Worth Restoring? Taking Stock of the Northern Ireland Assembly

**Abstract**

The ongoing and almost record-breaking hiatus in devolved government in Northern Ireland has brought the sustainability of the region’s Assembly into sharp focus. As parties in Northern Ireland consider their options for restoring (and possibly reforming) the devolved institutions, this article takes stock of the Assembly’s merits and demerits. It is argued that, amidst the public’s understandable exasperation with the current stalemate, it is easy to forget that the Assembly operated for a decade without suspension (2007-2017) and performed some functions reasonably well. This, of course, is not to detract from the institution’s serious shortcomings, though it is argued that the worst of these could be mitigated via institutional reform. Crucially, institutional inertia is not an option. Should parties fail to address the need for institutional reform, commentators may well be right to question whether the Assembly is worth restoring.

**Keywords:** Northern Ireland Assembly, consociationalism, power-sharing, institutional reform, Qualified Voluntary Coalition (QVC), petition of concern

**Introduction**

Due only to a technicality, Northern Ireland has been spared the title of Guinness World Record holder for going the longest period in peacetime without a government in place.[[1]](#endnote-1) Almost 1,000 days have passed since Sinn Féin’s Martin McGuinness resigned as deputy First Minister of Northern Ireland, a decision that, due to the region’s complex power-sharing arrangements, also collapsed the Northern Ireland Executive and Assembly. Despite several bouts of negotiations, with sporadic interventions from the British and Irish governments, parties in Northern Ireland have yet to secure an agreement that would see devolution restored to the region. Whilst this is not the first time that devolution in Northern Ireland has been derailed, there is a growing sense among political actors and the public that this time is different. The comments of one party leader, that there is simply ‘no point’ in restoring a ‘Humpty Dumpty Assembly’, [[2]](#endnote-2) suggest that the devolved institutions are no longer judged fit for purpose.

Grumblings about the devolved institutions long pre-date the current hiatus. Even when the Assembly was operational, a majority of the Northern Ireland population were of the view that it achieved little.[[3]](#endnote-3) Such views were informed, at least in part, by unfavourable assessments of the Assembly in Northern Ireland’s media. Characterisations of the Assembly as a ‘busted flush’ and a ‘mockery of democracy’ have not been untypical.[[4]](#endnote-4) Criticism of democratic institutions, however, is not always rooted in empirical evidence. Whilst there is much to improve at the Assembly, to suggest that it achieved nothing would be to ignore some of the functions it has performed reasonably well. As parties in Northern Ireland consider their options for restoring (and possibly reforming) the Assembly, it is worth taking stock of the institution’s merits and demerits. This paper presents a SWOT analysis of the Assembly, considering its main strengths and weaknesses, as well as the opportunities and threats presented by current circumstances.

**Strengths**

In terms of legislative productivity, the Assembly’s record compares favourably with devolved legislatures elsewhere in the United Kingdom. From 2011 to 2016, for example, the Assembly passed a total of 67 bills – more than that passed by the National Assembly for Wales during this period (28 bills) and fairly close to that of the Scottish Parliament (79 bills).[[5]](#endnote-5) Over the 2007-2011 mandate, the Northern Ireland Assembly passed more primary legislation (67 bills) than any other devolved legislature during the same period.[[6]](#endnote-6) This is a noteworthy record given that ministers in Northern Ireland face extra challenges in getting their bills over the line. Added to the fact that no minister in Northern Ireland can rely on a parliamentary majority to ensure a bill’s passage (coalition parties can – and have – voted against one another’s proposals), their legislative efforts are also at the mercy of the Petition of Concern, a cross-community voting mechanism, tantamount to a veto, which can be triggered by as few as 30 Members of the Legislative Assembly (MLAs). Whilst the number of bills passed is, at best, a rough proxy for legislative productivity, the point to be emphasised here is that the Assembly has not underperformed in this regard.

