

Why does the Government get defeated in the House of Lords? The Liberal Democrats as a Pivotal Group

Paper prepared for EPOP Conference Sept. 8th-10th 2006

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Abstract

Although the threat of defeat in the House of Commons attracts significant attention, we hear a great deal less about defeats in the House of Lords. Yet in this chamber of parliament government is defeated regularly - now nearly 400 times since 1997. This paper analyses what contributes to Lords defeats, and the role played by the different groups in the chamber. It uses voting data from the six full parliamentary sessions since the (majority of) hereditary peers were removed from the chamber in 1999, supplemented by data from a survey of peers. It finds that Labour rebels play only a minor role in bringing about defeat, and that the 200-strong group on independent 'crossbenchers' have less influence than their numbers would suggest. The pivotal group in the House of Lords in most cases is the Liberal Democrats. This situation, brought about by the 1999 reform, gives the third party a new importance in British politics that is not yet widely understood. Our research also finds that far from always being overturned in the Commons, as is often assumed, almost four out of ten Lords defeats 'stick', resulting in lasting policy change. This makes the leverage given to the opposition parties important. We conclude that the House of Lords is now a significant site of political negotiation, with far-reaching implications for the dynamics of British politics.

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Introduction

Voting patterns in the British House of Commons have been much studied over the years.¹ The House of Lords, in contrast, is a far less well-studied institution.² Indeed in British politics the term 'parliament' is often used synonymously with the House of Commons - the Lords being considered an unreformed curiosity which may not be with us for long, and which is not where the important decisions are taken. Government defeats in the House of Commons are rare, and never go unnoticed. House of Lords defeats are also only occasionally brought to public attention. Yet the government is defeated frequently in the House of Lords, and the number and severity of these defeats appears to be on an upward trajectory.

Labour governments have always been defeated more often than Conservative governments in the House of Lords, due to the chamber's peculiar composition. In keeping with this tradition, the Blair government suffered a total of 383 defeats in the Lords between 1997 and the end of March 2006. However, government reform removed the majority of hereditary peers from the chamber at the end of the parliamentary session 1998-99, and thus ended the Conservative Party's predominance.³ What was left was a chamber where no party could command an overall majority, and most members were life peers.⁴ The removal of the bulk of hereditaries has given the Lords a greater confidence, and peers' belief that they are now more legitimate seems to be shared by the public and MPs (Russell 2005). Government defeats in the Lords therefore now take place in a very different context. Since reform in 1999 some significant proposals have been blocked, and the argument between the two chambers over the Prevention of Terrorism Bill in 2005 was one of the largest since the start of the twentieth century.

In this new environment there are therefore a number of important questions to be answered about government defeats in the House of Lords. For example, are such defeats becoming more common, are they becoming more severe, and what is their policy impact? With respect to some of these questions, less than seven years after reform happened, it still remains too early to tell. This paper seeks to address a prior question, as part of a research project which aims to address these general issues. Here we ask which groups contribute to Lords defeats in the 'semi reformed' House, and how large their impact is. This will help us to understand the new dynamic that was released by Lords reform in 1999, and its implications for British politics.

We have constructed a database of all members and all votes in the House of Lords since the start of the 1999-2000 session (the point at which the hereditary peers departed).⁵ This paper is based on the data from the six full parliamentary sessions since then - stretching from November 1999 to the dissolution shortly before the general election of May 2005. Data on voting (derived from Lords Hansard) is supplemented by the views of peers as expressed in a postal questionnaire survey circulated in February 2005.⁶

At this stage we present only a straightforward analysis of voting patterns by different groups in the House, and their impact on defeats. At the end of the paper we present a preliminary analysis of the extent to which defeats result in actual policy change, and indicate future research directions. Before turning to these matters, however, it is worth pausing briefly to ask what we mean by a government defeat.

When is a defeat a defeat?

At one level it is straightforward to describe how many defeats there are in the House of Lords. The Lords website itself openly cites the total defeats in each session dating back to 1975.⁷ This comprises all those occasions on which the government whipped a division, but the number of peers backing its position in the lobbies was fewer than the number opposing it. The number of

such defeats each of the six sessions we are dealing with, and the number of other divisions, is given in Table 1. By this definition the government was defeated 283 times in the chamber during the first six sessions after it was reformed. This is a small dataset from which to determine a trend, covering only one and a half electoral cycles. However, it does seem to show an upward drift.⁸

Table 1: defeats and divisions by session, 1999-2005

Divisions:	Whipped			Not whipped	All	Defeats as % of whipped votes
Session	Defeat	Draw	Victory			
1999-2000	36	0	150	6	192	19.4%
2000-2001*	2	0	32	6	40	5.9%
2001-2002	56	1	101	14	172	35.4%
2002-2003	88	0	116	22	226	43.1%
2003-2004	64	0	96	16	176	40.0%
2004-2005*	37	0	27	3	67	57.8%
Total	283	1	522	67	873	35.1%

* Short session due to general election.

This is the basic definition which we will work with in the first part of the paper. However, three qualifications should be put on this definition as a description of when government is defeated in the Lords.

The first qualification is that the definition seeks to capture clear conflicts between the government and the House of Lords, rather than between the two chambers of parliament. On occasions where the government does not whip a division (ie. allows a 'free vote'), clashes between the two chambers cannot be considered as government defeats. However, some free votes are more 'free' than others, and there are various borderline 'conscience' issues which may attract the label on some, but not all, occasions.⁹ We have excluded from our analysis votes on procedural matters, which are by convention unwhipped, and others where there were strong indications that the government side had allowed a free vote (for example through the pattern of 'tellers' appointed, through public government statements, or - in the case of doubt - through enquiries to the Labour whips' office). As shown in Table 1, this applied to 67 of 873 divisions during the period. Although it seems obvious that these divisions should be excluded, it should be noted that it results in some high-profile and highly political issues being removed from the analysis, which under a wider definition could be argued to be government defeats. For example a total of 23 divisions related to hunting and seven to House of Lords reform.¹⁰ At the same time some high profile 'conscience' type issues are left in, for example votes on the abolition of Section 28, on rights of unmarried couples to adopt, and the Civil Partnerships Bill.

The second qualification relates to the nature of parliamentary influence. Defeats in the division lobbies are a blunt instrument by which to extract concessions from government. Peers are generally more inclined to deploy powers of persuasion where they can.¹¹ A common tactic is to raise an issue at the early stages of a bill, but not press an amendment to the vote if the relevant minister states that s/he will go away and consider the matter again. This often happens at committee stage in the Lords, where there are relatively few divisions. If the minister's response proves unsatisfactory the matter can then be pressed again at report stage, and the option remains to inflict a defeat at third reading if a compromise cannot be reached. This pattern helps explain the figures in Table 2, which shows how the 283 defeats on whipped divisions broke down by legislative stage.

Table 2: Defeats by Legislative Stage

Legislative Stage	No. of defeats	As % of total
Second Reading†	2	1
Committee stage	34	12
Report stage	124	44
Third Reading	65	23
Lords Consideration of Commons' Amendments	47	17
Not applicable*	11	4
Total	283	100

† The Lords does not by convention vote on whole bills at second reading. These were (unusual) whipped divisions relating to the procedure for the remainder of the bill.¹²

* This category comprises largely of non-fatal motions objecting to statutory instruments.

It is very common for this process to result in government concessions in the Lords (Griffith 1974, Miers and Brock 1993, Shell 1992). Indeed this may prove a more effective mechanism than pressing an issue to the vote, as it is low profile and thus enables ministers to concede policy changes without losing face. However, such concessions cannot be classified as defeats, even where an amendment was formally tabled at three stages under threat of defeat, and a similar government amendment followed. This simply illustrates that the Lords' impact on policy cannot be fully captured by quantitative study, but that a fuller analysis of the chamber's policy influence would be a long and laborious process.

