

Hi

I've been away on & off so too little time available to furnish a response to the Bill. Had I more notice I could have done something. Instead, perhaps the Committee might take a look at my article in the current issue of Parliamentary Affairs, 'Two Cheers for Consociational Democracy.....' Its focus is on Assembly & Executive reform.

Rick Wilford

Two Cheers for Consociational Democracy? Reforming the Northern Ireland Assembly and Executive

Rick Wilford*

School of Politics, International Studies and Philosophy, Queen's University, 25 University Square, Belfast BT7 1PB, UK

*Correspondence: r.wilford@qub.ac.uk

This article discusses the attempts to reform the Northern Ireland Assembly and Executive by the former's Assembly and Executive Review Committee. It situates the Committee's review of the Belfast Agreement's Strand One institutions within the context both of prior proposals to effect reform and the constraints, institutional and behavioural, created by Northern Ireland's model of consociational democracy.

1. Introduction

In his 1938 essay, 'What I Believe', E M Forster voiced 'two cheers for democracy: one, because it admits variety and two, because it permits criticism' (Forster, 1972). 'Variety' or, to adopt the consociational lexicon, 'inclusiveness', is a cornerstone of devolved institutional design in Northern Ireland (NI), and the composition of the Assembly and Executive Review Committee (AERC) tasked to review the potential for reform of the Strand One institutions—the subject of this paper—meets that test (see below). As for permissible criticism of the institutions, there has been and is a surfeit.¹

Based on Forster's criteria, at face value the model of consociational democracy adopted in NI warrants two cheers. Yet, the very limited extent of inter-party agreement on institutional reform suggests a more muted response. The review's limited outcomes, identified below, arose from a combination of the consociational design

¹See successive Northern Ireland Life and Times surveys, available at www.ark.ac.uk, Lucid Talk surveys, published by the *Belfast Telegraph*, 11–15 June 2012, 20 September 2013, 9 April 2014 and 2 October 2014, and the NI Assembly's Engagement Survey, October 2010. On the latter, see [Clark and Wilford 2012](#).

and its related effects on the behaviour of the Committee's members, not least those drawn from the two major Executive-forming parties, the Democratic Unionist Party (DUP) and Sinn Féin (SF), chief among which was deference to their respective leaderships. This interaction of rigid structure and pliant agency meant that the task of manufacturing a consensus within the AERC proved elusive, such that it yielded only a minimalist reform agenda.

Before turning to these outcomes, the lineage of both the AERC and the terms of its review will be described, together with a discussion of the inter-party debate on the substance of any reform 'package'. Underlying this discussion lies a basic question: whether the attempt to reform the institutions and procedures of the Assembly and the Executive lends credence to consociationalism's capacity to facilitate the politics of accommodation. Although the potential re-engineering of the institutions is less salient in the electorate's mind than tackling the more wickedly divisive issues addressed most recently during the Haass–O'Sullivan process²—flags and emblems, parading and 'the past'—the low public regard in which those institutions are held suggests that their reform *could* play a role in anchoring them more deeply within the wider community.

2. The institutional reform paper trail

The more immediate origins of the AERC's review lay with the 2006 St Andrews Agreement/Act which provided for the Assembly to appoint a standing 'Institutional Review Committee' tasked 'to examine the operational aspects of the Strand One institutions' (a joint British–Irish proposal that first appeared in 2004, see below). This standing committee, subsequently dubbed the AERC, was established following the restoration of devolution in 2007 and included among its 11 members four from the DUP, three from SF, two from the UUP and one each from the SDLP and the Alliance Party, thereby reflecting the broadly proportional seat strengths of the parties in the Assembly. Its chair and deputy chair were allocated *via* the d'Hondt process (to the DUP and SF, respectively), the procedure common to the allocation of all such committee posts.

Paralleling the AERC, the 2006 Agreement/Act enabled the First and deputy First Ministers (FMs/DFMs) to appoint an 'Efficiency Review Panel', tasked to 'examine efficiency and value for money of aspects of the Strand One institutions', i.e. the Assembly and the Executive (and the now defunct Civic

²Talks to resolve the neuralgic issues of flags, parades and the past were led by Dr Richard Haass and Prof. Meghan O'Sullivan between September and December 2013, ending without all-party agreement on New Year's Eve. The Haass–O'Sullivan proposals are available on the Northern Ireland Executive website: www.northernireland.gov.uk.

Forum).³ This provision, included in the same ‘Reviews’ section of the St Andrews Agreement, was intended to foster a measure of joined-upness between the Executive and the Assembly. As the Agreement stated: ‘The FM/DFM would put to the Assembly for approval proposals for the panel’s remit, which might include the size of the Assembly and the departmental structure’—matters that were also to fall within the AERC’s terms of reference. However, the Panel has yet to be established.

Provision for the consideration of institutional reform in post-devolution NI has a lengthy provenance. The 1998 Agreement included a paragraph (36) stating that ‘after a specified period’ (stipulated elsewhere in the text as four years) a review into the Strand One institutions and their procedures—that is the Assembly, the Executive and the Civic Forum—would take place, together with ‘electoral arrangements’, ‘with a view to agreeing any adjustments necessary in the interests of efficiency and fairness’ (*Belfast Agreement*, Para 36). The scheduled review was to be conducted by both the UK and Irish Governments in partnership with the NI parties within four years of the Agreement’s implementation (i.e. in 2003) but, given the final suspension of the first phase of devolution in October 2002 and the consequential re-introduction of direct rule, it did not take place. Instead, the trail of talks intended to restore devolution led by the two Governments between 2002 and 2007 embraced an agenda of prospective reform.

