

# **OUR WORST PREFERENCE**

**Reforming the Electoral System**



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Our Worst Preference  
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Chapter One

The Urgent Need for Political Reform

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## 1. “The Urgent Need for Political Reform”

### Introduction

There are a number of questions we need to ask ourselves if we are to have a real debate about reforming the electoral system, as the organisers of the Summer School intend. For a start, we could ask how we wound up with the Single Transferrable Vote when twenty-three of the twenty-seven member states of the EU use some form of the list system of PR in parliamentary elections? Why is Malta the only other country in the world to use STV? Why are we an odd man out?

Then we could go on and ask what sort of debate did we have on the merits of the different forms of PR and why did we choose this version above all others? Have we subsequently analysed the effects of STV on the political system and examined it for any systemic defects that might result in our political system being “not fit for purpose”, as the organisers suggest? How, in the name of all that is holy, did we wind up in this economic mess with only four former fascist countries to keep us company? It could be said of Greece, Italy, Spain and Portugal that they are to be excused for failing to manage their economies properly since each, after all, is still in the process of building a modern state: in the case of Greece they have only just begun.

But we don't have that sort of excuse to hand. After all, we have been building a state for ninety years, a period uninterrupted by war, revolution or dictatorship. So what makes us different from the other members of the monetary union? Our failure has been spectacular. You could say it has been almost biblical in its proportions. Anglo-Irish Bank, if we need reminding, is one of the biggest banking failures in history, the collapse of our public finances one of the most dramatic ever experienced by a democratic state and the drop in property prices among the steepest on record. The fall in living standards has been one of the most precipitous in modern economic history. The blunt truth is that we are a failed state which is being kept going through the charity of friends. What caused this to happen?

I believe the root cause of the failure is the electoral system. It is being put under the spotlight here at this session of the Summer School under the title of "The Urgent Need to Reform our Electoral System" and rightly so. By way of context, the Summer School brochure makes reference to "public representatives working in an unhealthy political culture of clientelism with an over-concentration on local issues and individual needs at the expense of the common good".

Indeed they do. And I make this prediction: if the electoral system is allowed to go unreformed it will lead inexorably to a crisis in our political system because people will not consent forever to be governed by a state which fails to protect their welfare. That should be self-evident.

## The Social Contract

The social contract between the governing and the governed is based everywhere on the ability of the state to protect its citizens. This is an overriding obligation on the state, which was expressed by Cicero when he said that the first duty and overriding responsibility of the state, or the Supreme Law as he called it, should be the welfare of the people. *Salus populi suprema lex esto*.

When the contract between the governed and the governing is broken then retribution is swift, as we saw in the last election. But were it to be broken again over the next four years by Fine Gael and Labour, the only other combination of democratic political forces on offer, then there is no knowing how the people would react. It can hardly be denied they have been provoked to the limits of endurance and if the various crises facing Irish society are listed - a banking and financial system in ruins, the public finances in melt down, a health system that doesn't work, infrastructure that is grossly inadequate, the spread of organised crime and rampant criminality - then it can hardly be contested that the state is confronting a first order crisis in terms of its legitimacy.

We are facing such a crisis - that is the starting point of this paper. All of the conclusions that outlined here flow from the proposition that the state is in peril because the social contract has been broken. While there are many causes, the poor quality of the public service and regulatory agencies being the most serious, it is inescapable that the

failure to honour the social contract originates within the Oireachtas itself. The low calibre of the members, and hence of the Government, were notorious. In specific terms it was the inability of the Dáil to function as an effective legislature that led us to the current crisis.

The electoral system is the root cause of this political failure. It produces the parliamentarians and the parliamentarians produce the government. That neither were up to the primary task of safeguarding the common good is self evident. How then, did we place ourselves in such danger? The answer, surely, is that we have failed to question the political system by which we govern ourselves and have carried on mindlessly with the one we inherited from the British at the foundation of the State. Simply put, we have failed to think about system of governance and this is particularly true of the electoral system.

## The Electoral System

For a start, and to answer the questions posed at the outset as to how we are an outlier with regards to the electoral system, proportional representation was adopted by the infant Irish State partly at the behest of the British, but primarily as a means of assuring southern Unionists that they would be given an appropriate role in an independent Ireland and that their political interests would be protected and respected. Arthur Griffith was a central figure in this process. He had been a founder member of the Electoral

Reform Society, which agitated for the replacement of the “first past the post” electoral system by one based on proportional representation. He persuaded De Valera to make a public commitment to introduce PR when Ireland became independent, a commitment De Valera gave when addressing the 1919 Árd Fheis as President of Sinn Féin. Then on the very same day he signed the Treaty in London, Griffith met representatives of the southern Unionists and repeated that assurance, which he regarded as a matter of honour, and that is how PR became enshrined in the constitution of the Irish Free State.

