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NORTHERN IRELAND'S POLITICAL FUTURE CHALLENGES AFTER THE ASSEMBLY ELECTIONS: A DISCUSSION PAPER

Alan Whysall

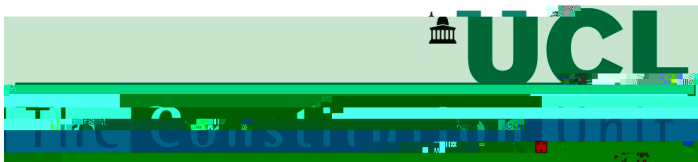
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1 R U W K H U Q Political IO D Q Future

Challenges after the Assembly
Elections: A Discussion Paper

Alan Whysall

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Approach of This Report

This report is about the future of the Belfast/Good Friday Agreement: as it approaches its 25th anniversary, can it survive, and can it be revived? The focus is on the political process following the elections to the Northern Ireland Assembly on 5 May. It is a discussion paper, intended to stimulate further conversation and reflection, in Belfast, London, Dublin and beyond.

§ V H F R Q G U H S R U W D G I G n g e n t e r m i s s u e s w i t h h a r d t o r d e r t h e w i s e c o n s t i t u t i o n a l s t a t u s o f N o r t h e r n I r e l a n d , b e t w e e n U n i o n w i t h G r e a t B r i t a i n a n d I r i s h ? w i l l a p p e a r l a t e r i n t h e y e a r (t h e a p p r o a c h w a s s u m m a r i s e d [h i c h i s](#))

The paper aims, in a neutral spirit, to offer explanations, ~~is a~~ proposals for further action,

Executive Summary

Key Themes

These are some of the main themes of the paper:

x

debate and the pursuit of compromise Northern Ireland should be able to make a greater contribution to resolving its destiny.

The traditional fatalism that says nothing can be achieved is unjustified. The complacency that says that it does not matter is profoundly wrong.

Chapter summaries

Chapter 1 The Belfast Good Friday Agreement

The first chapter looks at the history and prospects of the Agreement reached in 1998.

That Agreement once created great political momentum, and great public hope. And it is still widely supported. But much in politics did not change. And Brexit and its outworkings have gravely exacerbated already developing tensions: it was the first major change in arrangements that lacked the cross-community support by which the Agreement was achieved. Mistrust now abounds.

3ROLWLFDOO\ WKH SRVVLELOLW\ RI D VHFRQG HOHFWLRQ

Crucial to success will be the role of the British and Irish governments, which in the past have worked closely together to foster compromise. But recent briefings coming out of London suggest its approach may be centred around a conflict with the EU. The two governments may find it hard to work together. There may be demands for external brokerage.

Civic society may also have an important role here in helping to broker a compromise.

The difficulties are such that resolving them may require ambition on a scale not much different from the original Agreement. The governments at top level need to be engaged.

Chapter 3 Collapse

The third chapter looks of the possibilities if the negotiations fail. It is widely thought that once devolved government would disappear and reviving it would be impossible for a long time.

Some may see this as a tipping point, favouring Irish unity. But a dysfunctional Northern Ireland may be unwanted both to the east and to the south. A political vacuum has traditionally been seen as favouring disorder and violence, the possibility of which cannot be ignored, though we are in a very different position from the Troubles years.

How government would be done would be acutely difficult. The legitimacy of direct rule from London may be seriously contested. But leaving government largely to the service, as between 2017 and 2020, is hard to contemplate when decision making may be needed on Brexit issues, potentially on Covid. In all circumstances, the absence of devolved government is likely to mean worse government.

Dublin has the right under the Agreement to take a role in devolved matters, which would come to the fore if devolution were not operating, and it would be highly contentious.

Chapter 4 The Responsibilities of London

This chapter considers the approach of British governments to Northern Ireland in recent decades. For a long time, it was a policy priority to restore and maintain peace and stability in Northern Ireland; generally with bipartisanship at Westminster, and a close and effective partnership with Dublin, seeking to show evenhandedness and build trust among different traditions in Northern Ireland.

This has changed markedly in the last couple of years. To many, London has appeared to play

Chapter 8 The Good Government Deficit

Chapter 8 looks at the governing performance of institutions, which has been patchy at best in the face of serious issues of economic underperformance, grave social problems, struggling

Chapter 1.

The Belfast/Good Friday Agreement

This chapter considers whether Belfast/Good Friday Agreement is still the necessary foundation for politics in Northern Ireland and whether its structures and achievements are in danger. It concludes that there is no visible alternative to the Agreement, its institutions must be kept in being, but that is not enough: it needs renewal.

Background

The Agreement

The Agreement was the product of compromise pursued over several decades by the British and Irish governments working in close partnership by some in politics by members of civic society in Northern Ireland and by governments and individuals beyond. It was agreed in interparty negotiations involving the governments and independent chairs, of whom the most notable was the American Senator George Mitchell.

