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The Coalition and the politics of the English Question

Richard Hayton

Abstract

For much of the 2010-15 Parliament the English Question was not a conspicuous feature of political debate in the UK. However, the issue of English votes for English laws (EvfEl) was thrust centre stage by the Prime Minister David Cameron in the aftermath of the Scottish independence referendum, when he announced that fulfilment of the promise of further devolution to Scotland must be accompanied by an answer to the West Lothian Question at Westminster. This article analyses these events and explores their possible consequences. It argues that a reform of parliamentary procedures along the lines outlined in the report of the McKay Commission looks increasingly likely, but that this will not mark a resolution of the broader English Question, and the future of the Union remains in doubt.

Keywords

West Lothian Question, English votes for English laws (EvfEl), Scottish independence referendum, English Question, McKay Commission, devo-max

Introduction

At six minutes past seven on the morning of 19 September 2014, David Cameron strode out of 10 Downing Street to offer his verdict on the Scottish independence referendum. Welcoming the no vote, he reiterated the commitment to further devolution of powers to Scotland that he had made, in conjunction with Ed Miliband and Nick Clegg, on the front page of the Daily Record just three days earlier. By ten past seven he had moved on to discuss the rest of the United Kingdom, arguing that the quid pro quo for the transfer of more competencies to Holyrood must be a 'decisive answer' to the West Lothian Question. He argued that 'as the people of Scotland will have more power over their affairs, so it follows that the people of England, Wales and Northern Ireland must have a bigger say over theirs.' Furthermore he claimed 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.' Importantly, Cameron also suggested that English votes for English laws should be instituted 'in tandem with, and at the same pace as, the settlement for Scotland.'¹ Given the tight timetable for devolving new powers to the Scottish Parliament outlined by Gordon Brown during the referendum campaign, and later endorsed by the three main pro-Union parties, this implied a settlement being put in place before the dissolution of the Westminster parliament for the 2015 general election.

The Prime Minister's decision to thrust English votes for English laws (henceforth EvfEl) into the centre of debate attracted the charge that he was seeking to exploit the referendum aftermath for party political advantage, and fractured the shaky alliance that had led the major Westminster parties to agree the devo-max proposals for Scotland. It drew strongly worded censure from the Deputy Prime Minister Nick Clegg, who hit out at Cameron for 'conventional party political point scoring' and argued that in rushing to EvfEl the Conservatives 'could jeopardise the Union they purport to defend'.² Cameron's move could also be seen as surprising given his repeated assertion of

his sense of attachment to the Union, and his professed determination to maintain it all costs. Indeed, the shock publication twelve days before referendum day of a YouGov poll that placed the Yes campaign in the lead was widely credited with jolting the No campaign into making 'the vow' to grant the Scottish Parliament 'permanent and extensive new powers', but also to retain the Barnett formula.³ This method of allocating resources to the devolved nations has long faced criticism for its iniquitous results in Scotland's favour, including from the former Labour minister, Joel Barnett, who devised it in the first place. Even before the result of the referendum had been announced, a growing chorus of disquiet could be heard from Conservative MPs at Westminster about the promises being made to Scottish voters, with the normally loyal Minister Claire Perry joining numerous backbenchers in criticising the 'raft of goodies on offer for Scotland that will be paid for by us south of the border to appease the Yes voters'.⁴

Cameron's rapid move to place EvfEl centre stage should therefore be understood as an attempt to head-off a Conservative rebellion over 'the vow' made to the people of Scotland. As the Conservative commentator Tim Montgomerie argued: 'he was very worried that Tory MPs were going to say that he had given away too much, and he wanted to pre-empt that... it was all about internal Tory Party management, and it has hurt Labour and the Unionist cause north of the border.'⁵ This article argues that comprehending this sentiment within the Conservative Party is essential for understanding how the Coalition has attempted to handle the issue of Scotland and the future of the Union. As such, this matter also serves as an illuminating example of the party management challenges that have faced Cameron as Prime Minister of a Coalition government, having to handle both a relationship with the leadership of the Liberal Democrats as well as his own parliamentary party. In exploring this, the article proceeds in the following way. Firstly, it considers the background in terms of the Coalition partners' respective positions on devolution and the West Lothian Question, and the position reached in the initial Coalition agreement. It then goes on to consider the report of the McKay Commission on the implications of devolution for the Commons.

