

“Legislative Behaviour in the Northern Ireland Assembly, 2007-2011:
Conflict and Consensus in a Developing Consociational Democracy”

Richard S. Conley
Associate Professor
University of Florida
Department of Political Science
234 Anderson Hall
Gainesville, FL 32611
(352) 317-1860
rconley@ufl.edu

Charles Dahan
PhD Candidate
University of Florida
Department of Political Science
234 Anderson Hall
Gainesville, FL 32611

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ABSTRACT

While most research has focused on the executive in Northern Ireland, this study examines behavioural dynamics in the legislative assembly by focusing sharply on division votes and the use of procedural mechanisms in the four sessions from 2007-2011. By assessing patterns of coalition configurations and employing Poole’s (2005) “Optimal Classification” method for examining dimensionality on division votes, the analysis explores the basis for the relative consensus and conflict that have marked legislative behaviour in the most recent attempt at power-sharing. This research uncovers two essential dimensions to legislative behaviour: a cross-community dimension that diminished over time in advance of the 2011 election, and a more traditional left-right and nationalist-unionist divide. The study accentuates, however, that unionist and nationalist parties do not vote consistently as cohesive, monolithic blocs. Further the empirical analysis shows that use of the ‘minority veto’ was sparing and reserved largely for the most controversial issues of importance to each community.

The consociational or power-sharing model of governance advocated for divided societies like Northern Ireland has drawn intense scholarly interest (Lijphart 2004). Reservations about the practicability of the consociational model, however, abound—and for good reason. From 1972-1996 repeated attempts by the United Kingdom solely or in concert with the Republic of Ireland aimed at establishing a power-sharing arrangement in Northern Ireland failed to garner consensus between the nationalist and unionist communities (see Cunningham 1991; O’Leary 1997; Tonge 2000). Scholars have highlighted the limits to the ‘coercive consociationalism,’ which has featured efforts by the British, Irish and American governments to arrive at some form of elite accommodation (Lijphart 1977; O’Leary 1989; McGarry and O’Leary 1995; O’Leary, Elliot, and Wilford 1988; Briand 2002; Guelke 2001; McGarry and O’Leary 2006, 48-54).

Attempts at consociational governance proceeded largely by fits and starts for nearly a decade following the 1998 Good Friday Agreement (Ruane and Todd 2001). Regrettably, the controversies surrounding elite conflict and power-sharing centring on the *executive* have all but obscured the role of the *legislature* in Northern Ireland (Stormont) in discussions about the unique model of consociationalism purportedly taking hold. Rules of legislative procedure mandated by the Good Friday Agreement, namely a veto for both the nationalist and unionist power-sharing parties, have altered considerably the traditional British legislative model (Wilford 2010, 137). Yet there is no contemporary, empirical scholarship on the frequency of the use of procedural mechanisms by each community to thwart objectionable legislation, let alone patterns of voting among the seven parties in Stormont since the 2007 election. This study is the first to rectify this considerable void in the literature.

This research examines legislative dynamics in the Northern Ireland Assembly by focusing sharply on division votes and the use of procedural mechanisms in the four legislative sessions from 2007-2011. By employing Poole's (2005) 'Optimal Classification' method to examine dimensionality on division votes and assess patterns of coalition configurations, the analysis explores the basis for the relative consensus and conflict that have marked legislative behaviour amongst the seven parties in the Northern Ireland Assembly, to wit, the five major parties including the Democratic Unionist Party (DUP) and Ulster Unionist Party (UUP), the nationalist Sinn Féin and Social and Democratic Labour Party (SDLP), and the non-designated Alliance Party. This research uncovers two essential dimensions to legislative behaviour: a cross-community dimension that diminished over time in advance of the 2011 election, and a more traditional left-right and nationalist-unionist divide. The study accentuates that unionist and nationalist parties do not vote consistently as cohesive, monolithic blocs. The SDLP and UUP compete for much of the same political space vis-à-vis Sinn Féin and the DUP, respectively, and search to distinguish their positions when possible, adding a layer of complexity in understanding legislative dynamics in the Northern Ireland Assembly.

The analysis also focuses on each community's usage of 'petitions of concern.' Petitions of concern are tantamount to a minority veto and necessitate cross-community support for the adoption of bills rather than just a simple majority. The relatively sparing use of this instrument by Sinn Féin and the DUP from 2007-2011 suggests that petitions of concern have not led to legislative gridlock, but underscores that minor-designated parties and the Alliance Party are at a distinct disadvantage in employing the mechanism. The concluding section offers considerations of changes that could allow the procedure to play a more constructive role in legislative scrutiny in the future

In sum, this research provides the basis for cautious optimism about the development of institutional norms consistent with the consociational model based on the experience of power-sharing from 2007-2011. The two main governing parties, the DUP and Sinn Féin, frequently found common ground to vote together on less controversial legislation. The minor-designated parties variably supported or criticised the governing coalition on division votes. Taken together with the guarded approach to the use of petitions of concern by the major parties in both communities, the legislative dynamics uncovered in this research suggest the possible evolution towards a ‘normalised’ system of government and opposition in the Northern Ireland Assembly in the future.

The study commences with a brief review of the theory and practicability of the consociational model as it applies to Northern Ireland. The subsequent section details the data and methods used in the analysis, followed by an analysis of legislative behaviour and history from 2007-2011. The concluding section reprises the importance of the findings relative to normative considerations of consociationalism and ‘institutional learning’ in Stormont.

