



eGUIDE//

Government & Politics

A21 Option B: A Comparative Study of the Government and Politics of the Republic of Ireland and the United Kingdom.

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Introduction

This guide is designed to aid students preparing for Unit A21, Option B; A Comparative Study of the Government and Politics of the Republic of Ireland and the United Kingdom (UK). It will address the Learning Outcomes for the specification with particular emphasis on the role of the Oireachtas, the role of the Executive and the relationship between the two. Guidance will be provided on where to find additional information and the types of questions which may be asked on this topic.



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The constitutional definition of the Oireachtas.

The Irish Constitution, Bunreacht na hEireann, defines the Oireachtas or Parliament as the Dail, Seanad Eireann and the President. This is in much the same way as Parliament is technically defined in the British system as the House of Commons, the House of Lords and the Monarch.

Key Terms

Bunreacht na hEireann - The Irish Constitution written in 1937 set out the way Ireland was to be governed from that time on.

Oireachtas - The Irish legislature is comprised of two houses; the Dail and the Seanad and also the President of Ireland.

President - The Republic of Ireland's Head of State. Directly elected by the people every seven years.

The President

The President is elected every seven years by direct election using the alternative voting method. To be considered for election the candidates must first be nominated. There are two distinct ways in which aspiring presidential candidates can be nominated; by four city or county councils or by 20 TDs or Senators. Incumbent Presidential candidates can nominate themselves, however, the requirement for new candidates to be nominated means that it is difficult for any candidate to succeed without the backing of one of the main political parties.

The constitution gives the President, in his/her role as Head of state, a number of roles. One of the roles carried out by the President is that of Supreme Commander of the Irish Defence Forces which is similar to the power exercised by the British Monarch as Commander in Chief/Head of the Armed Forces. Another of the powers allowed by the Constitution and exercised by the President is the ability to appoint Judges, members of the Government and the Taoiseach. It is, however, expected that this will be on the advice of the Taoiseach following a general election rather than at the President's own discretion. The President also has the ability to convene a meeting of either House of the Oireachtas, with a view to solving a dispute or addressing a national emergency.

Two of the most significant powers available to the President is his/her ability to dissolve the Dail in order to facilitate a General Election and the ability to make a Presidential referral. Until 2011 the President's ability to dissolve the Dail was a power comparable to that of the British monarch's power to dissolve Parliament.



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The Fixed-Term Parliaments Act, 2011, however, removed this power from the British monarch although the monarch still retains the power to announce the prorogation of Parliament which is the formal announcement of the end of a Parliamentary session. In the case of the Irish President the constitution states that the President is responsible for the dissolution of the Dail on the advice of the Taoiseach who must have the support of a majority in the Dail. The President may refuse to dissolve the Dail if the Taoiseach has lost the confidence of the Dail or doesn't have majority support. In 1994 the President, Mary Robinson made it clear that if the Taoiseach, Albert Reynolds asked her to dissolve the Dail and call an election she would refuse to do so as Reynolds' Fianna Fail / Labour Coalition had collapsed. As a consequence of this Reynolds resigned as Taoiseach. While this power gives the President a degree of political leverage, it is, however, a limited and rarely invoked power.

The power of Presidential referral allows the President to send a bill to the Supreme Court for a compatibility judgement instead of automatically signing it after it has passed both Houses of the Oireachtas. This power has been used 15 times since 1937 and the odds are fairly even on whether the Supreme Court will uphold the bill or strike it down. Bills challenged by the President in this manner have been upheld and therefore passed into legislation on eight occasions whilst on seven occasions the challenged bills have been struck down. Again, this is a little used power and one which Presidents invoke with caution. Once the Supreme Court has upheld a bill no part of the bill may be challenged in court again even if the workings of the bill reveal, as they frequently might, unintended or unanticipated consequences. A further criticism of this power is that the requirements for proving the constitutionality of the bill are less rigorous than those for judicial reviews instigated in other ways. In the case of a judicial review an individual needs to be able to demonstrate through their experiences that a bill is unfair in its application but in the case of a Presidential referral the objections are based purely on hypothetical assumptions about the possible outcomes of a bill. These concerns about the president's power of referral led the Constitutional Review Group to recommend in 2013 that article 34.3.3, which allows for the presidential referral of bills, should be removed from the Irish Constitution. To date this has not happened. In general, however, the Presidential role remains very much a Head of State role and is seen as being 'above politics'. There are, therefore, unlikely to be any major changes to the role or powers of the President anytime soon. Like the British monarch the President's ceremonial role is the most influential of the roles he or she may perform and why, when considering the role of the Oireachtas in this unit, it is only necessary to consider the functions and powers of the Seanad and the Dail.



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The Houses of the Oireachtas

In common with all parliaments, the Houses of the Oireachtas have three key functions; to legislate, represent the people and to scrutinise the actions of government. How effectively each house performs these various roles will be discussed below.

