

# We should not willingly walk into a constitutional no-man's land

---

*Brian Murphy\**

History and Policy Opinion  
No. 5, 2013

School of History and Archives  
University College Dublin

\* Brian Murphy has recently submitted his PhD thesis in the School of History and Archives, University College Dublin

Recently, Fine Gael's Director of Elections for the Seanad referendum, the Minister for Jobs, Enterprise, and Innovation, Richard Bruton, colourfully dismissed the Upper House as a 'watchdog that barks only once every fifty years.'<sup>1</sup> Like so much else in this campaign, Richard Bruton's assertion is a finely crafted sound-bite, but it has little basis in historical fact. The reality is that over the past seventy-five years, since its re-emergence as an integral component of Bunreacht na hÉireann, the Seanad has on a number of occasions played an important role in blocking ill-thought out or draconian legislation which would have gravely impinged on the Irish people's civil liberties.

This paper specifically highlights that without crucial interventions in the Seanad, this country's statute book would have been blemished by intolerant legislation, such as measures to prevent members of minority religions having their children educated outside the State; measures to weigh the electoral system blatantly in favour of the largest political party; and measures to ban opinion polls, with all of the consequent implications this would have for a free press. This paper also examines some of the erroneous information currently in circulation in relation to the future of the Seanad. The economic collapse has surely taught us that in this country we should be careful of a rush to judgment based on clever political marketing strategies, whose main selling point is that they have cut the mustard in expensive focus groups. Far too many decisions have been made over the past few decades on the basis of inadequate or flawed information and discussion.

For many voters who are experiencing real and severe economic hardship, it is severely tempting to vote in favour of a referendum which, in one fell swoop, promises to fire a large number of politicians, but it is important to recognise that there is a bigger picture. A 'Yes' vote will place our national parliament in a constitutional no-man's-land, as nobody can predict with any certainty the future consequences of abolishing the Seanad. Before taking this step, it is worth reflecting on the valuable democratic and constitutional role Seanad Éireann has played and can continue to play as a revising

---

<sup>1</sup> *Irish Times*, 5/9/13.

chamber and as a potential check and balance on the powers of a transient Dáil majority.

The value of the Seanad as a space for an independent second opinion to reflect on bad legislation was never more clearly highlighted than in early 1943, when a debate in Seanad Éireann played a significant role in blocking one of the most illiberal, intolerant and arguably sectarian measures ever proposed by an Irish Government. This debate arose in the context of a legislative proposal dealing with the issue of compulsory Irish in the School Attendance Bill 1942 brought forward by the Fianna Fáil Minister for Education, Tom Derrig.

This Bill enjoyed a relatively non-contentious passage through the Dáil. On Second Stage, only Professor John Marcus O’Sullivan, a Fine Gael TD and former Minister for Education, had expressed any doubt about the constitutionality of the Bill, however, he did so without wishing to ‘press anything unduly against the Minister.’<sup>2</sup> O’Sullivan did suggest that section 4 of the Bill might impinge on Article 42 of the Constitution which, while guaranteeing every child’s right to receive ‘a necessary minimum education,’ recognised that the parents should not be obliged to send their children ‘to any particular type of school designated by the State.’<sup>3</sup>

It was not until the Bill reached the Seanad that opposition to it crystallised. The parliamentary assault on the School Attendance Bill was led by a number of non-Fianna Fáil Senators, most prominently Sir John Keane and Michael Tierney. They argued that the upshot of section 4 of the Bill would be to make parents who sent their children to school abroad – in essence mostly members of the Protestant community, who had a tradition of sending their children to Great Britain or Northern Ireland – liable to prosecution for failing to have their children taught Irish.<sup>4</sup>

Though Derrig gave an assurance that, as long as he was Minister, he would operate under the assumption that a child was receiving a proper education if the child was

---

<sup>2</sup> *Dáil Éireann*, 28/10/42.

<sup>3</sup> *Dáil Éireann*, 28/10/42; *Bunreacht na hÉireann*, Article 42.

