

# **Interpreting EVEL: Latest Station in the Conservative Party's English Journey?**

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## **Abstract**

*In October 2015, the Conservative government introduced a reform to the procedures of the House of Commons known as 'English Votes for English Laws' (or EVEL). This chapter examines how the Conservative party, which has historically been closely identified with unionism, became the architect of such a scheme. It documents how this topic emerged in political debate, following the implementation of devolution and, again, in the aftermath of the 2014 Scottish independence referendum. And it analyses EVEL's operation at Westminster in 2015-17, uncovering tensions within it that point to deeper strains within Conservative party thinking. It concludes that EVEL needs to be understood not only as a response to the 'West Lothian Question', but also in relation to a longer-term disjuncture in the Conservative psyche arising from two competing conceptions of the nature and purpose of union.*

## **Keywords**

*Conservative party; devolution; English Votes for English Laws; EVEL; House of Commons; Scottish independence referendum; West Lothian Question; Westminster*

## **6.1 Introduction**

On the morning after the Scottish independence referendum, in September 2014, prime minister David Cameron gave a speech in which he welcomed Scotland's vote to remain in the UK, and went on to declare that: 'I have long believed that a crucial part missing from this national discussion is England. We have heard the voice of Scotland – and now the millions of voices of England must also be heard. The question of English votes for English laws – the so-called West Lothian question – requires a decisive answer' (Cameron 2014). This call led – following the election of a single-party Conservative government in May 2015 – to the establishment of a new set of procedures in the House of Commons known as 'English Votes for English Laws' (hereafter EVEL). The scheme created new mechanisms for MPs representing constituencies in England to vote down legislation that applies only in England.

EVEL has been highly divisive in UK party politics and has been criticised by some for accentuating territorial and national tensions at a moment when the union had just been saved

from the threat posed by Scottish nationalism. In response to Cameron's post-referendum statement, Nick Clegg – then deputy prime minister and leader of the Liberal Democrats, the Conservatives' coalition partners – declared this to be an exercise in 'conventional party political point scoring', warning that the Conservatives 'could jeopardise the Union they purport to defend' (Clegg 2014).

How it is that the political party that has for so long seen itself as the traditional guardian of the union, and the inveterate opponent of devolution, became the architect of a policy which is seen by its opponents as endangering the union, remains somewhat mysterious. In this chapter we ask whether this reflects a deeper shift in the nature of the Conservative party's approach to the union, explore different ways of understanding the evolution of its territorial statecraft, and emphasise some important differences of perspective within the party's ranks. We consider the introduction of EVEL against this background, drawing on material gathered from a broader investigation which the authors have conducted into this reform.

The chapter is organised into several discrete sections. We start by setting out the broad development of different strands of Conservative thinking about the union, followed by the various designs that began to emerge for institutionalising English control over Westminster legislation. There follows a close-up focus upon the period 2014–15, when the Conservative-led coalition government sought to inject political energy into the English Question. We then focus on the design and operation of the EVEL procedures during the 2015–17 parliament, and identify some important political tensions and inconsistencies affecting them. In the next section we step back from these developments, drawing upon several existing interpretations of the UK's territorial politics to deepen contemporary understanding of Conservative motivations and thought. We conclude with some reflections on how the Tory party might now be required to approach these issues, given the outcome of the 2017 general election and the imperatives associated with Brexit.

## **6.2 The Conservatives, the union and devolution: a historical preamble**

Unionism has long been central to the Conservative party's self-image, and this identity was forged in part during earlier moments when the idea of introducing devolution to different territories of the UK was under consideration. In response to political unrest in the late nineteenth and early twentieth centuries, a succession of Liberal governments sought to implement schemes for 'home rule' to Ireland, under which control over domestic matters would be transferred to a separate Irish legislature and executive. The Conservatives opposed such moves on the basis that home rule would weaken the integrity of the UK, and this opposition became a hallmark of the party's approach to the union during this period. One of the most contentious features of arguments for devolution concerned the consequences of any home rule scheme for Westminster – and in particular how Ireland should be represented in a UK legislature that had only limited responsibility for Irish matters. Gladstone's 'in and out' solution – included in his 1893 bill, under which Irish MPs would continue to sit at Westminster but would only be entitled to vote on certain matters – was ultimately regarded by him as unworkable (Bogdanor 2001). But the political conflicts stirred by debates about a federal settlement ensured a significant political realignment, as a split within the ranks of the

Liberal party resulted in a small group of Liberal Unionists forming an alliance with the Conservatives, a development which led ultimately to the formation of today's 'Conservative and Unionist' party.

Against this historical backdrop, the Conservative party's current enthusiasm for the idea of giving new voting rights to English MPs is, at first sight, surprising. Yet the move represents the culmination of a process of argument and deliberation that has been happening for several decades. This involved acceptance by many of the party's post-war leaders, most notably Edward Heath, of the case for limited devolution to Scotland in order to stabilise the wider unionist project, followed by the adoption, once more, of a more sceptical position in the wake of Margaret Thatcher's emergence as leader in the 1970s. One of the key episodes in this process was the attempt of the James Callaghan government in the late 1970s to introduce devolution to Scotland and Wales. Speaking in the debates on the Scotland Bill in 1977 Conservative MP Francis Pym, Shadow Leader of the Commons, expressed fears that 'the consequences of this Bill, if enacted, will in the course of time damage the Union and could conceivably prove fatal to its continuance' (HC Deb 14 November 1977: col. 74). The same Commons debate also provided the occasion for Labour MP Tam Dalyell to pose his iconic 'West Lothian Question' for the first time:

For how long will English constituencies and English hon. Members tolerate not just 71 Scots, 36 Welsh and a number of Ulstermen but at least 119 hon. Members from Scotland, Wales and Northern Ireland exercising an important, and probably often decisive, effect on English politics while they themselves have no say in the same matters in Scotland, Wales and Ireland? (HC Deb 14 November 1977: col. 123)

During the course of the bill's passage, the Conservatives backed a proposal that would have enabled certain votes that were carried by Scottish MPs, but did not apply in Scotland, to be confirmed two weeks later by a second Commons vote. The rationale for this was to give MPs the chance to reconsider their original decision. The party's leadership defended this solution as maintaining the equality of all MPs, thus distinguishing it from Gladstone's earlier 'in and out' proposal (Francis Pym, HC Deb 17 July 1978: col. 159).

