

# On the potential of Article 19 of the Constitution

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## I. Introduction

1. On the 4th October 2013 the Irish public narrowly voted against the abolition of Seanad Éireann. This decision must be viewed in the light of the heated and thorough national debate that preceded the ballot, in which the ‘No’ campaign almost unanimously accepted that the Seanad was a flawed institution, much in need of reform. However, throughout the debate, no one agenda of reform was proposed or offered to the people. No firm alternative was presented.
2. In many respects, the proposals for reform that have been put forward since the referendum can be divided into two categories: those who believe in the transformation of the Seanad into a legislative body similar to the Dáil, and those who believe that the Seanad should be a subordinate, advisory body to the Dáil. These submissions favour the latter position.

3. These submissions are not intended to address every aspect of the reform of the Seanad; instead they are limited only to the reform of the method of election of Senators from the Panels specified by Article 18.7 of the Constitution. The appointment of the Taoiseach's Nominees or the election of University Senators is not dealt with.
4. The focus of these submissions is on the untapped potential of Article 19 of the Constitution, set out in full here:-

*“Provision may be made by law for the direct election by any functional or vocational group or association or council of so many members of Seanad Éireann as may be fixed by such law in substitution for an equal number of the members to be elected from the corresponding panels of candidates constituted under Article 18 of this Constitution.”*

## **II. Usage**

5. This provision has never been utilised.
6. It is worth noting, even in passing, that the focus on vocational panels was not entirely novel to the 1937 Constitution; Article 45 of the 1922 Free State Constitution provided that:

*“The Oireachtas may provide for the establishment of Functional or Vocational Councils representing branches of the social and economic life of the Nation. A law establishing any such Council shall determine its powers, rights and duties, and its relation to the government of the Irish Free State (Saorstát Eireann).”*

## **III. Effect**

7. Article 19 effectively allows for certain specified non-governmental bodies to be given the power, through legislation, to elect a senator, or senators, to the Seanad. It seems that these senators must correspond to a particular panel; the Article

does not allow for the overall number of senators to be increased beyond 60. Each such 'Vocational Senator' means that one less 'Panel Senator' can be elected.

8. As an example, if the IFA (Irish Farmers' Association), which has represented Irish farmers on a local and national level since 1955, was given the right to appoint a senator, then the Agriculture and allied interests, and Fisheries Panel would lose a seat.
9. There does not appear to be an upper limit on the number of such substitutions that can be made. Generally, each panel can not contain more than eleven senators or less than five; provision is made for less than five senators on a panel where certain senators have been appointed from organisations that correspond to that panel.
10. This means that while the Agriculture and allied interests, and Fisheries Panel could not normally have less than five seats, if the IFA were assigned a seat, then the number of senators elected from that panel could be reduced to four.

#### **IV. Proposal: The expansion of the use of Article 19**

11. The decades since the passing of the Constitution have seen the creation of a plethora of new organisations that could arguably satisfy the criteria allowing them to be assigned the power to appoint a senator. Similarly, certain organisations, such as the Irish Countrywomen's Association, a prominent community-based organisation for women, have grown in status and size since the introduction of the Constitution, such that they might now be considered appropriate candidates to elect a senator.
12. The proposal of these submissions is simple: Article 19 should be availed of, and a significant number of Panel Senators should be replaced by Vocational Senators, elected by bodies that are respected, established and active in their areas. This could be done via legislation, to come into effect after the next general election.

13. The main arguments for and against the use of Article 19 are considered below and where appropriate contrasted with the principles of direct election, which to date has been the favoured option of the majority of reformers.

## **V. The Dáil and the Seanad should be different**

14. Most of the proposals for reform aired in public to date have focused on a need to make the Seanad more democratic, mostly by way of direct election. The largest problem with this is that there already exists in Ireland a democratically elected body: the Dáil. This, combined with the decision to rule out any reform of the Seanad by way of change to the Constitution, gives rise to several problems with the proposed direct election of the Seanad.
15. Currently, the Seanad has significantly less power than the Dáil. The limits on its power are mostly set by the Constitution; the decision not to alter the Constitution means that any legislative reform of the Seanad will still leave it in a significantly subordinate position to the Dáil.

