AN COINBHINSIÚN AR AN mBUNREACHT
THE CONVENTION ON THE CONSTITUTION

Fourth Report of the Convention on the Constitution

Dáil Electoral System

August, 2013

Table of Contents

1.   Chairman's Introduction

Over the course of two weekends, 18-19 May and 8-9 June, the Convention on the Constitution held its fourth and fifth meetings respectively to discuss the Dáil electoral system, one of the topics in the terms of reference under the Resolution of the Houses of the Oireachtas (Appendix A).

Background

Membership of the Constitutional Convention comprises 66 citizens, 33 parliamentarians and an independent Chairman. The 66 citizens were selected randomly by a polling company using the electoral register and on the basis of groups representative of Irish society and generally balanced in terms of gender, age, region, social class and occupational status.

Political parties and groups in Dáil Éireann and Seanad Éireann nominated representatives on the basis of their relative strengths in the Oireachtas. Political parties represented in the Northern Ireland Assembly were invited to nominate one representative each.

The Convention has been asked to complete its work within 12 months of its first plenary meeting in January, 2013.

The Government has committed to responding to the various recommendations of the Constitutional Convention within four months of the publication of its reports and will arrange a full debate in the Houses of the Oireachtas in each case.

In the event that the Government accepts a recommendation that the Constitution be amended, it will include a timeframe for the holding of the referendum.

Fourth & Fifth Plenary Meetings

The purpose of the May and June meetings was to examine the Dáil electoral system and make recommendations in the context of constitutional change. The Dáil electoral system is one aspect of a wider framework of parliamentary reform. While acknowledging that the breadth of issues that might arise in any discussion of the Dáil electoral system, the Convention was aware of the need to maintain its focus on the specific task given it under the Oireachtas Resolution.

Of the eight issues that the Convention has been asked to consider, the Dáil electoral system was regarded as being the most technical and complex, hence the Convention's decision to devote two plenary weekends to the topic.

At its first meeting in May, the Convention examined in some detail the current electoral system, Proportional Representation Single Transferable Vote (PRSTV) and, as possible alternatives, three other systems: Proportional Representation - List System; Non-Proportional Systems; and Mixed-Member Proportional systems (MMP).

The May meeting concluded with a ballot which set the agenda for the June meeting. The Convention voted in favour of having a more detailed look at the PR-STV and the MMP systems. In addition, the Convention voted to examine four related issues in greater detail: the size of constituencies; the number of Dáil members; non-parliamentary Ministers; and ways of increasing the engagement of citizens in the democratic process.

The Convention's overall objective across the two plenary meetings was to consider the question of which electoral system we thought was best for the future of Ireland, politically, economically, socially and culturally. It was clear from the start of the May meeting that the Convention members were fully committed to the task. They were greatly assisted by a number of excellent papers and presentations from distinguished guest speakers and from the Convention's own expert support team. In addition, evening master classes' on the practical application of the various electoral systems were held in advance of both plenary weekends which members of the Convention found to be very helpful.

I think the approach taken across the two plenary meetings demonstrates the potential of the Convention model and its ability to tackle complex and difficult subject matter in a way that is understandable to 'non-expert' citizens. I would like to pay particular tribute to the members of the Convention for their hard work over the months of May and June and in the way they conducted their deliberations.

Submissions from the public are an integral part of the Convention model. Many submissions on this topic, from both individuals and advocacy groups, were substantive in content and analysis. While the Convention makes every effort to accommodate as many people as possible who wish to present their submissions at the plenary meetings, the schedule of the work to be done in the time available makes this a very difficult task.

Recommendations

At the conclusion of the plenary meeting in June the result of the ballot was decisively in favour of keeping the current PRSTV electoral system but in a modified form, in particular by increasing the size of constituencies and changing from the alphabetical order of candidates on the ballot paper. At the same time the Convention favoured the retention of greater than 159 members of the Dáil.

A wide range of other changes to the PRSTV system were also recommended, including the establishment of an Electoral Commission; measures to make it easier to vote and improve voter turn-out; and the introduction of an enhanced civic, social and political education programme.

There was also a majority in favour of the appointment of non-Oireachtas members to the cabinet and to a requirement that members of the Dáil should resign their seats on appointment to ministerial office. Direct Democracy is a form of democracy where people decide on policy initiatives directly rather than through elected representatives. A decisive majority were in favour of 'direct democracy' with regard to the (non-constitutional) legislative agenda and constitutional change.

I believe these results give a very clear message of the regard in which the current PR-STV electoral system is held but equally of a strong demand for changes to it, as part of a more substantial agenda of political reform.

Acknowledgements

I would like to acknowledge the commitment and hard work of the members of the Convention over the two plenary meetings.

I am grateful to the members of the public who submitted their views and proposals and I would like to thank Dr Gemma Carney for her work in presenting a summary report on the submissions.

The success of these Convention meetings can be attributed directly to the significant involvement of the "Two Michaels", Marsh and Gallagher, from Trinity College, Dublin who took away the mystery of often complex and technical electoral issues and made them easily understandable to the Convention members. We are also much obliged to Muiris MacCarthaigh, Queens University, Belfast, Niamh Hardiman, UCD and Adrian Kavanagh, NUI, Maynooth for their enlightening contributions, which considerably assisted our deliberations over the two weekends.

I would also like to thank the Convention's Academic and Legal Support Team, led by Prof David Farrell, who with Dr Jane Suiter, Dr Clodagh Harris, Lia O'Hegarty and Dr Eoin O'Malley provided invaluable assistance, support and advice in the preparation for and during the plenary meetings. They were ably assisted in their work by two interns, Colm Byrne and Paul Deane.

We are grateful to Prof Mary Hickman, Votes for Irish Citzens Abroad (VICA) and Eoin Murray, National Women's Council of Ireland (NWCI) for taking the time to address the Convention and communicating the views of their respective organisations.

Dr. Ken Carty from the University of British Columbia deserves a special mention, having travelled from Canada to be with us for our second weekend meeting. Known fondly as the "Grandfather of Citizens' Assemblies", Ken shared with us some wonderful insights into our electoral system from an international perspective and also his views our work and the potential of the Convention model. I'd also like to thank Ken Curtin who gave us the benefit of his considerable wisdom, experience and technical knowledge on all things electoral during the course of the weekend.

We were indebted to Nora Owen, former Minister of Justice and member of Dáil Eireann for participating in the panel discussion during the May meeting and for her insights into the electoral system based on her recent international experience in Pakistan. Members of the Convention particularly enjoyed the contributions by both Noel Whelan and Brendan Halligan during the June meeting, which greatly enhanced the deliberations in a highly engaging and often amusing fashion.

As you know, the study commissioned by Publicpolicy.ie was presented to the May meeting by Professor Adrian Kavanagh of NUI Maynooth, who produced the study in association with Noel Whelan. I think that the study and its presentation contributed greatly to the quality of the debate and assisted the members of the Convention decide on the two electoral systems they wished to have examined in more detail at the June meeting.

I want to thank Publicpolicy.ie for commissioning the study on possible outcomes of the 2007 and 2011 elections under the different electoral systems, and Professor Kavanagh and Noel Whelan for their production of it. I believe that the study not only assisted the Convention in its work but will also have been of considerable interest and value for political practitioners and the political science community.

Finally, as we complete six months work, I want to particularly acknowledge the work of the Convention secretariat. It is led ably and imaginatively by Art O'Leary and supported by Richard Holland, Nason Fallon and Amy Brennan. I would also like to thank the staff from the Department of the Taoiseach who given up many weekends to assist us in the smooth running of the events.

Tom Arnold
Chairman

2.   Convention Recommendations

The votes on the first ballot paper that were most related to the main theme of these two weekends. On the question of whether the existing electoral system (PR-STV) should be changed at all, the majority (54%) voted in favour. This was followed by two questions specifically designed to reflect the changes that members were looking for, namely: (1) to keep the existing electoral system (79% voting against the alternative electoral system on offer – MMP), and (2) to make two key changes to the existing electoral system – ensuring that no constituency size should be less than a 5-seater (86% in favour), and replacing the alphabetical ordering of candidates on the ballot paper (67%).

Given the result of the second vote – against MMP – the fourth vote was made redundant, though even here the level of attachment to PR-STV is notable (60% of members would have wanted PR-STV to be at the core of any MMP system that might have been adopted).

Finally there were two votes aimed at reflecting members' opinions on the question of the size of Dáil Éireann, which indicated strong support (49%) for greater than 159 members. As things stand, the number of members will be reduced to 158 at the next General Election.

Electoral Systems

1. Should we change our existing PR-STV electoral system? *

Yes	No	No opinion
54	**45**	**1**

2. Should we replace our existing PR-STV electoral system with MMP? *

Yes	No	No opinion
20	**79**	**1**

3. In the event that the Convention votes for changes to our existing PR-STV electoral system, which of the following should be considered?

	Yes	**No**	**No opinion**
Larger constituencies (smallest constituency size will be 5-seaters)	**86**	**13**	**1**
Changing the alphabetical order of candidates on the ballot paper	**67**	**16**	**17**

4. **In the event that the Convention votes to replace our existing PR-STV electoral system, what form of MMP should be adopted?***

Classic MMP with single-seat constituencies and a party list	**13**
MMP with multi-member STV for constituency counts	**60**
No opinion	**25**

5. **Should we change the number of members of Dáil Éireann?***

Yes	No	No opinion
37	**59**	**4**

6. **In the event that the Convention votes to change the number of members of Dáil Éireann, what range would be most appropriate?***

100-130 (1 per 40k–50k electorate)	130-158 (1 per 30k–40k electorate)	159+ (1 per < 30k electorate)
12	**38**	**49**

* a constitutional amendment would be required

Other changes to the electoral system

The second ballot paper contained four sets of votes. First, there were six items – an electoral commission, extending polling hours/days, postal voting, the electoral register, 'measures to improve voter turnout', education programmes in schools – that shared in common a desire on the part of the members for more to be done to improve electoral turnout. On all six items the votes were overwhelmingly (in one case unanimously) in favour of change.

The members next voted on the question of non-parliamentary ministers in government, with the majority voting in favour of the two main alternative approaches that had been discussed: non-members of the Oireachtas as ministers (55% in favour) and requiring TDs to resign their seats on being appointed minister (59% in favour).

Finally, the members had two sets of votes on the issue of direct democracy, with the basic principle receiving strong support (83% in favour), with adequate safeguards to ensure that no measures could be adopted that would have the effect of undermining citizens' fundamental rights. There was also strong support for the two main forms it might take: 80% favoured the right for citizens to petition on influencing the (constitutional and non-constitutional) legislative agenda; 78% favoured the right to petition for referenda. Time didn't permit a more detailed consideration of the merits of this issue.

7. What other electoral system-related changes should be considered?

	Yes	No	No opinion
The Establishment of an Electoral Commission	97	1	1
Extending polling hours/days	89	11	0
Greater access to postal voting	91	8	1
Improving the accuracy of the electoral register	100	0	0
The introduction of measures to improve voter turnout	96	1	3
Introduction of relevant education programme in schools	95	0	5

8. Non-Parliamentary Members of the Government *

	Yes	No	No opinion
Should Dáil Éireann be permitted to appoint non-members of the Oireachtas as Ministers?	55	42	3
Should members of the Dáil be required to resign their seats following appointment to ministerial office?	59	40	1

9. Should 'direct democracy' (i.e. citizens' initiatives) with adequate safeguards be introduced? *

Yes	No	No opinion
83	16	1

10. In the event that the Constitutional Convention votes in favour of direct democracy, which of the following should it apply to: *

	Yes	No	No opinion
Placing items on, or removing them from, the legislative agenda	80	19	1
Requiring constitutional referenda to be held	78	17	4

* a constitutional amendment would be required

3.   Convention Programmes for first and second meetings

First meeting - May 18th-19th, 2013

Saturday

9.30 am   Welcome from the Chair

9.40 am   *Presentations:*
- The role of Parliament and the Executive – Muiris MacCarthaigh
- Irish system of policy development - Dr. Niamh Hardiman (UCD)
- Irish public opinion and debates over electoral reform - Prof Michael Marsh (TCD)

10.35 am   *Q&A*

10.45 am   *Presentations:*
- The Irish electoral system - Prof Michael Gallagher (TCD)
- Alternative electoral systems - Prof David Farrell (UCD)

11.25 am   *Q&A*

11.45 am   Roundtable discussion

1.45 pm   Plenary session: participants to hear emerging themes from the discussion at other tables

2.15 pm   *Presentations:*
- Adrian Kavanagh – Alternative results for 2007 and 2011 elections
- Michael Gallagher (TCD) on the arguments for and against electoral reform
- Michael Marsh (TCD) Non-constitutional electoral reforms

3.05 pm   *Panel Discussion & Q&A*

4.15 pm   Roundtable discussion

5.20 pm   Expert summary - initial ideas on other electoral system-related reforms

5.30 pm   **Conclusion**

Sunday

10.00 am   Other related electoral issues – Jane Suiter

10.30 am   Plenary: review draft ballot papers (areas to focus on in June)

11 am   Presentations by Advocacy Groups

11.30 am   *Final Q&A with advisory panel members*

12 noon   Private session – Convention business

12.45 pm   Announcement of Results

Second meeting: June 8th – 9th

Saturday

9.30 a.m.	Welcome by Chair
9.40a.m.	Presentation on Mixed Member Proportional system – David Farrell (University College Dublin)
9.55a.m.	Sample MMP Ballot (results from the Masterclass)
10.10am	*Q&A*
10.20 am	Options for an MMP system for Ireland – Michael Gallagher (Trinity College Dublin)
10.40 am	*Q&A*
11.05 a.m.	*Is there anything wrong with the Single Transferable Vote (STV)?* **Debate and Q&A** with Brendan Halligan and Noel Whelan
12 noon	Roundtable discussions
2 p.m.	Options for reform of Irish elections (size of constituencies; number of TDs; non-parliamentary ministers; participatory democracy) and *Q&A – David Farrell (UCD) and Jane Suiter (Dublin City University)*
2.45 p.m.	Roundtable Discussion
4 pm	Plenary session - participants to hear the emerging themes from the discussion at other tables
4.45 pm	Presentation on public submissions received and information from the Minister for the Environment, Heritage and Local Government – presented by Gemma Carney (NUI Galway).
5.05 pm	Options for administrative reform of Irish elections (Michael Marsh, Trinity College Dublin)

Sunday

10a.m.	Summary and emerging themes from previous sessions
10.30 a.m.	Agree ballot paper
11 a.m.	Electoral reform for Ireland. Some reflections? – Ken Carty (University of British Columbia, Vancouver)
11.15 am	Final Q&A (written questions from the members)
12.15 p.m.	*Private Session*: Convention business
12.45 p.m.	Announcement of Results

4. Dáil Electoral System – Expert presentations (first meeting)

4.1 Presentation by Muiris MacCarthaigh, Queens University Belfast – The role of Parliament and the Government

Introduction: The separation of powers

Most parliamentary democracies are founded upon a three-way division of power between the legislature (parliament), executive (government) and judiciary (the courts). In other words, a healthy democracy has a clear 'separation of powers' or a system of 'checks and balances' between the parliament, the government and the courts. This idea has influenced the design of constitutions for centuries, and it is a core feature of the Irish constitutions of 1922 and 1937. In this briefing paper, we look at the constitutional position of the parliament vis-a-vis the government in the 1937 Constitution and consider what this tells us about the role of Irish parliamentarians.

Parliament and the Executive in Bunreacht na hÉireann - The Constitution of Ireland

'The National Parliament' is the subject of Articles 15 to 27 of Bunreacht na hÉireann, with a good deal of emphasis on its composition and operation. According to Article 15.1.1, the national parliament of Ireland is called 'the Oireachtas', and it consists of 'the President and two Houses…a House of Representatives to be called Dáil Éireann and a Senate to be called Seanad Éireann'. The Senate was to have 60 seats (elected by a complex electoral system) but the 1937 Constitution did not specify the number of seats Dáil Éireann should have, leaving that issue to be decided by legislation (see Appendix 1 below). It did however specify that there should be at least one TD for every 20-30,000 thousand members of the population.

The tasks of the Parliament under the Constitution can be grouped into two categories: *lawmaking* and *non-lawmaking*. In terms of the **lawmaking** role, Article 15 states quite deliberately that the 'sole and exclusive power of making laws for the State is hereby vested in the Oireachtas'. So the principal role of Irish parliamentarians is to make law for the state, laws that are within the boundaries of the Constitution. Proposed legislation only becomes law when it has been approved by both Houses, and signed by the President.

In relation to the non-lawmaking functions of Parliament, a number of tasks are identified, some of which directly concern the Executive. Article 16.2.1 says that 'Dáil Éireann shall be composed of members who represent constituencies', and Article 18.4 notes that members of the Seanad are elected indirectly to that House. So we can conclude that members of the Houses of the Oireachtas have an important **representative** function. This means that Parliament provides a forum for discussion and debate concerning any and all policy issues affecting those who elect its members to office.

Members of Dáil Éireann are exclusively tasked with the **election of the Executive**, or Government. To understand this we must first consider how the Government is created. Article 13.1 states:

> 1° The President shall, on the nomination of Dáil Éireann, appoint the Taoiseach, that is, the head of the Government or Prime Minister.
> 2° The President shall, on the nomination of the Taoiseach with the previous

approval of Dáil Éireann, appoint the other members of the Government.

Article 28 completes the process of government formation by stating:
> 1. The Government shall consist of not less than seven and not more than fifteen members who shall be appointed by the President in accordance with the provisions of this Constitution.
> 2. The executive power of the State shall, subject to the provisions of this Constitution, be exercised by or on the authority of the Government.