2.1 *Comprehensive agreement 2004*

The first substantive attempt to achieve that end was the publication by the UK and Irish Governments of the *Comprehensive Agreement*, December 2004, which identified

³See Paragraph 13, Annex A, St Andrews Agreement, October 2006. The Civic Forum (CF) was, together with the other devolved institutions, suspended in October 2002 but has not been restored. A review was commissioned by Office of the First Minister and Deputy First Minister (OFMDFM) in 2008 into the effectiveness and appropriateness of the CF’s structure, operation and membership, and to recommend a mechanism for engaging with civic society. The review’s report remains unpublished, although the 60 written responses it attracted were posted on OFMDFM’s website. In an oral answer in the Assembly, the FM Peter Robinson, reflecting on the consultation exercise, stated: ‘There was no widespread desire for a return to a structure of the size and expense of the CF as it had previously operated’. He continued: ‘It is important that we have a connection with the community, particularly with those who have expertise in the issues we are dealing with. However, I think that we manage to have that consultation and the value of the advice without the expensive machinery of the Civic Forum that we had before’ (*Official Report*, 21 March 2011). All prior and subsequent attempts at the Assembly to restore the Forum have fallen foul of DUP and UUP opposition, thereby failing to secure cross-community consent (see Official Reports 3 February 2009, and 9 April and 18 November 2013).

One apparent, even perverse, lesson that may be drawn from the CF saga is that the architecture of the 1998 Agreement is susceptible to redesign or even, as in this case, partial demolition. Moreover, the pertinence of the CF’s demise suggests that structural reform can be secured and be accomplished in the absence of consensus—it was, and remains, the casualty of a joint DUP–UUP veto, not all-party agreement.

a range of potential reforms—or, rather, those envisaged by the two Governments—following all-party talks. They included:

- placing a revised Ministerial Code on a statutory basis;
- a new requirement in the Ministerial pledge of office that Ministers would ‘participate fully’ in the Executive and both the North–South Ministerial Council (the DUP had boycotted both during the Assembly’s first mandate) and the British–Irish Council (the DUP was blocked from attending its meetings by the other Executive parties between 1999 and 2002 in response to its boycott);⁴
- a cross-community vote within the Assembly endorsing the entire Executive, nominated as before *via* the d’Hondt procedure (the original procedure for Executive formation incorporated a cross-community vote solely for the nominees, on a joint-ticket, for the posts of FMs/DFMs);
- this new ‘Executive slate’ procedure also provided, should a vacancy arise for the post of either the FM or DFM, that following nominations by the relevant parties for a new joint-ticket, a ‘partial Executive Declaration’ would be tabled in the Assembly which would be subject to the test of cross-community support (any other Ministerial vacancy would be filled, as before, by a Member from within the relevant nominating party thereby preserving the d’Hondt procedure);
- the opportunity for the FMs/DFMs to agree the transfer of functions from their joint Office to other Departments, subject to agreement within the Executive and Assembly;
- changing the status of the ‘Committee of the Centre’, which scrutinised OFMdFM, from a standing to a statutory committee;
- provision for the Assembly to initiate a once-only Executive review of ‘important Ministerial decisions’ by 30 MLAs within seven days of the announcement of such a decision, or notification of such a decision, subject to certification by the Assembly Speaker, following consultation with the Assembly parties, that the decision was ‘an issue of public importance’ (this equated with the procedure

⁴The DUP’s participation in the NSMC is a pragmatic rather than a whole-hearted commitment. Its 2011 policy paper, *Making Stormont Work Better* (p. 4), while acknowledging the need for cross-community agreement, signalled its aspiration ‘to replace existing All-Ireland Implementation Bodies or to amend the present responsibilities of the North–South Ministerial Council’. Somewhat disingenuously it concluded, ‘We believe that with some goodwill, changes can be made which are to the benefit of all of the people of Northern Ireland’. That said, its related policy paper, *Reforming Government* (see mydup.com, p. 9), noted that ‘Relations between Northern Ireland and the Republic of Ireland have never been better’ and that ‘the present north–south institutions present no constitutional threat to Northern Ireland’. However, it entered a caveat: ‘The extent to which they represent good value for money is a separate issue.’ While declaring that ‘we strongly oppose politically motivated Cross-Border Bodies’ it affirmed ‘we will support co-operation which is in the interests of Northern Ireland’.

for triggering a Petition of Concern within the Assembly, which requires that a Petition is tabled by at least 30 MLAs);

- that an MLA would only be able to change community designation for an Assembly term from that expressed at the time of nomination for election where s/he changed her/his membership of a political party.⁵

That the two Governments entertained such changes demonstrated that they did not take an undiluted view of the structures and procedures of the Strand One institutions established by the 1998 Agreement. The proposed changes, however, represented the best judgement of London and Dublin on those matters, not the local parties whose agreement would have to be secured before any such reforms could be implemented.

3. Preparation for Government Committee I

These potential reforms structured the agenda of the Preparation for Government Committee (PFGC) established at the Assembly by the Northern Ireland Act 2006 which sought to pave the way to the restoration of devolution. The PFGC, chaired jointly by the DUP and SF, had a wide remit, including 'Institutional Issues', the report of which was published on 26 September 2006, shortly before the talks at St Andrews and the subsequent St Andrews Agreement published on 16 October.⁶

There is a clear thread of continuity extending from the Comprehensive Agreement to the St Andrews Agreement, *via* the PFGC, whose members agreed both a number of substantive proposals and those which, where there was an absence of consensus, required referral to a future committee of the Assembly for review: in effect, it was an agenda-setting exercise for what became the AERC.

