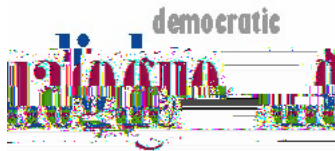




The Constituti

A Democratic Design? The political style of the Northern Ireland Assembly

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Foreword

This paper is one product of a two-pronged research project, investigating to what extent the devolution of legislative power over large swathes of policy to a parliament at Holyrood and an assembly at Stormont has been associated with a substantial change of political style. To what extent, in other words, has the opportunity been taken to 'break the Westminster mould'?

In particular, given that 'Westminsterism' is associated with strong executive control, and devolution is heralded as allowing distinct regional/small-national preferences to be articulated, the question can be defined in terms of to what extent the new devolved arrangements are turning out to be executive-dominant or legislature-led.

This question has a particular tweak in Northern Ireland. Belfast's devolved powers are tu

Executive summary

The 1998 elections to the Assembly produced a highly 'representative' result in the sense that STV is a highly proportional system. But they revealed, unlike in Scotland with its constituency 'twinning' arrangements for the election to the Parliament, an overwhelming male bias in the Assembly. Moreover, with six seats per (Westminster) constituency, an unwieldy body of 108 members has resulted, not all of them of the highest calibre. In addition, STV contains no incentives towards political accommodation and the elections saw a further erosion of the political centre – at a time when reconciliation, not polarisation, was meant to be the order of the post-agreement day.

The Northern Ireland public has become acclimatised to the 'new' Assembly at Stormont and is felt – at least by Assembly members – to be well-disposed to it, as a more accessible and responsive institution than Westminster. This has two interesting aspects: Catholics no longer experience the Stormont 'chill factor' of old; anti-agreement unionists have to concede a reluctance among Protestants to bring the institution down. The Assembly's public communication could, however, be more professional and it could benefit from more policy-oriented media coverage.

The hybrid statutory committees at Stormont have in reality corresponded to a combination of Westminster select and standing committees. They were initially much more secretive than their Scottish counterparts, though most now meet mostly in public. They have been rather unadventurous in their approach to public participation. They have, however, been marked by significantly more cordial relationships between DUP and Sinn Féin members of the Assembly than are evident in plenary sessions.

So far the Assembly has followed Westminster in its freedom-of-information régime, not yet exploring as in Scotland a more liberal variant. A combination of the parochialism of some members and the lack of habituation of the Northern Ireland civil service to close democratic scrutiny has led to tensions over access to information held by the executive. MLAs in the round have not taken full advantage of the generous research facilities at their disposal.

The Assembly's Code of Conduct for MLAs is unexceptional by Westminster standards. The Ministerial code and the Pledge of Office are specific, and in theory

arguably Sinn Féin has failed in terms of **effectively renouncing violence and the DUP in terms of engaging in democratic dialogue with its opponents**, the overarching commitment to 'inclusiveness' has trumped any capacity of the Pledge of Office to act as a sanction in these regards.

The statutory committees have so far focused on their scrutiny role, none as yet initiating legislation. There have, however, been unforeseen problems of accountability arising from the unanticipated growth of the Office of the First Minister and Deputy First Minister (**OFMDFM**) at the heart of the executive. A Committee of the Centre established to scrutinise the office is restricted by its remit to only about half of the functions of OFMDFM: 'external' north-south, 'east-west' and European areas are not subject to the scrutiny of any Assembly committee. Even then, the sprawling brief has left the Committee of the Centre unsure of its thrust, and its domination by the two parties represented in the office has rather spiked its guns.

Scrutiny of the budget by the Assembly's Finance Committee has been very unsatisfactory to date. This is explained by the period of suspension from **February to May 2000** and the problem is unlikely to recur. Effective scrutiny of the Executive

jealousy towards the forum on the part of some Assembly members. NGOs are developing the capacity to target Assembly committees, but the procedure for petition has not yet been used. The Social Development and Environment departments attract most complaints via the Ombudsman.

A positive innovation by the Assembly has been its Business Committee, **chaired by the speaker, which discusses forthcoming business and facilities for members. The Committee** has attracted some international interest. In other respects, the Assembly has been more conservative, for example in failing to adopt electronic voting. Pressure of business is likely to lead to committee sessions increasingly encroaching on plenary meetings.

A touchstone of the distribution of power in the new dispensation is the degree to which the Assembly, or its committees, can not just scrutinise but effectively challenge the executive. A major limit in this regard is the 'inclusive' nature of the Executive Committee: with overwhelming (however nominal) 'government' majorities on all statutory committees and only minor parties comprising the 'opposition', effective challenge has been rare. The coherence of the executive is itself threatened by the absence of collective responsibility, though 'joined-up'

Background

The 'Good Friday' Agreement¹ was signed on April 10 1998, the island-wide referendums

Representing the People

The shared intention among the signatories to the Agreement that it should be underpinned by a philosophy of inclusivity and that, in Mr Trimble's words, the Assembly would be 'a pluralist parliament for a pluralist people'¹² was to be realised through the application of consociational thinking, not least by the use of the single transferable vote (see below) as the means of achieving proportional representation within the Assembly itself.

The Assembly elections were held on the basis of Northern Ireland's 18 Westminster constituencies – each constituency returning six members – and attracted 295 candidates, an average of 2.7 for each seat. As in all previous elections – whether at local, regional, UK-wide or European levels – the candidates were overwhelmingly male, 83% overall, whereas women constitute a numerical majority of the population. At the elections, 14 women were returned¹³ and 94 men. Age-related data are available for 64 of the successful candidates, including 60 men, and tend to confirm certain aspects of the stereotypical public representative: not only are they male, but also middle-aged (average age is 52 years) and, in occupational terms, largely middle-class – although a large number are not 'middle-minded', if support for the Agreement is understood as a defining characteristic of the latter.

Table 1
Parties Elected to the Assembly

Party Pro-Agreement	% First Preference Vote	% Seats	N Seats	Seat Bonus (%S-%V)
UUP	21.3	25.9	28	4.6
SDLP	22.0	22.2	24	0.2
SF	17.7	16.7	18	-0.9
APNI	6.5	5.6	6	-0.9
PUP	2.5	1.9	2	-0.6
WC	1.6	1.9	2	0.3
Anti- Agreement				
<i>DUP</i>	<i>18.0</i>	<i>18.5</i>	<i>20</i>	<i>0.4</i>
<i>UKUP</i>				

By definition, all of the anti-Agreement unionists were Protestants, albeit drawn from a variety of congregations and, with one exception – Sir John Gorman, a practising Catholic – so too were the pro-Agreement unionists. All nationalist and republican MLAs were at least nominally Catholic, as was one of the Women’s Coalition members and four of the Alliance Party’s MLAs.

The ostensibly pro-Agreement unionist vote (23.8%) and bloc of seats (N30), achieved by combining the results for the UUP and PUP, is, however, somewhat misleading. A number of the UUP’s successful candidates had voted ‘No’ at the referendum and this complicated the parliamentary arithmetic in the Assembly, even though all took the party whip. This was significant given the application of cross-

and Sinn Féin, marginalised the other parties, including the bi-communal Alliance Party. Its vote share (6.5%) remained at the level it had won at three of the four previous elections in Northern Ireland. The Women's Coalition did little more than sustain the minor, but nonetheless noteworthy, dent it had inflicted on Northern Ireland's 'malestream' politics at the 1996 Forum election, the first it had contested.

1973-74 and sustained in its 1982-1986 successor, was carried over apparently without reflection.

It has, however, long been argued by one of the leading academics in the field of ethnic conflict, Donald Horowitz, that electoral systems in divided societies must be carefully chosen with a view to deciding whether they offer incentives for *both* parties *and* voters to behave in either a more conciliatory or a more antagonistic fashion. Thus, for example, the alternative vote may have the effect of encouraging candidates in heterogeneous constituencies to court moderate electors from 'the other side' to defeat more extreme candidates on their own, and of encouraging electors from a minority community in the constituency to give their second preference to a moderate from the local majority as the lesser evil.

By contrast, Horowitz (2001) argues, STV was a bad choice for Northern Ireland, allowing, as it does, candidates to be elected on small, core votes. It thus provides no disincentive for extremist electoral behaviour.