In practice therefore, after a general election (and possibly on other occasions), a Prime Minister or 'Taoiseach' is elected by the members of Dáil Éireann, and seeks approval from that House for the other 14 members of government, which the President then formally appoints. This 'Cabinet' of Ministers is then bestowed with the state's Executive authority. The Constitution states that all members of the executive must be members of the Oireachtas. This means that another role of the Oireachtas is to **provide Ministers for Government**. Article 28.7.1 says that the Taoiseach, Tánaiste and Minister for Finance must be members of Dáil Éireann only. Article 28.7.2 states that the Taoiseach may appoint up to two members of Seanad Éireann to Government, but this has rarely occurred, and in practice the Executive is comprised of members of the party or parties holding a majority of seats in Dáil Éireann.

Another key task for Dáil Éireann is the **oversight of the Executive** it has elected - this is a critical function designed to ensure the separation of powers between legislature and executive. The relevant Article here is 28.4.1, which simply states that 'The Government shall be responsible to Dáil Éireann'. (Note there is no role for the Seanad in the election or dismissal of government). So members of Dáil Éireann have a duty to hold the government to account. While this is a deeply important provision in the Constitution, it is also perhaps an Article that is difficult to fully understand without reference to the reality of political parties, which are of course not mentioned in the Constitution. Also, it should be noted that considerable power is given to the Taoiseach under the Constitution over both the Executive and Parliament. For example, Article 28.9.4 allows the Taoiseach to demand the resignation of any Minister as he or she wishes. The Taoiseach can also resign and request that the President dissolve Dáil Éireann without obligation to seek approval for this from other members of the government.

Dáil Éireann also has a **financial oversight** function (Article 17.1, also Articles 21.1 and 28.4.4). It requires members of Dáil Éireann to approve and check how the activities of the state are funded, mainly though the annual presentation by the Government of the Budget and a debate on its contents. The state's financial watchdog, the Comptroller and Auditor-General, is required to report to Dáil Éireann. The Seanad has little if any direct role in this work.

The only policy area where the Constitution is specific about the duty of the Government to Parliament is in relation to international affairs. Article 29 says that the Government may enter international agreements and bind the state in international law, but such agreements must be laid before the Dáil and if any of these agreements involve a charge on public funds they require the approval of the Dáil. So again this expects members of the Dáil to approve

the actions of government. If an international agreement is to be subsumed into the domestic law of Ireland, that can only be carried out 'as may be determined by the Oireachtas' as it requires legislation, and thus the Dáil, Seanad and President must approve it.

Finally, the Constitution also requires members of both Houses of the Oireachtas to perform some other, less common, tasks: declaration of an emergency, removal of a judge from office, and impeachment of a President as necessary.

Appendix 1

Constituency size and total Dáil membership since 1923[1]

Legislation	Year of revision	Number of TDs in constituency						Total number of constituencies	Total number of TDs
		3	4	5	7	8	9		
Electoral Act 1923 (No. 12 of 1923)	1923	6	4	9	5	3	1	28[1]	147[1]
Electoral Act 1935 (No. 5 of 1935)	1935	15	8	8	3			34	138
Electoral (Amendment) Act 1947 (No. 31 of 1947)	1947	22	9	9				40	147
Electoral (Amendment) Act 1959 (No. 33 of 1959)	1959[2]	21	9	9				39	144
Electoral (Amendment) Act 1961 (No. 19 of 1961)	1961	17	12	9				38	144
Electoral (Amendment) Act 1969 (No. 3 of 1969)	1969	26	14	2				42	144
Electoral (Amendment) Act 1974 (No. 7 of 1974)	1974	26	10	6				42	148
Electoral (Amendment) Act 1980 (No. 17 of 1980)	1980	13	13	15				41	166
Electoral (Amendment) Act 1983 (No. 36 of 1983)	1983	13	13	15				41	166
Electoral (Amendment) Act 1990 (No. 36 of 1990)	1990	12	15	14				41	166
Electoral (Amendment) Act 1995 (No. 21 of 1995)	1995	12	15	14				41	166
Electoral (Amendment) (No. 2) Act 1998 (No. 19 of 1998)	1998	16	12	14				42	166
Electoral (Amendment) Act 2005 (No. 16 of 2005)	2005	18	13	12				43	166
Electoral (Amendment) Act 2009 (No. 4 of 2009)	2007 (Recommended)	17	15	11				43	166

[1]Excludes 6 university members returned for 2 constituencies of 3 members each.
[2]This revision was found to be unconstitutional by the High Court.

Source: MacCarthaigh and Manning (2010), pp.470-1

Note: The Constituency Commission report of 2012 recommended that the number of members in Dáil Éireann be reduced by 8 to 158 seats at the next election, and that the number of constituencies be reduced from 43 to 40.

References

Gallagher, M. 2010. *The Oireachtas* in Coakley, J. and Gallagher, M. (eds) *Politics in the Republic of Ireland,* London: Routledge/PSAI, pp.198-229.

Kohn, L. 1932. *The Constitution of the Irish Free State*, London: George Allen & Unwin.

MacCarthaigh, M. 2005. *Accountability in Irish Parliamentary Politics,* Dublin: Institute of Public Administration.

Malley, E. 2012. 'The Apex of Government: Cabinet and Taoiseach in Operation' in O'Malley, E. and MacCarthaigh, M. *Governing Ireland: From Cabinet Government to Delegated Governance,* Dublin: Institute of Public Administration, pp.35-60.

O'Hegarty, L. 2010. 'The Constitutional Parameters of the Work of the Houses' in MacCarthaigh, M. and Manning, M. *The Houses of the Oireachtas: Parliament in Ireland,* Dublin: Institute of Public Administration, pp. 54-105.

4.2   Presentation by Dr Niamh Hardiman, UCD – Irish system of policy development

The policy process
The policy process refers to the activities whereby the government sets out its priorities for new legislation, the civil service develops detailed plans, and interested groups comment and lobby. Then the legislation goes before the Dáil and the Seanad for debate, where it is subject to amendment before being passed into law, after which it is then put into effect.

Problems
A number of problems have been identified in recent years in the way the policy process works in Ireland.

Quality
Short-term outcomes can be prioritized over long-term planning. Important but difficult changes are too easily put off. Recommendations drawn up in expert reports are too easily shelved. Public interest considerations can yield to the preferences of lobby groups with insider access. Policy-making can lack transparency, sometimes to the point of actual corruption.

Localism
Elected politicians at national level spend a lot of time looking after constituency affairs. Incentives to focus on local issues detract from politicians' ability to focus on national-level policy issues. The skills that get people elected may not be the same skills needed to be effective government ministers. Government priorities tend to be shaped by concerns of particular localities or groups, and policy development is poor at systematic, long-term planning in the national interest.

Proposals for change

Regulatory change in areas such as registering lobbying groups disclosure of financial contributions to political parties are part of the reform process. Institutional change is also important, because institutions shape behaviour. But which institutions most need to be changed to bring about political reform?

Electoral system change

Changing the electoral system may seem attractive because PR-STV incentivizes close connections between politicians and voters, and sharpens intra-party competition between candidates. But it is not clear that an alternative electoral system would change some of the most problematic aspects of the Irish policy process. Politicians' responsiveness to their voters is not a bad thing in itself. Under a different electoral system, voters might still want to use their politicians to solve local problems, while other weaknesses in the system would still exist.

Ministers' specialized skills

There is little incentive for Irish politicians to have or to develop specialist skills in particular policy areas. Ministers are appointed from among elected politicians, and typically move between departments in the course of a career, learning as they go. This is very unusual in European terms. In most countries, including Britain, ministers can be appointed to government from outside parliament because they have specialized skills, while still being fully accountable to the legislature.(Table 1 in the appendix shows the range of practices across European countries.)

Politicians' ability to debate policy and scrutinize government decisions

Arguably the biggest weakness in the Irish policy process is the power of the government to prevail over the legislature in getting measures passed. The government can use the party whip to discipline members of the parliament to a much stronger degree than elsewhere in Europe, as Table 2 in the appendix shows. This means that government proposals for legislation do not get specialized attention, criticism, and amendment. It also means that the parliament cannot easily hold the government to account.

The most important place in which these functions are carried out in other jurisdictions is in parliamentary committees. Not only are Irish parliamentary committees particularly weak, but they have been weakened even further by the Supreme Court decision in the Abbeylara case. The 2011 referendum proposal to strengthen the powers of committees was rejected by the people. This may be that people were suspicious of politicians in general, rather than because they fully understood that powerful committees are an essential safeguard against over-powerful governments.

Skills, independence, and accountability of the civil service

The Irish civil service recruits people for their general skills, and people are expected to learn on the job. Ireland has fallen behind developments in the British system, on which our civil service is based, in areas such as graduate recruitment, specialist training, and construction of expert skills services.

Senior policy advisers in the civil service need to be fearless in the impartial advice they give to ministers. When things go wrong, it should be clearer where responsibility lies. The Irish answer that 'the system is to blame' means that necessary change can too easily be avoided.

Citizens' rights
People often turn to national politicians for help in dealing with bureaucracy, which encourages politicians to take credit for delivering services. But if the rules were simple, clear, and fair, people would have less trouble getting their rights, and politicians would be freed up from having to 'go about persecuting civil servants'.

Limiting scope for corruption
A lot of corruption has come to light in local government land zoning and planning decisions. One issue is that zoning dramatically increases land value, and governments have been unwilling to tax away windfall gains. The Kenny Report (1973) on land zoning recommended changing the strong Constitutional protections afforded to private property, where the public interest is at stake.

Appendix

Table 1. Separation of the Functions of Members of the Legislature and the Executive

	Westminster-type systems	Complete separation of executive and legislature	Mixed models
Recruitment	Ministers must come from within parliament, including the upper house. Some key personnel have to come from the lower house.	No minister may also hold a seat in the legislature and must resign seat if appointed to government. Not necessarily appointed from the legislature.	Ministers may but need not be from parliament. They may keep their seats in the legislature. Mixed practices on appointing non-parliamentary or experts as ministers.
Examples	**Ireland** **Britain**	**France** **Netherlands** **Norway**	**Most West European democracies**

Source: Niamh Hardiman ed., *Irish Governance In Crisis*. Manchester: Manchester University Press, 2012, p.221.

Table 2. Index of government dominance over the legislature

High	Greece 5 Ireland 4 UK 4
Medium	Germany 2 France 1 Netherlands 1 Portugal 1 Spain 0.5
Low	Belgium -1 Denmark -1 Finland -1 Italy -1 Norway -1 Iceland -2 Sweden -4

Source: Niamh Hardiman ed., *Irish Governance In Crisis*. Manchester: Manchester University Press, 2012, p.218.

4.3   Presentation by Prof Michael Marsh, TCD – Irish public opinion and debates over electoral reform

"That Ireland adopted [PR-STV] was due to the fact that at the time of the Treaty both the leaders of the independence movement and the British Government were in favour if it".[i]

A proportional representation electoral system (PR) was widely appreciated as a means of protecting the interests of the significant protestant minority, and since PR-STV was the system most familiar to policy makers at the time this was the system adopted at the foundation of the State.[ii]PR-STV was given constitutional expression in the 1937 Constitution. This specified several important features of the electoral system, including that it should be PR-STV, a minimum of three seats per constituency, and a ratio of seats per head of population of between 1 to 20,000 and 1 to 30,000.

The first major debate on electoral reform was in 1958-59 when the FF government, led by Eamon deValera, initiated a referendum to replace PR-STV with a non-proportional first-past-the-post system (FPTP) as used in Britain and the USA. DeValera's case for change was laid out in the Dáil debate on the required constitutional amendment. His main criticism was aimed at the principle of proportionality. He said that elections should be concerned first with the choice of government:

> The main question before the people at the time of an election is what sort of Government they will have for the succeeding five years, what sort of policy they will have.

This question is obscured when there are several parties, leading to coalition or minority government, which had been the typical outcome of Irish elections to that point. The FPTP system in Irish conditions would reduce the number of parties and clarify the choice for voters. FPTP would mean that bargains between parties would be made in front of the people, before an election, not afterwards, in private. DeValera also drew attention to the shortcomings of multi-seat constituencies, but said this was not his fundamental point. Essentially he claimed that single seat constituencies would promote integration, with one TD for all the people in an area.

Just 10 years later the Jack Lynch led FF government again initiated a referendum to change to single seat constituencies using the FPTP system. The arguments he put forward were similar ones to those made by deValera with the central point again being the benefits of single party government and the need to introduce a new electoral system to ensure that would be the norm. However, Lynch highlighted the critical need for stable government as the modern government's economic role had become central. There were fewer parties at that time, but Lynch argued that continued use of PR would lead to lots more parties now that the system defining issue of independence and the civil war was "beginning to wane". Lynch also made a stronger case against multi-seat constituencies. He said that they encouraged partisan approaches to local problems while "competition between Deputies— often of the same Party—has forced some of them to curry favour with voters by pretending to gain favours for them even where benefits are available as of right". Such activities distracted TDs away from their "primary role as legislators". He further argued that under the single seat system parties would have "every incentive to put forward candidates of a high calibre", perhaps implying that they did not at present.

The debates in later years have concentrated rather more on the problems with multi-seat constituencies as identified in that debate. In 1987 FG included a manifesto commitment to change to something like the German system, with single seat constituencies and a second vote for a party list to ensure overall proportionality. People such as Garret FitzGerald and Gemma Hussey argued that the multi-seat constituencies distracted TDs from their work within the Oireachtas, and ministers from their departmental responsibilities.

The debate over multi-seat constituencies has continued ever since. Former FF minister Noel Dempsey made the case for change at the MacGill Summer School in 1999. At that time an Oireachtas Committee was looking at the case for and against change, but came down in favour of retaining the current system. Another Oireachtas committee reached the same conclusion in 2010. However, the economic crisis has promoted a new wave of criticism. While this is still focused largely on the multi-seat constituencies, there is more criticism now of the quality of TDs who are nominated to run and get elected under that system. The arguments have been made widely. Two examples are enough. Ed Walsh, former president of the University of Limerick complained about the large numbers of schoolteachers and lawyers in the Dáiland said that almost no TDs had any business experience. More recently, Dan O'Brien, economics editor for *The Irish Times,* claimed that the quality of Irish TDs and ministers was below the level that he had found elsewhere when he worked for the *Economist* across Europe. Both of these critics see the current role of a TD – which is biased towards constituency service – as putting off aspiring politicians who would make good TDs with a stronger policy focus.

Public opinion and electoral reform

In 1959 and again in 1968 the people voted in a referendum for the status quo. There have been relatively few surveys over the years to tell us anything of what people now think about the electoral system and, perhaps more importantly, the features singled out for criticism since 1959. I have brought together some of these, most of which are taken from the Irish National Election Study (INES), a survey carried out after the 2011 election by RED C for a team of academic researchers.

Single party government. This was the ideal that FF politicians held up in the 1959 and 1968 referendums. The evidence suggests that it is not something that the public necessarily now sees as ideal, even when their chosen party is involved. Voters are occasionally asked during election campaigns to indicate what sort of government they would most like to see. In 2002 and again in 2007 only 15% of voters indicated in RTE's exit poll that they wanted to see a single party FF government. More than half of FF's own voters did not want that. Just 18% wanted to see a single party FG government in 2011, and only 40% of FG's own voters wanted that outcome (RTE's exit poll).

Voting for a party. While votes are usually taken as indicating support for a party, the extent to which voters support particular candidates rather than parties is open to question. A question asked in 2011 illustrates that many might vote for the same candidate even if they represented a different party.

If your first preference candidate had been running for any of the other parties, would you still have given a first preference vote to him or her?[INES2011]	%
Yes	32
No	35
Depends on the other party/ Don't know	33

The TD's role. Significant numbers do see the local activities of their TDs as very important, and that this is a strength of the current system. Even so, the people seem to see many other aspects of the job as equally, and perhaps even more important.

	Strongly Disagree	Disagree	Disagree slightly	Neither agree nor disagree	Slightly agree	Agree	Strongly agree
The assumption that TDs should provide a local service is a strength of the Irish political system[INES2011]	5%	10%	9%	24%	19%	25%	8%
		24%				52%	

When thinking about the work of a TD, how important are the following aspects of their work? This time please use a 5 point scale where 1 = Of Little importance and 5 = Of Great Importance. [INES2011]	% Scoring 4 or 5
Raising awareness of important social needs and interests	87
Developing policies	80
Working on legislation	77
Balancing different interests in society	71
Get as much for their constituency from the government as possible	70
Representing the individual interests of individual citizens	67

Keeping the current system. Electors were supportive of a number of proposed reforms in the political system at the time of the 2011 election, but there was little support for changing the electoral system.

During the election campaign, there were a lot of discussions by various parties about the political reforms that would be made. Considering each one of these, how much do you agree or disagree with each?[INES2011]	Agree*
Our PR-STV (Single Transferable Vote) electoral system should be replaced	27
Parties should be forced to nominate more women as candidates	45
The Seanad should be abolished	57
Cabinet ministers should step down as TDs to concentrate on running their ministries and be replaced by someone else from the same party	60
Local government should be given power to raise and to manage their own finances	61
Some experts who are not TD's should be brought into the cabinet	74
The number of TDs should be significantly reduced	77

* Combined percentage saying Slightly Agree, Agree or Strongly Agree

4.4   Presentation by Prof Michael Gallagher, TCD – the Irish Electoral system

Proportional Representation by the Single Transferable Vote (STV)
This is a 'proportional' electoral system (i.e. PR): it seeks to provide a fair representation in parliament for all parties contesting the election roughly in proportion to the votes they win. This means that smaller parties have a chance of winning some seats.

Parliamentary constituencies
In Ireland TDs are elected in parliamentary constituencies. The number and size of these constituencies are determined by Constituency Commissions appointed every few years, which are required to ensure that the number of TDs to the population is kept within the

constitutional limits of between 20,000 and 30,000 per TD, to ensure that this ratio of TDs to population is basically uniform throughout the country, and to try and keep constituencies within county boundaries 'as far as practicable'.

As in all PR systems, the Golden Rule is that the greater the number of TDs elected in each constituency (referred to as the 'district magnitude') the more proportional the election result. This is because it's easier to divide seats proportionally when there are a lot of them.[1] Under the Constitution (a.16.2.6), constituencies must elect at least three TDs, but there is no upper limit on constituency size. In earlier elections constituencies elected as many as nine TDs, but in recent elections an upper limit has been set at five TDs (which is the limit set by the 1997 Electoral Act).

