



*The Question of EVEL:  
a review of literature and  
opinions*

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## Introduction

*“You will see the biggest devolution in 100 years of money and power. This will be a decade of decentralisation.” (Cruddas 21.09.14)*

Many politicians and commentators might not agree with Jon Cruddas’s prediction, but most are agreed that the constitutional arrangements between and within the four nations of the Union will radically change in the near future. Beyond this general agreement almost no part of the prediction is uncontested. The debate about how the constitution should be changed to meet the new circumstances is intense and complex.

This paper was commissioned by Compass to explore some of the key arguments and issues relating to the question of ‘English Votes for English laws’ (EVEL), and the wider constitutional and political issues that surround the question, with the aim of encouraging and informing debate within the Labour Party in the run up to the general election in May 2015.

The publication of the Government’s policy paper, in December 2014, exemplifies some of the difficulties surrounding the question of EVEL: the Coalition was unable to achieve a consensus between the parties and indeed within the Tory party itself (Hague 2014).

At the same time the Labour Party revised its long-term opposition to EVEL, agreeing that a committee stage made up of only English MPs who would scrutinise and amend legislation that applies only to England needs to be developed (LP, 19.09.14).

The next Labour Government would also:

- introduce an English Devolution Act to devolve skills, transport and economic development to Wales and local authorities
- create a democratically elected Senate of the Nations and Regions, replacing the House of Lords
- establish a Constitutional Convention made up of members of the public as elected representatives. A key role of the Convention would be to consider the McKay Committee recommendations that an English Committee stage should be introduced into parliamentary proceedings (Kahn, 16.12.14).

So it appears that there is some agreement that some form of EVEL is required. But it is a consensus that is, at best, skin deep. There is little agreement on how EVEL should work and what other constitutional reforms are required.

There are, broadly speaking, three contrasting views on the question of EVEL:

**Bogdanor and others:** argue that EVEL is essentially unworkable and may lead to constitutional crisis. In practice the only way that the West Lothian question can be resolved is by devolving significant powers, including fiscal measures, to regions and the large cities.

**Hazell et al:** argue that such concerns relating to EVEL are exaggerated. The amount of legislation relating to English matters is very limited and usually uncontroversial. It is unlikely that a constitutional crisis would develop even if the next Labour government had a minority of English MPs.

**Law and Hutton:** argue that the UK should become a federal system. They argue that the anti-federalists have a basic misunderstanding of what a federal system could be like in the UK.

Whatever the views on the desirability or otherwise of EVEL, there is a growing consensus among politicians and constitutional experts that any changes in the way Westminster does things must be accompanied by a radical decentralisation of power, most likely to some form of regional system. Some also argue that any form of EVEL would be unworkable without

replacing our current ‘first past the post’ electoral system with some form of proportional representation.

Finally there is the question of how constitutional change should come about. The Labour Party is committed to the creation of a ‘people-led Constitutional Convention’, a strategy that is supported by a coalition of civil organisations (including Compass) led by the Electoral Reform Society. However some pro-English devolution voices, including Graham Allen MP<sup>1</sup>, argue that the process of constitutional reform must not be delayed, and that a Convention would result in the issues being kicked into the long grass (Allen, 11.12.14).

## EVEL - Current Party Policy

### The Coalition Government’s Position

The command paper on the question of English Laws for English Votes tabled by William Hague on 16 December 2014 merely outlined several options relating to EVEL (Hague, 2014). Indeed at that time there seemed to be little agreement within the Conservative Party itself (Guardian 16.12.14).

The command paper options included three options from the Conservative Party and one from the Liberal Democrats:

The **Tory** options were:

- barring Scottish and Northern Irish MPs from any role in English and Welsh bills and limiting England-only bills to English MPs
- English MPs, or English and Welsh MPs only allowed to consider relevant bills during their committee and report stages, including debate on amendments, prior to all MPs voting on the final bill
- allowing only English MPs, or English and Welsh MPs, to consider relevant bills at committee stage and giving them an effective veto in a separate vote before their third reading.

Option one (sometimes referred to as ‘pure EVEL’) was advocated by a number of Tory MPs, notably John Redwood, whilst options two and three related more closely to the McKay Commission recommendations<sup>2</sup> (BBC 15.09.14).

The **Liberal Democrats’** proposal was to establish a grand committee of English MPs, who would have the right to veto legislation applying only to England. Membership of the committee to be based on the share of the vote given to each party at the last general election, rather than based on the number of MPs elected.

**Labour.** After the publication of the command paper, the Labour Party modified its opposition to EVEL. The Party now advocates some form of scrutiny process, based around the McKay report (Kahn 16.12.12).

