11 The Irish Senate, 1920–1936

John Dorney

Introduction

In the years 1920–1921, Ireland had its first (short-lived) Senate under Home Rule (1914–1920). This chamber was the immediate predecessor of the independent Irish Free State Senate. The Senate of the Irish Free State lasted just fourteen years, from 1922 to 1936. It was established as the upper house of the Parliament of the newly founded Irish Free State after the enactment of the Anglo-Irish Treaty in 1922. It was intended to represent southern Ireland's Protestant minority, especially its landed, business and intellectual elite, in a country where the lower house would inevitably be dominated by Catholic Irish nationalists. A secondary function was to provide expert guidance for the Parliament's lower house, the *Dáil*, in enacting legislation, which it could delay or amend. In 1933 it was abolished by the nationalist *Fianna Fáil* (the 'Soldiers of Destiny') government under Eamon de Valera (1932–1948) as a result of its continual blocking of that government's legislation. The Senate deployed its delaying powers against its own abolition but gave itself only a stay of execution of two and half years, until 1936, when it ceased to exist.

This chapter examines the aims of the Irish Senates in the tumultuous period from 1920 to 1936, a period that encompassed the Irish achievement of independence, civil war and the painful integration of the losing faction of the war into democratic politics. The chapter will focus on two aspects of these Senates and the discussions they generated. First, these Senates were supposed to be institutions that would safeguard special interests, especially those of the Protestant minority and of women. Second, it was envisaged that they would look after the quality and legality of government proposals. This chapter on the Irish interbellum Senates will be subdivided into six periods (to some extent overlapping) and the discussions therein – about its functioning and the desirability of its maintenance. In this way, it explores how these Senates functioned in practice and why the Irish Free State Senate was finally abolished.

It will argue that the decline of the Irish Senate was due in part to the ascendancy of the idea of popular sovereignty, vested in a lower house of Parliament and elected by universal suffrage. In light of this, the role of upper houses came to be seen as an illegitimate block on the powers of elected government or an

unnecessary duplication of the lower house. For instance, in Britain, after the hereditary House of Lords rejected the Liberals' left-of-centre 'People's Budget' of 1909, the power of the Lords to oppose a 'money bill' was abolished and its veto over other legislation was reduced to a delay of two years (cf. Slapper & David 2009, p. 69). The Irish Free State Senate never had a power of veto, but nevertheless it eventually incurred the ire of the directly elected government, which felt the Senate was infringing on its powers. While on numerous occasions the Senate did provide useful aid to an inexperienced lower house of Parliament in drafting legislation, ultimately it saw its powers eroded and eventually abolished by parliamentarians who viewed political legitimacy as vested solely in the popularly elected lower house, the Dáil. The Senate's ostensible purpose as a seat of representation for Southern Ireland's Protestant minority was not easy to achieve. On the one occasion in which senators were directly elected by the public, in 1925, most Protestant 'Anglo-Irish' senators lost their seats, and it was only by the reintroduction of nomination and indirect election in 1928 that some of them were reinstated. Antagonism towards the Free State's Senate was particularly pronounced on the part of Irish Republicans, who viewed the upper house as a pro-British brake on progress towards full Irish independence. For this reason, senators came under physical attack during the Irish Civil War of 1922–1923, being specifically targeted by Republican paramilitaries in the Irish Republican Army (IRA). Once the political representatives of the Republicans opposed to the Anglo-Irish Treaty of 1922 (the party of Fianna Fáil) were voted into government in 1932, the Senate became a battleground in which senators attempted to block Fianna Fáil's agenda.

The 'Home Rule Senate', 1920–1921

Home Rule, or limited self-governance for Ireland within the United Kingdom, had first come on the agenda of British politics in the 1880s, when the Liberal government of William Gladstone tried but failed to pass it into law in 1886 – the Bill being voted down in the House of Commons by MPs who were concerned that it would prompt the breakup of the United Kingdom and possibly even of the British Empire. A second Home Rule Bill was passed in the House of Commons in 1893 but voted down in the Conservative and Unionist-dominated House of Lords; therefore, it did not become law. An upper chamber as part of an Irish Home Rule Parliament was included in the first and the second Home Rule Bills. The idea of the Senate was to ensure representation for Irish Protestants, many of whom, particularly in the northern province of Ulster, were Unionists – that is, for union with Britain and against Irish self-government – in a country that was approximately 70 per cent Catholic.

