposal that helped kill the

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[25] Harold Jackson and Anne McHardy, *The Two Irelands: The Problem of the Double Minority* (London: Minority Rights Group, 1995).

power-sharing government of 1973–74 been accepted, the more far-reaching Anglo-Irish Agreement of 1985 would not have been necessary. 'Every time unionism walked away from the table, it was offered less than the time before.' The longer it took unionism to engage, 'the less there would be on offer.' And the safeguards of the agreement, unionists noted, work both ways. They are good for unionists in the future, in case nationalists should win a majority in the Assembly. 'It's taking out an insurance policy. You give something now, but you get some return in the future.' These are the motivating forces of an ethnic group dissatisfied with its missed political opportunities and anxious about its future. They are the forces that modified what would otherwise have been the strong preference of a majority for unabridged majoritarian institutions. UUP and loyalist leaders were looking for an agreement that would stop erosion of the Protestant position, looking, in other words, for guarantees.

From a Convention to a Tête-à-Tête

The coherence of the product approved on Good Friday owes a great deal to the shape the negotiations over the internal arrangements ultimately took. Each of the two largest parties, the UUP and SDLP, had blocked earlier agreements, and their assent was crucial to this one. With the DUP and UKUP departed from the negotiations and Sinn Féin behaving disconcertingly as if it had not arrived,[26] the only remaining delegations of any significance consisted of members of the two loyalist parties with paramilitary affiliations and two parties with cross-ethnic outlooks, the Alliance party and the Women's Coalition. Together, the loyalist and cross-ethnic parties had won less than one-seventh of the vote in the Forum election of 1996,[27] compared to the total of 45.6 per cent won by the two largest parties. The divergent preferences of the four small parties were, in the main, unaccommodated.

The two cross-ethnic parties saw the entrenchment of weighted majorities based on affirmation of unionist or nationalist affiliation as retrograde and inimical to their interests, but they were powerless to prevent it. The Alliance party (APNI), long professing transcommunal aspirations, went further and opposed all references to the two communities, even the reference to 'parity of esteem'. APNI favoured supermajorities, but not by group designation, and proportional inclusion of parties in the cabinet, for it had long viewed itself as an indispensable bridge between moderate unionists and moderate nationalists. APNI was hostile to the paramilitaries, and, although intraparty opinion was divided, the thrust of Alliance thinking was opposed to a constitutional dispensation that included the extremes. APNI favoured a

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[26] Until almost the very end of the negotiations, Sinn Féin took the position that it would not agree to sit in a Stormont assembly, that it would only agree to a united Ireland. For this reason, it contributed no serious proposals to the negotiations.

[27] The results of the Forum election determined the relative weight of the party delegations to the negotiation. The Forum itself soon became moribund.

voluntary, majoritarian, multiethnic coalition of the middle (UUP, SDLP and itself), rather than a completely inclusive consociational one. Save for proportional inclusion in cabinet, Alliance's lonely voice was unheard by the other moderate parties whose cause it triumphed against their will.

The Women's Coalition saw itself as intercommunal, rather than transcommunal, and it wanted all political forces included. In contrast to the Alliance, the Women's Coalition feared its inability to win seats under the single transferable vote electoral system. STV is based on territorial constituencies, and the support of the Women's Coalition was highly dispersed rather than geographically concentrated. The WC argued unsuccessfully for top-up seats on a list basis for parties unable to win territorial seats.[28] These, however, were resisted by the SDLP and UUP. The only serious concession won by the small parties was an expansion in the number of seats in each STV constituency, from five to six, which reduced the quota to win a seat from 16.7 per cent to 14.3 per cent. (Two WC members were ultimately elected to the Assembly under STV in 1998, but on vote transfers, not quotas of first preferences.)

The two small loyalist parties had fewer problems with the outcome on Good Friday. Unlike Alliance and unlike some of their own supporters, loyalist leaders accepted inclusion of Sinn Féin in government. This position made it much easier for the UUP to accept a fully consociational arrangement.[29] Because, unlike the Women's Coalition, the loyalists' support was geographically concentrated, they had little anxiety about STV. Nevertheless, in the 1998 Assembly elections, the loyalists would have elected more legislators under list-system PR. STV can work against small parties.

