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Does government dominate the legislative process?

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ABSTRACT

This thesis addresses parliamentary impact on government legislation using the Scottish Parliament as a case-study. It contributes to the ongoing debate about whether government dominates the legislative process, bringing a practitioner perspective. It makes the case for re-evaluating expectations about what government and parliament are seeking to achieve in the legislative process, demonstrating the need to take account of the type of legislation brought forward by government in interpreting parliament's response. It highlights the importance of the choice of method in avoiding over– and under-stating parliamentary impact in the legislative process. It proposes re-evaluating the Scottish Parliament's legislative performance, arguing that the legislative process in Scotland is largely defined by the sort of consensus politics which its proponents wished to see. This thesis addresses significant gaps in understanding of the Scottish Parliament's legislative process in particular, but its focus on the role of parliament and government in the legislative process more generally should make it of interest to scholars in the wider legislative studies discipline.

PREFACE

This PhD is the result of long-standing personal and professional interest in parliament and the legislative process. My background is a career civil servant in the Scottish Government, starting at about the time the devolution process in Scotland began. Since then I have worked on a wide range of legislative and parliamentary issues, ranging from individual Bills to my current role coordinating the Scottish Government's legislative programmes. That practitioner exposure to parliament and the legislative process has sparked an academic interest in the relationship between governments and legislatures. I pursued this initially through an MA in Legislative Studies at the University of Hull, and now through this PhD thesis.

As I explain later in the thesis, this is not formally practitioner/action research in that it doesn't draw from participant observation or confidential sources. But it is motivated by my desire to combine my practitioner and academic knowledge and bring a fresh perspective on the issue of parliamentary impact in the legislative process, taking advantage of the insider perspective I have that is not available to most PhD students. That insider perspective put me in a position to understand the government's motivation for progressing Bills, to know the expectations of government about how parliament would react to those Bills, to follow the parliamentary passage of many of the Bills, and to be part of conversations about many of the Bills with Ministers, civil servants, parliamentary officials and MSPs. I have considered with my supervisor how to best reflect that unique vantage point. He encouraged me to write the thesis in the first-person, and to make as clear as possible where my personal experiences have informed decisions on how to conduct my research or which have framed my interpretation and my conclusions - and that is how the thesis is presented.

CHAPTER 1 – DOES GOVERNMENT DOMINATE THE LEGISLATIVE PROCESS?

Does government dominate the legislative process? A case-study of the Scottish Parliament.

OVERVIEW

Government dominance of the legislative process is a misconception. That is the bold claim made by Russell et al (2016), who identify significant policy impact by the UK Parliament on UK government Bills.

This thesis argues that government domination of the legislative process is a misconception not just because parliamentary impact is often greater than is understood (which is the point Russell et al make), but because there is a case for fundamentally re-evaluating expectations about what government and parliament are seeking to achieve in the legislative process.

I use government legislation scrutinised by the Scottish Parliament as a case-study, showing that in Scotland the legislative process is seldom the zero-sum game of winners and losers it is stereotypically presented as – government is not usually attempting to push through unpopular legislation as quickly as it can, and parliament is not usually seeking to unthinkingly frustrate the government's ambitions. This means that the usual yardsticks of whether parliament is important – can it block or significantly amend government Bills – are often of limited value. I argue for more attention to be given to the type of legislation which government brings forward when reaching conclusions about the legislative performance of parliaments and whether government truly dominates the legislative process.

Taking a fresh look at what happens in the legislative process is especially important in the case of the Scottish Parliament. Most research on its performance suggests that it has fallen far short of the ambitious and arguably unrealistic promises made by its proponents, but no detailed study of its legislative process has been carried out beyond its first session in 1999-2003. This thesis fills that gap by analysing data on government Bills between 1999 and 2021, and demonstrates that there is a strong case to be made for re-evaluating the legislative performance of the Scottish Parliament, focusing less on what it was hoped it would achieve and more on what it is realistic to expect it to achieve and what it has actually achieved. The evidence I present also suggests that the Scottish Parliament is not the marginal actor it is often portrayed as.

This thesis should be of interest to all observers of the Scottish Parliament, but also to scholars in the wider legislative discipline. Firstly, it provides a rare opportunity to understand what difference periods of minority government (two sessions since 1999) and majority government (three sessions since 1999) make to a government's ability to secure the passage of its legislative programmes. Secondly, it develops the discussion about the impact of parliaments from generalised discussions of 'significance' to show more clearly the practical policy consequences of parliament impact. Thirdly, it illustrates the benefits for legislative scholars of taking into account not just the perspectives of the legislative studies literature (with its emphasis on what happens in parliament) but also the public policy literature (with its emphasis on the whole policy process) when judging the strength or weakness of parliaments. Fourthly, it highlights the importance of understanding the nature of individual Bills which parliaments scrutinise. The specific context of individual Bills influences how parliaments approach scrutiny and the type of impact it is reasonable to expect them to have, and challenges the simple categorisations of parliamentary impact in the extant typologies. Fifth, it draws attention to the consequences of any limitations on the policy parameters of a parliament. The constrained legislative competence of the Scottish Parliament, which excludes potentially polarising topics such as foreign affairs and significant aspects of taxation, may reduce the scope for fundamental policy conflict between government and parliament. Sixth, it points to the need to take an outward-looking perspective on legislative improvement. Parliamentary reform should focus not just on the perceived failings of an individual legislature but on whether and where the characteristics which are desired from that legislature can be found. Finally, it identifies that, although there are steps which can be taken to strengthen a parliament's position in the legislative process, they may not automatically result in a significant change in the parliament's role or its impact in the legislative process in the way that proponents of parliamentary strengthening assume it will.

The rest of this introductory chapter sets out my research aims, the research questions I set out to answer, how it relates to the main literature and the gaps that it fills, and an outline of my findings.

RESEARCH AIMS

The thesis address three main research aims. These situate the thesis within the latest research on legislative theory, legislative methods and the specific case of the Scottish Parliament:

- To make the case for re-evaluating expectations about what government and parliament are seeking to achieve in the legislative process.

- To demonstrate the importance of the choice of method in drawing conclusions about the extent to which government dominates the legislative process.

- To re-evaluate the Scottish Parliament's legislative performance.

I summarise the purpose of these research aims, and how I address them, in the following sections.

(i) To make the case for re-evaluating expectations about what government and parliament are seeking to achieve in the legislative process.

Most of the theory in the legislative studies discipline (Blondel (1990), Polsby (1990), Mezey (1990) and Norton (1984)), and most of the UK research on parliamentary impact in the legislative process (Griffith 1974; Shephard and Cairney 2005; Russell and Cowley 2015; Russell et al 2015; Russell and Gover 2017; Thompson 2013, 2015a, 2015b) takes the power relationship between parliament and government as its starting point – which institution can dominate the other and enforce its will?

Jean Blondel's (1990) concept of 'legislative viscosity' is the classic illustration of the legislative process as a zero-sum power struggle. When parliaments are free, they should slow down, block and amend government Bills - displaying high legislative viscosity. (Blondel 1990, p.200) When parliaments are subject to government control, the opposite should be true and government Bills should pass quickly and easily – displaying low legislative viscosity. (Blondel 1990, p.200) This view of the legislative process is attractive due to its common-sense simplicity, and would at first sight seem to fit well with an investigation of what happens in the Scottish Parliament – it should demonstrate evidence of high legislative viscosity and low government domination in minority government sessions (when government lacked a majority of MSPs to enable it to push its Bills through unimpeded) and low legislative viscosity and high government domination in majority government sessions (when other parties in parliament would be unable to combine to block or substantially amend Bills brought before it). However, from a practitioner perspective this simplification of the legislative process into 'the government proposes and parliament opposes' is

problematic – it doesn't seem to match the diverse range of parliamentary responses to individual government Bills which play out on a day to day basis in parliament *within* minority and majority government sessions as well as across those different types of session.

By taking a wider view of what theory is relevant to understanding the legislative process, a different set of expectations can be identified. The policy network literature of the public policy perspective in particular focuses much more on how policy (including Bills) is made than what happens to it in parliament, but has clear implications for how the latter should be interpreted. Russell and Cowley (2015, p.134) base their conclusion that the UK parliament is extremely influential on the public policy literature's focus on the whole policy process. They use it to bring in more types of parliamentary impact than just that found during the parliament scrutiny of Bills, showing that parliamentary influence can be found in the pre-legislative phase (particularly in terms of the anticipated reaction of government) and in the implementation phase (2015, p.133). Although their underlying point – that the deeper we dig, the more parliamentary impact we are likely to find, and the more this undermines the argument that government dominates the legislative process – is important, from my practitioner perspective the relevance of the public policy literature is even more fundamental. My argument is that the public policy literature can help explain why even a complete absence of parliamentary impact (whether before, during, or after the formal legislative process) does not necessarily mean that government dominates the legislative process, and that this literature in fact points to parliament being unlikely to routinely want to change government legislation in a fundamental way.

The starting point for this argument is Richardson and Jordan's (1979) seminal analysis of the policy development process, which emphasises the role of policy networks and interest groups to the exclusion of parliament. By the time a Bill reaches parliament its key features should have been hammered out, and should normally reflect a consensual and incremental style of policy-making. If that is true, the legislative studies literature's focus on the power dynamic between government and parliament, and the assumption that the latter will routinely seek to block or significantly amend government legislation, starts to look misplaced. Instead, parliament's role may be more passive, ensuring that consensus has in fact been built and, as Judge (1993) notes, legitimising that process where it has been successful. The public policy literature suggests that only exceptionally should parliament need to adjudicate polarised policy options, and only exceptionally should there be room for parliament to fundamentally object to, or to seek to transform, the legislation which government has brought forward.

So, whereas from the point of view of the legislative studies literature a lack of parliamentary impact will typically be treated as evidence of parliamentary weakness, the public policy literature implies that even 'strong' parliaments may not try to transform government legislation. This suggests that instead of focusing exclusively on strength and weakness, parliament's legislative performance needs to be contextualised by the type of legislation which government brings forward. Even a very powerful parliament is unlikely (assuming it acts rationally) to block, slow down or significantly amend incremental and consensual government Bills. Consequently, the public policy literature suggests that there should be much less of a divergence between the parliamentary impact on government Bills in minority and majority government sessions than Blondel's theory of legislative viscosity predicts.

Finding the evidence to support or contradict the predictions of each of these theories involves important methodological choices, and that is the focus of my next research aim.

(ii) To demonstrate the importance of method in drawing conclusions about the extent to which government dominates the legislative process.

The legislative process lends itself to being investigated in different ways, and the literature reveals studies which range from quantitative analysis of large data-sets, qualitative analysis to reveal otherwise hidden features of parliamentary impact and case-studies which tell the journey of individual pieces of legislation through parliament. Each approach offers important insights, and each has a place in this thesis. To test the contribution of each I address the following three specific sub-questions.

<u>Research sub-question 1 - What has happened to government legislation in the Scottish Parliament since 1999?</u>

This first question is a scene-setter, designed to provide an overview of what happened to all Scottish Government Bills, and amendments to them, from the parliament's establishment in 1999 up to the end of its 5th session in early 2021. I use an original data-set of 272 Bills and 39,847 amendments to those Bills for this question.

By analysing key variables – such as how many Bills are passed or defeated, who is successful with amendments to Bills, and how long parliament takes to process Bills – I can reach a preliminary view on whether or not the government appears to dominate the legislative process. If Bills pass quickly, easily and without many amendments made to them then that suggests government dominance of the legislative process. By contrast, if Bills are

routinely defeated, significantly amended and take a long time to pass, that points in the other direction.

This approach can be classed as longitudinal case analysis (Jenne, 2019), which is research carried out over an extended period of time to enable in-depth exploration and analysis, particularly as the focus of studies develop or change. (Sage, 2010) By analysing the data in longitudinal perspective across individual and multiple sessions of the Scottish Parliament, I can reach a preliminary view on whether the prediction of legislative viscosity (that government dominance should substantially decrease in minority government sessions) is supported.

I also use the data-set to explore whether there is evidence in support of the prediction of the public policy literature that most government legislation should be consensual (and therefore not usually opposed by parliament) in both minority and majority government settings.

Research sub-question 2 – In what ways does the Scottish Parliament try to change government legislation?

