



Conor Mulvagh <conor.mulvagh@ucd.ie>

12/01/2015 12:25

To: seanadreformwg@taoiseach.gov.ie

cc

Subject: Seanad Reform Working Group

This message has been replied to.

2 attachments



1379077879ConorMulvagh\_WP101.pdf 1379309630ElaineByrne\_WP11.pdf

Dear Dr Manning,

I understand that the working group on Seanad reform is accepting submissions in advance of compiling its report this March.

Prior to the Seanad Referendum, HistoryHub.ie, UCD's public history website, published two policy papers on the subject, one written by myself and the other by Dr Elaine Byrne (UNSW). I hereby submit them for your consideration.

[postscript: I now note that Dr Byrne is a member of the working group but I will leave her paper here for the sake of completeness.]

My own paper outlines several proposals for the establishment of a new Seanad elected on a new franchise. The mainstay of my proposal for a different composition of a new Seanad is based on a provincial franchise (25/60 seats to go to representatives of the four provinces). This incorporates elements of the structural intentions of the United States' Senate but also finds precedent in the Senate outlined in the Government of Ireland Act (1914). Additional to this are proposals for the inclusion of marginalised groups in Irish society (ethnic and linguistic minorities), a modernised university representation, as well as a diaspora vote. I have also provided rudimentary costings which propose some ways in which structurally cost-neutral reform could be achieved.

My proposal can be summed up by the following table. All panels, their composition, franchise, mode of election, and historical justification are documented in full in the attached paper.

Table 3: present and proposed composition of Seanad Éireann

Current (1937) Seanad		Proposed Seanad	
Panels	43	Regional (Provinces)	25
Taoiseach	11	Taoiseach's nominees	5
University	6	University	15
		Minorities	10
		Diaspora	5
<b>TOTAL</b>	<b>60</b>	<b>TOTAL</b>	<b>60</b>

Dr Byrne's paper gives historical account of the Seanad Electoral (Panel Members) Act, 1947 which may be of benefit although I am sure your committee is already familiar with the reports to which she refers.

I attach PDFs of the two papers below.

With my sincere best wishes for the work ahead of you.

--

Dr Conor Mulvagh  
Lecturer in Irish History  
(Decade of Commemorations, 2013-2023)  
School of History and Archives  
University College Dublin



# Other voices: historical precedents and modern propositions for Ireland's upper house

---

*Conor Mulvagh\**

Working Papers in History and Policy  
No. 10, 2013

School of History and Archives  
University College Dublin

\* Dr Conor Mulvagh is editorial assistant on the Royal Irish Academy's *Documents on Irish Foreign Policy* series and lectures part time in history and Irish studies at University College Dublin.  
Email: [conor.mulvagh@ucd.ie](mailto:conor.mulvagh@ucd.ie)

Abstract:

*This paper explores the international and historical justifications for the existence of upper houses, arguing that the function of the Irish upper chamber should remain representative and advisory rather than federal or for safeguarding purposes as in other legislative systems. By altering the composition of the Seanad, it will be argued that the outlook, work, and value of Ireland's upper house can be transformed significantly.*

*As the referendum on the abolition of Seanad Éireann looms, Irish voters have been faced with a stark choice: keep the present Seanad or abolish it altogether. However, there is a third way. Political reform can be difficult to carry out. However, this working paper outlines in plain terms a vision for a new Seanad and, furthermore, it outlines ways in which simple cost savings can be made that will make reform cost neutral at the very least.*

*The present Seanad lacks vocational voices despite its overtly vocational structure. Furthermore, it displays a lack of trust in the choice of the people. 90 percent of senators are not directly elected and the stereotype that the Seanad is a crèche for young and aspirant politicians and a retirement home for failed TDs is more accurate than it should be. By bringing in important but heretofore unrepresented voices, the Seanad could become a model for second chambers in countries wishing to address problems associated with emigration and immigration; a core-periphery divide; or inter-community tensions.*

*The paper is broken up into three parts. Firstly, bicameralism in Ireland will be considered in a historical context and the nature precedents for reform will be considered. Part 2 will outline in full proposals for a new Seanad in which 92 percent of senators would be elected directly by Irish people at home and abroad. Finally, consideration will be given to the expected cost of Seanad reform. Savings in the present model of election to and representation in the Oireachtas will be proposed. These savings outweigh expected costs of reform, thus making the model for a new Seanad outlined here cost neutral at the very least. In total, annualised net savings of over €5 million have been identified.*

## CONTENTS

Part 1 Precedents and past policies: bicameralism in historical perspective

Part 2 Proposals for the composition of a reformed Seanad

Part 3 Financial considerations: towards cost neutral reform

Conclusion

## PART 1: PRECEDENTS AND PAST POLICIES BICAMERALISM IN HISTORICAL PERSPECTIVE

### Introduction

If the present debate on Seanad reform is to be meaningful, policy must be informed by historical perspective. The Taoiseach's proposal to abolish the Seanad adds yet another chapter to the history of Irish political reform. Seven times during the past 127 years,<sup>1</sup> a seismic shift to the foundations of Irish law making has been proposed. Only two of these proposals have enjoyed full enactment: namely, the constitutional settlements of 1922 and 1937.<sup>2</sup> Meanwhile, attempts at reform of the government of Ireland prior to independence consist of four Home Rule bills – one rejected in the Commons; one in the Lords; one never brought into operation; and one which only succeeded in Northern Ireland. Finally, an Irish Council Bill (1907) was rejected out of hand by a national convention of the Home Rule movement at a point where nationalists refused to countenance Home Rule in 'half-measures'.<sup>3</sup> Since the inauguration of the present constitution, the 1937 equilibrium has not fundamentally been altered despite numerous amendments, and the present mechanisms for passing laws have endured for over three quarters of a century. Interestingly, Ireland has been senate-less only once in the 91 years since independence. In May 1936, de Valera abolished the Free State Senate, nineteen months before the 1937 Constitution came into operation, inaugurating a new upper house. The new Seanad sat for the first time on 27 April 1938.<sup>4</sup>

<sup>1</sup> The first serious proposal to reform Irish government in modern times was Gladstone's first Home Rule Bill, introduced on 8 April 1886. See *Hansard* 4, cciv, col. 1036 et seq.

<sup>2</sup> First through fourth Home Rule Bills (1886, 1893, 1912-14, and 1920), Irish Council Bill (1907), Constitution of the Irish Free State 1922, abolition of the Free State Senate (1936) and Bunreacht na hÉireann (1937)

<sup>3</sup> On the rejection of the Irish Council Bill by the United Irish League national convention in 1907, see Denis Gwynn, *The Life of John Redmond* (London, 1932), p. 148.