Legislation – As with the British system the theory states that all law making power lies with the Oireachtas but in fact an examination of the law-making process reveals that the executive has the dominant role in law making. The Dail and Seanad are at best revising chambers and the Oireachtas has been described by Dinan as a ‘woefully inadequate institution.’ The vast majority of legislation which is discussed in the Oireachtas originates in the executive and it is rare for executive bills to be defeated. In this respect the comparisons with the British system are very clear with the British executive also dominating the legislative process.

The Irish system is very similar to the Westminster model in terms of the process of law making, for example, bills can be initiated in either House and, although there has been a tendency in the past to ignore the Seanad, there has, nevertheless, been an increase in bills originating in the Seanad in recent years. The Dail, however, has the pre-eminent role in law making as in the event of a dispute between the two houses, the view of the Dail prevails. In this respect there is a difference between the two systems as the House of Lords, in spite of its much reduced powers (due to the Parliament Acts of 1911 and 1949), can and does still defeat government legislation. The key stage for any bill going through the Oireachtas is the second stage debate and the relevant committee stage. However, the tendency has been for TDs to only appear in the chamber to make their own speech and to leave once they have done this. This means that, for the most part, speeches are delivered to a near empty chamber and speeches are made to fulfil party or constituency demands rather than with any real passion for the bill. As a result of this, Dail debates are rarely covered in the media because they are, allegedly, ‘so boring’ (Coakley and Gallagher, 2010: 211).

A government bill is only really likely to be defeated if the government has a very small majority or has slipped into a minority position. The opposition can, however, influence a bill at the committee stage and even though the government will have a majority of TDs on these committees, ministers often take on board opposition amendments and incorporate them into the bill. This, however, is very much at the minister’s discretion and in this sense the Dail can be seen as a legitimising rather than a law-making chamber.

While this suggests a high degree of similarity between the Irish and British systems, the key difference lies in the tendency for Irish governments to be either coalitions, or increasingly minority governments. This means that, in reality, it can be difficult for Irish governments to get their legislation passed. Irish governments expect to have to earn the support of their TDs and those of other parties even if they have a majority government. In weekly parliamentary party meetings TDs expect to have a real voice



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and if there is a high degree of opposition to a proposal then it is, more often than not, withdrawn. This degree of respect for individual parliamentary party members is not part of the Westminster system and reflects the very different political culture in Ireland and the impact of a multi-party system.

Commentators like Dr A O'Halloran argue that the Irish government's legislative programme meets very little resistance from either the Dail or the Seanad. Rebellions rarely occur as backbenchers are tightly whipped and reminded that party loyalty is essential. The tendency for Irish governments to be minority or coalition governments makes this even more important and there is no room for rebellious backbenchers in this system as every vote counts. For this reason party whips play an even greater role in Irish party politics than is sometimes the case in the UK system. On the rare occasions when there are government backbench rebellions swift party discipline is demonstrated. Usually this will result in the ultimate penalty i.e. expulsion from the party. In July 2013, five Fine Gael TDs, one of whom was a government Minister, voted against their government's Protection of Life During Pregnancy Act. All were expelled from the party. Additionally, control of the parliamentary timetable in the Dail means that the government can monopolise the legislative process so that government bills are given priority. This makes Private Members Bills even more of a rarity in the Irish system than is the case in the UK. For example, only 6 Private Members' Bills succeeded during the period 1983-1990. The latest defeat of a Private Members' Bill was Mick Wallace's bill on fatal foetal abnormality which was defeated in the Dail by 95 to 45 in July 2016. The Irish government can also use the 'guillotine' motion and in spite of reassurances from the Former Chief Government Whip this has been used with devastating effect to steam roll legislation through the Dail with the minimum of scrutiny, for example in December 2010 the Cowen government used this to push through the Credit Institution Bill, which completed all of its stages in just four hours. The difficulties TDs face in trying to influence government legislation was also demonstrated in the 2015 Water Charges Bill which came into effect in Jan 2015 and which saw its most effective opposition outside of the Dail in spite of numerous TDs being opposed in both principle and practice to the introduction of water charges.

Key Terms

TD - Teachta Dala – The name given to an Irish member of parliament. There are currently 158 TDs elected to the Irish parliament or Dail Eireann representing approximately 20-30,000 people each.

Haddington Road Agreement – led to a reduction in public sector pay and resulted in TDs seeing their salary reduced to €87,258, a reduction of over €5,000 per year.

Scrutiny- While the government might, on balance, dominate the legislative process, the Oireachtas still has an important role to play in holding the government



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to account. The scrutiny function of any parliament is an important feature of the democratic system and is designed to make sure that governments stick to the rules and spend tax payers' money fairly. In common with the British system the Dail has three main ways of holding the executive to account: questions, debates and committees.

Debates

There are four types of debate in the Dail which all fulfil this scrutiny function - motions of confidence in the government, ad hoc debates on topical issues, seasonal debates on topics and the daily adjournment debates. While it is not uncommon for the opposition to call for a motion of no confidence in the government it is relatively rare for these to succeed – this has happened only twice so far. Both ad hoc and seasonal topical debates give both the opposition and the government an opportunity to debate policy strategy in detail with the opposition launching an attack and the government trying to defend its actions. The most useful of all of the debates are the daily adjournment debates which allow TDs to raise an issue immediately or to pursue a matter they have previously raised with the government but feel has not been properly addressed by the government.

