

**Submission to the Seanad Working Group**

**Daniel Sullivan**

## Introduction

This submission combines a number of previous submissions in respect of the Seanad Electoral (University Members) (Amendment) Bill 2014 and submissions to the Constitutional Convention in respect of the electoral system.

Political and electoral reform has become a rallying cry for many groups and individuals in Ireland over the last few years. People are calling for the abolition of that and the gutting of this and the significant and far reaching reform of the other. Many of these proposals on electoral reform are misguided in their intent and effectiveness and suffer from the time honoured problem faced by any person armed with a hammer that everything presents itself as a nail.

To corrupt an adage “there is no silver ballot”; no single solution that will cure all ills, rather we require an array of changes, some small, some less so.

When it comes to electoral politics, those most deeply involved, for all their fervour, are frequently blind to the reality around them. Most of the population, irrespective of gender, income, or social background finds much of what passes for day to day party politics in Ireland to be a pointless turn-off. It is small wonder that only the narrowest slice from any social, income, gender or educational backgrounds are represented in election contests at all levels.

We have open to us the opportunity of utilising the strengths inherent in PR-STV more, by say compelling all parties to run twice the number of candidates as there are seats in a constituency, creating an open, local list system with instant primaries. And if they so wished implementing measures to increase the diversity within those local lists.

Certainly other countries elect people to their parliament via indirect methods such as our current Seanad process or they use closed lists, or first past the post or a primary system or instant run-offs. It should not matter in our deliberations that other countries use a different system to ours, what should matter is what is the system intended to do and does it do it successfully. We should design a system that will work for us in our context, taking what elements from other systems that we can be confident will work for us. Not simply importing aspects of another system because it happens to work elsewhere under quite different circumstances.

The outcome to be avoided is of change enforced by legislation without consultation of the electorate that facilitates a power-grab by the party elite over ordinary members and citizens and which encourages the political parties to be more conservative, not less, in their candidate selection. In such a circumstance they will continue to choose from the same pool of the middle-aged and middle class, with money to spare, no childcare problems, the right family connections or an inside line to the party hierarchy. It's not simply that we need more women or young people as candidates; we need everyone

more involved in what must be the grandest contest of ideas imaginable. We have never needed that contest of what can be possible to be fierce and fulsome more than now.

A mixture of simple but significant changes to the electoral system could ensure that our parliament includes a mixture of the benefits that are occasionally ascribed to national lists but that ensure the power is retained by the voter not party headquarters.

### **Current Situation and associated problems**

The discussion about political change, and in particular where the topic of electoral reform is concerned, tends to start by identifying the problem through a description and examination of its symptoms and then rapidly moves to methods of alleviating those same symptoms. Often times the solution is through a form of green-field gerrymandering that presupposes we are able to start from scratch from the date of some future election. Such green field efforts aim for defined outcomes, a gender balanced parliament, or a parliament more evenly balanced between the existing ideologies of the left and right rather than simply ensuring the system is fair and accessible and allowing the outcomes to be in the hands of the voters.

Two of the biggest problems in representative politics – and from which many others stem – are a lack of real diversity being offered to the electorate in our parliamentary elections and a surfeit of clientelism. I will start with the latter.

### **Clientelism**

Excessive clientelism across Irish political life is a real problem we have to face up to. However, we need to recognise that clientelism is not simply a result of the PR-STV system but is rather a potentiality that exists in all electoral systems if the electorate are so minded to reward it. Other nations and local governmental units overseas have been able to take measures within their electoral systems to prevent it getting out of control.

Clientelism is therefore a condition that needs to be controlled and managed, not necessarily eliminated entirely since it originates from the behaviour of the public. In considering what those measures might involve, in particular in the context of our local political environment here in Ireland, we need to consider the scale of clientelism and how it works in Ireland.

Clientelism as a major problem manifests itself when it is possible to get elected from simply doing a ‘good turn;’ particular to the everyday needs of individual voters or their families (letter writing, form filling, hand holding, funeral attending, and making calls for people) on a purely local level – the direct person to person contact – such that a sufficient number of people will reward you with a vote such that you can be elected on this support base alone. It is, in some senses, a transactional issue; you are buying votes for work done for those specific individuals who will in turn cast their ballots for you.