<sup>4</sup> *Seanad Éireann*, 3/2/43.

attending a recognised school, public or otherwise, outside the State, his failure to accept a legislative amendment, proposed by Senator James Douglas, on this basis suggested that the Government at a future stage might use this legislation to prevent children from being educated outside Ireland.<sup>5</sup>

Derrig's assurance of moderation was not given credence by the comments of some of his party's allies in Seanad Éireann. Liam O Buachalla, a Fianna Fáil senator and Irish language enthusiast, and William Magennis, one of the Taoiseach's nominees, both spoke trenchantly in favour of measures to compel parents to educate their children in Irish.<sup>6</sup>

The progress of the Seanad debate was monitored closely in Áras an Uachtaráin and undoubtedly alerted President Hyde that the Bill was now being viewed as being very contentious.<sup>7</sup> This debate received a lot of publicity and was the subject of a hard-hitting Irish Times editorial, focusing on Senator Tierney's damning claim that the School Attendance Bill was analogous to the Penal Laws, which made it an offence for parents to have a child educated abroad.<sup>8</sup> Had the President needed any further confirmation that the School Attendance Bill 1942 was now a hot political potato, this duly arrived by means of correspondence signed by six senators and two TDs on 15 February 1943, a full three days before Fianna Fáil's numerical advantage ensured the Bill finally passed through the Oireachtas.<sup>9</sup>

The letter was the brain-child of the Independent Senator James Douglas and was also signed by the three Independent Trinity Senators, Ernest Alton, Joseph Johnston and Robert Rowlette; by two Fine Gael TDs, John Marcus O'Sullivan and Richard Mulcahy; and by two Fine Gael Senators, Michael Hayes and Michael Tierney.<sup>10</sup> The letter maintained that

---

<sup>5</sup> *Irish Times*, 22/1/43; *Seanad Éireann*, 3/2/43; J. Anthony Gaughan (ed.), *Memoirs of Senator James G. Douglas 1887-1954: Concerned Citizen*, (Dublin, 1998), pp. 39-40.

<sup>6</sup> Paul Rouse, 'Liam Ó Buachalla,' in James McGuire & James Quinn, *Dictionary of Irish Biography*, Vol. 7, pp. 108-9; *Seanad Éireann*, 21/1/43, *Seanad Éireann*, 3/2/43.

<sup>7</sup> National Archives of Ireland, PRES 1/P3041.

<sup>8</sup> *Seanad Éireann*, 3/2/43; *Irish Times*, 4/2/43.

<sup>9</sup> National Archives of Ireland, PRES 1/P3041.

<sup>10</sup> National Archives of Ireland, PRES 1/P3041.

in our opinion section 4 of this Bill introduces new principles which may be held to be repugnant to Article 42 of the Constitution, and we respectfully suggest that it would be desirable to have the question of the repugnancy or otherwise of this section submitted to the Supreme Court before the Bill became law.<sup>11</sup>

The focus that the opposition senators, in particular, had brought on the School Attendance Bill was a major factor in President Hyde declining to sign it into law. On 22 February 1943, it was announced that Hyde had decided to convene a meeting of the Council of State to consider the School Attendance Bill.<sup>12</sup> This meeting took place in *Áras an Uachtaráin* three days later.<sup>13</sup> On 26 February, Hyde took the decision to refer section 4 of the School Attendance Bill to the Supreme Court for a ruling on its constitutionality.<sup>14</sup> On 15 April 1943, the Supreme Court advised the President that section 4 of the School Attendance Bill, 1942, was repugnant to the Constitution. The judgement delivered by the Chief Justice, Timothy Sullivan, said that the Bill was an unwarranted intrusion into family rights.<sup>15</sup>

For the President, given his background, both as a champion of the Irish language (although he was, at best, lukewarm on the policy of compulsion) and as a member of the Protestant community, the issues in the School Attendance Bill were sensitive matters to deal with. Hyde, however, did not shirk his constitutional responsibilities and wisely chose to seek the opinion of the Supreme Court as to whether the Bill was repugnant to the Constitution. Though Hyde's action deserve praise, the major credit for ensuring that this illiberal legislation did not make it onto the Irish statute book belongs to the opposition senators, who successfully shone a spotlight on some of the Bill's more narrow-minded provisions. After the Bill had passed tamely through the *Dáil*, the vocal opposition of the senators to the Government's policy of compulsion in the teaching of Irish and how this might impact on parents, mostly from minority

---

<sup>11</sup> National Archives of Ireland, PRES 1/P3041.