Questions:

Questions are an important way to hold the government to account in both the British and Irish systems. The Dail sits every week on Tuesdays, Wednesdays and Thursdays and the Taoiseach is questioned at the start of Question Time on both Tuesdays and Wednesdays for 45 minutes. This represents considerably more scrutiny of the executive than that faced by the British Prime Minister. In addition to this, departmental ministers are questioned for 2-3 hours per week. In common with the British system questions are submitted in advance (at least four days) and this gives the ministers and their civil servants time to research their response. TDs can follow their first question with a supplementary question which must be related to the topic but the minister will not know in advance the nature of the supplementary question. Opposition TDs see Question Time as an opportunity to carry out their oversight function with the added benefit of potentially catching the government out. The government similarly try as hard as possible to avoid being caught out. Again this is very similar to the British system where parliamentary question time can often resemble a Punch and Judy show. Ministers have four days to prepare replies and are experts at giving evasive answers, however, this does not mean that parliamentary questions are a worthless procedure. Indeed there has been a dramatic rise in the number of questions asked by TDs from 4,000 per year in the 1960s to 39,000 a year in 2005.

In addition to oral questions on the floor of the Dail, TDs can also submit questions for written response. These are more likely to be specific questions on constituency matters and are a good way of making sure that constituents are well represented. These questions are answered within three working days and the majority of questions



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asked by TDs are written questions as opposed to questions for oral response. In the case of both written and oral questions, if a TD is unhappy with a response or feels that more clarity is required then they will use the time set aside for adjournment debates to pursue the matter more fully. In this respect it is often the case that questions may fulfil a representative function as well as a scrutiny function.

Committees:

Whilst questions provide TDs with a chance to scrutinise ministers on a regular basis and with varying degrees of success, the main way of holding government ministers to account is through the committee system. Oireachtas committees are an essential part of the parliamentary system. It took a while, following their introduction, for TD's to fully utilise the scope of powers these committees gave them. However, they have since developed into significant parliamentary bodies with real powers and a willingness to carry these out. Since 1997 the Irish system has mimicked the British system of having a committee for each government department, 12 in total. A key difference in the Oireachtas is that most committees sit as joint committees with both Senators and TDs present. However, when they are considering legislation, only the TDs participate. The government has a majority on the committees as they mirror the makeup of the Dail which does give the government an advantage. Additionally, committee decisions can be overturned by the full Dail.

In 2007, seven new committees were set up to deal with the issues highlighted in the names given to each committee: Climate Change, Constitution, Constitutional Amendment on Children, Economic Regulatory Affairs, European Affairs, European Scrutiny and Implementation of the Good Friday Agreement. Although these new committees were set up to deal with contemporary political issues, their creation was seen by many political commentators as an unnecessary burden on the public purse. In addition to departmental committees there are a number of standing committees which are similar to Stormont's standing committees and are mainly concerned with issues necessary for the day to day running of the Dail. However, one of these, the Public Accounts Committee, like its counterpart in the UK, is a powerful committee as it has the power to check government spending and to examine government accounts.

TDs are appointed to committees by their relevant party whips, although for the most part TDs will be appointed to committees in whose work they have expressed an interest. The Chairs of committees are usually government TDs and they receive an additional € 10,000 for performing the role. This does raise the question of how effectively they can be expected to carry out their role of investigating the government and has given rise to some criticism. Since 1997, however, committees are generally seen as more effective. They have additional resources for research available to them, however they do not have the power to force witnesses to appear before them and they really only achieve media attention when they are covering high profile matters. Coakley and Gallagher argue that, although there is a commitment to a sound committee structure in the Irish political system, there are a number of reasons for the failure to fully achieve this. These reasons include a lack of adequate resources



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and the difficulty in finding TDs who are prepared to be critical of the government when most someday hope to be selected for a ministerial post. This used to be a very common concern about MPs in the British Select Committee system, however, since the Wright reforms of 2010 which allowed for the direct election of Chairs by the House of Commons and the elections of committee members within each Party, this is no longer such a great concern. The power of the Party Whips has been removed allowing for British Select Committees to be far more assertive and protective of their independence and better able to hold the government to account.

Learning Activity

Draw up a list of ways the Dail can hold the executive to account. For each method do the following:

- Identify the method and then develop and explain it as fully as possible
- Assess the strengths and weaknesses of this method.
- Give an example of when it has worked/not worked. Try to keep examples as contemporary as possible but remember historical examples are also valid – if you are struggling to find a recent example an historical one will suffice.