Having established that general picture of what happens to government Bills, my next research question focuses on what parliament tries to do to government legislation, and what insight this offers about government dominance of the legislative process.

One of the key lessons from the literature (Griffith 1974, p.167; Shephard and Cairney 2005, p.307-308; Thompson 2015a, p.43; Russell et al 2015, p.294) is that simply counting government and non-government amendment outcomes is likely to overstate government dominance of the legislative process. That is because many government amendments are found to have been prompted by parliament and should therefore count as evidence of parliamentary impact rather than of government domination. I address this by identifying government amendments inspired by parliament and adding them to the picture of direct impact by parliament.

Conversely, the literature (for example Cairney 2006, p.188) also demonstrates that it is important not to overstate parliamentary impact by failing to account for any non-government amendments which were made at the committee stage of proceedings but were subsequently overturned at plenary proceedings (see Chapter 4 for a full description of the Scottish Parliament's legislative process). I address this by identifying any instances of government amendments having been overturned.

Another key lesson from the literature (Griffith 1974, p.9; Tsebelis and Kalandrakis 1999, pp.128-131; Shephard and Cairney 2005, p.309; Thompson 2015b, p.60) is of the need to understand the consequences of parliamentary amendments to government Bills. If parliament secures lots of amendments to government Bills but those amendments are all trivial or technical that suggests a higher level of government dominance than if those amendments had made fundamental changes to the policy content of government Bills.

My approach to this issue is based on the most common methods found in the literature for coding the 'significance' of amendments. Shephard and Cairney's (2015, p.309) analysis of what happened to government Bills in the Scottish Parliament's first session differentiated between a minor category (typographical/consequential amendments which correct errors or which simply follow-through and deliver the purpose of earlier amendment), a middle category (detail/clarification amendments which had a minor impact but did not change the policy of the Bill) and a top category (substantive amendments which changed the tone or substance of the Bill). Russell et al (2015, p.303) have taken a more policy-based approach to measuring significance, using a five category typology (two categories for policy amendments, two categories for procedural amendments, and one category for technical amendments) in their analysis of the impact of the UK Parliament on government legislation.

These typologies, and others like them (for example Thompson's (2015b) dichotomous typology which she used in analysis of the impact of UK Parliament committees on government Bills), are useful for showing in general terms whether parliament had minor or major impact with its amendments. But they all ultimately result in a very broad categorisation of parliamentary impact which doesn't offer much insight to the practical policy consequences of parliament's impact. From my practitioner experience I believe it is worth investigating that additional level of detail because it has the potential to offer important insights to the nature of parliamentary scrutiny of, and impact on, government legislation. I test this by coding parliamentary amendments (whether delivered directly by the parliament, or indirectly by government on behalf of parliament) against an original nineteen category typology of policy impact. This typology differentiates between types of policy impact which fundamentally effect the structure and purpose of a Bill (such as whether amendments sought to add completely new topics to Bills, remove entire topics from Bill, or expand the original coverage of a Bill into a wider range of situations) and those which are more thematic in nature (such as amendments which add time limits to Bill, deal with offences and penalties, are procedural in character or deal with the functions and powers of Ministers or public bodies). The benefit of this approach is that as well as enabling a judgement to be

made about the significance of parliamentary amendments it also provides a much clearer picture than is usually found in the literature of the practical policy consequences of those amendments.

Although this shift in perspective to the policy consequences of amendments lends itself to testing whether there is evidence of legislative viscosity at play (parliament may be more successful with amendments which seek to fundamentally transform government Bills in minority government sessions) the main value is in considering the policy consequences of amendments regardless of whether they were ultimately passed. Understanding the policy consequences of parliament's *attempted* amendments enables me to test the public policy literature prediction that most government should be consensual and incremental – if that is true, the amendments which parliament brings forward should be much more about the mechanics of how Bills work than about the fundamental building blocks of those Bills.

The qualitative nature of the coding and analysis required for this research sub-question is much more labour intensive than coding for simple Bill and amendment outcomes, and as a result the data-set for this research question is correspondingly smaller. Instead of encompassing the full 272 Bills and 39,847 amendments to those Bills it comprises a sample of 50 Bills and 2,314 amendments drawn equally from across each of the five parliamentary sessions since 1999.

<u>Research sub-question 3 – Why does parliamentary impact on government Bills vary so much?</u>

One of my main practitioner experiences of the legislative process is the sheer variation which is to be found - whether in the size of Bills, their purpose, or the response they receive from stakeholders. This variation includes parliament's response to Bills and its impact on them, with some Bills seeming to pass quickly and easily and others taking longer and being subject to much greater levels of parliamentary interest. Importantly, my experience is that this variation seems to arise just as much *within* minority or majority government sessions as it does between those sessions. Although the existence of this variation may be obvious to practitioners, observers and students of parliament, its extent and the implications of it do not seem to have been systematically investigated in the literature. That is therefore the focus of this final research sub-question – why does parliamentary impact on government Bills vary so much?

My starting point for answering this question is the policy content of government Bills, and how those Bills are viewed by stakeholders and politicians, as potentially determining factors in how parliament will react to those Bills and what its impact will ultimately be. My experience is that there is often a strong correlation between the two, and to test this I analyse four specifically chosen Bills from the 2007-2011 minority government session of the Scottish Parliament.

These case-studies were picked to enable me to explain why, in a situation in which the parliament had the numerical ability to block or significantly transform any Bill brought before it, its response ranged across the entire spectrum of making no changes to a Bill to blocking government's ability to progress a Bill. I use these case-studies to demonstrate the correlation between the type of Bill which governments bring forward (coding variables such as policy divergence between political parties, and stakeholder views) and the parliament's response to those Bills (coding variables such as the time parliament spends scrutinising Bills and the amendments it seeks to make). I argue in the concluding chapter that these results demonstrate that more attention should be given in the literature to the types of Bill brought forward by government as an explanation for how government reacts, and I offer two practitioner based concepts for doing that.

(iii) To re-evaluate the Scottish Parliament's legislative performance.

The purpose of this final research aim is consider what is known about the Scottish Parliament's legislative process and to reach a fresh perspective on the parliament's legislative performance in light of the new evidence and analysis offered by this thesis.

There is very little direct research available on the Scottish Parliament's legislative process. The most relevant study by Shephard and Cairney (2005) of Bill and amendment outcomes in the first session (1999-2003) of the Scottish Parliament is now dated. Related research by Arter (2004a) (on how the committee system of the parliament was operating in the first session) and by Cowley (2001) (on voting cohesion and voting coalitions within and between parties in the parliament's first year) is similarly dated. Collectively, these studies all pointed to patterns of behavior which were not radically different to those found at Westminster:

- parties mostly voted as a block and the coalition government parties voted essentially as a single entity (Cowley 2001, p.100)

- there was strong evidence of party politicisation of the parliament (Arter 2004a, p.81)

- government Bills were the main type of legislation to be found in Scotland and government dominated proceedings on those Bills, but with parliament having more of an impact than first impressions suggested (Shephard and Cairney 2005, pp.316-317)

The lack of longitudinal empirically focused research since the first session of the Scottish Parliament means that it has been difficult for observers to form concrete views on what has happened in its legislative process since then, and whether there has been any divergence from these early findings - particularly the extent to which the oscillation from coalition majority government (in the form of Labour and Liberal Democrat coalition governments in the 1999-2003 and 2003-2007 session), to minority single party government (the SNP administration of 2007-2011), to majority single party government (the SNP administration of 2011-2016) and finally back to minority single party government (the SNP administration of 2016 to the present) has made a difference to the role and impact of the parliament in the legislative process. The general view (Shephard 2019, p.98; Gallagher 2019, p.244; McAngus 2019, p.139; Cairney 2011b, p.266) is that there has been no radical departure since the first session of the parliament, but one of the main contributions of this thesis is to test that assumption empirically and to bring up to date our understanding of what happens in the Scottish Parliament's legislative process more generally.

There is a wider literature on the Scottish Parliament which is also relevant to the thesis. The prevailing view in it (Megaughin and Jeffrey 2009, p.12; Mitchell 2010, p.113; St Denny 2019, p.76; Cairney 2013a, p.3; Consultative Steering Group 2019, para 7) is that parliament has successfully secured its position as the key institution responsible for legitimising public policy outputs from the devolved political process in Scotland, but with judgements on its overall performance more qualified. A recurring theme in this literature is the shadow which continues to be cast by the bold promises of the proponents of the new parliament that it would herald a 'new politics' in Scotland which would be substantially different from what was to be found at Westminster. Although there is an acceptance that many of those promises were unrealistic, probably unattainable and based on misconceptions about the role of party and government in modern democracies (Megaughin and Jeffrey 2009, p.11; Hassan 2019, p.3), the parliament has nevertheless continued to be judged against them. Another contribution of this thesis, by re-evaluating what expectations it is reasonable to have about the impact of parliament on government Bills, and showing what impact parliament actually has on Bills, is to suggest a more sympathetic view can be taken of the Scottish Parliament's legislative performance.

THESIS STRUCTURE

The structure of the full thesis, and a summary of the contents of each chapter, is set out below.

- Chapter 1 – Does government dominate the legislative process?
- Chapter 2 – Should we expect government to dominate the legislative process?
- Chapter 3 – How should dominance of the legislative process be measured?
- Chapter 4 – Should we expect government to dominate the Scottish Parliament's legislative process?
- Chapter 5 – What has happened to government Bills since the Scottish Parliament's establishment?
- Chapter 6 – In what ways does the Scottish Parliament try to change government Bills?
- Chapter 7 – Why is the Scottish Parliament's impact on government Bills so varied?
- Chapter 8 – Does government dominate the Scottish Parliament's legislative process?

Chapter 1 (this chapter) sets out my principal research question, and how I go about answering that and addressing my principal research aims.

Chapter 2 sets out the two contrasting theoretical perspectives I use to address the question of government domination of the legislative process. I explain why the traditional focus in the legislative studies literature on where power lies in the legislative process should be supplemented with the broader focus of the public policy literature on how policy is developed and the type of legislation which government brings forward.

Chapter 3 sets out how I go about investigating government dominance in the legislative process. The first part of the chapter discusses how this question has been tackled in the literature, which methods are most relevant, and where new methods are needed. The second part explains how I operationalise these methods to address my three research sub-questions. The third part addresses general methodological issues, such as ethics, reliability and validity, which my methods give rise to.

Chapter 4 provides necessary case-study context to understand the Scottish Parliament and its legislative process. The first part explains what the parliament's proponents hoped it would deliver and the key features of the institution which was ultimately established. The second part reviews what is known about the Scottish Parliament's legislative and wider performance since 1999, and the contribution this thesis can make to that debate.

Chapter 5 is the first of my results chapters, which addresses the research question of what has happened to government Bills since 1999. These quantitative results paint a general picture of government dominance of the legislative process in majority *and* minority government sessions, with almost all government Bills having passed through parliament successfully since 1999 and with government responsible for most amendments. There is evidence in support of one of the key predictions of the legislative studies literature (that parliamentary impact should increase in minority government sessions) but for most variables (Bill defeats, time spent on scrutiny, non-government amendments lodged) the results reveal no significant differences between minority and majority sessions. By contrast, the results provide clear support, across all sessions, for the prediction of the public policy literature that most government legislation should not attract strong opposition from parliament.

Chapter 6 is the second of my results chapters, which addresses the research question of in what ways does parliament try to change government legislation? The results qualify the picture of government dominance from the previous chapter, revealing that almost half of all government amendments in my sample were in fact inspired by parliament. The results provide further strong support for the public policy literature by showing that parliament was seldom seeking to fundamentally change government Bills (by adding new policy topics, or removing existing ones) and that its impact was often about the procedural operation of the original policy purpose of those Bills – both in minority and majority government sessions. However, the results also provide support for the prediction of legislative viscosity by showing that where parliament did make fundamental changes these usually occurred in minority government sessions.

Chapter 7 is the last of my results chapters, which addresses the research question of why does parliament's impact on government Bills vary so significantly? The results show that for my chosen case-studies there was a very clear correlation between the controversy associated with individual Bills and parliamentary impact and reaction to them – when controversy was low Bills passed quickly and easily, and when it was high government Bills ran into difficulties. The results demonstrate why focusing simply on the generality of

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parliament-government power relationships can be misleading, and why there is a need to better take into account the type of legislation which governments bring forward.