Had a government of the moderate middle been envisaged, the Alliance party and the Women's Coalition would have had a larger part to play in the constitutional process. But this was to be explicitly an arrangement between the two communities, and the largest parties of the communities – the only two of the four such large parties willing to discuss the arrangement seriously – were the UUP and SDLP. They, therefore, took the lead and were able to ignore demands from the small parties. They engaged, in the view of the small parties, in 'a carve-up'. By this, the small party representatives meant that the two largest parties took over the Strand 1 negotiations and shaped the outcome to suit their interests.[30]

The process by which this was done was by no means an exchange. The two

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[28] That is, in addition to the constituency elections, the WC wanted a territory-wide list election that would provide supplementary seats to compensate for disproportional results at the constituency level.

[29] See John McGarry, 'Political Settlements in Northern Ireland and South Africa', *Political Studies*, 46 (1998), 853–70, p. 868.

[30] The same suggestions were made about UUP–SDLP behaviour after the Assembly convened following the 1998 elections. The agreement required the use of d'Hondt proportionality for the appointment of cabinet ministers, but not for the appointment of junior ministers. Nevertheless, the UUP and SDLP leaders in government were planning to use d'Hondt for the latter as well, thus making it more difficult for members of small parties to be appointed to these positions.

parties played different roles. Seamus Mallon, a prominent SDLP leader (later designated deputy first minister) is quoted as having told his delegation at the outset, 'He who drafts best will win here.' Following this dictum, the SDLP was better prepared to advance proposals. In this, it worked closely with the Irish government. 'We were acting as a unit,' said an SDLP negotiator. In the final hours, 'we were one team.' Without doubt, the SDLP did the better preparatory work in the last days before Good Friday. The UUP proposed less and reacted more. Unlike F.W. de Klerk, who initiated the South African negotiations and attempted to stay one step ahead of his opponents,[31] David Trimble played the role of a slightly difficult partner to whom others had to pay court. This meant that the SDLP had the initiative and the UUP had the right of refusal. In the words of an SDLP negotiator, the UUP just put out 'answers on a postcard'. There may have been a carve-up, but the SDLP had much the larger knife.

   This differentiation of roles made for a coherent set of proposals. On Strand 2, the Irish government had proposed an expansive set of North–South arrangements that it surely knew would be unacceptable to unionists. When these had to be scaled back, it might have been natural to think that the SDLP could get more on Strand 1 as part of a trade. But the SDLP negotiators had an idea of what they wanted in Strand 1 and did not want to have to give something on one front to gain something on another. What the SDLP people wanted was an inclusive government and group safeguards. They wanted a strongly consociational regime, and that is what they got.

   The main issues concerned exactly how government would be conducted and what form the consociational guarantees would take. The UUP understood that duly elected Sinn Féin legislators would take their seats and have their say, but, with the DUP set to reject an agreement, UUP leaders were reluctant to sit in a cabinet with Sinn Féin. In Belfast, elected SF councillors had long sat on local council committees, and even the DUP had had no problem with that. The UUP, therefore, proposed that Northern Ireland likewise be governed by legislative committees, rather than by a cabinet. Committee chairs could be parcelled out proportionately, and so Sinn Féin would play an executive role solely by leading committees it chaired.

   This seemingly anachronistic proposal could be justified by its superficial similarity to European Union governing structures and those of the newly devolved Welsh assembly. The proposal represented the UUP's position as late as the day before Good Friday, but it did not survive. The SDLP was committed to having a cabinet, because it was determined to assure a fully fledged government, with Sinn Féin included.

   To the nationalists' surprise, the UUP agreed to a cabinet on Good Friday itself. One reason for the UUP's agreement may have been the argument of SDLP leader John Hume that, in external relations, it is preferable to negotiate

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[31] See Courtney Jung and Ian Shapiro, 'South Africa's Negotiated Transition: Democracy, Opposition, and the New Constitutional Order', *Politics and Society*, 23 (1995), 269–308. Compare Samuel P. Huntington, 'Reform and Stability in South Africa', *International Security*, 6 (1982), 3–25.

as a cabinet minister to negotiating as a committee chair – an argument easily applied by the UUP leadership to negotiations with the Irish Republic that would be made necessary by Strand 2 dealing with North–South relations. Another reason can be derived from simple projections. Using d'Hondt methods of cabinet election, as long as the cabinet was not very large, there would likely be equal numbers of unionist and nationalist ministers even if Catholics became a clear majority in Northern Ireland. So, again, unionists calculated on the basis of a less favourable future.