Seanad Eireann

The Seanad has 60 members who are elected a couple of months after the corresponding Dail election. Some of the seats are appointed by the Taoiseach (11) and a further 6 seats are elected by the universities – hence the name ‘University Senators.’ This leaves 43 seats which are elected from five panels of electors: agriculture, culture and education, industry and commerce, labour and public administration. The electors are members of the outgoing Seanad, members of the Dail and members of the city and county councils. This, in effect, means that rather than representing interest groups or sectional interests as might be expected from the panel system, the Senators nearly always come from the mainstream parties and the Seanad has become something of a reward for long political service or indeed a ‘retirement home’ for ex-TDs! The Senators chosen by the Taoiseach are usually chosen to make sure the government has a majority in the Seanad or to give an aspiring government TD a chance to raise their profile prior to being fielded in the next election.

Additional Resources

There are lots of you tube videos of debates in Seanad Eireann and equally the Irish Government’s own website has relevant contemporary material. Some links you may want to explore are:

<https://www.youtube.com/watch?v=-muQGsuWHHU>

<https://www.youtube.com/watch?v=Fzxr8GGuFpA>

<https://www.youtube.com/watch?v=T5A3i-kJrjE>



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The Seanad's powers are more limited than those of the Dail's and also more limited in comparison to its UK counterpart, the House of Lords. The Seanad can only delay bills for 90 days, whereas the House of Lords can delay bills for a year. Seanad amendments or rejections of finance bills can simply be ignored by the Dail. The Seanad's limited role in the consideration of money bills is reflected in the fact that they are allowed only three weeks in which to consider a money bill. There is a similar limitation to the input of the House of Lords with regards to finance and money bills but again it is not as notable nor as severe as that experienced by the Seanad. The Parliament Acts of 1911 and 1949 prevent the House of Lords from amending Money Bills and state that Money Bills must originate in the Commons and receive Royal Assent no later than a month after being introduced in the House of Lords. The House of Lords, however, has been noted for ignoring the convention of non-involvement with finance bills when they feel particularly strongly about an issue, for example, a number of objections were made by the Lords to the Conservative government's Welfare Reform Bill. As a result of the restrictions placed on it, the Seanad has not rejected a government bill since 1964, leading to criticism by Enda Kenny that the Seanad performs no useful function and that there should be a debate about removing it from the political system.

There have been a number of suggestions for the reform or removal of the Seanad. Most recently it was suggested that it should be temporarily suspended as a cost cutting exercise. Those who support its abolition have argued that similarly weak upper houses have been removed from other political systems without any ill effects, for example, Denmark in 1953. However, supporters of the Seanad defend it by stating that it does still carry out an effective check on legislation. Rather like the Lords in the UK the quality of debate in the Seanad is regarded as better than that of the Dail. This is perhaps why 51.7% of the Irish electorate voted against the abolition of the Seanad in a constitutional referendum held on the 4th October, 2013. Even though the Seanad only sits for 79 days a year, the Dail does not sit for much longer, sitting for just 89 days. Senators can also, arguably, devote more time to national issues given their freedom from constituency matters. It has also been claimed that the Oireachtas Committees could not be set up without the help of the 60 Senators and that there are still a number of functions which require the cooperation of both the Seanad and the Dail such as the declaration of an emergency, the removal of a judge or the impeachment of the Irish President. In addition to this, the Seanad can invoke an Article 27 procedure to request that the President not sign a bill, however, for this to succeed it needs a majority of Senators to support it and a third of the members of the Dail to also do so. Given the range of functions performed by the Seanad and the apparent resistance to its total removal from the political system the most likely reform would be to its composition and indeed most of the suggestions for reform have focused on this rather than its complete removal. The All-Party Oireachtas Committee on the Constitution recommended in 2002 that the method of election should be changed to allow 48 of the Senators to be directly elected from a national list. As of yet this issue has not been resolved although there are plans for further discussion of possible reforms which include enhancing the powers of the Seanad.



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Relationship between the Executive and the Oireachtas

There is little doubt that the government dominates in its relationship with the Oireachtas. The role of the state and the scope of government work has increased dramatically making it difficult for backbenchers to fully monitor all necessary government activity. Reforms to the Oireachtas have been notoriously slow as with other institutions. One of the biggest criticisms of the Dail is that it sits far too infrequently and that it also doesn't sit for enough hours on the three days of the week that it does meet. The Dail sits for about 92 days per year which amounts to 30 weeks of sittings for three days a week. Opposition TDs often criticise this and claim that it hampers the ability of TDs from all parties to successfully complete their functions. One of the responsibilities most likely to suffer is that of scrutiny as TDs, mindful of the next election, will focus on their role of legislating rather than that of scrutinising the executive during this limited period of time. Another of the difficulties in resolving this issue is the unwillingness of TDs from outside Dublin to attend the Dail on more than three days a week.

Decision making in Ireland has changed significantly and often the government will make agreements with big pressure groups such as farmers or trade unions. Policies will be drafted based on these agreements and this makes it difficult for TDs to oppose them once they reach the floor of the Dail. Arguably, the main problem in the Irish system is the disproportionate amount of time TDs spend working on constituency matters to the detriment of their role as national representatives. All of this could lead us to conclude that the Oireachtas is totally at the beck and call of the executive. However, this would be too simplistic an assessment as the government, in a system which is increasingly run by minority executives, will always need to be able to negotiate with both its own backbenchers and the opposition if it is going to get its programme through.