In Irish elections, a candidate is well in the running for a seat in most general elections if they poll over 6,000 first preference votes and are almost guaranteed one if they can poll over 8,000. It is actually possible given the nature of Ireland to physically meet that many people and do that many small turns and be rewarded by their extended families and communities over the course of the 3/5 year period that typically occurs between elections.

Worse yet, election to the local council is possible with considerably less than that level of support and with the winning of a council seat becoming more and more a required stepping stone to the Oireachtas (national parliament encompassing both the Dáil and Seanad) then only those who have won at local election level get to be in the running for a Dáil nomination. And so the seeds of clientelism are sown.

What we are presented with is a straight forward problem of scaling; make it sufficiently hard to get in the running for a seat in national parliament simply on clientelism activities alone and you will reduce the impact of clientelism on the governance of the country. In order for this to act as a means to raise the bar sufficiently then you would need a quota of close to 20,000 votes. It would be possible for the quotas for the Seanad seats to be three and four times what they are now for the Dáil, with considerably large seat numbers per panel.

## **Diversity and Broadening choice at election time**

There is considerable attention given to the lack of diversity in the Oireachtas which it is felt derives entirely from the lack of diversity is offered to the electorate. For many understandable reasons most of the attention is on purely the topic of gender diversity with the occasional nod towards the age profile of the parliament.

The truth is that lack of diversity in representative politics is not simply gender specific but encompasses age, income, educational background, and shocking though it might be for some to consider, political opinion. To focus solely on gender is to miss the core problem which is that it is the voters and how we group them together that cause the political parties to tack to the middle and towards safe, conservative waters in terms of candidate selection.

The question is often asked “why won’t political parties run”... more women, more young people, more people who are gay, or more people who openly ideologically whether of the left or right. Yet the question is often asked more as a rhetorical device to castigate political party X or position Y instead of looking at the reality of why parties don’t run broader slates of candidates.

So why do parties cleave to the mainstream with their tickets? The truth is that they are ruled in their candidate selection strategies more by fear than adventure, and because most of them face into an election with seats that they can lose as much as they are targeting seats that they can win. Political party organisations as campaigning entities exist in the main to win seats, and winning seats is again

about numbers and the behaviour of the electorate. You can design new electoral systems all you want but if the public want to vote a certain way or use the system to get a certain outcome then that is what they will do and that is what they will try to get.

In part the problem in Ireland is that winning seats, not alone above all but to the exclusion of all else, has become the sole objective of the party organisations. The money and resources for election campaigns come from individual party activists, not party HQs – people who cannot be compelled by legislation to work or invest their time in candidate Y rather than candidate X.

So what is stopping parties running much more diverse slates, why do they not take more chances and run more new candidates or run 7 candidates in a 5 seater? Fundamentally it is down to transfers; it might think that running as broad a range of candidates would be the best option as it would ensure that everyone in the electorate has a candidate from a party whose policies they like that and who – on a personal level – they are also comfortable voting for. However that is not the case, people will cross party lines and vote along personal and in many instances locality and geographical lines.

No other country has our electoral system of Multi-Seat constituencies with PR-STV. As the psephologists tell us the more candidates that are run, over and above the party's likely seat target (based on what votes they are likely to get), the more seats they risk forfeiting as a result of transfers drifting away in the later counts. That is what drives their fear.

We need to remove the geography as a consideration for voters when voting for at least one part of the national parliament.

### **Non-geographical Constituencies**

The perceived effectiveness of the two third level panels is due not to their electorate but due to the very non-geographical aspects of their electorate. One solution to address the diversity issue in the rest of the Seanad would be to remove the geography from the voter's considerations by having non-geographically based constituencies.

By this I mean creating an electorate for multi-seat PR-STV panels to which voters are simply randomly allocated. Which panel someone would be eligible to voting in would be noted on the electoral register, whether panel 1 2 or 5.

With the electorate within the state for these panels should be randomly allocated, i.e. the electorate's choices would not be determined by geography. This would seek to eliminate the degree of clientelism and geography biased voting that we see as common for the Dáil. It would also be an argument in favour of the differentiated value of the Seanad.