This particular response to the West Lothian Question disappeared from view along with Labour's devolution proposals of that period.<sup>1</sup> But the issue resurfaced, and this time more resonantly, in the context of debates triggered by the devolution settlements introduced in Scotland, Wales and Northern Ireland in the late 1990s. For many of its unionist supporters, devolution was, in part, intended to offset concerns about England's dominance within the union, and head off the growing threat of nationalism in different parts of the UK. But in its 1997 manifesto the Conservative party warned that Labour's devolution proposals would 'create strains which could well pull apart the Union' (Conservative Party 1997: 50).

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<sup>1</sup> Both the Scotland Act 1978 and the Wales Act 1978 required devolution to be approved through a referendum in which a majority (comprising at least 40 per cent of eligible electors) voted in support. The subsequent referendum in Wales did not achieve majority support, while in Scotland the slim majority in favour did not pass the 40 per cent threshold.

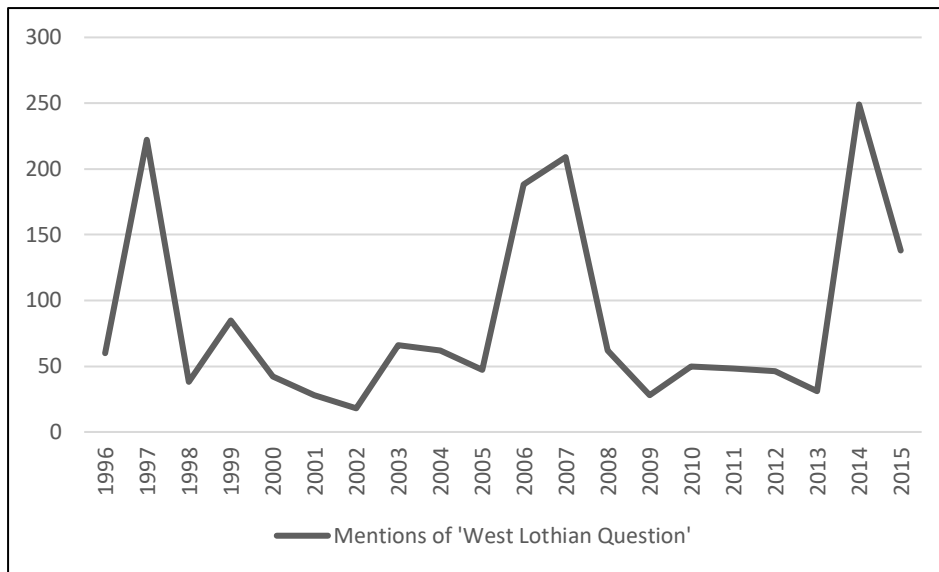
### 6.3 Early designs for EVEL

Following successful campaigns in September 1997, devolution was introduced by Labour in both Scotland and Wales against the objections of the Conservatives. But, having drawn attention to the salience and intractability of the West Lothian Question during these earlier debates, the Conservatives began to entertain new ideas for solving it, and linked these to the demand for some kind of counter-balancing reform for England as a response to the asymmetry created by a devolution settlement which did not extend to the largest part of the Kingdom. In a speech delivered in February 1998, Conservative leader William Hague signalled his intention to begin ‘a full debate’ about further reform (Hague 1998). And, writing in his autobiography in this period, Heath set out his own view that Scottish MPs could be prevented from voting on England-only legislation (Heath 1998: 565). During the course of the next two decades, more detailed proposals were aired in Conservative circles, contributing to a developing body of specialist knowledge on this question, and enabling the party to include commitments to introduce a version of EVEL in its general election manifestos from 2001 onwards (Conservative Party 2001, 2005, 2010).

The first major contribution to this debate was the report of the Commission to Strengthen Parliament (2000), a body appointed by Hague and chaired by the Conservative peer (and constitutional expert) Lord (Philip) Norton of Louth. Under its proposals, the Commons Speaker would be required to certify the territorial application of legislation, and any provisions applying exclusively to England (or England and Wales) would then pass through a revised Commons legislative process, with second reading, committee and report stages all voted on by English (or English and Welsh) MPs only, and reflecting the party balance in that part of the UK. For third reading (the bill’s final stage during its initial Commons passage), all MPs would formally be entitled to vote, but the commission anticipated the development of a convention that those representing parts of the UK not affected by the legislation would not do so. In effect, the commission thus envisaged England-only legislation being voted on by English MPs alone, which represented a relatively robust, ‘full-strength’ version of EVEL.

