Bicameral Conflict Resolution in an Asymmetrical Parliament:

Nine Case Studies from the House of Lords 1976-2012

Fiona Williams

University of Nottingham

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Abstract

The House of Lords has been rising in profile in academic, political, and popular narratives. Whilst existing research has developed our understanding of the House of Lords and its role in bringing about defeats of the Government and the genesis and paths of amendments made within both chambers, there has been little distinction made between how the Lords brings about a defeat, and the Lords bringing about a defeat that is later overturned. Equally, the role of the Lords in amending a bill as a reviewing chamber, and amending one as a second chamber in its own right have not been separated. Research into comparable international examples has shown that this period between an amendment being moved and a defeat being sustained or overturned can define the bicameral relationship, and it is this area of the House of Lords relationship with the wider British political system that this thesis examines.

This thesis studies the extent to which the Lords attempts and succeeds with amendments to bills, looking at the changes in both as the procedure known as ping pong progresses. It also examines the behaviour changes, both through debate language and through tangible voting turnout as, ping pong progresses to build up a picture of behaviour within the chamber. This thesis bridges the gap between the procedural single case study model and the large scale defeats and amendment tracing study model to show that the House of Lords has become a chamber that is driven more than ever by historical and political realities, as well as the political needs of the policy in question.

This research argues that the House of Lords maintains a delicate balance between two roles, that of a second chamber which is performing a function complimentary to and distinct from that of the first chamber in passing legislation and that of a chamber that is aware of its somewhat uncomfortable position as a non-democratic institution, filled with non-directly elected members. Ultimately in the House of Lords, for ping pong to begin there is a need for strong feeling on the policy in question. The House of Lords ability to achieve its aims is measured in three points, first in its desired amendments to legislation, second in its actions as ping pong divisions progress, and the debates leading to them take place and lastly in the final degree of conciliation it achieves. In all three points, the role of self restraint has a positive role in

achieving an outcome that is closest to the Lords original aims, whilst still allowing the Government's legislative programme and aims to pass. It is this understanding that allows the Lords to have the greatest influence over legislation, and perform a significant role.

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1. Introduction

"In dealing with another place, which we must challenge but from which we derive our power, we must walk a tightrope"- Earl Russell, speaking on the Railways Bill, 1993.[1]

The House of Lords, that mainly unelected, supposedly undemocratic and apparently unaccountable anomaly of the British Parliament, is often given less attention by academics and journalists than its more theatrical and noisy neighbour, the House of Commons. Whilst the House of Commons is dominated by the government, the House of Lords, with its weaker party controls, finds its powers and actions overshadowed by concerns about legitimacy and composition. The power of the House of Lords to influence legislation, and particularly to bolster bicameralism in Westminster, are vital to the understanding of parliamentary influence and, more specifically, to the influence of the House of Lords within Parliament and on legislation. The House of Lords remains unreformed, with little prospect of increased legitimacy, although governments continue to be frustrated by it.

The Parliament at Westminster has the delicate act of balancing act of strong government and weak bicameralism, and all institutions need to continue to be relevant, whilst not holding up the increasingly busy and demanding processes. The House of Lords can best make its presence felt in terms of legislation by reviewing and, where it believes this is appropriate, amending bills that are passed to it. Although its powers have been curbed over the last 150 years, it can still amend legislation and, more importantly, can inflict defeats on the government. These defeats stretch the Westminster system, and at the same time show the House of Lords' impact in a clear way. This thesis examines the impact that the House of Lords can have on legislation during the period of most direct conflict with the House of Commons (and by extension the government) during the legislative process.

[1] HL Deb, 4 November 1993, vol. 549, col.1171

1.1. History and Attention

Studies of the British Parliament and, more specifically, those of the wider British institutional arrangement have tended to focus on the legislative procedure of the House of Commons, whilst only mentioning the House of Lords very briefly.

Several basic textbooks on British politics barely cover the Lords at all. Kavanagh's *British Politics Today,* or John Kingdom's *Government and Politics in Britain: An Introduction,* give little coverage to the Lords.[2] Kavanagh examines the House of Lords in conjunction with the monarchy; although a more general study of the legislative process is also provided, the emphasis is on the House of Commons. The status of the Lords as an institution is derived chiefly from the more ceremonial and archaic aspects of British politics, as opposed to the functional ones. Aimed at a similar readership, *Politics UK* by Jones and Norton offers five chapters focused on Parliament, with one on the House of Lords. Of the 30 pages, 15 focus on the functioning of the chamber, including the legislative procedure.[3] Whilst there is better focus on the functioning, less attention is given to the relations between chambers. Books focused more on the impact and workings of Parliament have included sections on the interaction between the two chambers, as well as on the relative strength of the Lords, but have tended to downplay the role of the Lords. *How Parliament Works* covers the procedural aspects of both chambers equally, but without reference to success or influence.[4] Books such as *Politico's Guide to Parliament* provide a roughly equal split between coverage of the two chambers, but

[2] Basic textbooks, such as Kavanagh's, barely cover the Lords at all, focusing more on the reform debates. Revolts and partisan control in the House of Commons are also covered more widely.

[3] Written by Lord Norton to cover the legislative functions of the House of Lords, including procedure and functions. Bill Jones and Philip Norton, *Politics UK.* (Oxford: Routledge. 2014) pp. 345-357

[4] Robert Rogers and Rhodri Rogers,. *How Parliament Works* 6th Edition. (London: Routledge, 2006). Philip Norton, *Parliament in British Politics. (*Basingstoke: Palgrave, 2013)*;* Michael Rush. *Parliament Today (*Manchester: Manchester University Press, 2005).

others, such as *Parliament Today* from the 1980s, provide far less.[5] Introductory text books, both on British politics in general and on Parliament in particular, provide a procedural overview of the Lords, but this is overshadowed, as relations with the government are covered either in terms of Parliament as a whole, or simply via a discussion of the House of Commons.

There is often more written about the possible reform of the institution than there is on how it functions. For example, Peter Dorey, Alexander Kelso and Chris Ballinger have all written about reform, with particular emphasis on the 100 years following 1911.[6] Peter Dorey in particular has examined the motives, proposals for and roadblocks to reform of the House of Lords under Labour Governments, concluding that, whilst there is a desire to reform the Lords, there is rarely sufficient political consensus or will to bring about such reform. The authors have focused on the success and outcomes of the reforms, as well as on the effects they have had. Kelso's interests have inclined more towards general parliamentary reform, which demonstrates that the slow pace of the Lords' reform is echoed in the House of Commons.[7] Whilst the authors offer broad suggestions concerning how the House of Lords has changed as a legislative body as a result of these reforms, the functioning and powers thereof are of secondary concern. More is written about the possible composition of the Lords than about how it should function. What is covered well are possible motives and conflicts regarding reform, and blocks to future and further reform. Books focused on the Lords' functionality exist in period niches; for example, Shell and Adonis both investigated the House of Lords in the 1980s, and Baldwin and Shell in the

[5] Andrew Adonis. *Parliament Today.*(Manchester: Manchester University Press, 1993) Philip Norton. *Parliament in British Politics.*(Basingstoke: Palgrave Macmillan, 2013); Philip Norton. *Does Parliament Matter,* (New York: Harvester Wheatsheaf, 1993).

[6] Peter Dorey and Alexandra Kelso, *House of Lords Reform Since 2011: Must the Lords Go?* (Basingstoke: Palgrave Macmillan, 2011); Chris Ballinger, *The House of Lords 1911-2011: A Century of Non-Reform.* (Oxford: Hart., 2012); Donald Shell, *The House of Lords. (*Manchester, Manchester University Press, 2007)

[7] Alexandra Kelso, *Parliamentary Reform at Westminster.* (Manchester: Manchester University Press, 2009) is a good example of her recent work.

1970s.[8] However, the legislative impact sections of these books are small. Yet what the Lords does – how it functions, and the influence it has on legislation – should be as important as how it might be constituted, not least because there is good evidence that its role is increasing. Russell, in particular, has studied the defeats and the amendments made in the House of Lords, and has examined the impact on legislation[9]. Studies tracing amendments and defeats have shown the impact that the Lords can have on legislation. The findings conclude that the chamber can have an influence; however, most of the studies have focused on the last 10 years of Parliament.

The modern House of Lords is the product of over a century of reform, including many failed reform ideals, and has changed from being a hereditary, conservative upper chamber with the ability to threaten a government's legislative agenda to a majority-appointed second chamber in which no party holds a majority, the legislative functions of which fall short of an absolute veto. With the present House of Lords still under threat of further reform, it is important to examine the process that brought it to this point and the likely nature of further reform. Reform attempts thus far have demonstrated that, while powers were debated between 1911 and 1950, they have gradually ceded attention to that of composition, regarding which it is proving difficult to achieve agreement, although a consensus that the House cannot continue in its current form appears to be developing.[10]

[8] Andrew Adonis, *Making Aristocracy Work,* (Oxford: Clarendon Press: 1993) provides a comprehensive look at the 1980s House of Lords, as does Donald Shell "The House of Lords and the Thatcher Government" in *Parliamentary Affairs.* 38 no. 1 (1985): 16-32. . In the 1970s, Nicholas Baldwin, "The House of Lords and the Labour Government 1974-1979", in *The Journal of Legislative Studies.* 1 no. 2 (1995): 218-242, as well as Donald Shell and David Beamish *The House of Lord at Work.* (Oxford: Clarendon Press, 1993)

[9] The main work from Russell is Meg Russell *The Contemporary House of Lords: Westminster Bicameralism Revived.* (Oxford: Oxford University Press, 2013).

[10] The Conservatives are generally happier with the current arrangement than are the other two parties. That being said, their 2010 General Election manifesto called for a consultation in bringing an elected element into the Second Chamber. Furthermore, while the other parties are desirous of change, there is very little consensus on how change should occur. Most of the attention remains on how to make the Lords more legitimate.

1.1.1. **Historical Reform**

The 'modern' asymmetric bicameral relationship began in 1911 when the Parliament Act removing the Lords' veto was passed, instituting a maximum delaying power of two years instead. This was a result of an incident in 1909 when Asquith's Liberal Government and the Conservative majority in the House of Lords disagreed about government legislation; specifically, about the 'People's Budget'.[11] In response, the Liberal Government sought an election to prove it had the relevant public support, something it barely achieved, while at the same time showing the need to reform the chamber that had so frustrated the Liberal Government's legislative agenda.[12] The House of Lords was given the choice of the prime minister asking the king to 'pack' the Lords with liberal-minded peers, or to accept what would become the 1911 Parliament Act.[13] Lord Newton was instrumental in the acceptance, as he persuaded enough Conservative peers to vote in favour of the motion, allowing the Lords to maintain sufficient political leverage to remain relevant in the long term.[14] This reform removed the Lords' absolute veto and replaced it with a two-year suspensory veto, allowing the Commons to pass a bill it had agreed on after three attempts at passage without the Lords' consent. The intention was that a second phase of reform would follow, bringing in

[11] There were reforms prior to that. For example, in 1876, the Bishoprics Act responded to the dissolution of the Irish and Welsh churches' links to the state, and limited the number of English bishops. The precursors to life peers were first created around the same time, as the monarch created the first law lords. More recently, in 1907, Lord Newton attempted reform by initiating the Rosebery Commission that reported in 1908, suggesting that the House of Lords be limited to 400 peers, elected by all eligible members. This was never acted upon.

[12] Chris Ballinger "Hedging and Ditching: The Parliament Act 1911" *Parliamentary History* 30 no. 1 (2011):22. See also B K Murray, "The Politics of the People's Budget" *The Historical Journal* 16 no. 3 (1973):555-570

[13] Ballinger, "Hedging", 19-32. Regarding the first Parliament Act, other studies have been conducted in relation to the attitude of the lords at the time, including Philip Norton's "Resisting the Inevitable" *Parliamentary History* 31 no. 3 (2012): 444-459; CC Weston and P Kelvin, "The Judas Coven and the Parliament Bill 1911" *English Historical Review* 99 no. 392 (1984): 551-563*;* Iain McLean, "Mr Asquith's Unfinished Business" *The Political Quarterly.* 70 no .4 (1999): 382-389

[14] David Southern, "Lord Newton, the Conservative Peers and the Parliament Act of 1911" *The English Historical Review"* 96 no. 138 (1981):838.

an elected chamber, but the parties failed to agree on how to implement this.[15]

The only three uses of this first iteration of the Parliament Act were in 1914, 1919 and 1949.[16] However, apart from these, the Lords was still actively amending, and insisting on amendments, throughout the 1920s and 1930s; examples are the 1918 Representation of the People Bill, the 1932 Children and Young Persons Bill, and the 1937 Coal Bill.[17]

The Salisbury-Addison Convention was introduced after the Second World War to allay fears that the Conservative majority in the House of Lords would block the more progressive legislation of Attlee's Labour Government.[18] Viscount Cranborne (later Lord Salisbury), the then leader of the Conservatives in the House of Lords, said at the time:

> "Whatever our personal views, we should frankly recognize that these proposals were put before the country at the recent General Election and that the people of this country, with full knowledge of these proposals, returned the Labour Party to power. The Government may, therefore, I think, fairly claim that they have a mandate to introduce these proposals. I believe that it would be constitutionally wrong, when the country has so recently expressed its view, for this House to oppose proposals which have been definitely put before the electorate."[19]

Shortly afterwards, the Attlee Government passed the 1949 Parliament Act, which further reduced the Lords' suspensory veto to one year, using

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[15] Ballinger, "Hedging", 30

[16] Parliament Act and its History retrieved from: http://www.parliament.uk/about/how/laws/parliamentacts/ last accessed 17/07/2014. The 1913 Temperance (Scotland) Bill could have been another example during this period, but was agreed to without the need for the Parliament Act.

[17] Examples are the 1918 Representation of the People Bill (Bill no. 129), the 1932 Children and Young Persons Bill (Bill no. 123), and the 1937 Coal Bill (Bill No. 219).

[18] Peter Dorey, "1949, 1969 and 1999: The Labour Party and House of Lords Reform" *Parliamentary Affairs* 59 no. 4 (2006):600

[19] Glenn Dymond and Hugo Deadman, *House of Lords Library Note: The Salisbury Doctrine* Published 30/06/2006. Retrieved from http://www.parliament.uk/documents/lords-library/hllsalisburydoctrine.pdf. Last Accessed 01/02/2016. This speech has been used to define the convention whereby the House of Lords will not deny a government bill promised by a manifesto pledge of a second reading, and that the bill will not be subjected to undue delays or wrecking amendments.

the Parliament Act 1911 to pass it amid opposition.[20] This move had had its earlier roots in the Iron and Steel Bill, when the Lords had expressed great hostility. At the time, however, Attlee's own cabinet had been divided regarding the Lords' reform.[21]

The 1957 Life Peerages Act introduced life peers as members of the House of Lords. It was passed by a Conservative government, during which time the Lords was less active in revising government legislation. The aim of the Life Peerages Act was to attract more active members to the Lords, particularly those who, in the past, may have refused a peerage for fear of tying their descendants to the House of Lords as well.[22] Sir Bernard Crick examined the general acceptance that developed out of the necessity of passing such a bill within the House of Lords. He noted, "the list of new creation of 24th July, while composed of very able men and women scarcely introduces a new type of member as distinct from a greater supply".[23] However, it also made it easier for a government to 'pack' the House of Lords with friendly members. This was followed by the 1963 Peerage Act, which allowed female heirs with hereditary peerages access to the House of Lords. It was deemed that hereditary peeresses should have the same rights as women holding life peerages.[24] This served to increase the opportunity for diversity of the House of Lords' membership, but had limited impact at the time.

In 1967, Wilson's Labour Government attempted a reform whereby there would have been "an all appointed house with a two-tier voting and non-

[20] Dorey,"1949, 1969 and 1999":600. Furthermore, the use of the Parliament Act to pass the amendment to itself led to legal challenges, heard in the House of Lords, to the Hunting Act 2004. The petitioners stated that, as the Parliament Act 1949 was passed using the Act it amended, it was not a valid act of parliament. The House of Lords dismissed the claim, stating that the 1911 Parliament Act did not specify that amendments to itself were exempt.

[21] Kevin Manton, "Labour and the 1949 Parliament Act" *Contemporary British History.* 26 no. 2 (2012):156

[22] Kelso, *Parliamentary Reform*

[23] Bernard Crick, "The Life Peerages Act" *Parliamentary Affairs.* 11 no. 4, (1957): 463

[24] The 1963 Act also allowed peers to resign their peerages under certain circumstances. This was also designed to allow the Conservatives to elect the then Lord Douglas-Home as their leader, allowing him to sit in the House of Commons as Sir Alec Douglas-Home.

voting membership".[25] The non-voters would have included hereditary peers, whose heirs would have been unable to take up seats.[26] The bill encountered dissent from other parties as well as, more damagingly from within the Labour Party, including from Michael Foot, who believed it would strengthen the chamber, which he wanted abandoned in favour of a unicameral legislature. The bill passed through to committee stage, but "ministers realised they would not get it through without a guillotine; and, almost certainly, any motion to bring in a guillotine on this constitutional measure would have been defeated".[27] Accordingly, the bill failed.

The Lords reawakened in the 1970s when realistic attempts at Lords' reform ended.[28] The Conservatives were in government from 1970-74 and from 1979, and the Wilson and then Callaghan governments had more pressing economic and social matters than constitutional reform to deal with initially. During the 1970s, 1980s and early 1990s, Labour continued to attempt reforms to the Lords from opposition, without success. However, Labour's position solidified and a policy of reform had re-emerged by 1997, consisting of a two-stage plan that would first see the hereditary peers being removed from the House of Lords before a second stage would bring in elections.[29] Meg Russell discussed the particular antagonism towards the Lords during the period under the leadership of Michael Foot, at which time the Labour party called for unicameralism.[30] Since then there has been a move to a less combative, or at least a more pragmatic, approach to reform.

In 1999, the Blair government passed the Lords' reform, which in a compromise measure with the Conservative opposition in the Lords, removed all but 92 hereditary peers who would be voted for by the

[25] Donald Shell, "Labour and the House of Lords: A Case Study in Constitutional Reform" *Parliamentary Affairs.* 53 no.2, (2000): 293
[26] Shell, "Labour and the House of Lords": 293
[27] Ibid., 293
[28] House of Lords reform bills were moved during the 1970-71, 1978-79 and 1979-80 parliaments, but failed during their second readings.
[29] Dorey, "1949, 1969 and 1999":610
[30] Meg Russell and Maria Sciara, "The House of Lords in 2005: A More Representative and Assertive Chamber" (2006): retrieved from , http://www.ucl.ac.uk/spp/publications/unit-publications/132.pdf, 5

Lords.[31] This, as in 1911, was intended to be the first phase of reform before making the House at least partially elected. Emma Crewe investigated the Lords' own reactions to the reforms proposed under Tony Blair's government. The personal interventions of Viscount Cranborne, and his work with Lord Wetherill to save 92 hereditary peers, was an important turning point. Furthermore, it is clear that the government's attitude towards the Lords, compared to the Lords' interpretation of its own role, was an important trigger for reform.

The reforms in 1999 were followed by the Wakeham Commission's report in 2000, which reported that it favoured the use of European Regional constituencies, but that the House should not be either mostly or wholly directly elected.[32] At the time of publication, the government took no action, and no policy changes followed immediately. By 2003, the government gave both Houses of Parliament seven options, ranging in 20 % increments from 100 % appointed to 100 % elected, as well as a half-and-half option. The House of Lords voted in favour of becoming wholly appointed, whereas the House of Commons, having defeated a motion to become unicameral, defeated each of the other proposals as well.[33] In 2007, however, the House of Commons voted in favour of either an 80% or 100% elected House of Lords, but the House of Lords remained insistent on appointment.[34]

The threat of reform returned in 2010 in the Conservative-Liberal Democrat Coalition agreement, and the current proposal is for 80% of the House to be elected on staggered 15-year terms.[35] While the House of

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[31] Dorey, "1949, 1969 and 1999": 611

[32] The Wakeham Report: http://www.archive.official-documents.co.uk/document/cm45/4534/chap12.pdf accessed 7/3/13

[33] Iain McClean, Arthur Spiralling Meg Russell, "None of the Above: The UK House of Commons Votes on Reforming the House of Lords, February 2003 http://www.people.fas.harvard.edu/~spirling/documents/NoneAbove.pdf, accessed 04/02/2016

[34] Peter Dorey "Stumbling Through 'Stage Two': New labour and House of Lords Reform" *British Politics.* 3 no. 1, (2008): 22-40

[35] The 2010 Coalition: A Programme For Government, Retrieved from http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf retrieved 17/12/2015. p. 27

Lords Reform Bill was granted a second reading on the 10th of July 2012, it was placed on hold following tensions within the coalition, and is viewed as having failed in the 2012-13 parliamentary session after it failed to get past timetabling in the House of Commons when it became clear there was strong opposition.[36,37] Since 2015, although major constitutional reform was not a feature of party manifestos, the Conservative Government suffered a humiliating defeat concerning welfare reform, and has since hinted at a curtailment of powers.[38]

1.1.2. **What is the Outcome of Reform?**

The reform of the House of Lords is best viewed as a collection of small reforms and has taken the form of path dependency whereby future reforms are shaped by the past. This is driven by the need for gradual change and cross-party consensus on any form of movement towards a partially elected chamber. As a result, the 1999 reform can be seen as the moment when the Lords changed in character from that at the beginning of the twentieth century. The fact that no party can be sure of a clear majority in the chamber, the seeming focus on 'good legislation' through revision and discussion, and the sundering of legal and political functions (with the position of highest court of appeal being transferred from the House of Lords to the Supreme Court in October 2009), make the House of Lords very different from the way it was at the turn of the 20th century, or even in 1945.

The reform of both powers and composition may be expected to change the way that the House of Lords engages with the House of Commons when it disagrees with legislation. This change also has the effect of

[36] The initial bill had removed all hereditary peers but, with the risk of defeat, a compromise was worked out to allow 92 elected hereditary peers to remain in their seats. Plans for going forward have included phasing these peers out, either by not replacing them as they died, or by removing voting privileges.

[37] HC Deb 10 July 2012, vol. 548. cols. 274-278

[38] BBC News. James Lansdale. "Lords Veto Powers to be Curtailed". Published 17/12/2015. http://www.bbc.co.uk/news/uk-politics-35117990 accessed 17/12/2015. The resulting Strathclyde review suggested changing a veto to a "power to ask for reconsideration". This would only affect statutory instruments. Lucinda Maer, 2016, "Conventions on the Relationship between the Commons and the Lords" Briefing Paper Number 5996 *research**briefings**.files.parliament.uk/documents/SN05996/SN05996.pdf*

creating a comparability issue with the House of Lords over time, particularly with regard to ‘big’ reforms whereby the position of the Lords has changed substantially. With the modern House of Lords being created via the 1911 Parliament Act, and then formalising the bicameral relationship in 1945-49, any study after 1950 compares a House of Lords in a steady position vis-a-vis the House of Commons. The 1999 reform is more problematic because the powers remained the same, but there was a clear change in how the relationship was perceived. However, comparing the relationship across this change is important for a deeper investigation of the probable impact of party divides and potential elections.

Reform has historically had two common factors. The first pertains to making the Lords 'democratic' or 'representative', while the second involves the government and its ability to pass legislation. Both of these factors have an effect on the daily working relationship between the two chambers, and on the balance of power between them. In the Westminster system, the power is seen by the government, and the electoral system, to be more in favour of the House of Commons, something that is reinforced by the Parliament Act, and by the Lords through the Salisbury Convention. However, there is then a question about how the balance of power affects the ability of the House of Lords to perform the roles traditionally assigned to second chambers, primarily the review of legislation.

The result has been that the House has developed its role as a legislative chamber, becoming a chamber that requires more understanding than is simply implied by the "constitutional oddity" explanation. Whilst the House of Lords remains unelected by the public, hereditary peers are elected from within the chamber, either by the entire house or by their party groups. The result of the current composition of the House of Lords is a House that is held more in check by the concerns and fears of the members, and through self-governance, than it is through external accountability. The House of Lords has remained a central part of the legislative process and has increased its role, partly due to a willingness to make changes and to work within its own rules. This is self-restraint.

1.2. The Lords and its Legislative Role

A growing body of literature has begun to examine the power of the House of Lords to amend legislation, through both high-profile defeats inflicted on the government and via other forms of legislative disagreement. These disagreements can include scrutiny and debate during committees, questions, draft bill debates and pre-legislative meetings. The latter may result in avoiding defeats because a change was made before the bill was read in the Commons, resulting in an even less tangible influence. Nonetheless, whilst commented on at the time, these defeats may later be overturned just as easily and have no lasting impact as a result, which is the more common outcome.[39] Most of the Lords' time is involved in removing drafting errors from bills after receiving a bill that could not receive full scrutiny in the Commons. These are of less interest, but form the majority of amendments that are returned to the House of Commons.[40] Whilst rare, defeats that are not overturned are a clear sign of the Lords' strength vis-a-vis that of the government.

1.2.1. **Westminster Procedure**

While the House of Lords follows similar procedural rules to the House of Commons on paper, it functions somewhat differently in practice. Procedure, whilst written down, has evolved into a system of 'usual channels' and 'parliamentary behaviour'.

The first reading is procedural in each House. The second reading is a debate about the general expectations and principles of the bill, without going into detail. This is followed by a detailed review of the bill by committee, which is then considered in a report that tends to be less detailed than the committee review, by the entire house. Lastly, there is a third reading. The end of the third reading marks the end of the procedure in the Commons. It is then transferred either to the House of Lords or, after

[39] Meg Russell and Maria Sciara, "The Policy Impact of Defeats in the House of Lords". *The British Journal of Politics & International Relations*, 10 no.4,(2008): 571-589.

[40] This argument is also used by the opposition when moving amendments to which the government is opposed, but it is noteworthy that most amendments returned to the House of Commons will have been moved by the government.

the second house has proceeded, if it has made amendments, "consideration of amendments" begins.

The House of Lords, unlike the House of Commons, tends to remain in plenary sittings throughout and the amendments are not timetabled, allowing for a greater possibility of 'filibustering'.[41] This delaying tactic, however, is less deplored than is the use of guillotine motions by the government, something that is expected in the House of Commons.[42] While timetabling does not exist, the expectations of reasonable time conventions and of not delaying government legislation are clearly understood. Furthermore, the identity of the House of Lords as a self-governing chamber remains important, and actions by peers that are seen to threaten this identity are collectively discouraged.

Meetings beyond the record keeping of the chamber of the House of Lords, as well as inter-cameral meetings held by ministers or spokespersons, and expertise from a pre-parliamentary career are often drawn upon in debate.[43] While the Lords is prepared to pass the government's legislative agenda without much delay in most instances, this is not always the case and, at this point, the House of Lords is often rebuked for its behaviour. An extreme example took place during the Parliamentary Voting System and Constituencies Bill 2011 when Lord Geddes, who was the deputy chair of committees in the chair during the tenth (and extremely long) day of Committee, needed to issue a procedural warning:

> "I am instructed by order of the House to say that the motion that the question now be put is considered to be a most exceptional

[41] See, for example, Labour Peers accused of filibustering. Retrieved from BBC News: http://news.bbc.co.uk/democracylive/hi/house_of_lords/newsid_9371000/9371534.stm accessed 25/06/2015

[42] R. Johnston, R., & C Pattie, "Parties and Crossbenchers voting in the post-2010 House of Lords: The example of the parliamentary voting system and constituencies bill". *British Politics, 6* no. 4, (2011):430-452. doi: http://dx.doi.org/10.1057/bp.2011.25. This details Crossbenchers' frustrations with the government's response to Lords' concerns about the handling of the legislation.

[43] This was seen in practice when, following the high intake of former MPs, early debates in the 2010-2011 sitting were more adversarial than debates in the Lords are normally. Interruptions and catcalling are usually frowned upon in the Lords, where there is less call for dramatic behaviour.

> procedure and that the House will not accept it save in circumstances where it is felt to be the only means of ensuring the proper conduct of business of the House".[44]

The purpose was to return the debate to the question at hand, rather than to allow extraneous points to be made with the apparent purpose of prolonging the committee's debate. The procedure amounts to a guillotine, and is rarely used. The use of it in this instance provoked the criticism that the House was losing its self-governing identity (something on which it relies), and that the chamber was becoming increasingly similar to the House of Commons in its attitude and behaviour - something that, by implication, was not desirable.

The House of Lords is most visible in its legislative role when it chooses to oppose the government. This may be where the opposition in the House of Commons also raised concerns, or where the House of Lords has expertise in that area. In these cases, the House of Lords becomes known as the 'real opposition' in a manner similar to the 1980s when the Lords was more effective than was the largely outnumbered Labour opposition in the House of Commons.[45] For example, the 42-day detention of terror suspects, which was part of the 2005 Prevention of Terrorism Act, the security of the identity card database in the 2006 Identity Card Act, and reforms to the health and social care system in the Health and Social Care Act 2011, are all issues in which the House of Lords was able to frustrate, and win concessions from, the government, building on opposition that had been raised in the Commons and in the wider media debate.

1.2.2. **Bicameral Context**

The House of Lords is generally considered to be a weaker example of a second chamber. This is the result of a combination of representative and power comparisons with other chambers. Powers are categorised using hard constitutional mechanisms. This study is more concerned with the

[44] HL Deb 19 January 2011,vol. 724, col.393

[45]See, for example, Donald Shell, "The House of Lords in the 1980s" *Contemporary British History*. 4 no. 4 (1991):17-18. Damien Welfare, "An Anachronism with Relevance: The Revival of the House of Lords in the 1980s and Its Defence of Local Government". *Parliamentary Affairs.* 45, no.2 (1992): 205-219

behaviour of second chambers prior to the use of constitutional mechanisms, and the way in which a second chamber can use influence to increase its power. The House of Lords has better opportunities than most to exert such influence, having fewer restrictions prior to the use of stopping procedures than others of similar strength. Weak second chambers are at risk of being viewed as obsolete, while strong second chambers are potential roadblocks.

The US Congress has been the subject of many studies of negotiation and of the balance of power in inter-cameral negotiations, largely because the number of instances of so-called 'gridlock' mean that there are a large number of cases. The stronger chambers have more options once a stopping procedure is implemented; thus, the potential "costs" are less for the second chamber. The weaker chambers have higher costs. However, the government in both instances has similar costs in terms of the legislative programmes and the associated delays in enacting its manifestos.

The constitutional position of the United Kingdom means that, unlike most states, the constitution and constitutional changes are the same as standard legislation, which in terms of the House of Lords reform means that it is essentially government driven, and is part of the manifesto. This increases the associated costs for the House of Lords of triggering the so-called stopping procedure. The second chamber wants to avoid the stopping procedure in order to avoid the risks associated with it; in this case, the Parliament Act. As a result, the House of Lords is an example of a weak chamber, the long-term influence of which may be harmed by a short-term use of power.

1.2.3. **An Introduction to Ping-pong**

Given all that we know about the influence that the Lords can have on legislation, as well as the powers of the Lords relative to the House of Commons, the functioning of the current bicameral system relies on both chambers acknowledging the constraints of the bicameral relationship in

which they function. Because the conciliation system (up to the use of the Parliament Act) is not enshrined in a codified constitution, the bicameral relationship in the current system requires the recognition of conventions and norms. Therefore, if one wants to examine the impact achieved by the House of Lords once it has defeated the government and has passed an amendment with which the government was not inclined to agree, one needs to examine the process whereby the Lords and the Commons move towards an agreement. This process is known formally as 'the consideration of amendments'. It covers all stages after both the House of Lords and the House of Commons have read the bill for the third time. As most bills pass either un-amended or with only technical or drafting amendments, the process is often concluded swiftly once the Commons accepts the government's own drafting changes. However, the extended examples mentioned above contain within them the outcomes of negotiations and conciliations that attempt to bring legislation to a conclusion on which both Houses can agree. They remain relatively rare occurrences. For the House of Lords to insist on an amendment with which it disagreed previously is the moment when ping-ponging goes from being a usual part of passing legislation to a reconciliation process. Other countries use conciliation committees, or joint sittings; Westminster uses messages.[46]

The process of the consideration of amendments was first described as 'ping-pong' in 1976, in debates in both the House of Lords and in the House of Commons.[47] Prior to that, the phrase might have referred to the exchange between front benches, or between departments.[48] In 2006, a report by the procedure committee contained a section on the Exchange of Amendments, known as ping-pong, in which it was noted that the procedure was being used more frequently, and that it remained an

[46] Lijphart, Tsebelis, Money, and Russell have all provided comparisons of different conciliatory procedures, which are discussed in Chapter 3.
[47] HC Deb 8 March 1977, vol. 927 c. 918; HL Deb 22 July 1977, vol. 386, col. 626
[48] HC Deb 3 December 1902, vol.115, c. 1114. In fact, the use of ping-pong to describe the former continued until 2000.

important part of parliamentary procedure.[49] These (often prolonged) arguments became known in the media, and increasingly in parliamentary language, as ping-pong. For example, in 2004 Chris Bryant, a Labour backbencher, speaking about on-going ping-pong, said:

> Surely, the point is that we need a new Parliament Act to legislate properly on arrangements between the other place and this Chamber. This ping-pong, which completely flouts the Salisbury convention, brings the whole parliamentary system into disrepute.[50]

During evidence presented to the joint Committee on Conventions in 2005-6, all three of the main parties in the House of Lords supported the procedure of ping-pong remaining flexible, calling it of great importance to the legislative functioning.[51] The ping-pong procedure was named within the questions considered by the committee, where it was formally described as the "shorthand way of describing the procedures used by both houses for dealing with the amendments proposed to legislation by the other House".[52] Furthermore, the fact that it was referenced in such a report on conventions is significant in terms of its adoption as part of parliamentary language. Since 2004, the House of Lords' publications have referred to ping-pong in their indices; for example, in the House of Lords Journals, and in the Daily and Weekly Digests of the Parliamentary Timetable, as well as on the front page of the Parliamentary Website from whence it is possible to track the progress of bills. Both the House of Lords and the House of Commons Journals have tracked ping-ponging as a procedure since 2004. The phrase has now become part of the language, and is accepted as the name of a procedure.

1.3. Research Gap

To inflict a legislative defeat, there must be significant political will behind it, or a chance encounter whereby the opposition happened to have greater numbers in the division halls. Either scenario requires organisation,

[49] Joint Committee on Procedures http://www.publications.parliament.uk/pa/jt200506/jtselect/jtconv/265/26508.htm
[50] HC Deb 29 March 2004, vol. 419, col.1304
[51] Joint Committee on Conventions. Report of Session 2005-06 vol. 1, p. 52
[52] Joint Committee on Conventions. Report of Session 2005-06 vol. 1, p. 6

and the gathering of support by the supporters of a given amendment. Such arguments also have the opportunity to be presented in pre-legislative procedures, presenting the government with the reason for any concerns and with the opportunity to avoid the risk of defeat entirely. Given this access, particularly in light of reforms in the 1997-2001 and in the 2001-2005 parliaments, it is reasonable to assume that a defeat inflicted on the government concerning a section of manifesto policy is inflicted with strong political will on one, or most likely both, sides of the argument. The frequency and depth of defeats in this era has been covered extensively by Meg Russell's research, most notably in 2013, covering all governments since the 1999 reforms. These assumptions about political will are less likely to hold true in the pre-reform period and in the post-reform period in which legislation has had less pre-legislative scrutiny, because it is reactive, subject to time constraints, or is simply rushed.

Two changes in circumstances negate the likelihood of what may be termed ‘testing amendments’ in the pre-reform period. Under Labour Governments, the Conservative majority in the House of Lords either appeared less frequently, or lacked the will to obstruct the government for the sake of it, and was governed more rigorously by the Salisbury Convention. Under Conservative Governments, defeats could easily be avoided if the majority was present. As a result, political will and organisation needed to be utilised in a somewhat different way, but the underlying cause, that of a determined amending party, remained the same.

In the post-reform era, during which the pre-legislative period was less drawn out, three scenarios could apply. The first was that the legislation was genuinely rushed. In such cases, the Lords would table many drafting amendments, but changes in policy may have occurred with the argument that the government had not consulted sufficiently. Such defeats may therefore have been a genuine surprise to the government. However, the resulting battle of wills may have become solidified as the process continued. The second was that the time limit imposed, or the reasons for it, was a cause of concern for the opposition. The third was that the time

limit amplified concerns that may otherwise have been addressed in secondary legislation. Time-imperative legislation is often related to constitutional changes, or to elections; thus, the concerns are about subjects in which the House of Lords is traditionally more interested.

The House of Lords needs to balance the political desires within its own chamber with the certainty that insisting on an amendment against the will of the government may have both long- and short-term political consequences. Whilst the bill in question may fail, a precedent may be created, and the question of legitimacy will be raised once again. For example, during the Identity Card Bill debates, there was a fear that, were the Lords to continue to insist on and to force the use of a Parliament Act, this would set a precedent for future use. For example, Lord Carter said:

> My Lords, with regard to the Parliament Act we ought to be entirely clear what we are talking about. The noble Lord, Lord McNally, and the noble Earl, Lord Erroll, have said "Use the Parliament Act". That Act has been used only once on a whipped vote on a major item of government policy, and that was the Parliament Act 1949. The Acts since- the Act changing the age of consent, the Hunting Act and the War Crimes Act- were all passed on free votes. The only other one was the European Parliamentary Elections Act, which, as I know the noble Lords, Lord Strathclyde and Lord Henley, will remember, was an arrangement between the two parties. The official Opposition have to decide whether the killing of the Identity Cards Bill for a year or longer is the issue on which they wish to force the will of this House...Is this the issue on which they wish to create a precedent.[53]

The Parliament Act is the greatest symbol of the primacy of the House of Commons, and came about because of the unelected nature of the House of Lords. However, while the democratic nature of any parliament is an important feature, it was the 2011 statement by the then Liberal Democrat leader and deputy prime-minister, Nick Clegg, who said that the Parliament Act would not change, that attracted significant interest during the latest attempt to reform the House of Lords.[54]

[53] HL Deb 15 March 2005,vol. 670 col: 1242

[54]Nick Clegg, during the introduction of the 2012 Reform Act, from HC Deb 17 May 2011, vol. 528, col. 165.

Given that both the Parliament Act and the Salisbury Convention were formulated because of the unelected nature of the second chamber, the fact that the government saw them as needing to continue leads to the problem that is central to bicameralism – bicameralism is not designed to facilitate strong governments, as it is there to ensure adequate scrutiny. The Salisbury Convention has evolved to a condition in which the House of Lords has taken it to mean it will grant second readings as a matter of procedure, although the extent to which the Lords is required not to pass amendments has been contested, with the general rule being that wrecking amendments will not be moved. [55] Given that the basic principle of bicameralism is for a second chamber to act as a brake on the first chamber, and by extension on the government, a strong second chamber is not in the interests of a majoritarian government such as the one in the United Kingdom. The problem for politicians at Westminster is that the Parliament Act and the Salisbury Convention are two procedures that form the most visible part of the culture of self-restraint that has been constructed in the House of Lords. The Parliament Act, whilst rarely used, is a bill that the House of Lords is unwilling to see employed. Perpetuated by the existence of fewer party ties, and a significant crossbencher element, it has allowed the House of Lords to offer scrutiny whilst knowing when to step back and allow laws to pass.[56] If fear of the Parliament Act is something that the Lords is using to restrain itself, it has the potential to change the dynamics in the bicameral relationship if further reforms are to be successful.

The House of Lords Constitutional Committee expressed concerns about the long-term impact on the bicameral relationship, and concerning whether the Government foresaw the Salisbury Convention as remaining in effect.

[55] The report from the Joint Committee of Conventions (2005-6) is the most detailed authority on this. Report of the Joint Committee on Conventions 2005-6, Published 3rd November 2006, at http://www.publications.parliament.uk/pa/jt/jtconv.htm

[56] Russell, Adonis, Crewe, and Lord Pannick QC have all written about the importance of Crossbenchers in the chamber, and their less tangible influence on proceedings. Meg Russell, and Maria Sciara, "Independent Parliamentarians En Masse: The Changing Nature and Role of the 'Crossbenchers' in the House of Lords" *Parliamentary Affairs* 62 no. 1 (2009), 41; Andrew Adonis. *Making Aristocracy Work: The Peerage and the Political System in Britain. (*Oxford: Clarendon Press, 2003) Emma Crewe. *Lords of Parliament: Manners, Rituals and Politics.* (Manchester: Manchester University Press, 2005). Lord Pannick QC, 'Respect for Law and Sausages': How Parliament Made Section 31 of the Growth and Infrastructure Act 2013 on the Sale of Employment Rights". *The Political Quarterly*, *85* no. 1 (2014): 43-49.

By bringing in an elected house, the reason behind the current culture of self-restraint vanishes, as does the group that has cut through many of the more party-orientated arguments in recent years. If the culture of self-restraint vanishes, the equilibrium required to keep bicameralism functioning disappears, and the result could be a system of gridlock, or a chamber that has no purpose (the latter is more likely, given the relative powers). Here the literature on bicameral relations more broadly gives an indication that impatience is a factor, but the House of Lords, having already endured deep reform is more politically aware now than it was in the past.[57]

Since the 1999 House of Lords Act, a reform that removed most of the old hereditary peers, the House of Lords is generally accepted to have to become a more professional and consistent chamber. Committees and questions are better attended, and a wider pool of expertise has been acquired through an increase in the number of life peers.[58] This process has changed the House of Lords in order to ensure that no party can command a majority in the upper house. This has also increased the role of the Crossbenchers who, although they account for a comparatively small number, may often wield power beyond that which their numbers indicate they should. Defeats and the party actions behind defeats, as well as the party composition and actions in the House of Lords, all form well-trodden ground.

The Lords post-reform has become more about utilising powers short of obstructing bills. This thesis aims to test the influence of the House of Lords, filling in the gap in our knowledge about how defeats are sustained, and how influence can be found between a defeat first being made and being either sustained or overturned. This pattern of behaviour is important to increasing our understanding of influence in avoiding the use of the Parliament Act.

[57]Tsebelis, George and Jeanette Money, *Bicameralism* (Cambridge: Cambridge University Press, 1997).
[58] This is the effect of the reforms in 1999.

This thesis bridges the gap between a detailed, qualitative study of five or fewer bills, and the large-scale quantitative studies examining the causes of defeats, by providing a comparison of nine bills, using mixed methods, to study the behaviour of the House of Lords during ping-pong. The relationship between the two houses involves more than just the extended disagreements. The House of Lords is able to exert influence on the pre-legislative procedures, and on minor/drafting amendments, as well as on improvements to bills. It also carries out scrutiny and questioning roles. However, ping-pong is the 'stress point' of the relationship.

1.4. Research Question

The fact that the Lords can have a strong impact on legislation has been well established in academic literature. The House of Lords is a second chamber, and has a role to fulfil as a second chamber. This thesis will argue that the House of Lords uses ping-pong to affect legislation, but that it shows self-restraint in order to maintain its position, and that this is a position it took more after the reform. The behaviour of the House of Lords during ping-pong, the way it functions, and the outcomes during the prolonged consideration of amendments have not been studied in detail. Filling this gap is the aim of this thesis. To this end, this thesis draws on three bodies of literature.

The first is the literature on impacts and defeats and the subsequent effects on legislation. This is subdivided into large- and small-scale groups. Impacts and defeats have tended to be on a far larger scale.[59] The use of process tracing in this study has drawn from this literature with regard to its method of following amendment changes. Detailed case studies examining the behaviour of the House of Lords, as well as negotiations between the two chambers and the motivations of groups of peers, have

[59] Meg Russell . *The Contemporary House of Lords: Westminster Bicameralism Revived.* (Oxford: Oxford University Press, 2013); Meg Russell and Maria Sciara, The policy impact of defeats in the House of Lords. *The British Journal of Politics & International Relations*, 10 no. 4, (2008), 571-589; Andew Adonis "The House of Lords in the 1980s" in *Parliamentary Affairs.* 41 no.3, (1988) 380-401.Donald Shell, "The House of Lords and the Thatcher Government". In *Parliamentary Affairs.* 38 no.1. (1985), 16-32.

tended to focus on single or, at most, four cases.[60] As the goal here was a focus on detail instead of scale, the method is different, but the aim remained the same.

The second is the literature on reform and development, which examines how the Lords has changed (and may change in the future), as well as examining parties' attitudes towards change.[61] This involved investigating the government view and the Lords' response. Reform and the presumed restraint that stems from it needed the House of Lords to believe that it needs to worry about pushing the government too far, or it may become reformed to the point of irrelevancy.

The third is the literature that examines the institutional arrangement and relationships between the executive and legislature, and within the legislature.[62] This develops the second chamber's role, as well as the way in which the House of Lords carries out its role.

The principal question in this thesis is **how does the House of Lords impact on legislation during the conciliation process of ping-pong?**

The core argument is that the House of Lords is using self-restraint to impact on legislation in order to carry out its role as a second chamber most effectively and, furthermore, that this has been amplified by the reforms of 1999 as the Lords has become more concerned with its own

[60] Richard Whitaker, "Parliament and Government, 2005-06: Reforms and Reflections" in *Parliamentary Affairs* 59 no.4 (2006), 694-702; Richard Whittaker, "Ping Pong and policy Influence: Relations between the Lords and Commons, 2005-06" *Parliamentary Affairs* 59 no.3 (2006), 536-545; Gavin Drewry and Jenny Brock. "Government Legislation: An Overview" in Donald Shell and David Beamish. *The House of Lords at Work. (*Clarendon Press: Oxford. 1993); Susanna Kalitowski, "Rubber Stamp or Cockpit? The Impact of Parliament on Government Legislation" *Parliamentary Affairs* 61 No.4 (2008), 695

[61] Peter Dorey, Peter. "1949, 1969 and 1999: The Labour Party and House of Lords Reform" *Parliamentary Affairs* 59(4) (2006), 600 as well as Peter Dorey . "Stumbling Through 'Stage Two': New labour and House of Lords Reform" *British Politics.* 3.1 (2008), 22-40. Beyond this Philip Norton,"Reforming the House of Lords: a view from the parapets." *Representation* 40.3 (2004), 185-199, gives a great overview from the internal view.

[62] Literature focussing on specific time periods such as the above does this extremely well.

longevity. Answering this requires answers to three sub-questions, which are outlined below.

1.4.1. **How does the House of Lords seek to impact on legislation?**

This is both a pre-requisite to and a sub-part of the main question. That there is an attempted level of impact is proved by the fact that ping-pong takes place, and the fact that the Lords moved an amendment at all. All amendments seek a degree of impact on the policy. This ranges from drafting changes to changes to underlying policy. The extent to which the amendments seek to change the policy is also expected to dictate the government's response to a large extent, as well as the Lords' response in return. This also provides a benchmark against which to measure any degree of "success".

This sub-question looks specifically at the initial amendments, (publically) stated aims, and reactions to them, including any precursors moved in the House of Commons, the House of Lords' committee, reports or third readings, as well as amendments that were debated in both chambers. The qualitative approach taken does require some degree of categorisation, as the major amendments are ranked according to the degree of impact to allow for comparison. This furthers the argument by assessing the degree to which restraint was necessary, and the degree to which the Lords came into conflict with the government by virtue of carrying out its review and improvement role.

1.4.2. **How does the behaviour of the House of Lords change over and within the process of ping-pong and affect legislation?**

This examines the voting and debating behaviour of peers, and those changes that take place when reaching an agreement about the amendments that are being moved. For example, if the opposition or government becomes more or less engaged, this will have an effect on the outcome. A more conciliatory view coming from the government implies

different behaviour from that of a conciliatory view on the part of the opposition.

Whilst conducting a study of voting behaviour is relatively straightforward, it is augmented here by a study of the accompanying debate transcripts, which include a study of the key arguments being made, and a more detailed study of arguments specifically referencing the procedures and conventions governing the bicameral relationship, such as mentions of the Parliament Act. This entailed a risk of reading too much into statements, but they can be taken as general indicators of concerns.

This involved studying 76 divisions of the House of Lords, as well as approximately 1000 columns of Hansard debate records, over the nine bills, as well as looking at other bills and references scattered through literature and debates since 1911.

1.4.3. **Is there a move towards conciliation over ping-pong?**

Ping-pong covers the messages and the changes to amendments that are proposed and offered; thus, if there are any changes in the position of the majority in each house, the outcome will be shown as part of the case studies and analysis in this thesis. The ideal outcome from the perspective of a conciliation procedure is for there to be a solution to which both houses can agree. From the point of view of the Lords, the closer the outcome to the Lords' initial desires, the more influence it has been able to exert.

Assessing this involves looking at debate contributions and examining whether peers felt that it was a compromise, as well as considering the actual amendment text and providing an analysis of any changes. The policy behind any bill in this study is not important, but any perceived threat to it is, as are the underlying arguments from the standpoint of party ideology.

1.5. Case Selection

The number of examples of bills that see the Lords insist on a position after the House of Commons has rejected it does not represent a high percentage of bills. Table 1-1, entitled "Number of 'Lords' Amendments", shows the number of bills that underwent ping-ponging in each decade , obtained via a search of the *House of Commons Parliamentary Papers* to return a list of the House of Lords' amendment papers from 1911 to 2000, which formed a list of bills amended, titled "Number of Lords' Amendments".[63] This list was then filtered manually to show those bills for which the House of Lords returned amendments after the House of Commons had refused to pass them. As the House of Lords' papers from this period are not digitised, this is the most reliable way of finding such bills.[64] The time period is shown on the left, followed by number of bills that saw Lords' amendments returned to the Commons in that time, the number of bills that saw the Lords then return a counter offer to the Commons' position, and the percentage of bills with Lords' amendments this represented.

Period of Time	Number of 'Lords' Amendments'	Lords Insisted on Amendments	%
1911-1920	108	5	5
1921-1930	118	4	3
1931-1940	101	2	2
1941-1950	104	3	3
1951-1960	106	0	0
1961-1970	147	0	0
1971-1980	159	4	3
1981-1990	149	2	1
1990-1999	97	3	3
1999-2004[65]	75	14	19

Table 1-1: Lords' Amendments and Lords' Amendments Returned, by Time

[63] House of Commons Parliamentary Papers: *parlipapers.chadwyck.co.uk/ provides a searchable database of papers published by the House of Commons.*
[64] A search of HCPP returned a list of 1164 bill documents, which were divided manually into Lords' amendments, and then later iterations.
[65] Incomplete data. This information is completed in Figure 1-2

The percentage was low, in single figures until after the reforms of 1999, and it is notable that, during the 1950s and 1960s, no examples were found. The House of Lords was considered less active during this period. This study begins in 1975 with the second Wilson government, when the House of Lords first began to reassert itself.[66] At this point, defeats became more of a feature and occurred more often.

Table 1-2 below shows the number of public bills introduced in the House of Commons by session after 2001. This table also shows the number of bills in that session that experienced ping-ponging according to parliamentary records. From 2003-4, these sessions were recorded in the index of the Lords' Journal.[67] The percentage of bills that ping-ponged is also shown as a percentage of the public bills that were introduced.

Session	Total Bills	Ping-pong Bills	% of Bills that Ping-ponged
2001-02	27 Bills	7	26
2002-03	29 Bills	6	21
2003-04	27 Bills	9	33
2004-05	20 Bills	5	25
2005-06	38 Bills	13	34
2006-07	25 Bills	2	8
2007-08	25 Bills	6	24
2008-09	22 Bills	5	23
2009-10	24 Bills	2	8
2010-12	38 Bills	9	24
2012-13	30 Bills	4	13

Table 1-2: Sessions 2001-2013, showing public bills introduced in the Commons, and the number of those that underwent ping-ponging

Table 1-2 shows that, in most sessions, between 20 and 25% of the bills experienced ping-ponging, although the figure was below 10% in 2006-7, 2009-10 and 2012-13, whilst in 2005-6, when the Lords inflicted more defeats than usual, a third of government bills ping-ponged. This means

[66] In the 1960s, the House of Lords did not present much of a barrier to the House of Commons.

[67] This included both a separate index entry for Ping-pong. See House of Lords Journal 237 2003-04 http://www.publications.parliament.uk/pa/ld200304/ldjournal/237/gen_ix-2.htm#p accessed 27/07/2015. In 2004-5, the HTML version of the Journal had a hyperlinked entry for ping-pong, also producing a list of bills. http://www.publications.parliament.uk/pa/ld200405/ldjournal/238/contents.htm accessed 27/07/2015. In the 2006-7 session, although ping-pong remained a separate entry, bills in the list of public bills were now marked as such. This has been the convention in all journals since. http://www.publications.parliament.uk/pa/ld200607/ldjournal/240/gen_ix-2.htm#pingpong . Accessed 27/07/2015

that there were, in general, more bills to choose from in the post-reform era.

Whilst the overall population was small, it is made even smaller when only those taking more than four phases are taken into account. It would have been entirely feasible to use only these bills. This would have included bills such as the Planning and Compulsory Purchase Bill, the Prevention of Terrorism Bill, and the Nationality and Immigration Bill. Such a study would be useful for establishing behaviour in drawn out disagreements, but less useful for self-restraint. Considering all of the bills shown in the above tables would have resulted in a more quantitative study, which would not have allowed for the qualitative work required to establish potential motives and arguments.

Studies of defeats and amendments tend to focus on a single government, or on a series of governments under the same party or prime minister. This has the advantage of producing a stable political landscape in which to compare, as well as removing large changes in the composition of the House of Lords.[68] In the pre-reform period, bills were selected largely on the basis of being specified by other authors as particularly noteworthy. There were far fewer cases to choose from, mainly because cases of very long ping-ponging simply did not occur until the European Parliamentary Elections Bill. Therefore, the reason all the bills were not selected was very simple. The pool from which to select was already very small. It was therefore plausible to simply take all bills at four phases of ping-ponging and beyond and study those. In post reform, the bills were filtered to avoid repetition or weighting. Therefore, one bill from each Government allowed for the greatest breadth, whilst also maintaining detail.

In the 1970s, the two biggest disagreements both concerned industrial relations: the Aircraft and Shipbuilding Industry Bill and the Trade Union

[68]General elections leading to a change in the governing party tend to result in large numbers of new appointments. Whilst not quite 'packing' with friendly peers, it is the first opportunity for any prime minister to propose appointments to the upper house.

Bill.[69] The Aircraft and Shipbuilding Industry Bill was chosen as the more regularly cited example; however, the Trade Union bill could have been chosen, although would have had the disadvantage of being less comparable to other choices. As both bills from the 1970s failed in their initial introductions, with a view to bringing in the Parliament Act, there was a need to compare other bills addressing a similar issue.

Four bills fitted the criteria, of which two were from the pre-reform era. The European Parliamentary Elections Bill was selected at random. The Thatcher government provided several options, but the Housing and Building Control bill was notable because it was not in an area that would have seemed likely to produce such a drawn out disagreement. This resulted in four bills from the pre-reform era, two of which failed upon first introduction, and two of which passed.

In the post-reform era, the 1999-2001 timeframe was ruled out because that parliament was intersected by the reforms.[70] As a result, the post-reform era included the 2001-2005 parliament under Tony Blair, the 2005-2007 period under Blair, and the 2007-10 period under Gordon Brown.[71]

The records of the post reform era are far easier to access and cross reference. There are more examples of ping-pong lasting four or more stages in the post-reform era. For the purposes of this study, wherever possible, bills with the longest ping-pong were selected. When the bills that underwent ping-ponging were filtered to only those undergoing four or more stages of ping-pong, this meant that, for those with extended disagreements, the pool of available bills was considerably smaller. All bills related to pensions, welfare and social security were removed from the pool. These tend to become complex because they relate to previous legislation and other bills. As a result, they are rarely (if ever) discreet.

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[69] Similarly, the Scotland and Wales Bills were also subjected to a longer than usual period.

[70] In addition, the 2000-2001 period was a short session, lasting only a few months.

[71] After 2008, there were far fewer defeats of government legislation by the House of Lords. See House of Lords Defeats: http://www.parliament.uk/about/faqs/house-of-lords-faqs/lords-govtdefeats/ accessed 25/06/2015. There were 45 defeats in 2007-8, and only 29 in the following session.

The list of bills presented has been divided by prime minster and then by policy area. From 2001 to 2005, six bills fulfilled the criteria laid out. Of these, the European Parliamentary and Local Elections Pilots Bill experienced the longest disagreement and was selected. It was a constitutional bill. The other option was the Prevention of Terrorism Bill; however, this was discounted due to the uncommon nature of the negotiations, which all took place in one night. The remaining bills covered trade, planning relations and justice. From 2005-6, five bills fit the criteria; however, whilst the Identity Card Bill was selected because it had the longest ping-pong, the Terrorist Bill, and the Police and Justice bill both fit the criteria of having civil liberties implications, which have traditionally excited the Lords to the same degree as constitutional concerns. The Identity Card Bill also provided a higher profile example from Home Affairs. The European Parliamentary and Local Elections Bill provided a clear contrast as they were relatively minor, as well as being from a completely different policy area.

In 2006-2010, there were fewer available cases compared to 2001-2005. The Corporate Manslaughter and Corporate Homicide Bill had the longest ping-pong, and was therefore selected. The Coroners and Justice Bill was the only other available case. Whilst this could have been used, it did not provide as many stages of negotiation, and was therefore not chosen.

The final period was the period of the Coalition Government from 2010-13. This provided the contrast of being in the post-reform era, but not under a Labour Government, and was thus important to include; however, the nature of coalition would potentially cause difficulties for comparison. At the time, only four bills had undergone prolonged consideration; two were selected on the basis of both being constitutional in nature but having different backgrounds in terms of the individual party's election manifestos. These were the Fixed Term Parliaments Bill and the Parliamentary Voting Systems and Constituencies Bill.[72]. These bills achieved both an element of comparability to previous governments

[72] The 2011 Welfare Bill and the 2011 Health and Social Care Bill also experienced ping-ponging.

through the policy type, as well as providing a comparison of the difficulties of self-restraint. This resulted in five bills being selected from the post-reform period, with two from Home Affairs' issues (the Identity Cards Bill 2005-6 and the Corporate Manslaughter and Corporate Homicide Bill 2006-7), and three from constitutional issues (the European Parliamentary and Local Elections (Pilot) Bill 2003-4, the Parliamentary Voting System and Constituencies Bill 2011, and the Fixed Term Parliaments Bill 2011).

1.6. Thesis Outline

Chapter 2 focuses on demonstrating that some key assumptions regarding bicameral conflict resolution and the strength of the second chamber are correct and withstand scrutiny. Using comparative examples, it also demonstrates the importance of conflict resolution procedures in the application of influence of the second chamber on legislation, regardless of constitutional strength. Using the system for comparing bicameral strength formulated by Arendt Lijphart, in conjunction with the differing methods of bicameral conflict resolution for legislation highlighted by Money and Tsebelis, international examples are compared in terms of their apparent strengths and weaknesses as highlighted by historical and contemporary studies. This shows that even apparently strong chambers may lose power in dual-chamber decision making. This comparison highlights differences between apparently similar chambers in the Lijphart scale, which have differing levels of influence on the outcome of legislation during conflict resolution procedures. Single-chamber decision making does not preclude the second chamber's influence on the lower chamber, nor the government's influence on legislation. This chapter contextualises the House of Lords as a weaker chamber, and shows the importance of the consideration of amendments in the exercise of influence on legislation.

Chapter 3 examines the House of Lords itself, elucidating the functioning of ping-ponging, as well as the research questions underpinning this thesis. It also probes the impact of the House as a whole, and of the different party groups that behave in different ways, which results in outcomes that

are rarely assured. The Liberal Democrats have been a more cohesive and active group in the past, and the Conservatives considerably less so. The roles of the crossbencher peers beyond the tangible divisions are also examined, showing that the influence of these peers extends beyond the chamber. This chapter outlines the consideration of amendments, and the subsequent negotiations as a relevant, but missing link in our understanding of the functioning of the House of Lords, before providing an overview of how the process works on a procedural level.

Chapters 4 and 5 present the nine comparative case studies used to examine the Lords' influence as exercised through ping-pong. These chapters explain the process in detail of how proposed amendments are agreed upon before being applied to legislation. Chapter 4 contains bills from the 1975-79 Labour Government, the 1983-87 Conservative Government, the 1992-1997 Conservative Government, and from the Labour Government of 1997-2001. Covering industrial relations, housing, transport and elections, they cover different policy areas, degrees of party ideology and public interest. Chapter 5 examines constitutional bills from the Labour Government under Tony Blair, and from the Conservative-Liberal Democrat Coalition of 2010-15. These experienced different lengths of ping-ponging and different policy impacts. Chapter 6 examines Home Affairs' bills from two Labour administrations, both of which experienced extended ping-ponging, but had different outcomes and approaches. The case studies provide evidence for different degrees of impact attempted and achieved, and the paths taken by the amendment offers.

Chapter 6 studies the change in behaviour seen in the House of Lords in divisions on the nine bills in the study, seeking patterns in behaviour through ping-pong that change with or across the length of the debate. It also examines the effects of the compositional change brought about by the 1999 reform. This provided for a change in behaviour of the House of Lords that has had a measurable impact on the passage of the legislation in question. Studying three different groups, namely government, opposition

and crossbenchers, allows for a comparison of these groups to establish whether a decrease in turnout is being driven by the opposition or by the government. This suggests a group of peers that is engaging to a greater extent at the end of the process. For a defeat to be inflicted, the opposition would be expected to have more engagement at the start; however, is the outcome produced by both opposition and the government engagment decreasing, or does the government's influence increase? The Crossbenchers and their behaviour are also important, based on whether they change their positions actively, or if they simply do not attend divisions.

Chapter 7 looks at behaviour beyond divisions and examines the debates and the amendments, looking for changes in behaviour that are linked to divisions, and shows the changes in policy that are being proposed. This chapter employs a qualitative approach to process tracing to compare policy change, as well as how different conventions covering the Lords' behaviour affects the amendments and the outcomes, before turning to the measurement of levels of self-restraint. Using computer-assisted content analysis, the uses of the Salisbury Convention, the Parliament Act, and the unelected status of the Lords are examined across the three groups of interest across all nine bills. This will demonstrate that there is a clear disconnect between what the House of Lords attempts to achieve and what it is able to achieve. It suggests that the House of Lords is impacted by an innate self-restraint, in addition to the Salisbury Convention.

Chapter 8 brings the individual cases and collective analysis together to suggest conclusions about the functioning of ping-pong, and the House of Lords within this process, as well as the effectiveness of the process in terms of bringing about the passage of legislation. The change in impact, the way that impact comes about, the behaviour that causes it, and the length of the process are all important parts of answering the research question.

2. Bicameral Conflict Resolution

"The apparent raison d'être [state representation] of a second chamber in a federation is, of course, absent in unitary states. Nor has their presence there, as in Great Britain, France, and New Zealand, been considered a constitutional blessing".[73]

So wrote a New Zealand academic following the demise of New Zealand's Upper House. Bicameralism is the minority choice for constitutions at present, with only 40% of national legislatures being bicameral.[74] In the Americas, where federalism is more prevalent, the numbers of parliaments using a bicameral structure are higher. In Europe, the figure is 35%. However, countries such as Denmark, Sweden, Norway and New Zealand have changed from being bicameral to become unicameral after their second chambers became unsustainable and their purpose questioned. Unitary states may lack the natural representational needs of a federal system but, even in such systems, second chambers do still serve both a legislative and an accountability purpose. Whilst their powers to do this may vary, their very existence imbues them with a role. With that representational role comes the reason that the "constitutional blessing" may be missing. Two chambers with two different groups of people, and two different terms of reference, will inevitably come into conflict. This conflict, and the powers that the second chamber enjoys during its enactment, are the focus of this thesis with regard to the House of Lords. The comparison of the second chamber's powers within bicameralism provides a framework within which to study the House of Lords and its behaviour and impact during the conciliation proceedings in Westminster.

In order to investigate the conflict, the second chambers' powers need to be examined. This involves looking first at the purpose of a second chamber, and then examining how the powers of second chambers place them on a scale that indicates how strong a bicameral system is. Lijphart's scale, on which this relies, examines both powers and composition,

[73] Harry J Benda, "The End of Bicameralism in New Zealand," *Parliamentary Affairs* 4 no. 1 (1950): 58.
[74] Inter-parliamentary Union (Parline Database). Published at http://www.ipu.org/parline-e/parlinesearch.asp. Last Accessed 28/01/2016. Of 190 national parliaments, 76 have second chambers.

although not legitimacy, or veto players.[75] This provides a lens through which to view the conflict resolution procedures. These procedures take the form of a single chamber resolution, a dual chamber resolution or, on occasion, no resolution system being used. The argument presented in this chapter is that the shuttle that takes place before any stopping procedure is enacted is as useful in terms of influence as is a dual chamber resolution for a weak chamber. It also shows that strong bicameralism and an efficient government need to be balanced against each other. A stronger chamber, simply put, can do more. However, it also has the potential to become more problematic, and less easy to persuade to compromise or yield to the will of the first chamber. This is the great debate for bicameralism - the balancing of efficient government and strong parliamentary accountability. In parliamentary systems of government, the government is derived from the lower house and, as a result, there is a greater interest in maintaining a relatively strong lower chamber to favour efficient government. By contrast, presidential systems favour checks and balances against a strong presidency, and so favour a more symmetrical bicameralism.

This chapter is divided into two sections. The first part discusses the measures whereby second chambers are compared, and examines how the House of Lords fits into such a framework, before discussing the necessary modifications to the scale in the case of the House of Lords. This argues that a large source of the Lords' increased activity is due to party balance. The second part covers bicameral conflict resolution procedures, first investigating ping-ponging, which I argue is the source of the Lords' strength as a second chamber. It then examines the stopping procedures, first looking at the dual chamber, stronger options, and then at the single chamber options, which is where the Parliament Act positions the Westminster System.

[75] This is a criticism of the scale, as whilst there may be little change compositionally, the House of Lords has shown that a small change in both self and outside perception can greatly affect the degree to which constitutional powers are utilised. Having power is not synonymous with powers being used.

2.1. Comparing Second Chambers

In his study on bicameralism, Arendt Lijphart formulated a scale to measure the strength of second chambers in their respective parliaments. The strength of upper houses has an impact on their ability to negotiate with the lower house, and by extension the government, in any bicameral conflict resolution process. A stronger chamber can be expected to have greater leverage in negotiations than a weaker one, and to be more likely to exert its will.

The application of the scale to international examples demonstrates the examples that are most similar to and dissimilar from the House of Lords. Lastly, the placement of conflict resolution within the scale and what may have an effect on it provides a bridge between veto powers and more general legislative and constitutional powers. Some states are more naturally suited to bicameralism than are others due to their size, populations or history. These often have naturally introduced federal systems. With regard to the others, the question of why a second chamber exists and the purpose thereof means a second chamber needs to justify itself via meaningful power without being obstructive. In states in which this has not been successful, there has been a switch to unicameralism. Examples are Denmark, Sweden, Norway and New Zealand, all of which are small, homogeneous unitary states.

Even in federal states, a second chamber may be considered to be problematic, as any second chamber is likely to frustrate an executive or lower chamber. In states such as the United States or Australia where there is a democratic, federal and constitutionally secure reason for having a second chamber, the tensions between the two chambers are problematic for the functioning of an efficient legislative programme.

The scale is made up of 2 measures, one of composition and one of powers. Each measure is dichotomous, and the measures are combined to create the four categories that constitute the scale. This section considers each in terms of the measures used. Other authors have supplemented the

scale, and have suggested that veto players and legitimacy, particularly the perception of increased legitimacy, should also be considered.[76] For most purposes of this study, these can be viewed as sub-categories of the existing scale's terms.

The House of Lords and its lack of "democratic change" in the composition of the second chamber mean that the perception of legitimacy has increased importance in place of any compositional change. The Westminster system and how it fits into the Lijphart scale is an important for providing context for the House of Lords and its impact on legislation. The Westminster system is generally considered an example of a weak bicameral system, which means that the House of Lords is imbued with asymmetrical powers and congruent representation. This is discussed below. Other authors have augmented this with veto players and legitimacy perception factors to explain changes seen in the House of Lords functioning that are not explained by Lijphart's scale.[77] Veto players are those who can change an outcome actively, usually by using or threatening a veto. Legitimacy covers the extent to which the second chamber is allowed to exercise its powers.

2.1.1. **Where the House of Lords Fits**

Lijphart grouped the countries he studied into strong parliaments that had symmetrical powers and were incongruent, including Australia, Switzerland, Germany, the United States and Colombia. Australia has been described as strong in principle, but less so in practice. Medium bicameralism is when the upper chambers are either symmetrical and congruent (Belgium, Italy, Japan, the Netherlands, Sweden and Denmark), or are asymmetrical and incongruent (Canada, France, Spain). Lastly, there is weak bicameralism, in which the upper chamber is both asymmetrical

[76] Meg Russell stated that the House of Lords reform created a problem for the Lijphart scale because the House began using its powers to a greater extent at this point. This signalled the inclusion of legitimacy in the scale as the only factor that had changed. See, for example, Meg Russell, "What Are Second Chambers for?" *Parliamentary Affairs* 54 no. 4 (2001): 442-458.

[77] Meg Russell argued for the inclusion of legitimacy, stating that the House of Lords change in influence and the change in strength of the bicameralism in the Westminster case was a change in legitimacy, both real and perceived.

and congruent; Lijphart placed the United Kingdom and Ireland in this category.[78] This is shown graphically in Table 2-1 below.

	Symmetrical	Asymmetrical
Incongruent	Australia, Switzerland, Germany, the United States and Colombia	Canada, France, Spain
Congruent	Belgium, Italy, Japan, the Netherlands, Sweden and Denmark	The United Kingdom and Ireland

Table 2-1: Distribution of Countries according to the Lijphart Scale

In his scale, Lijphart treated those chambers that were symmetrical and congruent as being equal to those that were asymmetrical and incongruent.

2.1.2. **Composition**

Lijphart divided composition into two dichotomous groups, namely congruent chambers and incongruent chambers. The first group is second chambers in which the population is represented in the same way, such as the national constituency. If the chamber is incongruent, it is represented differently; the most common form is federal states, or some other division at a regional level.

Congruency affects the power of the second chamber because, as Philip Norton argued, all second chambers fulfil two key roles to a certain degree, those of representation and reflection.[79] Representation relates to the second chamber representing a group that may be under-represented in the lower house. This is a role that has greater priority in federal second chambers, as these tend to represent the sub-national tier. This is also the case for countries such as France and Spain; whilst unitary, they use sub-

[78] Lijphart, *Patterns*, 212. When he analysed 36 countries in 2012, he placed the United Kingdom in the Asymmetric and Incongruent category, which would have categorised the Westminster Parliament as medium bicameralism; however, the Lords was downgraded as being 'pre-democratic'. This did not represent any change in powers, or in power usage.

[79]Philip Norton, "Adding Value? The Role of the Second Chamber" *Asia Pacific Law Review*. 15 no. 1 (2007): 6-7

national regions for the second chamber and are described as incongruent by Lijphart.[80]

Congruency is linked to the reflective properties of the second chamber, which can be viewed as having two forms. This should be considered as the political impact of congruency or incongruency. Even if the chamber is incongruent, it is likely to be less useful if the party balance is the same as that of the lower chamber.

The first type of reflection, which Norton called reactive reflection, is similar to Russell's points as being "representation of a different set of values" and of being "more independent view in what are frequently party-dominated parliaments".[81] This, according to Norton, is "the predominant reason for having a second chamber". [82] As Russell argued, "they may perform many of the classic functions of parliaments more effectively than first chambers which are more likely to be dominated by the executive and the political parties. At least some of these positive attributes are likely to be found in all second chambers irrespective of their composition, powers and functions".[83] Therefore, the chamber wants to have political incongruence as well as representative incongruence.

Reflection can also be proactive, involving the spreading of legislative load, as well as carrying out specific tasks entrusted to the second chambers.[84] Russell described this as playing a role in "spreading the burden of parliamentary work".[85] This reflection, whilst related to the legislative powers discussed below, is only capable of providing a real function if the composition of the chamber is distinct. Norton accepted that homogenous unitary states have less need to retain a second chamber.[86] This is particularly true for territorially small countries with small populations. While Norton accepted that unicameral legislatures can work

[80] Lijphart, *Patterns*: 212
[81] Russell, "What", 452
[82] Norton, "Adding" 7
[83] Russell, "What", 453
[84] Norton, "Adding", 8
[85] Russell, "What", 453
[86] Norton, "Adding", 10

in these cases, he stated that the constraint that can be placed on the first chamber is still a strong argument in favour of bicameralism in countries in which unicameralism may otherwise be considered.

House of Lords

The House of Lords, as of January 2013, contained 780 peers, including 647 life peers, 88 hereditary peers and 26 bishops.[87] Bishops are entitled to sit because of the office they hold outside of the Lords, with the Archbishops of Canterbury and York, and the Bishops of Winchester, Durham and London automatically sitting in the Lords, together with the 21 next most senior bishops of the Church of England. The hereditary peers are "15 office holders elected by the house, 75 party and crossbench members (elected by their own party or group) and two who hold royal appointments".[88] The independent appointments commission appoints life peers. Until 2008, the House of Lords also served as the final court of appeal, and counted the 'law lords' among its members. However, with the establishment of the Supreme Court, with the law lords as its first justices, this role is no longer part of the Lords' remit, and the law lords have ceased to sit as members of the Lords. Whilst this does not affect the legislative ability of the Lords, it does solidify the Lord's role and focus as a legislative chamber. However, even with the removal of the law lords, as with the Commons, there are still a large number of Lords with strong legal and constitutional backgrounds.

The Lord Chancellor, in a political figurehead role, previously led the House of Lords in a formal capacity. In 2006, the job of Lord Chancellor was moved to the House of Commons, with much of the position's ministerial duties being assumed by the new Justice Secretary. The House of Lords is now led by an apolitical speaker who is elected in a manner similar to that of the House of Commons' counterpart. While the speaker acts as chair, s/he does not call members to speak, call debates or

[87] House of Lords briefing: membership http://www.parliament.uk/documents/lords-information-office/lords-briefing-papers/15595HoLBriefing-membership.pdf last accessed 01/02/2016
[88] Ibíd.

amendments. The position is a largely ceremonial role. The self-governance of the Lords was tested during late-night debates on the Parliamentary Voting System and Constituencies Bill. Baroness D'Souza, the Convenor of the Crossbenchers at the time, said:

> "The tactics that the Opposition are using to delay the Bill fly in the face of the conventions that have governed this House for perhaps the past six decades, that these tactics undoubtedly bring this House into disrepute, that any success of such tactics may well encourage their further future use, and that these factors put together may even mark the beginning of the dissolution of this House.[89]

The current Speaker, Baroness D'Souza, was elected on the 18th of July 2011, replacing Baroness Hayman who had held the office since its creation in May 2006.[90][56] The House of Lords is known as being the less formally controlled chamber with more time to consider bills; it deals with all of its business in a less regimented manner, with a focus on discussion and debate. However, Meg Russell examined the potential to take reform too far in what is described as "party carve up", saying "the move to election would result in some reduction in independent behaviour".[91] There could be a greater dependence on "party machines", and the use of block votes rather than individual ones.[92] The ideal, according to Russell, would entail more party groups in the Lords, and a limited dependence on the whips.[93] This would also require proportional representation elections to the reformed second chamber, and a prolonged period of transition.[94] According to this argument, there needs to be an end to the piecemeal reforms that have taken place thus far.

In reality, there are groups that transcend the party groups. Emma Crewe investigated the groups beyond parties into which peers move, which may go some way to dictating the standing of the peer. Of these groups, that of

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[89] Lords Deb, January 24 2011, vol. 724, col.683

[90] http://www.parliament.uk/documents/lords-information-office/lords-briefing-papers/15595HoLBriefing-membership.pdf. accessed 01/02/2016

[91] Meg Russell. "Parliament: Emasculated or Emancipated" (2008): retrieved from http://www.psa.ac.uk/2009/pps/russell.pdf accessed 15/11/2011, 12

[92] Ibid. 9.

[93] Ibid. 9

[94] Ibid. 10

"party creature" was the least numerous, as most members of the Lords had already achieved higher party offices in the House of Commons.[95] Other positions were viewed as being more important in the House of Lords. These groups include "specialists", who have had a professional interest or have developed one[96], "networkers", such as the Countess of Mar, who organised and persuaded votes[97], and "eccentrics" of the humorous variety who garner respect, and who tend to be hereditary peers.[98] The final group is that of "elders", who have been members of the House for a long time, are well versed in procedure and conventions, and who may offer advice and 'wisdom'.[99] All of these groups might be difficult to detect in division results; however, these groups may become visible in debates. The House of Lords can be characterised by the division between the working house and the voting house. This characterisation can be identified particularly strongly in the 1980s literature on the House of Lords, although has been less obvious since the 1999 reforms.

Concentrating specifically on the Crossbenchers, while their influence on actually bringing about defeat may be small, their overall impact on the working of the House is more informal, as the influence that the Crossbenchers may have in the working realm and in the debates, compared to the relatively limited impact they have on division outcomes.[100] Russell and Sciara concluded that, while the independent peers may appear to be important, they are not so in reality.[101] The Crossbenchers can be grouped as "experts" who have knowledge in a certain area such as business, farming or education, and the near universal constitutional experts, "brokers", who work to negotiate deals. In addition,

[95] Crewe, *Lords,* 32
[96] Ibid. 30
[97] Ibid. 31
[98] Ibid. 33
[99] Ibid. 34
[100] Meg Russell and Maria Sciara, "Independent Parliamentarians En Masse: The Changing Nature and Role of the 'Crossbenchers' in the House of Lords" *Parliamentary Affairs* 62 No.1(2009): 41
[101] Ibid, 49

there are “catalysts”, who may initiate ideas, or the “jury”, which passes judgement on what parties or small groups of peers may want.[102]

Following the 1999 reforms, the party balance of the House of Lords changed fundamentally, and the upper house was widely viewed as becoming a more professional and engaged chamber, with attendance of the remaining peers much higher than it was previously. In response, the Blair government appointed new peers, and successive governments since then have done the same thing. The lack of a reliable party majority in the House of Lords since 1999 is a fundamental part of its behaviour in debating and voting on legislation. However, while there is not the strict party discipline that is seen in the House of Commons, party cohesion remains high. A series of studies have concentrated on the effects of party groups in the House of Lords, and on how party control and divisions have affected the working relationship with the government and the House of Commons. Among the models of bicameralism that have emerged over time, Russell identified several distinct structures. Among these are the elite model, which catered to societies’ more powerful groups, in contrast to the lower chamber for the masses,[103] or the territorial model, which was more appropriate to federal, or geographically divided countries. In more modern times, the elite model has given way to the vocational model, which is seen in Ireland, and the partisan model in which the elections and composition design mean the chamber is designed to have a different party balance from that of the lower chamber.[104] In this regard the House of Lords has changed from being an elite chamber to becoming a more partisan model since the 1999 reforms; however, it has some vocational elements. Regardless of compositional style, second chambers remain controversial. The House of Lords has therefore slowly followed a pattern of a move away from the elite model of second chambers.