The Consociational Model and Northern Ireland

In the lexicon of political science the term ‘consociational’ connotes a power-sharing arrangement between two or more parties, communities, linguistic, religious, racial or ethnic groups. Lijphart (1969, 216) defines the concept as a “government by elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy.” Not only must elites accommodate diverse interests in their own subcultures, but they must surmount cleavages between subcultures and commit to stabilising the regime in a plural society. Success is contingent upon “mutual cooperation of subnational elites” (Lustick 1979, 328) and their recognition of “the perils of political fragmentation” (Lijphart 1969, 216). The consociational

model rejects the archtypical ‘majority rule’ in the British Westminster tradition by institutionalising minority representation (Lijphart 1985). “The threat to democratic stability by social segmentation,” Andeweg (2000, 512) notes, “is neutralized at the elite level by the use of various non-majoritarian mechanisms for conflict resolution, institutionally anchored by inclusive coalitions and proportionality in appointments.” Indeed, Lijphart (1984; 1989; 1999) distinguishes consociational democracies from their majoritarian and ‘consensus’ counterparts by emphasising the presence of four essential elements: the formation of ‘grand coalitions’ (and inclusive power-sharing executive) proportionality (in the executive and legislature), the provision for a minority veto, and segmental autonomy.

For critics of consociationalism, the theory’s central tenets are its Achilles heel. Critics charge that entrenching and legitimising polarisation within political institutions exacerbates societal divisions and segmentation (Taylor 1992, 5). Consociationalism seeks to limit inter-group contact to avoid the outbreak of hostilities (Lijphart 1977, 88), but the reinforcement of group autonomy through a ‘top-down’ structure of decisionmaking and elite accommodation hinders the development of civil society and may intensify extra-institutional conflict. Moreover, critics contend that the methods elites may employ to achieve regime stabilisation not only may aggravate inter-group tensions but may also be inherently anti-democratic or manipulative, based on control and coercion (Barry 1975; Lustick 1979).

Critics also posit that the putatively ‘successful’ cases of consociational democracies exhibit significant ‘discontinuities’ with the ideal framework. Horowitz (2002) considers the theory an improvised ‘one size fits all’ model that does not account for significant variation. Pappalardo (1981) asserts that many democracies labeled as consociational fail to meet all of the normative criteria, and that only two conditions—inter-subcultural stability and a politically

deferential populace—connect the successful examples. In the cases of Austria, Belgium, the Netherlands, and Switzerland, Halpern (1986) argues that sub-cultural hostility was less than evident in these countries, cross-cutting cleavages more common, and not every case features ‘grand coalitions.’ Lijphart (2004, 99) rejects the ‘one size fits all’ accusation, noting that the “relative success of a power-sharing system is contingent upon the specific mechanisms devised to yield the broad representation that constitutes its core.” The main constitutional choices entail the electoral system and type of proportional representation, parliamentary or presidential government, power-sharing in the executive, cabinet stability, the head of state function, level of decentralisation, communal autonomy, and power-sharing beyond the executive and legislature to include civil society and the administrative state. But according to Lijphart, there are other prerequisites to democratic stability in divided societies. Nearly three decades earlier he posited that nine conditions were most ideally conducive to a consociational arrangement: small population size, no majority segment, segments of equal size, overarching loyalties, a small number of segments, geographic concentration of segments, socio-economic equality, traditions of accommodation and lack of external threats (Lijphart, 1977:53-103).

In the case of Northern Ireland, Lijphart (1975) expressed skepticism that favourable conditions existed for a consociational framework. Writing during the period of the ‘Troubles,’ he contended that three pivotal criteria were absent. The first includes a multiple balance of power between unionists and nationalists. Unionist Protestants enjoy a quasi-permanent majority notwithstanding higher birth rates in the nationalist, Catholic community (see also Rose 1971). The second comprised Northern Ireland’s adherence to a Westminster-style majoritarian set of institutions (prior to the Good Friday Agreement of 1998) that favours single-party majorities. The final missing element constituted “some degree of national solidarity,” as unionists pledge

their allegiance to the United Kingdom and nationalists to the Republic of Ireland (Lijphart 1975, 100). On the other hand, Lijphart contended that Northern Ireland's small population (about 1.8 million), distinct lines of cleavage leaving little contact between communities, and the lack of external threats could make possible a future consociational settlement.

Communal autonomy was not a major feature of the Good Friday Agreement reached in 1998. However, the Agreement put three major elements of consociational theory in practice, alongside some considerable innovations in power-sharing to include external actors such as the North-South Ministerial Council and the British-Irish Council (see O'Leary 1998). First, the single transferable vote (STV), utilised in multi-member districts in Northern Ireland since 1973, was retained to ensure proportionality between the nationalist and unionist communities in legislative elections. STV deviates significantly from the British democratic tradition of single-member, first-past-the-post (plurality) elections to the House of Commons. The system inherently recognises the presence of unionist and nationalist populations that reside in the same geographical area.

Second, power-sharing in the executive explicitly reflects sectarian cleavages in Northern Ireland. Ministers do not take an oath of allegiance to the British Crown, but rather a 'pledge of office' that "cements" bi-nationalism (O'Leary 1998, 3). The Ministerial code mandates the nationalist and unionist parties share power "not as a result of any pre- or post-election negotiations, but rather because they are obliged by law to share power with each other" (McGrath 2005, 109). The accord mandates that ministerial portfolios be allocated on the basis of party representation in the legislature according to the d'Hondt formula. The exception is the Justice Minister. The Hillsborough Castle Agreement in 2010 enabled the Alliance Party to hold

the portfolio in the wake of devolution of policing and outstanding issues on parades and marches.

The Northern Ireland Executive is charged with five important tasks, including: 1) the discussion of, and agreement on, issues which cut across the responsibilities of two or more ministers; 2) prioritising executive proposals 3) prioritising legislative proposals; 4) recommending a common position where necessary; and 5) agreeing annually on (and review as necessary of) a programme incorporating an agreed budget linked to policies and programmes” (Northern Ireland Executive, 2000). While the Executive Programme for Government is not subject to a cross-community vote, the budget is (and has been considered a proxy for the Programme following the first mandate). As O’Leary (1998, 3) notes, “in practice agreements within the Executive will minimally require majority support including the agreement of the First and Deputy First Ministers.” There is a provision for cross-community votes on Executive draft legislation and policy, which in effect prompts preemptive management of debate in the Assembly—though it scarcely guarantees the absence of conflict.