There is also something to be said for the Assembly’s improved performance vis-à-vis non-executive legislation. The most recently completed parliamentary term (2011-2016) witnessed more committee and private members’ bills (PMBs) introduced and passed since the Assembly’s inception. Although the statutory committees have possessed the power of legislative initiation since 1998, there has been a reluctance on their part to exercise this competence. This changed in 2015, with the Committee for the Office of the First and Deputy First Minister passing two committee bills in quick succession, thus ending a long spell of legislative inertia. Having carefully observed the progress of these bills, there were indications that other statutory committees intended to follow suit with their own legislative proposals.[[7]](#endnote-7) Similarly, backbench MLAs displayed greater willingness to bring forth PMBs. It was a backbench MLA, for example, who introduced one of the most significant pieces of legislation in the Assembly’s history: the Assembly and Executive Reform (Assembly Opposition) Bill (2016), creating provisions for the Assembly’s first official opposition. Other high profile PMBs legislated on issues including human trafficking and reform of Northern Ireland’s licensing laws. The enactment and ensuing publicity of these bills was not lost on the Assembly’s 2016 intake of MLAs. Shortly after the fifth Assembly convened, the Assembly’s Bill Office reported an unprecedented surge in PMB proposals.[[8]](#endnote-8) If we take the view that policy-making should not be the exclusive preserve of government, these are welcome developments. Non-executive bills are the mark of a more confident, more policy active legislature.

The charge that MLAs are distinctly parochial needs to be challenged. Localism in politicians can be both virtue and vice: on the one hand, constituents expect their representatives to be attentive to the needs and wants of the local area yet, on the other hand, representatives too focussed on the parish pump risk neglecting their parliamentary responsibilities – scrutinising legislation, holding ministers to account, and so on. The reputation of MLAs would suggest that they have not struck the right balance in this regard, having attracted criticism for parochialism and for exhibiting ‘very intense localism’.[[9]](#endnote-9) The empirical evidence, however, indicates that MLAs exhibit no more – nor no less – localism than their counterparts in Scotland and Wales. When the Assembly was operational, MLAs spent an average of 28 hours per week on constituency service tasks (running the constituency surgery, attending local events, conducting house calls, et cetera).[[10]](#endnote-10) This figure is commensurate with the amount of time spent on constituency service provision by Members of the Scottish Parliament and Assembly Members in Wales.[[11]](#endnote-11) What is more, when citizens in Northern Ireland interact with their MLA, the experience is usually a positive one. Research conducted by Ipsos Mori shows that, of those who have been in contact with their MLA, three out of four come away satisfied with the outcome.[[12]](#endnote-12) Against a backdrop of declining levels of trust in politicians and political institutions,[[13]](#endnote-13) such positive interaction is to be welcomed.

One final point of merit concerns the Assembly’s committee system. Whereas government departments in Northern Ireland have been accused of a silo mentality, a culture of cooperation and collaboration has developed between the Assembly’s committees. When powers were first devolved, the statutory committees, responsible for scrutinising and advising government departments, were quick off the mark to introduce practices such as joint committee evidence sessions to facilitate joined-up scrutiny of government.[[14]](#endnote-14) Evidence and information sharing between committees and the holding of concurrent committee meetings have since become normal practice. Equally important has been the development of positive working relationships within committees between members of rival ethno-national communities. MLAs report that committee meetings are characterised by ‘an implicit search for consensus’ among members and that, more often than not, relations are amicable. Through ‘rubbing shoulders’, as one veteran committee chairperson remarked, ‘animosities [have] started to wear away’.[[15]](#endnote-15) To outside observers, of course, a cordial working environment is unlikely to register as an impressive achievement. In a divided society emerging from conflict, however, such things are not to be sniffed at.

**Weaknesses**

Whatever the merits of a party’s decision not to participate in an Executive, it is difficult to justify a system in which such a decision precludes other democratically elected parties from forming a government. Such is the situation at present. As the second largest party, Sinn Féin are entitled to nominate for the position of deputy First Minister in the Northern Ireland Executive but have, since 2017, refused to do so. In this scenario, all else grinds to a halt – ministers cannot be nominated to other departments, committees cannot be established, and MLAs are unable to go about their parliamentary duties. Short of calling another election or suspending the institutions, the current arrangements do not provide a legal workaround. With no deputy First Minister in place, there can be no Executive, and with no Executive in place, there can be no Assembly. For as long as this system remains in place, the devolved institutions will be susceptible to gridlock and collapse.