In the 2011 election, the country was divided up into 43 constituencies each electing 3 (in 17 constituencies), 4 (in 15 constituencies), or 5 (in 11 constituencies) TDs. Given the relatively small 'district magnitude' of Ireland's constituencies (by international standards), this means that the results are a lot less proportional than they might otherwise be.

How voting occurs in this system

Electoral systems vary in terms of whether the vote is (1) for a candidate or a party, and also (2) regarding how much choice is given to voters on the ballot paper. In the case of STV, the vote is for a candidate. The particularly noteworthy feature of STV is the amount of choice given to voters, who are invited to rank-order the candidates (1, 2, 3, etc.): voters have the possibility of rank-ordering as few or as many candidates on the ballot paper as they wish; this includes being able to vote for candidates from as many of the parties as they wish. A sample of an Irish ballot paper is reproduced below.

How politicians are elected

To get elected a candidate must receive enough votes to reach or exceed an electoral quota (the Droop Quota: which is calculated on the basis of the number of valid votes and the number of seats in the constituency). The election count occurs in a number of stages. While this is quite complex, it is not necessary for the voter to understand how the counting works in order to vote effectively. First, the returning officer orders the ballot papers in terms of the Number One votes marked against every candidate. If any candidates reach or exceed the quota at this stage, they are deemed elected. What follows then is a series of count stages that can be either one of the following:

- A transfer of the surplus votes (i.e. those votes that exceed the quota) of elected candidates to the remaining candidates based on the next preference indicated on each ballot paper;
- Or in the event that there are no surplus votes to transfer, the returning officer eliminates from the count the candidate with the lowest number of votes, and transfers all of his/her ballot papers based on the next preference indicated on each ballot paper.

---

[1] For example if a party gets 10% of the vote in a constituency, giving the party 10% of the seats will be impossible in a five seat constituency but easily done where the constituency has ten seats.

These counting stages continue until the required number of candidates (3, 4 or 5 depending on the size of the constituency in Ireland) has been elected. The fact that every preference can count (i.e. not just the Number One votes received by the candidate, but also the Number Twos, Number Threes and so on) means that candidates make every effort to attract preference votes from *all* voters.

Countries using this system
STV is an extremely rare electoral systems used only in Ireland and Malta to elect its main (lower) house of parliament; though Australia uses it to elect its Senate (upper house). It is also used at sub-national level for electing regional parliaments in such places as Australia and Northern Ireland (the Northern Ireland Assembly) and for local elections for instance in New Zealand and Scotland.

Variations
There are a large number of ways in which STV can vary; here are some of the more significant forms of variation:
- In Malta and Australia, the constituency sizes are larger, which means that the election results are more proportional.
- Candidates are not listed alphabetically in Australia (to guard against alphabetical voting). In both Malta and Australia, candidates are grouped together by their party affiliation.
- Malta and Australia do not use by-elections to fill vacant seats in parliament.

An Irish STV ballot paper

4.5 Presentation by Prof David Farrell, UCD – Alternative Electoral Systems

4.5.1 Mixed-Member Proportional Systems (MMP)

Just like STV and List systems, this also is a 'proportional' electoral system (i.e. PR): it seeks to provide a fair representation in parliament for all parties contesting the election roughly in proportion to the votes they win. This means that smaller parties have a chance of winning some seats.

As its title suggests this system is a mix of two separate electoral systems. While any number of possible mixes is possible, the most common mix is of the First-Past-the-Post system used in the UK and the PR-List systems common in much of Europe (both dealt with in separate briefing notes). As we shall see, in recent Irish debates over electoral reform there has been some discussion of mixing STV and List (e.g. with some TDs elected in multi-seat STV constituencies and others elected on national party lists).

Parliamentary constituencies
The big feature that stands out with this system is the fact that it produces two different types of MPs: a portion of the MPs (commonly half of the parliament) are elected in single-seat constituencies, with the remainder elected on party lists usually with constituencies that are large regions (though it can be the whole country). Supporters of the system argue that it offers the best of both of these systems because, it results in some MPs with a focus on constituency work and other MPs focused more on national political issues. Critics suggest that the two types of MP means the two might be regarded as having different levels of authority. As a matter of fact, this is not always borne out in practice.

How voting occurs in this system
Sample ballot papers from Germany and New Zealand are provided below. As you can see, in both cases, voters are asked to vote twice, for constituency candidates and for (closed) party lists.

How politicians are elected
The count occurs in three stages as follows:
1. First, the returning officer counts the FPTP constituency part of the ballot paper. The candidate with the most votes in the constituency race is deemed elected. However there is nothing to say that one could not use AV in this part.
2. The returning officer then counts the list part of the ballot paper, just like in the list electoral system dealt with separately. This determines how many seats each party is entitled to overall. The rules as to what the proportionality is based on can cause very different seat allocations.
3. Given that this is a proportional electoral system, the focus is on trying to ensure as much as possible that parties are awarded seats in proportion to the number of votes they win overall. Therefore, in this final stage, now that it is known how many seats each party is due, the returning officer has to subtract from that total any constituency seats already won in the first stage of the count and this determines how many list seats each party is awarded. This should result in a proportional result.

The consequence of the final calculation (in point 3) is that larger parties can end up having a lot of constituency seats and far fewer list seats; indeed, in one MPP election in Wales the Labour party ended up with only constituency seats).

Countries using this system
Germany is the first place in the world to use this system, having adopted it after the second world war. In recent years a small number of other countries have adopted it, most notably New Zealand, but also Bolivia and Venezuela. At sub-national level it is used to elect the Scottish Parliament and the Welsh Assembly.

Variations
Clearly this system offers the greatest scope for variation, among the most important being:
- The choice of which two systems to mix;
- Whether this system should be fully or only partially proportional (in the case of the latter there is no linkage between the results of the two systems so that a party that

wins lots of constituency seats is still allowed to sweep up as many list seats as possible);

- The proportion of parliamentary seats that should be allotted to each part (e.g. in Germany half of MPs represent individual constituencies and the other half are elected on party lists);
- How open or closed the ballot should be on the list part of the system;
- Whether candidates should be allowed to run both as constituency and list candidates.

4.5.2 Proportional Representation – List

This is a 'proportional' electoral system (i.e. PR): it seeks to provide a fair representation in parliament for all parties contesting the election roughly in proportion to the votes they win. This means that smaller parties have a chance of winning some seats.

Parliamentary constituencies

As in all PR systems, the Golden Rule is that the greater the number of MPs elected in each constituency (referred to as the 'district magnitude') the more proportional the election result. In list systems, constituency (or regional) size tends to vary quite significantly from one country to the next. For instance, in Greece the average 'district magnitude' is quite similar to Ireland's – five MPs per constituency – whereas in Portugal the average is about 24 MPs per constituency. In some countries (The Netherlands, Israel, Slovakia) the entire country is a single constituency, which maximizes the proportionality of the election result. In the Netherlands, this means that all 150 MPs represent the entire country rather than individual constituencies. This tends to reduce, but not eliminate, the focus on 'local service'.

How voting occurs in this system

This is the area in which list systems vary most dramatically. Below we provide examples of ballot papers from the two extremes – South Africa's 'closed list' system and Luxembourg's 'open list' (or 'panachage') system.

- *Closed List*: In the case of South Africa's version of list (which is also used in a number of European countries such as Portugal and Spain), voters are asked to give a single vote for their preferred party. It is the responsibility of the parties to draw up their list of candidates; voters are not able to change the rank order of candidates on these lists. If, for example, party A receives 30% of the vote in a 10 seat constituency it is (usually) allocated three seats, and the top three candidates on the party's list are deemed elected.

- *Open List*: Luxembourg provides the opposite extreme (Switzerland also uses this system). Here voters have three options:
  1. They can either agree with the rank-order of candidates for their preferred party (as in South Africa), or
  2. They can vote for their preferred party but change the rank order of the candidates (this option is available in other list systems, e.g. Denmark and Finland), or
  3. They can vote for candidates from all the parties and produce their own ranking of candidates (much like in the case of Ireland's STV system).

In-between the South African and Luxembourg extremes there are list systems that provide more limited choice. For instance, in Belgium, voters are allowed the possibility to express a preference vote for individual candidates and depending on how many individual preference votes a candidate receives he or she might have the possibility of moving up the ranking provided by the party when drawing up its list.

The nature of how 'open' or 'closed' the ballot paper is in a list system has important implications for voter choice. It can also influence how candidates operate in election campaigns and how politicians operate in the parliament. Basically, the more 'open' the ballot paper the greater the likelihood that candidates and politicians will try to develop a 'personal vote'. Where the constituencies are reasonably small this will mean a focus on local constituency interests.

How politicians are elected

Much like in the STV system, list systems operate on the basis of a quota. There are a number of different quotas in operation across the various list systems, but they all share the same objective, which is ensuring a reasonable allocation of the seats among parties on the basis of their respective support. It is not necessary to go into detail on the different quota options at this point. It is useful just to be aware of the fact that this is another area where there are options and that some options produce electoral outcomes that are fairer to smaller parties.

Countries using this system

List systems are the most commonly used form of electoral system in the world, used for electing the national parliaments of more than a third of the world's democracies, including almost all countries in Europe.

Variations

As you have seen see, there is a lot of scope for variation in list systems, the most significant of which are: over the number of seats in a constituency and also regarding how much choice the voter has on the ballot paper.

4.5.3   Non-Proportional Electoral Systems

Non-proportional electoral systems are primarily focused on which of the larger parties 'wins' the election and thus forms a government. As such they are not concerned about achieving a fair representation for all parties in parliament Smaller parties face great difficulties to win seats in these systems.

There are a number of different non-proportional systems but the two most prominent ones, and the ones most likely to be of interest in an Irish context, are the British first-past-the-post system (FPTP) and the Australian alternative vote (AV). These are the two that will be dealt with here.

Parliamentary constituencies

The one thing that these two systems share in common is single-seat constituencies: i.e. there is just one MP in each constituency. This is the most important point of distinction

from proportional systems.[2] The larger parties tend to attract most votes in each of the constituencies and thus win the seats; supporters of smaller parties tend to find that their votes are 'wasted' as a consequence.

If we were to use this system in Ireland we would have 166 constituencies to elect 166 TDs. This would make the constituencies geographically much smaller. It also means that candidates would compete only with candidates from other parties or independents and not with candidates from their own party (which some argue this is a cause of excessive localism).

How voting occurs in this system
Copies of British and Australian ballot papers are provided below. In the British case, the voter is asked to 'vote for one candidate only' by placing an X in the box of their preferred candidate.

The Australian case is quite different. We use the same AV system to elect the Irish President and for bye-elections (sometimes it is referred to, mistakenly, as 'single-seat single transferable vote'). Here, just like in STV, the voters are asked to rank-order the candidates in order of choice (1, 2, 3, etc.).[3]

How politicians are elected
The first-past-the-post system is given this name because of the manner in which politicians are elected: literally the candidate with the most votes in the constituency is the one who is elected (or 'first past the post'). The candidate only needs to have more votes than any of the other candidates: just a one vote difference would be enough to win the seat. As a result the counting process is very simple: all the ballot papers are counted and the candidate with the most votes wins – plain and simple. It also leads to some odd results where candidates who get support from just a small proportion of the population are the sole representatives of the constituency.

In the case of AV a candidate must exceed 50% of the vote in the constituency to win the seat (i.e. he or she needs at least 50% +1 of the vote). The counting process bears a lot of similarities to an STV count. First, the returning officer orders the ballot papers in terms of the Number One votes marked against every candidate. If any candidate has an overall majority of the votes at this stage then he or she is deemed elected and the count is complete. If, however, no one has an overall majority, as in STV the count proceeds to the next stage, with the returning officer eliminating from the count the candidate with the lowest number of votes, and transferring all of his/her ballot papers based on the next preference indicated on each ballot paper. If still no one has achieved an overall majority, the process of eliminating candidates and transferring ballots continues until a winner emerges.

---

[2] It is possible to have multi-seat constituencies in non-proportional systems, but this is rare and for a number of reasons not advised. Rather than confuse matters unnecessarily we won't consider this option here.

[3] Note that in the Australian version of AV the voters are required to rank-order *all* the candidates on the ballot paper. This is peculiar to Australia and not something that has ever been required in Ireland.

Countries using this system

FPTP is used by a large number of countries, including some of the largest democracies in the world, among them India, the USA and Canada. It is also common among many of the former British colonies. In two referendums (in 1959 and 1968) Irish citizens were asked whether they would replace STV with this system. On both occasions, they rejected the proposal.
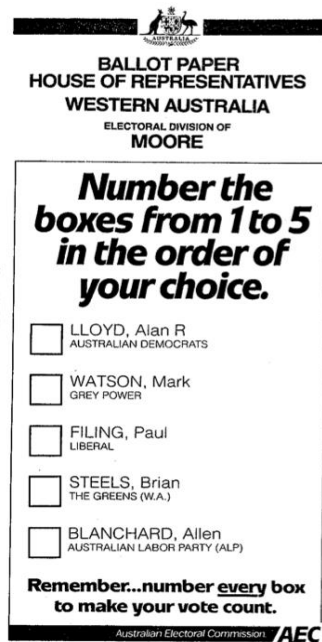
The AV electoral system is more rare – the other countries that use it tending to be small island states in the region surrounding Australia. As pointed out earlier, this system is also used to elect the Irish President, and it is used in Irish bye-elections.

A British first-past-the-post ballot paper

An Australian alternative vote ballot paper

4.6 Presentation by Dr Adrian Kavanagh, NUI Maynooth - Alternative results for 2007 and 2011 elections.

Publicpolicy.ie asked Dr Adrian Kavanagh and Noel Whelan to undertake a study of the possible outcomes of the 2007 and 2011 Irish Dail elections if those elections had been run under a different electoral system. A summary of the study is set out below and the full report can be downloaded at www.constitution.ie

The purpose of this study is to examine what might have been the outcomes of Ireland's 2007 and 2011 Dáil elections if, instead of being conducted under the current constitutionally mandated PRSTV electoral system, these had instead been conducted under any of three alternative electoral systems.

The three alternatives that we explore for each of these two elections are:
1. The First Past the Post electoral system (Single Member Plurality
2. The Alternative Vote electoral system (Single Transferable Vote in Single Seat Constituencies)
3. The Mixed Member Proportional electoral system (variant of a List electoral system as used in Germany)

We draw on our differing expertise in the study of Irish elections and in particular on our detailed constituency level knowledge of the results of the 2007 and 2011 election to develop what we hope will be seen as an informed and reasonable suggestion of what the outcome would have been if each of these two elections had been conducted under any of these three alternative electoral systems.

In order to develop these outcomes we have sourced and collated detailed tally information for all constituencies in the two elections. In some instances this tally information had been published in the local newspapers in the aftermath of the count but for some constituencies we obtained it from those political parties that conducted tallies on the day. We are grateful to them for their assistance.

Once a complete set of the tally information for the entire country had been gathered, the next step was to develop a credible scenario for how the boundaries of the 43 multi-seat Dáil constituencies in place for the 2007 and 2011 elections might have been redrawn to form either 166 single seat constituencies for the First Past the Post and Alternative Vote scenarios or 83 single seat constituencies for use in a Mixed Member Proportional system. This involved making reasoned judgements about how the current constituencies might have been divided on the basis of contiguous geographical areas. When the task of delineating them was completed, we calculated the level of support that each political party and the category of independents/others had received in the relevant geographic area in 2007 and 2011 based on an analysis of the tally figures.

On the basis of their level of support in these notional constituencies it was possible to work out which party (or independent) was likely to have won the seat in each election scenario. Obviously, this was more straightforward for First Past the Post than for the Alternative Vote scenario. The basis on which these determinations were made is laid out in Chapters 3 to 5 and the full detail of those constituency by constituency decisions is set out in the spreadsheet in the appendix to this report. For the purpose of the Mixed Member Proportional scenario, we also had to explore how the 'top up seats' on a notional national list would have been distributed.

Key Findings - Overall National Results - A Summary of the Scenarios

2007 Dáil Election

Party/Grouping	Actual Result	Scenario 1.a	Scenario 2.a	Scenario 3.a
	PR-STV	First Past The Post	Alternative Vote	Mixed Member Proportional
Fianna Fáil	78	142	114	80
Fine Gael	51	18	34	53
Labour Party	20	3	12	19
Sinn Féin	4	1	1	13
Green Party	6	0	2	0
Progressive Democrats	2	1	1	0
SP/PBP/WUAG	0	0	0	0
Others/Independents	5	1	2	1
Total	**166**	**166**	**166**	**166**

Table X.1: Actual seats won in the 2007 General Election and party seat estimates for this election under alternative electoral system scenarios.

Party/Grouping	Actual Result	Scenario 1.b	Scenario 2.b	Scenario 3.b
	PR-STV	**First Past The Post**	**Alternative Vote**	**Mixed Member Proportional**
Fianna Fáil	20	3	2	35
Fine Gael	76	114	114	71
Labour Party	37	32	35	38
Sinn Féin	14	6	5	20
Green Party	0	0	0	0
United Left Alliance	4	1	1	0
Others/Independents	15	10	9	2
Total	**166**	**166**	**166**	**166**

Table X.2: Actual seats won in the 2011 General Election and party seat estimates for this election under alternative electoral system scenarios.

The outcomes of both the 2007 and 2011 elections would have been dramatically different they had been conducted under any of the three other electoral systems that we discuss here. A number of striking outcomes emerged, including the following.

(1) The make up of government would have been altered dramatically. Under either the First Past the Post or Alternative Vote electoral systems, Table X.1 shows that Fianna Fáil would have governed on its own from 2007 to 2011 as a single party government with an extraordinarily large majority. Had either of these electoral systems been in place at the 2011 election (Table X.2), Fine Gael would now be governing on its own with a substantial overall majority in Dáil Éireann. Neither the Progressive Democrats nor the Green Party would have been in government after the 2007 election and Labour would not be currently in government. Under the Mixed Member Proportional system, however, Fianna Fáil would have had to form a coalition with either the Labour Party or Sinn Féin in 2007 to have a working majority in Dáil Éireann. The only one of our scenarios which would have resulted in the same government outcome as that which actually occurred would have been that in which the 2011 election was run under the Mixed Member Proportional system.