A third Home Rule Bill was drafted in 1912 as part of an electoral deal between the Liberal government of Herbert Asquith and Irish nationalists in the British Parliament at Westminster in return for the Irish Party's support for the Liberal government. By this time, the House of Commons had curtailed the powers of the House of Lords to a mere two-year delay on bills received from the House

of Commons. As a result, the first Home Rule Bill actually passed into law in August 1914. The legislation was, however, never enacted. In the face of Ulster Unionist resistance, it was suspended for the duration of the First World War, and ultimately Home Rule never became a reality. The 1912 Home Rule Bill envisaged an important role for a senate in an autonomous Ireland. Under this legislation, Ireland would have had two houses of Parliament: a House of Commons, with 164 elected members, and a Senate, with forty members, nominated by the Imperial Parliament at Westminster and intended to represent the interests of the Protestant minority. The Senate would have the right to hold up legislation and appeal it to the Imperial Parliament but not to ultimately block it. Given that the Westminster Parliament could overturn any law passed in Dublin – indeed, according to Prime Minister Herbert Asquith, ‘the over-riding force of the Imperial Legislation can at any time nullify, amend or alter any act of the Irish Parliament’ – the Senate’s power would have been significant (Jackson 2000). The last attempt to enact Home Rule in Ireland came in 1920, when the Government of Ireland Act created parliaments in a partitioned Ireland, one for Northern Ireland, based in Belfast, and one for Southern Ireland, based in Dublin. The Act proposed a Senate in both Northern Ireland and Southern Ireland. The Northern Senate lasted as long as the original Northern Ireland administration, that is until direct British rule was reintroduced in 1972. The Southern Senate was instead a short-lived affair, meeting only once in 1921 in the midst of the guerrilla war now termed the Irish War of Independence. It was, however, important to the eventual evolution of the Irish Senate, as it heavily influenced the first working Irish *Seanad* of 1922–1934.

The Southern Ireland Home Rule Senate was to have sixty-four members. Three were co-opted automatically by virtue of their office: the lord chancellor and the lord mayors of Dublin and Cork. Seventeen were nominated by the lord lieutenant (the British Crown’s representative in Ireland) to represent ‘commerce, labour and the learned professions’. Four were to be elected by the Catholic bishops and two by the Protestant Church of Ireland. Another sixteen were peers, or members of the British House of Lords, who would hold their seats by virtue of their hereditary titles. Eight were nominated by British privy councillors and fourteen by Irish county councillors. In short, out of sixty-four senators, only twenty would be elected in Ireland and none by a popular vote (Coakley & Gallagher 1999). This Senate had a short life. It was ignored by Sinn Féin, the separatist party now ascendant in Irish politics, which boycotted the Southern Ireland Parliament. Only five senators turned up at the opening of the Parliament in June 1921, and it never met again. The Southern Ireland Senate was formally abolished with the signing of the Anglo-Irish Treaty in December 1921. There was, however, a strong overlap between the Home Rule Senate and the Free State Senate, or *Seanad*, that was created the following year. Moreover, because of its purpose under the 1920 Act as representative of Southern unionists, the Senate carried with it the baggage of a pro-British institution that was an impediment to the fully independent Irish Republic that many aspired to.

The making of the Free State Seanad, 1922

The Anglo-Irish Treaty signed on 6 December 1921 formally ended the war between the British government and the Irish separatists of Sinn Féin and the Irish Republican Army (IRA). The British did not concede a fully independent, all-Ireland Republic but rather an Irish Free State, on the same territory as Southern Ireland – that is, twenty-six of Ireland's thirty-two counties – which was to be a self-governing dominion of the British Commonwealth. The Treaty made no mention of the form of government the newly created Irish Free State would take. This decision was left to the Irish authorities, who were to draw up a constitution for the Free State that would in turn require approval by the British Parliament. Michael Collins and Arthur Griffith, heads of the Provisional Government set up to oversee the transition from British rule to the Free State, formed a committee in early 1922 to draft a new constitution. During the Treaty negotiations, Arthur Griffith had assured representatives of Southern Irish unionists that their interests would be safeguarded by the use of proportional representation in voting: a mechanism designed to ensure that minorities were fairly represented and that Southern unionists received 'due representation' in the Seanad (Byrne 2015).