Complaints about abuse of the Petition of Concern (PoC) are well founded. As an integral part of the power-sharing arrangements established by the Good Friday Agreement, the PoC, for all intents and purposes, was created to prevent one community’s interests from riding roughshod over the other’s. When activated by 30 or more MLAs, the procedure is tantamount to a veto in that no Assembly decision can pass without satisfying the supermajority threshold of cross-community consent – usually the support of a majority of unionist MLAs *and* a majority of nationalist MLAs *and* an overall majority. The problem is that the Good Friday Agreement provides no guidance on the appropriate use of this veto. This ambiguity has led to parties vetoing decisions that have nothing to do with one community’s interests superseding the other’s. A majority of Catholics *and* a majority of Protestants in Northern Ireland support same-sex marriage,[[16]](#endnote-16) for example, and yet a motion calling for its introduction was vetoed by the DUP in 2015. Welfare reform legislation, which would have affected welfare recipients from all creeds and none, was vetoed by a PoC co-signed by Sinn Féin, the SDLP, and the Green Party. PoCs have even been used to protect MLAs from sanction after they have been found guilty of misconduct by the Assembly Commissioner for Standards. 116 PoCs were tabled between 2011 and 2016:[[17]](#endnote-17) few of them bona fide, and most of them chipping away at the Assembly’s credibility as a fair and accountable institution.

Other issues have been less publicised but are equally worthy of redress. One lesson to be drawn from the Renewable Heating Incentive (RHI) scandal concerns the importance of rigorous parliamentary scrutiny. In that regard, the Executive’s poor record for responding to written parliamentary questions on time should be a matter of concern. The effectiveness of this important scrutiny tool is undermined when MLAs must wait weeks, if not months, to receive information they have requested. Officials have also called into question the competence and expertise of statutory committee members,[[18]](#endnote-18) which suggests that both the Assembly and political parties could do more to ensure MLAs are sufficiently trained and up to the job. Finally, a conversation needs to be had about post-legislative scrutiny in Northern Ireland – what reviews (if any) have taken place to assess whether the Assembly’s laws are having the desired effect? A revived Assembly would do well to follow in the footsteps of Westminster and the devolved administrations in Britain, where post-legislative scrutiny has been taking place for a number of years. The Assembly’s excellent Research and Library Service could begin this process now (if it has not already done so).

**Opportunities**

There is a growing sense in Northern Ireland that the devolved institutions must be made fit for purpose before they can be restored. This presents a golden opportunity for parties to introduce long overdue reforms. Contrary to the arguments of some, institutional reform is (and has been) possible without renegotiating the Good Friday Agreement. For instance, the size of the Assembly has been reduced from 108 to 90 MLAs, new Executive departments have been established, others have ceased to exist, a bespoke (non-D’Hondt) process has been established for appointing the Justice Minister,[[19]](#endnote-19) and provisions for an official opposition have been created. Further innovations are possible with sufficient political will.

Future proofing the Northern Ireland Executive against collapse should rank highly on any reform agenda, although it is undoubtedly the trickiest of issues. Any suggestion to move away from the involuntary coalition system used at present is likely to evoke fears of a return to majoritarianism. A majoritarian form of government, however, is not the only alternative. Indeed, a modification to the rules around the nomination of the First and deputy First Minister could significantly reduce the potential for a repeat of the current stalemate. The rules at present stipulate that the First Minister is nominated by the largest party in the largest designation (nationalist, unionist, other) and that the deputy First Minister is nominated by the largest party in the second largest designation.[[20]](#endnote-20) This (rightly) ensures that the Executive Office is a joint, power-sharing, office since the top positions must be occupied by representatives of different communities. Clearly, the prospect of a qualifying party *refusing* to nominate for one of these top positions was not anticipated. As described above, such a refusal makes government formation impossible. One conceivable workaround would be to amend the rules of executive formation with a contingency clause: if a party declines to nominate for the Executive Office, the opportunity to nominate then passes to the next qualifying party (in size and, in the case of nominating a deputy First Minister, of the appropriate designation). Once the Executive Office positions have been filled, all other executive ministries could be allocated as normal using the D’Hondt formula. The Executive Office would thus remain a joint office and proportionality would be protected through the application of D’Hondt.