[102] Ibid, 44
[103] Meg Russell, *The Contemporary House of Lords,* (Oxford: Oxford University Press 2013), 42.
[104] ibid. 45

Legitimacy Factor

Although federal systems are generally protected by a strong constitution, the House of Lords is not, and therefore the boundaries between the two chambers are more fluid. In this study, the importance of congruency comes more from the legitimacy question, as well as the importance of party make up, which enables the chamber to function as a veto player. While the justification for having a second chamber for federal systems is clear, this is not the case for unitary systems. The issue is how much legitimacy an elected second chamber may feel has been conferred on it, and therefore the power that it has as a legislative body.

The legitimacy of the House of Lords to interact and continue to press a disagreement with, and if necessary to defeat, the House of Commons, is the foundation of the reform debate; it is also linked to the way in which the House of Lords performs its role as a scrutinising chamber. Legitimacy has been studied, or at least alluded to, in two ways: how it is perceived from without, and how it is perceived and reacts to that from within.[105]

In the pre-reform era, the political balance of the House of Lords was markedly different from the way it was afterwards, and this is likely to have an impact on the bicameral relationship determined by the majority in the House of Commons at the time. Therefore, many of the compositional issues are determined more by the political makeup of the two houses relative to each other, rather than by the elected issue, which is addressed via the 'reform or not' debate. This would suggest that opinions about the House of Lords are not formed by actualities, but rather through perceptions. This view encourages the Lord's self-promotion. Adonis also examined the daily functioning of the Lords.[106] He focused on the work

[105] Meg Russell, and Maria Sciara. "The House of Lords in 2005: A More Representative and Assertive Chamber", 2006. Retrieved from http://www.ucl.ac.uk/spp/publications/unit-publications/132.pdf accessed 15/12/2015

[106] Andrew Adonis, "The House of Lords in the 1980s" in *Parliamentary Affairs.* 41 no.3, (1988) 380-401.and Andrew Adonis, *Parliament Today.* Manchester: Manchester University Press, 1993.

performed by the chamber as a whole, arguing that, as the influence of the chamber increases, so does its standing with the public.

In all cases, the House of Lords felt more justified in defeating the government at least some of the time than did either the MPs or the general public.[107] This is also demonstrated by the occasions on which the House of Lords has argued, based on apparent technicalities, that the Salisbury Convention has not been relevant, which ultimately led, in 2005, to the Liberal Democrats in the House of Lords choosing not to acknowledge that the Salisbury Convention continued to have relevance.[108]

The House of Lords, while not representing the people by any method of direct or indirect election, still has a different composition from the lower chamber. Arguably, nothing changed with the 1999 reforms in this respect, although it is none the less true that there has been an increase in feelings of legitimacy and respect for increased legitimacy of the House of Lords and its role. This therefore puts the study of the House of Lords in a position to inform us about the political and representational composition of a second chamber as opposed to constitutional rules of composition.

Veto Powers

The veto power gives the second chambers a powerful position from which to negotiate; however, it is only a positive tool to improve legislation, or to negotiate with the lower chamber, if it is used sparingly. The upper chamber therefore finds itself in a position of having powers that it needs to use responsibility to remain effective. The veto power thus not only entails having the power to use the veto, but also the knowledge

[107] Ibid.

[108] Baroness Royall of Blaisdon, Written Evidence. House of Commons Political and Constitutional Reform Committee, Inquiry into Government Formation Post Election 2011. 2010-15 Session. Retrieved from http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpolcon/528/528vw07.htm accessed 04/02/2016. In 2015, they once again choose not to follow the Convention because the policy in question (social housing) was a matter of principle. Ben Riley-Smith, "Liberal Democrat peers to break with convention and vote down 'right to buy' reform" *Daily Telegraph Online.* 22nd September 2015, Retrieved 04/02/2016.

that it will be used responsibly, which, for the lower house, means with restraint.

The original justification for having a second chamber was that it would act as a 'brake' on the popularly elected lower chamber.[109] This stemmed from the time when such chambers were appointed, or were hereditary, based on the Westminster System and were thus not subject to frequent changes in membership or balance of ideology. William Riker called this "the justification of bicameralism", saying "it slows down the legislative process, renders abrupt change difficult, forces myopic legislators to have second thoughts and thereby minimises arbitrariness and injustice in government action".[110]

Other methods of delay that Riker discussed include an extraordinary majority, a proportional representation system, a multi-party system, and even judicial review. Riker deemed bicameralism to be the best method because "multicameralism encourages prompt adoption of the one dimensional equilibrium"; "among all the devices, therefore, only multicameralism both prevents majority tyranny and promotes simple majority equilibrium".[111]The brake is more specifically shown by an evening out of policy, ensuring that the status quo is maintained, or at least that any movement away from the status quo is slower, and does not see any dramatic shifts in policy.

2.1.3. **Powers**

In Lijphart's description, 'powers' refer to hard, measurable powers, such as introducing and vetoing legislation.[112] However, softer forms, such as amending and improving legislation, are equally valid. The softer powers are often unwritten and made possible by the harder powers. The legislative roles of second chambers discussed below are firstly to improve

[109] George Tsebelis and Jeanette Money, *Bicameralism.* (Cambridge: Cambridge University Press, 1997)
[110] William H. Riker, "The Justification of Bicameralism" *International Political Science Review.* 13. no. 1, (1992): 101
[111] Riker, 113
[112] Arendt Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries.* (London: Yale University Press, 1999): 202

government legislation, and secondly to give pause to what they may view as defective legislation.

Regardless of any other rule, Heller argued, "at the very least an upper chamber can serve to perfect legislation. It can do so best if it mirrors the first chamber, otherwise any amendments offered might arouse suspicion that the upper chamber is attempting to subvert legislation to its own purposes".[113] However, he continued, "second chambers are meant to do more than proof read bills".[114] This would suggest that second chambers need to have some kind of meaningful power behind them during negotiations with first chambers. Therefore, they need to not only to have powers, but also to have useable tools that the lower chambers are aware they will use. This is particularly relatable to the House of Lords.

House of Lords

The House of Lords considers bills passed to it by the House of Commons, and can introduce legislation of its own. Whilst legislation introduced into the House of Lords may be amended, it is the usual practice of governments to introduce uncontroversial legislation to the Lords; thus, there are fewer disagreements. Part of the main work of the House of Lords is the study of government legislation passed to it, including work in committees and reports. The Lords has the opportunity to move amendments in Committee, which tend to be the line-by-line and clause-by-clause stages of amendments. The report stage is when the government is able to react to opposition concerns, and may move drafting amendments. The third reading is then the last opportunity to move amendments.

The Identity Cards Act 2006, which resulted in a long, drawn-out parliamentary debate about the issue of compulsory identity cards, showed that the House of Lords often had success in picking up amendments that

[113] William B Heller, "Divided Politics: Bicameralism, Parties, and Policy in Democratic Legislatures" *Annual Review of Political Science*, 10 no. 2, (2007):251
[114] Heller, "Divided Politics", 251

had failed in the Commons.[115] This finding was also concluded by Whittaker, who found that the Lords was better able to leverage the matter than the opposition in the Commons had been.[116] Russell's study was a precursor to a wider study looking at the threads of amendments, as will be discussed later.[117]

This effectively shows that the House of Lords' impact is far more than just the headline disagreements, and is more about influence and well-drafted legislation, which goes towards demonstrating the worth of even weak second chambers internationally. While defeats are fairly common, non-reversed defeats are less so. Studies have also shown that, while the Lords may be successful in amending legislation, much of its amendments have their roots in the Commons, and that many government amendments are reactions to opposition probing.

2.1.4. **Conclusion**

Powers and representation are undoubtedly interlinked, as a representationally distinct second chamber will be more likely to use or to press its powers than will one that is congruent. Powers, which rely on the second chamber having a differing political point of view, may still be used because of institutionalised differences, even in a congruent second chamber. However, the powers are more important in this study, as it is the use of these powers that brings about the need for bicameral conflict resolution.

Lijphart focused on the constitutionally defined compositional differences, enabled by an electoral system or different timings. The political effect of

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[115] Meg Russell, and Jeffrey Johns. "Bicameral Parliamentary Scrutiny of Government Bill: A Case Study of the Identity Cards Bill", 2007. From http://www.ucl.ac.uk/constitution-unit/research/parliament/policy-impact/ID_cards.pdf last accessed 15/12/2015.

[116] Brazier and Kalitowski, "Law in the Making", 186

[117] Russell and Law in the Making. Meg Russell and her team, the authors of the Identity Card Case, later looked at a wider range of cases that became a study of parliamentary impact on the 2005 – 2010 Labour Government. The Identity Card Bill was not included in that study. While Whittaker looked at the Regulatory Reform Bill as a study of reform, the Law in the Making Study was a study of how parliament uses its time to scrutinise bills.

these is also a difference in political balance, with differing parties potentially holding the majority. Therefore, this is not constitutionally defined, but may play a role in the variance of strength.

The ability to introduce legislation and the time allowed to review such legislation both vary among weaker chambers, which may be restricted by time for review and the circumstances under which they can introduce bills. Stronger chambers, by their nature, have fewer variations because they generally enjoy equal powers to those of their lower chambers. However, the role as a brake or vehicle of moderation is common among weak and strong chambers, although the degree of success is different.

For the purposes of this chapter, the actual veto powers are the most important, as a non-existent veto cannot be used in any circumstances. However, the softer influence and impact of the congruency affects the use of what little influence asymmetric chambers have. For that reason, this is viewed as the less important function. The congruency aspect gains importance through the same way in which the legitimacy function is important in so far as it is an enabler of powers. Therefore, powers are not as important as how they are used, and how the veto players function.

2.2. Bicameral Conflict Resolution

This section investigates the different methods of resolving bicameral conflict that are available. Some states use more than one method, and in some cases they may deviate from the constitutionally prescribed methods because better procedures have evolved over time (for example, Canada and Australia have moved from advisory committees to the passage of messages).

2.2.1. **Ping-pong**

A pocket veto does not really exist in the House of Lords. The House of Lords is expected, by convention, to consider all legislation in a 'reasonable' time period after first receiving it, and all Lords are generally aware of this. A “reasonable time” has never been defined, but is taken to

mean that the House of Lords will not seek to delay legislation.[118] As with all the conventions, it has never been suggested that this be codified. It was noted in the Hunt Report of 2004 that the House of Lords has not always followed this convention. Several examples, including the Constitutional Reform Bill, revealed stages had been delayed by the opposition in the Lords to disrupt the bills' progress.[119] The Committee on Conventions ruled out that a codified time limit would improve legislative timetabling issues.

Despite this, filibusters and pocket vetoes have been attempted, with whips having problems agreeing about timetabling issues, and members making long speeches about matters with questionable relationships to the bill in question. This was a recent problem with the Parliamentary Voting System and Constituencies Bill, when the Labour Party was accused of an attempted filibuster. In this instance, it was coupled with the accusation that the new peers in the house were bringing a more adversarial style to proceedings.

The Passage of Messages

The study of ping-pong is a progression of amendment tracing, as it examines certain threads, but in more detail. This development is rare in the United Kingdom although, as shown in the previous chapter, it is more common elsewhere.

In each house, the second reading is the first time the 'essence of the bill may be considered', and it is at this stage when general issues with the bill may be raised.[120] This is an area that is not usually considered by studies of amendments and defeats, as no amendments or defeats are moved, but the issues are still raised here first.[121] Both houses then send the bill to a

[118] First Report from the Joint Committee on Conventions p. 36 http://www.publications.parliament.uk/pa/jt/jtconv.htm last accessed 01/02/2016.
[119] First Report from the Joint Committee on Conventions p. 37 http://www.publications.parliament.uk/pa/jt/jtconv.htm last accessed 01/02/2016.
[120] Malcom Jack, (ed.) *Erskine May's treatise on the law, privileges, proceedings and usage of Parliament*. (London: LexisNexis, 2011):629
[121] Ibid

committee. In the House of Commons, this used to be a standing committee, more recently called a public bill committee, the proceedings of which are subject to a timetable and often to a guillotine.[122] In the House of Lords, the process is carried out by a committee of the entire house of which a chairperson takes charge, or a grand committee, which applies similar principles, although divisions are prohibited.[123] In both houses, consideration of the bill is done clause by clause. Following the conclusion of committee proceedings, the committee gives the house the amendment report, which is then reviewed and amended by the entire house.[124] Once again, the House of Commons often imposes time limits. The third reading then takes place in the House of Commons. This is mainly a formality, and no amendments are moved. From the House of Commons, the bill passes to the House of Lords. Amendments can be moved in the House of Lords at this stage. From the House of Lords, if amendments have been made, ping-ponging begins, or the bill is returned to the commons for royal assent.[125]

The 24th Edition of Erskine May describes three levels of ping-ponging as "the point beyond which it would normally be impossible to proceed".[126] Once the House of Lords has proposed its amendments to an article of legislation, the House of Commons has three options. It can agree to the amendments, disagree with the amendments and offer a reason, or take other action. Such action may take the form of amending it further and making agreement dependant on the amendment, offering an alternative amendment in lieu of the amendment to which it does not agree, splitting the amendment and taking different action, or moving the amendment. Following any action except agreement, the decision is then transmitted back to the Lords as a message.

The House of Lords can then insist on its original amendment and provide a reason, it can accept the House of Commons' decision, it can amend its

[122] Ibid
[123] ibid
[124] Ibid
[125] Ibid
[126] Ibid. Bills studied within this thesis have gone beyond that, and are exceptional cases.

own amendment or, if appropriate, can further amend a Commons amendment to its own amendments. This is then transmitted back to the House of Commons.

The House of Commons now has the same options as the House of Lords had. However, another requirement takes precedence. If the House of Lords has insisted on an amendment and the House of Commons had initially disagreed without further action, and the House of Commons then chooses to insist on its original disagreement, this is double insistence and, under normal circumstances, the bill would fail.[127]Thus, under these circumstances, the Commons would normally attempt to offer an amendment in lieu.

I have taken the basic structure of ping-pong, which was outlined by Erskine May's Treatise of Parliamentary Procedure, and imposed some additional detail onto it based on the outcome from the point of view of the House of Lords. This is shown in Figure 2-1 below. Here, I have formulated four types of ping-pong based on the options available to each house and the expected outcome from the point of view of the House of Lords as the house moving the amendment. Ping-pong lite takes place for any amendment when the House of Commons accepts the amendment as formulated by the House of Lords, and does not return it to that house. Any bill that the Lords amends could be considered as ping-pong, but these amendments tend to be drafting, or less contentious amendments.

[127] Erskine May, 2011, 636

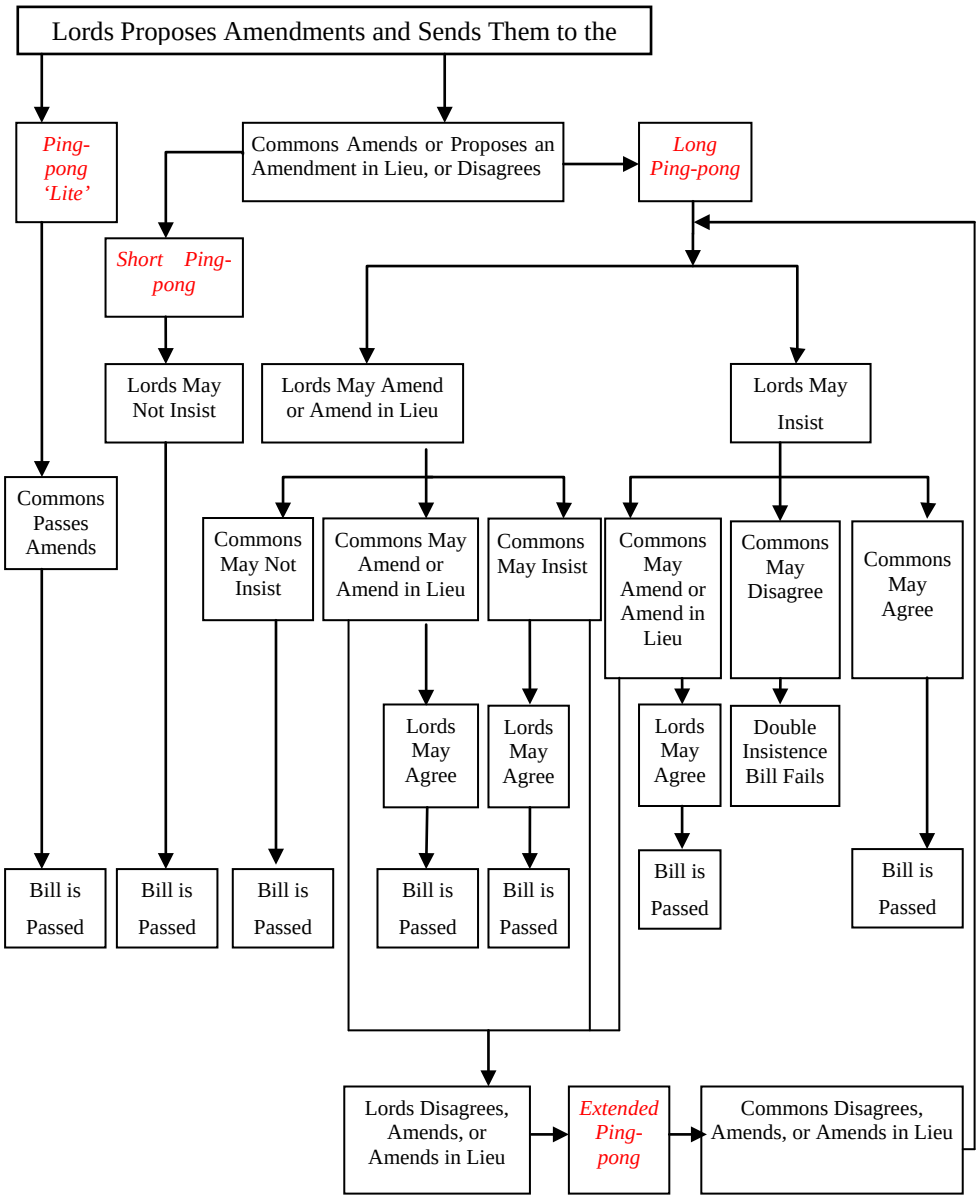


Figure 2-1: Revised Ping-pong Structure

Short ping-pong takes place for any bill in which the Commons changes or disagrees with the amendment, and the House of Lords takes no further action on it. If the House of Lords sends it back to the House of Commons, this is said to be long ping-pong. Long ping-pong allows the amendment to be considered up to two times by each house. After the House of Lords receives the amendment a second time, if it returns it to the Commons in any form to allow that chamber to read it a third time, this is considered to be 'extended ping-pong'. This definition is intended to capture only those

instances in which a significant disagreement between the two chambers existed. Long and extended ping-pong are the main focuses of conciliation between the Lords and the Commons, as these might reasonably be expected to be the issues on which there is the most disagreement regarding specific issues. There are also likely to be examples of both lite and short ping-pong with other amendments within these bills.

2.2.2. **Time Limitations**

Second chambers are limited in a number of ways when they are considering legislation. For example, the amount of time that is allocated once they have received the legislation may be limited, lasting from 10 days to 60.[128][129] In many cases, failure to act is taken to mean agreement rather than disagreement, and the bill is passed at the end of the period, thus removing the so-called 'pocket veto' ability. The pocket veto is used to describe a veto player not declining explicitly, but waiting for time to run out instead, thus causing the bill to fail anyway. The time limit allows the government at least an advantage in having its legislative agenda passed, although it could be argued that this reduces the amount of time the second chamber has for improving legislation. The mechanisms for designating legislation as urgent also vary among systems. For the most part, the government is responsible for such a designation, which is often linked to the origins of the legislation; for example, if it is a manifesto bill or is a response to a crisis. For most second chambers, the constitutional designation of the bill has great bearing on the influence the chamber may exert.

The House of Lords has a "reasonable time" convention, which has in the past caused concerns about what constitutes reasonable time, versus the need for picking up on detailed committee and report amendments. This reasonable time amendment does dissuade members from using

[128] Austria's upper house only has eight weeks to indicate to the lower house's objections or changes it wishes to make. Brazil allows the reviewing chamber, which for government legislation is the upper house, only ten days to review legislation. The Czech Republic's upper chamber has 30 days, Japan's has 60 days, Poland's has 30 days, and the Russian Federation's has 14 days. Tsebelis and Money, (1997): 59-63

[129] Tsebelis and Money, (1997) 59-63

filibustering tactics. This is maintained by self-governing and institutional norms.

2.2.3. **The Shuttle**

The shuttle, or navette, is the system whereby legislation is moved from one house to the other. Tsebelis defined it as "the reintroduction of a bill into the original chamber".[130] It refers specifically to the complete bill, as opposed to amendments. This exchange of amendments and amendments in lieu is known as the 'exchange of messages' in the Australian, Canadian, British and Indian Parliaments.[131] The shuttle occurs when the bill has failed, and is formally reintroduced into the originating chamber in order to repeat the entire process. The number of times this can be allowed to happen varies. In France, as in most chambers, a bill can be reintroduced and reviewed twice before the government may choose to intervene, or once if the bill has been declared urgent by the government.[132] Australia allows three readings in each house, while Germany only allows one reading.[133] A stopping procedure is normally initiated at this point.

In some countries, there is a minimum time before the reintroduction of a complete bill, ranging from two months to a year.[134] In Europe, set periods between passages are rare. The existence of a long delay does change the dynamics in negotiating, giving the upper chamber the additional ability to delay policy. None the less, it is accepted that there is a delay, which the government must consider. In the case of the House of Lords, this shuttle is limited to two introductions in two parliaments.

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[130] Tsebelis and Money, (1997)59-63

[131] Parliament of Canada: Legislative Process, Senate Consideration from http://www.parl.gc.ca/About/House/Compendium/Web-Content/c_g_legislativeprocess-e.htm#2h accessed 3/1/2013

[132] George Tsebelis and Jeanette Money "Bicameral Negotiations: The Navette System in France" *British Journal of Political Science* 25 no. 1 (1995)

[133] Tsebelis and Money, *Bicameralism*: 59-63

[134] Tsebelis and Money, *Bicameralism*:-63 Jamaica requires a seven-month time window, Fiji requires six months, Antigua only two months between the approvals, the Bahamas requires nine months, Barbados needs seven months, and Belize requires six months. Australia requires three months between lower chamber passages. Malaysia requires more than one year to have elapsed before reintroduction.

Some states do not utilise stopping procedures, and allow the same bill to be reintroduced continuously. In 1995, prior to federalisation, Belgium allowed the shuttle to continue indefinitely.[135] Italy still does; however, this leads to the somewhat bizarre situation in which a shuttle on a sexual offences bill continued for 17 years before both chambers agreed.[136] In part, this is a reaction to historical events, and the need to protect against extremism. In this regard, the system works almost too well in Italy. While the Italians extol the virtues of their system of 'perfect bicameralism', it is clearly not ideal for contentious legislation, and has the capacity to limit the government's ability to pass its agenda. This is an exception, as most other states with functioning democracies have a stopping procedure within Parliament to end a shuttle. These different procedures are discussed in the following sections.

2.2.4. **Dual Chamber Stopping**

As outlined in the introduction, the second chamber may have equality to the first chamber with regard to the ending of the shuttle, which amounts to a veto. If the stopping procedure ends with both chambers having a say, it is categorised as a dual stopping procedure.

Double Dissolution

This procedure allows for the dissolution of both chambers simultaneously when legislation is not agreed upon in the same form by both chambers. In Australia, the only country to employ this method, there is no obligation to reintroduce the legislation after the dissolution and ensuing election. In Australia, it is emphasised that this method was designed as a deterrent to long, drawn-out disagreements. The procedure has only been used six times since the constitution was written in 1901. As a result, double dissolution can present problems. If both chambers of the parliament are elected at the same time, the likelihood of political congruence increases, even if structural incongruence remains. In a parliament such as Australia's, in which party control is considered to be high, this is not a

[135] Ibid, 59-63
[136] Ibid, 59-63

positive characteristic of such elections. It also results in a new senate, which is different from what would take place in an ordinary election. Such a system is open to partisan manipulation because governments in a weak position are able to introduce a bill they know would fail in an attempt to gain a stronger majority in the ensuing election. On the other hand, the decision to dissolve the entire parliament is nominally in the hands of the governor general, not the government, although this creates its own problems, as discussed later in this chapter. The result is a highly unstable system. It also means that the senate is effectively invested with a confidence mechanism, as disagreeing would result in an election of the parliament and therefore of the government.

The joint dissolution procedure allows the senate to have revising powers, but it does cause issues with political congruence, meaning that elections at the same time could still favour the parties leading to greater partisans in both chambers, which is a criticism that has been levelled at the Australian Parliament. It can also be argued that, as the mechanism was designed as a deterrent to inter-cameral disagreement, it minimises the senate's brake and its revision functions. Moreover, by allowing for the dissolution of government and the potential for a new government before a term is complete, there is a greater risk of political change. This surely goes against the functions of a second chamber, weakening it further, as part of the strength of second chambers derives from the fact that the membership of the upper chamber does not change as frequently.

Joint Sitting

A joint sitting is when both chambers sit together in a plenary environment to discuss a legislation that is deadlocked. The discussion is limited to the amendment in dispute. In Australia, the upper chamber is outnumbered in such meetings because it is half the size of the lower chamber, a fact that would be mirrored in most other instances around the world.[137] In only one

[137] Harry Evans, "Constitutional Bicameralism and the Control of Power" (2006) from the website of the Australian National Parliament, http://www.aph.gov.au/About_Parliament/Senate/Research_and_Education/The_Biograp

case, in 1974, has the disagreement between the two chambers continued to the point at which a joint sitting was necessary, and the meeting was successful in that instance.[138] To pass an amendment in a joint sitting requires an absolute majority from both chambers in the meeting, providing additional security for the upper chamber.

As in the case of Australia, Bolivia uses the joint sitting. Either chamber can call a joint session, and both retain a veto, although the lower chamber has the advantage due to its size. The same is true in Uruguay and Venezuela.[139] India also uses a joint session in which the reviewing chamber initiates proceedings, although a joint session is called when either chamber does not act within six months, thus speeding up the process. In India, both the lower chamber, the Lok Sabha, and the upper chamber, the Rajya Sabha, can initiate legislation, and they pass amendments between them as messages. If the receiving chamber amends the bill, and the originating chamber either amends it further or disagrees to it, and the receiving chamber then insists on the original amendment; in this case, the disagreement is said to be final, and a joint session is called.[140]South Africa and Romania allow a joint session if the conference committee fails to obtain an agreement.[141]

Conference Committee

The conference committee is the most prevalent form of resolving disputes between chambers, and is utilised in various countries including Canada, Chile, Columbia, Congo, France, Germany, Haiti, Ireland, Japan, Madagascar, Poland, South Africa, Switzerland, Thailand and the US.[142] These systems comprise both relatively weak (France and Ireland) and

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hical Dictionary of the Australian Senate/Papers by former Clerk of the Senate Harry Evans/Constitutionalism accessed 3/1/2013,

[138] Ibid.

[139] Mariana Llanos and Detlef Nolte, "Bicameralism in the Americas: Around the Extremes of Symmetry and Incongruence" *The Journal of Legislative Studies* 9 no. 3, (2003), 74

[140] Procedure of the Indian Parliament from http://parliamentofindia.nic.in/ls/rules/rulep10.html retrieved on 3/1/2013

[141] Romanian National Parliament Website, for the Senat https://www.senat.ro/ Last accessed 12/11/2015.

[142] Tsebelis and Money, "Bicameralism":,59-63

strong (the United States and Germany) second chambers, and those in unitary as well as in federal systems.

The functioning of the conference committee depends on its position in the resolution procedure. In some examples, it is followed by a single chamber override, which is referred to below as an impure conference committee. It is the only method in other systems, and is classified as a pure conference committee.

In the United States, once a disagreement has been raised, either chamber can call for a conference committee, or allow the amendments to continue passing between them. The US conference committee is different from many others, as the delegations only have one vote reflecting the majority view of each delegation, thus allowing them to be different sizes.[143] Once a conference report is returned for debate, it cannot be amended further by either house. As congress reports, "almost all of the most important measures are sent to conference, but these are only a minority of the bills that the two houses pass each year".[144] The US system is therefore flexible, and both chambers retain effective vetoes.

The ability of each house to veto any decision made in a conference committee varies, as do the mechanisms whereby the conference committees are called. In South Africa, the constitution determines that the lower chamber, the National Assembly, may pass the bill regardless. Although the upper chamber is welcome to attempt to amend it, the acceptance of such amendments is at the discretion of the lower chamber. The mediation committee is used for section 76 bills, which are those that affect the provinces. In these cases, if the National Council of Provinces rejects a bill or amends it against the wishes of the National Assembly, it goes to a mediation committee. The mediation committee may pass the bill as passed by the National Assembly, the bill as amended by the Council of

[143] Llanos and Nolte, "Bicameralism", 74
[144] US Senate: Legislation
http://www.senate.gov/legislative/common/briefing/Senate_legislative_process.htm#4
retrieved 20/12/2012

Provinces, or may create a new version. The mediation committee bill then needs to be passed by the individual chambers.[145]

2.2.5. **Advisory Committee**

In Canada, although a conference committee is formally an option if disagreements arise, it only acts in an advisory capacity and is designed as a way to explain differences of opinions between the two chambers.[146] More common in Canada is the use of messages to acquaint the other house with the chamber's opinion of the amendments, and these messages continue to be passed until an agreement is reached. South Australia, although it also has a dual dissolution and joint sitting procedure, like the Australian Federal Parliament, it also has a conference committee procedure. In a method similar to Canada's, the conference procedure began as requiring two preliminary conferences before a so-called 'free committee' could be held.[147] In recent times, managers have turned to free committees to explain their chambers' positions as a matter of course.[148]

Therefore, this system fulfils a similar role to the Westminster ping-pong system, but with fewer members involved. This has the advantage of cutting the minor interruptions or non-engaged interventions; however, it also limits the ability of expert and non-political members to moderate debates. This could be a consideration if there are many interventions that do not further reasoned debates. States that use this system are notably weaker, and thus provide similarities to the House of Lords.

2.2.6. **Single Chamber Stopping Procedures**

Some countries have a stopping system that requires the consent of only one chamber, or have a procedure that allows one chamber to come to a

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[145] Parliament of the Republic of South Africa: How a Law is Made retrieved from http://www.parliament.gov.za/live/content.php?Item_ID=1843 accessed 3/1/2013

[146] Parliament of Canada: Legislative Process, Senate Consideration from http://www.parl.gc.ca/About/House/Compendium/Web-Content/c_g_legislativeprocess-e.htm#2h accessed 3/1/2013

[147] Rick Crump, "Why the Conference Procedure Remains the Preferred Method for Resolving Disputes Between the Two Houses of the South Australian Parliament" *Australian Parliamentary Review*, 22. (2007): 123

[148] Crump, 124

decision if a conference committee or joint sitting fails to produce a consensus between the two chambers. This type of conference committee is described here as impure, as opposed to the pure version described above.

Impure Conference Committee

A conference committee is used in Ireland, but it is subject to limitations - for example, the Dáil Éireann, or lower chamber, has 180 days to overturn any amendments made by the conference committee, meaning that even if the Seanad is successful in influencing the committee's outcomes, the committee may be overruled. Furthermore, in recent history, the Seanad has rarely had a majority that was not a reflection of the Dáil. This means that, in reality, there has been limited extended disagreement, and little opportunity to use the procedure.

France also uses a conference committee system. The government retains the ability to call a conference committee once a bill is reintroduced a second time in both chambers.[149] The government retains the initiative. The committee is then made up of equal numbers of representatives and, as in the US, is then subject to a closed vote in both chambers.[150] Unlike Ireland, this means that both chambers in France have equal powers in terms of accepting the conference committee, and the Senate thus retains influence up to this point. It is notable that chambers utilising this procedure tend to be ones that are not directly elected. This is also linked to the legitimacy issue as well, as such chambers cannot be allowed to overturn one that is elected directly by the people.

Stopping Procedure

Both France and Ireland allow the final decision to be taken by the lower chamber if the conference committee fails to gain agreement from both chambers. This method is also followed by Jamaica, Madagascar,

[149] Tsebelis and Money, "France", 104
[150] Ibid, 105

Mauritania, Russia and Thailand.[151] In France, the bill is reintroduced into the National Assembly following the conference committee. If the two chambers do not agree, the National Assembly can vote to pass the bill. Chile follows similar rules, allowing the upper chamber the opportunity to pass its version, also with a two-thirds majority. Should this fail, this would lead to the bill failing. This procedure is different in Ireland, where the Seanad can override the lower chamber by calling for a referendum with two thirds of its members.

In the Austrian parliament, although it is federal, the upper house is at a distinct disadvantage with regard to passing any laws. It cannot initiate any legislations, and only the lower chamber can make the ultimate decision to pass a bill. If more than half of its members are present, they can override any objection. Moreover, the upper chamber only has eight weeks to raise any objections it may have in relation to the legislation; otherwise, the bill is presumed to have passed. In a similar way, the Czech upper house cannot initiate legislation and has no veto, but it has 30 days to consider legislation passed to it from the lower chamber.

Only the Netherlands does not give the final decision to the lower chamber. The Dutch Parliament allows the Senate to take the final decision. The Senate can only accept or reject ordinary legislation. As it cannot amend it, there is little chance of conciliation if it has rejected the legislation, and new legislation must be considered.[152] Although Broeksteeg and Knippenberg noted a development of the Senate's ability to bring about the reintroduction of a bill with its own suggestions included since 1967, only 20 bills have had this procedure applied, and such suggestions can only be linguistic or technical, as opposed to major legislative change.[153]Argentina allows the originating chamber to make the final decision with an absolute two-thirds majority when making the final decision to pass a bill; in theory, this can be either house. Similarly,

[151] Tsebelis and Money, *Bicameralism.* 57-63
[152]Dutch Senate Website, English Translation: https://www.eerstekamer.nl/begrip/english_2 Last accessed 28/01/2016
[153] Hansko Broeksteeg and Erik Knippenberg "The Role of the Senate in the Legislative Process" in *Maastricht Journal of European and Comparative Law* 13 no. 2 (2006): 226

Mexico, Paraguay, Peru and the Dominican Republic also require majority votes to end the shuttle, with one house only requiring a simple majority, while the other requires an absolute majority. This process varies according to the country in question. In these countries, there is no other procedure for resolving confrontation.[154] It may be assumed, however, that, as in the Westminster System, it is lower priority bills that are introduced in the upper chamber.

Single chamber passage exists in many countries without another form of dual chamber conciliation. This is the case in Austria, Croatia, the Czech Republic, Poland, Spain and the United Kingdom. In all cases, it is the lower house that has the final decision concerning the passage of the bill, with or without second chamber amendments.

The House of Lords

The Westminster Parliament gives the House of Commons a single chamber stopping procedure, as the House of Lords has a limited one year veto provided for by the Parliament Act. The Parliament Act 1911 (amended in 1945) provided that:

> "If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons in two successive sessions (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the second time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: Provided that this provision shall not take effect unless one year has elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the second of these sessions".[155]

[154] Llanos and Nolte, 72

[155] Parliament Act 1911, as amended 1914, UK Legislation. Retrieved from http://www.legislation.gov.uk/ukpga/Geo5/1-2/13/section/2 on 26/03/2015

This limited the shuttle, as it is defined by Lijphart, to two introductions in each chamber, and placed a one-year time lapse on the bill. This means that a bill that requires the Parliament Act to pass it is subjected to a significant delay. The House of Lords has a history of exercising self-restraint in the name of self-preservation, seeing the use of the Parliament Act as being destructive to its own continued existence. This was particularly evident in 1911, when peers supported the limitation of their own powers in order to ensure that the Lords was not packed with Liberal Peers. In 1945, the Salisbury Convention was laid out, stating that the Lords recognised the rights of governments to enact their manifesto legislations, and that the House of Lords would not seek to delay or to wreck such bills. Stopping procedures, by their nature, come from both the veto role of the upper chamber, in addition to interacting with the legitimacy and relative use. The House of Lords procedure rules out any opportunity for formal negotiations as an equal chamber prior to the Parliament Act being used. However, this does not mean that informal negotiations, and influence during the shuttle are not present, and it is this that the research questions addressed in this thesis cover.

2.3. What we know about the House of Lords and Its Power

The Lijphart scale, while it is a good starting point, covers the whole bicameral system and not just the second chamber. This study is primarily concerned with legislative powers, of which the most important is the existence of a veto, but also the ability to amend, and then insist on an amendment. The Lijphart scale of measuring powers and composition has been augmented with the existence of veto players, and of legitimacy. Legitimacy is essentially the factor that allows academics to explain differences in unelected chambers, in which electoral representation is missing.

Legislation is worked out through a shuttle, followed by a stopping procedure. In some cases, the shuttle is all that exists to end disagreements, but the shuttle generally ends with either a dual chamber decision or a

single chamber decision. The single chamber decisions can follow a dual procedure failing in systems with weaker chambers. However, most such chambers are also weakened prior to the shuttle's start or during the shuttle to make the use of a stopping procedure even more unlikely. For such chambers, even when an intervening procedure, such as a conference committee exists, they are still at a disadvantage compared to their stronger counterparts.

Stopping procedures are related to the type of system the Parliament is in-federal/unitary, and parliamentary/presidential. Federal systems tend to invest more powers in second chambers anyway, and tend to include pure conference committees with equal powers, which would be unthinkable in the case of the House of Lords. Having said that, the difference between the US and Australia is interesting. Australia's senate is rendered less powerful both by the stopping procedure (in Australia the double dissolution is a sledgehammer to a nut), and by party machinery, which means that even triggering the stopping procedure is rare. Thus, in Australia, use of its stopping procedures have triggered so-called constitutional crises, whereas in the US, a gridlock in split congressional sessions is considered almost ordinary. This lends weight to concerns that, for parliamentary systems, party control of chambers is the difference between stopping procedures in bicameral parliaments being utilised.

In France and Ireland, which both end (although by different routes) in a single chamber stopping procedure, the French Senate is more vocal at times in its opposition, and its stopping procedures are used more often. Much of this is due to the fact that the Irish second chamber is greatly impeded in its ability to move controversial amendments, which may require stopping procedures to be utilised. This is due to time restrictions, and restrictions on how and when amendments to government bills may be used.

There is considerable variance in the single chamber stopping procedure, in the voting method used, and in the level of recourse the upper house then has. The existence of strict time limits in the upper house is not

unusual, which decreases the likelihood of conflict resolution procedures being used. This reduces the opportunity to use the veto, but also decreases the amount of influence available to the upper chamber, as it has a reduced opportunity to provide additional advice or arguments against the will of the lower chamber.

For a second chamber to be able to have powers equivalent to those of the lower chamber, particularly if it is not directly elected, would be problematic. In terms of powers, the House of Lords is in a similar position to other comparable parliamentary chambers. However, it does not have time restrictions, and it does not have restrictions regarding the types of amendments it can make. This means that it can fulfil the revising role of a second chamber very easily. The lack of time restriction can give the Lords a quasi-pocket veto; however, the reality is that conventions governing the bicameral relationship discourage this. The powers of the Lords are further weakened by the House of Commons only requiring a simple majority to override a Lords' veto.

The House of Lords

Compositionally, the House of Lords is not as much of an anomaly as it has been previously. When the chamber was largely hereditary, it followed the outdated elitist model, which has long since been replaced in most countries. However, as life peers became more of a presence from 1951 onwards, it moved away from this and, since the 1999 reform act, it has become closer to a partisan or even a vocational chamber. Whilst it remains an appointed chamber, it has a different party profile to the Commons. Whilst this is not a different representational model, the political outcome is similar to such a difference. This is arguably more important in a state with powerful parties, as a different representational model may still produce similar party profiles.

Lijphart's scale situates the Westminster Parliament as an example of weak bicameralism because it has both weak powers invested in the upper house, and is so-called pre-democratic. I am arguing that, although Meg

Russell was correct in identifying legitimacy as the key difference in explaining the changing strength of bicameralism in Westminster following the 1999 reforms, it is actually party balance, and therefore the composition of the second chamber, that has had a real effect. This is because, whilst legitimacy enables the House to feel more enabled to use the powers imbued in it by the constitution, it is party balance that causes these powers to be needed to be used in the first place, for instance through the tabling of amendments to government bills. A second chamber with the same party balance in a parliamentary democracy such as Westminster would be so controlled by party machinery that such amendments would be far fewer in frequency, and such powers of amendment and insistence would not be used.

Furthermore, the House of Lords does not have a permanent veto, only a one-year delay, and this power is used very rarely. However, up to this point, the House of Lords is the only chamber that is capable of conducting line-by-line checks of bills, and is often the first chamber to "proofread" legislation to this extent and in this much detail. This comes in the form of lengthy lists of amendments moved by the government to its own bills, but also allows for reasoned opposition amendments that the House of Commons is not able to address, owing to the greater political and adversarial style of committee and plenary debates. Whilst this is not a "power" as such, it imbues the House of Lords with a purpose that is distinct from its neighbour, the House of Commons. I am arguing that the powers that the House of Lords has in legislation exist in the period between it receiving the bill, up to the use of Parliament Act, rather than in the Parliament Act itself.

Final Conclusion

The purpose of the chapter was to identify the key expected behaviours and work of the second chamber. The shuttle in weak chambers may be limited in a number of ways before a stopping procedure is even implemented, both by constitutional rules and by political restraints. Once a stopping procedure is implemented, some states use multiple procedures,

while others use only one or none at all. Some restriction on the upper chamber is common, with only the very strongest chambers, such as the United States Senate, having no real restrictions on their ability to make amendments and maintain equal powers of decision after any stopping procedure. From the point of view of the second chamber's power, stopping procedures are influenced by the shuttle rules prior to the procedures being implemented, including who makes the final decision - for example, the last 'non over-rideable' vote.

Therefore, whilst the powers of the House of Lords remain asymmetric, and have been so since 1950, the composition has changed, although not in terms of representation. The House of Lords has powers, and the ability to use these powers up to the point at which the first chamber uses its veto, in this case the Parliament Act. In this instance, the House of Lords is at the more powerful end of similar chambers. The difference is whether or not the House of Lords chooses, or is able to choose, to use these powers. I am arguing that the change in 1999 enabled the chamber to find more opportunities to insist on the positions it took. Therefore, to study the influence of the House of Lords on policies with which it disagrees, the period of consideration of amendments is vital.

3. The Power of the Second Chambers

The previous chapter showed that the House of Lords, as a second chamber, has to manage its role as a second chamber and to fulfil it, as well as recognising its somewhat tenuous position in the British political system.

Weak chambers are weaker because of the lack of an equal veto. However, in many cases, the chamber is weakened by having fewer opportunities and a shorter timeframe in which to move amendments. As a result, the House of Lords is at an advantage compared to other chambers because no such hard limits exist on its powers to amend to government legislation and because, even before the 1999 reform, party control meant less to the Lords than it did to the Commons. Since the 1999 reform, the lack of a party majority for the governing party in the commons, and the increasing professionalisation of the chamber, has changed the dynamics. The House of Lords is therefore in the position of being a weak chamber in terms of powers, but it is in a position to have a significant influence on legislation.

This chapter is divided into three sections. The first examines evidence of power interactions in international examples. The study is first of weaker chambers, then stronger ones, looking at those in a similar position to the Lords compared to those at the other end of the power spectrum. It also includes Australia in a separate subsection because of the degree of importance attached to the strong Australian parties. The second section examines empirical knowledge of the House of Lords, covering first the legislative power of the House of Lords, and then factors linked to legitimacy, before examining empirical evidence specifically covering the consideration of amendments and the use of the Parliament Act. The third section uses this and the theoretical arguments developed in the previous chapter to outline the hypotheses and indicators used in this study, as well as providing an explanation of the case selection.

This chapter examines what we know about how influence is exerted in international bicameral parliaments during bicameral negations, looking at both strong and weak examples.

3.1. Behaviour of Second Chambers in Bicameral Parliaments

In a bicameral system, the preferences of the second chamber are expected to be more towards the maintenance of the status quo, whatever form it may take, as well as in defence of the constitution and civil rights. This is an indication of both the existence of a second chamber and the existence of an engaged second chamber. This section investigates what is known about both weak and strong bicameral systems and, more importantly, how we know it. Detailed studies have been conducted on the French Parliament and the US and Australian Senates, and these are discussed below. While the latter two are both more powerful than the House of Lords, they provide evidence of patterns of behaviour that are common to all systems.

3.1.1. **Weakest**

Tsebelis divided the French Senates between 1959 and 1986 into five periods, two under De Gaulle, when the laws did not usually need a conference committee and only 1.7% of all bills required the National Assembly vote of last resort.[156] In the second period, from 1963 to 1969, De Gaulle actively sought to weaken the Senate, and government intervention in the legislative procedure was “extraordinarily high”. The Senate voted under closed rule, in which the parameters of debate are clearly defined, 71 times, 56 of which ended in rejection by the Senate.[157]

The Pompidou years, from 1969 to 1973, saw high levels of agreement between the two chambers; however, the National Assembly used its vote of last resort on 3.4% of the bills.[158] The fourth period (under d’Estaing)

156 Tsebelis and Money, “France”, 106
157 Ibid, 106
158 Ibid, 107

saw less than 1% of bills requiring the vote of last resort, but the conference committee was used more often. However, the Senate and the Left clashed during the period from 1981 to 1986, when nearly seven out of ten bills referred to the conference committee were eventually voted in by the National Assembly alone, accounting for just over a quarter of all legislation.[159]

Under President Chirac and Prime Minister Jospin, between whom there was public hostility, the Senate joined the president in opposing the government's social reform plans and, according to data analysed by Conley, 15 of the 21 conference committees failed to reach an agreement between 1997 and 1998.[160] In the session that followed, 12 of the 18 committees established failed to find common ground between the two chambers.[161] Under these circumstances, the National Assembly then makes the decision.

This shows that a relatively weak chamber can gain powers if there is a difference in party control, and if that difference is sufficiently large to produce a different policy position in the upper chamber. Even when the senate has pushed its position in a conference committee, the committee fails most of the time, and the lower chamber takes the final vote.[162] Therefore, the conference committee still results in the lower chamber exerting its strength. If the upper chamber is belligerent, the result is still a veto. Parties may increase the instances of disagreements, but this in itself does not mean that the house will be any more or less successful at leveraging influence over the government.

More widely, in systems with weak bicameralism, the upper chamber is discouraged from disagreeing early in the process. Ireland, for example,

159 Ibid, 107
160 Richard S Conley and Marija Bekafigo, "The Determinates of Legislative Productivity: Parties, Coalitions, and 'Divided Government' in the US, France, and Ireland", (2006). A Paper presented to the Annual Conference, American Political Science Association. Retrieved from http://www.academia.edu/322002/_The_Determinants_of_Legislative_Productivity_Parties_Coalitions_And, accessed 15/12/2015
161 Ibid, 282
162 Ibid, 282

has never used the power to call for a referendum on a bill with which it disagreed following a lower chamber override. All are greatly dependent on the partisan balances in both chambers of parliament. These parliaments also appear to have a greater partisan effect on how willing they are to enter into the conflict procedures in the first place. If the second chamber chooses to pursue a conflict as far as a conference committee, the balance of power means that it has little chance of success. Therefore, the existence of a conference committee does not increase an upper chamber's bargaining position in such systems.

3.1.2. **Stronger Chambers**

As in the case of their weaker counterparts, stronger chambers also utilise the conference committee to resolve disagreements. In these cases, however, the powers invested in the upper chamber prior to the conference committee are stronger and are balanced with those of the lower chamber; thus, it is in a stronger negotiating position, as it cannot be vetoed as easily. The other option commonly utilised when a conference committee is not used, is a joint sitting in a plenary environment, which is a similar concept. Those chambers that use conference committees include South Africa, the United States, South Australia and Germany. Joint sittings are used in India and Australia, both of which have parliaments based on the Westminster System.

The Senate is more important to the needs of the parties, and this allows the Senate a considerable amount of leverage in the conference committee, enabling it to achieve its aims.[163] The Senate possesses specific powers in relation to executive appointments that are not invested in the lower chamber, as it is allowed to veto appointments to the cabinet and senior agency posts. This factor creates the possibility that the needs of parties may cross institutional boundaries, as parties may engage in cross-chamber work, certainly with regards to governments in parliamentary systems.

[163] Lydia Ortega and Lawrence McQuillan "Why does the senate "win" in conference committee? A stability explanation" 87 no. 1, (1996): 101-116

As Ferejohn found, “the Senate does manage to restore a majority of those house reductions which it chooses to contest”.[164] He also found “a clear pattern of senate victories”.[165] His evidence comes from the fact that, of 1309 disagreements between the House and the Senate during the period 1951-67, the Senate prevailed on 859 occasions, or on nearly two-thirds of all occasions.[166]As proof of bargaining power in the conference committee, this is strong. The senate is therefore able to push its position because it is already holding a higher status for the needs of the parties, and because it is on an equal footing with the lower house. It is also powerful to the extent that it does not need to worry about further recourse. The protection of power may also be an important factor in the bargaining process.

The problem with a strong second chamber, as far as the government is concerned, is that there are fewer ways of persuading an equally strong upper chamber. In the presidential system in the US, in which the two parties are controlled by far weaker disciplines and the executive and legislative are separate, gridlock can bring the government’s legislative programme to a halt. Gridlock is caused when legislation becomes held up because the chambers cannot agree. As Binder noted, “gridlock may be a frequent consequence of the constitution but that does not mean that the framers preferred it”.[167] Binder noted the particular problems of filibustering - endless talking - in the Senate. Filibustering is seen as a "parliamentary right to obstruct".[168] It suggests that the conference committee is not sufficiently empowered to resolve differences when the two chambers are well matched in power and influence.

Studies on the ability of the United States Congress to legislate tend to focus on the difference between the presidency and the congress, as

[164] John Ferejohn, “Who Wins in Conference Committee? “ *The Journal of Politics* 37 no .4, (1975), 1044
[165] John Ferejohn, 1044
[166] John Ferejohn, 1044
[167] Sarah A Binder, "Going No Where: A Gridlocked Congress" *The Brooking Review* (2000): 16
[168] David J. Jones, "Explaining Restraint from Filibustering in the US Senate" *The Journal of Legislative Studies.* 6 no. 1, (2000):53

opposed to differences in the control of the Senate and the House of Representatives. As William Heller asserted, "Bicameralism should affect politics when it offers real policy making influence to opposing viewpoints".[169] He continued that the upper chamber garners strength when its approval is needed, not because it initiated the legislation, which is something that is more likely to be a concern in parliamentary governments. In a separate article on bicameralism but with a specific slant towards budgets, where upper chambers have fewer powers in most cases, Heller argued that "government in bicameral parliaments run higher government deficits than in unicameral ones".[170] His argument stemmed from the fact that cameral preferences will always differ at some point, and that there are very real trade-offs that can be negotiated in the budget. Binder and Rodgers both found that having the two chambers under different parties provided a significant decrease in the number of successful legislations passed by congress.[171] Edwards et al. found that a divided government meant that "major legislation is a product of a structured bargaining that can often lead to delay and diluted policy changes".[172] However, this study focuses more on the impact of the president and congress being from two different parties.

South Australia, although it has a dual dissolution and joint sitting procedure, also has a conference committee procedure similar to that of the Australian Federal Parliament. In the South Australian Parliament, both chambers are in possession of constitutionally equal powers, with the exception of money bills. "The history of the South Australian Parliament" wrote Rick Crump, "clearly indicates that the formal deadlock provisions as contained within the constitution have not proven to be very popular or practical procedure for resolving disputes" and that "its lack of use strongly suggests that some other less destabilising procedure is readily

[169]Williams B. Heller, "Divided Politics: Bicameralism, Parties, and Policy in Democratic Legislatures" Annual *Review of Political Science*, 10 no.2. (2007), 246
[170] William B.Heller, " Bicameralism and Budget Deficits: The Effect of Parliamentary Structure on Government Spending" 22 no.4, (1997): 486
[171] James R Rogers, "Impact of Divided Government on Legislative Production" *Public Choice* 123 no. 2 (2005): 225
[172] George Edwards, Andrew Barnett, Jeffrey Pearce, "Legislative Impact of a Divided Government," *American Journal of Political Science.* 41 no.2, (1997),.546

available".[173] This highlights the key issues of the dissolution procedure - its upheaval, and the advantages of conference committee procedures in comparison to it. The standing orders of both chambers enabled the use of the conference committee.[174] In a method similar to Canada's, the conference procedure began as requiring two preliminary conferences before a so-called 'free committee' could be held.[175].

In Germany, the Bundesrat is able to exercise great influence through pre-legislative procedures and assistance in drafting even in the weakest area, which is facilitated through the need to cooperate on legislation.[176] The South African mediation committee is used for Section 76 bills affecting the provinces, which can be used for a wide range of legislations. Both of these examples have, in reality, extended their powers beyond what was constitutionally intended, thus strengthening their positions.

The other procedure that is used to resolve bicameral conflict is joint sittings. In Australia, the upper chamber is outnumbered in such meetings because it is half the size of the lower chamber, a fact that would be mirrored in most other instances around the world.[177] In only one case, in 1974, has the disagreement between the two chambers continued to the point at which a joint sitting was necessary, and the meeting was successful in that case.[178] To pass an amendment in a joint sitting requires an absolute majority from both chambers, providing additional security for the upper chamber.

Joint sittings have only happened three times in India - in 1959, with the Dowry Prohibition Bill, the Banking Service Commission (Repeal) Bill in

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[173] RickCrump, "Why The Conference Procedure Remains the Preferred Method for Resolving Disputes Between the Two Houses of the South Australian Parliament". *Australian Parliamentary Review*. 22 no. 2 (2007) 122
[174] Crump, 122
[175] Crump, 123
[176] Broeksteeg and Knippenberg, 233
[177]Harry Evans, "Constitutionalism, Bicameralism, and the Control of Power" accessed through the Australian Parliaments Website: http://www.aph.gov.au/About_Parliament/Senate/Research_and_Education/The_Biographical_Dictionary_of_the_Australian_Senate/Papers_by_former_Clerk_of_the_Senate_Harry_Evans/Constitutionalism accessed 3/1/2013, (2006): p. 3-4
[178] Ibid.

1978, and the Prevention of Terrorism Bill in 2002.[179] There are also instances when a joint sitting has been called following a six-month lapse after the receiving chamber had received the bill in question. In India, use of this procedure is more common than is prolonged disagreement through messages, which has been used previously. The conference committee is more prevalent; however, a joint sitting can also be effective if the two chambers are of similar size. Both of these require a degree of legitimacy recognised by both chambers, as well as constitutional recognition. Equally, questions of size and composition, as well as powers, affect the effectiveness of the stopping procedure used.

Only the Netherlands does not give the final decision to the lower chamber. The Dutch Parliament allows the Senate to take the final decision. The Senate can only accept or reject ordinary legislation. As it cannot amend it, there is little chance of conciliation if it has rejected the legislation, and new legislation must be considered.[180] Although Broeksteeg and Knippenberg noted a development of the Senate's ability to bring about the reintroduction of a bill with its own suggestions included since 1967, only 20 bills have had this procedure applied, and such suggestions can only be linguistic or technical, as opposed to major legislative change.[181]

While the Italians extol the virtues of their system of 'perfect bicameralism', it is not ideal for contentious legislation, and has the capacity to limit the government's ability to pass its agenda. Equally, such urgent legislation is unlikely to result in such circumstances, although the risk exists. This serves to increase the validity of the arguments about congruency or differing election cycles, which is also a concern for the Australian double dissolution procedure.

[179] Ibid.
[180] Dutch Senate Website, English Translation: https://www.eerstekamer.nl/begrip/english_2 Last accessed 28/01/2016
[181] Hansko Broeksteeg and Erik Knippenberg "The Role of the Senate in the Legislative Process" in *Maastricht Journal of European and Comparative Law* 13 no. 2 (2006): 226

3.1.3. **Australia: Strong but Weak**

The Australian example is particularly pertinent as it is a parliamentary system, albeit federal, and has strong parties in its parliament. The double dissolution procedure has only been used six times since the constitution was written in 1901.[182] In two cases, 1914 and 1983, the government that had introduced the contentious legislation did not receive a majority in the election, and the new government did not proceed with the legislation.[183] In 1951 and 1987, the government was returned and the bill introduced, but the legislation was only implemented in 1951. In 1987, although the legislation was passed, the government did not implement it.[184] In 1974, the bill in question went on to require a joint sitting of the two chambers in plenary. In 1975, however, the use of the procedure, although unsuccessful in terms of legislation, provoked a constitutional crisis that is worth discussing in greater detail.

The double dissolution presents problems for Australia because, if both chambers of the parliament are elected at the same time, the likelihood of political congruence increases significantly, even if structural incongruence remains. In a parliament such as Australia's, where party control is considered to be high, this is not a positive characteristic of such elections. It also results in a new senate, which is different from what would occur in an ordinary election. Such an arrangement is open to partisan manipulation because governments in a weak position are able to introduce a bill they know would fail in an attempt to gain a stronger majority in the ensuing election. On the other hand, the decision to dissolve the entire parliament is nominally in the hands of the governor general, not the government, although this creates its own problems as will be discussed later in this chapter. The result is a highly unstable system. It also means that the senate is effectively invested with a confidence

[182] Redmond Curtis, "The Origins and Genesis of the Deadlock Clause of the Australian Constitution" *Political Science Quarterly* 60 no.3 (1945): 412
[183] Rosemary Laing. 2012, *Odgers Australian Senate Practice 13th Edition.* http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/odgers13?file=chapter21&section=04 retrieved on 3/1/2013
[184] Ibid.

mechanism, as disagreeing would result in an election of the parliament and therefore of the government.

Moreover, Harry Evans, a clerk in the Australian Senate, accused his chamber of gradually seeding power to the politicians. Although he said a defence might be made for the Senate, as it has to be at least kept from rebelling against the government and the House of Representatives, he noted, "[I]t is not sufficient to justify the expense of an upper House".[185] Not all of this can be attributed to the second chamber's conflict resolution method, but it is clear that that method does not assist the second chamber to perform its functions in the case of Australia.

Australia's 1975 constitutional crisis occurred because of the ability of partisan actors to attempt to force a disagreement, leading to a double dissolution of the parliament. This move was perceived as having more to do with partisan policy goals than with constitutional fears that the Australian Senate had refused to grant a supply bill, which caused the government to grind to a halt.[186] The leader of the opposition, Malcolm Fraser, wanted to force an election and therefore encouraged the senate to continue to oppose the supply bill. This led to the Governor General dismissing Gough Whitlam, the prime minister at the time, and then calling an election that returned a new government that consisted of the opposition via a strong majority. This example highlights the problem of allowing political bodies to use conciliation processes for political gain. The complete dissolution of the Australian Parliament is probably not for export to a country with strong parties, such as the United Kingdom. That being said, Fisk found that "governments have incentives to act strategically vis-a-vis the second chamber, and these incentives exist

[185] Harry Evans, "Constitutionalism, Bicameralism, and the Control of Power" accessed through the Australian Parliaments Website: http://www.aph.gov.au/About_Parliament/Senate/Research_and_Education/The_Biographical_Dictionary_of_the_Australian_Senate/Papers_by_former_Clerk_of_the_Senate_Harry_Evans/Constitutionalism accessed 3/1/2013, (2006): p. 3-4

[186] David Butler, "The Australian Crisis of 1975" *Parliament Affairs*, 29 no.2, (1976): 201-210

whether or not the government is facing a friendly or hostile majority" although he still advocated independence in the second chambers.[187]

The Australian example demonstrates the potential problems of opposing party control in systems in which party discipline transcends chambers, and where such discipline is high. Whilst the US does not have the same issue, its parties can hold up proceedings in congress for extended periods, demonstrating the risk presented by a strong upper house that does not agree with the lower one. In a system in which efficiency is valued and parliamentary timetables are already stretched, as is often the case in Westminster, neither system would be appropriate.

3.1.4. **International Conflict Resolution**

The combination of quantitative and qualitative analysis suggest that the status quo is important as the default position for bicameral systems. It also suggests that the second chamber would more naturally come into conflict (in the British system) when the Commons has a Labour majority, and the Conservative Party has generally been more comfortable with the status quo. These are broad generalisations. However, the effect of time constraints has to be considered, as do the negatives associated with the loss of a bill for a government. Weaker chambers will simply come into conflict less; however, when the party majorities are different, the instances of disagreement and the instances of prolonged disagreement as a percentage of that will both be higher. For stronger chambers, a different party balance is more likely to cause prolonged disagreements.

3.2. House of Lords

Different aspects of the bicameral relationship have been discussed through the House of Lords' impact on legislation. This has mainly been measured by way of successful amendments and defeats inflicted on the government. These amendments and powers are investigated below.

[187] Fisk, David. "Superfluous or Mischievous: Evaluating the Determinates of Government Defeats in Second Chambers" in Federal Legislative Studies Quarterly. 35 no.2. (2011): 234

3.2.1. **Powers**

Amendment tracing is a general way of looking at the Lords' influence on legislation, regardless of whether it resulted in defeat or success. It looks at influence and collaboration, as well as at success. Therefore, it provides a way to identity the route of an idea, the result, and how it changes. It does not identify cause, although emerging patterns across cases provide some insight into this. Studies looking at the 'power' of the House of Lords may be mostly focused on amendments, or more on the general work of the Lords on bills, which includes softer variables such as mood/attitude. In addition, studies of individual bills include more detailed descriptions of the debates and the overall position of the houses at each point from a qualitative perspective.

Amendments

Measuring the impact as an objective variable is difficult unless it is counted via amendments and defeats. Consequently, it may be reasonable to say the amendments can only provide an overview of the number of changes the Lords made to a bill, and are more useful for establishing the relative strength of the entire parliament vis-à-vis the government rather than the levels of impact of each house. They provide little explanation for the reasons, or the distance moved by each house towards an agreement, and after how long.

The use of amendment strands for the more recent parliaments was based on a much older study by J. A. G. Griffiths, *Parliamentary Scrutiny of Government Bills*, published in 1974. This method allows both a study of the number of amendments moved on an issue and the progression between the houses. The theories examined included the parties that sponsored amendments to certain issues, and whether they were later taken up in the Lords from a failed Commons' attempt. This allowed conclusions to be drawn on issues such as the strength of opposition parties and the ability of the Lords to act where Commons' backbenchers or the opposition had failed. Baldwin also used this method to examine the

House of Lords in the 1970s.[188] Adonis used a simplified version of this in the 1980s. He found that certain bills were amended heavily, and that government amendments accounted for a large number of these.[189] Miers and Brock found that, in the 1988-89 parliament, of the 2,211 amendments that the House of Lords moved on the eight bills under investigation, only six were rejected by the House of Commons (not accepted).[190] This effectively shows that the Lords' impact is far more than just the headline disagreements, and is more about influence and well-drafted legislation. The same method was used by the constitution unit to study the impact of parliament on legislation passed between 2005 and 2010, beginning with an in-depth analysis of the Identity Card Bill.[191] This method was then extrapolated to the wider 2005-2010 parliamentary period, with one example bill per session, namely the Health Bill (2005-6), the Corporate Manslaughter and Corporate Homicide Bill (2005-6 and 2006-7 - carried over), the Employment Bill (2007-8), the Saving Gateway Accounts Bill (2008-2009), and the Energy Bill, (2009-10).[192]

With regard to the inter-cameral relationship, the research has found that "the impact of the House of Lords on Government legislation is greater than that of the House of Commons"[193], and that "many of the amendments proposed in the receiving chamber has previously been proposed in some form in the initiating chamber."[194] Furthermore, "amendments that were pursued in both chambers were more likely to

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[188] Nicholas DJ. Baldwin "The House of Lords and the Labour government 1974–79." The *Journal of Legislative Studies* 1 no .2 (1995); 233

[189] Adonis, Andrew, "The House of Lords in the 1980s" *Parliamentary Affairs.* 41 no. 3, (1988): 380-401.
This finding was also seen in the Constitution Unit study of parliament 2006-2010. These amendments were non-substantive, or drafting amendments, or reactions to earlier opposition concerns.

[190] David Miers and Jenny Brock "Government Legislation: Case Studies" in Donald Shell and David Beamish. *The House of Lords at Work.* (Oxford: Clarendon Press: 1993):

[191] Meg Russell and Jeffrey Johns. "Bicameral Parliamentary Scrutiny of Government Bill: A Case Study of the Identity Cards Bill" (2007) From http://www.ucl.ac.uk/constitution-unit/research/parliament/policy-impact/ID_cards.pdf Last accessed 01/02/2016

[192] Meg Russell, "A Measurable Difference: Assessing the Westminster Parliament's Impact on Government Legislation, 2005-2010" (2012): retrieved from http://webpages.dcu.ie/~leg/Russell.pdf Last accessed 01/02/2016

[193] Ibid, 14

[194] Ibid, 15

succeed than those that were taken up in only one chamber".[195] With reference to the identity card study, no support was found for the pursuance of amendments in both chambers, having more chance of succeeding than those pursued by one chamber,[196] and only limited support was found for the conclusion of the Lords having greater impact.[197] The second hypothesis in this group was also supported by the earlier study by Miers and Brock on legislation from the 1988-9 parliament.[198]

In addition, the findings were generally weaker than in previous cases with reference to whether "there was significant cooperation between the two main parties", "amendments supported by both the main opposition parties had a greater chance of success than those supported by only one main opposition party"[199], "amendments supported by government backbenchers were more influential than those by opposition parliamentarians"[200] and "amendments sponsored by the Crossbenchers in the Lords were more influential than those by opposition parliamentarians".[201] While the first two findings were mirrored in the identity card case,[202] the last was not found to be true[203], and the third was found to have only very weak support.[204]

While amendments have been traced, there has been no study of the changes that amendments go through, particularly during the final stages. This is linked to the debates and arguments that take place during the so-called ping-pong consideration of the amendments phase, and there has

[195] Ibid, 15
[196] Ibid, 15
[197] Ibid, 15
[198] David Miers and Jenny Brock "Government Legislation: Case Studies" in Donald Shell and David Beamish. *The House of Lords at Work.* (Oxford: Clarendon Press: 1993):121 and 129
[199] Russell et Al "A measurable Difference": 16
[200] Ibid.16
[201] Ibid.16
[202] Russell and Johns, "Bicameral Parliamentary Scrutiny" 12
[203] ibid, 16
[204] Ibid,15

been no attempt to combine the two, or to examine the process whereby a final compromise is reached.

The Wider Process

In the 1980s, more thought was given to the 'controversial' issues that resulted from in the relationship between the House of Lords and the House of Commons, as well as examining the everyday work. For example, there were housing reforms that addressed with the 'right-to-buy' policy for council house tenants in this period, which were later expanded to allow housing associations' tenants to also purchase their homes, as well as allowing some elderly and disabled tenants the same rights. These studies looked more specifically at 'mood' or 'attitude'. This type of study is usually confined to bills from the same parliament, or those from the same government.

In the 1988-89 parliament, Miers and Brock examined eight bills, four of which were introduced in each house, and which were all of varying degrees of importance and interest. They were the Children's Bill [HL], the Companies Bill [HL], the Football Spectators Bill [HL], the Road Traffic Bill [HL], the Official Secrets Bill, the Prevention of Terrorism Bill, the Transport (Scotland) Bill and the Water Bill. The measures were all in the same session, and the case studies considered the 'voices' of dissent in both houses prior to the formal legislative process in each, the amendments that the two houses moved, and the eventual outcomes. Miers and Brock found that the government tended to pre-empt disagreements in the early stages of drafting and amendments.

In the 2006-07 parliament, Susanna Kalitowski conducted a similar study of five bills to examine the impact of parliament. These were the Export and Control Act 2002, the Equality Act 2003, the Immigration, Asylum and Nationality Act 2006, the Legislative Regulatory Reform Act 2006 and the Welfare Reform Act 2007.[205] The case studies in this instance were chosen to represent a broad range of issues and topics. She found that

[205] Kalitowski "Rubber Stamp", 695

all the bills had different procedures, and that parliament influenced them in different ways, with one house often managing to exert more influence than the other. In the case of the Legislative and Regulatory Reform Act, she found that the government took pre-emptive action because it was aware that parliament was uneasy about the legislation.[206]

The wider study, *Law in the Making,* examined intercameral interaction but did not look at ping-pong specifically.[207][47] However, the authors did find that "it is clear from our case studies, and confirmed in our interviews, that the government's efforts to avoid repeated defeats and the 'ping pong' of bills between the houses further strengthens the House of Lords".[208]

Whittaker also studied the Legislative and Regulatory Reform Act, and found that it sparked fears that it could be used to undermine parliament and that the Lords made its feelings known early on through the whips in a form of pre-emptive action.[209] The Law in the Making study found that this was the only bill in the study that "was substantially amended in the Commons in the face of fierce opposition".[210] As a result, it can be argued that just looking at the later stages of legislative procedure, and particularly at defeats, does not identify the influence of parliament as a whole, or even just the influence of the Lords. Knowing the influence of parliament as a whole in relation to the government is a prerequisite for drawing conclusions about the House of Lords in the same relationship. Making assertions about the strength of the Lords relative to the Commons does not require such a linkage.

The Identity Cards Act 2006, which resulted in a long, drawn-out parliamentary debate about the issue of compulsory identity cards, showed that the House of Lords often had success picking up amendments that had

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[206] Ibid., 702

[207] Alex Brazier, Susanna Kalitowski, *Law in the Making Discussion Paper* retrieved from http://www.hansardsociety.org.uk/blogs/downloads/archive/2007/09/27/law-in-the-making-jun-2007.aspx on 19/9/2012

[208] Brazier and Kalitowski, "Law in the Making" 187

[209] Richard Whitaker, "Parliament and Government, 2005-06: Reform and Reflections" *Parliamentary Affairs*, 59 no. 4 (2006):699

[210] Brazier and Kalitowski, "Law in the Making", 186

failed in the Commons. This finding was also concluded by Whittaker, who found that the Lords was better able to leverage the matter than the opposition in the Commons had been.[211] Russell's study was a precursor to a wider study examined the threads of amendments, as will be discussed.[212]

Defeats have a lasting impact and are viewed as important by peers; however, government responding to pressure from peers was viewed as equally so (this helps in increasing the importance of the ping-pong process. This is because, while there are many government sponsored amendments, these may well be in response to opposition or backbencher pressure.[213]

Russell studied the amendments that were moved, and those that were successfully adopted across 12 bills in the post-reform period, including under the Coalition government's first session 2010-12. She compared these to studies conducted by other authors (particularly in the 1970s and 80s). She found that, in terms of the bills studied, 63% of the amendments moved were at committee, with most of the rest at report. Of the amendments that were successful, 66% were from the report stage; however, 88% of successful amendments were government sponsored. Of the opposition ones, 50 of 59 amendments were the result of defeats. Most were overturned in subsequent phases.[214] Russell's research found that there was a high number of so-called drafting amendments moved by the government, particularly at the report stage.[215] About 30% of government amendments had policy substance, while[216] 55% of these amendments were in response to non-government peer amendments. This was echoed

[211] Ibid

[212] Russell and Law in the Making. Meg Russell and her team, the authors of the Identity Card Case, later looked at a wider range of cases that became a study of parliamentary impact on the 2005 – 2010 Labour Government. The Identity Card Bill was not included in that study. While Whittaker looked at the Regulatory Reform Bill as a study of reform, the Law in the Making Study was a study of how parliament uses its time to scrutinise bills.

[213] Meg Russell, *The Contemporary House of Lords.* (Oxford: Oxford University Press, 2013),169

[214] Ibid, 172

[215] Ibid, 173

[216] Ibid, 173

by Miers and Brock, who found that government substantially amended its own legislation in the 1980s.

For the government, the period between the committee and report is a good time to recognise that there are concerns that need to be resolved. The next best time is between the report and the third reading. "The period between the committee and report stages is therefore a key time for discussions between government and any peers who feel that their questions have not been adequately resolved".[217] These all demonstrate the importance of the negotiated outcomes.

The resulting view based on these case studies is that there is much avoidance and effort made to avoid defeats, as well as extreme pressure on the House of Lords to do its job well and to improve the clarity of legislation, but not to pressure the government. It is also clear that the credible threat of defeat or of extended deliberations increases the Lords' powers, and that it is powerful because it is not used that often. This also suggests that circumstantial evidence is important for examining the process of amendments.

Composition

Russell and Sciara alluded to the continuation of such a distinction in their study of the impact of Crossbenchers, describing the influence that the Crossbenchers may have in the working realm and in the debates, compared to the relatively limited impact they have on division outcomes.[218] The Crossbench Peers, a group that has been studied in detail, really make the Lords a unique House, as the group includes the Law Lords who enabled the Lords to take up its position as the final court of appeal in the country. There were 201 Crossbench Peers at the time of the study, which amounted to just over a quarter of the total number of peers who could sit in the House of Lords.[219] There was a lack of trust in the independence of these peers, as "only 45% of Labour members and

[217] Ibid,180
[218] Russell and Sciara, "Independent Parliamentarians",41
[219] Ibid, 38

52% of Liberal Democrats agreed that 'the Crossbenchers fulfil a genuinely independent role'".[220] In terms of the actual impact that Crossbench Peers had, the message is decidedly mixed, with only 8% of amendments coming from Crossbenchers, and voting limited to areas in which the House as a whole was vocal.[221] This should not be a surprise, as the peers in this group are not impacted by party control or issues; therefore, there is not one voice, but many. That being said, both the Conservatives and Labour have frequently accused the independent peers of secretly supporting the other side.[222] Instead, they act in a more fluid way, influencing the work of other peers.[223]

The Liberal Democrats voting against the government, rather than abstaining, can be extremely important.[224] The crossbenchers, in comparison, had less direct influence on the outcomes. Nonetheless, the speeches made by Crossbenchers "may be important in determining the mood of the chamber".[225] This also indicates that the turnout of these groups may be just as important as the voting direction. A united opposition, however, does pose a threat to the government in ping-pong. Meg Russell noted that the highest number of defeats and whipping was present in the report stage, and that peers in the opposition avoid the calling of divisions they know they cannot win. Across all parties, abstention is more likely than is dissent.[226]

As the "least tangible" of the groups, and as the group that differentiates the Lords most clearly from the House of Commons, the Crossbenchers deserve more attention. Russell's work sheds light on the mistrust that is present. Perception versus reality is important. However, it is also important to recognise that, as other authors have pointed out, the Crossbenchers are also part of the brake mechanism, in that they reduce partisan swings or may have this influence. However, whilst

[220] Ibid, 38
[221] Ibid, 44
[222] Ibid, 38
[223] Ibid, 44
[224] Ibid.118
[225] Ibid,123
[226] Ibid, 115

Crossbenchers are often very even-handed in divisions, they can be heavily weighted in some cases, demonstrating strong opposition or support.[227]

Defeats

In the British political system, the main veto players can reasonably be assumed to be the parties. Studies examining defeats since the 1960s have generally focused on the role that different parties have played in achieving them. This is linked to wider studies on the behaviour and functioning of the Lords. Defeats are an obvious way of investigating the power of the Lords vis-à-vis the government. Records of divisions are readily available, including the list of MPs or peers voting either way, making the ability to examine party voting a natural next step. This was true of studies that took place both before and after the 1999 reform, of which Shell's work was another example, in addition to Russell. An increase in the number of defeats presents a longer term feeling of developing strength in the Lords vis-à-vis the Commons, which has strengthened further since the 1999 reform. While defeats were fairly common, non-reversed defeats were less so. Studies have also shown that, while the Lords may be successful in amending legislation, much of its amendments have their roots in the Commons, and that many government amendments are reactions to opposition probing.

The focus on defeats and on divisions presupposes a level of party discipline, similar to that seen in the House of Commons. Norton confirmed that party cohesion was high, with not many more rebellions in the Lords than there were in the House of Commons, and that these varied among parties.[228] This was confirmed by Russell and Sciara, who found that the level of cohesion varied, with the Conservatives being less cohesive, the Liberal Democrats the most cohesive, and the Labour Party most likely to use the whip in the House of Lords' divisions.

[227] Ibid. 142
[228] Norton, 52

Party cohesion, and the effect that it has on the likelihood of government defeats, increases the importance of party balance and party operations in the divisions in the second chamber. In the 1974-75 parliament, the Lords was increasingly driven by political divisions, as the Lords remained 'conservative' in mind-set and politically 'Conservative', and this coloured much of the revision that was being done by the Lords in this period.[229] Baldwin, however, concluded that the House of Lords is largely free from party control and remains independent of its composition. This was partly due to the lack of a majority faction.[230] This point of view is demonstrated by findings of studies examining the number of defeats suffered by Conservative and Labour Governments before Thatcher. In the 1980s, a distinction was found in the "voting" House of Lords, where the Conservatives were dominant, while in the "debating" House of Lords, they were frequently outvoted due to opposition parties being better organised.[231] This also suggests that the profile of peers voting in divisions may be important for the subsequent outcome.

Shell identified ten major defeats that influenced policy. Of these, one defeat on the British Nationality Bill was rejected by the Commons, and two more, the BBC External Services Bill and the Oil and Gas Enterprise Bill, were compromised on.[232] Shell investigated the beginning of the new parliament, in which the Lords had already inflicted 19 defeats in the first two years, 12 of which Shell viewed as major.[233] What Shell did not explore further is the number of defeats that were rejected or resolved via a compromise, four in each case.[234] This response by the government is surely worth investigating, particularly given the level of compromise. The

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[229] Ivor Burton and Gavin Drewry "Public Legislation: A survey of the Session 1974/75" in *Parliamentary Affairs* 30 no. 2 (1977):161-193

[230] Nicolas D. J Baldwin, "The Membership of the House" in Donald Shell and David Beamish. *The House of Lords at Work.* (Oxford: Clarendon Press 1993): 59
Nicolas D. J Baldwin "The House of Lords and the Labour Government 1974-79" in *The Journal of Legislative Studies.* 1 no. 2, (1995):218-242

[231] In the debating context, this refers to initial divisions on issues, or simply that there were more members speaking against a Government position than there were speaking in favour of it.