(2) Governments would have been more stable, but less accountable and would have been more likely to run complete a full five-year term. Under the First Past the Post system there would have been only 24 opposition TDs after the 2007 election. Using the Alternative Vote system the size of the opposition after the 2007 election would have been larger, but that opposition would still have been dwarfed by the size of the government majority. After the 2011 election either of these systems would have led to Fine Gael in government similarly dominating Dáil Éireann, with 114 seats.

(3) The volatility in Irish politics, as would have been reflected even more strongly than it actually was in 2011, if the 2007 and 2011 elections had been conducted under either the First Past the Post or the Alternative Vote electoral systems. Under First Past the Post Fianna Fáil would have won 142 of the 166 seats at the 2007 election, but in the 2011 election the party would have lost all but three of these seats. Under the Alternative Vote system, Fianna Fáil would have had 114 seats after the 2007 election but would have been left with only

two seats after the 2011 contest. On the other hand, Fine Gael's seat numbers would have increased almost seven-fold under First Past the Post between 2007 and 2011. Even under the Alternative Vote system Fine Gael would have more than tripled its seat numbers from 34 to 114 between these two contests.

The degree of volatility, in terms of party representation levels, would have been marginally less pronounced if the 2007 and 2011 elections had been conducted under the Mixed Member Proportional system. Fianna Fáil seat number would have declined from 80 seats to 35 seats, a loss of 45 seats, as compared with the 58 seats actually lost by the party between these elections under PR-STV electoral rules. In a similar vein, the level of Fine Gael gains would have been marginally less pronounced; they would have gained 18 additional seats under a Mixed Member Proportional system whereas in the actual election they gained 23 seats.

(4) The Labour Party would have had representation in Dáil Éireann irrespective of which electoral system was used in the two elections. However, the size of that representation would have differed dramatically after the 2007 election depending on which electoral system had been used. In the actual 2007 election Labour won 20 seats and they would have won 19 seats under a Mixed Member Proportional system, but the party would have won only 12 seats under Alternative Vote and just 3 seats if a First Past the Post system had been used. By comparison Labour seat numbers in 2011 would have been only marginally different depending on which system was used. In the actual 2011 election they won 37 seats, they would have won 38 under the Mixed Member Proportional system, 35 using the Alternative Vote and 32 using First Past the Post . The similar outcomes for the Labour Party in the 2011 studies would appear to be related to factors specific to that election and in particular to the scale of the Fianna Fáil collapse.

(5) Sinn Féin would also have had representation in Dáil Éireann after both of these elections, irrespective of which electoral system was used. Under both the First Past the Post and Alternative Vote systems, however, they would have had only one seat after the 2007 election. In 2011 they would also have suffered to a significant degree from the lack of proportionality associated with both these systems. (However, the geographical concentration of Sinn Féin support in certain areas would have left the party with more seats than Fianna Fáil, despite winning a smaller number of votes nationally.) Sinn Féin won 14 seats in the actual 2011 election under PR-STV but in our 2011 scenario they would have won only six seats under First Past the Post and five seats using the Alternative Vote. By comparison the party would have been a significant beneficiary of the additional proportionality that flows from the Mixed Member Proportional system both in 2007 and 2011. If these elections had been conducted using that system, Sinn Féin would finished with nine extra seats in 2007 and six more in 2011.

(6) The study shows that independent candidates would have fared differently in our alternative scenarios, especially with respect to the First Past the Post and Alternative Vote electoral systems. In 2007, independents would have struggled to win seats under either of these: in fact they would have won only one seat under a First Past the Post system and two seats under the Alternative Vote at that election. Tipperary would have been the only place where the support for an independent was both strong enough and geographically

concentrated enough to win a seat in a single seat constituency with both systems (although there would have been another independent seat in north Kildare using the Alternative Vote scenario).

However, in the volatile 2011 election a surprisingly large number of independents would have been gained Dáil seats under most of these electoral systems. Under PR-STV electoral rules, 15 independents were actually elected. Our study suggests that 10 independents would have been elected if the 2011 election had been run under First Past the Post rules, while 9 independents would have won seats using the Alternative Vote. The geographic concentration of high support in relatively small areas within constituencies for certain independent candidates, while not sufficient to win many seats in 2007 in the face of strong local Fianna Fáil opposition, would have been great enough in 2011 to enable well-positioned independents to take advantage of the Fianna Fáil collapse. Independents would not have done well under a Mixed Member Proportional system in either of these electoral contests; they would have been locked out of the distribution of 'top up' seats as the highly diverse nature of the Independents and Others grouping would have meant that it could not be treated as a separate political party.

4.7   Presentation by Prof Michael Gallagher, TCD - The arguments for and against electoral reform

Why would we decide to change, or not to change, the current PR-STV electoral system? In this short paper we'll outline some of the grounds on which PR-STV has been criticised, but first we should take account of the possibility that many features of a country's politics cannot realistically be attributed to its electoral system at all, so changing the electoral system may not change politics.

1. A caveat: perhaps electoral systems don't matter much at all
Before we look in detail at the arguments for and against, it's very important to bear in mind a general caveat, namely that it's all too easy to assume that electoral systems have much more impact than they really do. In past decades, there were very polemical arguments to the effect that PR (or the absence of PR) was likely, for example, to lead to the collapse of democracy, arguments that are now seen as wildly exaggerated. Some of these arguments surfaced in the two referendums held in this country on PR-STV, back in 1959 and 1968. These days, in various countries reformers wanting to reduce a country's levels of corruption, or increase the effectiveness of its government, tend to light on the electoral system as the key institution to change in order to bring that about, even in the absence of a convincing argument as to how changing the electoral system could have that effect. Too often, there is a temptation to push the button marked 'Change the electoral system' rather than think more systematically about what needs fixing and how to fix it.

Thus, a recent study by two US-based academics into the actual effect of a number of changes in electoral rules concludes that the impact is usually minimal or nil.[4] Attitudes and patterns of behaviour persist even when the institutional rules change, and these rules,

---

[4] Shaun Bowler and Todd Donovan, *The Limits of Electoral Reform* (Oxford: Oxford University Press, 2013).

including the electoral system, simply do not have as great an impact on behaviour as either advocates of change or defenders of the status quo often believe. As the authors put it, 'Electoral rules are also but just one part of a nation's political system, and, even in the best functioning democracies, they probably play a very minor role compared to larger forces that people are responsive to' (p. 137). Thus we should be very cautious about assuming that anything we do like, or don't like, about the way Irish politics works has anything to do with the electoral system. PR-STV was not responsible for the economic boom and neither is it responsible for the economic slump.

We know that different electoral systems can have an impact on the shape of the party system: making it easier or more difficult for small parties to gain representation, and perhaps increasing or decreasing the likelihood of coalition as opposed to single-party government. But expecting electoral system change to result in a transformation in the style of politics is completely unrealistic.

2. Arguments for change

2a. Stable government
The two referendums of 1959 and 1968 were dominated by the supposed issue of single-party government versus coalition government. On each occasion the referendum was initiated by Fianna Fáil, which proposed that Ireland adopt the 'first past the post' system, as used in the United Kingdom. The essence of Fianna Fáil's case on both occasions was that under PR-STV (or, indeed, any kind of PR) governments were more or less bound to be coalitions, whereas under first past the post it was much more likely that a single party would win a majority of seats and hence be able to govern alone. This was bound up with a wider argument about the supposed advantages of single-party government over coalition government.

These arguments now have a very dated ring to them and it's hard to find examples of anyone seriously putting forward this claim these days. Most governments around Europe are coalitions; some are effective and stable, others are neither. The simplistic judgement that single-party government is good and coalition government is bad lacks any credibility.

2b. Proportionality
The correspondence between party vote shares and seat shares is not always very close. At the 2011 election, for example, Fine Gael won 46 per cent of the seats with 36 per cent of the first preference votes; 76 seats instead of the 60 that would have represented its proportional share.

This issue is something of a red herring, though. Proportionality is relatively low in Ireland because of the very small 'district magnitude' or constituency size – an average of only 3.8 TDs per constituency. The larger the average district magnitude in a country, the higher the levels of proportionality will tend to be. If there is a will to achieve a closer correspondence between vote shares and seat shares, this can be achieved simply through the use of larger constituencies – returning, say, 5, 6, 7 or 8 TDs each.

2c. The focus of TDs

The main argument heard against PR-STV these days concerns its impact, or alleged impact, on the focus and behaviour of TDs. As we know, under PR-STV candidates of each party are competing against each other as well as against candidates of other parties, and incumbent TDs know they are at risk of being unseated by a running mate as well as by a candidate of another party. In addition, because some lower preferences are likely to play a part in the count, TDs are reluctant to alienate any voter because this might cost them a fifth or sixth preference that could make a difference.

Critics and defenders of the PR-STV system would take very different views of this competition that goes on among candidates from the same party. For critics, this results in an excessive focus by TDs on local matters, sometimes unfairly caricatured as 'ward-heeling' or 'getting potholes fixed', at the expense of national responsibilities. Government policies and proposals receive inadequate scrutiny from the Dáil, it's said, because TDs spend too much time trying to curry favour with their constituents by enquiring about delays in social welfare or headage payments with only a secondary focus on scrutinising government. Any TD who devotes themselves to national parliamentary work runs the risk of being ousted at the next election by a running mate who has been more assiduous at cultivating the grass roots. Hence, in the eyes of critics, it would be better to move to an electoral system under which voters could not choose among candidates of the same party, so that TDs would no longer have to respond to every trivial matter raised by a constituent but could focus more on national issues. Critics also say that the knowledge that TDs have to spend a lot of time on constituency work puts many able people off entering politics in the first place.

Of course, defenders would have a very different perspective. First, they would object to the dismissal of all constituency work as a waste of time; some of it, they argue, plays a vital role in ensuring that citizens feel that the system is responsive to them and can obtain their rights, and a situation where TDs felt free to ignore their constituents' requests for advice or assistance would not be desirable. Second, they would argue that this familiarity with the real-life problems of their constituents enhances TDs' input at national level. TDs are made very aware of the impact of national policies on their constituents. Third, they would say, constituency work is a feature of the work of MPs pretty much everywhere, regardless of the electoral system, and much the same arguments, about the impact on MPs' parliamentary roles and on their ability to reduce citizens' alienation from the state, are heard everywhere. Moreover, the practice of people going to their MPs for assistance in dealing with the state was already established in Ireland in the nineteenth century, before PR-STV was adopted, so it is not a consequence of the electoral system.

2d. Accountability of TDs

Some of the same points are raised when we consider how accountable TDs are, or should be. Critics and defenders alike agree that PR-STV maximises the power of voters to choose who should represent them. Voters can convey a lot of information about their preferences for the different candidates, and if an incumbent is not performing to their satisfaction he or she can be replaced by a more able or energetic newcomer of the same party.

Critics, while usually in favour of accountability in general, believe that this represents an excessive degree of accountability and that TDs would, paradoxically, perform better in the interests of their constituents if they were less immediately answerable to them. If TDs were able to devote themselves to national political matters between elections, without having to fend off party rivals back in the constituency who are plotting to take their seat, voters would be the long-term beneficiaries of giving up some of their power to choose their TDs. Accountability lost by voters over TDs could be compensated by the greater accountability that would now be demanded by TDs from government.

Defenders, of course, do not see the logic of expecting TDs to deliver a better service if made less accountable, as would happen if Ireland were to adopt, say, a closed list system or a German-type mixed-member system. Besides, there will always be competition within the party to be selected as a candidate. For example, if the country had a closed list system, the competition would be to be selected in a high position on the list so as to have a good chance of winning a seat, and aspiring TDs would have a strong incentive to build up support among the candidate selectors, who in all parties are currently local party members.

3. An unusual electoral system?
As we have seen, PR-STV is not in widespread usage around the world. Malta is the only other country to use it to elect its national parliament, and in only a few other places is it employed to elect sub-national bodies, such as Australia, New Zealand and Northern Ireland. This reflects the origins of PR-STV, which was first devised in Britain in the nineteenth century and whose use has been largely confined to English-speaking countries.

However, while PR-STV itself is not in widespread use, we should be aware of the fact that one of its central features, namely voters' ability to choose among candidates of the same party, is a common feature of PR list systems. Under what are termed 'open list' PR systems, each party presents a list of candidates in a multi-seat constituency, and voters can express support not simply for the list but for a specific candidate within that list by casting what is called a 'preference vote' (in effect, the equivalent of a first preference under PR-STV). If the party wins enough votes for, say, 4 seats within that constituency, then those seats go to the 4 candidates who won the highest number of preference votes.[5] As a consequence, candidates of each party are competing with each other just as much as they are under PR-STV, and are similarly vulnerable to be ousting by a running mate.

Across the EU, somewhat more than half of the member states use electoral systems based on this principle; that is, under which voters can choose among candidates of the one party, and hence candidates of every party are competing with each other for support from the voters. These countries, in addition to Ireland and Malta, are Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Latvia, Lithuania, Luxembourg, Poland, Slovakia, Slovenia, and Sweden; this applies in Switzerland as well. The list includes countries that are seen as examples of very good governance and others that are seen as examples of very poor

---

[5] The rules vary somewhat from country to country. In some, the number of preference votes for each candidate is the sole determinant of which candidates get the seats (Denmark and Finland are examples). In others, the party's candidate selectors draw up an initial ordering, which stands as a default order but can be adjusted if sufficient numbers of voters use their preference votes for candidates placed lower on the list (Slovakia and Sweden are examples).

governance – another indication of the point made at the start of this document, that the choice of an electoral system may not be anything like as important for the quality of governance as some people imagine.

4. The alternatives

In a sense, it is difficult to assess any electoral system in isolation. One thing agreed by everyone who studies electoral systems is that there is no such thing as a 'perfect' electoral system. A meaningful debate will require comparing different options with each other rather than considering any one in isolation. Each system, considered in isolation, may be considered to have shortcomings, but other systems may possess other and perhaps greater shortcomings of their own.

4.8 Presentation by Prof Michael Marsh, TCD - Non-constitutional electoral reforms

Possible changes to electoral system but keeping PR-STV

This short note looks at several aspects of the electoral system that have attracted criticism and might be changed. In general these would not require a constitutional amendment

1. **Ballot structure**. The appearance of our ballots have changed significantly over the years. Party labels were introduced in the 1960s and party logos and candidate photographs in 2002. These were all done with the intention of making it easier for voters to identify the candidates they wanted to vote for. However, the basic structure is unchanged. Candidates are listed in alphabetical order.

In Malta and Australia, where the same electoral system is in use, the ballot is slightly different. Candidates are grouped by party (see illustrations appended). This perhaps makes it easier for voters to identify all the candidates of their preferred party or parties, particularly when ballots are lengthy. (There were 24 names on the Wicklow ballot in 2011.)

Criticisms have also been made of the ballot order. Several studies have shown that a more prominent position on the ballot paper helps a candidate, and some have changed their names to achieve that. The courts were asked to adjudicate on whether the use of alphabetical ordering was fair, but refused to do so, saying they could not look into the mind of the Irish voter. However, in many other jurisdictions there is a requirement to randomise the order of names, typically by having many different orderings and so many versions of the ballot paper in each constituency.

2. **Counting rules.** The procedure of counting votes owes more to convenience than fairness, a criticism FF made of the system when proposing to replace it in 1968. The procedure in Seanad elections, for instance, is different, and so are those in other jurisdictions that use PR-STV. Other procedures are said to be fairer, and less arbitrary. For instance, when a candidate exceeds the quota on a second or subsequent count the practice here is to take only those excess votes and redistribute those, while elsewhere all of that candidates votes would be examined to arrive at the way in which the surplus votes would be distributed. In the absence of electronic means of counting, this would mean the counts would last much longer.

3. Constituency sizes. The1937 Constitution specified a minimum of three seats per constituency. While initially district magnitude varied between 3 and 9, large constituencies were soon discontinued. From 1935-44 there were just three with more than 5 seats – there were three 7-seat constituencies – and the range has been between 3 and 5 since 1948. In principle this makes it harder for small parties to win seats, and reduces the likelihood of a highly proportional outcome at national level. Neutralcommissions have been established to decide boundaries since the 1977 election, but the government has required those commissions to stay within the 3-5 guidelines. It would be easy to draw larger constituencies in urban areas, but to do so nationally would mean that county boundaries would have to be given less weight and/or more constituencies would need to include more than one county.

4. By elections. Some consider it odd that vacancies that arise in the Dáil are filled by a new election of any kind and odder still one where just a single seat is allocated using PR-STV. This means that although – for example – the vacated seat might have been secured at the general election by a candidate winning just a 20% of the votes in a four seat constituency, to win the same seat in a by election the successful candidate would need 50% of the votes. The solution used in some other jurisdictions is to give the seat to the next candidate of the same party from the previous election, by recounting the votes from that election. The rationale for this is that a parliament stems for a single election, and vacancies that arise should be filled as they would have been at that time.

