

The Continuing Volatility of Devolution in Northern Ireland: The Shadow of Direct Rule

DEREK BIRRELL AND DEIRDRE HEENAN

Abstract

Since the establishment of devolution in 1999, Northern Ireland's power-sharing governments have been fragile and prone to crisis. However, following a decade of relative stability and cooperation between Nationalists and Unionists at Stormont, hopes were high that the devolved arrangements had finally become embedded and more resistant to collapse. This optimism was dashed when Sinn Féin brought down the devolved institutions in January 2017. A snap election once again returned the Democratic Unionist Party (DUP) and Sinn Féin as the largest parties and their inability to form a government resulted in yet another political stalemate. This article begins by outlining the pattern of political crises in Northern Ireland and assesses both the trigger factors and the responses. It then goes beyond the most obvious explanation for this continuing instability—that of the deep sectarian based divisions—and points to a number of other reasons for the volatility. These include issues such as the incomplete implementation of previous agreements, the impact of broader UK policies and the shadow of Direct Rule.

Keywords: Northern Ireland, power-sharing, devolution, Direct Rule

Introduction

THE FRAGILE NATURE of devolution in Northern Ireland was once again brought into sharp relief with the collapse of the political institutions in January 2017. Following the resignation of the Deputy First Minister and the refusal of Sinn Féin to nominate a replacement, the Secretary of State was legally obliged to call an election—the second Stormont Assembly election in less than twelve months. The outcome of this March poll resulted in the DUP and Sinn Féin emerging again as the two largest parties, albeit in the context of a fundamentally altered backdrop. Sinn Féin was the biggest winner, coming within a seat of matching the DUP's return with twenty-eight seats. Significantly, in what can be described as a political earthquake, for the first time since Ireland was partitioned in 1921, Unionists no longer hold an overall majority in Stormont.

In theory, the parties had a period of three weeks in which to come together and form a power-sharing Executive or face another election or the reinstatement of Direct Rule from London. Negotiations aimed at addressing

this latest impasse between the two main political parties and the British and Irish Governments commenced immediately after the result. An initial deadline for establishing an Executive passed without agreement, opening up the possibility of another protracted period of negotiations. This article outlines the causes and responses to the crisis and identifies recurring themes and issues. It contends that instability in Northern Ireland's devolved government cannot simply be explained by deeply entrenched ethnic divisions, and points to a number of barriers to sustainable devolution. It contends that the region's instability and volatility will continue unless these fundamental underlying issues are addressed.

Patterns of breakdown and restoration

Since the establishment of devolution in 1999, following the prolonged negotiations leading to the Good Friday Agreement, the Northern Ireland Act and its implementation, there has

been a series of breakdowns and suspensions of devolution, as well as times of severe threats to the continuation of the institutions. The most significant breakdown occurred in 2002 and it was not until 2007 that the St Andrews Agreement led to the restoration of devolution, underpinned in this case by the Northern Ireland (St Andrews Agreement) Act 2006. The key issues that had to be resolved were support for the devolution of policing and justice (subject to getting Sinn Féin to support the Police Service of Northern Ireland (PSNI), which they agreed to at a special Ard Feis in January 2007), changes in the operation of power-sharing and Executive procedures and a number of other matters relating to human rights, equality and the Irish language. A significant change in the rules ceased to make the First Minister come from the largest party of the largest designation (either Unionist or Nationalist) in Stormont and changed the criterion to simply the largest party. Some amendments were made to the ministerial code, for example, a further veto mechanism was agreed whereby three members of the Executive could require a decision to be made on a cross-community basis. Additionally, measures were introduced in relation to attendance at the North South Ministerial Council. Other aspects of this Agreement covered victims, the Irish language, human rights and the review of parades, underpinned by a financial package for the restored Executive. It has been noted that the St Andrews Agreement was written as an agreement between the two governments mainly to ensure certain actions, with the acquiescence of the Northern Ireland local political parties.¹ The two governments made clear that in the event of failure to reach agreement on the implementation of the St Andrews Agreement, they would proceed on the basis of new, but unspecified British–Irish partnership arrangements.