Third, it follows that the design of the legislative assembly provides critical consociational arrangements that reflect bi-communalism. The 108 members of the legislative assembly (MLAs) must designate their affiliation as members of either the nationalist or unionist bloc. MLAs of the non-aligned Alliance Party and the Green Party (and independents) choose to designate themselves as ‘other.’ “Such self-ascription,” as Wilford (2000, 580) posits, “is required to allow application of the tests of cross-community support in what the Agreement describes as ‘key’ decisions.” ‘Parallel consent’ and a weighted majority are required for such procedural votes such as the election of the Speaker, standing orders, and the budget. Parallel consent requires that a majority of both nationalist and unionist parties must agree to a legislative

proposal. The weighted majority provision is more complex, as 60 percent of members must favour a proposal, including 40 percent of both unionist and nationalist MLAs present for the vote. Measuring cross-community support is normally done through voice or division votes.

Under Standing Order 27(3) division votes are at the discretion of the Speaker, who will call upon the members of the Assembly to rise in their places if the bill is ‘unnecessarily’ challenged. Members have four minutes to proceed to the chamber. The Speaker calls for two tellers, after which the ‘ayes’ divide to the right of the chamber and the ‘noes’ to the left.

Perhaps the most important procedural tool in the Assembly relating to voting is the ‘petition of concern,’ which furnishes the nationalist and unionist parties with a community or ‘minority’ veto. Standing Order 27, adopted on 7 June 2007, mandates that “no vote may be held on a matter which is the subject of a Petition of Concern until at least one day after the Petition of Concern has been presented.” Thirty members must sign the petition. Any bill for which a petition of concern has been filed requires a weighted majority of 60 percent of members taking part in the division to vote ‘aye’. Further, cross-community support is mandated for the measure to pass. Forty percent of both nationalist and unionist parties must vote ‘aye.’ Petitions of concern therefore have two narrow purposes: to delay a vote and reconsider the legislation, and to allow one or more parties in each community to exercise an effective veto over a proposal. Although empirically petitions of concern have been used as a blocking mechanism (see below), the provision was also intended to play a broader constructive role in parliamentary scrutiny of legislation. Parties participating in the inclusive Executive do not surrender their rights and responsibilities relative to accountability in the Assembly.

Many questions surround legislative behaviour in Stormont since devolution. “In the public mind,” Wilford (2001, 241) asserts, devolution was associated “with the occasional

eruption of tension and bad temper in the chamber between primarily anti-and pro-Agreement unionists and the ‘antis’ and Sinn Fein members.” Little is known about legislative outcomes, or the use of petitions of concern on policymaking. In addition, it is unclear how the SDLP and UUP have reacted to their diminished status in the Assembly and the power-sharing executive vis-à-vis Sinn Féin and the DUP, respectively. The 2003 and 2007 elections witnessed an important drop in support for the two ‘moderate’ and now minor designated parties, the SDLP and UUP, respectively, reducing their influence to a single ministerial portfolio in the executive and sparking debate within both camps about how to move forward (McEvoy 2007).

The institutional complexities of the Northern Ireland Assembly suggest, at one extreme, the potential for legislative gridlock. On the other hand power-sharing may furnish a means to contain political conflict as the designers of the Assembly sought. As Kissane (2006, 665) notes, the assumptions “are that peace requires power sharing and that the experience of power sharing will solidify peace.” The analysis of legislative dynamics that follows provides some evidence that the consociational framework has contributed to developing institutional norms.

Data and Methods

The analysis begins with a spatial analysis aimed at uncovering underlying dimensionality on division votes. Poole’s (2005, 46) Optimal Classification (OC) methodology is employed to “maximize the classification of legislative choices” and discern legislators’ ideal points. The OC methodology has gained widespread currency in studies of the U.S. Congress as well as in the comparative analysis of parliamentary systems, including the European Union.

The OC method involves nonmetric unfolding of legislators’ positions. As Poole (2001) notes, finding the optimal rank ordering of votes requires three steps. The first involves rank ordering legislators into evenly spaced coordinates between -1.0 and +1.0 (the scale, with

negative coordinates indicating ‘left’ positions and positive coordinates indicating ‘right’ positions ideologically). The second requires locating the ‘cutpoint’ for each roll call that maximizes the correct classification of the legislator. Finally, once the cutpoint is found, the legislator’s spatial coordinate can be identified.

The OC methodology requires setting the ‘polarity’ function in the program to one or more legislators who serve simply as a reference point for the unfolding technique and rank ordering process. *The choice of the legislator is entirely arbitrary.* The objective is to correctly rank order legislators’ vote choices to the left or to the right of the cutpoint of the vote. In the ideal analysis, the most left-wing party is mapped on the left-hand side of a dimension, and the most right-wing party on the right-hand side. The adjectives ‘conservative’ and ‘liberal,’ however, are admittedly difficult to ascribe to parties in the Northern Ireland Assembly. Following Hix and Noury (2010) we simply set the polarity function to a party leader. We chose First Minister Peter Robinson. While the DUP is typically relatively left-of-centre on economic issues, the party is largely right-of-centre on constitutional issues. Setting the polarity function to other party leaders or MLAs does not alter the distribution of ideal points.

Like any factor analysis, *the OC method does not convey the meaning of the uncovered dimensions, but leaves it to the researcher to make an assessment.* We do so on the basis of intense scrutiny of the vote subjects in the data set. This research estimates a two-dimensional model for the Northern Ireland Assembly. First, following Spirling and McLean (2007) we anticipate that the first dimension to voting will include a type of government-opposition dynamic that will place the two major governing parties (DUP/SF) against the others. We call this dimension the ‘cross-community’ axis for the DUP/SF legislative agenda. Second, we contend that the second axis captures issues that traditionally divide the nationalist and unionist

communities, including language, culture, and education. In this regard, the analysis underscores differences between the DUP, in particular, and SF, SDLP, and the Alliance Party. All told, the OC method correctly classifies 96 percent of legislators' positions in two dimensions for the 209 division votes in the study.

