Assembly and Executive Review Committee

OFFICIAL REPORT (Hansard)

Review of d'Hondt, Community Designation and Provision for Opposition: Briefing from Professor Christopher McCrudden and Professor Brendan O'Leary

5 March 2013

NORTHERN IRELAND ASSEMBLY

Assembly and Executive Review Committee

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Members present for all or part of the proceedings:
Mr Stephen Moutray (Chairperson)
Mr Pat Sheehan (Deputy Chairperson)
Mr Roy Beggs
Mr Stewart Dickson
Mr Paul Givan
Mr Simon Hamilton
Mr Raymond McCartney
Mr Conall McDevitt
Ms Caitríona Ruane

Witnesses:

Professor Christopher McCrudden	Queen's University Belfast
Professor Brendan O'Leary	University of Pennsylvania

The Chairperson: I welcome Professors McCrudden and O'Leary. Thank you for your memorandum and attendance today. I ask you to begin your submission.

Professor Brendan O'Leary (University of Pennsylvania): Thank you very much. It is an honour to supply evidence to you. Professor McCrudden and I will highlight the key elements of the memorandum that we submitted, and I will add some further reflections on the simulations that I sent yesterday. Professor McCrudden will speak to legal issues in a moment.

Let me highlight five components of our arguments. First, we defend the d'Hondt system. We say that it has worked well, facilitates speedy Executive formation, and achieves difference-blind inclusivity and power sharing across all political parties that have a significant mandate. This way, Northern Ireland avoids the types of crises in Executive formation that occur in Belgium, Iraq, Israel and Italy. The d'Hondt system is not unique to Northern Ireland, but it is especially suited to a deeply divided place that seeks to accomplish jointness and proportionality in the Executive. We note that it was explained to the public in the 1998 referendum, endorsed in both jurisdictions in Ireland.

Secondly, in our supplementary evidence, we show that the use of an alternative method to d'Hondt — namely, Sainte-Laguë, which is typically kinder to smaller parties — does not offer a significant prospect of enhanced representation in the Executive for the others, especially if that was to be combined with possible reductions in the size of the Northern Ireland Assembly. At best, Sainte-Laguë would marginally enhance the likelihood that others obtain the last Ministry out of a 10-member Executive or get a single higher pick among Executive portfolios. In our view, the use of Saint-Laguë

would not significantly compensate small parties for their loss of seats in an Assembly reduced by 36 Members or, indeed, one reduced by 18.

Thirdly, regarding an opposition, we argue that the existing arrangements are better than they might appear, even to those schooled in the orthodoxies of the Westminster model. We think that it is politically inappropriate to prefer the Government and opposition model for Northern Ireland. We note that membership of the Executive is voluntary. Parties are free to go into opposition. The chairing and deputy chairing of Committees by MLAs from competitor parties holds Ministers to scrutiny much more effectively than in the Westminster model. The relatively high number of MLAs who are not in the Executive is beneficial for enhancing scrutiny. It is certainly better than what would follow from reducing their numbers. We commend enhancing MLAs' policy and administrative scrutiny capabilities through increasing resources available for expert assistance, which is also good for building party capacity. We are not persuaded of the merits of increasing the likelihood of votes of no confidence in the Executive as a whole, and we note existing provisions for admonishing particular Ministers. The suggestions for change, we believe, flow from the suppositions of the Westminster model, which simply do not meet the needs of Northern Ireland.

Fourthly, regarding designation, we welcome the improvements made at St Andrews regarding the mode of election of the First Minister and deputy First Minister. We also carefully note in our memorandum the difficulty in creating difference-blind qualified majority rules for legislation in the Assembly. A 60% difference-blind rule might encourage a majority opposed by all designated nationalists, and it might encourage a future majority opposed by all designated unionists. By contrast, a 65% or 66% rule would enhance the likelihood that one party — not a designated group — would enjoy a veto over all legislation, despite having significantly less support than a majority in the Assembly. Any higher threshold for a qualified majority rule would likely create the pathologies associated with moves towards unanimity. For those reasons, we think that the existing rules on designation are appropriate as mutual confidence-building arrangements. We accept that the others are less pivotal than nationalists and unionists under the existing rules, but we observe just as emphatically that, under any plausible alternative arrangements, they would be disproportionately pivotal, which would be neither obviously democratic nor necessarily better for conflict regulation.

