

The Senate

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Introduction

The Senate or later Seanad Éireann is the only major Irish constitutional institution whose very existence has been called into question on several occasions. It was abolished altogether for a period in the 1930's only to be reconstituted later in a weaker form. Throughout its lifetime, its role in Irish politics, its composition, electoral system and indeed its very existence have all persisted as matters of unresolved controversy. This chapter examines the origins, role and fate of the Free State Senate and its successor in Seanad Éireann and especially the difficulties encountered in finding an acceptable electoral system and distinctive political role for that House.

Background – the Free State Senate

When the Constitution of the Irish Free State was debated in 1922 there was no controversy about the provision of a second House. In so far as the matter was discussed publicly, there was almost general agreement that second Houses were not just useful in themselves in ensuring full legislative deliberation but in the case of the Free State provided a mechanism to ensure adequate representation for the Unionist minority in the political life of the new State.

The proposals for Home Rule had envisaged a bicameral system. The Government of Ireland Bill which was due to become law in 1914 proposed a House of Commons and a Senate. There would be forty members of this all-Ireland body, elected from the four provinces as separate constituencies – fourteen from Ulster; eleven from Leinster, nine from Munster and six from Connacht. The electoral system was to be the single transferable system of proportional representation. The lifetime of each senate would be five years,

not coterminous with the life of the Commons. It would have the power to reject or to hold up bills for the duration of a parliamentary session. If the Senate persisted in its opposition in the next session, differences would be resolved by vote in a joint session of both Houses (O'Sullivan 1940: 83-98).

The ill-fated Irish Convention in 1919 proposed a Senate of sixty-four members with powers similar to those in the Government of Ireland Bill. The new Senate proposal was altogether more elaborate, comprising the lord chancellor, four Roman Catholic bishops, two Church of Ireland bishops, a member of the Presbyterian general assembly, the lord mayors of Dublin, Cork and Limerick, four privy councillors, three members from the 'learned' institutions, fifteen representatives of commerce and industry, four representatives of Labour and eight county councillors (O'Sullivan 1940: 40-1).

When the Constitutional Committee established by the Provisional Government to draw up a draft Constitution met in the Shelbourne Hotel in January 1922, there was unanimity on the need for a Senate. In part, this was founded on a fairly general consensus around the value of a second House but was also based on promises, or at least understandings, given to the leaders of Southern Unionism before the signing of the Treaty. The establishment of a Senate and proportional representation had been two major safeguards sought by Unionists. The Unionists did have a significant influence on the shaping of the Senate, though not all of their demands were conceded – for example, they sought a property qualification for voting for the elected part of the Senate. This was rejected but as a compromise the vote was restricted to those over thirty. The Provisional Government wanted a Senate of forty members, the Unionists a large House, with eventual agreement on sixty members. Substantively, the Unionists wanted a delaying power of twelve months on legislation and if Senate opposition persisted, the matter was to be resolved by a joint sitting of both Houses. The eventual compromise was a delay of nine months on all non-money bills.

The Free State Senate lasted just fourteen years. During that time, it carved out a distinctive if at times lethargic existence, but from the outset was confronted by two persistent problems. The first was the composition of its membership and its electorate; the second its relationship with the Dáil.

As to what should be distinctive about Senate membership, the Constitution offered only headline guidance. Article 30 of the Free State Constitution said the Senate would be 'composed' of citizens who shall be proposed on the grounds that they have done honour to the Nation by reason of useful public service or that, because of special qualifications or attainments, they represent important aspects of the Nation's 'life'. Specifically there was a minimum age for membership – thirty-five years – and the normal term of membership would be twelve years. It was proposed that one-quarter of the membership would resign every three years. This was an important point, ensuring that political changes in the Dáil would not be reflected in the Senate, or at the very least there would be a lengthy time lag. Interestingly, the question of university representation, a strong feature of the later Seanad Éireann, was dropped when the Constitution Committee accepted a proposal for six university seats in the Dáil, three each from Trinity College and the National University of Ireland.