The Agreement was once widely popular in Northern Ireland: in the negotiations it was b

It also layout an internanl5nelpty(Typ9 g3(G 3(y Q TJ0(ofg 0 TJ0(go 3(ver g 0pty(ent)40 TJ0(i

A few hardline republican groups also regard the Agreement as a betrayal of the ~~idea~~ ^{principle} and are electorally insignificant

[Polling suggests enduring support](#)

x If Northern Ireland is to be stable, prosperous and well governed, there is a need to recreate the political and popular mood and energy that the Agreement settlement once generated, and perhaps also the international involvement, from the US and the EU.

x In short there is a need for a renewed Agreement, whether achieved within the Q H J R W L D W L R Q S H U L R G 25th Anniversary Year. \$ J U H H P H Q W . V

It is easy, and common in Northern Ireland, to be fatalistic about the prospects of political advance this was seen before the 1998 Agreement. There is often a complacency about failure to achieve it. Both are out of place: there is a real prospect now that renewal can occur, but failure to secure it could wipe out many of the benefits the Agreement has brought.

divisions in Northern Ireland as a price it was willing to pay. The US Administration argued strongly the need for respect for the Protocol.

Sir Jeffrey Donaldson was installed as DUP Leader in summer 2020 (though being a Member of Parliament, not of the Assembly, he did not immediately take a role in the Executive). He instructed his ministers to protest over the Protocol to participate in the operation of the North-South institutions of the Agreement. They persisted in this course despite [being declared unlawful by the courts](#)

But Sir Jeffrey also threatened to withdraw ministers from the Executive [less grievances over the Protocol were resolved](#) and gave notice that his Ministers in the Executive would use their powers to block any further checks under it at the ports. Although Brussels announced various steps to alleviate the effects of the Protocol in the autumn, and negotiations seemed more promising after the UK side, the Foreign Secretary had taken the UK lead from Lord Frost, the DUP eventually [carried its threat into effect](#). Its Agriculture Minister on 2 February instructed his officials to end border controls under the Protocol, a move [of much disputed legality](#). The following day, it was announced that the DUP First Minister, Paul Givan, would resign his post. His resignation, by law, also removed the Sinn Féin deputy First Minister, ML F K H O O H 2 · 1 H L O O

Other ministers (including DUP ministers) remain in post, though effectively as caretakers, unable to take significant new decisions (see below). A third budget had been proposed before the First Minister resigned, but not voted on by the Executive. The Finance Minister maintained that failure to do so left £300 million that could not legally be [allocated between the parties](#) [find a way forward](#) failed.

Once the new Assembly meets following the election it must elect a Speaker and then the First and deputy First Ministers must be appointed. Under the current rules, the largest party in the Assembly nominates the First Minister; and the largest in the largest designation (that is, nationalist, unionist or other) part from the First Minister: V Q R P L Q D W H V W K H G H S X W

If either of those parties does not nominate, the process of Executive formation is stalled. It will be a period of up to 24 weeks to find a political basis on which ministerial appointments can be made.

Analysis: post

about the legacy of the Irish language (to both see chapter 7) are also likely to feature the negotiation.

Second, a significantly changed electoral line-up from Assemblies of the last two decades is in prospect. That may pose a number of different, but serious and complex, challenges to the institutional arrangements.

Possible outcomes and their implications

What exactly the stakes may be will turn on the results. There is a wide range of contingencies. A former leader of the Alliance party sketched [three possibilities](#). It is worth exploring some of these. They and their implications are discussed at greater length in chapter 9.

Recurrent polling over the last year suggests fragmentation of the unionist vote may be under way² with a decline in the DUP vote, hitherto much the largest on the unionist side, a possible rise in that of the UUP. But also a rise in support for the UV. If reflected in election results (and barring an unexpectedly high Alliance vote) this would lead to Sinn Féir becoming the largest party, and taking the First Minister post (under arrangements introduced following the St Andrews Agreement of 2006).

In that event, the largest unionist party would be entitled to nominate the First Minister. Some on the unionist side, though, argue that the DUP or UUP should not accept that role² even though the First Minister and deputy First Minister posts are precisely equal in powers hence collapsing devolution. The leadership have avoided saying what they would do.

DUP campaigning since St Andrews has with great success played up the importance of leadership

x If not, but the other-designation are the largest in the Assembly, largest party in that designation would nominate the deputy First Minister.