Lastly, regarding Assembly size and consequences of reductions in the number of MLAs, in supplementary evidence, I have simulated two reductions in Assembly size. In scenario 1, the Assembly is reduced by 18 MLAs, and, in scenario 2, by 36 Members. The first scenario results in the proportion of nationalist MLAs increasing and the proportion of unionist MLAs decreasing. Others, by contrast, would increase their share of the Assembly very slightly, but not increase their numbers. The second scenario would result in the proportion of both nationalist and unionist MLAs increasing, while the proportion of others would decrease. We also observe that any significant reduction in the size of the Assembly — for example, by 36 Members — would enhance the likelihood that the Alliance Party would not win a place in the Executive, whether the Executive were large — 10 members — or small — six members. We also observe that a smaller Executive of six makes the likelihood of parity in the number of nationalist and unionist Ministers far more probable. It would almost certainly remove the presence of others on the Executive.

There is a straightforward tension between reducing the size of the Assembly and the desire to maintain proportionality, which a shift from d'Hondt to Sainte-Laguë would barely modify. Reducing the size of the Assembly, given current party strengths and voter preferences, is also likely to increase the share of nationalists in the Assembly, which may encourage unionists to prefer the status quo. Many desirable properties of the existing system, namely reasonable opportunities for small parties, proportionality and having a significant number of MLAs who are not in the Executive, are all enhanced by keeping the existing Assembly at its existing size. Ours is, therefore, a conservative argument. There is much wisdom in the present arrangements, which flow from much learning and many compromises. Beware of changing without very good cause a system that is working well. Especially beware of the unintended consequences of what might appear to be minor reforms. Northern Ireland has fought and negotiated its way to a functioning set of institutions. We think that it should stick with them unless there are decisive objections to them, cross-community consent to those objections and cross-community consent on what would work better.

Professor Christopher McCrudden (Queen's University Belfast): Thank you for the invitation. We did not include in our original submission any discussion of the equality or human rights implications of the current or possible future arrangements. We noted, however, that the Northern Ireland Affairs Select Committee, in its recent call for evidence, asked specifically whether there are any equality and human rights considerations that should be brought to its attention. It might be useful to this Committee if I briefly touched on those issues. I am happy to clarify further the points that I am about

to make if necessary. For obvious reasons, this part of our evidence is in my name only. The general conclusion — before I explain why I reached this conclusion — is that the likelihood of equality law or human rights law being the grounds for any successful challenge to the current arrangements is so negligible that the Committee would be justified in dismissing it.

I will concentrate on the implications, particularly of the European Convention on Human Rights, for the current arrangements. There are two issues that we should distinguish. The first is whether the mere requirement of parties to register as unionist, nationalist or other is itself a breach of human rights requirements under article 8 of the convention, which protects the right for private life, or article 9, which protects freedom of religion. I am aware that a question was asked in the Assembly, some time ago, about the effect of recent European Court of Human Rights case law on monitoring in the fair employment context, which might be thought to raise somewhat equivalent issues. In my view, the relevant case law of the European Court of Human Rights poses no threat to the requirement on parties to choose a designation in the Assembly. The cases in which the European Court of Human Rights objected to requirements to disclose affiliations and identities all involved the forced disclosure of religious or ethnic identities, and it is by no means clear that the court would regard unionist, nationalist or other as ethnic classifications, let alone religious classifications, although there is some possibility that it might. Even if the European Court of Human Rights were to view designations as ethnic classifications, the other elements of those cases come into play. All the relevant cases in which claims have been successful on those grounds have involved individuals, but the designation requirements for the Assembly relate to parties, not individuals. Party designations in the Assembly are chosen, based on self-identification, rather than imposed. There can be no objection on the procedural fairness of the process of designation. There are strong prudential justifications for the system, as we have just heard and as we have set out in more detail in our memorandum. It would, in short, be a dramatic departure from precedent were the court to regard the Assembly designation requirements as by themselves contrary to the convention, and my professional judgement is that it would not.

The second major issue is whether the other practices that the Committee is considering would amount to a breach of article 3 of protocol 1 taken alone or in combination with article 14. Article 3 of protocol 1 protects the right to fair elections, and article 14 prohibits discrimination. As regards the arrangements for the appointment of the Executive, the legal position is straightforward. Article 3 of protocol 1 does not apply to the formation of an Executive, only to the right to vote for and to be elected to the Assembly. Article 14 also does not apply because it is not a stand-alone prohibition of discrimination; it would have to engage some other right. Article 3 of protocol 1 seems to be the only possible candidate, and we have seen that it does not apply. So there appears to be no legal basis for challenging the formation of the Executive under human rights law in this respect. In any event, the system of proportional and sequential allocation of ministerial portfolios is difference-blind. It does not, on its face, allocate on the basis of religion or ethnicity, and nor does it, of course, exclude the others from gaining ministerial portfolios.