A cabinet selected by parties would not be a cabinet like any other. Allocation of seats in accordance with party legislative strength, using d'Hondt – a proportional method of calculation that is somewhat less favourable to small parties than the competing St Laguë method would be – implied that each party would nominate its own ministers, and they might then be responsible to the parties that appointed them. Enormous issues of cabinet responsibility and of government and opposition are raised by these unconventional arrangements in the context of the Westminster-style parliamentary institutions of the British Isles (or 'these islands,' as the British and Irish governments now call them). Would each minister be bound by cabinet decisions? If all parties are in government and there is no longer opposition in the house, is opposition then to be institutionalized inside the cabinet? In the main, these issues were not resolved and will undoubtedly haunt cabinets constituted by the agreed methods. But two small steps were taken to mitigate the severity of the problems: (1) an oath of office (conspicuously, not a pledge of loyalty to any sovereign), so that a minister could not blithely follow any rejectionist path that might be pursued by his or her party; and (2) a first minister and deputy first minister elected by the house, rather than merely nominated by their parties.

The virtually double first ministership, one from each community, has a pedigree antedating the negotiations, as we shall see. To use d'Hondt PR in selecting these two leaders opened the possibility that both might be unionists. The SDLP proposed and the UUP agreed that the two not be appointed by their parties but be elected jointly by the whole Assembly. Election would require a majority of members voting and also a majority of declared unionist and nationalist members voting. The two are thus supposed to operate together and be responsible to the house as a whole.[32] The dual election requirements also guarantee the election of moderates, one from the UUP and one from the SDLP.

Perhaps the most difficult issue was the matter of parallel consent of the two communities, which aroused the ire of the cross-ethnic parties. In the background was the principle of sufficient consensus utilized in South Africa's constitutional deliberations and borrowed for making decisions at the Belfast negotiations. Proposed by the Alliance – ironically, in view of its later position

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[32] This idea may have had more than one parent, but it can be traced, in part at least, to the killing in March 1998 of a Protestant man and a Catholic man who were close friends. David Trimble and Seamus Mallon attended the funeral. Within the SDLP, their joint appearance inspired the idea of a joint office.

on parallel consent in the agreement itself – the principle provided that, for binding decisions in Belfast, there would need to be a majority of unionists, a majority of nationalists, and a majority of the party delegations. This was acceptable to the UUP and SDLP, as it provided each with a veto.[33] Having adopted such a formula for the Belfast proceedings, the parties believed it had promise for inclusion in the agreement itself. What was finally agreed on Good Friday – a majority of all plus a majority of representatives of each community, or 60 per cent of all plus at least 40 per cent of the representatives of each community – obviously suited the SDLP because it could then block one-sidedly unionist proposals. On the same grounds, it suited a UUP pessimistic about the long-term prospects for a unionist majority. The 60–40–40 formulation was designed by SDLP negotiators to meet a contingency in which moderates were in the minority on the unionist side on a matter of importance to nationalists.

This was the issue with greatest external input, but again the internal participants made the decisions. Senator Mitchell had opposed both parallel consent formulations on grounds of their complexity and urged a straightforward two-thirds majority. The Irish government recommended an overall two-thirds plus one-third of each community. The British prime minister, Tony Blair, had suggested 60 per cent, rather than two-thirds. Caring less about the size of the overall majority and more about its intergroup character, the SDLP agreed with Blair and proposed the 60–40–40 formula.[34] When this was put to Trimble, he saw immediately that the 40 per cent threshold was high enough to allow unionists as a whole to have a veto but low enough to prevent Ian Paisley's DUP and others who might be likeminded from having a veto, even if their strength should increase. The result was a formula that legitimized controversial measures by requiring substantial support from them in each community but not such substantial support that even a fairly large fraction of a single community's legislators could block them. This was a victory for the SDLP and for the UUP in its struggle to contain the DUP. It could be seen, too, to advantage the SDLP *vis-à-vis* Sinn Féin in the event that Sinn Féin's strength should grow. In these respects, the provisions merit the term 'carve-up'. Again, not exchange but a confluence of interest explains the outcome.

The Entailments of History

If the supreme irony of the Belfast process is that supermajorities were agreed by a clear minority, that *fait accompli*, rather than 'sufficient consensus', was the modus operandi of the last days of the negotiations, this irony should not obscure the fact that there was relatively little in the internal arrangements on which to agree or disagree. Proportionality in apportioning executive

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[33] The third part of the principle – consent of a majority of the delegations – was not, however, conspicuously on display in the private discussions between those two parties on Strand 1. They assumed, correctly, that what they agreed to would bind others.

[34] The Alliance party had also proposed a supermajority of 60 per cent.

responsibility, whether of a committee or a cabinet sort, was a well-accepted principle in Belfast, and so was the principle of supermajority rule, although parallel consent of the two communities as such was a principle contested by the Alliance party. The STV electoral system encountered no difference of opinion based on group affiliation. Objections to STV were a function of party size and the distribution of party support. Parity of esteem and the other maximally egalitarian commitments of the agreement met with no serious objection. Once the DUP and UKUP left the negotiations, even inclusion of parties connected to violent organizations was largely uncontroversial. To a considerable degree, Northern Ireland had a constitutional consensus that antedated the negotiations.