<sup>12</sup> *Irish Independent*, 23/2/43.

<sup>13</sup> National Archives of Ireland, PRES 1/P3041.

<sup>14</sup> National Archives of Ireland, PRES 1/P3041.

<sup>15</sup> *Irish Reports, Supreme Court 1943*, (Dublin, 1943), p. 346.

religions was instrumental to the Bill ultimately being subjected to constitutional scrutiny and being struck down by the Courts.

In 1959, Seanad Éireann made another important, but largely unheralded intervention. This occurred on 19 March 1959 when the Seanad rejected the Third Amendment of the Constitution Bill, 1958, by 29 votes to 28.<sup>16</sup> The purpose of this Bill was to permit a referendum that would alter the system of voting in Dáil elections from PR to a first-past-the-post system. This proposal had the potential to fundamentally alter Irish parliamentary democracy or, at least, to weight the composition of future parliaments even more strongly in favour of Fianna Fáil. It was, however, Fianna Fáil's lack of a majority in the Seanad in 1959 which played a key role in ensuring that this did not come to pass. At this time, Fianna Fáil was dependent on Independents for a Seanad majority and the parliamentary arithmetic was further complicated by two Government supporters being absent because of an influenza epidemic.<sup>17</sup> On the fifth stage of the Third Amendment of the Constitution Bill, 1958, all of the independent senators chose to vote against the Bill causing its defeat.

The Seanad's decision to reject the referendum bill to abolish PR was seen as both a strong political protest and a set-back for the Government's proposals to alter the voting system. The Seanad's action, however, merely delayed the referendum. Under the terms of Article 23 of the Constitution, the Dáil passed the requisite resolution 'deeming' the Bill to have passed both Houses, on 13 May 1959.<sup>18</sup> The referendum to abolish proportional representation ultimately took place on, 17 June 1959, the same day that de Valera was elected as the third President of Ireland. Despite de Valera's immense prestige being in the scales, the Government's proposal to alter the voting system was narrowly rejected by the public. This was in no small part due to the Seanad's unprecedented action in delaying the referendum bill, which helped to focus public attention on the controversial measures that the Government was proposing.

---

<sup>16</sup> *Seanad Éireann*, 19/3/59.

<sup>17</sup> *Irish Times*, 20/3/59, *Irish Independent*, 20/3/59.

<sup>18</sup> John M. Kelly, *The Irish Constitution* (2<sup>nd</sup> edition), (Dublin, 1984), p. 109.

In July 1964, the Seanad rejected the Pawnbrokers Bill 1964. Subsequently, again, by means of Article 23, the Dáil passed a resolution 'deeming' the Bill to have passed both Houses.<sup>19</sup> In this instance, the Seanad's rejection of the Pawnbrokers Bill seems to have been as a result of robust parliamentary opposition rather than an issue of high political principle. The vote on the Bill took place at 10.30 p.m. and resulted in a one vote defeat for the Government's legislation.<sup>20</sup> This outcome was followed by an *Irish Independent* editorial highlighting the fact that 'half the senators were not even present'<sup>21</sup> for the vote and suspicions abounded that some senators had gone home or had adjourned to the bar because of the late hour. Intriguingly, the Seanad record shows that the Fine Gael senator, Michael Hayes, called the division on which the Bill was defeated in protest at what he viewed as the contemptuous attitude of the Minister for Justice, Charles Haughey. Hayes said:

This division has been caused by the Minister's very insolent action. I am voting against his insolent attitude. He has been inconvenienced, no end, here tonight and he has treated us with insolence, without a vestige of good manners. This, therefore, is a vote against the Minister for his attitude. It is disgraceful.<sup>22</sup>

In this referendum campaign, a Sinn Féin critic of the Seanad has sought to downplay the Seanad's stance in 1964 by suggesting that it had actually only voted against the Pawnbrokers Bill 'by accident.'<sup>23</sup> Senator Michael Hayes's contemporaneous comments, however, make it clear that the Seanad vote was a conscious effort by Fine Gael to hold what they saw as an arrogant minister to account.