As regards the election of the First Minister and deputy First Minister, you will be aware that the 1998 agreement specified that those posts would be held only by a designated unionist and a designated nationalist. The subsequent rule agreed at St Andrews in 2006 changed that system. As you well know, the post of First Minister is now awarded to the largest designation in the Assembly, whether nationalist, unionist or other, and the deputy First Minister post is awarded to the second-largest designation in the Assembly, whether unionist, nationalist or other. Therefore, the method now adopted after St Andrews is difference-blind, meaning that there is no prohibition on others being elected as First Minister or deputy First Minister.

As regards the arrangements requiring unionist and nationalist agreement on any important decision in the Assembly by providing for qualified majority rules, we have already accepted that they have the effect of rendering the legislative votes of those self-designating as others less likely to be pivotal. Does that amount to a breach of article 1 of protocol 1, on the ground that the vote cast by a voter for a candidate of a party that will register as "others" is of less value than that of a voter voting for a unionist or nationalist candidate? The answer to that question is more complicated, because it is clear that article 1 of protocol 1 does apply and, therefore, that article 14, prohibiting discrimination, would apply as well, unlike in the context of the selection of the Executive or the First and deputy First Ministers.

It is also more complicated legally, because of the decision of the European Court of Human Rights in the Sejdić and Finci v Bosnia case, in which aspects of the constitutional arrangements agreed at Dayton to settle the civil war in Bosnia were successfully challenged. The decision of the court was that constitutional prohibitions on others — that is, non-constituent peoples; think nationalist and

unionist — from being able to stand for the upper house of the federal parliament were contrary to the convention insofar as they prevented a self-identified Jew and Roma, who did not wish to self-identify as one of the constituent peoples, from standing.

The Northern Ireland arrangements would, nevertheless, survive any challenge on those grounds under the convention, in my view. The main reason, again, is that the rules on designation are not based on ethnicity or religion. They refer to national identification. Given that no suspect classification, such as ethnicity or religion, is used, requiring heightened scrutiny by the court, the default rule applies — that is, that electoral systems, the right to vote and the right to be elected are all matters within national competence and expertise, to which the court generally gives a very wide margin of appreciation. It is also relevant that the Dayton agreement was never subject to democratic approval, unlike the Belfast/Good Friday Agreement.

In conclusion, whatever the merits or demerits of the existing arrangements on political, prudential or ethical grounds, there is no good reason under equality or human rights law to depart from those arrangements.

The Chairperson: Thank you very much. I want to open it up to questions from members. First of all, in relation to the opposition within the Assembly, you have been pretty clear in saying that you see no clear need for enhancing resources, whether in money, time or positions, for exclusively opposition parties. Will you expand on why?

Professor O'Leary: Our basic philosophy is that the system established by the Belfast/Good Friday Agreement has as its core the principle of proportionality. As far as our understanding goes, it is our empirical appraisal that small parties get proportional access to all sorts of resources in the Assembly, including questioning time, and so on. We think that that is the appropriate rule. We also think that, unlike the Westminster system, opposition parties and/or small parties get a more significant role to play in scrutiny, so we found it difficult to find a special case for enhanced opposition support.

We also noted that the distinctive characteristic of the dual leadership — having a First Minister and a deputy First Minister — made it almost conceptually impossible to think of an appropriate set of opposition figures. Would there be a first leader of the opposition and a deputy first leader of the opposition? How could they be constituted? Those were the factors that led us to be sceptical about any special need for fresh support for opposition. It is possible that the Committee and/or the Assembly might wish to review matters if a much higher proportion of parties, on a stable basis, went into opposition, but I do not think that that is the situation currently faced.

Mr McDevitt: Thank you, gentlemen. My party, certainly, agrees with the basic proposition that the d'Hondt process should remain at the heart of the institutions. I just want to explore Professor O'Leary's last remark. Surely, it would be prudent for this Committee to put in place arrangements should the circumstances arise in which one or two substantial parties were to choose not to take advantage of their d'Hondt entitlement and, therefore, following an election, opt out of their entitlement to the Executive without prejudice, possibly, to their entitlement to Committee seats or other roles and responsibilities in the Assembly. If they were to do so, is there not an argument that Standing Orders, the operational modus of the Assembly, would have to shift a little bit to acknowledge that there were now substantial blocks, not so much Government opposition, but non-Government?