An Irish STV Ballot Paper

A Maltese STV Ballot Paper

POLZA — *BALLOT PAPER*

| Ghadd ta' Deputati li għandhom jiġu eletti
Number of Members to be elected | **5** | | **Distrett**
Division | **6** |

Isem tal-Kandidati *Name of Candidates*	Badge tal-Kandidat Badge of Candidate	Immarka skond il-preferenzi li tagħti Mark order of preference in spaces below

ALTERNATTIVA DEMOKRATIKA - *THE GREEN PARTY*

FENECH (Edward Fenech, ta' 6, Triq il-Knisja, Attard, Accountant)		

AZZJONI NAZZJONALI

ATTARD (Charles Attard, ta' 42, Triq it-23 ta' April, Qormi, Management Consultant)	AN	

MALTA LABOUR PARTY

COLEIRO PRECA (Marie-Louise Coleiro-Preca, BA (Legal & HS), Dip. Notary Public, ta' 110, Flat 2, Triq San Franġisk, Balzan, Principal)		
GALDES (Roderick Galdes, B.PLAN, M.A.(ISSS), MaCP, M.P., ta' 25, 'Ħannieqa', Triq San Benedittu, Qormi, Planning Officer)		
GULIA (Gavin Gulia, Dr, LL.D., ta' 4, Triq De Rohan, Sqaq Nru 1, Żebbuġ, Avukat)		
MANGION (Charles Mangion, ta' 'Carmville', Triq id-Dokkiena, Luqa, Nutar)		
MUSCAT (Bastjan Muscat, il-McCoy, ta' 2, 'Flimville', Triq il-Barjola, Gudja, Businessman)		
SCHEMBRI (Silvio Schembri, B.Com., ta' 123, Triq Ġużeppi Ellul, Luqa, Gradwat fl-Ekonomija u l-Finanzi)		

PARTIT NAZZJONALISTA

DALLI (John Dalli, ta' Portomaso 2461, Vjal Portomaso, Paceville, San Ġiljan, Konsulent)		
GALEA (Louis Galea, Dr, ta' 10, Triq Nazzareno Pisani, Siġġiewi, Avukat)		
MICALLEF (Peter Micallef, Dr, ta' 'Anżalor', Triq Patri Andrea Azzopardi, Żebbuġ, Tabib)		
MUSUMECI (Robert Musumeci, il-Perit, ta' 10, Pjazza San Nikola, Siġġiewi, Perit)		
PULI (Clyde Michael [Clyde] Puli, ta' 73, Triq il-Kardinal Xiberras, Qormi, Manager)		
ZAMMIT (Ninu [Anthony] Zammit, ta' 'San Nikola', Triq Sant'Andrija, Żurrieq, Perit)		

SPECIMEN — SPECIMEN — SPECIMEN — SPECIMEN — SPECIMEN — SPECIMEN — SPECIMEN

POSTAL BALLOT PAPER
Tasmania

T

You may vote in one of two ways

either ▶

By placing the single figure 1 in one and only one of these squares to indicate the voting ticket you wish to adopt as your vote

A	or	B	or	C	or	D	or	E	or	F	or	G	or	H
☐		☐		☐		☐		☐		☐		☐		☐
TASMANIAN INDEPENDENT SENATOR BRIAN HARRADINE		AUSTRALIAN LABOR PARTY		TASMANIA SENATE TEAM		TASMANIAN GREENS		CALL TO AUSTRALIA (FRED NILE) GROUP		NATURAL LAW PARTY		AUSTRALIAN DEMOCRATS		LIBERAL

or ▶

By placing the numbers 1 to 20 in the order of your preference

Fold the ballot paper, place it in the envelope addressed to the Divisional Returning Officer and fasten the envelope

A	B	C	D	E	F	G	H
TASMANIAN INDEPENDENT SENATOR BRIAN HARRADINE	AUSTRALIAN LABOR PARTY	TASMANIA SENATE TEAM	TASMANIAN GREENS	CALL TO AUSTRALIA (FRED NILE) GROUP	NATURAL LAW PARTY	AUSTRALIAN DEMOCRATS	LIBERAL
☐ HARRADINE Brian TASMANIAN INDEPENDENT SENATOR BRIAN HARRADINE	☐ TATE Michael AUSTRALIAN LABOR PARTY	☐ SPROULE Alan TASMANIA SENATE TEAM	☐ HENDERSON Judy TASMANIAN GREENS	☐ HOPSON Phillip CALL TO AUSTRALIA (FRED NILE) GROUP	☐ BROSZCZYK Greg NATURAL LAW PARTY	☐ HARMSEN Patsy AUSTRALIAN DEMOCRATS	☐ ARG Brian LIBER
	☐ COATES John AUSTRALIAN LABOR PARTY	☐ McSHANE Frances TASMANIA SENATE TEAM	☐ JONES Peter TASMANIAN GREENS	☐ HOPSON Janelle CALL TO AUSTRALIA (FRED NILE) GROUP	☐ DAVIES Caroline NATURAL LAW PARTY	☐ STEPHEN David AUSTRALIAN DEMOCRATS	☐ GIB Bria LIBER
	☐ MURPHY Shayne AUSTRALIAN LABOR PARTY		☐ FRY Marion TASMANIAN GREENS				☐ ABB Eric LIBER
	☐ AULICH Terry AUSTRALIAN LABOR PARTY						

5. Dáil Electoral System – Expert presentations (second meeting)

5.1 Mixed Member Proportional (MMP) System - Prof David Farrell, UCD

This system is a mix of two separate electoral systems. Any number of possible mixes is possible, but the most common mix is of the First-Past-the-Post system used in the UK and the PR-List systems common in much of Europe.

Parliamentary constituencies

The big feature that stands out with this system is the fact that it produces a parliament comprising MPs elected in two different ways: a portion of the MPs (commonly half of the parliament) are elected in single-seat constituencies, with the remainder elected on party lists usually with constituencies that are large regions (though it can be the whole country).

How voting occurs in this system

Sample ballot papers from Germany and New Zealand are provided below. As you can see, in both cases, voters are asked to vote twice, for constituency candidates and for (closed) party lists.

How politicians are elected

The count occurs in three stages as follows:

1. First, the returning officer counts the FPTP constituency part of the ballot paper. The candidate with the most votes in the constituency race is deemed elected.
2. The returning officer then counts the list part of the ballot paper. This determines how many seats each party is entitled to overall.
3. Given that this is a proportional electoral system, the focus is on trying to ensure as much as possible that parties are awarded seats in proportion to the number of votes they win overall. Therefore, in this final stage, now that it is known how many seats each party is due, the returning officer has to subtract from that total any constituency seats already won in the first stage of the count and this determines how many list seats each party is awarded. This should result in a proportional result.

The consequence of the final calculation (in point 3) is that larger parties can end up having a lot of constituency seats and far fewer list seats. In the 2009 German election the main governing party of Angela Merkel (CDU) ended up with only 21 list seats (because they had won so many constituency seats – 173).

Countries using this system

Germany is the first place in the world to use this system, having adopted it after the second world war. In recent years a small number of other countries have adopted it, most notably New Zealand, but also Bolivia and Venezuela. At sub-national level it is used to elect the Scottish Parliament and the Welsh Assembly.

Variations

Clearly this system offers the greatest scope for variation among the most important are the following:

1. It is possible to have a non-proportional version where rather than subtracting a party's constituency seats from its total of list seats the two are added together.[6] This variant is much more popular among the newer democracies, for obvious reasons: notably because it gives an inbuilt advantage to the larger governing parties.
2. It is possible to vary the ratio of constituency and list seats. In Germany and New Zealand the ratio is 50:50; in other MMP systems the proportion of list seats is lower. For instance in Italy (where a version of this system was used in the 1990s) list seats made up just 25% of the total. You need a sufficient number of list seats to produce a properly proportional result – the ideal is Germany's 50:50 ratio.
3. In both Germany and New Zealand the constituency elections are by the British FPTP system. It would be possible to use different electoral systems to elect constituency politicians (as Michael Gallagher will discuss further in his presentation).

Other design issues that need to be considered
This is a much more complex electoral system than any of the others that the convention might have considered (including our own STV system) and as a result that are important design issues that need to be considered.

First, there is the anomaly that can occur known as 'surplus seats', resulting from the situation where a party ends up with more constituency seats than the total number of seats that to which its share of the vote would entitle it. The common practice is for the party in question to be allowed keep these surplus seats, as a result of which the size of the parliament is increased temporarily. This can have important implications for the election result – as indeed was the case in the 2009 German election when Angela Merkel's party won 21 surplus seats, which together with another 3 surplus seats won by her sister party (CSU) helped them secure a governing majority in coalition with the FDP.

It is possible to reduce the risk of surplus seats (e.g. by using national lists rather than the regional lists used in Germany) or to prevent them from happening, such as the practice in Scotland of adapting the seat distribution of all parties so as to leave the size of the parliament unaffected. Certainly, something like this would have to be considered for Ireland given that the size of the Dáil is set by the Constitution.

A second issue – that goes to the heart of this being seen as an electoral system that supposedly produces two types of MPs – is the question of 'dual candidacies. This refers to the possibility of candidates running both as constituency and list candidates – i.e. getting two cracks of the whip. This is common practice in MMP electoral systems;[7] in fact the only MMP system that formally bans dual candidacies in Wales.

---

[6] This system is generally referred to as a 'mixed-member majoritarian' system (MMM).

[7] In the MMM variant of mixed-member system, where the two electoral systems operate separately from each other, there is greater tendency to prevent dual candidacies. A good example of this is Japan's MMM system which prevents it due to the desire to avoid having 'zombie politicians' – i.e. allowing candidates defeated in the candidate race to re-emerge as elected on the party lists.

There are good practical reasons why dual candidacies should be allowed, most notably because if they weren't then it would be in the interests of list candidates not to help the campaigns of the constituency candidates due to the fact that if the party wins too many constituency seats then there would be very few list seats available. So, dual candidacies are common. In the 2009 German election, over a third of all the candidates were dual candidates; the proportion was even greater in the case of all the main German parties, where over half of their candidates were dual candidates.

What this means, however, is that in practice many of the politicians operating in these countries experience life both as constituency and list politicians; from one election to the next they have no way of knowing which kind of MP they're going to be next time. As a result, many of the list politicians tend to hedge their bets and operate as if they were constituency politicians.

Conclusion
Supporters of MMP argue that it offers the 'best of both worlds' because, it results in some MPs who should have a focus on constituency work and other MPs likely to be focused more on national political issues. Some have argued that this is why Ireland should adopt an MMP system – it would give us TDs with a national focus and of higher calibre for ministerial office.

But is this really so? As we have seen, one problem with how MMP operates in practice is that the larger parties – particularly those who win the election – end up with far fewer list seats than constituency seats. And, as we have seen, in large part because of the dual candidacies, in most cases, the list MPs tend to operate in the much the same was as their constituency counterparts.

A German MMP ballot paper

Sie haben 2 Stimmen

hier 1 Stimme
für die Wahl
eines Wahlkreisabgeordneten
(Erststimme)

hier 1 Stimme
für die Wahl
einer Landesliste (Partei)
(Zweitstimme)

1	Dr. Kreutzmann, Heinz Parl. Staatssekretär **SPD** Sozialdemo- Borken (Hessen) kratische Partei Kellerwaldstraße 7 Deutschlands	◯
2	Jagoda, Bernhard Obersekretär a.D. **CDU** Christlich Demo- Schwalmstadt-Treysa kratische Union Am Weißen Stein 31 Deutschlands	◯
3	Wilke, Otto Elektromeister **F.D.P.** Freie Diemelsee-Adorf Demokratische Bredelarer Straße 1 Partei	◯
4	Funk, Peter Werkzeugmacher **DKP** Deutsche Baunatal 6 Kommunistische Triftweg 6 Partei	◯
5	Keller, Gerhard Zivildienstleistender DIE GRÜNEN Frielendorf 2 **GRÜNE** Friedhofsweg 30	◯

◯	**SPD**	Sozialdemokratische Partei Deutschlands Leber, Matthöfer, Jahn, Frau Dr. Timm, Zander	1
◯	**CDU**	Christlich Demokratische Union Deutschlands Dr. Dregger, Zink, Dr. Schwarz- Schilling, Frau Geier, Haase	2
◯	**F.D.P.**	Freie Demokratische Partei Mischnick, von Schoeler, Hölie, Wurbs, Dr. Prinz zu Solms-Hohensolms-Lich	3
◯	**DKP**	Deutsche Kommunistische Partei Mayer, Knopf, Frau Dr. Weber, Funk, Frau Schuster	4
◯	**GRÜNE**	DIE GRÜNEN Frau Ibbeken, Hecker, Horacek, Kerschgens, Kuhnert	5
◯	**EAP**	Europäische Arbeiterpartei Frau Liebig, Haßmann, Stalleicher, Frau Kaestner, Stalla	6
◯	**KBW**	Kommunistischer Bund Westdeutschland Schmierer, Frau Mönich, Frau Eckardt, Orester, Lang	7
◯	**NPD**	Nationaldemokratische Partei Deutschlands Philipp, Brandt, Stürtz, Lauck, Bauer	8
◯	**V**	VOLKSFRONT Götz, Taufertshöfer, König, Riebe, Frau Weißert	9

A New Zealand MMP ballot paper

5.2 Options for an MMP system in Ireland - Prof Michael Gallagher, TCD

The standard version of mixed-member compensatory systems (also known as mixed-member proportional, or MMP systems) is one in which half of the MPs are elected in single-member constituencies by the first-past-the post system, as in the United Kingdom, while the other half are elected from closed party lists. Thus in Germany the number of single-member constituency seats is 299 and there are also 299 list seats, though in practice because of the need to allow for 'surplus seats' the total number of members in the Bundestag is usually greater than 598 (it was 622 in 2009, for example).

Applying this to an election to Dáil Éireann, which at the next election is to have 158 TDs, there would be 79 TDs elected from single-member constituencies by first-past-the-post, and a further 79 elected from closed lists.

Needless to say, all of these elements and others are open to variation. The seven elements are:
(i) the balance between the constituency seats and the list seats;
(ii) the way in which the constituency seats are filled;
(iii) the way in which the list seats are filled;
(iv) whether the lists should be regional or national;
(v) the setting of a threshold;
(vi) treatment of independents;
(vii) surplus seats, alliances and decoy parties.

(i) the balance between list seats and constituency seats
The number of list seats could be greater or less than half of the total: 100 from constituencies and 58 from closed lists, 58 from constituencies and 100 from closed lists, or whatever. However, experience shows that if we want the overall outcome to be proportional and if first-past-the post is used in the constituencies, about half of the seats need to be list seats; if fewer than this proportion come from the lists, then the list seats may be too few to redress the imbalances that arise from the allocation of the single-member constituency seats. Hence, while the balance would not have to be exactly 79–79, it would have to lie somewhere within the range of about 69–89 one way or the other.

(ii) the way in which the constituency seats are filled
The constituency seats under all MMP systems are currently filled by the first-past-the-post method, but this is not a prerequisite of MMP. They could instead be filled by, say, the alternative vote (AV) – the system that is used in this country to elect the president and at by-elections and is also used in Australia to elect its parliament. In practice, though, this would make little difference to the outcome since, as we know, AV is pretty much as disproportional as first-past-the-post.

Diverging even more from standard practice, we could elect the 79 'constituency' TDs from multi-member constituencies, much as at present. They might, for example, be elected by PR-STV from 15 5-seat constituencies and one 4-member constituency; on average each of the 5-member constituencies would be about twice as large, in size and population, as the average 5-seat constituency is at present.

One complication here is that voters might agonise over which of a party's constituency candidates to vote for, and elect, say, one of the two candidates put forward by the party, only to find that the one they rejected gets in anyway via the list. If, as some people suggest, it is easier to be a list TD than a constituency TD, in that the list TDs might have less constituency work than the constituency TDs (though experience elsewhere suggests that in practice the two 'types' of MP behave almost identically), then it would actually be to the advantage of a candidate to be rejected in the constituency in order to be elected via the list route instead. The apparent choice of candidates within each party, which is a very real choice under PR-STV and also under open-list PR systems, would now become somewhat illusory, and the exercise of that choice could have perverse consequences.

This apparent anomaly – a candidate being rejected in a constituency but getting elected anyway via a list – could be prevented if dual candidacies were banned; in other words, if a candidate could stand in a constituency, or on a list, but not both. However, banning dual candidacies is a rarity under existing MMP systems, and for a good reason. This is that parties cannot be sure how many list seats they will win, because this depends very much on how many constituency seats they win. If they do badly in the constituencies, they will win correspondingly more list seats, while if they do well in the constituencies they will win few list seats, maybe none at all. Dual candidacies are banned only in Wales, a measure instigated by the largest party, Labour, against the wishes of all other parties. In the words of Professor Louis Massicotte of Laval University, who has studied this phenomenon, dual candidacies should be seen as 'part and parcel of an MMP system, and prohibiting this practice engenders perverse outcomes'.

For example, research by Professor John Coakley of UCD suggests that if MMP had been in use at the 2011 election, Fine Gael would have won 71 constituency seats and no list seats – so if any of its big names, such as the party leader, had been placed on top of the list and had not also stood in a constituency, he or she would have lost their seat in the Dáil. Conversely, if they had stood in a constituency without also being on a list, then they would have been vulnerable to an unexpected result in their constituency or to a national tide against the party, without the safety net of the list to guarantee their election.

A basic logistical point is that if the constituency seats are filled in any way other than by first-past-the-post, the design and appearance of the ballot paper becomes complicated. The standard format, as illustrated by the ballot papers in Germany and New Zealand, has the constituency vote on one half of the ballot paper and the list vote on the other half. If voters were to cast a vote in different ways (1, 2, 3 etc for the constituency seat(s), X for the list) this might require two separate ballot papers.

(iii) the way in which the list seats are filled
In practice, the list seats under all national MMP systems are filled from closed lists – that is, lists that the voter has no power to alter. If a party qualifies for, say, 10 list seats, those seats go to the top 10 candidates on the list – or, to be precise, under MMP they would go to the top 10 candidates who have not already been elected from a constituency.

The party's candidate selectors would have a decisive role in determining the order of names on the list. The parties would have to decide how to pick and rank these candidates. The process could be done by a large gathering of party members from all over the country or, at the other end of the scale, by a small group such as the national executive or even by the party leader acting alone. Each party would decide this for itself. The selectors might opt for candidates of high ability who don't have local appeal, and we might get more technocrats, more young candidates, more female candidates; or they might fill the lists with party 'hacks' and associates of the leader; or they might select people of pretty much the same background as the constituency candidates. The lists might, indeed, contain a mixture of all three. Either way, candidate selection within the parties would now become a key battleground.