<sup>4</sup> The (Constitution Amendment No. 24) Bill which abolished the Free State Senate was signed into law on 29 May 1936. Bunreacht na hÉireann came into operation on 29 December 1937. On the abolition of the

### Identifying the problem

One of the arguments proposed by abolitionists in the present debate is that Seanad Éireann has no clear role or effect other than to waste tax-payers' money.<sup>5</sup> What commentators from the reform side have pointed out time and again is that focus on the excesses and questionable utility of the present Seanad is a sideshow aimed at distracting the public from the poor record of this and previous governments in effecting the much more difficult task of Dáil reform.

It is true that it can be difficult to justify the work of the Seanad. Its highest value can arguably be found in what the lower house has not done rather than in what it itself has achieved. The rushing through of bailout legislation in 2010 – admittedly with embarrassingly low levels of Senatorial oversight – and the stark unwillingness to debate important legislation in the present incarnation of Dáil Éireann should be serious causes for concern to any Irish voter being asked to increase further the powers and hegemony of Dáil Éireann. One of the most troubling episodes in this recent trend was the rushing through of legislation for the liquidation of Anglo-Irish Bank in February 2013. In this instance, conventions traditionally reserved for emergency powers legislation in time of war or grave crisis were resorted to in a move that seriously undermined the credibility of Irish democracy.

Every modern democracy must justify its need for a second chamber. In France, the Sénat provides increased representation to peripheral regions and to the French diaspora. In Germany, the Bundesrat (Federal Council) balances out the individual interests of the sixteen states that constitute the German federation. Similarly, in America, the Senate is a safeguard for federalism, balancing the voices of component

---

Free State Senate, see Donal O'Sullivan, *The Irish Free State and its Senate: a study in contemporary politics* (London, 1940), p. 469. The bill had been initiated in 1934 but had been delayed by two years by the Seanad under its powers in the 1922 Constitution. See Art. 38 of 1922 Constitution, in Leo Kohn, *The Constitution of the Irish Free State* (London, 1932), p. 401.

<sup>5</sup> See for instance the comments made by the Taoiseach upon the introduction of the 32<sup>nd</sup> Amendment to the Constitution Bill (<http://bit.ly/166qS6C>; accessed 11 Aug. 2013) and those of Deputy Thomas P. Broughan during the second stage of debate on the same (<http://bit.ly/17Hr2g8>; accessed 11 August 2011).

states within the union regardless of population size.<sup>6</sup> The state of Wyoming, for instance, with a population roughly the same as greater Belfast, sends its two senators to Washington the same as do California and Texas, the most populous of the United States. A country like Ireland can surely appreciate the importance of these mechanisms for small populations, diasporas, and island minorities within multi-ethnic and sprawling continental political systems.

Despite these important comparators, Ireland has been blinkered by its proximity to Britain into seeing the upper house of its nearest neighbour as the only possible template for such an institution, despite the fact that many of the innovations of Bunreacht na hÉireann draw from American, rather than British, political precedents. In Britain, the rationale for an upper house is one part historical and one part genealogical. The House of Lords is a place where the aristocracy can participate – or, more correctly, since 1911, commentate – on United Kingdom legislation. Thankfully, Ireland no longer has any great aristocracy in need of a chamber and a woosack.<sup>7</sup> For better or for worse, the virtual extinction of Ireland's indigenous and planted aristocracy in the early seventeenth and late nineteenth centuries respectively has left Ireland with an atypical class structure when compared to most other western European states. As such, the aristocratic justification for a 'Lords-style' upper chamber is null and void in the case of modern Ireland. However, there are other compelling reasons for having an upper house in our small republic.

### Historical precedents for an Irish upper house – the Home Rule Bills

When structural reform to the Irish constitution was first contemplated by Gladstone, Ireland became the guinea pig for a new model of government. In 1891, the Liberal party's 'Newcastle programme' drew a blueprint for policies on everything from the

<sup>6</sup> Although the US Senate has sometimes been seen as an opponent of progress – especially in relation to the blocking of more than 200 anti-lynching bills in the first half of the twentieth century – its founding principles and intrinsic attributes remain solid. On anti-lynching legislation and the US Senate, see Gregory Koger, 'Cloture Reform and Party Government in the Senate, 1918-1925', in *Journal of Politics*, lxxviii, no. 3 (Aug., 2006), pp. 708-719. For a contemporary defence of the US Senate at the time of its conception, see [Alexander Hamilton/James Madison?], 'Federalist nos 62 & 63', in *The Federalist Papers* ([Library of Congress](http://Library of Congress); accessed 27 Aug. 2013).

<sup>7</sup> It should be noted that the positive attributes of the British House of Lords model have been somewhat understated here. For a strong and well-reasoned defence of Britain's upper house as a chamber well suited to processing and scrutinising complex legislation, see Tom Garvin, *The Irish Senate* (Dublin, 1969), pp 89-90.

establishment of a proto-welfare state to the inauguration of a non-hereditary upper house.<sup>8</sup> When the Liberals returned to power in 1905 after a decade in opposition, the most recent research shows that it was Gladstone's Newcastle blueprint that quietly piloted their programme for government. One element of the Newcastle programme was House of Lords reform. In 1909, the most controversial budget in British history provoked the House of Lords into embarking on the path of their own demise.<sup>9</sup> When John Redmond, chairman of the Irish Parliamentary Party, found himself in the Nick Clegg 'king-maker' position in 1910, proposals for a third Irish Home Rule Bill became a topic of serious discussion. The idea of a federal Britain and a radically altered style of British bicameralism were both considered in the course of these deliberations in both press and political circles.<sup>10</sup> By the end of 1911, after the British House of Lords had been effectively castrated by the Parliament Act, the drafting of a new Government of Ireland bill – the third Home Rule Bill – presented a unique opportunity to try out upper house reform on that island which had proved so valuable a testing ground for everything from education to police reform during the nineteenth century. Firstly, the upper house proposed under the third Home Rule Bill was to be called a 'senate', not a 'house of lords' as Ireland had had up to 1800.<sup>11</sup>

The evolution of terminology over the four<sup>12</sup> Home Rule Bills is interesting. In 1886, the first Home Rule Bill proposed a unicameral legislature for Ireland consisting of two 'orders' sitting in unison. By 1893, the second Home Rule Bill outlined plans for an upper 'Legislative Council' of 48 and a lower 'Legislative Assembly' of 103 members. Only in 1912, were the terms 'Senate' and 'House of Commons' used in connection with the proposed legislature of Ireland. Whereas the two 'orders' outlined in 1886 had

<sup>8</sup> See Eugenio Biagini, *British Democracy and Irish Nationalism* (Cambridge, 2007), esp. pp 11-12. On House of Lords reform in the Newcastle programme, see *Irish Times*, 18 Oct. 1891, p. 5.

