

In the shadow of the continuing dispute over the Protocol, Sinn Féin wins an historic victory in Northern Ireland



Michelle O'Neill, Sinn Féin Vice President and leader in Northern Ireland and Mary Lou McDonald, Sinn Féin President, celebrating last Thursday's election.

On Thursday, voters in Northern Ireland went to the polls to elect the 90 members of their Assembly. In an election that took place in the shadow of the continuing dispute between the UK and the EU – and between Northern Ireland and Westminster – over the Protocol on Ireland/Northern Ireland, Sinn Féin, the left-oriented, nationalist and republican party that supports the political unification of the island of Ireland and is led by Michelle O'Neill, its Vice President, leader in Northern Ireland and former deputy First Minister, won an historic victory, winning for the first time more first preference votes than any other party and, most importantly, the largest number of seats in the Assembly. That means that, under the rules of the Northern Ireland (St Andrews Agreement) Act 2006 which amended the Northern Ireland Act 1998, it is entitled to nominate O'Neill for the position of First Minister. But under those same rules, whether she will be able to assume that position depends on whether the Democratic Unionist Party (DUP), the largest unionist party, nominates a deputy First Minister.

The election was conducted under the rules of Northern Ireland's Single Transferable Vote (STV) electoral system, a complex form of proportional representation it uses for Assembly and local council elections. In elections for the Assembly, five members are elected in each of 18 constituencies. The voters may vote in ranked order for as many or as few candidates as they wish. A quota is calculated according to the number of seats available and votes cast, the first preferences of all voters are added up, and if the leading candidate achieves the quota and is elected, any surplus votes beyond the quota are distributed to the second preferences on the

surplus ballots, the votes are tallied again, and if the quota is met the individual with the most votes gets a seat. The process is repeated until all five seats have been allocated. If at any point in the process, no candidate meets the quota, the candidate with the fewest first preference votes is eliminated and the votes for that candidate are distributed to the second preferences.

While STV has the virtue of translating fairly accurately each party's share of the vote into seats, it is an exceptionally complicated electoral system, which means it typically takes two or three days of counting and recounting before the final results are known. But the first indication of which parties did well and which did not, as measured by the aggregate number of first preference votes received by all of the candidates of each party in all of the constituencies, generally is reported within a day. And so it was that on Friday it became apparent that Sinn Féin had won a dramatic, indeed historic, victory. It received 29 percent of the first preference votes, an increase of 1.1 percent over the 27.9 percent it won in the March 2017 election. The DUP, the largest unionist party, suffered a significant setback, winning only 21.3 percent of the first preference votes, a drop of 6.8 percent compared with the 28.1 percent it won in 2017 when it was led by Arlene Foster. The Ulster Unionist Party (UUP) also suffered a setback, although not as dramatic as that of the DUP, receiving 11.2 percent of the first preference votes, a drop of 1.7 percent from the 12.9 percent it won in 2017. Some of the losses experienced by the DUP and UUP may have gone to the Traditional Unionist Voice (TUV), founded several years ago by members of the DUP opposed to the Belfast/Good Friday Agreement and the DUP's acceptance of power-sharing with Sinn Féin. TUV received 7.6 percent of the first preference votes, an increase of 5 percent over the 2.6 percent it won in 2017. The other party that did significantly better, in terms of its share of the first preference votes, than it had done in 2017 was the cross-community Alliance party, which received 13.5 percent, a gain of 4.5 percent over the 9 percent it won in 2017. Lastly, the nationalist Social Democratic and Labour Party (SDLP) had a disappointing election, winning only 9.1 percent of the first preference votes, a drop of 2.8 percent from the 11.9 percent it won in 2017.

The lengthy process of counting and recounting the preference votes in order to allocate the five seats in each of the 18 constituencies was not completed until late Saturday night. When it was done, Sinn Féin ended up with the same number of seats – 27 – it won in 2017. But importantly, the DUP, which had won 28 seats in 2017, won only 25 seats, meaning that Sinn Féin, as the party with the most seats, had, for the first time in history, won the right to nominate the First Minister of Northern Ireland. Among the other parties, the cross-community Alliance party won 17 seats, a gain of 9 over the 8 it won in 2017; the UUP won 9 seats, a loss of one from the 10 it won in 2017; and the SDLP won 8 seats, a loss of four from the 12 it won in 2017. Despite winning the largest increase from 2017 in first preference votes, the hardline unionist TUV won, as it had in 2017, only one seat.

