Finding the good in EVEL: An evaluation of ‘English Votes for English Laws’ in the House of Commons

Daniel Gover and Michael Kenny
Mile End Institute
Queen Mary University of London

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Research project

• Funded by Centre on Constitutional Change & Economic and Social Research Council (hosted by Mile End Institute)

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• Methods and sources:
  • Semi-structured interviews with around 40 politicians, officials and other stakeholders
  • Analysis of parliamentary records of how EVEL operated
  • Analysis of key primary and secondary publications
  • Review of historical literature on earlier similar episodes
Aims of Research

• Evaluate first year of operation of EVEL

• Does the evidence bear out the criticisms of it?

• Can EVEL be made more legitimate and transparent?
The historical background

- Consequences of devolution for Westminster representation:
  - Gladstone: Home Rule Bills, late 1800s
  - Wilson: Steel nationalisation, 1960s
  - Dalyell: ‘West Lothian’ Question, 1970s

- More recent trends
  - Devolution introduced in late 1990s – two Commons bills where Scottish MPs affected division results on English issues
  - Growing sense of ‘English’ national identity – disaffection with domestic union and EU?
  - Scottish referendum and Conservative party have raised question of English ‘devolution’
Development of Evel: English opinion

‘Scottish MPs should no longer be allowed to vote in the House of Commons on laws that only affect England’


Source: Queen Mary University of London

Centre on Constitutional Change

Economic & Social Research Council
A major challenge of legitimacy

• Stark political divisions over EVEL – but also possibility for greater consensus among UK parties?
• Standing Orders relatively easy to change, suspend or revoke
  • Danger of incoming government adjusting ‘rules of the game’?
  • But preferable to change by statute?

• Caveat: our findings apply to current political situation
# Development of EVEL: Party attitudes

Commons vote to approve EVEL standing orders (October 2015)

<table>
<thead>
<tr>
<th>Party</th>
<th>For EVEL</th>
<th>Against EVEL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conservative</td>
<td>312</td>
<td>0</td>
</tr>
<tr>
<td>Labour</td>
<td>0</td>
<td>200</td>
</tr>
<tr>
<td>Scottish National</td>
<td>0</td>
<td>54</td>
</tr>
<tr>
<td>Democratic Unionist</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>Liberal Democrat</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Plaid Cymru</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Social Democratic &amp; Labour</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Ulster Unionist</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Green</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>UK Independence</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Independent</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>312</td>
<td>270</td>
</tr>
</tbody>
</table>
Common criticisms of EVE... merited?

1. Will politicise the office of Commons Speaker
2. Will create two classes of MP
3. Does not offer a meaningful English ‘voice’
4. Is unhelpfully complicated and opaque
How EVEL works

- Certification: 2-part test
- The ‘double veto’
Politicisation of the Speaker?

• Fear that Speaker’s certification decisions will attract controversy and undermine neutrality

• Lots of certification – but so far no evidence of controversy
• But potential for disagreement in future exists
• Speaker-government disagreements on certification
  • On several bills – e.g. Higher Education and Research Bill
  • Often due to interpretation of the rules – impossible to avoid
  • But disagreements also underscore impartiality of Speaker
## Certification during first 12 months

Initial certification on primary legislation

<table>
<thead>
<tr>
<th>Bill</th>
<th>Clauses &amp; schedules in bill</th>
<th>Clauses &amp; schedules certified</th>
<th>% of clauses &amp; schedules certified</th>
<th>Area of certification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing and Planning Bill</td>
<td>156</td>
<td>148</td>
<td>95%</td>
<td>E, EW</td>
</tr>
<tr>
<td>Childcare Bill</td>
<td>9</td>
<td>3</td>
<td>33%</td>
<td>E</td>
</tr>
<tr>
<td>Charities (Protection and Social Investment) Bill</td>
<td>17</td>
<td>17</td>
<td>100%</td>
<td>EW</td>
</tr>
<tr>
<td>Energy Bill</td>
<td>86</td>
<td>1</td>
<td>1%</td>
<td>EW</td>
</tr>
<tr>
<td>Enterprise Bill</td>
<td>44</td>
<td>6</td>
<td>14%</td>
<td>E, EW</td>
</tr>
<tr>
<td>Policing and Crime Bill</td>
<td>124</td>
<td>69</td>
<td>56%</td>
<td>E, EW</td>
</tr>
<tr>
<td>Finance (No. 2) Bill</td>
<td>204</td>
<td>10</td>
<td>5%</td>
<td>EWNI</td>
</tr>
<tr>
<td>Higher Education and Research Bill</td>
<td>125</td>
<td>8</td>
<td>6%</td>
<td>E</td>
</tr>
<tr>
<td>Neighbourhood Planning Bill</td>
<td>38</td>
<td>32</td>
<td>84%</td>
<td>E, EW</td>
</tr>
<tr>
<td>All eligible bills (20 in total)</td>
<td>1317</td>
<td>294</td>
<td>22%</td>
<td></td>
</tr>
</tbody>
</table>
Two classes of MP?

- Connection to concerns about indirect effects of legislation, including ‘Barnett consequentials’

- Partly a matter of interpretation and judgement:
  - Certain MPs get veto right, while others do not
  - But all MPs get equal say at key stages on all bills
  - Special rights to MPs based on territory not entirely new
- So far no division outcome affected by EVEL (but early days)
- But ‘double veto’ key – MPs from outside England in no weaker position to block legislation
Failure to facilitate England’s ‘voice’?

- David Cameron (September 2014): ‘now the millions of voices of England must also be heard’

- ‘Legislative grand committees’ intended (in part) to facilitate voice
  - Most last around 2 mins – hardly any MPs participate
  - Opaque and sometimes confusing
  - Higher Education & Research Bill – not even opportunity for debate
- Hard to combine ‘veto’ and ‘voice’ in single institutional mechanism – EVEL prioritises the former?
- Why voice matters: popular salience, political legitimacy
Unhelpfully complicated and opaque?

- A frequent criticism of Evel: ‘unbelievably obscure’
  - Elaborate series of additional legislative stages
  - Certification test potentially legally complex, and conducted repeatedly
  - Complexity of standing orders: SO Nos. 83J-83X run to almost 30 pages – 13% of public business standing orders

- Why might complexity matter?
  - MPs need to understand process – especially if a crisis
  - Potential impact on Commons time
  - Harder for public to understand
Recommendations (1)

Separating voice and veto
- An English Affairs select committee
- An English grand committee
- Territorially based pre-legislative scrutiny

Entrenching the double veto
- Correct two aspects where ‘double veto’ not reflected
- Instruments subject to ‘negative’ procedure
- Lords amendments that delete legislative text
Recommendations (2)

Reducing complexity
• Trigger stages/processes only where needed
• Fewer veto points or items of certification
• Consolidate and simplify standing orders

Improving legitimacy
• Further cross-party discussions needed
• Further reviews needed: in this parliament and beyond
• Speaker should consider giving explanations or guidance
• More accurate name: ‘English Consent to English Laws’?