Professor O'Leary: Perhaps. However, I think that it is also important to observe the point that you raised, namely that one of the special features of the Northern Ireland arrangements is that you can decide not to participate in the Executive and yet, remarkably, receive your entitlement either to chairing or deputy chairing Committees, for which there is no analogue in the Westminster model of democracy. It seems to me that, for that reason, opposition parties get a very reasonable share of resources and opportunities under the existing system. Personally, I see no special need to review the possibility for greater resources for the opposition if the circumstances that you envisage were to materialise. However, it is not for me to decide that matter.

Mr McDevitt: Perhaps, Chair, I could continue on that issue. Members will all have their own opinion, but I do not think that the Committee is fixated on the Westminster model. I think that we accept that, whatever we are talking about, it is unlikely to be the Westminster model. Therefore, from my point of view, it is about preserving the integrity of d'Hondt — as you say, still being entitled to exercise your proportional rights with regard to scrutiny mechanisms — but envisaging a situation in which, for whatever reason, as long as the principle of power sharing is maintained round the Executive table, parties may just opt out. Have you had the opportunity to look in any detail at the practical expression

of scrutiny in plenary? Have you had the opportunity to analyse what happens, for example, at Question Time? How do you feel about what happens, for example, at the First Minister and deputy First Minister's Question Time, when the overwhelming number of questions are posed by their party colleagues and are, often, co-ordinated between the two parties?

Professor O'Leary: We report the findings of a systematic appraisal of Question Time by Professor Conley at the University of Florida. His findings are genuinely interesting. It is true that roughly one third of questions that go to the First Minister and deputy First Minister are related to constituency matters. However, he shows, very significantly, that both the Ulster Unionist Party and the SDLP engage in extensive scrutiny of the Executive through Question Time and do so more than the other parties. He also shows the remarkable phenomenon that each party tends to specialise in a certain area of public policy, so it may well be that people from the same party, as in the Westminster system, are soft on their own members of the Executive. Nevertheless, other parties do generate lots of serious scrutiny of Ministers.

In response to your general query, let us go to the heart of the agreement on this question, which is the notion of proportionality. If, in the scenario that you are talking about, the SDLP and the Ulster Unionist Party were to withdraw from the Executive, they would automatically have a higher proportion of opposition time and resources. So, I assume that, under your existing Standing Orders — though I beg to be corrected — they would automatically be entitled to an increased share of access to Question Time and other resources. Personally, if that were not the case, I would be in favour of such a transformation.

Professor McCrudden: I want to make two very brief points in response to Mr McDevitt. The first is that we should not lose sight of the recommendation that, in general, we would like more facilities to be provided to MLAs in order to enable them to be more effective in questioning and scrutiny. It is not that we are, in any way, hesitant or uneasy about scrutiny: we are very much in favour of it. However, we are not convinced about its being directed to a particular group, as it were, rather than to the generality of MLAs.

The second point comes back to the broader question that you began with. I think that there is an important point of principle at stake here. The supposition, not behind your question but behind some arguments as to why you should move to an opposition model, is based on the notion that, in some way, the opposition model is the normal model. There has been quite a lot of talk about normalisation. It is precisely that that we want to resist. Steps towards the opposition model seem to suggest that the normalised model would be one of Government and opposition, as in the Westminster model. However much moving towards that in small steps may not have been the original intention, we are worried that it gives the impression that the Westminster model is the normalised model, which we suggest is not appropriate in these circumstances.

Mr Hamilton: Thanks for your presentation. I want to follow on from the point that Conall has elaborated on: your evolving position on the resourcing of opposition parties. As you say in your paper, Professor O'Leary, every party that is entitled to a place in the Executive has the right not to take up that position. Let us use the SDLP as an example. You do not mind me using the SDLP as an example, do you? As it stands, if the SDLP were to withdraw from the Executive today, it would not get any more time in the Chamber. Questions are allocated on an individual Member ballot basis. It would be freakish if it were to happen, but it is conceivable that, for every Question Time in an Assembly term, no SDLP Member could be drawn to ask a question. They may get called for supplementary questions. However, it is conceivable that they would not be called for a question. That is unlikely to happen. However, if it did, the SDLP would not get any additional time or monetary resources to employ people to scrutinise. It is possible, too, that its Members may not chair any scrutiny Committee for the critical Ministries. There are no additional resources. Even though parties have the right to pull out, that does not afford them any additional rights or status to scrutinise. That is the point.