The salience of this issue was significantly boosted by the contentious passage of legislation that applied primarily to England during Blair’s second term in government, on the issues of tuition fees and foundation hospitals (Russell and Lodge 2006). The government’s reliance on Scottish MPs in key parliamentary votes on these bills stirred a loud chorus of complaint, particularly in Conservative circles (e.g. Tim Yeo, HC Deb 27 January 2004: col. 275). These votes also attracted extensive commentary about the injustices being done to England, from press and politicians alike, and appear to have touched a nerve among some English audiences. Analysis of mainstream national media, for instance, shows that mentions in the UK press of the term ‘West Lothian Question’ – a useful indicator of interest in this topic – spiked significantly in the few years subsequently, as shown in Figure 6.1.

**Figure 6.1: Newspaper mentions of West Lothian Question per year, 1996–2015**



*Source: LexisNexis search of UK national newspapers for the term 'West Lothian Question', conducted by the authors, 1 January 1996 to 31 December 2015.*

A new version of EVEL was subsequently elaborated in a report produced by the Conservative Democracy Task Force (2008), set up by party leader David Cameron and chaired by Kenneth Clarke MP. This body was an important part of the political attempt to brand the Conservatives as concerned about democratic questions, to many of which an increasingly unpopular Labour government appeared insensitive. Clarke's report recommended that legislation certified as English should pass through a Commons legislative process that afforded MPs from England, and also those from across the UK, veto rights at different stages. The second and third reading stages of bills would, on this model, be voted on by the whole House, allowing all MPs the chance to vote against the entire bill at either end of its Commons passage. But English MPs would have control at committee and report stages – the two Commons stages at which a bill is amendable – enabling them to revise or delete any provisions that they disagreed with (and/or to add new ones). In comparison with Norton, this represented a 'medium-strength' variant of EVEL – as the passage of England-only legislation would require the assent of both English and UK-wide MPs, but neither would have the power to force through legislation against the wishes of the other.

But the most influential and important document setting out the arguments for reform emerged from outside the party. It was produced by the McKay Commission (2013), an independent body established by the government as part of the Conservative-Liberal Democrat coalition agreement (HM Government 2010), and chaired by the highly-respected former Clerk of the Commons, Sir William McKay.<sup>2</sup> The commission concluded that, post-

<sup>2</sup> The commission's official title was the Commission on the Consequences of Devolution for the House of Commons.

devolution, English voters needed to have their interests more clearly delineated and protected at Westminster – perhaps the first time this hitherto heterodox argument had been so clearly accepted in official quarters (Kenny 2015). Yet these unconventional notes were blended with more constitutionally orthodox ideas. Thus, in contrast with some of the earlier proposals circulating within the Conservative party, the commission explicitly rejected the establishment of a formal veto right for English representatives, instead preferring mechanisms to enable their preferences, or ‘voice’, to be more clearly articulated and acknowledged.

These various proposed answers to the West Lothian Question are an important barometer of the growing conviction in different parts of the political world that some kind of balancing reform was required to alleviate the asymmetries bequeathed by devolution. Arguments for such a reform generated some important intellectual and policy tributaries within the Conservative party. An equally important impact was to help legitimate the notion that the English were entitled to expect a more substantial degree of recognition and protection within the UK parliament. And the appearance of this idea in such ‘official’ quarters is one sign that the long-established consensus that the West Lothian Question was insoluble, was starting to crack.

#### **6.4 The English Question Emerges: 2014–15**

The appearance of the McKay Commission’s report caused little stir in 2013, except in specialist constitutional circles. Labour simply ignored it, having already declined to make any submission to it. For the government, too, the commission was widely understood as a sop to the Conservative party’s base, engendering little interest from either coalition party’s leadership. Behind the scenes, the requirement to formulate an official government reply sparked limited discussions between the two parties, with some Liberal Democrat figures willing to explore the possibility of achieving an agreement that it could trade for other policy concessions as part of the bargaining game that had come to define intra-governmental relations by 2013. Accordingly, representatives of the two parties hammered out an agreement on a version of EVEL. But, although this proposal was put before the prime minister and deputy prime minister, it was not pursued any further – a telling sign of the lack of interest in this question, at this juncture, among either party’s leadership.<sup>3</sup>

Further progress on the agenda was stimulated by the Scottish independence referendum, and a growing conviction in Conservative circles that, in its aftermath, the English Question needed to be publicly aired, and might also present tactical benefits for the party. Indeed, Conservative interest in this issue was already growing, partly in response to the sharp rise in popularity of UKIP in 2012–13 and the appeal of its brand of populist nationalism to disillusioned Conservative voters. While UKIP’s primary focus was upon the issues of immigration and Europe, its core support lay in England, and some of its senior figures were keen to speak to English grievances in the context of the Scottish referendum. UKIP leader Nigel Farage raised the question of English representation during the weeks leading up to the

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<sup>3</sup> Source: interviews with officials from the Conservative and Liberal Democrat parties.

referendum vote (BBC News 2014), and various opinion surveys from the period reported that a striking number of those to whom the party appealed tended to identify as English rather than British (Jeffery et al. 2014; Ford & Sobolewska, chapter 8 of this volume). The concern that the Conservatives were being outflanked by a party that spoke more directly to a mood of heightened English irritation weighed heavily on the former's strategists.

But the growing salience of the English constitutional issue also represented a response to a different kind of political incentive: the chance to outmanoeuvre the Conservatives' main opponents on an issue which the Scottish referendum had brought to the fore. Both Labour and the Liberal Democrats had generally favoured schemes for greater regional self-government in England as their preferred response to the English Question, as John Denham discusses in chapter 7. This preference was bound up with the association many progressives drew between English national identity and right-wing political attitudes. Both parties responded to the Conservatives' interest in the West Lothian anomaly by challenging the latter's unionist credentials and offering a defence of the new *status quo* – as exemplified by Clegg's response to Cameron's statement above.