Learning Activity

Draw up a table comparing the powers of the Seanad and the House of Lords.

Include a section on legislation, scrutiny and membership.

Use this to write a two sided argument comparing the two upper houses with reference to relevant evidence from both political systems.

Swap responses in a paired assessment exercise – this helps you learn to identify what the common mistakes are by seeing them in the work of others.

By doing so you quickly begin to identify them in your own work.

Representation in the Dail.

In any Parliament, representation takes at least two forms: constituency representation and party representation. Increasingly, however, it also takes a third form: that of representing an interest group. However, there is a significant difference between the British and Irish systems as to the importance placed on the



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representative role. In the case of the Irish system there is little doubt that for all TDs, constituency work is the main priority allegedly to the detriment of the national assembly and national matters. There are three main aspects to the constituency representative role: that of welfare officer, local promoter and local dignitary. While TDs spend much of their time dealing with constituents' grievances, TDs in the context of their role as 'welfare officers,' also assist constituents in dealing with bureaucratic matters. Most of the time TDs are dealing with issues related to public services, for example, welfare, housing or water and therefore they can help constituents to navigate through the necessary paper-work and phone calls required to deal with such issues. Numerous studies have been carried out to gauge to what extent TDs can actually make a difference. The conclusion seems to be that, in the main, bureaucratic systems are so complicated that for many constituents the involvement of a TD is a great help. Coakley and Gallagher have a good account of the various studies and offer the following conclusion, "The TD's welfare officer role, in fact, resembles that of a lawyer, who operates not by bribing the judge or jury but by ensuring the case is presented better than the ordinary citizen would be able to present it." (2010:237).

As a local promoter TDs are expected to make sure that local services are well maintained and that the local area receives its fair share of national resources. There is a public perception that if a TD becomes a minister then the constituency will benefit. Dick Spring was particularly noted for this in his home town of Tralee and was credited with bringing significant economic benefits to the area. This is a view which ministers are keen to encourage and gives an incentive to local voters to vote for those representatives most likely to be appointed to a ministerial position. Additionally, in the case of minority governments, independent TDs can sometimes use their bargaining power to secure additional benefits for their constituency in return for lending their support to the government. Although controversial, it is further evidence of the importance in the Irish system, as in the American, of 'bringing home the bacon.'

There have been numerous criticisms of this aspect of Irish politics. One such criticism is that this represents a form of 'clientelism'. However, this has been refuted by numerous studies which argue that Irish politicians simply cannot give out jobs or positions of power in the way in which this term implies. It is perhaps more accurate to describe the process as 'brokerage.' Brokerage describes a process of helping someone to access something they want and indicates that once this has happened the relationship ends. Clientelism indicates a much more permanent relationship between the TD and constituent and implies that the TD is perpetually obliged to the constituent in return for continuing support. There is also some dispute about the extent to which the Irish situation is different to that of other parliamentary systems. Although Irish TDs do spend on average more time on constituency matters than their British counterparts, 2.5 days per week as opposed to 1.8, there is perhaps less of a difference than we assume. There have been claims that this is partly due to the electoral system of PR-STV which pits members of the same party against one another in elections and therefore makes constituency work the deciding factor in



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securing the necessary votes. This claim was made by Elaine Byrne in 2008 but it has been contested by Muller whose study in 2007 claimed that there are more factors at work than the electoral system in making active constituency work a necessary part of electoral success in Ireland. In fact there is evidence to suggest that this can be ascribed to Irish political culture – the expectation of high volumes of brokerage work and the need for it given the way the administrative structures are set up. In other words, public bodies are difficult for ordinary people to deal with without the intervention of someone acting on their behalf and, by convention, this has become the TD.

Whatever the reasons for the high levels of brokerage work evident in the Irish system, the impact is to reduce the amount of time a TD can spend on parliamentary matters and this has been regarded as a problem for some time. Chubb argues that good support staff and resources would allow TDs to be both good constituency workers and dedicated parliamentarians and TDs would not be forced to choose between the two roles. In recent times ministers have increasingly turned to civil servants to carry out their constituency work as revealed by the parliamentary questions asked by Fine Gael in December 2008 and written by O'Halloran in 2008 and 2009. The statistics revealed that the ministers were using public money to carry out constituency work to the tune of €18.7 million a year.

Key Terms

Clientelism – This term is used to describe a mutually beneficial relationship based on the TDs need for votes and the voter's desire for help with specific issues. This term has been used to describe the relationship TDs have with their constituents but has been contested as implying too high a sense of obligation on both sides of the arrangement.

Brokerage – This is the more commonly used term to describe how TDs represent their constituents. It implies that TDs act as 'brokers' on behalf of their constituents when dealing with bureaucratic issues and that this is an accepted part of their role and well established as part of Irish political culture.

The Constitutional definition of the role of the Executive.

