

The Institutional Design of Executive Formation in Northern Ireland

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ABSTRACT The article employs an institutionalist approach to explain the design of executive power sharing under the d'Hondt procedure in the Northern Ireland 1998 Agreement. It argues that the preference for d'Hondt was due to (1) the evolution of proposals from the 1970s and (2) the preferences of the parties for proportional, inclusive and automatic power sharing whereby ministerial seats are allocated subject to party strength in the assembly. The paper considers the processes of structure and agency that led to executive design in 1998 and points to the ongoing design since the suspension of the devolved institutions in October 2002.

KEY WORDS: Institutional design, executive formation, power sharing, conflict management, Northern Ireland

Introduction

The use of the d'Hondt procedure for executive formation under the Northern Ireland 1998 Agreement is described as an institutional "innovation" (O'Leary *et al.*, 2005: 210) and is clearly significant for the literature on coalition formation and conflict resolution. The significance of executive design lies in the use of the d'Hondt sequential portfolio allocation procedure to allocate ministerial seats, a method which is usually used to allocate seats in a legislature.¹ The use of d'Hondt in Northern Ireland allowed for inclusion in government of not just nationalists and unionists, but also republicans with two Sinn Féin ministers in the 1999 to 2002 administration.² This article employs an institutionalist approach to explain that d'Hondt came to be included in the 1998 Agreement³ as a process of evolution and intentional institutional design. It hopes to contribute to the literature on power sharing, such as the analysis of the workings of d'Hondt in Northern Ireland in November 1999 (O'Leary *et al.*, 2005), institutional design in divided societies (Weller & Wolff, 2005) and the sustainability of power-sharing government (O'Flynn & Russell, 2005).

The article comprises four sections. First, it outlines the theoretical discussions on institutions. Secondly, it uncovers the genesis of the d'Hondt procedure: when it was first

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introduced in proposals for a settlement and how it came to be in the Agreement. Thirdly, it positions d'Hondt as fitting the evolution of power-sharing proposals from the moderate middle to full inclusivity. Fourthly, it demonstrates that executive formation under the Agreement can also be explained by the political actors' intentional institutional design, a process which has continued in the post-suspension period with the Review of the Agreement and the British and Irish Governments' proposals of December 2004.

The Institutionalist Approach

Coined 'new institutionalism', the institutionalist approach addresses the "resurgence of concern with institutions" (March & Olsen, 1984: 734) in political science and argues for a "more general view of the place of institutions in politics and the possibilities for a political theory which is more attentive to them" (March & Olsen, 1984: 735). New institutionalism has been referred to as a "revolution" (Goodin & Klingemann, 1996: 25) in political science, blending the concerns of traditional institutional analysis on the structures of institutions with insights from behaviouralism and rational choice to explain the motives of political actors and the interactions between actors and institutions. Retaining the explanatory value of the traditional focus on the formal structures of government, the new institutionalism includes more informal conventions and seeks to adopt methodological pluralism and a multi-theoretical approach to "reinvent the institutional approach" (Rhodes, 1997: 83).

There are a variety of approaches within institutional theory, concerned with the functioning of institutions and their impact on policy.⁴ These different perspectives do not, however, say much about the design of institutions, how they are formed and how they change. Indeed, as Lowndes (2002: 104) argued, "new institutionalism is at its weakest when trying to explain the genesis and transformation of institutions". Lowndes (2002) pitched the debate as a battle between rational choice and normative approaches. Rational choice theorists see "individual preferences as prior to institutions . . . institutions are human constructions, designed to solve collective actions problems—to maximise gains from cooperation" (Lowndes, 2002). Normative institutionalists, on the other hand, see "individuals' preferences as shaped by institutions . . . [they] expect institutions continually to evolve" (Lowndes, 2002: 105). Hall and Taylor (1996) pointed to the differences between rational choice, historical and sociological versions of new institutionalism on how institutions originate or change. Rational choice institutionalists explain the existence of institutions "by reference to the value those functions have for the actors affected . . . the actors create the institution in order to realize this value . . . in terms of gains from cooperation" (Hall and Taylor, 1996: 945). By contrast, historical and sociological institutionalists "focus attention on the processes whereby those developing new institutions 'borrow' from the existing world of institutional templates" (Hall and Taylor, 1996: 953). Hall and Taylor argued that the rational choice approach of explaining how institutions originate is often highly 'functionalist, largely 'intentionalist' and highly 'voluntarist'. They claimed that historical institutionalists have been slow to "aggregate their findings into systematic theories" while sociological institutionalists "can miss the extent to which processes of institutional creation or reform entail a clash of power among actors with competing interests" (Hall and Taylor, 1996: 952–954).

Goodin (1996: 24–25) focused on institutional design and maintained there are three ways in which social institutions come into being and change over time: by accident; by evolution; or as the product of intentional intervention by relevant actors. The first mode, institutional change by accident, does not appear to be appropriate to executive design under the Agreement, given that successive initiatives since the early 1970s attempted to establish a power-sharing government and, as will be shown, d’Hondt was first proposed in the late 1980s. It could hardly be said, then, that a power-sharing government under d’Hondt ‘just happened’ in 1998 or that the process had “no causal mechanisms driving things” (Goodin, 1996: 24). The paper will argue, however, that the design of executive formation can be explained by Goodin’s other two modes of institutional design: as a product of evolution and as a result of intentional intervention by the parties involved.