<sup>9</sup> On British House of Lords reform and the crisis that surrounded it in 1909-11, see Neal Blewett, *The peers, the parties and the people: the general elections of 1910* (London, 1972) and Roy Jenkins, *Mr. Balfour's poodle: an account of the struggle between the House of Lords and the government of Mr Asquith* (London, 1989).

<sup>10</sup> On this, see Michael Wheatley, 'John Redmond and federalism in 1910' in *Irish Historical Studies*, xxxii, no. 127 (May 2001), pp 343-64. As part of these deliberations, Winston Churchill became fixated with the idea of establishing seven self-governing 'home rule' parliaments within England based on the old medieval kingdoms of the 'heptarchy'. See Patricia Jalland, 'United Kingdom Devolution 1910-14: Political Panacea or Tactical Diversion?' *English Historical Review*, xciv, no. 373 (Oct, 1979), p. 766.

<sup>11</sup> On Ireland's old House of Lords, see Francis G. James, *Lords of the ascendancy: the Irish House of Lords and its members, 1600-1800* (Dublin, 1995).

<sup>12</sup> 1886, 1893, 1912, and the sometimes forgotten 1920 Home Rule Bill. This latter bill became the 1920 Government of Ireland Act (10 & 11 Geo. 5 c. 67).



echoes of class, the estates, and social stratification, the terminology of 1893 was intended to assuage unionists by confirming the subordinate nature of Ireland's proposed devolved institutions. The terms 'legislative assembly' and 'legislative council' used in the second Home Rule Bill were both in use in certain of the provinces of Canada at this time whereas 'House of Commons' and 'Senate' were terms reserved for the national legislature of the dominion of Canada. The implication here was that the Irish legislature proposed in 1893 was to be regional rather than national in status.

By 1912, it was acceptable to the British government and a majority of the Imperial House of Commons to confer the far more illustrious titles of 'Senate' and 'House of Commons' on the new legislative institutions proposed for Ireland. In 1920, when a Home Rule Bill proposed the establishment of two distinct parliaments, north and south, although the mode of representation was somewhat different to that which appeared in the 1914 Act, the nomenclature for both houses remained unchanged. This legislation became the Government of Ireland Act (1920) and, although rejected by republicans in the south, the act created the legislative framework under which the government of Northern Ireland operated right up until 1972. Throughout this period, the legislature of Northern Ireland consisted of a House of Commons and a Senate. Going back to the 1920s, when the Anglo-Irish Treaty was being hammered out at Downing Street in the closing months of 1921, Lloyd George had to spell it out to a new generation of Irish politicians that what was on offer was the exact same autonomy as that enjoyed in the *dominion* of Canada, and the parliament of the Irish Free State would have the same legal status as its Canadian counterpart under the agreement.<sup>13</sup> These are the subtleties of terminology which had real currency in the four decades during which the shape and function of modern Irish politics was being moulded. When discussing the future of the Oireachtas, it is important that these lessons of the past are not lost on the citizens of modern Ireland.

In the first draft of the 1912 Home Rule Bill, the Senate was to be nominated, but this was subsequently amended in committee and, once established, the Irish Senate was to be elected by proportional representation on a single transferable vote (PR-STV) by the same electors as elected the Irish House of Commons. However, each of the four

---

<sup>13</sup> The parallel with Canada was explicitly drawn in articles 1, 2, and 3 of the 1921 Anglo-Irish Treaty.

provinces was to be a constituency with each weighted by population size. Under the Government of Ireland Act 1914, Ulster, Leinster, Munster and Connaught would elect 14, 11, 9, and 6 senators respectively.<sup>14</sup> If one is looking for a model on which to reform the franchise of the present Irish Senate, the principle of a provincial franchise could be a good starting point, even if the composition of a 26 county republic is quite different to that of the 32 county island as was on the table in 1912.

### **Seanad reform in independent Ireland**

Moving on to the lessons that can be learned from the study of the upper house in independent Ireland, one thing that is difficult to understand in the present debate is why the Seanad has been singled out in effecting major reform in Irish politics. The financial argument only tells half the story. The precedent of 1936/37 points very clearly to what modern-day policy makers may have in store. Just as de Valera realised that if he was to enact changes to the bedrock of Irish legislation, he would need to get rid of an upper house in which Anglo-Irish members, Protestants, and even unionists would object to, and potentially thwart, his reforms.

If the 1937 Constitution is to be scrapped and replaced by a new '2013 Bunreacht na hÉireann' this can only be done by an unchallenged Dáil enjoying one of the largest governmental majorities in decades. It is not the job of historians to predict the future, but the past tells us that if bicameralism is under-threat, then reforms amounting to the inauguration of a whole new constitution – either in substance or in fact – may very well be contemplated. The argument that the present constitution is old and rendered 'tatty' by multiple amendments will be trotted out, but the fact remains that, through the fundamental and implicit rights enshrined in Bunreacht na hÉireann and those subsequently identified through judicial review, the document of 1937 gives rights and safeguards to the family and the individual that would arguably never be reaffirmed by any of Ireland's present political parties. One must ask: would rights such as bodily integrity or marital privacy<sup>15</sup> be re-enshrined in law if we were now to throw out our present constitution and all it contains? Indeed, one of the greatest attributes of the

<sup>14</sup> Government of Ireland Act (1914) 4 & 5 Geo. 5 c. 90, first schedule.

<sup>15</sup> These 'unenumerated rights' were established through judicial review in the Ryan and McGee cases respectively: *Ryan v. Attorney General* [1965] IR294 and *McGee v Attorney General* [1974] IR284.

document is that it harbours rights which are yet to be 'discovered' through the proactively of citizens and judicial review.