The lists could instead be open rather than closed, which would permit the voters to express their preferences as to which of a party's list candidates should be elected. This would take some power away from the party's candidate selectors and give it instead to the voters. However, if one reason for changing the current electoral system is because some people regard it as dysfunctional for the political system to have candidates of one party competing with each other for votes, then there would seem to be little point in using open lists.

(iv) regional lists or national lists
Lists in New Zealand are national lists; in Germany there are regional lists, though when it comes to deciding how many list seats each party receives the national vote is what matters; in Scotland and Wales the lists are regional.

Regional lists in Ireland would mean that, if the former Euro-constituencies were used as the units, Connacht–Ulster, Dublin, the rest of Leinster and Munster might be used as the 'regions'. In Munster, for example, which is due to return 43 TDs at the next election, 22 might be elected from constituencies and 21 from lists. Using regional lists would provide greater opportunity to ensure that the candidates on the list would have a connection with the region – this might be seen as a good thing or a bad thing, depending on exactly what we want from the list candidates – but would provide a lower level of proportionality than national lists.

(v) a threshold
All countries employing MMP have some kind of threshold below which parties do not qualify for list seats. In Germany, parties must either win 5 per cent of the list votes or win 3 constituency seats; in New Zealand they must either win 5 per cent of the list votes or win 1 constituency seat. As things stand, a 5 per cent threshold would be comfortably exceeded by Fine Gael, Fianna Fáil, Labour and Sinn Féin – though Sinn Féin was below this level as recently as 1997 (3 per cent) and Labour not much above it in 1987 (6 per cent). No other party, such as the Green Party or the United Left Alliance, came close to the 5 per cent level at the 2011 election. A threshold of 2 per cent would also have excluded the Greens in 2011, though the ULA exceeded this level and would have qualified for list seats.

There is no 'correct' level, and indeed no absolute requirement to have a threshold at all, and no doubt the setting of a threshold would be politically contentious because the implications for specific minor parties would be very evident.

(vi) treatment of independents

Independents are a feature of Irish political life, a feature that is accommodated by PR-STV but not by party-based systems – which could be seen as an argument either for or against PR-STV depending on individual preference.

Under MMP their status would be uncertain. In order to be elected from a constituency, an independent would need to have a high profile, and a good level of support, over a much wider area than at present. If the constituencies were single-seat, then an independent would need to be the strongest candidate in an area covering approximately half of the area of the average 4-seat constituency today. If the constituencies were 5-seat constituencies to be filled by PR-STV, then an independent would need something close to a quota (16.7 per cent of the votes) in an area currently covered by 10 seats, such as Clare plus Kerry, Meath plus Longford–Westmeath, or Wexford plus Wicklow.

There might be difficult decisions to be made regarding the appearance of independents on the list section of the ballot paper. It might be decided that since the overall aim is to give proportional representation to parties, independents are too disparate collectively to warrant proportional representation and so should not be permitted to appear on the list section at all. Independents might form themselves into a quasi-party, with a name such as 'Party of Independents', and present a list, but then a voter in one part of the country who happened to support a local independent candidate would not know whether a vote for this list might simply elect an independent from another part of the country, perhaps at the expense of a party candidate from their own area.

(vii) surplus seats, alliances and decoy parties

'Surplus seats' are a technical detail of MMP systems but one to which there is no perfect solution. The problem arises when a party wins more seats in the constituencies than it is entitled to win overall, which can happen if the constituency seats are filled by first-past-the post, especially if regional lists are used. This is usually dealt with either by increasing the size of the parliament to accommodate these overhang seats, or by letting the party keep its extra seats and reducing the other parties' seats accordingly. If independent candidates were to win constituency seats without standing in the list part of the election, this would create a number of 'surplus seats', as they would have won more seats than their list votes entitled them to.

MMP is also open to 'creative behaviour' by parties looking to maximise their seat return. One tactic that could be employed is for two parties to form an alliance and agree to give all their constituency votes to one party and all of their list votes to the other. That way, one party does very well in the constituency seats while the other, not having won any constituency seats, does very well from the list share-out, leaving the combined alliance much better off than its voting strength warrants.

Another is for parties to use 'fake lists', 'decoy parties' or other such tactics. The essential idea is that a party runs candidates under one label in the constituencies and under another in the lists. That way, when the list seats are shared out, the party whose name is on the list section of the ballot seems to have won no constituency seats and hence it wins a larger

share of the list seats than if the constituency seats won under its 'decoy' name were taken into account. This tactic was employed by the Italian parties when Italy used a version of MMP. Another trick, which was used by the parties in Albania when that country used MMP, was to register its constituency candidates as independents, so that, again, technically they did not win any constituency seats and hence received a larger share of the list seats.

Such tactics are difficult, though perhaps not impossible, to tackle through legislation, but it is worth noting that they do not surface in established users of MMP such as Germany and New Zealand, either because the parties are unaware of the ideas or because they believe that if they attempted to manipulate the MMP system in this way the voters would cry foul and penalise them. That might very well be the case in Ireland as well, but a highly disproportional result brought about by this kind of manipulation is always theoretically possible.

5.3   Options for Electoral Reform - Prof David Farrell, UCD, & Dr Jane Suiter, DCU

5.3.1   Size of the Dáil and of Dáil constituencies
The size of the Dáil is governed by article 16.2.2 of the Constitution, which states:
> *The number of members shall from time to time be fixed by law, but the total number of members of Dáil Éireann shall not be fixed at less than one member for each thirty thousand of the population, or at more than one member for each twenty thousand of the population.*

This limits the ability of governments to increase or decrease the numbers of TDs. As the Table below shows this has resulted in a Dáil whose membership has grown gradually over time in line with general population trends: since the early 1980s the membership has consisted of 166 members. The current government promised to reduce the number of TDs (following a Fine Gael manifesto commitment in the 2011 election), but because of the constitutional requirement of not less than one TD for each 30,000 of population, they were only able to reduce the number by just eight members – far less than they had signalled.

Some have argued that our Parliament is too large, and that it could be reduced more radically (although this would need constitutional reform). It is worth noting, however, that in terms of international norms (on parliamentary size related to size of population), our Dáil is just about the right size as it is.

The constitutional requirement of one TD per 20,000-30,000 of the population doesn't only set limits on the overall size of the Dáil, it also ensures that there is a fair distribution of TDs across the country. On occasions it has been suggested that in more rural parts of the country, there might be a case for relaxing this rule to allow a greater proportion of TDs based on population size so as to keep constituencies of manageable size. To do this would require constitutional change (as Fianna Fáil attempted unsuccessfully in 1968), but it would be inadvisable as it would flout an extremely important rule in democracy, namely that all votes should have the same value. If some parts of the country were given more TDs (based on population size) than others this would mean that the votes of citizens in these parts of

the country would be worth more than those of citizens in other parts of the country. This is not something to be recommended.[8]

Constituency size is governed by article 16.2.6 of the Constitution, which states:
> *No law shall be enacted whereby the number of members to be returned for any constituency shall be less than three.*

A minimum of three TDs per constituency is required to ensure a proportional election result – this is a bare minimum. Ideally constituencies should be larger than this. The Golden Rule in all proportional representation electoral systems is that the larger the constituency size (i.e. the more TDs elected per constituency) the more proportional the outcome. An accepted rule of thumb is that in order to get a decent proportional result (i.e. an election result that is fair to all parties, large and small) a constituency should elect at least five TDs. Ireland falls below this figure: for instance in the most recent election just 11 of the 43 constituencies were 5-seater; all the other constituencies were either 3-seat (17) or 4-seat (15).

In all recent elections, the largest constituencies have been 5-seater. There is no particular reason why this has to be so; this limit is set by legislation (not by any constitutional restriction) and so could easily be changed. In earlier elections (see the Table below) it was not uncommon to have constituencies with 7 or 8 seats; there was even a constituency with as many as 9 seats! In short, there is no need for Constitutional reform to increase the average size of constituencies in Ireland.

5.3.2 Direct Democracy
Direct democracy is a form of democracy in which individual political decisions are made by the voters.

Even in many of the older established democracies, citizens often express dissatisfaction with the quality of their democracy. Periodic elections alone cannot always guarantee sufficient choice or accountability. Nor are elections always the best mechanism for resolving contentious policies, or embarking on a programme of fundamental change. For these and other reasons greater interest is being shown around the world in institutions that promise to enhance the quality of democracy and particularly in referendums and initiatives, in other words forms of direct democracy.

Direct democracy differs from representative democracy where voters elect representatives to make political decisions on their behalf. While it can vary in the details, the basic idea behind direct democracy is that citizens can petition for items of concern to be put to referendum or to be considered in legislation. Thus full direct democracy is a qualitatively different kind of political process from referendum democracy. It is primarily practiced in Switzerland and in the Western United States particularly California.

---

[8] Technically, the term used to describe a situation where constituencies don't take account of population size is 'malapportionment'.

The primary difference is that referendums in countries such as the UK, Canada or France are used relatively infrequently and the decision to hold them and the topics to be decided largely remain in the hands of legislators. In direct democracies the subject matter is much more a matter for citizens to determine. For example there are two initiatives being held on June 9 in Switzerland: one is an initiative to reform elections for the Swiss parliament and the other an amendment to the Asylum Act.

Background
Provisions for direct democracy were included in the 1922 Constitution of the Irish Free State. Under the 1922 Constitution there were three elements of direct democracy.
1. **Provisions for Constitutional referendums** where all constitutional amendments would be subject to a mandatory binding referendum. This provision is still in place in the current Constitution.
2. **Veto of legislation**. Various provisions for certain proportion of the Dáil and Seanad to be able to veto legislation within a short time frame. In addition within 90 days of any legislation being passed 5% of all registered voters could demand a referendum on the bill. This did not apply to money bills or those dealing with aspects of health and safety.
3. **The Initiative**. Citizens could draft either constitutional amendments or ordinary laws and have them put to a referendum. A proposal had to be initiated with the signatures of some 50,000 registered voters. The Oireachtas had two years to adopt the bill or put it to a referendum if demanded by 75,000 voters with no more than 15,000 in any one constituency.

A loophole allowed the Dáil to change the 1922 Constitution in its initial years and as a result the direct democracy provisions never saw the light of day. These provisions were subsequently left out of the 1937 Constitution.

Points in favour of direct democracy
1. Restores authority to the people, and makes them responsible, in conjunction with the political parties.
2. Curbs the imbalance of power, making politicians more responsible and accountable to the people than infrequent elections.
3. There is evidence that voters can make multiple decisions on diverse topics at the same time. This may lead to a more deliberative citizenry engaged with policy.

Points against
1. Voters can vote for contradictory policies such as cutting spending and not increasing taxes. The Swiss have tackled this with a tiebreak question if there are proposals that contradict one another – the so-called subsidiary questions: "If both proposals are adopted by the people, which proposal do you favor?"
2. Some argue that in small countries such as Ireland issues are easily aired in the media and politicians are close to the people and thus we may not need a formalized system of initiative.
3. An enduring question is whether voters are up to the task of dealing with direct democracy. With so many proposals on so many topics some argue that voters cannot have and process enough information to make educated choices. After all

it is often thought that voters do not think very long or hard about most political issues, preferring to leave that to the representatives they elect to represent them. Over-burdened voters may not only disengage from the process they will also grow to dislike the process of direct democracy itself.

Recent international examples of direct democracy in action

1. **The European citizens' initiative** allows EU citizens to participate directly in the development of EU policies, by calling on the European Commission to make a legislative proposal. The citizens' initiative has to be backed by at least one million EU citizens, coming from at least 7 out of the 27 member states. A minimum number of signatories is required in each of those 7 member states, in Ireland that is 9,000 and in Germany 74,250. The Commission is not obliged to propose legislation as a result of an initiative but it must give a reply within three months, meet the proposers and allow them to present at the European Parliament.

2. **Californian Initiative.** Between 1912 and January 2013 some 360 initiative proposals qualified for the ballot in the US state of California. A further 1307 failed to qualify but made at least some progress towards the ballot. With so many proposals being made and put to the ballot it is not surprising that a wide range of issues are considered. November 2012, for example, saw Californians decide on ten initiatives and a referendum including measures on taxation, union dues, car insurance, the death penalty, labeling of GM foods and redistricting. By contrast to referendum practice none of these issues were placed on the ballot by legislature, but rather by pressure groups from outside the legislature. In order to qualify for the ballot, the initiative measure must be signed by a specified number of registered voters depending on the type of initiative measure submitted. For a proposal of a statute it is 504,670 signatories, for a constitutional amendment it is 807,615 while for a referendum on already enacted legislation there is a deadline of just 90 days and these are thus very rare.

3. **Swiss National Initiative and Referendums.** Citizens can call both constitutional and legislative referendums. The Legislative calls do not allow citizens to propose new laws but just to pass judgment on laws already passed by the legislature. However, constitutional changes can be initiated by citizen initiative with 100,000 signatures. In addition they must be passed by a double majority of both the votes and the states. More than 550 referendums have occurred since 1858 and they often occur twice a year with between two and 10 items on the ballot. In 2012 for example there were questions on employment leave, second houses, building society savings, price agreements, gambling revenues, healthcare, foreign policy, home buying, a smoking ban, secure housing in old age and music lessons at school and finally on the Animal Diseases Act.
Switzerland also has local cantonal referendums and initiatives and in Germany there are also moves for local referendums for example a railway project in Stuttgart.

Referendums		Initiative	
Constitutional (binding)	Consultative (non binding)	Abrogative	Citizens' Initiative
A vote that is required in order to effect a change in the constitution or basic law. • Australia • Denmark • Ireland • Switzerland	A vote on any subject initiated by the government or legislature • Britain • Canada • Finland • Sweden	A procedure to force a vote on a law already passed by the legislature. Generally initiated by a petition of citizens or sometimes by a legislative minority • Austria • Italy • Sweden • Switzerland	A referendum on any subject which is brought by a petition of citizens. The number of signatures required varies. May be binding but can also be subject to review by courts or legislature. • New Zealand • Switzerland • Many US states

Source: Le Duc:2003: 32

Constituency size and total Dáil membership since 1923[1]

Legislation	Year of revision	Number of TDs in constituency						Total number of constituencies	Total number of TDs
		3	4	5	7	8	9		
Electoral Act 1923 (No. 12 of 1923)	1923	6	4	9	5	3	1	28[1]	147[1]
Electoral Act 1935 (No. 5 of 1935)	1935	15	8	8	3			34	138
Electoral (Amendment) Act 1947 (No. 31 of 1947)	1947	22	9	9				40	147
Electoral (Amendment) Act 1959 (No. 33 of 1959)	1959[2]	21	9	9				39	144
Electoral (Amendment) Act 1961 (No. 19 of 1961)	1961	17	12	9				38	144
Electoral (Amendment) Act 1969 (No. 3 of 1969)	1969	26	14	2				42	144
Electoral (Amendment) Act 1974 (No. 7 of 1974)	1974	26	10	6				42	148
Electoral (Amendment) Act 1980 (No. 17 of 1980)	1980	13	13	15				41	166
Electoral (Amendment) Act 1983 (No. 36 of 1983)	1983	13	13	15				41	166
Electoral (Amendment) Act 1990 (No. 36 of 1990)	1990	12	15	14				41	166
Electoral (Amendment) Act 1995 (No. 21 of 1995)	1995	12	15	14				41	166
Electoral (Amendment) (No. 2) Act 1998 (No. 19 of 1998)	1998	16	12	14				42	166
Electoral (Amendment) Act 2005 (No. 16 of 2005)	2005	18	13	12				43	166
Electoral (Amendment) Act 2009 (No. 4 of 2009)	2007 (Recommended)	17	15	11				43	166

[1] Excludes 6 university members returned for 2 constituencies of 3 members each.
[2] This revision was found to be unconstitutional by the High Court.

Source: MacCarthaigh and Manning (2010), pp.470-1

5.4   Public submissions received and the information from the Department of the Environment, Heritage and Local Government - Dr Gemma Carney, NUI Galway

5.4.1   Public submissions received by the Convention can be viewed at
www.constitution.ie

5.4.2   Information note for the Chairman of the Convention on the Constitution[9]

The Chairman of the Convention on the Constitution wrote to the Minister on 27 May 2013 asking if the Department could prepare an information note on the following four issues:

1. The establishment of an Electoral Commission
2. Measures to improve voter turnout
3. The difficulties with the electoral register
4. Electronic voting

Notes on each are provided below in response to that request.

1.   The establishment of an Electoral Commission
The Programme for Government provides for 'the establishment of an Electoral Commission to subsume the functions of existing bodies and the Department of the Environment'. The position on this commitment is as set out in the Minister's response to a Parliamentary Question on 8 May 2013-

> The <u>Programme for Government</u> includes a range of political reform measures a number of which are in my area of responsibility as Minister for the Environment, Community and Local Government. Many of the measures have already been implemented through legislation enacted in the last two years. Legislation enacted in 2011 provides for a reduction in the number of TDs, reduced spending limits at Presidential elections and time limits for the holding of bye elections. Legislation enacted in 2012 strengthens the political funding regime in Ireland and provides for the payment of state funding to political parties being conditional on parties having at least 30% women and 30% men candidates at the next general election. The Electoral (Amendment) (Dáil Constituencies) Act 2013 was signed into law in March and provides for 158 TDs to be elected to represent 40 constituencies in the next Dáil.
>
> The Government legislation programme includes the Electoral (Amendment) Bill 2013 which will provide for amendment of the European Parliament Elections Act 1997 to transpose directive 2013/1/EU which amends arrangements for EU citizens exercising their right to stand as a candidate in European Parliament elections in a Member State of which they are not nationals but in which they are residing; and for other amendments to the electoral acts relating to the date for additions to the postal voters register supplement list, the circulation of Referendum Bills to Post Offices, the register of electors in Limerick, Tipperary and Waterford and the review of European

---

[9] Members of the Convention expressed some dissatisfaction with the information note provided and agreed that the Chairman should write again to the Department seeking further detail on the electoral issues being discussed. This response is contained in Appendix

Parliament constituencies. Also in the legislation programme the Electoral (Amendment) (Referendum Spending and Miscellaneous Provisions) Bill, to be progressed later this year, will implement more commitments in the Programme for Government. Arising from the Action Programme for Effective Local Government I established a Local Electoral Area Boundary Committee in November 2012 to review and make recommendations on local electoral area boundaries in time for the 2014 local elections and my Department is providing administrative support to that committee.