Such argument as there was at the time of the Agreement was confined to the number of seats per multi-member constituency: would it be five, grossing up to a 90-seat Assembly, or six, as one of the small loyalist parties insisted, with a total of 108? Fear that if the demands of the loyalists were not met, and they did not secure representation in the Assembly, their ceasefires would not be sustained led to the latter position being conceded (though even more vulnerable to Horowitz's criticism). Even then, the Ulster Defence Association-linked UDP won no seats at all, while the Ulster Volunteer Force's 'political wing', the PUP, won two.

With a population of 1.7 million, Northern Ireland thus has an Assembly which is nearly as large as the 129-member Scottish Parliament, even though the population of Scotland is three times greater (the powers of the two being broadly similar). One outcome of its size is that the proportion of what have been disdainfully described as 'numpties' in the Holyrood Parliament – under-performers – is higher than it otherwise would be.

Several of our MLA respondents were scathing about the calibre of some of their colleagues, notably those with a background in local government. Northern Ireland's 26 district councils, with their modest administrative powers, are a poor training ground for addressing regional, even global, policy concerns with legislative capacity. More than one interviewee advocated a reduction in the size of the Assembly to the 90 originally envisaged.

The 1998 elections to the Assembly produced a highly 'representative' result in the sense that STV is a highly proportional system. But they revealed, unlike in Scotland with its constituency 'twinning' arrangements for the election to the Parliament, an overwhelming male bias in the Assembly. Moreover, with six seats per (Westminster) constituency, an unwieldy body of 108 members has resulted, not all of them of the highest calibre. In addition, STV contains no incentives towards political accommodation and the elections saw a further erosion of the political centre – at a time when reconciliation, not polarisation, was meant to be the order of the post-agreement day.

Public communication

The Assembly does have a website which has been subject to redesign on three occasions since it first met in shadow mode on 1 July 1998. The most recent redesign occurred in March 2001 when, for the first time, the complete run of committee reports to date – whether statutory, standing or *ad hoc* – became available in electronic form.

The provision of hard copies of Assembly papers is patchy. While the main library at Queen's University is not legally an official repository, there is an understanding that all official documents from both the devolved Departments and the Assembly will be deposited in its Government division. However, there is no routine procedure for ensuring that all such documents are deposited therein, the result being an incomplete run of Assembly papers.

Basic background material on the Assembly is available on the website, including brief biographies of its members, party composition, the powers of the Assembly, lists of committees and their forthcoming meetings, order papers, stages of the legislative process, minutes of proceedings and so on. However, the volume and quality of information is not of the standard provided by the Welsh National Assembly or the Scottish Parliament.

There is no evidence to suggest that the normal sitting hours of the Assembly in plenary session (10:30am-6pm on Mondays and Tuesdays) have inconvenienced the public. If anything, the adoption of family-friendly working hours has assisted the organisation of visits by schools etc. One MLA, referring to the 'huge' number of visitors, colourfully suggested that on some days the Assembly was like a 'Turkish bazaar'.

Committee meetings take place throughout the week, although the majority are held between Wednesday and Friday. Many committee rooms are rather cramped such that high-profile meetings – involving, say, the appearance of a Minister before a statutory committee – will attract large numbers of the press whose presence, together with that of the witnesses, tends to limit the space for members of the public.

Apart from tours of a restricted area of Parliament Buildings on the Stormont estate – in which the Assembly is situated – and provision for a public gallery in the chamber, there is no dedicated educational programme designed to raise awareness of the democratic process. There is no systematic or organised outreach to the public

by the Assembly, nor a Youth Assembly that is intended specifically to engage the interest of the region's young people.

Public attitudes to the Assembly, pro-agreement MLAs believe, are generally benign. The accessibility of members, and of ministers to members, has, in this view, made government less remote. Under direct rule, said one, 'You couldn't get answers to anything.' Now the answers were speedier and had a Northern Ireland 'slant' rather than offering UK-wide solutions (see Table 2). There was an appreciation, said another, that 'this is our government and these people are here to serve us'.

Table 2
 Written and Oral Questions
 7 February 2000-12 March 2001*

Party	Written Questions (N)	Oral Questions (N)	Total (N)
UUP	557	485	1042
DUP	1260	327	1587
Other Unionists**	28	16	44

From the other side, even one anti-Agreement MLA conceded that the Protestant community was torn between opposition to what appeared morally queasy aspects of the Agreement (such as prisoner releases) and support for democratic structures in Northern Ireland. This creates a weak flank in the 'no' camp which has so far rendered it more willing to wound than to strike Mr Trimble, the UUP leader.

There is, however, a sense, perhaps as in Scotland, that initial public expectations of what the Assembly could do, and how quickly, may have been excessive – and, as in Scotland, an early decision by MLAs on a salary increase went down badly. This would be borne out by the October-December 2000 data from the Northern Ireland Life and Times Survey (see www.qub.ac.uk/nilt), indicating a majority belief that the Assembly has made no difference across the range of public services. As one MLA said, 'So much was assumed would be delivered by this institution it inevitably could not live up to expectations.'

Public participation in the work of the Assembly is limited. The views and opinions of the wider public are sought by the statutory committees *via* general invitations in the local press to submit written evidence during the course of an inquiry. The Executive Committee did publish its Draft Programme for Government in the autumn of 2000 and invited comments from the public as part of the consultation exercise that extended until 15 January 2001, but this was an Executive rather than an Assembly initiative.

Media coverage of the Assembly is felt by MLAs to be adequate in quantitative terms. BBC Northern Ireland, for example, has invested substantially in its Assembly coverage, with a large number of additional correspondents recruited. The Assembly's management body, the cross-party Assembly Commission, arranged the establishment of a media unit in Parliament Buildings, with facilities for press conferences and interviews, and a studio from where BBC NI transmits its weekly *Assembly Live* (albeit on BBC2). A liaison panel between the Commission and the regional media meets roughly every quarter.

There is, however, some disquiet about the quality of the reportage. This is partly the complaint of parliamentarians everywhere – that media organisations seek only to highlight, indeed exaggerate, the sensational or controversial, at the expense of the bulk of worthy, but dull, activity in which any such Assembly engages.

This media preoccupation carries a particular charge in Northern Ireland, for two reasons. First, the tendency to focus on issues on which parties adopt adversarial stances means an emphasis on those concerns – such as the plight of victims of the 'troubles' – that expose bitter sectarian divisions, divisions which the Agreement has

not resolved. Secondly, and relatedly, what political correspondents deem to be 'political' is in fact a relatively narrow agenda of issues revolving around sectarianism and violence inherited from the long struggle over the region's constitutional future. The nature of the coverage may thus unwittingly tend to undermine public confidence in the Agreement's future, which the longitudinal Northern Ireland Life and Times Survey indicates is indeed diminishing.

Thus one MLA complained that political correspondents only turned up at the Assembly in anticipation of 'a row'. In particular, he suggested, the promulgation of the Programme for Government had been 'very ill served'. He said: 'The media are not geared to concentrating on serious, detailed policies.' While most committee meetings were now public (see below), the media rarely attended, said another.

Assembly committees

There are ten statutory committees in the Assembly (see Table 3), each tasked to 'shadow' the relevant devolved Department. In addition, there are six standing committees (see Table 4) including the Committee of the Centre which monitors half of the functions administered by the Office of the First Minister and Deputy First Minister (OFMDFM). Post-devolution, three *Ad Hoc* Committees were established to examine three discrete pieces

Table 3
Statutory Committee Meetings

Statutory Committees	Meetings at Parliament Buildings	Meetings outside Parliament Buildings
Agriculture and Rural Development	40	2
Culture, Arts and Leisure	40	0
Education	38	0
Enterprise, Trade and Investment	50	3
Environment	33	0
Finance and Personnel	43	0
Health, Social Services and Public Safety	38	0
Higher, Further Education, Training & Employment	43	2
Regional Development	36	3
Social Development	40	2
Totals	401	12

Note: The statutory committees were not entirely sedentary. In addition to the evidence taking sessions, some of the committees also undertook site visits (number in brackets) throughout the region. Agriculture and Rural Development (1); Culture, Arts and Leisure (5); Education (1); Health, Social Services and Public Safety (7); Higher and Further Education, Training and Employment (2); Social Development (1). Two of the committees ventured further afield. The Enterprise, Trade and Investment committee visited Dublin to meet Mary O'Rourke TD, Minister for Public Enterprise, and also travelled to Cardiff to meet representatives of the Welsh Development Agency. The Culture, Arts and Leisure Committee also visited Dublin to meet its counterpart in the Dáil.

