

# **A Vocationally Based Upper House? Lessons from Ireland**

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## Executive Summary

The current House of Lords includes ‘crossbenchers’ as a significant element within its membership. These members do not take a party whip, and introduce an element of independence amongst the views of members of the upper house. The government has stated its commitment to retaining an independent element within the reformed House of Lords, and the means of achieving this will be a difficult issue for the Royal Commission on Lords reform to resolve. One method which has occasionally been suggested is the formal representation of different professions or other interest groups such as trade unions or charities in the upper house.

The Irish second chamber, the Seanad (Senate), provides the only remaining example of such a system of parliamentary representation in the world. It is therefore an interesting model to study in order to learn how such a model might work in the UK.

The key points of interest about the Irish Seanad include:

- The Seanad comprises 60 members, 43 of whom are elected to represent vocational groups. These candidates are organised in five panels, representing, for example, agriculture, culture and education, industry and commerce. Of the remaining places, six are elected by university graduates and 11 are appointed by the Taoiseach (Prime Minister).
- Despite the vocational structure of the elections, most members of the Seanad take a party whip. This is because the electorate for the panel seats are councillors and members of parliament, who are closely aligned to parties, and the involvement of independent vocational bodies is limited to nomination of candidates. The six university senators tend to be the only members of the Seanad who sit as independents.
- Action by Senators inside the chamber to promote the vocational group they represent is limited. The government has an inbuilt majority in the chamber and the outcome of votes is predictable. In any case the Seanad has very limited powers to challenge the will of the lower house.
- In Ireland the vocational groups have been complicit in the parties’ control of the election. This would probably be less likely with the strong organisations of 1990s Britain than in 1930s Ireland, when the tradition developed. Because of the fear of greater ‘politicisation’ of the professional bodies, calls for reform in Ireland have not proposed a renewal of the vocational system.
- If the UK were to adopt a method of vocational elections it would certainly not wish to use the Irish system. However, any such system must be carefully designed to ensure it is not monopolised by candidates from the parties.
- A successful vocational system in Britain would be difficult to achieve. It would depend on agreeing vocational categories, the number of seats to be assigned to them, which organisations should be involved and how candidates should be selected. However such a system might be less controversial, and less subject to party domination, if it made up only a fraction of the seats in the upper house.

## Introduction

The government has announced that the long-term future of the House of Lords will be considered by a Royal Commission. Government has indicated its intention to retain an independent element in the reformed upper house<sup>1</sup> and the means of doing this will be one of the most difficult issues which the Royal Commission must address.

One means of ensuring independent members of the upper chamber would be to retain an element of appointment. This is suggested in the White Paper. Another would be to expand the *ex officio* element of the House's membership – currently comprising the bishops and Law Lords<sup>2</sup> – to represent other professions or groups, such as the arts, education, medicine, trade unions or business. However, the difficulty with either of these solutions is that they could be seen to conflict with the objective of democratising the upper house, as they would leave selection of some of its members in the hands of a few people rather than involving a process of open elections. A third solution would be to devise a system which allowed election of independent candidates representing professional or other interest groups.

By international standards, any of these solutions would be quite unusual. Appointment of members tends to apply to a small percentage of the house at most, with the wholly-appointed Canadian upper chamber being the notable exception amongst western democracies<sup>3</sup>. The use of *ex officio* positions is relatively rare, and where it is applied the number of members is also small<sup>4</sup>.

The systematic representation of professions in parliamentary chambers has also infrequently been used in recent times. The only significant example which remains is the Irish upper house, the Seanad (Senate)<sup>5</sup>. The Irish Seanad consists largely of members elected on the basis of professional categories, sitting alongside a number of appointed members. This briefing sets out to describe this unique parliamentary chamber, and in particular the extent to which it is genuinely representative of professions. It then concludes by considering some lessons for reform of the House of Lords in the UK.