Minister Bruton's claims that 'the Seanad has blocked only one piece of legislation since 1964'<sup>24</sup> fails to take account of the Seanad's key intervention in forcing the withdrawal of a controversial provision in the Electoral (Amendment) Bill, 2000. The background to this episode was that Fianna Fáil had been angered by a TG4 poll that had been

<sup>19</sup> John M. Kelly, *The Irish Constitution* (2<sup>nd</sup> edition), (Dublin, 1984), p. 131.

<sup>20</sup> *Seanad Éireann*, 1/7/64.

<sup>21</sup> *Irish Independent*, 3/7/64.

<sup>22</sup> *Seanad Éireann*, 1/7/64.

<sup>23</sup> 'TD and councillor both critical of each other's party stances over October 4 referendum,' *Anglo-Celt*, 24/9/13.

<sup>24</sup> *Irish Times*, 5/9/13.

broadcast three days before a by-election in Tipperary South in June 2001, believing that this poll had impacted unfairly on its candidate's chances. In July 2001, the Government brought forward a proposal, as part of the Electoral (Amendment) Bill, 2000, that would ban the publication of opinion polls within a week of an election.<sup>25</sup> This amendment, in its original form, had, in fact, first been proposed by Fine Gael and initially, at least, there was a cross-party consensus on the opinion poll ban.<sup>26</sup> An *Irish Times* political reporter noted on 12 July that 'the haste with which the legislation banning opinion polls was rushed through the Dáil was almost indecent.'<sup>27</sup> It was in the Seanad that real opposition to the opinion poll ban raised its head. This was spearheaded by the Independent senator, Shane Ross, who was supported by fellow Independents, Joe O'Toole and David Norris, and a number of Labour senators as cross-party consensus began to unravel.<sup>28</sup> Concerns were also expressed by journalists that politicians were seeking to curb the democratic right of the media to gather information for voters.<sup>29</sup> The Government was ultimately forced to withdraw the Bill when, after almost six hours of Seanad debate, Ross discovered unintended loopholes in the legislation that would allow a poll to be taken eight days prior to an election and published on polling day or allow a telephone poll to be carried out immediately after midnight on the morning of polling day with the results published the same day.<sup>30</sup> In the course of this referendum, Minister Bruton has dismissed 'the contention that the Upper House has a 'checks and balances' role in relation to legislation,'<sup>31</sup> but this argument is hugely undermined by the Seanad's impact in forcing the withdrawal of the legislative proposals to ban opinion polls in 2001.

Fine Gael is correct when it states that the Seanad has only very infrequently blocked legislation that has emanated from the Dáil, though this has happened a little more frequently than only once in every fifty years as Fine Gael has claimed. The main Government party's argument that the Seanad should be abolished because it only infrequently negatively impacts on Dáil legislation is disingenuous because the Seanad's

---

<sup>25</sup> *Irish Times*, 11/7/01.

<sup>26</sup> *Irish Times*, 12/7/01.

<sup>27</sup> *Irish Times*, 12/7/01.

<sup>28</sup> *Irish Times*, 11/7/01.

<sup>29</sup> *Irish Times*, 12/7/01.

<sup>30</sup> *Irish Times*, 11-12/7/01.

<sup>31</sup> *Irish Times*, 5/9/13.

essential purpose is to work in concert with the Dáil to amend or improve legislation. This was de Valera's intention in drafting the Constitution and he told the Dáil on 11 May 1937, in the debate on the Constitution, that

with regard to legislation generally, in the ordinary course we will take it that the Dáil by a majority will pass a measure. That measure will go to the Seanad. The Seanad will consider it and may amend it. Generally, I would take it, if the Second House does its duty as mainly a House of revision, because its powers of delay are very limited under this Constitution, we will get between the two Houses a certain amount of agreement, and the measures will pass in future as we have been able to get the ordinary measures in the past.<sup>32</sup>

There is some irony in Fine Gael's campaign argument that the Seanad deserves to be consigned to history for not flexing its muscles more often because this proposition stems from a flawed understanding of our constitutional history. The architects of Bunreacht na hÉireann clearly did not envisage a legislative log-jam caused by the Seanad regularly opposing the will of the Dáil. The Seanad was established to improve and scrutinize legislation, not to create conflict or to block legislation for the sake of it.