We have a few parties that would style themselves as an opposition, but you are talking about one- and two-Member parties. We had a discussion last week about thresholds and whether you could really consider a party that had two Members to be an appropriate opposition. However, if a party like the SDLP withdrew, with 14 Members, it would get to a certain level. It would not, by any means, be dominant in the Assembly, but it would be significant enough. That was the point you made: if you had a sizeable and more stable opposition, that would be sufficient to resource. Your position in the paper was not an argument for resources, but are you saying that, in certain circumstances, if certain

parties were to do it and do it on an ongoing basis, resources — time and monetary resources — would be appropriate?

Professor O'Leary: We want to be cautious in our answer. The first thing I would say is to repeat the point that Professor McCrudden made that we are generally in favour of enhancing resources to all MLAs to enhance their policy, scrutiny, administrative and monitoring capabilities. We would want that to apply to the parties in the Executive as well as to those parties in opposition. We make the point in the paper that the system now built in Northern Ireland actually provides for better opportunities for those not in the Executive compared to the Westminster model. So, it would be generous for the Assembly to decide to resource such opposition parties further. Of course, if it was minded to do so, that is its prerogative. However, our point is simply to observe that nothing under the principle of proportionality requires the Assembly to do more than it is doing at present.

Mr Hamilton: I am almost arguing against my party's position. A party that pulls out but does not get any additional resources is, therefore, not able to probe my party and the other parties that remain in the Executive. That is not a bad position to be in.

Mr McDevitt: It is all right from inside it at the moment, as you keep reminding us.

Mr Hamilton: It is entirely tactical.

The question is about whether it is fair. If our parties decided not to take their Executive positions, is it "normal", to use that phrase, that they should not be getting a little bit more? It is not about money to do whatever they want with; it is more about time resources and the ability to scrutinise in Committee and plenary.

Professor McCrudden: One of the points that we need to come back to is the centrality of proportionality in this context. You get the resources that, to put it crudely, voters want you to get: the resources are proportionate to your electoral support. Were one to take a party into "opposition" and that "opposition" role proved popular, the general rule of politics is that that party will get more votes, more support, more MLAs and will be able, on a basis of proportionality, to carry out even more successful monitoring in calling the Executive to account. The principle of proportionality is central to the mechanism. I think that I speak for both of us when I say that breaching the principle of proportionality by giving some groups of MLAs more resources than apply to the run of the mill would be a worrying trend.

Mr Hamilton: I do not disagree with you about the principle of proportionality as it relates to democratic representation or positions in the Executive. However, I am not entirely sure whether it was ever envisaged that it would go down as far as pounds, shillings and pence. We had an interesting discussion last week about thresholds, and there is a ridiculousness about a party of two people getting lots of money, time and resources that the electorate did not afford them via the ballot box. It creates a perverse incentive for people to create such an establishment. There is a difference once you get beyond a certain threshold, although I am not stating a position on what I think that should be. However, it is interesting that in an earlier discussion, we said that if there was a sizeable party over a sustained period, it might perhaps be worth looking at.

Professor McCrudden: I should say that we both read Rick Wilford's evidence to the Committee and the discussions surrounding it. I should also say that we were not convinced by it.

Mr McCartney: Thank you for your presentation. Your paper was very good; it opened up some of the points that I want to raise today. There has been commentary on the need for an opposition, although there has been rather less narrative about why people suddenly feel the need for an opposition now when there was not so much discussion about it in the past. I do not want to reduce the argument to a sentence or two, but I am forced to. You touched on people believing that other models are normal and, almost by extension, that equals better. However, from reading your paper, I infer that if a number of MLAs or parties decided to go into opposition, they would find themselves in a better position than what is described as the "normal" opposition that exists in, say, Westminster. Is that a fair reflection of your position?

Professor O'Leary: It is fair in respect of proportional access to time and leadership positions in Committees. As you know, the official Opposition at Westminster gets special resources that enable it

to fund a great many special assistants who work on behalf of members of the shadow Cabinet. There are resource opportunities that the official Opposition gets in a Westminster-style system.

Thank you for your generous comments on our paper. One of the things that we want to emphasise in the series of submissions is that there are parliamentary models other than the Westminster one, including the European Parliament model, in which the principle of proportionality is applied more or less all the way through. That is another form of normality to which the Northern Ireland Assembly might want to refer.

Mr McCartney: At present, if parties decide to go into opposition by choice, which is your contention, they would have Chairs and Deputy Chairs of Committees, which is not the case in Westminster.

Professor O'Leary: Correct.

Mr McCartney: Therefore, in many ways, they would put themselves in a more advanced position. Resources make a difference, and I will not minimise that. However, opposition should come about through opposing policy or by suggesting a different way of doing things rather than having more resources to do it. If you have the position and the platform, you may find yourself in a better position than some of the well-resourced opposition spokespersons that you find in other models.

