



Progressive Politics

*and the Question of
English Votes for
English Laws*

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About Colin Miller

Colin has a particular interest in the power of deliberative and participative forms of democratic decision-making and community led partnerships, and how the lessons learned from them can be used to enrich and extend our wider democratic systems. He has undertaken extensive research, writing, teaching and consultancy work in this field.

Colin has also collaborated on a wide range of publications with Gabriel Chanan which are available through their joint venture PACES. More information about PACES is available at www.pacesempowerment.co.uk/wordpress

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Overview

The question of ‘English votes for English laws’ (EVEL) present’s progressive politicians with a political and constitutional headache. The issue cannot be avoided – the new Conservative government is committed to implementing the Smith report on devolution, but also introducing some form of EVEL as soon as possible. The government are also going forward with their ‘northern powerhouse’ policy by devolving powers to Greater Manchester and then elsewhere.

Coupled with this is the sizeable presence of the Scottish National Party, now the third largest party in Westminster, and an electoral system that has demonstrably failed to elect a parliament that represents voters’ intentions. The current government was chosen by only 36% of those who voted, which alongside the massive under-representation of the Liberal Democrats, Greens and UKIP in particular, makes it, as a recent Electoral Reform Society report states ‘the most disproportionate result in British election history’^[1].

In the longer term the Conservative government intends to take forward a plan to reorganise the electoral boundaries so that each constituency has roughly the same number of voters, a change that is predicted to result in an even greater political advantage for the Conservatives in England.

How then, should Labour and the other progressive parties respond to a whole range of complex but important constitutional challenges that require a clear and coherent response?

During the election, in tandem with other progressive parties, the Labour Party was committed to a radical reform of the constitution and devoted a significant part of the manifesto in explaining what changes it would make.

As the new parliament proceeds, there will be opportunities to argue for a progressive agenda for constitutional reform in Westminster, the regions and in local government, not least because voices outside parliament will demand reform.

This paper is based on consultation with Labour MPs and constitutional experts - it recommends progressive parties should pursue a strategy based on four elements:

- They support the introduction of EVEL, based upon the recommendations of the McKay Report.^[2]
- They develop a wider democratic vision than the Conservative’s on the development of the ‘northern powerhouses’, and the likelihood of growing demands for increased powers to our cities, towns and rural areas.
- Build on the work of the Electoral Reform Society and others to support the establishment of a civil society led constitutional convention. This civil society led constitutional convention should aim to become a strong grassroots voice for radical democratic reform. Such a convention should examine the complex question of the relationship between the nations, regions, local government and neighbourhoods, and the replacement of the House of Lords with a House of the Nations and Regions.
- Establish a cross party campaign, including UKIP, for electoral reform.

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Before the election many constitutional experts said that they believed we were facing a once in a lifetime 'constitutional moment'. They argued that the political tectonic plates are moving and forcing change. Despite the unexpected but narrow Conservative victory, there is no reason to believe that the pressures for change have abated. Indeed the case for reform is greater than ever, even if the Conservatives refuse to accept such comprehensive reform is necessary. The introduction of EVEL and the devolving of extensive new powers to Scotland, and to a lesser extent Wales and Northern Ireland will make the pressures for change stronger than ever. It is likely that over the next few years we will see increasingly muscular demands made by many big cities, and rural areas for more devolved powers along the lines of Greater Manchester. We're also likely to see an increasingly 'English' focus on many issues and the rise of English political identity coupled with a potential growing resentment of the English electorate at the asymmetric transfer of powers to Scotland, Wales and Northern Ireland.

Change is inevitable. Will it be progressive?

If Labour had been in the position to form a government but lacking a majority in England it is clear that the Tories and their allies in the media would have immediately begun to question the validity of the new Labour government to make decisions about England. We recommended that in the event of a Labour government, the introduction of some form of EVEL would have been a key element, enabling the government to implement a radical strategy of constitutional change and the devolution of power.