Chapter 8 is my conclusion, and I group my reflections on the thesis in line with my three principal research aims.

Firstly, I consider the results from the general perspective of my chosen case-study of the Scottish Parliament. I argue that government dominance of the legislative process in Scotland is a misconception, with a lack of parliamentary impact often explained by the type of legislation which government brings forward rather than because parliament has tried and failed to block or fundamentally change that legislation. I demonstrate that although parliamentary impact does increase in minority government sessions, in the vast majority of cases the type of impact it secures is not qualitatively different from majority government sessions. I challenge the popular view that the Scottish Parliament has failed to deliver on new politics and is dominated by partisan party politics. I argue that the legislative process in Scotland is in fact largely defined by the sort of consensus politics which its proponents wished to see, and that this coexists with the political posturing necessary for parties to appeal to voters in a fiercely competitive electoral environment.

Secondly, I consider the results from a methodological perspective. I argue that my experience of trying to measure whether government dominates the legislative process is an instructive example of the difference which the choice of methods can make. The simple quantitative picture is likely to overstate government dominance. Further qualitative analysis can reveal hidden parliamentary impact, and determine how significant it is, but can still only provide a partial picture if results are aggregated to a general level. Even deeper qualitative analysis at the case-study level can reveal that the variation in parliamentary impact which exists.

Thirdly, I consider the results from a theoretical perspective. I draw together the perspectives of the legislative studies literature and the public policy literature to offer two practitioner concepts of the potential for parliamentary impact on government Bills. The first is 'Bill elasticity', which draws attention to the specific nature of individual Bills and the procedural, policy and parliamentary dynamics which help predict the extent to which they are likely to be subject to significant change. The second is 'non-Newtonian legislative viscosity', which goes back to the basis for Blondel's concept of legislative viscosity to show that parliamentary impact in minority government sessions is strongly related to the level of

controversy which Bills generate rather than simply the power dynamic between government and legislature.

I conclude by addressing what directions the thesis suggests for future research, and its limitations.

CHAPTER 2 – SHOULD WE EXPECT GOVERNMENT TO DOMINATE THE LEGISLATIVE PROCESS?

Does government dominate the legislative process? A case-study of the Scottish Parliament.

INTRODUCTION

Establishing reasonable expectations about what impact parliaments are likely to try to achieve in the legislative process is an important preliminary step in reaching a judgment about legislative performance. The dominant perspective in the legislative studies literature, and of most analysis of parliamentary impact in UK parliaments, is that parliamentary performance is closely correlated to a parliament's ability to block or substantially amend government Bills. That zero-sum game starting point sets up the discussion about the impact of parliaments to be framed in terms of whether they are 'weak' (if they fail to block or change government legislation) or 'strong' (if they are successful in blocking or changing government legislation).

The purpose of this chapter is to address my first research aim of making the case for re-assessing expectations about what government and parliament are seeking to achieve in the legislative process. My intention is to show that there is an alternative perspective to the zero-sum game framing of the legislative process. That alternative is to be found in the public policy literature, and particularly the policy network literature, with its focus on the policy development process. The public policy literature draws attention to the type of legislation which government brings forward, which is expected to be predominately consensual and incremental, and unlikely in the main to polarise opinion or generate substantial controversy. The implication is that if a parliament is presented with an uncontroversial Bill, which has been developed by government in consultation with stakeholders, it makes little sense to conclude that the parliament is weak if it chooses not to block or substantially amend that legislation.

I set out the key features of each of these theoretical perspectives in the main part of this chapter

FRAMING EXPECTATIONS - THE LEGISLATIVE STUDIES LITERATURE

The relative strength and weakness of parliament in relation to government has been a key focus of the legislative studies literature, and has produced several typologies (Mezey

(1990), Norton (1984), Polsby (1990) and Blondel (1990)) of parliamentary impact which are designed to categorise different types of parliament according to the significance of their impact in the legislative process.

Polsby's (1990) approach is to describe the two most extreme ends of the spectrum of parliamentary influence. This enables him to differentiate between those parliaments which are 'transformative' parliaments (able to change government policy) and 'arena' parliaments (which discuss but don't change what is put before them). Implied in this analysis is that arena parliaments are unable to change government Bills rather than having a choice.

Mezey (1990) went a step further and used categories covering the middle-ground as well as the two ends of the impact spectrum, and explicitly identified the veto function which parliaments can perform. He identified parliaments with little or no policy-making impact (which do little to government legislation brought before them), those with moderate policy-making impact (which change the government legislation brought before them) and those with strong policy-making impact (which can reject as well as change government legislation). Again, the implication is that it is 'strong' parliaments which are able to effect significant policy change and 'weak' parliaments which are unable to stop governments from getting their way.

Norton (1984) built on Mezey's typology, differentiating between those parliaments which can make their own legislation (policy-making parliaments), those which just change what is brought before them (policy-influencing parliaments) and those which do neither (parliaments with little or no policy effect).

Blondel's (1990) concept of 'legislative viscosity' posits a spectrum of parliamentary impact, ranging from parliaments with low legislative viscosity (in which government Bills pass easily and quickly through parliament) and those with high legislative viscosity (in which government Bills take longer to pass, and are subject to being blocked or significantly amended). Blondel links the viscosity of parliaments directly to government control – those which are free from government control will have high legislative viscosity, and those subject to government control will have low legislative viscosity.

These legislative typologies can be brought together, as shown below in figure 1, to create a unified spectrum of parliamentary impact in the legislative process.

Figure 1 – Unified spectrum of parliamentary impact

Significant parliamentary influence   **Minimal parliamentary influence**

Transformative *(Polsby)*		Arena *(Polsby)*
Policy-making (Norton)	Policy-influencing (Norton)	Little or no policy effect (Norton)
Strong policy-making (Mezey)	Moderate policy-making (Mezey)	Little or no policy-making (Mezey)
High viscosity (Blondel)		Low viscosity (Blondel)
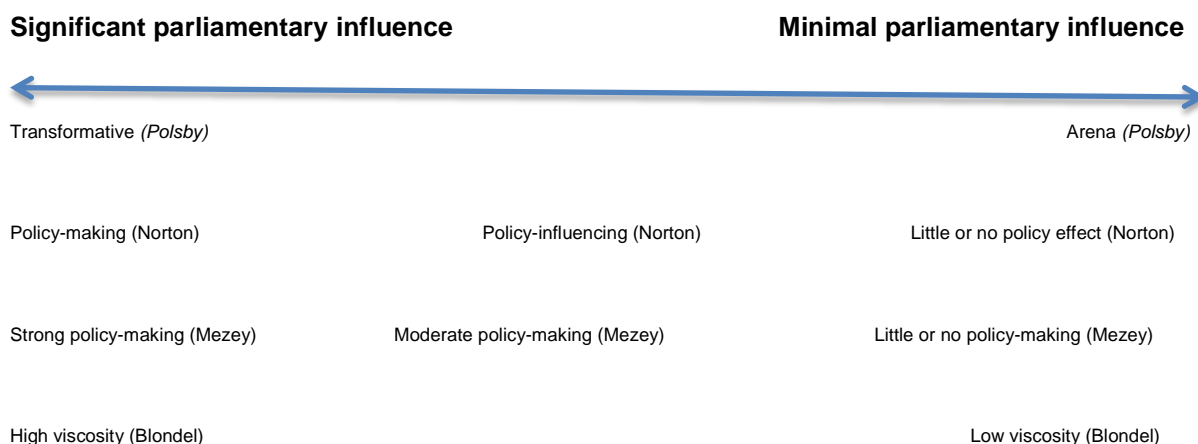
These typologies have two main benefits. The first is that they offer a simple means by which to describe and categorise parliamentary impact on legislation, distinguishing between the most fundamental differences in the type of impact they have. The second is that they allow for a standard set of descriptors by which to compare and contrast how different parliaments operate in the legislative process. However, there are problems. As Leston-Bandeira and Judge (2021) note, the focus these typologies bring to the decision-making function of legislatures has directed attention away from the other activities of legislatures. That focus on the decision-making function of legislatures often results in a pejorative discussion about where power lies in the legislative process, with the result that an absence of power being exercised is taken as a sign of parliamentary weakness. Blondel's theory of legislative viscosity illustrates this most clearly, and is of particular relevance to this thesis.

Legislative viscosity

Blondel's theory of legislative viscosity has been used in studies (for example, Thompson 2015b, pp.47-51) similar to this thesis to frame analysis of parliamentary impact in the legislative process, focusing attention on parliament's ability to block and amend the legislation which government brings forward.

Blondel's theory borrows from the study of liquids (rheology) and is concerned with the 'flow' behaviour of government legislation through a parliament. Blondel posits that this flow of legislation is directly related to a parliament's power of reaction. Where a legislature is very compliant (i.e. dominated by a majority-wielding government) Blondel suggests (1990, p.200) government Bills do not merely pass, they pass very easily and the time spent in debate is limited. Such parliaments have low legislative viscosity and can be expected to

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have a low impact on government legislation. As legislatures become freer (i.e. when the governing party or parties cannot dominate them), Blondel suggests (1990, p.200) that the time spent in debate increases and non-government amendments are debated and passed. Such parliaments have high legislative viscosity and can be expected to have a significant impact on government legislation. The concept of legislative viscosity is attractive for its simplicity and because it seems to accord with the popular view of how the legislative process operates – government proposes, parliament opposes, and victory goes to the strongest.

The Scottish Parliament is an ideal test-case for Blondel's theory given its transition between minority and majority governments since 1999. If Blondel's proposition is accurate, the Scottish Parliament should be 'compliant' in majority government sessions and less compliant in minority government sessions. In minority government sessions there should be evidence of key legislative viscosity indicators (Blondel 1990, p.210), such as government Bills being defeated, passing slowly through parliament, and being subject to significant and continual amendment. In majority government sessions there should be evidence of Bills passing quickly and easily through parliament, with few (if any) being defeated and few non-government amendments being made to them.

FRAMING EXPECTATIONS – THE PUBLIC POLICY LITERATURE

The public policy literature offers a very different perspective to draw from. This literature is a broad church, encompassing a range of theories such as new institutionalism, rational choice, multiple streams, punctuated equilibrium, advocacy coalitions, policy networks and so on. These theories take different approaches to analysis of the policy process, sharing the common desire to explore where power and influence lies in the policy process, and the interaction between individuals, institutions and their political environment. (Cairney, 2012) The public policy literature's emphasis on the whole system of public policy which extends far beyond the parliamentary arena makes it a helpful contrast to the institutional perspective of power relationships in the legislative process which the concept of legislative viscosity offers. The policy networks subset of the public policy literature, described further below, is most relevant to this thesis.

Different countries, and different political structures, are thought to give rise to different types of policy-making style. The UK approach to policy-making has traditionally been described as a top-down majoritarian style (Lijphart 1999), although that has been contested and the more popular view is that the UK approach is part of a wider European style of consensus

seeking in the development of policy (Richardson 1982). Most commentators (Cairney 2009, 2013b; Cairney and McGarvey 2013; Elvidge 2011; Housden 2014; Keating 2005/2010; Paun et al 2016) place the 'Scottish approach' (Cairney 2020, p.465) to policy-making in the consensus-seeking category, although it is also argued (Cairney 2020, p.464) that the plurality of policy approaches taken by the Scottish Government mean that it cannot be completely disassociated with the popular view of a top-down, centralist British style. Beneath these discussions of 'policy style' are discussions of the 'policy process' or 'policy cycle' they give rise to. The 'policy cycle' (Cairney 2012, pp.32) is often presented as a linear and idealised process which involves a number of ordered steps, running from beginning to end: the identification of policy aims; selecting a measure to deliver that aim; securing approval for that measure (the parliamentary phase); implementing the measure; and evaluating its effectiveness. The 'policy process' perspective (Heikkila and Cairney 2018, pp.364-365) focuses more on the dynamic context within which policy development takes place than on describing a specific method of production. This perspective emphasises a messier mix of key actors, networks, events, ideas and the role of institutions.