To be more accurate about it, that is how we adopted the Single Transferable Vote because it was assumed that the Single Transferable Vote and PR were synonymous, which they are not. The reason for the error belongs more to British than to Irish history. The Single Transferable Vote was invented by an Englishman, Thomas Hare, as a means of increasing voter choice in the single member constituencies that are peculiar to the British constitution and for a variety of complicated reasons STV became synonymous with PR. This mistaken belief was shared here in Ireland as much as in Britain, and not least by Griffith.

Yet the difference between the two systems is obvious enough. From the perspective of the elector, Proportional Representation is a choice between political parties whereas the Single Transferrable Vote is a choice between candidates. It is now clear in Britain, as the Royal Commission on Electoral Systems confirmed, that the Single Transferable Vote is not a form of PR at all but is a

preferential vote, an insight that has yet to cross the Irish Sea. At the time, many critics here in Ireland, such as James Creed Meredith (also a member of the Electoral Reform Society) and John Commons, pointed out at the time in well written but largely ignored books that STV was not a form of PR but a British electoral system designed to meet the particular requirements of the British constitution regarding parliamentary representation.

Meredith explained in 1913 that, “The system is of English manufacture, having been invented by Mr Hare and supported by John Stuart Mill, and it is largely on this ground that it is preferred in England”. This viewpoint had originally been expressed in 1907 by John Commons in his book “Proportional Representation” in which he said “The STV has become the classical form of PR from the great ability with which it was presented by its author, Mr Thomas Hare, and advocated by John Stuart Mill”.

But for Griffith, STV was Proportional Representation and none of his colleagues questioned that belief. In fact, they all subscribed to it; hence while Proportional Representation appeared in the Free State Constitution the Dáil took that as meaning STV and put it into the electoral act without any real debate as to its nature or effects. But the Free State constitution at least had the merit of simply referring to Proportional Representation as the electoral system to be employed, leaving it to the Oireachtas to choose by way of legislation which form was to be used. Bunreacht na h-Éireann, on the other hand, is unfortunately more prescriptive in that it refers to the election of members



of the Dáil “on the system of proportional representation by means of the single transferable vote”. As a result, our electoral system can only be changed by way of referendum, which Fianna Fáil tried to do in 1957 and 1968. On both occasions they endeavoured to re-introduce the straight vote in an attempt to secure themselves in power and consequently there was no real debate in either referendum campaign since both Fine Gael and Labour saw it as an issue of political life or death and didn’t engage in the niceties of academic discourse. In 1968 Labour, for example, campaigned on the slogan “The Straight Vote is Crooked”, which it is.

That brief résumé answers the question as to how we came to choose STV as our electoral system. It also answers the subsidiary question as to the depth of the debate on alternative voting systems.

In summary, the adoption of STV was an accident of history and since the debate on the merits of different electoral systems was virtually non-existent, we wound up being one of four EU member states not using the List System of PR to elect members of Parliament. Apart from Malta which, as mentioned earlier, uses STV, the other outsiders are UK and France which both use single seat constituencies with MPs elected on the majoritarian principle, a system that in each case has paradoxically become a de facto list system, making Ireland even more exceptional. (Being exceptional is something to be worried about).

## Negative Effects of STV

As to whether systematic analysis of the effects of STV on the political system has been carried out, the answer has to be: not a lot. But one body which has debated the issue is the Irish Parliamentary (Former Members) Association which, interestingly, held a one-day seminar on the “Reform of the Electoral System” on 21 January 2010, the 91st Anniversary of the First Dáil. Here’s a summary of what I said on that occasion about the systemic defects of STV and it answers the question of what is required of an electoral system if the political system as an entity is to function optimally.

One of the first requirements is that it should be instrumental in ensuring a functioning, effective, and professional legislature. This is of critical importance because parliament is core to the democratic system as a whole and it follows as a logical consequence that the electoral system must, as a primary requirement, produce parliamentarians who are equal to the task. But because of the growing complexity of political life the job description of the parliamentarian is being expanded to include that of policy originator and public investigator, as well as the basic requirements of legislator and representative of the people. What we find elsewhere in Europe are professional parliamentarians, as distinct from professional politicians, with the time and talent to make parliament work as a national institution. For that to happen, there must be a committee system where the focus is on the affairs of society as a whole; and for that to happen we need

parliamentarians with the time and the talent to work the committees.

Does STV lead to the election of such parliamentarians or does it predominantly lead to the return of politicians whose focus is on their own patch and whose primary preoccupation is to get themselves re-elected? The answer is self-evident. The reality is that the election of professional parliamentarians is an accidental by-product of STV because under that system the primary requirement of a good candidate is electability; having the potential to be an effective parliamentarian matters little to the electorate and even less to the party apparatus. It is not a selling point either at a selection conference or at the hustings. So our electoral system suffers from a fundamental design fault and this failure has a negative impact on the supply of talent to the Dáil.