## **Limitations**

The point of multi seat constituencies is to provide the electorate with a choice not alone of party but of personnel. It is in effect a potential instant primary system. However political parties are currently fearful of using it as such because of the effect of transfers on the number of seats they get. Enforcing lists would, if lists are used, then the placement of candidates on them should not be in the control of the political parties or the accident of birth that is naming.

No matter what changes are made to the electoral system if the mindset of the electorate remains the same, favouring personality over policy, locality over ability and name recognition and family affinity over the qualities of the individual then nothing will really change. Change of the electoral system must not be an end in itself; it must be a means to an end.

One of the few potential benefits of the Seanad was the opportunity in its design to break the tie between locality and representation. This is an opportunity taken up only in the increasingly ill named university seats. We are all through the course of our lives members of communities other than the geographical yet our electoral system in the manner of its operation by both the electors and the elected is slavish in how it cleaves to the local. The inhabitants of Royston Vasey would find much to enjoy in the conduct of Irish election campaigns with the refrain of "And where are you from?" to be heard far and wide. We must consider that electing all or a large part of the Oireachtas in the form of the Seanad from non-geographical constituencies, preferably while avoiding the imposition of closed party lists selected by party insiders.

## **Leaving Lists Aside**

List systems place too much power in the hands of the political party insiders. The problem is not simply that we have too many men or too few women but that electoral politics is attractive to only a minority of narrow personality types. And national lists place even more power in the hands of that same cabal. It's much like deciding to change the rules of soccer with the intention of ensuring that more not so tall, overweight middle aged people could make a career of it. Yet putting the young fit people with whom they might be competing in charge of the changes. We should make changes that will allow as many people an opportunity to put their case before the people and then let the people decide who gets elected.

We need to create more electoral opportunity not impose restrictions on the narrow chances that there are today.

Or other suggestions are to remove the link between locality and national representation via various list systems. Yet List systems of various types (closed or open, national or provincial) bring their own set of new problems. It is unclear just who decides who is on the list, and where they are placed and how people get well enough known nationally to get votes and how exactly that would all be funded.

When proponents of list systems say that they would be controlled by the political parties it is never made clear who exactly the people within the parties they mean, the membership, local or national, the party executives, professionals who work for the party, the elected party leadership. People often talk of 'the political parties' as if they were sentient entities in their own right. This impression demonstrates that many of those advancing lists systems controlled by the parties have limited insight into exactly how political parties operate at the senior level. Because any system whereby access to the ballot is controlled by the national political party won't necessarily lead to any broadening of the general diversity of the candidates on offer.

### **Panels**

The vocational element of the Seanad is no longer appropriate in particular where the five vocational areas are anachronistic, are not adhered to in any transparent manner and would appear to be designed exclude many citizens from being eligible to stand for a national parliamentary chamber. How well versed in the National Language, Culture, Literature, Art, or Education does one need to be to fulfil the purpose of this panel, or any of the others? Is being descended from farming stock sufficient or should someone be capable of delivering a calf or harvest a crop unassisted in order to be nominated for the Agriculture panel?

*Article 19 - 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.*

It would be more effective to utilise Article 19 to its fullest and allow for the replacement of the current panels with 5 panels whether of the same sizes as those at present or if different sizes as might be allowed for by this article to be elected by all citizens resident in the state on polling day, or if desired to allocate one of the five panel for those citizens resident outside the state who might choose to register.

### **Nominating**

And who should be in charge of attesting to the suitability of someone to server on such a panel, constitutional on vocational or interested specific groups? The current collection of nominating bodies is riddled with inconsistency and reflective of a desire to see the nation as one divided between the Catholic Church and the larger of the Protestant denominations, hence our mix of overlapping nominating bodies for those with hearing impairment or groups representing those with a disability.

- We have the Georgian Society but not An Taisce.
- We have the Association of Advertisers Ireland Limited and the Institute of Advertising Practitioners in Ireland but not the Consumers Association.

- We have Royal College of Surgeons in Ireland but not the University of Limerick, or the National College of Ireland.

Indeed the Labour panel is intended to represent “*Labour, whether organised or unorganised*”; “, yet it is solely two organisations the Irish Congress of Trade Unions and The Irish Conference of Professional and Service Associations that may nominate. The Irish National Organisation of the Unemployed is not afford the chance to nominate someone to represent those whose labours are currently wastefully not being availed of.