The key point from these discussions is that public policy models seldom if ever put parliament at their heart or give parliament a significant role in the development of policy. Instead, development of policy (of which government Bills are one type) is presented as a predominately government controlled exercise far outside the parliamentary arena. Governments may spend months or even years developing legislation, running multiple consultations and engaging extensively with the public and stakeholders. Parliament's main role in the public policy process is viewed as coming at the end of the development phase, if its formal approval (as is the case for Bills) is required for new policy to come into force.

There is a case to be made that this literature should give more prominence to parliamentary impact in models of the policy process. There is evidence, for example, that parliament does substantively alter some of the legislation brought forward by government and that its role is more than simple legitimation (Shephard and Cairney, 2005; Thompson 2013, 2015a, 2015b; Russell and Cowley 2015; Russell and Gover 2017). There is also evidence that parliaments can have influence in the earlier policy development process. This may arise where the government specifically targets parliamentary input in the form of draft Bills put forward for pre-legislative scrutiny (Johnston 2009, pp.31-32), or by government taking into account how it thinks parliament will respond to the legislation it is considering bringing forward. This 'anticipated reaction' (Mayhew 1974) of government has been highlighted in recent research on the UK Parliament (Russell and Cowley 2015) as sometimes being of

significant importance, and Russell and Cowley make a strong case for paying more attention to it.

The absence from policy process models of anticipated reaction as a significant type of influence may simply reflect the fact that it is difficult to detect, measure and categorise on a routine basis, but also that there is no general agreement about its extent, and whether it arises only occasionally or is a routine phenomenon every time government develops a Bill. From a practitioner perspective, there are reasons for being cautious about overestimating the extent of anticipated reaction. Firstly, the policy content of some prospective legislation may not deal with significant policy questions and/or be controversial enough to give rise to obvious policy cleavages between parties which government can use to predict how parliament will react. When a Bill generates consensus the anticipated reaction of government may simply be that parliament is likely to approve the main components of the proposal it intends to bring forward and the principal discussion in parliament is likely to be about how the framework set out in the legislation will operate. Similarly, even if policy cleavages do exist, opposition parties may not have formed a settled view on the legislation being brought forward and as a consequence government may not be able to predict with certainty what their reaction will be.

In considering the significance of the role of anticipated reaction it is therefore important to recognise that government is often working with an imperfect understanding of how parliament will react to the legislation it plans to bring forward, and as a consequence there are situations in which it cannot adapt its legislation to pre-empt that parliamentary reaction even if it wanted to. So, although Russell and Cowley (2015, p.130) are correct to identify the development of 'handling strategies' by the UK Government as evidence of how seriously government takes parliamentary scrutiny (with a similar approach also taken by the Scottish Government when it is preparing Bills for introduction to the Scottish Parliament), it is not yet clear from the literature the extent to which those handling strategies accurately predict the issues which parliament will be concerned about, or how they actually shape the structure of Bills pre- and post-introduction.

Arguably the principal contribution of the public policy literature is not to point towards the potential extent of parliamentary influence in the development of policy (and by extension Bills), but to point away (for example, Richardson and Jordan 1979) from parliament and towards policy networks and interest groups as the place where the main influences in the development of policy (and by extension Bills) can be found. This literature de-emphasises not just the role of parliaments in developing policies but so too even those government

Ministers responsible for the relevant policies, who it is suggested may operate on the margins because of the scale and complexity of issues which need to be processed on a day to day basis. From this perspective, it is simply not possible to operate a Ministerially-led command and control top down approach to every single policy issue arising in modern society. Instead, policy gets divided into manageable sectors and sub-sectors with day to day policy development activity delegated to civil servants to progress with their interest group networks. The result, as Cairney (2012, p.12) notes, is that much public policy is conducted primarily through policy networks which process 'technical' issues in a manner not typically visible to the public or parliamentarians.

The public policy literature does not just draw attention to how policy is made, and where influence lies, but also conceptualises the type of policy (and by extension Bill) which results. For example, Lindblom's (1959) concept of 'incrementalism' contends that, since existing policy already represents a negotiated settlement between competing interests, a consensus-based approach to further policy-making means that governments will not ordinarily break that consensus with radical change. So too the concept of policy 'inheritance' (Rose 1990), which emphasises that decades of cumulative policies means new governments will continue the policies of their predecessors and that large parts of government legislative programmes would be introduced regardless of which party was in power. As a result, 'policy succession' (Hogwood and Gunn 1984), in the form of a continuation of the main features of existing policy, is always more likely than innovation and termination. The essence of this is captured in Milton Friedman's oft quoted (Sobel and Crowley 2012, p.168) insight that nothing is so permanent as a temporary government programme. A consensual, incremental, cumulative and succession-based view of policy is understood to be the dominant or normal policy style in the Scottish and UK systems (Cairney 2011a). High-profile, and potentially controversial, decision-making by Ministers which leads to radical policy change through legislation is not totally discounted (Cairney 2008; Rose and Davies 1994) but is not expected to be the norm.

The issues raised in the public policy literature about how policies (and Bills) are made has important implications for framing the role of parliament in the legislative process, and the impact which parliaments are likely to have on Bills brought before them. The emphasis on the development of policy through consensus, incremental development, inheritance etc. should sound a strong cautionary note about expecting the Bills brought forward by government to routinely represent radically new or controversial policy. That in turn should sound a strong cautionary note about expecting parliaments to want to routinely block or fundamentally transform all of the Bills which government brings forward. These points in

turn should sound a strong cautionary note about using the language of 'weak' and 'strong' to characterise parliamentary reaction to all government legislation without first understanding the nature of the legislation brought forward and the nature of parliament's response to it.

In short, it should be a surprise, from the perspective of key elements of the public policy literature, if government Bills are routinely radical, routinely generate lots of parliamentary opposition and routinely result in parliament seeking to make fundamental changes to those Bills. Whereas Blondel's (1990) concept of legislative viscosity assumes that the parliament's starting point will be to seek to block or significantly amend government legislation, it can be inferred that the public policy literature perspective assumes that parliament's role is much more likely to be of quality assurer and policy tinkerer than policy blocker or transformer. Indeed, as I discuss later in Chapter 4 on the Scottish Parliament, it is precisely this supervisory role which the parliament's architects arguably identified as being one of the key contributions the new parliament would make in its scrutiny of government legislation.

Similar ideas can be found in Strom's (2000) discussion of principal-agent roles in the legislative process and Judge's (1993) response to Richardson and Jordan's (1979) post-parliamentary state argument. In this analysis, parliament delegates to government the responsibility to develop and bring forward legislation with parliament's role being to use its different methods of scrutiny to hold the government to account for the way in which it has done that. McGann (2006, p.454) notes that this means that any conflict which does arise between government and parliament in the legislative process does not demonstrate legislative strength but instead weakness and agency failure, in the sense of parliament having failed to get the government to act in a way it wished to. McGann (2006, p.455) also notes that this principal-agent relationship means that if a government was to perfectly implement the wishes of a parliament, the parliament would then have no reason to seek to block or change what was brought before it. He notes, however, most models of strength and influence in the legislative process would identify such legislature as a weak rubber-stamp because there was no resistance to, or attempt to resist, the government.

CONCLUSION

The purpose of this chapter was to explore how two different theoretical perspectives frame very different expectations of the impact which parliaments will seek to achieve in the legislative process.

The first, the legislative studies literature and particularly Blondel's concept of legislative viscosity, puts emphasis on the power relationship between parliament and government. This literature focuses on finding evidence of parliament's ability to constrain government, either by blocking, amending or slowing down the legislation it brings forward. The second, the public policy literature, and particularly the policy network literature, puts emphasis on the development of policy taking place away from the parliamentary arena, which should result in types of policy that are unlikely to provoke a parliament to want to routinely block or transform the legislation that government brings forward.

The discussion in this chapter demonstrates that in a situation like that of the Scottish Parliament, which has oscillated between minority and majority governments, it is important to be able to account for both perspectives – is there evidence of parliament blocking or significantly amending government legislation and, if there isn't, is that best explained by the legislative studies literature (parliament tried and failed) or the public policy literature (parliament was often not motivated to try)? The purpose of my next chapter is to address what methods can be used to investigate these competing claims.

CHAPTER 3 – HOW SHOULD DOMINANCE OF THE LEGISLATIVE PROCESS BE MEASURED?

Does government dominate the legislative process? A case-study of the Scottish Parliament.

INTRODUCTION

The purpose of this chapter is to address my second research aim of demonstrating the importance of the choice of methods in drawing conclusions about the extent to which government dominates the legislative process. The chapter has three main parts, which look in turn at relevant literature on the measurement of government dominance of the legislative process, the methods I adopt in answering my research sub-questions, and the general methodological issues relevant to the thesis.

The first part of the chapter is a literature review of how the issue of government dominance of, and parliamentary impact in, the legislative process has been approached by researchers. That this is not a straightforward issue is illustrated by the fact that over 30 years after Griffith (1974, p.13) noted that "the language which is used to describe the more or the less of…impact is imprecise", Arter (2006, p.247) too concluded that there was an absence of precision tools through which to calibrate parliamentary impact. The literature reveals an eclectic range of methods, which can be categorised into three main thematic approaches – basic analysis of 'who wins' in the legislative process; the quest to describe how significant parliament's impact on government Bills is; and case-studies which investigate the fate of single or multiple Bills. I explain how these three approaches, and the very different insights they offer on government dominance of the legislative process, can contribute to answering my overall research question of does government dominate the legislative process?

The second part of the chapter sets out the specific methods I use to answer my three research sub-questions of what has happened to government legislation in the Scottish Parliament since 1999; in what ways does the Scottish Parliament try to change government legislation; and why does parliamentary impact on government Bills vary so much? I explain for each which principal sources I use, and my approach to data-collection, coding and analysis. I also explain the hypotheses I use to investigate whether the results are more in line with the predictions of the legislative studies literature (parliamentary impact increasing in minority government sessions) or the public policy literature (generally low levels of controversy in the Bill process), or both.

In the final part of the chapter I address a number of general methodological issues relevant to the thesis. Some of these arise from my research design, with my investigation of the question of government dominance of the legislative process from quantitative and qualitative perspectives requiring issues associated with mixed methods research to be addressed. Some arise from my practitioner status, with my insider perspective giving rise to ethical considerations and potential bias which need to be considered. Others are common to empirical research of the type employed in this thesis, with questions of validity and reliability arising from the coding of tens of thousands of amendments, and the subjective judgements involved in coding qualitative features of parliamentary impact.

PART 1 - LITERATURE ON THE METHODS OF INVESTIGATING PARLIAMENTARY IMPACT ON GOVERNMENT BILLS

A recurring theme in the literature is the difficulties associated with studying legislatures. Blondel (1973, pp.21-28) identifies a range of methodological challenges including simple data collection (not all proceedings are recorded or published), how to observe informal activities which may be as relevant as the formal conduct of business, and processes and procedures across parliaments which make comparative analysis difficult. Arter (2007, p.247) also identifies the challenges of comparative analysis, noting that each legislature has its own individuality and distinctive legislative culture.

The challenges involved in the systematic analysis of parliaments may be the reason why much of the older literature on analysis of the legislative process is imbued with the 'old institutional' approach of the intelligent and interested observer describing what they see (Peters 1999, p.2). The limitations of that approach are exemplified by Beer's view (1966, p.33) that voting in the House of Commons was so monotonously 100% in favour of the Government position on amendments that it was hardly worth the effort to count. Thankfully, not everyone has been deterred from the challenge of investigating the legislative process in more detail than that, and the following sections discuss the three main thematic types of approach which have been taken to studying government dominance of, and parliamentary impact in, the legislative process. These three approaches span the methodological spectrum, starting at the quantitative end and finishing at the qualitative end.

Theme 1 – Who wins in the legislative process?

One common way to approach analysis of government dominance of the legislative process is to focus on a simple analysis of 'who wins?', which can be characterised as the simple

empirical model. This approach usually involves totalling up government successes in securing the passage of its Bills, and government and parliament's success in amending those Bills. These results can then be used to draw inferences about government dominance. Examples of this approach are Newell's (2006) analysis of legislation in the Italian Parliament concentrates; Kerrouche's (2006) analysis of the French Assemblée Nationale; Damgaard and Jensen's (2006) case-study of the Danish Parliament over a 30-year period; Pettai and Madise's (2006) analysis of three post-communist emergent states (Estonian, Latvia and Lithuania); and Maurer's (1999) work on the emerging democracy of Spain during the period 1979-96.