### Conservative Proposals - February 2015

In February 2015 William Hague announced that the Conservatives will seek to introduce legislation before the next election on the issues of EVEL. His proposal is based on the third option outlined in the December Command Paper:

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<sup>1</sup> Chair of the Commons Select Committee on Political and Constitutional Reform

<sup>2</sup> See subsection ‘The McKay Report’ below.

- Before a bill or parts of a bill affecting only England, or England and Wales, is put to its final Commons vote, English and in some cases Welsh MPs would meet separately to consider it
- The Bill could not proceed without the backing of a majority of this English Grand Committee
- In addition, only MPs for English constituencies (and Welsh seats where relevant) would be allowed to take part in the committee stage, where the fine details are thrashed out and amendments proposed
- But MPs from all parts of the UK would be entitled to take part in the final Commons vote passing the Bill into law

(BBC News, 2015)

This would mean that:

- English MPs would be given a veto over legislation that applies only in England, including setting income tax rates
- MPs from all the nations would still be able to debate laws that apply solely in England, because a Commons majority would still be required for any bill
- The committee stage would be restricted to those MPs who represent English constituencies
- The English MPs' veto would "to prevent the wishes of the English or English and Welsh being overridden by Scottish MPs" (Chakellian, 2015).

However several Tory MPs, most notably John Redwood, argue that Hague's proposals do not go far enough, firstly because English MPs would only be able to veto legislation rather than initiate it, and secondly because the Scots would still be able to hold Westminster to hostage on English issues, because proposals could be voted down by a coalition of Labour and the SNP (Colvile, 2015)>

### **Scottish National Party**

Nicola Sturgeon, leader of the Scottish National Party has rejected Hague's proposals. She uses the same arguments as Bogdanor's (see page 8) that whilst legislation may seem superficially 'English', much of it could have 'serious knock-on consequences for Scotland, particularly in public finances via the Barnett Formula'. Therefore the SNP would feel entitled to vote on issues that appeared to concern England only but would have an impact on Scotland (Sturgeon, 2015).

## **Background and Drivers**

The post Scottish Independence Referendum turmoil concerning the constitution is neither sudden nor unexpected. This 'constitutional moment' is a product of structural, political, cultural and economic factors that have been developing for many years which can be summarised as follows (Cram 11.12.14) :

### **Structural**

- West Lothian Question
- the impact of asymmetrical devolution
- growing frustration with the exceptionally centralised Westminster system of government (Blick, 2014)
- the 'lopsided' nature of the 4 nations that form the Union, where England has approximately 84% of the total population of the United Kingdom and Britain.

### **Political**

- the first past the post electoral system is increasingly problematic (Bogdanor 2014)
- we are rapidly moving away from a two/three party to a multiparty system

- increasing demands for the devolution of power to communities, service users and local authorities (Miliband, 2014)
- the shrinking representation of Conservatives in Scotland and Labour in the south and south east of England (with the exception of London) (Kenny 24.11.14)

### **Cultural**

- increasing levels of alienation from the political system, represented by a collapse in political party membership and voter turnout in elections
- loosening of Union
- a growing sense of ‘English Identity’ and nationalism (Kenny 24.11.14)

### **Economic**

- the economic crisis and subsequent austerity, particularly severe and continuing cuts in public spending.

## **The West Lothian Question**

Lying at the heart of the constitutional issue is the West Lothian Question (WLQ) (or alternatively the English Question). The WLQ has been described as “a constant thorn in the side of devolution efforts for over 100 years” (McLean, 2014). Key dates are given in Table 1.

The question centres on the nature of the British state, where all decisions about England and the UK as a whole are made in Parliament, but many decisions affecting the other three nations of the Union are increasingly devolved to their own national assemblies.

Therefore English MPs have little say in the domestic policies of the devolved nations but MPs from the devolved nations are able to vote on wholly English matters (SN/PC/06821).

There are two other important issues arising from the WLQ (Bogdanor, 2001):

- the potential problem of a party gaining an overall majority of MPs across the UK but a minority from England
- the appropriateness of a Scottish MP becoming a minister in the British government, and deciding on English matters.

**TABLE 1 The West Lothian Question and Devolution - Key Dates**

1707 - Treaty of Union

1886 - William Gladstone identifies the problem in relation to Irish Home Rule

1977 - Tam Dalyell raises the problem again. Enoch Powell coins the term 'West Lothian Question' in his response to the speech

1979 - Devolution Referendum (fails)

1997 - Devolution Referendum (successful)

1999 - Opening of Scottish Parliament

1999 - William Hague, leader of Conservative opposition argues for English votes for English laws

2007 - Scottish Executive becomes Scottish Government

2008 - Attempt by Labour Government to establish series of regional select and grand committees - fails, as Conservatives do not nominate any MPs to serve

2008 - Conservative Democracy Task Force - led by Ken Clark - develops a series of proposals re EVEL

2012/13 - McKay Commission established to report on the 'consequences of devolution for the House of Commons'

2014 - Publication of Coalition Government options re English vote for English laws

## English Votes for English Laws - Arguments and Options

On the face of it, allowing only MPs from English constituencies to vote on English matters would seem the easiest and most logical way of solving the West Lothian Question. However some believe that imposition of EVEL is a far from desirable option. Up to December 2104 this was also the long-held view of the Labour Party (Wintour 2014).