The Genesis of d’Hondt

To track the evolution of executive design, it is necessary to uncover the genesis of proposals for using d’Hondt and how it came to be in the 1998 Agreement. Over time the procedure was included in proposals to meet the parties’ requirements for proportionality and sequential portfolio allocation, thus negating any need for inter-party negotiation to form a government. These ideas evolved from the prorogation of Stormont in 1972 and the British government’s policy to re-establish devolved power sharing. The first attempt at a power-sharing government came with the short-lived Sunningdale experiment of 1973–1974, with a voluntary coalition between the Official Unionists, the SDLP and the Alliance Party and ministerial seats agreed between the parties and overseen by the Secretary of State. The power-sharing government was, however, short lived due to divisions within unionism and finally fell as a result of the Ulster Workers’ Council strike (Anderson, 1994). A voluntary power-sharing executive was proposed next during the Constitutional Convention of 1975 by William Craig of the Vanguard Party for a temporary voluntary coalition between the Unionist Coalition and the SDLP but was not to materialize, however, due to unionist division over power sharing with nationalists.⁵

An important genesis of the ideas on what a power-sharing government might look like comes from the academic literature. Rose’s (1976) seminal work, *Northern Ireland: A Time of Choice*, proposes a number of different options for Northern Ireland—self-government within the UK; direct rule; independence; a united Ireland; and repartition. In the context of devolution Rose develops the principle of proportional power sharing with ministerial seats allocated in order according to party strength:

Power sharing could also be realized through the creation of a popularly elected executive. An eight-man executive elected by proportional representation would result in a cabinet of five Loyalists, two SDLP members, and one Alliance member, judging by the Convention election results . . . Specific ministerial offices could be chosen in order among the parties. The Loyalists, choosing first, might take finance, the SDLP commerce, Alliance law reform, and so on (Rose, 1976: 151).

In the 1993 Institute for Public Policy Research (IPPR) publication, *Northern Ireland: Sharing Authority*, O'Leary *et al.* proposed a model of shared authority for Northern Ireland between the British and Irish governments and local institutions.⁶ The Shared Authority Council of Northern Ireland (SACNI) would have five members: three elected by proportional representation, one member of the House of Commons and one member of Dáil Éireann. The SACNI would then appoint an Executive Council whose chair would rotate among members every six months. The document suggested several ways the ministers could be appointed, their preferred mechanism being for each member of the SACNI to nominate one, two or three members, subject to their decision to have five, ten or 15 portfolios.

The IPPR document proposed the allocation of ministerial nominees via one of a number of possibilities: as a result of negotiations; rank-ordering the right of nomination between the elected members of the SACNI; and alternate nominations between the British and Irish members; on the basis of simple majority within the SACNI; by the approval of both British and Irish nominees and a majority of the SACNI or via preferential voting on nominees proposed for specific portfolios. The authors proposed that if the SACNI decides to opt for a strictly parliamentary regime, Sainte-Laguë should be used to sequence ministerial portfolios from a panel elected by the Assembly.⁷ The use of a procedure to achieve proportionality is carried through to the allocation of committee chairs. An extensive appendix looks at the different outcomes under d'Hondt or Sainte-Laguë for allocating and sequencing committee chairs and comes down firmly in support of Sainte-Laguë for not favouring larger parties and for bringing on board the extremes: "There are good constitutional reasons . . . to support a rule which is proportional, but which is not unduly generous to large parties . . . a successful constitutional model for Northern Ireland must be one which can be operated by the DUP and SF" (O'Leary *et al.*, 1993: 144).

Attention to institutional design is continued by McGarry and O'Leary (1995: 373–375), who stipulated that in any future internal settlement, "[P]roportionality principles will [also] have to be used by the assembly to establish its committee structures and chairs; and they must be used to elect the executive". McGarry and O'Leary's (1995: 374) preference was for Sainte-Laguë, which, "fair to small parties, will give both the Alliance Party and Sinn Féin a stake in any new executive or committee-structure for a new assembly . . .". They pointed out that d'Hondt, beneficial to larger parties, had already been supported by the UUP and DUP in previous talks.

Former UUP leader, David Trimble, agreed that his party proposed using the d'Hondt procedure in the submissions to the Brooke and Mayhew talks of 1991–1992. In Frank Millar's book (2004: 59), Trimble wanted to 'put the record straight' and said: "If you look back at the Unionist Party proposals for the Strand One talks in 1992, about the purely internal Northern Ireland arrangements, it's d'Hondt". These proposals were, of course, not based on executive power sharing but rather on administrative or legislative devolution where departments would be controlled by a committee structure. This limited form of power sharing was, nevertheless, to be in proportion to electoral support and led to the UUP support for d'Hondt in 1998. As Trimble commented:

Go back to the talks unionist leaders had with Secretaries of State Peter Brooke and then Sir Patrick Mayhew circa 1991–92 and the agreement on Strand One.

Now that agreement wasn't finalised but the broad shape of it was, and we went into the '96 talks with our '93 position, which was based on d'Hondt and with the principles of proportionality and automaticity at the heart of it (Millar, 2004: 62–63).

Another unionist politician, in an interview for this research, confirmed that d'Hondt was first suggested in the early 1990s talks: "at that stage, out of the blue, there was a proposal that departments would be shared around; in those days we were talking about committees and who would be chair and there was a suggestion that it would come out by way of d'Hondt". As for who exactly proposed the use of the procedure, he recalled Peter Robinson of the DUP "having an interest in it" but acknowledged that others may say that the idea came from UUP party leader Jim Molyneux.