It should also be noted that there is no consistency of the nominating process within these bodies or the means by which a citizen may present themselves for consideration for their nomination. Some such as the IEI in recent elections have sought to consult their membership as to whether to support an application for nomination while others may simply convene a meeting of their boards while still others may look only into their hearts or the hearts of whoever is empowered to send the nomination papers to decide who will be nominated and who will not.

Maintaining and policing any such list of adjudicating bodies is open to abuse and inconsistency. Indeed it is repugnant to the republican ideals that the constitution and so many of our state institutions are meant to be founded on, that any unaccountable grouping or nominating body should have the capacity to judge whether someone is suitable for election to a national parliament.

We should instead return to Article 18.2 “*A person to be eligible for membership of Seanad Éireann must be eligible to become a member of Dáil Éireann.*” Nothing more should be required of someone in order to seek election.

#### **Nomination of candidates for the 6 third level seats:**

Nomination procedures for the extended Seanad Panel for third level voter should be similar to those for Dáil constituencies, either by a political party or a set number of citizens.

The candidate nor their nominators should not need to be graduates of the institutions whose graduates comprising the electoral. The reason for this is that anyone who is eligible to serve in Seanad Éireann should be eligible and enabled to stand for election for this panel until such time as voting for the Seanad may be more broadly reformed to afford all citizens a vote.

There should not be a fixed financial deposit required for all candidates if there is not one required for Dáil constituencies. Only if candidates are unable to provide the assenters necessary should the option of contesting by way of a deposit be provided for. The figure of €900 for those appears reasonable in that instance.



### **The electorate for the panels.**

The electorate within the state for these panels should be randomly allocated, i.e. the electorate would not be determined by geography. This would seek to eliminate the degree of clientelism and geography biased voting that is common for the Dail. The perceived effectiveness of the two third level panels is due not to their electorate but due to the very non-geographical aspects of their electorate.

### **Register of electors:**

There should be no requirement for a separately maintained register, those who would be entitled to vote should be simply noted on the general electoral register as is the case with those who can only vote in particular elections i.e. British Citizens, EU Citizens, or non EU citizens who are ordinarily resident in Ireland.

Maintenance of the electoral register could be preferably be centralised as part of the function of a future Electoral Commission or remain as part of the function of local authorities.

### **In the case of the register and the 6 third level seats.**

To request to be marked as a U voter, the voter should either complete a separate form or this could be incorporated into the existing registration form noting their name, address, nationality (as at present) PPSN, and 3<sup>rd</sup> level ID No and what institutions they had graduated from. These details should then be provided to the 3<sup>rd</sup> level institutions, who can corroborate that the person did indeed receive the level 7 qualifications required to be a Seanad voter for this panel. The 3<sup>rd</sup> level institutions should be instructed to provide corroboration of the graduate's entitlement within a short defined period (1 to 2 weeks) to whatever authority is maintaining the register.

The current practice of a single annual deadline to be on the register should be avoided. It should be an all year around updating process.

Basic practices of version control should be incorporated into the updating of the electoral register. Anyone adding or removing people from the register should be clearly identifiable and provide a reason for doing so, i.e. due to someone being deceased they should cite how they were informed of this and the location of where this information came to them.

There should be either no grandfathering at all of the current registers from NUI and TCD i.e. everyone from all institutions new and old is equally required to apply afresh to be on the register or else the opportunity should be afforded to the newer institutions to provide details of their eligible alumni to be added to the accumulative register.

### **Election Process**

The order of candidates on the ballot paper should be randomly allocated by public lottery. Such a provision found favour at the Constitutional Convention and this would be a suitable field test. With the provision of photographs and other identification the continuance of alphabetic ordering is unnecessary.

### **Same day voting.**

In order to eliminate one of the major perception problems of the Seanad, voting should take place on the same day as the general election.

*Article 18.5. Every election of the elected members of Seanad Éireann shall be held on the system of proportional representation by means of the single transferable vote, and by secret postal ballot.*

It would be possible to fulfil this and to ensure same day voting by the temporary provision of postal facilities at polling stations. A modified franking stamp with a nominal value could be stamped onto an envelope if required by the presiding officer. Collection of the Seanad Ballots post box would be similarly of the collection of ballot boxes and of equal cost.