The root of the West Lothian Question is the dual 'untidy and asymmetric' nature of the Union in terms of:

- size, where England has about 84% of the total population the union<sup>3</sup> (2014)
- devolution of powers:
  - a. where Scotland, Wales and Northern Ireland have devolved powers, but the extent and the form of those powers differ from each other.
  - b. where England is has no devolved powers. Decisions relating to England are made by the parliament of the United Kingdom.

It is an asymmetry that will become even more pronounced as the agreements of the Smith Commission are implemented (Smith, 2014).

Whilst the political parties and governments have long discussed the WLQ, the debates have not markedly modified the way parliament functions. However there is common agreement,

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<sup>3</sup> It is 10 times bigger than Scotland, 20 times bigger than Wales and 30 times the size of the Northern Ireland. (Gallagher 2014)

that, in the aftermath of the Scottish Impendence Referendum, the WLQ can no longer be ignored.

## The Pro EVEL Argument

The main aims and arguments advocating EVEL as the solution to the WLQ are outlined in Table 2.

TABLE 2

<i>Argument</i>	<i>Details</i>	<i>Source</i>
Demand from the electorate	50% polled support for some form of EVEL and 60% do not trust the UK government to pursue English interests	(Blick 2014) (Hazell 2006)
Easiest Option	No new tier of government will be created, merely changes in procedure, and these can be quickly implemented	(Blick 2014)
Consistently advocated	Parliamentary commissions have been consistently pro-EVEL. Most recently McKay in 2013	(SN/PC/06821)
EVEL will rarely be invoked	The majority of bills considered by Westminster have mixed territoriality, and English-specific bills are rare. Since 1997 only 21 out of 5,000 divisions were concerned with English only matters. There have been just two in the current parliamentary session.	(Hazell 21.11.14)
Other options are worse	Options such as maintaining the status quo, strengthening local government, or creating a federal system will not resolve the problem, are not popular with the electorate, or are too radical.	(SN/PC/06821)

### The McKay Report

This Commission was set up by the Government in 2012 to report on ‘the consequences of devolution on the House of Commons’. The report was published in 2013. (SN/PC/06821)

The report recommended the adoption of a constitutional convention whereby decisions relating to England only should normally be taken only with the consent of a majority of MPs from English constituencies (SN/PC/06821). Whilst maintaining this principal, ‘English only’ bills should pass through the normal House of Commons sequence, but via an ‘in and out’ process, whereby only English MPs would consider a bill at some stages, but at other stages it would be debated by the whole of the House. In addition:

- The Speaker would have the role of certifying those bills that are ‘English’.
- English MPs would consider English Bills only in proportion to the English party strengths within the Commons
- an English Grand Committee consisting of English MPs would debate the effects of legislation on England.
- the third reading would involve the whole of the House.

## Arguments Opposing EVEL

Vernon Bogdanor is the best-known proponent of the anti-EVEL view, but it is a view that is shared by a number of senior politicians from the Labour Party. Bogdanor’s case is summarised in Table 3.

**TABLE 3. A Summary of the Arguments Against EVEL Options**

<b>Argument</b>	<b>Details</b>	<b>Source</b>
A ‘bifurcated government is a logical absurdity’	EVEL would create a ‘bifurcated government’ resulting in a deadlocked government. Particularly if the government does not have a majority of English MPs and is dependent on MPs from Scotland and Wales for its majority. <i>‘A government must be collectively responsible to parliament for all the policies that come before it’</i>	(Bogdanor 2014)
An English Grand Committee	An English Grand Committee would not work for the same reason. An English majority might be able to negotiate on some matters, but it would regularly be unable to secure swathes of legislation. Such a government might find it impossible to legislate on issues relating to Health and Education because they have revenue-raising implications and it may have not control over taxation.	(Bogdanor 2014)
Tax and Revenue	It is not possible to separate English from Scottish matters because even if the control of income tax is devolved to Scotland, the bulk of Holyrood’s revenue would still come from Westminster. Because Scotland gets a fixed percentage of the overall block grant, any reduction in spending on an English service will also cut spending in Scotland.	(Bogdanor 2014)
The scarcity of English only legislation is irrelevant	This is particularly true in relation to budget issues. The sheer size of England in comparison with the rest of Britain and the UK means there will always be an impact on the other nations.	(Bogdanor 2014)

Supporters of EVEL concede that Bogdanor may have a point but hold that he exaggerates the issues. Indeed EVEL may have a positive impact on Westminster politics by encouraging a more bipartisan approach (Elliot 2014). If for example a Labour government lacked an English majority it still might not be difficult to achieve English majorities for particular programmes (Elliott 2014). In any case a Labour government lacking an English majority would be in a weak position and would therefore need to seek cross-party allies for many measures (Hazell 21.11.14).