Unionist support for d'Hondt can be traced back even further than the Brooke–Mayhew Talks to a joint UUP–DUP document of 1987 which became the basis for the negotiating position in 1991–1992. Leaked to the *Irish Times* of 3 July 1991, the 'Administrative and Legislative Devolution' document, proposed a devolved assembly elected by proportional representation with either 85 or 102 members and a number of committees appointed to run the departments. The chairs and deputy chairs of the committees would be allocated in proportion to party strength in the assembly under the d'Hondt rule. If a chair was to stand down then the party would nominate a successor or if that party refused, or failed to do so, then the position would be filled by the party next in line under d'Hondt.

The 1987 document is significant in that the unionist parties were proposing legislative power sharing on a proportional basis with d'Hondt as the particular method to ensure proportionality: "As the structure is based upon proportionality, majority and minority alike have a real say, influence and part in the administration and decision making of the province" (*Irish Times*, 3 July 1991). Decision making, however, was not to extend to executive power sharing with nationalists: "As there is no executive there is *ipso facto* no executive power sharing. Yet the SDLP can rightly say that they are represented at the highest level" and the overriding concern was to "... control each committee. ... the larger the committee, the larger the unionist majority and the risk is consequently and proportionately reduced ..." (*Irish Times*, 3 July 1991). While the unionist parties were not prepared to countenance executive power sharing with nationalists in the early 1990s, they were supportive of the principle of 'proportionality' which became a central part of future initiatives.

At the actual Brooke–Mayhew talks there appeared a considerable gulf between the pro-union parties and the SDLP. The UUP and DUP preferred limited administrative and legislative devolution based on a committee structure, in contrast to the much more radical thinking of the SDLP's 'Agreeing new political structures' document of May 1992. Termed the 'European model' the SDLP proposed an executive commission comprising three members elected in Northern Ireland and three nominated separately by the British and Irish governments and the European Community. The powers of the Commission were to be much more extensive than the unionist legislative devolution proposals in functioning as a cabinet with collective responsibility and commissioners able to initiate legislation (*Irish Times*, 13 May 1992). Of note is the

SDLP's rejection of a solution based solely on internal arrangements, stating that the commission should reflect the key external relationship with the Republic of Ireland.

A subcommittee of the talks attempted to bridge the gap and came up with a compromise package in June 1992. Details of the document put forward by the British government, entitled 'Possible Outline Framework', were printed in the *Sunday News* on 20 September 1992 and pointed to unionist support for an 85 member assembly elected via proportional representation with departments controlled by committees and a panel of three as a variation on the SDLP's Commission. The panel's role was to focus on consultation and inspection of assembly decisions and levels of public finance. It was intended that parties would be allocated committee posts according to their numbers: "Arrangements might be made to determine the allocation of individual members to committees, though each party should have a share of the total committee places broadly proportional to its strength in the assembly". However, while the package appeared to be accepted by the UUP, the DUP and the Alliance Party, the SDLP maintained their reservations and remained steadfastly committed to their European model proposals.

Former deputy first minister and SDLP leader Mark Durkan claims that it was he, within the SDLP group negotiating the Agreement, who advocated using d'Hondt for the appointment of ministers. In an interview, Durkan acknowledged that d'Hondt was part of the thinking during the Brooke–Mayhew talks, albeit that was for distributing committee chairs and that unionists remained opposed to executive power sharing up until the final stage of the 1998 negotiations. In addition to the SDLP pioneering d'Hondt in local councils in the 1990s, unionist support for d'Hondt in previous talks made it sensible for SDLP negotiators to take it up in 1998 as the procedure could attract cross-community consensus once the UUP agreed to ministerial portfolios: "We stuck to the executive power model but given that people who were looking for a non-executive power model were talking about d'Hondt . . . it made sense to say d'Hondt".

The principle of proportionality had been a mainstay of SDLP policy since the 1970s, evident in the party's *Towards a New Ireland* proposals of 1972. At that time the party's proposed solution to the conflict was for Britain and the Republic of Ireland to accept joint responsibility for Northern Ireland—the party's joint sovereignty model—until such times as a united Ireland would be possible. An interim system of government would have two commissioners acting jointly as the representatives of the two states and, significantly, an executive of fifteen members elected by proportional representation from the 84 members of the Assembly and a Chief Executive elected by the Executive would then allocate departmental responsibilities subject to the approval of both Commissioners. The SDLP's 1972 document thus established the party's commitment to cross-community, proportional executive power sharing. Indeed, the academic literature supports the view that the SDLP's 1972 joint sovereignty proposals were based on similar provisions for power sharing as agreed in the 1998 Agreement. Murray and Tonge (2005: 200) noted the similarities between the SDLP positions towards executive power sharing in the early 1970s and 1998:

The SDLP of the early 1970s envisaged the formation of a Commission with cross-party representation, to elect a fifteen-member executive, which in turn

would appoint its own Directors of Northern Ireland Departments. The Good Friday Agreement allowed for the allocation of ministerial posts via party choice, according to the d'Hondt mechanism, based upon party strength in the Assembly.

D'Hondt was thus included in the Agreement without much debate, having been in the lexicon of how power sharing might be realized since the late 1980s. The principle of proportionality was certainly around for more than two decades, going back to the British government's White Paper of 1973 and the SDLP's 1972 joint sovereignty document. The first appearance of d'Hondt, however, seems to have been in the leaked proposals from the unionist parties in 1987 to allocate committee chairs for administrative devolution and then informed the unionist position in the Brooke–Mayhew talks. Although the Ulster Unionists remained opposed to executive power sharing up until the last few days of the negotiations leading to the 1998 Agreement, a cabinet administration was agreed with the SDLP for administrative and political reasons (see Godson, 2004: 337–340). The procedure met the parties' requirements for proportionality, inclusivity and automaticity, thereby ensuring its inclusion in the 1998 Agreement once unionists agreed to executive power sharing and institutions with an all-Ireland dimension.