### ***(i) Equal Mandates/Unequal Powers***

16. This subordinate position is not troublesome if one accepts the idea of the Seanad as a secondary, advisory body to the Dáil. If, however, the decision is made to directly elect the Seanad, then certain issues arise.
17. If a person is elected by direct election, that person has a mandate from the people of Ireland. The most popular current proposals for reform allow for either ‘super-constituencies’ similar to those found in European elections or ‘self-selecting’ constituencies whereby persons choose their own constituency. Either option gives rise to the strong likelihood that there will be persons in the Seanad who will have been endorsed by a far greater proportion of the Irish people, will have a far greater mandate than their counterparts in the Dáil, but will have only a fraction of the power or influence.

18. A situation wherein persons with far greater popular mandates are placed in a substantially weaker position than those with far lesser mandates does not do anything to address any democratic deficit or crisis in Ireland; rather, it creates a new one, far greater.

***(ii) Diversity of Candidates / Professional Politicians***

19. For simplicity, the common moniker, found throughout the referendum debate, 'Professional Politicians' is used hereafter to designate the idea of the type of politician that usually runs for the Dáil. It is acknowledged that in reality, there is no conceptual problem with politics as a profession (indeed, one need only imagine a part-time Taoiseach to see why) and that some of those who are commonly regarded as not being Professional Politicians have had no other source of income for many decades.

20. Throughout the referendum debate on the proposed abolition of the Seanad, it was frequently acknowledged that the Seanad had provided a different type of politician from that usually found in the Dáil. There are those who went, and would go, so far as to say that it has produced a higher calibre of politician from that typically found in the Dáil. Whether this is true depends on the characteristics and traits that one desires in a TD.

21. The proposal to directly elect a substantial portion of the Seanad almost certainly increases the risk that seats in the Seanad and the Dáil will be occupied by the same type of person.

22. In many respects this is underlined when one looks at the examples used when discussing the differences between the types of people who sit in the Seanad versus those who sit in the Dáil. Traditionally, the examples used would have originated in the University Constituency of the Seanad whereas the Taoiseach's Nominees and the Panel Senators would have been composed of persons similar to that found in the Dáil.

23. In the current Seanad, due to the fervour for political reform found after the last election, the Taoiseach's Nominees are mostly composed of persons of uncommon eminence and qualification. In the past it has been common for such seats to be assigned to past or future government party candidates. It remains to be seen if this new approach will be continued by subsequent governments.
24. By contrast, persons qualified to become Panel Senators have normally been seen as possible candidates for the Dáil; many a TD has spent time in the Seanad, either before being elected to the Dáil, after being elected, or in between general elections. It is entirely common to hear Panel senators declare that they are the senator for a particular constituency, despite a senate seat being a national role; this is because for many the panel seats in the Seanad are essentially seen as a bridging point to the Dáil.
25. There is no reason to believe that opening the Seanad to direct election would do anything more than create a second house whose inhabitants mirrored those already found in the Dáil. If a diversity of politicians, a move away from 'Professional Politicians' is desired, then other means of electing the Seanad should be examined.

***(iii) Control of the Seanad***

26. Using Article 19 to give organisations the ability to elect senators would not only prevent professional politicians from utilising the Seanad as a way station to the Dáil, but it would also have the effect of making it almost impossible for the Government to control the Seanad.
27. While at first blush this may seem to be a negative effect, leading to uncertainty, the powers of the Seanad are limited mostly to delay; this arrangement makes sense if one views the Seanad as an advisory body. This means that if the Seanad disagrees with government legislation, it can delay and propose amendments to it without actually being able to stop it altogether; it can embarrass but not blackmail the government. This avoids the type of destructive stalemate situation found in

Italy or Belgium while still allowing the government to be held accountable, to a degree, by the Legislature; at the moment, the government typically controls both Houses of the Legislature with an iron fist.

28. Such control is politically desirable but may not be in the ultimate public interest.

## **VI. Expertise**

29. The Constitution states that persons elected to panels should be “persons having knowledge and practical experience” of the subject areas of their panels. The reality is that while there are a limited number of checks provided by the current system, many of those elected to panels are not substantially engaged or qualified in the subject matter of their panel. Further, many of those so elected do not address issues relating to their panel subject once they are in the Seanad.

30. Giving the right to elect a senator to particular organisations ensures that those persons elected will have real, practical experience of the issues that need to be addressed by their panel. They will have been selected by the people with the most experience and engagement in a particular area as the person best qualified to put forward their concerns and to address those issues that arise.