In either case, the traditional binary, unionist/nationalist,

Legal framework for the post-election period

The [Northern Ireland \(Ministers, Elections and Petitions of Concern\) Act 2020](#) passed at Westminster in early February has significantly extended the period before which a default of nominations for First Minister and deputy First Minister being made elections are called. This is

The political context: what will happen in the 24week period?

other unionist parties do not have, and which Sinn Féin lacks

Dublin is also to some degree a player as well as a broker, particularly given its influence with the EU and the EU itself is a player, though how far it may be at the table, in the absence of precedent, is unclear

The position of the governments may lead to demands for external brokerage, including the possibility of an American or other international mediator, official or private, in the tradition of Senator George Mitchell, Dr Richard Haass, or others. The Biden Administration is currently considering [appointing an official Envoy to Northern Ireland](#). Given the strong position that the Administration has taken on the need to respect the Protocol, unionists may not regard it as an honest broker, though Senator Mitchell faced such opposition, and after appointment built considerable respect on all sides

How [3UHVLGHQW %LGHQ·V SRVLEOH YAVW WFRUHS HO DQG](#) may impact the negotiations is unclear.

Senior Northern Ireland civil servants have also been taken on chairing and brokerage. But finding mediators of sufficient stature, acceptability and willingness to take on what

in public spending and a perception in Westminster of Northern Ireland members as transactional

Chapter 3. Collapse

This chapter looks at the question if, finally, the conclusion was inescapable that sharing government was not for the moment possible, what would happen? Would government without London oversight, as in 2017 to 2020, be feasible? Would direct rule be sustainable? What would the Irish role be? How would politics develop? Could stability be maintained? The prospects are bleak.

Background

Northern Ireland has found politics deadlocked a number of times before.

In the event of that negotiation leads to no agreement about resume devolution over the extended periods set out in the latest Act, the only remedy the law has is recurrent elections. The system is built on a requirement of cross-community participation in government, and there is a difficulty sufficient participation is not forthcoming.

But at times in the past when deadlock has persisted, the conclusion has been reached that further immediate elections would not change the stakes, and would make things worse rather than better. Fresh legislation has then been used at Westminster to put them off.

In this case, as discussed above, if the first negotiation period fails, there may well be further elections; but if during the second week period it becomes clear there is no pathway to agreement for resumed devolution, a third set of elections might be put on hold.

In the past, such a move would have been accompanied by the introduction of direct rule from London: the rationale would have been that government course² had to be carried on, and in the absence of local political leadership, it could only be done on the ground with accountability to, Westminster. This system operated from 1970s through to 1999, and from 2002 to 2007. Direct rule legislation (most recently [Northern Ireland Act 2000](#)) provided for the Secretary of State to direct the executive machine (in practice, junior ministers in the Northern Ireland Office were allocated departmental portfolios), and for Orders made with the approval of each House of the Westminster Parliament to take the place of Acts of the Assembly.

The Assembly would on past form be suspended rather than immediately dissolved: it would not be able to meet, there would be no Executive appointments, but its members would remain MLAs, handling constituency business. The Secretary of State would have the power to revive devolution, if a political basis for it could be found.

Difficult questions would arise about remuneration of and facilities for MLAs. If the hope is to restore devolved politics, then the political class, especially those within it ablest to find employment elsewhere, should be avoided. But paying politicians for failing to agree on a way to govern, where there are acute economic and social needs to be dealt with, is also unpopular. By way of compromise, salaries have at times been reduced, and facilities restricted.

No authority for direct rule any longer exists the 2000 Act was repealed following the St Andrews Agreement of 2006.

And new powers were not taken when the Executive collapsed in 2017, apparently because the legitimacy of London rule would have been seriously contested the more so since the Conservative government was dependent at Westminster [Confidence and Supply Agreement](#) with the DUP. The Irish government as well as a number of Northern Ireland parties were strongly opposed to direct rule.

So Northern Ireland was between 2017 and 2020 in the extraordinary position that the administration was carried on by the civil service it acted on the basis of continuing with the policies set out by the earlier ministers. Even [then the found its powers wanting](#) and they

sufficient to permit devolution to resume may be difficult in present circumstances reviving devolved government might be impossible for a very long time

Impact on long-term politics: there are different ideas about how this will impact longer term politics (see chapter 6). Some appear to believe that London will feel affinity with unionism and back that cause. But on recent precedents there must be grounds for doubt.

There is also doubt about whether people in Northern Ireland who are not convinced unionists will feel more attached to the Union when it appears to offer no possibilities of self-government. With the disappearance of an overwhelming unionist majority, such people are now the swinging constituency in the Union versus unity debate.

On the other side, proponents of unity may urge that the collapse is proof that Northern Ireland is a failed entity, and the only viable political future for Northern Ireland is within a united Ireland. But dysfunction and disorder in Northern Ireland seriously risk making unity less attractive: to people within Northern Ireland, because it risks heightening disorder, and to people in the South who would have every reason to fear the destabilisation of their politics.

Traditionally, a political vacuum has been seen as tending to favour violence in Northern Ireland. Matters have moved on greatly since the ceasefires of the 1990s. Well developed paramilitary organisations are no longer in place. But there are still to be some capacity at both extremes for various kinds of illegal or inflammatory action. And there are those on the extremes of unionism who appear to see [the destabilisation of Northern Ireland as likely to help them](#)

It is important not to talk up the risks of violence gratuitously. But it is also important not to neglect the possibilities, given historic patterns of resort to force in recent history.