Among the agreed matters were: the retention of the cross-community voting procedure for the election of the Speaker and three Deputy Speakers; the retention of the existing Petition of Concern mechanism; the change in status of the standing Committee of the Centre (subsequently the Committee for OFMDFM) to a statutory committee; the retention of PR STV for Assembly elections; placing elements of the Ministerial Code on a statutory footing, including measures designed to increase collectivity within the Executive and ensure that Ministers inform each other

⁵In 2000, during the fraught process of electing David Trimble and Mark Durkan as, respectively, FM/DFM, three member of the Alliance Party changed their designation to 'Unionist' for the purpose of the cross-community vote, and thereafter reverted to their original designation as 'Other'. The two members of the Women's Coalition also changed their designation for the same purpose, one re-designating as 'Unionist', the other as 'Nationalist', each of whom retained their changed designations until the final suspension of the first Assembly in 2002.

⁶The PFGC report on institutional issues is available online at the NI Assembly's archive site *via* niassembly.gov.uk.

of major decisions; that chairpersons and chief executives of the North–South implementation bodies should report annually to the relevant Assembly committee and that certain (unspecified) public appointments should be endorsed by the Executive.

The referred matters included: a review of the efficiency of the Assembly structures; an Assembly-based ‘Institutional review’ to examine the operational aspects of the Strand One institutions; the phasing out of multiple mandates; a review by OFMdFM, first of the number of Departments and Ministerial responsibilities, and second of the ways in which civic society engages with the Assembly (see footnote 3). In addition, the Committee agreed to refer for further discussion both the number and role of the North/South Implementation bodies (a Strand Two matter) and any proposed ‘overarching Council of the Isles’ (Strand Three): the former favoured by SF and the SDLP, the latter by the DUP and UUP.

There were also four issues identified by at least one party as requiring resolution prior to the restoration of devolution: the mode of electing/appointing the FMs/DFMs; accountability between the Executive and the Assembly; the elements of the Ministerial Code which were to be given statutory effect and the accountability of Ministers to the Assembly on North–South Ministerial Council (NSMC) matters. Each of these issues—together with the major question concerning the conditions under which the devolution of policing and criminal justice (agreed in principle by all parties) could occur—had structured the St Andrews talks.

4. St Andrews and PFGC II

The proposed institutional and procedural changes published in the [St Andrews Agreement](#) were considered by the PFGC in October 2006 and, although they achieved some consensus, there were areas where the parties could not agree. For instance, though there was agreement in principle for a statutory Ministerial Code, parties differed over its proposed contents. The SDLP chafed at the scope of issues to be included and, together with Alliance, expressed concern that the breadth of the Code risked recourse to legal challenges ‘on matters that ought to be resolved politically’. Further, the SDLP signalled its opposition to the proposal enabling the FM and DFM to exercise their unfettered discretion in agreeing which ‘significant or controversial issues’ that lay outwith an agreed Programme for Government should be brought to the Executive table. It argued that such a blanket provision would override the executive authority of other Ministers and was joined by the UUP in objecting to the proposal. This was, in effect, a defence of departmentalism designed to bridle OFMdFM.

The issue of a statutory Ministerial code betokened a concern to enhance ministerial accountability and foster collectivity in the Executive. To that end, and at the behest of the DUP, a new operating procedure for the Executive was proposed in the

Agreement. Namely, that where a decision could not be reached by consensus and a vote was required, three Ministers would trigger a cross-community vote at the Executive table. While a blunt device, it nevertheless provided an assurance that solo policy runs on non-legislative decisions by Ministers could be blocked. This particular proposal may be interpreted in a number of ways: as a means of engineering consensus; of managing dissensus; or, and more bleakly, of creating Executive gridlock—the view taken by the UUP which opposed the proposal.

The Agreement also endorsed the provision for Assembly referral—on a once-only basis per issue—to the Executive of ministerial decisions that ‘concerned an issue of public importance’. This measure reinforced the existing PoC procedure and was endorsed by the DUP whose leadership was concerned to demonstrate to its voters that St Andrews represented a *new* Agreement, not merely a marginally tweaked version of its 1998 predecessor. This key purpose from the DUP’s perspective was buttressed by its proposal to create the new cross-community voting procedure at the Executive.

To achieve balance between the two major parties, the Agreement included the SF demand to repeal the Northern Ireland Act 2000 which enabled the UK Government to suspend devolution. Furthermore, while it provided for a review group to examine the efficiency and value for money of existing cross-border implementation bodies (a Unionist objective), it also enabled the proposed review group to examine the case for increasing the number of cross-border bodies and areas of co-operation where mutual benefit to NI and the Republic of Ireland would be derived—an objective sought both by SF and the SDLP. This proposed review group has yet to be established.

Thus, a number of issues emerged from the St Andrews-PfGC II process that would need to be resolved when devolution was restored—itsself contingent on the resolution of the transfer of policing and criminal justice powers which proved to be a protracted but eventually successful outcome of further talks at Hillsborough Castle in 2010 ([Hillsborough Agreement](#), March 2010). The engagement of the parties in the PfGC, both prior to and in the wake of St Andrews, together with another round of discussions and negotiations in the newly created Programme for Government Committee—limited to the four major parties, *viz* DUP, UUP, SF and the SDLP—did assist in creating a softer landing for devolution in May 2007. However, a potential difficulty emerged when the St Andrews Bill was laid before Parliament, one that arose directly from the institutional reform agenda.