Following these tasks, I will be addressing the Programme for Government commitment to establish an Electoral Commission to subsume functions of existing bodies and my Department. Establishment of an Electoral Commission will be a major body of work. Issues for consideration include international best practice, the Commission's structure and functions, who it reports to, its relationship with other bodies currently involved in electoral administration, and the approach to be followed in relation to the extensive legislation that will be required, as well as practical matters including staffing and funding arrangements.

2. Measures to improve voter turnout

The question of measures to improve voter turnout is not at present the subject of detailed scrutiny in the Department. This is not to say that there is no concern about levels of voter turnout which differ from poll to poll (elections and referendums) and from year to year.

Routine measures taken on the occasion of each poll to encourage voter turnout include the publication by the Department of notices about the making of the polling day order, final dates for inclusion in the supplement to the electoral register, voting at an alternative polling station where a person is unable for reasons of disability to vote at their allotted polling station.

For referendums the functions of a Referendum Commission include 'to promote awareness of the referendum and encourage the electorate to vote at the poll'. Since 1998 a Referendum Commission has been established on each occasion that a referendum has been held in the State. This week the Minister established a Referendum Commission for the referendum on the Thirty – Second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013.

3. The difficulties with the electoral register

The Electoral Register is not at present the subject of detailed scrutiny in the Department. Responsibility for the electoral register lies with the voting public, local authorities and the Department. The Department is responsible, under the Minister, for policy issues relating to the electoral system generally and for bringing forward legislative proposals as appropriate for consideration by the Oireachtas. Two such legislative proposals are being developed at present as part of the Electoral (Amendment) Bill 2013 – one on the date for additions to the postal voters register supplement list and another relating to the register of electors in Limerick, Tipperary and Waterford in which areas single new local authorities will be established following the 2014 local elections.

In law, the preparation of the Electoral Register is a matter for each local registration authority. It is the duty of the 34 registration authorities to ensure as far as possible, and with the cooperation of the public, the accuracy and comprehensiveness of the register. Given the responsibility of local authorities in relation to the Electoral Register for their areas, the focus of Department action is to support authorities in their registration work through, inter alia, providing guidance to authorities in relation to the Electoral Register.

4. Electronic voting

Electronic voting is not the subject of detailed scrutiny in the Department. The electronic voting project undertaken by previous administrations was brought to finality in 2012 with the disposal of the equipment and the ending of storage arrangements for that equipment. The Minister's press release on that occasion is attached.

PRESS RELEASE

Hogan Disposes Electronic Voting Equipment

The Minister for the Environment, Community and Local Government, Phil Hogan T.D. has today (28.6.2012) announced that a contract has been awarded for the disposal of the electronic voting equipment. A contract, worth €70,267, was today signed with KMK Metals Recycling Ltd., who are based in Tullamore County Offaly.

Minister Hogan said; 'I am glad to bring this sorry episode to a conclusion on behalf of the taxpayer. From the outset, this project was ill-conceived and poorly planned by my political predecessors and as a result it has cost the taxpayer €55 million. While this is a scandalous waste of public money, I am happy to say that we will not incur any further costs in the disposal of the machines. KMK Metals Recycling Ltd will pay €70,267 for all of the equipment. Removal of the equipment from the present storage locations and transportation to the recovery facility by the contractor will commence in the coming week and will be completed by September. The storage costs of the machines were €140,000 per year for the past 3-years, and from next year we will not incur those costs any longer.'

KMK Metals Recycling Ltd was the preferred bidder amongst the seven tenders submitted in response to a Request for Tenders published on 19 January 2012. Proposals were sought for either the purchase of the evoting equipment or for its recovery as waste, consistent with environmental and other obligations. No proposals were received for the purchase of the machines for reuse as an electronic voting system. The Request for Tenders provided for the contract to be awarded on the basis of the most economically advantageous outcome and KMK Metals Recycling Ltd. quoted the most cost beneficial price for the recovery of all of the equipment. Taking account of the residual value of components contained within the electronic voting system and the potential to reuse some of the supporting items of equipment, the contract provides for a payment of €70,267 to be made to the State.

The Minister added: 'I want to finally draw a line under the electronic voting project and to see that the equipment is disposed of properly. The recovery process will be carried out in line with national legislation and EU regulations on the treatment of waste electrical and electronic equipment. The electronic voting machines will now be dismantled. Whatever

elements of the equipment can be reused will be reused. The cost of storing the machines has been a subject of particular interest and implementation of the disposal contract will now enable a line to be drawn under these arrangements in the coming weeks.', the Minister added.

Ends

When the decision not to proceed with the electronic voting project was taken in April 2009, an Interdepartmental Task Force was established to bring the project to an orderly conclusion. It comprised nominees from the Department of Public Expenditure and Reform, Office of Public Works and Department of Defence. It was chaired by the Department of the Environment, Community and Local Government.

On taking up office in March 2011, Minister Hogan asked the Task Force to review work it had done for the previous Government. The Task Force recommended that a Request for Tenders invite proposals for both the sale and /or recovery of the equipment. This was done in January 2012.

The Task Force considered the seven tenders received and the Minister accepted the recommendation of the Task Force. From its first meeting in July 2009, the Task Force met on eight occasions. All of its members are public servants and none received any additional payments arising from their work.

Inventory of items of equipment
While the most significant element of the electronic voting equipment is the actual machines themselves, there are a number of other pieces of hardware including electronic and non-electronic items:
- 7,500 Voting Machines
- 154 Programme Reading Units (devices for uploading candidate details to the machines for each election and for downloading the votes cast)
- 12,842 Ballot Modules for the storage of votes cast
- 292 Cases for carrying the Ballot Modules / Programme Reading Units
- 1,232 Transport / Storage Trolleys
- 2,142 Hand Trolleys for moving the machines
- 4,787 Metal Tilt Tables on which the machines were placed in polling stations
- 918 Tray Attachments for Tables.

Storage
Over 60% of the electronic voting machines are stored at Gormanston Army Camp where there are no ongoing rental costs in respect of the use of this property.
The remaining machines are stored at 13 local premises around the country for which costs do arise. Arrangements are being made for the removal of the equipment from all locations over the coming weeks. The leases which are mainly of short duration will be terminated and there will be no storage costs in 2013.

Storage arrangements for the Evoting equipment

- In 2010 and 2011 the local storage costs of the electronic voting equipment was €140,000 approximately per annum.
- Of the 13 local premises used to store the equipment, 4 are likely to be retained by the Returning Officers for the storage of traditional manual voting equipment (ballot boxes, etc) and any costs arising would be met by the Returning Officers as part of their normal duties under the electoral system.
- 9 of the 13 local premises will no longer be required. The leases are mainly of a short-term nature and will not involve negotiation of termination arrangements or the payment of a penalty to end the leases.
- At just one of these locations a cost may arise to end the lease and this will be subject to final negotiations with the landlord concerned.

5.5   Options for administrative reform of elections - Prof Michael Marsh, TCD

Electoral commission

The responsibility for running elections lies with the Department of the Environment. This is not uncommon around the world but an increasing number of countries now give this responsibility to an independent body. The government, or head of state on the advice of the government may appoint people to this body, but it is typically established for a term exceeding the lifetime of the parliament and is staffed by experts. A common model is the Australian one. The Australian Electoral Commission (AEC) has several core functions, of which the most important are:

1. manage the electoral register (i.e. the list of who is eligible to vote in elections)
2. conduct public elections and referendums
3. educate and inform the community about electoral rights and responsibilities
4. provide research, advice and assistance on electoral matters to the Parliament, other government agencies and recognised bodies
5. administer election funding, financial disclosure and party registration requirements
6. support electoral redistributions (i.e. the size and shape of parliamentary constituencies).

In Ireland the Standards in Public Offices (SIPO) covers most aspects of (5) and successive governments establish ad hoc referendum commissions to handle aspects of (2) and other ad hoc bodies to deal with (6). However, responsibility for running elections, including registration (1), remains at a local level, while (3) and (4) are generally absent. The previous government promised to establish such an electoral commission but failed to do so before it collapsed, and while it is in the current government's programme we have not seen anything to date.

The main advantages of such a body generally is that it is independent. Perhaps the greater advantage in an Irish context would be that it would be more proactive, and would have electoral administration as its priority. The Australian Electoral Commission is under the overall direction of: a retired judge (chairman), the Australian Electoral Commissioner (who has day-to-day responsibility and who has tended to be an academic or public servant), and a non-judicial member (usually from the Australian Statistics Office).

The UK has a slightly different model. The administration of elections is, as here, effectively under local control, but there is also an Electoral Commission with monitoring and advisory roles, including:

1. registering political parties;
2. monitoring and publishing significant donations to parties;
3. regulating spending by parties on election campaigns;
4. writing reports on the conduct of elections and referendums;
5. reviewing electoral law and procedures;
6. advising the government on changes;
7. advising those involved on the conduct of elections and referendums;
8. promoting public awareness of electoral systems; and
9. reviewing electoral boundaries.

What is significant here is that this body is – like the AEC – proactive in various matters and has responsibility for elections and referendums.

Convenience voting
Over the last 20 years or so there have been change in many countries that have been designed to make voting easier. Methods include broadened access to postal voting, a wider scope to vote 'in person' before the election and experiments with Internet voting. Many of these initiatives have been driven by a concern to raise turnout, by reducing some of the 'costs' of voting, such as the time spent driving to polling stations and waiting there.
There is some evidence that such measures have increased turnout, but only marginally. There is little evidence that it has broadened the composition of voters: those who use such measures are those who probably would have voted anyway. A review of the UK experience in 2005 concluded: 'In general, ... postal voting on demand did not prove to be a panacea for the turnout "problem" and had only a very weak effect on the distribution of party support.' (Rallings et al. 2008).

An extensive review of US evidence concluded that 'convenience voting reforms do not draw in new citizens and do not seem to appeal to disempowered segments of the population. Convenience voting laws thus seem to offer campaigns little incentive to expand their efforts beyond their base to disengaged citizens' (Gronke et al. 2008). There are also concerns about an increased potential for fraud with such measures, particularly in the absence of strong individual registration and personal identification procedures.

Voting over weekends

Another measure which might increase turnout and make voting more convenient is weekend voting. Most of Europe actually votes on Sundays or even over the weekend. Some countries allow a day and a half or even two days for elections. Statistical evidence shows turnout tends to be higher in countries that vote on Sundays, but that does not mean that we could necessarily expect a boost by moving to Sundays. Experiments here with voting on a Saturday met with a mixed response from voters. A poll carried out for the Referendum Commission found 16% found Saturday voting easier, and 15% found it harder, with 69% saying it made no difference.

6.   Convention discussion

The discussion of the Dáil electoral system covered two main sets of questions – the electoral system used to elect TDs, and the other issues related more generally to the process of elections in Ireland. This summary of the discussions at the Convention over the two weekends of May and June deals with these in turn.

6.1   Discussion

At the May meeting discussion focused on the question of whether to make changes to the existing electoral system or to replace it with an entirely new electoral system.

It was already apparent at this first meeting that there were strongly held views in favour of keeping the existing electoral system, but with changes to make it more effective. The current system was seen by many members as providing good levels of proximity and accountability, and allowing good personal links between public representatives and their constituents. There seemed to be little appetite for a completely new system.

While a number of criticisms were made of the current system, a recurring argument was that these issues should be addressed *within* the system, not by introducing a new one. Some wondered if the system is too clientelist encouraging public representatives to focus excessively on local concerns. Others stressed the need to keep local contact between politicians and constituents. In response to concerns about TDs having an overly-local approach, it was pointed out by some members that not all local assistance provided by TDs relates to minor issues.

Regarding possible alterations to the current system, the main suggestion put forward was to create larger constituencies with more seats, although some concerns were expressed that larger constituencies will reduce the level of contact a TD has with his/her constituents. It was argued that ministers should vacate their Dáil seat upon being selected to cabinet, to be replaced by another TD. This would allow the ministers to do their job and not focus on constituency work. This was a recurring point – the need to better separate national and local responsibilities. While some wished to see less localism and clientelism in the system, others argued that these features are perhaps a response to an inefficient public service

Of the alternative electoral systems that were outlined to the members (non-proportional systems such as used in the UK and Australia, the PR list systems common across much of Europe, or the mixed-member proportional system that originated in Germany), the system which generated the most interest was MMP. The benefits of local and national candidates on the ballot paper in this system was attractive to some, who expressed a hope that it would attract greater expertise and a greater range of talents than the current system does. However there were concerns that it might encourage politicians to focus more on gaining support within their party rather than among their constituents. There was close to no support for the First Past The Post system, primarily because would not adequately reflect/represent the votes cast and it would diminish the weight of small parties.

At the end of the first weekend the members voted on the agenda for the June weekend, resulting in the decision to focus attention on three possible outcomes: whether to keep our

existing PR-STV electoral system, whether to make some amendments to the PR-STV system, or whether to replace it with an MMP system.

Having heard the views of experts at the start of the June weekend, the convention members first discussed the advantages and disadvantages of replacing the existing PR-STV system. Many members felt that the current system should not be replaced, but should be reformed. It was generally considered to be a good system albeit with some flaws. Many members argued that it was not totally broken nor in need of complete overhaul but that what was is needed is parliamentary reform and improvement of local government and local services. Local government should be made stronger and work better, as stronger local government would remove minor problems from the work of TDs, who can focus on national issues.

A number of members suggested that the local element of Irish politics was not necessarily a bad thing; that a connection exists between constituency work and national issues. Another argument against replacing PR-STV was the concern that adopting a whole new system would be a complex process that would cause confusion, particularly for older people. The main argument in favour of replacing the current system was that it would allow more experts in government.

The second issue for discussion by the members pertained to the advantages and disadvantages of MMP for Ireland, and what kind of MMP system would apply in Ireland. The main advantage members saw with this system was that it might increase parliamentary diversity, ensuring that the composition of the legislature better reflects the population as regards gender and other factors. It might also allow more experts in government. Against that, concern was expressed that the list system, which is a main feature of MMP, could lead to too much control by political parties and take power away from citizens. Overall the system was seen to focus too much on parties and allows too much influence by party headquarters and it was argued it could lead to a lack of connectivity with the grassroots. Members were unclear as to how government ministers could achieve re-election if they were to focus on portfolios exclusively and not their constituents, unless automatic re-election is applied. A solution proposed at one table was a separate list for electing Ministers. It was suggested that adoption of MMP would not necessarily guarantee bringing more experts into government. Many felt that changes carried out within the PR-STV system would be superior to adopting MMP, and those changes could be done through legislation.

The Convention then moved on to consider what change to the existing PR-STV might be worthwhile. Many voices called for larger constituencies as a primary solution because the results are more representative of actual voter preferences and, therefore arguably more democratic. It was also argued that in order to solve the problem of local services a greater degree of localism is needed, i.e. more powers for local government. A previous meeting of the Convention made strong recommendations on the increased participation of women in politics and the use of gender quotas was again proposed. Some said random ordering of names should be used on the ballot paper instead of the current alphabetical order. Views were expressed at one table about possible improvements to how PR-STV counts are run, particularly relating to the redistribution of surplus votes.

Other elections related issues
Having started with a wide range of possible electoral reforms at the first meeting in May, the members voted to reduce the list of 'other issues' to four main areas for consideration at the June meeting: non-parliamentary ministers, the size of the Dáil, the administration of elections, and direct democracy.

Many members argued that there is a need for greater expertise among ministers. The members considered the issue of non-parliamentary ministers. It was felt by many that this should be an option open to governments beyond the current constitutional provision whereby up to two members of the Seanad may be appointed. It should be done in a permissive way, with governments permitted but not obliged to bring in ministers from outside parliament. There was however opposition from some to the idea of automatic re-election of ministers. Members argued that while expertise is needed in government it is not a panacea, because of the political and administrative skills also required to manage a government department..

The question of the size of the Dáil attracted mixed views: the members were pretty evenly divided on the issue of whether to increase or reduce the number of TDs, or whether to leave the number as is.

Discussion of the administration of elections showed a strong desire for reform. Points were made in favour of proactive measures to ensure that everyone that has a valid right to vote can use it, and to end the administrative disenfranchisement of eligible voters due to problems with the current system of enumeration and maintaining and updating the electoral register. A strongly held view was that voting should be made easier, with ideas to achieve this including the extension of the voting period to several days, e-voting, postal votes, and voting by smart phones. There was also a lot of support for the view that there should be an independent and permanent electoral commission. A number of members expressed some concern at the lack of detail in the briefing document provided to the Convention by the Department of the Environment – a supplementary response is attached at Appendix C. Some argued that by-elections need to be overhauled, and that perhaps the system of co-option that happens at local government level should be adopted.

Lastly the Convention addressed the idea of direct democracy and how it might operate in Ireland. While many said petitions should be allowed for referendums, others said governments should be compelled to respond through parliamentary legislation. There should be a reasonably high threshold and a geographic spread for petitions it was felt. Some expressed concerns over the possible manipulation of petitions and the need for reasonable controls to prevent this.

6.2   Ballot results

6.2.1 First meeting
At the May meeting, discussions on the electoral system covered a wide range of themes. At the end of the weekend the members voted on four sets of questions that aimed at focusing the discussions for the subsequent meeting in June.   The first vote was over whether the members would want to continue to consider an entirely new electoral system for Ireland or

whether instead the subsequent meeting would also examine possible changes to the existing electoral system. A majority (59%) favoured the latter.

Having decided that, the issue then was which of the three main sets of electoral systems that had been scrutinized over this first weekend would feature as the electoral system to devote more attention to in June. On this vote, the mixed-member proportional system was the clear favourite – winning 69% support of the members.