Following this the article assesses the way in which EvfEl was reignited in the aftermath of the referendum, arguing that the issue is now highly charged politically. Finally, it considers the outlook for EvfEl and considers the possible implications in 2015 and beyond.

A reforming Coalition?

During the 2010 general election campaign, voters could have been forgiven for believing that the Conservatives and the Liberal Democrats were quite some distance apart on a range of issues – most notably deficit reduction, on which the latter sided with Labour's position by warning of the risks to economic recovery of cutting spending too quickly or too early. Embedding deficit reduction in the Coalition Agreement as the overriding priority of the new government was therefore a significant strategic victory for the Conservatives, helping ensure their dominance over large swathes of public policy. The Liberal Democrats were nonetheless widely credited with some important wins of their own, particularly in relation to constitutional reform, which had long been a priority for the party. David Laws, who led the coalition negotiations for the junior partner, revealed that it was the Conservatives' willingness to accept a referendum on electoral reform that was decisive in securing the agreement. However, as Robert Hazell has noted, the Conservatives also came into the talks with a substantial programme for constitutional reform, even if they did not regard it as one of their main concerns. The two parties found 'a surprising amount of common ground', notably a 'shared commitment to decentralisation and localism'.⁶

The 2010 Liberal Democrat manifesto reaffirmed the party's aspiration of 'a federal Britain', and unsurprisingly offered to grant new powers to both the Welsh Assembly and the Scottish Parliament. Importantly, it also suggested scrapping the Barnett formula and replacing it with a new 'needs-based' assessment, and to 'address the status of England' through a constitutional convention.⁷ The Conservative manifesto emphasised the party's desire to 'strengthen the Union', but was similarly

supportive of devolution. It offered to 'take forward the proposals of the Calman Commission' in Scotland and offered a referendum on further devolution to Wales. The 2001 and 2005 Conservative manifestos both contained a commitment to EvfEl, and in 2010 the party repeated the pledge to provide an answer to the West Lothian Question, stating that: 'A Conservative government will introduce new rules so that legislation referring specifically to England, or to England and Wales, cannot be enacted without the consent of MPs representing constituencies of those countries.'⁸ This carefully chosen form of words suggested the party was open to a softer resolution than fullthroated EvfEl, which is of relevance as we shall see later.

Much of this was incorporated into the Coalition Agreement, which pledged to implement the Calman Commission recommendations and to hold a referendum on further devolution in Wales. The Scotland Act granting greater tax varying powers to Holyrood consequently received Royal Assent in May 2012, while further powers were granted to the Welsh government following a referendum in 2011. The more contentious issues, EvfEl and the Barnett formula, were dispatched to the long grass. On the latter, 'the concerns expressed by the Holtham Commission' (namely the unfairness of the current system to Wales) were acknowledged, but the deficit used as cover for indeterminate delay: 'any change to the system must await the stabilisation of the public finances'.⁹ A commission to consider the West Lothian Question was promised, a tactic used in relation to a number of issues where common ground was not readily available.¹⁰

The headline-grabbing constitutional measures contained in the Coalition agreement were the referendum on AV, which was linked to both a cut in the number of MPs and an equalisation of constituency sizes (a Conservative priority); fixed-term parliaments; and Lords reform. As Hazell argued however, it proved easier to negotiate these compromises at elite level than to win over backbenchers in Parliament and implement them in practice. The Conservatives were deeply sceptical of electoral reform, and the 'brutal whipping' of the referendum bill 'left very sore feelings'

amongst their backbenchers, who 'swore that they would not swallow any further Lib Dem constitutional reforms'.¹¹ This proved significant when attention turned to the Clegg's proposals for the upper chamber in July 2012, when 91 Conservatives defied the whip to kill the plans, prompting the Lib Dems to retaliate by blocking the boundary changes. The bitterness expressed on both sides regarding the conduct of the AV referendum, constituency equalisation and Lords reform suggested that it would prove difficult to secure the passage of any measures to address the West Lothian Question, which would almost inevitably confer some partisan advantage on the Conservatives.

