



Finding the good in EVEL:

An evaluation of 'English Votes for English Laws' in the House of Commons



Daniel Gover and Michael Kenny

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

28 November 2016, Houses of Parliament

Research project

- Funded by Centre on Constitutional Change & Economic and Social Research Council (hosted by Mile End Institute)
- Thanks also to Constitution Unit and Study of Parliament Group
- 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

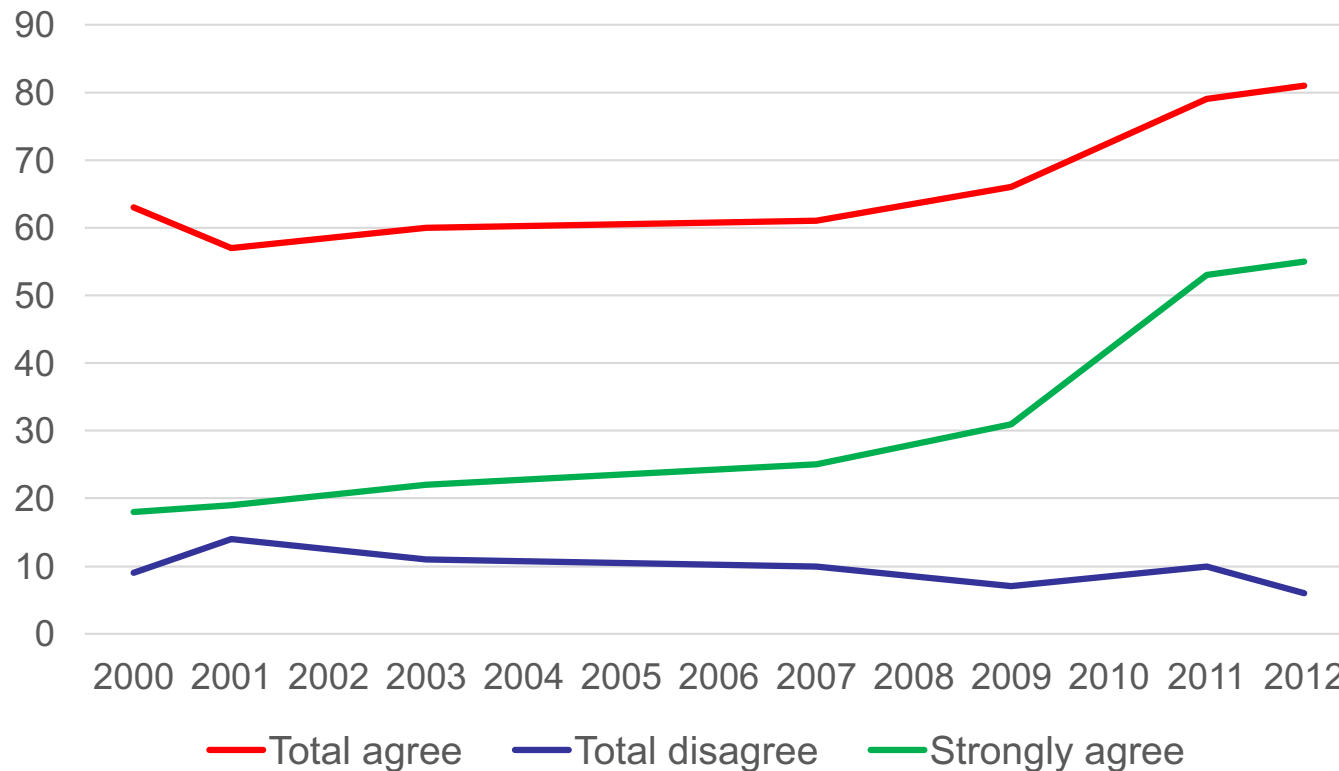
- Evaluate first year of operation of EVEL
- Does the evidence bear out the criticisms of it?
- Can EVEL be made more legitimate and transparent?

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: Wyn Jones et. al. (2013), based on British Social Attitudes survey (2000–09) & Future of England survey (2011–12).