Table 4
Standing Committee Meetings

Standing Committee	Meetings at Parliament Buildings	Meetings Outside Parliament Buildings
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The statutory committees have thus far proven to be unadventurous and unimaginative in the ways they conduct business, for the most part seeking written and subsequently oral evidence in the course of an inquiry *via* calls for submission in the press and on their dedicated websites and invitations to interested individuals and organisations. These calls for evidence define the limits of their proactive behaviour. Transcripts of the oral-evidence sessions are available on each committee's website.

There are no co-opted members on any of the committees, whether statutory, standing or *ad hoc*. Statutory committees do appoint specialist advisors where they deem it appropriate to the conduct of an inquiry. None has sought to appoint a *rapporteur* or employed other innovatory measures: they are, in this guise, rather orthodox institutions.

The committees also rely heavily on Departmental officials for technical advice during the committee stages of a Bill. While none has initiated a Bill, their reports are routinely debated on the floor of the chamber, unlike those of their (distant) cousins at Westminster.

Unlike standing committees at Westminster, whose membership includes MPs with expertise and/or interest in the field of the relevant legislation, and which are weighted to ensure a government majority, statutory committee members are expected to acquire expertise over time across what is, in many cases, a multi-functional Departmental remit. The sprawl of some Departments' responsibilities is extensive and is an outcome of the political, rather than administrative, rationale that governed the reconfiguration of the six direct rule Departments into 11 devolved Departments when inter-party (essentially UUP/SDLP) negotiations were concluded in December 1998.

Committee members, as more than one MLA interviewed put it, were placed on a steep 'learning curve' in relation to the new Departments and were reluctant to betray their ignorance in public. As Liz Fawcett has demonstrated in an ESRC-funded research project on Political Communication and Devolution in Northern Ireland, committees were thus far more likely to conduct their business in closed rather than public sessions in their early lives. This penchant for privacy compared unfavourably with the standard operating procedures of the committees of both the Scottish Parliament and the Welsh National Assembly, which were public from the outset. Transparency was evidently not a principle uppermost in the minds of MLAs when they embarked on their committee roles.

Dr Fawcett's research findings were presented at an ESRC seminar in Belfast in September 2000. And the issue did not stop with private meetings. She told the seminar that whereas the Scottish Parliament's committees published a full transcript of proceedings after each meeting, initially Assembly committees only published minutes, which were not very informative (for example, recording the comings and goings of members but not the back and forth of debate) and which were not published until agreed at the next meeting. She declared it 'extraordinary' that this issue had not been raised in public and that there had been so little interest in the Scottish (and Welsh) comparison.

The ESRC presentation became itself a major media event. The *Belfast Telegraph* that night ran with the headline 'BEHIND CLOSED DOORS: Unease at "appalling" level of secrecy' (11 September 2000). The UUP leader and First Minister, Mr Trimble, suggested that this practice reflected the unwillingness of the DUP to be seen to be sitting in committee with SF members. But a subsequent Assembly Question by the DUP leader, Rev Ian Paisley, revealed that the most secretive committees were chaired by UUP and SDLP members ('Stormont league table of secrecy is revealed', *Belfast Telegraph*, 3 October 2000).

Most committee meetings are now held mostly in public. Whether this change would have occurred as members got beyond the briefing phase, or whether it required the embarrassment caused by the Fawcett research, is a moot point. One MLA said that she might have 'needled that point along'.

Mr Trimble nevertheless himself had a point, even if he missed the transparency issue. In terms of the potential of the Assembly to improve intercommunal relations, plenary sessions on occasion descend into sectarian confrontations. But MLAs affirm that committee meetings are now generally of a cordial nature, with members addressing one another on a first-name basis, even though they embrace the political spectrum from the DUP to SF. Under the initial chair of the Committee of the Centre, Gregory Campbell (DUP), meetings were abortive affairs. But though Mr Campbell was replaced by a DUP colleague, Edwin Poots, when he became a Minister in July 2000, even in this difficult case business is now effectively being done.

One MLA even used the word 'camaraderie' to describe relationships in one committee of which he was a member. Another said the absence of 'fireworks' was 'incredible'. Another again said that committees were developing 'a strong loyalty' (though see below), including 'a healthy respect' between SF and DUP members – even though the latter would be 'not an inch' fundamentalists in public. 'In terms of the broader peace process that's perhaps the most interesting part of all of this.'

The hybrid statutory committees at Stormont have in reality corresponded to a combination of Westminster select and standing committees. They were initially much more secretive than their Scottish counterparts, though most now meet mostly in public. They have been rather unadventurous in their approach to public participation. They have, however, been marked by significantly more cordial relationships between DUP and Sinn Féin members of the Assembly than are evident in plenary sessions.

Access to information

The Assembly has itself yet to publish its first Annual Report. The delay has been occasioned in part by the period of suspension and shortages of administrative staff.

In the current financial year (2000-01), the budget for running the Assembly is £37.8 million, less than 1% of the total budget of £5.3 billion administered by the devolved government. This figure is projected to rise by 2.5% to £38.8 million in the next financial year, when total spending is expected to be £5.7 billion, equivalent to approximately 0.7% of the devolved budget. Thereafter, planned spending on the Assembly is expected to increase to £40 million in 2002-03 and stabilise at that figure in the following year (Finance and Personnel Department press release, 12 December 2000).

The rather uncertain political future of the Assembly has created some problems for the recruitment of administrative staff. Potential staff, aware of the risk that devolution may yet turn out to be an event rather than a process have been reluctant to apply for the available posts (one of the authors was asked by a research appointee for his prognosis in this regard). While a significant number of officials have been seconded from the Northern Ireland Civil Service to staff the various divisions within the Assembly (see Table 5), this practice has been stopped largely because of the perceived drain on Departmental resources.

Table 5
Assembly Staffing Levels

not well briefed on social and economic issues, relying instead on ‘anecdotal evidence’.

So far the Assembly has followed Westminster in its freedom-of-information régime, not yet exploring as in Scotland a more liberal variant. A combination of the parochialism of some members and the lack of habituation of the Northern Ireland civil service to close democratic scrutiny has led to tensions over access to information held by the executive. MLAs in the round have not taken full advantage of the generous research facilities at their disposal.

Upholding standards

In addition to the Code and Guide, Schedule 4 of the Northern Ireland Act stipulated a Ministerial Code of Conduct and a Pledge of Office for Ministers, including junior Ministers, of which there are currently two in OFMDFM. The Pledge of Office contains seven injunctions to Ministers, including compliance with the Ministerial Code of Conduct. The remaining six pledges, in order, are:

1. 'to discharge in good faith all the duties of office';
2. 'commitment to non-violence and exclusively peaceful and democratic means';
3. 'to serve all the people of Northern Ireland equally, and to act in accordance with the general obligations on government to promote equality and prevent discrimination';
4. 'to participate with colleagues in the preparation of a programme for government';
5. 'to operate within the framework of t

of the Programme that relate to their Departments (Regional Development and Social Development) then they would be in *prima facie* breach of the Pledge and a motion for their exclusion *could* be moved on the floor of the chamber. To succeed, such a motion would require cross-community support, *ie* the support of the UUP would be needed to exclude the DUP. This, however, is unlikely: the political and electoral risks for the UUP would be too great.

Anti-Agreement MLAs are obviously furious about the failure to hold SF (though not the DUP) to the Pledge of Office. One complained that ‘parties fronting armed terrorists in government’ were associated with paramilitary crime which was ‘threatening the infrastructure of civil society’. But one (‘nationalist’) pro-Agreement member also conceded: ‘In the interests of making this work we have perhaps been more lenient than we should have been.’

And a DUP MLA in a way concurred. He admitted his party had been able to ‘manipulate’ the Pledge but claimed SF was doing likewise ‘without so much as a sneeze from the major players’.

The Assembly’s Code of Conduct for MLAs is unexceptional by Westminster standards. The Ministerial code and the Pledge of Office are specific, and in theory they constrain members to comply with democratic norms, in terms of dissociation from violence and the pursuit of deliberation with colleagues instead. While arguably Sinn Féin has failed in terms effectively renouncing violence and the DUP in terms of engaging in democratic dialogue with its opponents, the overarching commitment to ‘inclusiveness’ has trumped any capacity of the Pledge of Office to act as a sanction in these regards.

Scrutinising the executive

Each of the statutory committees has the power to initiate inquiries and make reports, and all have made use of this power. To date (April 2001), eight of the ten statutory committees have published at least one report. The most prolific, on this measure, is the Agriculture and Rural Development Committee, chaired by the DUP leader, Mr Paisley.

