

## **Submission of evidence to the AERC on reform to Community Designation and the Appointment of First Minister and deputy First Minister.**

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This research note addresses the two issues flagged in the letter requesting evidence from expert witnesses on the two areas of community designation and the appointment of First Minister/deputy First Minister. We are pleased to make this submission to the AERC and hope it helps in the committee's ongoing work.<sup>2</sup>

The starting point for our comments is that we are generally supportive of consociational power-sharing in Northern Ireland and the devolved institutions, though we have written extensively elsewhere about the deficiencies of the consociational model, as well as the possibilities for further reform.

Our other caveat is that this submission is made in the knowledge that there are political differences within Northern Ireland (and across the political parties) that may make these ideas unattractive and unacceptable. We present them however, as reforms that might allow the devolved institutions to work more effectively (and in a way that helps to future proof the evolving political context in Northern Ireland) while conscious of the need for safeguards within the system based on the core principles of consociational democracy.

Two initial questions are presented. First, is there a valid case for making alterations to community designation in the Assembly and to the method for appointing the First Minister and deputy First Minister within the Executive Office? Secondly, if there is a prima facie case for either of these reforms –is there a viable methodology that could be devised and implemented for doing so?

This note is divided into 3 sections. Section I addresses the case for reform and whether the two issues of (community designation and the appointment of First Minister/deputy First Minister) require reform.

Section II presents findings from a project conducted by the research team and funded by the United States Institute for Peace (USIP) which might assist the AERC in its determination of how any reform to current practice on these issues might be perceived among the wider public in Northern Ireland.

Section III puts forward some ideas on areas that might be worth more detailed modelling in terms of community designation and reform to the appointment of FM/dFM that we believe could allow progress to be made on the two issues highlighted but without jeopardising the safeguards built into the devolved institutions. *We are aware that these suggestions need to be explored further, but at this stage our submission is outlining a possible direction of travel if there is a desire among the political parties to look at reform.* They are not therefore 'recommendations' but examples of types of reforms we see as being feasible.

Most of our contribution focuses on the case for change, rather than the specific mechanisms that might be used to engineer such change. We would suggest that is a second tier issue that would require more substantive methodological and technical engagement than is possible in this note.

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<sup>2</sup> This paper is based on a number of joint research projects of the team hence the broad coalition of authorship.

## SECTION I

### *Is there a need for reform?*

There has been a degree of political polarisation about the merits of the devolved institutions since they were formed in 1999 following the Belfast/Good Friday Agreement<sup>3</sup> which was reached the year before. Some academics, media commentators and political representatives took the view from the outset that this form of consociational power-sharing was incapable of bringing stable and effective government to Northern Ireland or of gaining support across the community. Others took the view that this was the most viable and appropriate form of political accommodation achievable within Northern Ireland's deeply divided society and that its political geometry provided safeguards for both unionist and nationalist communities that could allow the political parties to share power together. Within academia there has been a somewhat binary approach taken to accommodationist and integrationist models of power-sharing. The former seeks to contain and manage conflict between ethnonational adversaries, while the latter seeks to deconstruct and transform divisions through institutions that reformulate ethno-national cleavages.<sup>4</sup>

In general, the critical challenge for divided societies is institutionalising a broadly inclusive, functional and legitimate coalition representing all groups that is not significantly different from the composition of their respective populations. This principle works effectively elsewhere so is not, in itself, problematic. The Belgian Constitution for example, provides that the Government cannot have more than 15 Ministers and that it must comprise as many Dutch-speaking (DS) as French-speaking (FS) Ministers, with the possible exception of the Prime Minister.<sup>5</sup> The Federal Government also includes States Secretaries. While being "attached" to specific Ministers, the States Secretaries have their own competences.<sup>6</sup> The Belgian Constitution does not legislate for the maximum number of States Secretaries, or the linguistic balance that should be achieved. Against this backdrop, the current Government is constituted of the Prime Minister (DS), fourteen Ministers (7 DS and 7 FS) and five States Secretaries (2 DS and 3 FS). Thus, with the possible exception of the Prime Minister and of the States Secretaries, the Belgian fundamental law guarantees political equality within the Executive. This political equality is underwritten regardless of the actual share of the population in both community groups. In this respect, most recent figures show that the proportion of Dutch-speakers to French-speakers in Belgium roughly amounts to 60-40.