It was not until June of 1922 that the first Irish constitution was published by Free State authorities, and it was October of that year when it was brought into force. Like the Home Rule bills that had preceded it, the 1922 constitution envisaged a two-house Parliament. The Dáil, directly elected by all citizens over 21 years of age, would enact legislation, while a senate or Seanad, sixty strong, would represent various social groups. The establishment of a senate and a proportional representation system of voting for the Dáil were two major safeguards sought by Unionists against the domination of the Protestant minority by the Catholic majority. The Unionists had a significant influence on determining the composition of the Seanad, but not all of their demands were agreed to. For instance, they sought a property qualification for voting for the Seanad which was rejected. As a compromise, the vote was restricted to those over 30 years of age (Manning s.d.). According to the constitution, 'citizens who shall be proposed on the grounds that they have done honour to the Nation by reason of useful public service or that, because of special qualifications or attainments, they represent important aspects of the Nation's life' – and oversee the legislation passed in the lower house. Unlike the Home Rule Senate, the first Seanad was envisaged as a rather democratic body. The constitution stated,

All citizens of the Irish Free State (*Saorstát Éireann*) without distinction of sex who have reached the age of thirty years and who comply with the provisions of the prevailing electoral laws shall have the right to vote for members of Seanad Éireann.

(Irish Free State 1922)

The candidates would first be selected by the Dáil and the existing Seanad members. Senators would serve terms of twelve years, and a quarter of the Seanad's members would face re-election every three years.

The Senate's powers were principally to delay and amend legislation. Dermot O'Sullivan, the Senate's clerk, remarked that 'the powers of the new Senate were severely restricted as compared with Second Chambers elsewhere' (O'Sullivan 1940). It had no absolute veto but could send legislation back to the Dáil if it did not agree with the proposal, and in the event the Dáil continued to pass it, it could suspend that legislation for 277 days, or nine months, before it was presented to the governor-general for the formality of the king's assent and then passed into law. In practice, this could mean a delay of up to eighteen months, as the Senate could invoke its delaying powers twice if the Dáil presented the same legislation the Senate had opposed on the first occasion. The exception to this was a 'money bill' – anything connected with taxation or public finances – which it could only hold up for twenty-one days. The Seanad had the right to initiate legislation which, if passed in the Senate, would come before the Dáil and, if passed there, would become law (Irish Free State 1922). There was, moreover, a provision whereby the Senate could request a joint sitting of both houses to discuss a money bill (O'Sullivan 1940). A further power the Senate possessed was, with a three-fifths majority in the upper house, to force a popular referendum on a law passed in the Dáil which had been rejected in the Senate. There was also a provision for senators to be nominated as 'external ministers' in the government (O'Sullivan 1940, pp. 87–89). Southern Unionists had wanted a minimum delaying power for the Senate of one year, while the provisional government, made up of pro-Treaty nationalists, had wanted a maximum delaying power of one year, so the nine-month delay the Seanad could impose was a compromise (O'Sullivan 1940). The Seanad was due to meet for the first time in December 1922. However, a furious division had arisen in the Irish Republican movement over the Anglo-Irish Treaty by this time, which some considered to betray Republican principles. In late June 1922, the split over the Treaty led to civil war between those who accepted the Free State and those who insisted on rejecting the Treaty in favour of an Irish Republic. Against this background, the Senate, associated strongly with the pro-Treaty position and its acceptance of membership of the British Commonwealth, became a target for violent attacks by the Republican faction.

The Free State Seanad in civil war, 1922–1923

While the constitution envisaged a directly elected senate, this was not possible in late 1922, with civil war raging across much of the country. Instead, the first Seanad was half nominated by the president of the Dáil, William T. Cosgrave (effectively the prime minister), while the other half was elected by members of the Dáil (Townshend 1998). Cahir Davitt, the Free State's attorney general, recalled:

On December 6th [1922] the Irish Free State had come into being when its constitution was enacted by the Dáil sitting as a Constituent Assembly. The

first Senate came into existence [...] by being partly elected and partly nominated as provided by the constitution and held its first meeting on December 9th under the Chairmanship of Lord Glenavy.

(Davitt s.d.)

It was agreed that the senators would be nominated ‘in a manner calculated to represent minorities or interests not adequately represented in the Dail’ (O’Sullivan 1940). The Free State authorities depended on military and financial support from the British to get through the crisis of the Irish Civil War, and they knew that as a result they would have to reach out to members of the old pro-British elite in Ireland in the selection of senators. As Minister for Home Affairs Kevin O’Higgins put it:

it comes well from us [the Catholic and nationalist majority] to make generous adjustment to show that these people were well regarded, not as alien enemies, not as planters [colonists] but that we regard them as part and parcel of this nation and that we wish them to take their share of its responsibilities.