The powers that the Seanad has to delay legislation (it can only completely block legislation if the Dáil is convinced of the merits of the Seanad's case) are essentially those of a democratic reserve – only to be used in extraordinary circumstances. The arguments which have been deployed in this referendum by abolitionists that because this and others powers of the Seanad have been so sparingly used, they can be disposed of is not a sensible one. As Councillor Jim O'Callaghan, senior counsel and Fianna Fáil's Deputy Director of Elections, has argued in this regard: 'The fire escape in every apartment block is thankfully never used in the vast majority of cases, but would that seriously be deployed as an argument to prevent their construction?'<sup>33</sup>

---

<sup>32</sup> *Dáil Éireann*, 11/5/37.

<sup>33</sup> Press Statement by Jim O'Callaghan, <http://www.fiannafail.ie/news/entry/removal-of-article-27-most-disturbing-element-of-govts-power-grab-ff/>

Much of the work that the Seanad does is unglamorous, but it is essential. In an article in the *Irish Times* in 2002, former Fine Gael Taoiseach Garret FitzGerald, who was a strong supporter of the Seanad, pointed out the chamber's intrinsic value as well as the public relations deficit it has to contend. FitzGerald wrote:

Everybody who has been in politics knows that a whole range of Bills are much more thoroughly vetted and improved in the Seanad than in the Dáil.... Of course, none of this emerges in the media, for nowadays neither the broadcast media nor the print media bother to report the serious debates which represent the crucial contribution of our legislative system to our society. In addition to the authors of the "colour pieces" which often entertain and amuse us, there are also reporters who take a serious interest in the legislative performance of our politicians. These journalists however know that there is little point in attempting to report on the serious work of parliament for even our more serious papers are reluctant to give much space to the work of the Dáil or Seanad unless some kind of a row takes place.<sup>34</sup>

The Seanad's intensive work in vetting legislation may not make good copy for reporters, but people should not under-estimate the importance of this work, especially in a political climate where a government with the largest majority in the history of the State has shown a real fondness for curtailing parliamentary debate and foreshortening the analysis of legislation. As the *Irish Times* highlighted in June of this year, 52 of the 90 Bills passed by this current Dáil have been guillotined, meaning that in most cases they received only rudimentary parliamentary scrutiny.<sup>35</sup> It is a truism and there is no disputing that rushed legislation is often bad legislation. In the lifetime of this Oireachtas, Seanad Éireann has had to make over 529 amendments to Bills that passed through the current Dáil in a defective, incomplete or inaccurate manner. In the referendum campaign, those arguing in favour of abolition have sought to minimize the importance of this extraordinary figure, which highlights both the Dáil's dysfunctionality as well as the compelling need for a second chamber to vet and, where necessary, amend the defective legislative work of a Dáil dominated by politicians more

---

<sup>34</sup> *Irish Times*, 22/6/02.

<sup>35</sup> *Irish Times*, 10/6/13.

concerned with local issues than their role as national legislators. On RTE's Morning Ireland on 1 October, Kieran Mulvey, the chairman of One House, said most of the amendments made by the Seanad are 'of a technical, minor variety, there's nothing substantial in most of them,'<sup>36</sup> however, this claim ignores the fact that bills such as the National Vetting Bureau (Children and Vulnerable Adults) Bill and the Credit Union Bill were passed by the Dáil with defects and had to be corrected by the Seanad.<sup>37</sup> It is also worth noting that the Personal Insolvency Bill was significantly improved by the Seanad. The independent website: [www.insolvencyjournal.ie](http://www.insolvencyjournal.ie) noted that:

The Seanad have however addressed three very important matters which were widely held to be problems / uncertainties regarding the new insolvency processes under the following headings: 1. Pensions. 2. Excluded Debts. 3. Reasonable Living Expenses.<sup>38</sup>

In a pertinent letter to the *Irish Times*, which highlights the damage that the Seanad's abolition would inflict on the process by which laws are made in Ireland, Senator Feargal Quinn noted:

... the Government's own chief whip has admitted that its track-record in relation to Dáil reform is, in fact, "deplorable." This hardly inspires confidence; indeed, on the contrary, it highlights the stark reality that there is little credible basis to believe that the Dáil will suddenly stop making mistakes or show a new-found capacity for properly vetting legislation. Bad law affects everyone in our society. It damages trust in politics, it undermines economic renewal and it impacts negatively on the way we all lead our lives. Before voting to abolish the Seanad, I would urge people to ask themselves a couple of fundamental questions – who will monitor and, where necessary, amend the legislative work of the Dáil? And who will correct the next 529 mistakes?<sup>39</sup>

<sup>36</sup> RTE, *Morning Ireland*, 1/10/13.