Towards Inclusive Power Sharing

The design for executive formation under d'Hondt evolved in line with proposals that would include the extremes rather than just the parties of the moderate middle. The British and Irish governments were clearly committed to finding a settlement based on power sharing between nationalism and unionism; a key issue was what type of power sharing would best suit devolution in Northern Ireland and who should be included.

Following the prorogation of Stormont in 1972 the British government was of the opinion that future internal arrangements should be based on devolved inter-communal power sharing. The White Paper of March 1973 held that a Northern Ireland executive “can no longer be solely based upon any single party, if that party draws its support and its elected representation virtually entirely from only one section of a divided community”. The Northern Ireland Constitution Act 1973 required the Secretary of State to appoint executive ministers and ensure “that a Northern Ireland Executive can be formed, which, having the regard to the support it commands in the Assembly and to the electorate on which that support is based, is likely to be widely accepted throughout the community”.

The next milestone was the Anglo-Irish Agreement of November 1985⁸ whereby Britain acknowledged a formal legal role for the Republic of Ireland in governing Northern Ireland; the Irish government would thus be able to put forward proposals relating to Northern Ireland in areas of the Inter-governmental Conference and outside of the remit of a devolved administration. The British and Irish governments confirmed their support for devolution and a system which would have the support of both traditions. Article 4 stipulates a commitment to devolved power sharing:

Both Governments recognise that devolution can be achieved only with the co-operation of constitutional representatives within Northern Ireland of both

traditions there. The Conference shall be a framework within which the Irish Government may put forward views and proposals on the modalities of bringing about devolution in Northern Ireland, in so far as they relate to the interests of the minority community.

By the late 1980s the SDLP were of the opinion that any solution to the conflict had to include Sinn Féin. In an interview, Denis Haughey (SDLP) talks of his party's view that agreement between the middle ground was not going solve the conflict:

It became increasingly clear that a consensus of the middle ground was not going to be possible because of the tensions, the antagonisms, the bitterness, the problems created by campaigns of violence carried on by paramilitaries and . . . by the end of the 1980s we became firmly convinced that we could only get an adequate working solution to the problem through . . . switching off the violence and the inclusion of the extreme parties of both traditions.

Similarly, British policy came to the thinking that an end to the conflict and the realization of a peace settlement would be possible only by including republicans subject to them ending paramilitarism. To this end, the Thatcher and Major governments were involved in back-channel exchanges with the Provisionals during the late 1980s and early 1990s. As Major (2000: 442) wrote in his autobiography: "we knew that there could not be a lasting settlement without all-round acceptance of the consent principle; yet any settlement needed to include Sinn Féin and its military wing, the IRA . . .". This evolved into one of the principles of the Downing Street Declaration of December 1993 where the two governments stipulated that if such groups were to renounce violence then they could enter into discussions with the governments and political parties.

Of course, it was the steps made by Sinn Féin over the course of the 1980s and 1990s that made inclusivity possible. Well-documented elsewhere (English, 2003; Murray & Tonge, 2005), the shift in republican strategy included the entry of Sinn Féin into the electoral process at the 1982 Assembly elections where, on an abstentionist platform to the 'rolling devolution' plans of Secretary of State, James Prior, it won 10.1% of the vote. Dialogue with the SDLP from 1988 led to the Hume–Adams statement in 1993 and the position that any agreement would have to have support of the different traditions, followed by the 1993 Joint Declaration⁹ and the 1994 IRA ceasefire. Sinn Féin's increased electoral strength and the party's entry into talks in September 1997 meant the process became more inclusive. This inclusivity was thus to become part and parcel of the Agreement and the new internal arrangements.

The British government's thinking was set out in *A Framework for Accountable Government in Northern Ireland*, in 1995 (HMSO 1995). Following on from the ideas put forward by the parties during the Brooke–Mayhew talks, the document proposed a panel of 'probably' three people elected by proportional representation. While similar to the SDLP's Commission proposal, the 'panel' would not include external representatives, thus satisfying unionist opposition to seats for Republic of Ireland or EU representatives. Rather than full ministerial portfolios, however, departments would be controlled by committees whose chairs and deputy chairs would be in proportion to party strength. The document does not advocate any particular weighted

majority or any particular way of dealing out committee chairs and ensuring proportionality. As O'Leary suggested (1995: 865), the proposed committee structure would necessitate a mechanical procedure such as d'Hondt or Sainte-Laguë to ensure rough proportionality. The British government's 1995 document was, therefore, a compromise or "splitting the difference" (O'Leary, 1995: 866) between UUP and SDLP positions of 1991–1992. It was another step towards power sharing upholding the principle of proportionality at panel level and pointed to allocating committee seats using a method such as d'Hondt. Both unionists and republicans, however, had strong objections to the Framework Documents. While unionists were unhappy about the strong Irish dimension, republicans objected to the *status quo* of Northern Ireland's constitutional status.

In tracking the evolution of d'Hondt in Northern Ireland up to the Agreement, it is important that the method was used for allocating seats to the 1996 Forum with 110 members from the 18 constituencies, 5 members each under d'Hondt with the top ten parties selecting a further two from a regional list. Furthermore, power sharing had been taking hold in local government with 'responsibility sharing' involving the rotation of the chair/vice chair and proportionate distribution of committee membership (see Knox, 1996; Knox & Carmichael, 1998). As developed in the next section, however, it appears that the acceptance of the method in 1998 was more to do with the evolution of proposals and the parties' concern to meet the requirements of proportionality and inclusivity, subject to republicans renouncing violence.