The Commission on the consequences of devolution for the House of Commons (the McKay Commission) was finally established in January 2012, and reported in March 2013. It recommended the adoption as a constitutional convention the principle that 'decisions at the United Kingdom level with a separate and distinct effect for England (or for England-and-Wales) should normally be taken only with the consent of a majority of MPs for constituencies in England (or England and Wales).' This would enacted through a 'double-count' whereby votes on legislation would (as now) involve and be carried by the votes of all MPs, but the outcome of the 'balance of the votes from England (or England-and-Wales) would be announced as well'.¹² These recommendations therefore rest on the notion that no government would want to face the political embarrassment of been seen to break what might be termed the McKay convention. However, as lain McLean has previously argued in this journal, this is 'a pretty soft constraint' that a government may well be willing to risk breaking.¹³ As such, these proposals always looked unlikely to satisfy those arguing for EvfEl, although an early implementation of the plans may have assuaged the concerns of enough Conservative moderates on the issue to have reduced its potency in the light of devo-max. However, following the report's publication there appeared to be little appetite amongst either Coalition partner to push things forward, or to even offer a substantive official response. The prospect of a measure to address the West Lothian Question being implemented by the government therefore seemed slim, as predicted by Robert Hazell in 2012.¹⁴ However, when the issue of EvfEl was reignited by Cameron after the Accepted version of article published in *Political Quarterly*, (2015), vol. 86(1), pp. 125-132. For published version please visit: http://onlinelibrary.wiley.com/doi/10.1111/1467-923X.12142/epdf referendum, the McKay report acted as a yardstick against which other proposals to address the

West Lothian Question can be compared, as discussed below.

The referendum aftermath

It has become something of a cliché to suggest that the West Lothian Question is one that cannot be satisfactorily answered, and therefore (as Lord Irvine once suggested) one that is better not asked. The government's record prior to the Scottish independence referendum indicated that (in spite of the pledges contained in successive Conservative general election manifestos since 2001) David Cameron was inclined to neglect getting around to dealing with this thorny issue. Although opinion polls suggested that when asked voters tended to agree with the beguiling principle of EvfEl, it had never become a salient concern. Indeed, the formation of the Conservative-Liberal Democrat Coalition helped to diffuse the matter, as together the two parties enjoy a substantial majority both in England and in the UK as a whole. In contrast, a rainbow coalition of the left, as some Liberal Democrats had hoped for, 'would have resurrected the West Lothian Question with a vengeance' by falling a long way short of a majority in England.¹⁵ Given the problems identified with the main proposed solutions to the question, declining to tackle it could be seen as a plausible conservative response: as one right-wing commentator argued, 'leaving it alone causes less trouble than addressing it. And *first, do no harm* is *supposed* to be a Tory principle.'¹⁶ And while the Liberal Democrats remained ostensibly wedded to the principle of federalism, they had demonstrated little appetite for developing serious proposals to make it happen in practice.¹⁷

However, as discussed at the outset, all of this changed with the promise of devo-max to Scotland and the no vote in the referendum. Sticking to the timetable announced by Cameron on the morning of the referendum result, the Leader of the House of Commons, William Hague, brought before Parliament a series of proposals for addressing the West Lothian Question with a view to holding a

vote in the New Year. However, the government's command paper revealed the difficulty in reaching agreement on the issue, containing as it did three options proposed by the Conservative Party and one by the Liberal Democrats. The Conservative contribution to the document endorsed the representative principle contained in the McKay report, and suggested this needed to be enacted through a more forceful set of reforms placed on a statutory footing. The three options for achieving this were firstly, that MPs from outside of England be excluded from English-only legislation at all stages of its passage (based on recommendations made to the Conservative Party in 2000 by Lord Norton); secondly, an English-only committee stage (essentially the proposals from the 2008 Democracy Taskforce chaired by Kenneth Clarke); and thirdly, a bolstered version of McKay's proposal for a consent motion, but providing English MPs with a veto on English-only legislation. The Liberal Democrat proposal suggested an English-only committee stage with English MPs represented on a proportional basis to votes cast in England at the previous general election, rather than seats held in the Commons.¹⁸ The divergence between this and the Conservative position means that it is difficult to envisage the Coalition reaching a settled view on the matter before the general election, not least because of the bitter aftertaste left by the disputes between the parties over constitutional matters earlier in the parliament.