One argument which features in almost all previous literature on Irish bicameralism is that Ireland, as a unitary, non-federal state, does not need two tiers of representation.<sup>16</sup> This is where the case for a new Seanad becomes strongest. In post-celtic tiger, post-bailout Ireland, one thing that is becoming increasingly clear is that divisions between core and periphery and between rich and poor are widening in Ireland. The twenty-six county republic is obviously less politically diverse than the thirty-two county island of a century ago but it is undeniable that regional variation exists almost as much in Ireland today as it did in 1913. Between this regional variation and inward migration, the idea of a relatively homogenous state no longer holds as much water as it did in the second half of the twentieth century. The idea that fair and proportional representation would be given to the provinces of the republic would allow senators to speak authoritatively with a mandate to represent the special economic and social concerns of the republic's four provinces. A voice could be found for the three politically divided Ulster counties as much as it would allow senators to represent the concerns that are common to peripheral communities all along the western coastline as opposed to speaking specifically about the marginalisation of west Mayo, Connemara, or rural Limerick.

### University reform

Moving from the 1912 precedent of regional representation, one of the strongest aspects of the present Seanad has been its ability to provide representation to graduates of Ireland's universities. However, the narrow nature of this franchise has meant that, for decades, an increasing number, now the majority, of students graduating from third-level institutions have not received the same privileges as graduates of the National University of Ireland and the University of Dublin. As well as having the potential to provide a forum in which the distinct concerns of Ireland's provinces can be heard, Seanad reform also offers an opportunity to extend the third-level franchise to students of institutes of technology.<sup>17</sup>

<sup>16</sup> This is most explicitly stated in John McG Smyth, *The theory and practice of the Irish Senate* (Dublin, 1972), pp 1-7. See also, Garvin, *The Irish Senate*, p. 88 *et seq.*

<sup>17</sup> Interestingly, this was part of Enda Kenny's original vision for a reformed Seanad when he spoke to the MacGill Summer School in 2009. Kenny explained, 'I see a new role for the Seanad entirely. The system of

### Looking beyond the horizon: international comparisons

When a decision needs some retrospective justification in Irish politics, there is a tendency to resort to a seemingly exotic and under-researched precedent from one Scandinavian country or other. In the present case, Finland, Denmark, and Sweden's unicameral statuses are seen as ample justification for Ireland's proposed Dáil-dominated future. It might be equally meaningless to state that Russia, Serbia, Turkey, and Kazakhstan also have single-chambered legislatures.<sup>18</sup> Among EU member-states, the split is roughly even. 15 countries are unicameral while 13 are bicameral. However, this statistic occludes two unappreciated facts about bicameralism in Europe.

The first fact that this raw 15:13 split masks is that the prevalence of unicameralism in the EU is due only to the mass entry of former eastern-bloc countries since 2004.<sup>19</sup> As table and figure 1 below show, over 70% (13/18) of pre-2004 member states are bicameral. Meanwhile, just short of 70% of the thirteen new accession states have single chamber legislatures. However, an East-West divide does not get to the heart of explaining patterns of bi- and uni-cameral national legislatures across Europe: arguably the strongest correlation between bicameralism and any other factor is population size.

Finally, in surveying unicameralism in Europe, its dominance in Scandinavian countries has a historical explanation. In Finland and Sweden, unicameralism stems from a desire by former governments to streamline a legislative process stretching across not two, but four chambers in a 'tetracameral' arrangement up to late nineteenth century. Under the rule of Tsarist Russia, Finland's tetracameral Diet was rationalised following the 1905 Russian revolution and the unicameral Eduskunta first sat in 1906.<sup>20</sup>

---

voting has got to be changed. Every graduate should be entitled to vote for the Seanad': quoted in Vincent Browne, 'Cynical Seanad abolition stunt must not be rewarded', *Irish Times*, 17 July 2013 (<http://bit.ly/14IT1jw>; accessed 11 Aug. 2013).

<sup>18</sup> International comparisons between unicameral and bicameral systems are discussed in greater detail in Smyth, *Theory and practice*, pp 1-7.

<sup>19</sup> This paper has been amended from an earlier version to reflect the fact that Croatia, with its unicameral legislature, the Sabor, became the newest full member of the European Union on 2 July 2013.

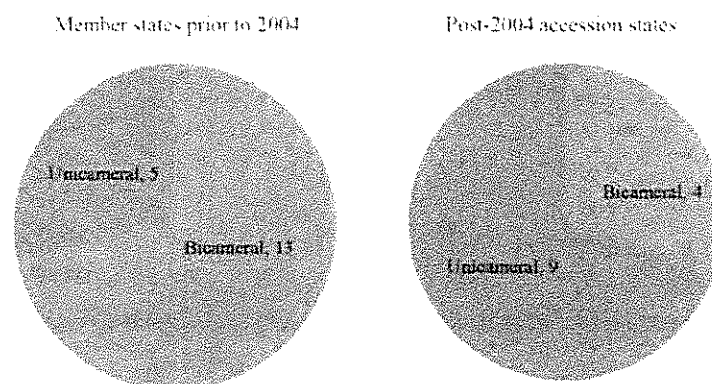
<sup>20</sup> See Matti Klinge, *A brief history of Finland* (3<sup>rd</sup> ed., Helsinki, 2000), pp 104-107.

**Table 1: Bicameral and unicameral EU member states\***

Bicameral member states		Unicameral member states	
Country	Date of accession	Country	Date of accession
Belgium	Founder member	Luxembourg	Founder member
France	Founder member	Denmark	1973
Germany	Founder member	Greece	1981
Italy	Founder member	Portugal	1986
The Netherlands	Founder member	Finland	1995
Ireland	1973	Sweden	1995
United Kingdom	1973	<b>Cyprus</b>	<b>2004</b>
Spain	1986	<b>Estonia</b>	<b>2004</b>
Austria	1995	<b>Hungary</b>	<b>2004</b>
<b>Czech Republic</b>	<b>2004</b>	<b>Latvia</b>	<b>2004</b>
<b>Poland</b>	<b>2004</b>	<b>Lithuania</b>	<b>2004</b>
<b>Slovenia</b>	<b>2004</b>	<b>Malta</b>	<b>2004</b>
<b>Romania</b>	<b>2007</b>	<b>Slovakia</b>	<b>2004</b>
		<b>Bulgaria</b>	<b>2007</b>
		<b>Croatia</b>	<b>2013</b>

\* EU member states divided by type of legislative system and arranged chronologically (post-2004 accession states are highlighted in bold text throughout)