The third qualification to the standard definition of defeats is that they do not necessarily result in real policy change. Just as government may concede without being defeated, it can also be defeated without having to concede. This makes defeats in the Lords very different to defeats in the House of Commons. As the Commons has the last word, the government frequently attempts to overturn Lords defeats when a bill returns there for approval. Indeed the common perception may be that this is what happens most of the time. Given that this process occurs it could be argued that then the number of defeats in the Lords, as commonly defined, is unimportant. What is of greater interest is the number of defeats that 'stick' and thus result in real policy change. This is a dimension that we investigate briefly in the second part of the paper.

First, however, we consider in more detail the 283 'standard' defeats that occurred, and the factors explaining why the government lost these divisions.

Potential contributors to defeat: political groups in the House of Lords

The short answer to why government gets defeated in the House of Lords is that it does not have a majority in the chamber. The breakdown of membership in the Lords at the end of the 2004-5 session is given in Table 3. This shows that there are three roughly evenly-balanced groups in the chamber: Labour, the Conservatives and the independent 'Crossbenchers', each with around 200 seats. The Liberal Democrats then have around 70 seats and the Bishops 26, with a small number of other non-aligned members making up the total. Although numbers fluctuated slightly, the proportions held by these groups were relatively stable over the period under study here. Only following the 2005 general election did the dissolution honours list, which included 16 former Labour MPs, make Labour narrowly the largest party in the chamber for the first time (Russell and Sciara 2006).

This is a rather different situation to that which applied in the House of Lords throughout the 20th century, when the Conservative party was dominant in the chamber. Immediately before reform in 1999 the Conservatives held 471 seats to Labour’s 179, while the Liberal Democrats held 72 seats and the Crossbenchers 353. Given the low turnout amongst Crossbench peers (discussed below), the Conservatives were well placed to win divisions without the support of other forces when they were determined to do so.¹³ In practice this meant that the party acted with considerable restraint during periods of Labour government, and did not force large numbers of divisions (Morgan 1975, Bromhead 1958).

Table 3: Party breakdown in the House at the end of the 2004-5 session

Party	Life Peers	Hereditary Peers	Bishops	Total
Conservative	156	49	0	205
Labour	195	4	0	199
Liberal Democrat	64	5	0	69
Crossbench	150	31	0	181
Bishops	0	0	25	25
Other†	10	2	0	12
Total	575	91§	25§	691

§ On this date there was one (Crossbench) vacancy amongst the hereditary peers and one vacancy amongst the bishops.

† The “Other” group contains a small number of members who are not allied to the three main parties but do not wish, or have been refused the right, to sit on the Crossbenches. These include several members who have defected from the major parties, and one representing the Green Party.

In the post-1999 house Labour has to secure the support (or at least the abstention) of a significant number of members from other groups in order to win a vote in the House of Lords. It is important to note that many decisions are taken without a division - for example it is rare for the House to divide on the second reading of bills.¹⁴ But where there is a division any group has the potential to act as a veto player, depending on the behaviour of other groups. This situation is made more unpredictable and complex by the widely recognised ‘less partisan setting’ of the House of Lords (Judge 2005: 76), where the whips have few sanctions and many members may choose not to vote at all. Particularly given that the government lost 51 divisions over this period by fewer than 10 votes, it is clear that the behaviour of Labour rebels, Conservatives, Crossbenchers, Liberal Democrats or Bishops could each potentially make the difference between victory and defeat.

We will structure this section of the paper by looking at the behaviour of each of these groups in turn, and their influence on the outcome of divisions. We will then summarise the overall picture before going on to focus on those defeats that ‘stick’ and result in lasting policy change.

Labour rebels

In the House of Commons it is the behaviour of the government’s own backbenchers that is most critical to legislative outcomes (King 1976, Cowley 2005). Whilst holding a majority, governments can generally discount the votes of opposition parties, so long as they can depend on the support of their own MPs. In the contemporary House of Commons it is therefore Labour rebels, in most instances, who are the pivotal voters.

In the House of Lords, Labour rebels are only one group amongst many which could contribute to government defeat. This makes them a less obvious focus than they are in the House of Commons. However, given government’s weak numerical position in the upper house, it is potentially of even greater importance that it maximises its own vote in Lords divisions. A few abstentions or rebels can better be afforded in the Commons, where the government’s majority has been comfortable since 1997. This is a challenge in an environment where party discipline is generally considered to be weaker.

As Norton (2003) has shown, party voting in the House of Lords is actually remarkably cohesive, despite the relatively weak sanctions available to the whips. Of the 806 whipped divisions over this period, dissenting votes were cast by Labour members in 206 cases. This was only a slightly higher proportion than the 21% in the House of Commons during 2001-05 (Cowley 2005a). And most of the time these rebellions in the Lords were very small - as shown in Table 4. On only 13 occasions over the period did more than 10 Labour members rebel.¹⁵ In six of these there was an element of ‘conscience’, despite these not formally having been free votes (for example the repeal of Section 28 or allowing unmarried couples to adopt). Of the remainder, three related to the 2005 Prevention of Terrorism Bill - the subject of the greatest argument between the Commons and the Lords since the early 20th century¹⁶, one to the protection of pension rights when the National Air Traffic Services (NATS) was in privatised in 2000, and one to the attempt to restrict trial by jury in the Criminal Justice Bill of 2003. The bill which attracted the largest rebellion (and two large rebellions in total) was the Communications Bill, with 33 Labour members seeking to rebalance the interests of the citizen and the consumer in the bill in June 2003.

Table 4: Divisions including Labour dissenting votes, 1999-2005

No. rebels	Defeat	Victory	All divisions
1-5	86	90	176
6-10	10	7	17
11-15	4	2	6
16-20	2	1	3
21-25	2	1	3
26-30	0	0	0
31-35	1	0	1
Total	105	101	206

In total, Labour rebels contributed to 105 defeats. However, given the small numbers involved, they were rarely enough on their own to make the difference. For example on the Communications Bill the 33 Labour rebels were joined by sufficient Conservatives, Liberal Democrats and Crossbenchers to ensure that the government lost the division by 105 votes. In all, Labour rebels alone accounted for a government defeat on only eight occasions (in the sense that if they had voted for the government and all other votes had remained unchanged, the government would have won).¹⁷ The most dramatic occasion was that relating to pension rights of NATS staff, when the government lost by one vote but would have won by 21 had it been supported in the division lobbies by the Labour peers who rebelled.

The influence of rebellious Labour peers, however, extends beyond this limited number of cases, as the voices of rebels may be influential with other members in the chamber. Crossbenchers, in particular, may be swayed to vote against the government if it is clear that there are splits in its own ranks. This again demonstrates the very different politics that applies in the Lords when compared to the House of Commons, and also the limits of a quantitative approach. An amendment moved by a Labour backbencher is obviously a particularly effective way of

signalling to Crossbenchers, opposition peers and the outside world that there is disquiet on the government side. For example the amendment to the Communications Bill was moved by Lord Puttnam (who had chaired a joint committee on the draft bill), the amendment on NATS was moved by Labour's Lord Brett, and a key amendment to add a sunset clause to the Prevention of Terrorism Bill was moved by Baroness Hayman. All of these resulted in defeat, and the last in one of the largest defeats the government has suffered in the chamber.¹⁸

More frequently a Labour member will add their name to an amendment moved by a member of another party (or a Crossbencher) to indicate that concern extends across the House, or express their dissent in debate or in statements outside the chamber. In this context it is worth noting that though the number of Labour rebels in the Lords is small, some members rebel very publicly and in spectacular style. In the House of Commons the most rebellious member is Jeremy Corbyn, who cast 148 votes against the government in the 2001-05 session, but still voted with his party 12% of the time (Cowley 2005). In the Lords three Labour members cast a greater proportion of their votes than this against the government. The leading rebel was Baroness (Helena) Kennedy, who cast 51 votes against the government over this period and only 103 votes in its favour (a dissention rate of 33%). Her outspoken criticisms of government policy on various civil liberty issues helped set the media agenda and, particularly given her legal expertise, seems likely to have been influential with members sitting on the Crossbenches as well.