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<sup>1</sup> *Modernising Parliament - Reforming the House of Lords*, Government White Paper (CM4183), January 1999.

<sup>2</sup> The House of Lords currently includes amongst its members 26 bishops, who hold their seats on an *ex officio* basis during the time they hold their see. There are up to 12 Law Lords, who automatically become full voting members of the House of Lords when appointed, but hold their seats for life.

<sup>3</sup> In Canada appointments are very rarely used to include independent members in the upper house - see the Constitution Unit's briefing *An Appointed Upper House: Lessons from Canada*, November 1998. Other examples of small numbers of appointed members of an upper house include Italy (which allows its president to appoint up to five members), India, Croatia and Chile. As described below, the Irish Seanad also includes 11 appointed members.

<sup>4</sup> In Chile, Italy, Kazakhstan, Uruguay and Venezuela, for example, ex presidents are automatic members of the upper chamber.

<sup>5</sup> Until February 1998 the upper house of Bavaria in Germany was elected on the basis of professional groups. 60 members served six year terms, with one third elected every two years. Groups, who elected their own representatives, included trade unions, charities, higher education institutions and religious communities. However, this chamber has now been abolished. Other historical examples are mentioned in the text.

## Selecting members of the Irish Seanad

The Irish Seanad was established in its modern form in the new constitution of 1937. This states that the members of the Seanad will comprise three groups:

- 43 members elected to represent five defined vocational panels
- Six members elected to represent Irish universities
- 11 members appointed by the Taoiseach (Prime Minister).

Elections to the Seanad are linked to elections to the Dáil (lower house) and take place around three months later. The last elections were in the summer of 1997. The elections for the vocational panels and the university seats are separate, and have different electorates. However, the university senators could also strictly be considered as a vocational group<sup>6</sup>. Once the two separate elections are completed and the winners have been announced, the final 11 members of the Seanad are chosen by the Taoiseach.

Thus the bulk of members of the Seanad represent the vocational panels. Each panel relates to a particular vocational group, with the number of members elected on each defined by law. The panels are as follows:

- National language and culture, literature, art, education (five members)
- Agriculture and allied interests, fisheries (eleven members)
- Labour, organised or unorganised (eleven members)
- Industry and commerce, including banking, finance, accountancy, engineering and architecture (nine members)
- Public administration and social services, including voluntary social services (seven members).

The method of election of this section of the Seanad is somewhat surprising. The electorate is not the general public, nor is it vocationally based. Instead it comprises members of the incoming Dáil, outgoing Seanad, and local councils. It is thus a standard form of ‘indirect’ election, as used for other non-vocationally based upper houses such as the French Sénat. The electorate for the Seanad election in 1997 comprised 992 people – 834 local councillors, 166 members of the Dáil and 49 outgoing Senators.

The genuine vocational element of the election is further limited by two other elements of the system. Firstly, those nominated must meet a minimal requirement that they have ‘knowledge or practical experience’ of the vocational area concerned, but this rule is interpreted very loosely. Secondly, the involvement of vocational groups from outside the political system, which in any case extends only to the nomination of candidates, applies only to half of those candidates ultimately elected.

When the election is announced invitations to nominate are issued to various professional and other interest groups. For this purpose a list is kept of groups qualified to nominate to each panel. To qualify a group must have objectives related to the interests of the panel, or represent members having knowledge or experience relevant to that panel. In 1997 there were 89 nominating bodies in total. The number of nominating bodies ranges from two for the

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<sup>6</sup> Indeed originally the panel including education was allocated only five members in order that, combined with the six university seats, it had the same strength as the Agriculture and Labour panels which both comprise 11 members.

Labour panel (the Irish Congress of Trade Unions and Irish Conference of Professional and Service Associations) to 35 for the Industry panel (including, for example, the Insurance Institute of Ireland, Royal Institute of Architects, Irish Hotels Federation and Irish Road Haulage Association). Members of the culture, literature, art and education panel are particularly diverse, including, for example, the Irish Georgian Society, Irish Dental Association, Irish National Teachers' Organisation, Law Society of Ireland, Royal College of Surgeons in Ireland and Royal Irish Academy of Music.