Subsequent to the restoration of the Assembly and Executive, a crisis over the final agreement on the devolution of justice and policing again threatened the continued functioning of the Executive. The crisis was averted through negotiations which concluded in the Hillsborough Agreement of 2010, largely focused on justice and policing. The text of the Agreement noted that ‘we wish to see this agreement reflect our

willingness to ensure the Executive and Assembly reflect better this spirit of partnership, mutual respect and equality which remain vital for the success of devolution’. The Hillsborough Agreement set out the special arrangements for the appointment of a first justice minister. Additional funding was provided to meet the exceptional pressures on security, capital expenditure, and for police pensions. In addition, there were other commitments, including a review of parading and an examination of outstanding issues from the St Andrews Agreement.

The continuing threat to the stability of the political arrangements posed by a flags dispute, parades and dealing with the past led to the Haass talks in 2013. Senior American diplomats Richard Haass and Meghan O’Sullivan were appointed to chair all-party talks on flags, parades and the legacy of the past. Following months of talks, the process was dissolved without agreement, although there was a consensus that the talks had moved all of the issues forward. Shortly afterwards, Stormont’s power-sharing Executive became deadlocked over the issue of welfare reform. Sinn Féin refused to implement the welfare reforms introduced elsewhere in the UK. In terms of content, this was a less traditional dispute, as the issues it raised related to inter-governmental relations, devolved powers and the socio-economic policies of the political parties. While Sinn Féin totally opposed the introduction of welfare reforms, the DUP had also taken action to prevent aspects of the reforms being introduced. Constitutionally, welfare benefits are a devolved matter, but Northern Ireland has traditionally followed a policy of parity in implementing UK measures, with the UK government directly funding benefits. An impasse occurred as the UK Government began to impose financial penalties for the absence of welfare savings through making reductions in the block grant. This disagreement over implementation of reforms led to a financial and political crisis and an inability to agree a budget. The seemingly inevitable collapse was avoided only through inter-governmental and party negotiations.

The Stormont House Agreement was reached in December 2014, through which

the Executive would bring in legislation to implement welfare reform and, in return, it would be provided with a comprehensive package of financial support. This covered capital funding, borrowing facilities, proceeds from asset sales and direct funding to bodies to deal with the past. The key factor was the flexibility to make up for deductions for welfare from asset sales and capital budgets. This enabled top-ups to be made to welfare reduction and to postpone the 'bedroom tax'. The UK Parliament also approved the devolution of corporation tax powers. The Executive in return would develop a programme of public sector reform and restructuring. Other measures in the Agreement included a commission on flags, identity, culture and tradition. A number of legacy measures were agreed, including an oral historical archive, victims and survivors' services, an historical investigations unit and an independent commission on information retrieval. Institutional reform reducing the number of MLAs and departments, a robust system for members' expenses, a protocol on the operation of petitions of concern and processes to improve efficiency would also be introduced. There were other agreed statements on outstanding issues of a civic advisory panel, endorsing respect and recognition of the Irish language and actions to improve community relations. The Stormont House Agreement ended by stating that progress in implementing the provisions must be actively reviewed and monitored.

Some six months after the Stormont House Agreement, its implementation had stalled. Disagreements within the Executive over the scope of the welfare reform mitigation and the budget had hindered progress in broader areas of the Agreement. Moreover, long-standing divisions re-emerged over paramilitarism and the continuing formal existence of the Provisional IRA. The Secretary of State stressed that Northern Ireland was faced with the prospect of early elections with a return to Direct Rule. In this context, it proved necessary for the UK and the Irish governments to convene a fresh round of cross-party talks with two objectives: to secure the full implementation of the Stormont House Agreement and to deal with the impact of continued paramilitary activity.

Ten weeks of intensive negotiations led to what was widely viewed as a successful outcome.