Table 6
Statutory Committee Reports

Statutory Committee	Number of Reports
Agriculture and Rural Development	3
Culture, Arts and Leisure	1
Education	1
Environment	1
Finance and Personnel	2
Health, Social Services and Public Safety	1
Higher and Further Education, Training and Employment	1
Regional Development	1

Note: In addition to the statutory committees, the Public Accounts Committee – one of the Assembly’s standing committees – has produced three reports, and there have been three reports produced by *ad hoc* committees on draft orders.

In addition to undertaking inquiries, the statutory committees have an entrenched role within the legislative process (see below), taking the committee stage of primary legislation emerging from within their associated Departments and also examining relevant statutory instruments. The committee stage – for which 30 calendar days are currently allowed by Standing Orders – results in a report from each of the statutory committees. To date, eight such reports have been produced, including one from the

Committee of the Centre (CoC) tasked to monitor OFMDFM. However, it is not a statutory but a standing committee and thus does not enjoy the full raft of powers accorded to the former.

Until 21 January 2001, when the relevant Standing Order (SO 59) was amended, the CoC could not process any piece of legislation – whether primary or secondary – from OFMDFM without a motion being put to the Assembly seeking leave to refer it to the Committee. In January, the Procedures Committee sought to overcome this anomaly by amending Standing Orders such that any Bill, Statutory Rule or draft Statutory Rule should stand referred to the CoC unless the Assembly ordered otherwise. The proposal was endorsed by the Assembly by means of cross-community consent (all Standing Orders have to be agreed on this basis) and with the support of OFMDFM, thereby enabling the Committee to conduct its business in a more efficient manner.

While this was a positive development for the CoC in particular and, more generally, for the legislative relationship between the Executive and the Assembly, the remit of the Committee remains constrained and, thereby, limits the extent of accountability and scrutiny of OFMDFM afforded by the committee route. The scope of the CoC's reach is restricted to approximately half the functions administered by Messrs Trimble and Mallon, aided by their two junior Ministers. All 'external' functions of the Office – in relation to the Republic of Ireland, the rest of the UK and the rest of Europe – are outwith the Committee's remit, the First and Deputy First Ministers instead being answerable to the Assembly as a plenary body for those areas of joint responsibility. In effect, the Office escapes the extent and level of scrutiny to which the other ten devolved Departments are subject.

Nor are the 'north-south' aspects of Strand Two of the Agreement, notably the six cross-border bodies, scrutinised in a systematic way by the statutory committees (see below). Instead, the relevant Ministers are questioned by MLAs either by means of oral and/or written questions, or following a statement to the Assembly about meetings of the appropriate body/bodies and sectoral/plenary meetings of the North-South Ministerial Council – the body from which the two Sinn Féin Ministers are currently excluded.

The accountability of north-south co-operation was a hugely sensitive issue in the negotiations leading up to the Belfast Agreement. Republicans favoured free-standing institutions, which would develop an all-Ireland 'dynamic' of their own in line with the (dated) functionalist theory of European integration by policy 'spill-over'. Unionists were equally determined to nail down such bodies to accountability to any northern Assembly (and the southern Dáil). The upshot was a limited number

of executive or 'implementation' bodies, reporting to a North/South Ministerial Council operating on a basis of unanimity. A further dimension to be developed was bilateral policy co-ordination between Departments in the two jurisdictions.

The issue of the Assembly's involvement in all this was complicated by the unanticipated manner in which OFMDFM grew like Topsy in the wake of devolution. With 'liaison with NSMC' only one of 26 functions accruing to the office by the time in February 1999 the First and Deputy First Ministers Designate reported to the Assembly on the new Departmental structures, it was hardly surprising that, along with the other 'external' functions of the office, its scrutiny should have been excluded from the CoC when the latter was established.

The theory was that the NSMC (like the British-Irish Council and European affairs) would be rendered accountable to the Assembly as a whole. But with no committee to accumulate the relevant expertise and develop alternative perspectives, in practice this has simply meant that MLAs have the opportunity to question the First or Deputy First Ministers after meetings of the NSMC on the basis of what they have been told.

Ministers can of course be scrutinised by 'their' committees on bilateral departmental relationships. But one MLA, by no means ill-disposed to north-south co-operation, complained that this meant the six implementation bodies were not properly scrutinised. Another, again pro-Agreement, said she was 'very concerned' about the lack of accountability and the 'superficial' statements made to the Assembly about the NSMC. An anti-Agreement member claimed the north-south bodies were effectively 'freestanding'.

Links between Assembly members and their counterparts across these islands have developed to some extent, usually *via* meetings of Assembly committees with Scottish or Dáil counterparts. For example, the Assembly's Public Accounts Committee went to Dublin to meet the (rather effective) PAC there and sat in on one of its hearings; the Environment Committee of the Assembly met the local government panel of the Scottish Parliament. There are also links *via* the British-Irish Interparliamentary Body (though unionists still boycott this).

A notable connection has been effected by the all-party children's group in the Assembly. It liaised with the Scottish Parliament and the Welsh National Assembly over the idea of a Children's Commissioner – an idea to which the Executive Committee is now committed.

Hitherto, the British-Irish Council appears to have been withering on the vine of London (and, to a lesser extent, Dublin) uninterest. But the absence of a European affairs committee to scrutinise the Executive on European Union matters (see below) is highly problematic, given not only the huge volume of paper the EU institutions generate but also the special attention devoted in recent years to Northern Ireland. The Executive Committee is establishing an official presence for itself (rather than the Assembly) in Brussels, temporarily using Scottish premises.

Despite the restricted nature of the mandate of the CoC, the fact that OFMDFM embraces 26 functions in all means it still has a huge spread of diverse policy issues to address. Members of the Committee confess that they have struggled to do so. 'It's difficult in all honesty,' said a senior member.

The Committee's time so far has been largely taken up with meeting individuals or groups who can assist it in coming to grips with the issues within its remit. Proactive pressure on OFMDFM has been rather less in evidence. As one member put it, OFMDFM is 'massive and diverse' and the Committee had spent 'aeons' familiarising itself with it, but 'where are we going?' Another said: 'I think it hasn't really yet established what its main priorities are.'

A further particular problem with the CoC is the fact that OFMDFM is a co-ministerial office, with two UUP and two SDLP Ministers. Thus not just one party

the autonomy of the statutory committees. In short, it may be argued that the first (interrupted) year of devolution has resulted in committee overload such that, for instance, none has so far initiated legislation. One MLA was blunt: 'All the committees are absolutely snowed under.'

On the other hand, the consociational principle of power-sharing that underpins the relationship between the statutory committees and the Departments has effected a set of working partnerships between them. Moreover, committee reports are routinely debated on the floor of the Assembly, although this has created conflict between particular committees and their Ministers. For instance, the inquiry by the Higher and Further Education, Employment and Training Committee into student finance led to a report that was opposed by the Minister, Sean Farren (SDLP). Elsewhere, the Health Committee took a contrary view to that of the Minister on the matter of hospital-based maternity services in Belfast (see below).

MLAs interviewed for this project were divided as to whether, over time, committees would come to initiate legislation. Proponents suggested that a number of the overweening burdens committees currently faced would gradually lift. Familiarisation with the committee's policy domain would have been completed, rights and equality provisions (including a Single Equality Bill harmonising existing legislation) would have bedded down, and the backlog of legislation blighted during the run-up to devolution would have been cleared.

On the other hand, the committees do not have the drafting resources to prepare their own Bills. It was 'a long, long way off,' said one MLA. Another said he could only envisage a committee initiating legislation where it had a 'bee in its bonnet' and the Department was reluctant itself to legislate; it is true that the only specific suggestions made by interviewees were control of dog-fouling or street-trading. And one sceptic, a committee chair, suggested on the contrary that committees would 'retrench' even from their policy-development roles into more Westminster-style scrutiny. In as far as there is a consensus here, it would be that it is unlikely that committees will initiate any substantial legislation before the next Assembly election, scheduled for 2003.

During the year or so that devolution has actually been in place, the work-rates of the statutory committees have varied. In terms of reports produced, legislation processed and/or inquiries undertaken, the Agriculture and Rural Development, Higher and Further Education, Training and Employment and Finance and Personnel Committees have proven to be among the busiest and Culture, Arts and Leisure and Environment the least 'busy'. In particular, the role of the F&PC as the co-ordinating committee on budgetary matters places it at the hub of committee

activity, with strategic oversight over expenditure allocations and the Executive Programme Funds devised as an integral element of the wider Programme for Government.