Intentional Institutional Design

In addition to explaining institutional design as a process of evolution, Goodin (1996) suggested that the creation of institutions can be the product of intentions on the part of key political actors. This article argues that the design of power sharing in Northern Ireland could certainly be considered the "product of the deliberate interventions of purposive, goal-seeking agents" (Goodin, 1996: 25). The agents in this case are the internal political parties as well as the British government and, to some extent, the Irish government, who have, over the years, put forward proposals for power sharing. The move to inclusive, mandatory power sharing using a sequential portfolio allocation method rather than 'voluntary' or exclusive power sharing based on inter-party bargaining to allocate seats was thus the product of the various parties' preferences. As Goodin (2000: 523) wrote of intentional agents, "[i]nstitutionalized solutions to their common problems emerge and evolve out of the interplay of their intentions".

What were the intentions of the parties in agreeing to executive formation under d'Hondt? While the idea of using d'Hondt to form a power-sharing government had been around for ten years prior to the Agreement, politicians cite several reasons why they supported the method in 1998. With evidence from interviews with former ministers in the Executive Committee 1999–2002, it is clear that they supported the use of d'Hondt to guarantee proportionality. Secondly, the procedure allowed for the inclusive nature of the executive and was supported by the pro-Agreement parties provided that Sinn Féin dealt with the decommissioning issue. Thirdly, the automatic nature of d'Hondt took government formation out of the hands of the parties, thereby avoiding political wrangling over portfolio allocation. The automaticity of

the method also spared the parties from having to vote for each other which arguably would have been politically impossible. Fourthly, as parties were familiar with the procedure from its usage in the European Parliament, it appealed as a tried and tested method.

The most obvious benefit of the d'Hondt procedure is that it ensures rough proportionality of seats in accordance with party strength in the Assembly. In an interview a nationalist politician commented, "the main reason is [d'Hondt] seemed like a fair method of proportionality . . . obviously, the number of officers, ministers . . . has to bear some reflection on the strength of the party". On the pro-Agreement unionist side, the former UUP Deputy Leader, John Taylor, in a speech to the Glasgow Chamber of Commerce in 1999, took ownership of the proportionality principle:

These arrangements are deliberately inclusive, and the idea of proportionality in allocating government ministries originated with my own party. Our aim has been to offer paramilitaries a significant role in the new administration, to construct an integrated Ulster as a widely-acceptable alternative to a united Ireland (*Irish Times*, 4 June 1999)

In an interview with a unionist politician, he confirmed the concern for the method to allow for fairness and proportionality, thereby encouraging nationalists to embrace devolution:

d'Hondt would have been as a solution to the problem of how do we share out the departments to give everybody comfort? The big thing, remember, in 1998, was devolution and nationalists, and particularly Hume and the SDLP, had always set themselves firmly against devolution because they claim the tyranny of the majority . . . d'Hondt was [a] way [of] being seen as going the extra mile for fairness based on party strengths . . .

As well as ensuring proportionality, the procedure was, secondly, inclusive in that it allowed for the positions to be shared by as many parties as possible dependent upon their strength in the Assembly. Significantly, this allowed for the inclusion of Sinn Féin and the anti-Agreement DUP. Former deputy first minister Mark Durkan (SDLP) acknowledged that there was some discussion within his party on the dangers of full inclusivity as some members felt that the inclusion of parties opposed to the Agreement, such as the DUP, or those not fully signed up to it, such as Sinn Féin, would pose serious difficulties. His reasoning for inclusivity, however, was that it would encourage as high an endorsement as possible in a referendum which was a key motivation. In an interview, Durkan said this would avert a situation whereby the Agreement could be changed by parties initially outside of a 'voluntary' coalition but who might be in government in the future:

. . . so that was the point of inclusion, that even people who voted 'no' would be included . . . these arrangements had the power not just to bring unionist and nationalist, loyalist and republican in partnership and co-operation but also those who voted 'yes' and those who voted 'no' . . . we can't afford a system

that is going to be hostage . . . to one electoral swing and that was part of the thinking.

An inclusive power-sharing executive with Sinn Féin on board had, of course, the objective of ending the violence. As SDLP former deputy first minister Seamus Mallon wrote in July 1999:

For the first time since partition, there will be no major political force, North or South, which advocates the use of violence for political ends alongside the pursuit of votes. And in return, Sinn Féin will have seats in Government for the first time in the modern era. Their rights as Ministers will be no less than those of any other political party (Mallon, 1999).

David Trimble's support for full inclusivity under d'Hondt can be explained as a vehicle for putting an end to paramilitarism as well as his eagerness to bring about devolution. Indeed, the *Irish Times* of 16 November 1999 reported Trimble as saying the institutions had to be "deliberately inclusive". As Godson (2004: 464) explained, Trimble was not pushing for administrative devolution: "so uninterested was he in the available alternatives that it suggests that he was a more committed believer in the principle of full governmental inclusivity than many nationalists gave him credit for". This is explored in Millar's book where Trimble talks of the party's commitment to proportionality from the early 1990s. He was prepared to stick to proportionality and accept Sinn Féin's inevitable share in power given their electoral successes in the 1996 Forum but subject to republicans' transition to purely democratic means:

If I suddenly say "Whoops, changed my mind, I don't want proportionality, we'll go for weighted majorities instead", and it's obvious that you're doing it to exclude Sinn Féin, it puts you in a slightly queer pitch in the matter . . . But let me say this: to have a link to decommissioning so that Sinn Féin doesn't get the advantage of proportionality until they have genuinely done the business (Millar, 2004: 60).