## **VII. Accountability**

31. Vocational Senators appointed by organisations will be more accountable than those elected by panels.

32. Firstly, it will be far easier for the members of the organisations to judge the performance, or lack thereof, of ‘their’ senator and decide whether or not they should be returned. Being closer to the issues and realities of their area, they are far more likely to force a change in senator for lack of competence than the current panel system, and are far more likely to have another possible replacement waiting in the wings. Party ties are unlikely to save a senator who is underperforming.

33. Secondly, the Vocational Senators would have constant feedback from their organisations as to their performance. Rather than being forced to resort to polling or ‘on the doorsteps’ information, they will have an organisation which is immersed in activities addressing the very issues that they are elected to address. It is less likely that they will be able to drift out of touch with their electorate.

## **VIII. Flexibility**

34. A system of Vocational Senators appointed by organisations will be a more flexible one than a system of election from panels.

35. Firstly, as the identity of the particular organisations given the ability to elect a senator will be governed by legislation, this means that the system can be more responsive to the crises of the day. Should an issue arise and persist over a number of years, it would be possible by legislation for provision to be made for the election of a senator, at the next Seanad, specifically for the purpose of addressing and highlighting that issue.

36. This will be significantly less costly than appointing a Junior Minister and will allow the composition of senators to be gradually altered over the years to reflect the issues affecting the nation.

37. Secondly, as the organisations would be specified by legislation, it would be possible to replace organisations as their fortunes rise and fall. Further, an organisation could be stripped of their right to elect a senator in the face of scandal, should any wrongdoing, tax avoidance or expense abuse be detected. The potential loss of status will give a further deterrent to any such common abuses.

## **IX. Civil Society**

38. There are more organisations in our society than just private enterprises or state bodies. Ireland is home to hundreds, if not thousands of private groups and organisations that exist for social and community purposes. These bodies range from vocational associations that bring together people of the same profession, to



charitable organisations which aim to alleviate physical suffering, to groups which aim, not necessarily to heal a wound, but instead to help other citizens grow and prosper in all aspects of their life.

39. These organisations aid in the running of the state, reduce pressure on the resources of the state and improve the daily lives of a huge number of citizens. They often work without much or any state funding, and their activities are often made possible only by many thousands of hours of free labour provided by their membership, as well as monetary contributions.
40. Very often the contribution of these groups to the general welfare of the state, their continuous betterment of the human conditions within our borders, is underestimated. Many use the facilities provided without ever pausing to consider the time, effort and vision needed to found and operate them. Often citizens do not see those institutions that are not explicitly aimed at them and so do not understand their merit or value their contribution.
41. The use of Article 19 allows for at least some of those civil societies, those bodies and associations active outside the political sphere which strive for the betterment of the people of Ireland, to have a greater input into the running of our nation. It allows for our nation to mark the contribution of those members to our society and create a direct path for their ideas to reach the government and the legislature. Not all bodies will fall within the scope of Article 19. Not all need to.
42. Having a Seanad that is not (1) directly elected (2) using only a single type of constituency (3) with roughly equal numbers of voters assigned to each constituency, necessarily means that some groups will have more say than others. At the moment that weighting rests in the favour of those involved only in political party organisations; organisations which already have a powerful say in the Dáil. Allowing other bodies to nominate senators rebalances that power, and gives it to those most active in ordinary Irish society.

## **X. Conclusion**

43. The foregoing are just some of the advantages of a system of Vocational Senators over the direct election of Panel Senators, and some of the benefits that our nation could enjoy if we reward those organisations of active citizens that have benefitted our nation and our people the most.
44. Such a system will give the Seanad a real independence from the Dáil and an entirely different identity. It will be composed of different people, with different perspectives, representing those who are not represented by common electoral politics and providing additional insight and expertise into the legislation that governs this country. It will create a House uncontrolled by the political parties of the day, one which can be overridden but where alternative viewpoints can flourish.
45. It will connect people as it never has before, and give tens, if not hundreds, of thousands of Irish people a greater and more direct channel to the governance of this country. It will favour some over others, but the persons it will favour are those involved in our society, those who give their time, and their minds, and their industry to the service and improvement of our nation.
46. Article 19 has been largely forgotten over the years. It has never been used or considered in any great detail. That does not mean that we can not make use of it today. It provides us with an opportunity to greatly reform the politics of this country not by altering the Constitution, but by way of relatively simple legislation.
47. It is one of the easiest, yet most fundamental, changes that can be made to the structure of the Oireachtas, a change that will provide benefits for decades to come.