[232] Ibid., 22

[233] Ibid., 25

[234] Ibid., 26

House of Lords can be characterised by the division between the working house and the voting house. This characterisation can be identified particularly strongly in the 1980s literature on the House of Lords. Adonis found that a key feature of defeats in the 1980s was that "the vote must generally take place early in the sitting…so that the Tory whips are caught unawares", and are unable to organise their peers in time.[235] The constant comparison made here is of the theoretical make-up of the house, the composition of the house that attends regularly, and the make-up of the house that votes regularly.[236] Drewry and Brock studied the House of Lords' ability to defeat the government on legislative measures during the 1987-88 and the 1988-89 parliaments. They found that, during the earlier parliament, most legislative attention and amendments were focused on five bills, with 632 amendments being moved against the Education Reform Bill, 560 against the Designs and Patents Bill, 520 against the Local Government Finance Bill, 308 against the Housing Bill and 261 against the Criminal Justice Bill.[237]

This argument is lent weight by the evidence collected during the 1988-89 parliament in which, of 12 defeats suffered by the government, "four of the 12 government defeats would have been averted if all Conservative peers who had voted had voted for the Government".[238] This is confirmed by Russell and Sciara's findings, namely that, in five defeats of the Labour Government, the mass of the vote against the government would have meant that the defeat would have stood even if the Conservative peers had supported the Labour Government. This implied cohesiveness within smaller opposition parties, true in both the 1980s and in the early 2000s, seems to suggest a better organised opposition in the House of Lords - more importantly, a vociferous one.

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[235] Adonis, "The House of Lords in the 1980s", 384

[236] Adonis, "*MakingAristocracy Work"*

[237] Drewry and Brock, 72

[238] Gavin Drewry and Jenny Brock, "Government Legislation: An Overview" in Donald Shell and David Beamish. *The House of Lords at Work.* (Oxford: Clarendon Press: 1993):83

In the post-reform period, while the Labour peers did not have to rebel for a defeat to be inflicted, their doing so often energised the Crossbenchers. The Conservatives, although most often participating in revolts, could not alone ensure a defeat, as they did not often vote cohesively. Russell and Sciara noted that the Liberal Democrats were perhaps the most cohesive group within the House of Lords, but that the Labour Party was the most likely to use whipped votes, although other authors have noted that this was true of the Conservatives when they were in government.[239]

When looking at party balance between the two chambers, there is a lot of interest. Shell studied the levels of defeats prior to 1979 and found that Heath had had more trouble than had previous governments, facing defeats on 5.7% of bills, compared to 3.7% under the earlier Harold Macmillan administration.[240] This is compared to the 1966-70 and 1974-79 Labour administrations, which were found to have suffered defeats on 42.6% and 79.8% of bills, respectively.[241]

Even though the Conservative Governments suffered fewer defeats, the numbers were increasing. It is also clear that, under Heath, it was the House of Lords that was more progressive with regard to both immigration and sexual health. However, Thatcher's first government continued the trend of increased difficulties for Conservative governments, with 6.2% of government bills being subject to defeats in the Lords.[242]Margaret Thatcher made her opinion of the House of Lords clear, suggesting that the governing party was not the most important factor in the Lords' functioning at that time. As Andrew Adonis wrote, "assuredly no Tory government in modern times had been so consistently savaged by the watchdog once described as Mr Balfour's poodle"[243] referring to the Lords capitalising on the weaker position of the Commons, in which MPs were dominated by the will of the government.

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[239] Adonis, "The House of Lords in the 1980s",
[240] Donald Shell "The House of Lords and the Thatcher Government" in *Parliamentary Affairs.* 38 no. 1 (1985):117
[241] Ibid, 117
[242] Ibid, 117
[243] Adonis, "The House of Lords in the 1980s"

Following the 1999 reforms, the party balance of the House of Lords changed fundamentally, and the upper house was widely viewed as becoming a more professional and engaged chamber, with attendance of the remaining peers much higher than it was previously. In response, the Blair government appointed new peers, and successive governments since then have done the same. The lack of a reliable party majority in the House of Lords since 1999 is a fundamental aspect of its behaviour in debating and voting on legislation. However, while there is not the strict party discipline that is seen in the House of Commons, party cohesion remains high. A series of studies have concentrated on the effects of party groups in the House of Lords, and on how party control and divisions have affected the working relationship with the government and the House of Commons.

Russell's work on the policy impact of defeats tested unreversed defeats only, creating a five-point scale and considering anything between the Lords getting its own way and a fifty-fifty split as being an unreversed defeat.[244] She found that the 'importance' of the legislation did not make a difference to the likelihood of the government accepting the defeat. She also found that, while there was support for such defeats occurring on legislation introduced in the Lords, this could only be part of the explanation.[245] Russell found that the majority in the defeat, the party from which the amendment originated, the department from which the bill came, or the timing in the parliamentary session did not have a significant effect on the likelihood of the government accepting a defeat.[246] However, she found that the presence of Labour rebels did have an impact.[247] She was not able to determine the factors that were most likely to lead to a defeat, and suggested that the answer might lie in cross cameral investigations.

[244] Russell and Sciara "The Policy Impact of Defeats" 575
[245] Ibid, 579
[246] Ibid, 579-585
[247] Ibid, 582

In an expanded study, Russell studied defeats, and then whether they resulted in a Commons or a Lords' "win". Russell shows that 56% of defeats were mostly Commons' wins, although the Lords does have a high degree of success.[248] Russell assessed the effect of policy significance, the chamber of introduction, the size of the defeat, government rebels, government rebel amendments, crossbencher amendments and coalition governments. By performing a multivariate analysis, she found that only two variables had statistical significance - Government Backbench Rebels increased the likelihood of successful defeats, and Crossbencher amendments, which were more likely to be unsuccessful. [249]

Russell suggested that the time constraints in parliament are a key reason for Lords wining, because of the penalty of the Parliament Act being introduced. Over time, successive governments have realised that there is no need to aggravate peers unnecessarily. Furthermore, Russel notes that "one important factor is probably the chambers renowned "expertise", in terms of the status of particular peers pressing for change. Faced with criticisms from some members, government can sometimes find it hard to say no".[250] At times, acceding to the Lords' demands can actually be the path of least resistance. She also emphasised that parliamentary bicameralism is not a zero sum game.

3.2.2. **The Legitimacy Factor**

The legitimacy of the House of Lords to interact and continue to press a disagreement with, and if necessary to defeat, the House of Commons, is the foundation of the reform debate; it is also linked to the way in which the House of Lords performs its role as a scrutinising chamber. Legitimacy has been studied, or at least alluded to, in two ways: how it is perceived from without, and how it is perceived and reacts to that perception from within.

[248] Meg Russell, *The Contemporary House of Lords.* (Oxford: Oxford University Press, 2013)146
[249] ibid: 162
[250] Ibid:163

In the 1980s, the Lords was generally seen as increasing in confidence,[251] and its actions were, in fact, seen as unprecedented in the light of the two houses being broadly aligned politically.[252] In 2005, 43% of the public, 57% of MPs and 78% of peers agreed that it was either 'more legitimate' or 'far more legitimate'.[253] Peers were therefore happier with the current state than were the MPs or the general public. This may explain the difficulty of continuing reform, as the Lords perceived less of a threat. These figures are examined in more detail later in this section.

Later, the 2005-6 parliamentary session could be argued to be a watershed in terms of the Lords' ability to press its assertiveness, as the House of Lords inflicted more defeats and continued to insist on them.[254] On both occasions, confidence and legitimacy affected the House of Lords' interaction with the government in the House of Commons. Therefore, internal legitimacy may have come to have an effect on outside opinions of the Lords, as the House of Lords' feelings of increased legitimacy increases its assertiveness, and potentially also provides reasons to question its legitimacy in delaying the government's legislative agenda.

Outside the Lords

The Constitution Units study showed that the public was generally more supportive of the Lords' right to defeat the government in manifesto bills than were MPs, but this relationship was reversed for non-manifesto bills, as MPs were more supportive.[255] Forty-eight % of the public agreed that the House of Lords was justified (at least sometimes) in defeating the government on manifesto bills with strong public support, whereas 54% believed the Lords was justified in the same circumstances when the bill had not been in the manifesto. When the bill had little public support, the results were 66% and 64%, a strange result, as it might be expected that

[251] Andrew Adonis "The House of Lords in the 1980s" , 380-401
[252] Ibid.
[253] Ibid. 3
[254] Richard Whitaker, "Parliament and Government, 2005-06: Reforms and Reflections" in *Parliamentary Affairs* 59 no. 4 (2006): 694-702
[255] Russell and Sciara, "Legitimacy and Bicameralism", 3

the public would be more supportive of the Lords in the case of a non-manifesto bill. When peers on government benches rebelled, the support was 70% and 68% respectively, showing that, in general, the public felt the Lords was more entitled to scrutinise manifesto-pledged bills, which questions the underlying principle of the Salisbury Convention. Only 41% of MPs felt the Lords was sometimes justified in defeating the government on a publically supported bill that had been in the manifesto, whereas 68% supported the same situation for a non-manifesto bill. Where there was little public support, the results were 59% and 74% respectively, and in the presence of government backbench rebels, 65% and 77%.

Andrew Adonis argued that media, public interest and recognition of the work of the Lords began to increase in the 1980s, raising its profile in the minds of the general population.[256] Adonis noted that the increasing public awareness of the Lords through the media "reduce[d] the pressure for reform or abolition".[257] This would suggest that opinions about the House of Lords are not formed by actualities, but rather through perception. This view encourages the Lord's self-promotion. Adonis also examined the daily functioning of the Lords. He focused on the work done as a whole chamber, arguing that, as the influence of the chamber increases, so does its standing with the public.

Within the Lords

Peers feel generally more legitimised to defeat the government in non-manifesto bills than they do in manifesto bills, with the percentage of peers saying that they were justified in inflicting defeats always being higher in those categories.[258] For non-manifesto pledged legislation, 96% of peers

[256] Andrew Adonis, "The House of Lords in the 1980s" *Parliamentary Affairs*. 41 no. 3 (1988):380

[257] Ibid, 384. The Decision to allow the media into the Lords and to televise debates was discussed in Anthony Mughan, and Jonathan P. Swartz, "The Coming of Age of Parliamentary Television: The Lords and the Senate Compared" *in Political Studies*. 45. no. 1 (1997):36

[258] Russell and Sciara "Views from Peers, Mps and the Public on the Legitimacy and Powers of the House of Lords". UCL Constitution Unit Publications, Accessed via http://www.ucl.ac.uk/constitution-unit/research/parliament/house-of-lords/tabs/Peers_MPs_and_Public_views_on_Lords_Legitimacy_and_Powers.pdf. p 3

stated that they felt at least sometimes justified in defeating the government for both non-publically supported legislation and that which had public support.[259] This number rose insignificantly to 97% when there were many government rebels.[260] With regard to legislation in the manifesto, the level of public support proved the key factor, as 72% of the Lords felt the house was at least sometimes justified in defeating the government in such instances.[261] While this is lowest percentage of peers responding positively, it still means that over two-thirds of peers felt justified in defeating the government. This finding, at the very least, raises questions about the continued relevance of the Salisbury Convention in the modern House of Lords. When there was no evidence of public support for manifesto legislation, 93% of peers felt they were at least sometimes justified in defeating legislation, and 96% of peers felt they were at least sometimes justified in bringing about defeats regarding legislation when government MPs had rebelled.[262] In all cases, the House of Lords felt more justified in defeating the government at least some of the time than did either the MPs or the general public.[263] This is also demonstrated by the occasions on which the House of Lords has argued, based on apparent technicalities, that the Salisbury Convention has not been relevant, which ultimately led, in 2005, to the Liberal Democrats in the House of Lords choosing not to acknowledge that the Salisbury Convention continued to have relevance.[264]

[259] Ibid.3
[260] Ibid.3
[261] Ibid.3
[262] Ibid.3
[263] Ibid.3
[264]Baroness Royall of Blaisdon, Written Evidence. House of Commons Political and Constitutional Reform Committee, Inquiry into Government Formation Post Election 2011. 2010-15 Session. Retrieved from http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpolcon/528/528vw07.htm accessed 04/02/2016. In 2015, they once again choose not to follow the Convention because the policy in question (social housing) was a matter of principle. Ben Riley-Smith, "Liberal Democrat peers to break with convention and vote down 'right to buy' reform" *Daily Telegraph Online.* 22nd September 2015, Retrieved 04/02/2016.

3.2.3. **The Stopping Procedure**

Studying the rules and the procedure of the House of Lords across time is problematic, partly because of the evolving nature of the House of Lords and its rules and procedures. This means that any type of comparison over time needs to take this into account. However, the two main "rules", the Parliament Act, the function of ping-pong and the Salisbury Convention are unchanged over time. This lends itself to both large-scale variable-based studies, and small, single or detailed comparisons.

Rules of the Lords

A pocket veto does not really exist in the House of Lords. The House of Lords is expected, by convention, to consider all legislation in a 'reasonable' time after first receiving it, and all Lords are generally aware of this. A “reasonable time” has never been defined, but is taken to mean that the House of Lords will not seek to delay legislation.[265] As with all the conventions, it has never been suggested that this be codified. It was noted in the Hunt Report of 2004 that the House of Lords has not always followed this convention. Several examples, including the Constitutional Reform Bill, revealed stages had been delayed by the opposition in the Lords to disrupt the bills’ progress.[266] The Committee on Conventions ruled out that a codified time limit would improve legislative timetabling issues. This was a recent problem with the Parliamentary Voting System and Constituencies Bill, when the Labour Party was accused of an attempted filibuster. In this instance, it was coupled with the accusation that the new peers in the house were bringing a more adversarial style to proceedings.

The Salisbury Convention, more objectively understood, had been effectively ignored by the Liberal Democrats following 2006. They said that a manifesto pledge did not mean that a bill had public support, and used the Identity Card Bill as an example. As a result, conventions may be

[265] First Report from the Joint Committee on Conventions p. 36 http://www.publications.parliament.uk/pa/jt/jtconv.htm last accessed 01/02/2016.
[266] Joint Committee on Conventions p. 37

ignored, and most often are ignored when a faction in the House of Lords is trying to frustrate the Government, and the bill timetable.

Ping-pong

Ping-pong has rarely been studied directly, or expressly. The study of ping-pong is a progression of amendment tracing, as it investigates certain threads, but in more detail. This development is rare in the United Kingdom although, as shown in the previous chapter, it is more common elsewhere.

In the 1950s, the House of Lords was said to have high levels of non-tangible influence on both legislation and parliamentary procedure.[267] Lord Pethick-Lawrence, who examined this, did not examine the potential implications of this for the relationship with the Commons. Scully also cast doubt on the importance of 'powers' of an upper chamber in terms of the role it can play in legislating, arguing that "even if the powers of the upper chamber are limited, the fact that they exist offers the potential for the house to become a significant player in policy making".[268] This significant role is based on the ability of the upper chamber to revise and improve legislation and, as such, it is a vital role. This is why the focus on the consideration of amendments is important for the House of Lords.

Whitaker's work on ping-pong focused only on the 'special' session of 2005-6, looking at three key bills - the Identity Cards Bill, the Racial and Religious Hatred Bill and the Terrorism Bill. His case studies mainly explored the outcomes of the parliamentary debate, but did include an examination of the level of compromise between the two houses, the level of majorities in the votes and the party split. Concerning the Identity Cards Bill, Whitaker noted that the Salisbury Convention was a point of contention in terms of applicability throughout the early stages, in no cases were the majorities particularly low, and the degree to which the final

[267] Lord Pethick-Lawrence. "Legislative and Deliberative Function" *Parliamentary Affairs.* 7 no. 1, (1953): 75

[268] Roger Scully, "Dealing with Big Brother: Relations with the First Chamber" Journal of Legislative Affairs. 7. No.1 (2001), 99

agreement was really an equal compromise is open to debate.[269] With regard to the Racial and Religious Hatred Bill, the Salisbury Convention was not in question, but the Lords responded to the Commons and offered amendments that were acceptable to a majority in the Commons.[270] For the Terrorism Bill, there were fewer rebels in the Lords, and the Parliament Act was not considered viable.[271] The result was that the Lords achieved few concessions, but the Liberal Democrats proved crucial in this case.

However, as Whittaker noted, "Upper Houses with the power of veto are in a stronger bargaining position than those without". This suggests that the Lords would be weaker when confronting the government because the government can use the Parliament Act against it.[272] Importantly, the level of detail in each of these cases is high, when considering the amendments and the votes resulting at each stage in both houses. Whittaker noted the number of defeats inflicted, as well as the decreasing role of the party in the house.[273]

The process of ping-pong is therefore not often covered in isolation, and when it is the focus, it has been done previously through case studies. Case studies go furthest towards covering the various issues and paths that bring bills into this process. This is the central point- extended ping-pong is a rarity, and bills and the arguments presented when the contentious amendments are moved are all different. Whilst quantitative multi-variate analysis may be able to tell us some things, as Russell's study of defeats shows, it cannot provide a complete picture.

What We Know About the Use of the Parliament Act

The Parliament Act has only been used seven times to date. The first three were under the 1911 act, which required three introductions before the Commons could use its override. Two of the bills were in 1914, passing

[269] Richard Whitaker, "Ping Pong and Policy Influence: Relations between the Lords and Commons, 2005-06" in *Parliamentary Affairs* 59 no. 3 (2006): 536-545
[270] Ibid.535
[271] Ibid. 536
[272] Ibid. 537
[273] Ibid. 535

the Church of Wales and the Government of Ireland Bills. The third use was to pass the 1949 amendment to the Parliament Act. In a ruling regarding the legality of the 2005 Fox Hunting Bill, the House of Lords ruled that there was no validity argument to be made because the 1945 Parliament Act was constitutional, even though it was passed using itself to amend itself, as this had not been excluded.

The Parliament Act, as a constitutional anomaly, tends to be considered in terms of how the use of the Act comes about, or how it has been avoided. The arguments that come about using the mechanism often depend on the bill, and the way in which the bill was introduced. Studies concerning the success of the Parliament Act have included those bills that almostrequired the Parliament Act. The House of Lords, under the Callaghan government in the 1970s, considered the Aircraft and Shipbuilding Industry Bill and the Trade Union Bill, both of which were reintroduced a second time with the aim of using the Parliament Act if the disagreement persisted; however, the bills were agreed upon after the agreements were achieved.[274]

The War Crimes Act 1991 resulted in the Parliament Act being used, and there was debate about why, in the actuality of the Parliament Act being used, there was no further discussion of the Constitutional Future of the Lords.[275] Fourteen years later, the Fox Hunting Act 2005 is the most recent example of the Parliament Act being used, and it was the outcome of a bitter debate between the two houses, which ended when the Lords decided to try to force the government into a corner over the measure. The government waited to use the Parliament Act instead, reducing the Lords' influence as a result.[276]

The House of Lords has a history of exercising self-restraint in the name of self-preservation. This was particularly evident in 1911, when peers

[274] Nicolas D.J Baldwin "The House of Lords and the Labour Government 1974-79" in *The Journal of Legislative Studies.* 1 no. 2, (1995):218-242
[275] Gabriele Ganz, "War Crimes, Why No Constitutional Crisis" *The Modern Law Review.* 55 no. 1 (1992): 87-59
[276] Philip Cowley and Mark Stuart, "Hunting for Votes" *Parliamentary Affairs.* 58 no. 2 (2005): 258-271

supported the limitation of their own powers in order to ensure that the Lords was not packed with Liberal Peers. In 1945, the Salisbury Convention was laid out, stating that the Lords recognised the rights of governments to enact their manifesto legislations, and that the House of Lords would not seek to delay or to wreck such bills. However, the Lords is not always as restrained. The 1991 War Crimes Act, the European Parliamentary Election Act 1999, the Sexual Offences Act 2001 and the Fox Hunting Bill 2004 were all passed using the Parliament Act after the House of Lords refused to back down.

The Sexual Offences Bill was initially rejected, but was then heavily amended in committee on the second introduction.[277] The European Parliamentary Elections Act and the Fox Hunting Act both saw the House of Lords attempting what were seen as wrecking amendments during the first introduction, before rejecting the bill at a second reading on the second introduction.[278] The membership did not back down in these cases, and there was an increased awareness of the House of Lords' constitutional position in subsequent years. The Lords' constitutional position beyond the Parliament Act is ambiguous. With the Wakeham commission and the Joint Committee on Conventions, the potential for codifying the key conventions (Salisbury and Reasonable Time) were rejected, and the continuation of the house as a self-regulating chamber was included.[279] These cases, whilst uncommon, are rarely compared, and it is equally uncommon to compare such cases to those in which the Parliament Act was not used. Therefore, whilst the case studies are excellent for providing process tracing, they have little general

[277] House of Lords Journal Index for session 1999-2000, from https://publications.parliament.uk/pa/ld199900/ldjournal/233/gen_ix-2.htm#s accessed 19/01/2015 as well as House of Lords Journal Index for session 1998-1999, from https://publications.parliament.uk/pa/ld199899/ldjournal/232/gen_ix-2.htm#s accessed 19/01/2015.

[278] The House of Lords Journal 2003-4, https://publications.parliament.uk/pa/ld200304/ldjournal/237/157.htm#page_904 accessed 19/01/2015

[279] Joint Committee on Conventions Report session 2005-6, retrieved from https://publications.parliament.uk/pa/jt200506/jtselect/jtconv/265/265.pdf last accessed 19/01/2018

applicability. What they do provide is the context, and a detailed study of the motivations and the arguments.

The Parliament Act, as stated in the previous chapter, is the ultimate veto, and the end of the Lords' influence regarding legislation. If disagreements arise, both chambers may use the procedure known as ping-pong to try to reach an agreement prior to the reintroduction of the bill, and the potential use of the Parliament Act. Studies of all of these have tended to be based on single case studies, or on a small number of detailed studies. As with the Australian example given previously, the use of the Parliament Act can appear to be a constitutional crisis rather than the constitution working as it was intended to work, suggesting that, for the government at least, the Parliament Act is more of a deterrent.[280] This is in contrast to stronger parliaments, which appear to view their stopping procedures as part of the standard procedures.

3.3. What we know and what we do not know

Although reforms during the 20th century have served to increase the legitimacy of the House of Lords, it remains an unelected body that is clearly subordinate to the House of Commons in both theory and practice with regard to the passage and scrutiny of legislation. This is a position that is accentuated by the existence of constitutional and conventional constraints. The threat of further reform of the second chamber is still present, and the House of Lords remains aware that, in the past, overstepping its mandate from the viewpoint of the government adds to the argument for an elected chamber with reduced powers.

The influence of the second chambers is weakened, both in the ability to introduce amendments, as well as in the ability to insist on them and to inflict sustained defeats. Therefore, whilst weaker chambers cannot use a substantive veto, they also have fewer opportunities to raise objections.[281]

[280] David Butler, "The Australian Crisis of 1975" Parliament Affairs, 29 no .2, (1976): 201-210

[281] Ibid.

The House of Lords is useful in so far as much of its influence and power is used in mechanisms prior to a veto. The fact that weaker chambers appear to become more combative, if not more successful when the party balance is different in the upper chamber compared to the lower chamber, is also important. Despite its constitutional position, the House of Lords still amends government bills actively (admittedly, these are mainly drafting changes), and is able to enact defeats against the government.[282] As the house is primarily governed by party mechanisms, it is to be expected that party ideology becomes the overriding factor in voting and debates on occasion. Not all of the peers in the House of Lords are party political, and the crossbenchers in particular tend to be chosen more for their expertise; this is the overriding factor in their contributions to debates on bills.[283] These peers also tend to be self-made constitutional experts, and at times become the voices of reason in a self-governing chamber. The outcome of these competing factors is that, if the House of Lords has managed to inflict a defeat on the government, which the government has seen fit not to pass in the first stage of amendment consideration, and the House of Lords in turn has insisted on that defeat, this is an amendment about which the Lords feels strongly. An overturned defeat is often not insisted on, as it was a probing amendment or one that lacked support.

The use of the Parliament Act as the Commons' veto is rare. The use of it, as in Australia with join dissolution, often brings constitutional questions to the fore, and brings the question of Lords reform back into the public and, by extension, the government's consciousness. Therefore, this forms one of the keystones of behaviour of the House of Lords - avoidance of the use of the Parliament Act. Longer ping-ponging increases the chances of

[282] Meg Russell, *The Contemporary House of Lords: Westminster Bicameralism Revived.* Oxford: Oxford University Press, 2013 and Meg Russell & Maria Sciara, "The policy impact of defeats in the House of Lords". *The British Journal of Politics & International Relations*, 10 No.4, (2008),: 571-589.and Meg Russell, and Jeffrey Johns. "Bicameral Parliamentary Scrutiny of Government Bill: A Case Study of the Identity Cards Bill", 2007. From http://www.ucl.ac.uk/constitution-unit/research/parliament/policy-impact/ID_cards.pdf

[283] Meg Russell, and Maria Sciara. "Independent Parliamentarians En Masse: The Changing Nature and Role of the 'Crossbenchers' in the House of Lords" *Parliamentary Affairs* 62 No. 1, (2009), 41

this use of the Parliament Act, especially at the end of a session. Detailed studies of how the Parliament Act was used and the reactions to the use thereof add to the idea that the Parliament Act is something that is attempted to be avoided "most" of the time.[284] Detailed studies of other cases, such as the Identity Card Bill, show this as well.

More partisan issues increase the likelihood of disagreements, as do more dichotomous debates in which there is limited room for negotiation, or when all other options have been exhausted. This is an issue for parliaments such as Westminster in which there are only two parties, and the parties have stronger cohesion.[285] However, an analysis of defeats show that aspects such as rebels and cohesion are less important in bringing about a defeat, or in sustaining them, but they do not show how this may change over time.

Ping-ponging is a failure of conciliation and negotiations after multiple opportunities have been exhausted in an attempt to resolve the House of Lords' concerns. The government will already be familiar with many of the arguments being made, and where they are coming from within the House of Lords. Therefore, early signs of movement are important, as these show that the government is willing to include and listen to the concerns of the House of Lords. The more interesting point is perhaps the divergence from this, and the fact that the strongest recognition of the need to avoid it comes immediately after it has not been avoided. This is seen again when recent failures are raised in debates. Nonetheless, having said that, by contrast, there have been times when the House of Lords has almost actively aimed to trigger the Parliament Act.

[284]For example, Kevin Manton, "Labour and the 1949 Parliament Act" *Contemporary British History.* 26 no.2 (2012),156 Philip Cowley and Mark Stuart, "Hunting for Votes" *Parliamentary Affairs* 58 no.2 (2005): 258-271

[285]For example the role of strong parties and their potential effect is discussed in Meg Russell, "Parliament: Emasculated or Emancipated", 2008. Retrieved from http://www.psa.ac.uk/2009/pps/russell.pdf accessed 15/11/11, 12

The outcome of the two combined threats of reform and weakening is that the House of Lords actively seeks to avoid prolonged confrontation concerning government bills, which in reality means there is an attempt to resolve any ping-ponging of amendments as soon as possible, as opposed to seeking to prolong the procedure.

At this point, there are three potential outcomes for the House of Lords: insistence, withdrawal or compromise. It is the way that the house works to achieve a compromise that has been lacking in amendment-tracing studies and studies of non-overturned defeats. The research question that is the basis of this thesis is **how does the House of Lords impact on legislation during the conciliation process of ping-pong?** As a sub-question, the change of behaviour over the period under consideration needs to be considered, as do the factors affecting the outcome. These include the voting behaviour of peers from differing sides of the house, the debating points and peers contributing to the debates. As ping-pong is the only procedure that can be used by either chamber to avoid the use of the Parliament Act, and the substantial delay that accompanies it, there is also the question of how effective ping-pong is as a mediation procedure.

This study is developed according to a theory based on the works studied in this chapter; namely, that the House of Lords operates within a structure of self-restraint that is driven by a desire for self-preservation. This has been seen throughout the 20th century whenever major reform was threatened, and should similarly appear when bill disagreements are prolonged (see extended ping-pong in Figure 2). The argument for a position of self-restraint is unlikely to be demonstrated by those peers who derive their positions through party affiliations. The driving force for this can therefore be traced to the crossbenchers and their increasing role as ping-pong progresses. This thesis therefore examines nine bills from the House of Lords' history, beginning with the 1974 Wilson/Callaghan Labour Government, under which the Lords was said to have reawakened after a period of lesser activity. This will include the period up to the Conservative-led coalition with the Liberal Democrats in 2010-2015. The

chosen bills include both constitutional and non-constitutional bills in order to test the theory that the crossbenchers are more active with regard to the former, and the bills that used the Parliament Act and where it was threatened. The lengths of ping-ponging vary from four considerations (long ping-pong in Figure 2) to much longer periods (up to 11 considerations).

3.3.1. **Hypotheses**

The hypothesis presented in this study is that the House of Lords operates within a dynamic of wanting to fulfil a role based on its political and constitutional roles, as well as stemming from a fear of further reform that may result in the undermining of the Lords' powers; therefore, it is restrained from within. As a testable hypotheses: When reform is controlled for around the 1999 House of Lords reform Act, the measureable self restraint of the House of Lords in amending Government legislation, will see an increase in the post reform era resulting in more instances of the House of Lords conceding to the wll of the Government acting extracting smaller concessions. The best way to measure restraint is through the change between the initial defeat and the final decision, and the behaviour throughout the conciliation process. This hypothesis will be tested by answering the following main research question: How does the House of Lords impact on legislation during the process of ping-pong? In asking this, the answer requires the following questions to be investigated:

How does the House of Lords seek to impact on legislation? When controlling for the reform era of the House of Lords around the House of Lords Reform Act 1999 the impact sought on legislation through House of Lords amendments should see an increase in those bills introduced after the 1999 Act. This is important to determine the circumstances in which ping-ponging takes place, and what the House of Lords was initially seeking to achieve. It also serves as the baseline for measuring how successful the House of Lords was.

Is there a move towards conciliation over ping-pong? When controlling for the House of Lords Reform Act 1999, both the House of Lords members supporting the amendments in question and the Government in both Houses, are expected to make more frequent, and more recognised concessions on major points of contention in the post reform period. This establishes that conciliation took place over ping-pong. This is not a prerequisite for self-restraint, but it is a measure of "success", both in terms of the House of Lords as a political actor and of bicameralism. The House of Lords as a political actor is successful if it achieves its aim, while bicameralism is successful when the bill passes and the government achieves its aims whilst taking the House of Lords' concerns into account.

How does the behaviour of the House of Lords change over and within the process of ping-pong and affect legislation? This investigates the difference between self-restraint and other attitudes. This is tested by the following: When the period of reform is controlled for, the House of Lords will show more frequent displays of, and longer lasting commitment to, self restraint, regardless of the depth of amendments being discussed to Government legislation, in the post reform period.

Dependant Variables

The main variable is "self-restraint", which is the pulling back from a position of insistence in order to pass legislation on which the government is intent with a more minor amendment, taking the view that some measure of impact is better than none at all. It has an interaction with the impact attempted on the bill, and on the impact achieved. Therefore, both should be considered.

Independent Variables

The Reform Status is the central factor of this thesis, that the reform has changed the importance of self-restraint. Self-restraint has developed as a response to the reform threat. This comes from an understanding that the House of Commons, and the government specifically, view House of Lords' interventions that amend bills extensively as further reasons to

reform it. Since the reform, there has been greater self-awareness of the position of the House of Lords, and whilst it has feelings of increased legitimacy, it is aware of the potential for further reform. I expect that this will further enhance the impact of other variables. Reform status will initially be a nominal variable, with the categories being pre-1999 reform and post-1999 reform, when the structure, composition and party balance changed dramatically. However, in addition to this major reform, over the course of this study there were different levels of threats of reform made in Parliament. The Coalition and the Labour Governments after 1997 both made reform a high priority. In the 1970s, following unsuccessful attempts to reform in the 1960s, the Government was still greatly unhappy with the Lords. Therefore, while the House of Lords has shown greater self-restraint after the 1999 reform act, this restraint will be greatest when it is under direct threat from a reform bill. This is also the variable based on which the case selection has been made.

The Parliament Act is the stopping procedure that gives the House of Commons the veto. As a result, it is - for the most part - a major contributor to a lack of impact on issues about which the House of Lords cares. After a use of the Parliament Act, the constitutional position of the House of Lords is under more pressure, particularly if there was evidence that factions within the House of Lords were against the bill being passed in any form. Linked but separate is the risk of future reform, whether as a direct threat or an indirect threat. The use of the Parliament Act being threatened, or recently used, are both likely to impact on the House of Lords. In both cases, it is expected to increase self-restraint when there is a threat, or it has recently been used. This increase will be magnified in the post-reform instance.

The role of party balance was discussed in this chapter and in the previous one. The ideological balance between the two chambers affects their ability to negotiate. It would therefore be expected that, when the majority party in the Lords is at the other end of the political spectrum in comparison to that in the Commons, there will be less self-restraint. Party

balance is unfortunately tied closely to reform and, as a result, it strengthens the argument that reform will be the biggest impact. However, the difference made by party positions, and positions that are clearly taken along party lines, is important in this regard.

As an extension of this, and it may be an interaction effect, is the role of Crossbenchers. These peers have been the subject of a significant amount of research, which has shown that, whilst their impact is not always tangible in terms of defeats and divisions, they have a role to play in debates and negotiations. Therefore, subjects in which Crossbenchers are engaged may be expected to see more negotiation, or greater self-restraint.

The manifesto link is key to the triggering of the use of Salisbury Convention, which is the epitome of the self-restraint of the House of Lords, but only if it is followed, which is at the discretion of the Lords themselves. Therefore, whilst the use of the manifesto link is important, the degree to which any position is agreed upon is also important. The policy area affected by the bill is a consideration; for example, those that extend into the realm of human rights, constitutional protection, or areas of specific expertise are more likely to see conciliation and not self-restraint.

Time constraints put pressure on the process and increase the risks for the House of Lords - if the Parliamentary session ends, and the bill was introduced before three months prior to the end of the session, the bill will fail, and a reintroduction would allow the government to use the Parliament Act. Another variable is that of early signs of conciliation. This is an indication that there is some likelihood that a middle ground may be achieved. It is thought that the Lords may be more likely to show self-restraint in these cases.

3.3.2. **Case Selection**

Bills were selected for the pre-reform and post-reform periods as the main independent variable under consideration. For all parliamentary sessions from 1974 onwards, using public bills introduced by the government, and looking at those in which the Commons did not accept amendments made

by the House of Lords, these bills were categorised according to the number of phases that they underwent.[286]

Bills were selected based on the governing party in the Commons and the size of the majority. The Conservative Party and the Labour Party both had governments prior to the reforms in 1999. These also had varying majorities, with an example of a Conservative government and an example of a Labour government having a small/negligible majority in the Commons, and of the same parties having large working majorities in the Commons. In the House of Lords at this time, the Conservatives had an apparent majority based on the numbers of peers and available peers. As the previous two chapters showed, this majority was not always apparent in the behaviour of the Lords, or in divisions. This was then mirrored in the post-reform selection in which the Labour Government had one full session in the post-reform era with a significantly larger majority than in the second, and the bills were selected to reflect this. There are examples of both constitutional and non-constitutional bills where possible in both periods, as well as examples of partisan and non-partisan issues.

The Aircraft and Shipbuilding Industry Bill and the Housing and Building Control Bill were selected as two bills that have been cited as two of the most divisive bills in their respective periods by academics in other works.[287] The Railways Bill was selected to mirror the earlier Aircraft and Shipbuilding Industry Bill. The European Parliamentary Elections bill was both an example of a failure of negotiation (mirroring the Aircraft and Shipbuilding Industry Bill), and an example of a constitutional disagreement.

In the post-reform period, the European Parliamentary and Local Election (Pilot) Bill mirrored the European Parliamentary Elections Bill, as well as the two coalition bills that were selected. The coalition presented a problem, and this was the only instance in which manifestos were used. One bill took parts from both manifestos, while the other was tacitly

[286] Bill phases were corroborated using Lords documents and Commons documents. From 1995 forwards online journals and archives were available.
[287] Shell "The House of Lords and the Thatcher Government". 16-32

agreed by both parties. At the time of case selection, four bills fitted the requirements. The Fixed Term Parliament Bill and the Parliamentary and Local Elections Bill provided comparable options both with each other and with bills from previous governments.

In contrast to the constitutional bills, the Corporate Manslaughter and Corporate Homicide Bill and the Identity Card Bill were both Home Affairs' bills, and both were examples of extended ping-ponging. Both were selected based on the difference in their timings. The Corporate Manslaughter bill was introduced after the 2005 election in which Labour was returned with a reduced majority. The Identity Card Bill had been introduced before, but was reintroduced after the 2005 election.

4. Parliamentary Conflict Resolution with an Unreformed House, 1974-1999

4.1. Introduction

Both case study chapters provide the first qualitative insights into answering the question ‘How does the House of Lords use the ping-pong procedure to affect legislation?’ This thesis argues that the House of Lords following the 1999 reform will exercise greater self restraint during ping pong because of their fear of further reform, irrelevancy, or complete abolition

Therefore, in this chapter, which focussed on the pre reform era, it is expected that the self restraint will be less prevalent. This is through both a higher number of further reaching attempted changes, which are then defeated, or by less restraint showed in conciliation. This chapter discusses three examples of bills from the period before the major 1999 reform of the House of Lords, under consecutive prime ministers since 1983. In addition to this a bill from the Wilson Callaghan Government 1975/76 is included in the appendix, and discussed as a comparison in this chapter.

The dependant variable of self restraint is a combination of several factors, that can be broken into different indicators. The first factor is that the House of Lords will not pursue a more impactful amendment. This is indicated that the Bill passed, and that that amendment was either dropped or negotiated. The bill failing shows that self restraint was not present. The second factor is that this comes from the House of Lords itself. This is may indicate a different type of restraint, for example a negotiated outcome that is agreed, or the amendment backers agreeing to back down shows more restraint than the Government peers overwhelming opposition. The case studies cannot directly answer this, however they can indicate the way the bill ended the ping pong process, and what the agreement was.

The independent variables involved in this study are party discipline, majority in the House of Commons, party balance in the House of Lords,

policy importance (as attributed by the Government) and time constraints. As discussed in chapter 3 these are all assumed to have a role, some bigger than others, on bicameral conciliation procedures. In particular the importance and urgency attached to the Lastly, the independent variable that this study is primarily interested in is reform, and reform period, that being before or after the 1999 House of Lords Act. These chapters allow for an investigation of how they interact when the reform variable is not a factor.

As shown in Chapters 2 and 3, the House of Lords became more active following the 1950s and early 60s during the extended period of the Conservative Government, and started to oppose and defeat the government actively. During the first Labour Government following the Second World War (1945-51), the government reaffirmed its desire to reform the Lords, as it feared that the Conservative-dominated House of Lords would not support the reformist policies it had proposed.[288] There was little opposition from the Lords in the 13 years of Conservative Governments that followed, and the Lords next woke up in the late 60s. This was again curtailed by another Conservative Government that gave the Lords little cause for concern. When the Wilson Labour Government returned in 1974, the House of Lords began to prolong the consideration of amendments, and it continued to do so throughout the Thatcher Governments.

Under James Callaghan, the Aircraft and Shipbuilding Bill of 1976-77 failed because the House of Lords stood by amendments that kept such companies in private hands. [289] The bill experienced five rounds of ping-pong before it failed; it passed in the following session after the Commons accepted the controversial amendments. The Trade Union Bill went through a similar procedure. Both bills split the house on ideological lines between the Labour and Conservative parties; however, the Shipbuilding

[288] Peter Dorey, "1949, 1969, 1999: The Labour Party and House of Lords Reform" *Parliamentary Affairs*, 59 no. 4 (2006), 599-620.
[289] Harold Wilson was the prime minister at the time of the introduction of the bill, but resigned in April 1976 before the ping-pong began. It was under Callaghan that the ping-pong of the bill was conducted, and was later reintroduced and passed.

and Aircraft Industry Bill was the earlier bill, and was later quoted as an example of the Lords' obstinacy.[290]

Under Margaret Thatcher in 1983-84, the Housing and Building Control Bill experienced much debate over the maintenance of modified housing stock. At the time both, the Lords and the Commons had large Conservative majorities, and yet the Lords was perceived as the focus of opposition.[291] The House of Lords frequently aggravated the government throughout this period, leading to the view that the Lords could lead to rethinks in legislation more often than the Commons could, and this was shown in the number of defeats the Lords inflicted.[292]

In 1992-3, the Lords battled John Major's government over the privatisation of the railways, and specifically the ability of British Rail to rebid for new franchises in the Railway Bill; the bill went through four rounds of ping-pong. In 1998, the Labour Government under Tony Blair saw the Lords and the government argue over the introduction of closed lists in European parliamentary elections. The bill failed in the 1997-8 session, and was introduced in the following session when, following a refusal in the Lords to grant a second reading, the bill was passed using the Parliament Act. Thus, the bill is unusual in that it resulted in passage under the Parliament Act; however, it is comparable to other constitutional bills in that it evoked strong arguments from both parties, and that the House of Lords favoured continuity not reform.

4.2. The Housing and Building Control Bill 1983-84

In 1979-1980, the Thatcher Government introduced its flagship right to buy policy with the hope of helping more families own their rented homes.

[290] As late as 1999, there were still references to the bill relating to concerns about the whether the bill was hybrid and the Lords' obstinacy, during the passage of the European Parliamentary Elections Bill.

[291] Authors including Donald Shell and Adonis have noted the importance of the House of Lords and opposition to the Thatcher Government. See, for example, Andrew Adonis. "The House of Lords in the 1980s" *Parliamentary Affairs* 41 no. 3 (1988): 380-401; Donald Shell "The House of Lords and the Thatcher Government". *Parliamentary Affairs.* 38 no. 1. (1985):16-32; Damien Welfare "An Anachronism with Relevance: The Revival of the House of Lords in the 1980s and Its Defence of Local Government" *Parliamentary Affairs*, *45* no.*2* (1992): 205

[292] Donald Shell in particular focussed on this aspect; see Chapter Three for more detail.

The policy was limited to council tenants, with the idea of expanding it later to housing associations. In 1982, an amending bill, the Housing and Building Control Bill, was introduced to expand the right to buy to include the right to buy houses on leasehold land and the right to buy on a shared-ownership basis. The 1982 incarnation failed, with the parliamentary session ending in a general election, in which the government manifesto put housing under a title to make Britain a "Home Owning Democracy".[293] The bill introduced in 1983-84 was successful following four rounds of ping-pong. While the original bill had passed, and the policy was being amended, concerns were expressed about the housing stock compared to the demand, and this was the focus of the amendments then being considered.

4.2.1. **Parliamentary Procedure in the House of Lords**

During the Committee of the Whole House, Baroness Birk moved amendment 14, which ensured that homes for elderly people remained excluded from the right-to-buy policy. The amendment stated that a house "designed or specifically adapted to make it suitable for occupation by persons of pensionable age" would be excluded from the policy.[294]

This amendment ensured that homes for elderly people remained excluded from the right-to-buy policy. In the debate that followed, there was a lot of uncertainty about whether or not it would be better or worse, with Baroness Lane-Fox saying that it would, in fact, further disadvantage the elderly by continuing to be a burden, and by not being able to have the security of home ownership. Those in support said it would ensure that housing stock was maintained so that there was no uncertainty, and that elderly people or their families would not have the cost of major adaptations to an ordinary house. This amendment became amendment 11 in the Lord's list of amendments that was sent to the Commons for consideration.

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[293] 1983 Conservative Party General Election Manifesto. Retrieved from http://www.conservative-party.net/manifestos/1983/1983-conservative-manifesto.shtml accessed 22/11/2013

[294] See Appendix 1

In the third reading, the most controversial amendments tabled were linked to new clauses. In total, across all three stages, 376 amendments were moved, of which 240 amendments were accepted, with some amending amendments that had been passed previously at an earlier stage. The Lords had also sought to exclude freehold when the owner of the freehold was different from the landlord of the leasehold. The passage of amendments is outlined in figure 4-1 below.

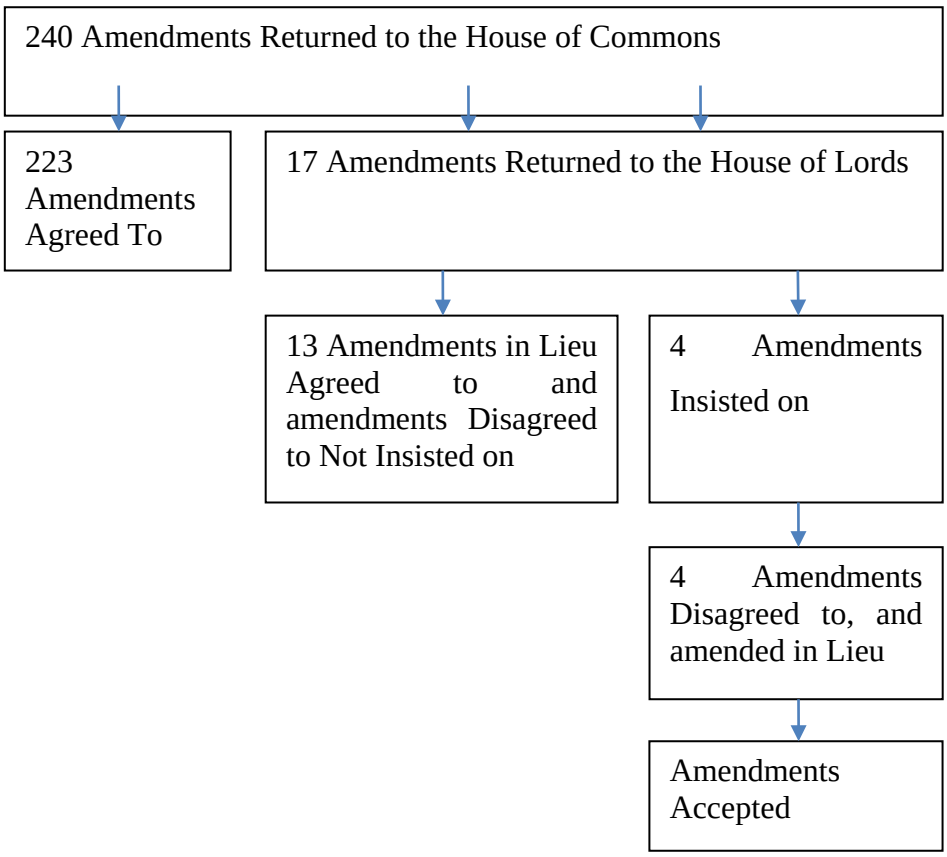


Figure 4-1: Overview of Ping-pong on the Housing and Building Control Bill

Round 1: House of Commons, 12th of April 1984

Of the 240 amendments that were sent from the Lords, 12 (1, 11, 12, 13, 14, 16, 63, 85, 86, 186, 190 and 216) were returned. Of these 12 amendments, four were disagreed to, only one without further amendments in lieu thereof. This is evidence of a level of conciliation in action from the way that the amendments were handled in the first instance.

The first amendment group covered Clause 1, “Where Landlord does not own freehold”, which looked at exclusions. The Lords had moved amendment 1, which aimed to remove freeholds owned by charities from the bill, as shown in the appendix. The government moved to disagree. As Sir George Young argued, “The effect of the Lords amendment would be to deny tenants of such leasehold property any right to buy long lease of their homes”.[295] Simon Hughes responded with concerns about university colleges that may own freehold charging higher amounts. John Fraser, having made clear that his position was firmly with the Lords, said, “There is one rule for local authorities and another for privileged charities”.[296] The disagreement passed on division with 259 to 138, although the Commons proposed amendments in lieu, showing some measure of conciliation.

Amendments 11 to 13, and 16, maintained the exclusion of adapted properties from the right-to-buy policy. However, according to Lord Gow, “The House knows that it is the government conviction that as many tenants as possible should have the right to buy”, and did not want to see further disadvantages. Amendment 14 was moved to disagree to. This disagreement passed on division with 235 to 101. The House of Commons agreed to several amendments in lieu thereof. This was therefore not a complete insistence, and there were overtures towards conciliation.

Amendments 63 and 86 had limited debate. Amendment 63 provided for the insertion of a new clause, “further advances in the case of certain voluntary disposals”, but it was agreed to with two government amendments in lieu.[297] Amendment 85 provided for a new clause that the government moved for agreement, with an amendment of its own. Amendment 186 was moved for agreement with government amendments, and was passed in that form with no debate at the conclusion of proceedings on the bill. The same was true for amendments 190 and 216, which were also passed with amendments.

[295]HC Deb 12 April 1984, vol. 58, col. 565
[296] Ibid. col. 573
[297] Ibid. col.612

Round 2: House of Lords, 10th of May 1984

Considering the original amendment and amendments offered by the Commons in lieu, the Earl of Selkirk, on behalf of the government, urged the Lords to agree, saying that the Commons had passed the amendment in lieu with a majority. Although Baroness Nicol urged going further to prevent further depletion of housing stock, amendment one was passed, with amendment 4a in lieu of the Commons' amendment four. As in the House of Commons, this was not complete insistence.

The Commons' amendments were to Schedule 10, which would have amended other, previously existing legislation; instead of exempting "shared ownership lease", the exemption re-referred to part I. The Lords moved an amendment that formally maintained the exemption instead.

The Lords then dealt with amendment 11 to clause 2, to which the Commons had proposed an amendment in lieu. The Commons also amended words put back into the bill because of its disagreement with the Lords' amendment 14. The Lords also debated amendments 12 and 13, as well as addressing the original amendment 16, although this was not debated. The Commons disagreed with amendment 16 because it felt that the decision it made regarding the Lords' amendment 13 made it superfluous. Lord Molson, on behalf of Viscount Ingleby, the amendments' original mover, rose to support it, as did Baroness Birk, Lord Hylton and Baroness Lane-Fox. This was then agreed to, as were the changes to amendments 12 and 13, with no debate. For amendment 14, Baroness Birk rose to move that the Lords insist on the original amendment. She said, "The government amendments in another place have replaced this very simple proposition with exemption for certain rural areas and pre-emption for the rest".[298] She continued, "This is not a party matter. It is a question of supply and demand and of giving elderly people the opportunity to live in places in which they can be independent and in which they can live a comfortable life without being dependant on other

[298] HL Deb 10 May 1984, vol. 451, col. 1039

people".[299] This was an active attempt to remove issues of partisan ideology from the debate.

Regarding the Lords' original amendment 63, the Commons proposed two amendments to it, to which the Lords agreed with no debate. The same happened with the Lords' original amendment 85, in that the Commons' amendments were accepted. The Lords' amendment 86 and the Commons' amendment to it were agreed to, also without debate, as was the consequential amendment. The Lords' original amendment 186 with Commons' amendments was agreed to without debate. Amendment 191 was agreed to, but Commons' amendments 46 to 48 were not moved and disagreed to as a result, but amendment 49 on the marshalled list was agreed to, all without debate. Lastly, the Lords' original amendment 216 was reaffirmed, but the two Commons' amendments to it were not moved and so were not accepted.

Round 3: House of Commons, 12 of June 1984

The Commons dealt first with Lords' original amendment 1. Sir George Young, for the government, said, "We have decided to accept the substance of the amendment to clause 1 which was passed against the government in another place. He continued by saying "although their lordships accepted the main thrust of the government's case, they did not accept it in its entirety, the result is amendment 1 on today's order paper".[300] The Commons then disagreed to the Lords amendment, proposed two in lieu, and, in reverting to the amendment to which the Lords proposed its own in lieu, made changes.

On the amendments to clause 2, in the face of the Lords' insistence and disagreement, the government proposed non-insistence on both the original disagreement and on the amendment offered in lieu. Eight amendments were offered, one to the amendment and seven consequential amendments. Simon Hughes replied that he would continue to oppose

[299] Ibid col. 1040
[300] HC Deb 12 June 1984, vol. 61, col. 877

changes to the Lords' original amendments, saying that the government had consistently refused to explain the implications for the elderly.[301] He believed the government was still effectively rejecting the Lords' amendment, and said that the Liberal Democrats rejected the compromise because it did not address the real problem.

In addition, the Commons again sought to amend Schedule 10 on technicalities, but did not openly debate the changes, which were proposed by the government, for consistency. The change to accept the thrust of the Lords' arguments at this point marked a shift in attitude.

Round 4: House of Lords, 19th of June

The first issue addressed was the continuing issues over amendment 1, on which there was no debate except for the Earl of Selkirk thanking the government. Regarding Clause 2 page 3 line 13, Lord Bellwin said he "confess[ed] a certain disappointment that your Lordships rejected the original proposals".[302] Baroness Birk recognised that improvements had been made, saying, "We now have safeguards in the bill for those elderly people living in rented housing".[303] Lord Evans also congratulated Baroness Birk on her tenacity. Lord Molson, also congratulating their Lordships on reaching an agreement, said he had concerns about the high levels of cost and administration, and this led to concerns about the centralisation of power. This was followed by a discussion on consequential amendments. The Commons' position on Schedule 10 was put, and passed, with the Lords accepting the Commons' amendments in lieu. Thus, in this example, there was an awareness that the offer currently being debated was as far as they were going to get movement.

4.2.2. **The Lords' Position**

The bill itself was an amendment bill and did not amount to new policy from the government, which makes it somewhat different from other bills,

[301] Ibid. col. 881-882
[302] HL Deb 19 June 1984, vol. 453, col. 161
[303] Ibid. col. 162

as the argument about the rights and wrongs of the underlying policy had already been won. However, the fact that this bill further depleted the social housing stocks did touch on an issue that divided the parties. This bill was referenced in the Conservative party manifesto, and the direct link was accepted and not challenged. As a result the Salisbury Convention was never referenced in the debates. The changes proposed by the Lords meant that the effect of the amendment to the housing bill would not be as extensive as the government had intended, but still allowed elements to go ahead. As a result, the amendments are seen as less fundamental. This may also explain the lack of involvement of discussion of the Parliament Act, even with high levels of concern about the effects of the new amendment.

At no point in the procedure did either house issue a flat insistence, nor was a motion moved for one. At the end of the procedure, there was general agreement in the House of Lords that it had achieved the changes it had set out to make, and that the government had moved to accept. Whilst Crossbenchers did not play a large role, they were present in the debates and the votes. Therefore, there was no self-restraint in this instance, largely because it was not required, although it was present in the peers who moved the amendment, who said they accepted the government had moved as far as it was able. Also in this, conciliation was evident throughout the short ping-pong.

Furthermore, party balance was clearly the Conservative parties favour on paper, however the Conservative Government could not count on its peers showing up in large numbers on a regular basis. This explains how a defeat might initially happen, and why continued ping pong was unexpected.

The Lords held a firm view that housing for the elderly should be excluded from the bill, and was clear that this was a matter of principle rather than of party. Ultimately, a negotiated position that satisfied the Lords and the Commons was achieved. As a result, the negotiations were successful. This was very much a case of the government accepting that the Lords had a point, although the bill it itself was not as divisive as were others to begin with. This bill therefore provides evidence that the House of Lords

may be more successful when the initial changes sought are not major changes to the legislation. It also adds weight to the idea that cross party support, and crossbencher support are important factors in the House of Lords achieving its amendment goals.

4.3. Railways Bill

The 1992-3 Railways Bill had been previewed in the 1992 Conservative Party election manifesto, and represented the Conservative Party's effort to re-privatise an industry that had been nationalised in 1948 by the Labour Party.[304] The legislation aimed at dividing the provision of services from the maintenance of the rail network. The former would be sold off as franchises, for which the government would be inviting bids, while Rail track would maintain the latter. This marked the end of British Rail as a nationalised company.

Unlike in the case of the Aircraft and Shipbuilding Industry, the opposition did not have a large majority in the House of Lords, although there were peers in the Lords on the government benches who were opposed to the measures. However, as with the earlier bill, this was a matter that related directly to central party doctrine. Furthermore, as with the Aircraft and Shipbuilding Industry Bill, it was subject to questions of hybrid classification.

4.3.1. **Parliamentary Procedure in the House of Lords**

The second reading was focussed on the general aspects of both nationalisation and the transport policy. Lord Clinton Davis opened the Labour opposition by saying that the bill was "inexplicable and

[304] The manifesto read, "We believe that the best way to produce profound and lasting improvements on the railways is to end BR's state monopoly. We want to restore the pride and local commitment that died with nationalisation. We want to give the private sector the opportunity to operate existing rail services and introduce new ones, for both passengers and freight". From 1992 the Conservative Party General Election Manifesto, retrieved from www.conservativemanifesto.com/1992/1992-conservative-manifesto.shtml#brighter accessed 13/10/2014

implausible".[305] This summarised the main point in the debates about the bill as a whole, and many of the amendments that were moved to it.

On the 5th of July, in the committee stage, Lord Peyton of Yeovil, a former Conservative Transport Secretary, moved amendment 31, which would allow groups from British Rail to bid for franchises. These amendments would become the focus of the ping-pong that followed. Lord Clinton-Davis agreed with the amendment, saying it may be useful to allow British Rail to bid for the franchises as this may help to boost competitiveness of the bids. The amendment passed 150 to 112.

The major amendment passed on report was also from Lord Peyton of Yeovil, namely amendment 289ZB; it dealt with the pension provisions for British Rail staff. Lord Marsh, a crossbencher, argued that the government had dug itself into a position in which no employer should find itself. In response to the minister, the Earl of Caithness said, "the amendment would give the Trustees a power of veto over Government expenditure. I accept that the memorandum provides for their agreement. But as I said in our earlier discussions…to put it in the bill is unacceptable. It would be wrong and unprecedented".[306] This amendment also passed on division, with 153 to 123. The third reading was principally about more government amendments being made to the bill. In total, the Lords sent 470 amendments back to the Commons.

4.3.2. **Ping-pong**

The Railways Bill underwent four stages of ping-pong, running to the penultimate day of parliament before prorogation. Coming as it did against the backdrop of the recent Parliament Act usage on the War Crimes Bill, the Lords was more careful about antagonising the government. A brief overview of what took place is shown in Figure 4-2 below.

[305] HL Deb 15 June 1993, vol. 546, col. 1434
[306] HL Deb 20 October 1993, vol. 549, col. 528

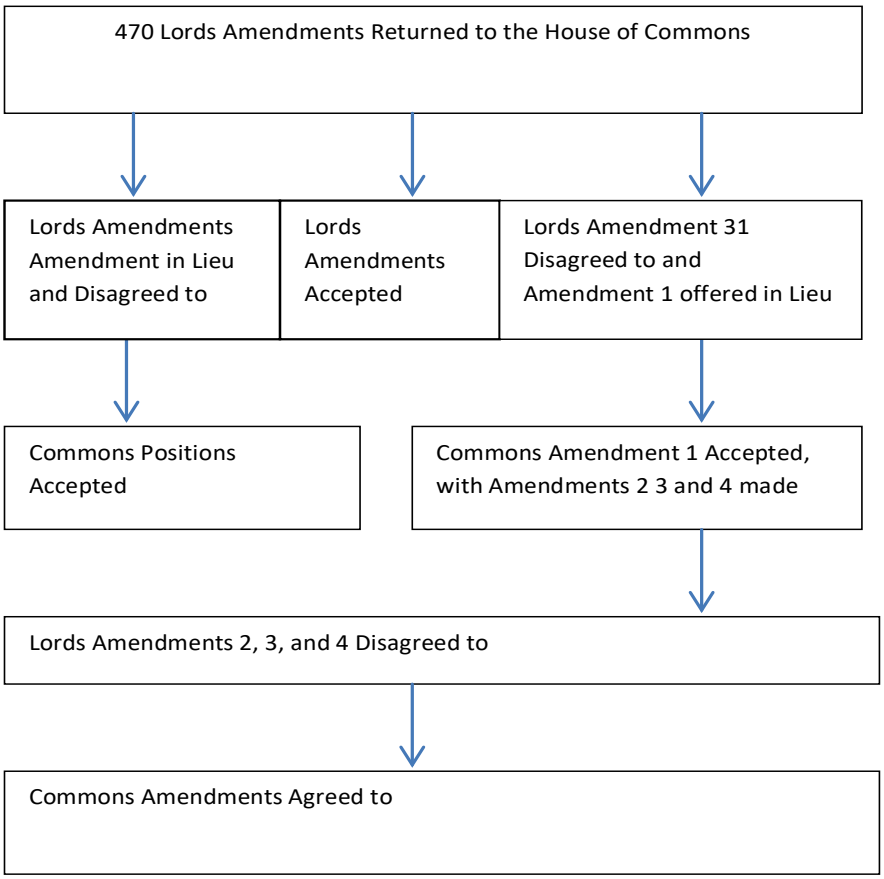


Figure 4-2: Overview of Ping-pong on the Railways Bill

Round 1: House of Commons, 2nd of November 1993

The Secretary of State, John MacGregor, moved to disagree to the Lords' amendment 31 with amendments in lieu. He argued that the move would increase any confusion, and limit the competiveness of the bidding process. Wilson said it was the government itself that was creating the confusion on this issue, and not the House of Lords. Mitchell continued to argue that allowing BR to bid would frighten off the "innovative private sector".[307] Harvey, however, called the government amendments "ridiculous", saying that the amendments would allow BR to be disregarded for virtually any reason that could be imagined by the franchising director.[308] The motion was passed. The insistence and amendment in lieu allowed for the franchising director to have the final say on whether BR could offer a bid. This amounted to some level of

[307] HC Deb 2 November 1993, vol 231 col. 232
[308] Ibid. col.236

conciliation, but there was also an ideological issue over the ability of a state-owned versus a private company to provide competitive, cost-effective services.

Round 2: House of Lords, 3rd of November 1993

The Earl of Caithness, the Minister, opened the debates on amendment 1 and the Commons' amendment in lieu 2, which provided additional reasons that the franchising director might exclude BR from biding. He said, "I indicated on the Third Reading that the Government had decided to accept the principle that BR should be eligible to be franchisees but that, because of BR's dominant position as the sole monopoly supplier of passenger railways services, additional legislative provision would be needed in respect of BRs role in the franchising process",[309] The government wanted further safeguards, and would leave the decision to allow BR to bid to the franchising director. Lord Marsh, a crossbencher, moved an amendment in response, saying, "Our concern is that the Minister's present proposals could merely change an already unsatisfactory situation into a chaotic mess, because there is no transfer of the system as such and no injection of the outside element which is so necessary".[310] At this point, the House of Lords began to worry that it was overstepping its constitutional provisions. Most of the arguments continued to focus on the rights and wrongs of allowing British Rail to enter into the bidding process, given the government's aims of introducing competiveness and money into the passenger rail industry. The division was passed 170 to 160. Additional amendments were also passed: 2b at 165 to 159, and 2c at 161 to 159. Furthermore, there was a move to disagree with the Commons' amendment 8 to the Lords' amendment 7, but this failed 146 to 159 on division. Other Commons' amendments were accepted.

[309] HL Deb 3 November 1993, vol. 549, col. 1093
[310] Ibid. col.1095

Round 3: House of Commons, 3rd of November 1993

The debate was characterised by criticisms of the government's stance on transport policy and on nationalisation. John Prescott, the Labour Shadow Transport Secretary, called the Lords' amendment damage limitation to a bill that was generally bad for the rail industry. Hugh Bayley felt the government was not giving parliament enough time to discuss the amendments, but Rathbone said, "The Lords amendment undercuts the entire principle of the bill".[311] The discussions appeared to be about the broader implications of the policy as a whole. This also showed a disconnect between what the Lords was claiming about its own amendment, and how the government saw the impact thereof.

The points of order confusion at the beginning of the debate was accompanied by reports of a 'sabotage' attempt by the Labour Party in the media the next day.[312] This was said to have taken place both in the lobbies and in the Chamber.

Round 4: House of Lords, 4th of November 1993

Lord Tordoff moved that the Lords should not continue to insist on amendments 2 and 3, but should insist on amendment 4, saying, "We have, first, the right to expect an explanation from the government".[313] Lord Peyton rose to say that, although he still believed that the amendments were right, "I believe that we would be unwise to press the amendments which yesterday we carried in the face of the first rejection of them by the other place".[314] Lord Stoddart argued that the Lords should continue to

[311]HC Deb 3 November 1993, vol. 231, col. 429

[312] "Door Stop" in London Evening Standard, 4 Nov 1993, Details anger about use of time-wasting tactics in the Division Lobby, and the use of 'arcane traditions', an accusation made by Conservative members about Labour Party whips. This story was taken up in the Guardian in the context of 'rushing' on the part of the government to complete the bill. Patrick Wintour, "Minister's Derail Peers' Rebellion" in *The Guardian (London)* Nov 4, 1993

[313] HL Deb, 4 November 1993, vol. 594, col. 1107

[314] Ibid. col.1167. Lord Peyton spoke on Channel 4 News, saying that he tried to draw attention to the bill's failings, but ""We have shot our bolt, that's it. It will come back against a different background. If we take it on again it then becomes a clash between the Lord and Commons and that is very undesirable. The elected House always wins in these cases."" (Quote from Lord Peyton to Channel 4 news, reported in Joy Copley, "Government Suffer Triple Defeat" in *The Scotsman*, Nov 4 1993).

insist, and Lord Simon also argued that the Lords should not allow the house to become marginalised under the weight of the government's expectations. The Lords chose not to insist, and the bill passed.

4.3.3. **The Lords' Position**

The amendment moved by the House of Lords allowed the privatisation of the provision of passenger services to be reversed in some instances. This policy touched one of the ideological divides between the two major parties at that time. Therefore, whilst it is not a matter of lords expertise, it does solidify party differences. The House of Lords argued that the amendment did not amount to a major change, as it did not affect the decision to privatise. This was disputed by the government, which argued that this would inhibit rather than create competition.

The ping-pong procedure only experienced one insistence, from the House of Commons, but after both sides had moved conciliatory options. Whilst the House of Lords had planned to move an insisting motion in the final instance, it was withdrawn. This shows that conciliation was attempted early. It also shows a degree of self-restraint, as stated by Lord Peyton, who had accepted he was not going to achieve further concessions. Crossbenchers and Conservative rebels were key to the amendments, which shifted party balance further. This was probably aided by his position as a crossbencher. Early conciliations moves were also made. This was further intensified by the pressures of time constraints at the end of the Parliamentary session. The Parliament Act was also a direct concern for some peers given the recent use the previous Parliament.

4.4. European Parliamentary Elections

The European Parliamentary Elections Bill aimed to introduce proportional representation in the European parliamentary elections for the United Kingdom, with the exception of Northern Ireland, which would continue to use the Single Transferable Vote (STV) system. Although the Labour Party had promised such a reform in its 1997 election manifesto, it had not specified the type of proportional representation. The party had

simply said, “We have long supported a proportional voting system for election to the European Parliament”.[315] Therefore, the bill’s underlying aim was protected by the Salisbury Convention as a manifesto commitment. When it was introduced in the House of Commons, the bill called for the use of closed, or party lists, where the order of candidates was predetermined by internal party rules.

At the same time, preparations were being made for a bill to reform the House of Lords, with a view to bringing in a staged reform, removing all hereditary peers, and bringing in a form of election. As a result, there was a feeling in the House of Lords that the bill was part of a wider constitutional opportunity on the part of the Labour Party. It also served to intensify feelings about the role and position of the hereditary peers, the majority of whom were on the Conservative benches. It was against this backdrop that the European Parliamentary Elections Bill came to the House of Lords for the first time.

4.4.1. **Parliamentary Procedure in the House of Lords**

There were many unsuccessful attempts to change the voting procedure in the bill throughout the committee and report stages. Many of these attempts appeared to be more symbolic than they were real attempts that expected to be successful, such as attempts to keep the ‘First Past the Post’, or to change to the STV system. It did, however, serve to underline the differences between the political parties in terms of their support for voting systems in general. The Liberal Democrats showed their preference for STV, but pragmatic support for closed lists, the Conservatives generally preferred First Past the Post, and the Labour party supported general reform. Throughout the process, the Conservative Party was accused of trying to get First Past the Post back onto the bill or, failing that, of causing the bill to fail by supporting open lists.

[315] Labour party 1997 General Election Manifesto. Retrieved from http://www.labour-party.org.uk/manifestos/1997/1997-labour-manifesto.shtml accessed 09/10/2014

Lord MacKay (Cons), Lord Chancellor under the Major Government, moved amendment number one during the third reading, arguing that "this amendment and the three grouped with it aim to change the voting system for the European elections in a very significant way, in order to give the electorate more choice and the party apparatus less choice".[316] He continued, "Those people, who vote Labour, Conservative, or Liberal Democrat, will therefore determine not just the number of seats the party will gain but who on the party's list will gains those seats".[317]

Lord Evans (Lab) continued the support of the amendment, asking, "Surely this is a timely and helpful amendment from the revising chamber to the principal chamber".[318] Lord Russell (Lib Dem) and Lord Renton (Cons) both urged the house to support the amendments. However, Lord McNally (Lib Dem) said he and his colleagues were supporting the government, as it was the least worst option compared to continuing with the current electoral system. Lord Stoddart (Ind. Lab) argued that the house should support the amendment, arguing, "The House is entitled to make representations to another place".[319] The amendment was passed 165 to 140. It was joined by three further consequential amendments. The amendments passed with votes in favour from all sections of the house, in spite of a three line whip reportedly being used by both Labour and the Lib Dems.[320] In total, nine amendments were sent back to the House of Commons for consideration.

Throughout this process the Conservatives in the House of Lords made clear their opposition to the policy being enacted by the bill. Furthermore, the Government and the Liberal Democrats were making clear that they suspected the Conservatives wanted to wreck the bill instead. There was therefore a dichotomy before ping pong began. This was combined with the ambiguous constitutional position of the bill. It related to the European

[316] Lords Hansard 20th October 1998 vol. 593 col.1318
[317] Ibid. col. 1318
[318] Ibid. col. 1323
[319] Ibid col. 1328
[320] Severin Carrell, "Peers Reject Election Moves" *The Scotsman* Oct 21 1998, p. 6

Union elections, however there was stated mistrust front eh Conservatives, about the

4.4.2. **Ping-pong**

The ping-pong on this bill took place in eight phases, and covered four amendments as one group. Figure 4-3 below shows the passage of the amendments as an overview of the decisions made at each phase.

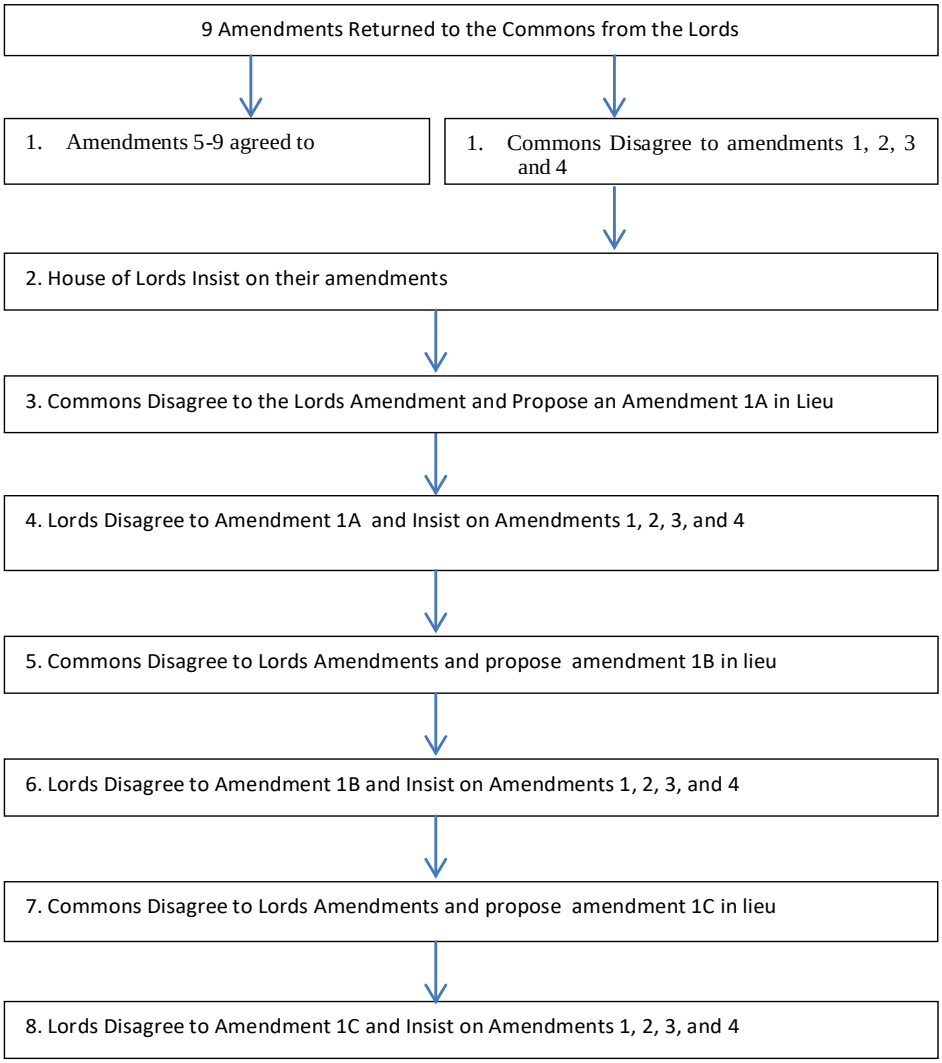


Figure 4-3: Overview of Ping-pong on the European Parliament Elections Bill

Round 1: House of Commons, 27th of October 1998

Jack Straw, the Home Secretary (Lab), opened the House of Commons' arguments against the Lord's amendments 1 to 4, saying, "Over the course

of almost a year this house and the other place have agreed that the next elections to the European Parliament should take place under a regional list system".[321] He argued that the Conservatives, and by extension the House of Lords, preferred the fully open list system. He felt that the list system proposed by the House of Lords might produce unintended results as, "under the open list system, an elector casts his vote for a particular candidate on a parties list, or for an independent candidate. What the voter cannot do is cast his or her vote for the parties list as a whole".[322] Richard Allen (Lib Dem) voiced the concern that the amendments were not about democracy, saying, "We strongly believe that this group of Lords amendments has been tabled with the intention of stopping the Bill's passage completely".[323] David Curry (Cons) argued that while "any list system is defective", the closed list was the worst. The Lords' amendment was disagreed to 338 to 131.[324]

Round 2: House of Lords, 4th of November 1998

The reason the Commons gave for the amendment being disagreed to called open lists "undesirable".[325] Lord MacKay started the debate with the motion to insist on its amendment, saying, "While it is open to the elector to decide which party to vote for, it is not open to the elector to decide on his or her preferred order within the list" under the government's proposal.[326] He concluded, "I strongly urge the House despite the difficulties of the Upper House, having to, as it were, impose itself upon the Commons, to vote again against the change that has been imposed".[327] Lord Carter (Lab) reminded the house that the House of Commons had to be careful about a so-called double insistence. None the less, the Lords

[321] HL Deb 27 October 1998, vol. 593, col. 164. The full text of the amendment is presented in Appendix 1
[322] Ibid. col. 165
[323] Ibid. col. 180
[324] This consisted of the Labour Party, the Lib Dems, the SNP and Plaid Cymru against the Conservatives and Ulster Unionists. There were no rebellions. The house was therefore divided along party lines.
[325] Appendix 1 See 4.1
[326] HL Deb, 4 November 1998, vol. 594 col.274
[327] Ibid. col. 278

voted to insist on the original amendment.[328] This meant that both houses had maintained their initial positions with no move towards conciliation.

The House of Lords in this case was clearly splitting along partisan lines, as it had in the original amendment, and as it did again on this division. Furthermore, there was a disregard of the existence of manifesto concerns, and the primacy of the House of Commons.

Round 3: House of Commons, 10th of November 1998

Jack Straw opened with the somewhat emotive statement that "the issue has now gone way beyond whether we have closed lists, open lists or Belgian Lists. There is now a challenge to the authority of this democratically elected House by hereditary Conservative peers".[329] The government was now offering an ex-post review of the electoral system and its functioning. Sir Norman Fowler (Con) responded with the argument that "we certainly shall not accept the proposed review".[330] The Independent called this "a humiliating climb-down", although a Home Office source was quoted as saying that the bill itself was not going to change.[331]

In support of the government, Alan Beith (Lib Dem) reminded the house that the House of Lords' amendments would involve people making decisions about the candidates on the list without sufficient knowledge. By moving an amendment in lieu, the House of Commons avoided the risk of double insistence and the loss of the bill.

Round 4: House of Lords, 12th of November 1998

Lord Mackay opened the Lords' argument against the Commons' amendment by saying, "I intend to ask your lordships to ask the Commons to think again and to come back with amendments which reflect the broad measure of support on all sides of your Lordships' house and elsewhere for

[328] See Appendix 1, 4.2
[329] HC Deb 10 November 1998, vol. 319, col. 207
[330] Ibid. col. 210
[331] Marie Woolf "Peers Put PR plan in Disarray" in *Independent* 8 Nov 1998, p. 2

a fairer, more open system than the closed list system".[332] He admitted that the arguments were becoming repetitive, but also stated that the house had won the argument.

Lord Barnet (Lab) clearly preferred the open list system, and believed that the Lords could continue to argue its position. He then said, "I am bound to say, that whether the other place puts forward a proposition that is good, bad, awful or just plain wrong, as I believe it to be in this case, it is the elected chamber - it is entitled to have its way".[333] He finished by saying that Mackay was not seeking to improve the bill, but merely to frustrate the government. This was linked to the mistrust of the position of either side, but also demonstrates that in this instance, the arguments about legitimacy appeared to be having no effect. Lord Alton (crossbencher) argued that he clearly knew that the opposition's position was improving the bill. Lord Evans (Lab) argued that the government was making moves to accept the Lord's position. The House of Lords put forward a reason for the disagreement, saying that a review should not be a condition of opening lists.[334]

Round 5: House of Commons, 16th of November 1998

Jack Straw opened the debate, saying this was "the third time that I have had to ask this elected House to override their unelected Lordships. The argument against the proposals from the other place are, on their merits, overwhelming. So are the arguments in favour of the closed or simple list system that we have advanced".[335] Meanwhile, opposition members, including Sir Norman Fowler, argued that the government, and particularly the Home Secretary, was engaging in arguments on the wrong issues. The Government disagreed, and returned another amendment in lieu, also

[332] HL Deb, 12 November 1998, vol. 594, col. 848. The text of the Commons' amendment is presented in Appendix 1, 4.3
[333] Ibid. col.856
[334] See Appendix 1 4.4 for the full reason.
[335] HC Deb 16 November 1998, vol. 319 col. 674

offering a review, but with a specific direction to look at the impact of the voting system, and with a shorter timescale.[336]

Round 6: House of Lords, 17th of November 1998

Debating the new review, Lord MacKay argued, "When we discussed this issue last week I was able to point out the total lack of support that the closed list received from the government back benchers both in this house and in the other place".[337] Lord Shore then said that he would not see it as a bad thing if the government lost the bill, as "I cannot vote for what is proposed. If the government do persist, they will lose the bill. But need we be very sad about that?"[338] Lord Jacobs again made the point that the Conservative Party was trying to frustrate the government and not to improve the legislation, saying, "We now realise what the Conservatives wanted was not to bring in an open list system, but to defeat the bill".[339] The House of Lords again insisted on its original amendments.