Special provision was made for the election of the first Senate. Thirty members were nominated directly by the President of the Executive Council, W.T. Cosgrave, and thirty were elected by the Dáil. Fifteen of the President's nominees held office for twelve years; fifteen for six. These elected from the Dáil were elected for terms of three and nine years. Cosgrave's list of nominees was impressive, including

W.B. Yeats and Oliver St John Gogarty, members of the Guinness and Jameson families, the cooperative pioneer Horace Plunkett and four earls (Kerry, Wicklow, Granard and Mayo). All in all, sixteen of the nominees could be classed as leaders of Irish Unionism, thus fulfilling the promise of a strong minority presence.

There was an element of farce about the election from the Dáil constituency. In the event, because of the abstention of Fianna Fáil from the Dáil there were only eighty-one electors for thirty seats with 131 candidates, 80 of whom received no vote whatsoever. In spite of this, a number of distinguished figures were elected, especially from industry and labour.

As to its powers, the Senate had no authority over money bills, reflecting a key principle that only the popularly elected Dáil could control the raising and spending of monies. It could make recommendations to money bills but was obliged to return the bill to the Dáil within twenty-one days. On other bills it had the power to suspend a bill for a period of nine months (later extended to eighteen) after which it became law and under Article 47 it could, with a three-fifths majority, have a bill submitted to referendum. This power was never used. The Senate had the right also to initiate bills.

There were some distinctive features of the first Senate. While some members were supporters of the government most members saw themselves as genuinely independent. There was no formal Leader of the House to organise and lead its business, nor was there a government (or any) whip. The business of the House was ordered by the Speaker. This often led to a chaotic or disorganised approach with long idle periods followed by rushed legislation at the end of parliamentary sessions. In spite of this, a significant number of senators took their legislating role seriously. In the first few years, over 500 amendments were made to legislation, most of which were accepted. There were occasional signs of ministerial impatience but no accusations from the government of the Senate behaving in a partisan way. In both organisational and procedural respects, the Dáil and Senate occupied very separate spaces with little or no interaction.

The first popular election to the Senate took place in 1925. The election was from a single national constituency, with all over thirty-five entitled to vote. For the first time, party lines began to emerge – pro government; farmers and Labour. Fianna Fáil was absent from this election having yet to enter Free State politics. Seventy-six candidates went forward: the turnout was 25 per cent (except in Monaghan where it was 80 per cent) and the count took over a week to complete. The election was significant both for the lack of public engagement and the emergence of some party-based voting.

The relationship between Government and Senate in the post-1925 period was ambivalent. Ministers increasingly found it inconvenient to attend the Senate and were increasingly tetchy when legislation was not dealt with as speedily as they would have liked. The use of closure on debates was invoked more and more often, with the chair seemingly over-anxious to facilitate the government. Yet the Senate did show signs of sturdy independence. The only opposition to the introduction of divorce came from that House and two important bills – one which would have restricted admission to civil service exams to men and another which would have excluded women from jury service – were defeated, the first becoming law nine months later (September 1926), the other resulting in compromise. On an everyday basis over 300 Senate amendments were accepted during this period (O'Sullivan 1940 : 19, seq.).

The political landscape changed with the entry of Fianna Fáil to the Dáil in 1927. That party lost no time in making clear its views on the Free State Constitution and, within it, the place of the Senate. Eamon de Valera told the Dáil: 'We think the

proper thing to do is to end the Senate and not to attempt to mend it. It is costly, and we do not see any useful function that it really serves' (Dáil Debates, Vol. 22: Col. 140, 22 Feb 1928). Sean Lemass made clear that the extent of ex-Unionist representation was a major source of objection. He also raised the question of the possibility of the Senate obstructing the Dáil: 'If there must be a second House...let it be a Second House under our thumb' (Dáil Debates, Vol. 24: Col. 614, 14 June 1928).

A new electoral system was put in place for the 1928 election. Instead of being nationwide, the electorate now consisted only of members of Dáil and Senate. The system used was proportional representation with a secret postal vote and a term of office of nine years. This election also saw the first serious sign of a party contest. Initially, only Labour and some Independents had any semblance of organisation in the House. Cumann na nGaedheal supporters had no formal organisation and no whip or leader. Fianna Fáil had a Senate leader and whip from the outset and with the arrival of six Fianna Fáil senators in November 1928 other parties had to follow suit – though not with any sense of urgency. The other feature of the 1928 election, and soon to be an embedded feature of all Senates, was the election of defeated TDs and Dáil candidates. This trend was even more pronounced in the 1931 election, which saw further Fianna Fáil gains, even if the party was still very much in a minority.