While this is a fundamental flaw it is made even worse by the way STV prevents deputies from doing the work they were elected to do. Instead of devoting themselves to parliamentary duties deputies are subject to the “tyranny of the constant campaign” of trying to get themselves re-elected. This is unavoidable because in a multi-member constituency the competition for votes is continuous and consists of what Professor Basil Chubb famously called badgering civil servants on behalf of constituents.

Badgering civil servants is unavoidable because of the two factors. Firstly, in multi-member constituencies competition for votes mainly takes the form of looking

after individual constituents, nowadays by running highly organised “clinics”. Secondly, STV is a person centred system and, as a consequence, the link between the deputy and the constituent is direct and personal. By and large, it stands or falls on services rendered by the deputy to the constituent. That concentrates the mind of the deputy.

In summary, the two basic design faults come at a cost and here we can apply a little economic analysis to prove what should be self-evident: STV largely results in the wrong sort of parliamentarian being elected and, even when the right sort is elected, largely results in them doing the wrong sort of work.

Electing the wrong sort of parliamentarian results from what Dan O’Brien in an Irish Times article called “choice architecture”, a concept developed by behavioural economists. He argued that the choice architecture of the Irish electoral system means that voters tend to opt for candidates “who deliver for the locality but neglect their duties at the helm of the ship of State”. This is an incentive, he said, to vote for those who work only to deliver short-term gains for the locality rather than long-term gains for the nation. He concluded by saying that the choice architecture of many continental systems of proportional representation put better options to the elector. Indeed they do, and they do so through the list system.

The other piece of economic analysis is that of opportunity cost, which, in this case, is expressed in the simple proposition that you cannot do two things at the

same time: if parliamentarians are looking after constituents then they not looking after parliament, and not attending their committees. It's well known that in contrast with other parliaments, the Oireachtas has a weak committee system. It is less well known that it came late to the establishment of committees and is still struggling to incorporate them into the way it does its work. STV reinforces this inherited weakness because of the competition for the member's time between the committee room and the constituency clinic, a competition in which the clinic always wins.

## Centrality of Committees

This is tragic because in committee draft legislation can be subjected to detailed scrutiny and amendment but it can neither be scrutinised nor amended unless the parliamentarian has the time and the talent to do both.

Furthermore, it is at this stage in the legislative process that ministers and civil servants are not only most accessible to the parliamentarian but are also most open to cross-examination in public on the purpose and content of the proposed legislation or the effects of policy. Again, if parliamentarians have neither the time nor the talent for this specialist activity then ministers and civil servants will not be held accountable to the extent they should be nor will the political process be as transparent as it could be.

Active committees are central to a functioning parliamentary system but human nature dictates that

ministers and civil servants like docile committees; the more preoccupied the parliamentarian is with constituency work, the more docile the parliamentarian within the committee, presuming he or she turns up, and the happier the ministers and civil servants. While the civil service and the government are the winners, accountability is the most obvious loser. But a less obvious consequence is the failure of parliament to perform two other fundamental tasks – that of scrutinising the implementation of policy and of carrying out investigations into issues of public concern.

In an age when people demand to be heard, and take consultation as a right, parliamentary committees can play an indispensable role in linking the parliament with the electorate. It's obvious that if the relationship is to flourish that parliament needs a vibrant committee system and this, in turn, demands parliamentarians who can give it the time and the attention it takes to make the committees work properly. Unfortunately, STV acts as an obstacle to efficient committee work and it is ironic that those who praise it for the direct contact it produces between the deputy and the constituent, mainly as a client, do not condemn it for the lack of contact between the same deputy and the citizen. I have no doubt as to which role should be given priority: the citizen should take precedence over the client.

## The Poor Quality of Government

Another obvious defect of STV is the quality of the government it produces. Given that we adopted the

Westminster parliamentary model of government, in which cabinet members are chosen from the members of the Dáil, then the quality of those elected as parliamentarians under STV determines the quality of those chosen by the Taoiseach to serve as Ministers. This political reality highlights the direct causal relationship between the electoral system and the quality of government. It is purely by accident that we get deputies who are both good vote getters at constituency level and good government ministers at cabinet level. The supply of such dual stars is limited. The supply of good ministers is reduced even further by the exclusion of members of the opposition – usually half the number of deputies- and by the requirement that the geographic spread of ministers should be equitable, a lethal consequence of the localism inherent in STV. Quality and geography are at odds.