Round 7: House of Commons, 18th of November 1998

Jack Straw opened the debate by moving another review of the electoral process, which would include a promise to include the opposition about who would lead the inquiry. He continued, "I am here because a group of people whose only claim to sit in this legislature is some act of their forebears".[340] James Clappison (Cons) continued to argue that the closed list system was unpopular in the wider public. The House of Commons offered a review again, this time looking specifically at the differences between the two types of lists, and the direct results on the election outcome.[341]

[336] See Appendix 1, 4.5 for the full text of the amendment.
[337] HL Deb 17 November 1998, vol. 594, col. 1131
[338] ibid. col.1135
[339] ibid, col. 1137
[340] HC Deb 18 November 1998, vol. 319, col.957
[341] See Appendix 1 4.7

Round 8: House of Lords, 18th of November 1998

John MacKay opened the argument, saying, "Looking at the amendment now sent to us from the other place, it hardly moves a millimetre. Of course, I welcome the review, I asked for it earlier in the bill. I was dismissed out of hand".[342] Lord Garel-Jones (Cons) responded by saying, "my inclination is against PR…but I don't not believe that PR with open or closed lists constitutes a crime against humanity or a mortal assault on the democratic process".[343] Referring to the same argument, Earl Russell (Lib Dem) said, "killing a bill of which we approve in principle is, as far as I can see, a bridge too far".[344] The central issue with the amendments in this bill was that, while the Commons did not go beyond offering a review, the Lords did not move beyond insisting on its own amendments.[345]

At the end of round eight, Baroness Jay, the Leader of the House of Lords, announced the government's intention to reintroduce the bill with the intention of using the Parliament Act to pass it. Following the reintroduction, the House of Lords declined a second reading, and the Parliament Act was used. Lord Mackay, moving the motion to disagree said in that debate, "In moving my reasoned amendment tonight, I am actually inviting noble Lords to bring the issue to a decision now".[346]

4.4.3. **The Lords' Position**

This bill represented the largest scale amendment that the Lords had attempted as part of this study, as it tried to change the main part of the policy. The Lords believed strongly that closed lists were a bad option for the electorate. However, from the start, the Home Secretary tied the Conservative preference for open lists to the Lords. As the Conservatives remained the largest party in the House of Lords, and knew that reform was imminent, there was party based hostility in this bill. In comparison, there were fewer Crossbenchers involved in what became a partisan

[342] HL Deb 18 November 1998, vol. 594, col. 1343
[343] Ibid col. 1348
[344] Ibid col. 1350
[345] Appendix 1
[346] HL Deb 15 December 1998, vol. 595, col.1310

argument. This was unusual for what was loosely a constitutional issue. Thus, the Lords' position was viewed by the government as opposition rather than as a meritorious attempt to improve the bill. Ultimately, the strength of the Lords' view resulted in the bill running out of time, and the Parliament Act being used on its reintroduction. It is noticeable that, throughout the consideration of amendments, the reasons for insisting were highly repetitive during the different stages of amendments. By the end, however, it appears clear that there was a section of the Lords that wanted the bill to end, regardless of any later political consequences for the House of Lords as an institution. Furthermore whilst the bill as mentioned in the manifesto, the opposition argued that the exact form was not. As with the Railways Bill, it was undergoing ping pong at the very end of the Parliamentary session and so was under a tight time constraint.

4.5. Conclusion

In the pre reform era Party discipline and importance attributed by the Government to the legislation in question were both lower on the Housing and Building Control bill than any of the other bills in the Pre Reform study. This was also the only bill that was not subject to tight time constraints at the time of its passage, coming up against the ending of the parliamentary session. This bill was therefore distinct in two of the other possible independent variables that this study seeks to exclude.

However, the Housing and Building Control Bill, like the European Parliamentary Elections Bill saw the Government with the large majority in the Commons. Both the Housing and Building Control Bill and the Railways Bill saw the majority in the House of Commons coincide with a majority for the Government (on paper) in the House of Lords. The European Parliamentary Elections Bill was distinct as having an immediate reform threat.

Taking the Housing and Building Control Bill, it was the bill that the House of Lords sort the smallest impact on, and it was also the bill that the House of Lords was able to have the greatest impact on. In so far as the

House of Lords showed demonstrable self restraint, this is not present within the bill, although the Lords were quick to agree that the Government was working to address their concerns. In this case though there was Crossbencher support, and cross party support. However it is important to remember that this bill was not enacting new policy. The Lords was therefore successful, but showed initial self restraint, although this did not change.

The Railways bill differed in so far that the House of Commons had a less stable majority, but it also saw the Government wield a majority in the House of Lords. The railways bill, like the Housing Bill was a piece of party ideological legislation. Like with the Housing Bil, there was cross party support, and cross bencher support for amendments. The Lords and the Commons differed in how disruptive the lords amendment was to the Commons proposed bill. In this case there was a clear moment, in the fourth phase when the House of Lords displayed self restraint.

By comparison, the European Parliamentary Elections Bill did not show restraint, either demonstrated by length of the phases, the lack of movement or change in position, and the apparent lack of concern about the outcome. This appears to run directly against the theory of impatience, or pressure from Parliament ending. It also demonstrates a "last stand" attitude. This was seen to a lesser degree in the Aircraft and Shipbuilding Industry Bill, which was amplified by a weaker Government in the Commons, and political differences. In this, like with the European parliamentary Elections Bill, there was little cross party views, and the Crossbenchers were noticeably absent.

There is a difference in the attitude of both the Lords and Commons, as demonstrated by the manner in which the amendments were addresses. For both the Aircraft and Shipbuilding Bill, and the Railways Bill, there was strongly ideological party stand. The nationalisation/privatisation debate has since largely disappeared, but at the time of both these bills, it was still part of the underlying desire of both parties, and represented a key electoral difference. Therefore, for Labour in particular, a Conservative

majority in the House of Lords was highly unlikely to prove supportive. What is noticeable in all the bills is that the positions taken by both houses were highly polarised, and did not change much throughout ping-pong in terms of offers being made.

The two bills that failed were both regarding highly polarised issues, as well as a disagreement on what the House of Lords and the opposition were trying to achieve. The Shipbuilding Industry Bill saw the Lords attack the nationalisation of the ship-repair industry, and claim that the government could have had the nationalisation of both the shipbuilding and the aircraft industries sooner had it accepted their lordships' amendments. The Commons, by contrast, accused the Lords of undermining the entire bill, and thus of 'wrecking' it. With regard to the European Parliamentary Elections Bill, the Conservative Party stated publically that it was willing to accept proportional representation with an open list. However, the Labour Government in the Commons was adamant that the Conservatives wanted to wreck the bill due to a preference for First Past the Post. While the other two bills also had ideological underpinnings, they differed due to the majorities in the two houses being reversed- the Labour Party did not have a majority in the House of Lords during this period. Thus, while privatisation of the rail industry and the reduction in social housing stocks may not have had support, the Lords was less potent with regard to wrecking a bill. In both of these cases, amendments that sought to adjust the policy were moved. Whilst the government was equally opposed, negotiations took place. In the case of the Railways Bill, it may be important that the amendments did not come from the opposition, but rather from a crossbencher and a conservative, both of whom were former ministers. They also dropped their opposition to the bill in the Lords' second consideration. During this period, the Lords was also still referencing the failure of the War Crimes Bill, which had resulted in the Commons using the Parliament Act to pass it.

There is a linkage between the bill having ideological underpinnings, as well as the political 'attitude' of both houses to the intentions, stated or not,

towards the other house. There is also, as might be expected, a linkage to the degree to which the House of Lords is prepared to be belligerent. Part of this may well be related, particularly in the case of the two bills that failed, to the large Conservative majority that was prepared to use its power to undermine a Labour government. This at least is no longer possible; however, the feeling of a 'last stand' that existed in the European Parliament Bill is. In the analysis of the passage of amendments in Chapters 7, 8 and 9, I examine not only the extent to which the Lords practices self-restraint, but also the degree to which the government's majority in the House of Lords affects outcomes.

5. Parliamentary Conflict Resolution with a Reformed House: 2001-2011

5.1. Introduction

Both case study chapters provide the first qualitative insights into answering the question, how does the House of Lords use the ping-pong procedure to affect legislation? Specifically, they argue three points. The first is that the House of Lords seeks a range of level of impact on the bills studied, but that ideological or partisan issues tend to be more of a factor in bigger amendments. The second is that self-restraint, driven by the crossbenchers, becomes more of a factor as the procedure progresses. The third is that, regardless of length, conciliation, in which at least some or most of the Lords' points are taken, requires early overtures from one side.

The five post reform bills in this study cover the parliaments from 2001 through to 2010. These Parliaments boosted different majorities. The greatest single party majority was in 2001, it was reduced in 2005, and whilst the majority for the Government was high in coalition era, it was based on a coalition.

The coalition bills, The Fixed Term Parliament bill, and the Parliamentary Voting Systems Bill, as well as the European Parliamentary Elections (Pilots) Bill, represented constitutional issues. The remaining bills were Home Affairs issues. The Home Affairs Bills, in common with the coalition bills had crossbencher support for the insistence. The Identity Card Bill, together with the Coalition examples had only disputed legitimacy links.

The House of Lords, in common with international second chambers, has attempted to build a position for itself as a defender of the constitution. As one peer put it, "If this House does not have a role as the watchdog of the Constitution, it has no role at all "[347] Whilst this opinion may not be an

[347] Lord Lawson, during the debates on the Parliamentary Voting and Constituencies Bill. HL Deb, 16 February 2011, vol. 725, col.664. Meg Russell wrote about this role,

accurate reflection of the Lords' actual powers and impact, it does contribute to demonstrating the importance that the Lords places on its constitutional role. Prior to the reforms in 1999, the Parliament Act had been used in the European Parliamentary Elections Bill, as well as in bills relating to the Government of Ireland and, most controversially, to the amendment of the Parliament Act.[348] The House of Lords therefore has a history of insisting on its position constitutional legislation, often against the government.

The legislation in this chapter covers both non-parliamentary and parliamentary elections, as well as the dates of elections. In 2003-4, the Blair Government proposed the European Parliamentary and Local Elections (Pilot) Bill, which experienced10 rounds of ping-pong before passing. The Conservative-Liberal Democrat Coalition moved the Parliamentary Voting System and Constituencies Bill and the Fixed Term Parliament Bill in its first term, both of which underwent four rounds of ping-pong.

The Identity Cards Bill was introduced before the 2005 general election, but did not progress, and was formally reintroduced after the 2005 election. The Corporate Manslaughter and Corporate Homicide Bill was also introduced in the 2005-06 parliament, but was carried over following consideration in the House of Commons' committee stage, and continued its passage from the report stage in the 2006-7 parliament, eventually being given royal assent under Gordon Brown's time in 10 Downing Street.[349]

In 2003, the government introduced the European Parliamentary and Local Elections (Pilot) Bill, which sought to trial different voting methods in an attempt to increase turnout in the European parliamentary elections, following concerns about extremely low turnout. Around the same time,

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specifically in "Responsibilities of Second Chambers: Constitutional and Human Rights Safeguards" *Journal of Legislative Studies*, vol. 7, no 1 (2001): 61-67

[348] Richard Kelly, "The Parliament Act" House of Commons Standard Note. 24 February 2014, p. 9 retrieved from http://www.parliament.uk/briefing-papers/SN00675/the-parliament-acts 17/12/2014

[349] Gordon Brown became Prime Minister on the 27th of June 2007

the Office of the Deputy Prime Minister was considering the policy of regional assemblies, and the policy of electoral reform for the House of Commons had still not disappeared from the political agenda.[350] The legislation itself therefore was not far reaching, but it had wide-reaching consequences (potential and perceived, as well as direct).

In 2010, following the election of the Conservative-Liberal Democrat Coalition, two further constitutional reform bills underwent ping-pong. The first was the Parliamentary Voting Systems and Constituencies Bill. It set out the procedure for a binding referendum on the alternative vote system for the House of Commons, whilst also setting out a review of boundaries, which would reduce the number, and even out the voters contained in each constituency in the House of Commons, reducing the number of MPs to 600.[351] This was followed up by the Fixed Term Parliament Bill, which would set all future parliaments to five years, fixing the date of the general elections.[352] These two bills both had bigger direct consequences than their predecessor did in 2003.

While the two bills in the 2005 Parliament were both home affairs' bills they were given somewhat different receptions in parliament. The stated intentions of both were welcomed, although in the Identity Card Bill's case, there was contention about whether the proposed policy would do anything, whereas the Corporate Manslaughter and Corporate Homicide Bill was seen as not going far enough; nonetheless, the policy was welcomed.

Whereas the Identity Cards Bill saw a dichotomous debate (for most of the amendment consideration) between identity cards being compulsory or voluntary on passport application, the Corporate Manslaughter and Corporate Homicide Bill saw the government accept the principle of the

[350] The Regional Assemblies (Preparations) Act provided for referendums in the Northwest, the Northeast, Yorkshire and Humber.

[351] The Coalition Agreement for Government, Cabinet Office https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf p. 26

[352] The Coalition Government Agreement for Government https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf. p. 26

Lords' amendments after a short time - the debate was mainly about negotiations concerning the timeline for implementation. As in the previous chapter, this case study will examine the validity of three points of argument. The first is that the House of Lords seeks a range of level of impact on the bills studied, but that ideological or partisan issues tend to be more of a factor in bigger amendments. The second is that self-restraint, driven by the crossbenchers, becomes more of a factor as the procedure progresses. The third is that, regardless of the length, conciliation, in which at least some or most of the Lords' points are accepted, requires early overtures from one side. The Identity Cards Bill was initially presented as part of an anti-terrorism strategy,[353] and had a long pre-parliamentary period, with considerable attention from single-issue groups concerned about potential civil liberties issues with the database that would underpin the identity cards. This was the main argument raised by the opposition within parliament, and was the focus of the disagreement that prolonged the ping-pong on the bill. The second bill, the Corporate Manslaughter and Corporate Homicide Bill, was introduced in response to growing concerns about deaths caused by corporate negligence. Both houses raised concerns not about the policy, but about the failure to include deaths in police custody in the bill. Inclusion of this would have meant that deaths in police custody, when a death was said to be caused by a failure in carrying out a duty of care, would also be able to be prosecuted under the legislation.

The two coalition bills were distinctive because they were drawn up as part of the coalition agreement, and because they were hybrids of bills proposed in at least one party's election manifesto. They were also overshadowed by the fact that the Lords was anticipating the third bill of

[353] A Home Office Select Committee Report quoted the Identity Cards: The Next Steps consultation paper, which quoted the government's aims, including "proposals would help combat illegal immigration and illegal working, terrorism, money-laundering, people-trafficking and drug-related offences, identity fraud and fraudulent use of public services, such as health tourism". It also noted that the government had specifically named that aim in its submission to the Select Committee Inquiry. The report noted that this aim could only be achieved via a compulsory card scheme (p. 30). Home Affairs Committee House of Commons Identity Cards, Fourth Report Session 2003-4 retrieved from http://www.publications.parliament.uk/pa/cm200304/cmselect/cmhaff/130/130.pdf accessed 19/12/2014

the package, which would bring in an entirely elected House of Lords.354 The Fixed-term Parliament Bill was the only one of the three in this chapter not to face a deadline, although it needed to be passed relatively early to ensure the legislative agenda of the session, and the stability of the coalition. Furthermore, the Fixed-term Parliament Bill fell outside of the auspices of the Parliament Act, as it sought to extend the life of a parliament past five years.355 Of these 5 bills, the European Parliamentary and Local Election (Pilots) Bill and the Fixed Term Parliament Bill are not discussed here in detail, however their passage can be found in the appendix to this chapter.

5.2. The Identity Card Bill (2005-06 Parliament)

Policy on identity cards in Britain dates back to World War Two when identity cards were issued to identify British citizens. For almost the same length of time, it has been argued that identity cards are restrictive and are an infringement of civil liberties. Although Major's government had considered a national identity card scheme, it was only in 2002 that the Blair Government began to draw up plans for such a scheme.[356] The intention was that voluntary identity cards would be introduced, eventually becoming compulsory for access to state services, and as proof of eligibility to work in the UK. The cards would be biometric, linked to a national database, and overseen by a commissioner appointed by the Home Secretary. The aim was that such cards would be extremely difficult to forge, and would provide a secure way of proving someone's identity. The government initially tied the bill to anti-terrorism policy; however, as part of the draft legislative proceedings, it was suggested that this was over

354 The Coalition Agreement for Government, Cabinet Office https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf . p. 27

355 The Coalition Agreement for Government, Cabinet Office https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf p. 26

356 Identity Cards: A summary of Finding from the Consultation on legislation on Identity Cards, 2004, p. 5 retrieved from http://www.archive2.official-documents.co.uk/document/cm63/6358/6358.pdf accessed 25/2/2012[357] 2005 Labour Manifesto, accessed by http://newsimg.bbc.co.uk/1/shared/bsp/hi/pdfs/LAB_uk_manifesto.pdf on 25/1/2012 pp. 52-3

ambitious. Thus, in later publicity, the emphasis shifted more towards access to social and public services and general identity assurance.

The bill was first introduced in parliament in the 2004-5 parliamentary session, and came to the House of Commons in November 2004 and to the House of Lords on the 21st of February 2005. This was late in the session, and it did not get past the committal stage before the parliament prorogued for the 2005 general election. The House of Lords criticised the bill as being "rushed", and therefore badly thought through during the second reading. The Labour general election manifesto declared, "We will introduce identity cards including biometric data like fingerprints backed up by a national register and rolling out on an initially voluntary basis as people renew their passports"; this set out the government's intention to reintroduce the legislation in the new parliament.[357] It was, however, the manifesto statement "initially voluntary basis as people renew their passports" that caused the most contention, and which was the focus of ping-pong.

5.2.1. **The House of Commons 2005-06**

When the bill had its second reading in the House of Commons, the opposition parties raised concerns about it. David Davis (Con, Shadow Home Secretary) argued that there were real concerns outside of parliament about the ability of the scheme to meet the government's expectations, particularly with regard to the curbing of illegal working and immigration, and the prevention of terrorism.[358] Mark Oaten (Lib Dem, Home Affairs) argued that the scheme was at risk of function creep, and argued that a state in which there were compulsory identity cards would be very different from that which existed at the time.[359] The final division on the second reading was 314 to 283, leaving the government with a majority of 31.

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[357] 2005 Labour Manifesto, accessed by http://newsimg.bbc.co.uk/1/shared/bsp/hi/pdfs/LAB_uk_manifesto.pdf on 25/1/2012 pp. 52-3

[358] HC Deb 28 June 2005, vol. 435, col.1182

[359] Ibid. col.1191

During the committee stage on the 12th of July 2005, Alistair Carmichael (Lib Dem) moved an amendment to Clause 5, namely "Leave out 'must' and insert 'may, if the applicant so chooses'".[360] In moving it, he accused the government of compulsion by stealth. The amendment to Clause 5 made a reappearance in the report stage, this time under Mr Gerrard (Lab), who said it would "remove one of the most important elements of compulsion from the bill".[361] Home Office Minister Tony McNulty (Lab) described the amendment as a "wrecking amendment". He also moved amendments that would remove Clauses 6 and 7.[362] Edward Garnier (Cons) said that, while he did not expect the amendments to pass, they did "give us the opportunity to express a view… about the huge powers that the secretary of state is taking".[363] The amendments failed 278 to 310 on division.

5.2.2. **The House of Lords 2005-06**

The House of Lords received the bill on the 12th of October 2005. The argument from the government benches during the second reading, led by Home Office Minister Baroness Scotland (Lab), was that under the Salisbury Convention, it should not be held up unduly because it was a manifesto pledge. [364] The opposition argued that the proposal to make registration on the identity database compulsory for those applying for a passport was not compatible with the government's manifesto pledge of a voluntary period leading to compulsory registration.[365] Concerns were also raised at that time about data security and technology, and Lord Phillips (LD) believed there were threats to civil liberties.[366] It was these threats that were the underpinning of his amendments to the Identity Card Bill.

The concern from the point of view of the opposition in the House of Lords was that the government had stated in its manifesto that the scheme

[360] HC Deb 2005-6 Standing Committee D 12 July 2005, col.175
[361] HC Deb 18 October 2005, vol. 437 col.756
[362] Ibid. col.748
[363] Ibid. col 760
[364] HL Deb 31 October 2005 vol. 438, col. 115
[H]l HL Deb 20 March 2005 vol. 67 col. 18
[366] Ibid. col. 22

would begin as being voluntary, but that the link to passports, encapsulated in the bill as it was passed to the house, meant that entry into the register and holding an identity card would, in effect, be compulsory. This meant that the policy was unaffected, but that a major part of the policy implementation was changed. This is therefore the second biggest change attempted on a bill in this study.

5.2.3. **Ping-pong**

The Identity Cards Bill underwent 11 stages of ping-pong, the highest number in this study. This is unusually high, resulting in five readings of amendments in the Lords and six in the House of Commons, beginning on the 13th of February 2006, and finishing on the 29th of March 2006. Although 72 amendments were passed to the House of Commons from the House of Lords, after the second phase of ping-pong, only two linked amendments proceeded through the remaining nine phases. The passage of amendments through ping-pong is shown in Figure 5-1 below.

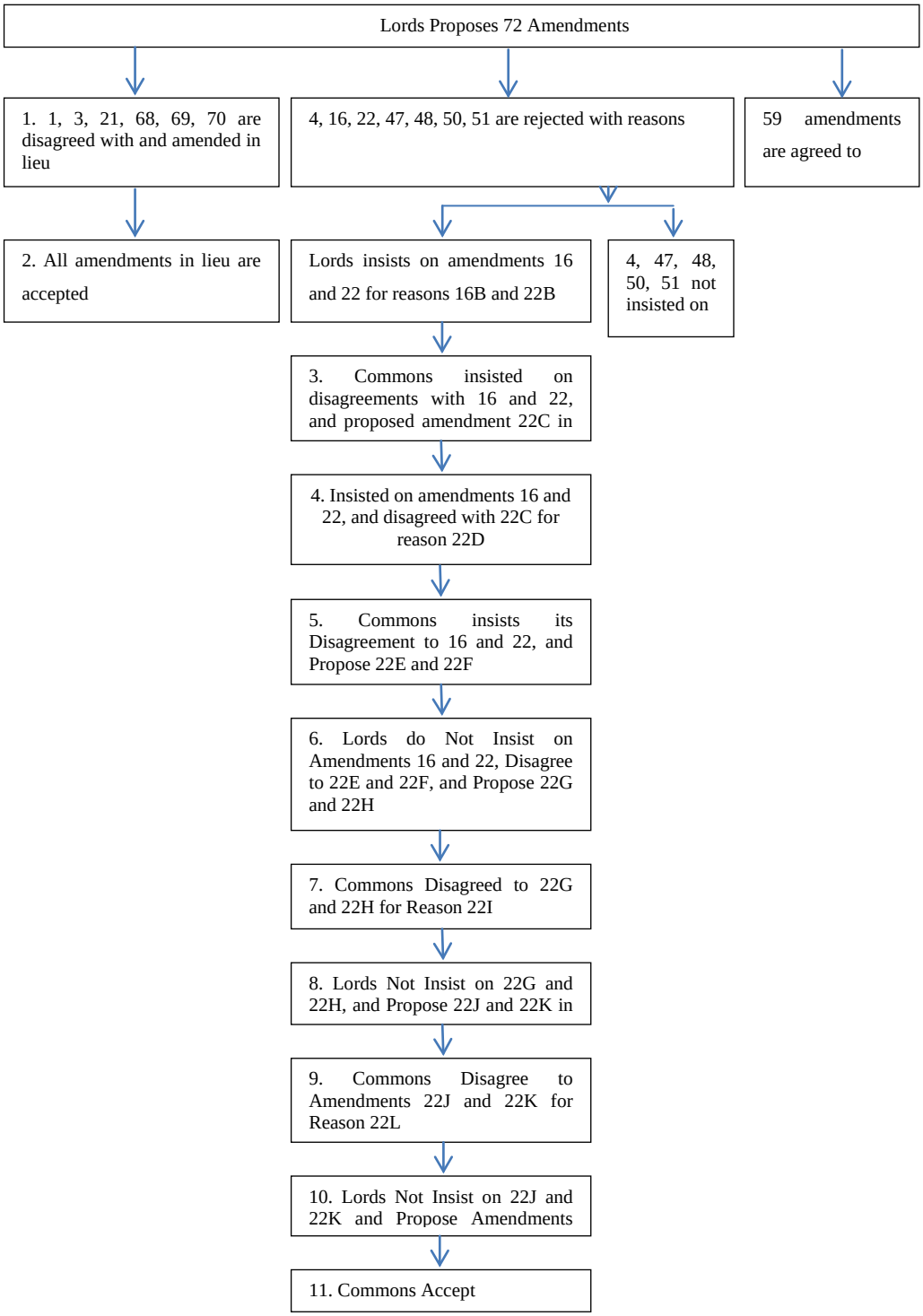


Figure 5-1: Ping-pong of the Identity Cards Bill

Round 1: House of Commons, 13th of February 2006

Of the 59 amendments that the Commons passed in the first stage, 54 were government amendments that were mostly technical and drafting changes. The fact that seven opposition amendments were successful is unusual, and separates this bill from others in this study. It also gave added weight to the government's argument that it was making concessions to the opposition. These included leaving out Clauses 6 and 7, which made it compulsory for all UK citizens to carry a card and to be entered on the register.

The remaining 13 amendments were returned to the Lords - six were amended in lieu, and seven were disagreed with reasons. Of the six amendments that were amended in lieu, four dealt with the issue of increased transparency concerning the cost of the project. In debate, Andy Burnham (Lab), speaking for the government, said that while the request for openness on costs was "legitimate", it had to be balanced with the need for best value in procurement. The last seven amendments were all disagreed to. Four dealt with

the Identity Commissioner and to whom he would report, with the Lords calling for reports to parliament and the government arguing that the Identity Commissioner should only be required to report to the Home Secretary. In disagreeing to amendment four, the Commons said it would have limited "the circumstances in which something would be regarded as necessary in the public interest".[367]In moving that the house should disagree with amendments 16 and 22, Charles Clarke (Lab, Home Secretary) said that the Lords "risk undermining the basis of the current identity cards proposal".[368] The opposition supported the Lords' amendments, with David Davis saying, "The rather arcane subject of this debate is designation. In practice, it is the most controversial and, indeed, the most important debate that we shall hold today, because it will

[367] HL Bill 75 Commons Amendments and Reasons
[368] HC Deb 13 February 2006, vol. 442 col. 1170

determine whether the identity card scheme is covertly rendered compulsory or not".[369] He spoke at length about the potential security problems with the database and about access to personal details from other, linked databases. However, the amendments were disagreed with and were sent back to the Lords for reason 22a.[370] The House of Commons, due to a programme motion, only spent 90 minutes on the two amendments. This was criticised by the opposition as being too short, and it accused the government of rushing through legislation of which parliament disapproved.[371]

Round 2: House of Lords, 6th of March 2006

The House of Lords, on receiving 13 amendments back from the Commons, made decisions on 11 by choosing not to continue to contest the Common's decisions, as shown in Figure 1. The debate on the 13 amendments lasted over three hours, with 61 contributions.

For amendments 16 and 22, the government minister, Baroness Scotland, requested that the house abandon the amendments, stating the changes they provided for would "undermine the whole basis of the current identity cards bill proposal".[372] She also reiterated the need for a link between passports and identity cards, as well as the lowering of costs. Lords Phillips (Lib Dem) argued that they had a majority of 44 and that they had made concessions regarding the other amendments so they could fight for this one, using the voluntary statement in the manifesto to underpin this argument.[373] This was an argument that was also made by Baroness Anelay, the Conservative spokesperson in the Lords on this issue.

[369] Ibid. col.1179
[370] See Appendix 1 for the full text
[371] This is not in itself unusual; the opposition will accuse the government of rushing legislation it dislikes. In this case, however, it was a recurring argument, and one that the Lords had raised in the previous iteration of the bill, suggesting more consultation was necessary.
[372] HL Deb 6 March 2006, vol. 679, col. 545
[373] Ibid. col. 569

Lord Gould (Lab), a polling expert, made repeated references to polling information.[374] Against this was Lord Stoddard's (Ind. Lab) argument that "the anti-democratic policies of this government have followed in one bill after another", while Lord Philips, in the same debate, warned of "warranted and intrusive" powers.[375] The vote on the motion to insist on the disagreement resulted in a division of 227 to 166 content.

Round 3: House of Commons, 13th of March 2006

The government offered 22c in lieu, as shown in Figure 6 below, which provided for the insertion of "or be accompanied by", which still meant that an application would have to be made either as a single document with a passport, or separately. This was a double-insistence avoidance motion.

This time, the Home Secretary was very clear that "passports are voluntary documents"[376] and continued by saying that, for those without passports (15% or 20%), it was optional. He also emphasised the number of safeguards already in place in the bill to protect the information on the database. The debate only lasted one hour, again due to time constraints in the house. Much of the debate was taken up with a definition of voluntary, with Nick Clegg (Lib Dem-Leader) quoting from the Oxford English Dictionary.[377]

The division was 310 to 277 to reject the Lords' amendments and to put 22c in lieu. This amendment changed the words, but did not change the outcome, which still required an application for an ID card with a passport.

Round 4: House of Lords, 15th March 2006

Considering the amendment that changed the requirement to "or be accompanied by", this amendment would not have changed the actual requirements to apply to have an identity card with the passport. The

[374] For example, Lord Gould argued that, in February 2006, a you-gov poll had found "52% in favour of id cards compared to 37% against. That is still a pretty large lead". In June 2005, a poll showed that "45% were in favour and 42% were against. The public is moving". Ibid. col.555
[375] HL Deb 6 March 2006, vol. 679, col. 562
[376] HC Deb 13 March 2006, vol. 443, col. 1249
[377] ibid. col.1255

debate in the House of Lords lasted for two hours, which was a long time considering it was discussing only the two amendments, with 47 contributions made to the debate.

Baroness Scotland reemphasised the point of the linkage between passports and the identity cards scheme, as well as the fact that the Commons had made concessions to the Lords, before making a point that the role of the Lords is "to review, not to wreck", and that "It [the Commons] has spoken. It has spoken loudly. Its voice is rising and I do not think we need a cacophony to tell us that the time has now arrived" to bow to the wish of the Commons.[378] Lord Gould (Lab) argued, "Nothing undermines peoples trust and confidence in politics more than a bill that is increasingly supported by a majority of the people, that people want enacted" being held up.[379]

The opposition argued that, while the public may have voted, they had not been properly aware of what was being planned. As Baroness Anelay (Con) argued, "the public, who go to vote in a general election as their citizens' duty rely on a manifesto" arguing that the manifesto was misleading.[380] Lord Barnet (Lab) also commented, "The only people who seem to read our manifesto are the people on the opposition benches".[381] Lord Phillips made the point that the government offered an amendment in lieu, and did not insist on a disagreement, which would have amounted to a double insistence and killed the bill. Because of this, he argued, compromise could still be reached. He said, "A compulsory scheme will add to what has become I am sad to say, a surveillance state of unparalleled reach among democracies".[382] In response, Baroness Scotland advised "to vote for this house's reputation and to vote for the other place".[383] The disagreement was then passed with 218 to 183.[384] The

[378] HL Deb 15 March 2006 vol. 679, col. 1224
[379] Ibid. col.1233
[380] Ibid. col.1229
[381] Ibid. col.1242
[382] Ibid. col. 1228 he continued col. 1232
[383] HL Deb 15 March 2006, vol. 679, col. 1244
[384] Ibid. col. 1247

reason given for disagreement was identical to that used in the previous instance.

Round 5: House of Commons, 16th of March 2006

Charles Clarke again referred to the argument that more people were in favour of identity cards than were against them.[385] The opposition, however, maintained that the issue of compulsion was not included in the poll, with David Davis saying, "The latest argument is the ludicrous assertion by the Home Secretary that having an identity card will limit the intrusion of the state upon the person".[386] This was followed by Martin Linton (Lab), who argued, "If he [Mr Davis] regards the passport as compulsory surely the passport is as much an infringement upon civil liberties as the national identity card".[387] This was in reference to the opposition viewpoint that, as Conservative Shadow Home Secretary, David Davis had been expounding that the public should have a choice about being entered onto a database that may not be entirely secure. In this instance, outside pressure groups may have reflected issues of concern within parliament, as numerous references were made to the pressure groups No2ID and Liberty throughout the debate.

The division was 292 to 241 to insist on disagreement with 16 and 22, and to propose 22e and 22f in lieu.[388] This provided for adding the words "or includes" to the clause.[389] As with the previous offer, this did little to address the concerns about compulsion raised in the House of Lords.

Round 6: House of Lords, 20th of March 2006

The debate in this phase lasted for one-and-a-half hours, with 27 contributions, which were fewer than previously.

[385] Charles Clarke quoted "according to No2ID, 52% of people are in favour if ID Cards and against what the other place is doing, while the home office research shows 70% in favour".[385]
[386] HC Deb 16 March 2006, vol.443, col. 1653
[387] Ibid. col. 1657
[388] Ibid. col. 1661
[389] Ibid. col. 1642

Baroness Scotland made another plea for agreement with the Commons, stating that there was a majority of 51 in the Commons, as well as because the amendments that would later be proposed by Lord Phillips would amount to a reversion (as she put it) to the original amendments, and would add additional cost and uncertainly.

She finished with, "There are those that think that this parliament should be unicameral. I would not like this House to give them any more of a basis for suggesting that this would be a good move".[390] With reference to the proposals, she said, "It is because this bill, in this parliament, asks both Houses to allow the "must" to happen now - not after the next election and not in 2012" and later in the same speech "this is not compulsion by stealth".[391] Lord Crickhowell (Cons) said that the Lords "should go for personal freedom of the individual".[392] Lords Phillips' (LD) proposals were for amendments 22g and 22h (see Figure 6-1). He made the point that "the delay to the end of 2011 is scarcely catastrophic, given that in any event ID cards will not be issued until 2009".[393] Lord Richard (Lab), put it most succinctly by saying, "There is very little new to be said about the issue of compulsion or voluntarism and passports and identity cards. The issue has been flogged to death".[394]

The Conservative benches agreed that this was a reasonable compromise and that it was in line with the government's manifesto pledge. Lord Foulkes (Lab) moved the debate back to the public opinion aspect and spoke of talking to the public when out walking, saying, "I got some very positive responses".[395] The division to offer 22g and 22h in lieu passed 211 to 175. These amendments provided for the inclusion of "and is made on or before 31st December 2011, that application may, if the applicant so chooses, include an application by that individual to be entered in the

[390] HL Deb 20 March 2006, vol. 680, col. 22
[391] Ibid. col. 42
[392] Ibid. col. 31
[393] Ibid. col. 24
[394] Ibid. col. 28
[395] Ibid. col. 37

register".[396] This added an additional phase to the plans, and acted as a sunset clause. It also marked a change in stance for the House of Lords, as it started to make offers instead of simply rejecting the House of Commons' offers.

Round 7: House of Commons, 21st of March 2006

Charles Clarke recognised the compromises made, but stated that a delay until 2012 was "unacceptable and it would not be right to allow the other place to delay the implementation of legislation that it dislikes until 5 years have passed".[397] His arguments with the opposition focussed on both the manifesto's wording and the constitutional rights of the House of Lords to intervene in the way in which it was attempting. Edward Garnier (Cons) supported the Lords, saying, "It is entirely proper for the other place to present these amendments to this House".[398] David Winnick (Lab) stated, "It would be totally inappropriate for the Parliament Act to be used in this matter".[399] The disagreement with g and h was passed 284 to 241.

Round 8: House of Lords, 28th of March 2006

A22j and 22j were proposed (see Figure 6-1); they applied opt-outs to entry on the register when applying for a 'designated document'. By this time, Lord Armstrong of Illminster, a crossbencher, had become involved in trying to end the deadlock, and this was the first amendment in the chain not to be moved by Lord Philips. Lord Philips himself described Lord Armstrong's role as "crucial in helping a solid majority being stitched together".[400] In this instance, the debate took place over one hour and 20 minutes, once again becoming shorter. In this case, there 30 contributions were made.

Baroness Scotland again called for backing down, and asked the house not to agree to the amendments that were to be proposed by Lord Armstrong

[396] See Appendix 1
[397] HC Deb 21 March 2006, vol.444, col. 182
[398] Ibid. col. 187
[399] Ibid. col. 192
[400] Lord Philips of Sudbury, in a letter to the Author.

because, once again, they risked returning to the original amendments that had been tabled. She also argued that the government had already made concessions. She ended by saying, "I must ask again that your Lordships' House should accept the will of the elected house".[401] This time, Baroness Anelay argued, "It is a bill that has the widest ramifications of cost, longevity, scope and above all in terms of citizens' liberty and the relationship between the citizen and the state".[402] Lord Armstrong's amendments were passed with 219 to 191.[403]

Round 9: House of Commons, 29th of March 2006

Charles Clarke accepted that Lord Armstrong was trying to find compromise, but rejected that this was the correct one, as an opt-out was in reality the same principal as an opt-in, which the commons had already rejected. He added, "While in theory an opt-out might well make more sense that an opt-in, the reality would be the same. We would still be introducing an unacceptably large degree of uncertainty into the plans for rolling out identity cards linked to passports".[404] Many members rose to say that they believed the compromise was reasonable. The government motion against the compromise was passed with 305 to 251.

Round 10: House of Lords, 29th of March 2006

Lord Armstrong proposed three amendments in lieu: 22m 22n and 22o, which allowed for opting out of getting a card, but not of entry on the register when applying for a biometric passport before the 1st of January 2010. This amendment was supported by peers on the government benches, as well as by the Conservatives, with Baroness Scotland acknowledging Lord Armstrong's role in negotiating a compromise. Baroness Anelay (Cons) added her support, finishing with the statement "The noble Lord, Lord Armstrong has shown us that we can find a sensible compromise on the promised roll out of the ID cards(*sic)*, as against the

[401] HL Deb 28 March 2006 vol. 680 col. 650
[402] HC Deb 28 March 2006 Vol. 444 col. 654
[403] HL Deb 28 March 2006 vol. 680. col. 669
[404] HC Deb 29 March 2006, vol. 444, col. 876

original compulsion that the Government had in mind".[405] Lord Thomas of Gresford (LD) said the bill was endemic of a new philosophy on the part of the government. When discussing the amendments in question, he said,

> "The noble Lord, Lord Armstrong, said yesterday that there is an issue of personal freedom that should not be brushed aside as being of no consequence. I pay tribute to him for his shrewd attempt yesterday to arrive at a compromise that the House as a whole could have supported, However his compromise was not accepted and what is objectionable in what is now put before us is that the applicant for a passport will still have to register with the database.[406]

Lord Thomas continued that "the present day reputation of this House has been gained not by being cravenly subservient to a government party supported by 36 per cent of the voters…but by standing for the traditions of liberty and freedom which are at the heart of the British Constitution".[407]

The Liberal Democrat's main concerns had been about the register, and as the opt-out had not included the register, they had felt unable to support the amendment. They also accused the Conservatives of being inconsistent in their opposition. In a debate that lasted only half an hour, only four speakers took part.

Round 11: House of Commons, 29th of March 2006

Charles Clarke asked for the house's agreement to the amendments, noting the large majority under which they passed. A general view that a compromise has been reached was expressed. However, some members, most notably David Davis (Cons) and many liberal democrats, expressed concern regarding the nature of the entire bill. Simon Hughes (LD) stated that the Liberal Democrats opposed the bill on principle and would continue to do so.[408] Nick Clegg (LD) followed this by saying that, from the Liberal Democrat point of view, the bill had simply delayed the

[405] HL Deb 29 March 2006 vol. 680 col. 802
[406] Ibid. col. 803
[407] Ibid. col. 802
[408] HC Deb 29 March 2006, vol. 444, col. 1008

compulsions by stealth. William Cash (Con) also voted against the compromise measure, and saying, “The amendments represent a stitch up with the Crossbenchers in the House of Lords”.[409] This split in the opposition parties allowed the bill to pass on division with 201 to 84.

5.2.4. **What the Lords Achieved**

In the case of the Identity Cards Bill, the Lords managed to make an opt-out when applying for an identity card available until 2010. What they did not manage was any opt-out from the register, which was where most of the concerns were concentrated. The house avoided the bill failing, which would arguably have been worse. This bill showcased the advantages of negotiations, as well as the slowness of ping-pong in moving positions.

There was a noticeable shift in the negotiations in the sixth phase when the Lords stopped insisting on its original amendments and began to offer alternatives, initially a sunset clause, then an opt-out, and lastly a sunrise clause. This changed the pattern of the Commons offering 'compromise' motions to avoid double insistence failure. Therefore, there was a compromise, the procedure worked, and the Lords achieved some of what it had aimed for, but the process was protracted. Writing about the outcome of the bill, Lord Philips said, "We castrated it". This indicates both that the Lords was largely successful in achieving its aims, and that conciliation was successful from the Lords’ point of view.

The bill also shows the importance of having a united opposition in both chambers. The Conservatives and the Liberal Democrats were both (broadly) against the compulsory nature of the bill. However, once the need to apply for a card was removed, the Conservatives (broadly) supported the amendment.[410] The Liberal Democrats maintained that their objections had always been focused more on the register, rather than on the card, and continued their opposition.

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[409] Ibid. col.1009

[410] Some Conservative MPs and peers stated that they continued to have concerns about the bill, but abstained rather than rebelled. Among those speaking was the then Shadow Home Secretary David Davis.

5.3. Corporate Manslaughter and Corporate Homicide Bill

In 2005, the Queen's speech announced, "My government will take forward proposals to introduce an offence of corporate manslaughter".[411] The legislation was aimed at allowing for the prosecutions of companies or organisations that had contributed to a person's death.

Planned legislation to make corporate manslaughter a criminal offence can be traced to 1994, when a law commission consultation was held. This resulted in a paper on adopting corporate manslaughter as a common law offence. Recommendations were made in 1996, but no further action was taken.[412] A government consultation document was published in 2000, which led to a manifesto pledge in 2001, and while a draft bill was attempted in 2003, it stalled over indecisions.[413]

Nine incidents that had taken place from 1987 to 2002, which could have been covered by corporations being prosecuted under criminal law, were part of the impetus for bringing the legislation to parliament, These were the capsize of the Herald of the Free Enterprise (1987), the Kings Cross fire (1987), the Piper Alpha oil platform fire (1988), the sinking of the Marchioness (1989), and rail crashes in Clapham (1988), Southall (1997), Paddington (1999), Hatfield (2000) and Potters Bar (2002).[414]

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[411] Queen's Speech 2005, HC Deb 17 May 2005, vol. 434, col.29.

[412] James Corbet, "The Corporate Manslaughter and Corporate Homicide Act 2007: Thirteen years in the Making but Was it Worth it?" *Modern Law Review.* 71 no. 3, (2008): 413-433

[413] House of Commons Research Paper 06/46 The Corporate Manslaughter and Corporate Homicide Bill, 200506, Bill 220 p. 13

[414] House of Commons Research Paper 06/46 The Corporate Manslaughter and Corporate Homicide Bill, 200506, Bill 220 p. 10. The Herald of the Free Enterprise inquest in particular showed the difference between the prosecution of employees directly involved, and corporate responsibility. Although in this case P&O Ferries were prosecuted, which set a precedent, it was not successful. For example, see

A draft bill was published in 2005, after which the Home Affairs Committee and the Work and Pensions Committee produced a joint report on the draft bill, to which the government responded in March 2006. The report from the committee welcomed the introduction of the bill, but was concerned about the timeframe. It also noted the exclusion of deaths in custody from the bill, stating that there was no "justifiable reason" for this.[415] The government maintained adequate legislation was already in place.[416]

In 2005-6, the Corporate Manslaughter and Corporate Homicide Bill got through the committee stage before the session ended. However, because it was introduced late in 2006 it was subject to a carryover motion. When it was reintroduced in the 2006-7 session, the second reading was procedural and the commons procedure started in earnest with the report stage, followed by the third reading.

In this instance, the House of Lords' input was aided by the membership of Lord Ramsbotham, a former chief inspector of prisons and crossbencher. In addition, midway through, the bill changed from the Home Office to the New Ministry of Justice, and Gordon Brown became prime minister.

There were 10 phases of ping-pong, with five in each chamber, ending on the 23rd of July 2007. The House of Lords moved a total of 35 amendments over to the Commons at the beginning of ping-pong.[417] The House of Commons agreed to all except 2, 3, 5, 6 and 10. These were moved as a group between the two houses 10 times.[418] These amendments aimed at including deaths in custody in the bill.

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http://news.bbc.co.uk/onthisday/hi/dates/stories/october/8/newsid_2626000/2626265.stm accessed 18/11/2014, which gives a good overview of the case.

[415] The government's reply to the first joint report from the home affairs and work and pensions committees' session 2005-6 HC540, p. 20

[416] Ibid. p. 22

[417] Lords' Amendments to the Corporate Manslaughter and Corporate Homicide Bill, Bill 70, House of Commons, 28 February 2007

[418] Commons Insistence, Non-insistence, Disagreement and Amendments in Lieu, HL Bill 98, House of Lords

5.3.1. **House of Commons**

The bill entered parliament for the first time on the 20th of July 2006, the second reading took place three months later on the 10th of October 2006 and the committee sittings were on the 19th and 31st of October 2006. The carryover motion meant that the first and second readings in the new session were procedural. The report debate and third reading took place together on the 4th of December 2006.

John Reid, the Home Secretary, introduced the bill in 2006. Dominic Grieve (Con) raised the issue of police custody and the definitions of duty of care in the bill. Referring to the Law Commission, he said it "suggested that the duty of care test on which the entire edifice will rest was a mistake. It took the view that that was a civil concept which translated only with difficulty into the field of criminal justice".[419] Ed Davey (Liberal Democrat) also raised the issues of persons in custody to whom the duty of care was applied.[420] Without real opposition, the second reading was agreed to on question.

The committee discussed amendment 39, which called on Clause 3, page 3, line 17, to "leave out from 'any' to 'owe' in line 18, and insert 'duty'".[421] This was unsuccessful, and with the parliament ending, the bill was carried over. After carryover, in report, Andrew Dismore (Lab) moved to insert "(d) a duty owed to anyone held in custody" and linked amendments on page 2, line 29.[422] Many examples of past cases were raised in the debates, and Dominic Grieve (Con), on behalf of the opposition, offered support for the amendment; however, it failed on division with 168 to 288. In the third reading, the general view was supportive, but there remained unresolved issues that it was expected the House of Lords would address. Dominic Grieve said the lack of inclusion of deaths in custody "was one moment in the entire passage of the Bill when I felt that the Government were unable to make any coherent case",

[419] HC Deb 10 October 2006, vol. 450, col.210
[420] Ibid. col.224
, HC Deb, Standing Committee B, vol. 450 24th October 2006
[422] HC Deb, 4 Dec 2006, vol.454 col.94

and warned the minister that he expected the government would be asked to return to that area when the bill passed through the Lords.[423]

5.3.2. **House of Lords**

The Lords' first reading was on the 5th of December 2006, with the second reading debate taking place on the 19th. The committee debates were on the 11th, 15th, 17th and 18th of January 2007. The report was on the 5th of February 2007, and the third reading on the 28th of February.

The bill was opened in the Lords by Baroness Scotland, who said the bill was highly significant because "it tackles an area of the law that has given rise to much concern: the effectiveness of present laws to establish when a corporate body can be guilty of manslaughter".[424] She emphasised the removal of crown immunity as a major part of the legislation, and the comprehensive coverage of corporate bodies. Lord Henley (Con) raised concerns about the lack of coverage for the military, the police, and within prisons. With general support, a second reading was agreed.

In the Grand Committee, Lord Hunt (Con) moved an amendment to insert "a duty of care to anyone held in custody".[425] In moving the amendment, he said:

> "These amendments would ensure that, where an individual died in custody as a result of gross breach of duty of care, that individual's family or loved ones would be entitled to bring a case of corporate manslaughter against the responsible organisation.[426]

Lord Lee said the amendments were aiming to "remedy what is arguably one of the most unsatisfactory features of the bill, namely the exemption from any corporate manslaughter charge of deaths in police custody".[427] Lord Ramsbotham said that this bill was "an appropriate weapon" for

[423] Ibid. col.119
[424] HL Deb 19 December 2006, vol. 687, col.1897-98
[425] HL Deb 15 January 2007, vol. 688, col.cg187
[426] Ibid. GC187
[427] Ibid. GC190

tackling the problem of deaths in custody.[428] However, Lord Bassam (Lab) said, "All deaths in prison custody are subject to an investigation by the Prison and Probation Ombudsman and deaths in police custody are subject to an investigation by the Independent Police Complains Commission".[429] Lord Hunt withdrew the amendment, but urged the government to continue to consider it.

In the report, an amendment was moved for Clause 2, page 2, line 34 by Lord Ramsbotham, who said that the bill "should be applicable to those responsible for the duty owed to anyone in custody".[430] Lord Lee spoke in support of the amendment by saying, "As the bill stands without the amendment, it is not fit for purpose".[431] The amendment was agreed on division with 222 to 127.The Corporate Manslaughter and Corporate Homicide Bill differs from the other bills in the study because the House of Lords accepted the policy in the bill, but expanded upon it. Because of this acceptance, it is viewed as being less impactful than the others are. That is not to say that the extension was a minor one; however, there is no effect on the original policy.

5.3.3. **Ping-pong**

The House of Lords sent 35 amendments back to the House of Commons, 30 of which were moved by the government. The remaining five amendments, 2, 3, 5, 6 and 10, all from the opposition, dealt with the issue of duty of care owed to those in custody or other forms of state accommodation. Figure 5-2 below, shows the passage of the amendments through ping-pong diagrammatically.

[428] Ibid. GC191. He had raised concerns prior to the introduction of the bill with the ministers concerned; however, he had been told that the government did not intend to include the prison service at that time. Source - Letter from Lord Ramsbotham to the author
[429] Ibid. GC199
[430] HL Deb 5 February 2007, vol. 689, col.502
[431] Ibid. col.509

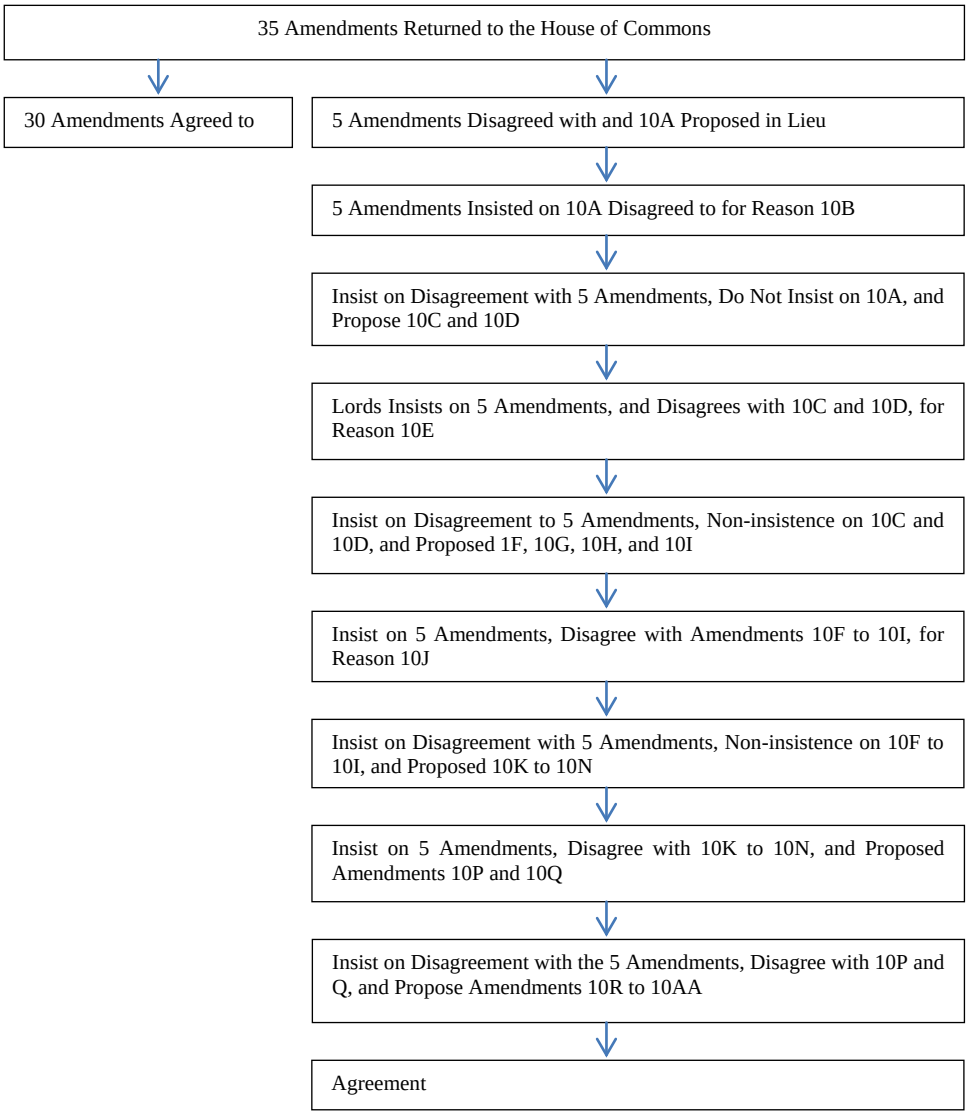


Figure 5-2: Ping-pong of the Corporate Manslaughter and Corporate Homicide Bill

Round 1: House of Commons, 16th of May 2007

Gerry Sutcliffe (Lab, Home Office Minister) opened the arguments in the House of Commons for the government by moving that the Commons disagree with amendments 2, 3 5, 6 and 10, aimed at expanding the duty of care protection to include police and custody. His principle concern was

that blanket coverage would lead to a risk-aversion culture and would cover deaths that were not in fact due to a failure in duty of care. He stated, "We want to strengthen the arrangements for the independent investigation of deaths in custody. Honourable members will know of the Independent Police Complains Commission and the inquest procedure, but we have also decided to put the prisons and probation ombudsman on statutory footing".[432] Sutcliffe did not dismiss the possibility of developing further. Grieve, however, argued that the government was not taking the issue seriously enough. He was concerned about the statutory instrument, saying, "Because the statutory instrument is not amendable, the House would be presented with a take all or leave all proposal.[433]

Jeremy Wright also thanked the minister for clarifying that he was willing to move a little on the proposals, but the Commons voted 299 to 228 to disagree with the amendment. Amendment 10a had the effect of giving the Secretary of State the power to order the inclusion of a duty of care in the bill. There was therefore some movement towards the House of Lords' position from the start of ping-pong.

Round 2: House of Lords, 22nd of May 2007

Baroness Ashton opened the debate with motion A, moving for non-insistence on amendments 2,3,5,6 and 10, and agreement with Commons' amendment 10a in lieu. She summarised the proceedings by saying that the "discussion of the bill now draws to a close and one issue remains outstanding between this House and the other place - whether the offence should extend to custody".[434] She then outlined the effects of the commons amendment 10a in lieu, saying it would result in stronger formal powers, new high court rulings and an independent inquiry.

[432] HC Deb, 16 May 2007, vol. 460, col.666
[433] Ibid. col.674
[434] HL Deb 22nd May 2007, vol. 692 3.15 pm. Retrieved from Lords Publications: Hansard, http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70522-0002.htm#07052292000705. Last accessed 12/02/2016. (Unlike other records, the web records for this bill did not contain frequent column references).

Lord Ramsbotham then moved an amendment that called for the insistence on 2,3,5,6 and 10, and disagreement with amendment 10a. He argued, "When this house debated these amendments on 5 February I argued then as I do now that my purpose was to rectify a glaring deficiency in what was otherwise a generally welcome bill by including 'a duty of care owed to anyone in custody".[435]

Lord Hunt joined this argument; praising the general work of the Lords, and saying, "Those amendments greatly enhanced the bill and restored balance to it. They were entirely consistent with the primary purpose of this important legislation and in no way conflicted with, or undermined it".[436] He argued against the Commons' proposals by saying, "They are no substitute for a full and fair extension of this legislation to protect a group of people".[437] Lord Lee and Lord Dear both supported this position.

However, a counter argument that Ramsbotham's amendments would result in a culture of risk aversion within the police and prison service was raised.[438] The disagreement passed 227 to 136, and reason 10b was returned after a one-hour debate with 13 contributions. The House of Lords insisted on its original position, but because of the House of Commons did not take a flat disagreement position, there was no risk of double insistence when the bill returned to the Commons.

Round 3: House of Commons, 5th of June 2007

Back in the House of Commons, Gerry Sutcliffe opened the debate with the motion to insist on the disagreement with 2,3,5,6 and 10, not to insist on amendment 10a in lieu, and to propose amendments 10c and 10d in lieu

[435] HL Deb 22nd May 3.30 pm. http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70522-0003.htm. Accessed 12/2/2016.
[436] Ibid.
[437] Ibid.
[438] HL Deb 22nd May. http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70522-0003.htm. Accessed 12/2/2016.

thereof. He argued that, after making concessions, the government "believe they have gone as far as they are able on this matter".[439]

David Heath (Lib Dem) attacked the whole idea that the government was making concessions, arguing that the government could easily accept the amendments but alter the commencement period. He also commented that, at the moment, they were entertaining window dressing and empty gestures. Gerry Sutcliffe reiterated the issue of timing, at which point Grieve asked how long they needed.

10c and 10d had the effect of inserting a new clause, which again allowed the Secretary of State to expand the duty of care. Once again, the government was accepting of the underlying point, but argued that more time was needed, and that moving the implementation date should be at the discretion of the Secretary of State.

Round 4: House of Lords, 25 of June 2007

Baroness Scotland moved motion A, not to insist on amendments 2, 3, 5, 6, and 10, and to agree with the Commons' amendments 10c and 10d in lieu. She argued that the government was "not persuaded at this stage that we can go further".[440] She then discussed the amendments in question, saying, "first this amendment would insert a new clause into the bill which deals with relevant duties of care to be amended to include duties owed to those in custody".[441]

Lord Ramsbotham called for the house to insist on amendments 2,3,5,6, and 10, and to disagree with amendments 10c and 10d. He argued that the Commons' amendments were merely cosmetic. He made it clear that meetings were taking place with Baroness Scotland outside of the chamber in an attempt to resolve the impasse. He said, "Our case is very simple: now that the government have agreed to the concept in detail all that remains to ensure the passage of the bill is that they should name the date

[439] HC Deb 5June 2007, vol. 461, col.146
[440] HL Deb 25 June 2007, vol. 693, col.449
[441] Ibid. col.451

for custody to be included on its face".[442] He continued that it would be irresponsible not to include deaths in custody in the bill, while accepting that not all deaths in custody were caused by a failure in the provision of a relevant duty of care.

Lord Lee echoed Ramsbotham's point by arguing, "All that remains in this dispute is a definite date for implementation".[443] There was general support from all speakers on a date for commencement, and the motion passed 183 to 145 on division with disagreement for reason 10e. The debate lasted for just under one hour, and had 12 contributors. Whilst the House of Lords remained insistent on the original amendment, there was still an acknowledgement that the government in the House of Commons was not entirely opposed.

Round 5, House of Commons, 28th of June 2007

Gerry Sutcliffe called for the Commons to insist on its disagreement to amendments 2,3,5,6, and 10, to non-insist on amendments 10c and 10d, and proposed new amendments in lieu: 10f, 10g, 10h and 10i. The amendment group better incorporated the new clause into the bill, making it legally binding. His argument was based on the government's progress and concessions to the House of Lords, saying, "We have offered again amendments to clarify the position. The Government openly recognised the strength of concern in this House and in the other place on the question of custody and again offered positive movement".[444] He said the government had reached its limits in compromise, and that the government had concerns about the time that the police and prison services would need to react to changes that the bill was putting forward. Dominic Grieve rose to argue that the amendments were not enabling, and were in fact restricting, and drew attention to the cross-party support in both houses.

Ed Davey (Lib Dem), in his statement, said, "It is difficult to believe that the principle really has been accepted and that the government are not

[442] Ibid. col.452
[443] Ibid. col.455
[444] HC Deb, 28 June 2007, vol. 462, col.492

simply using parliamentary and legislative devices to avoid the pressure that is being put on them".[445] He also believed that the House of Lords would not give in on the issue.

Round 6: House of Lords, 9th of July 2007

Baroness Ashton moved motion A, that the house should not insist on amendments 2,3,5,6, and 10, and should agree to the commons amendments 10f to 10i in lieu thereof. She said, "Your lordships have therefore secured a very considerable compromise by the government. Since that was adopted by the other place your lordships have asked the government to reconsider the position twice. We have done so...we have been prepared to look at a range of options".[446] She continued, "Noble lords will recall that following the concerns raised on deaths in custody in the context of this bill the government offered to put the prisons and probation ombudsman on a statutory footing".

Lord Ramsbotham moved for insistence on amendments 2,3,5,6 and 10, and for disagreement with Commons' amendments 10f to 10i in lieu. He argued that everybody wanted the bill, but with greater detail on the commencement of the inclusion of duty of care to those in custody. Lord Lee (Lib Dem) echoed this argument.[447] Lord Rosser, however, feared that what Lord Ramsbotham was calling for would have negative consequences on those in the police and prison services. Disagreement was passed for reason 10j. This was the House of Lords' final disagreement; there was more conciliation from that point onward.

Round 7: House of Commons, 11th of July 2007

Maria Eagle (Lab) from the Ministry of Justice moved the motion to insist on the disagreement with 2,3,5,6 and 10, not to insist on amendments 10f to 10i, and proposed 10k, 10l 10m and 10n in lieu. David Winnick (Lab)

[445] Ibid. col.501
[446] HL Deb 9 July 2007 vol. 964 col.1264
[447] Ibid. col. 1207

called on the Justice Secretary to "give further and serious consideration to the obvious concern felt by so many members of both the Commons and the Lords".[448] Eagle maintained that the government had in fact moved a great deal, and said that it "explicitly recognise[s] the principle of the bill applying to deaths in custody and set out a mechanism for bringing this about. That is absolutely right and it represents considerable movement".[449]

Round 8: House of Lords, 17th of July 2007

Baroness Ashton moved to agree to Commons' amendments 10k to 10n in lieu. Opening her speech, she said, "The government also offered to consider how the forum for preventing deaths in custody could be strengthened...on those occasions your lordships indicated dissatisfaction with the movement offered in the other place".[450]

Lord Ramsbotham followed up by moving to insist on amendments 2,3,5,6 and 10, and to disagree with Commons' amendments 10k to 10n in lieu, but he also moved amendments 10p and 10q. He said he was calling for "one last effort to obtain acceptance of the need for a more definite commitment than the word "may" to the application of the bill to the managers of those held in custody".[451] The insistence was passed on division. This was insistence and disagreement, but it also acknowledged that the government had made significant movement by offering conciliation from the Lords' side as well.

Round 9: House of Commons, 18th of July 2007

Jack Straw had asked for more time to debate the bill, and had indicated that he felt that compromise was close.[452] Maria Eagle moved amendments 10r to 10aa in lieu. Unlike previous amendments, this set allowed for the inclusion to begin when the act was first made law instead of having a

[448] HC Deb 11 July 2007, vol. 462, col.1563
[449] Ibid.
[450] HL Deb 17July 2007, vol. 694, col.137
[451] Ibid. col.140
[452] Guardian "Yesterday in Parliament" 19 July 2007. Source Material Commons Hansard, 18th July 2007,vol. 463 cols 327-331

delay.[453] More so than the original amendments, it contained strong definitions about what this covered, and allowed the Secretary of State to expand it further. Mr Grieve stated that, although there was clear compromise, many members were calling on the government to consider greater compromise, fearing that the Lords would continue to ping-pong until they achieved it.

David Winnick stated, "I know that he is doing his best to try to find a compromise with the Lords, and I am pleased about that".[454] Mr Grieve responded by saying, "I am not surprised that the other place has become increasingly insistent that 18 months ought to be sufficient".[455]

Round 10: House of Lords, 23rd of July 2007

Baroness Ashton moved not to insist on amendments 2,3,5,6 and 10, not to insist on 10p and 10q, and to agree to 10r and 10aa. She said, "The nub of concern with the government's amendments so far has been that they would leave discretion whether to extend the offence to custody".[456] She was clear that this had been replaced by a timetable. Although Lord Ramsbotham also moved to continue the pattern of insistence and disagreement, he withdrew it immediately, saying:

> I also pay great tribute to the Secretary of State in another place, because he has changed his position considerably over the last four weeks, influenced, I am sure, by the noble Baroness. Nevertheless we have been given his assurance as well as hers, so it would be churlish to press for more. My reason for tabling this amendment was my concern that seven years was too long. It represented more than the life of this Parliament and probably the life of the next Parliament as well.[457]

While there was concern about the long timetable, the motion was agreed on question, and the bill passed after Ramsbotham accepted the Government's offer. The debate lasted half an hour, with seven contributions made, indicating agreement had been reached.

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[453] See Appendix 1 for the full amendment text.
[454] HC Deb 18th July 2007,vol. 463. col.334
[455] Ibid. col.339
[456] HL Deb 23July 2007, vol. 694, col.556
[457] Ibid. col.558

5.3.4. **The Lords' Position**

Throughout the passage of this bill, there was a strong agreement that the principle of it was correct, but that the exclusion of deaths in custody was unacceptable. This was driven largely by the expertise of key embers, who happened to be Crossbench peers. Therefore the policy area was an important aspect, although it wasn't one of the traditional areas of Lords expertise. At the time the Government did not have a majority in the Lords. Because of this, there were only two phases in which a disagreement was moved without amendments being offered in lieu of the rejected offer. Furthermore, there were no arguments that the other house was attempting to wreck the bill at either end of the hall.

After three insistences, the House of Lords began to accept that the House of Commons was making concessions. In part, this was due to behind-the-scenes meetings with the ministers and spokespersons in both houses. In this case, there was clear evidence of ping-pong working as a conciliation procedure.

5.4. Parliamentary Voting Systems and Constituencies Bill

The bill arose from the Conservative Party's desire to redraw constituency boundaries and to reduce the number of MPs sitting in parliament, as well as the Liberal Democrats' ambition for an electoral system other than First Past the Post. The original Conservative policy was to reduce the number of MPs from 650 to 500 but, following the coalition negotiations, the reduction was planned to be only to 600.[458] The Liberal Democrats also changed their ambition from a single transferable vote to the alternative vote.[459]

[458] Conservative Manifesto 2010, and Coalition Agreement p. 27 retrieved from https://www.gov.uk/government/collections/coaltion-programme-for-government 11/02/2015

[459] Liberal Democrat Manifesto and Coalition Agreement p. 27 https://www.gov.uk/government/collections/coaltion-programme-for-government accessed 11/02/2015

The Parliamentary Voting System and Constituencies Bill was introduced into the House of Commons on the 22nd of July 2010 for its first reading, and received its second reading on the 6th of September 2010. The committee stage took place in a committee of the entire house from 12th of October to the 25th of October 2010, over four days of sittings. The report took place on the 1st and 2nd of November 2010, with the third reading taking place immediately afterwards on the 2nd of November.

In the House of Lords, the bill received its first reading on the 3rd of November 2010. It had its second reading from the 15th to the 16th of November 2010. The marathon committee of the entire house took place from the 30th of November 2010 to the 2nd of February 2011 over 17 sittings. Meanwhile, the report took place from the 7th to the 9th of February 2011. The third reading took place on the 14th of February 2011.

5.4.1. **The House of Commons**

The Deputy Prime Minister, Nick Clegg (LD), introduced the bill in the second reading. Kevin Brennan (Lab) began the questioning about the matching of the two policies when he asked, "Was it part of the deal that the two measures had to be brought before the House together, because otherwise he [Nick Clegg] would not get his referendum on AV".[460] The Deputy Prime Minister suggested that this was not the case. The cut from 650 to 600 MPs in the House of Commons was also a known compromise. Nick Clegg said of the cut that it "saves money- about £12 million each year- and because we think it creates a House that is sufficiently large to hold the government to account while enabling us all to do our jobs of representing our constituencies".[461] Trust in politics was also an issue that was discussed as being among the reasons for bringing forward the legislation at that time. Labour members argued that the redrawing of boundaries was unnecessary, and the political reasoning, that of cost and

[460] HC Deb, 6 September 2010, vol. 515, col.36
[461] Ibid. col.41

of political bias being inbuilt, was unnecessary.[462] The House of Commons passed the bill on division with 347 to 254.

The first allocated day of the report opened with a large number of amendments led by an amendment moved by Chris Bryant (Lab), which referred to the leeway concerning the size of electorate in the newly redrawn constituencies. They needed the greater leeway to prevent too much upheaval of traditional seat boundaries. It failed 245 to 326 in the division. When the debate reached the eighth clause, William Cash (Con) moved amendment 7, which provided for "(c) the number of electors casting a vote in the referendum is equal to or greater than 40 per cent of those entitled to cast such a vote".[463]Speaking about his amendment, he said, "Is it not reasonable that the people of this country should be able to have the result of a referendum refused if less than 40% actually cast a vote in it?"[464] The amendment was withdrawn when it was clear that there was no support.

5.4.2. **The House of Lords**

The House of Lords gave the bill a first reading on the 3rd of November 2010, and a second reading on the 15th and 16th of November 2010. A committee of the entire house considered the bill from the 30th of November through to the 2nd of February, when the Labour Party was accused of filibustering to frustrate the government. The report took place on the 7th, 8th and 9th of February 2011. The third reading was on the 14th of February 2011.

While there were serious concerns raised in the second readings, most of them were reserved for the way the policy had come about and about the mechanics thereof. Following the second reading, the bill underwent 17 days of committee, including a 36-hour sitting and two closure motions,

[462] The Conservatives claimed that the boundaries meant that the Labour Party needed fewer votes to win a majority. Labour, however, claimed that the reforms would cause it to lose out as it would lose more of their current seats than would either of the government parties.
[463] HC Deb 2 November 2010, vol. 517, col.844
[464] Ibid. col.844

which the government claimed were in response to an organised filibuster from the Labour benches.[465] Against a backdrop of concern about the ways the procedures of the Lords were being manipulated, the bill eventually passed to report.

On the first day of report, the first amendment was moved by Lord Rooker, who stated, "If less than 40% of the electorate vote in the referendum the result shall not be binding".[466] This was the direct follow up to the amendments that he had moved in the committee stage. In moving it, he emphasised that the amendment was reasonable, given the government's stated reservations about thresholds and the previous issues with such hard mechanisms, referring to the Scottish referendum on devolution in the 1970s. Lord Anderson supported the amendment, "as means has to be devised to show that such a change has at least reasonable support among the electorate".[467] On the other hand, Lord Alerdice said, "I do not think it is very advisable to ask the people what they think, but for the government to decide whether they will follow through on that".[468]

Lord Hodgson (lab) also supported the Rooker amendment by saying, "I share my noble friend's views about the danger of a precedent being created in this way without a threshold" and continued, "Even with the noble Lord's amendment, we could have a binding referendum with one in five people voting in favour of it, which seems a perfectly satisfactory threshold".[469]Lord Wallace spoke for the government, against Lord Rooker's amendment, saying, "The bill provides that the referendum result will be decided by a simple majority. We believe that that is right because it is the simplest, clearest and fairest way of proceeding".[470] With the government protesting, the amendment passed on division with 219 to 218.

Day three of the report began with an amendment moved by Lord Pannick, which sought to increase the leeway available to the boundary commission

[465] HL Deb 10 December 2010, vol. 723 -16 Feburary 2011, vol 725
[466] HL Deb 7 February 2011, vol. 725, col. 10
[467] Ibid. col. 18
[468] Ibid. col.22
[469] Ibid. col.23
[470] Ibid. col.29

when drawing up the new constituencies. He said, “I very much hope that, even at this late stage, the government may feel able to accept this compromise amendment in the spirit in which it is put forward”.[471] With regard to the reason for moving the amendment, he said that the bill would result in a “very substantial operation” and “it does not significantly conflict with the government’s stated objective of achieving equalisation of the size of constituencies”.[472] Lord Maples spoke against the amendment, saying that the leeway it was introducing would result in too big a gap between the smallest and largest constituencies, and that “it introduces areas of vagueness and subjectivity”.[473] Lord Rennard also spoke against it for similar reasons by saying, “There is simply no reasonably agreed and commonly accepted definition of the key phrase ‘a viable constituency’”.[474] However, on division, the amendment passed 275 to 257. These amendments had the effect of changing the scope of the policy, although not to the degree of the Aircraft and Shipbuilding Industry Bill, or the Identity Card Bill, but more so than did the Pilots Bill. Therefore, they had a moderate impact.

5.4.3. **Ping-pong**

The House of Lords moved 104 amendments back to the House of Commons. The House of Commons passed 98 amendments, all of which were government amendments. Three pairs of linked amendments were passed back the Lords, two were disagreed with reasons, and one was amended in lieu, with the House of Commons accepting the underlying reason for the amendment. The other two pairs dealt with key underpinnings of the bill, the first being the referendum and the second being the number of registered voters in each constituency, both being disagreed to. Figure 5-3 shows the ping-pong of this bill diagrammatically.

[471]HL Deb, 9February 2011 vol. 725, col. 236
[472]Ibid. col. 234
[473]Ibid. col.237
[474]Ibid. col.236

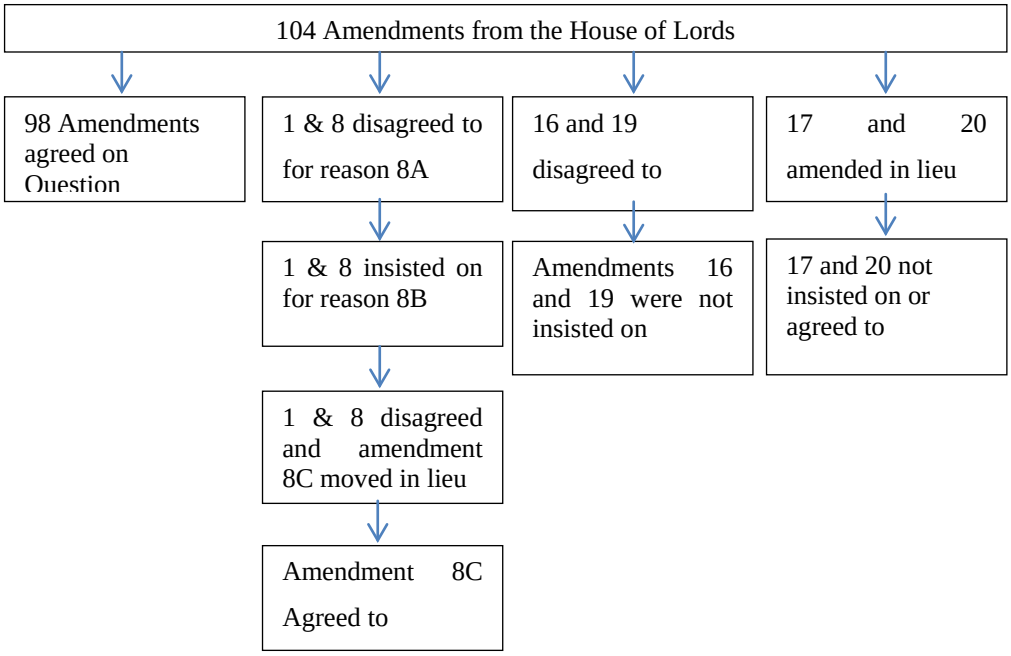


Figure 5-3: The Parliamentary Voting System and Constituencies Bill

Round 1: House of Commons, 15th of February 2011

The House of Commons received the Lords' amendments on the 15th of February 2011 for the first round of ping-pong with 104 amendments moved to it.

For amendments 16 and 19, Mark Harper (Minister for Constitutional and Political Reform) moved that the commons disagree to the amendments. He argued that these amendments, moved by Lord Pannick, gave the boundary commission a 7.5% margin either way to cater for existing wards when drawing up new constituencies. The amendments were disagreed to on division with 317 to 250, and 320 to 249, respectively.

The third group of amendments in the House of Commons contained amendments 17 and 20, to which the government offered three amendments in lieu. Amendment 20, shown below, provided an exception

to be made for the Isle of Wight to remain as a single constituency and not to merge with the mainland, moved by Lord Pannick, Lord Butler and Baroness Boothroyd, among others. The disagreement and amendments in lieu thereof passed 311 to 244 on division. The final two amendments, 1 and 8, were the last group to be debated. Amendment 1 (shown below) provided for a turnout of 40% to be required to make any result binding. Otherwise, it would merely be indicative, and parliament would make the final decision. The amendments were disagreed to with 317 to 247.

Round 2: The House of Lords, 16th of February 2011

In the House of Lords on the 16th of February 2011, the Lords dealt first with amendments 1 and 8. Lord Rooker then moved that the house should insist on the amendment by saying, "I have said all along that if the turnout was less than 40% the house could decide to implement AV and I would not argue with it".[475]Lord Philips essentially supported Lord Wallace's views that the amendment would "inadvertently act as a deterrent and a disincentive to vote".[476]Certainly, fears of a repeat of the 1979 Scotland referendum vote remained in the minds of peers during this debate, and shaped the arguments of several members. However, the house did vote to insist on the amendment 277 to 215, an increased majority.