And how would government be done following the collapse? There are no good answers, DQG WKH L V V X H U L V N V D G G L Q J W R W K H F R Q I U R Q W D W L R C problems are likely to be aggravated, and given political edge, by the cost of living crisis and post Covid backlogs.

The Agreement mechanism allowing the Irish government to make representations about matters in Northern Ireland has been little invoked formally, indeed in recent years little noticed. Any return to it by a Dublin government would be much resisted by unionists (and the

A number of prime ministers made a substantial personal contribution to political negotiation.

For a long time, governments of both Westminster parties remained largely removed from the Union versus unity debate being persuaded either for Irish unity (the Labour Party

The traditional [Westminster bipartisanship seems largely to have vanished](#). The Commons Northern Ireland Affairs Committee has done some thoughtful work on Northern Ireland, but it too is constrained by politics.

Recent polling shows extremely widespread [lack of trust in the British government within Northern Ireland over the Protocol](#) (4% trusting it versus 84% distrusting it). More general disenchantment in Northern Ireland is also evident. [Approval Ratings in Polling in March](#) minus 69 (significantly worse than any local politician).

[/R Q G R Q · V D S S U R D F K D W W U D, F i n d i n g C o u r t e e W r i t e W a r M i s t e r C h e B i d e n A d m i n i s t r a t i o n a n d C o n g r e s s](#)

Comments by [Dominic Cummings](#) in 2021 throw light on the approach to Northern Ireland at the centre of government, suggesting an attitude radically different from that of earlier British governments of both parties. He dismissed talk of Ireland, the Union and the rule of law in the context of the Brexit debate as [infeasible](#). Issues around the Northern Ireland Protocol asserted were very low priority. He suggested that the Northern Ireland Protocol was [included](#) with the intention of later repudiating it. He added [that a part of the job in government is cheating on foreigners](#), presumably including Irish ones.

The [former Chief of Staff to Theresa May, meanwhile, said of the present Prime Minister](#) that as Foreign Secretary and then backbencher he didn't agonise for a moment over Northern Ireland – he was utterly dismissive of the idea that its unique circumstances should influence the nature of Brexit.

Others have not spoken so explicitly. But there is little contrary evidence. There is scant sign of much policy interest in Northern Ireland at the centre of government beyond the Protocol. [L V V X H V Z K L F K V R P H V H H D V H V V H Q W L D O O \ D E R X W % U H \[L](#)

There are continuing perceptions of London partisanship within Northern Ireland too. The present Prime Minister was cultivated by the DUP out of office [promising their party conference](#) in 2018 that there would be no Irish sea border controls. Following the Protocol, he was [accused by unionists of betrayal](#). A DUP MP has [lamented](#) that the Conservatives were becoming English nationalists with little understanding of Northern Ireland.

But suggestions of party political favours for the DUP continue, and were revived when the government attempted to amend the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2020 during its Westminster passage, permitting limited double jobbing between Westminster and Stormont. This was widely seen as a favour to the leader of the DUP, who was attempting to switch. After denunciation by all the other parties, the government withdrew its amendment.

It has also been [hinted](#) that there was some element of collusion between the government and the DUP over changes to the Bill that facilitated the withdrawal of the First Minister at the time it happened. Others might wonder about the motivation of continued briefing from London

⁶ There might be arguments for the policy: what especially [G L I I L F X O W W R M X V W L I \ L Q W K H J R Y H](#) failure to consult the Northern Ireland parties before seeking to change the law

during the election campaign that the government was planning to [Article 16 of the Protocol or ignore the Protocol altogether](#), when voting was over.

Relations with Dublin are probably at a 40-year low. The comments of Mr Cummings about the Protocol led the Irish Deputy Prime Minister (Tánaiste) to question how far Britain would ever keep promises. We are now a world away from the high point of British-Irish relations, exemplified in the 2011 State Visit to Dublin.

And worsening relations at government level have been paralleled by [a rise in the views of many Irish people towards Britain](#). Social media certainly reflects a resurgence of traditional anti-British attitudes, North and South. Whether these views bolster the prospects of constitutional change, or Irish parties who take a harder line towards Britain, notably Sinn Féin, is unclear.

The nature of Northern Ireland politics has been such that the disputes other devolved administrations have had with London have had less impact there. But if the institutions began to work effectively together again, those challenges would loom larger in Northern Ireland.

To sum up this section it is hard to avoid the conclusion that the political world at Westminster has now forgotten most of what an earlier generation painfully learned about handling Ireland over four decades. There is no longer much apparent understanding of Ireland at the centre.