The Fresh Start Agreement led to the approval of welfare reform through a legislative consent motion and the Executive was able to allocate a total of £585 million from Executive funds over four years until 2019–20. There was a commitment that Northern Ireland would deliver a balanced budget to put the finances on a sustainable footing and a renewed commitment to devolve the setting of corporation tax. There was also to be a measure of financial support from the Irish Government. Further action was reported on implementing other aspects of the Stormont House Agreement or on work in progress including establishing a commission on flags, identity, culture and tradition. In terms of institutional change, in addition to legislation on reducing the size of the Assembly, arrangements would be put in place to support an official opposition from parties who were entitled to take up ministerial positions in the Executive but chose not to do so. A Programme for Government framework adopting what was called a more outcomes-based approach was announced. No progress on action on the Irish language was reported. This Agreement also set out the further commitment by the parties to challenge all paramilitary activity and support the rule of law unequivocally with a range of measures to tackle paramilitarism. The document contained a recommitment to partnership government, political cohesion, political inclusivity and participative democracy.

The 2017 collapse

Following the 2016 election it seemed that the prospects for political stability had increased, although a number of issues from previous negotiations still remained, most notably dealing with the past and parades. The Executive, now composed entirely of DUP and Sinn Féin ministers, despite historic and ideological differences declared a shared emphasis on so called bread and butter issues. The Executive also published an agreed draft Programme for Government and, although composed of very general long-term outcomes and omitting most

contentious policy issues, this was seen as another positive development. Initial fears that the diametrically opposed views on Brexit of these parties would destabilise the devolved government proved largely unfounded. In common with the majority of the UK electorate, the DUP strongly supported the Leave campaign and, like the majority of Northern Ireland electorate, Sinn Féin campaigned to remain, initially this difference did not appear to be insurmountable. Post-Brexit they appeared to adopt a unified approach in 'seeking to achieve the best possible outcome for all our people'. In a letter to the British Prime Minister, they noted that it was important that the 'border does not create an incentive for those who wish to undermine the peace process'. Indeed, the DUP and Sinn Féin continued to cooperate on a draft Programme for Government. In November, the First Minister and Deputy First Minister wrote a joint article for the *Belfast Telegraph* proclaiming their determination to work together.

Expectations of stability were shattered through a series of events producing another major crisis, leading to the collapse of the Executive and Assembly in early 2017. This time, the trigger factor or core issue related to a simple policy instrument for a renewable heating system rather than a major constitutional or security issue. The Renewable Heating Incentive (RHI) scheme was introduced without the two cost control elements of the RHI scheme in Great Britain, resulting in costs spiralling out of control. A massive overspend and potential payments of approximately £500 million, led to allegations of corruption, negligence and incompetency. When the First Minister, who had been in charge of the relevant department at the time, refused to stand aside for an inquiry, the Deputy First Minister resigned, leading to the collapse of the Executive and Assembly. Sinn Féin explained that the DUP's perceived arrogance around the heating scandal was simply the latest in a long list of grievances with their partners in government. A lack of respect and integrity in the power-sharing arrangements, particularly in regard to the Irish language, a bill of rights and differences over Brexit were also cited as causes for their withdrawal.

Causes of volatility

The most recent political crisis in Northern Ireland has called into question a number of the prevailing ideas and perceptions around how to achieve stability in the devolved arrangements. To date there has been a broadly accepted view that a lengthy period of stability would enable power-sharing to become embedded, thereby making collapse and the return to Direct Rule a remote possibility. Yet, after almost a decade of continuous power-sharing, the institutions remain fragile and lack robust foundations. There is a pattern of crisis; followed by intensive talks, leading to an agreement endorsed by the local parties and the British and Irish governments. This now somewhat predictable response to difficulties has resulted in marginal changes, without effective monitoring and implementation of agreed outcomes and pledges.

The destabilising factors that have provoked political crises can be broadly divided into three categories. First, are the issues of continuing long term policy impasses in the Executive and Assembly, even after formal agreements had been reached. It is now possible to itemise a running catalogue of difficult or wicked issues that have not been resolved and have undermined the political system. The continuing list includes: dealing with the past, victims, parades, an Irish Language Act, a Bill of Rights and the misuse of Petitions of Concern.