Northern Ireland stands out across alternative power-sharing models (e.g. in Belgium and Switzerland) in combining inclusivity and proportionality, with automaticity in the formation of its Executive via the d'Hondt mechanism. This feature links government formation to an arithmetic algorithm, *but at the same time, it disincentivizes long-term coalition building over policy issues or even outline consensus over a programme for government.*

In other words, parties can remain in a competitive oppositional mode rather than moving towards a co-operative or partnership relationship, because they have little need to reach policy agreements *in advance of* taking office. Perhaps perversely, they may have a greater need to emphasise what divides them than what unites them, continuing on from recent election campaigns, as access to governmental office is not contingent on reaching policy agreements with other political parties. This system therefore provides few incentives for parties to build coalitions with prospective partners in government over policy agendas. In practice, this has led to an efficient technical mechanism for appointing the Executive from the elected Assembly, but not always with great clarity over policy priorities or political direction once formed.

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<sup>3</sup> We are aware that the Agreement reached following the multi-party talks on 10 April 1998 is referred to in various ways as the Belfast Agreement, the Good Friday Agreement or the Belfast/Good Friday Agreement. For the purposes of clarity and consistency it will be primarily referred to here with the acronym B/GFA.

<sup>4</sup> The literature on consociationalism and its alternatives, has highlighted a set of unresolved tensions between its advocates and critical admirers on the one hand, (Lijphart, 2004; McCrudden, McGarry, O'Leary & Schwartz, 2016; McGarry & Loizides, 2015) and its scholarly opponents on the other, who advocate a more integrationist or 'centripetal' approach as an alternative to consociational power-sharing (Barry, 1975; Dixon, 2012; Horowitz, 1991, 1993, & 2002; Lustick, 1997; Reilly, 2012; Taylor, 2009).

<sup>5</sup> Article 99 of the Belgian Constitution.

<sup>6</sup> Article 104 of the Belgian Constitution.

Overall, the B/GFA political structures have brought stability and a relative absence of violence, but dealing with the past, addressing identity issues, tackling social exclusion and growing working class alienation, remain elusive goals. The wider point here in the context of this AERC review, is that the institutions need to do more than just survive in order to evolve in a way that connects elite accommodation to broader community-based acceptance. We agree with those who argue that Northern Ireland's institutions need stability, but they also need credibility in order to ensure their long term relevance and viability.

This structural tension within the Executive has bedevilled the devolved institutions in Northern Ireland and risks degrading public trust in the capacity of the political system (and the parties operating it) to deliver effective governance. This lack of common purpose (of an integrated approach to community needs rather than a competitive one between unionist and nationalist communities) can be seen in previous mandates (when the Ulster Unionist Party and SDLP occupied the office of First Minister and Deputy First Minister OFMDFM), was a feature of the numerous period of suspension of the devolved institutions (across the 2002-2020 timeline) and remains problematic in the current mandate in terms of relationships between the political parties. We do not underestimate the political difficulties that all of the parties have faced during the current or previous mandates, but we believe that more detailed modelling of reform to community designation and the appointment of FM/dFM should be further explored by the AERC.

There is a minority view that the devolved institutions in Northern Ireland are inherently illegitimate, anti-democratic or ideologically unacceptable and that they should be rejected root and branch and not tinkered with in terms of reforms at the edges. We do not adhere to that view and have published work elsewhere that explains why we are broadly supportive of the consociational approach to devolved government in Northern Ireland –though critical of some operational features.<sup>7</sup>

At the other end of the political spectrum from those who reject the devolved institutions in principle, advocates of the current system generally have two grounds for opposing reform. Firstly that the institutions are working effectively and do not require change on the grounds that 'if it ain't broke, don't fix it.' From this perspective, the devolved institutions in Northern Ireland have successfully managed the previously unbridgeable ethnonational cleavage, providing much-needed stability. There are, of course, tensions, incompatibilities, and political crises, but these are no greater than in other polities, and the devolved system should not be held to utopian benchmarks of governance not observable elsewhere (not least in GB over the last several years). According to some critical admirers of consociationalism, modelling showed that the system was stable, or at least no worse than in comparable regions

The second rationale provided is that minor or piece meal reform is not technically possible without adverse impact to the entire edifice of devolved government. Members of the AERC will be familiar with the argument that the devolved institutions represent a closed system, where each element impacts on another and cannot easily be detached or altered without having negative impacts on stability of other elements of the political system. This was one reason why introducing a formal opposition in the NI Assembly in 2016 was initially resisted. Thus, while one element such as community designation, may not have an optimal design, it is the price that has to be paid for significant gains elsewhere. Moreover, performing surgery in one area could potentially damage the integrity and functionality of the overall system of government.