On the day of general election the ballot papers would be provided to the voter and they would vote for the Seanad panel as part of the general election process. This eliminates the significant cost element of postal ballots for the vast majority of the constituency.

Provision should still be made for those graduates not resident in the republic who would not be able to vote in the general election with a register to be maintained either by an Electoral Commission or the Department of the Environment. Registration process to be the same as for those resident in the Republic. Their ballots could then be sent from and returned to the local Irish embassy (reduce the cost of international post). Ballots to be returned to the embassy by a set date as close as practicable to the general election polling day.

The counting of votes would take place a designated period e.g. 1 to 2 weeks after polling day to allow for the return of completed postal ballots.

The provision of **Litir** um Thoghchán should remain for Seanad candidates but be solely in the form of a single mail shoot booklet (DL size or similar) with the order of the candidates within decided by lottery and no candidate to appear on the covers or page 3, the order of candidates within the booklet should be randomly allocated by public lottery. This is to reduce significantly the costs of supporting and contesting election to such a large constituency.

#### **Filling of casual vacancies:**

A provision of filling casual vacancies by replacement list as in the European elections is a reasonable one though the possibility should at least be explored as to how a “count back” system might be practicably employed. Such a system would give the choice of who replaces the departed candidate to the voters who voted for them, and would not require the running of a new by-election. In Malta and Tasmania this method is used and would be at least worthy of examination in the public debate on this topic. Further reading on the count back system can be found here.

<http://politicalreform.ie/2010/04/26/should-by-elections-be-abolished/>

#### **Specific recommendations**

- i. Randomise the order of candidates on the ballot paper
- ii. Non-geographical constituencies and/or very large geographical constituencies with larger numbers of seats.
- iii. Retain PR-STV but refined to consider compelling all parties to run twice the number of candidates as there are seats in a constituency, creating an open, local list system with instant primaries.
- iv. All political donations should be public as in the US. It might mean the end of the church gate collections but I suspect most people would prefer to see them gone.

#### **Summary**

The situation we find ourselves in is a complex one that requires more than any single solution can provide. We need to guard against the transplantation of ideas that might work outside of the Irish context but which would serve us poorly. National Lists and demographical quotas place too much power in the hands of too few and reduce the person standing for election to what divides not unites us.

In summary, we have real problems in our politics as a result of excessive clientelism and a lack of diversity at election time but we need to consider how any systemic changes being suggested would work in the actual environment that exists in Ireland. Too much discussion is based on laboratory conditions or what happens elsewhere under entirely different electoral systems. We need to recognise that encouraging much more choice is better in the long run than seeking to restrict choice and that our ties to purely geographically based representation is blinding us to inventive but practical options that might assist us to combating clientelism.



Example of the modified note in the electoral register to indicate Seanad Voter

[\*] Election Type

Entitlement to vote, based on citizenship outlined below:

	Local Elections	European Elections	Dáil Elections	Referendum or Presidential Election	Seanad Elections
<b>Resident Irish citizens (P)*</b>	YES	YES	YES	YES	PANEL 3
<b>Resident British citizens (D)*</b>	YES	YES	YES	NO	NO
<b>Resident EU citizens (E)*</b>	YES	YES	NO	NO	NO
<b>Resident Non-EU citizens (L)*</b>	YES	NO	NO	NO	NO

\* as indicated on the register

## Appendix

The following is intended as a humorous reflection on the problem of elections and the problems faced by candidates. This may serve to lighten the mood of the reader at the end of a long day.

We have seen a considerable airing given to the 4 or is it 5 C's that are barriers to women being election candidates but what of the sorts of problems that can potentially affect any one of us who might think about putting our names forward for consideration by the general public, or worse yet the party membership? Below I list just ten of the possibilities.