The arrival in office of Fianna Fáil in 1932 had seismic implications for the Senate. The new government was strongly hostile to the Senate, but this did not prevent de Valera appointing Senator Joseph Connolly to the Cabinet as Minister for Posts and Telegraphs. More significantly the Senate was in a position to delay and frustrate the radical and urgent legislative programme of the government and specifically its constitutional reforms. The first test was the bill to remove the Oath of Allegiance from the Constitution in April 1932. The bill passed in the Senate but with significant amendments. These were rejected by the Dáil but insisted on by the Senate in July. This meant that legislation regarded by the government as a priority would not become law until late 1933.

For the Senate it was a bruising encounter and may have tempered its attitude to the second major proposal – the Land Annuities Bill, which in effect meant economic war with Britain. The Senate passed this bill despite strong misgivings and in general the work of revision continued through 1933 with many amendments being made and accepted. In fact, two further bills were rejected – one extending the local government franchise and the other curtailing the Senate's delaying power from eighteen to three months, which did not become law until late 1934.

The attitude of government was uncompromising. De Valera described the attempt to reduce the Senate's suspensory period as a first step – it was still intended to abolish the Senate. He hinted he was not ruling out a possible substitute but was not clear what that might be (Dáil Debates, Vol. 27: Cols 783-4, 23 November 1928).

An attempt by the Senate to have a Joint Committee to examine the role and powers of the Senate was rejected, in spite of Senator Douglas' assertion that 'the considered opinion of the civilised world was in favour of bicameral legislatures'. It was now clear the Senate was living on borrowed time. This was made explicit by de Valera: 'I did not hear a single good argument which would convince me that, if we were starting here a new Constitution, a Second Chamber was either necessary or fundamentally useful' (Dáil, Vol. 51: Col. 2109, 19 April 1934).

The crunch moment came with the introduction of the Wearing of Uniforms (Restrictions) Bill in March 1934. The purpose of the bill was effectively to outlaw the Blue Shirt movement. It passed after one of the most bitter debates in the history of the Dáil but was rejected by the Senate by thirty votes to eighteen, which

meant there would be a suspensory eighteen-month period. In fact, the Blue Shirt movement had faded before it ever became law but the action of the Senate was seen as a rejection of a bill deemed by the government as urgent. On the very next morning Mr de Valera introduced a bill to abolish the Senate. That bill passed on the Dáil in late May but was rejected by the Senate by thirty-three votes to fifteen on 2 June, which meant the bill would also not be enacted for at least eighteen months.

There were occasional hints from de Valera during this suspensory period that he might conceivably look at the possibility of a radically new Senate, but there would be no reprieve for the existing House. De Valera was not going to tolerate any further delaying of his programme of constitutional change.

Meanwhile, the Senate went on with its work, rejecting a bill to abolish university representation in the Senate and continuing to make amendments to legislation, many of which were accepted. It even held elections to fill twenty-three seats in November 1934: the two significant features of the election were the small number of candidates and the continuing party politicisation of the House. The suspension of the Senate Abolition bill expired in late November 1935 with the House finally ceasing to exist on May 29, 1936. The only comforting note for those who believed in bicameralism were the valedictory words of Eamon de Valera in the Dáil a day earlier: 'If it can be shown how we can constitute a Senate which practically will be of value, then certainly we will give such a proposition most careful consideration' (Dáil Debates, Vol. 69: Col. 1600, 2 December 1937).

The Free State Senate left behind it a considerable body of achievements in its thirteen years of existence. It received 489 bills from the Dáil (other than money bills) and of these 182 were amended by it, with virtually all of its 1831 amendments being accepted by the Dáil. The power of suspension had been exercised in only nine cases and in two of those cases the government refrained from passing the bills into law when the period of suspension had expired.