Having aired the question of English grievance on 19 September 2014, Cameron moved to establish a cabinet committee chaired by William Hague, the then Leader of the House of Commons, to consider how best to implement EVEL. The outcome of this process was a command paper that, very unusually, set out four different options for reform: three Conservative and one Liberal Democrat proposals (Leader of the House of Commons 2014). The Conservative options were based on the earlier proposals, discussed above: Norton's relatively 'full-strength' variant; Clarke's 'medium-strength' model; and an option based on some of the McKay Commission's proposals, but strengthened to incorporate a formal veto. The appearance of disagreement within the government's ranks was accentuated by the publication of the separate Liberal Democrat option.<sup>4</sup>

The Conservative party's grassroots in this period tended to favour stronger versions of EVEL, of the kind proposed by Norton. A survey of party members for the Conservative Home website found that 78 per cent favoured completely barring MPs from outside England from voting on English-only matters, while only a 33 per cent supported the weaker solution of an English-only committee stage (Goodman 2014).<sup>5</sup> This more robust form of EVEL also attracted significant support among the parliamentary party. Some, such as high-profile backbencher John Redwood (2015), had long advocated such a position, and informal canvassing of parliamentary opinion also led the party leadership to appreciate that this was the preferred option of a substantial section of its own Commons backbenchers.<sup>6</sup> Others favoured a rather different approach, seeking to bridge the party's unionist heritage, its support for the idea of devolution outside England and the need to adapt the UK parliament to obviate English concerns. Thus, a pamphlet written by constitutional expert Roger Gough and

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<sup>4</sup> This emphasised devolution of power within England and argued that the party balance on any new England-only parliamentary body should be determined based on the votes cast for each party rather than its number of MPs.

<sup>5</sup> Respondents to this survey were able to register their support for multiple options, or for a single one.

<sup>6</sup> Source: interview with official from the Conservative party.

backbench MP Andrew Tyrie (2015) argued that, although a formal veto right for the Commons was now necessary – a commitment that went further than the McKay Commission’s proposals – a ‘full-strength’ version of EVEL risked destabilising the union.

Debates about EVEL were only one manifestation of a much broader shift in territorial thinking within the Conservative party in these years. In 2014 a review into Scottish governance, commissioned by the Scottish Conservatives and chaired by Tory peer Lord Strathclyde, concluded that Scotland should be granted a significant measure of fiscal devolution, reflecting a wider argument for a looser union which did not make so many demands upon English taxpayers (Scottish Conservatives 2014). Separately, various Conservative commentators were by now openly questioning the rationale for union, and the depth of the party’s commitment to it. Writing in *The Spectator*, Matthew Parris (2010) expressed surprise at the discovery of his own profound indifference to the fate of the union. Other pundits sympathetic to the party were more troubled by the divergence between England and the UK, but could not see a way around this trend (Moore 2014). For some English Conservatives, it was increasingly apparent that their commitment to England, and maintaining the traditional sovereign authority of the state, counted for more than maintaining the domestic union; but for many other Tories, the need to preserve the union and head off further territorial conflicts remained paramount.

EVEL’s re-emergence on the political agenda temporarily pushed the Liberal Democrats towards their Labour opponents, given their overlapping outlooks on this issue. In late 2014 the two parties privately discussed supporting an amendment to a government bill to force the establishment of a constitutional convention, whose remit would include options for greater English scrutiny of legislation, but this dialogue came to nothing.<sup>7</sup> Meanwhile the Conservatives plumped for the third model of EVEL set out in Hague’s paper (the strengthened version of the McKay proposals) but were unable to secure support from the Liberal Democrats to put the matter to a vote in the Commons. In the 2015 general election campaign the Conservative party included the proposals in its manifesto (Conservative Party 2015a), and the pledge was also central to its ‘English manifesto’ – the first occasion it had published such a document (Conservative Party 2015b).

### **6.5 The operation of English Votes for English Laws, 2015–17**

Having promised in its manifesto to table its proposals within the first 100 days of the general election, the newly-elected Conservative government moved quickly to implement its commitment on this issue. Two months after the election, the incoming Leader of the House, Chris Grayling, published a series of proposed changes to the ‘standing orders’ of the Commons (the formal rules that govern procedure in that chamber). These were ultimately approved by MPs – following a series of relatively minor revisions – in October 2015.

Under these new procedures, MPs representing constituencies in England (and England and Wales) were accorded the opportunity to veto legislative provisions that applied only in the relevant part of the UK. To achieve this, the Commons Speaker was given a new

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<sup>7</sup> Source: interviews with officials from the Liberal Democrat and Labour parties.



responsibility to examine legislation for its territorial application, and to ‘certify’ any provision that met specified criteria. Legislation thus certified would then require the consent of MPs from the area concerned for it to pass the Commons, exercised primarily through new ‘legislative grand committees’. Importantly, this veto right did not override the existing right of the whole House to vote at the main legislative stages, including the ability to reject any bill or to make amendments to it. This constitutive aspect of the reform – labelled the ‘double veto’ by some commentators – meant that legislation certified as applying only to England required approval by a majority of both English and UK-wide MPs for it to be passed.<sup>8</sup> In broad terms, the government opted for a medium-strength version of EVEL – avoiding the more robust proposals associated with some of its backbenchers, while also offering a substantive innovation in the form of an unprecedented ‘English veto’ which proved highly unpopular with its political opponents.