We are not wholly convinced by either of these arguments (that the institutions are working well or that it is a fully integrated system that cannot be amended). The devolved institutions and the wider context within which they are situated have not stood still since they were devised and implemented in 1998/99. So from that perspective institutional reform has been ongoing since the latest phase of devolved government was

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<sup>7</sup> Cochrane, F. Loizides, N. Bodson, T. *Mediating Power-Sharing: Consociationalism in Deeply Divided Societies* (Routledge, 2018) Cochrane, F. *Northern Ireland: The Fragile Peace*, Yale University Press, 2021, Morgan-Jones, E., Stefanovic, D. and Loizides, N. (2020) "Citizen Endorsement of Contested Peace Settlements: Public Opinion in Post-Dayton Bosnia", *Democratization*. Morgan-Jones, E., Sudulich, L., Cochrane, F. and Loizides, N. (2020) "Citizen Preferences about Border Arrangements in Divided Societies: Evidence from a Conjoint Experiment in Northern Ireland", *Research and Politics*. Sage, pp. 1-8.

inaugurated in the late 1990s. Thus considering reforms to community designation and the appointment of FM/dFM might be seen as a continuity rather than as a radical departure.

For most of the period from 1999-2021 there has been a general inability within the main unionist and nationalist communities to view their political interests as being integrated and interdependent rather than competitive and adversarial. The political parties have co-operated in government (when they have managed to form one) but on the basis of an adversarial relationship which has frequently pulled them back from areas of co-operation, especially those that intersect with the ethnonational dimensions of the conflict. The impression given therefore, is that they share power because they are *forced to do so* –rather than because they *want to do so*. It would perhaps be less problematic if they could do this effectively –but that has not been the experience since the devolved structures were first established in 1999.

We are persuaded that the capacity of political institutions to evolve and reform is critical for their survival, not least to provide sufficient flex to adapt to unforeseen circumstances at the point such institutions were established (e.g. the B/GFA, & post-Brexit Northern Ireland). Devolved government in Northern Ireland needs to have the capacity to adapt to local conditions in ways that allow it to take advantage of changing political contexts over time and to cater for situations where that context becomes less advantageous. Furthermore, institutional systems that are needed at the beginning of a conflict transformation process may not be optimal several years afterwards, and the political fabric needs to have the capacity to stretch and adapt over time, to best reflect that changing context.

We conclude that there are insufficient incentives built into the structures of the Assembly and Executive to promote coalition-building between communities and too many incentives built in to promote coalition building within communities. We are therefore satisfied that a *prima facie* case exists for exploring the options for reform.

## SECTION II

### *Research on public attitudes towards reform of consociational arrangements in NI*

The political institutions that exist in Northern Ireland today have been achieved after painstaking negotiations in which the political parties have made compromises, often facilitated by international mediation, endorsement through referendums and mandated through numerous Assembly elections. The institutions in Northern Ireland today are the result of several rounds of negotiations, all of which have built upon the B/GFA in 1998 and legislation that has for instance, facilitated the recognition of an official opposition within the Assembly, and reduced the size of both the Assembly and Executive. In other words, the structures have evolved over time and will likely continue to do so. None of this change has been easy for the political parties to reach consensus on due to the competitive nature of politics in Northern Ireland.

A reasonable question for all of the political parties to ask if confronted with proposals for reform would be; ‘even if we could do it, should we do it?’ Why support reforms to already brittle institutions when it is unclear what the medium term implications might be electorally, or if public opinion would accept them?

Our research<sup>8</sup> suggests that there may be more complex patterns of support for reform to Northern Ireland’s devolved institutions than previously assumed. Our work points to the fact that public attitudes are not linear or static because the choices available to them are complex and contextual. So for instance the question is not, ‘do you support or oppose a change from the Executive Office FM/dFM to Joint First Ministers?’ It is more likely to be understood as a package of reform where this will be linked to other issues, e.g. a move from community designation to weighted majorities or the Justice Ministry being appointed under the dHondt system for appointing other members of the Executive.

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<sup>8</sup> Morgan-Jones, E., Sudulich, L., Cochrane, F. and Loizides, N. (2020) “Citizen Preferences about Border Arrangements in Divided Societies: Evidence from a Conjoint Experiment in Northern Ireland”, *Research and Politics*. Sage, pp. 1-8.

