

**TEXT OF AN ADDRESS
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REFORMING AND REBUILDING OUR STATE

LOYALTY TO AND RESPECT FOR OUR STATE

This year, 2012, is the centenary of the first year of a decade of historical events which gave birth to a free, independent and sovereign Irish State.

A hundred years ago, the Home Rule crisis was producing convulsions not merely on this island but also in the political system in Great Britain.

The Ulster Unionists set in train the series of events that was to include the Ulster Covenant, the establishment of a provisional government, and the establishment of the Ulster Volunteers, a direct threat to the authority of the Westminster government.

These events, we know, set in train the foundation of the Irish Volunteers, to the Easter Rising, to the War of Independence and to the establishment of the Irish Free State.

In the 15 years following the Treaty, a tragic civil war provided the backdrop of the development of the sovereign independent democratic Irish Republic that we have today, and for our Constitution.

LOYALTY TO THE STATE

While everybody knows that their rights as citizens of that State are enshrined and protected in a written constitution which cannot be amended save by the decision of the people themselves, few enough people ever pay attention to Article 9.3 of the Constitution, a short paragraph which simply states:

“Fidelity to the nation and loyalty to the State are fundamental political duties of all citizens.”

This means that our fundamental political duty as citizens is to owe our allegiance to the Irish Nation and to give our loyalty to the free independent Irish State that our grandfathers and grandmothers fought for, shaped and built over two decades from 1916 to 1937.

“Loyalty to the State” is not often spoken of in current political discourse.

It means loyalty to the Constitution, the Oireachtas – President, Dáil and Seanad – loyalty to the courts and the rule of law; loyalty to the laws that we have chosen through our institutions to abide by.

While people clamour for the recognition and enforcement of their constitutional and legal rights, there is a remarkable absence of public commentary about fulfilling our correlative duty of loyalty to the State - that citizens uphold the law and pay their taxes, not campaigning to boycott taxes or seeking to control our media while paying taxes to foreign states in preference to the Irish State.

But there is also the question of loyalty to the State's institutions – those who hold constitutional office such as the President, the members of Dáil Éireann and Seanad Éireann are entitled to receive our loyalty in that capacity precisely because we collectively have chosen them.

I am not speaking here of blind loyalty or unquestioning submission or of obsequious deference. Our Constitution is based on the sovereignty of the People. The People choose their representatives through the ballot box. The Constitution itself is the expression of the will of the People and can only be changed by the People. It acknowledges that the People are, in the last analysis, the decision makers in the Irish State or as Article 6 of the Constitution puts it the People are entitled *“to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good”*.

We should, accordingly, remind ourselves that those whom we elect as *“rulers”* are chosen by us and are trustees for us of our individual mandates as citizens expressed through the ballot box.

OPTING OUT AND MEDIA NEGATIVITY

At the last General Election there was one non-event that we should ponder. A group of hugely influential commentators and public figures met and examined the possibility that they would seek elective office. They ultimately decided not to do so, as was their privilege.

But their decision not to form a new party and not to contest the election carried a deeper meaning. Those to whom they yielded up the political battlefield, and those who were elected are collectively entitled, by the fact of their election, to the loyalty of the citizens – those who had their chance and opted not to contest the election are not now to be regarded as unsullied political virgins, uncontaminated by the reality of day to day politics. They should remember that by opting out of politics, they applied for a lower position in the hierarchy of constitutional loyalty and respect.

In the tsunami of public negativity and cynicism about elected politicians, there is an ever increasing likelihood that the good will be deterred from participating in politics, and that

the political stage will be abandoned to be occupied by skilled practitioners in the art of impunity.

In short, we should be conscious that as the people who choose our politicians and as the people who owe a fundamental duty of loyalty to our State, we do not transform anger and frustration into a collective disloyalty to our democracy – dressed up as righteous indignation. We have a Republic. It is **our** Republic. We owe that Republic our loyalty. We, and we alone, bear the ultimate responsibility for the wellbeing of that Republic. We do not have the option, as citizens, of turning our backs on our State.

THE SEANAD

In today's newspapers, we read a letter from six notable and I believe patriotic public figures who have individually served the Irish Nation and our State with fidelity and loyalty.

Maurice Hayes, Mary Henry, John A. Murphy, Mary O'Rourke, Bríd Rogers and T. K. Whittaker have, I think, in diverse and individually distinct ways, "*done this State some service*".

They call on their fellow citizens to stand back from the proposed referendum to abolish Seanad Éireann and to reflect on whether the proposal is wise.