Potentially as important as Labour rebellions are abstentions or absences amongst the Labour ranks. Overall, the level of absence from votes is far higher in the House of Lords than in the Commons, for a number of reasons. Members of the Lords are not paid a salary, and many have jobs outside parliament which prevent them from attending. Some have taken a peerage as an honour, rather than a job, and choose to attend rarely if at all. Others are elderly or in poor health, but remain members (since there is no means of retirement from the House).¹⁹ All of these factors affect the turnout amongst all groups in the chamber. In the parties, however, there is another factor, which is that members who disagree with their frontbench line are strongly encouraged by their whips to stay away, rather than to vote against. This saves the party embarrassment, and also costs it less (just one vote fewer, rather than one vote fewer plus one vote more for its opponent). Given the many possible reasons for absence from divisions, and the fact that abstentions are not recorded, it is impossible to know how much deliberate abstention goes on in the Lords.

Over this period the average Labour turnout in whipped divisions was 53.2%. Turnout in divisions where the government was defeated was marginally higher than that in divisions which were won (57% to 51%). This can largely be accounted for by whipping: where there is a threat of defeat party managers will try harder to encourage loyal Labour voters to attend. Many more divisions might have been won had Labour whips been able to rely on higher attendance amongst their party colleagues. For example, if Labour turnout in all divisions had been at least 67%, 93 defeats would have been averted. But even amongst the 140 new Labour peers who entered the chamber between 1997 and the 2005 general election, most of whom were appointed as 'working peers', turnout has only averaged 60.6% overall.

The Conservatives

Not surprisingly, the Conservatives contributed to almost every government defeat in the House of Lords over this period. On one occasion the Conservatives appeared to abstain in a defeat (on the education of asylum seekers' children, in 2002); in the other 282 cases they always voted against rather than for the government's position. This is not to say that Conservative voting assures government defeat: in 426 cases the Conservatives opposed the government in the division lobbies but it nonetheless won the vote. In just 17 cases (all resulting in victory) did the

Conservatives cast their votes with the government. The Conservative group is generally pivotal in the chamber, given its large size. However there were five occasions over this period when a division would still have been lost even if the Conservatives had not voted. Four of these were the four largest defeats over the period, all on the Prevention of Terrorism Bill 2005, where the range of forces against the government meant that it was defeated by between 127 and 187 votes. The fifth was on Lord Puttnam's amendment to the Communications Bill, where the government would have lost by 31 votes even without the Conservatives, in part because of the 33 Labour members who rebelled.

Even more than Labour, the Conservatives were weakened by non-attendance. There were relatively far fewer appointments to the Conservative side of the House after 1997: just 58 new peers compared to Labour's 140. As a result Conservative peers were on average older and had served in the chamber for a longer time (see Table 7). Over the period we are considering the Conservative turnout in whipped divisions (excluding divisions on which the party abstained) was just 34.2%. That is, the average Conservative turnout was only 73 members, out of an (average) available collection of 214 voters. When turnout was higher, defeat was far more likely: of the divisions where Conservative turnout was over 50%, 76% were defeats, compared to 29% of all other divisions. If turnout in Conservative-whipped divisions had always been at least 50%, Labour would have lost a further 218 votes. Although Conservative peers therefore played an important role in defeat, their impact therefore could have been far greater.

The Crossbenchers

The existence of the Crossbenchers in the House of Lords can be explained by its history. Until the passage of the Life Peerages Act 1958 the vast majority of members entered the chamber because they had inherited a title, rather than because they had actively sought inclusion in the legislature. Many of these members had no firm party allegiance. Hence it was natural for a non-aligned group to form, and this took its name from the benches which are neither on the government nor opposition side. With the arrival of life peerages the tradition of adding independent members to the chamber then continued. The Crossbenches include many retired senior civil servants, diplomats and military personnel, as well as distinguished scientists, lawyers and academics who choose not to take a party whip. Since its establishment in 2000, the House of Lords Appointments Commission has largely taken responsibility for selecting non-party peers and this now accounts for most, though not all, new Crossbench members.²⁰ In addition the group includes a number of members who previously represented political parties, and a small number of minority party representatives (at the end of the 2004-05 session these numbered eight Ulster Unionist Party representatives and one Plaid Cymru member). Under the 'Weatherill compromise' of 1999, whereby 10% of hereditary peers remained in the chamber, 32 Crossbench hereditaries were retained.

Although not a party group, the Crossbenchers do have their own organisation, including an elected 'convener' who has some office support, and weekly meetings and mailings through which they share information on business in the chamber. Nonetheless the group takes no collective position on matters discussed. Given its size it has the potential to be very influential on legislative outcomes; but there are a number of factors which mean that its impact is much less than the raw numbers might suggest.

The first factor is turnout amongst Crossbench peers in divisions, which is far lower than that amongst the party groups. In government-whipped divisions across this period the average Crossbench turnout was only 18 members (that is, 10% of the group). On some occasions turnout was far higher than this: the highest was 82 members over the retention of Section 28, in July 2000. Similarly, 75 Crossbenchers voted on rights of unmarried couples to adopt children, in

November 2002, 72 voted on the retention of the Lord Chancellor in the Constitutional Reform Bill in 2004, and 67 on inserting a sunset clause in the Prevention of Terrorism Bill in 2005. Of all of the 806 whipped divisions over this period, there were only 19 where the Crossbench turnout exceeded 50 members. All of these were on constitutional and civil liberties issues (in part due to the large number of lawyers on their benches), or on ‘family values’/sexual morality issues.²¹ On only 95 occasions in all did Crossbench turnout exceed 30 members.

This low turnout is not particularly surprising. Unlike party representatives, the Crossbenchers have no whips pressurising them to attend the chamber, and nobody in authority telling them which way to vote. If they wish to participate in a division they must familiarise themselves with the arguments in a way that party representatives are rarely required to do, in order to decide which side they should support. This means absorbing numerous papers and briefings, and actually sitting and listening to debates. Added to the fact that members receive no salary, have no electorate to answer to, and many have important responsibilities outside the House, the Crossbenchers’ low participation in Lords divisions is easily explained.