What makes this approach attractive to researchers is it that is relatively easy to collect basic data about the fate of Bills and amendments, to do so at scale, and over long periods of time. The principal value of this approach is that it offers a simple basis on which to draw conclusions – if government is successful with most of its Bill and most amendments to those Bill that suggests it dominates the legislatives process, and vice-versa. This approach, with its emphasis on quantitative data, is also suitable for the identification of trends in who wins over time. That is particularly relevant to this thesis, with a key variable for exploration being the difference which movements from majority to minority governments, and back again, have made to what happens in the Scottish Parliament's legislative process.

This empirically-focused approach is therefore an excellent starting point for considering the question of government dominance of the legislative process, and I use it to address my first research question of what has happened to government legislation in the Scottish Parliament since 1999? However, it is important to recognise that it is an approach which has limitations, and which suffers from invariably rediscovering David Olson's maxim (1996, p.7) that in most legislatures there is a 90% rule at play, with government proposing 90% of the legislative agenda and succeeding with 90% of that agenda. The empirically-focused approach is therefore insufficient on its own to fully understand whether government dominates the legislative process, and the following themes address why that is.

Theme 2 – How significant is parliamentary impact in the legislative process?

The last couple of decades have seen methodological developments aimed at moving beyond the simple empirical model and adding more depth to Bill and amendment outcome analysis. The most common approach is to try to measure how significant parliamentary impact is, and at the same time address the fact that too literal a reading of amendment outcomes risks overstating both government success and parliamentary failure.

The foundation for this work is Griffith's (1974, p.9) analysis of amendment outcomes in the UK Parliament through which he sought to "try to estimate the impact which Parliamentary scrutiny has on Government bills". Although on the face of things Griffith's analysis shared many similarities with the simple empirical model he included some key additional metrics, identifying (Griffith 1974, pp.160-166) examples of some amendments which were more significant than others and identifying (Griffith 1974, pp.167-182) where government amendments were inspired by the parliament (and should thus be included as evidence of parliamentary influence). The result of this was that Griffith was able to conclude that the impression of government domination of the legislative processes needed to be qualified by the fact that government was often responding to parliamentary prompting when it brought forward amendments, and sometimes parliament was making changes of consequence to government Bills.

The first significant refinements of Griffith's approach came through Kreppel (1999 and 2002), Tsebelis and Kalandrakis (1999), and Tsebelis et al (2001), sparked by renewed interest in the role and impact of the European Parliament and the impact of the introduction of new legislative procedures in EU law-making. This body of work introduced for the first time systematic coding of amendment significance, with Tsebelis and Kalandrakis (1999, pp.128-131) using numerical scales to help measure (a) the extent of the success/adoption of amendments and (b) the relative significance of those amendments. This enabled the researchers to account for the fact that some amendments were accepted verbatim, some rejected entirely, and some in between the two ends of that spectrum. It also enabled them to differentiate between those amendments which were very minor (making not much more than terminological changes to the text of legislation) and others which were highly important (which significantly alter the scope of the legislation).

The first application of this approach in the UK context was Shephard and Cairney (2004 and 2005) in research on the 1999-2003 session of the Scottish Parliament. Like Griffith, their analysis identified (Shephard and Cairney 2005, pp.307-308) the importance of understanding the original inspiration for amendments, which showed that government amendments were often brought forward in response to parliamentary pressure or prompting. They dropped the adoption scale used by Kreppel and others and modified the significance scale to bring out more subtle differences in amendment impact.

Their significance trichotomy (Shephard and Cairney 2005, p.309) distinguished between those amendments which had essentially no effect (typographical/consequential), those which had a minor impact but did not change the policy of the Bill (detail/clarification) and

those which changed the tone or substance of the Bill (substantive). The value of this approach is that it offers a relatively simple, and thus relatively repeatable and reliable, basis for differentiating amendments. In particular, it helps separate out those amendments which had a clear policy impact (substantive amendments) from those which had a minor effect and in turn from those which performed more technical purposes and essentially had no substantive effect at all. Shephard and Cairney found that not all parliamentary impact was in the bottom two categories of their typology, and that most government amendments in the top category had been inspired by parliament. So, like Griffith, they felt able to conclude that government domination of the legislative process was less than first impressions suggested, and that sometimes parliament was having a substantive impact on government Bills.

Other approaches to measuring significance have been taken. For example, Thompson's (2013, 2015a, 2015b) analysis of UK Government Bills updates Griffith's 1974 work, and uses a simpler dichotomy of amendment significance to differentiate between 'minor' amendments and more important 'substantial' amendments. Russell et al have also developed a significant and impressive body of work which also owes its inspiration to Griffith (1974) and builds upon Shephard and Cairney's (2005) approach. Key developments in their research have been the introduction of the concept of "policy strands" (Russell and Johns 2007) in order to trace the origin of ideas through to final amendment form and ultimate success or failure; measuring the relative significance of amendments by reference to the individual Bill to which they relate and the profile given to those topics by government (Russell and Sciara 2008); taking into account elite perceptions of the UK Parliament's assertiveness (Russell 2010); and significance scale analysis of amendments (similar to Shephard and Cairney's approach) of a large sample of case-study Bills from the UK Parliament (Russell et al 2016).

A novel and interesting development from the body of work produced by Russell et al is their work on trying to measure the policy effect of parliamentary amendment impact. This approach, first seen in Russell and Johns (2007), tries to make the discussion of parliamentary impact more tangible than a relatively abstract discussion of 'significance'. This makes it of particular interest to practitioners like myself who want to know more about the real-world consequences of parliamentary impact.

Russell et al (2016, p.303) have used this approach to identify and describe some significant policy changes brought about during the parliamentary passage of Bills – preventing the introduction of identify cards; introducing a total rather than partial smoking ban; including deaths in custody within the remit of the new offence of corporate manslaughter; and

removing the government's ability to sell off public forests. These policy-focused findings reinforce the conclusion that government dominance of the legislative process is a misconception, and emphasises the insights which qualitative analysis of the legislative process have to offer.

Russell et al have also (2016, p.304) developed an embryonic typology of parliamentary impact. This helpfully draws a clear distinction between amendments which have a policy impact (to which two categories are devoted – one for amendments with timing consequences, and another for general policy consequences), which are procedural (to which two further categories are devoted – one for amendments which relate to subordinate legislation, and another for other procedural impact), and those which are minor and technical in category (to which a single category is devoted). This analysis enabled them to conclude (2016, p.304) that it was safe to dismiss concerns that the UK Parliament's influence was largely on minor procedural matters.

However, all of these typologies share a drawback, and that is that they all result in very broad and general buckets from which it is possible to draw only very general conclusions about the type of impact which parliament is having on government Bills. There is scope to develop this approach further in two specific ways. The first is to focus more on how amendments impact on the fundamental policy structure of Bills – do they add any new topics, remove existing topics, or expand the coverage of the Bill into a broader range of places, organisation or people? Looking at policy impact in that way allows for a judgement to be made about whether parliament's impact on Bills genuinely transforms the policy content of Bills, and if it has then in what ways. The second area for development is for clearer differentiation of the policy consequences of parliamentary impact if it is has not been transformative. This allows for investigation of what thematic types of impact arise (such as whether amendments relate to the powers and functions of Ministers, deal with offences and penalties, add sunset provisions to Acts and so on) and how common or uncommon these types of amendments are. Those two innovations are the foundation of the approach I take to measuring parliamentary impact on government Bills. I develop an original nineteen category typology of policy impact for this purpose (which I explain in more detail in the next section of this chapter), which enables me to address my second research question of in what ways does parliament try to change government legislation?

Theme 3 – What can case-studies tell us about parliamentary impact in the legislative process?

The other principal approach to investigating government dominance of, and parliamentary impact in, the legislative process is to focus in on case-studies of what happens to individual or multiple Bills. For example, Brazier et al (2008) adopted a case-study approach to describe the parliamentary passage of a small number of case-study Bills through the UK Parliament. Their work demonstrated how parliaments can directly (through non-government amendments) and indirectly (by inspiring the government to take action short of amendments) influence government actions - a phenomenon also recognised in Thompson's (2015b, p.69) and Russell et al's (2015, p.300) analysis of parliamentary impact in the UK Parliament). This work further emphasises the conclusion that the closer we look at the legislative process the more likely we are to find evidence of parliamentary influence and impact.

The case-study approach allows for much more depth and context to be provided about what Bills are intended to do, what sorts of issues and controversies arose during their parliamentary passage, and in what specific ways Bills were changed. This has the benefit of providing rich contextualisation of government dominance and parliamentary impact, and provide more of a sense of 'how' parliaments process government legislation. But this approach is also much more resource-intensive and the trade-off is that researchers are not usually able to carry out studies at the scale required, and to understand whether the case-studies they used were atypical or not.

A case-study approach is well suited to addressing the final research sub-question of this thesis, which is why does parliamentary impact on government Bills vary so much? Although most observers of the legislative process would undoubtedly say that they recognise that Bills vary enormously (in size, scope, purpose etc.), the meaning and consequences of that do not appear to have been systematically investigated in the literature. Nor has the variation in parliament impact, with the literature referenced in the previous two themes of this section invariably presenting the overall results of parliamentary impact in general terms and using specific examples only to illustrate the type of impact which parliament has. To demonstrate how significant variation in parliamentary impact can be, and to investigate why the variation arises, I use a case-study approach to systematically analyse what happened to four specifically chosen Bills from the 2007-2011 minority government session of the Scottish Parliament.

PART 2 – METHODS EMPLOYED TO ANSWER RESEARCH QUESTIONS

In this part I address the data source, data-set, coding and analysis approaches I used for my three research sub-questions

Approach to research sub-question 1 – What has happened to government legislation in the Scottish Parliament since 1999?

<u>Overview</u>

This first question is designed to provide a comprehensive overview of what has happened to all Scottish Government Bills since the parliament's establishment in 1999 in order to form an initial impression of the extent of government dominance of the legislative process.

It also provides an initial test of the predictive qualities of Jean Blondel's (1990) concept of legislative viscosity and of the public policy literature, using a small number of key variables - how many Bills are passed or defeated; who is successful with amendments; how long does parliament take to process Bills; and how contentious is government legislation.

If the results support the prediction of legislative viscosity then what they should show is a generally high level of conflict in the legislative process, with government able to dominate in majority government sessions (low legislative viscosity – government securing passage of its Bills quickly and easily, with few non-government amendments being passed) and parliament able to impose its will in minority government sessions (high legislative viscosity – with fewer government Bills passing, taking longer to do so, and with more non-government amendments being passed). If the results support the prediction of the public policy literature then what they should show is a generally low level of conflict (which can be tested by looking at how contentious government Bills were), with much less of a divergence in results between minority and majority government sessions than predicted by Blondel's theory.

<u>Data-set</u>

The data for all three research sub-questions is drawn from information publicly available on the Scottish Parliament website. The key sources I used for this research question included the Scottish Parliament's equivalent to Hansard, its Official Report, which records all debates of proceedings and records voting outcomes on amendments and for key stages of Bills. I also used the 'Marshalled list' of amendments for individual Bills which shows for each Stage

2 and Stage proceeding which MSPs sponsored amendments, and the individual pages of the parliament's website dedicated to holding information on each Bill to collect information about how long each stage of proceedings took to complete.

The data-set captured relevant information on all government Bills introduced to the parliament in the period 1999 (the inception of the parliament) through to the end of the fifth session of parliament in Spring 2021. This amounted to 272 Bills and 39,847 amendments. The full list of Bills in the data-set is set out in Appendix A.

Coding

I manually coded the data into a database, using the variables set out in table 1 below. With one exception (coding for contentiousness), no significant conversion of the basic data was required and the principal task was simply to locate the relevant data and then code it.