A more radical solution would be to introduce a system of voluntary coalition with safeguards in place to ensure the representation of all three designations (nationalist, unionist, other) in government. At its simplest, the guiding principle of coalition formation would be that any Executive *must* be composed of at least one party from each designation. Let us call this Qualified Voluntary Coalition (QVC). In a QVC scenario, any tripartite coalition of one unionist party, one nationalist party, and one non-aligned (other) party that could command a majority in the Assembly would be entitled to form a government. Subject to parliamentary arithmetic, additional parties could join the coalition if required. Notwithstanding the requirement for tripartite community representation, parties could enter government on the basis of shared policy objectives. This would go some way to overcoming the hurdles previous executives have encountered in trying (and often failing) to reach policy consensus.[[21]](#endnote-21)

Although the 2017 Assembly election has removed the PoC from the gift of any one party – since all parties now have fewer than 30 MLAs – the potential for future abuse of the procedure remains. Cross-party agreement on the matter adds further support to the case for PoC reform.[[22]](#endnote-22) One idea, discussed by Schwartz, would be to subject the PoC to review, either by a panel of judges or by the Assembly’s Speaker.[[23]](#endnote-23) The latter would provide a speedier and relatively inexpensive mechanism through which the merits and intention of a PoC could be assessed. Does it relate to an issue of cultural or national identity? Or, perhaps, to Northern Ireland’s troubled past? Are human rights or equality matters at stake? To be sure, drawing up a definitive list of petition-able issues would prove difficult, however a set of admissible categories would provide much needed guidance. Upon taking the advice of officials, and perhaps with the involvement of his or her deputies, the Speaker would be in a position to rule some PoCs out of order.

At the very least, the process for tabling a PoC needs to be formalised. Leaked DUP correspondence reveals that some parties have their MLAs sign petitions in advance,[[24]](#endnote-24) a practice which essentially provides party whips with a blank cheque to veto issues as and when required. Since there is no official documentation for a PoC, parties can photocopy and reuse old petitions – robbing MLAs of their independence to decide issues on their merits. This is easily preventable. A system could be put in place whereby parties request the necessary paperwork from the Speaker’s office on a case-by-case basis. A valid PoC would not only require the signatures of 30 MLAs but also an accompanying justification, explaining whose interest the petition seeks to protect and how the issue in question might disproportionately affect one community. Publishing all PoC applications online would facilitate greater transparency around the process and, perhaps, act as a deterrent on those within the Assembly who have tabled PoCs for overtly party political purposes.

Putting to one side the arguments for and against Brexit, the repatriation of competences from the European Union to the UK (if and when it leaves) presents opportunities for Northern Ireland. As the House of Lords European Union Select Committee makes clear, powers that relate to devolved policy areas will automatically revert to the devolved administrations upon the UK’s exit (unless the UK Government introduces new legislation to the contrary).[[25]](#endnote-25) The repatriation of these powers – in areas such as agriculture, the environment, and regional development, for example – would significantly empower the Assembly and Executive by vastly expanding the range of competences under local control. It goes without saying, of course, that such opportunities could only be exploited by restoring devolved government.

**Threats**

Although citizens in Northern Ireland have not been particularly impressed with the devolved institutions in recent years, devolution has consistently emerged as the most preferred model of government in public opinion polls.[[26]](#endnote-26) Public support for devolution, however, should not be taken for granted. If citizens become increasingly resigned to the current (highly unsatisfactory) arrangement of direct rule lite in all but name, the case for restoring the devolved institutions weakens. Moves at Westminster to legalise same-sex marriage and liberalise abortion law in Northern Ireland may have shown direct rule in a more favourable light – at least to the majority of citizens who support these measures.[[27]](#endnote-27) Yet the benefits of a locally elected and locally accountable administration – of which there are many – are at risk of being forgotten amidst the public’s (understandable) frustration with the lack of devolved government in Northern Ireland. For devolutionists, the danger is that such benefits become outweighed by the considerable costs being incurred by citizens and public services as a result of no decisions being taken at Stormont. Recent increases in public support for direct rule in Northern Ireland may be a sign of things to come.[[28]](#endnote-28)