The procedure by which the FMs/DFMs were to be nominated and endorsed had, as noted above, bulked large during the serial talks’ process. The St Andrews Agreement proposed, as between 1999 and 2002, that the nominating officer of the largest party (as measured by the number of Assembly seats) in the largest designation (Unionist, Nationalist or Other) would nominate the FM and the nominating officer of the largest party in the second largest designation (determined by

means of the same criterion), the DFM. Unlike in 1999, however, the St Andrews Agreement did not stipulate that the nominees would be subject to a ratifying, cross-community vote in the Assembly: in effect, it defined a procedure akin to a joint coronation.

Agreement at the PFGC II was, however, unachievable. The SDLP, the UUP, Alliance and, at that stage, SF expressed a preference for retaining the *status quo* established by the 1998 Agreement, while the DUP objected, preferring instead the procedure set out in the St Andrews Agreement. The DUP's objection rested on the fact that it could not, indeed would not, entertain the prospect of requiring its MLAs to *vote* for an SF candidate as DFM on a joint-ticket with the nominee for FM, a role it prized and one which, on the basis of electoral evidence, it would secure at the planned Assembly election. However, during the PFGC II discussions SF had observed that the St Andrews proposal meant that the only person who could secure the FM nomination was someone from the largest party in the largest designation, and expressed its concern that the proposition took account of designation only, not party size, a point that it was to press to effect during the legislative process, albeit behind closed doors in discussions with the UK Government, a tactic later described by the then UUP leader Tom Elliott as a 'dirty deal' (NI Assembly, *Official Report*, 31 January 2011). The outcome of those discussions was the provision in the St Andrews Bill, subsequently enacted, enabling the largest party (as measured in terms of the number of seats), not the largest party of the largest political designation, to nominate the FM where the largest party of the largest political designation was not the largest political party (St Andrews Bill, 16 (C) (6)).

The inclusion of this clause in the Bill took the other parties by surprise—not least the DUP which was not privy either to the discussions or the UK Government's decision. Peter Robinson (Interview with the author) confirmed that this change occurred at the behest of SF and that the DUP had to decide, as Gregory Campbell (Interview with the author) put it, whether it was a 'deal breaker'. Peter Robinson echoed this view, stating that his party had to determine whether it was sufficient 'to allow the whole thing' (i.e. St Andrews) 'to go down. At that stage we put the Government on notice that from our point of view, they could put this through in legislation but that whenever it came to it we wouldn't operate the system'.⁷ In effect, this meant that if SF emerged from an Assembly election as the largest party, the DUP would not nominate one of its MLAs as DFM, thereby blocking the joint-ticket procedure and hence imperilling, even preventing, the formation of an Executive: in short, it would trigger a political crisis.

In choosing not to press the issue during the passage of the legislation, the DUP calculated that it could live with the change in the sure knowledge that, if the

⁷Interviews were conducted by the author between January and April 2012.

circumstance arose, it would frustrate its implementation. The DUP's decision may be interpreted as supplying at least one cheer for the politics of accommodation; on the other, however, it may be construed as demarcating the limit of accommodatory politics. It is clear from the comments of both Messrs Robinson and Campbell (and others in the DUP interviewed by the author) that they could not countenance the prospect of a SF FM. To reinforce that view, the DUP sought to render the 2007 Assembly election as a plebiscite on which party would hold the FM role. As its 2007 manifesto stated: only the DUP 'is realistically capable of winning more seats than Sinn Féin to stop them being nominated for the post of FM' (DUP 2007). Although such a blunt statement was absent from its 2011 manifesto, in the run-up to the election and in response to a proposal from Martin McGuinness that, should SF emerge as the largest party, he and the DUP leader could share the title of FM, Peter Robinson was dismissive. He rejected the offer as an 'electoral tactic', designed to undermine support for the DUP: 'I have no doubt there are people who don't want see a Sinn Féin FM and will lend us their votes to avoid that happening. . . I want the DUP to be coming out on top.' (BBC Online, 22 March 2011).

5. The elephant and the mouse: the AERC

That the change was not considered a 'deal breaker' by the DUP meant that the 2007 election and subsequent Executive formation could proceed—provided SF did not emerge as the largest party. It also paved the way for the Assembly, *via* the newly created AERC, to embark on the long-trailed review of the Strand One institutions albeit that the bulk of the work on these matters did not occur until after the 2011 election.⁸

The delay was occasioned largely by the AERC's preoccupation with the planned devolution of policing and criminal justice which eventually took place in 2010 following inter-party talks at Hillsborough Castle. However, it is worth observing that the transfer of policing and justice was only enabled by agreement between the DUP and SF over the procedure for appointing the Justice Minister—a procedure that itself breached the 1998 Belfast Agreement which prescribed that Ministers would be nominated in sequential order *via* the d'Hondt formula. Because the DUP could not contemplate the possibility that the Justice Minister could come from within SF's ranks, nor SF that s/he could be drawn from the DUP bloc, a compromise was reached by the two main parties whereby the nominees for the

⁸The AERC review was phased over the 2007–2011 and the current (2011–2016) mandates. During the former, while preoccupied with the prospective devolution of policing and criminal justice, it also addressed the changed procedure for filling the posts of FM/DFM included in the St Andrews Act. However, the Committee could not reach a consensus on the matter, thereby ensuring that the new procedure included in the St Andrews Act remained unaltered.

Minister would be subject to a cross-community vote in the Assembly. In effect, this meant that the nominee had to be acceptable to both the DUP and SF: this arrangement meant that the Alliance Party's nominee, its party leader David Ford, became the Justice Minister.