However, nomination is not restricted to these vocational and interest groups. Each panel is divided into two 'subpanels', one nominated by the registered groups, and the other nominated by members of the new Dáil and outgoing Seanad. For the former, one nomination is sufficient to gain a place on the ballot paper. For the latter, a candidate must be nominated by at least four members to qualify. When votes are counted a set number – around half – of candidates must be elected from each subpanel.

The university Senators comprise three members elected to represent Trinity College Dublin and three to represent the National University of Ireland (NUI). The electorate for these seats consists of all graduates of the relevant university who are Irish citizens. A register of electors is kept by the university authorities, who are also responsible for organising a postal ballot. The electorate in 1997 comprised 93,309 for NUI and 32,210 for Trinity College. Around 40% of ballot papers were returned.

## **A vocational chamber?**

Despite the definition of the vocational panels in the constitution, and the involvement of the nominating bodies in the electoral process, it is widely acknowledged that the Irish Seanad is not a vocational chamber in any real sense. This is largely because of the involvement of parliamentarians and local councillors, who almost exclusively represent political parties, in the election and nomination process. This dilution of involvement of true vocational interests is then supplemented by the appointment of 11 members by the Taoiseach, who are always used to ensure the government has a majority in the chamber.

To understand the rationale for this strange system of composition, it is necessary to look back to the history of the Irish second chamber, and the circumstances surrounding the agreement of the 1937 constitution.

Ireland has a long history of bicameralism. Before the merger of the British and Irish parliaments in 1800, the Irish parliament comprised a House of Commons and a House of Lords<sup>7</sup>. From 1800 the Irish lords were represented by 28 of their number in the British House of Lords, along with four Protestant Irish bishops. Thus during the transition to an independent Ireland, it was a natural development to include a second chamber in the constitution. The first Irish Senate of 1920 included peers and bishops, along with others including 17 members appointed by the Irish Prime Minister to represent the professions. Under the Irish Free State constitution of 1922 this was replaced by a half elected, half appointed Senate, with the nominated element designed to ensure the representation of the Unionist minority in parliament. This Senate had considerable powers, and was thus able to create considerable problems for the nationalist Fianna Fáil government elected in 1932. After

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<sup>7</sup> Until 1536 the Irish parliament also included a third chamber made up of clerical proctors.

numerous clashes with the Unionist-dominated upper house, President De Valera abolished the Free State Senate in 1936<sup>8</sup>.

In the design of the new constitution in 1937, De Valera was thus reluctant to include an upper house. However, the new constitution was to be subject to a plebiscite, so it was important to build a pluralist constitution which would win maximum support amongst all communities. At the time, the corporatist model of democracy was fashionable, with vocationally-organised parliamentary chambers in Portugal and fascist Italy<sup>9</sup>. Also influential in the Irish case was a papal encyclical issued in 1931, extolling the virtues of vocational representation as an alternative to class-based representation. This pressure from the church, coupled with the legacy of the 1920 Senate, meant that vocational representation was a natural way in which to proceed.

However, experience had taught De Valera of the dangers of a powerful Senate with a hostile majority. The final design thus included key elements to make the Senate more controllable: reduced powers, a predictable electorate<sup>10</sup> and sufficient members appointed by the Taoiseach to ensure a government majority. The addition of the university Senators – who have emerged to be the only independent element of the Seanad – was a legacy of the seats which Trinity College had held (alongside Oxford and Cambridge universities) in the British House of Commons, and which had transferred to the Dáil under the 1922 constitution.