Continuing uncertainty about the Assembly’s future may lead to losses of political talent. The BBC reports that MLAs are now considering, if not already pursuing, alternative careers.[[29]](#endnote-29) In light of public anger about MLAs continuing to draw a salary (albeit a reduced one), it is unlikely that an MLA exodus would elicit much public concern. However, the implications of MLA resignations needs to be fully considered. For a start, the public would have no say in filling any arising vacancies since replacement MLAs are co-opted by political parties rather than elected through by-elections. There is also the loss of knowledge and skills to consider. Whilst there is something to be said for fresh faces and new ideas in a reconvened Assembly, there are benefits to the institution of retaining experienced legislators. Those who have questioned the competency of individual MLAs may well argue that some members are worth losing. Yet the recent resignations of the DUP’s Simon Hamilton and former Green Party leader Steven Agnew, both regarded as accomplished parliamentarians within and beyond their parties, would suggest that it is the more talented MLAs who pose the greatest flight risk.

Finally, and perhaps most seriously, lack of devolved government in Northern Ireland has significantly impeded the region’s ability to prepare for the onset of Brexit. Whereas legislators in the devolved administrations in Scotland and Wales have conducted detailed scrutiny of the potential implications of EU withdrawal for their respective jurisdictions, there have been no such efforts in Northern Ireland for over two years.[[30]](#endnote-30) It is particularly unfortunate that the region of the UK set to be most distinctly affected by Brexit happens to be the least prepared. The consequences of this could be far-reaching indeed.

**Conclusion**

Given its propensity for stalemate and collapse, it is tempting to write off the Northern Ireland Assembly as a failed experiment in consociational democracy. Yet it is worth remembering that the institution has proven itself capable of functioning – if imperfectly – having survived without suspension from 2007 to 2017. Mere survival, of course, is a low bar against which to assess performance. There were signs, however, that the Assembly was (finally) finding its feet before its collapse in 2017. The Assembly’s record for legislative productivity compared favourably with its counterparts in Scotland and Wales, whilst MLAs and committees were making greater use of their primary legislative powers. A culture of cooperation had developed not only between the Assembly’s committees but also *within* them, offering a glimpse, perhaps, of Lijphart’s ‘spirit of accommodation’ – something that would be welcomed by those in Northern Ireland who lament the current deterioration of inter-communal relations.[[31]](#endnote-31) MLAs, for the most part, had cultivated positive relationships with their constituents.

The Assembly’s most obvious shortcomings need not be accepted as a matter of fact. Institutional reform is possible without renegotiating the Good Friday Agreement and, in that regard, the next inter-party talks process offers an important opportunity. Parties unwilling to consider changes to the rules for executive formation must accept that repeats of the current scenario – a province without government for almost 1000 days – remain a real possibility going forward. Modifying the rules of executive formation – be it through adding a contingency clause, adopting a QVC system, or another alternative – is a conversation that now needs to be had. Similarly, parties will have forfeited their right to complain about abuses of the petition of concern should they opt to maintain the status quo. Empowering the Speaker to review petitions before they take effect, requiring parties to justify their usage, and formalising the petitioning process would lend the procedure much needed transparency and credibility. Whilst none of these reforms would provide a panacea for the Assembly’s shortcomings, institutional inertia is no longer an option. If the devolved institutions in Northern Ireland are to be saved, the task at hand is to make them more workable.