According to the constitution the Dail selects a Taoiseach who in turn selects ministers. Both the Taoiseach and ministers are confirmed and formally appointed by the President. In fact the Taoiseach is selected by the electorate, albeit indirectly, as the Taoiseach is invariably the leader of the largest party following an election or the leader who is able to form a workable coalition government. Given the nature of the Republic of Ireland's electoral system it is a rare occasion when the government is not a minority government or a coalition government. Compromise and persuasion are, therefore, part and parcel of the Taoiseach's role right from the minute the election results are verified. The Irish general election of 2016 saw the Irish Labour Party lose



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30 seats and the main party Fine Gael lose 26 seats. Both Fianna Fail and Sinn Fein gained seats, 23 and 9 seats respectively, while smaller protest parties such as the Anti-Austerity Alliance – People Before Profit party gained 6 seats with the Green Party regaining 2 seats having lost all of their seats in 2011. Following intense negotiations Enda Kenny retained his position as Taoiseach but is now in charge of a wide coalition which includes independent TDs, and has the tacit support of Fianna Fail in non-controversial matters. This has allowed Kenny to lead a minority government. This has implications for the operation of government as it is clearly more difficult to keep a government together when it is a coalition, and even more so when it is a minority government.

Up until 1989 Fianna Fail refused to take part in coalition government, however, they reappraised this approach when Charles Haughey formed a coalition with the Progressive Democrats that year. Many factors must be considered when forming coalitions such as the number of seats the combination will bring, the policy rewards and suitability of the policy stances of the coalition partners, the rewards of office and how alluring these are to possibly reluctant coalition partners. Overall, the negotiations focus on the ability to develop a shared government programme and how executive posts will be divided. This is also the case for the Northern Ireland Executive. The Programme for Government is seen as the agenda for forward work plans by the relevant departments and their civil service teams so inevitably it takes a lot of time to agree these plans. The programmes which are produced are considerably more detailed than those produced in the 1980's under direct rule.

Learning Activity

Working in groups of three or four, students should begin to compile an analysis of the 2016 Irish general election. Each group should look at one area using materials from the Irish Times online archive, the RTE reports and any other sources they may come across in their initial research. The areas could include; overall returns for all constituencies, constituencies where there has been a change in representational balance, the impact of new parties along with reasons for the changes/performance of the parties.

Once each group has compiled their relevant section, this work should be presented to the class and used as the basis for class notes on the topic and to stimulate discussion and debate.

How are Ministers selected?

Although the selection of government ministers is technically the responsibility of the Taoiseach as leader of a coalition system there are a number of issues he/she must take into consideration which may limit their freedom of choice in appointing ministers. Firstly they will want to choose ministers who are likely to meet with



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the approval of the Dail. They are also restricted by the constitution to choosing a maximum of 15 ministers, all of whom must come from either of the two houses of the Oireachtas with a maximum of two allowed from the Seanad. However, in practice, nearly all ministers since 1937 have been TDs partly because the mechanism for appointing Senators as ministers takes longer than that for TDs meaning that the ministerial posts allocated to Senators remain unfilled for several weeks after the government has begun its work. Taoisigh (the plural form of Taoiseach) must take into account senior party members when making appointments and try to satisfy the various factions within their own party in order to keep their own support base secure. This would be the same for British Prime Ministers, with examples such as Tony Blair's inclusion of Gordon Brown in his cabinet despite their personal animosity towards one another or John Major's inclusion of John Redwood and Michael Heseltine in his cabinet.

Government posts tend to be distributed between coalition partners according to the electoral strength of the parties in order to keep things as equitable as possible. The post of Tanaiste (deputy Prime Minister) usually goes to the leader of the minority party in the coalition. In selecting ministers the Taoiseach will also be trying to make sure that their party takes control of the government departments within which they are most keen on influencing policy. Coalition partners are also looking to select posts which reflect their policy interests such as Labour choosing Welfare or the Green Party in 2007 selecting Environment and Energy. Overall, however, this should mean that the government has ministers who at least have an interest in the area that they are responsible for. Finally, the Taoiseach will try to ensure a good geographical spread amongst cabinet posts with attempts made, which vary in success, to ensure that all regions are represented within the government. Finally Taoisigh need to be mindful of the desire for promotion from within the backbenches and the need to keep loyal TDs on board. Increasingly the creation of junior ministerial positions has been used to keep loyal backbenchers happy and to increase the opportunities for patronage available to the Taoiseach.

Additional Resources

There are numerous videos on you tube which will expand your knowledge of this area and provide examples for use in your work. Below are some suggestions but do feel free to search for others throughout the course of your studies which may provide you with more contemporary examples.

<https://www.youtube.com/watch?v=n4Lq6ePOCDM>

<https://www.youtube.com/watch?v=HbcQQIKjpT4>

<https://www.youtube.com/watch?v=NJernxyShJg>

How does the Cabinet operate?