From the very start the vocational panel elections were monopolised by the parties, and this is a feature which has continued until the present day. The following quote could just as well describe the 1997 elections as those of almost 60 years before:

*One thing appears to emerge from yesterday's proceedings - namely, that the idea of electing a Senate on a vocational basis has proved futile ... The complete defeat of nearly every representative of the learned bodies, and of those who purported to represent interests other than those which are frankly political, was a marked feature of the results (Irish Times, 30 March 1938).*

To bring this point up to date, in 1997 only five of the 118 candidates for the panel elections had no clear political affiliation. The Royal Irish Academy nominated its president, who polled only three first preference votes out of a possible 992. Two other independent candidates on the culture and education panel, nominated by the Irish Countrywomen's Association and the Royal Irish Academy of Music, won four and eight votes respectively. Experience has thus taught organisations that if they want their candidate to have a chance of winning they should nominate someone who will attract votes from one of the main parties. Of the remaining 113 candidates in 1997, three were from the Labour Party and the rest represented Fianna Fáil or Fianna Gael. All Irish commentators tend to agree that "the various vocational panels contribute merely to an arcane nomination process that is vocational in

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<sup>8</sup> The Seanad Abolition Bill was passed by the Dáil and rejected by the Seanad. However, the Seanad only had the power to delay for 20 months and the Bill eventually passed into law without its consent.

<sup>9</sup> Where Mussolini had replaced the democratically elected lower house with a 'Chamber of Fascists and Corporations'.

<sup>10</sup> Initially the electorate comprised only members of the Dáil and seven representatives of each local authority – around 350 members in total. The franchise was widened to include outgoing Senators and all councillors in 1947.

name only”<sup>11</sup> and that “the chances of being elected on purely vocational grounds are virtually nil”.<sup>12</sup>

Although no party label is allowed on the ballot paper, candidates’ political backgrounds are always made clear. Many candidates are well known political figures, who have often been members of the Dáil or Seanad previously. In any case the parties circulate their councillors and parliamentarians with lists of their candidates before the ballot. Of the 992 voters in 1997, 794 had been elected as representatives of one of the three main parties and many others represented smaller parties. The ballot takes place by post using the Single Transferable Vote system of proportional representation. In practice each candidate need only canvass voters from their own party, and the main competitive element is amongst members of the same party for these votes.<sup>13</sup> In terms of political mix, the outcome of the Seanad elections are almost entirely predictable. In fact it has been noted that simply appointing members to the Seanad in proportion to the parties’ representation in the electoral college would have made the difference in only one Seanad seat in 1987, 1989 and 1993.<sup>14</sup>

Any independent element amongst members of the Seanad must thus come from the six university Senators or the 11 appointed by the Taoiseach. Although the latter offers possibilities for an injection of independence, this opportunity is rarely used. In 1997, all but one of the appointees were from a party of the governing coalition, mostly being members of the Seanad or the Dáil who had lost their seats in the elections.<sup>15</sup>

The university Senators, however, do bring a note of real independence. This is a tradition which the electorate, the graduates of the relevant universities, appear to nurture carefully. Even where candidates with strong party affiliations have stood in these seats they have tended to receive comparatively few votes. Those elected do not necessarily represent the world of education, and indeed need not have any connection with the university which elects them. However, the university seats “arguably come closest to fulfilling the original ideal of the Senate as a forum for experts who are largely independent of the political parties”.<sup>16</sup>

## The Seanad in practice

The Irish Seanad is a weak second chamber within a relatively weak parliament. Its powers were weakened under the new constitution of 1937. It has only 90 days to consider any legislation that comes from the Dáil, which in turn may overturn any amendments after a further 180 days. The Seanad has no powers over financial legislation, and no power to appoint or dismiss the government. Although ministers may be appointed from the Seanad, this has only happened twice – the last time being in 1981. The government is represented in

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<sup>11</sup> Laver, M. (1996). ‘Notes on a new Irish Senate’, in *Report of the Constitution Review Group*. Dublin: Government of Ireland, p. 533.

<sup>12</sup> Casey, J. (1992). *Constitutional Law in Ireland*. London: Sweet and Maxwell, p.100.