The other obvious factor which restricts the Crossbenchers’ influence on legislative outcomes is that when members of this group do vote, they do not all vote the same way. Thus even a high turnout may have little impact, if Crossbench votes in effect cancel each other out. This is a significant factor. So, for example, in the vote on unmarried couples’ right to adopt, 30 Crossbenchers supported the government (which sought to extend this right) and 45 Crossbenchers voted against. This pattern is replicated on a smaller scale in many other divisions. Nonetheless, there are trends discernable in the pattern of Crossbench votes. The standard measure of party cohesion in a legislature is the Rice index, which subtracts the proportion of members of the group voting one way from the proportion voting the other. The index thus equals 100% when a group is perfectly cohesive and zero when it is completely split. It might be expected that the Crossbench group on such a measure (when averaged across all whipped votes) would score close to zero. In fact the score over this period, taking only votes where more than 10 Crossbenchers participated (to minimise exaggeration resulting from small numbers happening to choose the same lobby), was 50%. This reflects the fact that Crossbench votes are not equally distributed for and against the government. Of the 14,626 votes cast by Crossbenchers over this period, 9,252 (63.2%) were against the government and 5,374 in its favour.²² Crossbenchers argue that this does not show a party bias, but a bias against bad legislation. Bearing in mind that divisions are called in the Lords only when there is some controversy, this is difficult to test. The behaviour of the Crossbench group under a future Conservative government would offer the best comparator.

The combination of the low Crossbench turnout and frequently divided votes means that the group does not hold the balance of power in the House of Lords to the extent that its size would suggest. In order to test the overall impact of the Crossbench group on the outcome of divisions, we calculated on how many occasions the outcome would have been different had no Crossbenchers voted. This obviously does not capture the many other forms of impact which the Crossbenchers can have: for example in sponsoring amendments and contributing to debates which (particularly where the sponsor is a recognised expert) may be influential on government or help encourage party members to vote a particular way or to abstain. In this relatively crude sense, then, we found that Crossbenchers affected the outcome of 50 of the 806 divisions over the period. The breakdown of these outcomes is given in Table 5.

The greater tendency of the Crossbenchers to vote against rather than for the government means that they contributed to 47 defeats over this period. In 37 cases the government would have won had they been absent, and in 10 cases there would have been a tied vote (which in practice generally means that the government would have won²³).

Table 5: Outcome of whipped divisions 1999-2005 if Crossbenchers had not voted

Outcome without Crossbench votes	Actual outcome		
	Defeat	Victory	Draw
Unchanged	236	520	0
Turned to victory	37	-	1
Turned to defeat	-	2	0
Turned to draw	10	0	-
Total	283	522	1

Often the numbers involved are small, however. For example in 2003 the Lords voted to remove a clause from the Criminal Justice Bill to allow hearsay evidence in court. The government was defeated by four votes but would have won by four if no Crossbenchers had voted (two Crossbenchers having voted with the government and 10 against). On the whole such effects were seen on relatively minor technical matters. Where Crossbench turnouts were high this might seem more likely to affect the outcome. So for example the absence of Crossbenchers in the vote on Section 28 cited above would have turned a defeat by 41 votes into a government victory of three. But often high Crossbench turnouts are accompanied either by divisions in Crossbench ranks, or by high turnouts across the chamber as a whole. So for example when 72 Crossbenchers contributed to the government's largest defeat, by 187 votes, on the sunset clause to the Prevention of Terrorism Bill, their votes were not decisive despite being split 60-12 against the government. Similarly when they voted 45-11 to remove a religious hatred clause from the Anti-Terrorism, Crime and Security Bill in 2001 this did not affect the outcome, as the government was defeated by 99 votes. Their impact is thus largely felt in divisions which are close to the line between victory and defeat. This is also illustrated by the only two cases in which the government won, but would have lost without the support of the Crossbenchers. A defeat by one would have been turned into a victory of four over the storage of electronic data under the Licensing Bill in 2003, and a defeat of two would have turned into a victory of three over rail vehicle accessibility in the Disability Discrimination Bill 2005.

The Liberal Democrats

The Liberal Democrats are a far smaller group than the Crossbenchers, but have the potential to play a more significant role. As the second opposition party they also have some distinct characteristics which give them a rather different profile to that of the Conservatives in the Lords.

Whilst the Conservative benches have seen relatively little renewal since Labour came to power, two thirds of the Liberal Democrat peers sitting in the chamber at the end of the 2004-5 session had entered since 1997 (see Table 7). This matches the level of turnover on the Labour benches, and results in part from the close relationship which the two parties enjoyed prior to the 1997 election, and the fact that the Liberal Democrats had previously been underrepresented in the chamber in comparison with their general election vote. As a result the Liberal Democrat group is the most youthful in the chamber, with an average age of 64 (again, see Table 7) and fewer problems with attendance amongst members who are elderly and infirm. Although average turnout in whipped divisions where the party took a position (ie. did not abstain) was only 51.3%, this compared favourably with the turnout on the government benches and far exceeded that of the Conservatives. In defeats the average Liberal Democrat turnout was 63%, and the party managed a turnout of over 80% on 50 occasions (compared to just four such occasions for Labour and three for the Conservatives). Of these 50 divisions, 38 were government defeats.

The results of our survey also showed some strikingly different attitudes amongst Liberal Democrat peers when compared to the other parties, and particularly to the Conservatives. When

asked whether ‘party peers have a duty to attend the House as much as they can’, 35% of Liberal Democrat peers strongly agreed, compared to just 17% of Conservatives. On the government benches, where the pressure to attend is naturally highest, the proportion sharing this view was 52%. Similarly when asked whether ‘when party peers vote they have a duty to support the party line all or most of the time’, 89% of Liberal Democrat peers agreed (20% strongly) compared to 58% of Conservatives and 83% of Labour peers. In organisational terms the Liberal Democrats showed an impressive degree of linkage between their party groups in the two chambers (made possible in part due to their smaller size), with 83% agreeing that relations between the two groups were good, compared to just 49% of Conservatives and 42% of Labour peers who said the same. Finally the group appeared to be strongly ideologically cohesive. When asked to place themselves and their party leader on a left-right spectrum, only 17% of Liberal Democrat peers placed themselves more than one point away from the position they attributed to their then leader, Charles Kennedy, whilst 46% of Conservatives placed themselves this far from Michael Howard and 53% of Labour peers placed themselves this far from Tony Blair (in both cases largely to the leader’s left). This cohesiveness showed itself also in party voting, with a Rice index of 99.0% - higher than Labour’s and similar to that of the Conservatives, whose absentee rate was far higher.²⁴

In terms of legislative outcomes, the Liberal Democrat group in the Lords certainly ‘punches above its weight’. Of the 283 defeats in the chamber during the period we are studying, the Liberal Democrats supported the government on just 12 occasions. These included five divisions on the Constitutional Reform Bill (to abolish the position of Lord Chancellor) and two on Section 28. As noted above, these were both issues on which there was a high Crossbench turnout, and most Crossbenchers voted against the government. On a further seven occasions the Liberal Democrats abstained or their position was unclear, but on the remaining 264 they opposed the government position. It is therefore Liberal Democrat votes, coupled with those of the Conservatives, that are largely responsible for inflicting government defeat - rather than the votes of Crossbenchers or Labour rebels. Of the 264 defeats where the Liberal Democrats opposed the government it would have won in 179 if they had abstained, and won in 256 had they voted with it. Had Lib Dem turnout always been at least 67% the government would have lost a further 65 divisions.