It's worth noting that, although the STV electoral system is a form of proportional representation, because the distribution of seats depends on the repeated reallocation of the ballots and counting in some cases the second, third, or even fourth preferences of some voters, the final distribution of seats may differ significantly from the overall distribution of first preference votes. Thus, although Sinn Féin, which received 29 percent of the first preference votes, received 30 percent of the 90 seats in the Assembly, the DUP, which received 21.3 percent of the first preference votes, received 27.8 percent of the 90 seats. The shares of the seats received by the UUP and the SDLP were quite close to their shares of the first preference votes – 11.3 percent of the first preference votes and 10 percent of the seats for the UUP, and 9.1 percent

of the first preference votes and 8.9 percent of the seats for the SDLP. But the Alliance received a considerably larger share of the seats – 18.9 percent – than its share of the first preference votes – 13.5 percent. And the hardline unionist TUV received a considerably smaller share of the seats – 1.1 percent – than the 7.6 percent it received in first preference votes.

Following the Good Friday/Belfast Agreement, the Northern Ireland Act 1998 established an Assembly and Executive, including an office of First Minister and deputy First Minister, both of whom would be appointed together by the Assembly on a joint ticket and would share the powers of the office. But the DUP rejected power-sharing and, after having been suspended several times, devolution was suspended in late 2002 for several years. In 2006, the UK, Ireland, and the Northern Ireland parties agreed at St Andrews on a number of changes that would allow devolved government to be restored. Sinn Féin accepted the Police Service of Northern Ireland, the DUP agreed to power-sharing with the nationalists, and the Assembly was restored. The agreement, codified in the Northern Ireland (St Andrews Agreement) Act 2006, led to a resumption of devolved government, complete with a complex proportional system of allocating ministerial portfolios. Importantly, the Agreement and Act modified the formation of the Executive by stipulating that, upon convening for the first meeting after an election, the members, in registering, designate themselves as “nationalist,” “unionist,” or “other.” Then, within a period of seven days beginning with the first meeting of the Assembly, the nominating officer of the largest party of the largest political designation will nominate a member of the Assembly to be First Minister and the nominating officer of the largest party of the second largest political designation will nominate a member of the Assembly to be deputy First Minister. Importantly, the Act stipulates that the positions cannot be filled after the first seven days of the meeting of the Assembly. Even more importantly, the Act stipulates that the nominated individuals may not take office until both of them have affirmed the terms of the pledge of office – meaning that if one of them refuses to do so, the other can’t assume the office he or she would otherwise assume. Finally, the Act also stipulates that if either the First Minister or the deputy First Minister ceases to hold office at any time, for whatever reason, the other also ceases to hold office (but may continue to exercise the function of the office until both offices are filled by repeating the nomination process).

The newly-elected Assembly will convene on Friday and the first order of business, after the newly-elected members register themselves as “nationalist,” “unionist,” or “other” and elect a Speaker, will be the nomination of the First Minister and deputy First Minister. Obviously, Sinn Féin, as the largest party, will nominate O’Neill, who served as the deputy First Minister until Paul Givan, the DUP First Minister, resigned in early February in protest against the checks on goods arriving from Great Britain mandated by the Protocol. But just as she was required to step down as deputy First Minister when Givan resigned, she won’t be able to assume the position of First Minister unless and until the DUP nominates someone to be deputy First Minister. And based on comments over the weekend and again yesterday by Sir Jeffrey Donaldson, the DUP leader, although the DUP accepts the outcome of the election, it’s not clear that it will appoint someone to serve as deputy First Minister, and thereby enable the two ministers to take office as co-heads of the Executive. Yesterday, Brandon Lewis, the British Secretary of State for Northern Ireland, flew to Belfast and met with the leaders of the parties – most importantly, of course, with Donaldson and other members of the DUP, which has been urging the British government to unilaterally amend or cancel altogether the rules in the Protocol pertaining to the movement of goods from Great Britain to Northern Ireland. Foreign Secretary Liz Truss, who is now in charge

of the negotiations with the EU pertaining to the Protocol, is reportedly frustrated with the EU's failure to address the UK's concerns expressed in its Command Paper last July, believes the EU's chief negotiator Maroš Šefčovič has been given little latitude to amend the application of the rules in the Protocol, and, for that reason, is considering proposing legislation that would in effect unilaterally amend those rules. But nothing has been done thus far, and yesterday, after meeting with Lewis, Donaldson stated bluntly, "Until we get decisive action on the protocol, we will not be nominating ministers to the executive."

And so the continuing dispute between the EU and the UK, and, within the UK, between Belfast and Westminster, over the Protocol on Ireland/Northern Ireland casts a shadow over the historic victory of Sinn Fein last Thursday.

David R. Cameron
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