For amendments 16 and 19, Lord Wallace moved that the house should not insist on the amendments. Lord Pannick (crossbencher) argued on constitutional grounds by saying, "The rules governing the composition of the other place are of such constitutional importance that they cannot be left solely to the judgement of the other place, in the sense that as soon as the other place disagrees with us we in this house immediately retreat". He also noted the strong criticism from the Constitutional Select Committee.[477]Baroness O'Neil (crossbencher) said in support that it was intended to help the boundary commission by allowing it more movement in drawing up the new constituency boundaries, and not forcing them into a narrow voter band. Lord King argued that the House of Lords should not

[475] HL Deb 16 February 2011, vol. 725, col.661
[476] Ibid. col.666
[477] Ibid. col.682

press the issue on constitutional grounds, but also argued that "a 15 per cent spread means a difference of perhaps 12,000 [voters]. That is too great".[478] The motion to insist failed 281 to 282, and the amendment was dropped.

Lord Wallace moved to accept the House of Commons' amendments in lieu of the Lords' amendments 17 and 20. This was not contested, as members from both sides of the house supported the idea that the government had accepted the principle, and that they should agree. The house agreed to the amendment on question. The entire debate lasted for three hours and contained 34 contributions.

Concerning the main point of contention, the House of Commons would now need to avoid a double insistence when the bill was returned to it. On the point of the Isle of Wight, conciliation had been achieved, but on the point of constituency size, whilst the motion to insist had failed, the amendment movers, including crossbenchers, remained unconvinced.

Round 3: The House of Commons, 16th of February 2011

The bill returned to the House of Commons that day, and Mark Harper opened by offering the following amendment in lieu, in a debate that lasted just under one hour. Concerning the procedures so far, Harper said, "The House of Commons has debated the issue of thresholds on a number of occasions and has voted conclusively against the principle twice".[479]

Chris Bryant then put forward the Labour Party's point of view, saying, "I support the alternative vote and will be voting yes in the referendum. However, the way in which the Deputy Prime Minister has conducted this piece of legislation or rather the way in which he has not conducted it, is steadily putting me off the idea".[480] He continued that the advisory nature was good and did not preclude that, with a high majority and a 39% turnout, parliament would pass AV anyway. He attacked the amendment in

[478] Ibid. col.684
[479] HC Deb 16 February 2011, vol. 523, col.1076
[480] Ibid. col.1079

lieu, saying, "The Minister's amendment in lieu has absolutely no value. It would merely mean that the process that is already adopted by the electoral commissions would be implemented".[481] This was something that the minister himself had already alluded to in his opening speech. Sir Gerald Kaufman (Lab) attacked the bill as a partisan bill, something Paul Farrelly (Lab) agreed with, although he attacked the Liberal Democrats' behaviour specifically. David Winnick (Lab) mentioned that there was still the issue of the fact that there was little apparent public desire for change. The matter passed on division with 310 to 231 after a one-hour debate. This appeared to be a token change, rather than any acceptance of the House of Lords' concerns about turnout and mandate, and furthermore mirrored amendments made by the Commons during the ping-pong on the European Parliamentary Elections Bill.

Round 4: House of Lords, 16th of February 2011

Lord Strathclyde said the government had argued that "the people of this country should have their say knowing that their vote in the referendum will count - no ifs, no buts and no artificial hurdles".[482] Lord Rooker accepted the Commons' amendment, but proposed a further amendment. Lord Beecham, in support, argued that the House of Lords still had the right to insist on its amendment. Lord Hodgson, however, accused the Lords of political opportunism, to which Lord Falconer responded that the Lords was within its rights to continue to insist on its point of contention. The amended motion A1 was disagreed to 153 to 221; the house did not insist, and agreed to amendment 8c without further amendment. This debate was very short compared to others, as it lasted only 30 minutes, with nine contributions. There was no question of Lord Rooker accepting that the House of Commons had made concessions, but the vote to insist was lost.

[481] Ibid. col.1082
[482] HL Deb 16 February 2011. Vol. 725 col.780

5.4.4. **Conclusion**

Given the level of opposition that appeared in the House of Lords at first, the bill passed quickly, and with limited changes. The Lords had successfully exempted the Isle of Wight from the boundary changes. However, it failed on two other main amendments, achieving only a review of the turnout of the referendum. The government was clearly not prepared to make any changes to the policy, given that the bill was a corner stone of the coalition policy negotiations and this, more than any other behaviour, most likely accounted for the Lords' decision to vote against continued insistence. The passage of this bill was seen by some media sources as a test of the coalition.[483] Time was a large issue, amplified by earlier time wasting in the Lords process. This also meant that the Parliament Act was not even considered for this bill. The coalition and the nature of how the coalition was formed meant that the Government both had a majority in the House of Lords, but that whilst the Bill was constitutional in nature, and would have drawn in crossbenchers anyway, there was increased concern both over the potential implications for the future, given the manifesto relationship, or lack thereof.

5.5. Conclusion

In the Post Reform era, party discipline is high across all of the Bills, however, only the Parliamentary Voting Systems and Constituencies Bill, and the Fixed Term Parliaments, moved under the Coalition Government had a majority in the House of Lords as well as the House of Commons. These Coalition Bills, together with the Identity Card Bill were among the Bills that had the most importance attached to them- being planned from general elections and being part of manifesto pledges. The Coalition Bills were also under a direct reform threat, although this was also indirectly present for the European Parliamentary and Local Elections Bill.

[483] For example a Guardian Article: Patrick Wintour "Av Referendum to Go Ahead without 40% Turnout Rule" in The Guardian (London) 17th September 2011. Both the Daily Telegraph and the Daily Mail reported Lib Dem anger at the number of Tory Rebels who supported the Rooker amendments in the House of Lords.

The bills with time constraint present, the Parliamentary Voting Systems and Constituencies Bill and the European Parliamentary and Local Election (Pilots) Bill one showed considerable more self restraint than the other, although both saw the Lords be unsuccessful in outcome for gaining their aims. When compared to those in the pre reform group, the Railways bill did show self restraint, but similarly the Aircraft and Shipbuilding Industry, and the European Parliamentary Elections Bill were forced to fail, which while it was the House of Lords achieving its aims (maybe), it was not self restraint. This shows that in this case, the Lords is not anxious to reach a conclusion under time constraints, and indeed even uses it as a negotiating tool, working that the Government will desire the bill sooner with compromise, than the delay required by the parliament Act.[484]

The highest Government majority in the House of Commons in the post reform group of bills was The European Parliamentary and Local Elections Pilots Bill, which demonstrated little self restraint. The coalition bills were also subject to a large commons majority, which was also mirrored in the House of Lords. Whilst both bills passed considerable quicker than the European Parliamentary and Local Elections Pilots Bill, neither demonstrated much self restraint.

The impact attempted on each of these bills was different. The Identity Card Bill was met with hostility, and a feeling that it would not meet the purpose it was assigned, in addition to wider concerns about civil liberties, something in which the House of Lords has tended to take a keen interest in the past. Whilst this study does not examine the overall impact of the House of Lords on legislation, it is worth noting that the house had more of an overall issue with the Identity Cards Bill as a whole, and the opposition found fault with more aspects of it, whilst the later bill was viewed as sound, but missing a core aspect. In both cases, large numbers of amendments were moved by the Lords, and were passed immediately by the Commons; thus, the Lords was able to perform its role as an engine for effective legislation properly. In the case of the Identity Cards Bill, the

[484] The Identity Card Bill used this argument- although the bill was not under a strict time constraint.

Lords chose to give way to the Commons, or accept to Commons' amendments to their amendments rather than to insist in order to focus on the most important element.

In both cases, the Lords attempted significant policy change; however, it was more impactful on the original policy in the case of the Identity Card Bill, as the Corporate Manslaughter Bill saw the attempted addition of an area. The key amendment in the Identity Cards Bill, that of removing the link to passports and making registration on the database and ID cards voluntary, was a significant change in policy implementation. By contrast, with the Corporate Manslaughter Bill, the House of Lords accepted the original policy but added to it, and this was reflected by the House of Commons' reception of the amendments. it was made clear that negotiations were taking place in both cases, although the government repeatedly made it clear that it had "gone as far as they were willing to go" before then going further in both cases. This is evidence of the politics of legislative relations, although it is notable that the tone was very different, with the Lords' actions in the case of the Identity Card Bill being considered reckless and obstructive, whereas the same descriptors were not usually applied in the corporate manslaughter example.

The Identity Cards Bill saw the House of Lords insist twice before offering any changes, having insisted on its original amendments in the first two returns of the bill, which is reflected by the so-called 'technical' changes made to the amendments by the Commons in a bid to ensure the bill was not lost due to the double-insistence procedure. The initiative then changed to the Lords with a sunset clause, and then an opt-out being proposed, and the Commons disagreeing for reasons. In the Corporate Manslaughter Bill, the change was more progressive, but both were eventually resolved by negotiations between the key players outside of the chamber. Therefore, in the case of the Corporate Manslaughter and Corporate Homicide Bill, conciliation began sooner. However, both bills resulted in similar outcomes for the House of Lords in terms of the amendments it had

moved. Whilst the Corporate Manslaughter Bill largely followed the expected pattern, the Identity Card Bill did not.

Crossbenchers were influential in both cases, as were negotiations behind the scenes. Both bills therefore saw a change in behaviour across ping-pong in terms of the offers being made. In both cases, there were examples both of conciliatory behaviour and of constitutional mandate concerns in both houses, but the latter was far less prevalent in the Corporate Manslaughter Bill, which was also not subjected to concerns about Salisbury Convention violations.

From this study, the role of crossbenchers appears to be worthy of further consideration, particularly regarding their roles as experts and as brokers. In both cases, there were signs of meetings being facilitated by the crossbencher group and cross-party support for their roles, which assisted in conciliation. However, whilst this attitude was present to some degree for the Corporate Manslaughter Bill from the beginning, it began much later for the Identity Card Bill, and this is reflected by the amendment offers, although not by the length of ping-pong.

The three constitutional bills in this chapter share the attribute that the House of Lords still moved a motion against the government's proposed amendment in the final phase, but that it did not get enough votes. In the case of the European Parliamentary and Local Elections (Pilots) Bill, the final vote came after 10 rounds and the arguments had run out, but in both the other bills, the arguments were still fresh, and there was added crossbencher involvement that crucially was not actively seeking to end the consideration of the bill at that point.

The House of Lords did not succeed in gaining major concessions in any of the three bills. In the case of the Pilot Bill, the Lords gained a concession over the fourth pilot region, but did not get as much movement on the fraud prevention amendment as it had hoped. In the later bills, the Parliamentary Voting System and the Fixed-term Parliaments were overshadowed by the potential for the Lord's reform bill, which was Part 3

of the constitutional reform package from the coalition. All three bills could be said to suffer from this 'bigger picture effect', in so far as the debate went beyond the bill at times, towards that which the bill could be heralding, be it regional assemblies or electoral system changes. Although the Lords moved a motion in opposition in all three cases, the debates at the end of ping-pong appeared to have run their natural course. This is where they differ from the Home Affairs; for example, when a compromise was reached, these just appeared to run out of energy. At the same time, there was a desire not to hold up proceedings unduly. In all three cases, the amendments had been moved previously in a very similar form in the Commons. This leads to some questions that require analysis and discussion. The first is the degree to which a wider agenda is influencing the passage of the bill. This may well be difficult to measure conclusively, but there could be indicators to suggest the degree to which it is relevant. Another factor is the role of a time limit, whether set or implied, on the exchange of amendments.

All three bills in this chapter ended with a division, and with the next option being rejected in favour of the offer from the House of Commons. This suggests the offer from the House of Commons was not sufficient to meet the wishes of certain members, but was accepted by the house as a whole. In each case, with the exception of the Fixed-term Parliament Bill, key members of the opposition moved the amendments. In the case of the Fixed-term Parliament Bill, and in an amendment to the composition of constituencies in the Parliamentary Voting Systems and Constituencies Bill, they were moved by crossbencher elements.

The constitutional protection role of second chambers is seen in all three bills in this chapter, as well as in the European Parliamentary Elections Bill that was studied in Chapter 4. The European Parliamentary and Local Elections (Pilots) Bill followed a similar pattern to the European Elections bill in that there was little movement, or concession, from either side during the process. In comparison, the Fixed-term Parliament Bill and the

Parliamentary Voting Systems Bill both saw the same pattern initially, but unlike the other two, the house as a whole accepted the position earlier.

6. How the House of Lords Divides: The Divisions of Ping-Pong and Their Patterns

The hypothesis presented in this study is that the House of Lords operates within a dynamic of both wanting to fulfil a role based on their political and constitutional roles, but also that a fear of further reform which may result in an undermining of the Lords powers. This chapter will provide evidence for the arguments that the House of Lords' behaviour is driven by the innate understanding of the need for self-restraint, and that this self-restraint has become more of a factor following the 1999 Reform Act. Furthermore, the Crossbencher group is an important marker in this self-restraint. It will also argue that conciliation, and perceived conciliation attempts, will have an effect on the behaviour observed. Potential causes of such behaviour will be discussed in the following chapter.

Thus far, this study has examined nine individual bills under six different prime ministers, and on four different policy areas. Ping-pong, and the arguments raised within the debates during the procedure, is a product of the specific piece of legislation, and the concerns of at least one peer about the policy being enacted. However, some patterns of behaviour may be discerned within the case studies including the need to avoid double insistence, and the differences between motions when one house is attempting to make concessions.

The nine bills were resolved in three different ways. The Aircraft and Shipbuilding Industry Bill and the European Parliamentary Elections Bill both failed in the session studied. Both were pre-reform bills. The European Parliamentary and Local Elections (Pilot) Bill, the Parliamentary Voting System and Constituencies Bill, and the Fixed Term Parliaments Bill were passed after a vote to insist failed. All of these bills were post reform bills, and constitutional in nature. The remaining four bills were passed when there was general agreement that the government had made a significant concession, or that it had conceded as much as it could or wanted. Two of these were pre reform and two were post reform. Patterns

of behaviour will be important for establishing the causal chain behind these outcomes.

The case studies highlighted the some potential important variables which will be examined here. Impact on legislation and the change in demands made by the Lords is the expected outcome. The House of Lords is a legislative chamber. If the House does not make big policy changes then it could be argued, as long as there was evidence that they were not in favour of the policy, indicates self restraint. However, the fact that ping pong takes place at all means that this self restraint was not present. Therefore, self restraint in this case would be present throughout the process. Length of ping pong is important as early resolution could demonstrate more restraint, as the House of Lords is prepared to accept a compromise more quickly, and not drawn out the argument. The presence of conciliation means that the House of Lords is prepare to compromise on policy, and was able to attain some influence on it, even with restraint.

Threat of Future Reform and the awareness of it, rather than the mere existence of it is linked to the use and threat of the Parliament Act. This recognition of a threat being present might be expected to result in more restrained behaviour later in ping-pong. Linked to this is the recognition of the risk of the use of the Parliament Act.

The presence of a manifesto link, and by extension the Salisbury Convention, is the pinnacle of self restraint, and therefore so is the recognition of its existence, or parts of it. Arguments about the need for restraint due to the existence of an explicit manifesto reference occur more frequently later in the process. Public Interest, and the awareness of it, may well be rather closely linked with the threat of future reform. The House of Lords is aware of its perceived position and perceived legitimacy. If it is an area where the House of Lords has a particular interest they may be less willing to compromise initially, but may in the end prove more persuasive. Therefore expertise may both increase the increase of the

Crossbenchers have tended in the past to have a longer term view. Researchers into the House of Lords have shown that whilst all the way through the House of Lords history there has been a degree of self preservation present, since the 1980s at least a considerable part of this has come from the Crossbenchers, whose general tendency towards constitutional expertise has driven this.

The bill cases studied highlighted the role of crossbenchers becoming involved, and the opposite effect that bills and amendments with party-ideological divides could have. This was particularly prominent in the pre-reform examples. The two Home Affairs bills, which were both long but ultimately more successful, both had crossbencher impact in different ways, with crossbenchers being involved in the process from the beginning of the procedure in the Corporate Manslaughter Bill, compared to a late intervention in the Identity Card Bill. Constitutional reform bills saw shorter ping-pong on bills in which Crossbenchers were involved, as opposed to longer ping-pong when there was a clear partisan divide. This, together with a gradual decrease in the numbers of contributions and new debates, are all points of interest to be investigated. This chapter will study the divisions within ping-pong for all nine bills. Specifically, it will be looking at the behaviour of three groups - the government, the opposition and the crossbenchers. The government and the opposition are classified to allow comparison between the different parties in the government. Two measures are being used, that of turnout and that of majority or cohesion. Turnout makes it possible to determine any pattern of interest. The time and number of contributions made in some ping-pong debates suggests a declining level of interest, and in some debates, it was made clear that peers were lamenting the lack of new arguments being made. Whilst any impact made on division turnout is likely to be smaller, this is still a reliable way of measuring interest in the issue. It also specifically allows the delineation between whether the government is simply able to get more votes, or whether the opposition gave in when insistence votes failed.

The other measure available is the direction of votes. Whilst whipping as such is not done, the existence of peers not voting in the 'accepted direction' has been highlighted previously, with the Labour Government in 2005-2007 and the Conservatives in Thatcher's first two parliaments often rebelling in the Lords. Equally, the homogeneity of the crossbenchers may serve as a marker of opinion. Because of the difference in turnout, majority combined with turnout allows us to use the rice index to create a measure of party group cohesion, which measures the relative size and weighting of the group turnout, allowing us to see how cohesive the vote is.

The use of defeats, and division results that bring them about has been a standard way of measuring the Lords "strength", as was discussed in the initial chapters in this thesis. Traditionally they have allowed for models of causality to be developed using the strength and size of defeats. Essentially the turnout is used to combine defeats with a measure of interest.

This chapter will first look at the behaviour of the House of Lords as a whole across all of the bills included in this study, and will examine the patterns found. This will then be applied to party groupings, also across all bills. The effect of reform will then be examined, first for the entire house, and then for each party group. The last part will specifically examine the crossbenchers and their distinct identity, if one exists. This data is based on a small number of cases, and so is looking at patterns based on these cases. As a result, the data provided here is to be treated with caution in terms of extrapolation to bills beyond this study.

6.1. Self-restraint

The problem with objectively measuring self restraint is that without knowing the cause of a peers actions it is impossible to say what the intentions are. The next best option is to look at the general behaviour of party groups. This is driven by the turnout, and cohesion. Essentially, peers are more likely to abstain than they are to revolt, but turnout also demonstrates interest, particularly from the Government and Crossbench sides.

There are different lengths and levels of ping-pong in the nine bills examined, which makes it difficult to compare them precisely. However, the pattern of behaviour may be discerned from the divisions. From the case studies and the lengths of the debates that were recorded in the case studies, it was apparent that interest was declining in the debates and, as a result, I would expect that interest would decline more generally over time, and that this would be reflected in the divisions.

The first step in examining the trends in behaviour was to look at the overall House of Lords across all the divisions covered in this study, including the divisions during committee, report and third reading. If self-restraint were present, the turnout of peers would be expected to decrease, and the cohesion would decrease because interest in insistence would be likely to decline more quickly.

Hypothesis $\mathbf{H_1}$ is therefore as follows:

$\mathbf{H_1}$: That self-restraint will become more noticeable in the behaviour of the House of Lords as a whole across all divisions. Self Restraint will be higher in the end of ping pong compared to the end of ping pong when length of ping pong is controlled for.

This hypothesis comes from two bodies of evidence. The first is the evidence from major disagreements in the past, where the House of Lords has stated that they have followed the will of the Government because they have concerns about a longer term issue. The Parliament Act in 1911 was a major example of this[485]. The House of Lords has increasingly had a strand of thought that is bent towards self preservation, and this hypothesises tests whether this self preservation has an impact beyond headline instances. The second is the changes in party balance and membership, specifically the important roles of the Liberal Democrats and Crossbenchers that are not mirrored in the House of Commons.[486] This has been postulated to

[485] See for example Ballinger, 2011.
[486] See Russell and Sciara "Liberal Democrats", and Russell and Sciara "Independent Peers", as well as Russell 2013.

bring about a more detailed policy based argument that transcends party divisions.

This hypothesis will be measured by two indicators, $\mathbf{H_{1A}}$, and $\mathbf{H_{1B}}$, used for establishing the existence of Self Restraint:

$\mathbf{H_{1A}}$: Peer turnout will decrease, reflecting reduced interest, or reduced belief that conciliation can be achieved at the end of the process compared to the beginning.

$\mathbf{H_{1B}}$: Cohesion levels recorded will decrease at the end of ping pong compared to the beginning, either because of a rallying of those who support the House of Lords acceding to the House of Commons' position, or because of a tailing off of desire to insist.

Studies by Norton and Russell have shown that party cohesion remains high in the Lords; however, rebellions and levels of absenteeism can still be a problem, particularly for governing parties.[487] This was shown to be a particular problem for the Conservatives in the 1980s, and again in the post-reform era, although less so than previously. Labour also had problems with rebellions[488], and there was a significant rebellion with the coalition.[489]

6.1.1. **Turnout**

Turnout shows levels of absenteeism across the process. Figure 3-1 in the appendix shows the average turnout by division for the nine bills examined, with division one being the first division to take place on a bill in the House of Lords. This presents a problem because of differing numbers of divisions on bills, which means that later division numbers will be averaged from a decreasing number of bills, which increases the risk of

[487] Russell, "Impact",
[488] Particularly during the latter years, Labour found itself being defeated more frequently in the House of Lords, with 88 defeats in the 2002-2003 session and 64 in 2003-04, while 2005-06 saw 62 defeats. Source: http://www.parliament.uk/about/faqs/house-of-lords-faqs/lords-govtdefeats/ accessed 28/05/2015.
[489] The Coalition was defeated 48 times in the 2010 to 2012 parliament, and had particular issues with 'set piece' bills such as the Parliamentary Voting System and Constituencies Bill, and the Healthcare Bill, with large rebellions. See http://www.parliament.uk/about/faqs/house-of-lords-faqs/lords-govtdefeats/ for more.

outliers affecting the pattern. Therefore, whilst it is possible to carry out an analysis of all the divisions of all nine bills in the study, this is not that helpful in reality. It also means that the ping-pong phases all start at different points, and so cannot be compared separately. Nonetheless, it gives an overview of turnouts.[490] The turnouts provided here are the percentages of peers voting from the total number of eligible peers.[491]

Figure 6-1 below shows the turnout of the entire house. Beginning, middle and end refer to the ping-pong division phase. 'Middle' may not be present in bills with only two phases. 'End' represents the final division of ping-pong, regardless of whether it was the 'final debate phase'. For example the Housing and Building the last debate was resolved without a division.[492]

[490] For example, the Parliamentary Voting System and Constituencies Bill had more divisions than did others. The bills after the reforms in 1999 also tended to have more divisions, as the insistence was longer lasting.

[491] Studies such as (get html link) have made it possible to trace the exact number of peers eligible at the time of the division. This is not possible for earlier bills, and the total number of eligible peers has been calculated using the list of peers sitting at the start of the session.

[492] Although 'End' is the final division of ping-pong on a bill, it does not necessarily represent the final phase. In some cases, such as the Housing and Building Control Bill and the Railways Bill, the final phases ended with a question rather than requiring a division.

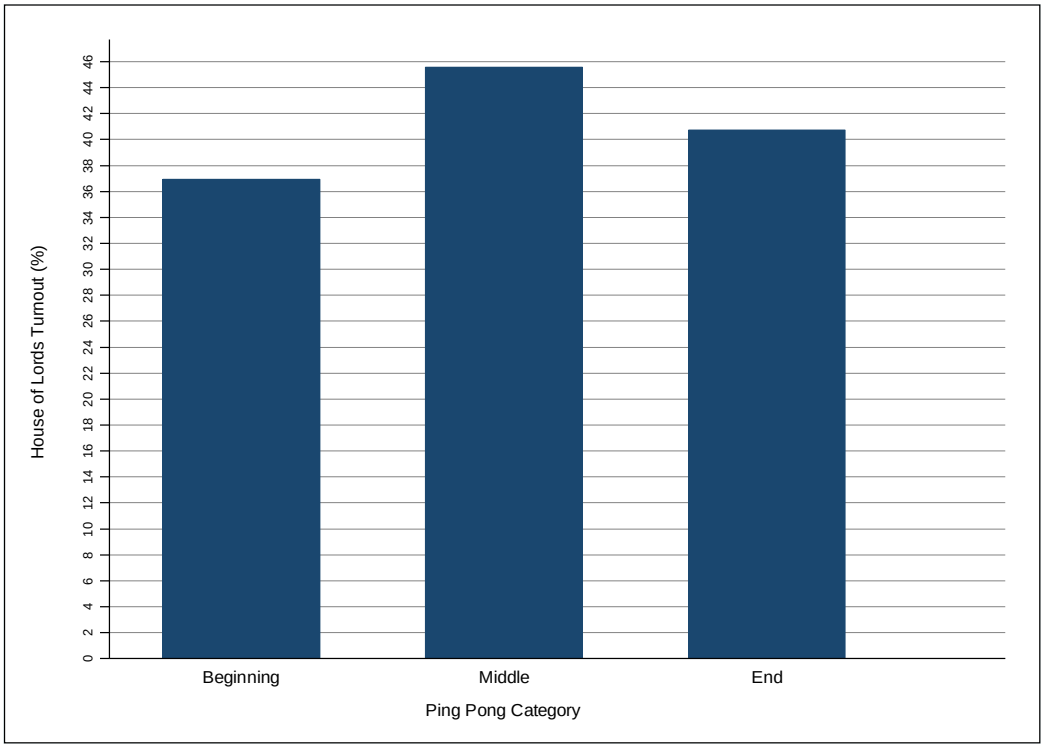


Figure 6-1: Average House of Lords' Turnout against the Ping-pong Category

Figure 6-1 shows an increase over ping-pong which results in a change of 4.5% from the beginning to the end of ping-pong on average. This shows the same direction of change, as does the study of distance along ping-pong. This confirms that, between the beginning and end of ping-pong phases, there is an increase in the turnout of peers, representing increased levels of interest in the House of Lords as ping-pong progresses.

Therefore, $\mathbf{H_{1A}}$ may be rejected, as turnout for the House of Lords as a whole actually increases as ping-pong progresses. Figure 6-1 indicates that there is less chance of this being because of a reaction to a negotiated outcome being achieved. Equally, this does not preclude a reduction in turnout from within either opposition or crossbencher elements, which could be indicative of self-restraint or attrition.

6.1.2. **Cohesion**

In addition, the majorities may be used to show the levels of cohesion and rebellion. [493] As whips are less important, rebellions are not formal; however, peers voting in a different manner from the majority of their party are considered to be rebelling, particularly for the government. Therefore, the level of cohesion may also indicate the number of rebels. Figure 3-2 in the appendix shows an increase in the majorities, but the increase is not steady, and it is marked by peaks throughout the later stages. The appendix shows greater detail. Figure 6-2 below shows the change in majorities between the beginning and the end of ping pong.

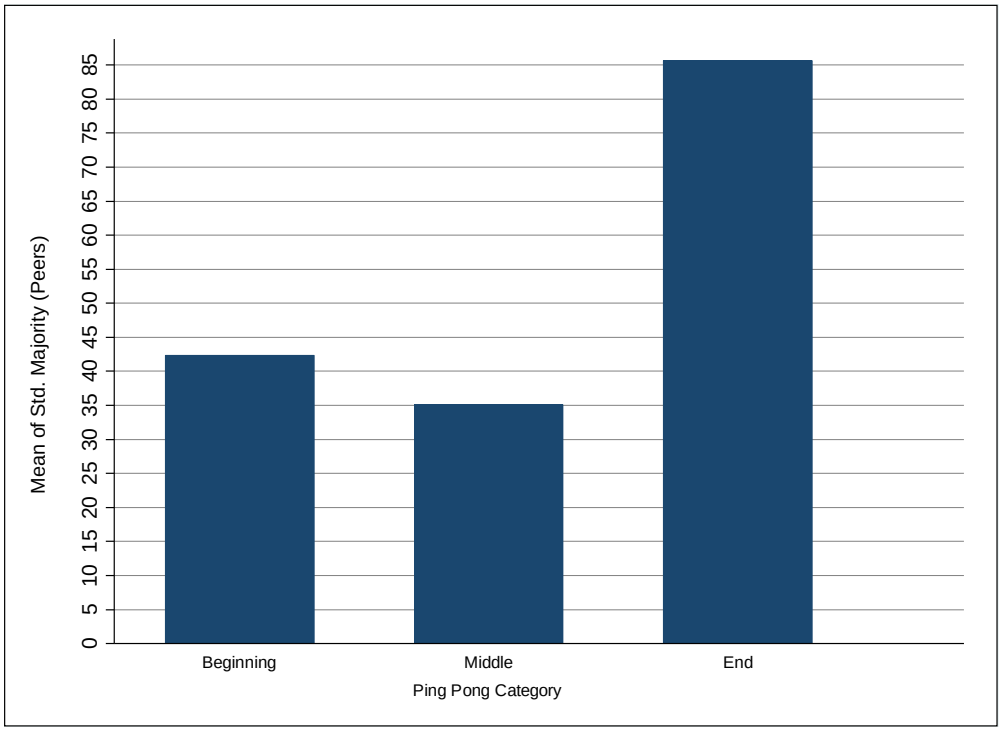


Figure 6-2: Average House of Lords' Majority against the Ping-pong Category

Figure 6-2 shows the average majority for the beginning and end of ping pong for the whole house. It shows that the average majority increased for the end of ping pong compared to beginning, for the whole House, with an average difference of around 40 peers. However, it does not show what

[493] A standardised majority is the contents minus the not contents, then turned positive. This means that both the government and opposition will always be positive. A lower number indicates that the two sides were closer, and therefore the House of Lords was more polarised, and more evenly split.

proportion of peers voting this actually represents, and whether is is representative of an attitude change, or a rallying.

However, whilst majority allows a good analysis of how the house was voting, the more interesting measure was the cohesion of the groups. This allowed for an analysis of the way that the different groups responded to change. The rice index looks at the proportion of peers in each group voting in each way.

It is calculated as followed:

Cohesion Factor

$$=\left(\left(\frac{Group\ Content}{Total\ Group\ Turnout}\right)-\left(\frac{Group\ Not\ Content}{Total\ Group\ Turnout}\right)\right)\times 100$$

This therefore means that a group that is equally divided between both lobbies will produce a factor of 0, whereas one that votes entirely the same way will have a factor of 100. The benefits of such analysis are shown in figures 6-3 and 6-4 below.

Figure 6-3 shows the cohesion of the whole House of Lords. As it is for the whole house with no account taken for party or groups, there is an assumption at it will be closer to a 50-50 split, or 0 on the Rice index.

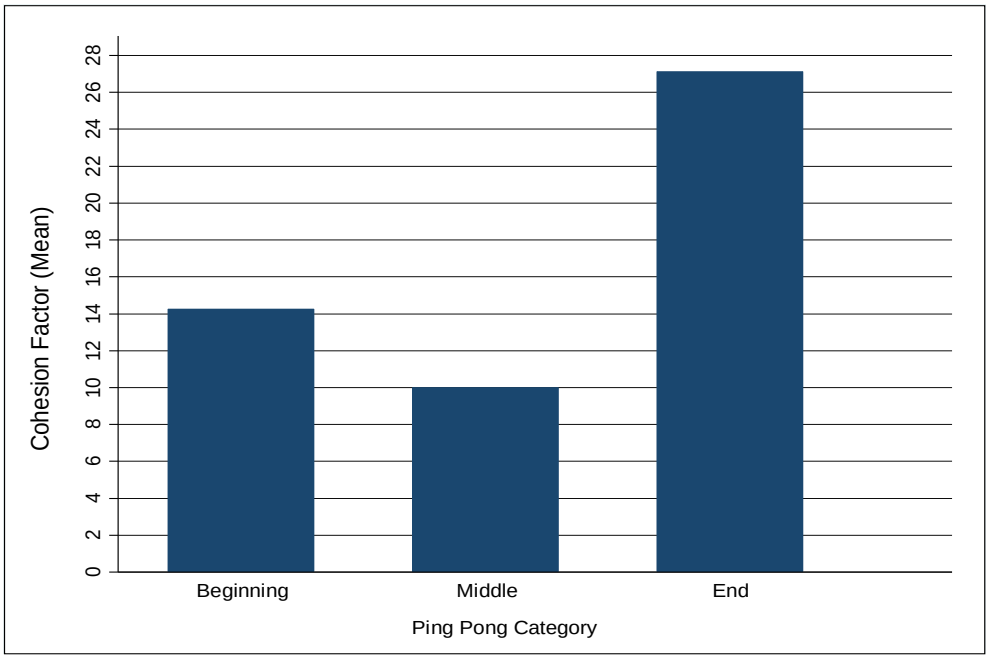


Figure 6-3: Average House of Lords' Cohesion against the Ping-pong Category

This also shows an increase in cohesion from the beginning of ping pong to the end of ping pong with an increase for 14 to 27 on the rice index. Therefore cohesion in the House of Lords did go up, and there was a polarisation. However this is for the House of Lords as a whole, and does not take into account party groups and positions. Therefore, a third measure was produced, which takes the average of the three main parties and the crossbenchers. This figure is shown in figure 6-4.

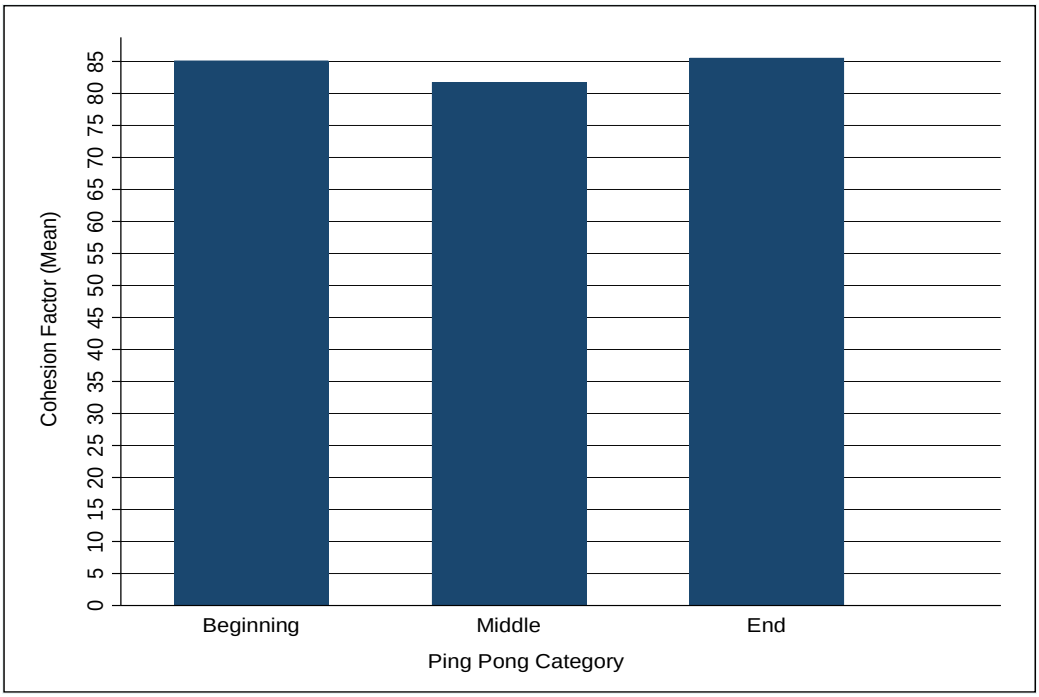


Figure 6-4: Average House of Lords' Cohesion of Groups against the Ping-pong Category

It shows that the parties themselves remained steady. This is therefore indicative that when a motion was tabled for agreement, that there was a general shift. To test this, Figure 6-5 below shows the majority information, but separated by the side of the house of the motion originated, the government, or another source, categorised here as "opposition". The Government in most cases was responsible for tabling amendments that were aimed at a compromise.

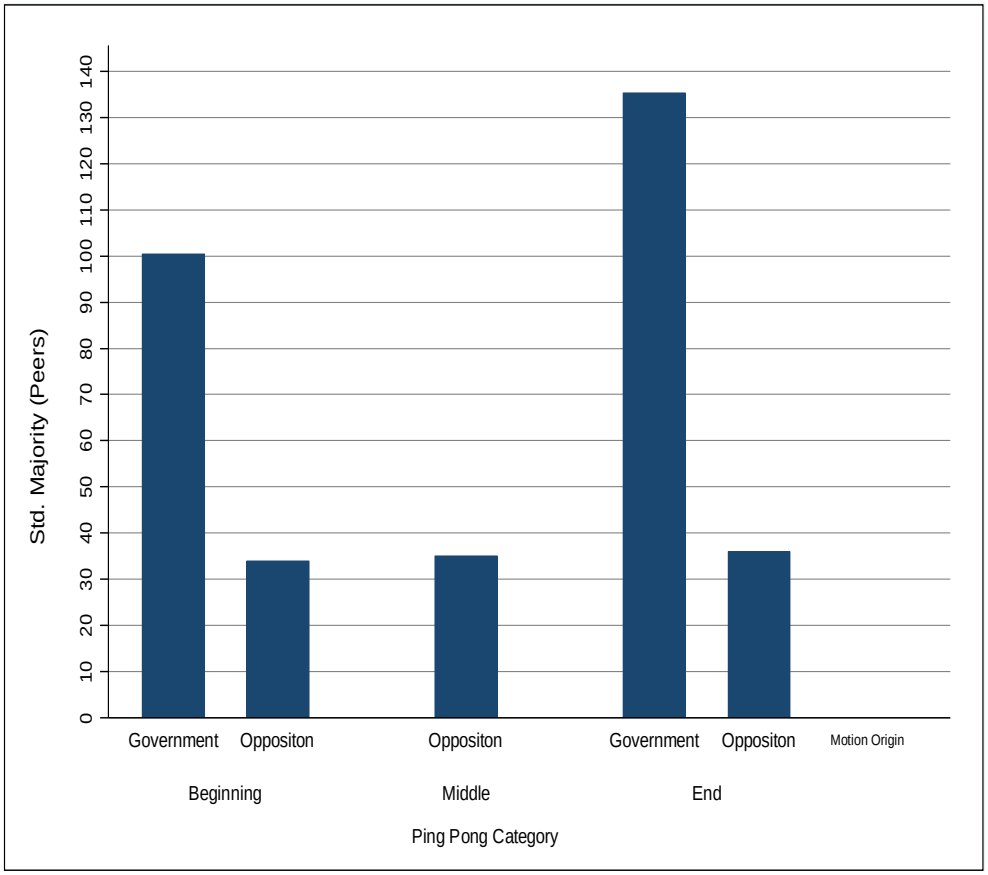


Figure 6-5: Average House of Lords' Standardised Majority against the Ping-pong Category and Motion Origin

This shows that the majority on the opposition motions was stable, but that government motions had a higher majority, and that the average majority at the end was higher than it was at the beginning. The high majorities displayed on government motions increased the average across all motions. In post-reform, government motions were generally those for which the opposition had not moved an amending motion. In pre-reform, particularly in 1976, the opposition did not move amending motions, but voted against the government's ones instead.

When direction is added back in, with contents being positive and not contents being negative, again separated by motion origin side, this view is further strengthened, as shown in Figure 6-6 below.

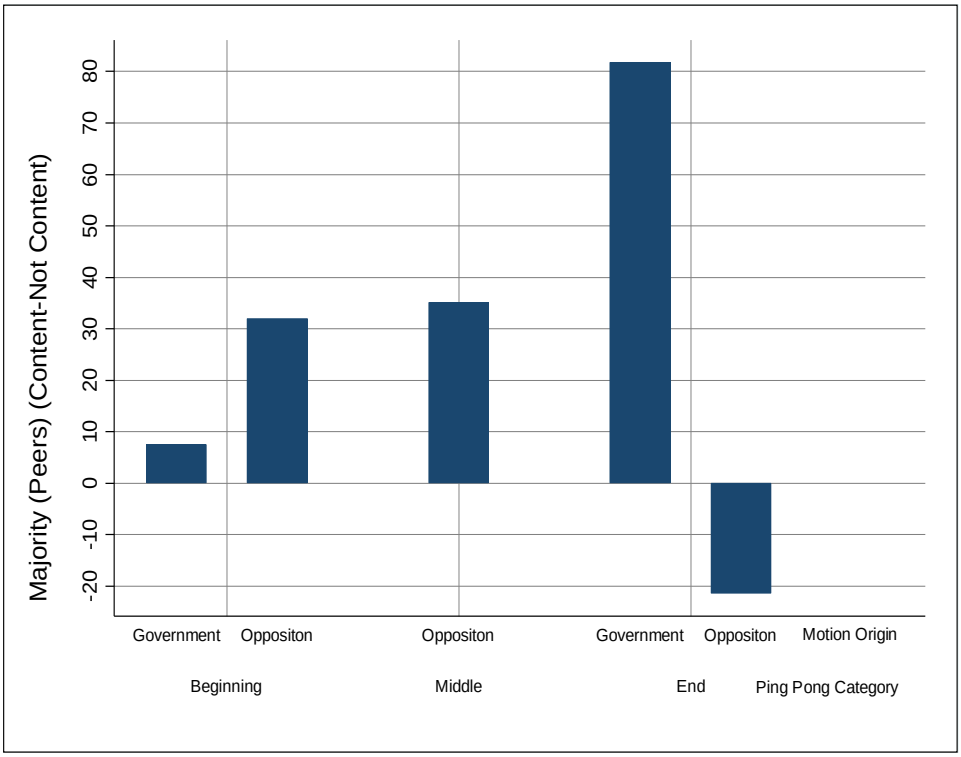


Figure 6-6: Average House of Lords' Majority against the Ping-Pong Category and Motion Origin

This also demonstrates that the majority voting when the government has moved a motion at the end of ping-pong is significantly higher on average than it is at other points. Equally, the majority defeating an opposition motion (~ -20) is lower than are majorities achieved in support of such motions earlier in the process. This lends support to the idea that the composition of the turnout of peers changes as ping-pong progresses.

H_{1B}: Whilst there is a general increase in the level of cohesion- both in terms of majorities, and those measured across the House of Lords as a whole, there is also evidence that within the parities themselves there is not much change, and that when it comes to motions opposing conciliation there is less cohesion. As a result this hypothesis cannot be rejected.

6.1.3. **Conclusion**

There is evidence that overall interest increases as ping-pong continues, suggesting that, far from there being a decline in interest in voting, there is in fact an increased desire to vote. However, the cohesion breaks down further as ping pong progresses. While there is no definitive evidence that

there is no self-restraint, hypothesis $\mathbf{H_1}$ cannot be dismissed. Turnout was found to increase, as was cohesion, although this increase appeared to be more connected to agreements being achieved. A more detailed look at the different elements of the study is required to evaluate hypothesis H1. In general, as has been found in other studies, both significant opposition disagreement and some level of government rebellion are needed to inflict a defeat on the government, particularly in the pre-reform era when peers were less reliable about being present in the house during key divisions.

The rest of this chapter will investigate the existence of self-restraint and a conciliation effect, respectively. Whilst looking at self-restraint, evidence of differences in behaviour among the three major groups of interest will be examined. These are the government, the opposition and the crossbenchers. The effect of the reform, if any, will then be examined for each group in turn.

6.2. The Groups of Interest

One of the issues associated with comparisons of the Lords' behaviour over time is the changing nature of the composition and the government majority in the House of Lords. Under the Blair Government, the number of Labour peers in the House increased dramatically, and the Conservative Lib-Dem Coalition also increased its party's peers.[494] The Conservatives have traditionally had more difficulty getting members to be present, but so does Labour whilst in government. In order to manage a sustained defeat of the government, the opposition will require more peers to vote consistently.[495] Accordingly, this study divides the Lords into crossbenchers, government, and opposition peers, rather than as party groups, in the search for patterns of behaviour. I expect the rise in turn out

[494] In the first year of the Coalition, 117 peers were appointed to the House of Lords, 71 of whom were either Conservatives or Liberal Democrats. Under the Labour Party in the 10 years of Blair's premiership, 374 peers had been appointed, and 162 of them were Labour. Source: Meg Russell: UCL Paper, Russell, Meg and Maria Sciara. "The House of Lords in 2005: A More Representative and Assertive Chamber", 2006. Retrieved from http://www.ucl.ac.uk/spp/publications/unit-publications/132.pdf, p. 6

[495] Russell and the Constitution Unit used the distinction between a defeat and a sustained defeat, with the latter being defeats that were not later overturned by the government in either house. Studies on defeats and the causes of defeats focus on sustained defeats.

to be driven primarily by the government benches, whereas the opposition is likely to be steady, or decreasing, and the crossbenchers will show decreasing turnout. This will be similar for the cohesion, as the government's cohesion will increase, whereas the other groups will see a decline.

The first hypothesis in this chapter demonstrated that turnout increased over time and furthermore that that the change of cohesion on average across groups and across of ping pong remained steady even as the Lords cohesion as a whole increased. This causes questions about whether the Government and the opposition behave in different ways. It also leads to questions about whether the Crossbenchers are different.

6.2.1. **The Government and the Opposition**

H_2: Government peers will rally to encourage the cessation of ping-pong and will become more united. This will contrast with the opposition, in which elements will begin to be desirous of restraint. As a testable hypothesis: The relationship between the relative cohesion and turnout of the Government and Opposition will change in the Governments favour as ping pong progresses.

As was noted by Shell, Adonis, and Beamish in studies of the 1980s House of Lords, government whips may sometimes be caught unawares, and there are simply not enough peers.[496] As ping-pong progresses, the government and its members may be expected to become more concerned about delays, and seek to overturn any defeat. Equally, members who have rebelled in previous votes may realise that there will be no movement, and that the bill needs to pass. Both possibilities are studied here. The opposition will similarly suffer from some attrition, and from members seeing that the government is making concessions.

[496] Andrew Adonis, "The House of Lords in the 198s" in *Parliamentary Affairs.* 41 no.3 (1988). 384, Drewey and Brock, 72

Turnout

H_{2A}: The government turnout will increase as the government attempts to overturn defeats at the end of ping pong compared to the beginning.

H_{2B}: The opposition turnout will decrease as the ping-pong continues, due to attrition and abstentions.

An overview of all of the divisions in this study across all phases of the bills shows a wide spread, but also a slight trend towards increased turnout. Figure 3-3 in the appendix shows that both the government and the opposition demonstrate an increase, although the government started from a higher point. As this includes all divisions, and not just those within the ping-pong stages, this is not completely reliable. In addition, Figure 3-4 in the appendix, which shows the average turnout for the opposition and the government across the phases of ping-pong, also shows the opposition starting with a greater turnout than that of the government, and finishing with a lower turnout. However, the change was less marked for both categories.

Both show that the government's percentage of turnout grew to a higher percentage of their available peers than did that of the opposition, suggesting increasing interest and involvement, whilst that of the opposition decreased. This suggests support for both **H_{2A}** and **H_{2B}**.

Figure 6-7 below shows the turnouts of the government and the opposition peers as a percentage of the total number eligible in each group.[497] These are averaged for the three stages of ping-pong, with the main change in interest being between the beginning and the end categories.

[497] Therefore, it is possible for both groups to be 100%. Turnout is based on the number of eligible peers in each group at the start of the session.

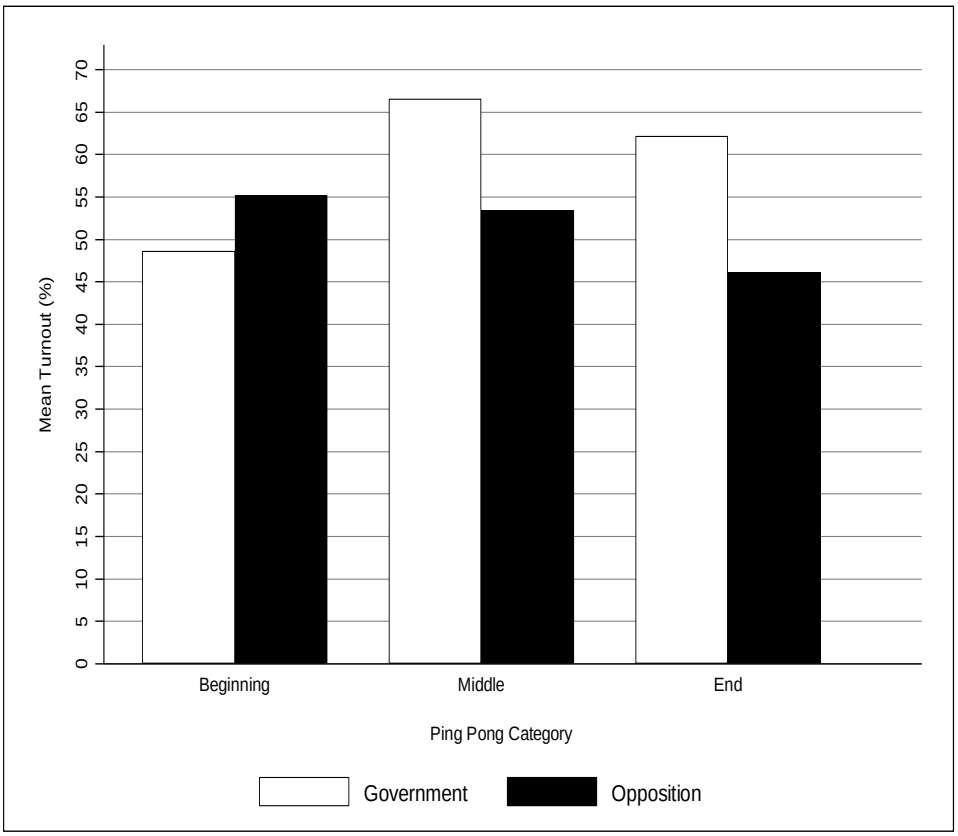


Figure 6-7: Turnout (Averaged) of the Government and Opposition against the Ping-pong Category

Figure 6-7 shows that the opposition had a higher initial percentage turnout than did the government, with an average difference of 8% of eligible members. By the end of ping-pong, the government had achieved a higher percentage turnout, with a difference between the two of 17%. This shows a clear growth in government turnout, whilst the opposition is tending towards a decline. The government's increase is also double the opposition's decrease as a percentage of its members. This would suggest that there is both a pulling together of the government and attrition in the opposition. Therefore, both $\mathbf{H_{2A}}$ and $\mathbf{H_{2B}}$ are shown to be correct.

Cohesion

H_{2C}: The government's cohesion will increase as ping pong progresses. This will be because more peers will turn out to support the government's position rather than rebel (supporting the theory that the government's aim, which is shared by peers, is to overturn defeats).

H_{2D}: The opposition's peer cohesion will decrease as ping pong progresses due to fewer members turning up, and more supporting non-insistence, thus supporting a restraint argument.

The cohesion for both the opposition and the government are shown in Figure 6-8 below, which also shows the average against the category of phase.

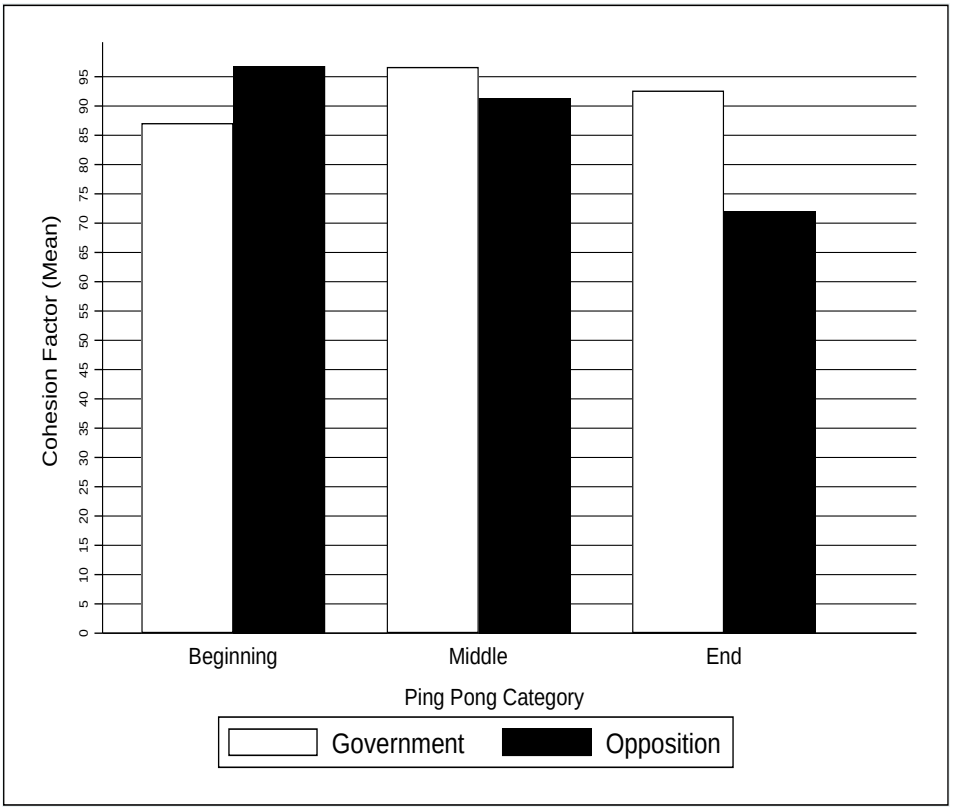


Figure 6-8: Mean Cohesion of Government and Opposition Groups

This shows that the groups were largely stable, with the opposition showing a decline in cohesion and the government showing a lower increase in comparison. These patterns are reflected in Figures 3-5, 3-6 which shows the difference between the two groups decreasing this is also the highest in the middle. This means that, whilst the opposition may have been having more issues in getting peers to vote, the government did not, and was more successful at pulling its members together in the House of Lords.

The opposition did show a decline in cohesion. This is also broadly similar to findings by average majority by ping-pong stage, which showed that the government's majority was relatively steady throughout, but that the opposition's was strongest in the middle of proceedings. This is also supported by Figure 3-7 in the appendix, which looked at the average number of rebels. Whilst the numbers were small, the government did, on average, see their numbers decrease, whereas, as might be expected, the opposition saw an increased number of rebels. Therefore, the theory that the government simply rallied as the opposition fell apart is not entirely without support. Figure 3-8 in the appendix shows the same information with direction, which shows that, on average, the government and the opposition are voting in opposite directions throughout the ping-pong procedure.

Figure 6-9 below controls for both the stage in ping-pong in which the motion was moved and the side of the house from which the motion came, with "opposition" covering anything that was not a government motion. This now allows for the examination of the effects of a motion to approve plans being moved, where no opposition was then moved; thus, the plan had broad approval, as opposed to insistence motions that then failed. The government motions shown at the beginning of ping-pong included those that were for amendments that then were approved. The final category, that of motions at the end of ping-pong, is the one that is of interest for this study.

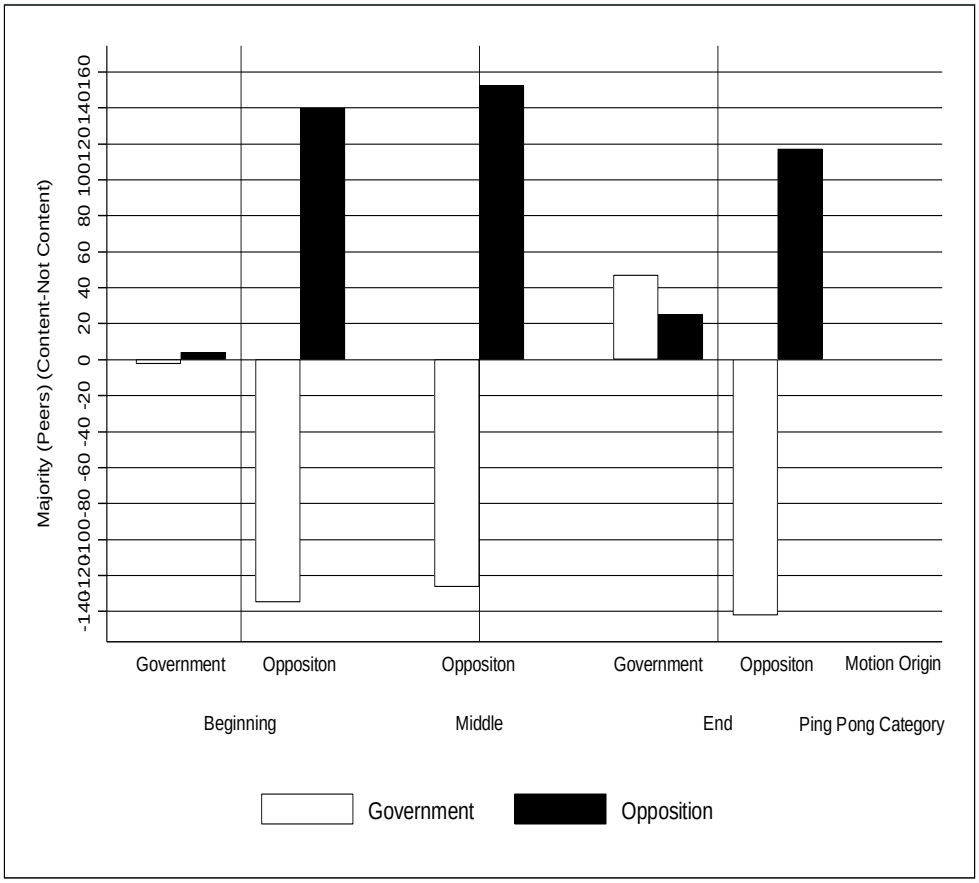


Figure 6-9: Mean Majority of Government and Opposition Groups

The other categories show that there was a general increase in government majorities and a general decrease, although both were minimal, in opposition majorities. However, at the end, the government's majority of its own peers is higher than is that of the opposition in both those motions moved by the government (approving an agreement) and those when the opposition moved, hence allowing for the end of ping-pong. This is part of a greater pattern. There is also evidence that the government majority, when attempting to defeat opposition motions, also declines prior to the last vote. This is supportive of a decline in interest. As a result of this, $\mathbf{H_{2C}}$ is cannot be wholly rejected, as whilst the Government cohesion and majority do increase, it is very slight. However, the opposition shows a more marked decline, and thus $\mathbf{H_{2D}}$ is found to be correct.

Conclusion

Only $\mathbf{H_{2C}}$ did not have strong supporting evidence; thus, $\mathbf{H_2}$ cannot be dismissed as yet, and appears to have some support. It appears that the

opposition experiences some attrition, whilst government interest increases; however, the opposition appears to experience more of a decline in interest blocking legislation actively. Therefore, the decline is more from the opposition's side. When turnout and cohesion are put together, the Government shows increased turnout with similar levels of cohesion, which suggests that there is a rallying from more peers turning out, rather than peers changing their minds. With the opposition this decline in turnout and decline in cohesion suggests there was a shift in the balance of support.

6.2.2. **The Crossbenchers**

The case studies showed that the crossbenchers do not involve themselves equally in all bills, and once involve it tends to be due to both expertise and a desire to ensure both good legislation and a constitutional balance (although the latter is sometimes forgotten). Therefore, in instances of long extended ping-pong, the Crossbenchers will show signs of increased self-restraint. This is further informed by Russell and Crewe's research that Crossbenchers will take a more back seat approach to influencing, but remain important to testing the temperature of the House of Lords.[498]

H_3: The crossbenchers will become more restrained over time, but less interested. They will remain equally divided.

Crossbencher Turnout

The crossbenchers with less of a political role, and more concern for the constitutional set up, will be driven by self-restraint arguments, and will fear the consequences of drawn-out debates over single bills.

H_{3A}: Turnout will decrease as ping-pong progresses.

This was initially tested across all divisions, and then across phases of ping-pong, where phase 1 indicated the first House of Lords division in ping-pong, but did not control for when the procedure ended. The turnout

[498] Russell and Sciara "Independent Parliamentarians".

for crossbenchers in all divisions, which is displayed in Figure 3-9 in the appendix, shows an increase from division 15, the same point at which the House of Lords began to show an increased turnout overall. However, Figure 3-10 in the appendix shows the percentage turnout as only fluctuating between 17% and 21%, which is stable.

Figure 6-10 below shows the percentage of crossbencher turnout for the beginning, end, and any middle stages of ping-pong, averaged.

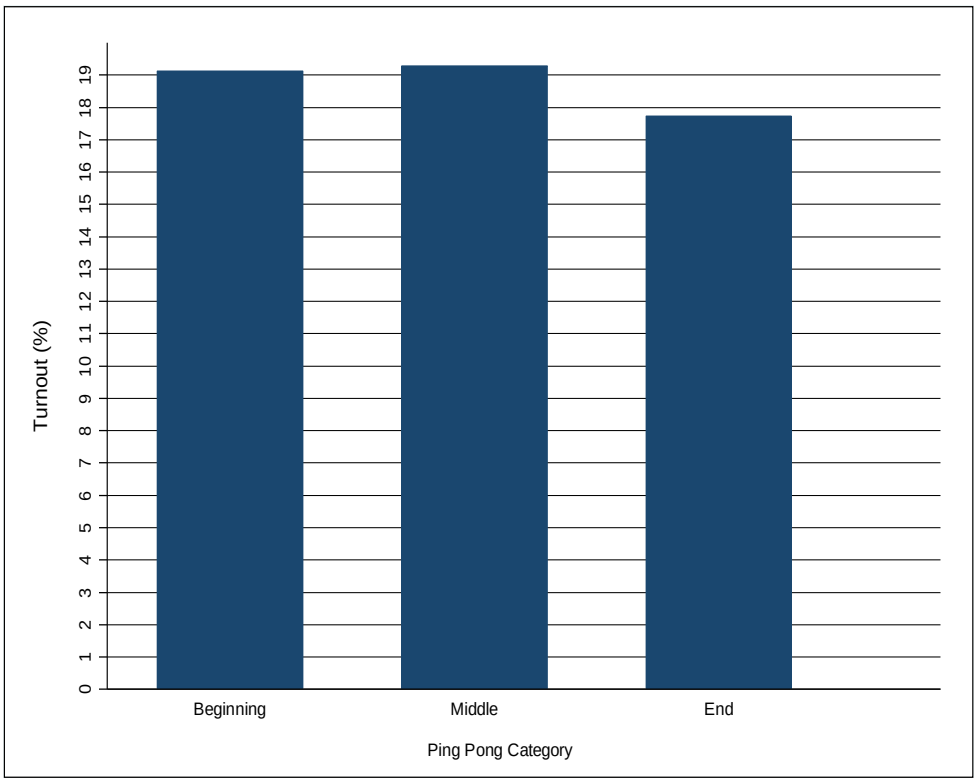


Figure 6-10: Crossbencher Turnout against Standardised Ping-pong Stages

The turnout of crossbenchers was extremely stable as there is little change shown here that is significant enough to outweigh any margin of error. It is therefore a stable level of turnout. As turnout is stable, $\mathbf{H_{3A}}$ may not be accepted. That Crossbencher turnout remains steady rules out any major pattern of attrition for this group.

$\mathbf{H_{3B}}$: The crossbenchers' cohesion will remain steady throughout ping-pong.

For the majorities, this is shown in Figure 6-11 below, across the beginning, middle and end stages of ping-pong.

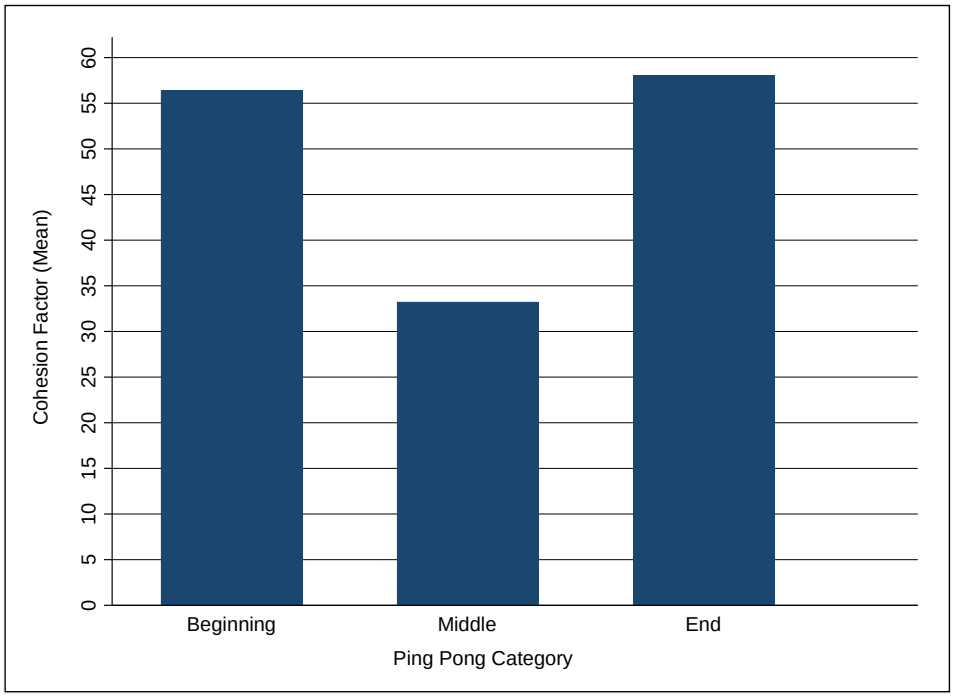


Figure 6-11: Crossbenchers' Cohesion against Standardised Ping-Pong Stages.

The cohesion of the crossbench group remained steady between the beginning and the end of ping pong. This suggests that $\mathbf{H_{3B}}$ is correct. However, there is a large dip in cohesion in the middle before rising again at the end, which does not exclude the possibility that some crossbenchers may become concerned about drawn-out confrontations with the government, and vote again for a compromise. This possibility was tested, with the cohesion being controlled for the government or opposition bench (where opposition refers to 'not government') from which the motion originated. This is shown in Figure 6-12 below.

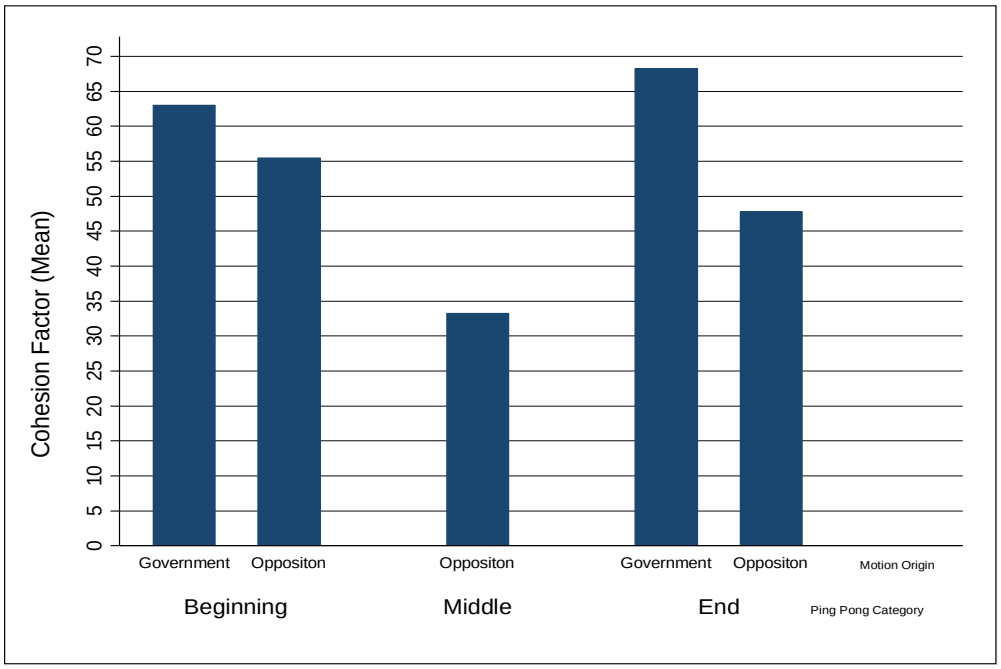


Figure 6-12: Crossbenchers' Cohesion against Standardised Ping-pong Stages.

This shows that there is generally a less cohesion for the opposition motions, regardless of whether they are at the beginning of ping-pong, and furthermore, that the degree of cohesion for both government and opposition motions decrease as ping-pong progresses, suggesting that crossbenchers become more divided.

Conclusion

The evidence from the nine bills included in the study is that the crossbenchers in the House of Lords show a generally steady turnout throughout ping-pong, suggesting that those who are interested remain interested, and those who are not also remain so. There is also a steady level of cohesion across the group, although it is noticeably lower on opposition motions than on Government ones, suggesting that they are in general more willing to accept compromises. This is appropriate for the role other authors have given them, that of constitutional protectors, and also pragmatists.

6.2.3. **Conclusion for Groups**

The Government turnout increased, whilst average cohesion remained the same which suggestions that there was a rallying of peers to the division lobby for the Government. The Crossbenchers also showed a steady degree of cohesion, although their turnout was also steady on average. In comparison the opposition recorded both reduced turnout and reduced cohesion. This is in line with expectations, and suggests that the Government growth was relatively stronger than that of the opposition decline in order to maintain the overall increase in House of Lords turnout. Therefore the opposition is showing restraint, although this may be driven by those in favour of insistence simply not voting, whereas the Government are showing a rallying focus. The crossbenchers are notably unchanged throughout ping pong.

6.3. Reform

The initial results showed that turnout increased, although the cohesion declined across the entire House. From the effect of reform, as it brings about a more politically aware house, and from the bills that are included in this thesis, it is expected that self-restraint would be more present in the post-reform period. Given the outcome of the $\mathbf{H_1}$, the hypothesis for the reform effect is shown as hypothesis $\mathbf{H_4}$ below.

$\mathbf{H_4}$: Self restraint through cohesion and turnout will increase in the period following House of Lords reform.

This hypotheses is built on the foundation that although Meg Russell's work into legitimacy, and defeats, showed that the Lords was more willing and able to bring such defeats about, there is an underlying thread, shown in the 1980s, 1990s, and 2000s, that the House of Lords is pragmatic, and unwilling to provoke the House of Commons and the Government.[499]

[499] Russell, Meg and Maria Sciara. "The House of Lords in 2005: A More Representative and Assertive Chamber", 2006. Retrieved from http://www.ucl.ac.uk/spp/publications/unit-publications/132.pdf on 15/12/2015. p5

The overall growth in the turnout of peers throughout ping-pong has been demonstrated. This section seeks to split the divisions according to the 1999 reforms, looking first at the percentage turnout of eligible Lords in Figure 6-13 below. This is split across categories.



Figure 6-13: House of Lords' Turnout

What is noticeable here is the strong difference in the pattern of change between the pre- and post-reform categories. Figure 3-11 in the appendix shows a similar pattern, although the decrease seen in the post-reform is not as marked. Although the overall change is by the same percentage, the middle three phases display a slight rise, which goes against the overall pattern of decrease.

Cohesion for the complete house are also shown in Figure 6-14, below, with information for the majorities achieved, and a more detailed view by phase shown in the appendix as Figure 3-12. This analysis shows that both pre- and post-reform majorities decrease across ping-pong.

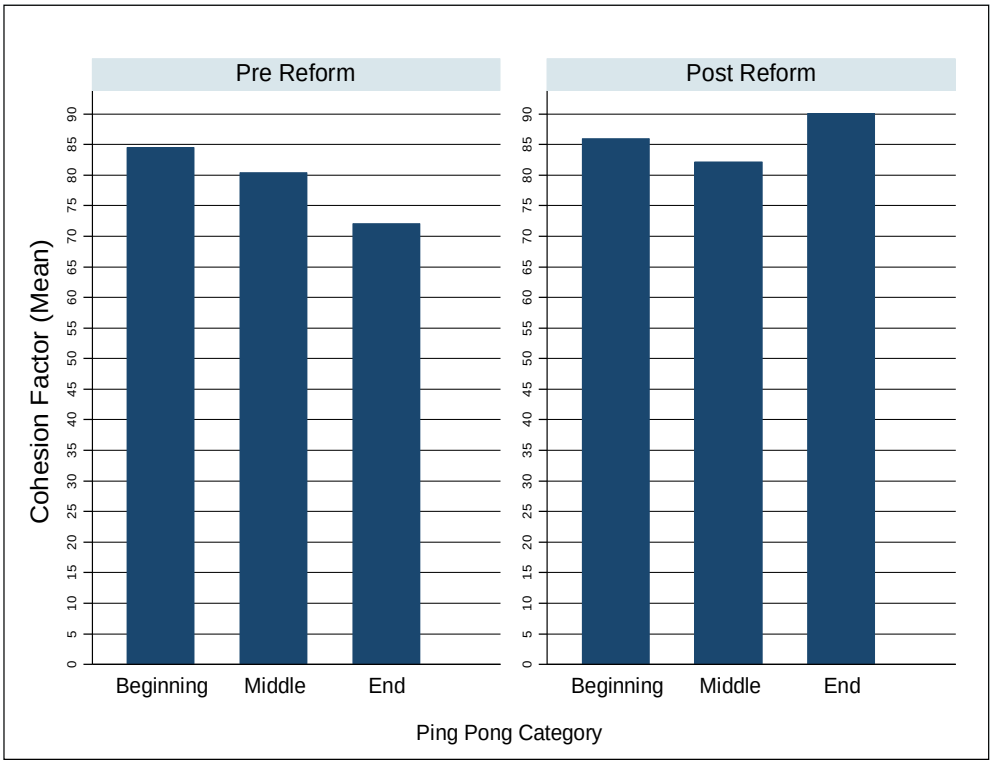


Figure 6-14: Cohesion of the House of Lords Against Ping-pong

This analysis shows that there was a decline in pre reform cohesion as progressed, by over 12 points on the rice index. In comparison the post reform increase was less than 5 points increase. Therefore whilst there was a decline in Cohesion in the House of Lords (based on the party groups), it was steady with a slight increase in the post reform period. This therefore depicts an image of change versus stability.

There is thus a clear difference in the behaviour between the pre-reform and post-reform cases. This will be discussed in more depth, but for now, hypothesis $\mathbf{H_4}$ may not be dismissed.

6.4. Effect of Reform on the Groups

Given the finding that the House of Lords increased in both turnout and majority in pre-reform, as opposed to in post-reform that showed a decline in both indicators, the bills in the post-reform period clearly had a different pattern of behaviour.

Across all nine bills, the government's peers had shown increasing turnout, although the cohesion remained steady. The opposition showed a decline in turnout, and cohesion. The crossbenchers showed a decline in turnout.

The government may be expected to behave in a similar manner in both periods, and may be seeking to overturn defeats, but it is also expected to have more of a need to do this in the post-reform period. Therefore:

H_5 The government's interest will increase as ping-pong progresses, and this will be more marked in the post-reform bills.

This is linked to the phenomenon in the 1980s that Governments may be caught unawares, but also that they will want to reverse a defeat where possible. This will be measured by the following indicators:

H_{5A}: Turnout will increase as ping pong progresses in both pre- and post-reform, with the post-reform increase being more marked.

H_{5B}: The government's cohesion will remain steady as ping pong progresses in both pre and post reform, although there will be a slight increase in pre-reform.

The opposition, like the government may be expected to behave in a similar manner in both periods

H_6: The opposition's interest will be declining as ping-pong progresses, with the post-reform decline being more marked.

This will be as the value to be gained by insisting decreases relative to the potential costs. This will be measured using the following sub-hypotheses:

H_{6A}: The opposition's turnout will show a decline in turnout as ping pong progresses in both pre- and post-reform, with a more marked change in the post-reform period.

H_{6B}: The opposition's cohesion will show a decline as ping pong progresses in pre-reform , but a more significant decline in post-reform.

The Crossbenchers' change in behaviour is shown in hypothesis H7:

H_7: The crossbenchers' turnout will show more of a decrease as ping pong progresses whilst cohesion will increase as crossbenchers form a single viewpoint in the post-reform period.

This is subdivided according to the indicators as followers:

H_{7A}: The crossbenchers' turnout will be steady as ping pong progresses, in pre-reform and will decline in post-reform, but starting from a higher level.

H_{7B}: The crossbenchers' cohesion will remain steady as ping pong progresses, in pre-reform and will increase in post-reform.

This section will examine the turnout and then cohesion, discussing each group in turn. This is generally related to the greater presence of a professional and politically aware chamber that whilst it is prepare to challenge the House of Commons also does not wish to jeopardise its future influence.

6.4.1. **Turnout**

The government and the opposition will be examined first. The two hypotheses, **H_{5A}** and **H_{6A}**, suggest that, in the pre-reform instance, the government's turnout will increase, whilst the opposition's turnout will remain steady. In the post-reform era, the two will diverge more widely, with the government increasing more than it did in pre-reform, and the opposition decreasing. There are therefore multiple elements to identify. Figure 6-15 below shows the opposition and the government compared across the three categories of ping-pong stages, and controlled for reform status.

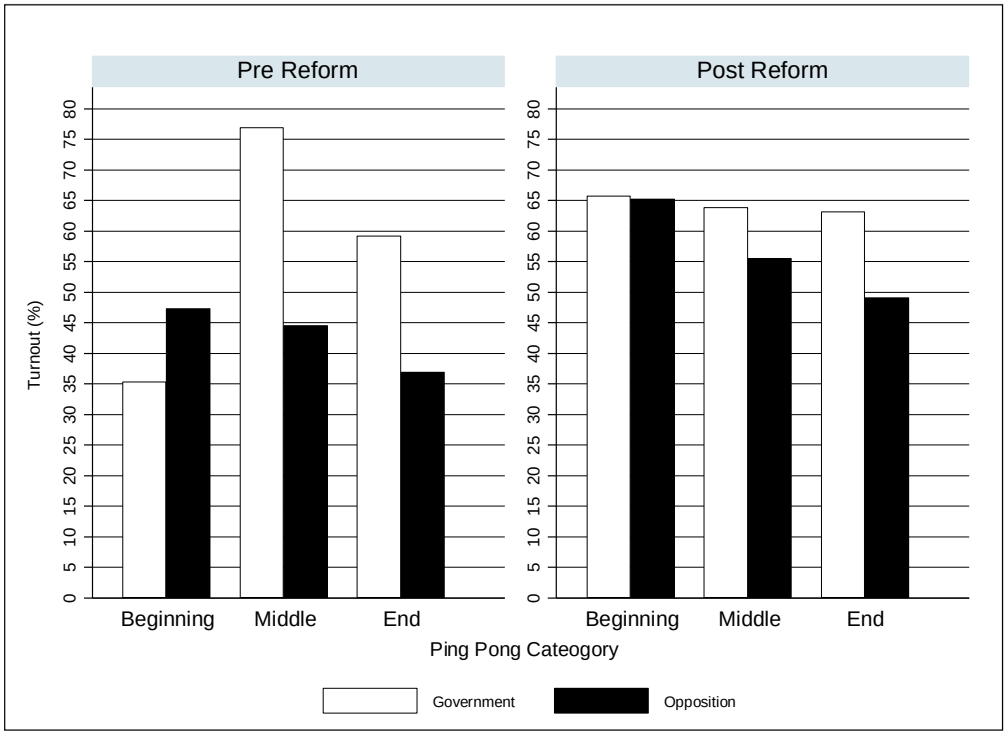


Figure 6-15: Average percentage Turnout against Ping-pong Division Phase for the Government and the Opposition Split by Reform

The government's turnout in pre-reform goes up, and is steady but decreases slightly in the post-reform category. The opposition decreases in both categories. What all graphs show is that the gap between the government and the opposition increases as ping-pong progresses. In the pre-reform period, this is driven by government increases, and in the post-reform period, it is mainly driven by opposition decreases.