<sup>13</sup> Candidates will generally make the effort to meet all their party’s electors personally.

<sup>14</sup> Doherty, B. (1996). ‘Seanad Éireann’, in *Constitution Review Group Report 4: The National Parliament*. Dublin: Government of Ireland.

<sup>15</sup> The remaining appointee was a genuine independent – Dr Maurice Hayes, a former Northern Ireland Ombudsman.

<sup>16</sup> Doherty, B. (1996). ‘Seanad Éireann’, in *Constitution Review Group Report 4: The National Parliament*. Dublin: Government of Ireland, p.19.

the upper house by the ‘government house leader’, who does not have ministerial rank. There is no facility to ask parliamentary questions of the government in the Seanad.

The almost permanent government majority in the house exacerbates the Seanad’s weak constitutional position. The current Seanad is typical, comprising 34 members of the government coalition, 19 members of the opposition parties and seven independents (the six university Senators and one appointed member). The formal power to override the decision of the upper house is thus rarely needed, because the Seanad will not pass amendments to legislation unless these are accepted by the government. Although there is no ministerial representation within the chamber, a minister will attend for discussion of all legislation and indicate which amendments are acceptable.

For only one short period was the party majority in the Seanad opposed to that in the Dáil. This happened following the change of government without an election in 1994, which left the new Fianna Gael coalition with the legacy of the previous Taoiseach’s nominees, whose allegiance was to the outgoing government. The Irish Times noted that “as a result, the Independent Senators had their finest hour, holding the balance of power and wielding an authority they never expected.”<sup>17</sup> The government were forced to compromise on many pieces of legislation, most notably a Universities Bill, which the university Senators – and Joe O’Toole, General Secretary of the teachers’ union, in particular – took a keen interest in amending. This was a period which all sides seem to freely acknowledge saw the Seanad finally coming into its own, providing a genuine check on the government and making a positive contribution to legislation.

The independent university Senators are one of the unique elements of the Seanad. These seats provide an opportunity for individuals who might not otherwise be elected to parliament to influence policy making. They often have a high profile. President Mary Robinson began her national political career as a university Senator, and her seat has now been taken by her ex- campaign manager Mary Henry, who is a practising medical doctor. The highest profile member of the Seanad is David Norris, who uses his position to campaign for gay rights and other issues including the position of East Timor. In the 1997 elections he topped the poll to be re-elected to his seat representing Trinity College.

In general the quality of debate and individual contributions in the Seanad is felt to be high. There are various reasons for this, many of which are common to second chambers in general. Firstly the Seanad is small. With only 60 members compared to the 166 in the Dáil, it has an intimate and informal atmosphere. Second, it is relatively out of the public eye. Political posturing and controversies tend to be restricted to the Dáil, allowing the Seanad to get on with the unglamorous but important work of amending legislation in detail, employing a more consensual method of working. Thirdly, the average age in the Seanad tends to be higher, as there is a tradition of entering the upper house after a career in the Dáil.<sup>18</sup> This brings many experienced politicians into the house. However, this tradition is changing as the Seanad increasingly becomes a launch pad for people on their way into the Dáil, as well as a resting place for those on their way out. In 1997, 23 of those elected or appointed to the Seanad had been candidates in the Dáil elections, including eight MPs who had lost their seats. An additional seven had been members of the Dáil previously. This ping-pong between the two

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<sup>17</sup> 22 July 1997.

<sup>18</sup> Currently, for example, 44% of Senators are aged over 55 compared to 24% in the Dáil.



chambers rather compromises the Seanad's distinctive character, although there is a stable proportion of around half of Senators who stay on after each election.