Often the context within which a policy issue is presented is equally if not more important than the substantive detail that underpins it. Ultimately, what we find unacceptable today we might find less obnoxious tomorrow if the alternative seems worse or it is mitigated by getting something else that we want. Choices in other words, are contingent and conjoined with other factors rather than made in isolation. To flag one basic example, unionist and nationalist attitudes towards majoritarian forms of democracy have shaped the current devolved institutions and to a large extent unionist and nationalist attitudes to issues like parallel consent, community designation and ideas around ‘mandatory’ versus ‘voluntary’ coalition. But what happens if the demography changes along with the notion of who the ‘majority’ and ‘minority’ communities are? We would suggest that recent polling and the results of the latest census might have some bearing on these dynamics and attitudes towards such issues among political parties and their core supporters. The point we are making, is that our attitudes to political institutions are fluid and contextual and may change over time in line with other aspects of our political and economic environment.

We suggest that determining whether there is public support for such fluid and complex reforms cannot easily be captured by traditional survey techniques or opinion polls. Instead we believe that a ‘conjoint analysis’ approach may provide a more fine-grained understanding of tolerances and preferences for future political change and is a more nuanced methodology for determining the range of possibilities that exist.

The conjoint approach assesses how people rank policy preferences *in relation to other options* –rather than surveying attitudes to individual issues. In other words it looks at the trade-offs people would consider making over a bundle of options, rather than looking at issues in isolation. Public opinion concerning future changes to the Assembly and Executive cannot be captured accurately by standard single item survey questions, which fail to identify the complexity of views about the options available, or how they relate to their wider context, operation or alternatives. Traditional methods also fail to identify the dimensions of a peace settlement that trouble or please ordinary citizens because they cannot detect the types of compromises or trade-offs the public might support. Conjoint analysis can remedy this shortfall.

Our research has used a conjoint methodology to evaluate citizen preferences to reform of the devolved institutions that we believe is highly relevant to the issues highlighted, with respect to moving away from community designation and the procedure governing the appointment of FM/dFM.

We used this technique to answer three important questions about citizen preferences and public support for peace settlements. Firstly, what elements of peace settlements are most important to citizen support overall? Secondly, what are the main cleavages between communities with opposing interests? Thirdly, can we identify compromise positions or zones of possible agreement between groups?<sup>9</sup>

We designed and embedded a conjoint survey experiment in Northern Ireland which connected possible post Brexit border arrangements with other issues, such as reform of the Northern Ireland Executive and rules for passing legislation in the Assembly. It deliberately linked issues to determine not what people wanted or did not want, or how much they wanted or did not want it, but rather what pattern of issues would be *most acceptable* to them in the context of other alternatives offered? So, what issues that they were opposed to would they be willing to trade off in order to get something that they wanted? This survey was administered via Lucid Talk online platform<sup>10</sup> to a sample of 738 respondents (age 18+)<sup>11</sup> drawn from the Unionist and Nationalist communities, as well as citizens who did not identify with either group.<sup>12</sup>

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<sup>9</sup> We would be happy to provide the full academic paper to the committee if requested which has more details on the methodology employed.

<sup>10</sup> There has been some discussion in the media about online polling versus other formats. All have their strengths and weaknesses and we would not have expected different outcomes had we conducted the conjoint experiment with a different provider or under an alternative methodology.

<sup>11</sup> The response rate for the web sample was 0.264, as per AAPOR guidelines.

<sup>12</sup> The methodology employed is experimental – meaning that random assignment of experimental *stimuli* to participants enables us to draw causal inferences on a sample without the need of a probability sample. In other words, we can reach internally valid conclusions without surveying a representative sample of the population. One of the shortfalls of online sample has indeed to do with their limited capacity to include certain groups – older people, under-

More precisely, respondents saw five pairs of peace settlements in separate screens and were asked to make a choice between the two options in each pair, for a total of ten potential agreements evaluated by each individual. The easiest way of understanding this method would be via the metaphor of ordering food from a set menu at a restaurant. Imagine one set menu offers soup, chicken and rice pudding, while the other offers salad, fish and apple pie. The diner really wants soup, fish and apple pie, but the menus are set. Will they be willing to trade their preference for soup and accept the salad in order to get the other two options?

Table 1 is the most relevant from our research to report in this research note and it is copied below: showing the dimensions and an example of the paired choices.