The spectrum of propositions from the Conservatives also illustrates the divergence of opinion that can be found on EvfEl within the party, and this was also evident in the Commons debate on the command paper. The former Secretary of State for Wales John Redwood, for example, claimed that: 'England expects English votes for English issues. We expect simplicity and justice now: no ifs, no buts, no committee limitations, no tricks' and urged Hague to 'join me in speaking for England'.¹⁹ Redwood's intervention reflected a substantial body of opinion on the Conservative backbenches. In the days following the referendum, newspapers reported that: 'Tory party whips spent the weekend ringing angry MPs, reassuring them that Mr Cameron recognised their concerns and would use the issue to portray Labour as resisting the rights of the English.'²⁰ Although Cameron had initially

claimed that EvfEl would accompany devo-max, he had soon been forced to concede that the two sets of reforms were not dependent on each other (a point he had to repeat when giving evidence to the Liaison Committee on the 20 November). Conservative resentment over further powers being granted to Holyrood regardless of any agreement on EvfEl may well have increased the determination of backbench MPs not to settle for a softer resolution to the West Lothian Question. Evidence that the wider party membership strongly supports EvfEl is likely to further harden their resolve. A poll of party members for the website ConservativeHome found that 78 per cent favoured the hard option (backed by Redwood) of completely barring MPs from outside of England voting for English-only matters, with only a third favouring the weaker solution of an English-only committee stage.²¹ Readers of the same website also selected Redwood as their parliamentarian of the year for 2014.

The strength of this sentiment explains the Conservative leadership's decision to include the firmer option of full EvfEI in the command paper, even if its chances of being adopted before the election remain extremely slim. The party leadership calculated that it needed to be seen to be pushing hard for EfvEI in order to prevent open revolt against the legislation required to fulfil 'the vow' to Scotland. However, some Conservative backbenchers remained cautious about full-blooded EvfEI. Sir Edward Leigh, for instance, told the Commons debate on the issue that 'our overriding concern must be to preserve the United Kingdom and the sense of unity in the United Kingdom' and stressed the desirability of achieving cross-party consensus for any reforms.²² By including several options in the command paper the government also left open the possibility of compromise being reached on a softer option. Although the Liberal Democrats' insistent on the precept of proportionality was a major stumbling block, Hague was able to tell parliament that 'the principle of establishing English votes on English laws is one on which we in the coalition can agree'.²³ The wording of the EvfEI pledge contained in the 2010 Conservative manifesto discussed above also suggests that the party

leadership would be willing to give ground to reach a deal on a variant of McKay's consent motion and/or an English-only committee stage.

The prospect of an agreement being reached about some form of EvfEl (albeit probably not in time for the general election) has also been noticeably increased by a shift in Labour's position on the issue. In the Commons debate, Shadow Justice Secretary Sadiq Khan conceded that the status of English-only matters at Westminster needed to be reviewed, to give English MPs a greater say in scrutinising such legislation. Labour has therefore suggested that a broader constitutional convention should take the McKay recommendations as its starting point on this particular issue, and also look at other matters including Lords reform and devolution within England. There is therefore broad acceptance of the need for some reform across the House, with McKay taken as a common starting point. The three main Westminster parties have also each indicated a willingness to hold a constitutional convention, although for the Conservatives a resolution of the West Lothian Question should precede rather than emerge from such a process. The key areas of contention are therefore over timing, and whether (and to what extent) the McKay recommendations need to be bolstered.