The extent to which the Seanad acts as a vocational chamber, given the system described above, is inevitably limited. Although 43 of the Senators are elected on vocational panels, fewer than half of them have relied upon nomination by outside bodies.<sup>19</sup> Those nominated by members of parliament rarely feel any debt to the vocational group that they formally represent. Those potentially reliant on an outside body for their re-nomination at the next election will take a keener interest in promoting the interests of that organisation; however, this will not extend to protecting broader interests of other organisations represented by their vocational panel. And whilst members may raise issues in parliamentary speeches of interest to their organisation, and may even lobby government on their behalf, at the end of the day when votes are cast their first loyalty will be to their party whip. Consequently the vocational bodies, although nominally represented in the Seanad, tend to use other more direct methods to influence government.

## **Calls for reform**

The weakness of the Seanad, and its failure ever to live up to its constitutional role as a representation of vocational groups, has led to many criticisms and indeed to questioning of its very existence. During the 1997 election the Irish Times ran a piece entitled "There is no point in the Seanad" and opening "Hundreds of candidates are engaged in another frenetic election campaign, this time for a redundant institution". It remarked that "if there is to be no fundamental change in the Seanad's role and composition there is no reason to retain it".<sup>20</sup>

There have been some attempts at reform during the 60-year life of the Seanad. In 1959 a commission was established to review its membership, after a debate in the Dáil where there were calls for its abolition.<sup>21</sup> Some members of the commission proposed that the panel elections become wholly vocational, but the final report reached a compromise that half the members should be directly elected by vocational groups (rather than just nominated by them) and the other half elected by members of parliament. However, the recommendations were not agreed in parliament and were never acted upon. A further committee established in 1967 to review the entire constitution made less ambitious proposals that the number of seats nominated by vocational bodies be increased. However, these too failed to lead to any action.

A number of minor reforms of Seanad electoral rules have taken place during its life. In 1947 the election of panel seats was modified to the current system, widening the electorate to include all local councillors and members of the Oireachtas.<sup>22</sup> In 1979 a constitutional amendment was introduced, to allow a widening of university representation to include

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<sup>19</sup> Electoral rules specify that approximately half of those elected must come from the 'Oireachtas subpanel' (ie. those nominated by members of parliament) and half from the 'nominating bodies subpanel'. However, the former inevitably do better in the elections, partly because they tend to be better known politicians, and partly because Oireachtas members are more strategic in their nomination tactics and put forward fewer names.

<sup>20</sup> 2 July 1997.

<sup>21</sup> The main proponent of this reform, Dr Noel Browne, later went on to take a seat in the Seanad after losing his seat in the Dáil.

<sup>22</sup> Prior to this the electoral college comprised only members of the Dáil and seven representatives of each local council.

Senators elected by other universities than Trinity and NUI.<sup>23</sup> However, this has never been brought into use.

More recent bodies appointed to consider reform have tended to focus on other issues. The Constitution Review Group established in 1995 to review the whole constitution, and comprising legal and academic members, gave considerable space in their report to reform of the Seanad. However, they concluded that “the Review Group recommends a separate, comprehensive, independent examination of all issue relating to Seanad Éireann.... If such a review does not resolve the issue of representation and other substantive issues in a satisfactory manner, serious consideration will need to be given to the abolition of the Seanad”.<sup>24</sup>

This challenge was taken up by the All-Party Oireachtas Committee on the Constitution, which was established in 1997. Again with a wide brief, this committee has so far produced three major reports, one of which was devoted to the possibilities for reform of the Seanad. A detailed paper by academics John Coakley and Michael Laver outlined the various reforms possible for the institution, both within the existing constitution and involving constitutional change.<sup>25</sup> These included strengthening or extending the powers of the Seanad, various forms of direct or indirect election of senators, reforming the systems of university seats and Taoiseach’s nominees, and outright abolition of the Seanad. The committee devised a new model for Seanad membership, which would continue to comprise 60 Senators, but would instead include directly elected Senators, Senators elected by the Dáil, a separate group elected by local councillors, plus the retention of six seats elected by universities and 11 appointed by the Taoiseach. Aside from university seats, the committee’s proposals would have ended the notion of vocational representation altogether.