Yet for all of its achievements the Free State Senate lacked a coherent *raison d'être*. It sought to be non-party, to be above partisan strife but such was simply not possible in the bitter, divided politics of the period. Fianna Fáil was a party with a popular mandate for change and it was not going to tolerate any obstruction, especially when it doubted the *bona fides* of the Senate majority. It never managed to find a satisfactory system of election, swinging from the hugely impractical model of a single national constituency to the 'rotten borough' concept of an electorate restricted to members of Dáil and Senate. It never managed to persuade a hostile government that it could be reformed, that a new role could be found, because ultimately the government disliked its origins and distrusted much of its composition, and resented its independence. In a moment of candour in 1938 after the Senate's demise Mr de Valera put it bluntly 'It had proved by its attitude to decisions taken by the people that it had a wrong idea of what its functions should be and it deserved to be got rid of for that reason, if for no other'. (Dáil Debates, Vol. 69: Col. 1626, 2 December 1937). The simple fact was that in a situation of conflict between the popularly elected Lower House and the indirectly elected Upper House, and where no will to compromise existed, there could only be one winner.

Seanad Éireann: background

By 1936 de Valera was well advanced in drawing up a new draft constitution and two weeks after the end of the Free State Senate he appointed a twenty-three-member Commission to 'make recommendations as to what should be the functions and powers of the Second Chamber in the event of its being decided to make provision in the Constitution for such Second Chambers...'. The commission was boycotted by the opposition parties on the basis that no understanding was given that a second

chamber would be established. The outcome of the commission indicated the complexity of the problems involved and indicated the wide diversity of views on the subject. It produced ten separate reports or reservations but the final report did at least provide some option for the drafters.

The draft constitution published on 30 April 1937 proposed the restoration of bicameralism with the Second House now officially known as Seanad Éireann. The new body would have sixty members, not the forty-five suggested earlier by de Valera. Its members would be elected in three ways – eleven nominated directly by Taoiseach of the day, three each elected by the graduates of the National University of Ireland and the University of Dublin, and forty-three on the basis of vocational representation. The life of the Senate would be virtually co-terminous with the life of the Dáil, the method of election determined by law. As for powers, the power over money bills was essentially as in the old Senate while the suspensory power over legislation was reduced to ninety days.

The most striking immediate feature of the proposed new chamber was its creator's lack of enthusiasm or ambition for it. Mr de Valera did not want a strong second House, which as he put it, 'The new house must never be in a position to challenge the Government as the old one had' (Dáil Debates, Vol. 69; Col. 1611, 2 December 1937). He declared 'it would pass the wit of man to devise a really satisfactory Second Chamber' (Dáil Debates, Vol. 69; Col. 1607, 2 December 1937). He was adamant it should neither duplicate nor impede the Dáil and had come to the view that certain limited powers might be given to a Second House and that as long as they were limited and the:

Second House could not be much more than a revising Chamber – taking up measures, criticising them from an independent standpoint and with as great a variety of viewpoints as possible - a Second House might be of some value... I worked on the basis that even if we cannot get an ideal Seanad, then a bad Seanad is better than no Seanad. (Dáil Debates, Vol. 69: Col. 1611, 2 December 1937)

The one novel feature of the Seanad was the introduction of the concept of vocational representation. The idea had been in vogue for some time and as a conspicuous feature of Catholic social thinking since the 1920s it was strongly espoused by Catholic social theorists in Ireland (Whyte 1971: *passim*). The problem was that nobody had much idea how it would work in practice and in particular how the electoral system would function. One proposal was that the vocational bodies would themselves nominate candidates directly to the Senate. However, as Sean Lemass pointed out there did not exist in the country 'the basis of vocational organisations which would enable a Seanad to be elected' (Dáil Debates, Vol. 69; Col. 1630, 2 December 1937).

Despite the absence of any very clear idea of what it would mean in practice, all parties in 1937-1938 declared their support for a non-party political Seanad and strong vocational representation. The system of election adopted however ensured the certainty that the new House would be dominated by the political parties.

Powers of the Seanad.

Like its predecessor, the Seanad may not initiate money bills nor hold them up for longer than twenty-one days. It does have the right to appeal to a committee of privileges, through the President, against the Ceann Comhairle's certification of a particular bill as a money bill. Neither of these powers has ever been used.