The fact that the agendas of the statutory committees have been heavily structured by Executive business has meant that it is only of late that they have begun to realise their relative autonomy as agenda-setters in their own right.

The statutory committees have so far focused on their scrutiny role, none as yet initiating legislation. There have, however, been unforeseen problems of accountability arising from the unanticipated growth of the Office of the First Minister and Deputy First Minister (OFMDFM) at the heart of the executive. A Committee of the Centre established to scrutinise the office is restricted by its remit to only about half of the functions of OFMDFM: 'external' north-south, 'east-west' and European areas are not subject to the scrutiny of any Assembly committee. Even then, the sprawling brief has left the Committee of the Centre unsure of its thrust,

Controlling the budget

As indicated above, each of the ten devolved Departments – that is with the exception of OFMDFM – is paralleled within the Assembly by a statutory committee. Paragraph 9 of Strand One of the Belfast

Finance and Personnel, thereby enabling the Minister, Mark Durkan (SDLP), to bring a revised budget forward for consideration (and endorsement on a cross-community basis) in December.

It was, however, clear that the Assembly, not least the members of the Finance and Personnel Committee (F&PC), were less than enthused with the tightness of the timetable allowed to examine and subsequently authorise the budget – a timetable that was made even shorter by the provision of a week's recess over the Hallowe'en period. Francie Molloy (SF), Chair of the F&PC, signalled the unease of members with the compressed schedule. He sought an assurance from Mr Durkan that in future the budget would be the first item on the Assembly's agenda following the summer recess. As Mr Molloy put it (*Official Report*, 17 October 2000), 'This would give Committees time to adequately scrutinise the Budget and would facilitate the coordination of Committees, allowing the Finance and Personnel Committee to do its job properly and advise the Minister.'

The discontent within the F&PC simmered throughout the autumn session. During a take-note debate on the budget, Mr Molloy remarked that 'the timescales adopted this year have prevented the kind of research and in-depth analysis that is desirable if Committees are to contribute to a report that adds real value to the Budget consideration process' (*Official Report*, 14 November 2000). Seamus Close (APNI), a fellow member of the F&PC, was even more forceful in his criticisms. During the debate he too lamented the time pressure, commenting that 'the opportunity for proper scrutiny has not yet been afforded to the committees', and drew the conclusion that 'we' (MLAs) 'are being railroaded towards a vote on a Budget without proper scrutiny' (*ibid.*).

The budget was amended on 12 December, following Gordon Brown's pre-budget statement, and a two-day debate was held on the revised budget on 18 and 19 December prior to its approval – on the basis of cross-community consent – by the Assembly. During the debate it emerged that, because of the pressure of other business, two of the statutory committees (Health, Social Services and Public Safety; and Social Development) had not submitte5J19.5149 8 TD0.0012 Tc0.11027Tw[(The)x]3(baminion pr tl

In the light of these and other related criticisms it is evident that the procedures for scrutinising the first home-grown budget were found wanting. The F&PC, besides recommending that henceforth the autumn session should open with the presentation by the Executive Committ

and recalled the broader criticisms voiced by MLAs in relation to the scrutiny of the Budget.

The Finance Minister reiterated the joined-up aspiration that lay behind the Funds – ‘[they] are a key instrument in promoting co-operation between Departments and making them address the multi-dimensional issues in a cross-cutting way’ – and their use as a ‘major means to support the priorities of this Administration’ (*ibid.*). He also noted that Departmental demands for the Funds outstripped supply by a healthy margin: ‘In total [there were] 139 bids across the five Funds totalling £581m over the three years’, whereas ‘£372m was available’. He also claimed: ‘All bids have been scrutinised carefully and measured against the criteria for the Funds by the Department of Finance and Personnel, the Economic Policy Unit and the Equality Unit [both located within OFMDFM] working closely with all the Departments.’ He confirmed too that the agreed bids were consistent with the statutory equality duty imposed on public bodies by Section 75 of the Northern Ireland Act 1998 and with the principle of ‘targeting social need’ (see above). Note that the Minister made no reference to rural-proofing in the statement (see below).

Only an hour was set aside for questions on the EPF allocations and it was soon apparent that Mr Durkan’s assurance about ‘scrutiny’ would not go unchallenged. Francie Molloy (SF), Chair of the F&PC, while welcoming the statement, insisted that the Committee ‘did not have the opportunity – and that is our main concern – of scrutinising and going through the departmental bids in the proper way’. Speaking on behalf of the Committee, Mr Molloy said its members had ‘severe concerns about the first round of allocations and the way that they have been managed’ and were ‘unhappy’ that the decisions on allocations ‘were taken with undue haste and insufficiently detailed consideration’. Again speaking for the Committee as a whole, he also challenged the rationale for the EPFs: ‘[We] felt that the principle of the funds – that they should be directed towards cross-departmental projects – had been set aside ... I believe that the cross-departmental aim has been lost.’ He insisted that the F&PC had been given insufficient time to deal with that matter, that there were still outstanding and serious issues that needed to be resolved and that they could only now be addressed on the floor of the chamber: ‘There was not enough time in the Committee session to ask the[se] questions.’

Mr Molloy’s critique did wring a concession from the Finance Minister – ‘matters were not dealt with perfectly’ – who hinted at the need to reform the methods for scrutinising the Funds, notably by channelling the task directly to the F&PC, not a

unlike Westminster – the Northern Ireland Assembly’s Standing Orders do not at present provide for a committee with a general human-rights competence.

Disquiet with this state of affairs extends beyond the Assembly to include the new Northern Ireland Human Rights Commission (NIHRC). In November 2000 the Commission published a report proposing that the Assembly should establish a ‘Standing Committee on Human Rights and Equality’ with a mandate ‘to examine and report on all human rights and equality issues ... within the competence of the Assembly, including the compatibility of Bills with relevant human rights standards’.

Among other things, the newly proposed committee would replace provision in the Standing Orders for an *ad hoc* ‘Special Committee on Equality Requirements’ (SO 55) designed to ‘examine and report on whether a Bill or proposal for legislation is in conformity with equality requirements’, including rights under the ECHR or any future Northern Ireland Bill of Rights. The Special Committee has yet to be convened.

The NIHRC also seeks to consolidate the centrality of rights and equality principles in the procedures of the Assembly by proposing that the statutory committees should be involved in the pre-legislative scrutiny of Bills – currently they are not. This would add a stage to the legislative process, as would the Commission’s proposal that MLAs be provided with an additional opportunity to amend Bills as they are proceeding through the Assembly. The NIHRC’s proposals underline the absence of routinised procedures for rights proofing *within* the Assembly – a procedural gap that is inconsistent with the spirit of the Belfast Agreement. Standing Orders do, however, provide that any MLA may put down a motion in the Assembly asking that the NIHRC be asked to advise whether a Bill, draft Bill or legislative proposal is compatible with human rights, including those under the ECHR. Notice of such a motion may be made at any time after the introduction of a Bill and in the case of a draft Bill or proposal for legislation at any time after it is published for public consultation. Any subsequent advice furnished by the Commission is circulated to all MLAs and published in a form determined by the Speaker.

The Assembly itself does not have an equality unit. Each of the statutory committees seeks to ‘equality-proof’ Bills emerging from the respective Departments. The ‘Equality Unit’ within OFMDFM does liaise with both the Equality Commission and the NIHRC and once a Bill is introduced in the Assembly, the Speaker sends a copy to the NIHRC for human-rights proofing (SO 28:6).

A further audit mechanism is provided by 'targeting social need', a policy inherited from the direct-rule administration. Departments are meant to seek to skew public expenditure at the margins in favour of disadvantaged areas, and a new index of disadvantage ('Noble') is being prepared to replace the old one ('Robson') in this regard.

Does all this reduce intercommunal tension? Like equality and human-rights (and 'rural' – see below) proofing, targeting social need in many ways reflects the triumph of administrative regulation over substantive policy. This is the product of a culture where mistrust fuelled by sectarianism remains rife and of the 'policy deficit' (Pollak, 1993: 319-320) accumulated by the parties during their sustained exclusion from power under direct rule.