Table 6: Liberal Democrat position in government whipped divisions, 1999-2005

Session	No. of Divisions where LibDems			% of Divisions where LibDems		
	Support govt.	Oppose govt.	Abstain or unclear	Support govt.	Oppose govt.	Abstain or unclear
1999-2000	97	54	35	52.2	29.0	18.8
2000-2001	22	8	4	64.7	23.5	11.8
2001-2002	40	97	21	25.3	61.4	13.3
2002-2003	50	140	14	24.5	68.6	6.9
2003-2004	29	116	15	18.1	72.5	9.4
2004-2005	11	48	5	17.2	75.0	6.0
Total	249	463	94	30.9	57.4	11.7

The Liberal Democrats are therefore a key pivotal group in the House of Lords.²⁵ And their position has changed markedly during the six years since 1999, as shown in Table 6. In the early years of the Blair government the party was largely supportive, tending to vote with the government on divisions called by the Conservatives. In more recent years this pattern has been reversed, with Liberal Democrats increasingly tending to oppose the government in most divisions and often taking the lead on pressing for a vote on issues such as civil liberties. In this

enterprise they often (though not always) have the support of, or work alongside, the Conservatives.²⁶

The relationship between the Conservatives and Liberal Democrats in the House of Lords is one of the little-noted outcomes of reform. Whereas the Conservatives previously could inflict an easy defeat on a Labour government in the Lords if they chose to, it is now difficult for them to do this without Liberal Democrat support. The relationship between the two parties has clearly strengthened at the same time as the Liberal Democrats' relationship with Labour has weakened. This has important implications, which we reflect on further below.

The Bishops

In considering the role of the different groups in the House of Lords, it would be an oversight not to give some place to the role of the Bishops. The Church of England continues to hold 26 seats in the upper house, five of which are held *ex officio* by the Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester, and the others of which are allocated according to seniority in the church. The Bishops are only a small group, but their voting behaviour is potentially interesting and whether it is appropriate for them to have a role in policy-making is now controversial.

Like the Crossbenchers, the first things to note about the Bishops are that they vote relatively little, and that they do not vote as a cohesive block. On most occasions there is one Bishop 'on duty' in the House (they have a formal rota) and the average turnout from the group in government-whipped divisions is only 3.2% (ie. less than one person). On only ten occasions over this period did more than five Bishops participate in such divisions, and on only 66 occasions did more than two Bishops take part. The largest turnouts were 11 votes on the balloting of grammar schools in 2000, when nine Bishops supported the government and two opposed, on the Civil Partnerships Bill in 2004, when eight supported the government and two opposed, and on the Learning and Skills Bill in 2000 with respect to sex education guidelines to replace Section 28.²⁷ Here the compromise amendment agreed with the government was moved by a Bishop, and nine supported this with one voting against. This illustrates, as discussed with respect to other groups in the chamber above, that key elements of influence may come not through voting but through proposing amendments and contributing to debate. This is arguably where the presence of the Bishops is most important, especially with respect to influencing voters on the Crossbenches, and setting the media agenda.

Unsurprisingly given their low turnout, the votes of the Bishops only rarely make a difference to legislative outcomes. Of our 806 divisions this occurred only four times. Once in 2004 on an amendment to the Pensions Bill where the government won by two votes, but without the support of two Bishops voting the result would have been a tie. On two occasions, in 2000 and 2003, the government was defeated by one vote, with the vote of one Bishop making the difference between this and a tied vote.²⁸ Only once, on the Nationality, Immigration and Asylum Bill in 2003, was the government defeated thanks to the votes of Bishops, when otherwise it would have won. This was over the issue of education of asylum seekers' children, where an amendment moved by the Bishop of Portsmouth required that such children are taught in a school and not separately in a detention centre. Three Bishops attended and voted against the government, and it lost the division by one vote. This also attracted 19 Crossbench votes, 17 of them cast against the government. This was the one defeat where the Conservatives did not vote against the government, and there were also four Labour rebels.

Summary

We have thus seen that there are various contributors to Lords defeats in the post-1999 House. The main contributors are Conservatives and Liberal Democrats who, when voting together, are generally effective at inflicting defeat. There were 387 occasions over this period where both opposition parties voted against the government, and 263 resulted in defeat. That the other 123 failed to do so was largely down to turnout. There were just 20 defeats in which one of the opposition parties but not the other opposed the government.

Relatively less important, therefore, despite the image of the chamber as less partisan, are the votes of Labour rebels, Crossbenchers or Bishops. However, influence is difficult to measure for at least two reasons. First, because absenteeism is high amongst all the groups in the Lords, and there is no formal system for recording abstentions. Labour absences accounted for more defeats than Labour rebellions, and there is no reliable way of knowing the extent to which these were an indication of dissent. Similarly the Conservatives, in particular, could have inflicted far more defeats had their members participated more regularly in divisions. Crossbench impact would also have been higher had their members voted more of the time. The second factor making it difficult to measure influence is that this not exerted only through voting, but through building support for positions across the chamber by networking and contributing to debates. The influence of high-profile Labour rebels, Crossbenchers and Bishops is far greater in this respect than voting figures demonstrate alone.

Table 7: Summary information on groups in the Lords 1999-2005

	Lab	Con	Lib Dem	Cross-bench	Bishop
Size of group†	199	205	69	181	25
Average (mean) age†	66	69	64	70	60
Proportion of group new since 1997†	67.0%	27.9%	67.1%	42.0%	84.0%
Mean turnout in whipped votes	53.2%	34.2%	51.3%	10.1%	3.2%
Mean cohesiveness (Rice index) in whipped votes‡	97.2%	99.2%	99.0%	50.0%	75.1%
Proportion placing themselves far from party leader	53.2%	46.1%	17.0%	n/a	n/a
Proportion believing they have a duty to vote the party line	83.5%	57.7%	89.1%	n/a	n/a
No of defeats (of 283) to which group contributed§	105	282	264	283	137
No of times (of 283) that abstention would have averted defeat*	3	278	179	47	3
No of times (of 283) that govt support would have averted defeat	8	283	256	152	8

† At end of 2004-05 parliamentary session.

‡ Calculated for Lab, Con, Lib Dem and Crossbench only on votes where more than 10 such members participated; for Bishops where more than two participated.

§ In terms of casting some votes against the government.

* For Labour, impact of rebels only.

Table 7 summarises some of the key information about the main groups in the Lords, including turnout, cohesiveness and profile of members of the group. It also summarises how different groups contributed to defeat. As already noted, eight defeats would have been averted if all Labour members voting had voted loyally. Three would have been averted if Labour rebels had simply abstained. With respect to Crossbenchers, 47 defeats would have been averted had they all abstained, and 152 defeats prevented if all those voting had chosen to support the government. But the main influence lies with the opposition parties. Had all Conservatives abstained, all but five defeats would have been prevented, and with their support (albeit unlikely) no divisions at all would have been lost. The group more likely to have supported the government - and as shown in Table 6, which often did in its early years - is the Liberal Democrats. Despite the small size of this group its support would have been almost as useful as that of the Conservatives in averting defeat. Had the Liberal Democrats supported the government it would have lost only 27, rather

than 283, divisions in the Lords over this period. Therefore both opposition parties have a clear pivotal role in the chamber. But whilst Conservative support may be unlikely in most cases, the loss of Liberal Democrat support has made a real difference to legislative outcomes from 1999-2005, and is the main explanation for the upward trend in defeats over this period that was seen in Table 1. We will return to discuss the implications of this in the conclusion to the paper.

The defeats that ‘stick’: a preliminary analysis

As suggested at the start of the paper, what may matter more than government being defeated in the Lords is whether such defeats result in real policy change. A defeat having occurred on a bill, that bill will return to the House of Commons, where the views of the peers must be considered. In most cases the bill will have already received Commons consideration, though around a third of bills (generally the more technical and less controversial) start in the Lords and pass to the Commons for substantive consideration afterwards. In either case the government may take the opportunity in the Commons to reverse Lords defeats, by moving amendments to take clauses back to, or close to, their previous words.²⁹ As both Houses must agree a bill in an identical form, when amendments are made a bill will shuttle between them until both have finally agreed it. In this process (colloquially referred to as ‘ping pong’) both Houses may repeatedly make amendments and counter-amendments where there is a dispute.