Whether this deal, itself contingent on the willingness of the Alliance Party to accept the nomination, is understood as evidence of the politics of accommodation or, rather, was the product of constraint occasioned by mutual suspicion and mistrust, is moot. The operative point, however, is that this marked departure from d'Hondt—which, on the basis of the 2007 Assembly election and the strict continuation of the d'Hondt procedure would have allocated the Ministerial role to the SDLP—indicated the readiness of the DUP and SF to alter a key operating procedure of the Belfast Agreement. Yet such 'suppleness' was missing when the AERC turned its fuller attention to the review of the Strand One institutions.⁹

The AERC was obliged to report to the Secretary of State, the Executive and the Assembly no later than 1 May 2015 on the operation of Parts III and IV of the Northern Ireland Act 1998—that is the legislative implementation of the Belfast Agreement—and to 'consider such other matters relating to the functioning of the Assembly or the Executive as may be referred to it by the Assembly'. The prompt for this much delayed review of the operation of the devolved institutions was the stated intention of the then Secretary of State, Owen Paterson, to table a Northern Ireland Bill in the third session of the 2010–2015 Parliament, a primary purpose of which was to effect changes relating to political donations to NI's political parties. In addition, the Bill provided a primary legislative vehicle to reform the devolved institutions where 'broad support' could be achieved among the political parties.

5.1 *Phase 1*

As a first step, the AERC had invited the parties and independent MLAs to submit their priorities for reform: on that basis it chose first to review the size of the Assembly (108 MLAs) and the number of Executive Departments (currently 12, including OFMdFM). With the exception of the SDLP, each of the parties submitted a written response on these and related matters, including: whether or not to decouple the Assembly and Westminster constituencies, as in Scotland and Wales; how to maintain the effectiveness of the Assembly's plenary sittings if there was to be a reduction in the total number of MLAs; and the efficiency and effectiveness of the Assembly's committee system.¹⁰

⁹The AERC's reports are available at niassembly.gov.uk.

¹⁰The Assembly's Committee on Procedures had published an earlier report on Committee Systems and Structures (NIA 29/07/08R, 14 May 2008).

The consideration of the size of the Assembly was prompted by the passage of the ill-fated Parliamentary Voting System and Constituencies Act 2011 which, had it been implemented, would have reduced the number of Westminster constituencies in NI from 18 to 16 and, thereby, the total number of MLAs to 96, assuming that each Assembly constituency would continue to elect six members *via* PR-STV. While this legislative prompt for the Committee's review was overtaken by events, the responses from the parties on both the total number of MLAs and the issue of decoupling the Assembly constituencies demonstrated the difficulties of reaching agreement. Both the UUP and the SDLP favoured a 96-member Assembly (i.e. each of the proposed 16 constituencies continuing to elect six MLAs) and the DUP and Alliance, an 80-strong legislature (16 × 5 MLAs). Although the preferred number of MLAs varied among these four Executive parties, in each case the reduction was justified on the grounds of efficiency savings, provided that there was a corresponding reduction in the number of devolved Departments. SF's position seemed more nuanced, that is that it was 'committed to adequate representation for all groups and communities', observing that 'reductions in representation could potentially marginalize smaller parties and independents'. Although stating 'at the moment we are not prepared to agree in principle that there should be a reduction' it also expressed its readiness to 'consider all options that reflect the inclusiveness and equality envisaged by the Good Friday Agreement'—a proviso that became SF's leitmotif throughout the AERC review.¹¹

On the matter of co-terminosity of Assembly and Westminster constituencies, SF and the SDLP favoured decoupling while, equally predictably, the UUP and DUP sought to retain the link—each, as the DUP put it, was 'instinctively in favour of keeping the Westminster boundaries'. The Alliance Party expressed its

¹¹The AERC commissioned a number of research papers from the Assembly's Research and Information Service (RaISe) which set out data on the size of both the Scottish Parliament and the National Assembly for Wales enabling Members to place the Assembly in comparative context. The papers also addressed the potential implications of a reduction in the total number of MLAs on both plenary sessions and committee work. See RaISe's Briefing Note, 28 September 2010, Briefing Paper, 8 March 2011 and the Research Paper NIAR 768-11, 10 November 2011.

Sinn Féin's position in relation to the number of both MLAs and devolved Departments has altered since the AERC's review. In mid-September 2014, Martin McGuinness stated during an interview that he was in favour of reducing both the number of MLAs (to 90, i.e. five per constituency) and the number of Departments. He explained this change in terms of the 'pain' inflicted by the UK Government's austerity measures: 'the political process politicians have to accept part of the pain'. BBC News Online, 17 September 2014. However, it is noticeable that the remarks came in the wake of Peter Robinson's claim a week earlier that the devolved institutions were 'not fit for purpose' and that institutional and procedural reform was required to enable sustainable devolution to develop. In that vein he called for a 'St Andrews 2' to 'upgrade' and reform decision-making arrangements at Stormont. His comments (*Belfast Telegraph*, 9 September 2014) were prompted in large measure by the impasse over welfare reform/cuts between the DUP and Sinn Féin.

open-mindedness on the issue, while acknowledging that decoupling would enable the Assembly ‘to control and [thereby] have stability in the number of constituencies’.