The difficulty with this is that there is thus no agreement on the meaning of 'equality' or 'social need', and this is proving highly divisive within OFMDFM where responsibility for it lies. One exasperated official said: 'Every single word is being dissected to the nth degree.' Would, for example, free school meal uptake or academic under-achievement be the indicator on which financial allocations to schools would be made? – the first would favour Catholics, the second Protestants.

'It really is all down to resources: what the Catholics are going to get and what the Protestants are going to get,' the official warned. It was 'us and them' thinking, 'sectarianism at the highest levels' of government. 'Evidence-based policy' was the victim, he said.

In addition to equality and rights proofing, the Programme for Government is also committed to the 'rural proofing' of legislation and policy. However, the concept lacks lucidity. In answer to an oral question from Mr Paisley (DUP) on 6 November 2000, the Deputy First Minister, Mr Mallon, said that the then draft Programme took 'full account of rural issues when developing major policies and programmes'. He went on to say: 'Rural proofing is a concept that involves reviewing all major policies and programmes in a structured way to ensure that any rural dimension has been fully taken into account at the formulation stage.' And he assured his questioner that 'all major policies and programmes will be rural proofed'.

Subsequently, during its scrutiny of the relevant parts of the Programme, on 2 March 2001 the Agriculture and Rural Development Committee, chaired by Mr Paisley, sought clarification from officials about the Department's 'working definition' of the concept. According to the DUP leader, the committee received a 'two page presentation. We were as far forward, after reading [it] as we had ever been.' He continued: 'At this stage, less than four weeks before the proposed start date for

rural proofing, the Department of Agriculture has no real blueprint for it. That is what we have concluded. There was general information, but [the paper] did not discuss how the job was to be done.'

Not only did Mr Paisley point to the seeming inadequacy of the Department's grasp of the concept; he also reinforced a view among many – mostly anti-Agreement unionist – MLAs that its implementation would be a matter for each Department acting in isolation. As he put it (*Official Report*, 5 March 2001), 'The main thing we, as

group into the anti-Agreement ranks would thereby endanger Mr Trimble's prospects of re-election as the unionist candidate on the joint slate. However, the Assembly's standing orders (SO 3 (8)) provide that an MLA may change his/her designation once during the life of an Assembly. This provision would, for instance, enable the 'other' parties – Alliance and/or the Women's Coalition, each of which is pro-Agreement – to redesignate themselves as unionists in order to vote for Mr Trimble if they so chose. To date, redesignation has not occurred.

The wider implication of 'otherness' is that the votes of Alliance and WC members do not 'count' in relation to key decisions, effectively disenfranchising their respective electorates in regard to these matters. All votes in the Assembly on non-key decisions, that is the bulk of them, do not, however, require cross-community consent but are governed by a simple-majority rule. The scope of key decisions is, though, potentially flexible.

The Agreement provides that 30 MLAs may, *via* the Petition of Concern, move that a vote be taken on a motion on the basis of the rules governing cross-community voting. Thus far, the only attempts to muster the required number of signatories on a Petition of Concern have been made by anti-Agreement unionists. There have been two such attempts since the transfer of devolved powers, each directed against Sinn Féin's participation in the Executive Committee on the grounds that 'it is not committed to non-violence and exclusively peaceful and democratic means', as required by the Pledge of Office set out in the Agreement. As stipulated by Section 30 of the Northern Ireland Act 1998, which implemented the Agreement, the motions sought to exclude Sinn Féin from holding Ministerial office for a period of 12 months.

concern about the absence of pre-legislative scrutiny in this regard. There are ideological tensions over equality issues and there is no certainty as to what 'rural-proofing' may entail. The mutual-veto arrangements enshrined in the Agreement can turn into mutually blocking a

Shaping legislation

All MLAs have the right to propose Bills (as well as amendments to Bills), as do the statutory committees – as yet, as indicated above, neither has done so. The only legislation to appear on the Assembly’s agenda has been that emerging from within the devolved Departments, Statutory Rules and draft Orders laid by the Secretary of State, who retains responsibility for both excepted and reserved matters under the Northern Ireland Act 1998.

By March 2001, nine Executive Bills had received Royal Assent and a further seven were at various stages of the legislative process, which are set out below. *Ad Hoc* Committees were established to produce reports on three draft Orders laid by the Secretary of State: the Draft Life Sentences Order 2001, the Draft Financial Investigations Order 2001, and Draft Regulations proposed under Article 3 of the Flags Order 2000. Statutory Rules (SR) fall into three categories: those subject to

Committee said the Department would not develop a policy without first ‘testing [it] out’ with the committee. A committee chair said ‘his’ Department would write to him with a discursive description of any proposed bills or regulations and would be willing to discuss this afterwards with the committee. One Minister said that *vis-à-vis* original (as against parity) legislation committees would normally be consulted *on the consultation document* to go out to the public. And the explanatory memorandum (see below) accompanying a Bill had to be cleared with the relevant committee.

The stages in consideration of Public Bills are defined in SOs 28 and 29. Any Member or Minister who proposes to introduce a Bill submits its full text to the Speaker not less than seven working days before its proposed introduction to the Assembly. The legislative stages are:

First Stage, the Introduction of a Bill – the title of the Bill is read to the Assembly by the Clerk and it is then printed and sent, by the Speaker, to the NIHRC;

Second Stage, a general debate, with an opportunity for Members to vote on its general principles;

Committee Stage, a detailed investigation by the relevant statutory committee – or, in the case of Bills emerging from OFMDFM, the Committee of the Centre – which concludes with the publication of a report for consideration by the Assembly;

Consideration Stage, the opportunity for Members to consider and vote on the details of a Bill, including amendments proposed to a Bill;

Further Consideration Stage, a further opportunity for Members to consider and vote on the details of a Bill, including amendments;

Final Stage, the passing or rejection of a Bill by the Assembly without further amendment.

A minimum interval of five working days separates each stage, except in the case(s) of the accelerated passage procedure (see below). No Bill is permitted to pass through all its stages in less than ten days.

In the legislative process, the statutory committees (and the CoC) become, in effect, transmuted into Westminster-like standing committees during the committee stage. This stage is normally expected to take 30 calendar days. However, provision is made in Standing Orders (31:4) for a Minister or a Chair or Deputy Chair of a statutory committee to put down a motion in the Assembly for a period extension to complete the committee stage. Of the 16 Bills that have been laid before the Assembly, period extensions have been sought for nine of them. The frequency of such extensions reflects in some cases the complexity of a Bill. More generally it tends to reflect the heavy workload, itself the product of their multiple functions, borne by the statutory committees.

Minister of Finance and Personnel, Mr Durkan (*Official Report*, 5 June 2000), and the second by the Minister for Social Development, Maurice Morrow (DUP) (*Official Report*, 2 October 2000).

Each of the 16 primary pieces of legislation laid before the Assembly has been moved by an individual Minister, rather than on behalf of the Executive as a whole. Up to March 2001, the Finance and Personnel Minister

Civic engagement

The appearance of a civic dimension in Northern Ireland's new political landscape was signalled in the provision for a Civic Forum in paragraph 34 of Strand One of the Belfast Agreement. Its provenance lies, among others, in the Women's Coalition's determination to create a space and a voice for civic society in the post-Agreement context.

Albeit a pillar of the new constitutional architecture, the Forum was to have consultative status only and would consist of representatives drawn from the business, trade union and voluntary sectors 'and other such sectors as agreed by the First Minister and the Deputy First Minister', who were to establish the guidelines for the selection of those representatives (Agreement, 9). Its writ was to encompass 'social, economic and cultural issues' and it would receive administrative support from what was to become OFMDFM.

During the shadow period the Assembly had approved proposals set out by Messrs Trimble and Mallon for the Forum's establishment (16 February 1999). These included that it would be 60-strong, and would have an independent Chair – this was to be Chris Gibson, a prominent businessperson and former regional director of

A fortnight later the Forum held its first session in Belfast's Waterfront Hall, the very day the DUP moved a motion of no confidence in the First Minister, Mr Trimble, in the Assembly. The inaugural session was launched by Messrs Trimble and Mallon, and proved to be a brief affair as representatives felt their way towards an initial agenda. Scheduled to meet six times per year – the second meeting occurred in November – formal arrangements between OFMDFM and the Forum for consultations had still to be formally endorsed by the Assembly, as stipulated by section 56 (2) of the Northern Ireland Act 1998, at the time of writing.