The third reason for the parties' support for the d'Hondt procedure was that it took government formation away from inter-party bargaining. As Denis Haughey (SDLP) explained, the automatic nature of the method negated any need for assembly ratification:

it is difficult, mainly unionists, but in certain circumstances for nationalists as well, to vote for, positively for, someone of the other tradition to be a minister . . . So if we agreed on this mechanism, it meant that the mechanism took over, nobody had to vote for anybody. It simply meant that the mechanism determined who would be the next minister, how many seats any party might have in the executive etc. and we found it worked very well.

As noted previously, the UUP did not favour executive power sharing as their preference in the 1998 negotiations had been for a committee system with seats allocated in

proportion to party strength under d'Hondt. For David Trimble, it appears that the decision to agree to executive power sharing was to give the SDLP something in return for unionist successes on constitutional and North–South issues (Godson, 2004: 339). In this respect, the automatic nature of coalition formation would be a vital component of executive design. As Godson (2004: 339) noted, d'Hondt thus provided a 'fig-leaf':

any decision to accept an all-inclusive consociational form of government could now be explained away as the compulsory outworkings of an imposed electoral method, rather than a decision taken voluntarily by themselves which would violate their traditional scepticism about power-sharing.

Sinn Féin did not advance a position on the method for executive formation as Strand One of the Agreement was effectively resolved between the SDLP and the UUP. While the deal as a whole fell short of republican objectives, the party leadership pitched their support in the context of securing 'parity of esteem' and that devolution would bring about a transitional phase to Irish unity. During an assembly debate on the setting up of the executive, Sinn Féin's Mitchel McLaughlin pointed to the party's support for an inclusive executive as a very different set of political arrangements to the old Stormont regime:

On Good Friday we all agreed to a form of coalition Government. . . That Government would be representative of all shades of political opinion, and would satisfy the criteria on establishing a mandate from the people under the d'Hondt system. Four parties achieved that agreement, and there could be a remarkable coalition. It would certainly be a remarkable demonstration of a new beginning for a political entity that has manifestly failed (Northern Ireland Assembly Official Report, 15 December 1998).

Finally, the parties were familiar with the d'Hondt procedure from its usage in the European Parliament and this appears to be an additional reason for its application in Northern Ireland. For instance, Denis Haughey (SDLP) said:

[D'Hondt] has achieved more or less universally acceptable outcomes in the European Parliament in terms of division of committee chairs, places among members of the different political groups in the parliament . . . the d'Hondt mechanism—more or less as it has been employed in the European Parliament - struck us as being the right mechanism in this case.

The DUP were in a unique position with regards to the specifics of government formation due to the party's anti-Agreement stance and opposition to Sinn Féin in government. According to Gregory Campbell, the party did not have difficulty with the proportionality principle or the specific d'Hondt procedure which was considered extraneous to their position with regards to Sinn Féin being allowed to take up ministerial seats:

we didn't have a problem with proportionality, we didn't have a problem with d'Hondt, nor did we have a problem with the *per se* allocation on some sort of

proportional basis with the various parties so that you would end up with a variety of ministers across the political divide in charge of the various portfolios. The issue for us . . . was . . . Sinn Féin's connection with the IRA and we were fundamentally opposed to any system, whether it was d'Hondt or anything else that would allow them to be in charge of one, two or, under present circumstances, I suppose, more departments. And so d'Hondt, if you like, was a mechanism which was irrelevant in respect of our opposition to Sinn Féin.

Outside the Executive, the Alliance Party were prepared to support mandatory power sharing but would have preferred a different procedure given that the method does not allow parties with a similar outlook to coalesce, as happens elsewhere.¹⁰ While Alliance had strong reservations and the anti-Agreement UKUP were adamantly opposed to mandatory power sharing, the design of executive formation was nevertheless the result of negotiations between the UUP and the SDLP as the two largest parties in 1998.

Although not the immediate scope of this article, it should be noted that executive formation under the d'Hondt procedure has been criticized for not fostering interethnic conciliation and compromise among the parties. The guarantee of ministerial seats to parties subject to their strength in the Assembly under the d'Hondt rule means that parties are not required to negotiate and agree on the coalition's policy agenda. As ministers are simply nominated by their parties rather than being appointed by a prime minister and are not subject to parliamentary ratification, they owe their allegiance to their parties. Ministers also had considerable autonomy under the 1998 Act which bestows executive authority on individual ministers.¹¹ It could also be argued that the use of the d'Hondt led to a lack of collective responsibility as the DUP were able to take their two ministerial posts without attending executive meetings and consistently voted against executive decisions, behaving at once as a governing and an opposition party.¹² In this respect it can be argued that d'Hondt did not promote compromise and moderation, thereby contributing to the operational difficulties of the executive and its ultimate collapse.