Post election we find ourselves in the unprecedented situation where political representation between the two largest nations of the Union, is completely polarised. The term United Kingdom is beginning to seem increasingly hollow. The political map of the UK is yellow at the top (SNP), red in the north (Labour) and blue from the midlands down (Tory) with a green dot in Brighton and purple one in Clacton. All of a sudden the consequences of our asymmetrical devolution process, the 'West Lothian Question' and EVEL has taken centre stage. The Conservative government is pledged to introduce some form of EVEL. We believe that progressives must support its introduction, but argue that it should be based on the recommendations of the McKay report.

The McKay Report

'English only' bills would pass through the normal House of Commons sequence via an 'in and out' process, where 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.

The Conservative proposals for constitutional change are reactive, narrow and piecemeal, concerned with protecting and consolidating Conservative party self-interest. However as far as the Labour Party and other progressive parties are concerned, the introduction of EVEL, should be only one, small part, of a much larger more visionary and outward looking argument for radical constitutional and political change.

The Labour Manifesto

The Labour Party devoted a significant proportion of its manifesto outlining its strategy for constitutional change. It was bold and radical. The pledges included:

- Devolving power to the regions, cities and local authorities.
- Supporting the creation of a citizen-led constitutional assembly to develop proposals for constitutional change.
- Replacing the House of Lords with a House of the Nations and Regions.
- Reducing the minimum voting age to 16.

It was a set of promises underpinned by the recognition that our existing political system was over centralised and that the progressive vision for a more equal society could only come about if there was a radical devolution of power to local authorities, neighbourhoods and the users of public services.^[8] Now that manifesto has been voted down a different strategy has to be pursued.

The context

A key driving force behind what some constitutional experts called a once in a lifetime ‘constitutional moment’ is of course the pledge to radically devolve powers to the Scottish parliament, but this is only one element forcing change. Others are structural, political, cultural and economic.

Structural

The problem of asymmetrical devolution and the West Lothian Question have been around for many years and will be one of the dominating issues facing this government. Additionally there is the growing frustration with our exceptionally centralised Westminster system of government, particularly in England.

Political

British politics is facing profound change, despite the surprise narrow Conservative majority, the quirks of our first past the post system has disguised the fact that we continue to move away from a two or three party system to a multiparty system.^[9]

Cultural

We face increasing levels of alienation from our political system. Membership of the main political parties is tiny as a percentage of the population, and voter turnout continues to fall over the medium to long term (despite a slight increase in 2015). This is not all just ‘voter apathy’, but the opposite; it is voter anger. There is a disillusion about our political and electoral systems that we ignore at our peril. This trend is coupled with a loosening of Union and rising levels of nationalism in Scotland and England.

Economic

The economic element forcing change is the impact of the economic and financial crisis and subsequent austerity; in particular the severe and continuing cuts in public spending, flat lining wages as well as the marketisation and privatisation of our public services.

A four element solution to EVEL

Because of the complexity of the problem, it is clear, despite Conservative hopes, that on its own EVEL will not resolve the many constitutional and structural issues confronting our political system. Instead, all four of the elements outlined below must be taken together and work as a consistent whole.

By publicly committing itself to each of these elements Labour has the opportunity to challenge the government with a positive vision. It can begin to shape what needs to be done in the longer term based on the common themes of devolving and sharing power, increasing community involvement, creating more flexible and effective forms of decentralised decision-making, and developing more accountable and flexible public services. There is an urgent need to start bringing them together into a coherent vision and strategy. What might this vision look like?

Element 1 - Introducing EVEL

The introduction of some form of EVEL is important for a number of reasons:

- As the first step in constitutional reform indicating a positive response to the issues that Westminster as a legislative body faces.
- Ensuring buy in from the other parties that EVEL is one part of a meaningful process of change.
- Symbolically, as it gives progressive politicians a firm and credible response to the constitutional issues that will confront the new government, but only if it is part of a much more ambitious programme of positive change and addresses the growing discontent of the English electorate on the issue.