Second, are the unexpected, contentious issues such as the Renewable Heating Initiative or, more usually, a security related event. In the absence of real consensus about values or principles underpinning policy, the government lacks the strength and resilience to effectively tackle unanticipated challenges. Thirdly, potentially destabilising are wider UK policies such as welfare reform and Brexit. As the only region containing a land border with the European Union from which the UK has chosen to depart, Northern Ireland will be particularly affected by withdrawal. Whilst the differing political stances of Sinn Féin and the DUP on Brexit seemed to be surmountable when they formed an Executive in 2016, the political context has changed. Sinn Féin have described Brexit as the biggest threat to the wellbeing of the

people of Ireland and are arguing for special status for the North. The DUP reject the idea of special status as it is an explicit acknowledgement that Northern Ireland is significantly different than other regions of the UK. It seems likely that Sinn Féin's vote in 2017 was enhanced by the Conservative government's stance on a hard Brexit. Theresa May has consistently restated that there will be no return 'to a border of the past' in Northern Ireland, but it is unclear what that actually means. The Prime Minister's determination to leave the EU customs union has raised the spectre of a return to internal borders in Ireland, which will have far reaching political, economic, social, cultural and psychological consequences. There are fears that the reintroduction of borders will place a strain on the still fragile peace process.²

Direct Rule

Whilst much academic attention has been paid to the consociational principles and the statutory basis for mandatory power-sharing in government, relatively scant attention has been given to consequences of having Direct Rule as a safety net. Throughout the last decade, it has been taken for granted that the DUP and Sinn Féin were fully wedded to devolved government. Any return to Direct Rule from London would be considered an abject failure and an acknowledgement that Northern Irish politicians were incapable of dealing with local issues. It would be viewed as a regressive step, which would see a return to a democratic deficit with those making decisions not accountable to the local population.

Previous periods of Direct Rule from 1972 were intended to be temporary, designed to maintain the status quo in difficult circumstances.³ Much needed reform and modernisation of the public sector and other key policy decisions on education, health and economic development were put on indefinite hold. The public policy process in Northern Ireland was controlled by senior civil servants working for interim British ministers, preoccupied with wider security and political issues.⁴ Direct Rule is viewed as a blunt instrument in terms of policy making. Publicly, there has been a consensus

across the political spectrum that any return to rule from London would be disastrous for Northern Ireland. The DUP leader, Arlene Foster, noted that London taking the reins would be very dangerous. Her predecessor, Peter Robinson, warned of dire consequences culminating in years of isolation and impotence. The Sinn Féin leader, Gerry Adams, completely dismissed the idea, stating that it was simply not an option.

Consequently, the idea that the DUP or Sinn Féin would voluntarily relinquish the hard won power to British ministers in London, rather than jointly rule, appears unimaginable. Yet, in the space of twelve months the political context in Northern Ireland has changed dramatically and the steadfast commitment to the re-establishment of the devolved political institutions may be not be as absolute as it once appeared.

This new political reality has raised the prospect that Sinn Féin may have decided that at this juncture, the reintroduction of Direct Rule may be the least worst option for them. Relinquishing power and jobs in a dysfunctional Assembly may be a price worth paying, short-term pain for long-term gain, given that for them, devolution was simply a stepping-stone to the achievement of their ultimate aim of a United Ireland. Whilst Sinn Féin claim that they are making no new demands, but rather insisting on the implementation of existing agreements, they will be acutely aware of how demands for an Irish Language Act, equal marriage and a comprehensive system for dealing with the past will be perceived by the DUP. Additionally, their insistence that the DUP leader steps aside whilst a twelve- to twenty-four-month inquiry into the heating scandal is complete means that it is extremely unlikely that the DUP will reach a deal with them. This position suggests that Sinn Féin have calculated that devolution has outlived its usefulness. If not in government when the UK is negotiating the deal to leave the EU, they can continue to oppose leaving and reiterate the call for special status for the North. Also, instead of having to implement Conservative party policies, Sinn Féin can be a vocal opponent. In these unique circumstances, a period of Direct Rule may be preferable to a return to a coalition government with the DUP.

Historically the DUP has been a strong advocate of devolution, viewing it as offering strong regionalism within a UK framework.⁵ There is a broad acceptance within the party that a regional, accountable parliament is necessary for the region to flourish—and preferable to being governed remotely from Westminster. However, their overriding concern continues to be the maintenance of the constitutional position of Northern Ireland as part of the UK, irrespective of devolved arrangements. Whilst they have not explicitly stated that Direct Rule is a better alternative to a regional power-sharing, their commitment to the ethos of partnership government has been widely questioned. In his resignation letter, Martin McGuinness highlighted their 'negative attitude' towards Irish culture and 'shameful disrespect' towards minority communities. During their decade of sharing power with Nationalists, the DUP, as the largest party, did little to build relationships or foster a climate of trust and respect.

