

Seanad abolition is no threat to our democracy – more an opportunity

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The referendum on the abolition of Seanad Éireann might be thought of a sort of Hobson's choice – a choice between two unappealing options. Some people claim they want a reformed upper house in Ireland, but the choice the people are offered is one between abolition or retention of the status quo. The ability to set the question in a referendum gives government great power because it structures the choices voters face. When the status quo is unappealing, it's easier to get a marginally less unappealing option carried.

But is abolition undesirable? The debate on the abolition or retention of the Seanad is only now beginning to heat up. The retentionist camp relies on a couple of arguments, none of which are plausible, while the abolitionists (in the form of the government) have failed to make a truly convincing argument to date.

This paper will examine each side's arguments, and then consider the more general arguments in favour or against a second chamber. It will then look at some basic empirical data to see if second chambers are in fact associated with those things we want our governments to achieve.

The arguments of some of the retentionists are summarised as 'democracy-in-danger'. They argue that the Seanad provides a bulwark against complete government domination of policy making. Some retentionists characterise the referendum as a 'power grab' by the government that will leave the executive utterly dominant. They point to the loss of Article 27, a procedure introduced for dealing with deep disagreement between the two Houses which allows the President to put a matter of urgent national importance to the people. They also point to the range of people that have been in the Seanad but who would be unlikely to get elected to the Dáil.

All these arguments are weak. First, empirically the Seanad has never acted as a bulwark against the Government. The last government bill to be rejected by the Seanad was the Pawnbrokers Bill, 1963, and then only by mistake. One can point to speeches in the Seanad (as one could point to some in the Dáil) where that speech made a

difference. For instance a speech by then Senator Shane Ross pointed out a flaw in the legislation trying to regulate publication of opinion polls in election campaigns. The government withdrew the legislation. But these points might have as easily been made in the opinion pages of the *Irish Times*.

In legislation that really counts where we'd hope a second chamber does its job, such as the Bank Guarantee Scheme, the Seanad passed the legislation with no amendments. In fact in the limited research on this issue, where we look at amendments accepted or adopted by the government, there is no evidence that the Seanad notices flaws in legislation at a higher rate than the Dáil.

The fears of a power grab are not real. How can the executive 'grab' power from an institution that does not have much power, and is reluctant to use any that it does have? The executive is quite dominant of the legislature, but that is as much because of the control the executive has over the careers of TDs. We are also likely to over-estimate this dominance. We know (from ministers and TDs) that significant changes to bills are made on the back of suggestions by TDs, but it usually occurs in private, at parliamentary party meetings.

The attempt to link the number of chambers to how democratic a country is has to be among the more facile arguments. Would three chambers make us more democratic? Countries such as New Zealand, Denmark and Sweden consistently rate among the most advanced democracies, yet they manage with the supposed handicap of just one chamber.

The appeals that the abolition of the Seanad will mean the removal of Article 27 fail to understand why Article 27 is there in the first place. Article 27 is there so that when the two Houses disagree quite fundamentally there is a mechanism other than the automatic override of the Seanad to put a question to the people. Again it might have been the sort of mechanism we'd like to have seen used related to the Bank Guarantee scheme. But in the context of a single chamber, you don't need such a mechanism. The argument that it does not matter because it has never been used is reasonable but not on its own convincing. Lots of provisions can have an impact even though they are not

used, because all parties know that they could be used. For instance, the ability to fire someone from their job can have an impact on their behaviour whether or not the threat is carried out, even if the threat is not explicitly made but the power is tacitly there. That said, this author has not seen anyone argue to date that Article 27 has ever been a consideration in policy making.

There is also an argument that it will be easier to fire a judge because you'll just need a majority in one House rather than the two that currently exist. In theory, yes. But that would be if the two Houses had different majorities. In practice this is not the case. The judiciary in Ireland is highly independent; this is a strength of our political system. There isn't a problem and none is likely to emerge. The Dáil has never really tried to influence judges in what might be an improper manner.

The final argument is that certain people of exceptional ability have served in the Seanad. They point to people such as WB Yeats, TK Whitaker, Mary Robinson, Gordon Wilson and David Norris (though they may stop using him as an example). They neglect to consider that these people made their names outside the Seanad – even Norris and Robinson who became well known as senators, did so on the basis of activities in the courts rather than in the Senate. In fact most senators actively nurse a Dáil constituency with the intention of getting elected.

More problematic for the retentionists is that they say they want a reformed Seanad which is democratically elected. Yet the only reason the type of people we saw in the Seanad are in the Seanad is precisely because they are either nominated or elected by a small elite. A reformed Seanad would resemble the Dáil they complain about, but lack its potential bite. They are promising a fantasy Seanad, that not only will not exist, but cannot exist.