Elliott argues that Bogdanor’s concerns are misplaced because if McKay was implemented, English MPs would be unable to veto government bills (Elliott 2014).

Finally the dangers of EVEL are decreasing because:

*‘The days of a single party with an overall majority pushing through their manifesto commitments is over. We are now in the era of permanent coalition’(Hazell 21.11.14).*

Governing parties now need to learn from the experiences of other governments in Europe such as Denmark and Germany, a point recognised by John Denham MP: (Denham 10.12.14)

*“ it would be wrong to get hung up on the results of the next election. We are facing a new unknown future with the development of a multi-party system, and this adds another dimension. It is increasingly unlikely we’ll get a single party government. This multi-party dimension added to devolution has built a fatal instability into the system as it currently exists”.*

Hazell concedes that there are a number of serious technical and political issues, but claims that these can be resolved (Hazell 2006). These are of two kinds:

**(i) Technical difficulties**

Identifying laws where only English MPs are allowed to vote: statutes typically extend across the UK, but may vary in their territorial application in different parts of the Act. This can be resolved by stronger signposting on the territorial extent of bills. The Speaker would identify clauses or amendments that apply only to England.

Deciding at what stage in the legislative process only English MPs are allowed to vote. McKay outlines a range of possible solutions including the creation of an English Grand Committee. Parliament would maintain the right to vote down legislation approved by an England only forum (SN/PC/06821).

**(ii) Political difficulties**

Bogdanor maintains that proponents of EVEL underestimate the impact of the changes. EVEL will create different classes of MPs and end the convention that all members can vote on all matters. The result will be the creation of a parliament within a parliament.

Hazell and others also argue there are practical solutions to many of the issues arising from EVEL for example:

- reducing the number of Scottish and Welsh and Northern Irish MPs to more accurately reflect the reduced role of MPs from these nations in Westminster
- the introduction of proportional representation would reduce Labour's exaggerated representation in Scotland and Wales and increase their representation in England.

Conservatives and Labour are in also in danger of exaggerating the impact of EVEL. For the Tories this is in terms of overselling the benefits of EVEL and failing to satisfy English nationalism:

*"The resentment of English nationalists is more diffuse and inarticulate, and if anything more likely to be focused on financial rather than legislated unfairness."*

For Labour it is in overestimating the potential difficulties posed by EVEL for a future Labour government. A Labour government lacking an English majority is rare. By opposing EVEL Labour's pitch on 'fairness' would look dubious (Kenny 24.11.14).

## 'English Devolution'

*"It is hard to find any democratic country where there is less territorial dispersal of political power than in the UK... the consequences of devolution not being introduced to England means that over 80% of the UK population has no significant tier of government between it and the Westminster/Whitehall core."*

*(Blick 2014)*

Many pro and anti EVEL commentators are agreed that, whatever happens in Westminster, it is essential that substantial executive and financial powers are devolved to the regions and local government.

It is a view shared by many local authorities and civil groups. A letter to the Observer signed by 119 English councils of all political persuasions argued *"English people will not accept Scottish devolution unless it is matched by an equal redistribution of power south of the border"* (Helm, 29.11.14).

According to Gallagher there are compelling political, economic, social and cultural arguments for decentralisation. There are serious divisions in the distribution of power and wealth in the UK. It is a division between the north and the south, not Scotland and England. The south east of England and London are distinct from the rest of the country. These areas increasingly operate in a globalised commercial and financial world. Scotland economically shares these similarities with the south east of England (Gallagher 2014).

Bogdanor argues that there are also growing political/electoral differences between the regions that are exacerbated by the increasing multi-party nature of British politics<sup>4</sup> (Bogdanor, 2015):

*“neither of the major parties is likely to win a national majority as opposed to a series of regional majorities. For the first past the post system not only penalises minor parties, but also major parties in areas where they are weak.”*

For example in 2010

- South of England outside London - Labour had one in six of the votes, but just 4 out of 84 seats
- Scotland - Conservatives one in six of votes, but just 1 out of the 59 seats
- Tories gained 94 seats in the 2010 election but not a single seat in large conurbations of the Midlands and north of England (with the exception of Leicester)

As a consequence it is likely that the election in 2015 will be fought in regional enclaves:

- southwest between Conservatives and Liberal Democrats
- Scotland between Labour and the SNP
- Much of east coast of England between the Conservatives and UKIP

A major problem for the ‘English devolutionists’ is defining the appropriate structure and tier of government where power should be devolved. Most argue that it should be based on English regions, but not existing regions. Existing English regions won’t work because:

- 1 (a) the concept of assemblies based on the existing English regions was soundly rejected by the public when proposed by the last Labour government (Hazell 2006)  
(b) voters are opposed to the creation of another tier of politicians and bureaucracy  
(c) people do not identify with the existing regions
- 2 existing regions lack political and social resonance, and local attachment does not necessarily match regional borders, for example in the South West and South East (Blick 2014).