The evolution of institutional design has, of course, continued following suspension of the institutions in October 2002. The Review of the Agreement which began in February 2004 focused parties' positions: while the SDLP and Sinn Féin hoped the Review would be limited to improving the operation of the Agreement, the DUP sought a wholesale renegotiation and the UUP called for concentration on decommissioning. The DUP launched its 'Devolution Now' document with a number of options either in some form of an executive or the assembly as a corporate body responsible for decision making. The mandatory coalition model would still allocate posts on a proportional basis, therefore upholding the use of d'Hondt but with some important amendments in the pursuit of greater ministerial accountability to ensure that ultimate power would rest with the executive rather than individual departments and the assembly would be able to challenge decisions of the executive. The Alliance Party set out its opposition to full inclusivity in the 'Agenda for Democracy' document, critiquing executive design under d'Hondt as a "Balkanised Executive, in which ministers exercise considerable authority in their own area of responsibility, with little sense of working to fulfil a common set of interests or to address cross-cutting issues". Alliance

would prefer to see a voluntary power-sharing coalition, negotiated among a number of parties on the basis of an agreed programme for government, adhering to collective responsibility and supported by a cross-community weighted-majority vote in the assembly.

The Review and subsequent talks at Leeds Castle failed to produce an agreement but led to the British and Irish governments' 'Comprehensive Agreement' proposals¹³ in December 2004 which were apparently set to be endorsed by the DUP and Sinn Féin but stumbled at the issue of transparent decommissioning by the IRA. From an institutional design perspective, these proposals are significant as they recommend some important changes to executive formation. Significantly, the document proposes assembly approval of the executive. The process would begin with the allocation of the position of first minister to the largest party in the largest designation and the post of deputy first minister to the largest party in the second largest designation.¹⁴ The d'Hondt procedure would then follow to allocate the ministerial portfolios and the presiding officer would put an Executive Declaration (FM, DFM and Ministers) to the assembly on a 50: 50: 50 approval criterion.¹⁵ If there is no approval on the declaration within six weeks, a new election will be contested.¹⁶ The proposed structure means the assembly would be required to approve the executive as a whole—an arrangement to approve individual ministers would arguably be politically impossible given the mutual hostility of Sinn Féin and the DUP.

The governments' proposals of December 2004 to restoring devolution were severely hampered, however, by events in early 2005.¹⁷ In a speech to the Ulster Unionist Council in March 2005, David Trimble called for the abandonment of the d'Hondt procedure to "release politics from the d'Hondt strait-jacket that currently gives the IRA a veto on political progress". The UUP position concurred with that of the DUP who specified in their general election manifesto May 2005 that "[I]nclusive, mandatory coalition government which includes Sinn Fein under d'Hondt or any other system is out of the question". While the UUP, the DUP and the Alliance Party argued for a voluntary coalition, this was opposed by the SDLP. As the SDLP leader Mark Durkan revealed in February 2005, Tony Blair had unsuccessfully tried to persuade him to enter a voluntary coalition with unionists (BBC News online, 2005) and promised in the party's 2005 manifesto to "stand strong for inclusive democracy [and] continue to oppose unionist and British pressure for exclusion or voluntary coalition".

The choice available to the parties persists, however, between an inclusive executive under d'Hondt and a voluntary coalition. As McFaul (1999: 32) noted, "actors do not interact, compete or cooperate in a vacuum when seeking to produce or prevent institutional change. Institutions effect institutional change . . ." The shifting of power and influence on the part of the parties is another important factor: while the UUP and the SDLP influenced the design under the Agreement given their electoral strength following the 1998 Assembly, the subsequent electoral shifts have relocated power to the DUP and Sinn Féin.¹⁸ In this respect, it is interesting that the UK and Irish governments' 'Comprehensive Agreement' document of December 2004 proposed that the largest party of the largest designation nominate the first minister and the largest party of the second largest designation nominate the deputy first minister.¹⁹ On the basis of the November 2003 Assembly elections this would mean a DUP first minister

and Sinn Féin deputy first minister. As the DUP would find it impossible for the Rev Ian Paisley to be jointly elected alongside Sinn Féin's Martin McGuinness, this proposal would get over the requirement in the Agreement for a joint nomination subject to endorsement by a cross-community vote in the assembly.²⁰

Conclusions

New institutionalism, in particular the perspectives on institutional design advanced by Goodin, offer insights into the design of the Northern Ireland power-sharing executive under the 1998 Agreement. Goodin suggests there are three ways in which social institutions come into being and change over time: by accident; by evolution; or as the product of intentional intervention by relevant actors. The article argues that executive design in Northern Ireland under the 1998 Agreement can be explained as a product of evolution and a result of intentional intervention by the parties. First, the move from voluntary power sharing of the moderate parties in 1973 with portfolio allocation by negotiation to inclusive power sharing under d'Hondt in 1998 can be explained by an evolution of proposals from the political actors involved. This evolution was made possible, moreover, by the fusion of preferences of the different parties: the SDLP's preference for proportional executive power sharing in their 1972 joint sovereignty model with the unionist parties' support for automatic proportionality for legislative devolution using d'Hondt in the late 1980s/early 1990s and, finally, the UUP's acceptance of executive devolution in 1998. Secondly, there was also a degree of intentionality in the process evidenced by the actors' support for an automatic method of executive formation by way of sequential portfolio allocation, thereby negating the need for inter-party bargaining over coalition formation and allowing for inclusivity subject to republicans renouncing violence.

The article thus makes a valuable contribution to our understanding of the process and outcome of institutional design. In the aftermath of the suspension of the devolved institutions in October 2002, the process of institutional design continued via the Review of the Agreement, the 'Comprehensive Agreement' proposals of 2004 and the convening of an assembly in 2006.²¹ In keeping with the provisions of the 1998 Agreement, power sharing was subject to agreement between the DUP and Sinn Féin, largely to be determined by the report of the Independent Monitoring Commission on IRA criminality in October 2006. The situation is likely to evolve out of the interplay of the intentions of the parties. The institutionalist approach, therefore, allows for a deeper explanation of the processes of structure and agency that led to executive design under the Agreement and beyond. In keeping with developments within this approach, the article hopefully responds to the call for institutional analysis "to focus more on the formation and transformation of structures" (Peters, 1999: 150).