### Comparing pre- and post-2004 EU member states by type of legislature

**Figure 1: pre- and post-2004 EU member states compared**

Ten out of twelve countries with eight-figure populations are bicameral whereas twelve out of fifteen countries with less than ten million inhabitants are unicameral. To get a sense of where Ireland sits in comparison to its neighbours, table 4 outlines how different sized EU member states divide by legislative system. Ireland has the second lowest population size of any bicameral member state; Slovenia, with roughly two million citizens, is the lowest. Incidentally, when legislative powers were devolved from Westminster to the Scottish, Welsh and Northern Irish assemblies, bicameralism was considered unnecessary for such small populations. If this is the case, bicameralism is a privilege, a positive addition to any legislative system and one usually justified by economies of scale.<sup>21</sup> However, what this paper argues is that Ireland both needs and deserves a second chamber. Ireland is not a mere statelet nor does it share with Scandinavian or eastern European states a historical justification for unicameralism.<sup>22</sup> Ireland is a fully fledged Wilsonian democracy and the stability and bicameralism it has inherited from the Westminster model, though seldom lauded, are highly positive attributes of its political system. It would be a huge disservice if, for the sake of €10 to €20 million per annum,<sup>23</sup> Seanad Éireann were to become the latest victim of imposed austerity.

The second fact that must be appreciated is that Ireland currently stands alone among the formally bailed-out and economically quarantined zones of Europe in having a bicameral legislature. Portugal, Greece, and Cyprus – all countries formerly under autocratic government – maintain systems of one-chamber rule. If Spain and Italy, as countries clinging to their economic sovereignty by a fingernail, are encouraged to follow the Irish lead and streamline their legislatures in a cost-saving exercise, then yet

<sup>21</sup> Interestingly, Smyth notes that most African states that came into existence in the post-war era ended up choosing unicameralism based purely on financial considerations. Although hardly the only factor at play, it cannot be said that single-chamber government has contributed to the stability of modern Africa. Smyth, *Theory and practice*, p. 2.

<sup>22</sup> Unicameralism in the east can be accounted for as a vestige of Iron Curtain era politics. The historical rationalisation of multi-chamber systems into unicameral legislatures in Scandinavia has been accounted for above.

<sup>23</sup> Senator Katherine Zapone estimated that the Seanad costs €10m per annum to run in an interview to RTE on 26 Sept. 2012 (<http://bit.ly/11oKSL2>; accessed 15 June 2013). Meanwhile, a very comprehensive breakdown of expenditure on the Seanad was outlined by Gavan Reilly of *TheJournal.ie* on 20 Jan. 2013 in which a final figure of €8,448,624.28 was arrived at (<http://bit.ly/14D2GWW>; accessed 15 June 2013). The government has consistently quoted a projected saving of €20 million per annum in relation to Seanad abolition.

another layer will be added to the differentiation between the bicameral, prosperous, and stable core of Europe and the marginalised, unicameral pauper-periphery.

**Table 2: Comparing population size and legislative systems across the EU**

Country	Legislative system	Population (2013 estimate)
Germany	<b>Bicameral</b>	80,580,000
United Kingdom	<b>Bicameral</b>	64,231,000
France	<b>Bicameral</b>	63,827,000
Italy	<b>Bicameral</b>	59,626,000
Spain	<b>Bicameral</b>	46,958,000
Poland	<b>Bicameral</b>	38,564,000
Romania	<b>Bicameral</b>	18,612,000
The Netherlands	<b>Bicameral</b>	16,798,000
Belgium	<b>Bicameral</b>	11,169,000
Greece	Unicameral	10,758,000
Portugal	Unicameral	10,609,000
Czech Republic	<b>Bicameral</b>	10,528,000
Hungary	Unicameral	9,895,000
Sweden	Unicameral	9,591,000
Austria	<b>Bicameral</b>	8,496,000
Bulgaria	Unicameral	7,261,000
Denmark	Unicameral	5,612,000
Finland	Unicameral	5,436,000
Slovakia	Unicameral	5,401,000
<b>Ireland</b>	<b>Bicameral</b>	<b>4,662,000</b>
Croatia	Unicameral	4,258,000
Lithuania	Unicameral	2,956,000
Slovenia	<b>Bicameral</b>	2,062,000
Latvia	Unicameral	2,018,000
Estonia	Unicameral	1,283,000
Cyprus	Unicameral	887,000
Luxembourg	Unicameral	542,000
Malta	Unicameral	419,000

\*population sizes according to most recent official estimate or census where applicable

### Towards reform

The unique composition and convoluted selection procedures of our present upper chamber are most certainly bizarre and out-dated.<sup>24</sup> The idea that representatives from different industrial, cultural, and vocational sectors would comprise the bulk of senators was one of two concessions made by de Valera to Catholic social thinking in the drafting of Bunreacht na hÉireann. The idea of vocationalism as outlined in Pope Pius XI's 1931 encyclical *Quadragesimo Anno* is directly responsible for the presence of forty-three senators representing panels of various sections of Irish society.<sup>25</sup> It could also be argued that the dominance of corporate panels in the Seanad under Bunreacht na hÉireann was a shrewd concession by Éamon de Valera to the corporatism then *au courant* in Fascist Italy and much favoured by Eoin O'Duffy who, in 1937 was gaining popularity through his defence of Catholicism and the political right in the Spanish Civil War.<sup>26</sup> As if proof that the Seanad panels are no longer working were needed, it might come as a surprise to some citizens that between five and eleven senators have been put there at every election since 1937 as experts on industry and commerce 'including banking, finance, accountancy, engineering, and architecture'<sup>27</sup> – clearly a group that have not been using their voices with sufficient volume or frequency in recent times.

The Senate of the Irish Free State constitution of 1922, can be seen as one of the most meaningful checks and balances – the other being our PR-STV voting system, which has been successfully defended by the people in two separate referenda<sup>28</sup> – designed to safeguard against the emergence of a Catholic, agrarian state in which minorities would have little or no voice.<sup>29</sup>

<sup>24</sup> Tom Garvin has previously referred to the 'byzantine intricacies of the House's electoral system'. Garvin, *Senate*, p. 96.

<sup>25</sup> Basil Chubb, *The politics of the Irish constitution* (Dublin, 1991), pp 27 and 40. The other article of Bunreacht na hÉireann influenced by this encyclical is Article 15.3.

<sup>26</sup> The closest reference that could be found to a comparison between Irish senatorial corporatism and totalitarianism is a quote cited by Tom Garvin where an unnamed government spokesman pointed out that an assembly of vocationalists 'would resemble a Parliament consisting solely of Nazis and Communists'. Garvin, *Senate*, p. 89.