If the government has any strategic view about even the medium term in Northern Ireland, it is not apparent. There is little sign of any thoughtful approach to preservation of the Union, though it is supposedly a prime objective of the government. What it has done recently by contrast is arguably liable to alienate support in the centre ground, which is now the swing constituency on the constitutional issue; flag waving and drum banging will only (at most) rally the already convinced.

Analysis: should London care and what should it do?

The downsides of the current London approach may be felt before long.

As we face greater political instability in Northern Ireland, the lack of trust in the British government will mean it is much harder for it to broker a compromise, or work constructively with Dublin. If devolution cannot be sustained after the election, it will be very hard to put back in place.

Instability would also bring reputational consequences for the UK internationally² potentially with significant material results, given the concern of many in US and EU politics about the way London has conducted itself with respect to Northern Ireland over the Brexit years. The Agreement is no longer seen as a triumph of British statecraft in the way that it was.

But it is important to note too that in US government circles, the Agreement is widely seen as an American achievement, [America as a guarantor of](#) so what is perceived as the British

J R Y H U Q P H Q W · V Q H J O H F W R I L W L V S D U W L F X O D U O \ S R R U O

At a more pedestrian, but also immediate level, an unstable Northern Ireland could soon

And it would seek to revive positive politics, would encourage progress again towards the wider objectives of the Agreement in developing relations, healing social division and banishing the threat of violence from politics

This requires sustained effort, real and conspicuous understanding and empathy in London, and an evenhanded approach between the different communities, identities and outlooks in Northern Ireland.

And it would once again need people who can command trust, empowered, capable and trusted Secretary of State, with the clear support of the Prime Minister.

The period following the elections will be a critical one: ensuring that devolution survives with the chance ultimately to thrive will require serious commitment from London and
a

Chapter 5.

The Need for a Revived Agreement

The argument in this

Meanwhile, business and third sector organisations have overcome initial reluctance and [been willing to speak publicly in debates about making Brexit arrangements work](#)

And much work has been done by academics in areas covered by the Agreement. Academics based [in Northern Ireland](#) and [elsewhere](#) have contributed substantially to public understanding in Northern Ireland of Brexit. There has been much academic input in some, though not all, other areas covered by the Agreement, like [Legal ARINS initiative](#), based in the Royal Irish Academy in Dublin, has sought to continue research and dialogue on policy options in the post-Brexit context.

This work is often of great value. But it is in certain respects limited. It does not systematically attend to the full range of issues discussed in this paper, on which the [the Agreement settlement](#) depends. And academic work is often in the nature of analysis, rather than policy prescription.

of the year. There may be political advantage in this for both the governments and the parties, apart from the long-term benefits underpinning the agreement.

The key likely elements are set out above.

The culmination of the process might draw the same sort of supporters as the original Agreement, including the British and Irish governments at the top level, but also the US.

And, as suggested in chapter 6,

Chapter 6.

The Northern Ireland Protocol

This chapter considers the Northern Ireland Protocol, which is likely to be the primary sticking point in the post-Brexit negotiations. There is a hope of finding a way through?

Background

The Agreement chapter set out the strains that Brexit has imposed on Northern Ireland politics. The Northern Ireland Protocol, the EU-UK Withdrawal Agreement has brought the issues to a head, and indeed over Northern Ireland politics since it came into effect early last year. It was the cause of the DUP walkout from the First Minister post in February.

Purpose and effect of the Protocol

The Protocol declares itself to be set against the background of

The history of the Protocol

The Protocol was negotiated at speed following a marked departure by the British government of Boris Johnson from the approach to Northern Ireland of Theresa May.

The EU position

7 K H (8 · V S Was to be strict controls, which were indeed included in the Protocol, and then strict fulfilment of them. Subsequently, following protests from Northern Ireland and London, consultation with business in Northern Ireland and, it appears, heavy pressure from Dublin, the Commission proposed in October 2021 a less burdensome approach. It has legislated itself to change regulations that threaten the supply of medicines from Great Britain to Northern Ireland

/RQGRQ · V SRVLWLRQ

London conceded the scheme in the Protocol at a late stage in the withdrawal negotiation. But after Brexit had taken effect, it backtracked

The immediate pressure on the British government has often been to invoke Article 16

the Union, and viewing cheating on foreigners as part of the job? [raised further doubts about /RQGRQ·V JRRG IDLWK](#)

London could have alleviated the problems the Protocol has caused through different policy choices its approach to Brexit for example by signing up to a food safety agreement, even if only temporarily as the EU proposed in April last year. And it might find itself under pressure of these sorts after the election.

The preponderant demand from businesses been policy stability. Some say the Protocol brings significant advantages to Northern Ireland businesses. Some have played up the unique advantage that Northern Ireland business in principle through alone being part of the British and European single markets for goods. Some businesses have faced difficulties. An economist suggested the Protocol imposed [heavy costs](#) though the [basis of this research was strongly disputed](#)

What might be the upshot of the threats currently emerging in briefings from London of further action on the Protocol, potentially disapplying it UK law? It is hard to tell how real WKH\ DUH \$UH WKH EULHILQJV VLP SO\ D SROLWLFDO WDF position with the right of his party, and perhaps also to help the DUP in the Assembly elections by suggesting the campaigning will bear fruit. A Bill, even if published, ultimately be passed and then brought into effect?