A theme running through the proposals for Seanad reform has been the fear that a truly vocational election would lead to the ‘politicisation’ of the nominating bodies. This was raised when the constitution was drafted in 1937 and again at the times of the 1959 and 1967 commissions. It was the reason given by the 1967 commission for rejecting direct vocational elections, and a similar sentiment was expressed in the report of the All-Party Committee in 1997. However, one has to wonder whether this is a conclusion which might have more to do with protecting the interests of the political parties, than with the purported protection of the independent nominating bodies.

Despite the numerous proposals for reform, changes to the Seanad currently appear unlikely. The current review of the constitution was an initiative of the Fianna Gael coalition in 1994, and the report on the Seanad was produced under their chairmanship of the All-Party Committee. No commitment has been made by the Fianna Fáil coalition to implement its conclusions. And although the Seanad is widely criticised, reform is not high up the public agenda – since it rarely blocks the government and has a generally low profile. Those who are

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<sup>23</sup> Ironically much of the debate on Seanad reform has been over the ‘elitist’ nature of the university seats, which exclude from their electorate graduates of other Irish universities, as well as the population at large. However, the electorate for these six seats represents 4% of the population, compared to 0.04% who elect the 43 panel seats.

<sup>24</sup> Government of Ireland (1996). *Report of the Constitution Review Group*. Dublin: Government of Ireland, p. 71.

<sup>25</sup> Reform of the Irish constitution is relatively difficult – proposals must be agreed by both houses of parliament and then pass a referendum.

interested in Seanad reform are largely the Senators themselves, who of course have a vested interest in maintaining the institution with its current membership. From the parties' point of view there is nothing to be gained from either a more powerful Seanad or one which gives more seats to independents. And the current composition of the Seanad also provides the parties with a useful repository for "young politicians on the way up, old politicians on the way down or midlevel politicians whose careers have received a temporary setback".<sup>26</sup>

## Lessons for the UK

It would be helpful to be able to use the Irish Seanad, as the only vocationally-based national parliamentary chamber in the world, as a model for independent representation in the reformed British parliament. However, unfortunately, the representation in the Irish second chamber is neither truly vocational nor truly independent. Nevertheless, there are lessons which can be learnt, both from the relative failure of the vocational panel seats and from the relative success of the university seats.

In devising a method of vocational representation in a reformed House of Lords it is highly unlikely that an electorate comprising local councillors and parliamentarians would even be considered. It would be easily foreseen – as indeed it may have been by De Valera in 1937 – that this would ensure the domination of the elections by political parties. This in fact holds a wider lesson for British reform based on possible indirect elections – that of the danger of party loyalty being placed above any other representative duty which members may have been chosen to carry out (eg. to their region, to the Scottish Parliament or Welsh Assembly, or to local government).

The university seats, on the other hand, provide an interesting case study of how a tradition of independence can grow up in an election that might well also have been dominated by the parties. With an electorate of many tens of thousands, who will doubtless largely have their own party loyalties, this is an election which might be expected also to be fought out amongst politically-aligned candidates. However, the electorate has tended to reject such candidates. On the part of the electorate this may be largely because of the proven performance of the independent university Senators, who have become the unique feature of the upper house in comparison to the Dáil. However, on the part of the parties the failure to break into this election may well be influenced by the fact that they control the other 90% of seats and the remainder are rarely needed to hold the balance of power.

The possibility of a genuinely vocational representation in the upper chamber, through either election or appointment by the nominating bodies themselves, has never been tested in Ireland. The result of such a system is therefore unpredictable. One of the interesting features of the Irish system is the relative ease with which the nominating bodies are persuaded to put forward party candidates for election. Only a handful of bodies stick to the principle of nominating, for example, their president – to face humiliation at the polls every time. Even on the Labour panel, which has four seats reserved for nominating bodies and only two such bodies accredited, there appears to be no attempt by the bodies to act collectively to ensure that party candidates are excluded from the race. Neither have the bodies formed any kind of campaign for Seanad reform to 'reclaim' their seats. It seems that party domination of the

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<sup>26</sup> Dinan, D. (1986). 'Constitution and parliament', in B. Girvin and R. Sturm (eds.), *Politics and Society in Contemporary Ireland*. Aldershot: Gower, p. 84.