The Seanad's suspensory power over ordinary bills is ninety days, after which on a resolution of the Dáil a bill is deemed to have passed after 180 days. Moreover, the

period of ninety days may be abridged if a bill is declared urgent by the government, but in that case the Act remains in force for ninety days only, unless before the expiration of that time, both Houses agree to keep it in force for a longer period.

The most that the Seanad can do in the event of disagreement with the Dáil is to petition the President not to sign the bill in dispute, and even that it cannot do alone. A majority of the Seante and one-third of the Dáil may present a joint petition to the President requesting the President not to sign the bill, other than a constitutional amendment, on the grounds that the bill contains a proposal of such national importance that the will of the people ought to be ascertained. If the President accedes to the petition, either a referendum or a general election must be held.

Only two bills have been rejected by the Senate. One was highly significant – a proposal by the government in 1959 to amend the Constitution by replacing proportional representation with the first-past-the-post system method of Dáil election. The Seanad defeat was a major embarrassment for the government and even though the Dáil rejected the Seanad decision, the proposal was eventually defeated in referendum. The other was the 1963 Pawnbrokers Bill: however, its rejection was due principally to poor whipping of government members which allowed the opposition to outvote the government's legislation. The Seanad's rejection of this bill was also overturned by the Dáil. The other powers have never been used.

The Constitution also authorised the introduction of legislation to allow any functional or vocational group or council to elect directly a number of senators in substitution for an equal number from the corresponding panel. However, no such legislation has ever been contemplated.

Election to the Seanad

Under the new arrangement twenty-two of the forty-three vocational senators would be nominated by the members of the Dáil and outgoing Seanad, twenty-one would be nominated by certified vocational bodies, thus creating 'inside' and 'outside' panels. The electorate for both panels however would be TDs, senators and members of city and county councils – an almost entirely party electorate. This was a defining decision in the development of the Seanad but it was almost certainly unrealistic to expect otherwise. The Labour leader William Norton said as much when the matter was being debated: 'It is absurd to imagine that you can ever get a Seanad, here or elsewhere, which will not, because of the nature of its work, be a political body. It is inevitable that the Seanad will be a political body' (Dáil Debates Vol. 69: Col. 1579, 2 December 1937). And so it proved.

The Dáil debate on the nature of the electoral system for the forty-three vocational seats centered on three proposals – (i) a Labour view that the Dáil alone should be the electorate; (ii) a Fine Gael proposal for a non-political electoral college and finally (iii) the Fianna Fáil proposal which was the one adopted. The electoral college comprised the members of the new Dáil and seven representatives of the thirty-one city and county councils – who were elected by their councils – all in all, a total of 355 electors. Candidates could be nominated either by members of the Dáil or by accredited vocational bodies from the five vocational panels – culture and education, agriculture, industry and commerce, administration and labour. This is the system that still exists, though now with an enlarged electorate.

There was an element of the bizarre about the first election, held in early 1938. The status of some of the nominating bodies was called into question, with the Labour party boycotting the election because it disagreed with the decision to allow the Ballygarry Cottage Tenants and Rural Workers the right to nominate a candidate. Otherwise the patterns laid down were to persist. Nineteen of those elected were former TDs and senators and most others elected had ties to the major parties. Few

of the genuinely 'vocational' candidates were successful. Even at this early stage the largely political electorate voted on party political lines. The second Seanad election which followed shortly, in August 1938, confirmed this pattern, with Labour now participating and with even more former members being elected, and even fewer genuinely vocational senators gaining seats. The last such senator elected was in the 1970s.

The small size of the electorate produced its own problems. Suspicion that some voters were behaving corruptly were confirmed with the prosecution, conviction and jailing of an offender after the 1944 Senate election (McCracken 1958:150). On the basis of this and of rumours of wider corruption a bill was introduced in 1947 altering the method of nominating and electing the panel members. The most significant change was to increase the size of the Seanad electorate which would now consist of the members of the newly elected Dáil, the outgoing Seanad and all county and borough councillors, making a total of over 900 electors. The change made corruption more difficult but it also emphasised the party political domination of the Seanad.