The cabinet is not governed by a tight set of constitutional rules and, in spite of a Cabinet Handbook and an article in the Irish Constitution setting out the



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procedures for cabinet, there is considerable flexibility in its actual operation and much depends on each individual Taoiseach. Like the Westminster system there is a doctrine of ministerial responsibility which has three main principles. The first of these principles is the requirement that both government and individual ministers must retain the confidence of the Dail and therefore can be removed if they fail to do so. Part of this also requires the Dail to hold the government to account and the government to answer questions posed by the Dail- both written and oral – in order to maintain confidence in the government. The second principle of this doctrine of ministerial responsibility is the need for complete unanimity. This is stipulated in the constitution and is similar to the convention of collective cabinet responsibility in the Westminster system. This requires government ministers to uphold government policy and to maintain a united stance in public even if they have privately disagreed with the policy at cabinet level. Ministers can express their true feelings about policy in cabinet meetings but once a policy has been agreed they are expected to support the government. If they feel they cannot do so they are required to resign their seat. The third principle is the need for confidentiality as clearly, in accordance with the doctrine of ministerial responsibility, the only way that unanimity will work is if the content of cabinet discussions and cabinet committee meetings are kept from the public.

Cabinet procedures - It is expected that government ministers will give advance notice to the cabinet of policies they intend to introduce or to bring up for discussion at the next cabinet meeting. The aim is that all members of the cabinet will have time to consider the matter and that they will all be informed as fully as possible of what is going on in the work of each department. However, strictly speaking and in common with the UK system, it is the Taoiseach who sets the agenda for cabinet meetings. The main difference would be that, due to the tendency for the Irish government to be a coalition government, individual ministers have more input into this agenda and will submit items for consideration to the Taoiseach in the expectation that they will be added to the agenda and therefore discussed. Although it is possible for the Taoiseach to omit an item which to which they are opposed, however, they will not be able to make a habit of this because of the coalition nature of their government. This has an impact on the degree of discussion and compromise in the meetings themselves. Generally seen as being more collegial than their UK counterparts because of the need to keep coalition partners happy, Irish cabinet meetings tend to provide greater opportunity for more genuine debate than is allegedly the case in the UK. In both systems, however, the personality of the head of government and the political circumstances surrounding their time in office will have a crucial impact on cabinet relations.

The relationship between the Taoiseach and the cabinet

There has been considerable debate about the powers of Taoisigh. The core of this debate centres on a term coined by Farrell in his study of Toisigh in which he identified two distinct leadership styles: 'Chairman' or 'Chief'. Farrell has carried out the only detailed study of the role and overall his conclusion was that the power of



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the Taoiseach really depends on the individual concerned. Those who he describes as Chairmen tend to take a collegial approach and are more prepared to share resources and decision making with the rest of their cabinet. Those he describes as Chiefs are more likely to dominate the decision making process and the allocation of resources. Broadly speaking, Bruton and Ahern can be seen as Chairmen and Haughey, Fitzgerald and Reynolds as Chiefs. It does, however, have to be noted that the extent to which they are either Chairmen or Chiefs depends very much on the political circumstances of their time in office and the ease with which they can form a coalition. All Taoisigh have the same powers at their disposal: the ability to appoint ministers, to set the agenda and to sum up or call the final decision on policy and other cabinet issues. Similarly, all are technically restrained by the same issues: the factions within their government or party and the difficulty in guaranteeing loyal party support in the Dail. The biggest single constraint is undoubtedly the demands of coalition partnership and it requires excellent negotiation skills to be able to maintain a coalition government whilst simultaneously trying to achieve at least some of the targets set before coming into power. The ability of the Taoiseach to veto ministers' legislative proposals and likewise the ability of coalition partners to veto the policies of the Taoiseach's party is one stumbling block. Individual ministers have a significant amount of influence over what happens in their departments and depending on their seniority and the degree of support they have from the Taoiseach they will have varying degrees of personal impact on policy output. They will not be able to get policies enacted which do not have the support of the Taoiseach making the limits to their power very clear. One way around this is to trade support with another minister which Coakley and Gallagher refer to as 'Ministerial log-rolling'. A further option, and one which has increased in the last twenty years, is the use statutory instruments as a way to get measures enacted. This avoids the need for a full policy discussion and all the necessary negotiation and persuasion that this would possibly entail. On average, there are between 30-50 Acts passed per year whereas Coakley and Gallagher estimate that the number of statutory instruments has risen from 264 per year in the 1960s to currently 700+ per year.

The relationship between the Prime Minister and Cabinet in the UK system is similarly fraught with behind the scenes negotiation. It is not uncommon for political commentators to refer to the UK Prime Minister as increasingly Presidential even though the use of this term and the corresponding theory of executive power it espouses is open to considerable debate. There is a general feeling that cabinet government is, if not totally dead, then in dire need of resuscitation and it is widely held that the Prime Minister can and does dominate the cabinet to a greater or lesser degree. As with the Irish system there is dichotomy based on whether an individual Prime Minister favours a collegial style of government or whether the Prime Minister favours a personally dominant role, in which case their time in office is seen as prime ministerial, or, as preferred by Michael Foley, Presidential. Either way both systems have similar powers and broadly similar debates about these powers. The biggest single difference is the tendency in the Irish system for the Taoiseach to head up a coalition government and the corresponding tendency in the UK system for the Prime Minister to have a single party government with a comfortable working majority. This



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is no small difference and has a significant impact on the leadership styles available to both. There can be little doubt that of the two it is generally much easier for the UK Prime Minister to assume a dominant position. However, this needs to be measured against factors such as the economic and political circumstances surrounding their time in power. Between 2010 and 2015 the British Prime Minister also led a coalition government although this is very rare in the UK political system.