**Table 1. Northern Irish Peace Agreement Dimensions and Values**

<b>Human Rights in Northern Ireland</b>	should be protected exclusively by UK courts.
	should be protected exclusively by European and other international courts
	should be protected by a special newly established international tribunal
	should be protected by UK, European and international courts
<b>Northern Ireland Executive</b>	must be based on all parties' proportion of seats in the Assembly
	must be formed by the largest Unionist and Nationalist parties
	must be formed with the support of at least a quarter of Assembly members from each community designation
	must be formed by a majority of members in the Assembly regardless of their designation
<b>Passing Laws in the Assembly</b>	requires parallel majorities of Unionist and Nationalist Assembly members.
	requires a majority with at least at least a quarter of Assembly members from each designation
	requires a majority of members of the Assembly regardless of community designation
<b>Public Spending after Brexit</b>	should increase or decrease with public spending in the rest of the UK
	should be increased by 5 percent to compensate for the financial impact of Brexit on Northern Ireland.
	should be increased by 10 percent to compensate for the financial impact of Brexit on Northern Ireland
<b>Location of Customs Border</b>	should be at the land border between Northern Ireland and Republic of Ireland
	should be in the Irish sea between the Island of Ireland and the rest of the UK

In terms of the composition of the Northern Ireland Executive, we found that respondents were *less likely* to select options that allowed the two largest unionist/nationalist parties to be in a 'forced' coalition (without other parties) than any other option. We suspect that this result reflects the recent experience of the performance of the devolved government when Sinn Fein and the DUP were in a two party 'coalition' prior to the collapse of the devolved institutions in January 2017. This may in part relate to the time this

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privileged etc. This problem is not as relevant when it comes to experimental methods, which are routinely applied on students sample in disciplines such as psychology and economics.

research was carried out (in 2019) and emphasises again that attitudes to reform are fluid and contextual rather than fixed and static.

It is important to remember that the options are analysed vis-à-vis each other; but with that caveat in mind our findings suggest that Executive power-sharing options are less important to respondents than other components of the political settlement in Northern Ireland. Going back to our restaurant metaphor, the diner (like the voter) has to choose between the set menus that are available and may put up with the salad they do not want because they really want fish and apple pie. They cannot order off-menu and the other option is to leave the restaurant hungry.

Equally, when we looked at preferences for the majorities needed to pass legislation in the Assembly, we found that options relaxing the requirement for parallel consent within the unionist/nationalist communities had slightly more support than the option requiring cross-community votes to pass legislation. There are several potential explanations for this, one being a sense that gridlock and disagreement was endemic to the Executive and Assembly and preventing important decisions from being made across key policy areas and/or some flex in traditional understandings of majority/minority given wider demographic changes in the population.

In terms of the pattern of divergence between the two communities, we found that preferences primarily revolved around those issues in which a strong alignment with (or dealignment from) the UK was expressed in terms of jurisdiction control and policy conformity. In other words, unionists have a strong preference for conforming with what happens in Great Britain, while nationalists prefer less UK involvement and don't mind diverging from Great Britain.

Both unionist and nationalist communities and the non-identifiers had similar preferences for power-sharing executive and legislative institutions. Reflecting recent experiences with the Northern Ireland Executive, no groups wanted to see the largest Nationalist party and largest Unionist party in a 'forced coalition' of two parties, relative to other options. Nor did they especially favour 'majority rule' within the Executive of one community designation or the other. This highlights perhaps that experience and institutional performance considerations are relevant to peace settlement preferences.

For the Legislature, weighted majority was slightly preferred to the requirement that the passage of legislation should require parallel majorities of both Unionist and Nationalist designated parties, but differences here were of little statistical significance.

Importantly, our findings rest on respondents' comparative assessments of the different peace settlement elements presented to them. Thus, the results should not be interpreted as assuming that any one dimension of the peace settlement is unimportant to citizens. Rather, the results speak to the comparative importance of these elements to citizens when they are considered *in conjunction with each other*.

We expected to find greater differences in the preferences of unionist and nationalist communities, as well as community divergence in preferences for power sharing options in the Executive and Legislature. These expectations were not supported. Instead, our results point to some consensus between the two communities and, at least some appetite for a loosening of the current system with respect to the procedures for passing legislation in the Assembly and the composition of the Executive.

We believe that our approach has important implications for the question of whether possible reforms to the devolved institutions would be capable of securing popular support in Northern Ireland.

An important consideration given the growth of the non-aligned segment of the electorate in Northern Ireland is the preferences of individuals who do not identify with either unionist or nationalist designation. Those respondents were more likely to be influenced by performance considerations as well as by an unwillingness to be politically dominated by the main two communities represented (currently) in the Executive Office by DUP and Sinn Féin respectively.