Although we are familiar with ‘ping pong’ on major bills, the common perception is that most amendments passed against the government’s wishes in the Lords are overturned in the House of Commons. But in this case the bill must return to the Lords, where peers can accept the Commons’ version or choose to continue the fight. If the fight continues this is when ping pong begins.

One way of avoiding ping pong, and the delay potentially created to this and other bills, is for the government to either accept the Lords defeat and suggest no further amendment when the bill reaches the House of Commons, or to make sufficient concessions to the House of Lords’ position that the chamber will accept the bill when it returns. In order to assess Lords impact we must therefore focus upon this process of concession (which can happen in either chamber) as well as those amendments that are completely overturned in the House of Commons and those which are completely accepted.

We have conducted a preliminary analysis of what happens to defeats at the later stages of consideration of a bill. For this purpose we constructed a five-point scale which describes the outcome in most cases. Under this scheme Lords amendments are classified as either (1) totally rejected by government/House of Commons, (2) largely rejected but with some concessions, (4) largely accepted but with some limitations, (5) totally accepted, or (3) a basic 50/50 compromise between acceptance and rejection. The cases of total acceptance or total rejection are relatively straightforward and uncontroversial. The other three categories are clearly more subjective and open to interpretation. At this stage our classifications are based on one researcher’s opinion, and need to be blind tested before we have greater confidence in our results. However, to give an example, we classified a defeat on the Education Bill in 2002 where peers sought to prevent governing bodies forming companies as (2), since the government merely conceded that the Local Education Authority should have an enhanced supervisory role over this process. In contrast, a defeat on the Nationality, Immigration and Asylum Bill in 2002 proposing that asylum seekers should spend no more than four months in a detention centre was changed in the Commons to a proposal that they should spend no more than six months. This we classified as (4). In addition to these five main outcomes there were two bills that were totally dropped due to Lords defeats (both in 2000 and both seeking to restrict the right to trial by jury), and one that was dropped routinely at the end of the 2004-5 session when the general election was called.

These outcomes were classified separately (6) and (7) respectively.³⁰ Other defeats on non-legislative matters were not included in the classification.

Table 8 shows the breakdown of defeats by final outcome, using this classification scheme. In this analysis we include only the first occurrence of each defeat, even where ping pong occurred and the same issue was voted upon in the Lords several times. This avoids double counting of the same issue. We also exclude non-legislative defeats. These factors reduce our total number of cases to 231.

Table 8: Defeats by final outcome (excluding ‘ping pong’)*

Code	Final outcome	N	% of total
1	Defeat reversed	93	40.3
2	Defeat largely rejected, with minor concessions	44	19.0
3	Government meets Lords halfway	8	3.5
4	Defeat largely accepted, with minor changes	45	19.5
5	Defeat accepted	38	16.5
6	Bill dropped due to defeat	2	0.9
7	Bill dropped routinely at end of session	1	0.5
Total		231	100.0

* As stated above, this is a preliminary classification only. These figures may therefore change after further analysis.

This shows that, contrary perhaps to popular perception, a relatively high proportion of Lords defeats result in policy change. In total, our preliminary analysis suggested that 37% of Lords defeats resulted in a ‘Lords win’ (ie. were classified 4, 5 or 6) and a further 3.5% resulted in a draw. The remaining 60% could be considered a ‘Government win’, although in a third of these there were some minor concessions. Lords wins over this period included limitations on control orders in the Prevention of Terrorism Bill (2005), blocking the offence of religious hatred (2001), preventing limitation on trial by jury (2000 and 2003) and ensuring the office of Lord Chancellor was retained (2004). But whilst all of these instances are well known, there are many others. For example in the Tax Credits Bill (2001) to require the Chancellor to lay an annual report before parliament, in the Adoption and Children Bill (2002) to ensure that a child has legal representation during the adoption process, and in the Higher Education Bill (2004) to ensure that student fees will not apply to students if they were offered a university place in 2005 but would not take it up until 2006.

Having established that Lords defeats do have a real policy impact, our attention turns naturally to which factors are associated with the defeats that prove to do so. There are a number of different factors that might appear relevant in explaining why government accepts (or largely accepts) certain Lords defeats, but goes on to overturn (or largely overturn) others.

We might hypothesise that the Lords is likely to be most effective at achieving policy change when there are a wide range of forces opposed to the government’s position. This is most clearly demonstrated by the size of the defeat. As already stated, on many occasions government is defeated narrowly (ten divisions in our period were lost by only one vote), whilst on other occasions defeat can be overwhelming. The biggest defeat of the period was on the Prevention of Terrorism Bill, when the government lost by 187 votes (110 to 297) to insert a sunset clause of 30 November 2005. Large defeats require the coming together of all or most of the forces identified above - Conservatives, Liberal Democrats, large numbers of Crossbenchers and sometimes

Labour rebels (or at least Labour absentees). They may therefore be likely to prove more difficult to overturn, even if a bill is returned to the House of Lords several times during ping pong.

Table 9: Final outcome of defeats by size of defeat*

Majority against government	Final outcome			Total	Lords win as % of total
	Government Win	Draw	Lords Win		
1-25	76	5	47	128	36.7
26-50	33	1	20	54	37.0
51-75	18	2	12	32	37.5
76-100	6	0	4	10	40.0
100+	4	0	2	6	33.3
Total	137	8	85	230	37.0

* The classification of outcomes here is subject to the same health warning as in Table 8.

Table 9 however shows that there is no simple relationship between the size of a defeat and whether goes on to result in policy change. Some large defeats are on issues of principle which are high profile and on which the government refuses to back down. Similarly some small defeats are on relatively uncontroversial matters which the government would rather accept than waste parliamentary time on. Nonetheless there are also clearly large controversial defeats that the government ultimately accepts, and small defeats that it ultimately overturns.

We might also hypothesise that the factors cited earlier in the paper - the presence of Labour rebels or large numbers of Crossbenchers, and the position of the two opposition parties, individually have a bearing on whether a defeat is accepted. For example, where there is discontent on the Labour benches the government might be loathe to return a bill to the House of Lords, and may even be nervous to ask the House of Commons to overturn the defeat. This particularly looks like a factor in the 2005 parliament, after the period we are studying here has ended. When the House of Lords removed a clause to the Identity Cards Bill which would have allowed ministers to make the cards compulsory using delegated legislation, in January 2006, the government chose not to press this issue in the House of Commons and instead accepted the defeat. This was at least in part because it feared provoking a rebellion. A judgement which later appeared wise given what happened when the government asked the Commons to overturn a major Lords defeat on the Racial and Religious Hatred Bill in February. Here the Commons chose to side with the Lords rather than the government, and the government was defeated by one vote, with 26 Labour MPs casting rebel votes.

Table 10: Relationship of final outcome to groups that contributed to defeat*

	Govt. Win		Draw		Lords Win	
	N	as %	N	as %	N	as %
Lab rebels >10	4	2.9	0	0	3	3.5
Crossbench turnout >30	22	16.1	2	16.7	16	18.8
Crossbenchers make difference	24	17.6	2	16.7	14	16.5
Lib Dems oppose govt	128	93.4	7	58.3	82	96.5
Lib Dems support govt	5	3.6	1	8.3	2	2.4
Total of each outcome	137		8		85	

* The classification of outcomes here is subject to the same health warning as in Table 8.