The motion seeking the approval of the Assembly was moved by Mr Trimble in somewhat ringing tones (*Official Report*, 6 February 2001): 'The Civic Forum ... underpins the principle of inclusivity on which the agreement (*sic*) is based ... [It] will enable the Executive and the Assembly to engage in a structured and formal dialogue with important sectors of the community [and] will provide a channel for information to flow from a broad sector of civil society and for views to be expressed on social, economic and cultural matters.'

During his opening statement, the First Minister indicated that the Forum had already responded to the Executive's draft Programme for Government and that it had decided to examine a number of issues, including poverty, 'peace-building' and lifelong learning. The motion itself sought to extend the Forum's 'catchment area' by providing that, in addition to requests for its views tendered by OFMDFM, it would also 'be invited to offer its view on specific social, economic and cultural matters where the Assembly has so requested'. Mr Trimble also assured the Assembly that the independence of the Forum would be guaranteed and that neither he nor Mr Mallon had any intention 'of preventing the Forum from addressing any issue it wishes to address, subject to resource considerations' – in effect, the Forum is free to set its own agenda.

The motion itself was agreed in advance by the Forum *via* consultation with yo is9.0ong t

could be a very effective instrument for improving government here': it was a vehicle for dialogue with groups with specialist knowledge, beyond the generalist capacities of MLAs, and it should not be a 'nodding dog'.

One Minister said, however, that while the Forum was 'only getting its teeth into its own agenda' it had nevertheless 'made some very valuable comments' on the draft Programme for Government, several of which had been incorporated into the final version. Another MLA said she thought the Civic Forum should focus on 'cutting-edge' issues that were difficult to debate on the floor of the Assembly – sectarianism, for instance – and offer solutions to them.

The casework of Assembly members is largely confined to Fridays while the Assembly is sitting. But MLAs say that both individual and group lobbying is substantial. 'Everybody is learning that this is the seat of authority,' said one. Another said there was a waiting list of organisations wanting to address each of the two statutory committees of which she was a member.

NGOs are however targeting the relevant committees to varying degrees. The National Union of Students / Union of Students in Ireland is credited by the Higher and Further Education, Training and Employment Committee with influencing its report on student finance. A senior member however expressed surprise that business had not been more assiduous in this regard.

There is provision in Standing Orders for Public Petition (SO 22), but there is no dedicated Petitions Committee. Any petition – and none have thus far been presented – must fall within the legal competence of the Assembly (see S6 Northern Ireland Act 1998) and must be notified to the Clerk of the Business Committee. It is this committee that considers whether and when a petition shall be taken in the Assembly.

A further avenue for redress of grievances is provided by the Ombudsman – in fact the popular name for two offices, the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints. The Ombudsman's Office was established in 1969 but the current powers and responsibilities are laid down in the Ombudsman (NI) Order 1996 and the Commissioner for Complaints (NI) Order 1996. These were extended by the Commissioner for Complaints (Amendment) (NI) Order 1997 to include various health service professionals and complaints about the exercise of clinical judgment.

The writ of the Ombudsman includes all district councils, education and library boards, health and social service boards and trusts, as well as the newly devolved government departments and their agencies.

The advent of devolution led to a change in the title of the Office such that the then incumbent, Tom Frawley, became the Assembly Ombudsman rather than the Parliamentary Ombudsman and he reported to the Assembly rather than Parliament. However, the coincidence of the period February-May 2000 when devolution was suspended with the publication of the 1999-2000 Annual Report meant that the report was laid at Westminster.

Early in 1999, Mr Frawley spoke to MLAs at Stormont at a familiarisation session designed, among other things, to help members in channelling complaints from their constituents to his Office. All complaints made against government departments and their associated agencies require the sponsorship of either an MP – if made prior to devolution – or an MLA after that date. The staff of the Ombudsman's Office (19 in all), are seconded from government departments or their agencies.

In 1999-2000, 256 complaints were made to the Assembly Ombudsman, 103 of which were submitted by either an MP or MLA, the remainder directly by complainants. A further 308 cases were submitted to the Commissioner for Complaints and 66 complaints were levelled at the Health and Social Services.

With respect to the complaints submitted to the Assembly Ombudsman, two of the newly devolved Departments, Environment and Social Development, attracted the lion's share: 99 against the former (mostly on planning issues) and 63 against the latter (largely relating to benefits matters). Of these, 141 related to the agencies associated with the two departments. Overall, 168 complaints (65%) received in 1999-2000 concerned agencies of government departments.

In 1999-2000, the number of complaints lodged against government departments was as follows: Agriculture and Rural Development, 10; Enterprise, Training and Investment, 6; Health, Social Services and

developing the capacity to target Assembly committees, but the procedure for petition has not yet been used. The Social Development and Environment departments attract most complaints via the Ombudsman.

The Assembly's self-management

One innovation in the Assembly is the thirteen-strong Business Committee, the successor to the Committee to Advise the Presiding Officer (CAPO) that was established early in the shadow phase. CAPO's role was to advise the Presiding Officer (Speaker) on the arrangement of the business of the Assembly and on practical issues related to the provision of

visit proved to be a success. So much so that it has recommended that there should be:

1. further US input into the in-service training of business managers within the Assembly in relation to procedural matters and the dissemination of information;
2. a direct link between the Information and Research Division of the Assembly and its Congressional equivalent to discuss matters of mutual interest; and
3. further liaison at Officer level between the Assembly and the Congress in relation to service delivery for members and, especially, in how the work of Congress is promoted to the American public.

Committees are by default constrained by Executive business in as much as the Executive has been the source of all legislation hitherto. But they are not so constrained in developing their programmes of work – in terms of inquiries and reports – and have elaborated these autonomously. Whether this has always been strategically conceived is, as is discussed above, another matter. But, for example, the Education Committee decided not only to focus on the ‘11+’ examination – a concern shared with the Minister – but also on issues of under-achievement and special-needs education. Enterprise, Trade and Investment looked at the ‘Strategy 2010’ economic-development strategy which the Minister had inherited from the direct-rule régime but also decided to investigate energy on its own initiative.

The Assembly Presiding Officer/Speaker,

Rendering the executive accountable

As to whether the committees can really hold the executive to account, a huge difficulty arises from the inclusive nature of the Executive Committee. Only parties enjoying less than around 10 per cent of the vote are not represented on it: the Alliance Party, the Progressive Unionist Party, the Women's Coalition and the anti-Agreement unionist fragments. While the former three small parties co-operate informally (the latter do not take part in the committee system), this means that on every committee the big majority of seats are occupied by executive parties.

Committees will thus tend only to challenge the executive if a Minister lacks support from his or her colleagues and/or if the whips do not secure party conformity. Two instances of the former have arisen (see below) and it is true, as one Minister put it, that whips in the Assembly do not see themselves as agents of the Government à la Westminster.

But the numbers are nonetheless overwhelming and effective opposition requires committee loyalty to transcend that of the party. And while one committee Chair said it was still 'early days', usually 'party loyalties win out'. Even the Chair of the Higher Education Committee felt obliged to

committee chairs needed to be careful not to be 'nobbled'. Yet another said most such relationships were 'businesslike'.

The Minister/committee relationship has broken down in two celebrated instances. In the first case, the long-running argument about where maternity services should be located in Belfast, the Health Minister, Ms de Brún of Sinn Féin, went against the view of the Health Committee in opting for a hospital in the west, rather than the south, of the city. Since the Committee had been split (7-4, on sectarian and/or constituency lines), she could have presented a reasoned case to members as to why she had opted for the minority position, particularly since the SDLP chair of the committee had supported her, and suffered little consequential damage. But she adopted the high-handed alternative of first telling the media of her intentions; her decision was subsequently condemned by an Assembly majority (largely voting on sectarian lines) and later subject to a successful judicial review. Relations between the

One (anti-Agreement) MLA claimed: 'If a Minister decides to do what he or she wants there's nothing the Assembly can do to stop them.' Another (pro-Agreement) member did say, however, that constraints were applied by the capacity of the Assembly to amend the Minister's legislative proposals (as happened over the ending of GP fundholding) and to deny him or her the finance required. (Indeed while the issue of the location of a new maternity hospital in Belfast remains, according to the Health Minister, to be decided, one of her ministerial colleagues once confided that he was confident Ms de Brún would be caught 'in the long grass' over her preference because she had not secured the finance for it.)