If parts of the Protocol were disapplied, reducing border checks, GRQ·V VWDQGLQJ D with some of the parties and with Dublin would be further damaged. But such a step on might well not stand in the way of political agreement in Northern Ireland; it might indeed help the DUP to join in. If however the consequence was GR LQJ V RPH RI 1 R U W K H U Q , U H C under the Protocol action might be much harder. As it might if anything were done that so clearly damaged the integrity of the European Single Market that it appeared to risk the EU demanding checks within or around Ireland. It could not be assumed that in that case Brussels rather than London, would get the blame with most Northern Ireland opinion.

Brexit, the Protocol and the Agreement

On the arguments that either Brexit itself, or the Protocol, conflict with the Agreement strict construction of the text of the Agreement, which for the most part was a political rather WK D Q D O D Z \ P I S D I F F I C U L T B U T F E X T H E H A I M I S Q U I T E D I F F I C U L T T O M A K E O U T b e c a u s e the Agreement text of course does not address these points. Specifically, it is hard to see how \$ J U H H P H Q W · V S U R a n b e l e a d a s p e r s e r v i n g e v e r y a s p e c t of the relationship between the different parts of the two islands such aspiration was voiced at the time the Agreement was negotiated and might have been strongly contested had been

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place? That impacts on the unionist community among others, of course. It is liable to be counterproductive with centre ground voters in Northern Ireland; and with opinion in London. And assuming that London will pick up the economic damage done may be dangerous.

- x Would government without the institutions benefit unionists? The DUP may comfort themselves with being the best represented party at Westminster. But outside hung parliaments, their influence is small. So far as the UK authorities take control of Northern Ireland in the absence of devolution (see chapter 3), unionists may on recent precedent think they have little ground for counting on government goodwill regards Brexit, or as regards other areas of policy close to their hearts.
- x And in the domestic political argument, does a collapse strengthen the case for Irish unity? It is hard to see how it brings anyone closer to the cause of the Union. On the contrary, it risks inflaming and changing the focus of Northern Irish politics. Sinn Féin and other proponents of early Irish unity would probably intensify their campaigns, suggesting the collapse demonstrated that Northern Ireland was a politically failed entity. It is far from clear that the centre ground, the swing constituency in a unity vote, would become more pro-Union in such a context.
- x Going a step further, would the final outcome of the UK abandoning checks on the sea borders might be the EU requiring Ireland to adopt checks within the island of Ireland or on its own borders with the EU to plug the breach in the Single Market and Customs Union protections. Both would be intensely difficult for Irish governments. The first would be for place within the Single Market.

Some among the Brexit hardline may take it that the blame will be borne by the EU. But the EU position would likely be that these were consequences the Protocol was designed to avoid, and that without agreement on them there would have been no Trade and Cooperation Agreement, which, as was hinted a few months ago, they might end.

Within Northern Ireland, it must be seriously questioned whether this would win unionism, the cause of the Union, friends among the centre ground might be seriously concerned by the possibility of economic and political instability.

And even if the institutions survive, the Protocol issue, unless resolved, is liable to be a running sore, potentially hobbling their ability to govern positively. Continued dysfunction may increasingly lead those who have been content to go along with the current arrangements to look more favourably at fundamental change.

- x And there must be a prospect of pulling back Great Britain if London does take further steps as the DUP and others. Even invoking Article 16 may clearly provoke serious EU retaliation. There is recent talk of doing more than that. But any such EU reaction would

be liable to have a serious impact on the UK as a whole which may be why the government has held back

Would such a reaction endear Northern Ireland to either the political classes or the general public of Great Britain? There are unionists who sometimes assume that the preponderant opinion in Great Britain will in all circumstances continue to support the Union; some perhaps imagine a prevalent goodwill towards them. But recent polling in Great Britain tends to show [limited feelings of affinity towards Northern Ireland](#). A succession of conservative opinion commentators for example [Max Hastings](#), [George Osborne](#) and [Matthew Parris](#)² have recently expressed the view, in the context of the Protocol dispute, that Irish unity is inevitable, and, it would appear in some cases, thought to be both desirable and painless. Unionists should perhaps reflect more on the state of opinion in Britain.

Unless the British government for its own reasons decides to return to combat with Brussels, with the potential for overturning the Trade and Cooperation Agreement yielding a 'no-deal Brexit' - ² the likelihood is that something along the lines of the Protocol, though potentially with many fewer frictions in practice, is here to stay. It will probably not favour the unionist cause to make it a running sore. Accommodations are therefore needed.