However a simple analysis of these factors, as shown in Table 10, again shows no clear relationship to whether a defeat goes on to be accepted by the government. A government win

appears marginally more likely where the Liberal Democrats support the government than when they oppose it - but given that there are so few defeats where the Lib Dems oppose, there is little opportunity to conclude whether this is a real effect. Similarly, there are so few occasions where large numbers of Labour peers rebel that we cannot see a pattern here. But it is notable that some of the largest Labour rebellions (including the largest of all, led by Lord Puttnam on the Communications Bill) went on to be overturned in the House of Commons. It will be interesting to observe whether this behaviour continues now that the government's Commons majority is more fragile. Lastly, there is no pattern apparent at all with respect to defeats where Crossbench votes made the difference or where Crossbench turnout was high.

In order to understand which factors explain why some Lords defeats 'stick' and others don't, we therefore have to develop our analysis further. A number of factors suggest themselves, and we end this preliminary discussion by indicating which of these we intend to explore in future work.

An important question is how the ping pong process itself develops. Although defeats at the outset may be large, it is common for the majority against the government to decline each time the issue is returned to the Lords. At the final stage the government may be able to persuade one of the opposition parties to abstain, or that party may apply a lighter whip, allowing the government finally to get its way. In the early years of the Blair government it was the Liberal Democrats that were most likely to fall away at this stage, but in more recent times they have often held firm whilst the Conservatives have ultimately abstained. This pattern was seen over the Prevention of Terrorism Bill of 2005, and most recently over the Identity Cards Bill. A fuller analysis of the ping pong process is therefore necessary to understand the political dynamics of Lords defeats.

Other process questions are whether the government is more likely to accept defeats close to the end of a parliamentary session, when legislative time is running out, and whether they are more or less likely to do so as a general election approaches. Also whether they are more likely to concede defeat on bills starting in the Lords than in the Commons (not least because the Parliament Act does not apply to these bills). But the most promising hypotheses, we believe, relate to the substance of the amendment on which the government is defeated. It is likely that government is more likely to concede on relatively minor and technical matters than on major matters of principle.³¹ It is also possible that ministers from some departments are more likely to concede than others, or that concessions are more likely on relatively low profile rather than 'flagship' bills. As well as these factors we plan in our future work to classify divisions according to issue types, some of which are widely associated with Lords intervention. For example we know that the Lords regularly intervenes on civil liberties issues and other matters of constitutional importance (due to the interests of the Liberal Democrats and many lawyers on the Crossbenches, often supported by the Conservatives), on issues of sexual morality and 'family values' (thanks to the interests of Conservatives and many Crossbenchers), but that it also defeats the government regularly on other matters as well. We hope to investigate the relationships between such issue types, and the coalitions that come together to support them, combined with some of these other factors. In this way we hope to gain a deeper understanding of the real policy impact of defeats in the House of Lords.

Conclusions and prospects

We have attempted in this paper to challenge some of the common assumptions about the House of Lords. But our findings also challenge some more general assumptions about the relationship between government and parliament, and between the parties, in the British political system.

Even before the reform in 1999 it was an exaggeration to refer to the House of Lords as a Conservative chamber. But - despite the protestations of some Labour politicians - it is absolutely not justified to make this allegation now. This much is understood by many, but what has not yet been widely noted is the extent to which its reform has put the third party, the Liberal Democrats, in a pivotal position. This is particularly so given the relatively small part played in divisions by either Labour rebel peers or members of the independent Crossbenches. Whilst it is true to say that the House of Lords is a 'less partisan' chamber than the House of Commons, weak whipping in the chamber manifests itself more through high levels of absenteeism from votes than through dissenting votes cast against the party line. Combined with the low turnout generally observed amongst non-party peers, this means that the main pivotal actors in the chamber are the two opposition parties. Of these, it is the Liberal Democrats that are the more cohesive and have greater propensity to vote. Over the period 1999-2005 this group has moved from being relatively supportive of the government to opposing it in most Lords divisions. The proportion of divisions lost has increased accordingly.

Our results also show that defeats in the Lords do often 'stick': it would be a misapprehension to believe that the vast majority are overturned in the House of Commons. In fact roughly six out of ten Lords defeats result in some kind of lasting policy change, and around four out of ten could be considered to be resolved more in the Lords' favour than that of the government. Put together with the points in the previous paragraph, this leads us to a surprising conclusion. Not only is government regularly defeated in parliament, in defeats which are rarely brought to the attention of the public, but it is also now regularly forced to compromise with the opposition parties in order to get its legislation. The most visible such compromises (around 14 per year over this period) are those that result from Lords defeats. But what is more significant (yet far more difficult to quantify) is the extent of compromise that goes on 'in the shadow' of Lords defeat. It is clear that the Liberal Democrats and Conservatives are both potential veto players in the House of Lords (McLean 2001, Tsebelis 2002), as to a lesser extent are the Crossbenchers. Government often seeks to avert defeat by bringing forward compromise amendments. It is also likely that some proposals are not advanced at all if it is clear that no compromise can be reached with one of the opposition parties. The extent to which the government is now working with both parties was evidenced by the talks on the Prevention of Terrorism Bill, and later its successor the Terrorism Bill, in 2005. Here the Liberal Democrats were included in talks on an equal basis to the Conservatives, in recognition of both parties' influence in the House of Lords. This is an influence that their peers have growing confidence to use, given their perceptions - shared by MPs and the public - that the chamber is now more legitimate.³² Thus since the reform of 1999 the House of Lords matters more than is generally perceived. But this reform also fundamentally changed the dynamic between the parties, enhancing the of the opposition and particularly of the third party.

The pattern of policy impact which has resulted from these changes remains, as yet, little understood. Further research is necessary in order to uncover this. How the pattern will change now that Labour has a smaller majority in the House of Commons, and what might happen under a future Conservative government, also remains to be seen. What seems clear however is that, despite its continuing unelected basis, the House of Lords has a growing role in the policy process. It also has the potential to change some of the fundamentals of British politics in significant ways.

References

- Baldwin, N. (1985). 'Behavioural Changes: A New Professionalism and a More Independent House', in P. Norton (ed.), *Parliament in the 1980s*. Oxford: Basil Blackwell.
- Berrington, H. (1973). *Backbench Opinion in the House of Commons 1945-55*. Oxford: Pergamon.