Conclusion: 2015 and beyond

The 2010 parliament has witnessed some important developments in relation to the English Question, with the implementation of procedural changes in the House of Commons to address West Lothian now looking much more likely than not. However, this shift has come about despite conflict within the Coalition over the issue, and has been driven by external events and party management pressures rather than by agreement to drive things forward at the top of government. Somewhat ironically for an administration that came into office with a radical agenda for constitutional reform, the key changes it has overseen, namely the recalibration of the Union with

Scotland along quasi-federal lines, have been driven by factors largely beyond its control. Meanwhile the key priorities of the Coalition partners for constitutional reform have foundered. As this article has noted, understanding the failure of the plans for reform of the electoral system, constituency boundaries and the House of Lords requires an appreciation of the intra- as well as inter-party disputes they engendered. Similarly in the case of EvfEl, the position of the Conservative Party leadership in particular has been shaped by the threat of backbench rebellion, and the attitude of all three main parties has reflected partisan interests rather than coherent thinking about the future of the constitution. Nonetheless, the risks of inaction on the West Lothian Question have been rebalanced by the imminent arrival of devo-max. Furthermore, this view seems to be gathering a cross-party consensus, even if a great deal of argument remains to be had over the detail.

A modest reform to the procedures of the House of Commons along the lines outlined by the McKay Commission would be a sensible and pragmatic step to help diffuse the threat of a narrative of illegitimacy developing around a future government of the UK in England (as was propagated by nationalists in Scotland regarding the Thatcher governments, for example). But while the West Lothian Question might finally be given some form of answer, this will not mark a resolution of the broader English Question. In 2008, reporting the findings of the Democracy Taskforce that he chaired, Kenneth Clarke described the West Lothian Question as a 'constitutional niggle' which needed to be dealt with to head off the threat of greater English disquiet in the future. Even if the opportunity to nip in the bud this potential for resentment existed then, it seems improbable that it could be so easily despatched now. The evidence from the other nations of the UK is that devolution leads to demands for further recognition and powers rather than less. The items that would be next in the sights of those who claim to 'speak for England' are not hard to foresee as rumblings of discontent have already been felt: the Barnett formula, taxation and public spending would surely soon be the next areas where more vocal demands would be heard.

Looming over all of this in the near term is the 2015 general election, the result of which could rapidly intensify the public demand for the political status of England to be more clearly resolved. At present the opinion pollsters and psephologists appear only to agree that the election is far too close to call, with a hung parliament the most likely outcome. As well as the question of which party will be the largest (Labour or the Conservatives), three other factors are in play which make the result particularly difficult to foresee, and which all have important potential consequences in relation to the English Question. The first is whether the Liberal Democrats will be decimated, as their headline poll ratings currently suggest, or whether they will be able to hold onto a good number of seats through the power of their local campaigning. At present the Liberal Democrats have 42 MPs in England. In a hung parliament scenario leading to a Labour-Liberal Democrat coalition, the seats of the smaller party could be crucial in helping form a government which represents a majority of seats in England.

The second factor is the rise in popularity of the Scottish National Party since the referendum, with some polls suggesting the SNP could win a majority of the seats in Scotland. Such a result not only makes the likelihood of a Labour majority much less likely, it also raises the intriguing possibility of a Westminster government being dependent on a pact or even a coalition with the nationalists while lacking a majority in England. Although the SNP has traditionally adopted a self-denying ordinance when it comes to voting on matters it deems English-only, such a scenario would make the West Lothian Question acute. The new leader of the SNP, Nicola Sturgeon, has already indicated that her MPs at Westminster would vote on some English-only matters if they judged that they may have a negative impact on Scotland, citing the (arguably hypothetical) threat of NHS privatisation as a relevant example. Without some parliamentary mechanism for adjudicating on whether legislation at Westminster will have an impact in Scotland, the power to adjudicate on that effectively would be delegated to the SNP and other Scottish MPs. Given their declared interest in breaking up the Union it would be astounding if the SNP did not use its representation at Westminster to ferment as much

controversy as possible over the current settlement: more vocal articulation of a sense of grievance in England would then be used by the party north of the border to support its case for independence.