It is no wonder that we have poor quality government. Neither is it any wonder that poor quality public service is a direct by-product because on the one hand the parliament fails to act as watchdog and guardian of the public interest and, on the other, the government fails to act as the protector of the public interest and is incapable of demanding the highest possible standards from the public service. The “Peter Principle” is given full rein, with predictable results, and it is indisputable that the root cause of this malaise is an electoral system that reinforces the clientelist nature of Irish politics, elevates the parochial over the national, enfeebles both the Dáil and the Government, rewards the worst aspects of political life and penalises the best. The political

system suffers and society pays the price. The events of 2010, with the arrival of the ECB, European Commission and IMF as our economic guardians and protectors, was proof positive that Irish governments up to that point were no longer equipped for the tasks of managing the economy and protecting society. It was a doleful conclusion, but a true one. This is not to exonerate other elements of the political system. The restriction of government membership to members of the Dáil (except for a little used constitutional device to include a maximum of two Senators) is clearly an issue for debate.

So too the role and powers of the Senate and Local Authorities, as well as the part played by courts and the judiciary in the constitutional order, and, dare I add, the role of the media in shaping the quality and determining the tone of what passes as public debate. They all play a part in determining the political system as a whole but is a sound principle of organizational reform to look for the core characteristic which sets the culture of an organisation and influences the efficacy of all other units in the system. Another way of making the point is to say that accurate diagnosis is central to proper prescription. In my view, good diagnosis would point to the electoral system as the source of the poison within the political system.

## Political Parties

This is not a universal view. An Irish Times editorial of 18 February 2011, which was devoted to the topic of changing



the voting system, defended what it called “PR – STV”, the hyphenation being symbolic of the confusion in the Irish mind about the real nature of STV. The editorial accepted that STV required TDs to expend “considerable energy cultivating their constituencies”. This was not a bad thing in itself, it said. Voters were given a real sense of connection to, and ownership of, their representatives, it added, while TDs and ministers were given “a real personal knowledge of their constituents lives, making them real representatives of the people”. Finally, it deprecated a list system, which it believed would pass the choice of candidates from the voter to the party bosses.

That fairly represents the battle lines of the debate ahead. Since the alternative to STV is some form of a list system and since all list systems are based on political parties it is essential to be clear about their role in society. Political parties are the lifeblood of politics and are the bedrock on which the political system rests. They organise and institutionalise political differences so that public discourse can be conducted in accordance with civilised norms.

By channelling debate within themselves, and between each other, they moderate public feelings and ease political passions. The debates on Northern policy in the early seventies were a graphic example of the value of political parties within the public order. This is also the case with the current crisis, at least in so far as the three main parties are concerned.

But the STV system of election is predicated on the proposition that parties are secondary to the candidate. In fact, the constitution takes this to its logical conclusion by ignoring their existence and failing to recognise them at all.

Now this is a dangerous flight from reality because parties are the foundation upon which the political system rests. Yet our electoral system is based on an alternative reality in which parties don't exist at all. In contrast, twenty-three of the twenty-seven Member States of the EU using the list system of Proportional Representation have grounded their politics in the reality that parties exist. Twenty-five member states, for example, use some form of the list system for the European elections, a graphic confirmation of the centrality of the political party to the political system which is universally accepted in Europe, except Ireland (and Malta).

Experience shows that list systems of whatever variety produce parliaments and provide governments which are up to the task of keeping the social contract.

Our experience over the past decade in particular tells us that STV has failed in this fundamental duty, not because of the moral shortcomings of individual politicians but because history dealt us a bad hand. Nobody chose STV as the best electoral system having carefully evaluated all others. It was bequeathed to us by an accident and it has turned out to be the worst of all possible systems for our country, given the localist and clientelist nature of our politics.

## Conclusion

If these propositions are true then the conclusions to be drawn are chilling, for good government is the central task of society. Yet Barbara Tuchman in her magisterial analysis of history says that what we humans do worst is what we should do best, that is, govern ourselves. She observes that there is an inbuilt tendency within human nature to do the opposite of what intelligence tells us to do. She called this the “March to Folly”, the title of her book. She said there were three requirements for any course of action to merit condemnation as folly leading to ruin. First, there must be alternative courses of action on offer. Second, they must be known to those who govern. Third, there must be public warnings about choosing the wrong option.

We in Ireland fulfil all three requirements. By continuing with STV we are marching purposefully towards the political ruin she describes as folly. Alternative electoral systems exist. We know what they are and we hear the public warnings about the defects of STV. Yet we march on.

The forthcoming constitutional convention is an opportunity to halt the onward “March to Folly”. I suggest a modern day equivalent of Griffith’s Electoral Reform Society be formed. I propose that those who believe the country is imperilled by the electoral system should campaign for the replacement of STV by a real form of Proportional Representation and so undo the legacy bequeathed to us by chance and replace it with a future based on choice. This is a once off opportunity to reverse history.

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