The abolitionists have thus far relied on arguments about cost savings and fewer politicians. Neither are good arguments.

Having fewer politicians seems to be less an argument than a base appeal for popularity – politicians aren't popular so the fewer of them the better. But Ireland doesn't have *too many* politicians compared to other similarly sized countries, and if anything reducing

the number of politicians will make it more difficult for the Oireachtas to hold the executive to account if the committee system is stretched even further. There are plans to streamline the committee system to alleviate this likely problem, but I am still not convinced by the 'argument'.

Related to the number of politicians is the cost of the Seanad and the savings associated. This again is a weak argument. Though the retentionists argue that the figures provided – c. €20m annual savings – are inaccurate, the numbers are probably right and supported by the Houses of the Oireachtas Commission. The Oireachtas costs about €120m a year to run, and it seems reasonable that the Seanad costs about one sixth of the total. The question is do we want to make savings in this total at all? Richard Bruton has talked about diverting money to special needs projects. This is not going to happen and arguing that it will is disingenuous.

In any case we don't want to run a democracy on the cheap. The money saved from salaries, pensions, overtime, subsidies etc. should be used to improve the support TDs receive. This shouldn't be in the form of extra staff working directly to TDs, as these invariably become part of a local campaign team. It should be used to increase the research support for the committees, supporting those TDs who choose to engage in committee work.

If the arguments used in the Seanad referendum campaign aren't much use, what arguments should we focus on?

The two main arguments about bicameralism can be summed up in two quotes that are standard fare in undergraduate essays. The first from George Washington relates to the potential of pernicious majoritarianism where a single majority can make legislation. So it's related to the 'democracy-in-danger' argument of the retentionists. Commenting on the need for a second chamber Washington said 'we pour legislation into the senatorial saucer to cool it.' If legislative power is divided between two chambers with distinct majorities and mutual vetoes, legislative change is more difficult.

It makes sense to have this sort of insurance policy in heterogeneous societies with distinct groups. In early democratic practice it allowed both the nobles and the commoners rule only by agreement of the two, and so both views and interests were respected. It meant policy change was slow, but such slow consensus-driven policy change could have helped avoid revolution. Where we actually see two chambers they tend to be in large, often federal countries or where there are deep divisions within society.

This is why the Seanad made sense historically. The new state retained a significant Protestant minority that was genuinely fearful (rightly as it turned out) that the new state would be influenced by Roman Catholic thinking. A Seanad offered some representation, if not power, for this group.

But now that group is either gone or assimilated into a more diverse and tolerant Irish society, and hardly needs protection. Furthermore the 1937 Constitution and its subsequent interpretation by the Courts has in place strong protections for the rights of different groups and puts real limits on the ability of the executive or legislature to restrict individual rights. This is a more effective way of avoiding pernicious majoritarianism.

The second quote on bicameralism is from Abbé Emmanuel Joseph Sieyès. He suggested that 'if a second chamber agrees it is superfluous, but if it disagrees with the first, it is mischievous'. This gets to the idea of what happens when there are distinct majorities in each chamber.

We wonder, what is the point of Seanad Éireann if the government majority in the Dáil is nearly always reflected by a government majority in the Seanad? Because the Seanad doesn't have a different majority as the Dáil, it doesn't have a different opinion. It doesn't provide any restriction on the Dáil and it as Abbé Sieyès suggested, superfluous. But what if the Seanad had a distinct majority? Then policy change would become more difficult. We could see policies agreed by the Dáil rejected by the Seanad. This could lead to legislative gridlock, as we occasionally see in the US. It might make government formation more difficult, if, as in Italy, governments felt the need to have a majority in

both houses. It might seem then that the second chamber was pernicious in preventing the lower house from legislating as it saw fit.

Even if the Seanad had a distinct majority it could still be regarded as superfluous. This is because the division of power between the two Houses of the Oireachtas is asymmetrical. On paper and in practice, the Dáil is clearly the more powerful of the two. The government is only responsible to it. So the Seanad might object to policies, but at most it could delay its implementation, though admittedly this might cause greater national debate on the issue at hand.

We can make the point that Ireland's bicameralism – where power is divided asymmetrically and the majorities in each chamber are similar – is essentially like unicameralism, so we might not expect any real change in policy outcomes as a result of abolition of the Seanad.

What we expect is that when there is strong bicameral symmetry with distinct majorities in each House, there should be an impact on policy. Policy should be more stable and more predictable – as it is more difficult to change policy. Policies would be more centrist, as any agreement on change will be shift policy towards the positions of the two Houses. So we could see that radical shifts in policy such as we saw in Thatcher's Britain would have been much more difficult to achieve had there been symmetrical bicameralism with distinct majorities. Policy change would be slow, though not quite at the pace of the slowest man, and based on broad agreement.