Labour has announced that it supports the establishment of an 'English Grand Committee', where MPs from English constituencies can scrutinise and amend legislation as recommended by the McKay report.⁶³ Under this process 'English only' bills should pass through the normal House of Commons sequence; at certain stages only MPs from English constituencies would consider the bill, while at other stages the whole of the House would debate the bill. The third and final reading would involve the whole of the House, providing a theoretical right of veto of all MPs over Grand Committee decisions.

We have to accept that this process may be based on a messy set of arrangements given the variety of political parties involved, and would depend on the relative representation of the political parties in the House of Commons elected from each of these parties.

Element 2 - Devolving and localising

The broad policies of Labour and other progressive parties echo the view of many of the constitutional experts who argue that the introduction of EVEL must be accompanied by a radical devolution of power. This is because devolving powers to the regions is the only way that the gross imbalance of size between the four nations of the United Kingdom and Great Britain (where England has 85% of the total population) can be redressed. This is the structural argument but there is also a political argument for English devolution. British people increasingly feel alienated from our political system; devolution would begin to address this problem.

Labour has begun the process of sketching out an alternative vision to our current over-centralised system. In early 2014 Ed Miliband outlined his desire for a more devolved and inclusive politics and democracy.⁶⁴ He said that Labour would be committed to a long-term strategy of devolving power to local government, neighbourhoods and public service users. He argued that creating a new kind of relationship between citizens, local government and services would have a profoundly positive effect on how we take forward progressive policies.

The party had also announced a number of pledges in response to the Scottish referendum; including creating a

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House of the Nations and Regions that would replace the House of Lords, and organising a citizen-led constitutional convention. This process of devolution and localism would be an important part of the work of the convention.

Through the cooperative councils movement, Labour and other progressive parties have also begun to rethink the way local government can work and its relationship with local residents. The process of devolving power to city regions has already begun, albeit in rather top down and opaque fashion.

In establishing these new city and county regions there should be an absolute commitment that local deliberative assemblies involving citizens, politicians and other stakeholders should be established to guide the establishment of these regions.

The guiding principle should be that power should be devolved from Westminster so that planning and decisions are made at the most appropriate level, with a commitment that wherever possible citizens will be involved in the process.

Regions should be able to develop policies and programmes that meet the needs of the area. They should have a range of powers and budgets devolved to them including the ability to raise income.

There is a strong consensus (and evidence) that the existing regional boundaries are largely artificial and do not resonate with the people living in them.⁸⁹ New regions will need to be developed through an organic process based on common identity and a sense of belonging. The obvious starting point is the northern cities, where the process has already begun in Greater Manchester.

These new regions will potentially be very powerful bodies that could have a profound impact – for good or ill – on the areas they serve. A key question is how these new regions will be democratically accountable, and how they can be developed as an inclusive rather than exclusive structure. Past evidence seems to indicate that there is little enthusiasm for the creation of elected regional assemblies of the type proposed by the last Labour government (although this might change). An alternative option might be to develop a regular system of deliberative assemblies that will examine key issues, such as long-term planning, budget setting and prioritising of resources, or even a mixture of the three.

Increased powers for local authorities should be accompanied by a requirement that councils as a matter of course involve residents and other stakeholders in the planning and decision-making processes.

Neighbourhoods must have more power, whether through existing parish councils or new partnerships. Running alongside and complementing the elected councillors, there should also be a focus on incorporating deliberative and participative forms of democracy, through neighbourhood partnerships and other approaches. Research should be undertaken to identify those things that the cooperative councils are doing most effectively.

The independent 'constitutional convention' could play an important role in defining the tricky balance between the identification of the role and competencies of each element within the developing structure and agreement on what competencies should remain in the centre (Westminster) and those that should be devolved.

Lessons from Germany

Other countries successfully manage the tension between the national and the local. Most states have a greater level of decentralisation than the UK, and Germany is no exception. The German government also grapples with the dilemma of how to give voice to regions in a second chamber in parliament, without undermining the legitimacy of the first chamber. German federalism comprises three elements of particular importance here:

- Demarcation of competences in a constitution, with some areas exclusively for the regions, and others exclusively for the federal government
- A second chamber comprising representatives of regional governments, the assent of which is required for all national laws that have an effect on the regions
- A fiscal equalisation mechanism, so that regions with lower tax bases pay towards those with higher tax bases; such funds are intended to support investment to enable poorer regions to catch up with their wealthier counterparts.