The third component of the analysis focuses on the most frequent coalition configurations for the four legislative sessions from 2007-2011. An examination of coalition voting enables a straightforward test of the regularity of 'cross-community' policymaking and 'split-community' legislative failures. Cross-community voting is defined, de minimus, as SF and the DUP voting together, as the two parties comprise the governing *legislative* majority. The UUP, SDLP, and Alliance—even if they allied with one another on votes—could not reach a majority. However, cross-community voting may certainly constitute additional support from the nationalist SDLP and the unionist UUP and this artifact of coalition behaviour is controlled for in the analysis. Another major objective of the analysis is to pinpoint how frequently the nationalist and unionist parties vote together against one another, as well as the location of Alliance Party support in the coalition configurations. Split-community voting is defined as those instances in which one or more unionist and nationalist parties vote against each other.

The final component of the analysis focuses on petitions of concern. From 2007-2010 parties tabled a combined total of 20 petitions. The analysis provides descriptive data on the party or party groupings that filed the petitions. A brief discussion of the bills subject to the petitions is included as a means of highlighting the most contentious issues that have divided the unionist and nationalist communities in the Assembly.

Analysis

Figure 1 shows legislators' ideal positions on two dimensions for the 209 division votes. There is a 'cross-community' dimension on the y-axis, underscoring that on many policy issues before the Assembly Sinn Féin and the DUP voted together. Indeed, the positions of First Minister Peter Robinson and Deputy First Minister Martin McGuinness are only slightly apart. Both cluster near the mid-point of the y-axis. As the next section explains in more detail, these votes entailed shared governance and frequent unity against minor designated parties' attempts to amend elements of the government's legislative programme. While the Alliance Party, not unexpectedly, is located nearly dead-centre on the y-axis, the UUP and SDLP are situated close to one another and below or to the 'left' of the governing parties. The data suggest these two parties' attempts not only to alter the legislative agenda through amendments but also to distinguish their positions from their major counterparts for electoral benefit.

[Figure 1]

The x-axis in Figure 1 shows a more traditional left/right and nationalist/unionist dimension to division votes. In these cases Sinn Féin and the SDLP ally themselves frequently against the DUP and UUP, and the spatial divide is palpable. The Alliance acts as a bridge between the two major factions as it is located again near the mid-point of the axis. The issues that divided unionist and nationalist factions on division votes in the data set are traditional in nature—ranging from the symbolic, such as classification of the 'Troubles' as a 'war' and the redevelopment of former military barracks, to more substantive matters like the Irish language, education, equality, and victims' rights. Interestingly, however, the UUP is located to the left of the DUP, with about half of its members around the centre, and the other half to the right. The data suggest some diversity in UUP MLA's positions. This artifact of the classification is taken up in greater depth in the following section.

Coalition Dynamics on Division Votes

Normative judgements about how well the consociational model works in the Assembly are at least partially contingent upon the frequency of cross-community voting, which denotes levels of consensus. Table 1 shows the frequency of cross-community division votes, defined as Sinn Féin and the DUP voting together, with or without the support of the UUP, SDLP, and Alliance. The data show that in the first two sessions (2007-2008, 2008-2009) approximately half of all division votes were taken on a cross-community basis. By contrast, cross-community voting waned in the following two sessions (2009-2010, 2010-2011), falling to just over a third and a fifth of all votes, respectively. The 2010-2011 is particularly noteworthy as the government tackled difficult issues that nearly brought the executive down over justice and policing. Other key issues that generated significant dissensus included an Irish Language Act, ending dual electoral mandates between the Assembly and local councils (Local Government Disqualification Bill), education, caravans (Travellers), the budget and a veterans bill.

[Table 1]

Table 2 furnishes a more in-depth accounting of coalition configurations on division votes. Because the factorial function ($n!$) yields a theoretical possibility of 120 different coalition configurations with five parties in Stormont, only the most common coalitions are reported in Table 2. In some cases one or another party abstained from the vote as a symbolic protest, and the analysis controls for this dynamic. Further, the ‘other split-party combinations’ category, as discussed below, generally entails one party voting against three or more parties—which was particularly the case in the 2010-2011 session as the DUP tabled a series of motions and amendments that garnered little support amongst the nationalist parties or the UUP. The latter frequently allied with Sinn Féin and the SDLP.

[Table 2]

Examining cross-community voting first, a fifth to a quarter of all division votes in the 2007-2008 and 2008-2009 sessions, respectively, pitted the DUP and Sinn Féin against the three other parties. The ‘other DUP+SF’ combinations category highlights the Alliance Party’s abstention on many votes, which placed the DUP and Sinn Féin against their minority designated counterparts. The data in this row mask the fact that the SDLP only joined Sinn Féin and the DUP on cross-community votes less than a tenth of the time. Similarly, the third row for cross-community votes accentuates how rarely the UUP joined Sinn Féin and the DUP in supporting the government’s legislative programme. The data are consistent with the Optimal Classification dimensions in Figure 1. Division votes that allied the DUP and Sinn Féin were generally aimed at beating back UUP and SDLP amendments to the government’s programme and the budget, particularly at the beginning of the legislative session. There is no unifying theme for amendments and motions later in the sessions, as they range from local government to justice matters.

On split-community votes the DUP and UUP joined together 25 percent of the time or less against the other parties in the four legislative sessions. Cultural and educational issues—perceived threats to the unionist community—were most likely to generate DUP/UUP alliances. On the nationalist side, in the first three sessions the SDLP and Sinn Féin only infrequently voted together. It was in the 2010-2011 session when nationalist parties allied primarily against the DUP more than half the time, with the Alliance and UUP variably absent on votes. This contentious session featured a number of issues that brought the two nationalist parties together—from victims rights to justice.

The row entitled ‘other split party combinations’ is most important for an understanding of coalition configurations in the 2010-2011 session. Twenty-five percent of all division votes were DUP motions and amendments that drew *no* support from any other party (excluding independents and the single Green Party member). The issues ranged from education, caravans (Travellers) and planning to the Local Government Disqualification Bill, climate change, and justice. On balance, the data suggest the DUP’s increasing isolation on a host of issues in the 2010-2011 session during which crisis over policing nearly toppled the executive.