They challenge us to consider whether it would not be preferable to grasp at long last the nettle of parliamentary reform to make the Seanad what it was intended to be – a valuable counterpoint in the democratic process to Dáil Éireann.

I believe that their intervention is valuable and deeply important for the health of Irish democracy. Their loyalty to the State is not some wish to preserve a dysfunctional Seanad for old times sake. They are challenging us, their fellow citizens, to strengthen our democracy and our State by radically reforming Seanad Éireann so as to enhance our parliamentary democracy itself.

CONSTITUTIONAL ISSUE SURFING

In these matters, we must be extremely cautious of those who engage in "*issue-surfing*" on constitutional reform.

Election promises to reduce the number of TDs by twenty have been quietly shelved to accommodate a reduction of 8 TDs. Will that make a blind bit of difference to this Dáil or the next? I very much doubt it.

From the same stable came the proposal to hold a referendum to abolish the Seanad.

To amend the Constitution to abolish the Seanad would require no less than 75 changes to the text of the Constitution. It would leave the current text of the Constitution in

tatters. Entire articles would be dropped and others would have to be extensively rewritten. As one leading constitutional lawyer and now a High Court Judge has remarked:

“There are a number of references to the Seanad that are all interlocked. So, to use a dental analogy, to abolish the Seanad would not be a constitutional filling but more a full root canal treatment with a few extractions.”

Let us be under no illusion. Simple abolition of the Seanad would leave the 1937 Constitution a gap-toothed wreck. Entirely new provisions would be needed in many areas; whole articles would become redundant.

I have brought here a list of the 75 parts of the Constitution that would require amendment.

THE DÁIL’S DECISION TO CRIPPLE THE SEANAD

When Dáil Éireann imposed by law on Seanad Éireann the current system of election by the Oireachtas and by County Councils, it betrayed the Constitution in pursuit of its own desire to dominate the Oireachtas.

We can now decide, with absolutely no Constitutional amendment at all, to introduce a different electoral law that, to coin a phrase, would *“open up the Seanad rather than close it down”*.

THE OPPORTUNITY TO REFORM

By a Seanad Reform Act, we could allow all our citizens a say by giving them the right to opt to register to vote on each of the five panels. That right could also be given to Irish citizens in Northern Ireland or overseas – as is the case with the University senators already.

We could easily, by passing a Seanad Reform Bill, hugely expand the electorate for each panel and create an elected Seanad which was independent of the dead hand of domination by the party politics of Dáil Éireann. We could provide for a real scrutiny of eligibility by reason of public service and public standing to stand as candidates for the panels.

There is absolutely no reason why Oireachtas members and County Councillors alone should decide who should sit in the Seanad. The problems with the Seanad so far result solely from the decision of Dáil Éireann to control the membership of the Seanad. It is not a problem with the Seanad itself or with the Constitution.

Nor is there any reason why such a wider electorate for the Seanad should not *“kick in”* from the date of the next general election. If such a Seanad Reform Act comes into law

during the life of this Dáil, the new reformed Seanad election system will give us a new, reformed Seanad at exactly the same time as the next “*slimmed down*” Dáil is elected.

So whatever is wrong with the current Seanad does not require constitutional amendment to remedy it. To suggest that the Seanad cannot be reformed without a referendum is simply untrue.

BOGUS ARGUMENTS ON COST

Another great untruth is the suggestion that the Seanad costs €25 million per annum and, as one Government member claimed, that abolition would save us €125 in the following five years.

This lie was cooked up in the following way. The entire cost of the Oireachtas was notionally computed and assigned pro rata to 166 TDs and to 60 senators. On that basis, it was claimed that huge savings would result from abolishing the Seanad.

The truth is very, very different. The real gross annual cost of the Seanad is far, far less. The head of the Oireachtas Commission acknowledges that the figure of €25 million was completely exaggerated when it was challenged at an Oireachtas session on 12th January of this year. The Clerk of the Dáil, Kieran Coughlan stated that the gross direct costs of the Seanad were not €25 million but were €9.2 million at worst.

Even then, the gross cost to the State of the Seanad of €9.2 million exceeds the true net cost (i.e. the cost before all taxes and PRSI cost of the Seanad), which is probably closer to €5 million.

If the true cost of €5 million were a reason to abolish the Seanad, a reduction in the annual allowance to Senators from €60,000 to say €15,000 or €20,000 would reduce net cost to the tax payer to a smaller sum of much less than €5 million, one which would compare favourably with the cost payment made to political parties and with the cost payments made to special advisors.

