

Constitutional deliberation

- **Process of deliberation:**
 - Ministerial Committee on NI, chaired by PM,
 - Official Committee on NI, chaired by cabinet sec
- **Arrangements emerged via:**
 - green paper ('The future of NI'), widely read in NI
 - subsequent white paper
 - consensual legislation (NI Constitution Act 1973)
- **Latter thus was to be NI's 'basic law'**

Remarkable impact

- Transformed debate in NI: almost every single opinion poll since has shown cross-communal endorsement of power-sharing
- Achilles Heel was north-south arrangements in Council of Ireland
- Latter product of rushed inter-party and intergovernmental negotiations
- Paisley: 'Dublin is just a Sunningdale away'

Belfast agreement

- Yet it was the Sunningdale private hot-house, not prolonged public deliberation, which was deployed to bring the Belfast agreement
- Agreement negotiated in 'cavalier' fashion in final days before Good Friday 1998
- Basically copied template of 1993 Opsahl commission report: 'mutual voice and veto'
- Two (SDLP) politicians: 'Sunningdale for slow learners', 'an agreement to disagree'

Failure

- → repeated tensions and suspensions, especially 2002-07 and 2017-??
- Fundamental error: giving communalist parties a veto over constitutional arrangements means they will demand a communalist veto within them
- Cf other dysfunctional political entities of Bosnia-Hercegovina and Lebanon, hobbled by Dayton accords and Tai'f agreement

The approach in the south

- What became the Irish Free State promulgated a constitution in 1937
- Change is by the two houses of the *Oireachtas* agreeing amendment, then passage by simple majority in a referendum
- Many controversies, eg re role of women
- → Constitutional Convention (established in 2012) and Citizens' Assembly (2016) given raft of constitutional issues to consider

Bringing in the citizens

- Convention was 1/3 politicians but assembly wholly citizens, selected by sortition
- Both have shown can address complex and divisive constitutional issues successfully
- Positive outcomes: constitutional referenda
 - legislation on:
 - marriage equality
 - abortion

Implications for NI

- Successful citizens' assembly run in NI in 2018 on social care
- Much similar success internationally with 'mini-publics' of all kinds
- NI political system demonstrated in 2017 study to be highly *non-deliberative*
- Clear constitutional flaws of GFA need to be addressed

Way forward

- NI now holds European record (past Belgium) for *non-government* formation post-election
- Anglo-Irish Agreement of 1985 established British-Irish Intergovernmental Conference
- BIGC should commission citizens' assembly
- Queen's University research (2016) showed >60% supported as way to deal with political crisis (fewer referendum or snap election)

Agenda for NI citizens' assembly

- As in republic, provide list of constitutional concerns
- Aspects deemed to explain polarisation:
 - border poll
 - electoral system
 - communal designation
 - executive formation
- Assembly should report to Parliament and *Dáil Eireann*
- Aim for new NI Constitution Act with Irish government support (esp north-south arrangements)

So what *can* Britain learn?

- ‘Brexit’ is wrong in principle: Ireland since the GFA can not be disentangled from the EU
- NI now has special relationship with Ireland as (fellow) EU member, including 142 areas of north-south co-operation
- ‘Brexit’ was always a wildly impractical project to restore the ‘national container’ of a pre-EU, pre-globalisation, empire era

A UK written constitution?

- UK desperately needs a written constitution
- Clearly role for Parliament—cf draft by former Political and Constitutional Reform Committee (2015)
- Role for devolved nations/regions—note all three now pro-Remain
- Role for academics—esp Constitution Unit
- Also place for citizens' assembly(ies)

Conclusion

- Basic Law in Germany was fundamentally to normalise an abnormal regime by rendering it compatible with universal norms
- ‘Brexit’ has demonstrated how inadequate the UK’s ‘unwritten constitution’ is in the face of an authoritarian-populist revolt
- It needs to write a new one, through a process of public deliberation
- Ireland, north and south, provides useful pointers as to how that deficit should be filled