<sup>27</sup> Bunreacht na hÉireann, Art. 18.7.1.iv.

<sup>28</sup> The Third Amendment of Constitution Bill (1958) was rejected by 51.8% of the valid vote and Fourth Amendment of the Constitution Bill (1968) was rejected by 60.8% of same. Figures from Department of the Environment, Community and Local Government, 'Referendum Results, 1937-2012' (<http://bit.ly/16smi3Y>; accessed 15 June 2013).

<sup>29</sup> An authoritative text of the 1922 constitution of the Irish Free State can be found in Kohn, *Constitution*, pp 389-418.



Unlike its 1937 successor, the Free State Senate played an important role in debating issues such as the status of women, divorce, censorship, and inspection of prisons.<sup>30</sup> Senators like William Butler Yeats, who spoke eloquently on all the aforementioned issues, ensured that the assembly is remembered as having housed orators of note who brought fresh perspectives into Irish politics. This is one of the functions of the upper house that should be retained. Thus, this working paper recommends retaining the Taoiseach's power to nominate a number of senators at each election although the present number – eleven – is too large as this was designed to copper-fasten the ruling party's control of the upper house and not to facilitate the entry of non-political experts into the legislature. The Taoiseach is allowed under the constitution to bring two senators into Cabinet and, therefore, a more appropriate number of Taoiseach's nominees would be five, just to give the Taoiseach of the day some room for substitution.<sup>31</sup>

By far the most popular, successful, and memorable of today's senators have been those elected under the university franchise. In 1988, having used the Seanad as an important platform and his status as a senator to increase public knowledge of his cause, David Norris successfully secured the decriminalisation of homosexuality by taking a case to the European Court of Human Rights.<sup>32</sup> Similarly, while she was a senator between 1969 and 1989, Mary Robinson was a pioneering campaigner for the removal of the Civil Service marriage ban, the inclusion of women on juries, and contraception. Interestingly, three of Ireland's nine presidents were members of either the Free State Senate or Seanad Éireann. The current president began his transition from academia into the full time politics when he became a senator as one of the Taoiseach's nominees in 1973. From Yeats to Norris, the upper house is the ideal forum for those independent and informed voices who would not otherwise gain representation in the hotly contested, and often carefully managed, Dáil constituencies. These are voices worth having. In times of crisis, they have pointed out the way that was right even if it was not

<sup>30</sup> For a useful collection of speeches made by W.B. Yeats, arguably the best known of the Free State Senators, see Donald R. Pearce (ed.), *The Senate Speeches of W.B. Yeats* (Bloomington, 1960).

<sup>31</sup> Provision for the inclusion of senators in cabinet can be found in Art. 28.7.2 of Bunreacht na hÉireann.

<sup>32</sup> Male homosexuality was only decriminalised in Ireland in 1993. It had been decriminalised in England and Wales over a quarter of a century beforehand in 1967. Scotland followed suit in 1981, and Northern Ireland in 1982 through the efforts of Jeffrey Dudgeon, who pioneered the method to which Norris eventually resorted, namely of going to Europe with his case. The Irish Supreme Court had rejected Norris' case in 1982 with two judges dissenting.

the easiest path. In times of stability, they have looked beyond the obvious and striven to right long-ignored wrongs such as religious and sexual discrimination.

### **Historical conclusions: towards an improved Seanad**

It is a good thing that this referendum has come about and reopened debate about the structures of Irish law making and government. Some of the greatest democracies in the world – America, France, and Britain – all have bicameralism hardwired into their political systems. The model of Irish government springs from the same roots as these polities. Our brand of liberty and republicanism is derived from France and America, the stability and durability of our democratic form of government is one of the most enduring legacies of British rule. The degree of oversight and protection afforded by an upper house may not be fully appreciated in modern Ireland due to the remarkable endurance of democracy here since 1922. Ireland is the exception rather than the rule in this sense. The majority of new European states founded in the turbulent aftermath of the First World War succumbed to totalitarianism from one end of the political spectrum or the other between 1922 and 1989. In the case of the Balkans, the region still struggles to control the tensions that boiled over in Sarajevo in July 1914.

It is not sensationalist to bring up these comparators when we speak of democratic streamlining. As recently as 2011, Hungary's unicameral legislature passed the *Magyarország Alaptörvénye*, Hungary's Basic Law, which has provoked international condemnation for establishing structures that will undermine democracy, embed Christian ideology into the legislative foundations of the state, and limit some basic civil liberties.<sup>33</sup> In cases such as this, unlikely as they are in an Irish context, an upper house remains an important institution in moderating the excesses of an over-zealous executive in a way that does not impinge on national sovereignty through resorting to supra-national arbiters such as the EU or the UN.

If the rationale for retaining Irish bicameralism is not federal or for oversight of the lower house then its justification is that it is a house designed to represent other voices

<sup>33</sup> See Dagmar Breitenbach and David Levitz, *Deutsche Welle*, 18 Apr. 2011 (online ed., <http://bit.ly/10o11e0>, accessed 17 June 2013) and Margit Feher, *Wall Street Journal*, 18 Apr. 2011 (online ed., <http://on.wsj.com/18Pi6i7>, accessed 17 June 2013).

and to give them a say in the legislative process. The Seanad should be an assembly that represents our aspirational rather than our actual selves – the composition of the Dáil has accurately represented the warts-and-all outlook of the Irish people since its inception.

In reforming the Seanad, this paper has shown that the importance of the Seanad is not to *do* things – after all this is a function of the executive rather than the legislature. The Seanad's real purpose is to say things that would not ordinarily be said in Dáil Éireann and to provide a forum for marginalised yet essential voices that would otherwise not feature in the Irish legislative process. Senators should be a mix of specialised experts and minorities who would not benefit from – or succeed in – the popularity and election posters contests into which Dáil constituency elections have devolved. Like the proposed Senate of the third Home Rule Bill, it would be important to have popularly elected provincial representatives, persons who can think provincially rather than locally. For example, a TD will represent the interests of his or her constituents, but there is a tendency towards excessive localism and even clientelism in this model.<sup>34</sup> If politicians represented whole provinces – in a system not dissimilar to that which elects Ireland's MEPs – they will not necessarily be freed from the constraints of party politics but given the size of their areas of responsibility, provincial senators would be more likely to rise above the parish pump and represent the differing concerns that present themselves in Ireland's economically and socially diverse regions.