- Bromhead, P. A. (1958). *The House of Lords and Contemporary Politics 1911-1957*. London: Routledge and Kegan Paul.
- Cowley, P. (1998). 'Conclusion' in Cowley, P. (ed.) *Conscience and Parliament*, London: Frank Cass.
- Cowley, P. (2002) *Revolts and Rebellions: Parliamentary Voting under Blair*, London: Politico's.
- Cowley, P. (2005). *The Rebels: How Blair Misled his Majority*. London: Politico's.
- Cowley, P. (2005a). 'Parliament', in A. Seldon (ed.), *The Blair Effect 2001-5*. Cambridge: Cambridge University Press.
- Finer, S. E., Berrington, H. and Bartholomew, D. J. (1961). *Backbench Opinion in the House of Commons 1955-59*. Oxford: Pergamon.
- Griffith, J. A. G. (1974). *Parliamentary Scrutiny of Government Bills*. London: George Allen and Unwin.
- Judge, D. (2005). *Political Institutions in the United Kingdom*. Oxford: Oxford University Press.
- King, A. (1976). 'Modes of Executive-Legislative Relations: Great Britain, France and West Germany', *Legislative Studies Quarterly*, 1(1): 11-36.
- McLean, I. (2001). *Rational Choice and British Politics*. Oxford: Oxford University Press.
- Miers, D. and Brock, J. (1993). 'Government Legislation: Case Studies', in D. Shell and D. Beamish (eds.), *The House of Lords at Work*. Oxford: Clarendon Press.
- Morgan, J. P. (1975). *The House of Lords and the Labour Government 1964-1970*. Oxford: Oxford University Press.
- Norton, P. (1975). *Dissent in the House of Commons 1945-74*. London: Macmillan.
- Norton, P. (1980). *Dissent in the House of Commons 1974-79*. Oxford: Clarendon Press.
- Norton, P. (2003). 'Cohesion without Discipline: Party Voting in the House of Lords', *Journal of Legislative Studies*, 9(3): 57-72.
- Richard, I. and Welfare, D. (1999). *Unfinished Business: Reforming the House of Lords*. London: Vintage.
- Russell, M. (2005). 'Views from Peers, MPs and the Public on the Legitimacy and Powers of the House of Lords', seminar paper, London: Constitution Unit. Available at: <http://www.ucl.ac.uk/constitution-unit/research/parliament/house-of-lords.html>
- Russell, M. and Sciara, M. (2006). 'The House of Lords in 2005: A More Representative and Assertive Chamber?', in M. Rush and P. Giddings (eds.), *The Palgrave Review of British Politics, 2005*. Basingstoke: Palgrave. This chapter is also published as a briefing by the Constitution Unit: see website address immediately above.
- Shell, D. (1992), *The House of Lords*. London: Harvester Wheatsheaf.
- Shell, D. (2000), 'Labour and the House of Lords: A Case Study in Constitutional Reform', *Parliamentary Affairs* 52(4): 429-441.
- Shell, D. and Beamish, D. (eds.) (1993). *The House of Lords at Work*. Oxford: Clarendon Press.
- Shephard, M. and Cairney, P. (2005). 'The Impact of the Scottish Parliament in Amending Executive Legislation', *Political Studies*, 53(2): 303-19.
- Tsebelis, G. (2002). *Veto Players: How Political Institutions Work*, Princeton: Princeton University Press.

¹ Eg. Berrington 1973, Finer, Berrington and Bartholomew 1961, Norton 1975, Norton 1980, Cowley 2000, Cowley 2005.

² Exceptions include Morgan 1975, Shell 1992, Shell and Beamish 1993. A recent analysis of cohesion in the Lords was provided by Norton (2003).

³ See Shell 2000.

⁴ The exception is the Church of England Bishops, who retire from the chamber when they retire their positions in the church, and 92 hereditary peers.

⁵ Our research was funded by the Economic and Social Research Council (ESRC) under grant RES-000-23-0597.

⁶ We received 397 replies, representing a response rate of 57% (which is unusually good for a survey of this kind and perhaps reflects how infrequently members of the House of Lords are troubled by researchers). Responses were

broadly representative of party groups, hereditary and life peers, established and more recent entrants. Amongst those peers attending the House at least 50% of the time over the 2003-05 period, the response rate was 63%.

⁷ See http://www.parliament.uk/faq/lords_govtdefeats.cfm

⁸ In contrast, in the 1997-98 session there were 39 defeats and in the 1998-99 session there were 31. In the current (2005-06) session there have so far been 30 defeats, and there are many more months yet to run. For an update of Lords defeats in this session, including their subject and breakdown of votes, see <http://www.ucl.ac.uk/constitution-unit/research/parliament/defeats.html>

⁹ See Cowley 1998, p. 180-1; Cowley 2002, p. 234-5.

¹⁰ The case of hunting illustrates the difficulty well, albeit being an extreme case. It may appear somewhat peculiar to exclude this issue, given that the hunting ban was eventually carried in a government bill, and it represented one of the biggest rows between Lords and Commons over this period. But the Prime Minister himself voted against the ban when the bill was voted on in the Commons in November 2004 (see Cowley 2005). The government clearly did not have a collective position.

¹¹ Indeed 85% of peers responding to our survey agreed that 'the chamber's real influence is exerted as much through persuasion as through defeats'.

¹² Namely a motion in September 2000 proposing that the Criminal Justice (Mode of Trial) (No. 2) Bill, which sought to limit trial by jury, should not be considered for a further six months, and a motion in 2004 proposing that the Constitutional Reform Bill, which sought to abolish the office of Lord Chancellor, be referred to a select committee.

¹³ This does not mean that the Conservatives were never defeated in the House of Lords - there were 241 defeats during the 18 years of Conservative government from 1979-97, not least due to differences in political perspective between the Thatcher government and the more traditional Tories in the Lords. See Baldwin 1985, Richard and Welfare 1999, Shell 1992, Shell and Beamish 1993.

¹⁴ Although this is also true of the House of Commons there are significantly fewer divisions in the Lords. For example in the 2001-05 parliament there were 1,246 divisions in the Commons (Cowley 2005), but in the Lords there were only 641.

¹⁵ In comparison 127 Commons rebellions over the same period comprised more than 10 members, and 73 more than 20 members (the latter being a more appropriate comparison, given the larger size of the Commons PLP). Thanks to Philip Cowley for these figures.

¹⁶ See Russell and Sciarra 2006.

¹⁷ On three of these occasions the result would have been a tied vote. However, in practice this would have resulted in a government win, as the convention in the Lords is that the status quo holds if a vote is tied. As all three votes were attempts to amend a bill, the bill would have remained unamended.

¹⁸ The government was defeated by 149 votes, with 22 Labour members rebelling. This was a compromise amendment to insert a sunset clause of 31 March 2006, following the original attempt sponsored by the Conservatives to insert a sunset clause of 30 November 2005.

¹⁹ Members are able to take 'leave of absence', during which time they will not be expected to perform Lords duties, but from which they can return at any time. For example in March 2006 there were 12 peers who had registered in this way. Members on leave of absence are excluded from our figures.

²⁰ The Prime Minister continues to appoint a small number of non party aligned peers: primarily retiring senior public servants. In 2005 the government announced that no more than 10 such appointments would be made per parliament.

²¹ There were a further 19 Crossbench turnouts of this size in unwhipped divisions, where clearly Crossbench votes may be influential. These included House of Lords reform (seven times), hunting (eight times), and one each on human fertilisation, sexual offences, sex education and adoption.

²² Voting patterns of individual Crossbenchers vary widely. Many vote against the government the great majority of the time, but some largely vote with the government whilst others divide their votes relatively evenly.

²³ See footnote 17.

²⁴ There were just 39 divisions in which any dissenting Liberal Democrat votes were cast, compared to Labour's 101 (and the Conservatives' 62). On 22 of these occasions there was only one rebel.

²⁵ See Russell and Sciarra 2006 for discussion of this phenomenon in 2005, in particular.

²⁶ The Liberal Democrats also opposed the government in 198 divisions which it won, and in one tied vote over this period.

²⁷ There were also two occasions when nine Bishops participated in an unwhipped vote: both on the Sexual Offences Bill in 2000, and in both cases the Bishops' vote was split (5:4 and 6:3). Eight Bishops all voted against a wholly-elected second chamber in the free votes on Lords reform in 2003.

²⁸ The first on the Government Resources and Accounts Bill, to ensure that the Comptroller and Auditor General has access to finances from all government departments. The second on the Community Care (Delayed Discharges, etc) Bill, to require that inspection bodies to regularly monitor the impact of the Bill.

²⁹ Many amendments passed in the Lords are government amendments (which the House normally does not divide upon). Therefore not all Lords amendments will be reversed in the Commons by any means. A bill may return to the Commons significantly altered, but with most changes having been made by government consent.

³⁰ Note that we are not using this classification as an ordinal scale, although the categories 1-6 are ordinal.

³¹ For an useful classification scheme used on this point see Griffith 1974, Shephard and Cairney 2005.

³² See Russell 2005, Russell and Sciara 2006.