These arrangements have stood the test of time, but are increasingly challenged by those who believe the need to secure agreement of the second chamber on much legislation slows down policy-making, and the equalisation measure, while good at promoting national equality, is bad for innovation and political accountability. Reforms to the system are therefore a frequent subject of public debate.

Element 3 - A constitutional convention

The third element of the solution to EVEL needs to be a civil society constitutional convention based on the Scottish Constitutional Convention (SCC) that would examine the challenging and complex questions around the new power relationships between the nations of the UK, the regions, local government and neighbourhoods. Crucially it would also build support in civil society for such reforms – putting pressure on all parties to eventually back reform as the SCC managed. As such it would look to involve politicians but would be driven by civil society groups. It would look at what powers and competences each element of the new structure should have and the creation of a House of the Nations and Regions to replace the House of Lords (an existing Labour commitment).

Constitutional conventions have been organised in Canada, Iceland, Ireland and Scotland. Currently the Electoral Reform Society is organising a series of pilot conventions that will provide important information on how they might be organised to meet our national needs. As the Conservative government is unlikely to set up such a constitutional convention, civil society and citizens will have to step up its calls for political reform. These pilots should therefore be the springboard for a revived civil society led campaign for radical constitutional reform. Straddling the second and third elements of this strategic response to EVEL is the issue of House of Lords reform. This is clearly a big question that will take time to resolve – but a Senate of the Regions cannot be decoupled from national and regional devolution. Priority should be given to this issue within the convention report.

Element 4 - An all-party PR Campaign

Proportional representation remains an essential ingredient of a democracy fit for the 21st century. This disparity between UKIP managing to win 4.5 million votes and gain 1 seat, and the SNP who secured 1.5 million votes and 56 seats is so astonishing it calls into question the very notion of our 'democracy'. Already, Liberal Democrats, Greens, UKIP, SNP and Plaid Cymru have shared a platform to demand electoral reform. Electoral reformists within Labour should join the campaign.

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It is not just at the national level that the case for reform should be made, it looks feasible that electoral reform could become a demand at local level too. As powers are devolved it again looks undemocratic if councils are in effect one-party states because of the way first past the post piles up votes for the dominant local party. The Devolution Bill going through parliament could be a mechanism to allow councils to request a change in the way votes are counted in their area.

Conclusions and recommendations

The introduction of EVEL is a difficult issue – to pretend otherwise is to mislead all progressive politicians and the country, but the issues related to EVEL and the need for an ambitious programme of constitutional and structural change cannot be avoided. Even though the result of the 2015 general election has not led to a 'constitutional moment', the long term trends including voter anger and our increasingly multi-party political system mean that a constitutional crisis will come.

The Conservative government is now committed to introducing some form of EVEL as soon as possible. The Labour Party and the wider progressive community have to react strategically to the issue of EVEL. The four elements discussed in this paper – of dealing with EVEL, developing localism and devolution, establishing a constitutional convention and developing an all-party campaign for electoral reform – outline a way forward.

References

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- [3] E Miliband, Hugo Young Memorial Lecture, 10 February 2014, <http://labourlist.org/2014/02/ed-milibands-hugo-young-lecture-full-text/>
- [4] The Electoral Reform Society estimate that, under a single Transferable Vote system, the House of Commons would have consisted of 276 Conservatives, 236 Labour, 34 SNP, 54 UKIP, 26 Liberal Democrats and 3 Greens. <http://www.electoral-reform.org.uk/press-releases>
- [5] The importance of linking EVEL to a much wider process of constitutional change seems to have eluded the Tories, who take the very short-sighted view that the introduction of EVEL will resolve the key constitutional problems.
- [6] McKay Commission, Report of the Commission on the Consequences of Devolution for the House of Commons.
- [7] E Miliband, Hugo Young Memorial Lecture.
- [8] For example, the failure of the last Labour government's regional assembly proposals.

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