(Byrne 2015)

As a result of the need to placate Southern Unionists, the Senate, in fact, quite closely resembled the Home Rule Senate of 1920; former Unionists and holders of British hereditary titles were notably represented. The *Cathaoirleach* or chairman of the new Senate was, for instance, James Campbell, the Baron of Glenavy, a former Unionist member of Parliament for Dublin and lord chief justice for Ireland under British rule. He had participated in the Ulster resistance to Home Rule in 1912.

Anti-Treaty Republican propaganda in 1922 called the Senate ‘England’s faithful garrison in Ireland’ (Foster 2015). One anti-Treaty writer catalogued Cosgrave’s thirty nominees to the Senate as ‘24 confirmed imperialists and [Dublin] Castle hacks [i.e. pro-British careerists], 18 Freemasons [generally associated with Protestants and unionism] and 25 who were ‘bitterly opposed to the idea of a Gaelic civilisation’ (Foster 2015). Former Unionists were indeed overrepresented in the Seanad for their share of the population, but they were not a majority. The new Senate included sixteen former Unionists, including seven peers and five other aristocrats. In all, it included thirty-six Catholics, twenty Protestants, three Quakers and one Jewish member. Eleven senators had served in the British Army. It also included representatives of organised labour and small farmers, as well as representatives of big and small business (Byrne 2015). The Seanad was targeted by the anti-Treaty IRA in reprisal for the executions of their imprisoned fighters by the Free State. In response to such executions, Liam Lynch, the IRA leader, issued an order that ‘all Free State supporters are traitors and deserve the latter’s stark fate, therefore their houses must be destroyed at once’ (Lynch 1922). And on 26 January 1923, anti-Treaty IRA Adjutant General Con Molony issued the following order:

1. Houses of members of ‘Free State Senate’ in attached list marked A and B will be destroyed. and 2. From the above date if any of our Prisoners of War

are executed by the enemy, one of the Senators in the attached list [...] will be shot in reprisal.

(O'Malley & Dolan 2007)

Moloney attached a list of the names of twenty senators and their addresses. Of these, fourteen were named as targets for assassination. Those marked for death included 'John Bagwell, General Manager Great Northern Railway, Imperialist and Freemason' and Henry Wilson, 'heir to the Marquis of Lansdowne, Imperialist and Freemason'. It also included Andrew Jameson, chairman of the Bank of Ireland; and Bryan Mahon, commander-in-chief of British forces in Ireland, 1916–1918 – respectively 'Imperialist and Freemason' (Lynch 1922). The list tells us something of Republican prejudices. Those marked for death were disproportionately upper-class 'Anglo-Irish' Protestants of either landed or capitalist background. However, it also tells us something about the nature of the first Free State Senate that so many of its members had occupied such senior social and political positions in British-ruled Ireland. Early 1923 saw an onslaught on the homes of senators and other 'Imperialists' around Dublin. Among the homes destroyed were those of Glenavy, the Senate's chairman, senators Bryan Mahon, Horace Plunkett, Maurice Moore and others (IRA [1923a]). Out of 199 'Big Houses' or mansions destroyed by the Republicans as reprisals, thirty belonged to senators (Dooley 2001). IRA Chief of Staff Liam Lynch also contemplated even more radical action, writing to anti-Treaty political leader Éamon de Valera in January 1923, advocating 'shooting a large number of senators' – 'at least four' – in reprisal for each execution of an IRA prisoner. At least in this case, de Valera managed to restrain the IRA chief of staff, telling him: 'it is unjustifiable to take the life of an innocent man and to make him suffer for the acts of the guilty' (De Valera 1923). There were several attempts to abduct and kill senators, but ultimately none were actually killed by the IRA during the Civil War (Dáil Éireann 1923). Senator John Bagwell, for instance, was kidnapped at gunpoint from his house in Howth, Dublin, and he was released only when the Free State threatened to execute several imprisoned Republican leaders if he was killed. Senator John Gogarty was also kidnapped and threatened with death but later released. The risk to the lives and homes of senators was not brought to an end until the IRA called a ceasefire in April 1923 and in May of that year instructed its fighters to 'dump arms' (Hopkinson 2004). Several prominent senators, notably James Douglas and Andrew Jameson, were involved in back-channel negotiations with anti-Treaty political leader Eamon de Valera, which helped to bring about the ceasefire and the end of the Civil War (IRA [1923b]).