Finally, we might speculate that over the recent period, the very idea of who constitutes the majority community in NI is shifting or becoming less certain. The growth of those who do not identify primarily with either a British or Irish identity together with the demographic growth of the Nationalist community, has meant that who is perceived to be the majority and on what basis has been thrown into doubt. We would suggest that the changing political landscape and demographics in Northern Ireland might in turn impact on overall party preferences for power-sharing configurations at Stormont. This dynamic is directly relevant to the AERC examination of the case for reform of community designation and the appointment procedures for FM/dFM.

Our study pilots the application of conjoint experiments on the preferences of citizens in divided society. This approach strengthens our capacity to pin down cross-community preferences and enables us to identify areas for compromise by highlighting what trade off each group (including non identifiers) is prepared to accept.

### SECTION III

#### *Ideas for reform in community designation and the appointment of FM/ dFM*

We are of the view that a static form of consociationalism without the capacity to change incrementally over time can lead to inertia and dysfunction in government and to community disillusionment towards the political system more broadly.

Proportionality lies at the heart of the power-sharing system in Northern Ireland in order to ensure that there can be cross community support for important decisions. To determine this proportionality it has been deemed necessary for those elected to the Northern Ireland Assembly to ‘designate’ themselves as being either a unionist or a nationalist –though it was also possible to opt out into an ‘other’ category. This remains a functional but crude mechanism to allow for a system of cross community votes and safeguards within the political institutions –but has been repeatedly criticised for building ethnonational divisions into the political system.

We suggest that it is feasible to both envisage and engineer, a form of consociational power-sharing that retains adequate protections for minorities within it, while also developing integrative incentives over time.

*Areas that we think might benefit from more detailed modelling and technical scrutiny would include the following.*

- 1) A possible move away from community designation for individual MLAs as unionist/nationalist/other, towards a *party designation* as unionist, nationalist, & non-aligned. As below the largest party within each designation would qualify for one of the places within an expanded JFM Office. Our research suggests that a move away from parallel consent to a weighted majority vote in the Assembly (perhaps of 65%) for key legislation might be a viable proposition to explore.
- 2) More thinking is needed about reform to the appointment of FM/dFM in the Executive Office to take account of partisan dealignment in NI. There is now sustained evidence of both demographic shifts and identity shifts to suggest there are three (rather than two) blocs within NI that require some recognition within the appointment rules for FM/dFM. Estimates vary as to how much the politically/ethnically non-aligned sector of the electorate is, with some studies (e.g. the *Northern Ireland Life and Times* survey 2020) suggesting the ‘other’ category was 42% and greater than either unionist or nationalist.<sup>13</sup> We would also suggest that an alternative identifier to ‘others’ should be defined and agreed- ‘non-aligned’ might suit but there are of course other possibilities. Currently the FM/dFM role is only open to the unionist/nationalist designations. More thinking is needed

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<sup>13</sup> Hayward, K & Rosher, B. *Research Update*, No.142, June 2021, p.4 [update142.pdf \(ark.ac.uk\)](#)

about whether this provides optimal flexibility to encompass changing profiles and demographic shifts within the electorate over the next 25 year period –not least because the second largest party after the next Assembly Election scheduled for 2022 could be of a non-aligned/other designation. Finally, it is worth noting that survey evidence from the *Northern Ireland Life and Times* survey suggests that the public appetite for reform of the institutions has increased over the last year, up 10 points between 2019-2020 to 45%.<sup>14</sup> While the % figure may vary depending on the survey technique, it is a reasonable conclusion that across the three areas of political allegiance (nationalist/unionist) nationality (British/Irish) and religious affiliation (Protestant/Catholic) traditional binary identities are becoming more blurred and complex.

More thinking might be given to opening the Executive Office to the non-aligned grouping (the party of the largest non-aligned designation) so in effect a Joint First Minister's Office (JFM) composed of the largest party of the largest nationalist designation in the Assembly as well as the largest party of the largest unionist designation and the largest party of the largest non-aligned designation in the Assembly.<sup>15</sup> It would not matter which of these parties had the most seats in the Assembly and responsibility would be shared equally across all three members of the JFM team. This would have a JFM team of three which might be more reflective of the future picture of the electorate in Northern Ireland. This would also energise that segment of the electorate who currently feel the devolved institutions are failing to reflect their interests and thus provide greater representativeness and robustness to the institutions.<sup>16</sup>

A more conservative approach to reform here could just be at the symbolic level of change from (FM/dFM to JFM under the current two person model by dispensing with the 'deputy' tag in recognition that it is a joint office based on equality and partnership.

