Submission to Working Group on Seanad Reform Consultation Process

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Seanad Éireann suffers from two significant problems that any reform of the chamber should at least acknowledge and attempt to deal with. One problem is that it is undemocratic, and the other is that it offers few alternative viewpoints to those already available in Dáil Éireann.

As I see it, it would be quite difficult to fix the first *and* fix the second. This is because making its elections more democratic will mean it uses the same electorate as for Dáil elections, unless there was a proposal to extend voting to Irish nationals living outside the jurisdiction, which would have to include Northern Ireland[1]. These different electorates would no doubt offer different voices in the Seanad. The same electorate is likely to choose similar parties and types of candidates (though there is a possibility that with a national list system parties could bring in other types of people. These however are likely to be *more* loyal to parties than those elected in PR-STV elections). As such it might be best to fix one or other.

The reason to fix the second issue – alternative voices – gets to the heart of bicameralism. 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 the retentionists used in the referendum on the Seanad. 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 cleavage divisions within society.

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[1] Under the current constitutional arrangement it would not be obviously possible to limit emigrant votes to a single constituency. Perhaps the constitution should be changed to allow a Northern Ireland constituency and a diaspora constituency.

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's the point of Seanad Éireann as the government majority in the Dáil is nearly always reflected by a government majority in the Seanad. So as 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 legislate as it saw fit. 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. But if one were to increase its democratic legitimacy, this might lead to calls to increase its power, which might lead to difficulties.

A reform should aim to increase debate but not restrain the democratic lower house from achieving its aims. That can be achieved by putting alternative voices in the Seanad. Probably the more (though not exclusively) interesting alternative voices in the Seanad have come via Taoiseach's nominees and university seats.

The type of people who populate a reformed Seanad should not be those who are on the ladder to the Dáil, or party apparatchiks. They should be significant people with alternative experiences and expertise who cannot be easily controlled by the government of the day. The UK House of Lords might be regarded as a model second chamber which is now widely seen as a source of good ideas and sage advice, not beholden to government. There are many ways to achieve this, but none will make the Seanad more democratic, and it is difficult to see how such a chamber could be achieved without constitutional change.