5.2 Phase 2

The potential re-configuration of the Executive also signalled the difficulties of achieving agreement. The UUP favoured nine Departments, while the DUP’s written submission to this stage of the review—its 2012 policy paper *Making Stormont Work Better*—indicated a preference for six to eight Departments, including OFMdFM. The SDLP favoured the *status quo*, although it (alone) expressed support for the introduction of thematic departments as part of a reconfigured Executive, while SF limited itself in its written submission to stating, ‘we are not opposed to a reduction in the number of departments’. Alliance proposed eight Departments and supplied a model of how they could be functionally re-organised.¹²

While there was no considered agreement about the precise structure of a smaller, re-designed Executive, the Committee was able to identify ‘areas of commonality’, as distinct from formal recommendations, that suggested the outline of a remodelled Executive. This embraced the retention of three existing Departments, *viz*, Health, Justice and Education; and three new Departments, *viz*, Economy, Agriculture, Environment and Rural Development, and either a Department for Urban and Social Development, or of Community/Communities and Social Welfare/Community, Housing and Local Government. Although a skeletal model, it did signify a readiness to revisit the original design, yielding seven Departments, plus OFMdFM.

Relatedly, the Committee addressed the question of the role and scope of OFMdFM which had been haphazardly developed during the autumn/winter of 1998–1999, resulting in a cluttered department arguably overloaded with a wide array of disparate functions rather than emerging as the strategic hub of the Executive. The AERC did not, however, indicate how the Office might be hollowed out, nor which of its functions might be reallocated to a new set of Departments, but rather confined itself to recognising the need to ‘revise and reform’ OFMdFM. This apparent reluctance stemmed from the Committee’s recognition that any proposed reform would necessarily require agreement between the DUP and SF,

¹²During this phase of its review the AERC was aided in its deliberations by a series of reports provided by RaISe that placed NI’s departmental structure in comparative context. The comparators included Scotland, Wales, the Republic of Ireland, Westminster and the Basque, Catalan and Flemish governments. RaISe also produced a paper on the cost of machinery of government changes that drew on research undertaken by the National Audit Office and the Institute of Government. Each of the reports is appended to AERC’s report, NIA 34/11-15, 20 November 2012.

OFMdfm's incumbents, in the knowledge that each party held conflicting views about the Office's role.

For its part, the DUP was and remains relaxed about the reallocation of functions to other Departments in a reconfigured Executive, believing, as Peter Robinson stated (Interview with the author), that OFMdfm's current operation is 'slow and laborious' and is incapable 'of producing smooth, efficient government' given its array of functions and the need for agreed decisions between the DUP and SF. The latter took a contrary view, at least insofar as the range of the Office's responsibilities is concerned. As Martin McGuinness put it:

If you strip out many functions, then you will be cutting down on the number of public engagements undertaken by the First and deputy First Ministers: they need to be seen working together in the community. Take that away and what you have are Ministers who are hidden, who are not seen because their responsibilities are being dealt with by other Departments. OFMdfm would become two people sitting in an ivory tower. (Interview with the author)

That the two Ministers could slough off a number of functions and focus on steering the Executive, rather than rowing a heavily freighted Office, found favour with the DUP but not SF, suggesting that the 'review and revise' exercise proposed by the AERC would founder between two contrasting perceptions of the role of OFMdfm: the DUP disposed to a reduced if not minimalist arrangement—less might mean more—SF to the *status quo*.

At odds on the need to restructure their own Office, the incumbents were less inhibited in relation to another devolved Department. In early 2012, Messrs Robinson and McGuinness issued an *ex cathedra* statement proposing the abolition of the Department of Employment and Learning (DEL) and the reallocation of its functions to the Departments of Education, and Enterprise, Trade and Investment. (OFMdfm Press Release, 11 January 2012). The proposal surprised the DEL Minister, Stephen Farry (Alliance), who, like his Permanent Secretary, learned of the announcement *via* the media (Private information). His party leader David Ford interpreted the statement in blunt terms:

We see what is apparently a carve-up, a fix to transfer DEL functions to a SF controlled and a DUP-controlled department. . . [besides being] malicious towards the Alliance Party it is extremely bad government not to keep the economy departments together but to further fragment them when we should be moving towards more streamlined government. (BBC Online, 11 January 2012)

What lessons may be drawn from this episode? First, it demonstrated the readiness of the FM and DFM to take what Martin McGuinness described as 'a

very decisive decision' (Ibid), one celebrated by Peter Robinson as a signal of OFMdFM's determination 'to move forward on a robust basis' (loc cit). In the event, and in the face of criticisms from other Executive parties, DEL's proposed abolition was deferred, not abandoned, pending the completion of the AERC review. The deferral suggests a second and obvious lesson, *viz*, that changes to the shape and size of the Executive can only be secured where there is broad cross-party consent. But perhaps the most instructive lesson is that both the DUP and SF were prepared to adopt a piecemeal rather than a holistic approach to Executive redesign. Moreover, the intervention of the FM and DFM was both ill-timed—given that the AERC was yet to embark on the Executive-redesign stage of its review—and ill-judged: the summary announcement belied the principle of inclusiveness vaunted, not least by SF, as key feature of NI's devolved polity.

5.3 Phase 3

The final phase of the AERC's review addressed the use of the d'Hondt mechanism in allocating Departments and committee chairs/deputy chairs, community designation and provisions for an Official Opposition, each of which related to key operating procedures of the Strand One institutions. Other than the decision to devote further attention by means of a *closed inquiry* into the increasingly vexed matter of the Petition of Concern device, a process begun in September 2013,¹³ the AERC failed to agree on: an alternative to d'Hondt; the abandonment of community designation in favour of weighted majority votes and provision for an Official Opposition. The latter was, however, debated further, both at the Assembly and at