Therefore, whilst the opposition's turnout does decline in post-reform, it also declines in the pre-reform period, although not by as much. The government, meanwhile, increases in pre-reform, and is steady in post-reform. Therefore, whilst $\mathbf{H_{5A}}$ can only be partially accepted, as the pre-reform does increase but the post-reform turnout is steady, $\mathbf{H_{6A}}$ is found to be correct. In both cases, the opposition goes from having a higher percentage turnout (within its own members) to a lower one, and thus the government retains its turnout more effectively than does the opposition.

The means of turnout of crossbenchers for the ping-pong division phases only, divided into the pre- and post-reform eras are shown in Figure 6-16 below.

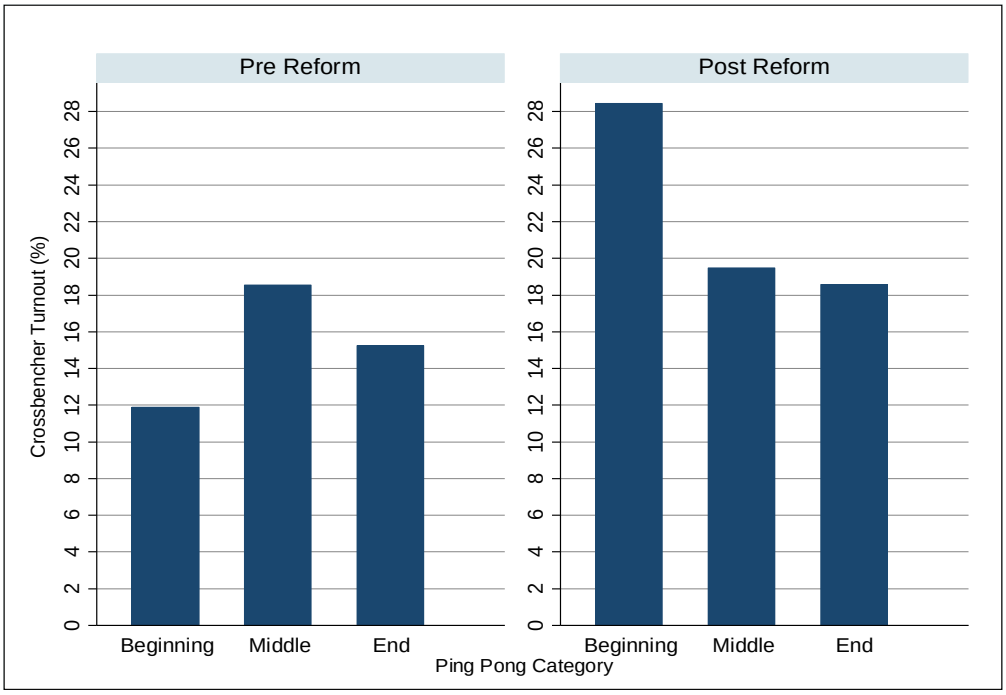


Figure 6-16**:** Crossbenchers' Bar Mean Turnout

Figure 6-16 shows that there is a gradual change in turnout for the pre-reform ping-pong phases, with turnout increasing from the beginning of Ping Pong to the end of it, whilst the post reform turnout shows a decline. This is reflected in Figure 3-13 in the appendix where the Crossbenchers showed the post reform period turnout also increasing, but this is only after the large decline after the initial phase.

Therefore, turnout increased slightly in pre-reform, but in reality was probably steady, whereas in post-reform it showed a clear decrease. As a result, hypothesis $\mathbf{H_{7A}}$ is shown to be correct.

6.4.2. **Cohesion**

Looking at the majorities, Figure 6-17 below shows the government and opposition cohesion for phases of ping-pong, controlling for reform status. Figure 3-14 in the appendix shows that the opposition increased in pre-

reform compared to a steady government turnout, whilst both decreased in post-reform. This is testing $\mathbf{H_{5B}}$ and $\mathbf{H_{6B}}$.

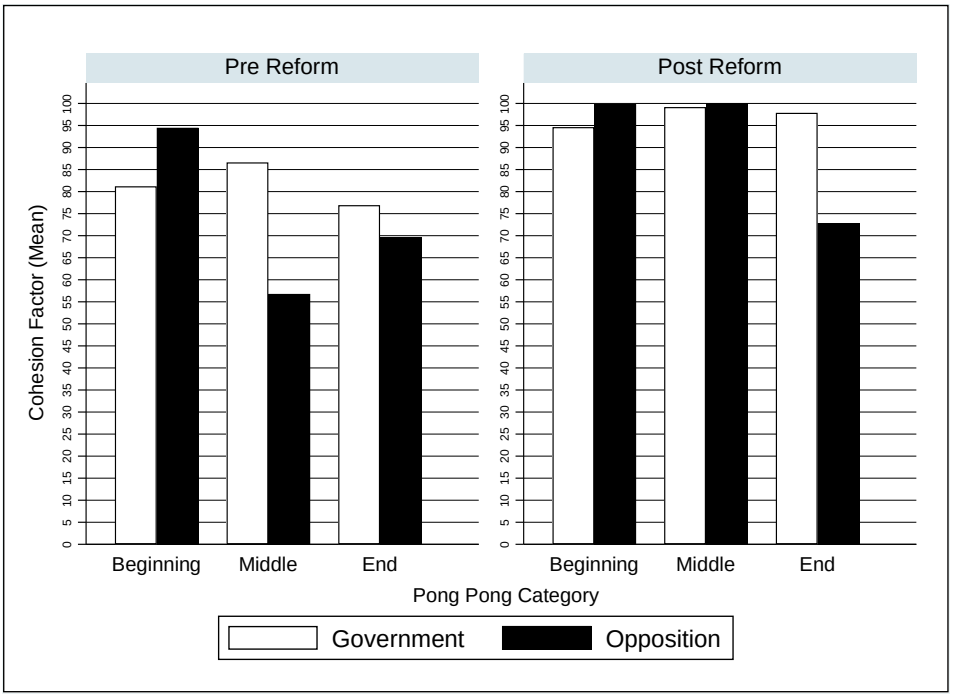


Figure 6-17: Average Standardised Cohesion against Ping-pong Division Phase for the Government and the Opposition Split by Reform.

In both the pre reform and the post reform, the opposition show a marked decline in cohesion from the beginning to the end of ping pong. In the pre reform instance this was a decline from 95 to 70, and in the post reform instance from ~100 to ~72. The decline was therefore similar in size in both cases. The Government in pre reform showed a slight decline from ~80 to ~75, and in post reform was steady. This suggests that both bodies remained equally cohesive.

The opposition's majority is on average always higher in the pre-reform era than is the corresponding government's majority. The difference is reduced in the post-reform era. This shows a strong opposition majority increase in pre-reform with a post-reform decrease. The government's majorities were steady, if decreasing in the pre-reform era, and they decreased post-reform at a lower rate than did those of the opposition. Both $\mathbf{H_{5B}}$ and $\mathbf{H_{6B}}$ are partially accepted, as although post-reform behaved in the way expected, in the pre-reform era, the government's majority

showed a slight decrease, and the opposition in pre-reform showed an increase in majorities.

Phases of ping-pong with averaged majorities of the crossbenchers, as a standardised figure, are shown in Figure 6-18 below.

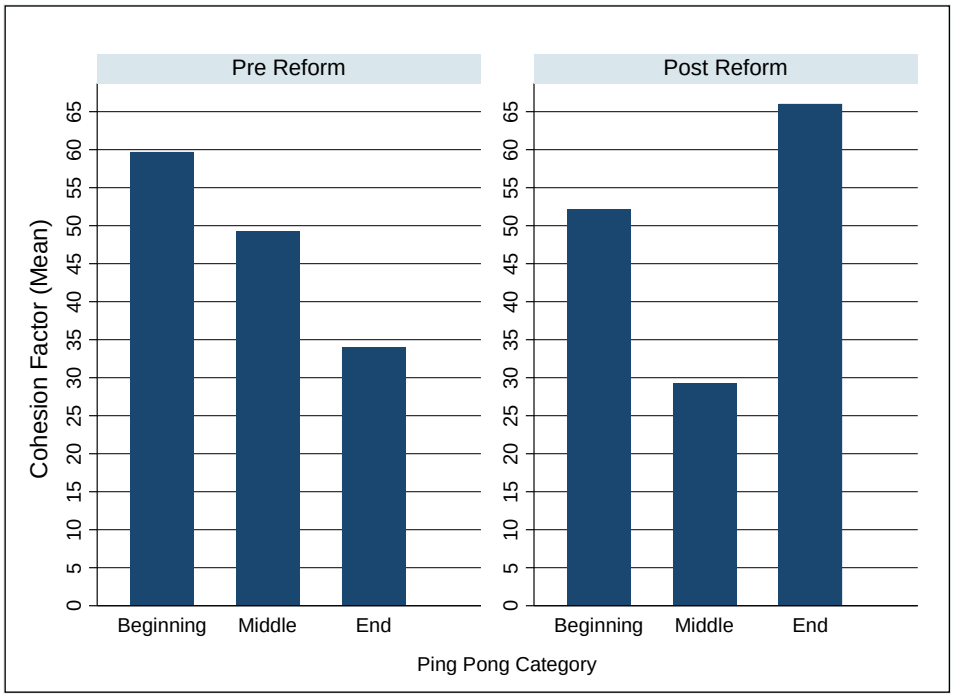


Figure 6-18: Mean Standardised Crossbencher Cohesion against Ping-pong Category Split by Reform Status.

This shows that the crossbencher cohesion showed a strong decline in pre reform with the rice index dropping from nearly 60 to 35 in the pre reform period on average, suggesting less cohesion within the group. In the post reform period, there was an increase, although the difference between the beginning and end was smaller. This therefore suggests that the crossbenchers became more cohesive as ping pong progressed in post reform, suggesting they had greater agreement on the desirable outcome.

This shows that, whilst there was a slight average increase of one or two peers over the entire period, in pre-reform, the crossbenchers' majorities remained steady. This is also reflected in Figure 3-15 in the appendix. In post-reform, however, there was a marked decrease, with the middle stages seeing a very low majority. Therefore, $\mathbf{H_{7B}}$ can be accepted.

This therefore suggests that, whilst there was an increase in turnout in pre-reform, the level of division within the crossbencher group remained the same across ping-pong. In the post-reform, turnout decreased, but cohesion increased.

6.5. Does Reform make a Difference?

This section directly tested the effect of reform on the House of Lords performance of self-restraint. It tested hypothesis **H_4**, which was that the effect of reform would be increased self-restraint. This was assisted by further hypotheses (which in themselves had sub-hypotheses), which were tested individually above.

H_5: The government's interest will increase as ping-pong progresses, and this will be more marked in the post-reform bills.

In the nine cases studied, the behaviour in divisions was steady, with neither turnout nor majorities showing a significant change in the post-reform examples. In pre-reform, however, the turnout increased and the majorities declined. This would suggest that, in pre-reform, there was more of a need for more government peers to turn out later. There is therefore evidence that the increase is greater in pre-reform, but that interest held steady for government peers in the post-reform period. **H_5** is ambiguous.

H_6: The opposition's interest will be declining as ping-pong progresses, with the post-reform decline being more marked.

In the nine cases studied, the opposition's turnout declined in both pre- and post-reform, with a more marked decline in the post-reform examples. In the case of majorities, whilst the post-reform majorities appeared to decline, in pre-reform, they increased at the end of ping-pong when compared to the beginning. **H_6** is therefore correct.

The crossbenchers' change in behaviour is shown in hypothesis H7:

H_7: The crossbenchers' turnout will show more of a decrease as ping pong progresses whilst cohesion will increase as crossbenchers form a single viewpoint in the post-reform period.

Whilst turnout behaved as expected as did cohesion. This suggested that in pre reform the group thinks more independently, and is more willing to do so as time progresses. This is reversed in the post reform period.

As a result, **H_7** is found to be correct. On balance, therefore, there is evidence for self-restraint; however, further evidence will be presented in the next chapter.

6.6. Conciliation

The second part of this chapter will answer the question, is conciliation successful?

Conciliation requires that a disagreement occurs and that efforts are made to resolve it. For conciliation to be successful from the point of view of the House of Lords requires some movement from the House of Commons. It also requires that the party or parties that supported the original amendment in the House of Lords accepted the offer made by the House of Commons. The length of the procedure, and the number of offers made and rejected is also relevant, and will be discussed in more detail in the next chapter.

6.6.1. **How to Test For Conciliation**

The nine bills in the study fell into four categories according to how ping-pong ended, namely failure, insistence overturned, agreement on division and agreement without division. Table 6-1 below shows the nine bills in their groups, together with the number of phases they required to pass.

Group	Bill	Phases
1	Aircraft and Shipbuilding Industry Bill	5
	European Parliament Elections Bill	8
2	European Parliamentary and Local Elections Bill	10
	Fixed-term Parliament Bill	4
	Parliamentary Voting Systems and Constituencies Bill	4
3	Identity Card Bill	11
4	Housing and Building Control Bill	4
	Railways Bill	4
	Corporate Manslaughter and Corporate Homicide Bill	10

Table 6-1: Bill, Group and Phases

6.6.2. **Group 1**

In the first group of bills, the Aircraft and Shipbuilding Industry Bill saw two ping-pong division votes reverse completely, simply due to the party that moved the motion being divided on them. The second motion during the first round of ping-pong was reversed, which is the only time that positions changed. The European Elections Bill saw no change.

6.6.3. **Group 2**

The European Parliamentary and Local Elections (Pilot) Bill saw the first two ping-pong divisions (both in the first stage of ping-pong) reflect the divisions that had resulted in the amendment. The following three divisions saw the crossbenchers change majority direction to the negative; however, the rest of the chamber, and the overall vote, remained the same. The final division, although the house voted against the motion to continue insisting, the relevant party groups voted the same as they had in the previous round.

Concerning the Fixed-term Parliament Bill, where the house as a whole choose to negate a second motion to insist, none of the parties changed positions in their individual viewpoints. For the same point, and in the same circumstances for the Parliamentary Voting Systems and Constituencies Bill, the crossbenchers alone changed their view.

6.6.4. **Group 3**

The Identity Card Bill is different, as the divisions in the last phase of ping-pong were moved as unopposed government motions; therefore, parties would have maintained their positions if their voting status had reversed for these two. However, the Conservative Party changed and voted in favour of the motion, accepting the conciliatory offer. The Liberal Democrats maintained their original position. The crossbenchers had changed from insistence to non-insistence in the previous round, and maintained that stance into round five. This was expected due to Lord Armstrong's intervention. They had also briefly reversed position in Stage 2, but reverted to insistence in Stage 3.

6.6.5. **Group 4**

The fourth group of bills reached their conclusion without the need for a division, indicating that broad assent was given. These were the Housing and Building Control Bill, the Railways Bill and the Corporate Manslaughter and Corporate Homicide Bill. The latter bill required 10 phases compared to only four for each of the other bills.

In the first group, for those bills that did not require a division on the final motion, no majority direction change was present for any of the preceding divisions from the original motion, with only one exception - this was the crossbenchers on one division during the Housing and Building Control's first ping-pong division phase in the House of Lords.

If the parties as a whole did not change their stance, with the exception of the Identity Card Bill, this supports that there is a case of attrition over time in most cases.

6.6.6. **Testing Attrition**

Using group three as an example, if attrition were correct, then the number voting content would fall, compared to the number voting not content over time. Part 1 already showed that this was true, until the point at which a conciliatory motion was agreed. Figure 6-19 below shows the five post-

reform bills, as well as the European Parliamentary Elections Bill. For each bill, the number voting content at each stage is shown in blue next to the number voting not content in red.

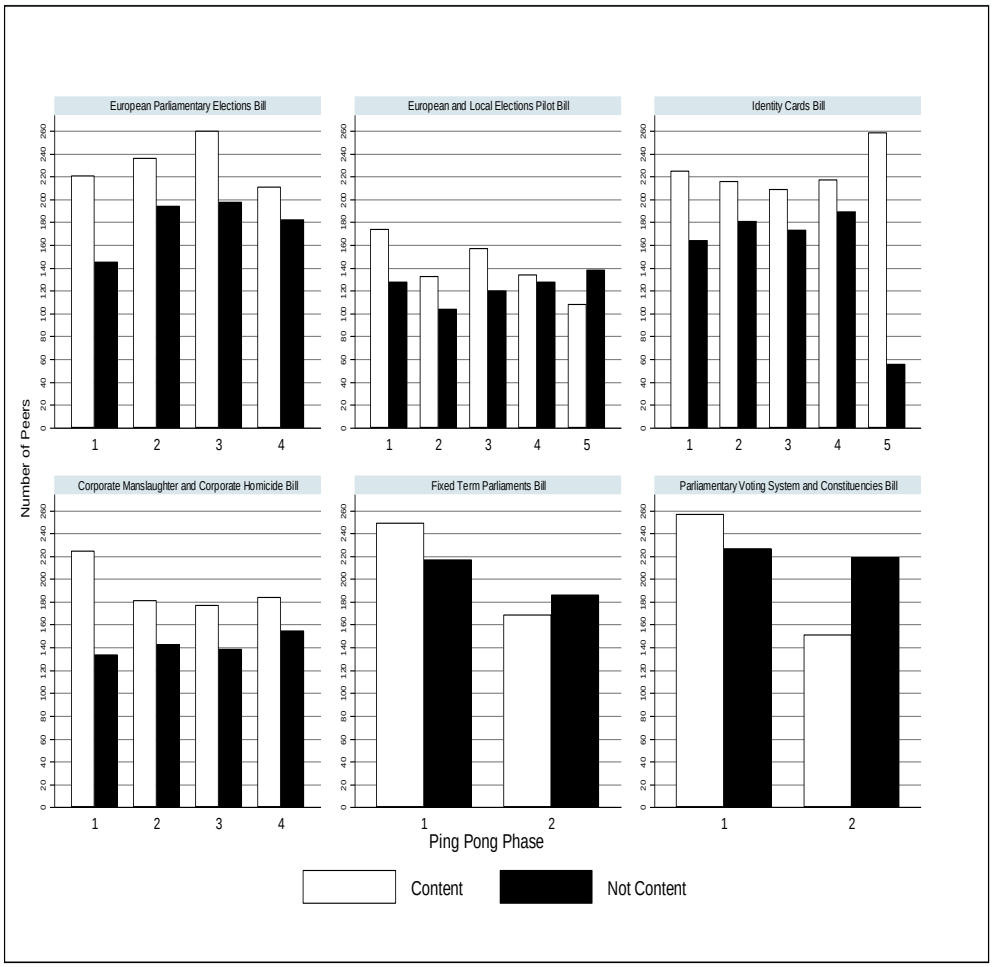


Figure 6-19: Bar Chart of Content and Not Content Numbers per ping-pong Stage, by Bill

The European Parliamentary and Local Elections Pilots Bill shows a falling trend in the number of peers voting content. This is coupled with a rising trend in the number of peers voting not content. In this case, those trends continued long enough that, on the last division, more peers voted not content than did content.

This trend is reflected across the five other bills. In the European Parliamentary Elections Bill, the bill ran out of time but, in this case, both not content and content votes were rising; however, the not content vote was rising faster. In the Identity Card Bill case, the content vote was

relatively steady, and the not content vote was rising across the phases; however, the trend ended with the final phase when the conciliatory measure was offered in the House of Lords by Lord Armstrong, with the government's backing.

Similarly, the Corporate Manslaughter and Corporate Homicide Bill saw a rising number of peers voting not content to motions, although the number voting content remained steady. In this instance, the final offer from the House of Commons was accepted, and did not require a division.

Attrition therefore appears to be present in some cases, but most also see the increase in peers voting against insistence. Therefore, in most cases, it is not so much that conciliation is achieved; it is simply that the government’s side continues to be present for the later votes.

6.7. The Crossbenchers and their Independence

The independence of the crossbenchers is one of the key features of the House of Lords as it is currently constituted. The independence of these peers has, as discussed in previous chapters, been called into question both prior to reform and since the reform, with the general view being that the Crossbencher peers are Conservatives in disguise. Particularly prior to the reforms, when the Crossbenchers tended to be hereditary peers, whose natural instincts may have been described as Conservative. However, this could also refer to the Crossbenchers innate self restraint.

The expectation is that the crossbenchers will have a greater degree of distinctiveness in the post-reform House of Lords, mainly due to the increased involvement in the passage of legislation across the board, and this is the basis of hypothesis **H_9**.

H_9: The independence, or distinctiveness, of the crossbenchers will be greater in the post-reform era than in the pre-reform era. This is driven by the increased use of expertise in that period.

Crewe and Russell argued that the Crossbenchers act as a sounding board for arguments, but also that they tend to involve themselves in pet polices.[500] This is reflected in the wider house, which appeared more likely to sustain defeats where there was existing expertise within the House.

6.7.1. **Comparison to the House of Lords**

As with the previous measures, this is investigated using turnout and cohesion. Figures 6-20 and 6-21 below compare crossbenchers' and House of Lords' turnout and cohesion respectively, averaged across all division in each ping-pong division phase. If $\mathbf{H_9}$ is correct, the pattern of change in pre-reform would be similar to that of the whole House, while in post-reform, the crossbenchers will be noticeably different, and will be more steady compared to the overall house.

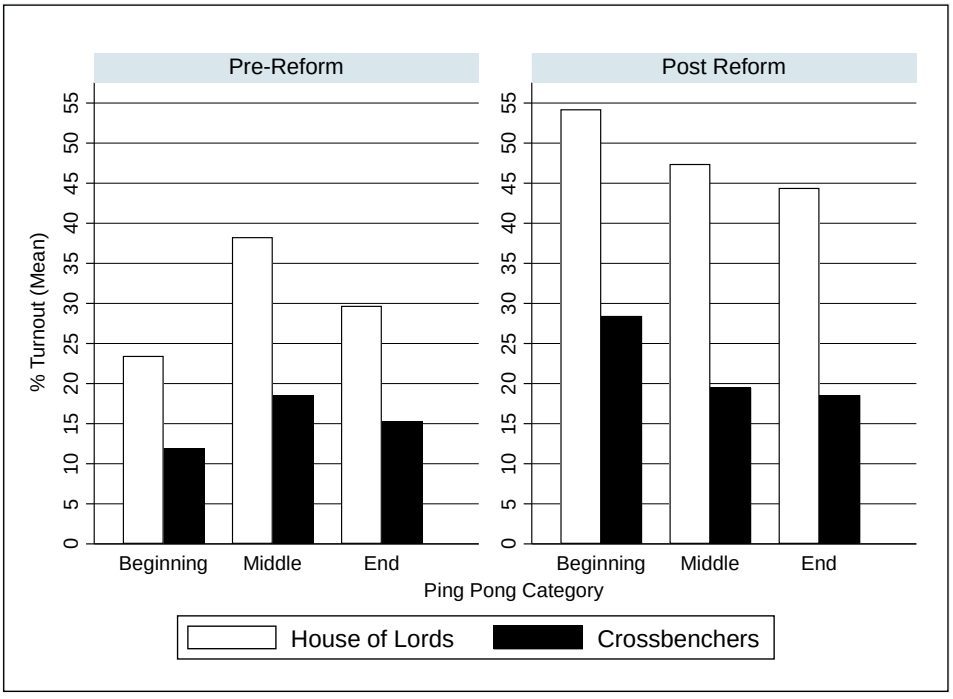


Figure 6-20: Mean Crossbenchers' and House of Lords' Turnout against Division Phase Split by Reform

The House of Lords in the pre reform era showed an increase in turnout of around 7% on average from the start to end of ping pong. The Crossbenchers by comparison., whilst also increasing showed an increase

[500] Russell and Sciara,"Independant"; Crewe, "Lords of Parliament".

of around 3% on average. Therefore the pattern was similar. In post reform the House of Lords showed a decrease in turnout of around 10% on average. The Crossbenchers also showed a decrease, also of around 10% on average. This therefore suggests that the reverse of H9 is true. In neither case do the Crossbenchers show a markedly different pattern of turnout from that of the House of Lords as a whole.

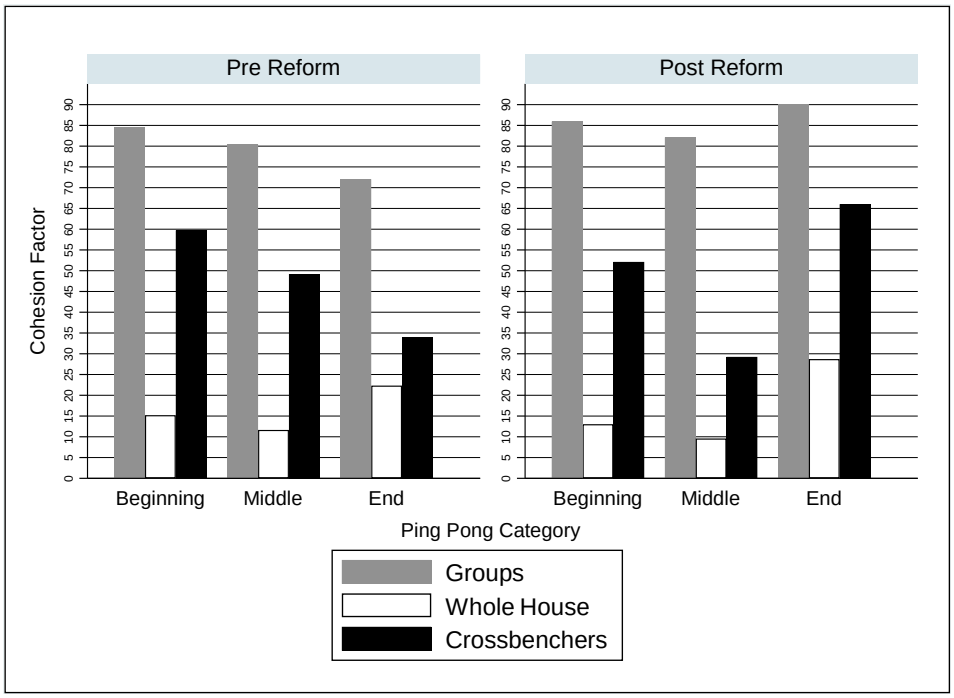


Figure 6-21: Mean Crossbenchers' and House of Lords' Cohesion against Division Phase Split by Reform

In the pre reform category the Crossbenchers show a decline in cohesion, dropped from 60 on average, to 35, a 25 point drop. The party groups (which includes the crossbenchers) also showed a drop in cohesion, falling from 85 to 72 on the rice index. However, the cohesion of the House of Lords showed a slight increase. In post reform, the Crossbenchers showed a more marked increase then the party groups on average, or House as a whole.

This means that in post reform, the groups becoming more cohesive reflects in a more cohesive position in the House of Lords in a whole, and the Crossbenchers mirror this change. There is therefore no evidence that, on average, the Crossbenchers are showing differing degrees of cohesion.

In Pre-reform, a breakdown in cohesion is seen across the groups, and this is reflected in the Crossbenchers, however it leads to the position of the House as a whole becoming more cohesive. In this respect therefore the Crossbenchers are behaving differently to the House, but the same as other parties. It may therefore be fair to say that whilst in neither case the Crossbenchers are particularly distinctive, they are reflecting the trends best in the post reform period better.

Evidentially, one of the issues with the method of analysis for majorities is that it does not reveal direction. The tables below show where the majorities were different. Although the crossbenchers did not influence the position taken by the house in these instances, the divisions on which they did so are still useful. Therefore, **H_9** has little supporting evidence.

6.7.2. **Examples of Deviation**

Although the crossbenchers appear to follow a similar pattern to the house as a whole, there were occasions when the crossbenchers voted differently from the outcome of the House of Lords as whole. Tables 1 and 2 below show the divisions split by those instances in which the crossbenchers voted in a different direction from the House of Lords as a whole in rows, and whether the crossbenchers voted with or against the majority of the house; yes indicates the crossbenchers voted against the house, and no indicates they voted with it.

		Crossbench Negative Vote?		
		No	**Yes**	**Total**
Different Direction?	**No**	38	17	55
	Yes	17	1	18
	Total	55	18	73

Table 6-2: Pre-reform Divisions Divided by Direction of Voting

In the pre-reform cases, shown in Table 6-2, there were 18 examples of the crossbenchers voting in a different direction from that of the House of Lords as a whole. However, in only one of these did the crossbenchers vote not content whilst the house as a whole voted content. This example was in the Housing and Building Control Bill, during ping-pong and the

final division on that Bill, and the crossbenchers voted in the negative, wishing to give way to the Commons rather than to continue ping-ponging.

Across the post-reform cases shown in Table 6-3, there were 27 instances in total where the crossbenchers voted in a different direction.

		Crossbench Negative Vote?		
		No	**Yes**	**Total**
Different Direction?	**No**	28	21	49
	Yes	18	9	27
	Total	46	30	76

Table 6-3: Tabulation of Different Direction Compared to the Direction of the Crossbench Group of Peers for Post-reform

In 18 of these, the crossbenchers voted content while the majority of the house voted not content, and nine when the crossbenchers voted not content but the house as a whole voted content. The information from Tables 6-2 and 6-3 was then split according to whether the divisions were in ping-pong stages or not. Table 6-4 shows the information for the pre-reform case studies, and Table 6-5 shows the information for the post-reform case studies.

Non-Ping-pong Stage					Ping-pong Stage				
		CB Negative Vote					CB Negative Vote		
		No	Yes	Total			No	Yes	Total
Different Direction?	No	29	15	44	Different Direction?	No	9	2	11
	Yes	16	0	16		Yes	1	1	2
	Total	45	15	60		Total	10	3	13

Table 6-4: Tabulation of Different Direction Compared to the Direction of the Crossbench Group of Peers, Split by Whether the Division was a Ping-pong Division or Not, for Pre-reform Cases

The crossbenchers voted differently from the direction taken by the House of Lords as a whole on 16 occasions of the 60 studied. On each occasion, the crossbenchers voted in favour of a position when the entire house had rejected it. During ping-pong, the crossbenchers voted differently on two occasions of the 13 divisions studied. These occasions occurred in the final divisions of the House and Building Control Bill, where the crossbenchers

voted positively, and in the Railways Bill, where the crossbenchers voted not content, whilst the Lords as a whole voted content.

Non-Ping-pong Stage					Ping-pong Stage				
		CB Negative Vote					CB Negative Vote		
		No	Yes	Total			No	Yes	Total
Different Direction?	No	16	19	35	Different Direction?	No	12	2	14
	Yes	16	4	20		Yes	2	5	7
	Total	32	23	55		Total	14	7	21

Table 6-5: Tabulation of Different Direction Compared to the Direction of the Crossbencher Group of Peers, Split by Whether the Division was a Ping-pong Division or Not, for Post-reform Cases

Of the seven votes in the ping-pong stages when the crossbenchers voted in different directions, three were from the European and Local Elections (Pilots) Bill, two were from the Identity Cards Bill, one was from the Fixed Term Parliaments Bill, and one was from the Parliamentary Voting System and Constituencies Bill.

With regard to the three from the Election Pilots Bill, the crossbenchers voted not content. These covered the last three votes during ping-pong, on the 18th, 25th and 30th of March 2004, in the second, third and fourth stages. On the 1st of April, the entire house joined the crossbenchers in voting not content.[501] For this bill, the ping-pong was characterised more broadly by exchanges of allegations of partisan game playing by both sides, and the crossbenchers' interest was already low, as shown by the lack of contributions from the crossbenchers, as discussed below. With regard to the Identity Card Bill, the crossbenchers voted not content whilst the entire house voted yes. This took place in the second and fourth stages of ping-pong.

The Fixed-term Parliament Bill had one such instance where, at the end of the ping-pong process, the crossbenchers still wanted to maintain insistence, but the house in general did not. This may, as in the case of the amendment of the Parliamentary Voting System and Constituencies Bill,

[501] Please see Chapters 5 and 6 for more information on these divisions, and the amendments to which they pertain.

have been partly related to the fact that it was moved by the crossbenchers.[502] The Voting System and Constituencies Bill also had one such instance, where the entire house narrowly accepted the position of the House of Commons on the leeway, but the crossbenchers did not accept. This amendment had originally been moved by the crossbenchers, and this may have accounted for their continued insistence.

6.8. Conclusion

Self-restraint is shown as becoming more noticeable as ping-pong progresses. Government peers generally rallied to encourage the cessation of ping-pong by becoming more united. By contrast, the opposition did not. The crossbenchers become more restrained over time, but less interested. They remained equally divided.

There is still evidence that self-restraint may be present in the actions of the House of Lords throughout the division process in ping-pong. The government's interest increased in pre-reform; however, post-reform interest from the government benches appeared to be steady. The opposition's interest declined as ping-pong progresses, with the post-reform decline being more marked. The crossbenchers' turnout and majority showed more of a decrease in both measures in the post-reform period. Attrition appears to be present in some cases, but most also see the increase in peers voting against insistence. As a result, in most cases it is not so much that conciliation is achieved as it is simply that the government's side continues to be present for the later votes.

The crossbenchers had greater distinctiveness from the main house in the pre-reform period, while it mirrored it a lot more post-reform. The degree of expertise that the crossbenchers have is found to have little effect on their voting behaviour, or on the degree of independence that they exhibit. This is broadly in-line with the expectations created by Russell and Sciaras

[502] Lord Pannick had argued that the constituency boundary redraw needed a larger variance to cover natural boundaries, and to give the Electoral Commission more leeway in making its decisions. He argued that the government had not made an adequate case for the smaller margin.

research into the voting and debating behaviour of Crossbench members in the House of Lords in the period after 1999.[503]

[503] Russell and Sciara, "Independent Parliamentarians"

7. The Process of Considering Amendments: How Ping-pong Works

7.1. Introduction

The previous chapter showed that, across ping-pong, the overall turnout of the peers increased by division, with the latter stages showing greater turnout. In the pre-reform period prior to 1999, the government benches increased their turnout, driving the overall trend of increased turnout, whilst opposition turnout declined. In the post-reform era, there was a slight decrease driven by the opposition. This change in characteristics is different from what was expected, given the nature of the consideration stages, and the way that the House of Lords has been perceived.

If the House of Lords is remaining engaged throughout the ping-pong process, the eventual outcomes seen in the case studies cannot be attributed to attrition over time, or to a loss in interest.[504] Ping-pong exists in the United Kingdom as the primary bicameral conflict resolution device, and this chapter aims to look at how the Lords performs in terms of the amendments it moves, and certain debating elements in its relationship with the lower chamber. For a second chamber that continues to have legitimacy and purview difficulties, these are key elements to understanding the process from the point of view of the House of Lords.

If bicameral parliaments are going to remain relevant, it is important to examine how the main interaction between the two chambers plays out when they disagree, and how the upper chamber in particular approaches such conflict. This is not to say that the lower chamber does not matter, but rather that the lower chamber is dominated by the government and its whips in the UK system; thus, if the government moves legislation, it wants to pass it, so this is the logical aim. Process tracing is employed here to examine the changing positions of the House of Lords in comparison across the nine case studies as described in Chapters 4, 5 and 6.

[504] In examples such as the Fixed-Term Parliament Act and the Parliamentary Voting System and Constituencies Bill, the result appeared somewhat at odds with the arguments and debating points put forward in the House of Lords.

This chapter will look at the House of Lords' behaviour throughout debates and engagement with amendments in three parts. The first part will examine the degree to which a major House of Lords amendment that triggers the procedure in the first place is finally accepted into the bill. It asks how successful the House of Lords can be in getting its concerns accepted into the bill. Bicameralism relies not only on legislation being passed, but also on the second chamber having a tangible role to play. Any chamber that is merely a proof reader, or a rubber stamp, begins to court questions about its continued existence. How well does the House of Lords currently manage to impact on legislation after initially defeating the government? This applies a qualitative processing tracing method to the more common amendment tracing methods used in other studies.

The second element examines the self-restraint arguments. This is done in two different ways. The first is by looking at the outcomes of amendments and how long they took to achieve, as well as using content analysis to examine the concerns the House of Lords had regarding its constitutional position, as this was relevant to the bill in question. In addition, this section also studies the role of the crossbenchers in perpetuating this concern about restraint.

The final element examines the role of more background elements that occur due to the timing of the bill, such as time constraints, and the threat of reform under which the House of Lords is operating. This could be referred to as environmental effects.

7.1.1. **Research Work**

The four arguments to be tested in this chapter are as follows.

H_1: When the impact of the House of Lords amendment is controlled for, it is expected that the success of the House of Lords in achieving some or all of their policy aims will be higher when the amendment in question is less impactful.

This is based on the Russell et Al findings that the House of Lords is generally involved in pre legislative procedures, and also that the House of Lords and the House of Commons share similar desires, and may both pressure, but is also influenced by the expected functioning of the reform effect.[505]

H_2: That the House of Lords will demonstrate an increase in the instances of self-restraint as the process of ping pong continues.

This is linked to impatience to reach a decision, part of Money and Tsebelis's theory that both chambers wish to end the shuttle process.[506] In the House of Lords, this would mean giving in to the House of Commons decision, as the House of Lords realised that the House of Commons would not wish to compromise on this issue.

H_3: When the nature of the first passage of messages is controlled for, the House of Lords is expected to show a more conciliatorily position at the end of the procedure when such conciliatory messages are present at the beginning..

Ping pong is not the first time that the House of Lords will have had the opportunity to express concerns with the policies that the Government are promoting with the bill in question through the pre legislative process. Authors including Adonis, Shell, Russell and Whittaker have discussed the process of legislative conciliation, and the power of pre emption in both Houses.[507]

H_4: That ping-pong is only effective on occasion.

This is in part common-sense, which is linked to the Parliament Act studies, and detailed case studies. The relatively few number of Parliament Act uses, and the comparisons between overturned, and sustained Lords defeats of the Government suggests that there is disparity between ping

[505] Russell and Sciara, "Policy Impact", 587
[506] Money and Tsebelis, "Cicero", 34
[507] Adonis, "Lords in the 1980s"; Russell and Sciara "Policy Impact"; Russell, "Contemporary Lords"; Shell, "House of Lords"; Whittaker, "Ping Pong".

pong happening, and the Lords getting their way, which suggests that as procedure it doesn't always work. The fact that the Parliament Act is used, or the Bills fail, is a starting point for this hypothesise8, but the phrase "effective" is used to judge the Lords ability to influence legislation.

7.1.2. **Evidence**

This chapter uses a combination of process tracing and computer-assisted content analysis to form a picture of the debates and the progress of the amendments. An investigation of the number of contributions allows for an examination of the general direction and weight of debate. A contribution in this context is defined as a substantive point being made, but excludes heckling, one-word interruptions, and directions, which are all recorded by Hansard official records.[508] However, this method does not allow for a direct comparison with division data, as some peers, especially party spokespersons, will make multiple contributions to the same motion. Therefore, in order to provide a meaningful comparison to division data, I have also examined the number of contributors. Across all nine bills studied in this thesis, 736 individual contributions were identified, made by 444 contributors, although in reality only 181 different peers contributed.[509]

Table 7-1 below shows the number of contributions made in all nine bills across the different groups: the government, the opposition, and the crossbenchers. This is totalled across all stages of ping-pong and all motions within them. The percentages of contributions coming from each group are then shown next to the absolute number. The bills in this instance are ordered by the date the bill was first introduced.

[508] Members will often interrupt, and will be told to wait until another peer has finished speaking. It is these type of directions, as well as calls for members to be quiet, that have not been included.

[509] These numbers differ because the number of contributors only adds contributions made in the same motion. Therefore, if a peer makes contributions in all five stages of a bill, s/he is counted as a contributor five times. However, the response is still from the same peer.

Bench		Govt	Opp	Cross	Other	total
Aircraft and Shipbuilding Industry Bill	No	77	51	19		147
	%	**52.4**	**34.7**	**12.9**	**0**	**100**
Housing and Building Control Bill	No	21	10	8		39
	%	**53.8**	**25.6**	**20.5**	**0**	**100**
Railways Bill	No	31	22	6		59
	%	**52.5**	**37.3**	**10.2**	**0**	**100**
European Parliamentary Elections Bill	No	20	29	3	2	54
	%	**37**	**53.7**	**5.6**	**3.7**	**100**
European Parliamentary and Local Elections (Pilot) Bill	No	46	52	1		99
	%	**46.5**	**52.5**	**1**	**0**	**100**
Identity Card Bill	No	82	67	20	2	171
	%	**48**	**39.2**	**11.7**	**1.2**	**100**
Corporate Manslaughter and Corporate Homicide Bill	No	22	20	21	1	64
	%	**34.4**	**31.3**	**32.8**	**1.6**	**100**
Fixed-term Parliaments Bill	No	30	18	12		60
	%	**50**	**30**	**20**	**0**	**100**
Parliamentary Voting Systems and Constituencies Bill	No	23	10	10		43
	%	**53.5**	**23.3**	**23.3**	**0**	**100**

Table 7-1: Contributions by Bill with Percentages by Party Bench

Table 7-1 shows that the government dominated contributions, making around half of all contributions in five of the nine bills. In the remaining four, the opposition made a higher percentage of contributions in two of them - the European Parliamentary Elections Bill and the European Parliamentary and Local Elections (Pilots) Bill. Crossbenchers' contributions were lowest in those bills, but notably highest in the Corporate Manslaughter and Corporate Homicide Bill, as well as in the two Coalition Constitutional Reform Bills. In addition, the Housing and Building Control Bill in the 1980s had an unusually high level of crossbencher interventions for the pre-reform era, with 20% of contributions being made by crossbenchers.

Table 7-2 below shows the number of contributors for the same three groups, also by bill. This is totalled across all stages of ping-pong and all motions within it. The percentage of contributors coming from the selected group is then shown next to the absolute number. This measure helps

reduce the importance given to repeated contributions by party spokespersons.

Bench		Govt	Opp	Cross	other	total
Aircraft and Shipbuilding Industry Bill	No	47	35	14		96
	%	**49**	**36.5**	**14.6**	**0**	**100**
Housing and Building Control Bill	No	11	9	6		26
	%	**42.3**	**34.6**	**23.1**	**0**	**100**
Railways Bill	No	13	11	4		28
	%	**46.4**	**39.3**	**14.3**	**0**	**100**
European Parliamentary Elections Bill	No	20	23	3	2	48
	%	**41.7**	**47.9**	**6.3**	**4.2**	**100**
European Parliamentary and Local Elections (Pilots) Bill	No	20	26	1		47
	%	**42.6**	**55.3**	**2.1**	**0**	**100**
Identity Card Bill	No	38	38	14	1	91
	%	**41.8**	**41.8**	**15.4**	**1.1**	**100**
Corporate Manslaughter and Corporate Homicide Bill	No	12	16	14	1	43
	%	**27.9**	**37.2**	**32.6**	**2.3**	**100**
Fixed-term Parliaments Bill	No	13	8	10		31
	%	**41.9**	**25.8**	**32.3**	**0**	**100**
Parliamentary Voting Systems and Constituencies Bill	No	17	8	9		34
	%	**50**	**23.5**	**26.5**	**0**	**100**

Table 7-2: Contributors by Party Bench as a Percentage of Bill Contributors

The government only provided more than 50% of contributors on the Parliamentary Voting Systems and Constituencies Bill. The opposition was dominant on the Corporate Homicide and Corporate Manslaughter, European Parliamentary and Local Elections (Pilot) Bill, and the European Parliamentary Elections Bill. The crossbenchers had a higher percentage of contributors compared to contributions, with the exception of the Housing and Building Control Bill. This suggests that crossbenchers were less likely than were the other groups to make repeated interventions in the debates. With regard to the crossbenchers, there is a distinction between pre- and post-reform behaviour, with more crossbenchers apparently making fewer contributions in the post-reform debates.

It is these peers' contributions that move the debates forward and that ultimately affect the mood and direction of the debates that take place in the House of Lords. Whilst the wording of amendments is decided before

the debates take place, it is this and the participants that dictate the direction of ping-pong in the future.

In addition, this chapter uses the motion papers from the ping-pong phases of all nine bills. These are the printed bill papers presented to the House of Lords or the House of Commons with the response from the other house. These document the amendment offers and the reasons for them. Motions moved in the debate that follows are documented by Hansard in the official record, and show the main supporter.

7.2. Policy Impact

H_1: When the impact of the House of Lords amendment is controlled for, it is expected that the success of the House of Lords in achieving some or all of their policy aims will be higher when the amendment in question is less impactful.

This was argued throughout the case studies, and found some support from within the individual cases. This section examines whether there is a wider trend towards this.

7.2.1. **Categories**

This requires three tests to be carried out:

1. How radical was the change proposed?

2. How successful was the amendment?

3. Is there a link?

Initial Amendment

Bills were initially categorised by the levels of change a Lords' amendment was bringing about, with the categories listed here in descending order: a change to the underlying policy; a change to the implementation, or a partial policy change or restriction; an addition to policy coverage. The bills were ordered on a scale within these categories.

An underlying policy change was said to take place only on the European Parliamentary Elections Bill, as it changed the electoral system being proposed from closed lists to open lists.[510] This meant that the expected outcome was different.

Implementation changes were said to take place on three bills: The Identity Card Bill, the Parliamentary Voting System and Constituencies Bill, and the Fixed-term Parliaments Bill. The Identity Card Bill amendment saw the Lords try to remove the link to passport applications for registration; the Parliamentary Voting System and Constituencies Bill amendment tried to make the referendum advisory as opposed to binding when turnout was below 40%; and the Fixed-term Parliaments Bill amendments had the effect of making the fixed term renewable for each parliament.

Policy changes that stopped short of altering the main thrust of the legislation look place on four bills: the Housing and Building Control Bill, the Railways Bill, the Aircraft and Shipbuilding Industries Bill and the European Parliamentary and Local Elections (Pilot) Bill. In the case of the Housing and Building Control Bill, the Lords tried to exclude modified homes for the disabled and elderly from the right-to-buy policy. This is an exception because, while it could be argued that the Lords was seeking a substantive change as it reduced the scope of the bill, I have not considered it as such, as this bill was an amendment, widening the scope of a previous piece of legislation, namely the Housing Act 1980. The main thrust of the bill was bringing housing associations into the legislation, and that was not interfered with.[511] In the case of the Railways Bill, the Lords' amendments had the effect of allowing British Rail teams to bid for new franchises.[512] This was not a major change to the intent of the bill, merely a clarification of eligible franchisees; thus, I have not defined it as a substantive change for the purposes of this chapter. While it could be argued that allowing BR to bid for franchises was in fact undermining the purpose of the bill, the

[510] The initial amendment changed the voting system to open, as opposed to closed lists. See Chapter 4 for more detail.
[511] See appendix 1 - Housing and Building Control Bill Amendments
[512] See Chapter 4 for full details

purpose of the bill as stated by the government was to relieve the burden on the public purse, and to provide better service. In this case, allowing BR or groups of former employees to bid, it allowed for competition, and could still be said to be in line with that purpose. The other bills are the Aircraft and Shipbuilding Industry Bill, when the House of Lords tried to remove the ship-repair element of the bill, and the European Parliamentary and Local Elections (Pilots) Bill, when the Lords tried to reduce the pilot area to two regions as opposed to four.

Lastly, the Corporate Manslaughter and Corporate Homicide Bill is in the final category of policy additions, when the Lords sought to extend the bill to include deaths in custody. This is taken as being the least change due to the original policy and implementation coming from the Commons remaining unaltered. The bills were then scaled within the6x//se categories. This is shown in Table 7-3 below:

Order	Bill
1	European Parliamentary Elections Bill
2	Identity Cards Bill
3	Aircraft and Shipbuilding Industry Bill
4	Fixed-term Parliaments Bill
4	Parliamentary Voting System and Constituencies Bill
6	European Parliamentary and Local Election (Pilot) Bill
7	Railways Bill
8	Housing and Building Control Bill
9	Corporate Manslaughter and Corporate Homicide Bill

Table 7-3: Ranked Order of Bill by Change Initially Proposed by a House of Lords Amendment

The scale is one to nine, with one being the greatest change and nine the least. The middle two categories have been merged and ordered between the European Parliamentary Elections and the Corporate Manslaughter and Corporate Homicide Bills as the two extremes.

The Identity Cards Bill was taken to be the most substantial change because it made the system entirely voluntary, which changed the nature of the policy being implemented. The Aircraft and Shipbuilding Industry Bill was next most significant policy change for the same reason, as it reduced the number of companies being nationalised. The Fixed-term Parliaments

Act, and the Parliamentary Voting Systems and Constituencies Bills were classified as bringing in similar levels of change. The next three bills were all largely similar in their changes, reducing the coverage of the policy but not changing the policy itself.

Outcome

When ping-pong is considered as a bicameral conflict resolution procedure, the most important feature is therefore whether the concerns of the Lords and the policy amendments it suggests are taken into account in the final version of the bill that becomes law. Why does this matter? If the second chamber becomes irrelevant through ping-pong, questions about its continued existence become more relevant. A second chamber that cannot have its concerns accepted in the bill is not effective.

Conciliation is a subjective measure. For the purposes of this chapter, there are three categories where the bill was entered onto the statue books. These are when the final amendment was accepted as recognising the House of Lords' concerns, and incorporated most, if not all, of the original amendment requirements. The second category is when the principle was accepted, but the amendment was reduced in coverage or applicability. The final category is when the final amendment did very little to cover the Lords' concerns (for example, a call for a change being met with a review). The fourth category is when the bill failed.

There were two bills in the final category, namely the Aircraft and Shipbuilding Industries (1976-77) Bill and the European Parliamentary Elections Bill (1997-8). Whilst this could be argued as being the greatest triumph of the Lords in terms of ending the bills, the result on reintroduction was a near total capitulation, either by refusing a second reading, or through simply not moving the problematic amendments, in the knowledge that the government intended the use of the Parliament Act.[513] With the Aircraft and Shipbuilding Industry Bill, the government accepted the House of Lords' arguments in the second introduction and exceptions

[513] See Chapter 5

were made; however, the failure of the bill caused uneasiness in the Lords for several years as an example of intransigence.

Regarding the bills that passed, but for which the Lords failed to win the argument about the inclusion of its concerns, three bills that match this criterion. The European Parliamentary and Local Elections (Pilots) Bill saw the Lords argue for stronger checks on postal votes and only having two pilot regions. Three pilot regions were used in the act, and some checks that were more stringent were included however, the final amendment ignored the key recommendation for a response mechanism from the returning officer. Because of this, this bill was included the category in which the House of Lords failed to make progress on its concerns. In the case of the Parliamentary Voting System and Constituencies Bill, the Lords had argued both for a larger, 7.5% leeway on registered voters in a constituency, and for a referendum to be advisory rather than binding.[514] The house failed on both points, with the government offering, and having accepted, a review on turnout in the referendum. In the case of the Fixed-term Parliament Bill, the Lords tabled amendments that would have had the effect of making the fixed-term principle renewable. These too were met with an offer of a review of the functioning of a fixed-term parliament after two parliaments had passed.[515]

The Lords gained some concessions in the remaining cases. For example, in the case of the Railways Bill, while the government did not preclude the bidding for the running of franchises by British Rail outright, it left the decision to the franchise directors, although it did dictate guidelines.[516] Consequentially, although the House of Lords had removed the general ban on the bidding, British Rail was not awarded the same rights as were other bidding teams. In the case of the Housing and Building Control Bill[517], while the government accepted that some properties should be exempted, the definitions were notably different,

[514] See Chapter 5
[515] See Chapter 6
[516] Commons Amendments in Lieu of Amendments Disagreed to
[517] See Chapter 4

with the decision being left to the landlord, and various conditions being applicable. Therefore, the Lords could be said to have gained key concessions concerning this issue. In the case of the Identity Cards Bill, in place of replacing "must" with "may, if the individual so chooses" a so-called sunrise clause was added, after which compulsion upon passport application was introduced, as shown in the appendix. The policy success of the House of Lords changes are shown in ranked order. Success is categorised as the majority of the Lords.

Outcome Order	Bill	Policy
1	European Parliamentary	Failed
2	Aircraft and Shipbuilding Industry Bill	Failed
3	Parliamentary Voting System and Constituencies	Gave In
3	Fixed Term Parliaments	Gave In
5	Pilots	Gave In
6	Identity Cards	Some Movement
7	Housing and Building Control Bill	Some Movement
8	Railways Bill	Some Movement
9	Corporate Manslaughter and Corporate Homicide	Success

Table 7-4: Ranked Order of Success Concession to Amendment Principle

The Aircraft and Shipbuilding Industry Bill was shown as being marginally more successful, due to the events that took place in following the introduction. The European and Local Elections (Pilot) Bill was ranked as slightly more successful than was the Fixed-term Parliaments and Parliamentary Voting System and Constituencies Bill, due to it achieving a reduction in the number of pilot regions. In the movement category, the Railways Bill was classed as moving the most, due to the acceptance of pension issues.[518] The Identity Card Bill was ranked last due to only part of the Lords' position being accepted for a limited period.

7.2.2. **Test**

To test the relationship, bills are shown in ranked order of the changes proposed, together with the ranking for the degree of acceptance, as shown

[518] See Chapter 4

in Table 7-5 below, together with the change in rank. A higher change indicates that the argument had less support.

	Initial	Outcome	Change
European Parliamentary Elections Bill	1	1	0
Identity Cards Bill	2	6	-4
Aircraft and Shipbuilding Industry Bill	3	2	-1
Fixed-term Parliaments Bill	4	3	-1
Parliamentary Voting System and Constituencies Bill	5	3	-2
European Parliamentary and Local Election (Pilot) Bill	6	5	+1
Railways Bill	7	8	-1
Housing and Building Control Bill	8	7	+1
Corporate Manslaughter and Corporate Homicide Bill	9	9	0

Table 7-5: Rankings Compared

This shows that H1 has sufficient support not to be rejected. It is impossible to prove causality, but in these cases, the House of Lords was more successful in getting the substance of the amendment accepted for the bills for which less fundamental amendments were moved,.

The Identity Card Bill was one major anomaly, as a relatively major change was proposed and was accepted to a significant degree. The Parliamentary Voting Systems and Constituencies Bill was less successful than may have been expected given the less fundamental change.

This tells us that, once the House of Lords has sought to make a significant change, it is less likely to achieve conciliations from the House of Commons. It is most successful at smaller adjustments to bills. Therefore, the Lords is more likely to give in on such matters, and then to gain real concessions from the government. Does this not suggest that, if anything, the Lords should be constraining itself more in terms of how it attempts to amend government bills in the first place?

7.3. Behaviour

This tests the following two hypotheses:

H_2: That the House of Lords will demonstrate an increase in the instances of self-restraint as the process of ping pong continues.

H_3: When the nature of the first passage of messages is controlled for, the House of Lords is expected to show a more conciliatorily position at the end of the procedure when such conciliatory messages are present at the beginning..

This follows on from the case study evidence and from the division behaviour evidence in the previous chapter.

7.3.1. **Self-Restraint**

This argues that the House of Lords will revert to a position of self-restraint as the process continues. This section examines three hypotheses in detail.

H_{2A}: Where there is evidence of self restraint being present through the House of Lords procedures and conventions, there will be higher degrees of "success" in terms of a conciliatory outcome. **H_{2BI}**: When the House of Lords is acting in a self restrained manner, there will be higher instances of references to the Parliament Act and the Salisbury Convention. The latter will be found to be in effect in these instances.

H_{2BII}: When self restraint is controlled for, the Crossbencher group in the House of Lords will be found to be more active. Furthermore this activity will relate to self restraint behaviours and actions.

H_{2BIII}: When Self restraint is present, there will likely be external pressures to bear on the Parliamentary procedure Self-restraint, and the desire not to frustrate the will of the government, may well be part of the reason behind those bills in which the House of Lords gave way after taking a position classed as stubborn insistence above. This test will seek to examine the role of the government's manifesto and the Salisbury Convention on the Lords' behaviour on bills, and will look at the Salisbury Convention as an intervening variable.

Arguably, the greatest illustration of self-restraint in the House of Lords is the existence of the Salisbury Convention, and the continuing adherence to

it as set out by the Joint Committee on Conventions, which has looked specifically at the conventions governing the behaviour of the House of Lords.[519] The House of Lords is therefore bound to allow second readings if the bill appeared in a manifesto. This does not mean, however, that the House of Lords is bound to accept the principle behind the introduction of the bill. It also does not preclude the house from finding loopholes in its own conventions. If the Salisbury Convention and wider manifesto questions truly impact on the House of Lords behaviour throughout ping-pong, there will be a clear relationship between those manifesto bills and those on which the House of Lords gives way.

Self-restraint Evidence

H_{2A}: Where there is evidence of self restraint being present through the House of Lords procedures and conventions, there will be higher degrees of "success" in terms of a conciliatory outcome. This hypothesis is tested by looking at the relationship between the bills' appearances in the manifesto of the governing party and the outcomes of the bills. If self-restraint were present, a clear link between the House of Lords giving way and the Salisbury convention would exist.

Self-restraint requires the following:

1. A holding back, which translates as a lack of continual insistence
2. A shorter time span

One of the issues with comparing motions is that the nuances in the language are often subtle. However, the type of motion is important. In this case, all division outcomes were taken and were placed in six categories. Category 1 indicated that there had been a disagreement, or an insistence with reason. Two indicated that there had been a disagreement or an insistence with an amendment offered in lieu thereof. Three was for non-insistence, with an amendment in lieu. Four was an agreement with further amendment, five was a pure agreement, and six indicated that a

[519] Joint Committee on Procedure Report 2006

motion to insist in some way was overturned, resulting in agreement. The pattern of motions that each bill took is shown in Table 7-6 below.

House	C	L	C	L	C	L	C	L	C	L	C
Phase	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**
Rail	2	4	1	5							
Housing		1	4	5							
Corporate Manslaughter			2	1	2	1	2	2	2	5	
Europe	1	1	2	1	2	1	1	1			
ID Cards						2	1	2	1	2	5
Shipbuilding					1						
Coalition				6							
Pilots			3	4	1	3	1	1	2	6	

Table 7-6: Categories of Motion

One its own, this tells very little, except that the three bills for which the Lords was more successful in getting its points included did not open with the House of Commons disagreeing, but with disagreeing with an amendment instead.

To further aide comparison, Categories 2 to 4 were merged with Category 2, as all provided further amendments, and Categories 5 and 6 became Category 3, as they resulted in agreement.

House	C	L	C	L	C	L	C	L	C	L	C
Phase	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**
Rail	2	2	1	3							
Housing		1	2	3							
Corporate Manslaughter				1	2	1	2	2	2	3	
Europe	1	1	2	1	2	1	1	1			
ID Cards						2	1	2	1	2	3
Shipbuilding					1						
Coalition				3							
Pilots				2	1	2	1	1	2	3	

Table 7-7: Refined Categories of Motion

For the first three phases, all the bills appeared to follow a similar pattern. The Commons' behaviour and that of the Lords in the phase that immediately followed were merged into a single phase, with the houses insisting on their previous positions (without amendment) were being labelled. This is shown in Table 7-8 below.

Phase	1	2	3	4	5	6
Rail	Neither	Commons				
Housing	Lords	Neither				
Corporate Manslaughter		Lords	Lords	Neither	Neither	
Europe	Both	Lords	Lords	Both		
ID Cards			Neither	Commons	Commons	3
Shipbuilding			1			
Coalition		Neither				
Pilots			Commons	Both	Neither	

Table 7-8: Paired Insistence

Looking at the three bills at the top, which were all examples of the House of Lords doing quite well in getting its way, at no point did both houses insist, and both went through at least one period of neither house taking an insistence position. In fact, this was only not the case in the two bills that failed, adding a further indication that there was no room for conciliation in either chamber's negotiating positions. In the latter stages of the Identity Cards Bill, the House of Lords was not insisting at all.

The European Parliamentary and Local Elections (Pilots) Bill is worth mentioning as the only bill, other than the European Parliamentary Elections Bill, for which there was a double insistence late in the process.

This then assists the forming the self-restraint variable that is tested between the two. This variable is shown in Table 7-9 below. It is calculated by adding the percentage of the number of #rounds in which the Lords insisted without offering a counter amendment, which is added to the number of rounds and is then multiplied by the action at the end. The end action was categorised as either 'agreed end', 'not agreed end', or 'failure', and was numbered 1 to 3 respectively.

SR	Bill	No. Insist	No. Lords	%	End	Score ((No+%)xEnd)
1	European Parliamentary Elections Bill	4	**4**	**1**	**3**	15
2	European and Local Elections (Pilot) Bill	2	**5**	**0.4**	**2**	10.8
3	Aircraft and Shipbuilding Industry Bill	2	**2**	**1**	**3**	9
4	Corporate Manslaughter and Corporate Homicide Bill	3	**5**	**0.6**	**1**	5.6
5	Identity Cards Bill	2	**5**	**0.4**	**1**	5.4
=6	Fixed-term Parliaments Bill	1	**2**	**0.5**	**2**	5
=6	Parliamentary Voting System and Constituencies Bill	1	**2**	**0.5**	**2**	5
8	Housing and Building Control Bill	1	**2**	**0.5**	**1**	2.5
9	Railways Bill	0	**2**	**0**	**1**	2

Table 7-9: Ranked Restraint Factors by Bill, Where 9 is High

The self-restraint variable is then ranked from the lowest self-restraint, shown by the highest number as shown first, descending to that with the highest restraint. The change requested and outcome achieved are also shown. This is presented in Table 7-10 below.

	Change	Outcome		Self-Restraint
European Parliamentary Elections Bill	1	1	0	1
European Parliamentary and Local Election (Pilot) Bill	6	5	+1	2
Aircraft and Shipbuilding Industry Bill	3	2	-1	3
Corporate Manslaughter and Corporate Homicide Bill	9	9	0	4
Identity Cards Bill	2	6	-4	5
Fixed-term Parliaments Bill	4	3	-1	6
Parliamentary Voting System and Constituencies Bill	5	3	-2	6
Housing and Building Control Bill	8	7	+1	8
Railways Bill	7	8	-1	9

Table 7-10: Self-restraint

The top half, which covers the four bills with the least self-restraint, covers both the end of the proposed changes and of the outcomes achieved. The same is true at the bottom. In the top half, the least self-restraint was shown for the European Parliamentary Elections Bill and for the Corporate Manslaughter Bill.

Self-restraint could not be dismissed as having an impact, as there was a clear influence of pulling back in some cases.

Salisbury Convention

There are three categories for this variable. The first contains those bills for which the Salisbury Convention is not application. These are cases when a bill had no connection to a government manifesto pledge. These become more common later in a parliaments' life, as earlier on there is more government focus on implementing manifesto pledges and less space on the parliamentary timetable for other work. The reasonable time commitment will still apply to these bills, but is generally viewed as more 'flexible' by the opposition.

In other cases, there is a clear link between the bill and a manifesto pledge. If the House of Lords were following the convention exactly, it would not be promoting either the wrecking of amendments or delaying the bill unduly via long periods of ping-pong. This is largely due to the definition that is being followed by the chamber and, since 1999, the Lords has tended to follow a stricter version.

The last category is when the Salisbury Conventions application is disputed by the opposition, but the government claims it is applicable. This became particularly problematic in the period between 2006 and 2010 when the Liberal Democrats as a group choose not to recognise the Salisbury Convention as still being applicable, and in the period 2010-2015 when there was a dispute about the applicability to the Coalition Agreement for Government and the relevant party manifestos in the general election in 2010.

No relationship was present with regard to the European Parliamentary and Local Elections (Pilots) Bill or the Corporate Manslaughter and Corporate Homicide Bill. Neither had a Salisbury Convention link, as no manifesto commitment had being made, with the former being a pilot measure only, and the latter being more of a reactionary measure.

The category of non-disputed applicability included the Aircraft and Shipbuilding Industry Bill, the Housing and Building Control Bill, and the Railways Bill. In these cases, the bills were mentioned clearly in the

government's manifesto, and the Salisbury Convention was not raised in debates. There is an argument to be made, particularly in relation to the Aircraft and Shipbuilding Industry Bill, that there was clearly no point in raising it as an argument, as the intentions of both the government and the opposition were clear, regardless of any convention.

The final category, that of disputed application, included the European Parliamentary Elections Bill, the Identity Cards Bill, the Parliamentary Voting Systems and Constituencies Bill, and the Fixed-term Parliaments Bill. In the latter two, it was argued that they were not bound by the convention because they were formed in the Coalition Agreement for Government, and not in the manifestos of both governing parties. In the case of the Identity Cards Bill and the European Parliamentary Elections Bill, there was no dispute that the bill had, in principle, come from a manifesto, but it was claimed that the measure that the Lords was trying to amend was not mentioned specifically.

Figure 7-1 below shows the categories listed above, with the bars for each bill, showing the degree of self-restraint based on the composite restraint variable. The bills have been ordered by manifesto category, and then within the categories by date.

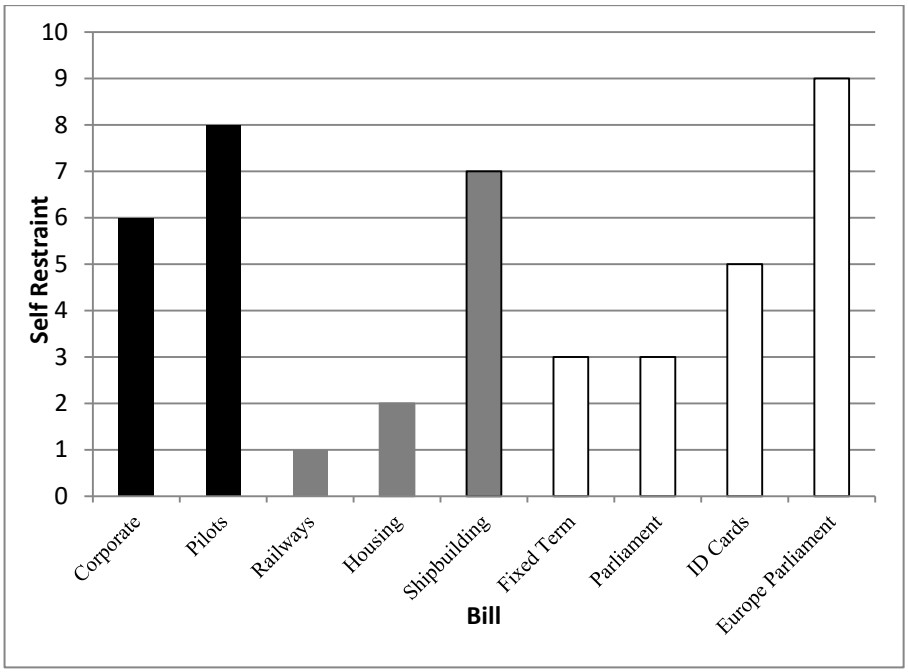


Figure 7-1: Bills Showing their Self-restraint

While the first category, with no pledge, generally showed less self-restraint than did the other two, the contested bills actually showed more 'necessary self-restraint' than did those in the final category. The categories were then averaged, as shown in Figure 7-2 below.

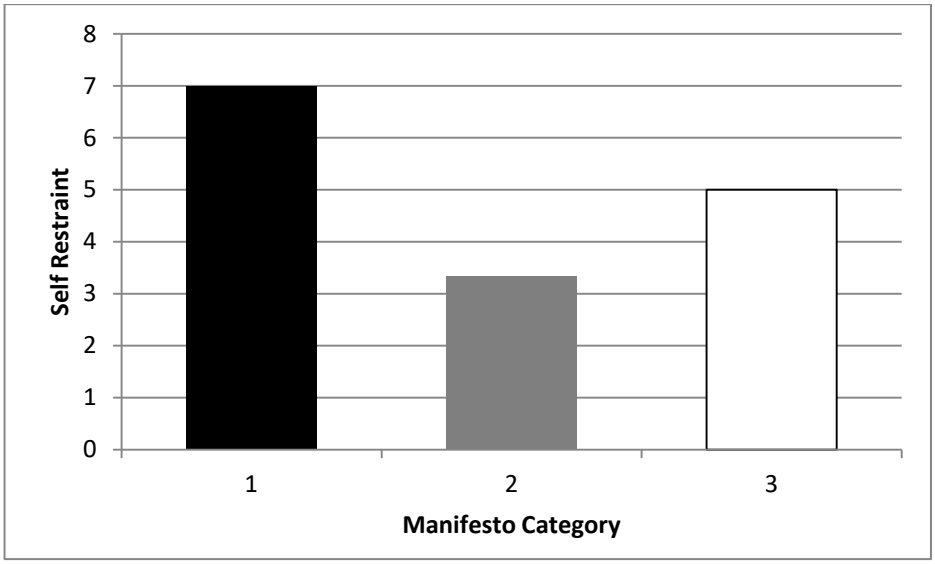


Figure 7-2: Categories of Manifesto Relationship Against Self-Restraint

Figure 7-2 above shows the categories listed above, with the bars for each bill, showing the degree of self-restraint based on the composite restraint

variable. The bills have been ordered by manifesto category, and then within these categories by date.

Remembering that a lower number indicates more self-restraint, those bills with no pledge generally show that the House of Lords displayed a lower level of self-restraint. By this measure, those that were disputed were similar to those with a clear, un-contested manifesto pledge. Therefore manifesto pledges, whether disputed or not, do have an influence on self-restraint, and thus the Salisbury Convention does have an effect, which would mean **H2AI** has support.

Crossbenchers

The crossbencher group in the House of Lords is important to the character of debates, and to the investigative and deliberative aspects of the chamber's work. As shown in the previous chapter, the crossbenchers do have a role to play in certain bills, do become more involved during the amendment consideration process, and have become more involved since the 1999 reform of the House of Lords. If **H4** were correct, it would show that the crossbenchers' role as conciliators is vital.

In the cases studied as part of this thesis, the crossbenchers were responsible for amendments that ping-ponged in the Housing and Building Control Bill, the Railways Bill, the Identity Cards Bill (although the original amendment was from a Liberal Democrat, Lord Philips of Sudbury), the Corporate Manslaughter and Corporate Homicide Bill, and both the coalition constitutional reform bills. With regard to those bills in which the crossbenchers did were not involved, namely the Aircraft and Shipbuilding Industries Bill, the European Parliamentary Elections Bill, and the European Parliamentary and Local Elections (Pilots) Bill, the house was generally divided along ideological lines. However, this is not to say that the crossbench group did not take an interest.

Table 7-11 below compares bills ordered by their self-restraint value and whether crossbenchers had a tangible involvement with them (putting their name to the major amendment that underwent ping-pong).

	Change	X Bencher	Outcome	Self-Restraint
European Parliamentary Elections Bill	1		1	1
Aircraft and Shipbuilding Industry Bill	3		2	3
Housing and Building Control Bill	8		7	8
Railways Bill	7	Y	8	9
European Parliamentary and Local Election (Pilot) Bill	6		5	2
Corporate Manslaughter and Corporate Homicide Bill	9	Y	9	4
Identity Cards Bill	2	Y	6	5
Fixed-term Parliaments Bill	4	Y	3	6
Parliamentary Voting System and Constituencies Bill	5	Y	3	6

Table 7-11: Crossbenchers Compared with Self-restraint

This shows that, in general, the crossbenchers are involved in two scenarios- where self-restraint exists with relatively major changes, and where the House of Lords is involved in less major change, and therefore more in negotiation. In the pre reform examples, there is a polarisation with bills or high self restraint, and those with low self restraint, with the crossbenchers being involved in one bill at the upper end of the self restraint scale. This is also reflected in the post reform examples.

	Change	Outcome	X Bencher	Self-Restraint
European Parliamentary Elections Bill	1	1		1
Aircraft and Shipbuilding Industry Bill	3	2		3
Railways Bill	7	8	y	9
Housing and Building Control Bill	8	7		8
Identity Cards Bill	2	6	Y	5
Fixed-term Parliaments Bill	4	3	Y	6
Parliamentary Voting System and Constituencies Bill	5	3	Y	6
European Parliamentary and Local Election (Pilot) Bill	6	5		2
Corporate Manslaughter and Corporate Homicide Bill	9	9	Y	4

Table 7-12: Crossbenchers Compared with Initial Position

Table 7-12 above shows crossbenchers compared against outcomes on the bills, with outcomes ordered by the degree of House of Lords' change attempted to the position of the House of Commons. This shows less of a relationship. Less or more change may be attempted whether or not Crossbenchers were directly involved in later stages.

	Change	Outcome	Self-Restraint	X Bench
European Parliamentary Elections Bill	1	1	1	
Aircraft and Shipbuilding Industry Bill	3	2	3	
Housing and Building Control Bill	8	7	8	
Railways Bill	7	8	9	Y
Fixed-term Parliaments Bill	4	3	6	Y
Parliamentary Voting System and Constituencies Bill	5	3	6	Y
European Parliamentary and Local Election (Pilot) Bill	6	5	2	
Identity Cards Bill	2	6	5	Y
Corporate Manslaughter and Corporate Homicide Bill	9	9	4	Y

Table 7-13: Outcome Compared with Crossbencher Involvement

There does not appear to be any relationship between policy success and crossbencher involvement from the evidence presented in Table 7-13. When all three tables are taken together, the crossbenchers do appear to be more involved in those bills in which there is self-restraint and, where there is not some movement negotiated, the House of Lords has given in. This does not exclude the possibility that the crossbenchers aid in self-restraint. An alternative explanation, however, is that the crossbenchers do not involve themselves in partisan debates, and that such debates are simply never going to result in conciliation.

Looking beyond direct involvement, crossbenchers' involvement in the debates is also useful, following both the expert panel and the jury approach to their involvement.[520] Examining the debate involvement of crossbenchers in three of the bills for which they were not involved in amendments is equally important for revealing their role in debates.

In the case of the Aircraft and Shipbuilding Bill, crossbenchers made 19 contributions (of a total of 136) in the first round of the ping-pong debates. They did not contribute in the second round; however, they were particularly vocal on amendment 26-55. For example, Lord Goodman said, "We have a duty, and we were reminded earlier that we are a revising Chamber. Nothing is more suitable by way of revision than to convert nonsense into sense. I would think it is an absolutely impeccable and

[520] As classified by authors such as Russell and Sciara

classical illustration of the revision of a provision".[521] Meanwhile, Lord Robbins said, "The noble Lord, Lord Melchett, said with serene confidence, dogmatically, that the provisions in the Bill were entirely just".[522] The crossbenchers were generally in favour of the amendments being discussed. In addition, they attempted to remain in favour of technical, rather than partisan grounds.

In the debates on the European Parliamentary Elections Bill, crossbenchers only intervened three times across all four stages in the Lords. In round four, Lord Weatherill said, "I am passionately against the closed list system. I voted against it the first time around. I abstained on the second occasion because I hoped that the Government would think again. However, on subsequent occasions I have voted in the Government Lobby. As a former Speaker of the House of Commons I think it is wrong that this House should seek to frustrate the will of the elected House".[523] This statement was an attempt to end the continued deadlock between the two chambers. Similarly, in the second round, Lord Alton said, "It is clear to anyone who followed the debates that there was support throughout your Lordships' House and another place for genuine reforms which would improve our system but not at the expense of the accountability of the elected representative to his constituents. The argument was not about hereditary Peers".[524] Both statements were trying to re-centre the debates, although Lord Alton was not so much trying to end the debate as to divert the focus the focus away from the shortcomings of the House of Lords and place it back on the policy issue.

For the European and Local (Pilots) Bill, only one crossbencher intervened across the five debates during ping-pong. This was also Lord Alton, who said, "So, why is the noble Lord, Lord Rennard, inviting us to take this to the wire? It is surely to be able still to try to find a way of reaching some agreement—not just between the two Houses but between the political

[521] HL Deb 16 November 1976, vol. 377, col.1220
[522] Ibid c. 1223
[523]HL Deb 18 November 1998 vol. 594, col.1349
[524] HL Deb 12 November 1998 vol. 594, col.856

parties. That is the best way to proceed on sensitive matters of this kind".[525] As in the case of the Aircraft and Shipbuilding Bill, this was about trying to end the prolonged ping-pong. Both bills were focussed on largely partisan divides from which the crossbenchers were actively distancing themselves.

In all three cases, the crossbenchers were trying to refocus the debates on the central policy issue, rather than on partisan divides, or were trying to argue that the consideration stage had gone on for long enough. This suggests that, in these circumstances, the crossbenchers advocate self-restraint, and these situations tend to be those in which the dividing issue is party ideology.

Debate Evidence

For the House of Lords, the Parliament Act represents a final failure to persuade the government to support its point of view, and represents the primacy of the House of Commons as the representative chamber. The Salisbury Convention, whilst less concrete in action, provides a more frequent constraining feature on the House of Lords, and one that it has applied to itself.

During the period studied, the Parliament Act was used four times, in 1991, 1998, 2001 and 2005. In the case of the Identity Cards Bill, there was concern in the debates that a precedent could possibly be created if the House of Lords continued to defy the will of the House of Commons. In the case of the Aircraft and Shipbuilding Industry Bill, following the failure of the bill in the session studied here, the government made it clear to the House of Lords that it would reintroduce the bill, with the intention of the using the Act. In this case it did not have to, but in 1998, it did use the act to pass the European Parliamentary Elections Bill. The House of Lords' attitude towards the Parliament Act can be seen as vital to understanding the viewpoints in the chamber. In certain instances, the Parliament Act was an irrelevance, as it was clear that either no such

[525] HL Deb. 30 March 2004 vol. 659, col.1188

fundamental disagreement existed, or the will to insist simply was not there. For those bills to which the Parliament Act was considered a meaningful threat, I argue that this acts as a vital strand of the self-restraint argument, particularly where the crossbench peers are concerned.