Ministers can, in theory (though see above) be subject to cross-community no-confidence motions which exclude them from office for failing to fulfil the Pledge of Office, but there is no provision to force the resignation of a Minister who defies the Assembly or is simply incompetent. Ministers hold office courtesy of their own nominating parties under the d'Hondt rule, unlike in Switzerland (the nearest comparator in terms of its 'magic formula') where the seven Federal Council members are elected by all members of the parliament and the political style is much more consensual. One anti-Agreement MLA feared, or more probably hoped, that this would lead to public disengagement from the institutions run by these 'independent warlords'.

This anomaly relates to the wider question of the non-dismissability of the Executive Committee and the impossibility of 'turving the scoundrels out' *via* an election. As Michael Laver (2000) noted in a presentation to a Democratic Dialogue round-table in Belfast in September 2000, there is no provision for the making or breaking of governments in the manner of 'normal' European democracies. In the latter, coalition formation requires parties to coalesce around putative winning combinations prior to an election and such coalitions can be broken by loss of such a parliamentary majority. Meantime, they can be subject to vigorous challenge from those parties not included in government and condemned to opposition for the duration.

None of these provisions applies to the Northern Ireland Executive Committee. All parties which can secure more than 10 per cent of the seats in the Assembly will be automatically represented in government, leaving only the most minor parties in opposition. One anti-Agreement MLA said it was impossible to 'critically scrutinise' government operation as a result. And a pro-Agreement MLA concurred: it was 'extremely difficult' to scrutinise an Executive formed by D'Hondt, he said. 'I think the Executive will dominate.' One (anti-Agreement) MLA went so far as to call it 'an elected dictatorship'.

The situation is more complicated, however, because two parties, the DUP and SF, have sometimes behaved as if they were simultaneously in government *and* opposition. Thus, for example, they opposed in the Assembly an 8 per cent increase in the regional rate for 2001-02 which they had nominally supported in the Executive. One Minister insisted that, th

Another MLA pointed to the manner in which the DUP and SF had departed from the ostensible agreed view of the Executive on the regional rate. He did not get 'a sense of collective government'. There was no 'collective responsibility', said another (anti-Agreement) member. Another (also anti-Agreement) took pleasure in pointing out that one party in government was suing another (SF challenging the UUP ban on its participation in the NSMC) and a third, the DUP, was claiming not to be part of it. The DUP in fact sought – and lost – a judicial review over the refusal of the other members of the Executive Committee to release all 'cabinet' papers to its two Ministers.

Ministers interviewed, however, gave a different view. 'The reality is that the Executive probably operates more as a collective than many people anticipated,' said one. Given the fissiparous tendencies in the government over macro-political issues like decommissioning, one senior official in OFMDFM said (with a straight face) that Ministers had tried to 'keep politics out' of the Executive—by implication operating in a technocratic fashion in a context where there is little division on more 'normal', left-right issues. Another, however, gave this a different gloss, seeing the endless pursuit of consensus as 'a brake on action'. He said: 'It comes down to everything's consensus, balanced – watered down is another way of putting it.'

Under the Ministerial Code, the Minister po

and which was passed by the Assembly in March. There was a 'determination' within the Executive, the Minister said, to resist falling into departmental 'silos'.

The Minister did, however, take a sideswipe at the DUP for not joining in government at all, though he did point out that if they did not engage with colleagues orally by attending Executive Committee meetings they did so in writing. 'I can't see the difference,' he said, a view echoed by a UUP MLA who said: 'To all intents and purposes they are running their Departments in an Executive effectively with Sinn Féin.' It is a view also shared by MLAs in the smaller anti-Agreement parties who believe the DUP is being sucked into the system – not of course a perception adopted by the DUP.

A touchstone of the distribution of power in the new dispensation is the degree to which the Assembly, or its committees, can not just scrutinise but effectively challenge the executive. A major limit in this regard is the 'inclusive' nature of the Executive Committee: with overwhelming (however nominal) 'government' majorities on all statutory committees and only minor parties comprising the 'opposition', effective challenge has been rare. The coherence of the executive is itself threatened by the absence of collective responsibility, though 'joined-up' government has nevertheless been evidenced, notably in the agreeing of the Programme for Government.

Conclusion: breaking the mould?

The nub of this and the parallel Scottish research is the question as to whether the opportunity of devolution is being grasped, not only to pursue different policy preferences at Stormont and Holyrood, as compared with Westminster, but also to do things differently by 'breaking the Westminster mould'. It has been argued, particularly in Scotland, in the light of the work of the Constitutional Convention and the Consultative Steering Group, that devolution could usher in a political style dominated by the Parliament rather than the Executive. The current First Minister, then CSG chair, Henry McLeish, wrote (CSG, 1998: v) of 'a new sort of democracy in Scotland'.

It first needs to be said that no such deba

of 'other problems' (notably decommissioning), the issue of accountability had the potential to see the Assembly 'tumble into a very deep pit'.

He wrote: 'The reality of the matter is that the committees are the only real "opposition" within the new political institutions and it is essential that they have specific and effective power. As it stands, a minister is not accountable to his committee or to the Assembly. I doubt if he is accountable to his Executive colleagues or bound by the Programme for Government. And, given the nature of mandatory power-sharing, he is not even accountable to a majority of the electorate. In what way is this an improvement upon the undemocratic nature of Direct Rule?'

At the time of writing, a further crisis for the Agreement loomed around the perennial problem of decommissioning, arising from the incompatibility between the

anticipate the survival of the institutions, nor wished them so to do. Interestingly, however, pro-Agreement respondents across th

dominance of the political élite for which 'Westminsterism' is so often castigated. It is now, in practice, evident to more far-sighted pro-Agreement political figures in Northern Ireland that it may not be desirable to perpetuate such arrangements, in a context where concerns for 'conflict resolution' are superseded by a focus on good governance. The idea of moving to a voluntary coalition, more akin to European models, is beginning to be canvassed. Such a development would allow the Assembly and its committees much more effectively to hold the executive to account.

Notes

1. *The Agreement: Agreement reached in the multi-party negotiations* (No place of publication, No date, UK Government)
2. In Northern Ireland, on a turnout of 81 per cent, 71 per cent voted for the Agreement and 29 per cent against. In the Republic of Ireland, on a 56 per cent turnout, 94 per cent voted in favour of the Agreement and 6 per cent against.
3. The title 'New Northern Ireland Assembly' was adopted during the shadow period, ie before the transfer of powers. The prefix 'New' was thereafter dropped.
4. The Agreement and Act stipulate that the Presiding Officer / Speaker be elected by the Assembly on a cross-community basis. However, the incumbent was not formally elected at the first plenary session but rather took the chair without dissent from the MLAs. His position has still not been ratified by a vote.
5. The co-chairs of the Committee were Fred Cobain (UUP) and Denis Haughey (SDLP).
6. The eight signatories were: UUP, SDLP, Sinn Féin, Progressive Unionist Party, Ulster Democratic Party, Alliance, Labour and the Women's Coalition.
7. The reconfiguration of the direct-rule departments was announced on 18 December 1998 by the UUP and SDLP. The departments (with their subsequent party allocation in parentheses) were: Agriculture and Rural Development (SDLP); Culture, Arts and Leisure (UUP); Education (SF); Enterprise, Trade and Investment (UUP); Environment (UUP); Finance and Personnel (SDLP); Further and Higher Education, Training and Employment (SDLP); Health, Social Services and Public Safety (SF); Regional Development (DUP); and Social Development (DUP).
8. The three other UUP Ministers were/are: Sir Reg Empey (Enterprise, Trade and Investment); Sam Foster (Environment); and Michael McGimpsey (Culture, Arts and Leisure).
9. Marti Ahtisaari, the former Finnish President, and Cyril Ramaphosa, former general secretary of the ANC
10. The statement was published on 22 December 2000.
11. The audit template was designed by Richard Cornes and Robert Hazell.
12. David Trimble employed this phrase on 3 September 1998 during a speech at Belfast's Waterfront Hall on the occasion of the second visit to Northern Ireland by President Bill Clinton. It was a very deliberate choice of words by the UUP leader, a riposte to the remark made in 1934 by one of his predecessors as UUP leader (and Prime Minister of Northern Ireland), Sir

James Craig, who referred to 'a Protestant parliament for a Protestant people' during a Stormont debate.

13. When John Hume resigned his Assembly seat in October 2000, he was replaced by his SDLP colleague Annie Courtney as one of the MLAs for the Foyle constituency, thus bringing the total number of women in the Assembly to 15.
14. For an explanation of the least squares index see Gallagher (1991) and Mitchell (2001).