The Seanad in the early Free State period, 1923–1932

The Seanad limped through the Civil War as an unelected and traumatised body. It did, however, make a number of notable contributions to the new Irish state in the following years. As political scientist Elaine Byrne (2015) argues, many senators

had experience in government and law that the directly elected *Teachta Dála*, or TDs [members of the Dáil], did not. Only five of the 153 members of the Dáil elected in 1923 had served in the British Parliament, and none had any ministerial experience outside the rebel underground Republican government of 1919–1921. In the upper house, by contrast, several members had served in either the House of Commons or the House of Lords in Westminster. James Douglas, the vice chair of the Seanad, took on the role of drafting standing orders and private members bills for both houses.

Between 1922 and 1928, the formative years of the Free State, a total of 238 bills came before the Senate for approval, including bills formally setting up the *Garda Síochána* or Irish police force, courts of Justice, local government bodies and rules for elections. Of these, the Seanad sent back and managed to amend ninety-three bills before they became law (Byrne 2015). The most significant of these was an amendment to the Courts of Justice Bill (1924). The original draft proposed that the executive (cabinet) could set the salaries of district judges. The Seanad, led by Glenavy, a former chief justice for Ireland himself, argued that this imperilled the independence of the judiciary and managed to get it amended so that the *Oireachtas* (houses of Parliament) as a whole could vote on setting judges' pay until 1926 (Byrne 2015). Maurice Manning (s.d.) notes that the Free State Senate received 489 bills from the Dáil; of these, the Senate amended 182, with virtually all amendments being accepted by the Dáil. The Senate used its power of suspension in only nine cases – and in two of those cases, the government refrained from passing the bills into law when the period of suspension had expired.

Yet in general, the Senate had only a limited effect in its original proposed function of safeguarding the interests of the Protestant minority or, for that matter, women's rights. This was at a time when, among other things, bans on divorce, contraception and women serving on juries were passed into law. In June 1925, the poet and senator W. B. Yeats (himself a Protestant by background, though a nationalist by conviction) famously railed against the banning of divorce by a majority Catholic lower house, claiming that it would alienate Irish Protestants from the state and crystallise the partition of Ireland. As he phrased it:

It is perhaps the deepest political passion with this nation that North and South be united into one nation. If it ever comes that North and South unite, the North will not give up any liberty which she already possesses under her constitution. You will then have to grant to another people what you refuse to grant to those within your borders. If you show that this country, Southern Ireland, is going to be governed by Catholic ideas and by Catholic ideas alone, you will never get the North. You will create an impassable barrier between South and North, and you will pass more and more Catholic laws, while the North will, gradually, assimilate its divorce and other laws to those of England.

(Seanad Éireann 1925)

Yeats's speech was essentially nationalist in tone, citing the unification of Ireland as his 'deepest political passion'. But it also reflected one of the original purposes of the Senate in that he claimed to speak on behalf of the Southern Protestant minority. Despite his efforts, the bill prohibiting divorce was passed in both houses. Indeed, the clerk and historian of the Senate, Dermot O'Sullivan, thought Yeats's speech 'deplorable [...] an envenomed attack on the religion of the majority of his countrymen' (O'Sullivan 1940).

The Senate of 1922 was not popularly elected – it was half nominated and half elected by members of the Dáil. Only in 1925 did the Seanad hold its first elections, for nineteen of the sixty seats in the Senate. In the face of a boycott by supporters of the anti-Treaty Sinn Féin party, only approximately 25 per cent of the electorate turned out to vote for seventy-six candidates, and they re-elected only eight of the existing senators nominated in 1922. Many former Unionists lost their seats, and the Seanad was now dominated by the representative of the pro-Treaty ruling party, Cumann na nGaedheal (roughly, the 'League of Irish'), followed by the Labour Party and the Farmers' Party (Coakley 2005). The Seanad had already effectively lost its original purpose of providing minority representation: an inevitable consequence of its being directly elected by an electorate that was overwhelmingly Catholic and nationalist. After the 1925 elections, the electoral system for the Seanad was changed so that in the senatorial elections of 1928, 1931 and 1934, its members would only be chosen by members of the Dáil and the Senate itself, not popularly elected. The contradiction was that a directly elected assembly would not represent minorities, while an indirectly elected one lacked popular legitimacy in the eyes of both the public and many members of the lower house.