Of the 736 contributions studied, 58 (7.9%) of them contained references to the Parliament Act.[526] That this number is low is not surprising. In fact, if the Parliament Act were being mentioned too frequently, it would have become something of a political weapon. After all, it has only been used seven times since being created, and is not, therefore, an instrument of 'standard procedure'. Of those 58 contributions referencing it, 26 were made by peers on the government benches, 24 by opposition peers, and eight by crossbenchers.[527]

The Salisbury Convention had more references, with 99 contributions containing a reference to the convention. Only nine of the contributions were made by crossbenchers. References for this include general references to the manifestos of the relevant parties, as this is the key underpinning of the convention.[528] The applicability of the Salisbury Convention, as discussed above, is often contested and the Liberal Democrats in the House of Lords chose not to recognise it as a constraining force for a time, arguing that being in a manifesto did not mean that the public supported the policy fully.

From the point of view of self-restraint, the crossbencher group is potentially the most interesting, and is therefore studied first. The opposition group may also reveal something about the general mood of the house, and the government will be discussed last. This is because government ministers in particular are most likely to caution against insistence, or prolonged disagreements, in the interest of passing the legislation.

To look specifically at the crossbencher group, five crossbenchers mentioned the Parliament Act. This amounted to eight contributions containing a reference to the Parliament Act of 100 crossbencher contributions in total.[529] This is the average across all peers, and shows that the crossbenchers are representative of the Lords as a whole, and no more or less likely to raise the Parliament Act in their arguments.

In the second round of ping-pong in the Identity Cards Bill, the Earl of Errol said:

> "My Lords, we do not have a power of veto in this House-all we have is the power to delay things. If we keep on voting no, they will then use the Parliament Act... Therefore, we might as well push the matter to the limit to point out that the Magna-Carta established the concept that the Executive should not have an unfettered right to do what they want".[530]

Lord Armstrong of Illminster argued that pushing the matter to the point of using the Parliament Act would be wrong, saying:

"I do not think that the issue should involve the Parliament Act—it does not seem to be that kind of thing. At the same time, there is an issue of personal freedom to which we and the other place should have some regard".[531]

"That kind of thing" also supports the argument that the crossbenchers have a tendency to move the debate to the higher planes of constitutional arguments. In this case, however, Lord Armstrong was deflecting from the arguments of the primary opponent to the bill. During the second stage of debates on the Fixed-term Parliaments Bill, Lord Elystan-Morgan argued

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[530] HL Deb, 15 March 2006. vol. 679, col.1242

[531] HL Deb 28 March 2006, vol. 68, Col 39. continued in col.651: "I am trying to find a way of avoiding the use of the Parliament Act to force the Bill through, because I do not think that this is an issue on which it would be appropriate to have recourse to the Parliament Act. The Bill will reach the statute book more quickly if recourse to the Parliament Act can be avoided".

that constitutional matters went beyond conventions of self-restraint, saying,

> "That Parliament saw fit in 1911 to make that so, and decided not to change the situation in 1949, is highly relevant to this issue. I would go so far as to suggest that it changes the whole balance of the relationship between the two Houses. I of course agree absolutely with what the noble Lord, Lord Armstrong, said about the general primacy of the House of Commons as the elected Chamber over this place. My submission is that, in relation to this matter, all such conventions and all such inhibitions are totally removed".[532]

All these contributes share the common theme of an awareness of the supremacy of the House of Commons in relation to the House of Lords. This therefore enhances the argument that self-restraint has become more prevalent since the 1999 House of Lords Act.

Arguments made by the crossbenchers concerning the Salisbury Convention fell into three categories: the specific veracity of Salisbury Convention claims in relation to the bill, or even specific amendments being debated; those that debated the relevance or the operation of the convention in general; and those on the functions of manifesto commitments.

With regard to the Railways Bill, Lord Simon said:

> "It would be quite absurd to say that that manifesto commitment—I use the word commitment and not the word "mandate" extended its umbrella effect to details such as pensions, which were introduced in a late schedule to the Bill, or to the franchising system, which I do not believe that the Government had thought of at the time of the general election".[533]

[532] HL Deb 12 September 2011, vol. 730, col.815
[533] HL Deb 4 November 1993. vol. 549, col.1170

He was arguing that thinking might change from the time at which the manifesto was written. However, he was also saying that, while the government had made a commitment to do something, it could not claim a mandate that followed on from the Countess of Mars' statement. In the first round of the Identity Cards Bill, the Earl of Errol said,

> "Finally, a lot has been said about the manifesto commitment. It is extreme hypocrisy when a government use a manifesto commitment to drive a proposal through the House until it does not suit them, when they abandon the doctrine of the manifesto commitment. They cannot have it both ways. If they force through this proposal against their manifesto commitment, I think that in future they will have to drop their demand that we support a manifesto commitment without any modification. We should be permitted in future to modify manifesto commitments in the light of current thinking in the country since the last general election, and given that the Government had the support of only about one-third of the voters in the country".[534]

He was saying that manifesto commitments are fluid, and therefore cannot be the basis for the House of Lords operating under self-restraint. Against this argument, however, Lord Armstrong dismissed the argument about the Salisbury Convention completely by saying, "I shall not enter into a learned discussion about what the Labour manifesto said or did not say at the previous general election, or what it meant or did not mean".[535] What is noticeable is the ease with which the crossbenchers either removed themselves from a debate on the application of the Salisbury Convention, or removed the Salisbury Convention from the debate by claiming non-applicability. There is very little evidence of the Salisbury Convention being used here by crossbenchers to urge self-restraint.

The next step is looking at the opposition peers who were making the arguments about the Parliament Act as 23 such contributions were made.

[534] HL Deb 6 March 2006, vol. 679col. 557
[535] HL Deb 28 March 2006. vol. 680, col. 652

Some of the opposition peers did argue for the House of Lords to show self-restraint through the point of the Parliament Act. For example, in the fourth round of the European Parliamentary and Local Elections Pilots Bill, Lord Rennard said,

> "I acknowledge that we must think carefully about what precedent we have in this House for the exceptional step we should now take in insisting on a compromise. There have been few occasions for such insistence since the passing of the Parliament Act 1949. But one such important precedent was what happened in 1969 when this House insisted upon its amendments to the House of Commons redistribution of seats Bill".[536]

In this case, he was arguing both that the House of Lords should think carefully before continuing with insistence, and that it had a precedent for doing so. Ii is interesting that his arguments focused more on insistence rather than on the risk of the Commons actually invoking the act. All of these arguments were made during the passage of the Identity Card Bill. More recently, during the debates on the Fixed-term Parliament Bill, Lord Falconer said,

> "The third particularly bad argument is that the provision increases the power of this place by allowing it to defeat orders. Yes, we can defeat orders, and the Parliament Act does not apply, but we always behave responsibly, and I would expect us to behave responsibly should the Commons indicate after the next general election that they want to have a fixed-term Parliament".[537]

During the Identity Card Bill debates, Lord Philips said, "We are trying to reach a compromise that will mean that the Government will not exercise the Parliament Act".[538] This was along similar lines to the argument made by Lord Mackay. More usually, however, the Parliament Act is painted as

[536] HL Deb 30 March 2004, vol. 659 col.1184
[537] HL Deb 18 July 2011, vol. 729 col.1096
[538] HL Deb 20 March 2006, vol. 680, col.42

a measure for ending deadlock, without any censure attached to that happening. However, this does acknowledge that the Commons, and not the Lords, will ultimately get its way.

However, the majority appeared to view the Parliament Act as an enabler. This is the opposite of what I expected to see if the Parliament Act had been an argument for self-restraint from the opposition. In the second round of debates in the aircraft industry bill, Lord Byers said, "It is obvious that the Government are determined on their course and that if we try to exercise our legitimate delaying powers we shall provoke them to use the Parliament Act and they will get the whole measure in a relatively short time".[539] This suggests belligerence on the part of the government.

Lord McNally used this argument during the passage of the Identity Card Bill, saying, "The House of Commons can have its way via the Parliament Act. What is it there for, if it is not for such an impasse—a rare impasse?"[540] In this instance, he was arguing that the Parliament Act acted as the ultimate conciliation procedure, and was therefore not something for the House of Lords to fear.

By contrast, there were those who argued that the Parliament Act was the wrong debate to be having. In the European Parliamentary Election Bill's final stage, Lord Russell argued that the bill should not be lost. Concerning the Parliament Act, he added,

> "I also took advice on the potential of the Parliament Acts. I received advice that, while in theory it might be possible that the Parliament Acts might be used in time, it was in practice extremely unlikely

[539]HL Deb 16 November 1976,vol. 377, col.1160. A similar argument was made in the following stage of ping-pong by Lord Byers, when he argued that the power to say no was enshrined in the Parliament Act. This argument was also made by Lord Carrington. This argument was continued by Lord Greaves to refer to Baroness Jay's argument that the House of Lords was now more legitimate, saying, "It means that occasionally we have the right to insist, at least within the parameters of the Parliament Acts, which are the laid-down legal frameworks".
[540] HL Deb, 15 March 2006, vol.679 col.1240

> unless it was in the circumstance of the Bill enjoying the Opposition's consent".[541]

Alternatively, it may simply be that the argument was wrong at that stage, although it could be used later. Lord Strathclyde's statement during the second round of ping-pong on the Identity Card Bill was that

> "I have said many times that using the Parliament Act is a sign of failure of the parliamentary process. It may be that we have got to that stage. I do not think we have got to that stage quite yet. ... If the Government regard this as being so important that they should get their way, then the Parliament Act is there to do precisely that".[542]

Some viewed the Parliament Act as an instrument of government threat, which suggested that they had something to fear from it to some extent. This can thus be seen as a continuation of the argument against precedence creation. "If the Government choose to use the Parliament Act the ensuing delay—and there will be delay, because they will have to reintroduce the Bill—will be their responsibility and not ours".[543]

Therefore, many of the opposition members did not see the Parliament Act as an argument for self-restraint, but rather as a constraining device, and at times even an enabling device. This increases the relative importance of the crossbenchers' role if the two groups viewed the same legislation so differently. However, as with the Lords, it is clear in later bills that self-restraint was more of an issue than it had been previously.

The last group to examine is that of the government-bench peers. Lord Shepherd argued that, while the House of Lords could delay, this should only be exercised "for issues of very great principle".[544] This is a familiar argument, in that the issue at hand is not the type of issue for which the

[541] HL Deb, 18 November 1998 vol. 594, col.1349
[542] HL Deb 15 March 2006. vol. 679 col.1244. Lord McNally also made a similar argument in the Identity Card Bill. Lord MacKay also made this argument in the European Parliament Act. Lord Goldsmith also made this argument in the Fixed-term Parliament Bill.
[543] HL Deb 22 November 1976, vol. 377, col.1673
[544] Ibid.

Parliament Act was envisaged. The other argument was that the Lords should back down before the act was used. For example, speaking on the European and Local Elections (Pilots) Bill, Lord Davis said, "The Liberals should acknowledge that the governments of 1911 and 1949 were not Tory… their [Conservatives in the House of Lords] strategic retreat on both occasions enabled legislation to be passed. This must happen now otherwise the validity of this House is even more disrespectful".[545] This is a view that also clearly advocates self-restraint on the part of the House of Lords.

A further argument was that the House of Lords was exceeding its remit. With regard to the Fixed-term Parliament Bill, Lord Marks, a Conservative peer, intervened twice by raising the Parliament Act. The first time, he said of the amendment requiring assent from both houses, "Secondly, the amendments would increase the power of your Lordships' House beyond that generally permitted by the Parliament Acts because they would give this House the power to thwart the will of the other place, not merely to delay its implementation, if a resolution were passed by the House of Commons but denied passage by the House of Lords".[546]

However, as with the opposition, the rebel House of Lords made the argument that the Parliament Act was an enabler. During the second round of the European Parliamentary Elections Bill, Lord Stoddart said, "The constitution says, quite clearly, that the House of Commons may pass a Bill or a measure; the House of Lords is entitled to scrutinise it and, indeed, according to the Parliament Acts of 1911 and 1949, may insist on its amendments, in which case there will be a delay of up to one year. That is the constitution, whether or not people like it".[547]

While there was a different tenor to the interventions made by the peers who sat on the government benches, they still agreed to the principle of the Lords as a revising house, and that the Lords had a role to play, within

[545] HL Deb 1 April 2004 vol. 659 col.1445
[546] HL Deb 18 July 2011, vol. 729 col.1089
[547] HL Deb 12 November 1998 vol. 594 col.860

limits. These limits appeared to be moveable and self-defined, and to be reliant on self-restraint.

The opposition had 47 contributions when the Salisbury Convention was referenced, and 26 different peers used the reference in their arguments. Most of the opposition statements were about the inapplicability of the Salisbury Convention in the legislation they were discussing. A good example of this was Lord MacKay who, when speaking about the amendments he had proposed to the European Parliamentary Elections Bill, said

> "Therefore this Bill, if we amend it with the open list, honours in every possible way the commitment given by the Labour Party in its manifesto... Your Lordships are not breaching that convention. Noble Lords would be breaching it if they removed PR from the Bill".[548]

Prior to this, the government peers had used it infrequently in their arguments, and in those cases, it was more as a general gesture to manifesto pledges rather than as a direct nod to the convention in explicit words. Some government peers, such as Lord Caldecote, have spoken about the general restraint of the House of Lords throughout its history.[549] However, an intervention by Lord Carter during the debates on the Identity Card Bill is typical:

> "Surely the argument of the noble Lord, Lord Phillips of Sudbury, was that the House should accept the words in the manifesto. That is the Salisbury doctrine. The noble Lord is therefore picking and choosing, as we would expect him to do, those items in the manifesto with which he agrees and which he will therefore support.

[548] HL Deb 18 November 1998, vol. 594, col.1345

[549] He said, "My mind goes back to the days of the post-war Labour Government and the Salisbury doctrine. We had then the right to throw out Bills, put to us here by the Labour Government, which were distasteful to us. We did not throw them out because, although, as the noble Lord, Lord Tordoff, and others have said, we had the right to do so, we felt that that would not be responsible. Therefore, we went along with the Bills put forward from the other place, although they were exceedingly distasteful"

> He will then say that the Salisbury convention does not apply to the items that he does not support".[550]

During the Fixed-term Parliament Bill debates, Lord Marks responded to the opposition points about their amendments by saying, "Both the Labour Party and the Liberal Democrats had commitments to fixed-term Parliaments in their manifestos, which were then agreed by the Conservatives in the coalition agreement".[551]

Most notably, most of the references to the Salisbury Convention come indirectly via mentions of the party manifestos at a previous general election, and more specifically any differences perceived by the speaker from the legislation the house was discussing. As with the Parliament Act, the opposition and the crossbenchers were using the argument as an enabler rather than a mechanism in many cases; thus, they should refrain from further disagreements with the Commons.

Time Constraints

Money and Tsebelis postulated that the chambers would be impatient to make a deal, and that this would affect the manner of bicameral negotiations, as both houses would be impatient for a deal.[552] The role of time pressure as an issue is relatively straightforward to measure. For the purposes of this section, time constraints occur when ping-pong is happening close to the end of parliament - within a few weeks, or when the government has set a date for implementation - for example, referendum or election dates to which the bill is intended to apply.

Five bills had clear time constraints. Three bills had amendments considered right at the end of the parliamentary sessions, namely the

[550] HL Deb, 20 March 2006, vol. 680, col.35. He then continued to speak about other conventions, saying, "The second time was to speak about wider conventions in which he said another "convention of this House, which is at least as important as the Salisbury convention, states that the elected government are entitled to have their business considered without unreasonable delay. That is linked with the other convention that the primacy of the Commons, as expressed through the Parliament Act, should finally prevail".
[551] HL Deb 18 July 2011, vol.729 col.1090
[552] Money and Tsebelis, "Cicero", 34

Aircraft and Shipbuilding Industries Bill, the European Parliamentary Elections Bill and the Railways Bill. Two more had dates by which the bill had to apply. The Parliamentary Voting Systems and Constituencies Bill had a referendum planned for the May 2011 and the Lords was debating amendments in February of 2011, while the European Parliamentary and Local Elections (Pilots) Bill was intended to be applied to the elections in the following year, giving a soft deadline for the electoral commission to be prepared for the new ballots. The remaining four bills did not have the same explicit time constraints. It is important to note that, while explicit time constraints are not said to be present on some of the bills in the study, parliamentary sessions face a more generalised time pressure, which places a more generalised pressure and discourages long periods of consideration.

An examination of the bills, divided according to their behaviour at the beginning and the end of the consideration of amendments, with the bills under time constraints shown in bold, is presented in Table 7-14 below:

	Change	**Time Constraint**	**Outcome**	**Self-Restraint**
European Parliamentary Elections Bill	1	Y	1	1
Aircraft and Shipbuilding Industry Bill	3	Y	2	4
Railways Bill	7	Y	8	9
Housing and Building Control Bill	8		7	8
Identity Cards Bill	2		6	5
Fixed-Term Parliaments Bill	4		3	6
Parliamentary Voting System and Constituencies Bill	5	Y	3	6
European Parliamentary and Local Election (Pilot) Bill	6	Y	5	2
Corporate Manslaughter and Corporate Homicide Bill	9		9	3

Table 7-14: Initial Position and Time Constraints Compared

There is no relationship here; those with time constraints are spread across the scale of change proposed. Therefore, time constraints cannot be said to have affected these bills and the amendments first proposed. This at least suggests that the House of Lords is not initially affected by timetabling issues.

The next stage compares this to the outcome from the point of view of the House of Lords.

	Change	**Outcome**	**Time Constraint**	**Self-Restraint**
European Parliamentary Elections Bill	1	1	Y	1
Aircraft and Shipbuilding Industry Bill	3	2	Y	3
Housing and Building Control Bill	8	7		8
Railways Bill	7	8	Y	9
Parliamentary Voting System and Constituencies Bill	5	3	Y	6
Fixed-term Parliaments Bill	4	3		6
European Parliamentary and Local Election (Pilot) Bill	6	5	Y	2
Identity Cards Bill	2	6		5
Corporate Manslaughter and Corporate Homicide Bill	9	9		4

Table 7-15: Policy Outcomes Compared to Time Constraints

The outcome of bills with time constraints 'tends' to result in a lesser outcome from the House of Lords' point of view. This may be coincidental, of course, but it does mean that there is no cause to dismiss a relationship. Self-restraint is shown in Table 7-16 below.

	Change	**Outcome**	**Self-Restraint**	**Time Constraint**
European Parliamentary Elections Bill	1	1	1	Y
Aircraft and Shipbuilding Industry Bill	3	2	3	Y
Housing and Building Control Bill	8	7	8	
Railways Bill	7	8	9	Y
European Parliamentary and Local Election (Pilot) Bill	6	5	2	Y
Corporate Manslaughter and Corporate Homicide Bill	9	9	4	
Identity Cards Bill	2	6	5	
Fixed-term Parliaments Bill	4	3	6	
Parliamentary Voting System and Constituencies Bill	5	3	6	Y

Table 7-16: Self-Restraint Compared to Time Constraint

The time constraint does not appear to have a direct effect on the outcome. However, in general, the bills with time constraints on them do end earlier, and with fewer concessions, than do other bills.

Reform Risk

Hypothesis H5 tests the relationship between the presence of reform proposals, specifically the Lords' proposals, and the outcome of the bill. This derives from the view that the House of Lords consists of self-interested actors who will ultimately act in the interest of self-preservation. This is linked to the professionalism arguments, but does run against the argument that the House of Lords is more willing to engage. Whilst testing this hypothesis does not seek to confound this argument, it does refine it, by saying the Lords will only push so far in a disagreement as it keeps one eye on its long term influence.

Reform bills targeting the House of Lords were proposed and had been announced in the Queen's Speech for three of the bills examined as part of this thesis, namely the European Parliamentary Elections Bill (1997-8), the Parliamentary Voting System and Constituencies Bill (2010-12) and the Fixed-term Parliaments Bill (2010-12). These bills are shown in the imminent category below. The House of Lords Act and the House of Lords Reform Bill were introduced in the sessions following the bills under discussion, and it was well understood that those changes were coming.

There was a bubbling undercurrent of reform consideration from 2000 through to 2009.[553] White Papers were issued, and free votes were held, but there was no agreement. On a less critical level, private members' bills were moved, and committee reports were published. However, after 2006, reform was no longer at the front of the political agenda. Therefore, the reform risk category contains those bills that occurred between 2000 and 2006, when the government was still generally open to continuing with the so-called Stage 2 of the Lords' reform. The degree to which any reform proposals had a likelihood of making the statute books may vary but,

[553] In 2000, the Wakeham Commission returned its report; 2002- Joint committee appointed to make reform; 2005- Discussion of a free vote on composition; 2006- Report from the joint committee on conventions; 2007- Government White Paper Published; 2007- Lord Steel Private Members Bill; 2007- Votes in both houses; 2008- Government White Paper;

between 2000 and 2006, there was still a belief that stage 2 reform could take place.

In the 1980s and early 1990s, when the government in the House of Commons was generally more supportive of the House of Lords, the risk of reform was at its lowest. In the 1970s, the Labour Government in the House of Commons was firmly against the House of Lords, and in favour of reform.[554] In the final category, no serious reform bill was proposed. The three categories of reform threat are shown within the stubborn insistence and outcome relationship table in Table 7-17 below.

	Change	**Reform Risk**	**Outcome**	**Self-Restraint**
European Parliamentary Elections Bill	1	A	1	1
Aircraft and Shipbuilding Industry Bill	3	C	2	3
Railways Bill	7	C	8	9
Housing and Building Control Bill	8	C	7	8
Identity Cards Bill	2	B	6	5
Fixed-term Parliaments Bill	4	A	3	6
Parliamentary Voting System and Constituencies Bill	5	A	3	6
European Parliamentary and Local Election (Pilot) Bill	6	B	5	2
Corporate Manslaughter and Corporate Homicide Bill	9	C	9	4

Table 7-17: Relationship between Reform and Amendments

There are two patterns to be aware of here. Those with no reform risk tended to be lower down the initial proposed change, with less policy implications in the Lords' amendments. Those with either an imminent, or a general reform risk generally proposed greater changes. Therefore, there was a split in the initial position taken from the start. Table 7-18 shows policy success and reform risk.

[554] In 1976, the Labour Party voted for abolishing the House of Lords, but it never acted on it, and in 1979, it did not make it into the manifesto. In the 1970s, the problems the government was facing in the House of Commons were a bigger priority.
David Shell, Labour and the House of Lords, A Case study in Constitutional Reform p. 294

	Change	Outcome	Reform Risk	Self-Restraint
European Parliamentary Elections Bill	1	1	A	1
Aircraft and Shipbuilding Industry Bill	3	2	C	3
Housing and Building Control Bill	8	7	C	8
Railways Bill	7	8	C	9
Parliamentary Voting System and Constituencies Bill	5	3	A	6
Fixed-term Parliaments Bill	4	3	A	6
European Parliamentary and Local Election (Pilot) Bill	6	5	B	2
Identity Cards Bill	2	6	B	5
Corporate Manslaughter and Corporate Homicide Bill	9	9	C	4

Table 7-18: Outcome Compared to Reform Risk

Those with an imminent risk generally saw the Lords either give in or fail, having proposed greater changes initially.

	Change	Outcome	Self-Restraint	Reform Risk
European Parliamentary Elections Bill	1	1	1	A
Aircraft and Shipbuilding Industry Bill	3	2	3	C
Housing and Building Control Bill	8	7	8	C
Railways Bill	7	8	9	C
European Parliamentary and Local Election (Pilot) Bill	6	5	2	B
Corporate Manslaughter and Corporate Homicide Bill	9	9	4	C
Identity Cards Bill	2	6	5	B
Fixed-term Parliaments Bill	4	3	6	A
Parliamentary Voting System and Constituencies Bill	5	3	6	A

Table 7-19: Self-Restraint and Reform Effects Compared.

Those with a reform risk are higher up the list, indicating both that there was higher self-restraint, and greater cause. However, those in both the general risk and no reform risk categories were distributed equally. If reform is a factor, it does not have that great an effect on self-restraint directly. However, there is a distinction between those without a reform risk, and those that have an imminent risk. Moreover, there is also a spread within them. Therefore it seems that in post reform, the effect was reversed compared to post reform.

The Unelected Chamber

References to self-restraint can be less explicit than merely looking at the strong, constitutionally mandated forms thereof. Much of the self-restraining actions from the Lords are likely to come from a far more general awareness that the House of Commons is simply more legitimate than it is, based on its democratic mandate. A good example of this is the reference to the House of Lords as an unelected second chamber.

The two Houses in Parliament are nearly always referred to either by their names, or more fluidly as 'chambers', 'places' or 'houses'.[555] The House of Commons is therefore always referred to either as 'the other' or 'another', or as 'The House of Commons'. References by the lords to their own chamber are somewhat more varied, but have been grouped for the purposes of this study by the chamber/house/place denomination. This also identifies more descriptive phrases, such as peers referring to themselves as an advisory chamber, but the intended argument remains the same. The 25 sources (a small proportion of the total 736 contributions counted) contained a direct reference to the Lords as unelected.

Fifteen of these were in the period after the 1999 reform Act. Of those prior to the reform act, seven were made during the European Parliamentary Elections Bill, and the remainder during the Aircraft and Shipbuilding Industry Bill, reflecting the nature of the disagreement being made. The three arguments during the Aircraft and Shipbuilding Industry Bill were made by Lord Byers and Lord Peart, both of whom were on the opposition benches, and by Lord Shepherd, who was a government peer. Lord Peart's remark was more about the fact that conventions existed to end deadlock as opposed to being a judgement on the legitimacy of the House of Lords.[556] Lord Byers made a similar contribution, saying the Lords was entitled to continue to disagree under the Parliament Act, and so

[555] A universal frequency test in QSR Vivo 10 denotes all strings of one or more letters that occur at least once. This allows for elimination of any other method of reference to 'the other place'.
[556] HL Deb 22 November 1976, vol. 377 col. 1685

were enabled, even as an unelected chamber, to insist.[557] Lord Shepherd, however, argued that the House of Lords was not entitled to disagree, saying that opposition peers were "asking the Government to do is to accept the view of an unelected Chamber as against the view of an elected Chamber".[558] This is a censorship of legitimacy, and is projecting it further to be a testament to the validity of the respective arguments.

When the threat of reform was non-specific, but general, there was still considerable concern about the unelected status of the House of Lords. The European Parliamentary and Local Elections Bill saw seven such interventions, one in the second round, three in the third round, one in the fourth round and two in the fifth round. Lord Hoyle, a government peer, said, "It is for the elected House, not an unelected House, to take that decision. I find it amazing that an unelected House should interfere with making it easier—not harder, and that is what your Lordships are doing—for people to cast their vote in a democratic election".[559] In the fourth debate, Lord Rennard tried to dismiss the argument again, saying:

> "This is not, therefore a simple issue between an elected House and an unelected and only partially reformed one. It is about how changes to voting rules should be decided when the parties involved cannot agree".[560]

During the Identity Cards Bill, Baroness Scotland implied that the fact that the Lords was unelected would mean that the house's arguments would hold less weight in the minds of those outside of the chamber.[561] Lord Richard argued that the elected house should prevail.[562] Lord Fraser also implied that being unelected meant that they were being coerced.[563]

[557] Ibid col.1671
[558] Ibid col. 1668
[559] HL Deb 18 March 2004, vol. 419. col.348
[560] HL Deb 30 March 2004 vol. 419. col.1183
[561] HL Deb 28 March 2006, vol. 680 col.662
[562] HL Deb15 March 2006,vol. 679, col.1239
[563] HL Deb 15 March 2006, vol. 679, col.1245

Looking at those bills that occurred when a reform was described as imminent, the European Parliamentary Elections Bill and the Fixed-term Parliament Bill, both contained direct references to the House of Lords status as an unelected chamber. In the 1998 debate, the arguments were made by Lord Shore (Labour) and Lord Barnett (Labour) in the second round, Lord Shore, Lord McNally (Lib Dem), and Lord Callaghan (Lab) in the third round, and Lord MacKay (Cons) and Lord Wetherill (Cross) in the final round.

Lord McNally, although an opposition peer, was a Liberal Democrat peer, whose party was highly supportive of the bill. He said, “I believe that it would be a constitutional outrage if this House used its unelected majority to thwart the wishes of the electorate expressed at the general election and those of another place elected through the democratic process”.[564] This is far stronger censure than was seen previously. By contrast, Lord Shore, who was arguing against the government, said that this was the wrong argument, saying, "The argument that it is simply a matter of elected Commons versus unelected Peers and that the unelected Peers, because they are dominated by hereditary Conservative Members, should always be brushed aside, is not in itself strong enough”.[565] His argument was that dismissing the argument because of who was making it was wrong.

In the Fixed-term Parliament Bill, three statements were made referring to the House of Lords unelected status, all during the first period of ping-pong, which was an earlier advent of the debate. Two statements were made by Lord Rennard, a Liberal Democrat, and one by Lord Howarth, a Labour peer.[566] Lord Howarth stated, “An argument could have been mounted that it would not be appropriate for your Lordships' House, unelected as it is, to decide itself whether the fixed-term provisions of this legislation should have been renewed".[567] This is more about raising the potential arguments of detractors to the amendments being debated than it

[564] HL Deb 17 November 1998 594 c. 1147.-Lord Barnett also supported this, saying that the Elected chamber was entitled to have its way (c. 854)
[565] HL Deb 12 November 1998, vol. 594, col.851
[566] Appendix – Unelected Word Results
[567] HL Deb, 18 July 2011,vol. 729 col.1086

is advocating his own position. Lord Rennard used other parliamentary bodies in the United Kingdom as examples of chambers with no problems with fixed-term parliaments as reasons that the 'unelected House' should not obstruct them either.[568] Therefore, while none of these really acted as explicit censorship on the Lords' rights to insist on an amendment, they were raising an argument by proxy, and placing it in the consciousness of the listening lords. Whether this was merely theatrics or genuine beliefs is less relevant than is the thrust of the arguments to which they were alluding.

The time constraints appear to show that those bills that had no time constraints showed a lot of self-restraint; given that the outcomes were less favourable to the House of Lords' position, this suggests that there is less potential benefit to pushing a position, and that the government is likely to incur fewer costs, therefore suggesting that the House of Lords sees that there is no benefit in pushing any position for which there is no limitation.

Reform is a little different. Looking at the comparisons, changes that are more significant were pushed for when reform was viewed as imminent; however, the outcomes were among the least favourable to the House of Lords, thus suggesting that the Lords capitulated. In the general risk category, the initial position was a medium degree of change, and there was no change. The self-restraint levels are therefore as expected, with those with imminent reform risk being higher. These bills were also those for which, mainly due to the reform risk, the House of Lords appeared to be more aware of its unelected status.

7.3.2. **Conciliation**

Conciliation is about the coming together of the two sides. The arguments from the two sides of the legislative process need to become closer together. This failed in the cases of the Aircraft and Shipbuilding Industry Bill and of the European Parliamentary Election Bill. Whilst these are also examples of a lack of self-restraint to some extent, they are also examples

[568] Ibid col.1086

of a failure of conciliation. Table 7-20 in the previous section showed the layout of motions moved for all the bills.

House	C	L	C	L	C	L	C	L	C	L	C
Phase	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**
Rail	2	4	1	5							
Housing		1	4	5							
Corporate Manslaughter			2	1	2	1	2	2	2	5	
Europe	1	1	2	1	2	1	1	1			
ID Cards						2	1	2	1	2	5
Shipbuilding					1						
Coalition				6							
Pilots			3	4	1	3	1	1	2	6	

Table 7-20: Motion Layout

Three bills did not open with the House of Commons' complete disagreement in at least one part of the House of Lords' argument. The remaining bills did. In the House of Lords, all except the Railways Bill were followed with at least one insistence. In the three bills in which there was an 'immediate' attempt at conciliation, there was a generally more successful outcome. These bills saw broad acceptance of the House of Lords' concerns.

In two cases, the House of Lords then insisted on its initial position without offering an alternative amendment. In the case of the Housing Bill, the Commons accepted this is a further amendment, which then was accepted by the Lords. This amounted to a degree of conciliation. In the case of the Corporate Manslaughter Bill, the initial pair of phases was followed by two more Commons' amendment in lieu, and Lords' insistences. The Commons made a fourth insistence with an amendment in lieu, which the Lords countered with an offer of its own. The Commons made another offer, and this was accepted. There was conciliation, but the process of getting there was one sided.

In the remaining case, the Railways Bill, the House of Lords agreed with an amendment. This was rejected by the House of Commons, and the Lords accepted the original offer. This amounted to a degree of conciliation. The remaining bills had both houses insisting flatly on their

original positions. This meant that, in the next stage, there was a risk of double insistence, and the House of Commons would need to add an alternative amendment in all cases; however, the difference in conciliation is how the House of Lords then reacted. This category of bills contained both of the bills that failed, and both of those in which an insistence was overthrown. Only the Identity Card Bill reached a condition of mutual conciliation.

Of these bills, two had a pair of insistences after the initial moves. One, the European Parliamentary Elections Bill, ended in failure. The other, the European Parliamentary and Local (Pilots) Bill, passed. Therefore, whilst initial conciliation is a positive sign, the lack of it is not a death-knell. The bills that had a pair of insistences followed with an insistence on all points with only one exception, where it was followed with non-insistence and amendment. This was followed by an amendment and agreement. Of the five bills that had an insistence with amendment, three were again insisted on, and the remaining two were moved for insistence but were overturned. In terms of conciliation, none of these meets the criteria set out.

7.4. Conclusion

There was a clear link between the number of changes aimed for at the beginning of the process in the initial Lords' amendments. This link did not show direct causality, but the existence of the strong correlation merited a deeper examination. This was regardless of the time spent or the reform era.

H_1: That the House of Lords will be most successful in achieving impact when the original amendment is less major. This was found to be the case most the time. To be successful with more impactful amendments required a more powerful external pressure, as was seen with the identity card bill.

H_2: That the House of Lords will revert to a position of self-restraint as the process continues. Self-restraint is also a factor in some areas; however, there were many instances in which the existence of self-restraint appeared

to be related specifically to crossbenchers although, after a more drawn out process, it could also be related to the opposition.

H_3: That conciliation will be most evident when it starts early. The greater degree of conciliation was most visible, most frequently. This appears to be less of a factor than is self-restraint, and still less so than is attrition.

8. Conclusion

The question of how the House of Lords impacts on legislation during the conciliation process of ping-ponging addresses the functioning of the legislative process at the point at which it is under the most pressure, and the point at which the House of Lords is attempting to challenge the elected chamber and the government. The fact that the Lords has an impact on legislation is not disputed. However, the ability of the Lords to have an impact when its attempts have been opposed amounts to a clear demonstration of strength within the bicameral system. Studies of bicameral conflict resolution in international examples have shown that weaker second chambers, such as the House of Lords, are at a disadvantage in terms of negotiations once conciliation begins because of the size, constitutional set up, and opportunities to prevent the first chamber from exercising its veto. The House of Lords does not have a fixed constitutional position; accordingly, its procedures are derived from a combination of statutes and conventions. The Parliament Act provides the House of Commons with a single-chamber veto. Every time that this veto has been exercised, the House of Lords has found itself weakened, either explicitly or implicitly, by either consideration of further reform or by a fear that further action may result in such a consideration. However, the House of Lords has been able to inflict defeats and to exercise influence by way of amendments.

This thesis argues that the House of Lords exercises self-restraint in order to carry out its role as a second chamber and impact on legislation most effectively; furthermore, this has been amplified via the reforms of 1999, as the Lords has become more concerned with its own on-going relevance. This will be demonstrated via each of the three threads in the research question. The examination of nine case studies was conducted as detailed case studies and as analyses cutting across all nine cases. The research question was broken down into three sub-questions, first covering the ability of the Lords to bring about the impact it sought, then the changes of behaviour whilst the procedure was taking place, and lastly the extent to

which the final outcome could be described as being the result of a conciliatory action.

Self-restraint is the dependant variable in this study and is the holding back from a position for political purposes. The reform of the House of Lords is the independent variable of interest. However, there are other variables of note that interact with this. These are the Parliament Act, party balance, Crossbencher involvement, the Salisbury Convention, conventions and time constraints.

8.1.1. **Question 1: How Does the House of Lords Seek to Impact on Legislation?**

The House of Lords is more successful in having more of its aims incorporated into a bill when it attempts changes that are less impactful to the . This supports the main argument as self-restraint is not only apparent in the negotiating behaviour, but also in the amendments attempted. Where a more impactful amendment is attempted, the measure of self-restraint is the degree to which the Lords backs down from its position. The role of a second chamber is as a brake, but its role as an aide to efficient and effective legislative agenda is also key.

Impact was assessed using the amendments offered, compared to the amendments that were agreed. Although the question itself related to the amendments that experienced ping-ponging, this was contextualised using all the amendments considered with regard to each bill. These amendments, the number returned from the Commons, the percentage of the total it represented, the number of ping-pong amendments, and the percentages of the total and those returned that these represented are shown in Table 9-1 below.

Bill	Lords Amendments	Amendments Returned	%	Ping-pong Amendments	% of Total	% of Returned	Pd.
Aircraft and Shipbuilding Industry Bill	85	54	64	7	8	13	Pre-Reform
Housing and Building Control Bill	217	12	6	12	6	100	
Railways Bill	470	4	<1	4	<1	100	
European Parliamentary Elections Bill	9	4	44	4	44	100	
Corporate Manslaughter and Corporate Homicide Bill	35	5	14	5	14	100	Post-Reform
Identity Cards Bill	72	13	18	2	3	15	
European Parliamentary and Local Elections Pilots Bill	50	2	4	2	4	100	
Parliamentary Voting Systems and Constituencies Bill	104	6	6	2	2	33	
Fixed-term Parliament Bill	9	3	33	3	33	100	
Total	**1051**	**103**	**10**	**41**	**4**	**40**	

Table 8-1: Amendments and Percentages

The most amended bills were the Railways Bill, the Housing and Building Control Bill, and the Parliamentary Voting Systems and Constituencies Bill. All of these saw a small percentage of amendments returned from the Commons (<1, 6, and 6 respectively). Only the European Parliamentary and Local Elections (Pilots) Bill was comparable to this because, although 50 amendments were moved, only two were returned. The bills with the most amendments returned from the Commons (after one round) were the Aircraft and Shipbuilding Industry Bill, the Identity Card Bill, and the Housing and Building Control Bill; these amounted to 64%, 18% and 6%, respectively. The bills with the highest percentage of amendments returned were the Aircraft and Shipbuilding Industry Bill, the European Parliamentary Elections Bill and the Fixed-term Parliaments Bill. The latter two had less than 10 amendments made in total, and a considerable number of these were then rejected by the Commons, which then continued throughout ping-ponging.

Within this, the more important measure is the degree to which the House of Lords attempted to change the policy of the government, and then the extent to which it was successful in achieving that impact. This is expected to be in line with the findings of other authors. Much of the Lords' work is reviewing and "reflecting".

Impact Sought Related to Success

Chapter 8 showed that the intention and the eventual outcome correlated closely in eight of the nine cases examined, with the Identity Card Bill proving the exception. However, within this, there is an additional divide, which comes at the end of the process, in which bills can be divided into three categories: failure, capitulation, and agreement. In terms of influence, these outcomes are very different, and the examples are discussed in turn.

With regard to the Aircraft and Shipbuilding Industries Bill, the Lords sought to exclude an entire industry from nationalisation. In the case of the European Parliamentary Elections, the Lords sought to change the electoral system being implemented. The bills failed in both cases; thus, the Lords was unsuccessful (with regard to the Aircraft and Shipbuilding Bill, the Lords succeeded in the reintroduction that followed, whereas in the European Parliamentary Elections Bill, it defeated the bill in the second reading, leading to the House of Commons passing the Bill via the Parliament Act). This failure of the bill means that the Lords' impact was extremely high if, as some suspected, the real aim of the Lords was to defeat the legislation. In 1977, this defeat was sufficient to cause the government to reconsider, whereas in 1998, it merely increased the determination. This demonstrates the risk in attempting to overturn an entire bill. Therefore, whilst the short-term impact was very high, the long-term impact on the legislation varied, because whilst it was later accepted in full in one case, the Lords achieved none of its stated aims in the other.

The Housing and Building Control Bill allowed the expansion of the 'right to buy' to include Housing Association tenants, but excluded homes designed for disabled and elderly tenants. The terms were tightened from

the Lords' original offer; thus, this counted as successful implementation of a minor change. The Railways Bill allowed bidding at the discretion of the franchising director. This was also a victory for some aspectst of the Lords' concerns, although it did not allow for the unlimited bidding that the Lords had desired. These bills support the development of the theory that the House of Lords is most successful when moving smaller policy changes rather than large policy shifts. That this was highly prevalent in the House of Lords in the pre-reform period was not expected, as this thesis had set out to argue that this would become more prevalent in the post-reform House of Lords.

In the post-reform period, the European Parliamentary and Local Elections (Pilots) Bill had an amendment moved to it that resulted in halving the size of the pilot and placing strong security safeguards in place for the voting. The legislation passed with three of the four pilot regions and some additional safeguards. The Fixed-Term Parliaments Bill and the Parliamentary Voting Systems and Constituencies Bill both saw the House of Lords attempt to move what the government perceived as moderately important changes to the policy. In both cases, the House of Lords voted to accept a review rather than any change. However, in these three cases, the position was not accepted, and the government won a majority. Therefore, whilst the outcome was that amendments were not fully accepted, and the impact was not as great as was expected, there was an expectation that it was possible to extract more concessions than they actually achieved. This was particularly noticeable among those Crossbench Peers who had initially supported the amendment. These bills were all in the middle of the scale of impact.

The Corporate Manslaughter and Corporate Manslaughter Bill could be argued to be a major change, as it extended the bill to an entire policy area that the ministers at the time argued was deserving of separate primary legislation. However, as it did not impact on the government's stated aims, it is considered to be a minor change. The result, however, was that the issue of deaths in custody would be included after a set time. In this

respect, the Lords was extremely successful. In these cases, the desired impact was the lowest of all the examples studied; however, the final government amendment was welcomed by the House of Lords in all three instances, as it accepted that it had pushed the government as far as it was able to go. It is also worth commenting on the fact that two of the three bills were from the pre-reform era, although admittedly under Conservative governments. As with the pre-reform bills discussed previously, the House of Lords in these cases made smaller changes, and was successful. However, this definition of change with regard to the Corporate Manslaughter Bill suggested that the House of Lords advocated a smaller change because it expanded a policy. However, the policy to which it expanded, namely that of custody, was significant and the House of Lords was still successful.

Evidence that Success Was Not Inversely Linked to Impact

The House of Lords' main contentious amendment to the Identity Card bill was an amendment that removed the link to passports as the mechanism for applying for an identity card and entry on the register. This resulted in a voluntary scheme. The amendment that was accepted at the end of ping-ponging was that applicants for passports prior to January 1 2010 would be able to opt out of having a card, but not out of the register. This amounted to a major change to the effect of the policy. This was a case in which, even though factions in the House of Lords did not agree, there was a large degree of success. The degree of change attempted placed it between the European Parliamentary Elections Bill and the Aircraft and Shipbuilding Industry Bill in terms of impact sought. However, in terms of outcome, the degree of success achieved was more comparable to the Housing and Building Control Bill and the Corporate Manslaughter and Corporate Homicide Bill. As with these bills, the final decision in the House of Lords was agreed as a negotiated outcome.

Lords' Efforts to Impact Legislation

With regard to the pre-reform bills (Aircraft and Shipbuilding Industry, Housing and Building Control, Railways, and European Parliamentary

Elections), the House of Lords proposed major changes to the Aircraft and Shipbuilding Industry Bill and the European Parliamentary Elections Bill, which were unsuccessful because the bills failed. These two bills addressed issues that divided the parties on a fundamental level at that time. Furthermore, both bills occurred with a Labour Government, against a Conservative majority in the House of Lords that was extremely hostile. However, the Housing and Building Control Bill and the Railways Bill also covered divisive policies and were high-profile defeats for the government at the time, although there were Conservative majorities in both houses. Whilst the Lords was more successful in having some of its amendments accepted and the changes made were "smaller" in both cases, the changes made were not considered acceptable to the government - clear efforts at conciliation were only made for the Housing and Building Control Bill.

In the post-reform constitutional bills (European Parliamentary and Local Elections (Pilots), Parliamentary Voting Systems and Constituencies, and Fixed Term Parliaments), the Lords disagreed with the underlying policies and scope of the bills. This is also indicative of the importance the Lords places on its role as a brake and guardian of the constitution. However, as with the European Parliamentary Elections Bill, there were concerns that the real aim of the House of Lords was to defeat the European Parliamentary and Local Elections (Pilots) and Parliamentary Voting Systems and Constituencies Bills.

The House of Lords had contrasting levels of impact on and outcome concerning the two post-reform Home Affairs' bills (Identity Card, and Corporate Manslaughter and Corporate Homicide). The bills were received very differently in the House of Lords. The Identity Card Bill was met with hostility, whereas the Corporate Manslaughter and Corporate Homicide Bill was welcomed. Both bills reached outcomes that were amongst the most successful for the House of Lords; the Identity Card Bill policy was changed and the scope of the Corporate Manslaughter and Corporate Homicide was expanded. The reception and view of the

Identity Card Bill throughout is similar to the reception of the constitutional bills studied after the reform. Therefore, why did these examples begin so differently and yet end in such a similar manner?

In the majority of cases, it seems that the House of Lords will have the greatest impact on those bills in which it seeks less fundamental changes. This does not mean that there are not occasions on which it is successful in introducing relatively major changes, but these cases are rare. In recent years, these failures to introduce major changes have been attributed to the House of Lords itself accepting lesser changes offered by the House of Commons.

These results may well play down the House of Lords perceived impact on bills, but this is only in relation to amendments concerning which the House of Lords continued to insist. The Lords is most effective at making small changes to bills and, for bills such as the Identity Card Bill, were able to bring about changes that were accepted by the House of Commons far earlier. For all the bills discussed in this chapter, with the exception of the European Parliamentary Elections Bill, the Lords moved a considerable number of amendments. In the Parliamentary Voting Systems and Constituencies Bill, the House of Lords was successful in having the Isle of Wight exempted from the proposed border changes, although this has admittedly been glossed over in this study.

The House of Lords does have successes and is impactful. However, this study shows it is less likely to be as successful, when the policy change it is advocating is greater. This supports Russell's findings. This is not arguing that the House of Lords is somehow less impactful than other studies have indicated. The House of Lords' impact is not on the headlining issues. With headlining issues, the House of Lords' impact has a greater possibility of obstructing the efficient functioning of the legislative agenda; yet, in the post-reform period it has had less desire to do so, and appears to avoid this actively in the post-reform era.

8.1.2. **Question 2: How does the behaviour of the House of Lords change throughout the process of ping-ponging and affect legislation?**

This question considered the argument that the House of Lords is driven primarily by a desire for self-restraint, based on a need for self-preservation and an awareness of the wider constitutional position in which it currently finds itself. The cornerstone of this self-restraint is the Crossbenchers. This is based on the evidence from wider studies of the Crossbenchers' role in providing expert advice, non-partisan arguments and, more importantly, their historical precedent for self-preservation when the perceived choice has been remaining useful with curtailed powers or becoming a symbol without purpose. This was seen in their behaviour at the major points of reform.

This came about due to the well-evidenced viewpoint that the House of Lords became more 'professional' following reform, and that the Crossbenchers were a key part of this. In the past, the Crossbenchers have also been the most acutely aware of the wider constitutional ramifications of any problems, and have been the keenest not only to pass legislation, and to pass good legislation, but also to do so in a way that does not antagonise the government in the lower chamber. With more Crossbenchers engaging more often, as well as lords from all parties tending to be more concerned with the continued effectiveness of the House of Lords, the Lords has become more circumspect about the matters upon which it chooses to insist; due to the reduced number of successes in these conflicts, this might give the impression that it is having less impact upon legislation.

'Behaviour' covered both the division and debate aspects of the House of Lords, and considered how the behaviour changed as ping-ponging progressed, as well as whether there were early indicators (other than the nature of the amendment) that ping-ponging was likely to last for more phases. It included three aspects of investigation. The division aspect looked specifically at the peers participating and the groups they were

from, as well as the majorities and the direction in which they were voting. As ping-ponging and the progression of ping-ponging require a defeat of the government's position, this allowed for a comparison of the crossbenchers, the opposition and the government. The second aspect covered the number of contributors and the style of their contributions, focusing particularly on the awareness of the constitutional relationship between the two Houses of Parliament. The third aspect was that of process tracing, which examined the way in which the motions moved were changing, be it flat insistence, some move with an amendment, or some form of acceptance.

Divisions, Voting and Evidence of Self-restraint

Without any distinctions of reform status or peer composition, the trend of the change from the beginning of ping-ponging to the end of ping-ponging was one of increasing turnout and a decreasing majority, although there was an increase at the end on average, which is consistent with an agreement being reached through negotiations. This was consistent with the rallying of peers and a coming back into line, and certainly ruled out an overall decline in interest, whilst not being counter-indicative of either self-restraint or attrition.

Therefore, when examining division patterns for evidence of self-restraint, the data needed to be sub-divided to examine the evidence within the overall framework identified above. When the overall data were divided into the three main groups of peers, namely government, opposition (neither of which distinguish parties) and crossbenchers/independents, the view solidified. The government was found to increase its turnout across ping-pong, although the majorities it achieved remained steady. This is indicative of rallying, even if it is not overwhelming. The opposition declined on both measures, which is indicative of self-restraint, or at least of decline within that group. On average, the Crossbenchers maintained a steady turnout during ping-ponging, which suggests that interest steady. The majority was also steady, although a dip that suggested concerns might have been raised in drawn-out cases was found. Coupled with the

steady turnout, this suggests that a degree of self-restraint was exercised by the crossbenchers.

In the pre-reform examples, the House of Lords as a whole had an increased turnout and an increased majority. The government turnout increased, whereas the opposition's decreased. The crossbenchers remained steady. This suggests that the government increase in turnout was sufficient to outweigh the opposition's decline, and suggests that the government was effective in pulling its members together. The government majority was steady; however, the opposition's majority increased. The crossbenchers were steady. This suggested that, if anything, the opposition was becoming more polarised and was driving that change.

In the post-reform period, both the turnout and the majority of the overall House of Lords decreased, although the end stages showed a marked increase in the majority. In the post-reform examples, the government turnout was steady, but the opposition declined in terms of its relative turnout. Crossbenchers also showed a slight decline. This suggested that the overall decrease shown was driven by the opposition. This adds strength to the self-restraint argument. The government showed a steady majority; by contrast, the opposition decreased, as did the crossbenchers. Therefore, the decrease appeared to be driven more by those in favour of continuing insistence.

This suggested that self-restraint was unlikely to be present pre-reform. Given that two of these bills failed and the other two were resolved without the need for drawn-out ping-ponging, this is not unexpected, and increases the validity of the evidence for post-reform behaviour instead. In both cases, the opposition went from having a higher percentage of turnout (within its own members) to a lower one; thus, the government retained its turnout more effectively than did the opposition. Therefore, voting outcomes support the view that, in post-reform, the opposition was turning out less often and achieved decreased majorities in the votes, which was suggestive of a decline in interest, although it is more difficult to attribute a cause from votes alone. As the government remained steady, this is not

consistent with the opposition being overwhelmed by the weight of government support.

Process-tracing Evidence

Self-restraint could also be viewed as being a combination of the number of rounds in the Lords that the bill required, although those that ended with the Lords insisting are comparatively more important for disproving self-restraint, and the way in which the bill ultimately ended. The most important factor in self-restraint was the ability of the Lords to accept the passing of a bill with some concessions as opposed to a complete failure (regardless of the later outcome). The result was a scale that included all three points and weighted them. In this case, the Railways Bill, the Housing and Building Control Bill, the Parliamentary Voting Systems and Constituencies Bill, the Fixed-term Parliaments Identity Cards Bill and the Corporate Homicide Bills were all more restrained (from most to least) than were the Aircraft and Shipbuilding Bill, the European and Local Elections (Pilot) Bill and the European Parliamentary Elections Bill.

When this was examined in the context of the Salisbury Convention and the manifesto, an issue that should have affected self-restraint, there were three categories according to which the relationship was viewed: A manifesto link was accepted, a manifesto link or the application of the Salisbury Convention was contested, or there was no link, and it was not an issue. Self-restraint was expected to have been the highest in those bills in which the link was clear and accepted. This was true for three bills in the study, and two of these were bills for which the Lords showed the most self-restraint. The other was the Aircraft and Shipbuilding Industry Bill, one of those in which the Lords showed the least self-restraint. The bills without a Salisbury Convention link were less restrained, which is consistent with some type of link being present. The bills in which the Salisbury Convention was contested fell somewhere between the other two groups. Therefore, there did appear to be a sufficient link to suggest that the Lords was still restrained by it at some level; however, if the policy is

sufficiently disliked, this will not be enough of a constraint to deter prolonged insistence.

The crossbenchers were usually involved in the bills with the most self-restraint, and were less involved in those without self-restraint. This adds to the view that they played some role in adding restraint. However, they may be expected to be less involved in bills in which the primary disagreement is along party lines. Moreover, their lack of involvement suggests that this party division was a primary driving force and the main block to gaining concessions, given that, in cases in which there was recognised dialogue, this was facilitated by crossbenchers. This does not mean that opposition or backbench peers may not be equally successful in building a dialogue with the ministers concerned, but the crossbenchers appear to be particularly successful at it.

Time constraints were present in the three least restrained bills, as well as in the Parliamentary Voting Systems and Constituencies Bill. Therefore, there was no evidence of time constraints assisting with restraint on the part of the House of Lords in most cases. If anything, in the case of the European Parliamentary Elections Bill and the Aircraft and Shipbuilding Industry Bill, the result was a less protracted and drawn-out procedure, when it was clear that there was no room for negotiations. Had there been more time, this may have occurred, but as the scenario played out in these cases, the time constraint appeared to assist the Lords to take a more entrenched position concerning the amendments it suggested. The opposite was true for the Parliamentary and Voting Systems Bill and the Railways Bill, when the Lords did appear more aware of the risks of extending the conciliation process. However, in the Parliamentary Voting Systems and Constituencies Bill, the Lords had already drawn the process out.

Arguments referring to the elected status of the Lords, the Parliament Act and the Salisbury Convention, tended to occur more often in the middle of debates concerning issues that were already contentious or in which the government had a particular timeframe to uphold. Self-restraint elements were found in the Identity Card Bill, the Railways Bill and the Housing

and Building Control Bill. The European Parliamentary and Local Elections Pilots Bill also showed some elements that could be attributed to self-restraint. The elements that were present in these bills were often missing in bills such as the Aircraft and Shipbuilding Industry Bill and the European Parliamentary Elections Bill.

The concern about the Salisbury Convention was also a major factor. In cases including the Identity Card Bill, both the Coalition government's constitutional reform bills and the European Parliamentary Elections Bill, the application of the convention was contested. Some tendency towards self-restraint was shown in all cases barring the Parliamentary Elections Bill.

From the point of view of motions, there is evidence of self-restraint and that the House of Lords would generally end the process when it ran out of new, or successful, arguments. There is even stronger evidence that this is usually brought about by the crossbenchers, although this is not always the case. It is most likely to be present if it results in a bill ending early; however, more arguments are made for longer bills, but endings are more likely to be the result of attrition than because of a clearly restrained nature. The restraint principle is not universal, and is simply ignored for some issues. This is not necessarily in areas of 'high principle', such as the constitution or concerning a set piece of legislation.

8.1.3. **Answer**

This study has enhanced the point of view that the House of Lords provides an element of legislative debate and analysis that the House of Commons cannot. When put into the prism of traditional comparative bicameral literature, the House of Lords is assisting with spreading the load in an increasingly pressured parliament, as well as providing, to a certain extent, a brake. Meg Russell found something similar in her analysis and noted that the House of Lords and House of Commons perform "different but complementary roles".[569]

[569]Russell, *Contemporary*, 199

Unlike Russell's work, the focus on the Lords and the evolution of amendments provided in this study expands on Russell's findings that the government is responsive by moving its own amendments, and the overturn or sustaining of defeats, but also in the way the overturn or sustainment is achieved. This enhances the roles of both party peers and crossbenchers, whose powers Russell put down to more intangible expert positions. Rebels were found to have a statistical effect, and this was seen.

This study largely agrees with these findings. What it does differently is study the changes that took place between the House of Lords moving an amendment, and the amendment being fully accepted or rejected. The divisions showed that, overall, the opposition was declining, and the government was either steady or rallying. This rallying increased in the pre-reform era. In the post-reform era, the opposition declined. Whilst motive was not considered, this is restraint when it is considered that abstention is considered better than rebellion. Traditional self-restraint, in the desire to end ping-ponging early, was seen; however, the ability to introduce new points of debate then depends largely on what is possible outside of the chamber as the argument within the chamber becomes increasingly repetitive.

8.1.4. **Question 3: Is there a move towards conciliation over ping-ponging?**

Conciliation required that at least some major element of the House of Lords be incorporated, but that both sides were required to accept the outcome. In this regard, it is linked to the first research question, in so far as an amendment has to be made and impact has to be attempted. This requires that there is movement throughout the ping-pong procedure. When bills failed, there was conciliation. The central argument being made was that successful conciliation, from the point of view of the House of Lords, was present most often when there were early overtures to that effect.

However, there was also a contra-indicator, in that the opposition majority (necessary for ping-pong) was worn away through attrition as the government rallied its peers. Nonetheless, the presence of attrition does not mean that there was no conciliation, merely that the outcome was not accepted. Evidence was gathered from the motions, the amendment texts and the debates, with divisions providing a framework to analyse the outcomes. Attrition does not mean that conciliation did not take place, but it does mean that it is not entirely a positive, or proactive, process.

A study of the motions showed that the outcomes were divided into three categories. The first of these was failure of the bill, the second was an agreed outcome, and the third was an overturned amendment. The first category occurred in the European Parliamentary Elections and Shipbuilding Bill, as discussed at length in the preceding chapters. Those that ended with an agreed conclusion included the Railways Bill, the Housing and Building Control Bill, the Corporate Manslaughter and Corporate Homicide Bill and the Identity Card Bill. The final category, in which a motion was overturned, included the Pilot Bill, the Fixed-term Parliament Bill, and the Parliamentary Voting Systems and Constituencies Bill.

The first category saw neither chamber move beyond insistence, and non-conciliatory offers that amounted to avoidance of double insistence before eventual failure. In both cases, the opposition in each chamber saw the offers as being no more than procedural. Conciliation was never an option in either case, and it certainly did not begin that way. Therefore, there was no evidence to contradict the theory.

In the second category of bills, three began with conciliatory overtures, although only the Railways Bill saw this mirrored in the Lords as well as in the Commons. The Identity Card Bill was different in that it began with both chambers insisting on their original positions. The Railways Bill and the Housing Bill both ended with an agreement between the two chambers. With regard to the Corporate Manslaughter Bill, it is notable that both chambers began offering alternatives mid-way through the proceedings. A

similar path was taken in the Identity Card Bill, although the Commons continued to insist in this case. In both cases, however, there was movement. Therefore, there were efforts towards conciliation, and they began at about the mid-point, while indications from the debates show that out-of-chamber negotiations began before then.

The final category contained the remaining three bills, all of which were achieved with an insistence motion being overturned. There was an insistence case in all three by both chambers, following which the Commons made an amendment that, as in other examples, was a double insistence avoidance. In all three cases, this was rejected by the Lords, which supported insistence. In the cases of the Fixed-term Parliament and the Parliamentary Voting System and Constituencies Bills, this was overturned and the bills passed. The European and Local Elections Bill underwent more phases, but the final two votes in the Lords mirrored the first two. Thus, the result was the same. Simply put, there was no majority.

There is sufficient evidence to suggest that a bill failing will not have begun with a conciliatory attitude from either house. For the Lords to achieve a high degree of impact also appears to require early indications from the Commons that it is willing to negotiate. As for the remaining bills, it appears to depend largely both on the strength of support and on other external factors.

Therefore, there is a move to conciliation during ping-ponging if that conciliation is present at the start, either visible through the motions being moved, or (and indeed with) intercameral negotiations taking place. If these early overtures do not exist, the difference between a bill failing and the Lords giving in depends on the circumstances at the time of the bill, including the ability of the opposition to maintain its turnout, and the ability of the government to rally its own peers. In the event of long, drawn-out negotiations, and those on which the government places particular importance, this may be expected to be more of a factor; however, this study was not sufficiently extensive to the degree.

Conciliation requires that at least some major element of the House of Lords' amendments be incorporated, and that both sides are required to accept the outcome. In this regard, it is linked to the first research question in so far as an amendment has to be made and impact has to be attempted. This requires that there is movement throughout the ping-ponging procedure. When bills failed, there was no conciliation. The central argument being made was that successful conciliation, from the point of view of the House of Lords, was present most often when there were early overtures to that effect.

However, there was also a contra-indicator, in that the opposition majority (necessary for ping-ponging) was worn away through attrition as the government rallied its peers. Nonetheless, the presence of attrition does not mean that there was no conciliation, merely that the outcome was not accepted. Evidence was gathered from the motions, the amendment texts and the debates, with divisions providing a framework to analyse the outcomes.

A study of the motions showed that the outcomes were divided into three categories. The first of these was the failure of the bill, the second was an agreed outcome, and the third was an overturned amendment. The first category occurred in the European Parliamentary Elections and Shipbuilding Bill, as discussed at length in the preceding chapters. Those that ended with an agreed conclusion included the Railways Bill, the Housing and Building Control Bill, the Corporate Manslaughter and Corporate Homicide Bill and the Identity Card Bill. The final category, in which a motion was overturned, included the Pilot Bill, the Fixed-term Parliament Bill, and the Parliamentary Voting Systems and Constituencies Bill.

The first category saw neither chamber move beyond insistence, and non-conciliatory offers that amounted to avoidance of double insistence before eventual failure. In both cases, the opposition in each chamber saw the offers as being no more than procedural. Conciliation was never an option in either case, and there was no evidence of it ever occurring. Therefore,

there was no evidence to contradict the theory. Similarly the voting behaviour on the European Parliamentary Elections Bill showed an increased number of peers voting to insist, a different pattern from the other bills.

In the second category of bills, three began with conciliatory overtures, although only the Railways Bill saw this mirrored in the Lords as well as in the Commons. The Identity Card Bill was different in that it began with both chambers insisting on their original positions. The Railways Bill and the Housing Bill both ended with an agreement between the two chambers. With regard to the Corporate Manslaughter Bill, it is notable that both chambers began offering alternatives mid-way through the proceedings. A similar path was taken in the Identity Card Bill, although the Commons continued to insist in this case. In both cases, however, there was movement. Therefore, there were efforts towards conciliation, and they began at about the mid-point, while indications from the debates show that out-of-chamber negotiations began before then.

The final category contained the remaining three bills, all of which were achieved with an insistence motion being overturned. There was an insistence case in all three by both chambers, following which the Commons made an amendment that, as in other examples, was a double insistence avoidance. In all three cases, this was rejected by the Lords, which supported insistence. In the cases of the Fixed-term Parliament and the Parliamentary Voting System and Constituencies Bill, this was overturned and the bills passed. The European and Local Elections Bill underwent more phases, but the final two votes in the Lords mirrored the first two. Thus, the result was the same. Simply put, there was no majority.

There is enough evidence to suggest that a bill failing will not have begun with a conciliatory attitude from either house. For the Lords to achieve a high degree of impact, it appears to require early indications from the Commons that it is willing to negotiate. As for the remaining bills, those that passed successfully, a conciliatory outcome appears to depend on the strength of support and on other external factors in both houses.

Therefore, there is a move to conciliation during ping-ponging if conciliation is present at the start, either visible through the motions being moved, or (and indeed with) intercameral negotiations taking place. If these early overtures do not exist, the difference between a bill failing and the Lords giving in depends on the circumstances at the time of the bill, including the ability of the opposition to maintain its turnout, and the ability of the government to rally its own peers. In the event of long, drawn-out negotiations, and those on which the government places particular importance, this may be expected to be more of a factor; however, this study was not sufficiently extensive to prove this conclusively.

8.2. How does the House of Lords impact on legislation during the conciliation process of ping-ponging?

The House of Lords achieves impact across all bills. However, once ping-ponging begins, the greatest success for the House of Lords in terms of its amendments is when those amendments have less of an impact on the House of Commons' policy. This means that, in cases in which the House of Lords seeks to expand the policy, it may be successful in achieving a major policy amendment. However, when the House of Lords is seeking to restrict or amend a fundamental underpinning, the government is more likely to (eventually) get its way. This is in accordance with the existing bicameral literature, which views second chambers as reflective, whilst retaining vestiges of the "brake" system.

Conciliation proceedings may begin with amendments that change the policy itself, or that change some form of the implementation of the policy. In general, according to the attempted amendments examined as part of this study, the Lords is less likely achieve a substantial degree of impact on issues when the amendment moved alters the bill in a major way, affecting the underlying policy or a significant part of the implementation substantially. Conciliation, if it occurs at the beginning, is more likely to result in an outcome favourable to the policy stance of the House of Lords;

however, the lack thereof does not indicate that the reverse is true, with bill-specific issues such as interest, will, and the wider legislative programme possibly having more of an influence. This was expanded by the qualitative evidence. Voting patterns show that the bills in the post-reform era have seen the opposition gradually reduce in both turnout and the degree of the turnout voting for insistence on ping-ponging, on average. There is also recognition of the constitutional situation in which the Lords finds itself.

Therefore, the House of Lords' impact on legislation has the greatest chance of being successful when the amendment being moved does not affect a major facet of the legislation. Early signs of negotiation and early attempts at conciliation greatly increase the chances of success. Drawn-out negotiations become repetitive and much more open to attrition of the opposition majority due to less interest and because the government appears to have less difficulty persuading peers to participate later in the process. The presence of crossbenchers appears to increase the awareness of potential constitutional problems, as well as an awareness of the future of the House of Lords. They also act as facilitators of conciliation in cases in which the main divide is not party ideology. Lastly, some issues are more likely to cause problems for the House of Lords, but the outcome is often more favourable when expertise exists.

The crossbenchers are shown here to have a similar degree of less tangible influence than is shown by Russell's work on independents. However, they do serve as an indicator of when self-restraint is more likely. There are outliers, for example the constitutional bills in 2011, when crossbenchers were in fact among the peers pushing for continued insistence. However, this work builds on the idea that crossbenchers are able to facilitate negotiations between the chambers. Both Russell and Crewe mentioned that crossbenchers are able to act as an expert jury, for both the opposition and the government to convince, but also to facilitate negotiations. This role is magnified in some examples. However, it is also shown that the crossbenchers can be problematic for the government, if not always as

effective. This, coupled with the findings related to conciliation, builds on the findings of amendment tracing studies, including Russell's extensive study, and of those from as far back as the 1970s - the House of Lords is most successful when the House of Commons wants to listen. If the House of Commons does not want to listen, the House of Lords in the post-reform era has become more willing to accept small offers in order to pass the legislation, rather than to hold up the bill.

How does the House of Lords impact on legislation during the conciliation process of ping-ponging? The House of Lords is able to impact on bills during ping pong by seeking smaller more moderate changes on bills where it has previously sought large policy changes, and by facilitating discussion between the Government and opposition through crossbencher expertise and less partisan channels. It does this whilst being mindful of its future influence.

8.3. Implications

Bills requiring more than four rounds of ping-ponging are rare in the British system. The House of Lords frequently gives way on amendments that are passed back from the Commons, and even more frequently passes considerable numbers of drafting amendments. The House of Lords therefore performs its reviewing role with little fanfare most the time. There are also more cases of ping-ponging in recent years than those recorded here. The indications of this study are that the House of Lords is not a "poodle", as it was once called, and does call the legislation it is reading into question. This is usually a problem for a government that wants its legislative programme passed as quickly as possible. While the Salisbury Convention may deter most "time wasting", the nature of the convention means it can be understood in different ways, and there is evidence here that this occurs. One of the most significant findings was that the Salisbury Convention appears to be discretionary at times. There is also evidence that, while the Lords wishes to avoid the Parliament Act in most cases, this deterrent may not be sufficient. This was noticeable in the qualitative content analysis, and showed that it was not only the

government, but that the fears concerning its use were voiced by the crossbenchers and the opposition. These issues would, as demonstrated in Chapter 2, occur with any second chamber as part of its role in government. However, much of what the House of Lords has been able to achieve has been attributed to a combination of expertise, time and distinction. The potential pitfalls of changing the composition of the second chamber were shown at the start of the 2010 parliament, when a sudden influx of former MPs led to an increase in behaviour that was more vocal and more adversarial. The risk of elections is that parties become more important as a means of election and that independents, who have a role to play in these differences, are reduced in number and influence. In addition, the problem of primacy, currently enshrined because of the lack of democratic legitimacy, could lead either to a power struggle or to the creation of a toothless chamber with little or no role.

Bicameralism

Tsebelis and Money suggested that both chambers desire an outcome. The power of the House of Lords may well be said to increase with the number of rounds, but only when the year delay is not viable. In such cases, the House of Lords has been more wary of provoking the government, particularly since the reforms, which increases the validity of the self-restraint argument. This is not always the case, as self-restraint and the presence thereof means that, while the House of Lords has the ability to press such advantages, it is choosing not to. This implies that it is not using all of its potential power, and that the avoidance of further stopping procedures is due to the House of Lords' awareness. This situation is demonstrated via the European Parliamentary Elections Bill, when the Lords forced the use of the Parliament Act, and the Parliamentary Voting Systems and Constituencies Bill when the Lords was unable to force any substantial change to the Bill

While Tsebelis and Money noted that they ignored the issue of efficient legislation, the Westminster system provides a good environment in which to examine its passage. Efficient legislation would be expected to engender

impatience, which it appears to do from the government's side, at least as a tool used in debates. However, the House of Lords, within the parameters of the "reasonable time" convention, does not appear to be impatient and, at times, has appeared to be happy to slow the progress of bills it does support. With longer instances of ping-ponging occurring after the 1999 reform, this does add another facet to self-restraint. The attrition of peers insisting has become more of a feature, with the government less likely to overwhelm opposition post-reform.

The House of Lords, as a weaker chamber similar to the French and Irish parliaments, faces the dual requirements of remaining sufficiently relevant to continue functioning as a legislative chamber while not frustrating the government beyond its constitutional limits. For the House of Lords, which can be reformed by the government with relative ease, it is more important to keep these two rules in balance. What the House of Lords demonstrates is the ability of second chambers to have an impact on the legislative process, which depends on both chambers, and the government seeing the relevance of the second chamber and that it continues to function within the accepted conventions.

The House of Lords performs a role that is performed without much attention for the most part. When it does garner attention, it is able to extract concessions at times, and is able to fulfil a valuable role in the consideration of legislation. Reform could threaten this delicate balance if it is done simply to quiet an unelected chamber that is frustrating the government.

The Restrictions on Findings

These bills represented the most contentious, and those commented on most frequently. These ignored issues such as the Prevention of Terrorism Bill 2004, when negotiations were conducted very rapidly, or bills such as the Hunting Bill when the Parliament Act was again used, this time in the post-reform period. While these would have been useful, the bills selected aimed to provide as representative a view as possible across the broadest

time frame and comparable issues. Using bills such as the Prevention of Terrorism Bill (2004) would have given a better view of negotiations across a wider range of issues and within a tighter time frame. Furthermore, the dataset was small, but allowed for greater detail. Whilst this helped with process tracing, it did detract from the quantitative findings, which is why these results were used to support other methods, unlike Russell's larger datasets.

However, what this study has ultimately done is to show that there was a change following reform, that party balance in the House of Lords is an important factor, and that institutional self-restraint is a factor. While a further, larger scale study would be beneficial, particularly with the use of process tracing across the entire population to establish patterns, this more statistical and categorical approach using a coding strategy would have the potential to clarify concerns about attrition versus restraint, as well as the use of particular strands of argument. This study was able to draw inferences and make suggestions about links, whilst a larger scale study could use more variables because it would have the cases to support it.

This study benefited from the wider time frame; however, it did skew the results slightly, as the post-reform period had more examples of bills with four or more phases of ping-ponging. It was important for this study to be able to compare the bills across the reform divide, as party balance and the impact thereof was an important part of examining soft influences as opposed to constitutional power. In the future, expanding the number of bills to all post-reform bills with four or more phases that were introduced by the government would give a deeper understanding of ping-ponging, having established that there is evidence of institutional self-restraint that has increased since the 1999 reform.

1. Appendix 1: Bills

1.1. Aircraft and Shipbuilding Industries Bill

The 1975-76 Aircraft and Shipbuilding Bill was one of a number bills on which the Lords and the Commons clashed during the Labour administration of 1974-79.[570] The primary aim of the bill was to nationalise the aircraft-building industry, the shipbuilding industry and, most controversially, the ship-repair industry. It was this third industry that the House of Lords chose to defend most passionately, based on its viability as a privately owned industry.

The Labour Government in the House of Commons at this time was in a more precarious position than it had found itself in previously. The House of Lords was dominated by the Conservative Party, and it was this majority that challenged the government over what it saw as a piece of 'doctrinal legislation'.[571] When it was reintroduced, this was accepted, and it later allowed the Lords' amendments to be put through.

This bill is an example of the House of Lords attempting a relatively major amendment to the bill by removing a key facet, although the extent to which this affected the viability of the bill was disputed. The bill failed, which demonstrates a failure of the conciliation process, and it did so after five rounds of ping-pong, during which there was very little sign of compromise.

1.1.1. **Ping-pong**

The House of Lords returned 85 amendments to the House of Commons, of which 31 were agreed to and 54 were returned to the Lords, some of which were agreed to with additional amendments, others amended in lieu thereof, and others disagreed to. Of these, the House of Lords accepted the

[570] For example, the Trade Union and Labour Relations Bill failed after lengthy ping-ponging in the 1974/75 parliament and was reintroduced with the aim of using the Parliament Act although, as with the Aircraft and Shipbuilding Bill, it was not required. The Scotland and Wales Bills both required lengthy ping-ponging, although both passed on the first attempt.

[571] In this case, they meant that the bill was being driven by the socialism that underpinned the Labour Party, as opposed to any direct need.

Commons' decision for 47 amendments, returning seven. These amendments formed three groups. The Commons disagreed with the first two groups for a reason, and the Lords accepted this decision. For the third group, the Commons moved amendments in lieu; the Lords disagreed, and the Commons continued to insist on the disagreement, leading the loss of the bill. This overview is shown pictorially in Figure 1-1 below.

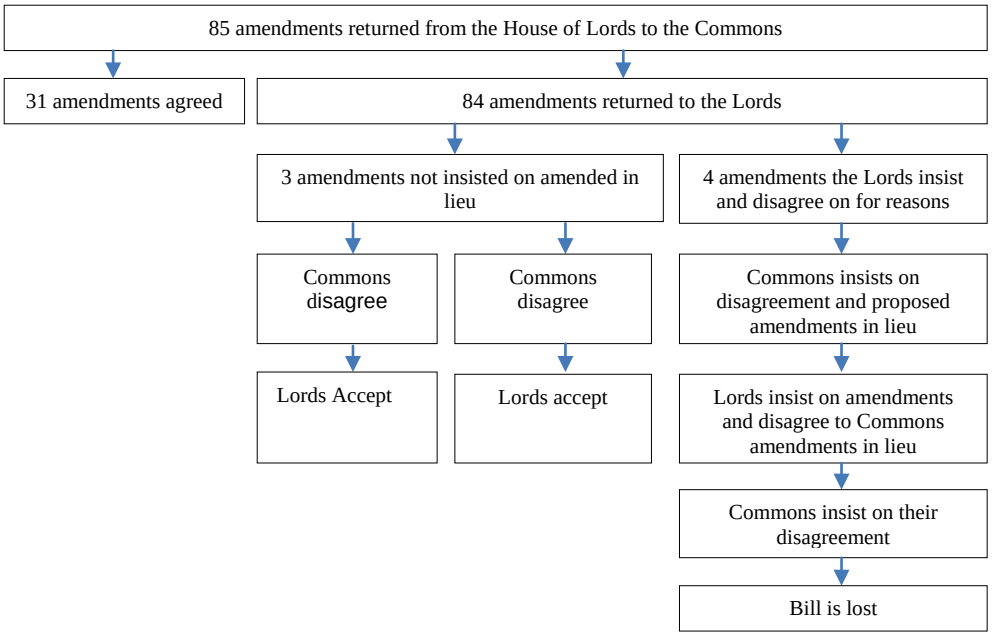


Figure 1-1: Overview of Ping-Pong for the Aircraft and Shipbuilding Industry Bill

The group of four amendments, shown on the right of Figure 1, contained the amendments concerned with excluding the ship-repair industry from nationalisation.

1.1.2. **The Lords' Position**

The amendments that the Lords proposed would have removed ship-repairing industries from the bill. The government argued that this amounted to a wrecking amendment because ship repairing was not ultimately distinguishable from shipbuilding, and thus had to be included. The opposition argued that it was, and added that nationalisation would stifle a profitable industry with high levels of employment. This part of the argument tended more towards the ideological aspect, as was the accusation that this was coming from business interests that had been

lobbying. Therefore, in this instance, the Lords had moved quite a substantial amendment, but one that was caught up in partisan and ideological debates.

Of the 85 amendments that the Lords passed back to the Commons, 31 were agreed to immediately, and for a further 47 further amendments, the Lords either accepted the amendments offered, or the reasons for disagreeing returned by the Commons. Therefore, 91% of the Lords' amendments caused little stir or disagreement. Those that did were related to one area, which was dichotomous.

In this instance, there was no evidence of the House of Lords, or the House of Commons for that matter, moving towards a conciliatory position. The only time a motion for non-insistence was moved was the third phase, to avoid double insistence, and it appeared to be a gesture, rather than conciliation. Therefore, there was no self-restraint. Crossbenchers were also not playing a noticeable part in the debates.

Therefore, the Lords attempted the exclusion of a major part of the bill, although not the wrecking of the complete bill - although whether this was the entire intention was argued in parliament at the time. After the initial two stages, and with the wider amendment list, there was no move towards conciliation, with both sides becoming entrenched in positions of insistence. There was a shift in stance at this point, as the constitutional focus became more prominent and arguments about whether the government should have accepted an earlier offer took over. The ultimate failure of the bill showed that, in this case, early insistence did not help future conciliation.