In practical terms there is some literature – more theoretical than empirical – showing that bicameralism is associated with lower government spending. This is because it should be easier to get agreement on new policies or programmes in unicameral systems.

However, an issue that is rarely considered is the possibility of log rolling between the chambers. Log rolling is the trading of favours between groups. So if one chamber has an interest in policy X in domain A, and the other has an interest in policy Y in domain B, they may agree to support each other's projects to get what otherwise would not have

been supported through both houses. Thus we might actually see that bicameralism is associated with increased spending.

Given these expectations some questions we might want to ask in making the decision as to whether we want a second chamber are: has our legislature been too overbearing in the laws it has imposed? Is policy too stable or too unpredictable? Is government spending too low or too high in Ireland?

These are essentially normative questions, but we can make some observations. There is no sense that even with asymmetrical bicameralism, which remember is functionally equivalent to unicameralism, Irish policy makers have introduced laws that have restricted the rights of minorities. Nor could we argue that Irish policy been too unstable or extreme? If anything some people complain that Ireland's policy space is a 'policy dot'. Meanwhile, Irish government spending is reasonably low when compared with other European countries.

Ireland, it seems, though bicameral on paper, already displays many of the behavioural traits associated with single chamber systems. I doubt there will be any significant impact of abolition. But this leaves open the question as to whether Ireland would benefit from a new, second chamber. The self-styled reformers argue for a Seanad that is directly elected. But they stop short of addressing the asymmetry between the Houses. A more ambitious reform might be to create a real second chamber with strong powers and a distinct majority. But would we want one?

Can we say that real bicameralism, if it were introduced, would have an impact in Ireland? The theoretical arguments above do not clearly favour of one form or another. Empirically are second chambers associated with particular outcomes? I suspect not, but we can see if those countries with two chambers have substantially different outcomes than those with just a single legislative chamber.

To do this, a dataset on the *Quality of Government* has been used. I have added a variable on bicameralism for the EU countries and those 36 countries regarded as established democracies in Arend Lijphart's *Patterns of Democracy*. There obviously isn't just one

measure to assess the quality of government or whether a state functions well so several have been employed here.

First, is the state larger under unicameralism? The results are inconclusive. Of EU countries, those with bicameralism have a very slightly larger state (36.7% compared to 35.9%). But among the Lijphart democracies unicameralism is associated with a larger state (34.6% to 29%). Neither difference is statistically significant. It is probable then that the difference we observe is random and associated with the different samples rather than the number of chambers.

With these data I generated predictions based on Ordinary Least-Squares (OLS) regression analysis, with some basic controls (physical size of the country, per capita GDP and population). The purpose is to see if being a bicameral country makes a difference on a range of outputs that we might expect bicameralism to be associated with. These are societal inclusiveness, functioning of government, perception of corruption, inequality, government efficiency, political stability, accountability, and happiness.

The results are that bicameralism is not a significant predictor for any of these outcome measures (using either sample). What can we conclude from this? Whether a country is unicameral or bicameral doesn't make much difference. So even introducing a reformed second chamber probably wouldn't make much of a difference.

In that context would we not just want to leave the Seanad in place, and reduce the salaries and, therefore, the cost of the Seanad? Maybe.

We know that the political system does matter. Good quality government is associated with health, wealth and happiness. We should, therefore, want to reform the political system to achieve these desirable outcomes. We can think of the abolition of the Seanad as an opportunity to renew our politics. This, I have argued elsewhere, should rest not on the Seanad or changing the electoral system as many argue.

The Seanad is irrelevant to the division of power in Ireland. What we need is a greater (though not full) separation of powers between the executive and the Dáil. This is more easily achieved than many seem to think and should be the focus of all parties' political reform agenda. One of the main ways in which the executive dominates the legislature is through the executive control of patronage and the careers of politicians. That ministers come from the Dáil means that TDs see ministerial office as the apex of their careers and a certain quiescence becomes politic at times. This is unhealthy; it should be the role of the TD to make government an uncomfortable place to be, not to provide unquestioning parliamentary backing.

In Ireland the Seanad is a mechanism through which parties create professional politicians (as a place for training would-be candidates and a soft landing for those defeated candidates). It gives the government significant patronage, allowing the party to build up and control parliamentarians. So even if it doesn't matter much in terms of policy outputs, the Seanad is deleterious to the separation of powers between the executive and legislature. Party leaders use the promise of a senate seat as a way of building up the cadre of party loyalists. It is for that reason we should rid ourselves of this failed chamber.