This consensus had roots in Northern Ireland's repeated attempts to create governments of unionists and nationalists.[35] The long experience of false starts and failed negotiations gave rise to inferences about why certain arrangements would not work or had not worked. The failures also left a long record of ideas that had to be abandoned only because they formed part of an overall scheme that had failed, rather than because they were believed to be inapt in themselves. These ideas often moved from one negotiating venue or document to the next, years later, and they acquired legitimacy, even a life of their own. Pieced together, these partial survivals from overall failures comprised a kind of immanent constitution of Northern Ireland, ready to be shaped and reshaped into a document that commanded acceptance. The perceived lessons of history and the residues of history, which together might be called the entailments of history, ruled some things out and other things in.

One institution they clearly ruled in was the single transferable vote. STV has a long history in Ireland. In 1920, the Government of Ireland Act established separate parliaments for northern and southern Ireland and required, for a minimum of three years, that elections be conducted by STV. The fear was that first-past-the-post elections would underrepresent minorities in each parliament. Northern Ireland conducted STV elections in 1921 and 1925, but a declining unionist majority induced a reversion to first-past-the-post, which survived until the British government reinstated STV for elections to Stormont, for reasons similar to those of 1920. In the Republic, however, there was no problem of a declining nationalist majority, and STV survived.

In the North, STV is associated with minority officeholding. To nationalists and unionists, it seems a natural choice for an accommodative regime. To be sure, list-system PR has similar associations outside Northern Ireland. In the situation of party fragmentation that prevails in Northern Ireland, list PR would provide more opportunities for smaller parties. That, of course, is one reason list PR would not find favour with the two (indeed, the four) largest parties.

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[35] For partial inventories of earlier attempts at intergroup accommodation, see Paul Dixon, 'Consociationalism and the Northern Ireland Peace Process: The Glass Half Full or Half Empty?' *Nationalism and Ethnic Politics*, 3 (1997), 20–36, pp. 25–6; Michael Lusztig and Colin Knox, 'Good Things and Small Packages: Lessons from Canada for the Northern Irish Constitutional Settlement', *Nations and Nationalism*, 5 (1999), 543–63, pp. 552–5.

The inclinations of the large parties were confirmed by the results of the different method used in 1996 to elect representatives to the Forum, which determined representation at the negotiations. As their purpose was to be maximally inclusive, the 1996 elections were run on the basis of constituency-list PR. Each constituency had five members. There was also a top-up: the ten parties with the largest number of votes overall received two seats in addition to the number they won by constituency list. The top-up enhanced the share won by small parties. It brought the parties affiliated with the loyalist paramilitaries into the negotiations, and it also brought the Women's Coalition in. Two years later, the Women's Coalition wanted an electoral system for the Assembly that would be equally accommodative of the small parties, but it was rebuffed. The SDLP, UUP and APNI all preferred STV, although in the elections that followed approval of the Good Friday agreement, the Alliance party, like some of the other small parties, received one fewer seat than it would have won under list PR. Since the 1996 system was unpopular with the larger parties, the Women's Coalition's quest for a top-up feature found no favour. As a concession to the small parties, however, the SDLP and UUP agreed to expand the number of assembly seats by creating eighteen six-member, rather than eighteen five-member, constituencies.

By 1998, STV was simply the most natural choice. By adopting it, Northern Ireland would be in harmony with the Irish Republic (a point in its favour for the SDLP) and would be able to provide accountability of representatives to constituents, as in Britain (a point in its favour for the UUP). The larger parties' hostility towards the 1996 system reinforced their inclinations towards STV.

Interestingly, no one seems to have considered whether STV played any role in the demise of the power-sharing government of 1973–74. A good case can be made that the incentives to transfer votes across group lines were too weak to support interethnic compromise and to counter extremists on the flanks in 1973–74.[36] In 1998, the failure of 1974 was put down to other causes. In 1998, unlike 1973–74, the way to produce interethnic accommodation and moderation was thought to be paved with supermajorities, parallel consent and other consociational guarantees. The part that might be played by an electoral system in doing anything other than fostering proportional officeholding by community representatives did not figure in the discussions. The important lessons of Northern Ireland's electoral-system history, ancient (1920–73) and modern (1996), were believed to lie elsewhere. In the former period, STV was associated with efforts at intergroup accommodation; in the latter, the unfamiliarity and two-tier complexity of list-PR and the top-up seats for the 1996 elections produced a widespread feeling that it was 'a dog's breakfast' of a system, not to be repeated in 1998.