In the final vote to approve the procedures, MPs divided neatly along party lines. All those in favour were Conservatives, while all opposed were from other parties (including one independent).<sup>9</sup> Yet this apparent unanimity masked some unease within the Conservative parliamentary party about the risks that EVEL might pose for the union, and various figures expressed concern about the implications of a radical redesign of the UK constitution which might unduly complicate the business of the Commons and aggravate territorial tensions. These views were aired, for instance, by backbench MPs Dominic Grieve and Edward Leigh, who raised concerns about how EVEL might apply on legislation with so-called ‘Barnett consequentials’ – referring to the practice by which the block grant to the devolved bodies is adjusted by reference to English spending decisions. Leigh spoke for a small, but not insignificant, minority of Tories when he argued that ‘the Union is at stake’ (HC Deb 7 July 2015: col. 197). Such arguments reflected a deeper fear that, while the Conservatives may well have achieved short-term political advantage by tabling this issue, the reform also had the potential to accentuate a long-standing weakness in the party’s own territorial position – making even more transparent the predominantly English base of its parliamentary representation. Equally, the SNP’s ascendancy in Scottish politics presented a new dilemma for the Conservative party, bringing into British politics a powerful Anglo-Scottish tension of the kind that British statecraft has long sought to defuse.

There have also been early signs of a very different pressure among those calling for a more robust form of EVEL, usually on the ground that the English now wanted for themselves what had been offered to other national groups in the UK. And the relative limitations of the new system, from this perspective, were illustrated in 2016 by the government’s attempts to relax Sunday trading laws through its Enterprise Bill. Although the policy would have applied only in England and Wales, and attracted majority support from English and Welsh MPs, it was defeated by UK-wide MPs – with the votes of Scottish MPs proving decisive (Gover and Kenny 2016b). In fact, the way in which the government drafted this provision

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<sup>8</sup> For further explanation and discussion of the procedures, see Gover and Kenny (2016a, 2018).

<sup>9</sup> Division result 312-270. Those voting in favour: Conservative (312). Those voting against: Labour (200), Scottish National Party (54), Democratic Unionist Party (6), Liberal Democrat (3), Plaid Cymru (3), Social Democratic & Labour Party (3), Independent (1). Figures exclude tellers. (HC Deb 22 October 2015: cols. 1253-56).

(by also including material that would have applied in Scotland) meant that it would not have been certified under EVEL by the Speaker – a situation that throws into relief the potential for future governments to circumnavigate these procedures should they wish to do so. But, even if the clause had related solely to England and Wales, the ‘double veto’ aspect of EVEL would have meant that all MPs would still have had the power to block the policy. This feature of EVEL also set limits upon Conservative ambitions in other policy areas that pertain only to England (or England and Wales), such as foxhunting and grammar schools. For how long the current procedures will retain the support of those who wish for a more full-throated form of English legislative control remains far from clear.

This new system has been afflicted by other inconsistencies and strains as well. It has, rather notably, been justified through reference to two quite distinct values. These can be associated with the achievement of a degree of ‘voice’, on the one hand, and the provision of a veto, on the other. Whereas arguments for an enhanced English voice in parliament tend to emphasise opportunities for deliberation and the importance of some degree of recognition for the English interest, the idea of veto refers to the particular right to block legislation from being imposed on England against the wishes of its elected representatives. Cameron, as noted above, responded to the result of the Scottish independence referendum by arguing that it was time for ‘the millions of voices of England [to] be heard’, while his party’s subsequent English manifesto pledged to address ‘the need for English MPs to express their voice on matters affecting England only’ (Conservative Party 2015b: 8). Yet when it turned to implement EVEL, his government ended up delivering a comprehensive kind of procedural veto, and did little to encourage the enhancement of voice. There is, for instance, little incentive for MPs to view the new ‘legislative grand committees’ as meaningful deliberative forums. During the 2015-17 parliament these committees were almost entirely perfunctory, most concluding without any substantive contributions at all (Gover and Kenny 2016a, 2018).

In its presentation of these reforms, the government also tended to conflate two very different understandings of their purpose. Specifically, it interlaced the kind of conservative case for judicious, incremental adjustment – which defenders of the constitutional order, from Edmund Burke through to today’s moderate voices in the party, have favoured – with the language of popular sovereignty and suppressed nationhood, themes which Enoch Powell and Margaret Thatcher brought into the mainstream of party thinking. These different arguments speak to different parts of the British Conservative tradition which have long held differing perspectives on issues of nationhood and constitution. The first of these strands evolved, after the end of the empire, towards a different vision of the United Kingdom, as a flexible polity which could accommodate modest forms of devolution and could pool sovereignty within a wider European arrangement. Its adherents have generally supported reform to the UK’s internal constitutional arrangements for prudential reasons – including to protect the union from the potential disaffection of the largest national population of the UK. Its leading proponents, such as Kenneth Clarke and Andrew Tyrie, tend to be sceptical about the idea that the union can function if England is accorded some form of devolution in an attempt to achieve ‘symmetry’. This traditional view was reflected in the then Leader of the House

Chris Grayling's contention that EVEL would serve 'to strengthen the Union' by making it fairer and more balanced (HC Deb 2 July 2015: col. 1667).

Yet Cameron's rhetoric in September 2014, and much Conservative discourse since, gestured simultaneously at a very different idea – the notion, associated with contemporary figures like MPs John Redwood and David Davis, that England deserves the same democratic rights that have been granted to the other parts of the UK. This perspective has its roots in the vision of parliamentary sovereignty and English heritage which were advanced from the political margins by Powell, and were institutionalised in the party's mainstream by Thatcher and her successors. On this – arguably more 'Jacobin' – view, England cannot retain its sovereignty while involved in a legal or political union with other countries, and it regards the domestic union as viable only when framed and managed on England's terms. Technical adjustments to the legislative rules of the House of Commons are unlikely to measure up to the heady rhetoric of self-government and 'taking back control' which this second discourse invokes.