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Notes

- ¹For example, the d'Hondt procedure is used to allocate committee chairs in the European Parliament. It was designed by Belgian mathematician Viktor d'Hondt in 1878 and uses a set of divisor rules (1, 2, 3 . . .).
- ²The South Africa Government of National Unity under the Interim Constitution of 1993 used a similar procedure. Parties with at least 20 seats in the National Assembly qualified for cabinet seats based on a proportional quota derived from their seat share, the number of coalition parties and the number of portfolios. The President then consulted with the Executive Deputy Presidents and leaders of coalition parties to determine the specific portfolios for each party and appointed the ministers. See Van Tonder (1996: 26). In contrast, the Northern Ireland 1998 Agreement does not provide for consultation on portfolio picks and ministers are simply nominated by their parties rather than the First Minister and Deputy First Minister. The author thanks the anonymous referee who pointed out the use of a proportional formula in South Africa 1994–1996.
- ³The Agreement Reached in Multi-Party Negotiations (www.nio.gov.uk/agreement.pdf) is often called the Good Friday Agreement, the Belfast Agreement or the 1998 Agreement. This article will hereafter use 'the Agreement'.
- ⁴See Peters (1999) for exploration of seven different approaches: normative, historical, rational choice, empirical, sociological, interest representation and international institutionalism. All approaches agree that institutions are the central component of political life, but disagree on how individuals and institutions interact.
- ⁵Interestingly, David Trimble supported Craig's idea of a voluntary coalition with the SDLP. See Godson (2004: 53–61).
- ⁶See O'Leary *et al.* (2005, fn. 29). The authors point out that the 1993 IPPR document was arguably the first time a sequential portfolio allocation procedure was proposed for distributing ministerial seats in Northern Ireland and suggest these ideas were borrowed from Rose (1976).
- ⁷Sainte-Laguë is another sequential portfolio allocation procedure with divisor rules (1, 3, 5 . . .) which benefits smaller parties. The authors proposed Sainte-Laguë so that republicans, loyalists and the non-communal Alliance Party would have a better chance of securing executive seats.
- ⁸Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Republic of Ireland, November 1985.
- ⁹Joint Declaration, Downing Street, 15 December 1993. While the Sinn Féin leadership had reportedly some input into the Downing Street Declaration, it is argued that the document 'watered down' the Hume–Adams wording of self-determination and upheld the 'consent principle' that constitutional change would not happen against the wishes of a majority in Northern Ireland. See Murray & Tonge (2005: 183).
- ¹⁰For exploration of how parties can form alliances under d'Hondt in Denmark, but not in Northern Ireland, see O'Leary *et al.* (2005).
- ¹¹The decision of Sinn Féin Minister for Health, Social Services and Public Safety to cite Belfast's maternity services at the Royal Victoria Hospital in opposition to the assembly's Health Committee is often cited as an example of the lack of ministerial accountability.
- ¹²Sinn Féin also sought to amend the budget which was ostensibly agreed by the wider executive. See Northern Ireland Assembly Report (2000).
- ¹³'Proposals by the British and Irish Governments for a Comprehensive Agreement', 8 December 2004 (see www.nio.gov.uk/proposals_by_the_british_and_irish_governments_for_a_comprehensive_agreement.pdf).
- ¹⁴The change from the cross-community election of First Minister and Deputy First Minister under the Agreement to the allocation of posts based on party strength in the assembly has provoked criticism from the SDLP and the UUP who claim the proposal removes an important symbol of accommodation.
- ¹⁵Fifty per cent of all members voting, including 50% of designated unionists and nationalists.
- ¹⁶This is subject to the British government abandoning their suspensory power.
- ¹⁷The February 2005 International Monitoring Commission report said Sinn Féin members were involved in sanctioning the Northern Bank robbery; the May 2005 report stated that the IRA had been involved in the murder of Robert McCartney and that the organization was still recruiting, training and gathering intelligence as well as fuel smuggling and money laundering (www.independentmonitoringcommission.org).

¹⁸On the basis of the 2003 assembly election results (DUP 30, UUP 27, Sinn Féin 24 and SDLP 18 seats), a twelve-member executive would result in a 7: 5 unionist: nationalist balance with 4 DUP (including First Minister), 3 UUP, 3 Sinn Féin (including Deputy First Minister) and 2 SDLP ministers. Although the numbers of the parties in the assembly have since changed due to the defection of three UUP members to the DUP, the resignation of DUP MLA Paul Berry and the inclusion of PUP member David Ervine in the UUP bloc, the outcome under d'Hondt would remain the same. The running of d'Hondt is based on the number of seats held by the parties on the day of the first meeting after an election. On the first day of the new assembly, 15 May 2006, the numbers stood at DUP 32, UUP 25, Sinn Féin 24 and SDLP 18.

¹⁹See footnote 12.

²⁰The proposal to extend d'Hondt to the nomination of First Minister and Deputy First Minister would entail a significant departure from the Agreement as it would do away with the symbolic accommodation and 'partnership' which was intended at the centre between the UUP and the SDLP in 1998.

²¹Members of the Legislative Assembly were recalled to an assembly in May 2006 under the Northern Ireland Act 2006. The Secretary of State had power to refer to the assembly the election of first minister and deputy first minister and matters for the transfer of devolved powers.

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