An even more fundamental choice – the most fundamental choice – was hardly contested at all. The issue was whether to plan for a government of the moderate middle and allow the elected extremes to try to join or constitute the opposition, as they wished, or to plan for a government that, by law, embraced

[36] For the argument, see Horowitz, *A Democratic South Africa?* pp. 173–4.

every party that wished to have a place. Only the Alliance party clung to the idea of power-sharing by the middle. By ideology and interest opposed to the extremes, with their commitment to mutually exclusive group claims, and inclined to see itself as the indispensable multi-ethnic centre party in a majority coalition with the UUP and SDLP, APNI's was a lonely voice among those remaining in the negotiations.

Not that Northern Ireland's political conditions were unripe for a government of the middle. On the contrary, they were exceedingly ripe. Both loyalists and republicans had grown more moderate. The *raison d'être* of armed struggle would presumably be undercut by a demonstration of progress on intergroup issues by a compromising middle. Northern Ireland society was increasingly drawn to the centre – witness the growing impatience with violence and the half of the population that now refuses to indicate its sympathy with either unionism or nationalism.[37] With an electoral system geared to support a moderate middle, such a regime might acquire a hold on legitimacy.

Moreover, the inclusion of the extremes was risky. With the DUP ready to denounce a government including Sinn Féin, and with the UUP itself only faintheartedly favourable to the idea, the support of the UUP for complete inclusion (support that only firmed up after the IRA ceasefire that admitted Sinn Féin to the negotiations) could still be undermined, as indeed it was after the 1998 Assembly elections.

The soft support of unionists for a wholly inclusive regime, manifested in Trimble's periodic backtracking during the negotiations, was largely respons-ible for the post-agreement crises from 1999 to 2001 over whether Sinn Féin could take up and retain cabinet positions before the IRA had begun to decommission its weapons. Pro- and anti-agreement unionists were evenly represented in the Assembly after the 1998 elections. Inclusion of Sinn Féin threatened to erode Trimble's support on the unionist flanks. Where there is no intra-ethnic party monopoly, ambitious compromises across group lines are vulnerable to flank claims of a sellout.

Undoubtedly, Trimble had a sense of the dangers of history repeated. Pro-Sunningdale representatives were a minority among unionists in the 1973 Assembly,[38] and Brian Faulkner, Trimble's predecessor, barely survived an anti-agreement motion in his own party council in November 1973, as Trimble himself barely did in November 1999. The lessons of history cut both ways for unionists, and the party configuration on the unionist side was not conducive to total inclusion.[39]

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[37] For evidence on declining violence and support for violence in Northern Ireland, see Donald L. Horowitz, *The Deadly Ethnic Riot* (Berkeley: University of California Press, 2001), pp. 497–9.

[38] See Brendan O'Duffy, 'British and Irish Conflict Regulation from Sunningdale to Belfast, Part I: Tracing the Status of Contesting Sovereigns, 1968–1974', *Nations and Nationalism*, 5 (1999), 523–42, p. 535.

[39] The point is reinforced by the narrowness of the vote within the UUP's council supporting Trimble's decision of November 1999 to form a government including Sinn Féin. Even after Trimble promised to reassess UUP participation in the cabinet in February 2000, he was only able to muster a 58 per cent vote of support.

On the nationalist side, it is not clear whether the party configuration was conducive to anything else. Certainly, Hume and Mallon did not wish to be responsible for an agreement that failed to guarantee Sinn Féin's inclusion in government.

Whether or not a government of the middle was a wiser or less risky choice was, however, a moot point at the negotiations. For one thing, elections to the negotiations produced an inclusive process, which in turn produced a bias towards an inclusive regime. For another, there had been a sea-change in British and Irish thinking. The Anglo-Irish Agreement of 1985 could be interpreted as an attempt to marginalize Sinn Féin. The Irish government had certainly been cool, at first, to the SDLP's approaches to Sinn Féin in the late 1980s. But no longer. The British and Irish governments had both been talking to Sinn Féin for years. Both wanted an arrangement that promised to end the violence sooner rather than later. An inclusive regime promised that. More decisive by far, however, was the conviction of the internal participants about what they believed was the main 'lesson' of history: so many efforts had failed to produce a politics of intergroup accommodation that it was time for a bold new departure. An inclusive regime, with air-tight minority guarantees, had not yet been tried.