The future options

It is still possible that there may be a further negotiated settlement based on compromises over the key issues of dealing with the past, the Irish language and measures to improve equality and respect. The time delay of approximately twelve months for the judge-led inquiry report into the RHI may require further compromise. There is evidence of the importance of finance in resolving some of the disputes. A financial package has formed a key part of most agreements, especially those on police reform, welfare reform, dealing with the past, integrated education, or, more generally, to assist Northern Ireland expenditure when the outcomes of agreements require extra spending over the Northern Ireland block grant. The justification for this in negotiations has usually involved the plea to take into account the need for post-conflict reconstruction and greater expenditure on socio-economic need. Alternatively, it may be suggested that financial incentives are always likely to prove attractive in reaching an agreement. Sinn Féin, as the largest Nationalist party, may be able to squeeze additional concessions out of a

Prime Minister who clearly does not want a return to Direct Rule.

The alternative option is the imposition of Direct Rule, which now requires legislation to be enacted by Westminster. A failure to reach an agreement leading to the establishment of an Executive means that, within a short period of time, it will be necessary for the UK government and Parliament to act to establish Direct Rule. The UK government has little desire to reintroduce Direct Rule, not wishing to accept a failure of the Good Friday Agreement, or to commit to the demands on parliamentary time and processes at Westminster, nor to allocate three or four new ministers to the Northern Ireland Office. If Direct Rule is introduced, the UK ministers have a choice of approaches and emphasis, as the previous period of Direct Rule demonstrated. Three main approaches can be identified. Firstly, a holding operation in which government is kept ticking over without any major decisions being made or new legislation introduced. Secondly, an approach based on bringing Northern Ireland into line with policies in Great Britain such as welfare reform, employment and trade union law, water charges, university fees, housing stock transfer, rates increases, or even tackling more difficult issues relating to equal marriage or abortion. Thirdly, the use of the threat to legislate as political leverage—as a bargaining chip to provide the incentive for the parties to reach agreement. Examples could relate to welfare reform, corporation tax, water charges or post-Brexit policies, for example, on agriculture. Direct Rule means that the structure of administrative devolution remains in place, with the Northern Ireland civil service having a stronger policy role.

An additional consideration—and incorporated usually into a form of Direct Rule—is a greater role for the Irish Government and a form of joint British and Irish governance. It has been suggested that in the future the Northern Ireland issue could be addressed through some form of joint sovereignty between London and Dublin. In this model, Stormont's power-sharing Assembly would remain in situ. However, there would be an overarching partnership between Dublin and London, which would ultimately share control. It could be argued that joint sovereignty

is a logical extension to the parity of esteem principle enshrined in the Good Friday/Belfast Agreement and acknowledges the demographic realities, but would face political and financial complexities. Whilst this concept has been proposed by the leader of the Social Democratic and Labour Party (SDLP), it is viewed as wholly unacceptable by the UK government.

Conclusion

Following the Assembly election of 2016 Northern Ireland appeared to be on the road to political stability. The two big parties had formed a government and appeared to be determined to make devolution work and deliver. Twelve months on and the region was once again in a political vacuum with an impasse triggered by disagreements over policy issues and discontent around the perceived commitment to the ethos of power-sharing. This breakdown triggered negotiations on restoration of the structures adhering to a—by now—well-established pattern. Despite a decade of power-sharing, there appeared to be little appetite for compromise and pragmatism around restoration

of the devolved structures. This raises more fundamental questions around the commitment of Sinn Féin and the DUP to devolution and the extent to which a return to Direct Rule is viewed by either as a failure. The uncertain political landscape in Northern Ireland in the wake of the decision to Brexit, the upsurge in the Nationalist vote and the fractious nature of power sharing has undermined accepted certainties around both the need and desire for devolution.

Notes

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