New regions need to be developed that better reflect the real nature and needs of areas. A good starting point might be city-regions. Conurbations such as Greater Manchester, Leeds and Sheffield already play an important role as economic drivers in a region and have a strong cultural identity (Cox, 2014).

This process has already begun. In November 2014 George Osborne launched the Greater Manchester region (BBC 3.11.14). The process has been criticised, however. Lisa Nandy MP for

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<sup>4</sup> Even if one of the parties manages to get an overall majority (requiring a minimum of 35% of the vote), it will mean that two thirds of voters will have rejected it.

Wigan in Greater Manchester, is critical of the lack of democratic control, stating that that plan has been:

*“cooked up by a group of men behind closed doors...the region’s people have been shown complete contempt” (Nandy, 3.12.14).*

So far the only form of local democratic control is the proposal to create an elected mayor, but the election will not take place until 2017.

Whilst the IPPR report shows that the concept of a city region makes sense particularly for northern England, the concept has its limits. Blick points out that there are a number of problems with the model, such as defining boundaries. There is also the question of the largely rural areas where there are few cities, Cornwall for example (Blick 2014).

Labour supporters of devolution tend to agree that existing regions would not work. John Denham MP and Graham Allen MP<sup>5</sup> also believe that the new regions should be based around common perceptions of identity, and a commonality interests (Allen 2014).

*We “really can’t have a uniform model any longer. That idea failed in the last government” (Denham 10.12.14).*

An alternative to regions is strengthening local government. But this option is problematic because successive reorganisations have left local government battered and demoralised; they have become ‘a creature of central government’ (Hazell 2006).

### Democracy and English Devolution

Throughout this part of the debate the question of democratic accountability has been largely invisible, at best limited to the unpopular concept of elected mayors. For Labour **there seems to be no linking of Miliband’s promise that the next Labour Government would enforce a radical and sustained devolution of power and accountability from the centre to communities, service users and local authorities, as consistently advocated by Ed Miliband (Miliband 2014) with the opportunity provided by English devolution (Chanan and Miller, 2014).**

The pro-decentralisation argument seems mostly to centre on the need to develop more efficient planning and decision-making processes that relate to the needs of the regions. So far it appears that citizens living in those area are effectively locked out. Creating what may in effect become regional mini-Westminster’s can only exacerbate the increasingly levels of alienation that citizens feel from all levels of government. Without the democratisation of the decision making process as advocated by Miliband, Cruddas and others, local government will continue to be seen as no more participative than national government.

## Other Options - Federalism

*“Given how close we came to losing the Union in September, we ought to have the courage to choose the more radical option, and with it a wholesale recalibration of the relationship between the centre and the periphery in this country” (Law 7.11.14).*

Some argue that a more radical, federal, option is required. John Law and Will Hutton argue that the United Kingdom and Britain should become a federal state where English matters are discussed in an English assembly and where a senate of the nations (and possibly regions) would replace the House of Lords (Hutton 06.09.14).

Law argues that EVEL and devolving power to regions would fail to deal with the growing sense of unfairness felt in England. Federalism and symmetrical devolution are not the same, and

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<sup>5</sup> Chair of the House of Commons Political and Constitutional Reform Committee

devolution does not address the principle of supreme authority of the UK Parliament at Westminster (Law 7.11.14).

A federal system should be designed to:

- avoid competition among the regional units within a common sphere of policy action
- prevent competition between regional government and the federal government as they also act within different policy spheres.

A federal system would consist of:

- an English parliament with its own cabinet and first minister. The new parliament would be based outside of London, shifting the centre of political gravity northwards. There would be a clear division between the regional and federal realms of competence
- the House of Commons would become the federal parliament, with a reduced range of policy competences, including overall fiscal and economic policy, international relations and defence
- a senate of the nations and regions would replace the House of Lords. The House could be organised in a similar way to the German Bundersrat<sup>6</sup> with appointed delegates from the four nations. A weighted voting system could be developed that would address the 85% problem.

The federal option would resolve a number of serious issues that other options cannot:

- the individual national parliaments would achieve a perceived symmetry between the 4 nations
- It would solve the 'bifurcated executive' problem of Westminster acting over two different territories.