On this, the SDLP held the firmest convictions, not subject to compromise, but others, including loyalists, shared them in some measure. After the failure of the power-sharing government in 1974, the SDLP's doubts about the utility of any solution without an external, North–South dimension were reinforced. The party also began to believe that a Stormont government without Sinn Féin would be prone to habitual breakdown. Distrustful of its experience in Northern Ireland assemblies, SDLP wanted as much protection as it could get from them. If Sinn Féin were willing to participate, it would add some votes and win some seats for the Catholic side, enhancing its equal standing with unionists in the assembly and the SDLP's negotiating position with unionists.

By 1988, SDLP leaders had begun talks with Sinn Féin. In the intervening decade, they became convinced that SF could be co-opted to democratic politics. Other SDLP members were less convinced than the SDLP leader John Hume, and SDLP negotiators were unnerved by Sinn Féin's failure to engage seriously the issues at stake during the 1998 negotiations. But, having made a leap of faith, they had no wish to reverse themselves. On the nationalist side, the idea of Sinn Féin's joining in peaceful contestation probably evoked folk memories of Éamon de Valéra's turn to democratic politics in the Republic, after fighting the British earlier in the century.[40] Successful history demands repetition.

Of course, the accepted lessons of history are not synonymous with history itself. It is true that the power-sharing government of 1973–74 was a government of the moderate middle, including only Official Unionists, SDLP and APNI. It is also true that paramilitaries on both sides opposed the regime fiercely. And it is true that the regime failed in 1974. But the less-than-fully inclusive character

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[40] The source of this observation is a Northern Ireland journalist with good connections in the nationalist community.

of the government was not the explanation for its failure. Rather, a fragile government was asked to take on too many ethnically contentious issues at once: the end of internment, a North–South Council, and the policy of the Republic towards self-determination for the people of the North.[41] This was a great deal to put on the plate of a government while unionists were divided over whether it was possible to admit nationalists to government in the first place, especially with an electoral system (STV) that failed to support the middle parties with a significant number of vote transfers.[42]

The profusion of fundamental issues allowed plenty of room for outbidding on the unionist side. In early 1974, opponents of power-sharing won eleven of twelve Northern Ireland seats in the Westminster election. When the Assembly ratified the Sunningdale Agreement of five months earlier that provided the basis for the power-sharing government, a loyalist general strike brought the government down. It was not the exclusion of Sinn Féin or other paramilitaries that defeated power-sharing in 1974, but unionist divisions. If there is any lesson at all in these events, it is that, for unionists to make a durable agreement, they need to cover their flank early on. An attempt to settle all outstanding issues at the outset, rather than to proceed incrementally, is conducive to erosion on the unionist flank. The 1998 agreement thus challenges, rather than follows upon, a proper understanding of 1973–74.

It may be that Trimble, with his habitual alternation of caution and boldness, and his irritating inconstancy, which was to plague efforts to implement the agreement, had a better grasp of the dangers of Good Friday than did some of his negotiating partners. But this proved irrelevant. The lessons of history, as learned by the SDLP, and the momentum of formulations left over from prior negotiations together proved far more powerful. The latter swept unionists along, too, for they found more than enough acceptable provisions available to consummate an agreement.

A consociational agreement had actually been evolving over the years. During the Brooke–Mayhew talks of 1991–92, the discussions mainly concerned ways to achieve a power-sharing, proportional regime. Hardly anyone had argued for an intergroup but merely majoritarian approach then, and Hume had insisted that Sinn Féin had to be included in a future regime. The ground had already begun to shift. By the time of the Framework Documents of 1995, the British government was proposing weighted majorities for the passage of controversial legislation, committee chairs elected by PR, and a requirement of unanimity for executive action – some of the main accoutrements of consociational rule, but without, as yet, the requirement of a grand coalition.[43]

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[41] For a somewhat different assessment, see Conor O'Clery, 'Why Sunningdale failed?' *Irish Times*, 9 August 1999.

[42] STV is a system that allows vote transfers across group lines if a candidate fails to win a seat on first-preference votes alone. But the incentives provided by STV for intergroup transfers are weak. In 1973 and subsequent elections, including 1998, there were very few transfers across group lines.

[43] See Brendan O'Leary, 'Afterword: What Is Framed in the Framework Documents?' *Ethnic and Racial Studies*, 18 (1995), 862–72.