¹³ A valid Petition of Concern (PoC), which functions as a veto on legislative and policy proposals, requires 30 signatories in order to trigger a cross-community vote in the Assembly. Designed to defend communal rights and thereby act as a safeguarding device, criticism has mounted about its perceived over-use, even misuse—that is, it may be employed vexatiously on matters that cannot reasonably be construed as being inimical to communal rights. Arguably, the device privileges as much as it protects group rights and, moreover, it has become an intrinsic aspect of consociational practice as a means of decision-blocking. Between 1999 and November 2013, 61 PoCs were submitted (49 of them since 2007): 34 by Unionists, 25 by Nationalists and there have been two joint petitions. On two occasions, a PoC has been submitted to block the suspension from the Assembly of two MLAs, Jim Wells (DUP) and Gerry Kelly (SF), as recommended by the Committee on Standards and Privilege, each for breaching the Members Code of Conduct: such instances suggest a misuse if not abuse of the PoC procedure. The SDLP's former leader and former DFM, Mark Durkan MP, cited those Petitions as a 'rank abuse' of the procedure and accused the DUP and SF of playing Petitions 'like a joker' (SDLP press release, 8 July 2013). Despite such criticism, the AERC's review of the PoC concluded that, despite misgivings over its deployment, no consensus could be reached on its reform: in effect, the current procedure remains unaltered (NIA 166/11-15, 25 March 2014). For data on PoCs, see McCaffrey (2013).

Westminster. In the latter case, one of the UUP's peers, Lord Empey, tabled an amendment (subsequently withdrawn) to the Government's Northern Ireland (Miscellaneous Provisions) Bill enabling the Assembly to request the Secretary of State to introduce an Opposition, while John McAllister MLA (then NI21, now an Independent Unionist) intends to table a Private Members Bill at the Assembly for the same purpose. While the latter is pending, the review of the Assembly's committee system, referred by the AERC to the Chairpersons Liaison Group (CLG), was concluded in October 2013.

5.4 Committee Review Group

The CLG itself delegated the review to a 'Committee Review Group' (CRG)—comprising five Committee Chairs (one from each of the Executive parties), two independent experts and the Clerk/Director General of the Assembly—that was tasked to identify 'new ways of improving the capacity and effectiveness of committees in delivering their policy development, scrutiny and legislative roles' (NIA 135/11–15).

This was a generous remit but the CRG proved reluctant to take full advantage of the opportunity given the continuing state of flux concerning the varying proposals to reduce the number of MLAs and reshape the Executive. As its report stated: 'Within this context, the CRG concludes that it would not be prudent to propose any fundamental changes to the committee system, but that this should be reviewed in 2015 in advance of the anticipated changes in 2016' (Ibid).

While avoiding 'fundamental changes', the CRG did, however, agree: to retain the link between each Department and a single statutory committee; to retain the size of statutory committees at 11 Members, subject to review in the light of any reduction in the number of both MLAs and Departments; that committees should adhere to 'seven guiding principles', namely strive to be accountable, open, accessible and inclusive, strategic, systematic, innovative and flexible and resourceful. It further agreed, following the example of select committees at Westminster, to identify a set of 'core tasks' for each committee to inform and guide their forward work plans in a more strategic way, while retaining their autonomy to set and prioritise their agendas. The CRG dismissed the proposition that at least some of the Assembly's standing committees should merge, contending that it would not release sufficient Secretariat resource and that the remits of the Committees were sufficiently distinct and separate to sustain their continued existence. It also rejected the proposition that committee powers be extended to amend legislation, expressing itself as content with the current arrangements for the Committee Stage.¹⁴

¹⁴ Assembly Committees have no power to amend Bills but can include proposals for amendments in reports on Bills.

6. Conclusion

The review of the committee system proved largely to be a case of ‘small earthquake in Chile . . .’, the outcome of a similar inquiry undertaken by the Assembly’s Procedure Committee in 2007–2008 (29 July 2008).¹⁵ Given the limited nature of the CRG’s conclusions, just one cheer for democracy, and a muted one at that, seems appropriate. But what of the wider AERC review? Does it merit one, two or three cheers—or, indeed, any?

The modesty of the wider outcomes stifles any prospect of a triple cheer. The extent of agreement encompassed concurrence about the need to redesign the size and shape of the Executive, including hollowing-out OFMdfM, and a general disposition to reduce the number of MLAs—all other issues failed to secure consensus or, at best, were deferred until the next Assembly mandate, that is nine years after the restoration of devolution in 2007. On that basis, a half-hearted single cheer seems a justifiable response.¹⁶

To describe the narrow limits of agreed institutional reform is not, however, to explain them. The outcomes are in part explicable in terms of the rigidity of the original consociational design and the differential effect it has exerted on the parties. While the DUP, UUP, SDLP and Alliance have been and remain receptive to reform, and in that sense are less corseted by the 1998 model, SF remains much more

¹⁵In 2008, the Procedure Committee proved reluctant to propose major operational changes, including the introduction of a substitute system, the introduction of rapporteurs, a reduction in the size of statutory committees (from 11 to nine Members), although it did agree both to a reduction in committee quorums (from five to four Members) and the provision for joint/concurrent committees to enhance scrutiny of an overlapping matter. On the rejection of rapporteurs—common to the Scottish Parliament, Welsh Assembly, the Oireachtas, the European Parliament and the UN—the Committee’s reasoning was unambiguous, viz ‘the Committee shared the concerns of some Members that the political impartiality might be an unrealistic demand on Members required to conduct this role effectively’ (p. 1). The inference is clear: Members in committee would act as ‘party animals’ rather than ‘committee creatures’. See [Wilford \(2010\)](#).

An explicit instance of such behaviour emerged during a meeting of the Social Development Committee on 13 March 2014 during the questioning of the then Social Development Minister, Nelson McCausland (DUP). His party colleagues on the Committee sought to defend the Minister from what they perceived as an unwarranted widening of the Committee’s terms of reference for the inquiry on which it was engaged, prompting the TUV MLA, Jim Allister, to liken them to ‘a human shield’ (para 2506). Amid mounting disarray and ill temper, the Committee Chair, Alex Maskey (SF) adjourned the meeting.