However there are arguments for being more ambitious as outlined in Section I and more detailed thinking could be done about the possibility of advocating some mechanism to allow the 'Other/non-aligned group to be included in the Office of JFM. This would obviously move the Executive Office away from the binary nationalist/unionist axis and provide representation to the large (and arguably alienated) section of the electorate whom, evidence suggests, do not define themselves along the traditional unionist/nationalist designation. There might also be a capacity here for a non-aligned member of the JFM Office to help the political relationship between the two aligned members of that office and enhance opportunities for collective thinking rather than being the representative of one side of the community or the other.

Changing the appointment of FM/dFM to Joint First Ministers (JFM) seems achievable and may help the political institutions adapt in a way that promotes rather than further jeopardises their stability.

A precedent for this type of reform to FM/dFM already exists, (at least to the symbolic version outlined above) as converting the Office of First and deputy First Minister (OFMDFM) into the Executive Office, as a consequence of the Fresh Start Agreement was introduced without noticeable public or party disapproval at the beginning of the May 2016 mandate following the Assembly election. Adjusting the FM/dFM appointment and recasting it as Joint First Ministers (JFM) would not materially affect the distribution of power connected to the FM/dFM posts, as both are co-equal in practice. It would of course

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<sup>14</sup> Ibid, p.1.

<sup>15</sup> To avoid 'gaming' of the system there would have to be criteria established to ensure that nationalist/ unionist parties were not able to self-designate as 'non-aligned' to gain access to the JFM office but that should be achievable with careful drafting. One possibility here would be that a party would be prevented from identifying as non-aligned if it was designated as unionist/nationalist in the previous mandate for example.

<sup>16</sup> There might need to be a threshold for a non-aligned party to qualify for the Executive Office to avoid over-representation (e.g. if the largest non-aligned party had a very small number of seats in the Assembly) but that is already the case for qualification for a ministerial seat in the Executive under the d'Hondt process so should not be overly difficult to design or apply.

(if non-aligned were included), broaden access to the office from 2 parties to 3 parties and move it beyond the unionist/nationalist designation. Some will see this as unreasonable, unacceptable or unworkable, potentially provided a non-aligned party with a role that is not deserved due to its smaller size in the Assembly. Others might see it as being more reflective of the political alignment within the electorate and a means of future-proofing the Executive Office, while at the same time not excluding EITHER the largest unionist or nationalist designations as might be the result of other potential reforms that might be envisaged. Some might argue that if it has been so hard to get agreement between two people in the Executive Office (EO) how could the addition of a third person result in decisions being taken more smoothly? But that is not necessarily the case as the addition of a third person could potentially reduce the sense of the EO being a binary and adversarial tug of war between unionism and nationalism.

This would require a reform of the current nominating procedure for FM/dFM but not a technically challenging one. Currently the nominating officer of the party of the largest designation nominates a Member of the Assembly to be First Minister. Then the nominating officer of the largest political party of the second largest designation nominates a Member of the Assembly to be deputy First Minister. In our suggested model, the two largest parties of the unionist and nationalist designations would nominate a Member of the Assembly to be Joint First Minister, *but the largest political party of the 'non-aligned/ other designation would also nominate a Member of the Assembly to be a Joint First Minister*, making a team of three.

There may be issues relating to what happens if one of the three FM's resigns –but our view is that these are not insurmountable drafting challenges and the most straightforward option would be that as now, when one member of the Executive Office resigns then the others also have to relinquish office.

There are inevitably potential downsides as well as benefits here but a reform of this nature might help to convey the sense of unity of purpose within the Executive, rather than it being defined as a binary post between opposing ethnonational blocs. While the positions of First and deputy First Minister remained within the newly coined *Executive Office* in 2016, the intention was to affirm partnership between the two largest ethnonational parties. Unionist parties have been very concerned to secure the FM position despite the change from OFMDFM to Executive Office and have made it a priority to secure the First Minister position in subsequent elections. There is little evidence that this largely symbolic change from OFMDFM to Executive Office has reduced unionist insecurity over this issue.<sup>17</sup> Recent evidence from opinion polls<sup>18</sup> might indicate that unionists could be more willing to consider a Joint First Minister appointment in future parliamentary mandates and that the devolved structures might be more stable in this scenario.

