

Session 3

**Thinking about constitution-
making in the four constituent
countries of the United
Kingdom**

Robin Wilson

Changing the UK constitution: lessons from Northern Ireland

Robin Wilson

r.wilson@socialeurope.eu

Summary

- What has Britain got to learn?
- A German digression
- Home Rule crisis
- Power-sharing mark I
- Power-sharing mark II
- Lessons of failure
- Ireland's success
- Way ahead for NI
- How to write a UK constitution

What could there be to learn?

- Marx to the German readers of *Das Kapital*:
‘De te fabula narratur’
- NI has been in constitutional turmoil since its existence
- Parallel/linked experiences in constitutional innovation in the republic
- The unanticipated (in Britain) ‘Brexit’ blockage—the Belfast agreement

What has *Britain* got to learn?

- ‘Unwritten constitution’ is an oxymoron
- Particularity reflects failure to appreciate universal norms key to postwar Europe
- Mess of asymmetric devolution since 1998:
 - instability, polarisation and collapse in NI
 - ratcheting up of tensions with Scotland
 - frustrations with disempowered English regions
- All feeding into catastrophe that is Brexit

It's basic

- Contrast biggest postwar western-Europe democratic success story—Germany
- 1949 *Grundgesetz*: symmetric decentralisation of power
- First sentence: 'Human dignity is inviolable'
- Disavows referenda, given use by Hitler to assume *Führer* powers in name of *das Volk*
- Bobbio: 'the people' is the language of every dictator
- Success in absorbing totalitarian DDR

And re Europe ...

- Two-thirds majorities required in *Bundestag* and *Bundesrat* for change to Basic Law
- Membership of EU incorporated, with accompanying legitimacy via addition of article 23
- Thus Germany could not leave EU except with support of concurrent parliamentary majorities
- Reflects awareness of distinction between constitutional and day-to-day political—or party-management—issues

Ireland and Home Rule

- Big missed opportunity of third home-rule crisis: 'home rule all round'—symmetrical devolution for Scotland, Wales, Ireland
- Would have removed at a stroke unionist case against home rule under asymmetric provision
- Would have prevented anti-constitutional mobilisation of UVF and so, in sectarian mirror image, of what became IRA
- Would thus have prevented partition, war of independence and civil war

Partition and after

- Government of Ireland Act overtaken in south by war of independence
- In north, introduced devolution with STV
- Recognition that democracy not just about 'parliamentary sovereignty'
- Crucial to avoid 'winner takes all' society
- Yet unionist government able to abolish, by simple majority → '50 years of misrule'

State collapse

- Civil-rights movement—'one man [sic], one vote'—showed NI regime incompatible with 'individualistic concept of society'
- Latter (Bobbio) basis of all democracy constitutions
- 'Unionist monolith' collapsed → 'direct rule' from London
- => need to 'constitutionalise' NI *de novo*

Refoundation

- Recognition that new government for NI had to be based on 'power-sharing'
- Cf International IDEA: democracy = popular control ('majority rule') + equal citizenship ('minority rights')
- Hence 'will of the people' is only a slogan to suppress pluralism (there are as many views as individual citizens), checks and balances