- i. **Having the wrong name:** If your name isn't that of the retiring elected rep, you're chances are badly holed before you even get to the convention. Unless that rep's son or daughter is found stranded on the local town roundabout with a cash of the local authority's travel budget and some barely alive bovine of negotiable affection then like as not their name will win out over yours. This is also a corollary to this where name will trump family, a distant cousin (or even someone who is no relation at all) with the appropriate family name will often romp home ahead of the actual offspring of the departing rep if said rep didn't have the decency to marry their mother or their mother decide that they should have her name.
- ii. **Being from the wrong place:** It might seem to those types up in Dublin that one Irish Ballygobackwards hamlet is much like another but heaven help the prospective candidate who does not come from the townland that the party draws most of its vote and membership from. The party stalwarts from Ballybogwater will select a pair of shoeless ankles held together with string providing it comes from their neck of the woods ahead of a fully functioning and breathing human being from 6 miles over in KnockPigSwill. This sort of thing happens in some areas of our cities too, watch for the candidate who talks unceasingly about being local, this in an election where being from the other side of the street can mark you as a dangerous blow-in. County teams used to be picked on this basis before the actual winning of matches became important. It's this sense of tradition that makes us what and where we are as a people.
- iii. **Being from the right place but at the wrong time:** You've had the good sense to be born in the right place but the only problem is there is a sitting TD already from the place. Whether they are from your party or another it matters not, so long as they are from the same place and that place lacks the population to elect two. If you get nominated you can't beat him and more than likely the locals who vote for you will transfer to back to him and you'll be blamed for delivering a seat to the enemy.
- iv. **Being in the wrong place:** You could be the 21st century's answer to Jim Larkin, but this isn't going to wash with the rural types. In this case you can invoke number 6 by following the example of some TDs and invert this role by going to the right place. Right for your chances of getting elected that is.
- v. **Being too smart for your own good:** If you have a Ph.D for the love of God, don't let on. Being a doctor is fine provided you have give people sick cert. After that the public isn't interested in what you know. Unless you know about getting grants: this is an entirely different matter to being cute.

- vi. **Coming from too small a family:** If your parents were only children then it is likely that you won't be a TD. Big families with plenty of cousins cannot alone vote for you at convention time, but will provide the core of your campaign team. Being a popular member of a football club or the like is useful substitute.
- vii. **Move away from home:** Most TDs are from the place they represent, indeed if they have never left the county before being elected except to attend the All-Ireland, protest against cuts to the CAP, and that time they needed a specialist to look at that nasty growth then all the better. Once you leave home to work or attend 3rd level, you leave the extended family network behind, presuming you had one to start with and are thus easily attacked as someone who is no longer in tune with the local people.
- viii. **Not talking as the rest of us do:** This is linked to being too smart, if you come from the Kingdom then please remember to talk like it. You can be as thick as the healthiest of planks but sounding like you had an education even if it didn't take is electorally fatal. Sure no one outside your own place will understand a word but what does that matter, they can't vote for you either.
- ix. **Have the wrong name Part II:** Xanax is a grand name for a drug but you won't find too many of the Xanax family standing in an Irish election. The alphabetic ordering of the ballot undermines the presence of those outside the norm. We go to all the bother of providing people with pictures and party logos but still they need to see the candidate name in the order of their ABCs or they're lost. Many is the person who simply votes 1, 2 and 3 as they go the paper, whether for a party or not.
- x. **Being prone to having ideas:** You are playing with dangerous magicks if you start to think for yourself in Irish politics. By all means you must have a notion about what it is that we must do something about, it is best if you must not have any concrete idea exactly what we should do about it.
- xi. **Having the wrong profession:** To get elected it is best to have a profession that requires you to interact with lots of people who in turn have a wide and somewhat unconnected circle of friends: Teachers, publicans, salespeople. People who just get on with their daily work in a place without much in the way of a public profile, say working in factory and down a mine are best suited to funding candidates, or marrying them.

About the author: I have contributed a number of articles over the past number of years to the Sunday Times and The Irish Times and online under the broad heading of political reform whether on [politicalreform.ie](http://politicalreform.ie), on [politics.ie](http://politics.ie), Irish Election and various other online places. I've been talking about this topic long enough; with your help I may be able to play some part in seeing something done about it.

I have been a candidate myself in both the 2007 and 2011 Seanad election, in large part on the very dull issue of electoral reform, believing that the focus needs to be as much on what practical steps can be taken to reform how politics works. I don't hold these ideas to be final or to be precious children of mine that must be adopted in their entirety. Rather they are meant to inspire reflection and to form a small part of what I would hope to be a lively debate both about what we need to do and why we need to do it.

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