Table 1 – Key variables for research sub-question 1

Topic	Coding
Bills	Number per session, number per year
	Passed, fallen, defeated
	Individual party vote on Stage 1 and Stage 3 motions
	Contentiousness
Time	Overall time
	Time for completion of Stage 1
	Time for completion of Stage 2
	Time for completion of Stage 3
Amendments	Passed, defeated, not move, withdrawn
	Government or non-government
	Party
	Name of MSP
	Passed with or without government support
Session	Session 1
	Session 2
	Session 3
	Session 4
	Session 5

Coding approach to 'policy contentiousness' variable

The level of controversy associated with government Bills is a key indicator of whether the public policy literature prediction of predominately consensual government policy holds or not. There is no single piece of data available from the parliamentary records connected to the policy contentiousness of Bills in the same way there is, for example, for the name of the MSP who lodged an amendment.

To address this I developed a proxy for policy contentiousness. The proxy is based on the data I collected on how parties voted at the two key stages in the Bill process when they have the opportunity to block a Bill - Stage 1 (when the question is whether the parliament supports the general principles of the Bill and agrees it should proceed to Stage 2) and Stage 3 (when the question is whether parliament agrees that the Bill should be passed). From that data, I developed two levels of contentiousness. The first is a low-threshold test for levels of contentiousness (did *any* party or independent MSP vote against a Bill at both these key stages) and the second is a high-threshold test (did *all* major opposition parties vote against a Bill at both these key stages). These proxies allow for straightforward comparisons across individual Bills and across sessions about the level of contentiousness associated with government Bills and legislative programmes.

Data analysis

I use a set of hypotheses to test whether the data supports the predictions of Jean Blondel's concept of legislative viscosity, with any negative correlation likely to instead support the claims of the public policy literature. These hypotheses are grouped under the four themes set out in table 2 and summarised below.

Table 2 – Hypotheses tested for research sub-question 1

Topic	No.	Hypothesis
Bill issues – volumes and outcomes. This theme gives a basic picture of what happened to government Bills – how many were introduced and passed?	1	Fewer government Bills should have been introduced to the Scottish Parliament in minority sessions 3 and 5 than in majority sessions 1, 2 and 4.
	2	Fewer government Bills should be passed in minority sessions 3 and 5 than in majority sessions 1, 2 and 4.
Bill issues – contentiousness. This theme explores the nature of government – were they consensual or did they generate controversy?	3	The policy controversy of Bills should be lower in minority government sessions than in majority government sessions.
Time issues. This theme explores another key feature of parliament's reaction to government Bills – how long did it spend scrutinising them?	4	The parliament should spend longer scrutinising government Bills in minority government sessions.
Amendment issues – volumes, outcomes, authorship, persuasive versus coercive capacity. This theme explores what happened to amendments – who lodged them, who was successful with them, and in what way did the parliament achieve its amendment impact.	5	There should be an increase in non-government amendments in sessions 3 and 5.
	6	Government amendments should have an extremely high pass rate, but with an observable reduction in minority government sessions.
	7	Non-government amendments should be less successful than government amendments, but their success rate should increase in minority government sessions
	8	The coercive impact of the parliament should be greater in sessions 3 and 5 than in sessions 1, 2 and 4.

The first two hypotheses focus on the simple questions of how many Bills were brought forward by government and how many were passed. These test Blondel's concept of legislative viscosity directly, predicting that where government dominated parliament (majority government sessions) it should bring forward more legislation than when

parliament was freer from government control (minority government sessions), and that it should be more successful in securing passage of its Bills in majority government sessions.

The third hypothesis tests how contentious government legislative programmes were. The public policy literature predicts that most government Bills, irrespective of whether they are brought forward in a minority or majority government sessions, should be incremental and consensual and should therefore be expected to give rise to low levels of contentiousness. Blondel's concept of legislative viscosity, by contrast, would predict that majority governments would feel emboldened to bring forward more contentious legislation than minority governments because of their ability to force it through despite parliamentary opposition.

The fourth hypothesis shifts the focus to the amount of time spent by parliament scrutinising government Bills. Blondel's concept of legislative viscosity predicts that as parliament becomes freer from government control then it should be able to exert more control over Bill timetables and consequently Bills should take longer to pass in minority government sessions than in majority ones.

The final four hypotheses test features of amendment outcomes. Blondel's concept of legislative viscosity predicts that as parliament becomes freer from government control in minority government sessions it should feel emboldened to bring forward more amendments, should have a higher success rate with those amendments, and should be able to inflict more defeats (by blocking government amendments, and securing passage of its own despite opposition by government).

Approach to research sub-question 2 – In what ways does parliament try to change government Bills?

Overview

This second question is designed to test whether qualitative analysis of parliamentary impact on government Bills supports or contradicts the findings from the previous research question.

Three new features of parliamentary impact are investigated through this research question. One element is to capture any indirect parliamentary impact secured through amendments it inspired the government to bring forward on its behalf. Another element is to form a

judgement on the significance of impact which parliament is seeking to have, and ultimately does have, by categorising amendments by the importance of their policy impact. The third element is to discount any parliamentary amendment successes subsequently overturned by government.

I use this new information to test again whether there is evidence of legislative viscosity at work (which should see more significant amendments passed by parliament in minority government sessions) or whether the public policy literature is validated (which should see infrequent occurrences of substantial numbers of significant amendments being brought forward, or made to Bills, in any session).

Data-set

The detailed analysis required to collect the qualitative information needed to answer this research question meant that it was not possible to code the full data-set of 272 Bills and 39,847 amendments used in the previous research question and instead I used a sample of those Bills.

My approach to the selection of that sample was to draw an equal number of Bills from each parliamentary session to enable comparisons to be made in results across those sessions. To maximise the number of cases which could be included I chose Bills which had a relatively small (<150) amendments lodged to them. This approach resulted in 10 Bills from each of the five parliamentary sessions as set out in Appendix B. The total of 50 Bills amounts to about a fifth of the data-set used to address the first research question. Although this sample provides a good range of coverage across sessions my focus on relatively small Bills could potentially have a skewing effect. It could be, for example, that larger Bills contain more contentious issues or are more amenable to amendment.

Coding

All of the basic information on amendments (e.g. who authored them, the outcome etc.) for the sample was already available from the coding undertaken for the first research question. The only additional coding which required to be undertaken for the sample was:

- the identification of which government amendments were inspired by parliament
- the policy consequences of amendments

- whether amendments were overturned at a later stage

Each of these new coding processes requires further explanation and this is set out below.

Coding approach to parliamentary influence in the form of inspiration for government amendments

To avoid understating parliamentary impact, I followed the example of other researchers (Shephard and Cairney 2015; Thompson 2013, 2015a, 2015b; Russell et al 2016) and used a secondary code for government amendments where there was clear evidence that parliament had been the inspiration for them so that they could be included as examples of parliamentary impact in subsequent analysis. Examples of this are where parliament withdraws its own amendments in return for assurances by Ministers that the spirit of the amendments will be reintroduced at a later stage in the process, or where Ministers make clear when speaking to their amendments that they have been brought forward as a result of issues raised by parliament. Amendments were only coded in this way where there was clear evidence of parliamentary inspiration to ensure, as far as possible, that the instances counted were genuine cases of parliamentary influence (although there can never be complete assurance that when government says it is bringing forward amendments in response to parliamentary influence it is not also being influenced by, for example, stakeholder opinion). This approach does mean that some less obvious cases of parliamentary influence (where there is no explicit Ministerial reference to why the amendment was brought forward but there is circumstantial evidence to suggest it was as a result of parliamentary prompting) are not included and that parliamentary impact will consequently be underestimated.

Coding approach to categorising policy impact

The typology of policy impact of parliamentary amendments I use to draw out different forms of public policy impact is set out in table 3 below.

Table 3 Typology of policy impact

1	An amendment which adds a new topic to a Bill, unrelated to its original content.
2	An amendment which adds a new policy component to a Bill, related to its original content.
3	An amendment which expands or contracts an original policy component of a Bill.
4	An amendment which removes an original policy component of a Bill.
5	An amendment which makes any change to timing, such as the addition of timescales for action to be taken.
6	An amendment which relates to offences and penalties.
7	An amendment which relates to judicial procedure, such as court or tribunal procedures, or evidence or proof.
8	An amendment which relates to consultation processes.

9	An amendment which streamlines, adds detail to, or alters a procedure.
10	An amendment which makes any form of correction, whether through error or omission.
11	An amendment which changes a form of words without any substantive effect.
12	An amendment which relates to Ministerial or public body functions.
13	An amendment which relates to Ministerial or public body powers.
14	An amendment which relates to recruitment or appointment processes.
15	An amendment which relates to changes to delegated powers.
16	An amendment which relates to the production, laying or approval of documents/reviews/reports/evaluations.
17	An amendment which relates to money, such as taxes or fees.
18	An amendment which adds, amends or removes a definition.
19	An amendment which sunsets a provision in a Bill.

The development of my typology built on the example of Russell et al's (2016) five category policy typology, but with the intention of identifying a much wider range of policy types. My approach to developing the typology followed the main elements of the Grounded Theory Method (Urquhart, 2017). GTM has a number of key elements – it is often used to inform development of a new theory, to derive that new theory from the intensive analysis of data, to refine new theory through the constant comparison of emerging concepts with new data. This bottom-up approach to the development of theory was a good fit for my needs – development of a new typology of concepts, identifying and refining those concepts from data I had collected, and reaching a final typology of concepts which could account for all of the data I had collected.

My starting point was the identification of four principal categories of policy change designed to capture whether or not the parliament was effecting fundamental change to government Bills or not. Categories 1 and 2 capture any examples of entirely new policy topics being added to Bills, firstly for new topics unrelated to the original policy content of a Bill and secondly for any related to the original policy content. These categories are intended to give a clear sense of whether or not the parliament had a policy-making capacity (i.e. by generating policy ideas and adding them to government Bills). Category 3 captures any examples of the expansion or contraction of the original policy content of a Bill, which leaves an original policy component intact but changes the extent of its application. This category can be viewed as a clear example of policy-influencing capacity. Category 4 captures any examples of where parliament deleted any original policy components of a Bill, evidencing a capacity to block government proposals which stops short of blocking an entire Bill.

Having established these first four key categories the next step was to develop suitable categories for other types of amendment. I developed an initial set of categories by coding amendments from a sample of five Bills and identifying thematic types of amendment, such as amendments which dealt with consultation issues, the procedural mechanics of how a Bill's provisions would operate, definitions or which made corrections to errors or omissions in a Bill and so on. I coded the remainder of the sample of Bills on this basis, adding new

categories such as sunsetting provisions or appointments and recruitment procedures only where that type of impact would not easily fit within an existing category or where I considered there would be value in identifying a new thematic type of impact. The result is the 19 category typology set out above. The subjective nature of this coding exercise, and the wide range of policy categories to choose from, does raise issues of coder reliability which I consider further in the 'reliability and validity' section of this chapter.

Coding approach to overturning of amendments

To avoid overstating parliamentary impact, I followed the example of Cairney (2006) and identified cases where parliamentary amendments made at Stage 2 of Bill proceedings were subsequently overturned, in whole or in part, at Stage 3. Cairney's categorisation, set out in table 4 below, recognises that changes to parliamentary amendments made at Stage 2 can be positive and negative. The first two categories in the table cover situations in which an amendment was changed in a negative way, either being wholly overturned or amended in a way which substantially lessened their impact. The third category covers situations in which the government changes a parliamentary amendment, but does so in a positive way which doesn't diminish its impact and which is acceptable to the MSP who brought forward the amendment. The fourth category covers all those successful parliamentary amendments at Stage 2 which were not subsequently altered.

Table 4 – Typology of overturned amendments

Category	Description
Fully reversed	This category includes parliamentary amendments which were entirely removed by subsequent government amendments.
Amended negatively	This category includes amendments which were partially amended by subsequent government amendments, with the effect of lessening their substantive impact.
Amended favourably	This category includes amendments which were amended by subsequent government amendments, but which tidied them up or made them technically workable rather than substantially undermining their original effect.
Untouched	These were parliamentary amendments where there was no evidence of subsequent government amendments having any impact on them.

Data analysis

For this research sub-question I again use a set of hypotheses to explore whether the data better supports the predictions of Jean Blondel's concept of legislative viscosity or the claims of the public policy literature. These are set out in table 5 below.

Table 5 – Hypotheses tested for research sub-question 2

Topic	No.	Hypothesis
Spread across categories	9	Most lodged parliamentary amendments should not be in the most important categories, and those that are should be concentrated in a small number of Bills.
Parliamentary impact	10	Successful parliamentary impact in the most important categories should occur mostly in minority government.
Overturned amendments	11	More, and more significant amendments should be overturned in majority government sessions.

