

# The territorial constitution and devolution

Michael Moran

CRESC/MBS

For 'Making Devolution Work'

7 July 2015

PP slides on request from:

[michael.moran@manchester.ac.uk](mailto:michael.moran@manchester.ac.uk)

# Three key things in understanding the territorial constitution

- Disentangling 'efficient secrets' (Bagehot) from 'the showy side of the Constitution' (Maitland)
- Remediating the (curious) bias in most accounts of devolution and national home rule: the focus on the periphery. Yet 'the history of an English domination is increasingly difficult to write in other than English terms.' (Pocock): in particular in terms of metropolitan high politics
- 'We live under a system of tacit (mis)understandings but the (mis) understandings are not always understood' (misquoted from Low 1904).

# Five constitutional foundations of our present discontents

- The legacy of the old constitution
- The 'home rule all round' constitution
- The dual polity and its key silences
- Breaking the silence: from comprehensives to capping
- The enduring problems of metropolitan high politics

# The 'traditional' (pre 1870) constitution and its legacies

- The critical features: pre-industrial, pre-democratic and pre-nationalist
- 'High politics' the preserve of the Crown and the court, morphing into an executive elite
- Local government is 'self government at the King's command'
- Parliament, especially the Commons, is the 'buckle' joining the high and low worlds
- And the Constitution is highly unstable because 'the tacit understandings are not understood'

# The 'Home rule all round' constitution: 1870 to 1922

- The old constitution chronically unstable; and further destabilised by well known features – industrialism, democratic challenges and the invention of national identities
- 1870 to 1922 dominated by: 'home rule all round'; disestablishment all round; local democracy and enterprise all round.
- Three reasons why this constitution foundered:
  - 1. The (constitutionally) sectarian Irish
  - 2. The logic of big (metropolitan centred) battalions
  - 3. The invention, and domination, of a 'Unionist' constitutional ideology: 'Parliament can make or unmake any law whatsoever' (Dicey)

# The dual polity (Bulpitt) constitution and its many silences

- 1922 to 1960s
- High politics (defence, foreign policy, managing a declining economy): the metropolitan elite
- Low politics (managing the locality): autonomous local government
- Administrative supervision not law, tacit understandings
- The transformation of local government from a provider of public (tradeable) goods to a welfare state redistribution machine

# Breaking the silence: Why the dual polity broke down

- The tacit understandings were not always understood – a continuation of the tradition of chronic instability in division of (political) labour: Crosland's 'offer you can't refuse' over comprehensives in 1965 an early example
- Transformation of local government into a welfare state distributive machine makes 'cash nexus' (Louglin) critical: local conflict turns on who pays and who benefits, politicises local taxation
- Above all, the great problem of high politics – how to cope with national decline – forces metropolitan elites to breach the tacit understandings and invade low politics of local government
- Produces....

# The Thatcher/Post Thatcher constitution

- Thatcherism the first serious response to national decline of the 20<sup>th</sup> century; New Labour as a continuation
- Numerous areas of 'low politics' invaded in the name of modernisation: universities, professions, unions, sport, media....
- Invading the low politics of the territorial constitution:
  1. Turning from tacit understandings to legal controls
  2. Enforcing the decomposition of local institutions – outsourcing, specialised authorities (development corps, etc)
  3. Controlling the terms of the cash nexus: from poll taxing to rate capping



# Coping with the pathologies of the Thatcher territorial constitution: enter Mr Osborne

- The 'Thatcher' constitution has numerous pathologies; here only the territorial ones
- Hyper innovation: from London reforms (1963), to the unstable devolution settlement, to Northern Powerhouse: a history of chronic institutional instability
- Shrinking of territorial base for the metropolitan elite: poll tax destroys Scottish Conservatism; Scottish Referendum destroys Scottish Labour; General Election of 2015 starts to destroy old Labour English power bases
- Juridification of central local relations turns relations from tacit understandings to a perpetual legal battle
- Central control of the cash nexus 'politicises' local government financing – which means, makes it visible to high politics
- Central control grossly overloads the metropolitan decision making system, and forces the elite to concern itself with 'low politics'
- The Osborne initiatives are an effort to cope with these pathologies
- Will they work? What might 'work' mean?