The disjuncture between the reality and some of the rhetoric associated with this reform has created a space which disenchantment, and more radical demands on behalf of the English, may come to fill. Senior backbenchers like Redwood are adamant that the terms of the devolved union place undue constraints upon the English, and have demanded to know why the principle of self-government has not been extended to the largest nation of the UK. As he put it to William Hague in a Commons debate in 2014: 'England expects English votes for English issues. We expect simplicity and justice now: no ifs, no buts, no committee limitations, no tricks. Give us what we want. We have waited 15 years for this. Will he now join me in speaking for England?' (HC Deb 16 December 2014: col. 1270). Such figures are willing to support EVEL in the short term, on the tacit understanding that it works to ensure that English interests are not disregarded in parliament, but they may turn against the current system should it prove unable to guarantee that the preferences of English MPs are not overridden.

In practical terms, however, the notion of achieving devolution at the English level faces enormous obstacles, not least because there are no extant institutions of English governance, and English affairs are so interwoven into the development of UK-wide policy and legislation. For this reason, too, Cameron's rhetoric sat awkwardly with the tradition, referenced above, of Conservative pragmatism towards the constitutional machinery of the UK. Distinct arrangements for the governance of the non-English territories have long been a hallmark of the British state, as has been the absence of England as a distinct entity within the functionally defined structures of the state, as discussed by Jim Gallagher in chapter 4 of this volume. Arguments about the possibility and wisdom of labelling as 'English' those government departments with functions that are now exercised primarily in relation to England, have begun to break the surface of British politics in recent years, and a number of public bodies – for instance NHS England – have quietly started to announce their territorial jurisdiction. But these developments remain under the political radar, and calls for some kind of equivalent devolution arrangement for England remain fundamentally at odds with the territorial character of British governance.

The Conservative government's presentation of EVEL reflects a tendency to 'over claim', and a desire to appeal simultaneously to different parts of the party, which may come to have significant repercussions for the union as a whole. But these inconsistencies and tensions are perhaps also an indication that Conservative thinking about England's place within the domestic union is less anchored than it once was. In the final main section of this chapter, we discuss different ways of understanding the much broader shift in party thinking that led to the introduction of EVEL.

## **6.6 The decline of unionist statecraft?**

To gain analytical purchase on this issue, we draw insights from three notable, and broadly complementary, accounts of the historical development and character of Conservative thinking about the territorial dimensions and constitutional character of the UK state: Andrew Gamble's analysis of the re-assertion of the enduring English core of British Conservatism; Jim Bulpitt's account of the kind of territorial statecraft which was integral to the Conservative political outlook, and which became increasingly problematic from the 1980s onwards; and Richard Rose's observation of the role played by the party system in providing an underpinning for the union.

For Gamble (2016) the Anglo-centric vision of the UK that became apparent in Conservative circles in the early 2000s should be seen as the continuation of an older version of Toryism that was partially effaced by the ascendancy of unionism and empire, but never entirely eclipsed by either. While allegiance to the union has long been key to this lineage, it had always been secondary to the need to protect the sovereignty of the British state, the core of which is England and its traditional institutions. The Conservatives, he suggests, have become increasingly willing and ready to discard the garments that were once so important to Conservative identity. For a growing number of today's Tories, the passion and enthusiasm once elicited by the UK as a multi-national state have steadily dissipated over the last few decades. And so, while the union remains important and valued, it is for many Conservatives glimpsed in increasingly instrumental terms – as a source of Britain's geo-political standing, or conduit to economic prosperity. Latterly it has come to be seen increasingly as a constraint and a burden – a potential block upon England's aspirations and sovereignty. For now, the union subsists in Conservative party thinking so long as other parts of the UK participate within it on English terms, and show that they are willing to share the priorities and outlook associated with the Conservatives. But Gamble detects an underlying, tectonic shift in mentality on the part of many Tories. This position, he suggests, takes the party back to its 'Tory roots, shorn of the Whig trappings of union and empire which have been the framework of Conservative politics for so long' (Gamble 2016: 361).

The appetite among parts of the Conservative party for maintaining the old union state, and its attendant constitutional order, has, Gamble observes, been waning for some while. Key episodes in this process include the fissure that opened between Ulster Unionism and British Conservatism, the decline of unionism and the Conservative presence in Scotland, and the party's diminished standing in the post-industrial cities of northern England, all of which have in turn consolidated its identity as a party of south east and 'middle' England. On this

view, the shift towards a more accommodationist approach to both the European and domestic unions that prevailed in the party from the era of Macmillan to Heath, gave way to a re-assertion of a unitary understanding of the UK, viewed through the lens of a traditional English constitutionalism. This set in train a rejection of devolution under Thatcher as she sought to re-build a different ‘politics of nationhood’ (Lynch 1999) for the party. Thatcher’s tenure was, on this account, a vital moment in the journey that Gamble describes. In important respects she laid the foundations for the revival of a political Englishness and the emergence of an Anglo-centric Euroscepticism among many British Conservatives, a force which played a major role in the UK’s referendum on EU membership in June 2016. Cameron’s talk in September 2014 of protecting England’s interests, and enhancing England’s hitherto suppressed voice, continued in this trajectory established by Thatcher. And EVEL, on this view, looks like a further step towards the re-assertion of England as the more authentic and integral political community for the Conservative party.