¹⁶Validation of that assessment is provided by the terms of the Northern Ireland (Miscellaneous Provisions) Act, which received Royal Assent in March 2014. Nominally a legislative vehicle for major reform, its institutional provisions reflected the heavily circumscribed nature of inter-party agreement. It ended dual mandates in respect of the Assembly, the House of Commons and the Dáil; extended the term of the current Assembly by one year to 2016, thereby putting it on a par with the Welsh Assembly and the Scottish Parliament; and *permits* the Assembly to reduce its size to 90 members (i.e. five per constituency). Thus far and no further.

cautious, concerned that tinkering with the design could exert unintended consequences that in its view could impair the stability of the devolved institutions.¹⁷ This view was encapsulated by one of its MLAs, Raymond McCartney during one of the AERC's evidence sessions: 'The Good Friday Agreement was designed in a particular way. There can be a tendency to look at the building blocks and try to reform those without looking at how each impacts on the other' (AERC Minutes of Evidence, 26 February 2013).

Its evident caution, although not entirely unmerited, does create a brake on the wheels of a reform process that should be both holistic and a genuinely joint enterprise between the Assembly and Executive. But SF's approach has been selective. Its successful and discrete lobbying of the UK Government to change the procedures for nominating the FM during the passage of the St Andrews Bill, together with its agreement with the DUP to both vary the process of Ministerial appointment in regard to the Justice Department and, although later postponed, to announce summarily the abolition of the Department of Employment and Learning (DEL), demonstrated its readiness to act on a partial and exclusive basis, and thereby depart from the inclusive spirit of the 1998 template. And, of course, the DUP was a willing partner to the latter two decisions and together with the UUP is responsible for the failure to resurrect the Civic Forum, a seemingly dispensable aspect of the institutional architecture established by the 1998 Agreement.

Responsibility for the failure to agree a more ambitious programme of reform is a shared one. If a test of parliamentarianism is the readiness of Members to demonstrate a la Burke (Canavan, 1999)¹⁸ a degree of independent mindedness, then the AERC failed. Tightly whipped and unable to act in tandem with the Executive *via* the still nascent Efficiency Review Panel, the fate of the AERC's labours recalls the wry comment attributed to Sir Barnett Cocks, former Clerk of the House of Commons: 'a committee is a *cul de sac* down which ideas are led and then quietly strangled'.

This self-imposed bridling of the AERC was epitomised by one of its members, Gregory Campbell (DUP). In the wake of a meeting between the Deputy Chair of the AERC and the FMs/DFMs, he reminded the Committee that 'in the end [reform] is a political matter for the party leaders. We must bear that in mind' (AERC Minutes of Evidence, 17 April 2012). A week later he reinforced the point by stating that reform 'is going to be decided in another room' (AERC Minutes

¹⁷Sinn Féin has, despite its abstentionist policy at the House of Commons, ended the practice of double-jobbing. Its five MPs have relinquished their Assembly seats and been replaced by five co-opted MLAs. Currently, two of the DUP's MPs and one SDLP MP also hold Assembly seats but will have to choose between them prior to the 2016 Assembly election.

¹⁸Speech to the Electors of Bristol, 3 November 1774, in Canavan (ed), 1999, pp. 3–14.

of Evidence, 24 April 2012). Such deference reminds one of Burke's rhetorical admonition: 'what sort of reason is that, in which the determination precedes the discussions; in which one sett (*sic.*) of men deliberate, and another decide?' (Canavan, 1999, p. 11).¹⁹

The culture of obeisance to party leaders, especially in the DUP and SF, reminds us that in NI party loyalty is co-terminous with loyalty to one's community: the reach of such loyalty is evident in the outcomes of the AERC's review. To controvert Burke, the Assembly, including in relation to institutional reform, *is* for the most part a congress of *ethnic* ambassadors in which communal purposes and prejudices, rather than the general good and general reason, prevail.

References

- Belfast Agreement. Northern Ireland Office, 1998.
- Canavan, F. (ed) (1999) *Selected Works of Edmund Burke: Miscellaneous Writings*, Indianapolis, Liberty Fund.
- Clark, A. and Wilford, R. (2012) 'Political Institutions, Engagement and Outreach: The Case of the Northern Ireland Assembly', *Parliamentary Affairs*, **65**, 380–403.
- Committee on Procedures. 'Report on Committee Systems and Structures', NI Assembly 29/07/08R; 14 May 2008.
- Committee Review Group. 'Report of the CRG Review of the Committee System of the Northern Ireland Assembly', NI Assembly 135/11–15, 1 October 2013.
- Forster, E. M. (1972) *Two Cheers for Democracy*, London, Edward Arnold.
- Hillsborough Castle Agreement. Northern Ireland Office, 5 February 2010.
- McCaffrey, R. 'Additional Information on Petitions of Concern', Research and Information Service Briefing Paper 66/13, 2 May 2013.
- OFMdFM. Justice 2012—Stormont Castle Proposals. Press Release 11 January 2012.
- Proposals by the British and Irish Governments for a Comprehensive Agreement. Northern Ireland Office, 8 December 2004.
- St Andrews Agreement. Northern Ireland Office, 2006.
- Wilford, R. (2010) 'Northern Ireland: The Politics of Constraint', *Parliamentary Affairs*, **63**, 134–155.

¹⁹*Ibid.*, p. 11.