<sup>37</sup> 'Stop the Power Grab,' Seanad Information Booklet published by Democracy Matters, (September 2013).

<sup>38</sup> 'Stop the Power Grab,' Seanad Information Booklet published by Democracy Matters, (September 2013).

<sup>39</sup> *Irish Times*, 12/6/13.

Not surprisingly, the cut and thrust of the campaign has focused more extensively not on the complexities of how legislation is arrived at, but rather on populist arguments about savings that may accrue from abolishing the Seanad. Fine Gael's claim, prominently displayed in their referendum posters, that abolishing the Seanad will save €20 million has been criticized by both leading members of their own party and their government partners.<sup>40</sup> This claim has, however, been most fatally undermined by a letter from the Oireachtas Commission's Finance Officer to the Referendum Commission, which states that 'it is not possible to estimate the amount of actual net savings that would accrue if Seanad Éireann was abolished.'<sup>41</sup> It should also be noted that abolition is unlikely to save the taxpayer one cent over this Government's term. A vote in favour of this referendum actually means that Seanad abolition will only take effect from the next General Election, which is not due until February 2016. This has not stopped Fine Gael TDs telling people in the run up to the Budget that if they vote 'Yes' there will be more money available for public services like schools, hospital and the needs of people with disabilities.<sup>42</sup> The reality, however, is that as a result of the Government's abolition proposal there will be absolutely zero savings for three years, but €14 million of taxpayers' money is currently being spent, at a time of austerity, on an unnecessary referendum that will deliver only questionable saving in 2016, by which time the Government tell us that economic recovery will be well underway!

Fine Gael's other high-profile poster claim suggests that 'abolishing the Seanad will bring us in line with progressive European countries like Denmark, Sweden and Finland – all of which survive perfectly well with one house of parliament and far fewer politicians than Ireland.'<sup>43</sup> Once again, this claim does not withstand basic scrutiny. Put simply, Fine Gael's comparison does not compare like with like. The overall structure of the political system in the Nordic countries is very different from ours. In these

<sup>40</sup> *Irish Times*, 12/9/13; <http://www.thejournal.ie/ranelagh-seanad-debate-quinn-mcdowell-1090329-Sep2013/>; <http://www.clarechampion.ie/index.php/e20m-seanad-savings-a-lie-mulcahy/>

<sup>41</sup> *Irish Times*, 21/9/13.

<sup>42</sup> *Meath Chronicle*, 15/7/13; *Irish Times*, 16/7/13;

<sup>43</sup> Statement by Richard Bruton, 'Fine Gael poster campaign gives the people a clear choice on the Seanad referendum,' <http://www.finegael.ie/latest-news/2013/fine-gael-poster-campaign/>

countries local government is at the heart of the political system. Ireland has weak local government, hence our need for a bicameral parliament. In contrast, the Nordic countries have devolved far more political responsibility to local and regional level, removing the need for a larger national legislature.<sup>44</sup> In Sweden, for example, the national parliament, the Riksdag, which is unicameral, still has 349 public representatives, Sweden's 20 county council have 3,500 public representatives and its 290 municipalities have approximately 46,000 public representatives.<sup>45</sup> In Ireland, the Oireachtas currently has 226 public representatives and, following recent government reforms, Ireland will have 31 local authorities and 949 councillors. Ireland did have 114 local authorities and 1,627 councillors (city, county and town), but Town Councils are being scrapped.<sup>46</sup> Despite Fine Gael's claims to the contrary, Ireland currently has far, far fewer politicians than Sweden.