Dermot O'Sullivan, a highly sympathetic observer of the Seanad, nevertheless noted that there was 'imperfect sympathy' between the members of the Dáil and those of the government on the one hand, most of whom had fought in the independence struggle against the British, and the Senate on the other, which was 'largely composed of men whose attitude during the national struggle was supposed, rightly or wrongly to have been one of apathy or even passive hostility'. What was more,

The Dáil, moreover, was a product of universal suffrage and regarded itself as the real repository of the sovereign rights of the people; and in respects of law-making intended to share them as little as possible with the 'unrepresentative' second chamber'.

(O'Sullivan 1940)

Perhaps as a result of this attitude among parliamentarians, the Seanad began losing power and influence by the late 1920s. In 1926 the upper house opposed but failed to stop legislation that barred women from taking civil service examinations. In 1927, senators had only limited success in amending a law passed by the Dáil removing women from jury duty. Under the compromise worked out between senator James Craig of Trinity College and Minister for Justice Kevin

O'Higgins, women would instead be excluded from the jury rolls but have the right to put themselves forward for inclusion if they had a special talent for the law, or as O'Higgins put it, 'an aptitude for that particular line of life' (McCarthy 2006). In the same year, O'Higgins managed to remove a provision in the 1922 constitution whereby a senator could be made a minister in the executive council or cabinet. O'Higgins thought it was 'a wrong thing' that senators, who were elected or nominated only 'with powers of revision, powers of criticism, powers of suggestion and even maximum powers of delay' could hold executive office over directly elected members of the Dáil (McCarthy 2006). O'Higgins' also removed the right of the Seanad to initiate legislation. His position was that sovereignty and real power must lie, in his view, with those directly elected by universal suffrage. In 1928, the right of the Senate to demand a referendum was also removed (O'Sullivan 1940).

Despite the fact that it would sometimes have a different opinion from that of the ruling party, *Cumman na nGaedheal*, the Seanad remained a bastion of pro-Treaty support. *Cumman na nGaedheal* was the party that grew out of the pro-Treaty faction of the Irish Civil War and was identified with a conciliatory attitude towards Britain. The Senate's close identification with one side of the Treaty identified the house as a whole with partisan politics and put them at odds with a resurgent anti-Treaty Republican political party. In 1926, most of the anti-Treaty veterans of the Civil War regrouped under Eamon de Valera in a new party, *Fianna Fáil*, which split from the older separatist party, *Sinn Féin*. *Fianna Fáil* was dedicated to dismantling the Treaty settlement and securing full Irish independence by political rather than military means. *Fianna Fáil* entered Parliament in 1927, ending their previous boycott of the Dáil (Coakley & Gallagher 1999).

In 1928, *Fianna Fáil* had six senators elected to the Seanad on the votes of their TDs or members of the Dáil. Campaigning for a dismantling of the Anglo-Irish Treaty, as well as a programme of social housing, land reform and economic nationalism, *Fianna Fáil* came to power after winning the General Election of 1932, with support from the Labour Party. Its stated goal was to undo the Treaty settlement and tear down those of its institutions – the Oath of Allegiance to the British monarch, the office of governor-general and the Seanad – that, so it believed, represented 'imperialist' interests in Ireland. One of the rising stars in the *Fianna Fáil* party, Sean Lemass, said in 1928 of the Senate: 'this bulwark of imperialism should be abolished by the people's representatives on the first available opportunity that they get' (Houses of the Oireachtas 2019). Lemass's words were prophetic, as within two years of coming to power, *Fianna Fáil* would indeed abolish the Irish Senate.

The Seanad under *Fianna Fáil*, 1932–1933

Many Irish parliamentarians from both sides of the Treaty divide had become impatient with the Senate's interfering, as they saw it, with the business of elected government. However, *Fianna Fáil*, with its objective of removing the remaining links with Britain, was an ideological enemy of the Seanad. Unsurprisingly