In the context of ongoing austerity in the public finances, the fiercest disputes are likely to revolve around questions of resource allocation. Already at this early stage of the election campaign, London-based newspapers have voiced outrage at the suggestion by the new leader of the Labour Party in Scotland, Jim Murphy, that the mansion tax (which would mainly affect the capital) will be used to help fund the NHS in Scotland. Should such a tax be implemented by a Labour-led government lacking a majority in England, and be portrayed as being diverted to Scotland, the backlash against the government from the London-elite could be ferocious, quite possibly leading to the demand that all property taxation be devolved to the London Assembly.

The third factor is the rise of UKIP. While the party is still not widely expected to make large gains in terms of seats, its capacity to win a substantial share of the vote makes the election highly unpredictable. In addition, the party is arguably best placed to exploit and mobilise the politics of resentment in England, and is likely to seek to do so. One recent survey found that UKIP is the party most trusted to argue for the interests of England. UKIP supporters also identified most strongly with England and were more likely to favour harder solutions to the West Lothian Question.²⁴ As in other areas such as Europe and immigration, the UKIP effect could therefore be to push the Conservatives (and possibly even Labour) into taking a more vigorously and overtly English, rather than Unionist, stance.

All of this suggests that the politics of Englishness is likely to be an important feature of the political landscape over the coming decade, and is something that future governments will, however unwillingly, need to respond to. For some time there has been a growing body of evidence that

indicates an increasing identification with England as a political community, and in the context of devo-max this looks unlikely to abate over the coming years. The referendum in Scotland has not decisively settled the question of the future of the Union, although it has led to the nature of the Unionist settlement being more closely examined in all guarters of the UK. The political dynamics analysed here remain in flux, and the outcome of the 2015 election will be crucial in shaping how this debate develops. In examining events since 2010, this article has argued that the implementation of some variant of EvfEl now looks much more likely than previously, and that the adoption of a consent motion on the lines suggested by the McKay Commission would be a prudent move in the light of further devolution to Scotland. However, while such a move may help stabilise the constitutional position in the short-term, it would not remove the wider English Question. To secure the long-term future of the Union a new settlement, probably along federal lines is required but the obstacles to achieving that remain immense. Few politicians south of the border appear willing to engage in a serious and far-reaching reappraisal of the basis of the United Kingdom, or appear able to articulate a Unionist vision that can accommodate the various identities of the constituent nations in a positive way. The break-up of the Union in my lifetime, remains, on balance, more likely than not.

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⁶ R. Hazell, 'Case Study I: Constitutional Reform', in R. Hazell & B. Yong, *The Politics of Coalition*, Oxford, Hart

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⁷ Liberal Democrat Manifesto 2010, p. 92.

⁸ Conservative Party Manifesto, 2010, pp. 83-4.

⁹ *The Coalition: our programme for government*, HM Government, 22 May 2010, p. 28.

¹⁰ B. Yong, 'Formation of the Coalition', in R. Hazell & B. Yong, *The Politics of Coalition*, Oxford, Hart Publishing,

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¹¹ Hazell, p. 161.

¹² Sir William McKay (chair), *Report of the Commission on the Consequences of Devolution for the House of Commons* [the McKay Report], 2013, para. 119, and para. 219.

¹³ I. McLean, 'Report of the Commission on the Consequences of Devolution for the House of Commons (the McKay Commission)', *Political Quarterly*, 84(3), p. 397.

¹⁴ Hazell, p. 158.

¹⁵ V. Bogdanor, *The Coalition and the* Constitution, Oxford, Hart Publishing, 2011, p. 41

¹⁶ A. Massie, 'The answer to the West Lothian Question is to stop asking it', *The Spectator*, 23 August 2013.

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¹⁸ Cm 8969, *The implications of devolution for England*, London, Cabinet Office, December 2014.

¹⁹ J. Redwood, *Hansard*, 16 Dec 2014: Column 1270.

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²² E. Leigh, *Hansard*, 16 Dec 2014: Column 1281.

²³ W. Hague, *Hansard*, 16 Dec 2014: Column 1272.

²⁴ C. Jeffrey et al, *Taking England Seriously: The New English Politics*, 2014,

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