Possibly the most bizarre intervention in the entire debate on the future of the Seanad involves another international comparison. One prominent Yes campaigner has described the abolition of the Hungary's second chamber in 1960 as 'a positive political decision.'<sup>47</sup> It should, however, be noted that Hungary back then was in the firm grip of the Communist dictator, Janos Kadar. As Patrick Brogan, a leading historian of Eastern Europe has noted, 'by 1960, Kadar and his Soviet masters had reduced the country to abject subservience and terror and obedience.'<sup>48</sup> Far from making positive political decisions, Kadar subjected the Hungarian people to a generation of repression and tyranny. The actions of his regime should not be cited in any debate on democratic political reform in Ireland.

It also has to be acknowledged that some 'No' campaigners have, at times, let their enthusiasm for saving the Seanad influence their better judgment. In June, Senator

---

<sup>44</sup> 'Stop the Power Grab,' Seanad Information Booklet published by Democracy Matters, (September 2013).

<sup>45</sup> Swedish Association of Local Authorities and Regions, 'Municipalities, county councils and regions,' [http://english.skl.se/municipalities\\_county\\_councils\\_and\\_regions](http://english.skl.se/municipalities_county_councils_and_regions)

<sup>46</sup> 'Stop the Power Grab,' Seanad Information Booklet published by Democracy Matters, (September 2013).

<sup>47</sup> Colm McCarthy, 'Seanad an indefensible institution that should rightly be abolished,' *Sunday Independent*, 29/9/13.

<sup>48</sup> Patrick Brogan, *Eastern Europe 1939-1989: The Fifty Years War*, (London, 1990), p.137.

David Norris said; ‘the first thing Mr. Mugabe did in Zimbabwe was abolish the country’s senate. Perhaps the Taoiseach sees himself not only in the mould of a little Napoleon but also in another guise.’<sup>49</sup> The Taoiseach did not respond to this criticism, but he did hit back hard when the Fianna Fáil leader, Micheál Martin, unwisely seemed to suggest that he was a Mussolini style-dictator who has no time for people opposed to his views.<sup>50</sup> The Taoiseach’s credentials as a democrat should not be called into question, but he has not helped his own campaign by refusing to debate. In an incisive intervention, the Independent TD, Stephen Donnelly said he viewed Mr Kenny’s refusal to debate as ‘deeply, deeply suspicious’ and he asked voters to

imagine David Cameron said I am going to abolish the House of Lords, but I am not willing to debate it on television. Imagine Barack Obama saying I am going to ask the American people to abolish the US Senate , but I am unwilling to debate that issue.<sup>51</sup>

Fine Gael has argued that ‘there is no precedent for a Taoiseach being engaged in a referendum debate,’<sup>52</sup> but it is hard to accept that its response would have been as tepid if, for example, Charles Haughey had sought to abolish a house of our national parliament, but declined to debate it. The Taoiseach’s refusal to actually debate a proposal he once described as a personal ‘leader’s initiative’<sup>53</sup> – and which will significantly involve over 40 amendments to the Constitution – is likely to weigh heavily on voter’s minds when they cast their ballot.

In an earlier article in this series on History Hub, Dr Eoin O’Malley, though arguing in favour of a ‘Yes’ vote, admitted that ‘the abolitionists (in the form of the government) have failed to make a truly convincing argument to date.’<sup>54</sup> As the campaign draws to a close, this remains the case. The ‘Yes’ campaign has been one of clever sound-bites, but

<sup>49</sup> *Seanad Éireann*, 27/6/13.

<sup>50</sup> *Irish Independent*, 18/9/13.

<sup>51</sup> TV3, *Tonight with Vincent Browne*, 18/9/13,

[http://www.youtube.com/watch?v=j7M\\_hbUYxyE](http://www.youtube.com/watch?v=j7M_hbUYxyE)

<sup>52</sup> <http://www.thejournal.ie/seanad-referendum-prime-time-debate-1108553-Oct2013/>

<sup>53</sup> *Irish Examiner*, 20/10/09.

<sup>54</sup> Eoin O’Malley, ‘*Seanad Abolition is no threat to our democracy – more an opportunity*,’ (Historyhub.ie, September 2013).

very little substance. In the midst of the worst recession since 1929, it would be unwise for the Irish people to willingly walk into a constitutional no-man's land.

-----