The third vote was on the other elections-related changes that might be considered regardless of whether or not there was a decision to adopt an entirely new electoral system. It was agreed to offer a choice on the ballot paper between eight items that had emerged from the course of the discussions over the weekend, the aim being to select four to focus on in June. The four that emerged as the most popular were: the size of Dáil constituencies, the number of TDs, direct democracy and non-parliamentary ministers.

Finally, the members were asked if they would like to discuss in more depth themes associated with the administration of elections in Ireland. This attracted by far the strongest endorsement, with 93% of members voting in favour of discussing this in June.

The results of the May ballot paper

What view on possible electoral reform does the Convention have at this point?

	Please mark X for your preferred option
Electoral reform should only involve changes to the existing PR-STV electoral system	**41**
Electoral reform might involve an entirely new electoral system *or* changes to the existing PR-STV electoral system	**59**

In the event that the Convention votes for Option 2, then which electoral system would you like to examine in more detail? *[Please rank these in order of preference (1, 2, 3)].*

	Rank in order of preference
A non-proportional system (such as used in Britain or Australia)	**3**
A proportional list system (such as used in most European countries)	**29**
A mixed-member system (such as used in Germany and New Zealand)	**69**

Within the existing PR-STV electoral system there are a number of changes that could be made. Which of the following would you like the Convention to consider at its next meeting?

[Please rank these in order of preference 1, 2, 3, and so on). The results presented below reflect the final vote after an STV count (to pick the top 4)

	Rank in order of preference
The size of constituencies	**47 Elected**
Non-geographic constituencies	**5**
Replacing bye-elections	**3**
Number of TDs	**19 Elected**
Non-parliamentary ministers	**9 Elected**
Direct Democracy	**16 Elected**
Term limits for TDs	**3**
Encourage/discourage independents	**0**

	Yes	**No**	**No opinion**
Would you like to discuss issues associated with the administration of elections (e.g. an Electoral Commission, measures to improve voter turnout, Register of Electors, Electronic Voting etc.)	**93**	**2**	**5**

6.2.2 Second meeting

By the end of the June meeting, the breadth and depth of discussions on the electoral system over two weekends was reflected in the range of issues voted on. The members decided in May to limit the focus of discussions, but by the end of the June weekend a lot of additional ground had been covered and this was reflected in the complexity of the ballot process. Two ballot papers were produced, the first devoted specifically to questions on the electoral system and its possible reform, and the second on other elections-related issues.

The votes on the first ballot paper that were most related to the main theme of these two weekends, were the first three, which went as follows. On the question of whether the existing electoral system (PR-STV) should be changed at all, the majority (54%) voted in

favour. This was followed by two questions specifically designed to reflect the changes that members were looking for, namely: (1) to keep the existing electoral system (79% voting against the alternative electoral system on offer – MMP), and (2) to make two key changes to the existing electoral system – ensuring that no constituency size should be less than a 5-seater (86% in favour), and replacing the alphabetical ordering of candidates on the ballot paper (67%).

Given the result of the second vote – against MMP – the fourth vote was made redundant, though even here the level of attachment to PR-STV is notable (60% of members would have wanted PR-STV to be at the core of any MMP system that might have been adopted).

Finally there were two votes aimed at reflecting members' opinions on the question of the size of Dáil Éireann, which indicated strong support (49%) for greater than 159 members. As things stand, the number of members will be reduced to 158 at the next General Election.

The second ballot paper contained four sets of votes. First, there were six items – an electoral commission, extending polling hours/days, postal voting, the electoral register, 'measures to improve voter turnout', education programmes in schools – that shared in common a desire on the part of the members for more to be done to improve electoral turnout. On all six items the votes were overwhelmingly (in one case unanimously) in favour of change.

The members next voted on the question of non-parliamentary ministers in government, with the majority voting in favour of the two main alternative approaches that had been discussed: non-members of the Oireachtas as ministers (55% in favour) and requiring TDs to resign their seats on being appointed minister (59% in favour).

Finally, the members had two sets of votes on the issue of direct democracy, with the basic principle receiving strong support (83% in favour), with adequate safeguards to ensure that no measures could be adopted that would have the effect of undermining citizens' fundamental rights. There was also strong support for the two main forms it might take: 80% favoured the right for citizens to petition on influencing the (constitutional and non-constitutional) legislative agenda; 78% favoured the right to petition for referenda. Time didn't permit a more detailed consideration of the merits of this issue.

Detail of the results of the ballot at the second meeting are contained in Chapter 2 – Convention Recommendations.

7. Convention discussion on the Referendum proposing the Abolition of Seanad Éireann

During the course of the first meeting of the Convention to discuss Dail Electoral reform, Senator David Norris proposed that the Convention should write to the Taoiseach to ask that the Convention have the opportunity to discuss the Abolition of the Seanad in advance of the holding of the referendum. Following a discussion on the matter, the Convention agreed to vote on the proposal and the results of the ballot are set out below.

Archive proceedings of this debate can be viewed at www.constitution.ie.

Question	Yes	No	No opinion
Should the Convention write to the Taoiseach to ask that the Convention have the opportunity to discuss the Abolition of the Seanad in advance of the holding of the referendum?	41	57	2

Appendix A: Convention on the Constitution Terms of Reference

"Go gceadaíonn Dáil Éireann:

Coinbhinsiún ar an mBunreacht a ghairm chun breithniú a dhéanamh ar na nithe seo a leanas agus chun cibé moltaí a dhéanamh is cuí leis agus chun tuairisciú do Thithe an Oireachtais:

(i) téarma oifige na hUachtaránachta a laghdú go cúig bliana agus é a chur ar comhfhad leis na toghcháin áitiúla agus leis na toghcháin don Eoraip;

(ii) an aois vótála a laghdú go 17 mbliana;

(iii) an córas toghcháin don Dáil a athbhreithniú;

(iv) an ceart a thabhairt do shaoránaigh a bhfuil cónaí orthu lasmuigh den Stát chun vótáil i dtoghcháin Uachtaráin in ambasáidí de chuid na hÉireann, nó ar shlí eile;

(v) foráil maidir le pósadh comhghnéis;

(vi) leasú a dhéanamh ar an gclásal i dtaobh ról na mban sa teaghlach agus rannpháirteachas níos mó ag mná sa saol poiblí a spreagadh;

(vii) rannpháirteachas na mban sa pholaitíocht a mhéadú;

(viii) an cion arb é diamhaslú é a bhaint as an mBunreacht; agus

(ix) tar éis na tuarascálacha thuas a chríochnú, cibé leasuithe iomchuí eile ar an mBunreacht a bheidh molta aige; agus

go dtugann sí dá haire:

— gur 100 duine mar a leanas a bheidh i gcomhaltas an Choinbhinsiúin:

— Cathaoirleach a bheidh le ceapadh ag an Rialtas;

— 66 shaoránach atá i dteideal vótáil i reifreann, arna roghnú go hamasach sa chaoi go mbeidh said ionadaitheach do shochaí na hÉireann i gcoitinne;

That Dáil Éireann:

approves the calling of a Convention on the Constitution to consider the following matters and to make such recommendations as it sees fit and report to the Houses of the Oireachtas:

(i) reducing the Presidential term of office to five years and aligning it with the local and European elections;

(ii) reducing the voting age to 17;

(iii) review of the Dáil electoral system;

(iv) giving citizens resident outside the State the right to vote in Presidential elections at Irish embassies, or otherwise;

(v) provision for same-sex marriage;

(vi) amending the clause on the role of women in the home and encouraging greater participation of women in public life;

(vii) increasing the participation of women in politics;

(viii) removal of the offence of blasphemy from the Constitution; and

(ix) following completion of the above reports, such other relevant constitutional amendments that may be recommended by it; and

notes that:

— membership of the Convention will consist of 100 persons as follows:

— a Chairperson to be appointed by the Government;

— 66 citizens entitled to vote at a referendum, randomly selected so as to be broadly representative of Irish society;

— comhalta de Thionól Thuaisceart Éireann as gach páirtí de na páirtithe polaitíochta sa Tionól a ghlacfaidh le cuireadh ón Rialtas; agus	— a member of the Northern Ireland Assembly from each of the political parties in the Assembly which accepts an invitation from the Government; and
— comhaltaí de thithe an Oireachtais, chun ionadaíocht neamhchlaonta a dhéanamh ar na Tithe;	— members of the Houses of the Oireachtas, so as to be impartially representative of the Houses;
— féadfar ionadaithe a cheapadh faoi réir na gcritéar roghnóireachta thuas, agus beidh na hionadaithe sin in ann páirt a ghlacadh sna himeachtaí agus vótáil faoina n-ainm féin;	— substitutes may be appointed subject to the selection criteria above, who will be entitled to contribute to the proceedings and vote in their own name;
— comhaontóidh an Coinbhinsiún a rialacha nóis imeachta féin d'fhonn a ghnó a sheoladh go héifeachtach ar shlí a bheidh chomh heacnamúil agus is féidir;	— the Convention will agree its own rules of procedure for the effective conduct of its business in as economical manner as possible;
— beidh aird chuí ag an gCoinbhinsiún ar Chomhaontú Aoine an Chéasta agus ar Chomhaontú Chill Rímhinn;	— the Convention will have appropriate regard to the Good Friday Agreement and the St. Andrews Agreement;
— tráth nach déanaí ná dhá mhí tar éis dháta na chéad éisteachta poiblí a thionólfaidh an Coinbhinsiún tabharfaidh an Coinbhinsiún tuarascáil do Thithe an Oireachtais agus déanfaidh sé moltaí dóibh ar gach ceann de na nithe atá leagtha amach ag (i) agus (ii) thuas;	— not later than two months from the date of the first public hearing held by the Convention, the Convention will make a report and recommendation to the Houses of the Oireachtas on each of the matters set out at (i) and (ii) above;
- tuairisceoidh an Coinbhinsiún do Thithe an Oireachtais agus déanfaidh sé moltaí dóibh ar gach ní eile a luaithe a bheidh a phléití críochnaithe aige agus, in aon chás, tráth nach déanaí ná bliain amháin ó dháta na chéad éisteachta poiblí;	— the Convention will report and make recommendations to the Houses of the Oireachtas on each remaining matter as soon as it has completed its deliberations, but in any event not later than one year from the date of the first public hearing;
— féadfaidh an Coinbhinsiún aighneachtaí a iarraidh agus glacadh leo ó chomhlachtaí leasmhara agus lorgóidh sé cibé comhairle shaineolaíoch is dóigh leis is inmhianaithe;	— the Convention may invite and accept submissions from interested bodies and will seek such expert advice as it considers desirable;
— déanfar gach ní a bheidh os comhair an Choinbhinsiúin a chinneadh trí thromlach de vótaí na gcomhaltaí a bheidh i láthair agus a vótálfaidh, seachas an Cathaoirleach a mbeidh vóta cinniúna aige nó aici i gcás comhionannas vótaí; agus	— all matters before the Convention will be determined by a majority of the votes of members present and voting, other than the Chairperson who will have a casting vote in the case of an equality of votes; and

— tabharfaidh an Rialtas freagra san Oireachtas laistigh de cheithre mhí ar gach moladh a dhéanfaidh an Coinbhinsiún agus, má tá sé chun glacadh leis an moladh, cuirfidh sé an creat ama in iúl ar lena linn atá sé ag brath aon reifreann gaolmhar a sheoladh.	— the Government will provide in the Oireachtas a response to each recommendation of the Convention within four months and, if accepting the recommendation, will indicate the timeframe it envisages for the holding of any related referendum."

Appendix B: Rules and procedures

1. **Timing, Frequency and Openness of meetings**

Meetings of the Convention will generally take place in a hotel at weekends (Saturdays and Sundays) during 2013. At least one meeting will be held outside Dublin. It is proposed to hold one meeting per month, with the exception of July and August. Members of the public will not have access to the meetings but the plenary sessions will be streamed live at www.constitution.ie.

2. **Role and duties of the Chairperson**

The Chairperson shall be the sole judge of order and shall be responsible for the smooth running of the Convention in accordance with these rules and the terms of the Resolution of the Houses of the Oireachtas of 10 July, 2012. He shall engage such support services as are necessary for the effective administration of the forum and, from time to time, make such recommendations to the Convention on the management of business as he sees fit.

3. **Work Programme**

The work programme shall be agreed by the Convention on foot of a proposal by the Chairman. The programme shall be reviewed regularly but any subsequent changes shall only take effect with the agreement of the Convention.

4. **Steering Group**

A Steering Group shall be established to support the Convention in the efficient and effective discharge of its role and functions. In practice, the Group shall assist with planning and operational issues associated with the work programme. The Steering Group shall consist of the Chairperson and representatives from the political parties, the public members and such other representatives as the Convention sees fit.

5. **Debates/speaking arrangements**

The format and structure of speaking arrangements shall be agreed in advance and as a general principle, all contributions by members should be brief, respectful and non-repetitive. Any member wishing to speak should indicate and will be called upon by the Chairperson, who will endeavour to ensure fairness in the allocation of speaking time to all members. In an effort to make most efficient use of time in plenary session, members are encouraged to use the opportunity of roundtable discussions to express their views, ask further question of the experts and deliberate with one another. These discussions can be reflected in a brief report to the plenary session.

6. **Tabling and Circulation of Papers**

All documents received by the Convention secretariat shall be made available to all members of the Convention via the www.constitution.ie website. Alternative arrangements will be made for those members who are not in a position to access the site. Deadlines for receipt of submissions and circulation of documents in advance of plenary meetings should be agreed by the Convention.

7. Presentations to the Convention

Following receipt of submissions on any matter, the Convention may choose to hear oral presentations from any representative group or individual to assist in its deliberations. For the efficient administration of the process, the Steering Group may wish to make recommendations in relation to the selection of interested bodies to present to the Convention. Invitations shall be issued by the Chairperson on behalf of the Convention.

8. Voting

Votes, if required, shall be by secret ballot of the members present and voting. Votes shall be overseen by the Chair with the support of at least 2 members of the Convention.

9. Advisory Panel

The Convention shall establish an advisory panel of academics, constitutional lawyers and others with demonstrated expertise, for access to such expert advice as it considers desirable. The process for selection and appointment of any such advisers shall be agreed by the Convention, on the advice of the Steering Committee.

10. Irish language facilities

A simultaneous translation service from Irish into English will be available for all plenary sessions of the forum.

11. Press and Communications

Authorised members of the media shall be permitted to attend plenary sessions of the Convention, subject to such terms and conditions as may be laid down by the Convention. As a general principle, the Chairperson shall act as spokesperson in relation to administrative or procedural matters.

12. Reports

Reports of the Convention shall be published as soon as practicable after a decision has been reached at each meeting. It shall be possible to finalise the detail of the content of each report other than in plenary session, subject to the agreement of the Convention.

13. Review of Procedures

The Chairperson shall consult with members of the Convention and other interested parties and conduct such reviews of the procedures and administration of the Convention as he sees fit.

14. Convention secretariat

The Chairperson shall have direction and control over the staff of the secretariat and other supports and resources available, subject to the wishes of the Convention.

Appendix C - Supplementary response from the Dept. of the Environment, Heritage and Local Government.

Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government

Oifig an Aire
Office of the Minister

July 2013

Mr. Tom Arnold,
Chairman,
Convention on the Constitution,
16 Parnell Square,
Dublin 1.

Ref: 19.05.06

Dear Tom,

Further to recent correspondence relating to the review by the Convention of the Dáil Electoral System and in reply to your letter of 19 June 2013, I wish to confirm the commitment in the Programme for Government to the establishment of an Electoral Commission.

The Programme for Government provides that an Electoral Commission would subsume the functions of existing bodies and the Department of the Environment, Community and Local Government. All aspects of electoral administration will need to be examined in undertaking this major body of work. I would hope that we can build on previous work in the area including the 'Preliminary Study on the Establishment of an Electoral Commission in Ireland' commissioned by my predecessor, private members bills introduced in the Oireachtas, relevant reports of Oireachtas committees including that on the electoral register. Some of the proposals that have previously been made have common, even overlapping elements. Others focus on particular responsibilities that can be assigned to an electoral commission.

The experience in other jurisdictions of the establishment of electoral commissions and their operation including the transitional arrangements where functions are being transferred will also inform our work. Ireland is not unique as a mature democracy seeking to set up an electoral commission. The Australian Electoral Commission was established in 1984. The Electoral Commission in the United Kingdom was set up in 2000. More recently, in July 2012, the New Zealand Electoral Commission completed a 4-year programme to

establish a single independent electoral agency responsible for all aspects of electoral administration.

The Irish electoral system enjoys a high degree of legitimacy amongst citizens and those involved in politics. The monitoring visit by the Organisation for Security and Cooperation in Europe / Office for Democratic Institutions and Human Rights (OSCE / ODIHR) in advance of the 2011 general election reported that there is a very high level of confidence amongst all stakeholders in the electoral process and the administration of elections. Notwithstanding this observation, it recommended that consideration be given to the establishment of a permanent electoral commission in Ireland.

Setting up an electoral commission gives us the opportunity of putting in place administrative and governance arrangements that most appropriately suit the particular features of Ireland's electoral system. While this represents an opportunity, there is also a challenge in not undermining elements of the current arrangements that are effective and that have strong levels of public credibility and support. I note from your letter that one issue of interest to the Commission is that of electronic voting. I can confirm that I have no plans to reintroduce electronic voting and that it is not the subject of active policy consideration in my Department. However, if experience with that project has taught us anything, it is that public scrutiny is important when changes affecting the electoral system are being progressed.

As I stated in the Dáil recently I hope to advance proposals on the commitment to establish an electoral commission in 2014. This will also provide an opportunity to deal with other issues of interest to the Convention, including the potential role an Electoral Commission can play in promoting voter turnout, and addressing concerns that have been expressed with regard to the electoral register.

I look forward in this context to receiving the report of the Convention on the Constitution with the recommendations of the Convention on the Dáil Electoral System decided upon in your meetings in May and June.

Yours sincerely,

_____
Phil Hogan, T.D.,
Minister for the Environment, Community and Local Government