Virtually every important provision in Strand 1 had antecedents in prior negotiations or documents. The jointly-elected chief executive goes back to an SDLP proposal during Brooke–Mayhew in 1991–92. The submission envisioned a 'commission', a three-member executive directly elected all over Northern Ireland. Presumably, these would have been two Protestants and one Catholic. In effect, they would constitute a collective presidency. According to the proposal, drafted in Dublin, the British government would have added one member, the Irish government another, and the EU a third, producing a total of six. The directly-elected three members of the executive were intended as a counterweight to what might turn out to be a volatile legislature. 'We didn't think it was a runner,' an SDLP negotiator reflected later, and, indeed, the internationalization of Northern Ireland the proposal implied was unacceptable to unionists. But the idea of a joint executive did not die. It appeared again in the 1995 Framework Documents. Eliminating the three external members, the British government advanced the idea of a three-member, separately-elected panel that would operate by unanimous decision. Its nationalist member would thus have a veto. From a panel of three, popularly elected, it was a short step to two, jointly elected but by the Assembly itself. There was still some creativity in the final design, but that design evolved from earlier proposals.

In accordance with UUP preferences, the Brooke–Mayhew talks had envisioned committee, rather than cabinet, government. As indicated earlier, committee chairs would be parcelled out by proportional representation, following the d'Hondt rules used by the European Parliament. This had long been acceptable even to the DUP, represented in the European Parliament by Ian Paisley. Its immediate parentage was, again, the 1995 Framework Document on Strand 1. But election of a cabinet by the Assembly had originally been mooted in the late 1970s by an Alliance party leader as a way of producing an intergroup government without the formal provisions for intergroup power-sharing of which unionists, chastened by the experience of 1974, were by then chary. Since it did not require any ethnic designations, this method was also congenial to the transcommunal instincts of APNI.

The 1998 provisions on cabinet formation are not identical to any of these, but they bear traces of all of them. Cabinet members come from the Assembly, rather than from selection by the first minister and deputy first minister, but parties nominate them (and, if they wish, withdraw them) on the basis of d'Hondt; the whole Assembly does not elect them. Committee chairs are still to be allocated on the basis of the d'Hondt system, but they are no longer a substitute for a cabinet executive.

Similar points could be made for 'parity of esteem' – a phrase coined by the SDLP almost a decade earlier, at first resisted by the DUP and UUP, then embraced by the British in 1995, and adopted in 1998 without great difficulty – or for the doctrine of 'widespread community consent', which went back twenty-five years, or a number of other provisions. No earlier failure failed to contribute towards agreement on Good Friday. So much experience had produced a stock of more or less acceptable ideas that could be reconfigured as

events unfolded. Even a loyalist representative confessed that he entered the negotiations more or less knowing where things would end up. What simultaneously had narrowed the options and served up an array of formulations was the survival of the fittest proposals.

THREE STRANDS OF EXPLANATION

Like the Good Friday Agreement, the argument here has three strands. To explain the agreement requires an understanding of the subjective frame that unionists brought to the negotiations, the process by which negotiations were conducted, and the way in which history was the unnamed partner in the process. The unionists' assessment of their position diminished their enthusiasm for untrammelled majoritarianism and made them receptive to a consociational dispensation. The narrowing of the process to two internal parties, one of which proposed and the other of which disposed, was conducive to adoption of a coherent plan. The narrowing of the options by virtue of what participants took to be the lessons of history and by virtue of the accretions that flowed out of prior experience produced an agreement that was, in a sense, merely a confirmation of earlier implicit agreements.

Had the unionists the same strong sense of their majority status that is typically enjoyed by majorities confronting severe ethnic conflict, they would surely have resisted an agreement based on maximal inclusion, maximal guarantees, and maximal promises of equality. Their subjective sense of their own present and (especially) future position led unionist negotiators, peeking through the veil of ignorance, to see themselves as likely beneficiaries of consociational guarantees at a later stage. But, of course, a sense of weakness can point in two directions: it argues either for making a good deal now (the UUP, PUP and UDP position) or for standing fast (the DUP position and that of a large minority in the UUP). Just as a precarious unionism made possible a consociational agreement, so did it also facilitate the hostile reaction to the agreement among some unionists.

The narrowing of the process had the same effect. At the outset, there were divergent preferences of the sort that typically produce hybrid agreements. But the parties with the most divergent preferences had virtually nothing to do with the outcome. Sinn Féin, its interests advanced by an SDLP that was committed to SF's inclusion, maintained until the last day the position that it wanted only a united Ireland and would not sit in Stormont. This was its position even in private conversation until the end of the Belfast proceedings, at which point it made a perfunctory, one-page submission on Strand 1 to Senator Mitchell. The DUP, of course, had left the negotiations, where it might have blocked the UUP concessions. When the DUP left, Trimble was noticeably less reticent about agreeing. Presumably, he thought that DUP would have a comparative advantage in espousing a militant rejectionism, and his advantage would have to rest on achieving what could be described as unionism's best deal. Even so, the consensus that the narrowing of participants and the differentiated roles

played by SDLP and UUP made possible was vulnerable to challenge from outside, particularly as the agreement, once confirmed in a referendum, was to be followed by an election for the Assembly.