Important and insightful as this interpretation is, whether Gamble’s characterisation captures the entirety of the party and its traditions of thinking – or merely an important and increasingly influential, part of it – is a key question. The ‘double veto’ feature of EVEL is revealing on this score, in that it also reflects a desire by party managers to appease those Conservatives who remain committed to an older, Heathite vision of the UK constitution. Gamble’s emphasis on an enduring lineage of English Toryism over the last century or more, can be usefully complemented by an appreciation of profound shifts in the instincts and wisdom associated with those charged with territorial management on the part of the British state over the same period. Jim Bulpitt’s (1983) suggestive, and much debated, historical sketch of the changing ‘territorial statecraft’ of previous eras also sheds light on the judgements and calculations of elite actors in relation to the constitutional order. In particular, his characterisation of the demise of the relatively stable territorial system of the middle decades of the twentieth century (which he christened the era of the ‘dual polity’) helps us understand, more generally, the dissolution of the co-ordinates and governing reflexes associated with Conservative statecraft.

Bulpitt’s interpretation stemmed from a ‘realist’ appreciation of the gap that existed between official rhetoric about the merits of the unitary state, on the one hand, and the complex and variegated manner in which territorial management was undertaken by the centre in Britain, on the other. Put simply, this involved the granting of strategic concessions to local elites to protect the basic autonomy of the central British state. While the English parliament ceased formally to exist in 1707, in practice it expanded after union with Scotland, absorbing territories from other parts of Britain, and becoming the legislature of the whole UK. Securing the hegemony of the state within this expanded territory was premised upon the recognition that special arrangements might be necessary for the governance of its non-English territories. The domestic elite, he intimated, tended to prefer short-term fixes and to avoid systematic reforms, and sought instinctively to avoid foundational and principled solutions to constitutional and territorial problems – a judgement that casts an important shadow over some of the territorial ‘fixes’ that have been attempted in the last two decades, EVEL included. Crucially, in this narrative, the centre’s approach to territorial management

was defined in terms of its inclination to stay above territorial politics itself, and to keep the latter at some remove, both in terms of its objectives and in the composition and personal relations of its elite.

Bulpitt's characterisation of the period of relative stability in territorial relations, which prevailed from the 1920s to the 1960s, as the era of the 'dual polity', is of particular interest because of his account of the reasons for, and consequences of, its dissolution. In these decades there emerged a relatively stable settlement based upon the attempt of party leaders, especially Tory ones, at the centre to ensure that the realm of 'high politics' was insulated from the demands bubbling up from the localities. To achieve this separation, a considerable degree of autonomy was offered to sympathetic local elites. To this end, a succession of Conservative leaders granted enhanced administrative autonomy, and, for the most part, held back from pursuing centralist ambitions or attempting to achieve uniformity across the UK. It was in this period that the Macmillanite ethos merged with a new, modernising current of Conservatism which saw merits in pooling sovereignty with other European countries. This settlement ultimately started to unwind during the late 1970s, and, as yet, no stable alternative to it has been located. During the Thatcher era, the Conservatives' avowed appeal to what Bulpitt termed 'provincial England', and attempt to re-introduce a more centralised form of governance and unitary perspective on the UK, made it highly likely that territorial politics would become a major field of conflict once more.

While it is hard to divine how Bulpitt would have responded to events that followed his own death (in 1999), his scepticism about the prospects for a stable future for the UK after devolution merits consideration in the light of subsequent events. The turn towards greater self-government as a way of solving the problem of the growing appeal of nationalism in the peripheral territories was, in his view, mistaken, since it meant creating political structures which might be captured by actors who did not wish to play the role ascribed by the central state to compliant elites, and whose appeal would lie in their capacity to mobilise opposition to the state – a judgement that has proved immensely prescient in the case of Scotland. He feared as well that setting the UK's informal and flexible arrangements on a more formal, quasi-legal, footing would create the kinds of institutional obstacle and minority advantage that were likely to inflame the resentments of the English majority and limit the flexibility and room for manoeuvre of those tasked with managing territorial affairs.

Since 2007, there are various indications that the statecraft paradigm which Bulpitt believed had evolved over successive centuries has entered a period of profound crisis. One sign of its increasingly dysfunctional character is the growing polarisation between the ways in which the two main UK parties have approached constitutional issues, a situation which is a major contributor to current instability and a crucial backdrop to Cameron's decision to inject political energy into the English Question in 2014. According to Richard Rose (1974), the stability of the British model rested to a considerable degree upon the capacity of the party system to defuse territorial and national tensions, and promote functional over national questions in political life. In the last decade, this deepening conflict suggests that, contrary to his analysis of its operation in 1974, the party system became increasingly a source rather

than a defuser of tension. Not since the Irish Question raged has such deep doctrinal division over territory and state been so prevalent in high politics in the UK.

In the current period, as discussed by John Denham in chapter 7 of this volume, Labour has, for the most part, remained hostile to arguments about devolution for England, offering a tepid case for administrative decentralisation to its regions and largest cities – an approach which has tended to lack popular resonance, and was viewed in some quarters as an illegitimate attempt, with Brussels’ connivance, to break England apart. The Conservatives, meanwhile, have become the champions of the English interest in UK politics. In this context, issues such as West Lothian have come to be viewed in strongly partisan terms, and the prospects for some kind of cross-party consensus on the future shape of the UK constitution appears to have receded. These differences have been over-determined by the parties’ divergent and increasingly fractured territorial bases (a situation that has in turn been accentuated by the retention of one of the features commonly associated with the ‘Westminster model’: the First Past the Post voting system for UK general elections). Labour’s position (until 2015) as the UK party most likely to win Scottish and Welsh seats has rendered the party more wary of calls for constitutional change that might be disadvantageous to those peripheries, and especially suspicious of arguments for devolution to England as a whole. The perception in Labour circles that England is a fundamentally conservative country in electoral terms is – as Iain McLean (2007) has demonstrated – both influential and significantly overplayed in the party’s mind-set.