Possible ways forward

There are good [arguments](#) that the Protocol properly handled could bring significant economic benefit to Northern Ireland which has unique freedoms of access to both EU and British markets.

With flexibility in Brussels and London, the border in the Sea could become a good deal less burdensome

There ought

Northern Ireland in 2007 by setting up a Northern Ireland Task Force under the patronage of President Barroso.

There is also little public consideration in the dialogue in Northern Ireland of what London might give. London

There are [arguments](#) too that conducting criminal investigations and prosecutions now for far-distant Troubles offences is largely fruitless, offering victims little realistic hope of justice, and potentially damaging community relations in the current climate. Although, these are difficult arguments to make publicly.

It may also ²there are precedents² be right at times for governments to do necessary but unpopular things against the public opposition, though perhaps with the tacit consent, of political parties.

But in present circumstances, the current initiative risks making matters far worse, the more so because of the perceived motivation. It is difficult to see these proposals in any way assisting reconciliation

The conclusion after all the debate may well be that there is no overall satisfactory answer to legacy issues. In the short term at least, sensitive handling, in particular showing the greatest consideration for victims, is at a premium, whilst trying to find areas of agreement. That, essentially, has been the approach for some years.

If London hopes to find ways of resolving legacy issues sufficiently for the broader politics to move on after the election, it will need to come ready to modify its position on legacy radically. Whatever the appeal in London of its proposals, they have none in Northern Ireland. And they risk doing grave damage in various respects to the UK national identity, the UHSXWDWLRQ RI LWV DUPHG IRUFHV DQG WKH FRXQWU\ of law.

Because there are no right answers, it is unlikely that the post-election engagement will find a comprehensive way forward on legacy that commands support across the parties. The objective must be to ensure that it is not a roadblock to political progress in the short term; and in the longer term that all is done that can be to show sensitivity to victims, but also to promote a climate of broader reconciliation in which these issues cause less pain.

Identity and language

Respect for different identities is central to the Agreement, with its principle of parity of esteem for unionist and nationalist aspirations. The associated symbology has often caused division: devolved government was seriously shaken starting from 2012 onwards. Some might seem fairly secondary questions about the frequency with which the Union Flag was displayed at Belfast City Hall.

The [Commission on Flags, Identity, Culture and Tradition](#) was established by the Executive in 2016 to examine these issues, or perhaps more realistically to kick them into BT /F1s.r4 /F1 12 Tf 1 0 0

Little of the media discussion around MKH UHS in 2004 concerned the substance of its recommendations: almost all of it was about the dysfunction of the process.

But the questions it considered ought not to be beside, until they erupt again in anger.

Rights

And there are continued allegations about the extent to which current or former paramilitaries exert influence on major political parties whether that is [Sinn Féin deferring to members of the old Provisional IRA Army Council](#) as has been alleged at various times in recent years; or the [DUP engaging with people close to loyalist paramilitaries](#) as it did shortly before its decision to

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unrepresentative of the community.

This is another issue that needs to be addressed squarely in contemplating the injection of new life into the Agreement to permit it to survive and prosper.

To conclude: the chief objective here is to flag up these issues as ones that need to be looked at, because in these areas the foundations of the 1998 settlement may be increasingly shaky. To come up with answers, much more thought is needed. Such thought is not at present being given in any coordinated way in politics, among the governments or elsewhere, though useful work is being done in individual areas. It is important that a way is found to build on that, and produce workable proposals that might at some stage be brought back to the political arena.

Chapter 8.

The Good Government Deficit

This chapter discusses the performance of the institutions of government² delivering on economic and social policy, maintaining good public services, upholding standards of propriety. The record is patchy at best. It is essential to the political future performance improves: there are serious challenges that are not receiving the proper response. Beyond that, an Executive that as a serious record of achievement is likely to survive: institutional stability requires better government.

Background

from the EU as a result of allocation elsewhere under UK auspices. Meanwhile, the Ireland Office has [Social Development Funds](#). There appears to be little coordination with the Executive in these programmes.

Analysis ensuring the institutions deliver

Good government and sound public policy are evidently valid objectives in their own right. The questions here are ones that carry significant human consequences and neglect of them risks future peace and prosperity.

But they have a broader significance in Northern Ireland: successful devolved institutions underpin stability. If they are delivering, the public which has not been greatly impressed with their performance

What is needed is serious cultural change a greater priority for these real world issues. There are many in political parties across the board who would like to focus more on these issues.

But the current state of politics makes this difficult. Executives have often dodged difficult decisions curiously, even having the main parties in government and no obvious opposition has not made such decisions easier.

A single public body, however, ought not to be the whole answer. An important part of changing the culture is supporting a range of contributors to, which requires them to be drawn out of an understandable reluctance to raise their heads in a potentially intimidating political environment. On this analysis, think tanks and similar bodies are which such views can

x Devolution collapsed in 2002, the DUP and Sinn Féin displaced the UUP and SDLP as

politics makes it hard to function effectively as an Opposition, and certainly to offer an alternative government¹²

But the composition of the Executive is otherwise mandatory: there is limited scope for political negotiation around the composition of the Executive, and there are no votes to endorse the Executive as a whole.