1.2. The Fixed-term Parliaments Bill

The Fixed-term Parliaments Bill was a relatively short bill, containing only five clauses. It sought to fix both the 2010-15 and all future parliaments at five years, and to have an election on a pre-set day, as well as codifying the clear procedures for votes of no confidence and votes of confidence. In

total, the House of Lords returned nine amendments to the House of Commons.

1.2.1. **The House of Lords**

Lord Pannick (crossbencher) moved amendment 4, which sought to include the line "if, but only if, a resolution to that effect is approved by each House of the Parliament in question" in relation to a parliament being fixed at five years in length.[572] The amendment was agreed 190 to 184 on division. Nine amendments in total were returned to the House of Commons, six of which were government amendments.

1.2.2. **Ping-pong**

Following the outcome of the Alternative Vote referendum, the Fixed-term Parliament Bill was slow to progress, and consideration of the amendments began in July 2011, two months later. The government in the Commons agreed to amendments 3 to 8 without question. Amendments 1, 2 and 9 were returned with a disagreement. The overview of this is shown in Figure 1-2 below, which shows that, after the Commons disagreed with the amendments, the Lords insisted, and the Commons moved an amendment to avoid the double insistence risk; in this instance, the House of Lords accepted that amendment.

[572] HL Deb 10 May 2011, vol. 727, col.823

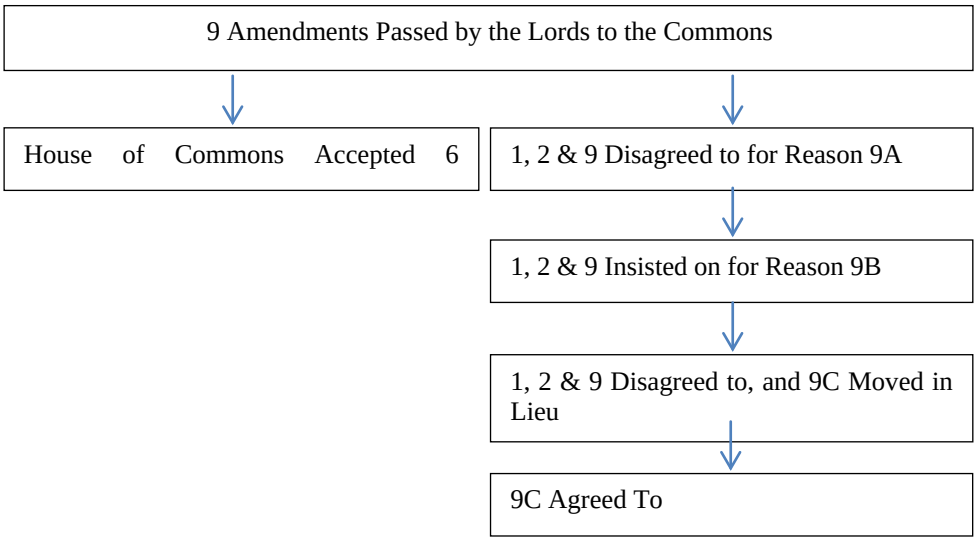


Figure 1-2: The Fixed-term Parliaments Bill.

The Fixed-term Parliament Bill was an odd piece of legislation, as it had been preceded by a binding order that fixed the present parliament at five years. All three main parties had agreed to the principle of fixed parliaments, although not to a duration of five years. The government in this case overcame a motion moved against its amendment. However, it did get its policy without major change. In this instance, the question for the House of Lords is perhaps why the House of Lords did not put up more of an argument to get its amendments included, and the impact that the wider constitutional debate, and the political balance of both houses of parliament may have had on the bill's passage.

1.3. The European Parliamentary and Local Elections (Pilot) Bill

This legislation was introduced late in the 2002/03 legislative session as part of the modernisation scheme for elections at that time. The aim was to continue with a pilot scheme that had begun with the Representation of the People Act 2000, which had allowed for small-scale, all-postal and electronic voting methods to be trialled in the local elections. In the case of the European elections, reform was being pushed in light of low election

turnout.[573] As the bill progressed through the period of amendment consideration, the time the electoral commission needed to bring the pilot about was given as a reason for ending the process.

1.3.1. **The House of Lords**

Baroness Hanham moved an amendment in committee that sought to limit the regions to two: the Northeast and the East Midlands.[574] On report, Baroness Hanham moved again an amendment to fix the pilot regions to two, following the government's publication of a new Clause 1. Lord Rennard (Lib Dem) moved an amendment that again sought to require authentication by a witness when the ballot was submitted.

1.3.2. **Ping-pong**

Ping-pong started on the 8th of March when the House of Commons debated the Lords' amendments. Nine more phases were undertaken, leading to ten debates in total before agreement was reached. These are shown on the next page. Throughout the period of consideration of amendments, the House of Commons proposed three amendments in lieu, whilst the Lords (in addition to the two original amendments) proposed two amendments in lieu. The final agreement was to a Commons' amendment, after the Lords' motion to insist failed.

[573] In 1999, the turnout across the UK was 24%, the lowest since the start of elections in 1979. Turnout had been consistently low. Aliyah Dar, 2013, "Elections: Turnout" *House of Commons Library Note*, p. 6

[574] This bill was taken to the Grand Committee, which meant that it was discussed in a committee of the complete house, but without divisions being allowed. This meant that an amendment would only be successful if it were agreed on question. Consequently, it is rare for opposition amendments to be successful.

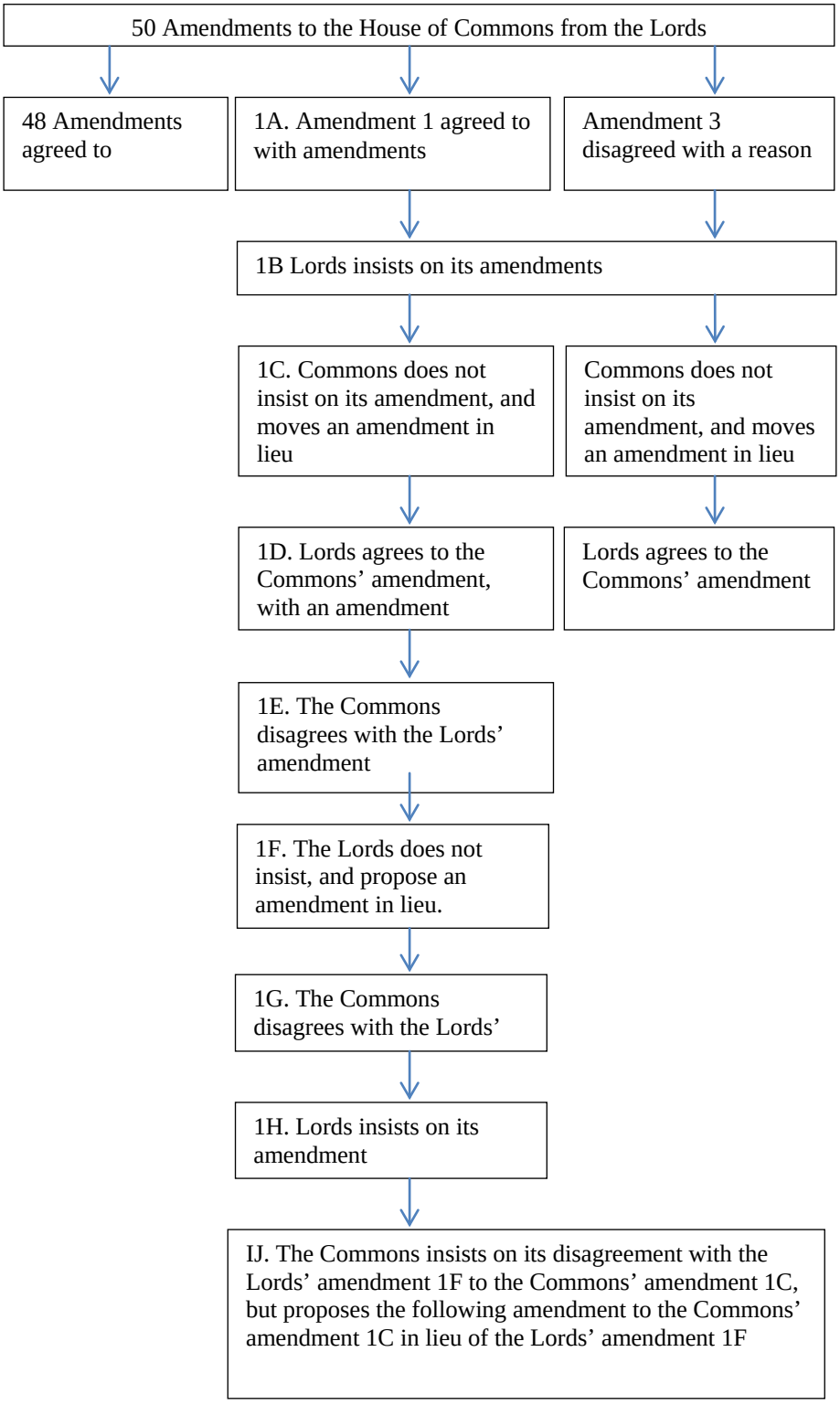


Figure 1-3: Overview of Ping-pong on the European Parliament Elections Bill

The House of Commons received the 50 amendments and passed amendments 2 and 4 to 50 without debate. The debate concentrated mainly on the first amendment, focussing on the number of regions to be involved in the pilots.

Whilst the impact either of the bill itself, or of the amendments moved by the Lords, was not very great, the debate essentially came down to a question over whether to have two pilot regions or four; unsurprisingly, the outcome was three. However, it took 10 rounds of ping-pong to reach that point and, unusually for the bills in this study, the House of Commons was required to move motions twice to avoid loss through double insistence, the second of which was successful in bringing to bill to royal assent.

It is notable that the debates about the bill became shorter and less varied. They also became gradually more repetitive, with most of the debates focussing on the reasons (according to the opposition) for the government proposing the regions in question, and the risks the policy presented. The final motion did not pass, and the result was that the Lords did not get the change it wanted in relation to the number of pilot regions, or in relation to the ballot security, although it did require a signed declaration of privacy as a method of fraud prevention. There was therefore little sign of conciliation, little sign of crossbencher involvement, and no sign of self-restraint in this bill. It seems, more so than do others, to have been the product of stubbornness on both sides.

2. Appendix 1: Amendments

2.1. Aircraft and Shipbuilding Industry

2.1.1. **Lords Amendments**[575]

Page 81, leave out lines 19 to 30

Page 82 Line 12, leave out “a ship-repairing company”

Page 82 line 42, leave out paragraph 3

2.1.2. **Commons Amendments**[576]

The Commons insist on their disagreement to the above amendments, but propose the following amendments in lieu thereof:

Page 21, line 43, at end insert-

“(2A) Subject to the provisions of this Part of this Act, on the ship repairing vesting date all securities of the companies which on that date were known by the names specified in paragraph 2 of Schedule 2 to this Act, being the companies other than any excepted company which on that date-

Fulfilled the conditions in part II of that Schedule, and

Fulfilled the condition specified in sub-paragraph (b) of paragraph 5 of that Schedule as being ship repairing companies for the purposes of that paragraph

Shall, by virtue of this section, vest in British Shipbuilders free from all trusts and in cumbrances.”

2.2. Housing [577]

2.2.1. **Original Amendments**

1. Lords' Amendment: No. 1, in page 2, line 5, after "or" insert save where the freeholder is a body of persons or Trust established for charitable purposes only".

2.2.2. **Commons Amendments**

The Commons disagreed to the above amendment but proposed the following amendments in lieu thereof:

[575] HL Bill 386, 1975-76
[576] HL Bill 397, 1975-76
[577] Bill 174, 1983-84

Page 83, line 6, leave out ("shared ownership lease") and insert ("lease in pursuance of Part I of this Act").

4Page 83, line 20, at end insert—

("(4) Where, in the case of a tenancy to which this subparagraph applies, the tenant or the tenant under a sub-tenancy directly or indirectly derived out of the tenancy exercises his right to acquire the freehold under Part I of the said Act of 1967, the price payable for the dwelling-house shall be determined in accordance with section 9(1 A) of that Act notwithstanding that the rateable value of the dwelling-house does not exceed £1,000 in Greater London or £500 elsewhere.

2.2.3. **Lords Amendments**

4A That this House do not insist on their Amendment No. 1 to which the Commons have disagreed and do agree to Amendments Nos. 2 to 4 proposed by the Commons in lieu thereof with the following Amendment to the Commons Amendment No. 4:

Line 1, at end insert—

"(3 A) The provisions of Part I of the said Act of 1967 shall not apply to a tenancy of a dwelling-house which is a house which is created by the grant of a lease in pursuance of Chapter I of Part 1 of the 1980 Act or Part I of this Act, nor to a sub-tenancy derived (whether directly or indirectly) from that tenancy, in any case where the landlord is a registered Housing Association and the freeholder is a body of persons or Trust established for charitable purposes only.").

2.2.4. **Commons Amendments**

In page 82, line 46, at beginning insert— `Part I of the Leasehold Reform Act (enfranchisement and extension of long leaseholds) shall not apply where, in the case of a tenancy or sub-tenancy to which this sub-paragraph applies, the landlord is a housing association and the freehold is owned by a body of persons or trust established for charitable purposes only. (1A)'.

In line 2, after 'tenancy', insert 'or sub-tenancy'.

In line 3, leave out `or the tenant under a sub-tenancy directly or indirectly derived out of the tenancy'.

In line 13, at end insert `and any sub-tenancy directly or indirectly derived out of such a tenancy'.

In line 21, at end insert `and any sub-tenancy directly or indirectly derived out of that later tenancy; and sub-paragraph (4) above also applies to a tenancy which is granted in substitution for a tenancy or sub-tenancy falling within paragraph (a) or (c) above in pursuance of Part I of the said Act of 1967.

2.3. Railways Bill[578]

2.3.1. **LORDS AMENDMENT**

1 Clause 22, page 24, line 37, at end insert:

[578] Bill 266, 1992-93

"(1A) Nothing in subsection (1) above shall prevent—

1. (a) the British Railways Board (in this Act referred to as "the Board"); or
2. (b) a wholly owned subsidiary of the Board, from being a franchisee.")

2.3.2. **Commons Amendments in Lieu**

Page 24, line 40, at end insert:

'(3) Subject to the following provisions of this section, subsection (1) above shall not prevent—

1. *(a) the British Railways Board (in this Act referred to as "the Board"), or*
2. *(b) a wholly owned subsidiary of the Board, from being a franchisee.*

(4) Subject to the following provisions of this section, whenever the Franchising Director proposes to issue invitations to tender under section 23 below in respect of any particular services for the carriage of passengers by railway, he may, after consultation with the Board and the Regulator, determine that neither the Board nor any wholly owned subsidiary of the Board shall be eligible for inclusion among the persons to whom the invitations are to be issued or who may be selected as the franchisee.

(5) The Franchising Director shall not make a determination under subsection (4) above unless he considers that it is desirable to do so—

1. *(a) for the purpose of promoting competition for franchises;*
2. *(b) for the purpose of promoting the award of franchise agreements to companies in which qualifying railway employees have a substantial interest;*
3. *(c) for the purpose of encouraging new entry to the passenger railway industry; or*
4. *(d) for the purpose of preventing or reducing the dominance of any person or persons in the market for the provision in Great Britain, or in a part of Great Britain, of services for the carriage of passengers by railway.*

(6) The Franchising Director shall—

1. *(a) give notice of any determination under subsection (4) above to the Board; and*
2. *(b) publish notice of the determination in such manner as he thinks fit.*

(7) Nothing in subsection (5) above shall be taken to affect the matters which the Franchising Director may take into account in determining the other persons whom he invites to tender for franchise agreements or whom he selects as franchisees.

(8) No objectives, instructions or guidance shall be given under section 5 above by the Secretary of State to the Franchising Director with respect to the exercise of his functions under this section.

(9) In this section—

"competition for franchises" means competition to become franchisees under franchise agreements;

"encouraging new entry to the passenger railway industry" means encouraging private sector operators who do not currently provide services for the carriage of passengers by railway to commence doing so;

"qualifying railway employees", in the case of any franchise agreement, means persons who are or have been employed in an undertaking which provides or provided the

services to which the franchise agreement relates at a time before those services begin to be provided under that franchise agreement.'.

2.3.3. **Lords amendment in lieu**

2A Subsection (4), line 2, leave out from first ("to") to ("in") in line 3 and insert ("award a franchise under this Part").

2.4. European Parliamentary Elections

2.4.1. **Lords amendments**[579]

1. in page 2, line 1, leave out ("a registered party, or").

2. Page 2, line 2, at end insert--

("(2A) Each candidate shall declare that he is either--
(a) the candidate of a party (and shall name that party); or
(b) an independent candidate.
(2B) There shall be added together the number of votes given for each party's candidates in each electoral region.
(2C) The number arrived at under subsection (2B) shall be the number of votes for the party for the purposes of this Act.").

3. Page 2, line 15, at end insert--

("(5A) After the allocation of seats to the parties, the order of candidates in each list shall be such that the candidates are ranked in terms of the votes each received, with the candidate with the highest number of votes appearing first.

(5B) If two or more candidates have the same number of votes, their order on the list shall be determined by lot.").

4. Page 2, line 18, at end insert (", following the rearrangement required under subsections (5A) and (5B)")

2.4.2. **Commons**[580]

(".--(1) The Secretary of State shall appoint one or more persons--
(a) to review the operation of the system of election provided for by section 3 of the European Parliamentary Elections Act 1978 as substituted by section 1 of this Act, and
(b) to make a report to the Secretary of State within six months from the day of appointment.
(2) The Secretary of State shall carry out his duty under subsection (1) within one month from the date of the first general election to the European Parliament which takes place after the coming into force of section 1.
(3) The Secretary of State shall lay a copy of any report received under subsection (1) (b) before each House of Parliament.")

[579] Bill 246, 1997-98
[580] Bill 255, 1997-98

2.4.3. **Commons**[581]

After Clause 2, insert the following new clause-

Review of electoral system
(".-(1) The Secretary of State shall appoint one or more persons-
(a) to review, in accordance with subsection (2), the operation of the system of election provided for by section 3 of the European Parliamentary Elections Act 1978 as substituted by section 1 of this Act, and
(b) to make a report to the Secretary of State within six months from the day of appointment.
(2) The review shall consider, in particular, how the ability of electors to vote for particular persons on a party's list of candidates might affect the results of an election.
(3) The Secretary of State shall carry out his duty under subsection (1) within one month from the date of the first general election to the European Parliament which takes place after the coming into force of section 1.
(4) The Secretary of State shall lay a copy of any report received under subsection (1) (b) before each House of Parliament.").

2.4.4. **Commons**[582]

After Clause 2, insert the following new clause--

Review of electoral system.

(".-(1) The Secretary of State shall appoint one or more persons--
(a) to review, in accordance with subsection (2), the operation of the system of election provided for by section 3 of the European Parliamentary Elections Act 1978 as substituted by section 1 of this Act, and
(b) to make a report to the Secretary of State within six months from the day of appointment.
(2) The review shall consider, in particular, how the ability of electors to vote for particular persons on a party's list of candidates might affect the results of an election.
(3) The Secretary of State shall carry out his duty under subsection (1) within one month from the date of the first general election to the European Parliament which takes place after the coming into force of section 1.
(4) Before making an appointment under subsection (1) the Secretary of State shall consult such persons appearing to him to be interested as he thinks appropriate.
(5) The Secretary of State shall lay a copy of any report received under subsection (1) (b) before each House of Parliament.").

2.5. European Parliamentary and Local Elections (Pilots) Bill

2.5.1. **Lords Amendments**

1Leave out Clause 1 and insert the following new Clause— "Piloting conduct at European and local elections

[581] Bill 260, 1997-98
[582] Bill 262, 1997-98

(1) An election to which this section applies (a pilot election) must be held—

(a) only by postal voting, and (for that purpose)
(b) in accordance with provision made by the Secretary of State by order (a pilot order).
(2) These are the elections to which this section applies—

(a) the European Parliamentary general election of 2004 in a pilot region;
(b) a local government election in England and Wales if the poll at such an election is combined with the poll at an election mentioned in paragraph (a). (3) These are the pilot regions—

(a) North East;
(b) East Midlands.

3. (4) Postal voting is voting where no polling station is used and a person entitled to vote in person or by proxy must deliver the ballot paper by post or by such other means as is specified in a pilot order.

(5) A pilot order—

(a) may modify or disapply any provision made by or under a relevant enactment;
(b) may contain such consequential, incidental, supplementary or transitional provision or savings (including provision amending, replacing, suspending or revoking provision made by or under any enactment) as the Secretary of State thinks appropriate;
(c) may make different provision for different purposes."

2.5.2. **Commons Phase 1**[583]

1A. Line 15, at end insert—
"(c) Yorkshire and the Humber;
(d) North West."

2.5.3. **Commons Phase 3**[584]

1CLeave out lines 16 to 18 and insert—
"(c) Yorkshire and the Humber;
(d) North West. ( ) Postal voting is voting where no polling station is used and a person entitled to vote in person or by proxy must deliver by post or by such other means as is specified in a pilot order—
(a) the ballot paper, and

[583] HL Bill 29, 2003-04
[584] HL Bill 41, 2003-04

(b) the completed declaration of identity form. ( ) The declaration of identity form is a form which is delivered along with the ballot paper and which is completed by being signed—

(a) by the person to whom the ballot paper is addressed, and

(b) by a witness to that signing whose name and address are clearly marked on the form."

2.5.4. **Lords Phase 4**[585]

1D. Line 3, at end insert— "but, in the case of either region specified in paragraph (c) or (d) above, a pilot may only take place if it is specifically recommended by the Electoral Commission in a report which is laid before both Houses of Parliament after the coming into force of this Act."

2.5.5. **Lords Phase 6**[586]

1F. Line 3, leave out—

"(d) North West."

2.5.6. **Commons Phase 9**[587]

1J. Line 13, at end insert— "( ) The declaration of identity must contain a statement advising the voter that the ballot paper should be completed by him—

(a) outside the presence of any other person, or

(b) in the case of a voter who requires assistance, in accordance with such advice as is provided for in the pilot order."

2.6. Parliamentary Voting Systems and Constituencies Bill

2.6.1. **Lords Amendments**[588]

Page 1, line 5, at end insert—

"(1A) If less than 40% of the electorate vote in the referendum, the result shall not be binding."

8 Page 5, line 36, at end insert—

"( ) In section 1(1A)—

[585] HL Bill 41, 2003-04
[586] HL Bill 49, 2003-04
[587] HL Bill 55, 2003-04
[588] Bill 147, 2010-12

(a) "the electorate" is defined as those persons entitled to vote in the referendum, as defined in section 2;

(b) the turnout figure is to be calculated on the basis that 100% turnout is defined as the total number of individuals who are entitled to vote in the referendum, as defined in section 2; and

(c) "vote" is defined as votes counted under Part 1 of this Act."

19 Page 10, line 22, at end insert—

"Exceptional circumstances

5A If, but only if, a Boundary Commission are satisfied that—

(a) it is necessary to do so in order to achieve a viable constituency, and

(b) such necessity arises from special geographical considerations or local ties, as defined in rule 5(1)(a) or (d) above, of an exceptionally compelling nature,

the Boundary Commission may decide that the electorate of the constituency shall be—

no less than 92.5% of the United Kingdom electoral quota; and

no more than 107.5% of that quota."

20. Page 10, line 30, at end insert—

"Isle of Wight

6A (1) All parts of the Isle of Wight must be included in a constituency which is wholly in the Isle of Wight.

Rule 2 does not apply to any such constituency."

2.6.2. **House of Commons Round 3**[589]

Page 20, line 3, at end insert-

"(3) Following the referendum, the Electoral Commission must-

(a) publish the most accurate estimate that it is reasonably possible to make of the turnout in each of England, Wales, Scotland and Northern Ireland;

(b) include that information in any report they submit under section 6(1) (b) of the 2000 Act to do with the referendum.

(4) In sub-paragraph (3) "turnout" means the percentage of those entitled to vote in the referendum who did so.

[589] HL Bill 48, 2010-12

A ballot paper recorded under head (b), (c) or (d) of rule 42(4) of the referendum rules is to be treated as a vote for this purpose."

2.7. Fixed-term Parliaments Bill

2.7.1. **House of Lords Amendments**[590]

1. Page 1, line 6, at beginning insert "If, but only if, a resolution to this effect is approved by each House of the Parliament in question,"

2 Page 1, line 6, leave out "each" and insert "a"

9: Sections 2, 3 and 4(3) shall have effect only until the first meeting of the new Parliament after the next parliamentary general election, but that Parliament or any subsequent Parliament may bring those sections back into force for the Parliament's own duration and until the first meeting of the following Parliament if a resolution to that effect is approved by each House of the Parliament in question."

2.7.2. **Phase 3 (Commons)**[591]

9C: Page 3, line 23, at end insert—
"(4) The Prime Minister must make arrangements—
(a) for a committee to carry out a review of the operation of this Act and, if appropriate in consequence of its findings, to make recommendations for the repeal or amendment of this Act, and
(b) for the publication of the committee's findings and recommendations (if any).
(5) A majority of the members of the committee are to be members of the House of Commons.
(6) Arrangements under subsection (4)(a) are to be made no earlier than 1 June 2020 and no later than 30 November 2020."

2.8. Identity Card Bill

2.8.1. **Lords Original Amendments**[592]

Amendment 16

16. Page 4, line 44

Leave out 'must' and insert 'may, if the individual so chooses'

[590] Bill 195, 2010-12
[591] HL Bill 93, 2010-12
[592] HL Bill 75, 2005-6

Amendment 22

22. Page 7 line 42

Leave out 'must' and insert 'may, if the individual so chooses'

2.8.2. **Commons Phase 3**[593]

22C The Commons propose 22c in lieu: page 4 line 45 after 'include' insert 'or be accompanied by'

2.8.3. **Commons Phase 5**[594]

22E. page 7 line 38 after 'accompanies' insert 'or includes'

22F: page 7 line 43 leave out from 'manner' to the end and insert 'ensure that an application to be issued with such a card accompanies or is included'

2.8.4. **Lords Phase 6**[595]

22G: page 4 line 44 after 'individual' insert 'and is made on or before 31st December 2011, that application may, if the applicant so chooses, include an application by that individual to be entered in the register.

(2A) Where an application to be issued with a designated document is made by an individual and is made after December 31st 2011

22H: page 7 line 42, leave out from 'card' to end of page 8 line 2 and insert "may, if the individual so chooses, in the prescribed manner, include an application to be issued with a card in any application made by him to be issued with a designated document, where the application is made on or before 31st December 2011

(7a) an individual who is not already he holder of an id card must, in the prescribed manner, include an application to be issued with a card in any application made by him to be issued with a designated document, where that application is made after 31st December 2011

2.8.5. **Lords Phase 8**[596]

22J: page 4 line 44 leave out from "individual' to end of line 4 on page 5 and insert-

[593] Bill 139, 2005-06
[594] Bill 148, 2005-06
[595] Bill 150. 2005-06
[596] Bill 159. 2005-06

"(a) if the individual is not already entered in the register , his application for a designated document must include or be accompanied by an application by that individual to be entered in the register unless he has stated I or with his application for a designated document that he does not wish to apply to be entered in the register"

"(B) If the individual is already entered in the register, his application for a designated document must either state that he is already entered in the register and confirm the contents of his entry or state that he is entered in the register and confirm contents of his entry subject to changes notified in the application"

22K: Page 8 line 2 after ' document' insert "in which he has not included or which is not accompanied by a statement in accordance with section 5(2) that he does not wish to be entered in the register"

2.8.6. **Lords Phase 10**[597]

22M: Clause 8, page 7 line 31, at end insert

"but this subsection does not require an id card to be issued as part of or together with a designated document issued on an application made in a case falling within subsection (7) (a) to (c)."

22N: Page 7 line 42, leave out from beginning to end of line 2 page 8 and insert-

"(7) Where an individual who is not already the holder of an id card makes an application to be issued with a designated document his application must, in a prescribed manner, include an application by him to be issued with such a card unless-

It is being made before 1st January 2010

The designated document applied for s a United Kingdom passport (within the meaning of the Immigration act 1971)

The application for that document contains a declaration by that individual that he does not wish to be issued with such a card

22O: Clause 10, page 9 line 13 leave out "who does not hold a valid id card" and insert "in a case in which-
The individual does not already hold an id card and-
The designated document is being issued otherwise than on an application made in a case falling in section (7) (a) to (c)

[597] Bill 165, 2005-06

2.9. Corporate Manslaughter and Corporate Homicide Bill

2.9.1. **Lords Original Amendments**[598]

Clause 2
2 Page 2, line 29, at end insert—

"(d) a duty owed to anyone held in custody."

3 Page 3, line 12, at end insert—
""custody" includes being held in prison, secure mental healthcare facilities, secure children's homes, secure training centres, immigration removal centres, court cells and police cells, and being subject to supervision by court, prisoner and detainee escort services;"

Clause 3
5 Page 3, line 37, leave out "or (b)" and insert ", (b) or (d)"

6 Page 3, line 40, leave out "or (b)" and insert ", (b) or (d)"

Clause 5

10 Page 5, line 8, leave out "or (b)" and insert ", (b) or (d)"

2.9.2. **Commons Phase 1**[599]

Amendment 10A in lieu—
10A: Page 2, line 43, at end insert—
"(5A) The Secretary of State may by order make amendments to this section to the effect that a duty of care owed by an organisation under the law of negligence to a person who—

(a) is in any specified form of custody or detention, or is otherwise on premises of a specified description or on premises in specified circumstances, and

(b) is by reason of that fact a person for whose safety the organisation is responsible,

is a "relevant duty of care".

(5B) An order under subsection (5A)—

(a) may amend this Act so as to specify exceptions with respect to the application of any provision contained in this section as a result of such an order;

(b) may make any amendment to this Act that is incidental or supplemental to, or consequential on, an amendment made by such an order.

(5C) An order under subsection (5A) is subject to affirmative resolution

[598] Bill 70, 2006-7
[599] Bill 113, 2006-7

procedure."

2.9.3. **Commons Phase 3**[600]

Page 13, line 3, at end insert the following new Clause—

"Power to extend meaning of "relevant duty of care"

(1) The Secretary of State may by order make amendments to this Act to the effect that a duty of care owed by an organisation under the law of negligence to a person who—

(a) is in any specified form of custody or detention, or is otherwise on premises of a specified description or on premises in specified circumstances, and

(b) is by reason of that fact a person for whose safety the organisation is responsible,

is a "relevant duty of care".

(2) An order under this section—

(a) may amend this Act so as to specify exceptions, or to restrict or disapply exceptions, as regards the application of any provision contained in this Act as a result of such an order;

(b) may make any amendment to this Act that is incidental or supplemental to, or consequential on, an amendment made by such an order.

(3) An order under this section is subject to affirmative resolution procedure."

2.9.4. **Commons Phase 5**[601]

"Power to extend meaning of "relevant duty of care"

(1) The Secretary of State may by order make amendments to this Act to the effect that a duty of care owed by an organisation under the law of negligence to a person who—

(a) is in any specified form of custody or detention, or is otherwise on premises of a specified description or on premises in specified circumstances, and

(b) is by reason of that fact a person for whose safety the organisation is responsible,

is a "relevant duty of care".

(2) An order under this section—

(a) may amend this Act so as to restrict or disapply exceptions as regards the application of any provision contained in this Act as a result of such an order;

(b) may make any amendment to this Act that is incidental or supplemental to, or consequential on, an amendment made by such an order.

(3) An order under this section is subject to affirmative resolution procedure."

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[600] Bill 133, 2006-7
[601] Bill 145, 2006-7

2.9.5. **Commons Phase 7**[602]

Page 13, line 3, at end insert the following new Clause:—

"Power to extend meaning of "relevant duty of care"

(1) The Secretary of State may by order make amendments to this Act to the effect that a "relevant duty of care" includes a duty of care owed by an organisation under the law of negligence to a person of a specified description who—

(a) is in custody or detention, or otherwise is required by virtue of a statutory provision to remain or reside on particular premises, or is subject to some other form of restriction of his liberty, and

(b) is by reason of that fact a person for whose safety the organisation is responsible.

(2) An order under this section—

(a) may amend this Act so as to restrict or disapply exceptions as regards the application of any provision contained in this Act as a result of such an order;

supplemental to, or consequential on, an amendment made by such an order.

2.9.6. **Lords Phase 8**[603]

10P: Page 13, line 19, at beginning insert "Subject to subsection (1A),"

10Q: Page 13, line 20, at end insert—

"(1A) The following provisions of this Act come into force on 1 January 2009—

(a) section 2(1)(d);

(b) sections 3(2), 3(3) and 5(3) so far as they relate to section 2(1) (d)."

2.9.7. **Commons Phase 9**[604]

10R Page 2, line 29, at end insert-

"(d) a duty owed to a person who, by reason of being a person within subsection (1A), is someone for whose safety the organisation is responsible.
(1A) A person is within this subsection if-

(a) he is detained at a custodial institution or in a custody area at a court or police station;

(b) he is detained at a removal centre or short-term holding facility;(c) he is being transported in a vehicle, or being held in any premises, in pursuance of prison escort arrangements or immigration escort arrangements;(d) he is living in secure accommodation in which he has been placed;(e) he is a detained patient."

10S Page 3, line 12, at end insert-

[602] HL Bill 94, 2006-7
[603] Bill 148, 2006-7
[604] HL Bill 98, 2006-7

““custodial institution” means a prison, a young offender institution, a secure training centre, a young offenders institution, a young offenders centre, a juvenile justice centre or a remand centre; “detained patient” means-
(a) a person who is detained in any premises under-

(i)Part 2 or 3 of the Mental Health Act 1983 (c. 20) (“the 1983 Act”), or

(ii)Part 2 or 3 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) (“the 1986 Order”);

(b) a person who (otherwise than by reason of being detained as mentioned in paragraph (a)) is deemed to be in legal custody by-

(i) section 137 of the 1983 Act,

(ii) Article 131 of the 1986 Order, or

(iii) article 11 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078);

(c) a person who is detained in any premises, or is otherwise in custody, under the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) or Part 6 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or who is detained in a hospital under section 200 of that Act of 1995;

“immigration escort arrangements” means arrangements made under section 156 of the Immigration and Asylum Act 1999 (c. 33);”

10U Page 3, line 25, at end insert-

““prison escort arrangements” means arrangements made under section 80 of the Criminal Justice Act 1991 (c.53) or under section 102 or 118 of the Criminal Justice and Public Order Act 1994 (c. 33);“removal centre” and “short-term holding facility” have the meaning given by section 147 of the Immigration and Asylum Act 1999 (c. 33);“secure accommodation” means accommodation, not consisting of or forming part of a custodial institution, provided for the purpose of restricting the liberty of persons under the age of 18.”

10Y Page 13, line 3, at end insert the following new Clause:-

“Power to extend section 2(1A)
(1) The Secretary of State may by order amend section 2(1A) to make it include any category of person (not already included) who-

(a) is required by virtue of a statutory provision to remain or reside on particular premises, or (b) is otherwise subject to a restriction of his liberty.
(2) An order under this section may make any amendment to this Act that is incidental or supplemental to, or consequential on, an amendment made by virtue of subsection (1).

(3) An order under this section is subject to affirmative resolution procedure.”

3. Appendix 3: Chapter 6 Support

3.1. Self-restraint

Averaged turnouts and majorities by divisions starting at the first per bill.

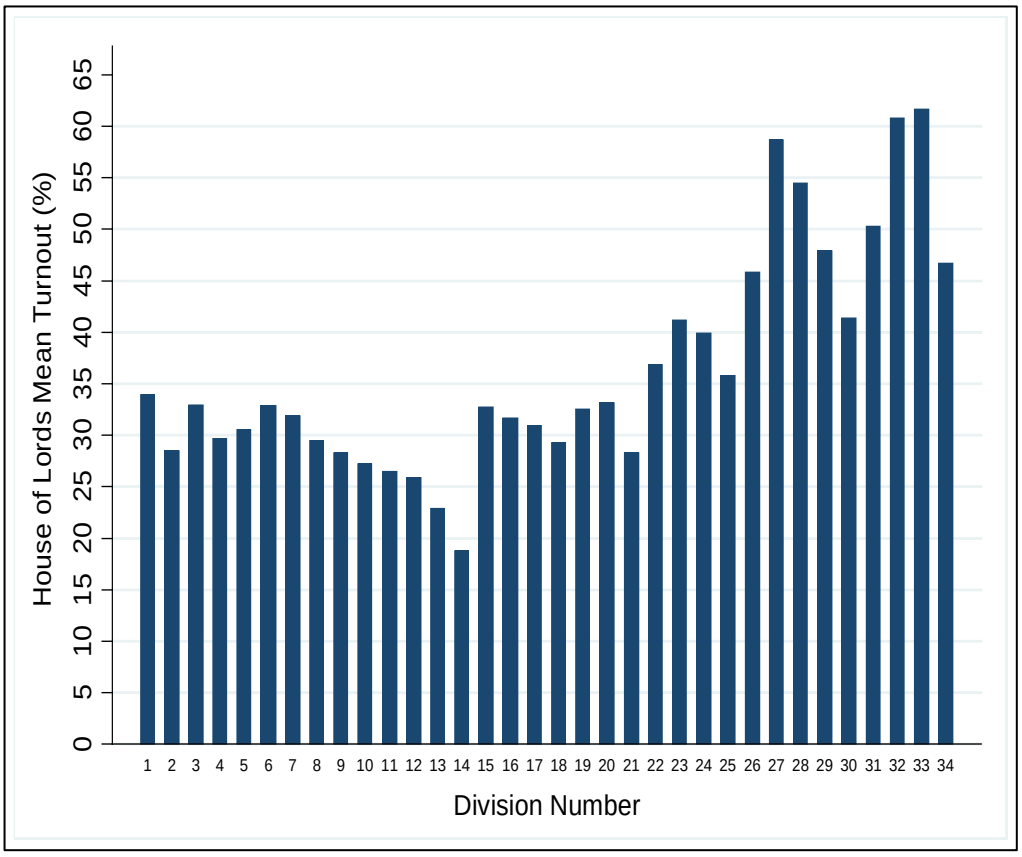


Figure 3-1: Average House of Lords' Turnout by Division Number

This shows an overall growth in turnout across divisions. Unfortunately, the later divisions are more influenced by bills such as the Parliamentary Voting Systems and Constituencies Bills, which had more divisions in earlier stages. The growth started in the 15th divisions.

3.2. Majorities

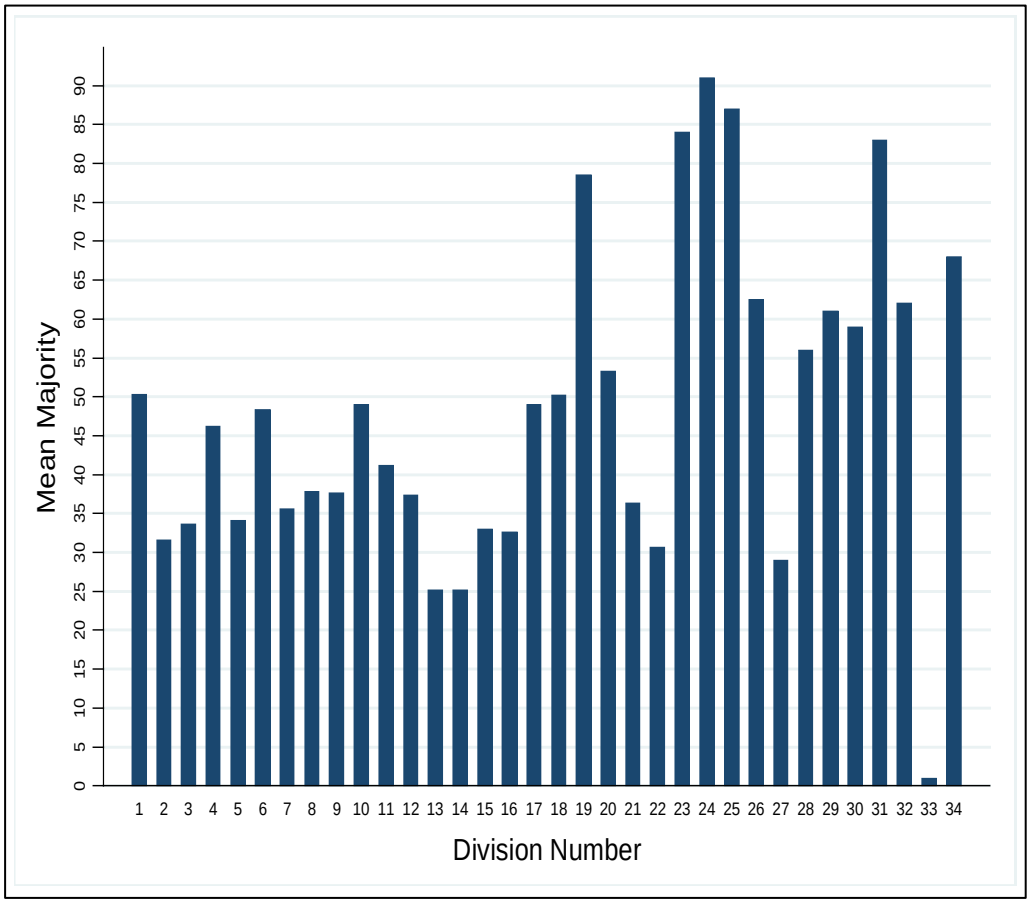


Figure 3-2: Average Standardised House of Lords' Majority by Division Number

The growth of the majority is not as consistent as those seen in the turnout study, but it is still rising, suggesting that the change is not as consistent on both sides of the amendment arguments. The overall growth, as well as the great spikes in majority, also starts also at division 15.

3.3. Overall Government Turnout and Opposition

Average turnouts can only show figures that have been skewed by higher or lower levels. Figure 3 below shows all of the divisions, and the percentage turnout of the opposition and of the government.

3.4. Turnout

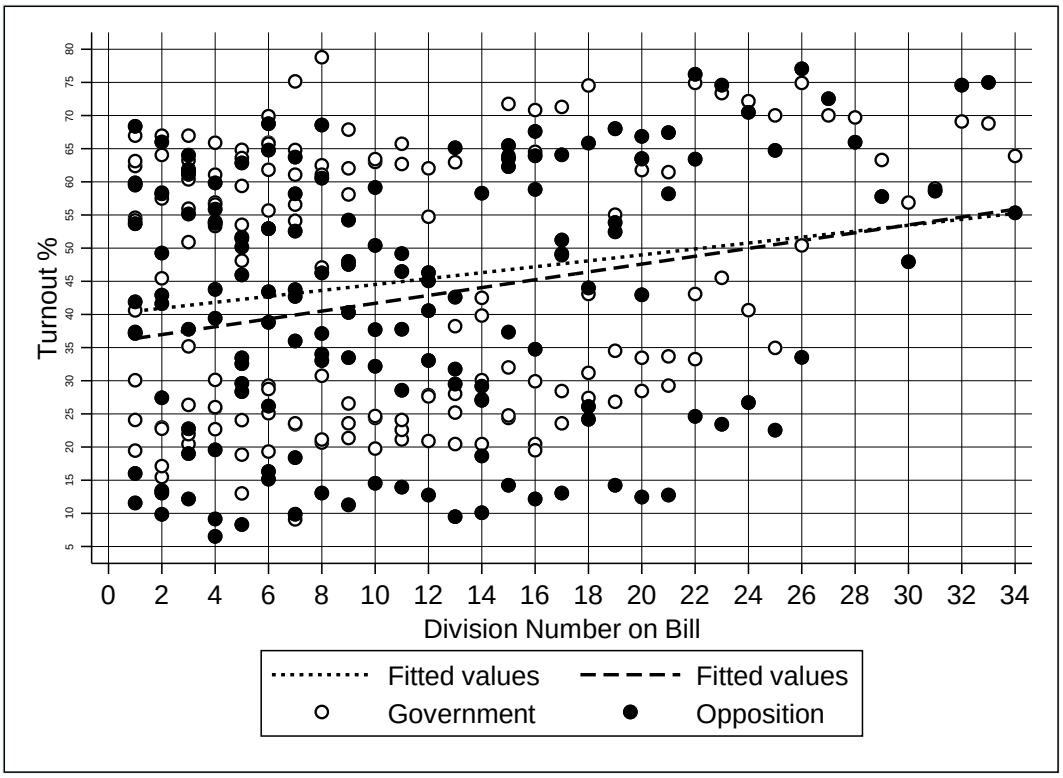


Figure 3-3: Turnout as a percentage for Government and Opposition Peers, with Fit Lines, against Divisions Number for All Bills.

Both of these show increases, with the government starting from a slightly higher percentage, as well as the relative difference between the two groups decreasing over time. Figure 4 takes these divisions and then averages them by division number, with 1 being the first division stage of ping-pong. This, similarly to previous figures, suffers from the issues of later division phases averaging from a lower percentage.

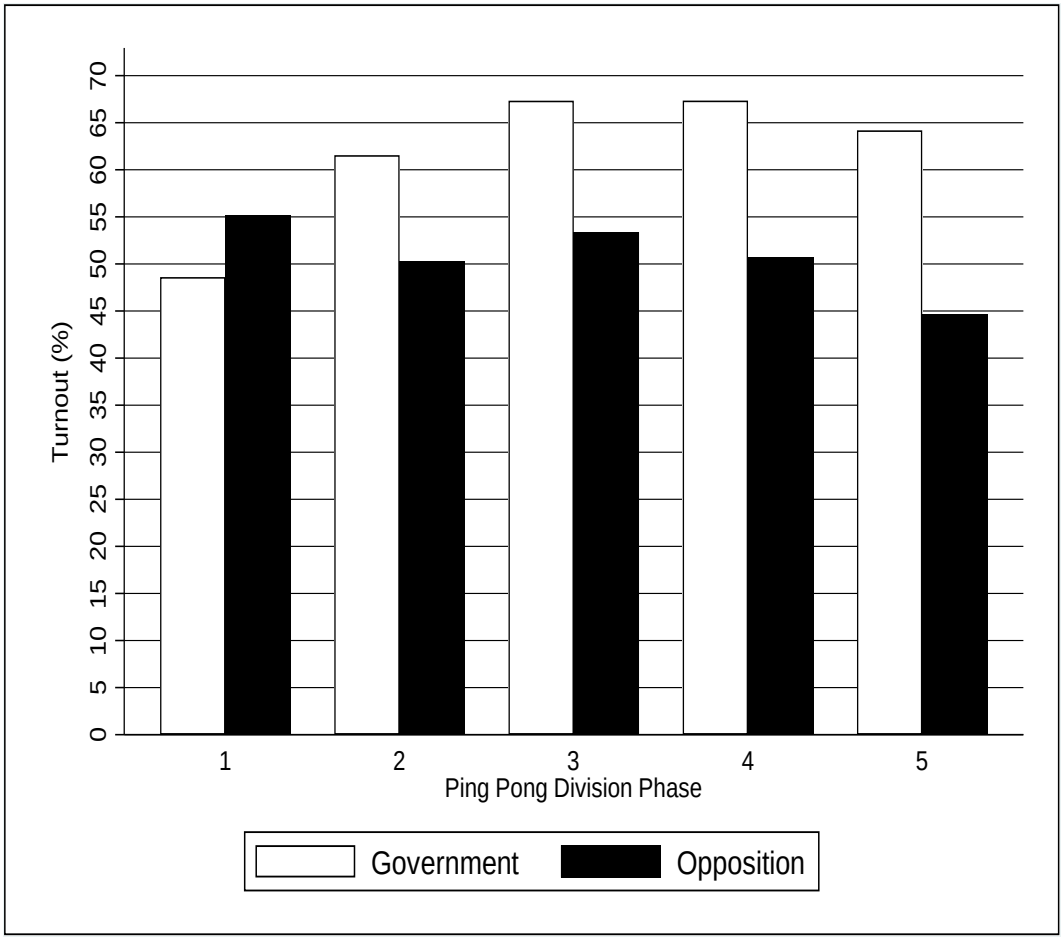


Figure 3-4: Average percentage of Turnout against Ping-pong Division Phase for the Government and the Opposition

This shows, unlike Figure 3, that whilst the government still increases over the averaged division phase, the opposition decreases; thus, the difference between the two increases over time.

3.5. Majority

Figures 5 and 6 below show the same information as Figures 3 and 4, but for majority.

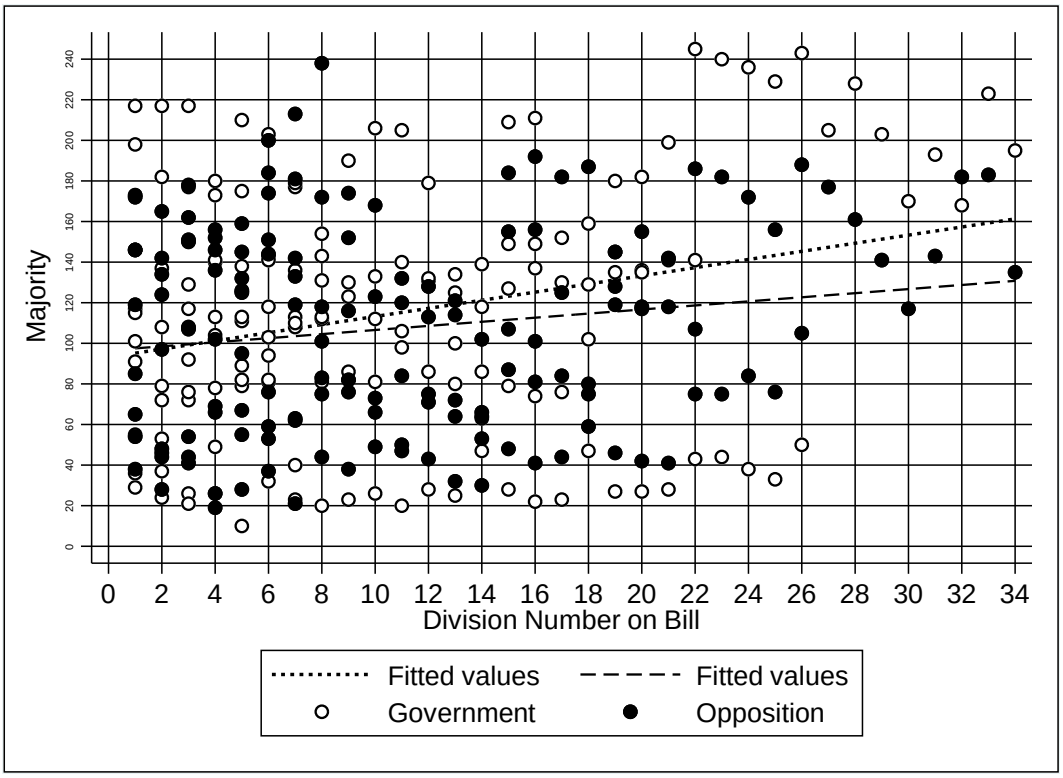


Figure 3-5: Majority as a percentage for Government and Opposition Peers, with Fit Lines, against Divisions Number for All Bills.

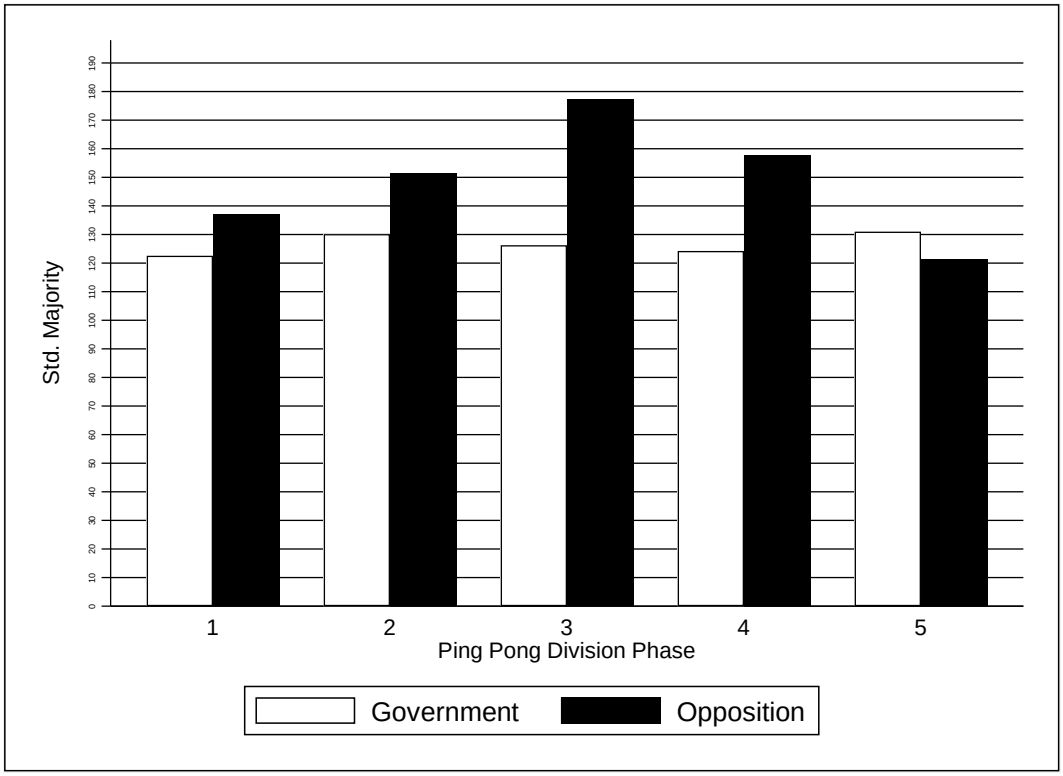


Figure 3-6: Average Standardised Majority against Ping-pong Division Phase for the Government and the Opposition

Both Figure 5 and Figure 6 show an increase in the government majority, which is greater than that of the opposition.

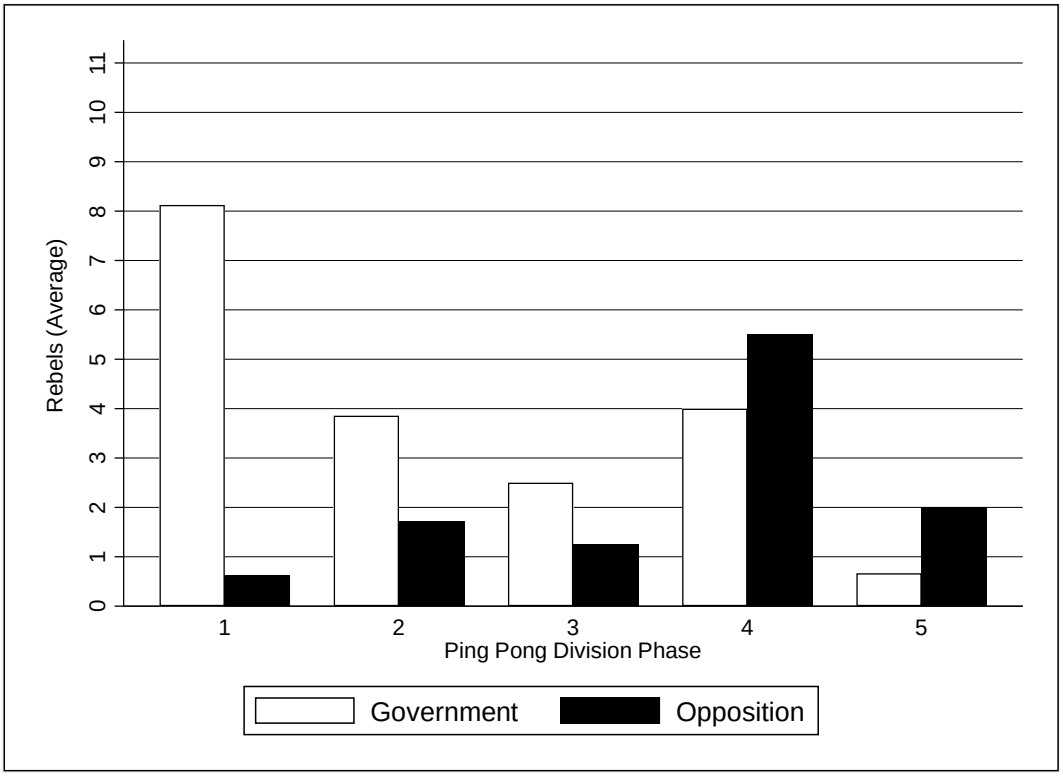


Figure 3-7: Average Number of Rebels per Division Phase, for the Government and the Opposition

Figure 7 shows that government rebels decrease overtime. The opposition rebels increased overtime. This is in line with that which would be expected.

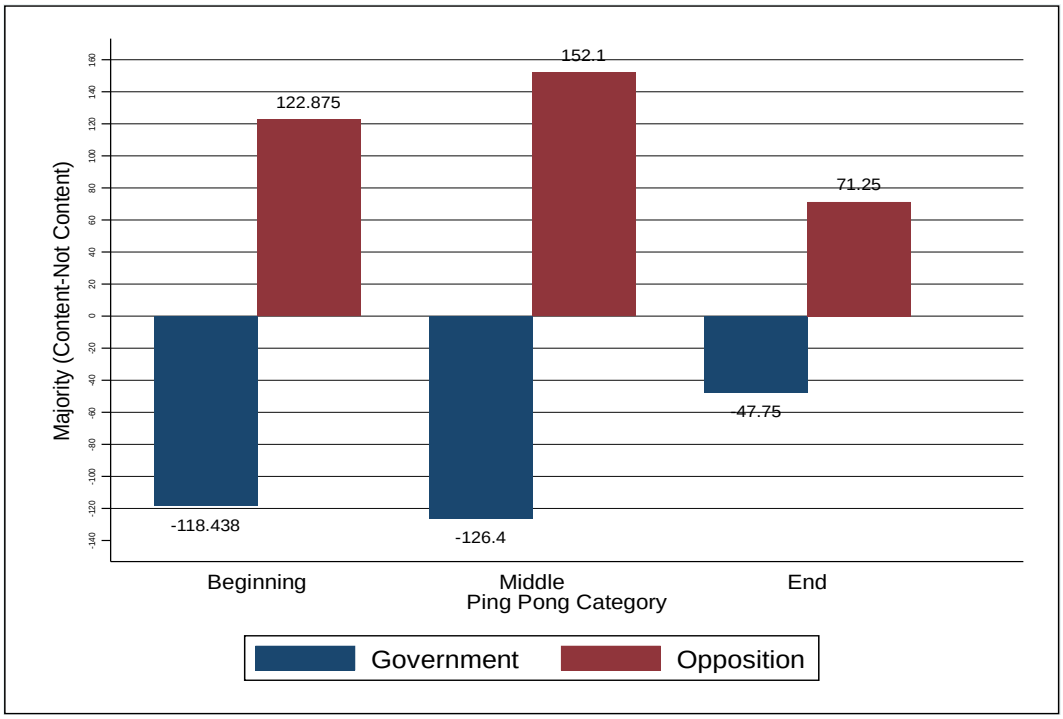


Figure 3-8: Mean Majority of Government and Opposition Group

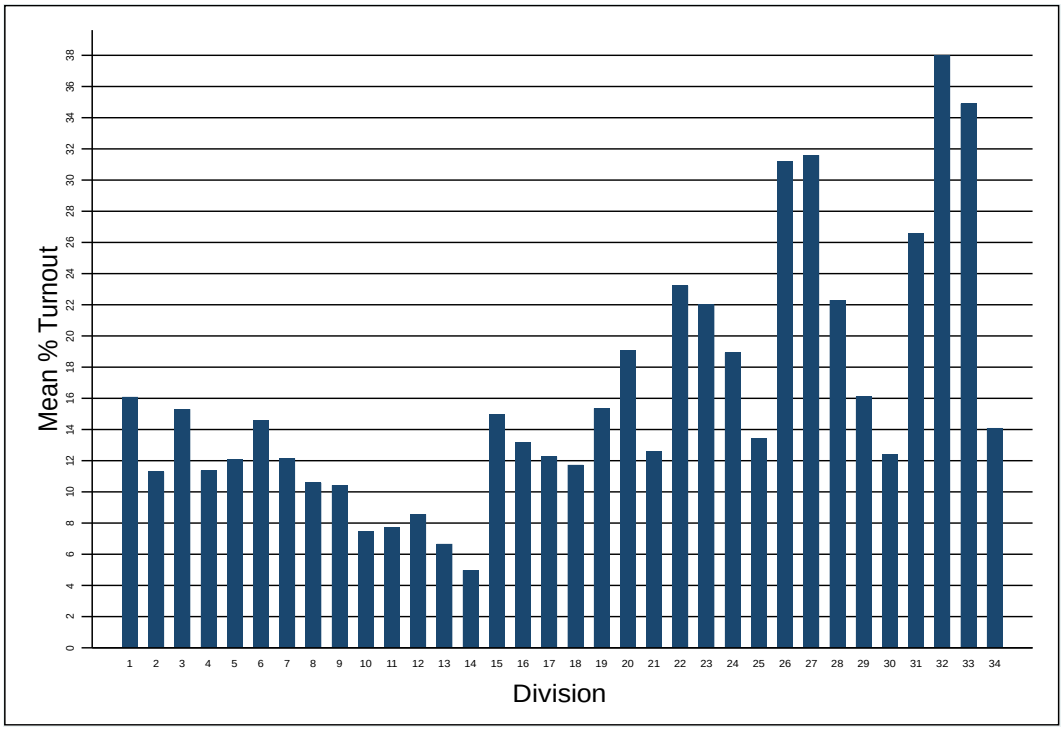


Figure 3-9: Crossbencher Turnout Mean Division Number

As with the overall figures, crossbencher turnout began a steady increase at about the 15th division. This was peaks at points, but these began increasing.

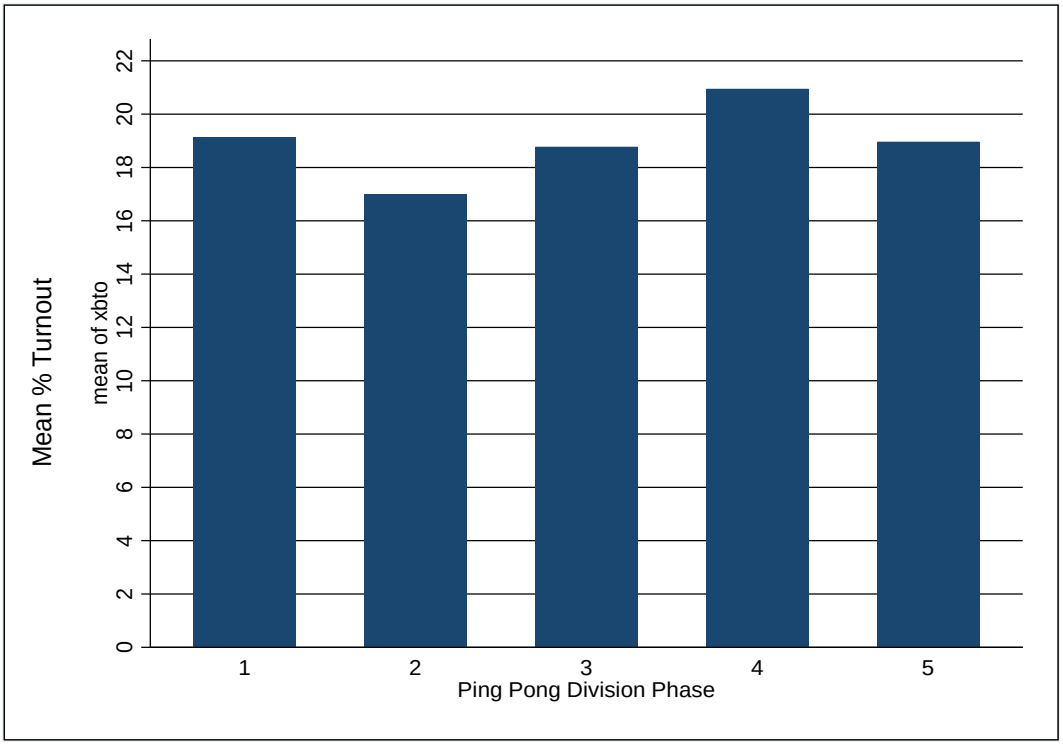


Figure 3-10: Crossbencher Turnout Division 'Phase'

Crossbencher turnout was largely steady across averaged ping-pong phases.

3.6. Reform

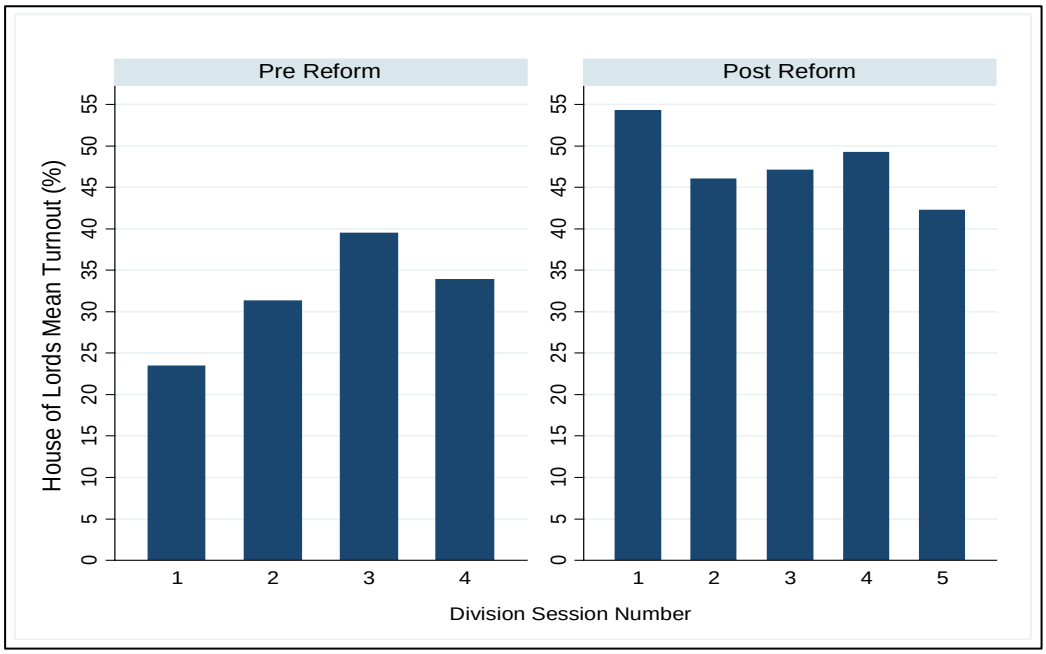


Figure 3-11: Average House of Lords Turnout by Division Day for Ping-pong, Split Reform

When this was split by reform era, turnout generally increased in the pre-reform era, and generally decreased in post-reform, although the relative change was greater in pre-reform.

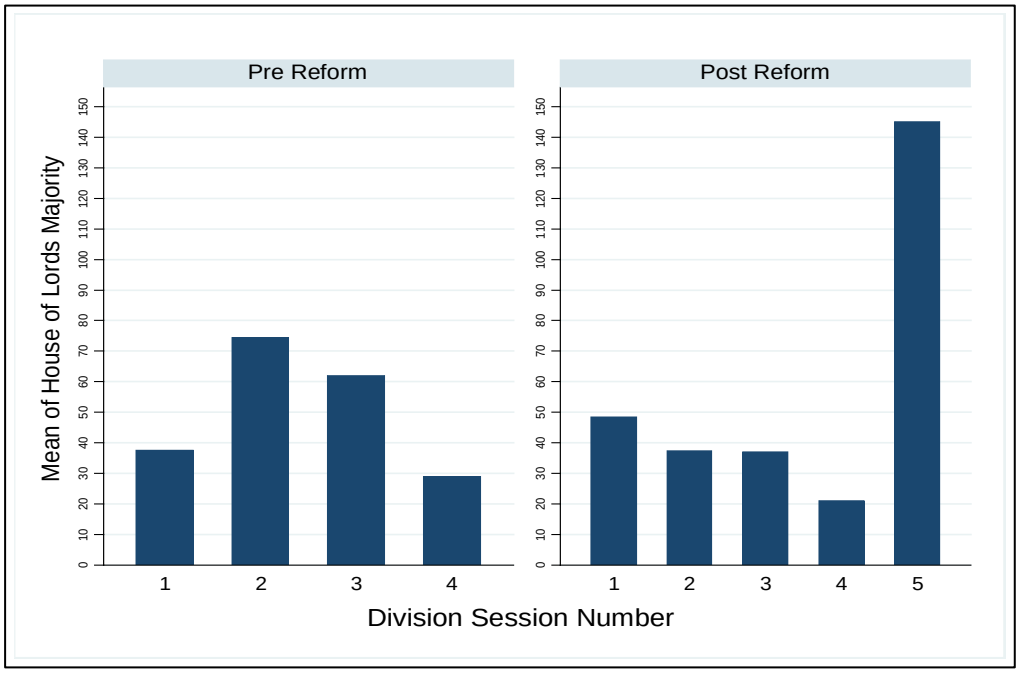


Figure 3-12: Average House of Lords Standardised Majority by Division Day for Ping-pong, Split Reform

Both measures decreased over the averaged ping-pong division phase.

3.7. Crossbenchers

Figure 3-13 shows the turnout as a percentage of eligible crossbenchers in that session that turned out in a division. This percentage is averaged by division phase, and split by reform status, resulting in more bills and divisions being included in the earlier phases than in the later ones.

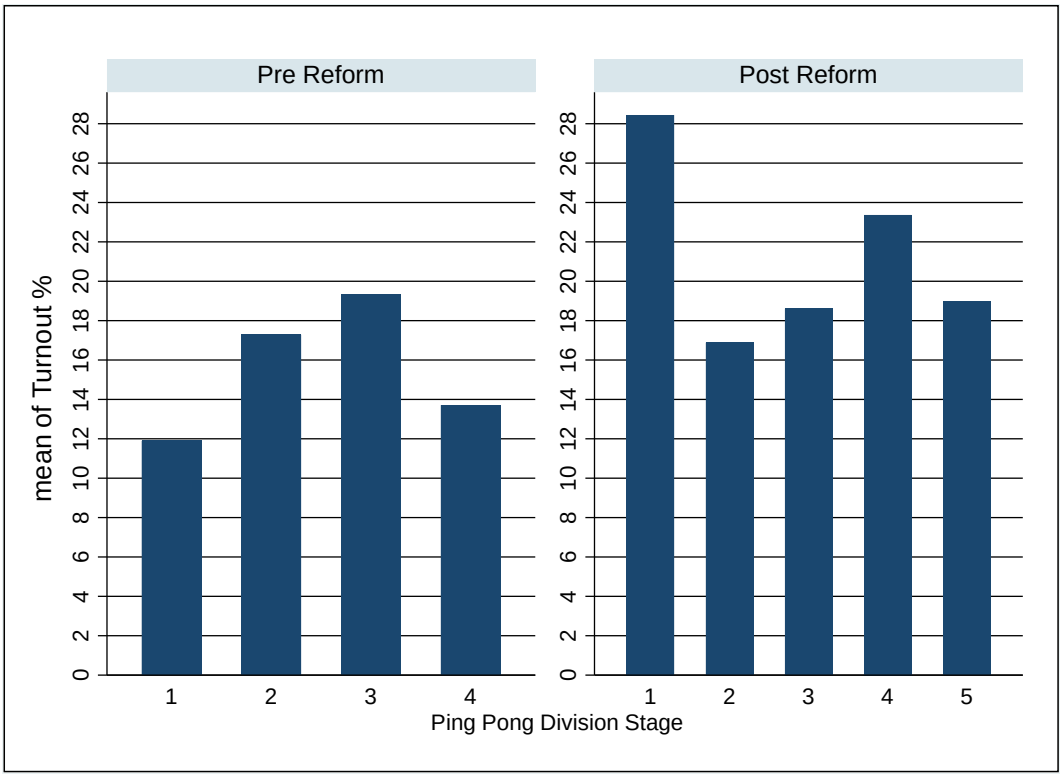


Figure 3-13: Crossbenchers' Bar Mean Turnout

This shows an apparent increase in turnout in the pre-reform period, although this is only 2% in reality. In the post-reform era, the overall turnout shows a decline from the first phase to the end; however, the turnout between the second and last shows an increase. This is again slightly misleading, and amounts to relatively steady turnout, although the first phase was considerably higher with 28% turnout compared to a more usual 20% in the later phases.

The same information is then shown with majorities for the crossbench group only. This, more so than does the turnout, shows the difference

made by using phases, and the effect of outliers within it. Within the post-reform period, Phases 1 to 3 increase from 28 peers to 36 peers, and Phase 4 has an average majority of 10 peers. In post-reform, majorities ranged from eight to 30 peers.

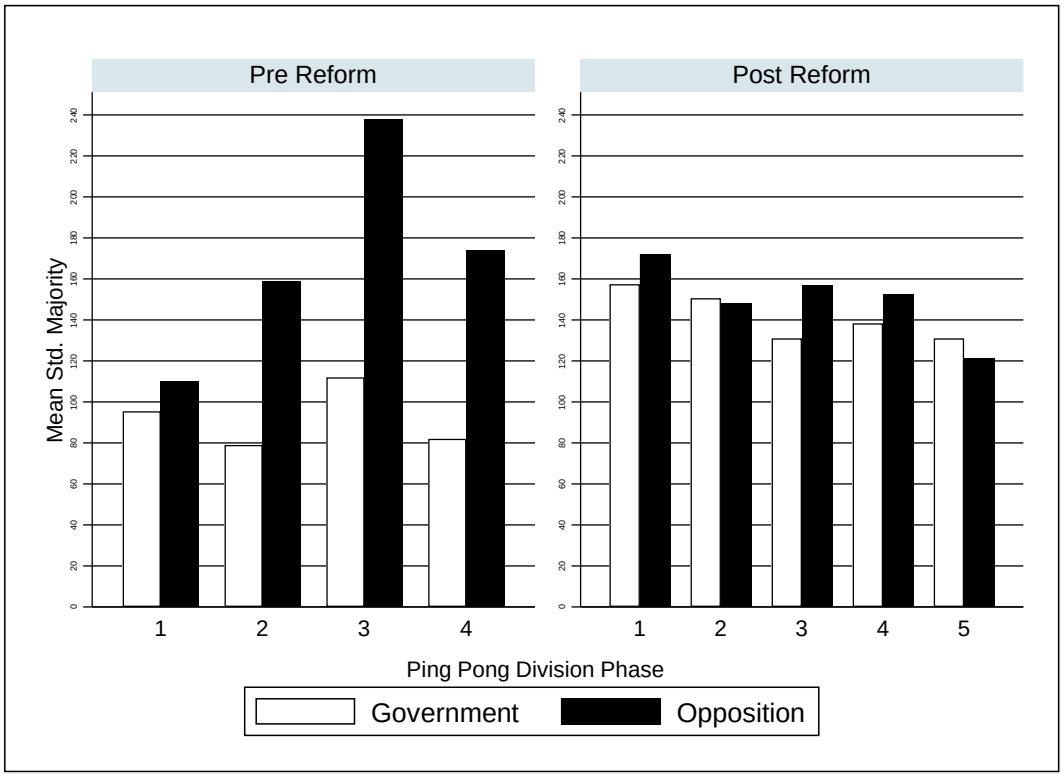


Figure 3-14: Average Standardised Majority against Ping-pong Division Phase for the Government and the Opposition Split by Reform.

The pre-reform majority showed a clear increase in opposition majority, whereas the government was essentially steady. In post-reform, both the government and the opposition showed an overall decrease, although the opposition's decline was steeper.

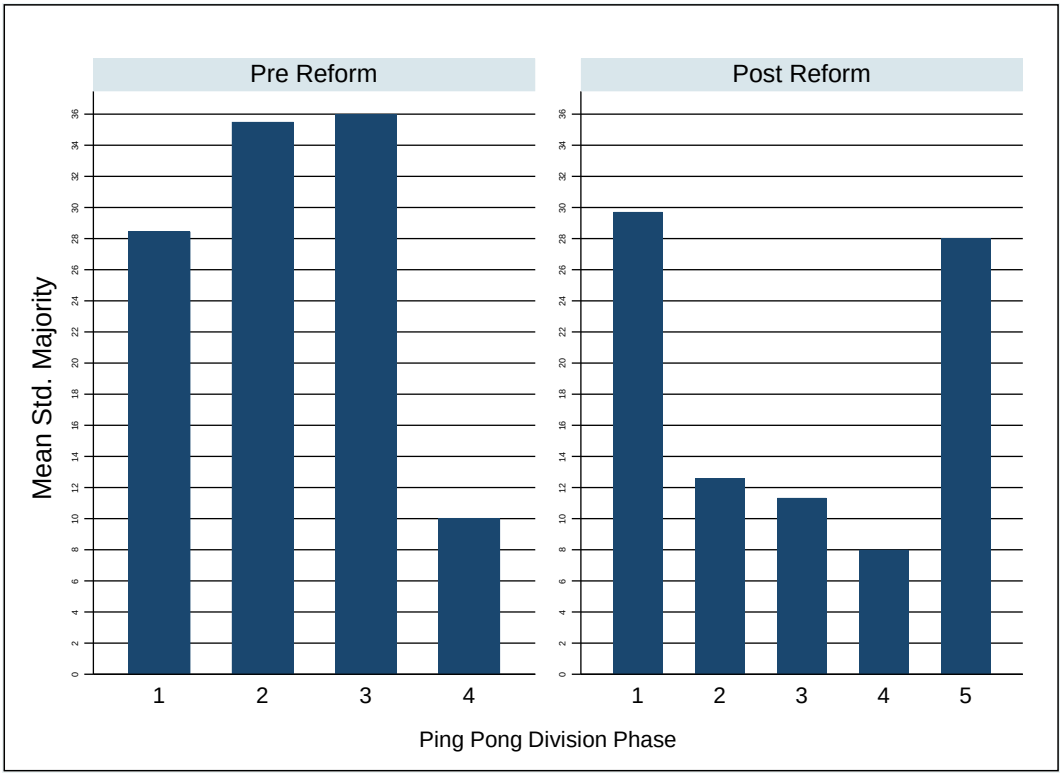


Figure 3-15: Mean Standardised Crossbencher Majority against Ping-pong Division Phases Split by Reform Status.

In the pre-reform period, there was an increase from Phases 1 to 3; however, Phase 4 was significantly lower. There was a decrease in the post-reform period; however, Phases 1 and 5 were significantly higher than were those in the middle.

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