The first hypothesis investigates the frequency of different types of policy impact across the typology. It tests the assumption, extrapolating from the public policy literature claim that most policy is consensual and incremental, that relatively few parliamentary amendments should seek to fundamentally transform government Bills. It also tests the connected assumption that where such amendments are lodged they should be concentrated in a small number of Bills with policy topics controversial or significant enough to motivate parliament to challenge the government's approach.

The second hypothesis shifts the focus from the impact which parliament sought to have on government Bills to the impact it achieved. In addressing this hypothesis I identify the extent to which government amendments were inspired by parliament and should therefore count as evidence of parliamentary impact. I then look at the general distribution of successful amendments, and whether there is evidence that the most important types of policy impact arise most often in minority sessions, based on the legislative viscosity prediction that such changes should be easier for parliament to make when it is free from government control.

The final hypothesis investigates the extent to which parliamentary amendment successes at Stage 2 of the Bill processes were subsequently overturned by the government at Stage 3. This analysis confirms whether or not parliament's amendment impact is ephemeral or is maintained throughout the legislative process, testing the legislative viscosity prediction that majority governments should be better able to use their plenary voting power to overturn amendments made at committee than minority governments.

The chapter concludes with illustrative examples of amendments which parliament made in order to contextualise each category of the typology.

Approach to research sub-question 3 – Why does the Scottish Parliament's impact on government Bills vary so much?

<u>Overview</u>

This final question is designed to investigate one of the main points of interest from my practitioner experience which drew me to conduct this thesis, which is the huge variation which can be found in parliamentary impact *within* as well as between minority and majority government sessions.

The purpose of this research question is to show how extreme this variation in parliamentary impact is, and the correlation which often seems to arise between how contentious a Bill is and parliamentary reaction to and impact on it. I use four case-study Bills from the first minority government session of the Scottish Parliament to demonstrate how, in a situation in which parliament had the capacity to block or significantly amend all Bills brought forward by government, it was selective about how it exercised that power.

<u>Data-set</u>

With the purpose of this research question being to explore whether a correlation exists between types of Bill and parliament's reaction to them, my approach to data-collection for this research question was to use a non-random selection of case-studies which could demonstrate this.

This approach is what Seawright and Gerring 2008, p.296) class as the 'diverse' category of approach to selecting case-studies. It is intended to address causation, and demonstrate that the context of an individual Bill and a parliament's approach to it are connected 'not by chance' (Dowding, 2016: 134).

My reason for choosing only Bills from minority government sessions 3 was that I was able to identify appropriate case-studies through my practitioner familiarity with the content of the individual Bills and the parliament's response to them in the first SNP minority government session of 2007-2011. I knew, with a high degree of confidence, that the Local Government (Elections) Bill, the Public Records Bill, the Alcohol Bill and the prospective Referendum Bill would demonstrate a wide spectrum of parliamentary response and impact, and these Bills are the case-studies I use. It has to be recognised, however, that this is a small sample and precludes examination of differences between minority and majority government sessions.

<u>Coding</u>

My approach to coding was to identify two sets of variables which could be used to demonstrate a relationship between the different claims of legislative viscosity and the public policy literature. One set of variables is used to demonstrate evidence of legislative viscosity, focused on the amount of scrutiny applied to government Bills and the amount of impact parliament had on them. A second set of variables is used to demonstrate evidence of stress (the amount of consensus or controversy) which each Bill generated.

Legislative viscosity variables

For legislative viscosity variables, the focus was on picking variables which could be expected to go up or down depending on the level of parliamentary interest in Bills. These are summarised in table 6 and described below.

<u>Table 6 – Viscosity variables</u>

Time	Number of days devoted to scrutiny
	Total amount of parliamentary scrutiny time
Sessions	Number of Stage 1 evidence sessions
	Number of Stage 2 evidence sessions
Amendments	Number of non-government amendments lodged
	Number of non-government, or government inspired by parliament amendments, passed
	Number of government defeats on amendments
	Significant of non-government amendments passed

(1) Number of days devoted to scrutiny – The parliamentary record shows when a Bill was introduced and when it was passed, and from that the amount of days it was subject to parliamentary scrutiny can be calculated. That data provides an opportunity to see whether the rate of scrutiny for the case-studies is steady or variable.

(2) Total amount of parliamentary scrutiny time – A variation on the timing theme is the precise time at which any deliberations on a Bill started and when they finished. This variable allows for pinpointing the amount of hours and minutes parliament spent on scrutiny. Using this variable avoids overestimating how much time was spent on scrutiny should a Bill sit in parliament for a significant period of time without any activity occurring.

(3) Number of Stage 1 evidence sessions – At Stage 1, lead committees are charged with considering the general principles of a Bill. They do this through evidence gathering, seeking written evidence and then calling the government and key stakeholders to appear before the committee to give oral evidence. The number of sessions held at

Stage 1 provides an indication of how deep evidence-gathering by lead committees went.

(4) Number of Stage 2 sessions – At Stage 2, lead committees debate and vote on any amendments which are lodged to a Bill and agree each section of a Bill. Occasionally, they might also conduct further evidence gathering at this point. The number of stage 2 sessions provides an indicator of how long lead committees spent looking at the detail of Bills.

(5) Number of non-government amendments lodged – At Stage 2 (committee) and Stage 3 (plenary), the government or any MSP can lodge amendments to a Bill. The number of non-government amendments lodged provides an indicator of the extent to which the parliament sought to amend government Bills, or to use the amendment process to probe the detail of a Bill.

(6) Number of non-government, or non-government inspired amendments, passed – As noted previously, MSPs can have a direct impact on the form of a Bill in two ways – either by succeeding in having one of their own amendments passed, or by persuading the government to bring forward an amendment on their behalf. The number of amendments made by, or inspired by, MSPs provides an indicator of the extent to which they were able to directly change a Bill.

(7) Number of government amendment defeats – The government can face defeat on amendments to a Bill in two ways – either by the parliament voting down a government amendment, or by the government failing to block a non-government amendment it was opposed to. The number of government amendment defeats provides an indicator of the coercive impact which the parliament had on a Bill.

(8) Significance of non-government amendments passed – As previously discussed, not all amendments are of equal policy significance, with a spectrum ranging from typographical amendments which changed words without any wider effect all the way through to the addition or deletion of entire policy topics. The significance of non-government amendments passed provides a clear indicator of the significance of direct parliament impact on a Bill. For the purposes of this analysis, I use a general description of the overall significance of the impact which parliament had on government Bills, ranging from none, to procedural/cosmetic to significance policy change.

Stress variables

Coding for legislative stress variables was less straightforward and required more thought about what variables could be used, and how to define those variables. The key focus was on identifying features of the legislative process which would show that the stress associated with a Bill – the extent to which it gave rise to tension, disagreement, discord etc. – arose during a Bill's parliamentary passage. The three variables I chose were policy divergence (the extent to which there appeared to be a divergence of policy opinion between parties), stakeholder views (the extent to which stakeholders supported the policy proposals put forward by in government Bills) and perceived political gain (whether the political environment surrounding the Bill was likely to influence how the Bill was scrutinised by parliament). These are summarised in table 7 and described below. Although my focus is on the specific stress associated with individual Bills it is possible that 'stress' could be influenced by the general political climate. It might be, for example, that there is more stress in the system following the 2014 independence referendum, and the potential for another referendum to come, than it was before. That general stress should still be picked up in an analysis of stress relating to individual Bills but is a variable which could be tracked over time if a larger sample of Bills were to be studied.

Table 7 – Stress variables

Stress variables	Policy divergence – Differences of opinion between parties in the parliament and government on the content of the Bill.
	Stakeholder views –The extent to which stakeholders supported the policy proposals put forward in the government Bill.
	Perceived political gain – The extent to which political antagonism arises about the content of a Bill.

(1) Policy divergence – It is reasonable to hypothesise that the more divergent the views between the government and opposition parties within the parliament on the policy topic(s) addressed in a Bill, the more likely that opposition parties will seek to block or amend it. And vice-versa, the more that the policy views of the government and opposition parties converge, the more amenable they should be to the passage of a Bill. This variable could apply to a whole Bill or it could apply to specific policy components of a wide-ranging Bill. To code for this variable I used reports from parliamentary proceedings which signalled whether parties agreed with or were opposed to the policy content of the Bill. I coded this variable on the basis of whether there was no, low, medium or high policy divergence accordingly.

(2) Stakeholder views – It is also reasonable to hypothesise that, the more external criticism that is voiced about a Bill (or parts of a Bill) by key stakeholders, and the more changes to the Bill which stakeholders lobby for, the easier it will be for the parliament to challenge the government position and to formulate potential amendments. And vice-versa, the more that stakeholders express support for the principles of a government Bill (or parts of a Bill) the harder it will become for opposition parties to rationalise and justify their opposition to a Bill and to generate amendments to it. I used the evidence which stakeholders provided to the lead committee, or other evidence where appropriate, to form a view on stakeholder views. My focus is on stakeholder views which were submitted to parliament in its call for evidence on Bills rather than as reported in the media. I coded this variable on the basis of whether stakeholder views were positive, negative or mixed.

(3) Perceived political gain – It is reasonable to assume that some element of rational decision-making will inform opposition parties' position in relation to a government Bill (or parts of a Bill). For example, where a Bill is technical, uncontroversial and is supported by stakeholders then there is little obvious gain from being seen to block that Bill. Indeed, opposition parties potentially stand to lose credibility and support from stakeholders and the electorate by blocking a Bill without any obvious justification. By contrast, opposition parties may see clear advantage in seeking to block a Bill (or parts of a Bill) which is unpopular or is opposed by key elements of stakeholder or public opinion. I coded this variable on the basis of whether the political environment around a Bill was neutral, antagonistic or polarised. A neutral political environment code was used when there was no obvious party political friction arising from scrutiny of a Bill. Differences of opinion might emerge and robust debate might take place, but the general tenor of scrutiny was to test the policy underlying the Bill rather than to attack its fundamental basis. An antagonistic political environment code was used when there was obvious friction between the government and opposition parties when a Bill was being scrutinised, with each settled on their position and seemingly unamenable to persuasion that the other's view may have merit. A polarised political environment was used when the parliamentary scrutiny of a Bill was fundamentally defined by conflict, with the government and opposition parties sitting at polar ends of the policy spectrum on a topic.

Data analysis

My approach to analysis of this data-set has three main parts, designed to enable me to test the hypothesis that in minority government settings, parliamentary impact on government

Bills should increase the more that those Bills diverge from the incremental and consensual policy predicted by the public policy literature.

Table 8 – Hypothesis tested for research sub-question 3

Topic	No.	Hypothesis
Correlation	17	In minority government settings, parliamentary impact on government Bills should increase the more that those Bills diverge from the incremental and consensual policy predicted by the public policy literature.

- First, I introduce the four case-studies which are used to demonstrate a wide spectrum of parliamentary impact.

- Second, I set out the results of the coding of legislative viscosity and stress variables for each of the case-study Bills.

- Third, I consider – in these particular case-studies – the extent of the correlation between low legislative viscosity and low stress, and high legislative viscosity and high stress, across the case-studies.

GENERAL METHODOLOGICAL ISSUES

The final part of this chapter addresses issues arising from my choice of methods.

Mixed methods approach

My methodological starting point is the 'why throw away anything helpful' approach identified by Weinstein and Tamur (as quoted in Miles and Huberman 1994, p.41). This flexibility is necessary because the tools which are appropriate for presenting a longitudinal perspective on Bill and amendment outcomes (which is essentially a basic counting exercise) are not appropriate for investigating the policy consequences of parliamentary impact (which requires an interpretation of specific legal provisions in a Bill). As a result, my approach is clearly 'mixed methods', defined by Tashakkori and Creswell (2007, p.4) as research in which the investigator collects and analyses data, integrates the findings, and draws inferences using both qualitative and quantitative approaches or methods in a single study or programme of inquiry.