The creation of an English First Minister would present no challenge to the authority of a British Prime Minister any more than Scottish, Welsh and Northern Irish counterparts now do. An English First Minister would focus on domestic issues (health, education, transport, housing and much of the welfare system), whilst the British Prime Minister would deal with the federal level such as matters of defence, security, foreign policy and macroeconomic management.

The argument that federal systems fail when there is a gross imbalance is incorrect. There already are a wide variety of federal systems operating around the world where the largest units are much bigger than the smallest (Law 7.11.14).

## Arguments Against Federalism

The key arguments against Federalism are:

**England is too dominant.** Gallagher argues that asymmetry between England and the other nations is so profound that a federal system would be grossly unbalanced. "No federation in the world has operated successfully where one of the units is so large. The English Parliament would become a rival to the Westminster Parliament, and in time could be seen as equally remote" (Hazell 2006).

An English Parliament would rival Westminster, as would an English first minister to a British Prime Minister. **Because of the extreme asymmetry, the government of England would be as powerful as that of the UK. A federal solution might answer the West Lothian question in a**

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<sup>6</sup> A Bundersrat is a federal council having legislative or executive functions composed of members selected by the state governments, such as: the upper house of the German and Austrian parliaments

formal sense, but it would mean “*the end of anything that would be recognisable as the UK*” (Gallagher 2014).

**An English Parliament may seem just as remote.** The establishment of national parliaments will not necessarily answer the disconnection of the national political systems that many feel. The Scottish parliament represents a much smaller population, but surveys have shown that Scottish citizens feel that their Parliament is remote from them (Hazell 2014). Finally a federal solution would seem unlikely because few politicians support the idea.

## A Constitutional Convention

*“A citizen-led Constitutional Convention is the only way to answer questions about the future of the UK in a way which commands legitimacy and ensures a sustainable settlement. It will not do for politicians to make these decisions about our constitutional future behind closed doors”* (Holehouse, 20.10.14).

David Cameron’s hasty announcement that the Government would fast track English votes for English laws (Guardian, 27.11.14) was immediately rejected by Ed Miliband, who argued that the Prime Minister’s proposal would fail to answer the constitutional challenges raised by the referendum. Instead Miliband proposed a Constitutional Convention<sup>7</sup>:

*“Rooted in our nations and regions... it should be a process that brings about a deeper change that involves the people rather than just an elite in Westminster”* (LP19.09.14).

The Convention process would include:

- regional debates bringing together MPs and councillors with ordinary citizens and civil society
- each region would produce a report outlining recommendations, dealing with
  - how sub-national devolution can be strengthened
  - how the regions can be given more of a voice in our political system
  - how we can give further voice to regional and national culture and identity
- the suggestions developed in the regions would then be debated at a Constitutional Convention.

The Electoral Reform Society (ERS), supported by other civic organisations including Compass, also believes a ‘citizen led’ constitutional convention is essential<sup>8</sup> (ERS, 2014). They argue that a future constitution will have no legitimacy unless citizens and politicians play an equal role in its development.

Organising a UK wide convention would require vision and ambition and would probably be the largest of its kind ever undertaken. But the convention would provide a platform to demonstrate a different way of doing politics and help counter the growing public disillusionment, cynicism and lack of trust in our existing political systems (ERS, 2014).

The organisers of a UK wide convention would face a number of tough challenges:

- developing a process which the general public and participants had confidence in, not dominated by politicians and interest groups

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<sup>7</sup> A constitutional convention is “*a representative body, brought together to draft a new constitution or to design or approve changes to an old one*” SCPCR, (2013). *Political and Constitutional Reform - Fourth Report: Do we need a constitutional convention for the UK?* House of Commons, Select Committee on Political and Constitutional Reform. London: House of Commons.

<sup>8</sup> The Democratic Society (DemSoc), Involve, British Youth Council (BYC), Unlock Democracy, Bite the Ballot, National Council of Voluntary Organisations (NCVO), Compass, Centre For Women and Democracy (CFWD) and the Association of Chief Executives of Voluntary Organisations (ACEVO)

- ensuring the remit is broad enough to give participants scope to deliberate and have meaningful input but not so wide that it lacks focus
- ensuring enough time is given for the process, but not so much that interest and energy is lost.

## Constitutional conventions in other countries

Table 4 summarises the processes, strengths and weaknesses of a number of recent Constitutional Conventions.