The large contribution made by the invisible actor at the table – history – had, as I have suggested, two sides: the lessons of history, as reconstructed by participants, and the deposits of history, the ideas that survived and were resurrected for inclusion in the agreement. Both aspects make it possible to think of the negotiation as something other than a single event,[44] as a long-running show with a great many intermissions. Each act made its contribution to the final performance. Those who acceded to the agreement may, with a bit of exaggeration, be described as assenting to an implicit, pre-existing agreement, rather than making a new one.[45]

Still, neither the relevant lessons of history nor the accretions of history were randomly distributed. Both pointed towards positions congenial to the SDLP. That is because there had been a groping towards guarantees in earlier negotiating attempts and because the SDLP had itself made a great many of the earlier proposals that formed the accretive deposits that were picked up and reshaped into the Good Friday Agreement. This skew, too, pushed the parties towards a coherent result.

The agreement, said Seamus Mallon, was 'Sunningdale for slow learners.' Of course, the agreement departed from Sunningdale in many ways, but the statement reflects correctly the part played by Sunningdale and all of its successors. Needless to say, historical recollection is a dangerous basis on which to make plans. The memory of previous events is frail and prone to error, particularly when the recollection pertains to the most general meaning of events, rather than to a single aspect of a discrete event.[46] Likewise, the surviving stock of provisions available for use may point in a particular direction, as it did in Belfast, but it may be that proposals that did not survive because of something in the earlier setting in which they were advanced might have been equally or more useful in the present setting.

The existence of consensus that produces an agreement does not mean that the contours of the agreed arrangements are necessarily apt to ameliorate the conflict. In Northern Ireland, questions about the course the parties took are raised not only by the doubtful role played by historical recollection, but by the softening of the conflict that would have provided support for a moderate

[44] For the difficulties of conceptualizing a single event, see Monroe C. Beardsley, 'Actions and Events: The Problem of Individuation', *American Philosophical Quarterly*, 12 (1975), 263–76; Donald Davidson, 'Reply to Quine on Events', in Ernest LePore and Brian P. McLaughlin, eds, *Actions and Events* (Oxford: Basil Blackwell, 1985), pp. 172–6, at p. 176.

[45] For a provocative discussion of 'made law' and 'implicit law,' see Lon L. Fuller, *Anatomy of the Law* (New York: Frederick A. Praeger, 1968), pp. 43–84.

[46] For suggestive treatments, see John Anderson, *Cognitive Psychology and Its Implications*, 3rd edn (New York: W. H. Freeman & Co., 1990), pp. 239–42; Daniel Kahnemann, 'New Challenges to the Rationality Assumption', *Journal of Institutional and Theoretical Economics*, 150 (1994), 18–36, pp. 27–32.

middle, as well as by the difficulty of forming a government once the agreement was consummated and elections were held. The long delay in implementing the agreement was largely attributable to constraints on fulfilling a commitment to incorporate Sinn Féin in the face of a divided unionist community.[47] Inclusion of the extremes remains a very great challenge.

The issue here, however, is not whether those who concluded the Good Friday agreement made the best choices or the right choices. The issue is why they were able to agree, and to agree on a coherent plan, in spite of the obstacles arrayed against any such agreement. Where coherent agreements are consummated, that will be because those obstacles are overcome. The multiplicity of parties, espousing a *mélange* of approaches and provisions, will somehow need to be reduced. The asymmetric preferences of the parties will have to be subdued. Bargaining and exchange will need to yield to a different sort of process. If the agreement is to be consociational, something in the relationship of the negotiating parties will need to give a special advantage to the minority that is likely to prefer consociational guarantees, which will otherwise be resisted by majorities. The structure of the Northern Ireland negotiations contained three causal conditions that enabled the parties to produce the agreement they did. The same configuration is unlikely elsewhere.

[47] This is an argument I explicate in a critique of the substance of the arrangements, 'The Northern Ireland Agreement: Clear, Consociational, and Risky', in John McGarry, ed., *Northern Ireland and the Divided World* (Oxford: Oxford University Press, 2001), pp. 89–108.