As there is a potential here for disproportionate reward to be inbuilt, if the largest designation non-aligned party is included in the JFM Office, this could be countered by changing the process of appointing the Justice Ministry –which currently goes to a non-aligned minister by default. It could be included within the d'Hondt process for nomination of other ministerial posts.<sup>19</sup> This was flagged up by Sinn Fein and the SDLP as their hope for the next mandate when they re-entered devolved government in January 2020 and while unionist parties have opposed this in the past it would further 'normalise' the allocation of ministerial appointments and the political system more broadly.<sup>20</sup>

Arguably, the treatment of the Justice Ministry as a special case and its appointment via a cross community vote, is evidence of the dysfunction at the centre of the political system and placing it within the nomination of other ministerial posts would be an obvious next step for the devolved institutions. In the past the DUP

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<sup>17</sup> [DUP's Donaldson says party will not return to government after election if NI protocol issues remain - BelfastTelegraph.co.uk](https://www.belfasttelegraph.co.uk/news/northern-ireland/dup-s-donaldson-says-party-will-not-return-to-government-after-election-if-ni-protocol-issues-remain-1.4611111)

<sup>18</sup> [LT NI 'Tracker' poll – Summer 2021 \(lucidtalk.co.uk\)](https://www.lucidtalk.co.uk/lt-ni-tracker-poll-summer-2021)

<sup>19</sup> Currently the Justice Minister is nominated in advance of the other ministerial posts by one or more members of the Assembly in accordance with the procedures set out in part 1A of schedule 4A to the Northern Ireland Act 1998 and Standing Order 44A. This nomination has to be approved by a resolution of the Assembly passed by a cross-community vote. In other words it is treated a special case outside the process of appointing other ministerial posts.

<sup>20</sup> *Northern Ireland Assembly Official Report (Hansard)* 11 January 2020, Volume 125 No.1. p.17. [plenary-11-01-2020.pdf \(niassembly.gov.uk\)](https://www.niassembly.gov.uk/~/media/NI-Assembly/Official-Reports/Hansard/2020/Plenary-11-01-2020.pdf)

has been opposed to this on the basis of the sensitivity of the role and its policy implications for policing and the criminal justice system, but we would recommend that the next mandate appoints the Minister of Justice under d'Hondt in line with the appointment of the other ministerial departments.

What we are suggesting here is that reforms of this nature might be worth exploring to help the Assembly and Executive adapt over time. International precedents from mediated peace talks globally suggest a set of options and alternatives that parties in Northern Ireland and citizens might consider. Bosnia's three-party presidency has been an attempt to de-politicize the highest office in the country and avoid communities winning symbolic victories against each another. Although problematic in many respects, Dayton stabilized the war-torn country; Our research indicates that today simultaneous majorities on all major groups will support the agreement. Lebanon and Cyprus (before 1964) aimed to specify ethnic posts in a hierarchical fashion (president vs. PM or vice-president) but that did not prevent new civil strife. UN mediation formulas since then have attempted for more parity across communities in line with our recommendations in this submission. In UN-led peace talks in Cyprus, options included a Swiss-style presidential council (Annan Plan), a Co-Presidents' arrangement (Christofias-Talat talks) or a combination of Belgian/Northern Ireland arrangements.

### *Conclusion*

We are conscious of the sensitivity to change here and to the sense of risk that might concern some parties and their supporters. It needs to be recognised that the introduction of any reform in the areas outlined needs to be carefully timed and negotiated with the support of all major political parties in the Assembly. So we would see this as the beginning of thinking about how such reforms might be designed and how the political parties themselves might be assisted in doing that if they see a value in doing so.

The timing of change or reform to political systems is a critical dilemma facing Northern Ireland and other post-conflict societies, including post-Dayton Bosnia or post-apartheid South Africa, where conflict-mitigating institutions have performed well in some areas but not in others. In all cases, major constitutional revisions might seem desirable, but they are dangerous and difficult to achieve without risking instability and mistrust, with people on both sides of a conflict fearing the political process is being manipulated by one community to the disadvantage of the other.

It is our view that the devolved institutions need to be adaptable and responsive to the changing political atmosphere in Northern Ireland but that change must be grown from within the political system itself –via consensus among the majority of parties across the community designation (and the electorate more generally) that reforms can present low-risk opportunities that might assist their needs and also help devolved government to function more smoothly.

We believe that possibilities for reform may exist to strengthen and build upon what has already been delivered and we would welcome these being explored in more detail by the political parties.

If the AERC concludes that reform in the areas of community designation and the appointment of FM/dFM would be beneficial, but are not sure whether it should be attempted due to levels of public support, or attitudes within the main political parties to such reforms, we would recommend that the committee looks in more detail at the capacity of a conjoint analysis approach to model potential scenarios and their viability.