TABLE 4

Area	Process	Pros & Cons
<p><b>Scottish Constitutional Convention</b> 1989 - 1995</p>	<p>Membership included political parties, although not the SNP as it was not in the convention's remit to discuss independence; also boycotted by the Conservatives as they opposed the development of a Scottish Parliament.</p> <p>Described as a 'civil society convention' because its methodology was to involve a wide range of civil society organisations such as the Scottish TUC, regional, district and island councils, women's groups and faith groups (Renwick, 2014).</p> <p>The proposals were included in the 1997 white paper 'Scotland's Parliament'. (SCPCR, 2013)</p>	<p><b>Strengths</b> Succeeded in its aims, bringing a range of opinions together. 74% voted in favour of recommendations for Scottish Parliament based on findings of the Convention (SCPCR, 2013).</p> <p><b>Weakness</b> 6 years to complete work. More a negotiation between interested parties than a 'citizen-led' process (ERS, 2014). Question re representativeness model. Groups couldn't represent population as a whole based on who decides on the groups to be excluded or included (Renwick, 2014).</p>
<p><b>Iceland</b> 2010 - 2012</p>	<p>National Forum involving 950 citizens randomly selected from the National Population Register.</p> <p>In parallel an elected Constitutional Assembly was established. Technical issue re legality, so appointed by Parliament as Constitutional Council. Its role was to draw up new clauses of the constitution incorporating the findings of the Forum.</p> <p>A wide public debate was held employing conventional means plus extensive use of social media. Draft constitution accepted by the Althingi (Parliament) and a national referendum then voted in favour of proposals (SCPCR, 2013). Since then the constitutional process has stalled because of political opposition.</p>	<p><b>Strengths</b> Process had widespread public support. Use of social media ensured a wide range of people participated.</p> <p><b>Weaknesses</b> Iceland has a small population (319,000) compared with UK's 50 million (SCPCR, 2013) The new constitution not adopted because it effectively excluded the politicians. Gave them "carte blanche to block the process at a later date [so] strong citizens' support came to nothing" (ERS, 2014).</p>

Area	Process	Pros & Cons
<p><b>Canada</b></p> <p>British Columbia &amp; Ontario</p> <p>Model used in Netherlands</p> <p>2005 - 2007</p>	<p>Citizen assemblies (BC 160 members). Potential members randomly selected from the electoral roll and invited to participate. Membership of Assembly chosen from a random sample, stratified to ensure proportional representation, by gender, age and ethnicity, of those interested. Members met at weekends to learn about options, canvas views, deliberate and make proposals.</p> <p>The BC assembly sat for 11 months and took evidence at 50 public hearings attended by over 3,000 people, also received 1,600 written submissions (SCPCR, 2013).</p>	<p><b>Strengths</b></p> <p>The approach worked well and participants were free of the vested interests of the established politicians. Other citizens trusted them (Renwick, 2014).</p> <p>Participants showed great capacity to understand the issues and develop reasoned proposals (Renwick, 2014).</p> <p><b>Weaknesses</b></p> <p>Only achieved limited institutional change. Little interest among the politicians or public on electoral reform. Politicians felt excluded from the process and therefore ‘felt free to rubbish its conclusions’ (Renwick, 2014).</p>
<p><b>Ireland</b></p> <p>2012 - 2014</p>	<p>Shared similarities with the Canadian and Dutch models but mixed assemblies, with two-thirds membership chosen randomly from the electoral role, other third nominated by politicians.</p> <p>The Assembly was asked to consider eight topics arising from lack of agreement between the parties of the governing coalition.</p>	<p><b>Strengths</b></p> <p>The mix of citizens and politicians worked well. Consequently politicians have taken the process and suggestions seriously. Considerable input from experts and pressure groups. Government have already suggested that more might follow. Politicians involved acted as ambassadors for the Convention’s recommendations (Renwick, 2014).</p> <p><b>Weaknesses</b></p> <p>Politicians who were not involved are far less interested in taking things forward. The limited range of questions and short time given (one weekend per question) prevented development of deep understanding and no time to properly deliberate. Lacked preliminary training (Renwick, 2014; ERS, 2014).</p>

## Key issues for a constitutional convention for the UK

The Electoral Reform Society has drawn a number of important conclusions from the experience of the conventions outlined in Table 4. For example it is important to be clear about how the recommendations of the Convention will be taken forward and enacted. Participants must feel confident that the process is being taken seriously by the government of the day.

In the UK this could be achieved through a Parliamentary commitment to honour the process and enable the recommendations to be taken forward (ERS, 2014).

One of the reasons why the Icelandic and to some extent Canadian conventions were not successful is because they did not effectively involve the politicians. In order to retain political legitimacy, elected representatives as well as citizens must be involved in the process. It is also important that citizens feel they are on an equal footing with the politicians. A new constitution must be seen as being inclusive and legitimate, and this can be achieved through a 'collective drafting process' (Olivier, 2014).

Like Labour, the ERS recommends organising regional assemblies that would feed into the England-wide convention.