‘vocational’ seats is now as much a feature of tradition as the election of independent university Senators.

It is this which leads to the fear in Ireland that creation of a genuinely vocational chamber might simply act to entrench the parties’ control over independent organisations. This might well prove to be true in the Irish context. However, it is hard to imagine that such fiercely independent bodies as the British Medical Association, National Trust or Greenpeace would allow themselves to become battlegrounds for party political elections in the UK. So perhaps a vocational chamber would be more achievable here?

There would of course be many other problems. Not least of these would be the difficulty of agreeing categories, numbers of seats and organisations to involve. For example, should trade unions have more or fewer seats than employers? How should health be balanced against education and, within health, doctors be balanced against nurses or patients’ groups? These are further reasons that few proposals have been advanced in Ireland to achieve a new and genuine vocational mix. For example, Michael Laver, in his appendix to the report of the Constitution Review Group states for just these reasons that “it would now be extremely contentious to attempt, in cold blood, to introduce an effective system of vocational representation”.<sup>27</sup>

If allocation of categories and seats were to be agreed, there would remain the issue of how the candidates themselves would be selected. Would they be appointed or elected by the groups concerned, and to what extent should the methods used by groups to do this be standardised or regulated? And either of these solutions would still not involve the majority of the public in their selection. Coakley and Laver, in their paper to the Irish All-Party Committee, floated the idea of direct vocational elections by universal suffrage, which if possible would avoid this problem. However the idea is not developed in any detail and was not proposed as a solution by the committee.<sup>28</sup>

One of the difficulties with the current Irish system is that the ‘vocational’ element of the upper house represents a high proportion of total seats – 43 out of 60 (or 49 if the university Senators are included). This means that for the parties the stakes are high, and the monopolisation of the elections becomes a worthwhile challenge. If such seats were to represent a fraction of those in a British upper house, as would be more likely, this would not be so much the case. The controversy surrounding the choice of categories and bodies involved might also be slightly moderated. The example of the Irish university Senators suggests that it is possible to retain independence amongst a small set of elected seats where the others are controlled by the parties. It also shows that independent members of the upper house can make a genuine and worthwhile contribution, and that this is respected by parliamentarians, commentators and the public alike.

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<sup>27</sup> Laver, M. (1996). ‘Notes on a new Irish Senate’, in *Report of the Constitution Review Group*. Dublin: Government of Ireland, p. 533.

<sup>28</sup> The precise suggestion was that each voter could opt to register to vote for one and only one vocational panel, with the number of Senators elected from each panel being in proportion to the number of registered electors.

## **The Constitution Unit and the House of Lords**

This research was carried out as part of a comparative project on second chambers overseas, based at the Constitution Unit and funded by the Leverhulme Trust. The aim of the project is to inform the debate about reform of the House of Lords in the UK. This is the second briefing in the series coming from this project and during the coming months further briefings will be produced, drawing on information about the second chambers in Australia, France, Germany, Italy and Spain. The final output from the project will be a book, to be published in November 1999.

The Constitution Unit has already produced a report and four briefings on reform of the House of Lords:

- Reform of the House of Lords (report) - £15
- Reform of the House of Lords (briefing) - £5
- Reforming the Lords: A step by step guide - £5
- Rebalancing the Lords: The numbers - £5
- An Appointed Upper House: Lessons from Canada - £5

To order any of these documents, request a publication list, or be put on the Constitution Unit mailing list for publications and events, please contact the Unit using the details given on the cover of this document.