[Figure 2]

One criticism of any examination of division votes is that they are, by nature, conflictual and may overstate levels of dissensus. To counterbalance this charge, Figure 2 presents data on motions and amendments adopted *without* division across the four legislative sessions. The data highlight that much of the work of the Assembly was increasingly conducted with an underlying consensus on less controversial measures. Motions and amendments not subject to division votes (n=209) number three to four times the latter.

It is important to note that the number of motions adopted without division dropped steadily from 2007-2011, from 205 to 108. So too did the number of amendments from 2007-2010. This general dynamic, alongside the burst of amendments in the 2010-2011 (299) may be explained by the ‘normalisation’ of legislative work in the Assembly. As the need for organic legislation dropped after power-sharing was re-established, much of the work—from the budget to local government issues—involved making changes to existing laws. Although the vast majority of amendments dealt with minor changes in language, the data do point to a great deal of consensus on ‘routine’ legislation necessary to home-rule.

Petitions of Concern

Petitions of concern have the potential to derail the legislative process. They range in issue from the highly symbolic and substantive to the mundane, but not a single bill for which a petition was tabled from 2007-2011 passed with requisite cross-community support (by a weighted majority). The following analysis focuses on the most high-profile legislation for which the procedural mechanism was employed. The analysis emphasises that each community employed the mechanism with equanimity, and that petitions of concern were used on less than 10 percent of division votes.

Table 3 places into sharp relief the reserved usage of the mechanism over the four legislative sessions. The number of petitions filed per year ranges from three to six. Only 20 petitions were filed *in toto*, with unionists and nationalists tabling 10 each. The DUP stood alone in filing six of 10 petitions, with the other four garnering UUP support. All nationalist petitions of concern included Sinn Féin and SDLP members. Regardless, neither bloc was willing to over-utilise the procedure. Still, petitions of concern caused much consternation and recriminations on both sides of the Assembly, arguably heightening institutional conflict.

[Tables 3 and 4]

Table 4 clarifies the subjects of the bills and the basis for heightened rhetoric used by both blocs when petitions were tabled. The lion's share of bills for which petitions were filed constituted high-profile legislative matters of significant consequence to each community. In the 2007 and 2008 matters relating to the use of the Irish language in schools and in the Assembly drew intense conflict. Nationalists have long argued for official equality between the Irish and English languages, in education and in the Assembly, to parallel policy in the Republic.

One petition of concern filed by nationalists regarded an amendment filed by UUP MLA David McNarry¹ that called upon members of the Assembly to refrain from the use of the Irish

language in oral and written communication (Northern Ireland Assembly Debates, 9 October 2007). The amendment fell on a cross-community basis on a division vote, with Sinn Féin, the SDLP, and the Alliance Party defeating the measure. The rationale for McNarry's amendment was his indignation that he had received a communication from Education Minister Caitriona Ruane (Sinn Féin) half written in Irish. McNarry found the letter "intimidating, disrespectful and off-putting." Sinn Féin party whip Carál Ní Chuilín contended that "the determination of unionist politicians to block any recognition of the Irish Language is a misguided and macho demonstration of anti-Irish bigotry" (McAdam 2007). Sinn Féin floated the idea of shifting the burden of enacting an Irish Language Act to the Westminster Parliament in London, which might have to pass a provision consistent with the European Union's framework for the protection of minority languages. The move prompted McNarry to contemplate whether a unionist petition of concern could be utilised to block that effort (McAdam 2007a).

One petition of concern filed in May 2008 regarded a DUP motion to preclude the establishment of Irish language schools in Dungannon and South Tyrone. The SDLP member for the area, Tommy Gallagher assembled SDLP and Sinn Féin support for the petition that halted the bill in its tracks. Gallagher argued that the DUP had ignored a plan to establish an integrated school in the region, and contended "that there should be fairness across all the sectors - that is a basic principle of the Good Friday Agreement that we abide by..." (SDLP 2008). The following month the DUP filed a petition of concern on a motion to establish an Irish language school in Derry whilst the Minister of Education putatively refused to consider an integrated school. The bill was stopped and the issue went unresolved until July 2010 when four new Irish-language schools were conditionally approved in light of growing community demands (Derry Journal 2011).

Issues surrounding the Irish language were the centre of attention again in November 2010. Sinn Féin members proposed an amendment that the Minister of Culture, Arts, and Leisure Nelson McCausland (DUP) introduce Irish language legislation given recommendations made by the Northern Ireland Human Rights Commission and in accordance with the St. Andrews Agreement of 2006. The UUP and DUP joined forces in tabling a valid petition of concern against the amendment. The principal sponsor of the amendment, Barry McElduff (Sinn Féin), contended that “We have seen endless delay mechanisms and great dishonesty over this matter over a long period of time” (BBC 2010). An amendment by SDLP MLA Dominic Bradley calling for an Irish Language Bill was subsequently defeated. McCausland contended that “the lack of consensus on the issue of legislation for the Irish language would be detrimental to the protection and promotion of the language in the context of a shared future,” arguing that “the best way forward for both minority languages in Northern Ireland is through the strategy for regional or minority languages” (Belfast Telegraph 2010).

In 2009 the North-South Ministerial Council, provided for under the Good Friday Agreement, became a point of contention between unionists and nationalists. The DUP and UUP contended that the Council, which met only three times from 2007-2009, was not worth the cost of £40 million. The SDLP’s Alban Maginness, a signatory to the petition of concern in opposition to unionists’ call for the Executive to “consider whether the North-South Ministerial Council is of any value to the people of Northern Ireland” asserted that “It is evident that the DUP are determined to erode the all-Ireland structures of our political settlement which was endorsed by the majority of the people on this island” (McAdam 2009). The DUP motion was negated on a cross-community vote. However, a motion by Alliance Party MLA Sean Neeson calling for a review of the Council’s activities subsequently passed with broad support.