Taoiseach's nominees

The power to allow the Taoiseach in his or her own discretion to nominate eleven senators had two main purposes in mind. The first and ostensible reason is to give a voice in parliament to distinguished citizens who have done honour to the state and may have a special contribution to make to public life. The second and more prosaic reason is to ensure the government has a secure majority. Most Taoisigh have sought to include a small number of distinguished public figures among their nominees and over the years many of these people such as T.K. Whitaker, Maurice Hayes, John Robb, Seamus Mallon, Éamon de Buitléar - have made significant contributions. The vast bulk of those nominated however have been for party political reasons - to compensate defeated TDs and to groom potential candidates for the next Dáil election. There has never been any attempt to disguise this reality and in fact all coalitions since 1948 have allocated seats on a proportionate party basis.

Nomination of ministers from the Seanad

The first Senate had sought unsuccessfully to have ministers nominated from its numbers. The intention in 1937 was to allow an injection of outside expertise to the cabinet. This has happened on two occasions, first in 1954 when the former Fianna Fáil Minister Sean Moylan lost his Dáil seat and was nominated to the Seanad and then appointed to the cabinet in de Valera's last government and in 1981 when Garret FitzGerald nominated Senator Jim Dooge as Minister for Foreign Affairs. Dooge was regarded as an extremely able minister but was not reappointed to FitzGerald's second government, partly at least because of the hostile reaction of many of the party's TDs to his original appointment.

University representation

The original inclusion of six university senators was to compensate for the abolition of such representation in the Dáil in 1937 and initially at any rate to ensure a voice for the ex-Unionist minority through the three Trinity seats. The existence of the university seats has come under sustained attack in recent years, partly on the principle that the enfranchising of university graduates over non-graduates lacks any democratic justification and on the practical grounds that it discriminates against graduates of the country's new universities and institutes of technology. The defence of the university senators concentrates on their consistently high quality, the disproportionate contribution they make and that they do meet one of de Valera's criteria by providing a diversity of views not normally represented in the House.

Organisation of the Seanad

After each election the Seanad elects a chairperson or 'Cathaoirleach' who remains in office for the lifetime of the Seanad. The Cathaoirleach votes only in the event of a tied vote and by convention does not attend parliamentary party meetings. A Cathaoirleach may be removed from office by a vote of no confidence through only one such (unsuccessful) vote has ever taken place. The Cathaoirleach is *ex officio* a member of the Council of State and chairs the Seanad Committee on Procedure and Privileges. Unlike the Ceann Comhairle, the Cathaoirleach is not automatically returned at election time.

Throughout the lifetime of Seanad Éireann government business has been organised by the Leader of the House, a member of the major government party appointed by the party leader – and removable by the leader. Each of the opposition parties has its own leader with the leader of the main opposition party serving as leader of the opposition. All groups – including Independents – have whips, who with the leaders organise the business of the House in much the same way as in the Dáil.

Revision of legislation continues to be at the core of the Seanad's work. Under the Constitution all bills must be taken into the Seanad but in recent years the number of government bills initiated in the House has increased significantly.

The House sat on 100 occasions in 2009. Forty-six bills were passed, sixteen of which originated in the Seanad. The reasons for the increase in Senate-originated bills may be due to the increased influence with government of some recent leaders of the House and a realisation by ministers that the Seanad offers a better opportunity to tease out the details and implications of a bill than in the more combative Dáil. Essentially, however, the Seanad lacks the capacity to insist on non-government amendments and is largely dependent on the willingness or otherwise of ministers to accept amendments. Like in the Dáil, the Seanad goes through long periods with very little legislation to consider and then finds itself having to deal with considerable numbers of bills which government departments seek to rush through in the closing days of each parliamentary session. One principal difference between Dáil and Seanad is that the guillotine or curtailing of debate rarely happens in the Seanad.

Other aspects of the Seanad workload include the order of business, matters on the adjournment, private members' time, statements on major matters of controversy or public concern, addresses from invited distinguished figures and the initiation of private members' bills and the processing of private bills. In addition, members of the Seanad serve on all Oireachtas joint committees, other than Finance. The *order of business* at the commencement of each day's sitting was initially intended merely as a brief discussion of that day's agenda but in recent years has assumed the format of a discussion on the major political issues of the particular day,

local issues and indeed issues of little apparent relevance. It is in the area of Seanad activity which is most likely to receive media attention.