For their Conservative counterparts, the mirror-image of this pattern of representation has also, over time, exercised an important influence upon the Tory outlook. As Northern Ireland became an electorally separate entity in the 1970s, and the Conservatives subsequently lost their foothold in Scotland, England became ever more important to their parliamentary position, and the party tended to win seats overwhelmingly in the south and south east. These are, broadly, places that are the largest net contributors to the public finances, compared to those Labour-represented ones that are the largest net recipients of them. This markedly bifurcated pattern of representation has done much to deepen and accentuate the divergent constitutional thinking of both parties, and served to inject political energy and conflict into some of the questions about constitutional order and territorial equity which the party system has, for the last century, been effective at managing and defusing, in Bulpittian terms.

## **6.7 Conclusions**

These different, but overlapping, interpretations offer important insights into the trends and processes that have been integral to the complex evolution of the territorial politics of the British Conservative party. They bring into view the rich hinterland of Tory thinking about union, constitution and nation which lies behind the party’s increasing interest in the seemingly arcane West Lothian Question, and the growing belief of many Conservatives that its resolution could be intimately connected to the idea of rebalancing the union to assuage English anxieties and aspirations. Gamble’s interpretation, in particular, points to a gradual and inexorable shift in the Conservative party’s mind-set towards the notion that the domestic, as well as European, union may not represent an ideal vehicle for the expression of

English sovereignty. And EVEL may well be an important staging-post on the journey that he identifies. In complementary style, Rose's analysis highlights the political contexts and factors that have been integral to the perpetuation of the union, a number of which are no longer necessarily conducive, we have suggested, to constitutional stability.

Nevertheless, such is the contingent, and often unpredictable, character of political life that what looks, at one moment, like an established trend can at a later point seem like a more contingent and less linear phenomenon. In the volatile circumstances created by recent political events in the UK, the plurality of Conservative ways of thinking about the union, and England's place within it, have become especially apparent and increasingly important. The key developments here were Theresa May's catastrophic general election campaign in 2017 and its surprising outcome, including the Conservative party's loss of its Commons majority, a significant upturn of fortunes for the party in Scotland, and a stronger-than-expected result for Labour in England.

In contrast to 2015, the Conservative party opted not to publish an English manifesto in 2017, and made little attempt to evoke English grievances in its broader campaign. Indeed, the return of the party's traditional billing as the 'Conservative and Unionist' party followed directly upon May's attempt, since assuming the premiership in July 2016, to conciliate those parts of the UK that had voted against Brexit, while seeking also to promote a 'hard' version of it as the assumed expression of the will of the people. The election result has thrown much of this strategy into the air, and the 'supply and confidence' arrangement agreed with the Democratic Unionist Party means that the territorial dynamics at play within British politics have changed quite considerably. This unexpected development, allied to the party's resurgence in Scotland, means that the Conservatives no longer look so unequivocally English in parliament, even though they remain by some margin the most popular party within England.

Quite how the party will respond to this change in the territorial composition of its parliamentary strengths, and how also it will deal with Labour's surprising appeal in parts of England where it was widely assumed that it would struggle, are now important and open-ended political questions. And they are made more complicated still by the challenges associated with forging a parliamentary coalition in support of any particular Brexit deal. This shift in the territorial political landscape serves to put the arguments set out here under a new spotlight. It also throws into relief the persistence of some important countervailing forces to the seemingly inexorable drift of the Conservative party away from the union. While the party has, over the last few decades, become increasingly southern-English in its parliamentary base, its recent electoral successes in Wales, especially in 2015, and Scotland, in 2016 and 2017, may well have a bearing upon how the party comes to approach the union.

In terms of EVEL more specifically, one of its most important features arises from its quasi-legal character. This complex, and rather opaque, way of implementing a seemingly straightforward democratic principle means that EVEL is almost invisible to the wider public. Indeed, the procedures associated with it have served to 'depoliticise' the West Lothian Question, and drained political energy from an issue which the party sought to emphasise in



late 2014. The inclination of the party's current leadership is to keep things this way, but whether a future leader will follow the same path – especially if the question of additional devolution to other parts of the UK resurfaces, or the party finds itself in opposition but with a majority among English MPs – is uncertain. On the other hand, if EVEL does endure for the course of a full parliamentary term, the likelihood that it will become part of the furniture at Westminster, and cease to be the focus for party political debate, would increase considerably.

Much is to be gained, we have suggested, from considering this controversial reform through the lens of two distinct historical processes. The first, shorter-term cycle to which we draw attention is the emergence since the late 1990s of the belief among many Conservatives that devolution had generated a degree of asymmetry which necessitated a further set of reforms to protect the position of England within the UK legislature. This emergent stream of thinking was focused primarily, though never entirely, on the West Lothian Question, and resulted in growing support across the party for the idea of EVEL. But this fairly recent development needs also to be understood in relation to a much longer political cycle – the historically rooted disjuncture in the Conservative psyche between those who believe that the UK can only survive if it continues to adapt to new challenges and attempts to resolve some of its anomalies when required to do so, on the one hand, and those who have come to believe that the UK needs to be re-imagined in unitary terms. In the wake of Thatcher, the rise of Euroscepticism in the party and the vote for Brexit, this latter tendency is now ascendant in both party and government. But following the 2017 general election result it is now compelled to operate in a situation which it no longer commands, and where it may well need to compromise with other constitutional ideas and visions. In these unforeseen and unprecedented circumstances, it is very likely that the party's English journey may have some surprising, unexpected, twists to come.

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