The politics of symbolism in drew major- and minor-designated parties together against legislation on several occasions. Nationalists lodged one petition of concern in 2008 regarding the Forkhill Military Site in County Armagh. The military installation had been used by the British military during the ‘Troubles,’ and was closed in 2005 after the Irish Republican Army (IRA) pledged to end violence (Peterkin 2005). PSNI headquarters were subsequently moved from the site to Crossmaglen, to the joy of nationalists—who viewed the watchtower as a symbol of oppression—and to the dismay of unionists skeptical about the IRA’s promise to lay down its arms. Debate ensued in the Assembly as to what to do with the installation. Sinn Féin opposed development by the private sector and favoured community groups to oversee the process (Sinn Féin 2008). The UUP filed an amendment (no. 2) concerning the redevelopment of the area to halt the Agriculture Minister Michelle Gildernew (Sinn Féin) and the Department of Agriculture and Rural Development from purchasing the site. Unionist Member of the European Parliament (MEP) Jim Allister (2008) called, Gildernew’s efforts “an example of Sinn Fein exerting its Ministerial powers to achieve political ends.” The amendment fell on a cross-community vote. The matter was not resolved until 2010 when the Department of Social Development ultimately purchased the site and planned to redevelop it as a children’s playground (Murphy 2010). A nationalist motion directing the Department of Social Development to purchase the property had been defeated in 2008.

Conflict between the communities over the definition of ‘victims’ during the Troubles dated to Fall 2009 when the SDLP raised objections to a potential move to alter the legal designation. The Ulster Unionists and SDLP had agreed to a Victims and Survivors Forum in the first power-sharing agreement reached following the Good Friday Agreement (McAdam 2009a). The DUP tabled a motion that sought to replace legislation that defined all individuals

killed during the Troubles as victims. The objective was to narrow the definition of victims to exclude “any person convicted of an offence in connection with any conflict-related incident and those who had been members of proscribed organizations” (BBC 2010a). The UUP also backed the legislation, which according to MLA Tom Elliott, would “benefit innocent victims and wider society in Northern Ireland. At present their needs can come second to the ongoing debates and point scoring surrounding the past” (UTV 2010). But the SDLP objected and garnered support from Sinn Féin to file a valid petition of concern. SDLP MLA Dolores Kelley asserted that the bill was unfair because there were cases in which “security force violence has led and, in fact, directed terrorism in many regards” (UTV 2010). The bill was defeated by a 48-47 cross-community vote, with the Alliance Party supporting the unionists.

On bill in particular—to end ‘double-jobbing’ (Local Government Disqualification Bill)—the DUP’s use of petitions of concern was considered by some as an abuse of process. The bill to end ‘double-jobbing’ or allowing MLAs to serve on elected local councils, drew significant attention. The legislation was sponsored by Dawn Purvis (PUP)² and was putatively “designed to share out the political power and prevent dynasty building...” (Belfast Telegraph 2010a). After DUP members’ amendments to phase out the practice through 2015 were rejected by the Assembly, the party tabled a petition of concern, halting the legislation in its tracks. The major issue was Purvis’s timing—SF wanted the reforms in place by the 2011 Assembly elections. The DUP has pledged to phase out the double-jobbing practice by 2014.

The cursory analysis of petitions of concern shows that on occasion, the minority veto has been used for ‘partisan’ purposes for which it was not designed. Ultimately such abuse, if prolonged, may undermine the legitimacy of the mechanism. But on balance the evidence accentuates that on balance petitions of concern were employed sparingly and on issues of great

significance to one or the other community. Concerns about excess usage and significant legislative gridlock stemming from this provision in the Good Friday Agreement are unfounded.

Reprise and Conclusions

The preceding analysis brings us full circle to Kissane's comment that "peace requires power sharing and that the experience of power sharing will solidify peace." Is this contention apropos in developing norms in Stormont? The fact that Sinn Féin and the DUP have partnered in the legislative process to the extent each party did from 2007-2011 to advance a legislative programme is, *per se*, remarkable given previous difficulties in reaching an agreement on power-sharing. On balance the evidence here suggests the degree to which Sinn Féin and the DUP realise their stakeholder roles in maintaining home-rule and finding compromise.

Evaluations of the role of, and procedures within the Assembly vis-à-vis the normative elements of the consociational model are nevertheless mixed. There is significant variation in the constellation of coalition configurations that clearly defies the Westminster expectation of 'responsible party government.' One of the most important findings is that the unionist and nationalist parties do not vote together consistently as a monolithic bloc. The ability of the UUP, SDLP, and Alliance Party as minor designated parties (as well as Green Party members and independents) to influence legislative outcomes is surely contingent upon finding support in one or more of the larger parties. But in some ways the evidence suggests that these parties have played the role of 'loyal opposition' vis-à-vis the DUP and Sinn Féin governmental programmes based on spatial voting analysis. Moreover, the fact that the two major parties have agreed on less controversial policy issues, including the large number of amendments accepted without division, bodes well for the continued structuring of policy conflict through accepted parliamentary practices in the Assembly.

The use of petitions of concern, however, remains a matter of considerable controversy and the debate is unlikely to subside in the future. This analysis underscores that the minority veto is a powerful tool that has been leveraged by Sinn Féin and the DUP to halt objectionable legislation largely on symbolic measure, *albeit with significant restraint*. The minority veto has not led to legislative gridlock. Critics may, however, level the charge that the mechanism is fundamentally undemocratic. Although this analysis accentuates that *all* petitions of concern tabled by nationalists included *both* Sinn Féin and the SDLP, and just less than half of those filed by unionists included *both* the DUP and UPP, cross-community rules presently “tend to enhance the voting power of the two largest community designation parties at the expense of all other parties, including the smaller community designation parties.”

It is clear from the empirical data that the centrist Alliance Party and the minor-designated parties are disadvantaged insofar as they (currently) cannot to file a petition of concern without the support of one of the major parties. The upshot is that not all voices in Stormont are created equal. The minority veto comes at a significant cost according to Wilford (2010, 139):

In effect, there are two orders of Assembly members: in relation to key decisions there are those whose votes always ‘count’ and those whose votes never do so. Not only is this patently undemocratic, in the particular case of the Alliance Party it is also richly ironic. Since its inception, it has been bi-confessional and committed to the promotion of positive cross-community relations and yet it is a casualty of this anomalous and wholly unnecessary procedure which could easily be surrendered in favour of weighted majority voting on key issues.