perhaps, the Seanad became a battleground in the first years of the Fianna Fáil government. Now it found itself in the classic position of an upper house: resisting, as most senators saw it, hasty and possibly unconstitutional legislation being introduced by a populist-dominated lower house of Parliament. Fianna Fáil and Eamon de Valera's first move with regard to remaking the Irish constitution was to neutralise the opposition to changes in the constitution of the governor-general, the king's representative in Ireland, whose approval was needed to pass any bill into law. They did this by replacing the incumbent pro-Treaty governor-general, James MacNeill, with de Valera loyalist Domhnall ua Buachalla, who dutifully signed into law any legislation passed by the Fianna Fáil government. By these means, de Valera successfully enacted a series of constitutional changes, despite the resistance of the Seanad, which could delay but not stop them (O Suilleabhain 2015). In 1932, Fianna Fáil passed a bill in the Dáil abolishing Article 17 of the Irish Free State's constitution, which obliged members of Parliament to take the Oath of Allegiance to the British monarch. The presence of such an oath was one of the major Republican objections to the Anglo-Irish Treaty. The Seanad, as was its right, proposed heavy amendments to the bill and returned it to the Dáil, delaying it by nine months. This was a clear case of a conservative upper house attempting to block or at least slow down what it considered to be radical legislation, incompatible with the Free State's constitution. De Valera himself, speaking before the Senate, argued that the Oath did not have democratic legitimacy, not having been chosen by the Irish people but imposed by Britain at the time of the Anglo-Irish Treaty in 1922. He argued that having been popularly elected, his government had a mandate to abolish the Oath (Seanad Éireann 1932).

De Valera's critics in the Seanad, with its disproportionate share of former Unionists, argued that abolishing the Oath risked alienating Britain. Senator James Douglas, a businessman senator since 1922 and a Quaker, for instance, alleged that de Valera preferred confrontation with the British to negotiation. He worried that the bill would 'affect our membership of the British Commonwealth – our trade and commerce, and last, but not least, the ultimate political unity of Ireland' (Seanad Éireann 1932). Somewhat ironically, pro-Treaty nationalist senators from Cumann na nGaedheal were far more intemperate in their criticism than former Unionists. Senator Sean Milroy, for instance, likened the Fianna Fáil government to 'pirates' who sought to 'scuttle the Free State'. Milroy believed that de Valera's government had no right to tamper with the constitution: 'I contend that the only valid authority upon which a proposal of this nature could rest is a clear mandate from the people, the electorate'. De Valera deftly outflanked this line of argument and the Senate generally by calling a fresh general election in which his Fianna Fáil party won an overall majority. Assured now of popular support, the Removal of the Oath Bill duly passed into law in May 1933 (Townshend 1998).

The abolition of the Seanad and the new Seanad of 1937

From this point onwards, the days of the first Seanad, now marked as a staunch opponent of de Valera's agenda, were numbered. It narrowly passed, albeit with

many amendments, his Land Annuities Bill in 1933, which withheld payments owed to Britain under the Treaty, starting a damaging trade war that lasted until 1938. Thereafter, de Valera unsuccessfully attempted to curtail the Seanad's power by suggesting reducing the maximum length of time it could hold up a bill from eighteen to three months (Manning s.d.). The next confrontation de Valera had with the Senate was when he attempted to broaden the local government franchise – the Senate resisted the widening of the right to vote in local elections and delayed it until 1934 (Manning s.d.).

The final conflict between the de Valera government and the Seanad – and the one that ultimately led to the Senate's abolition – resulted from the proscription of a right-wing paramilitary group. Upon coming to power, de Valera had sacked Garda Commissioner (chief of police) Eoin O'Duffy, an outspoken former pro-Treaty general. At the same time, he legalised the Republican paramilitaries of the IRA until 1936. In response to IRA intimidation of Cumman na nGaedheal supporters, O'Duffy gathered pro-Treaty army veterans into a grouping named the Army Comrades Association, popularly called the Blueshirts for their military-type uniform consisting of a blue shirt and black beret. O'Duffy adopted the trappings of continental fascism and some of its policies. He was by no means a fringe figure, becoming the first leader of the main opposition party – *Fine Gael* – which was a merger of Cumman na nGaedheal, the National Centre Party and the Blueshirts, now named the 'National Guard'. O'Duffy told the first Fine Gael congress that 'we should not make an idol of parliament, it is a human institution' (McGarry 2007). De Valera, meanwhile, commented that, 'we have not been unmindful of the developments on the continent [of Europe]' and accused the Blueshirts of having 'adopted the methods and symbols associated with dictatorships in other countries' (Broderick 2010).