Professor O'Leary: You have interpreted us correctly.

Mr McCartney: It even relates to using d'Hondt in the first instance. You contend that d'Hondt was employed because it favoured the larger parties, whereas Sainte-Laguë might have been better proportionally.

Professor O'Leary: There is a law of political science that you will find rather peculiar. However, it is simple to state, and I will not elaborate on it at any great length. Each definition of proportionality is proportional in its own way. The d'Hondt system is one way of accomplishing proportionality that operates to the benefit of larger parties, whereas Sainte-Laguë or Webster generally operates to the benefit of smaller parties. There is modified Sainte-Laguë, which operates to the benefit of medium-sized parties.

There is a whole family of proportionality systems, each of which accomplishes a slightly different objective. We do not want to take the view that one system of proportionality is always better than others. However, there were considered reasons for choosing d'Hondt. It has worked effectively. We note through our simulations that the application of Sainte-Laguë would not make a significant difference to the others, although, before we carried out the simulations, we thought that it might. However, the others stand to lose most from a reduction in the size of the Assembly. If you are concerned to protect the interests of the smaller parties, the best way to do that is to keep the Assembly at roughly its current size.

Mr McCartney: There was a debate in the Assembly yesterday on the Miscellaneous Provisions Bill that the Secretary of State is taking forward. The new model for selecting the First Minister and the deputy First Minister was described yesterday as a "corruption". However, your paper states that it is an enhancement, a better reflection and, indeed, opens up the possibility that you do not have to be a unionist or nationalist by designation to fill either post.

Professor O'Leary: Right. There are several features of the new system that are helpful compared to the old one. First, they are much closer to the d'Hondt principle. Secondly, as we have said, the others have a full opportunity to get either the first ministership or the deputy first ministership. Thirdly, each group gets to choose its own leader. There is no obligation on them to vote for the other party's nomination for leader, which is a much tougher call than endorsing your own leader.

Mr McCartney: No one has provided the narrative. We all have our own political viewpoint on why opposition has become a hot subject in recent times. However, nothing that I read here indicates that, as regards delivering good governance or best practice, the idea of a traditional "opposition" model is better than what is already on offer for parties that want to go into opposition.

Professor McCrudden: I must distinguish between a formal role for the opposition, as is being sketched out now and as Professor Wilford sketched out to some extent last week, and effective scrutiny by a group of MLAs. Professor O'Leary and I are deeply committed to effective scrutiny.

Anything that would increase that scrutiny would be good, provided that it does not undermine the basic structure of the operation of the Executive and the Assembly.

We have no reason to believe that there are not very effective ways of enhancing a scrutiny and monitoring role for MLAs without having to create a formal opposition role. Confusion sometimes enters the public debate about Opposition with a capital "O" and opposition with a lower-case "o". Opposition with a lower-case "o" is entirely consistent with what we are arguing. Indeed, we strongly support it. Opposition with a capital "O" is a different game.

Mr McCartney: One of the headlines of this is that the opposition provides an alternative government. Therefore a party's leaving the Executive voluntarily could provide the electorate with an alternative way of the Executive's doing business. It is not as if you need a formal structure to provide the alternative.

Professor O'Leary: A party could offer itself as a better party for the electorate to consider. However, in the context of the proportional representation system and multi-party government, it is implausible that a single party that goes into opposition could truly represent itself as an alternative government. It could represent itself in future as willing to bargain on different items that it would insist on having in a Programme of Government. However, that is quite a different picture from the classical Westminster model in which the Opposition hopes to accomplish a full scale parliamentary majority at some future election. That is not the kind of world in which we are living here.

Mr McCartney: I will be party political here. There may be a formal Opposition at Leinster House, but some people might say that the true opposition is a different party. The alternative to the politics of the government may not necessarily be the designated opposition. That can be possible in a multi-party system as well.

Professor McCrudden: This is not what you are doing, but there is a danger in picking and choosing bits of another system and assuming that they will have the same effects when transferred to your system. We suggest considerable caution in that regard. The system is an organic whole and operates in a particular way. We are against change for the sake of change, but we are not against change if it will lead to a more effective operation of the system. However, we are concerned about how far it would undermine this system.

Mr McCartney: In our party's presentation to the Select Committee, we made the point that, as this system is made up of a number of blocks, it is possible that you could have an opposition of 30 MLAs that, through use of the petition of concern, could block all the work of the Executive. You cannot just tinker without looking at all the blocks that might make our system of government more —

Professor McCrudden: As far as we are aware, part of the discussions are set in the context of possible reductions in the size of the Assembly and the Executive. I do not know how far those discussions have progressed. However, if one of the concerns for the opposition model is that you want to be seen to support small parties, I come back to the point that Professor O'Leary made earlier: the best possible way to support small parties in the existing system is by not reducing the size of the Assembly.