Wilford’s point is intuitive. Circumventing a petition of concern already requires weighted voting. This analysis shows that to the degree that legislation is defeated by the minority veto failure rates ostensibly have everything to do with required weighted majority voting procedures. Scrapping petitions of concern while retaining majority voting procedures would likely have little impact on outcomes. Ian O’Flynn (2009, 275) nonetheless suggests that extending the

application of the weighted-majority model to voting in the Northern Ireland Assembly would “allow smaller parties and independent candidates to have at least some say in the executive-formation process” and “encourage unionists and nationalists to behave in a more conciliatory fashion, and hence encourage greater political integration” on policy issues.

One potentially constructive provision related to petitions of concern under Standing Order 60 of the Northern Ireland Assembly has not been utilised to date. Standing Order 60 (1) provides that “The Assembly may establish an ad hoc committee to examine and report on whether a Bill or proposal for legislation is in conformity with equality requirements (including rights under the European Convention on Human Rights or any Northern Ireland Bill of Rights).” Under Standing Order 60 (4), if a petition of concern is filed on such legislation and that legislation fails to receive parallel consent, the Assembly may set up such an ad hoc committee to scrutinise the proposal. Invoking this provision in the future would surely prevent petitions of concern from being perceived solely as a veto mechanism.

Several changes to the procedure surrounding petitions of reform are also worthy of consideration. At present the 30 signatories are not required to offer an explanation for the use of the procedure. A public justification for tabling a petition of concern would lend greater transparency into the signatories’ rationale. Further, the expected reduction in the number of members of the Assembly following the Parliamentary Voting System and Constituencies Act of 2011 (the report is expected in October 2012) calls into question the ‘trigger’ mechanism for petitions of concern. Should the threshold remain at 30 MLAs, the minor-designated parties will become even more disadvantages in their ability to invoke petitions of concern. If, however, the ‘trigger’ is reduced to a lower number—and minor-designated parties remain electorally

competitive—more MLAs could avail themselves not only of the veto provision but also of the ad hoc committee procedure without the need for major-party support.

The objective of this research has been to provide a template for future examination of the institutionalisation of consociational norms within the Northern Ireland Assembly. Much work, however, remains to be undertaken on other fronts. One fruitful path of research might evaluate the role of question period in holding the diarchal executive accountable, as has been done in other parliamentary systems (see Conley 2011; Dunleavy, Jones and O’Leary 1990; Elgie and Stapleton 2006). Another is to assess the role of legislative committees in the Assembly with respect to accountability and transparency in the legislative process (Fawcett 2001). Combining such approaches with the one taken in this study may lend significant insight into the incremental nature of institutional learning for democratisation that may be applied in Northern Ireland and elsewhere (see Belloni and Deane 2005).

Tables and Figures

Table 1
Cross- and Split-Community Blocs on Division Votes, 2007-2011

	2007-2008 Session	2008-2009 Session	2009-2010 Session	2010-2011 Session
Cross- Community	28 (49.1%)	27 (51.9%)	16 (36.4%)	12 (21.4%)
Split-Community	29 (50.9%)	25 (48.1%)	28 (63.6%)	44 (79.6%)
<i>Total N</i>	57	52	44	56

Table 2
Coalition Configurations on Division Votes, 2007-2011

Cross-Community	Coalition	2007-2008 Session	2008-2009 Session	2009-2010 Session	2010-2011 Session
X	DUP+SF vs. UUP+SDLP+ALL	11 (19.3%)	15 (28.8%)	1 (2.2%)	3 (5.4%)
X	Other DUP+SF Combinations*	10 (17.5%)	10 (19.2%)	14 (31.8%)	9 (16.1%)
X	DUP+SF+UUP vs. SDLP+ALL	3 (5.3%)	2 (3.8%)	1 (2.2%)	0
X	DUP+SF vs. UUP+ALL*	3 (5.3%)	0	0	0
X	DUP+SF vs. SDLP+ALL*	1 (1.8%)	0	0	0
	DUP+UUP vs. SF+SDLP+ALL	13 (22.8%)	4 (7.7%)	6 (13.6%)	14 (25.0%)
	DUP+UUP+ALL vs. SF+SDLP	4 (7.0%)	2 (3.8%)	4 (9.1%)	0
	SF+SDLP vs. DUP+UUP*	3 (5.3%)	3 (5.8%)	2 (4.4%)	2 (3.6%)
	Other Split- Community Combinations**	9 (15.8%)	16 (30.8)	16 (36.4%)	28 (50.0%)
	<i>Total N</i>	57	52	44	56

* e.g., one or more parties abstained or was absent for the vote

** e.g., one party versus 3 or 4 of the other parties, or other combinations in which one party was abstained or was absent for the vote

DUP = Democratic Unionist Party (Unionist)

UUP = Ulster Unionist Party (Unionist)

SF = Sinn Féin (Nationalist)

SDLP = Social Democratic and Labour Party (Nationalist)

ALL = Alliance Party (Other)