Matters on the adjournment of which there can be four at the end of each day's sitting afford members the opportunity to raise issues (usually of local relevance) on which they can get a ministerial reply. In 2009, 235 matters were raised on the adjournment.

The Seanad plays the major part in dealing with *private bills*. Private bills are 'bills for the particular interest or benefit of any person or persons'. In the Free State Senate a private bill was needed to obtain a divorce, and it was the presentation of such a bill that led the government to outlaw divorce. In general, private bills originate with outside interests who must promote the bill. In recent years such bills have dealt with attempts by charter-based bodies, notably Trinity College Dublin and the Royal College of Surgeons in Ireland, to amend aspects of their charters. Private bills have also been promoted by individuals and essentially the process can be traced back to the medieval practice of petitions presented to parliament for specific relief.

The most striking feature of the work of the Seanad however is the realisation of de Valera's very specific determination that it should always be subservient to the government of the day and not be in a position to obstruct legislation. On only two occasions in over seventy years has the Seanad defeated the government on substantive issues, and while these instances caused annoyance and embarrassment to the government, they were quickly reversed by the Dáil. The other few government defeats were always either on matters of procedure or minor amendment and were the result of indiscipline and bad whipping. There was however one period when the government did not have to pay attention to the Seanad and on a number of occasions had to make amendments it would not otherwise have considered. This was particularly the case in relation to the Universities Bill, 1997.

Seanad reform

For long periods of its early life the Seanad was a backwater, enlivened occasionally by the university senators and by the dedication to detailed legislative scrutiny of a minority of members of all parties. During all of this time, and with varying intensity the role and existence of the Seanad has been questioned. It is not the case however that many senators are not alive to these questions or have not sought some answers to them. In all but two decades since the 1920s eleven special committees have examined various aspects of the workings of Seanad Éireann. The latest and most ambitious such work was the *Report on Seanad Reform* published by the Seanad Éireann Committee on Procedures and Privileges Sub-Committee on Seanad Reform in 2004. The report has no difficulty in defining what it saw as the key problems facing the Seanad:

1. It has no distinctive role in the Irish political system, and
 2. Its arcane and outdated system of nomination and election diminishes senators' public legitimacy.
- (Seanad Éireann Committee on Procedures and Privileges Sub-Committee on Seanad Reform 2004: 26)

The report also identified the issue of university representation as seriously problematic given that it privileged some citizens with a voting right solely on the basis of educational achievement.

The report did recommend radical change. Its main finding amounted to a comprehensive rejection of the concept of vocational representation, which was at the heart of the 1937 model. The new Seanad would have sixty-five members, twenty six elected directly from one national constituency using a list system of proportional representation, the election to be held independently of Dáil elections and on the same day as European and local elections; a higher education constituency of six members, with a single constituency of all third level graduates and an electoral college of TDs, senators and councillors to elect twenty members from a single constituency. This election would be held within ninety days of a general election. In addition, the Taoiseach would nominate twelve members, including two from Northern Ireland. In terms of legislation and other functions, the report proposed that the Seanad should not be in a position to obstruct the government but should have a new role in EU affairs, to be the 'principal policy reviewer in the Houses of the Oireachtas' (2004: 59), scrutinise senior public appointments and allow the leader of the Seanad to attend cabinet. In recent times, however, the debate has moved on from reform to abolition. Previously, the Progressive Democrats had proposed abolition in the 1980s, but having participated in the Seanad became strong supporters. In 2009 the Fine Gael party adopted abolition rather than reform as official party policy.

There is an irony about the current dilemma of the Seanad. The House is blamed for not using powers it does not have and was never intended by its founder to have. It is blamed for not progressing an agenda of reform and much of this criticism is justified given the dominant political culture of complacency and lack of ambition about the role and potential of the House. But ultimately it is the total failure of all governments since 1937 to take the Seanad seriously, to accept that the role and functions assigned to it are inadequate and anachronistic which is at the root of the current unease and uncertainty. The only certainty is that the status quo is not a sustainable option.