Professor O'Leary: Or the size of the Executive.

Ms Ruane: Go raibh maith agaibh. Tá fáilte romhaibh. You are very welcome. I am sorry that I was late for the initial part of the presentation. Like Raymond, I have read your papers and have listened to what you said, and it is very interesting. Our party wants inclusivity, diversity, fair play and power-sharing arrangements, including the scrutiny role that you are talking about, so the Human Rights Commission and the Equality Commission are a very important part of the arrangements. It is interesting that you say that reducing the size of the Assembly could diminish inclusivity. In my constituency of South Down, the majority of voters are nationalist, yet you have representatives from most of the parties. That is good. I like to see that, particularly given the times that we are living in now. This has been a very interesting discussion.

I want to focus on gender in Stormont and in our institutions, as we do not have good percentages of women. Have you given any thought to that?

You mentioned the scrutiny role. We are a young institution, and I agree that we need to increase our capabilities. Do you have a view on the Politics Plus programme that was launched last week here and the work of the Assembly trust on that?

Professor O'Leary: Thank you for your comments. International practice on gender is very interesting in this respect; it seems to have no concerns whatsoever about quotas for females. By contrast, ethnic and religious quotas tend to generate much more debate and controversy. It is not clear philosophically why that should be the case; nevertheless, it suggests that it is open to the Assembly to consider obliging parties to have quotas of female candidates if it chooses. That is the fastest route to increasing female representation in the Assembly. It is a little bit more difficult to do that under the single transferable vote than under list proportional representation. It would be bad to move to a world in which, in particular constituencies, there are only female candidates. I do not think that that would be a desirable model. Short of that, however, it is up to parties, by and large, to reform themselves to increase female representation. I will leave Chris to answer the other parts of the question. He may wish to disagree with me on the other matter because we did not have a prior consensus on the question of gender.

Professor McCrudden: I am afraid that I will pass on the second question because I do not know enough about it.

As you will know, increasing the participation of women is an issue that is close to my heart. However, there is a lack of good empirical information on how the system works in the context of women. Over the past two years, I have been supervising a thesis by a graduate student of mine who has been working precisely on the question of how to increase the representation of women in electoral systems, and he has many interesting conclusions that I am happy to share with you. I am sure that he would as well. One conclusion is the difficulty of knowing precisely how best to change a specific electoral system in a particular context to increase representation. Assuming that we want to increase representation, which I suspect we both do, the question is how to do that in a particular context. However, I am not aware of any empirical research in Northern Ireland on why the system results in a disproportionate number of women not being elected. Therefore, the starting point is — I am an academic so I would say this — much more attention to the current electoral system in Northern Ireland and how best it might be changed. Therefore, assuming that there is an agreement on the result, I would want to know a great deal more about the mechanics of how this particular system works. I just do not have the information at my fingertips. In other words, I cannot say at the moment which particular bits of the system need to be changed to have the most effective results. Professor O'Leary mentioned the quota systems that have been introduced: some have been very successful; some have not. Mostly, that relates to local conditions and local systems. That is the best that I can do, I am afraid, Ms Ruane.

Ms Ruane: It is Caitríona. I would be very interested to see your student's thesis. I am a delegate from our party to the Convention on the Constitution, and Stewart is a delegate from his party. There was a very interesting weekend that focused just on women in politics. If your student does not have it, I suggest that he take a look at it. It was very good, and many excellent academics provided very interesting information. All the statistics and research show that you need to get a critical mass of women in to change a culture. Moreover, they show the importance of getting women into winnable seats. The key thing is that party managers understand the importance of change. In the South, a law is being brought in that a party will be penalised financially if at least 30% of its candidates in local elections are not women. We argue that it should have gone further, but it will have an impact. Would you like to comment on that?

Professor McCrudden: It is precisely that second aspect of the question that I was indirectly hinting at. For example, under the system that operates in France, a financial penalty is attached. The empirical information on how that works is very mixed, so I do not think — to use the cliché — that there is a magic bullet here. It is by no means clear that simply introducing a financial penalty will automatically be successful. So far as I know, and being entirely dependent on my graduate students supplying me with the information, the effect in France has been that, at certain times, parties have just accepted the financial penalty. Therefore, it has had no effect other than a relatively marginal penalty being imposed that parties are willing to accept. A very context-specific argument needs to be made. I would not assume that if it works in the South, it will automatically work in the North. Each system needs to devise its own particular arrangements. That said, your first point on internal arrangements in parties to sensitise must be correct.