The post of Justice Minister, because of its particular political sensitivity, is filled by [vote of the Assembly approved with 50:50:50 cross-community support](#), as with the original First and deputy First Minister election² see above¹³

Cross community support and designation

The designation and cross-community support arrangements in the Assembly may themselves also come under greater scrutiny following the election. Besides the relevance of designation to Executive formation, many policy cut

It is clear that arrangements for safeguarding power sharing remain necessary for the legitimacy of the political system in the current state of Northern Ireland politics. Almost no one suggests that simple majority politics will work.

But there is room for greater reflection about how these arrangements are framed. This is especially so in the current context, with changing voting patterns, the possibility of boycotts, and the need for government to operate effectively in dealing with the acute economic and social difficulties facing Northern Ireland, which, as argued above, is itself essential to stability.

The means by which change might come about raise problems. Should parties constituting 50% of one or more of the Agreement institutions by boycotting them, and at the same time block all change that might permit them to operate? Would the governments in those circumstances be justified in effect to withdraw from the Agreement? Would the governments in those circumstances be justified in putting forward changes by which non-boycotting parties might seek to make government function?

There are good arguments that if the changes have broad measures of support across the community, the Agreement was not intended as a charter for non-participation in government, and as discussed above, the possibility of change in response to difficulties was foreseen.

But there are practical obstacles. Power sharing is about ensuring that significant strands of opinion are represented in government, and the largest parties have to date always been involved. The political viability of an Executive chosen otherwise may be in doubt. Even if there were a mechanism to put it in place, an Executive without the support of 50% of both unionist and nationalist MLAs might face difficulties in the Assembly. Without the support of 60% of members overall, and 40% of each of the unionist and nationalist, they would under present rules be stymied.

a changing political landscape and with increasingly pressing good government challenges also needs attention.

Specific changes

Should there be change so that no one party can block formation of an Executive through the mechanism for appointing the First and deputy First Ministers? As noted, only one party is entitled to appoint to each position; whereas most other ministerial appointments if a party declines to nominate, the position is passed to another party. The issue has been little discussed so far but may become very topical. [The Taoiseach has recently said](#) that no one party should have a veto over whether the Executive or Assembly should continue. [Alliance leader Naomi Long said](#) that if a party decided to take their ball home, the government would need to reform the institutions so that those who were willing could carry on.

The DUP is the party to which this might most probably apply, if it declines to nominate a First Minister, or deputy First Minister, as it has done. If it thought its interests were best served by period in opposition in which it might nevertheless have considerable influence in the Assembly, and it therefore agreed to change taking place, then there might be little to be gained.

But if, pursuing its attack on the Protocol, it refused consent, could change proceed nevertheless? Some would argue that reverting to the original Agreement provisions on appointing First and deputy First Ministers would be legitimate, since they were endorsed in the original Agreement negotiations, and in referendums.

But, if unionist parties opposed to the formation of an Executive were a majority might not achieve very much. Whether any arrangement could be devised that would permit government to operate depends on the party line-up.

There would be difficult questions to resolve about details of any change if the present nomination of system were maintained, with the right to nominate passing from an abstaining party, where would it go? Within the same designation as the abstaining party, for example? to the largest party outside the designation or the person appointed to the other post both cases, some would be liable to cry foul.

Recognising the increased centre ground

An increased other-vote might lead to several contingencies:

- x One possibility is Alliance being the largest party and taking the First Minister slot. This has been talked about recently, but goes well beyond the predictions of pre-election polling. In doing so, it would displace a unionist or nationalist from the top line-up, completely upending the Agreement system. Some change would be needed.
- x If other was the largest designation in the Assembly, and Alliance the largest party in it, it would take the deputy First Minister slot. This is probably more unlikely still.
- x A third possibility is Alliance being the second largest party but with other not being the largest designation. In that case it would be excluded from the lineup of First and deputy First Ministers. The size of the Alliance vote in such a scenario, though, would indicate that Northern Ireland politics no longer conformed to the binary model.

Indeed, if the post-election talks do not yield the foundation for devolution resuming, there may be an increasing public willingness to contemplate more radical change.

At all events, there needs to be an informed debate in which potentially difficult changes can be aired publicly, so that, if necessary over time, ways forward might emerge that could command a consensus.

At present, the expertise on the issues is essentially within the institutions and parties with other issues, there would be value in having some capacity outside government and politics for analysing them, and facing them publicly all the more so, UHF DXVH 1RUWKHUQ, UHODQ are unique: there is very little evidence from elsewhere that can be drawn on about the implications of possible change.

Chapter 10: Conclusion

Some of the questions raised in this paper will feature in

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