**Notes**

1. J. McCormack, ‘Stormont stalemate: NI “not eligible” for Guinness World Record’, *BBC News*, 9 August 2018; <https://www.bbc.co.uk/news/uk-northern-ireland-politics-45134828> (accessed 5July 2019). [↑](#endnote-ref-1)
2. News Letter, ‘Sinn Féin president says no point restoring “Humpty Dumpty assembly”’, 7 August 2018; <https://www.newsletter.co.uk/news/sinn-fein-president-says-no-point-restoring-humpty-dumpty-assembly-1-8593796> (accessed 8 July 2019). [↑](#endnote-ref-2)
3. Northern Ireland Life and Times Survey 2015; <https://www.ark.ac.uk/nilt/2015/quest15.html> (accessed 5 July 2019). [↑](#endnote-ref-3)
4. A. Kane, ‘Stormont poll: Put this mockery of democracy out of its misery now’, *Belfast Telegraph*, 3 October 2014; <https://www.belfasttelegraph.co.uk/opinion/columnists/stormont-poll-put-this-mockery-of-democracy-out-of-its-misery-right-now-30633671.html> (accessed 3 July 2019). [↑](#endnote-ref-4)
5. Primary legislation. Figures exclude bills introduced by the corporate bodies (e.g. Assembly Commission) of the respective legislatures. [↑](#endnote-ref-5)
6. The Scottish Parliament passed a total of 53 bills during the 2007-2011 period. Primary legislative powers were not devolved to the National Assembly for Wales until 2011. [↑](#endnote-ref-6)
7. Chairperson, Committee for the Office of the First Minister and Deputy First Minister, interview with the author, Parliament Buildings, Belfast, 24 February 2016. [↑](#endnote-ref-7)
8. J. Manley, ‘Stormont Speaker Stops Private Members' Bills after Record Number of Proposals’, *Irish News*, 22 September 2016; <http://www.irishnews.com/news/northernirelandnews/2016/09/22/news/stormont-speaker-stops-private-members-bills-after-record-number-of-proposals-704651/> (accessed 11 July 2019). [↑](#endnote-ref-8)
9. R. Wilford and R. Wilson, *The Trouble with Northern Ireland: The Belfast Agreement and Democratic Governance*, Dublin, New Island, 2006. [↑](#endnote-ref-9)
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15. Interviews with the author, Parliament Buildings Belfast, 22-23 February 2016. [↑](#endnote-ref-15)
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17. J. McVey, ‘Reforming the Petition of Concern: from ‘Concern’ to full citizenship’, Northern Ireland Public Service Alliance, 2019; <https://nipsa.org.uk/publications/40169-web.pdf> (accessed 24 July 2019). [↑](#endnote-ref-17)
18. M. Cole and L. McAllister, ‘Evaluating and Theorising Committee Scrutiny: A UK Comparative Perspective’, *Local Government Studies*, vol. 41, no. 2, 2015, pp. 220-239. [↑](#endnote-ref-18)
19. After the appointment of the First Minister and deputy First Minister, remaining seats in the Executive are allocated using the system devised by Belgian mathematician Victor D’Hondt. Under the D’Hondt formula, parties are allocated Executive posts in proportion to their share of seats in the Assembly. The formula used is seats in the Assembly/(1 + number of ministries held). Exceptionally, the Justice ministry is not filled using D’Hondt. Instead, the Justice minister is appointed via a cross-community vote in the Assembly. [↑](#endnote-ref-19)
20. Unless the largest party in the largest designation is not the largest party overall, in which case the largest party in the Assembly nominates the First Minister. [↑](#endnote-ref-20)
21. See, for example, D. Birrell and D. Heenan, 'Policy Style and Governing without Consensus: Devolution and Education Policy in Northern Ireland', *Social Policy & Administration*, vol. 47, no. 7, 2013, pp. 765-82. [↑](#endnote-ref-21)
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25. European Union Committee, *Brexit: devolution*, 4th Report of Session 2017-19, House of Lords, London, 2017, p. 50. [↑](#endnote-ref-25)
26. See Northern Ireland Life and Times Survey for 2016, 2017, 2018; <https://www.ark.ac.uk/nilt/2018/Political_Attitudes/NIRELND2.html> (accessed 30 July 2019). [↑](#endnote-ref-26)
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30. For the Scottish Government’s consideration of Brexit matters see <https://www.gov.scot/brexit/>; for the Welsh Government see <https://gov.wales/brexit>. The Northern Ireland Assembly’s Research and Information Service last produced a briefing paper on the potential implications of EU withdrawal in May 2017. See <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2017-2022/2017/economy/3017.pdf>. Accessed 30 July 2019 respectively. [↑](#endnote-ref-30)
31. A. Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*, Berkeley, Los Angeles, University of California Press, 1968. [↑](#endnote-ref-31)