The Chairperson: Conall, you wanted to come in on the same point.

Mr McDevitt: It is a slightly different point, Chair. It is on your observations on petitions of concern. I am happy to leave it to the end if other colleagues want to come in on that point.

The Chairperson: Paul Givan had indicated.

Mr McDevitt: I am happy to wait until after Mr Givan.

Mr Givan: Thank you very much for the presentation. You make a very strong defence of the arrangements that were established under the Belfast Agreement. We did not support that agreement, so we are not as precious about the institutions.

Professor McCrudden: And St Andrews.

Mr Givan: Yes. When we are looking at issues such as proportionality, from our perspective, things are on the table to make changes. Our boundaries are tied to Westminster, so if you are predicating your argument on there being 108 MLAs, our destiny is not in our own hands. Had the changes been made, we would have been facing a reduction of 12 MLAs.

Professor O'Leary: Eighteen, surely.

Mr Givan: No; we were to lose 12 MLAs. We were to lose two constituencies. It was to drop to 16 constituencies, so we would have had a reduction of 12 MLAs.

Professor O'Leary: That was under the proposals to make each constituency the same size.

Mr Givan: Yes; it was going to be kept as six Members in each constituency, but we would have been electing from 16 constituencies. If that had happened, and it may well come back on the table in a future Westminster term, what implications would that have for your arguments?

Professor O'Leary: I would not run simulations on constituencies that do not exist. That is why the simulations that you have presuppose the maintenance of the existing 18. I thought that that was a reasonable short-term assumption, given the fallout at Westminster between the two coalition parties in government about reviews of parliamentary boundaries.

If you reduced the number of constituencies in Northern Ireland and kept six members per constituency, the effect on proportionality and the small parties would be less than what would happen if you reduced the number of people returned from each constituency. Keeping the principle of six people per constituency is very important. There is logic in the relationship between the multi-member district in Northern Ireland and the Westminster constituency. However, it may be for the Assembly to consider whether it would want to make — in its own interests and in the interests of long-term proportionality or a stable size of the Assembly — proposals to Westminster about fixing its own organisational and constituency arrangements for long-term stability. I do not anticipate another huge growth in the population of Great Britain, vis-à-vis Northern Ireland, that might have adverse consequences for the number of constituencies in Northern Ireland, but it is something that the Assembly could consider.

To summarise, reducing the number of constituencies by one or two, if you keep the number of people returned per constituency the same, is much less consequential for proportionality and for small parties than a model where you would reduce the number of people returned per district.

Mr McDevitt: Thank you, Chair, for another bite at the cherry. I want to pick up on the observations that you both made in your submission about the petition of concern. You said:

> *"We have observed that the Petition of Concern has occasionally been abused to block decisions which have nothing to do with community-specific vital nationalist or unionist interests."*

You suggest how we might preserve the integrity of a petition but prevent it being blocked. Can you elaborate on that?

Professor O'Leary: Our philosophy is that you, as representatives of Northern Ireland in the Assembly and as representatives in a partnership system, should, as much as possible, resolve any disputes that you have among yourselves among yourselves rather than using outside bodies. We were most reluctant to see judicial review petitions and most reluctant to see the two Governments acting in some way as arbitrators over whether something was a genuine petition of concern. However, we saw no reason why the Assembly could not set up an informal committee under the presiding officer to establish some kind of protocols in which party elders or senior party members might meet to try to inhibit misuse of the petition of concern. It would be up to them to devise their own proposals. We did not presume to sketch quite what form those would take, but we thought it best for the Assembly to come up with an internal mechanism for handling those questions. I am thinking out loud here, but it could be, for example, that when the presiding officer is elected, together with his or her deputies, they would give guidance as to how they would treat petitions of concern.

Mr McDevitt: I presume for that to be a workable model, whether it was the Speaker and Deputy Speakers, just as a collective, given that they are probably representative of the Assembly having a function, that we would all accept that petitions of concern are just petitions of concern and that they are not blocking mechanisms for selfish party or political interest, and that we would see them solely as an opportunity to address a communal inequality that may arise.

Professor O'Leary: It would be a way for the Assembly to try to make sure that the petition of concern served its original function.

The Chairperson: Thank you for taking time out of your schedule to present to us today.

Professor O'Leary: Our pleasure; thank you.

Professor McCrudden: Thank you.