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)

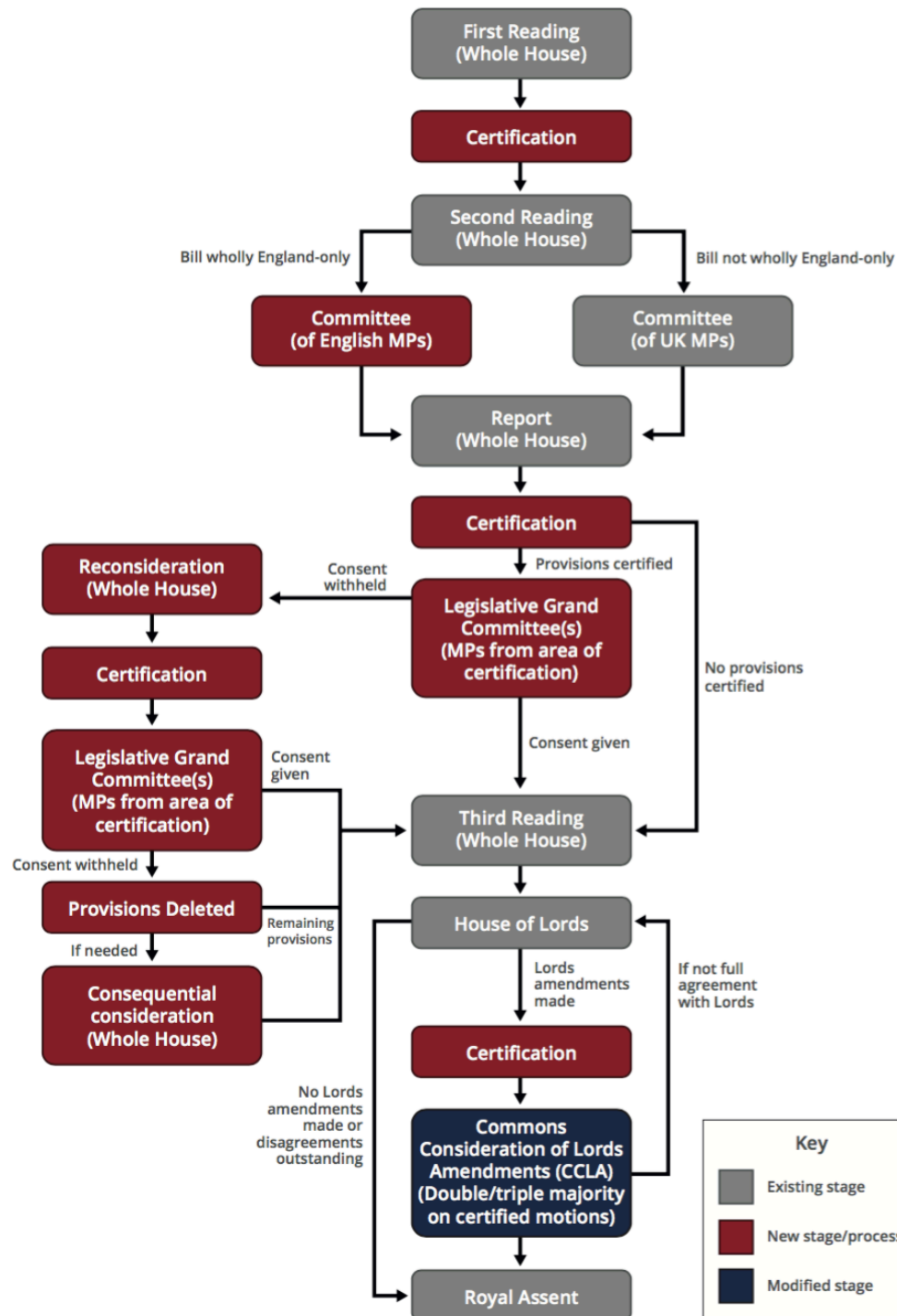
| | For EVEL | Against EVEL |
|----------------------------|----------|--------------|
| Conservative | 312 | 0 |
| Labour | 0 | 200 |
| Scottish National | 0 | 54 |
| Democratic Unionist | 0 | 6 |
| Liberal Democrat | 0 | 3 |
| Plaid Cymru | 0 | 3 |
| Social Democratic & Labour | 0 | 3 |
| Ulster Unionist | 0 | 0 |
| Green | 0 | 0 |
| UK Independence | 0 | 0 |
| Independent | 0 | 1 |
| Total | 312 | 270 |

Common criticisms of EVEL.... 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

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

Two classes of MP?

- Connection to concerns about indirect effects of legislation, including ‘Barnett consequentialials’
- 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'?