More importantly than provincial representatives, it is the unheard voices that need to be heard: the voice of the Irish diaspora; of the new-Irish; of travellers and other indigenous minority groups whether they be ethnic, social, or religious; and – after so many decades – the graduates of Ireland's institutes of technology who are snobbishly discriminated against from the moment they are awarded their qualifications. This new generation of senators would not only provide diversity, it would also provide genuine scrutiny. Other voices, ideally free from the constraints of party whips and other mechanisms of partisanship, would provide a model for representation that leads the way rather than follows predictable paths on the international stage.

---

<sup>34</sup> One of the best analyses of clientelism in Irish constituency politics is Michael D. Higgins, 'The Limits of Clientelism: Towards an Assessment of Irish Politics', in Christopher Clapham (ed.), *Private Patronage and Public Power: Political Clientelism in the Modern State* (London, 1982).

## PART 2: PROPOSALS FOR THE COMPOSITION OF A REFORMED SEANAD

Below is a brief outline of how a new system of representation for Seanad Éireann could lead to a radically different chamber in both outlook and actions. In each case, historical precedents have been invoked to justify the inclusion of representatives of different groups in the new house. Keeping numbers static at sixty senators, the split would go as follows:

**Table 3: present and proposed composition of Seanad Éireann**

Current (1937) Seanad		Proposed Seanad	
Panels	43	Regional (Provinces)	25
Taoiseach	11	Taoiseach's nominees	5
University	6	University	15
		Minorities	10
		Diaspora	5
<b>TOTAL</b>	<b>60</b>	<b>TOTAL</b>	<b>60</b>

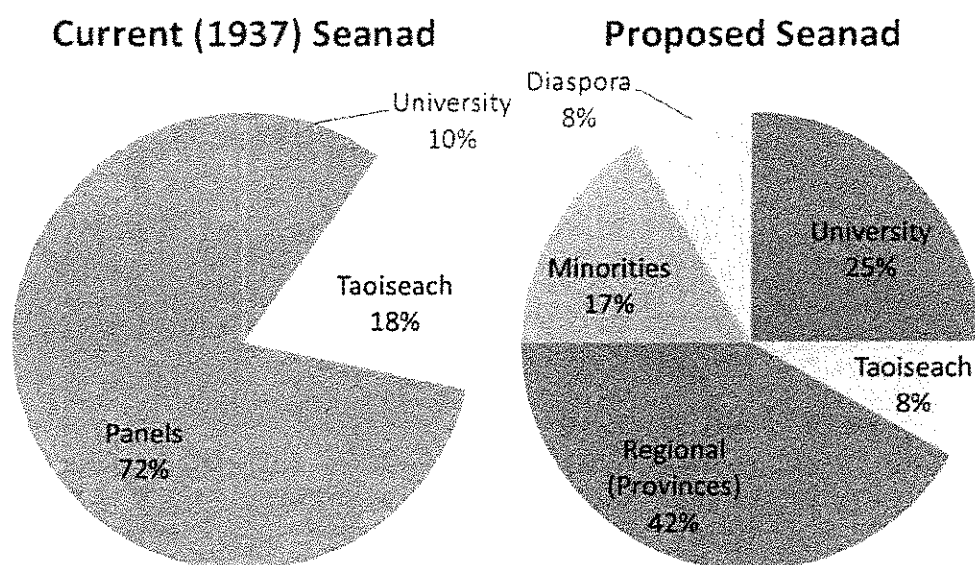


Figure 2: showing the percentage distribution of seats across the present and proposed models for Seanad Éireann.

In its present incarnation, only ten percent of the Seanad are directly elected by a section of the citizenry: namely the six university senators, who are elected by graduates of the National University of Ireland (NUI) and the University of Dublin (TCD). Vocational panel senators, meanwhile, are nominated and elected by other politicians. The present electorate for these forty-three seats consists of members of both houses of the Oireachtas as well as members of each county and city council nationwide.<sup>35</sup>

### **Regional (provincial) section**

*Allocation:* 25 seats

*Historical justification:* the third Home Rule Bill proposed that the Seanad be comprised of forty senators elected on a provincial franchise under the same electorate returning the House of Commons. Each province was allocated seats based on its size. Ulster, Leinster, Munster and Connaught got 14, 11, 9, and 6 seats respectively. Senators were to be elected by PR-STV for a term of five years and they were to retire en masse – upper house provisions in other Home Rule bills had proposed rolling representation. For instance, under the second Home Rule Bill (1893), the forty-eight members of the upper house were to sit for terms of eight years, with half the house retiring every fourth year to allow for a degree of continuity in the chamber.

*Specifics:* this section of the reformed Seanad would be elected by the same franchise as elects Dáil Éireann and provinces would be weighted as specified below. A potentially controversial element of this proposal is that representation for Northern Ireland within the Oireachtas has been factored in to the proposal. Care would have to be taken, both legislatively and politically, to ensure that the terms of the Good Friday Agreement be upheld. In no way is this proposal intended to row back upon the concessions made by the Republic in relinquishing the claims made on the North under articles 2 and 3 of Bunreacht na hÉireann repealed in 1998.<sup>36</sup>

<sup>35</sup> On this system and its evolution from 1937 to 1972, see Smyth, *Theory and practice*, p. 16.

<sup>36</sup> The question of giving Dáil representation to Northern Ireland was discussed in the early 1950s following proposals from the Tyrone nationalist MP Cahir Healy but it appears to have met with little official enthusiasm in the South. See Patrick McGilligan to J.P. Gallagher, 22 March 1951 (National Archives of Ireland, Irish News Agency, DFA, INA 20).

Representation for Northern Ireland as included here poses many potential problems, especially in terms of rolling out a new system of representation in the North. It would have to be stressed in the most emphatic of terms – and explicitly stated in the accompanying legislation – that the opening up of constituencies representing Northern Ireland in a Dublin parliament is not in any way intended to imply a claim to the governance of the North. The fact that the global Irish would be represented in the present model for a reformed Seanad sets a precedent for representation in the Oireachtas for persons living outside the jurisdiction of the state.

The historical justification for cross-border legislative representation stems from the Government of Ireland Act, 1920, which made provision for the establishment of a 'Council of Ireland', a joint body to work towards the reunification of the island.<sup>37</sup> Although the body was never called into being, it was enshrined in the founding legalisation of both parliaments of Ireland that such a body could exist. By founding a parliament in Stormont in 1921 under the Government of Ireland Act, the first Government of Northern Ireland gave implicit approval to the scheme. More recently, cross-border bodies established since 1998 have been widely successful.