Learning Activity

For a comparative paper it is vitally important that you are able to compare and contrast the powers of the Taoiseach and Prime Minister. A good way to make sure you have all of the facts and examples at hand before tackling an essay question or at examination is to complete the following exercise: Draw up a table, preferably using an electronic format so that you can expand columns or change layout if necessary. Have two overall sections; one for the Irish system and one for the UK. In one column, outline the powers that the Taoiseach and the Prime Minister are able to exercise and for each power outline the limitations or constraints on the identified power. Include examples for each point and check that the examples selected illustrate the points made. Take into consideration the impact of the political environment on these powers, for example, size of majority, state of the economy, if there is a national or international crisis. For each power identified write a paragraph comparing the relative powers of the Prime Minister and the Taoiseach. Remember to Define, Explain and provide an Example for every point. Done correctly this will provide you with the basis of a very solid comparative essay on this topic.

Impact of the judiciary on the executive

Judicial review is the main way in which the Supreme Court can act as a check on the executive although it would be more accurate to regard judicial review as a tool of redress for citizens when they feel wronged by a branch of government rather than the executive itself. Nonetheless, this is an important role for the judiciary and one which is well developed in the Irish system. In fact judicial review is more commonly used in the Irish system than in the UK system although the number of judicial review applications in Britain has gradually increased since 1998. In Ireland judicial review increased dramatically from the 1960s onwards and since then numerous landmark cases have had a huge impact on both Irish society and on the rights of Irish citizens.

Bunreacht na hEireann in articles 12-33 gives only the briefest outline of the powers and relationships between the various parts of the political institutions. It is because of this vacuum that the Supreme Court can use its power of judicial review to provide more detailed guidelines. There are two main ways in which the constitution can be amended today; the first is by the people through the means of a referendum and



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the second is through the power of judicial interpretation or judicial review. In order for a case to undergo a judicial review it has to fulfil certain criteria and, as with the British system, one of these is the ability to prove locus standi or standing. There are two categories for judicial reviews: priori abstract reviews which allow the judiciary to assess the constitutionality of a bill before it passes and which reach the court as a result of a Presidential referral; and concrete reviews which are brought by a citizen or group of citizens. There was a dramatic rise in concrete reviews following the 1963 Ryan vs Attorney General case which saw judges interpret the constitution to find previously 'undisclosed' rights. This tendency for a more active judiciary was encouraged by the Taoiseach, Sean Lemass and was in tandem with the rise of an active judiciary in the American system. Judicial review proved to be an important method of updating the constitution with regards to morality issues, for example, the 1973 McGee vs Attorney General case saw the removal of the ban on contraceptives and the 1992 'X' case saw the right to travel for abortion granted under certain circumstances. Politically, a review in 1992 on collective cabinet responsibility saw the Supreme Court rule that cabinet members should not disclose anything discussed in cabinet, a ruling which arguably strengthens the powers of the Taoiseach.

The Taoiseach has a key role to play in appointing Supreme Court justices as and when a vacancy arises. This is another one of the powers of the Taoiseach. Since 1996 a Judicial Appointments Advisory Board has been in place and in the event of a vacancy on the Supreme Court they draw up a list of seven nominations. However the Taoiseach is not obliged to draw their suggested candidate from this list. It is, however, customary for Supreme Court appointments to be drawn from the ranks of barristers or judges practicing in the lower courts with at least 12 years standing. As in the UK there are criticisms of the background of the justices and claims that they are unrepresentative of society as a whole. Approximately 40% are from legal families, 80% are from University College Dublin and 25% are women. This last figure is in sharp contrast to the UK where the underrepresentation of women is even more marked with Lady Hale the only female judge on the UK's Supreme Court.

The Irish judiciary has had a significant impact on the development of policy since the 1960s which continues to today. It not only acts as a check on executive power but also plays a significant part in influencing policy debates.

Additional Resources

In addition to the resources which have been noted throughout the document, the following websites could be accessed in order to develop depth of knowledge and understanding of the topics explored.

<http://www.taoiseach.gov.ie/eng/splash/>

http://www.taoiseach.gov.ie/eng/Taoiseach_and_Government/

<https://www.oireachtas.ie>

https://www.constitution.ie/Documents/Bhunreacht_na_hEireann_web.pdf

<http://cain.ulst.ac.uk/issues/politics/docs/coi37a.htm>



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Texts:

Chubb, Basil, (1992) *The Government and Politics of Ireland*, Longman

Coakley, John and Gallagher, Michael (2010) *Politics in the Republic of Ireland*,
Routledge, 5th ed 2010