Most importantly the process of the convention must be deliberative, where decisions must be reached through discussion, rather than "*a negotiation between interested parties*" (ERS, 2014).

The convention would require time and commitment (14 to 18 months) and should include 6 months to set up and recruit the participants, as well as organising a substantial learning phase to enable participants to learn about the options, and hear from experts and pressure groups.

A public hearing phase would seek contributions from as many people as possible. There would then be a deliberation phase and final publication of the Convention's recommendations (Renwick, 2014).

Those opposed to the idea of a convention say it might become a talking shop with the result of kicking the change process and English devolution into the long grass. The dynamics of the Westminster political process require that "*we simply get on with things - let's start devolving as soon as possible*" (Allen 2014).

However as Renwick points out when criticising the Conservatives for trying to push through EVEL:

*"What we are discussing here is the most radical reform of the structure of the Union since its creation in 1707. To push it through to fit someone's short-term political timetable would be appalling"* (Renwick, 2014).

# Appendix 1: Proposed Timetable for Devolution: post referendum

(Armstrong, 2014)

<i>Date</i>	<i>Event</i>	<i>Organisation</i>
18 September 2014	Referendum vote in Scotland	
19 September 2014	Establishment of Smith Commission (led by Lord Smith of Kelvin)	UK Government
30 September 2014	Members of Smith Commission nominated by Parties	Smith Commission
10 October 2014	<i>More powers for the Scottish Parliament</i> proposals published	Scottish Government
14 October 2014	Commons debate on Devolution (Scotland Referendum). ( HC Deb 14 Oct 2014, col 168-271	UK Parliament
16 October 2014	Commons adjournment debate on devolution (Gordon Brown). HC Deb 16 Oct 2014, col 555-564	UK Parliament
29 <sup>th</sup> of October 2014	Lords debate on the Scotland referendum (HL Deb 29 Oct 2014, 1201 - 1298	UK Parliament
By 30 November 2014	Smith Commission to publish Heads of Agreement and recommendations on further devolution to Scottish Parliament	Smith Commission
By 25 January 2015	Draft Bill to UK Parliament on further devolution of powers to Scottish Parliament	UK government (informed by Smith Commission)
April 2015	Additional tax-raising and borrowing powers devolved to the Scottish Parliament under <i>Scotland Act 2012</i>	Scottish Parliament
7 May 2015	Elections to UK Parliament	UK Parliament
After 7 May 2015	Publication of Scotland Bill on further devolution	UK Government
5 May 2016	Elections to the Scottish Parliament	Scottish Parliament

## Appendix 2: Summary of Recommendations of Smith Commission

(Siddique, 2014)

- The Scottish parliament will have complete power to set income tax rates and bands.
- Holyrood will receive a proportion of the VAT raised in Scotland, amounting to the first 10 percentage points of the standard rate (i.e. with the current standard VAT rate of 20%, Scotland will 50% of the receipts), but cannot influence the UK's overall UK rate.
- It will have increased borrowing powers, to be agreed with the UK government, to support capital investment and ensure budgetary stability.
- UK legislation will state that the Scottish parliament and Scottish government are permanent institutions. The parliament will also be given powers over how it is elected and run.
- Holyrood will have power to extend the vote to 16- and 17-year-olds, allowing them to vote in the 2016 Scottish parliamentary election.
- It will have control over a number of benefits including disability living allowance, the personal independence payment, winter fuel payments and the housing elements of universal credit, including the under-occupancy charge (bedroom tax).
- The Scottish parliament will also have new powers to make discretionary payments in any area of welfare without the need to obtain prior permission from department for work and pensions.
- It will have all powers of support for unemployed people through employment programmes, mainly delivered at present through [the Work Programme](#).
- It will have control over air passenger duty charged on people flying from Scottish airports.
- Responsibility for the management of [the crown estate's economic assets](#) in Scotland, including the crown estate's seabed and mineral and fishing rights, and the revenue generated from these assets, will be transferred to the Scottish parliament.
- The licensing of onshore oil and gas extraction underlying Scotland will be devolved to the Scottish parliament.
- The Scottish government will have power to allow public sector operators to bid for rail franchises funded and specified by Scottish ministers.
- The block grant from the UK government to Scotland will continue to be determined via the operation of the [Barnett formula](#). New rules to define how it will be adjusted at the point when powers are transferred and thereafter will be agreed by the Scottish and UK governments and put in place prior to the powers coming into force. These rules will ensure that neither the Scottish nor UK governments will lose or gain financially from the act of transferring a power.
- MPs representing constituencies across the whole of the UK will continue to decide the UK's budget, including income tax.
- The Scottish and UK governments will draw up and agree a memorandum of understanding to ensure that devolution is not detrimental to UK-wide critical national infrastructure in relation to matters such as defence and security, oil and gas and energy.

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