To provide a forum for representatives of all communities in Northern Ireland to comment on southern legislation and governance would be a major benefit not only for Northern Ireland but these other voices would have an extremely positive impact in eroding the growing homogeneity of southern Irish politics. Finally, there would be a real incentive for unionists to vote and sit in Seanad elections. Non participation by the unionist community augurs the possibility of the Seanad seats for Northern Ireland being dominated by nationalist and republican voices. If cross community support for a Seanad franchise could be fostered in Northern Ireland then the benefits for all persons on the island of Ireland would be significant.

---

<sup>37</sup> Under clause 2.2 of the Government of Ireland Act 1920, the Council of Ireland was envisioned as a body consisting of senators and House of Commons members from both sides of the border who could assemble to discuss issues of common interest. Furthermore, the Council of Ireland had the potential to exercise executive functions as outlined in clause 7 of the Government of Ireland Act: 'The Council of Ireland shall have power to make Powers of orders with respect to matters affecting interests both in Southern Ireland and Northern Ireland'. Government of Ireland Act (1920) 10 & 11 Geo. 5 c. 67.

The three counties of Ulster in the Republic of Ireland have been separated out in the proposal for provincial representation for two reasons. Firstly, it would constitute a potential threat to the unionist community to lump Northern Ireland representation into a nine county constituency which would be overwhelmingly nationalist. Secondly, Cavan, Donegal, and Monaghan have their own special concerns as southern border counties. These include economic marginalisation, neglect in transportation infrastructure – especially in the case of Donegal – and lawlessness associated with the border. To give these three peripheral counties separate senators would ensure that such issues would not be buried under issues affecting Ulster's core, centring on Belfast.

It is considered that voting in Northern Ireland for Seanad elections would best be conducted via postal ballot. The presence of polling stations for a Seanad election across Northern Ireland would not be desirable. This summer has re-emphasised that tensions around parading or any other public manifestation of politics would only serve to hinder forward progress in the North's increasingly delicate peace process.

**Table 4: Provisional allocation of seats for the provinces of Ireland**

Province	Seats	Population (as per 2011 census, source: <u>CSO/NISRA</u> <sup>38</sup> )
Leinster	10	2,501,208
Munster	5	1,243,726
Connaught	2	542,039
Ulster (3 county)	1	294,296
Northern Ireland	7	1,823,600
<b>TOTAL</b>	<b>25</b>	<b>6,404,869</b>

<sup>38</sup> Northern Ireland figures is from 2012, source: Northern Ireland Statistics and Research Agency (<http://bit.ly/14aLiNN>; accessed 18 Aug. 2013).

### **Taoiseach's nominees**

*Allocation:* 5 seats

*Historical justification:* under article 28.7.2 of Bunreacht na hÉireann, the Taoiseach may bring up to two members of the Seanad into cabinet. Although it is a good thing that ministers are democratically elected and accountable to their constituents, the ability to bring experts into cabinet as ministers is an essential privilege that may be required by a reforming executive in years to come. As such, this innovation of the 1937 document should be retained and safeguarded in any future reforms.

*Specifics:* The Taoiseach may nominate five senators in the same manner and under the same caveats as stipulated in article 18 of the present Bunreacht na hÉireann.

### **University section**

*Allocation:* 15 seats

*Historical justification:* The allocation of extra representation to university graduates as a principle is not universally popular in Ireland. Legitimate concerns about the elitism of this practice exist. However, in a country with an extremely high uptake in third level education,<sup>49</sup> there are genuine benefits to maintaining a dedicated representation for graduates in the legislature. The first thing that reform would have to achieve would be to widen out the franchise to include all publicly funded third level institutions. If this were done, not only would new voices come into the Seanad, the franchise would give the best opportunity for the election and entry of experts into the Oireachtas. Summing up the potential for the university franchise to attract a diverse expertise to the Seanad, Senator and Professor John Crown explained in the course of an otherwise unruly recent exchange in the chamber:

I do not consider myself a politician but somebody with a real day job. I am somebody who because of the spirit of our original Constitution has found himself with the opportunity to take a position of advocacy, which I have done outside the House for many years, into the halls of

---

<sup>49</sup> Ireland has the highest proportion of third level graduates in the 30-34 year age bracket (the EU target group for higher education). In total, 51.1 percent of Irish 30-34 year olds have completed a third level qualification. Irish Times, 29 Apr. 2013 (<http://bit.ly/150D4kZ>; accessed 27 Aug. 2013).



our Oireachtas, as intended in the 1937 Constitution. I am sorry if I am not perhaps wise to the ways of politics ...<sup>40</sup>

That the expertise of professionals from a variety of sectors be incorporated into the legislative process is highly desirable. One of the best ways to achieve this is to maintain a third level representation and to widen it to include institutes of technology and the modern state funded third level sector.

Under the 1922 constitution, the universities had representation in Dáil Éireann. When the 1937 Seanad was established, it was stipulated that three senators were to be elected by and represent each of the two universities then extant in the state. The practice of recognising university graduates as a constituency worthy of representation in the legislature comes to Ireland from the a practice of the British House of Commons that lasted from the beginning of the seventeenth century up to 1950. While university representatives fell out of favour in post-war Britain, university senators in Ireland have proved to be among the most active and lively members of our upper house in recent decades. Apart from the numerous academics who found a voice in the Seanad through the university constituencies, these seats provided an early platform for a young Mary Robinson as well as for Michael D. Higgins, the current president.

*Specifics:* having taken full time enrolment figures for all undergraduate and postgraduate degree programmes at every state-aided higher education institution in the country, a scheme to allocate seats has been worked out empirically and an attempt to stick to a guideline representation of one seat per 10-15,000 of enrolment has been outlined below. Obviously this cannot be done with full proportionality but a fair attempt has been made. Notable issues with the table below which could benefit from further debate and revision include the under-representation of NUI Galway, TCD and UCC and the over-representation of NUI Maynooth [see table 5]. Only public institutions in receipt of state money have been included for two reasons. Firstly, to include private colleges would confuse the system immeasurably and also make it liable to periodic and unplanned changes in size. Secondly, the principle that institutions in receipt of state money should have the opportunity to contribute to the legislative process is a sound

---

<sup>40</sup> Senator John Crown, 'Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013: Report Stage (Continued)', *Seanad Éireann deb.* (<http://bit.ly/15ifu9l>; accessed 27 Aug. 2013).