With rioting taking place around Ireland between Fianna Fáil and IRA supporters on the one hand and the Blueshirt movement on the other, the Fianna Fáil government passed a law banning the wearing of uniforms – effectively proscribing the Blueshirts. The Seanad voted down the bill, delaying its passing by nine months. Again, in the face of entrenched partisan divisions, there was little possibility that the lower house, with its Fianna Fáil majority, would reflect on the Senate's opposition and simply change its mind. Rather, its opposition merely delayed the Blueshirt ban until the following year. Fianna Fáil and Republicans in general usually depicted the Free State Senate as a reactionary, pro-British institution that defied the will of the elected government. Certainly, the Seanad's last stand, trying to prevent the banning of a quasi-fascist street-fighting movement, appears somewhat sinister today. At the time, however, senators argued that de Valera's government was not only unconstitutionally dismantling the Anglo-Irish Treaty but also infringing on basic civil liberties, such as the freedoms of speech and association, given that he appeared to tolerate the activities of the IRA (O'Sullivan 1940). That this depiction had at least some truth was underlined when de Valera then passed another bill, the morning after the Senate had opposed the bill banning the wearing of uniforms. This bill, however, sought to abolish the Senate itself. Ordinarily, abolishing a house of Parliament would be extremely difficult, but by neutralising

the position of governor-general, which de Valera had filled with the compliant Domhnall Ua Buachalla, and with a safe majority in the Dáil, de Valera's government faced little legislative opposition. Predictably, de Valera's bill abolishing the Senate was not passed in the upper house itself. But after the maximum delay of eighteen months, the first Seanad ceased to exist on 29 May 1936 (Keogh 1994).

From 1936 to 1937, the Irish Free State had no upper house. In 1937, however, when introducing his new constitution – still the basis of law in Ireland today – de Valera set up a new Seanad. De Valera's constitution was passed by referendum and, unlike its predecessor, it could only be altered by popular vote through a referendum. The 1937 Seanad, its creators were determined to ensure, would not obstruct the powers of the lower house as had its predecessor. Many Fianna Fáil supporters had regarded the old Senate as a bastion of pro-British privilege. Sean Lemass, one of de Valera's most able lieutenants, said, 'if there is to be a second house, let it be a second house under our thumb' (Townshend 1998). Although 'vocationalism' served as the basis for representation in the Senate – whereby social groups, such as employers, labour, farmers and others, would be represented – in practice, the new Senate had little independence, and the Seanad was tightly controlled by whichever party controlled the Dáil. Many of the seats became jobs for either aspiring or retiring politicians, and, unlike its predecessor, the 1937 Seanad could not initiate legislation – it could only hold up bills for ninety days, which it has only done on the rarest of occasions (Coakley & Gallagher 1999; cf. O'Donoghue, this volume).

Conclusion

The Irish Free State Seanad was originally envisaged as a way of managing Irish democracy, representing the Unionist minority and preventing (or at least delaying) legislation that senators deemed hasty, ill-advised or unconstitutional. In these respects, it was not without achievement. It did bring members of the old Anglo-Irish class into Free State politics, for which it has been lauded as 'a unique experiment in idealism' (Byrne 2015). Moreover, the administrative experience of some members of the Senate was a significant help to Irish parliamentarians in enacting formative legislation, such as setting up standing orders for Parliament and officially establishing the police and law courts.

As a means of representing minorities, however, the Seanad ultimately suffered from a fatal contradiction. It could be popularly elected or represent former elites, but not both, as the 1925 election proved. Having largely lost its position as a body representing minorities after the 1925 election, its distinctive role in Irish politics was no longer clear, with the result that it was again nominated rather than directly elected in 1928. If, moreover, it was not to be popularly elected, it would lack legitimacy in the eyes of much of the public, who did not share the enthusiasm of the drafters of the 1922 constitution for an upper house that would represent former Unionists.

Had there been a consensus in Irish politics on the fact that power lay not only in popular sovereignty but also with the Crown and its appointees – as was the

case, for instance, in Canada during this period – the Seanad could have perhaps continued as a check on the power of the executive. But Ireland, with its particularly Irish Republican tradition of majoritarian democracy, was different. During the 1920s, even pro-Treaty Free State politicians grew irritated by the interference of the upper house in matters they considered to be the exclusive legislative prerogatives of the directly elected Dáil. The anti-Treaty Republicans were overtly hostile to the Senate as established under the 1922 constitution. In a system where the constitution could be changed by a majority vote in the lower house of Parliament, the Senate was uniquely vulnerable once it became identified as a partisan opponent of the de Valera government in 1932. For all of these reasons, the Free State Senate disappeared in 1936 and was replaced in 1937 by an almost powerless successor.

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(Bert Brouwenstijn, Vrije Universiteit Amsterdam)