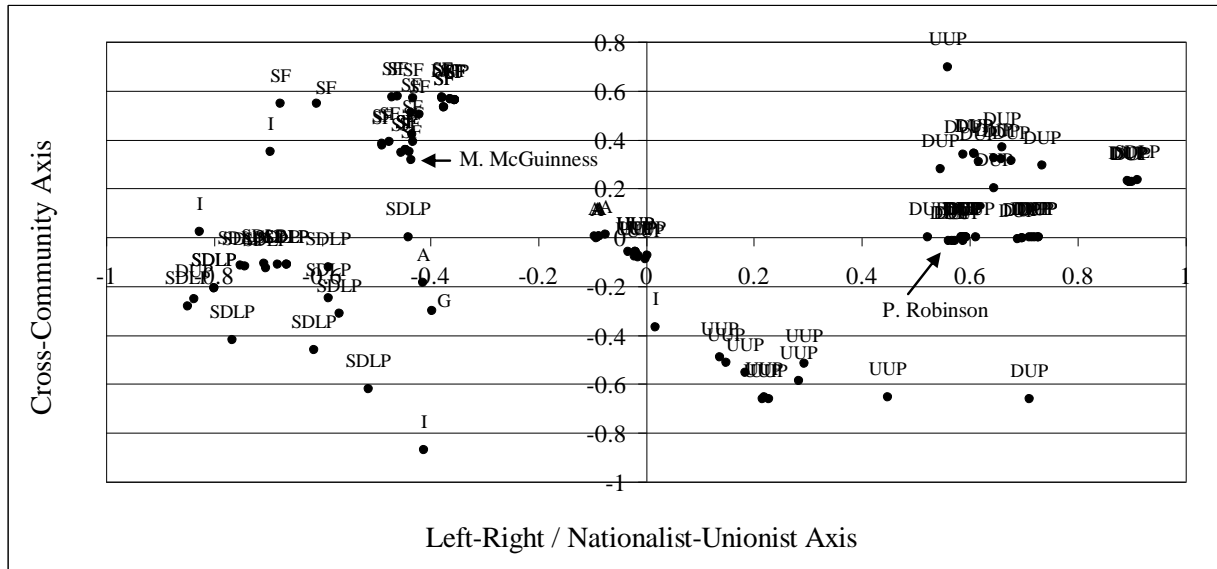
Table 3
Petitions of Concern, 2007-2011 (Combined Legislative Sessions)

DUP	6 (30%)
UUP	0
DUP + UUP	4 (20.0%)
SF	0
SDLP	0
SF+SDLP	10 (50.0%)
<i>Total N</i>	20

Table 4
Petitions of Concern by Date/Subject

DATE	COMMUNITY	SUBJECT
9-Oct-07	Nationalist	Irish Language
13-Nov-07	Nationalist	Irish Medium Club Bank
12-Dec-07	Nationalist	FIFA, Cross-Community Soccer Team Representation
7-Apr-08	Nationalist	Forkhill Military Site (amndt. 2)
13-May-08	Nationalist	Irish Medium Schools in Dungannon/South Tyrone
24-Jun-08	Nationalist	Irish Medium Primary School
9-Feb-09	Nationalist	North-South Ministerial Council
10-Mar-09	Unionist	Dual Mandates ('double jobbing')
24-Mar-09	Unionist	CO ₂ Advertising
3-Feb-09	Nationalist	Civic Forum
2-Jun-10	Unionist	Safe Passage to Gaza for Rachel Corrie
8-Nov-10	Unionist	Irish Language Strategy
7-Dec-10	Unionist	Local Government Disqualification Bill
13-Dec-10	Nationalist	Victims and Survivors Bill (2nd Stage)
25-Jan-11	Unionist	Caravan Bill (amndts. 12, 13, 14, 15)
15-Feb-11	Nationalist	Long Title of the Armed Forces
7-Mar-11	Unionist	Justice Bill (amndts. 5, 6, 8, 9, 10, 11)
8-Mar-11	Unionist	Planning Bill
8-Mar-11	Unionist	Local Government Disqualification Bill (final stage)
18-Mar-11	Unionist	Planning Bill (amendt. 2)

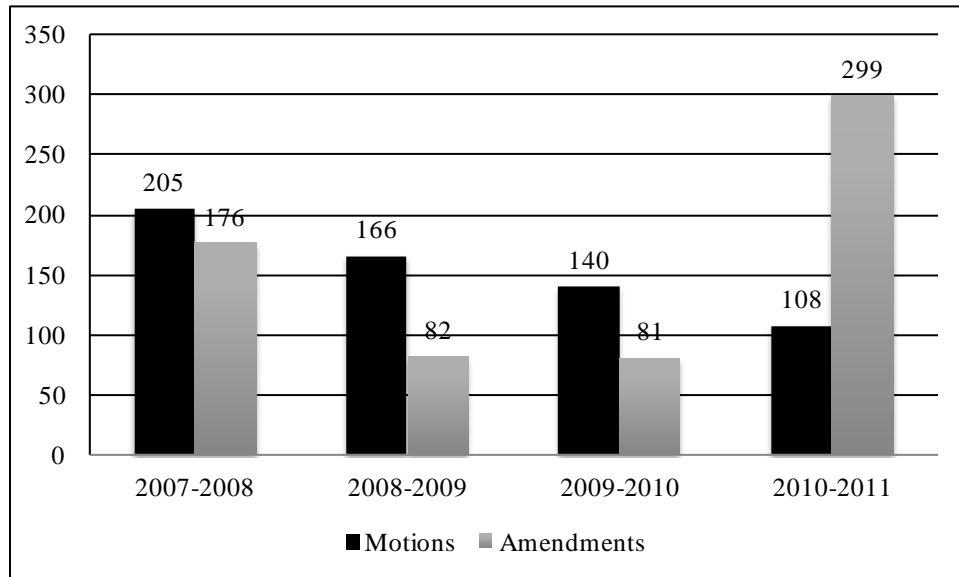
Figure 1
 Optimal Classification (OC) Scores, 2007-11 (Combined Legislative Sessions)



Key:

- DUP = Democratic Unionist Party (Unionist)
- UUP = Ulster Unionist Party (Unionist)
- SF = Sinn Féin (Nationalist)
- SDLP = Social Democratic and Labour Party (Nationalist)
- A = Alliance Party (Other)
- G = Green Party
- I = Independent

Figure 2
Motions and Amendments without Division, 2007-2011 Sessions



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ENDNOTES

¹ McNarry formally resigned from the UUP on 27 January 2012. In March 2012 he was suspended from the UUP membership for 9 months following an investigation by the UUP's Disciplinary Committee. In May 2012 he was expelled from the party after giving an interview to the *Belfast Telegraph* on UUP-DUP unity.

² Purvis left the PUP and became an independent in June 2010 after the murder of Brian Moffett. Purvis noted that the PUP was "severely restricted because of its relationship with the Ulster Volunteer Force," which was blamed for the killing.