In fact, the cost of a single issue referendum to abolish the Seanad with reduced allowances would probably exceed the money “*saved*” on it in the year the referendum was held.

In short, the Government’s “*cost*” argument for the abolition of the Seanad is grossly dishonest when it claims a saving of €25 million per year or €125m over five years. The real saving to the Exchequer would be a small fraction of that.

If money is the problem, I believe that many worthy people would be honoured to be elected to the Seanad with a small payment, given that they would come to the Seanad from other walks of life and given that it was never intended to be a full time occupation.

CONSEQUENCES

So what would we lose if we abolish the Seanad? A Constitution without the Seanad would have:

- No voices other than TDs elected by PR in our parliament. This means no voice in future for Senators such as W.B. Yeats, Douglas Hyde, Mary Robinson, David Norris, and Garret FitzGerald and John Kelly in their younger days
- No chance of appointing ministers who are not TDs
- No protection against removal by a Dáil majority of the President and the Judges
- No chance for non-TD experts to serve on Oireachtas Committees or to be members of our parliament
- No protection against the further surrender of sovereign powers to the EU by a Dáil majority. Under Article 29 the Seanad has a veto on such steps
- No chance for Irish citizens in Northern Ireland or abroad to have any chance of voting for or being heard in our Parliament
- Total domination of our politics by the rigid system of party whips
- No chance again of important private members Bills such as the very important Seanad Bills on contraception, gay rights and civil partnership
- No chance of any “*check and balance*” to Dáil Éireann which we would have if we amended the electoral law of the Seanad to make it more independent
- No real prospect of developing any EU scrutiny dimension to our parliament as is required by the Lisbon Treaty. TDs have other priorities and should be relied on to spend their time on EU matters
- No alternative voices in our parliament system
- No improvement in the quality of our parliamentary democracy
- Total future dominance for “*messenger boy*” multi-seat local issue driven politics under the rigid control of party whips.

The more you think about amending our Constitution to abolish the Seanad the worse an idea it seems.

Secretly most TDs and Senators believe that the abolition proposal is wrong. A clear majority of senators now oppose the change. Fianna Fáil and Sinn Féin are now opposed as well.

The Government has twice postponed the holding of a referendum and many people in the Government parties now privately acknowledge that a referendum to abolish the Seanad while leaving the Dáil un-reformed would quite likely be soundly defeated.

I am confident that civil society will show its loyalty to the Constitution by rejecting the gimmicky proposal to abolish the Seanad without making any other major reform to the Constitution or the electoral system for TDs.

My confidence that an abolition referendum would be defeated stems from a clear view that abolition would only serve to cement into position the present system of Dáil party politics and that a single chamber parliament with the present Dáil in place would deform rather than reform our democracy.

I believe that a Seanad Reform Bill will probably be considered and hopefully passed by Seanad Éireann in the near future and that this will then put it up to the Government to decide whether to defeat such a Reform Bill in the Dáil and be punished by the People if it persists with an abolition referendum.

It won't just be a matter of contending with the I.C.C.L. and a few former Attorneys General in a referendum to abolish the Seanad.

On the contrary, I can already see clear signs of a "*Reform the Seanad*" initiative gathering momentum over the coming months.

I agree with T.K. Whittaker and his fellow signatories today that we need a good debate on this issue. I also agree with them that we need a real choice now between the gimmick of abolition and a really valuable initiative to improve the Oireachtas by reforming the Seanad.

The process of consultation and devising such a reform cannot be left solely to the people who brought you the present disastrous electoral laws for the Seanad that have caused so much damage to its standing in the eyes of the people.

Those who believe in reforming the Seanad should now take up the challenge laid down by the distinguished former Senators in today's papers and devise a reform to be implemented in this coming year, well before the next election.

Our guiding principle should be:

"Don't Close the Seanad – Open it!"

I want to end by emphasising one thing. Those of us who are loyal to the State should realise that we are privileged to have a fundamental law – a Constitution - which is ours alone to change.

The Constitution is not a test bench for gimmicky experiments. It is difficult to change because it is designed as a permanent guarantee of our rights.

Our Constitution is not a bill-board for poseurs and shape-throwers.

For instance, changing the term of the Presidency to five years is in my view a gimmick. The President should not be expected to have only one request for a dissolution of Dáil Éireann in his or her term.

The idea of selecting voters by a polling company on a random basis to become the ballast of a constitutional convention is another gimmick.

We have enough problems of a serious kind to deal with without having to deal with empty gesture, gimmicky proposals to reform the Constitution. The Constitution did not cause our current crisis.

ENDS