Quantitative and qualitative research approaches are often described as fundamentally different ways of conducting research. The quantitative paradigm can be summarised as

having an emphasis on facts and causes of behaviour; the use of numbers that can be quantified and summarized; the use of mathematical analysis; and has results expressed in basic or complex statistical terminologies. (Golafshani 2003, p.597). That is the approach I take to addressing the first of my sub-research questions in particular, which is based on a relatively large data-set and numerical findings. By contrast, the qualitative paradigm can be summarised as being any kind of research that produces findings not arrived at by means of statistical procedures (Strauss and Corbin 1990, p.17). Qualitative researchers seek illumination, understanding and extrapolation rather than causal determination, prediction and generalisation of findings (Hoepfl 1997, p.48). This approach is particularly relevant to my second and third research sub-questions which focus on the interpretation of the meaning and consequences of parliamentary impact.

A mixed methods approach is not without controversy (Creswell 2011, p.269), with some arguing that quantitative and qualitative paradigms can never be mixed due to the inherent differences (and different ontological, epistemological and methodological assumptions) underlying them (Creswell 2011, p.275). There are two principal responses to this. The first is to argue (Reichardt and Cook 1979, p.16.) that paradigms are not the sole determinant of the choice of methods. The second is to present mixed methods as an alternative paradigm which embraces a plurality of assumptions and methods. The latter is the pragmatist approach (Johnson et al 2007, p.125), which aims to find a middle ground between philosophical dogmatisms and give the freedom to choose the best methods to answer the research question to hand. A pragmatic mixed methods approach is believed to bring potential benefits such as triangulation, expansion, exploration, completeness, offsetting weakness and illustration. (Doyle et al 2016, p.624)

My approach fits within this pragmatist paradigm, with my principal methodological concern being to adopt methods which are appropriate to the type of analysis which is required to answer the relevant research question, and to provide multiple perspectives on the key issue of government domination of the legislative process in order to present the most rounded picture possible. Addressing different facets of parliamentary impact, such as basic Bill and amendment outcomes, and subjective judgements on the significance and policy consequences of amendments, requires a variety of tools and techniques to be employed, straddling the qualitative and quantitative divides, reflective of the convergent/concurrent triangulation design (Doyle et al 2016, p.625) within the mixed methods approach. My emphasis on data-driven variables within my chosen case-studies means my approach could also be described as more quantitatively dominant than pure mixed methods or qualitatively dominant approaches (Johnson et al 2007, p.124). But in taking this mixed

methods approach I heed Bryman's (2007, p.21) caution that those reading mixed methods research deserve more than being presented with parallel accounts that barely connect – good integration in a mixed methods study should provide a whole greater than the sum of its parts.

Use of case-studies

My thesis is fundamentally an analysis of case-studies in the longitudinal case analysis tradition (Jenne, 2019). My principal case-study is the Scottish Parliament itself, from which I draw all of my data for this thesis. Within that specific institutional boundary, I make extensive use of samples of Bills and individual Bill case-studies. Seawright and Gerring (2008, p.296) define the use of case-studies as the intensive (qualitative or quantitative) analysis of a single unit or a small number of units (the cases), where the researcher's goal is to understand a larger class of similar units (or population of cases). Seawright and Gerring (2008, p.295) identify two main justifications for the selection of case-studies. The first is pragmatic considerations (such as time, money, expertise and access), which drove my approach to using a sample for my second research sub-question which focused on the type of impact which parliament has on government Bills. The other is based upon methodological justification (with the range of types being typical, diverse, extreme, deviant, influential, most similar and most different), with the 'diverse' justification driving my approach to my third research question which focused on the variation in parliamentary impact across Bills.

Ethical issues

The general ethical framework for this research is set out in the University of Stirling's 2018 guidance on 'Research ethics: definitions, principles and responsibilities', which is in turn informed by Economic and Social Research Council's Framework for Research Ethics. The University of Stirling's definition of research ethics is that it "involves the application of fundamental ethical principles to research activities which include the design and implementation of research, respect towards society and others, the use of resources and research outputs, scientific misconduct and the regulation of research". The main ethical issue which arose in the conduct of this research was practitioner-researcher considerations.

This issue arose due to my practitioner role as a civil servant involved in the development of the Scottish Government's legislative programme. Practitioner research can be defined in a number of ways, such as those who have professional responsibilities and who are also

conducting research into it (Bell and Nutt 2012, p.76) or the study of a social situation carried out by those involved in that situation in order to improve both their practice and the quality of their understanding (Winter and Munn-Giddings 2001, p.8). My research approach was not formally practitioner/action research, and is best described as practitioner informed, but this still gave rise to some ethical issues which needed to be considered.

The first of these was data access. Although I was researching the area in which I worked and had access to a wide range of confidential information about the government's legislative programme and its approach to the parliamentary handling of individual Bills, the data for my research was obtained solely through public domain sources. This deliberate non-use of confidential data is the principal difference between practitioner informed and practitioner/action research. The main utility which was drawn from my practitioner experience was context and understanding of the legislative environment rather than, for example, any form of participant observation or similar approach.

The other element I had to consider was the potential bias and conflict of interest which my practitioner status gave rise to. The University of Stirling's ethical guidance makes clear that the independence of the research should be clear and any conflicts of interest or partiality should be explicit. I addressed these issues of independence and potential conflict of issue by situating the research solely in the context of personal interest and continued professional development. So, although the Scottish Government provided support for this research, it did so on the basis of its general commitment to my CPD rather than as the funding a study of the legislative process (although even if it had it is unlikely any parameters which it would set for such research would have given rise to significant ethical issues).

Reliability and validity

The final general methodological issue to be considered is the concepts of reliability and validity. These concepts are used to evaluate the quality of research and, as Guba and Lincoln (1985, p.290) note, they are essential questions in understanding whether the results of research are worth paying attention to.

Reliability is about the extent to which measurements are repeatable (Drost 2011, p.106) and consistent over time (Payne and Payne 2011, p.197). There are different ways of testing reliability, such as test-retest (do you get the same results when you repeat the measure) (Drost 2011, p.109); interrater (do you get the same results when different people conduct the same measurement) (Drost 2011, p.111); and internal consistency (do you get the same

results from different parts of a test that are designed to test the same thing). (Drost 2011, p.111) The use of mixed methods in this thesis means a number of issues of reliability arose.

For example, my use of a quantitative data-set to consider the Scottish Parliament's impact on government legislation in longitudinal perspective was essentially a large data-extraction exercise with little interpretation required. The principal task was coding Bill and amendment outcomes from public domain sources. To that extent, the process was highly repeatable and, if no errors were made in the data extraction, multiple researchers should produce precisely the same data-set, but without intercoder reliability tests some uncertainty will remain. The quantity of data collected (39,847 amendments) for this data-set means that some transcription errors are bound to have arisen. However, having conducted a sample retest check and found an error rate of less than one in one hundred, any transcription errors which remained are unlikely to significantly impact the reliability (and validity) of the results.

My exploration of the policy consequences of parliamentary impact was a much more subjective process. By coding for a nineteen category typology there was a much higher degree of risk that my judgement of how to code amendments would not be internally consistent. I addressed this by collecting and recording descriptive data for each amendment which explained my choice of category, and repeating the coding of amendments on three separate occasions with a view to identifying amendments which addressed similar topics but which could be coded into more than category (and then choosing the category which was the best fit). In doing so I improved the internal consistency of my approach to coding amendments, but I recognise that if other people were to undertake the coding exercise they might reach different (and potentially very different) judgements than mine about where to place amendments in the typology.

Validity is about the accuracy of a measure and the extent to which the results really measure what they are supposed to measure (Drost 2011, p.115). There are different ways of testing validity, such as construct (the adherence of a measure to existing theory and knowledge of the concept being measured); content (the extent to which the measurement covers all aspects of the concept being measure); and criterion (the extent to which the result of a measure corresponds to other valid measures of the same concept. (Drost 2011, pp.115-120).

Part of my rationale for adopting a mixed methods approach was to maximise the validity of my results. My quantitative data-set provides a valuable longitudinal perspective on the parliament's impact on government legislation, and allows for testing any variation which

arises between minority and majority sessions. It provides a general picture of parliamentary impact and allows for general trends to be identified and broad conclusions about the importance of parliament's role to be reached. But the significance of that impact is unclear, and likewise the extent to which government amendments were inspired by parliament. My analysis of government amendments clearly inspired by parliament in my case-study based chapters helps corroborate or challenge the quantitative picture, as does the scoring of amendment significance, but it does so at the expense of scale. My analysis of the policy implications of parliamentary amendments provides further insight to the practical effect of parliamentary impact, but again at the expense of scale and generalisation. I would argue that each of these techniques offers a valid perspective on parliamentary impact within my research framework on the basis it is clear what they are seeking to identify and the limitations of each is acknowledged, and that together they provide a comprehensive and highly valid picture of parliamentary impact.

CONCLUSION

The purpose of this chapter was to address my second research aim of demonstrating the importance of method in drawing conclusions about the extent to which government dominate the legislative process.

It is clear from the literature that the question of government dominance of the legislative process can be, and has been, approached in a number of different ways, straddling the quantitative and qualitative divide. Choosing which methods to use can be driven by the availability of data, the time and resources available, or the specific issue which a researcher wants to address. The three thematic approaches I identify from the literature – simple empirical analysis; amendment significance; and in-depth case-study analysis – each have their place in this thesis, and I have shown how each will be operationalised to answer my three corresponding research sub-questions. Mine is a pragmatic approach, utilising the best of the existing methods where that will provide the most valid results, and developing new methods where that is necessary to generate the insights that I need to fully answer my research questions.

Taking this multi-faceted approach to the question of whether government dominates the legislative process enables me to consider government domination from a range of perspectives – does it change over time? does it change between minority and majority government sessions? and does it change if the lens shifts from the impact parliament is able to secure directly to that which it secures through government? It also enables me to address the question on a more fundamental level – what type of Bills are government

bringing forward? Is parliament actually trying to effect significant change to these government Bills? And is parliament's response to government Bills driven by the content of those government Bills?

My three results chapters (chapters 5 to 7) set out the answers to these questions. Before doing that, the next chapter provides essential case-study context about the Scottish Parliament, its legislative process and how its performance is viewed.

CHAPTER 4 – SHOULD WE EXPECT GOVERNMENT TO DOMINATE THE SCOTTISH PARLIAMENT'S LEGISLATIVE PROCESS?

Does government dominate the legislative process? A case-study of the Scottish Parliament.

INTRODUCTION

The purpose of this chapter is to investigate whether the Scottish Government should be expected to dominate the Scottish Parliament's legislative process.

I start with some historical perspective, tracing the key decisions which the Scottish Parliament's architects made about its structure and its legislative process, and considering the implications this had for the roles of government and parliament. This is the story of a journey from the promise of a radical 'new politics' in Scotland to the pragmatic realisation of a fairly ordinary parliamentary democracy which put government and parliament in their traditional roles of policy initiator and scrutiniser respectively. This structural analysis of the Scottish Parliament identifies the key institutional variable with the potential to significantly alter the legislative dynamic between parliament and government as the parliament's proportional electoral system, which has produced a constant shift between periods of majority and minority governments. Seen through the prism of Blondel's concept of legislative viscosity this holds out the prospect of higher levels of government domination in periods of majority government and lower levels in periods of minority government.

The second part of the chapter reviews what the literature has to say about government domination of the Scottish Parliament's legislative process. The story this time is of something only partially told, with detailed analysis of the Scottish Parliament's legislative process limited to the parliament's earliest years. This early research reveals legislative outputs, whether in the form of Bill and amendment outcomes, voting behaviour or party whipping, with much in common with Westminster, and government the dominant actor in the legislative process. Since then, most research and commentary has been hampered by a lack of data, but with the prevailing view being that periods of minority government have broadly mirrored periods of majority government and that government, and government business, has continued to dominate much of the Scottish Parliament's time.

The two parts of this chapter demonstrate the contribution which this thesis can make both in providing an up to date empirical picture of the Scottish Parliament's legislative process, and in reaching fresh conclusions on the extent of government domination of it.

A NEW TYPE OF PARLIAMENT? THE INSTITUTIONAL GAP BETWEEN RHETORIC AND REALITY

The establishment of the Scottish Parliament was, in historical institutionalism terms, a 'critical juncture' in UK governance which meets Lipset and Rokkan's (1967) requirements – it was brought about by a crisis (in this case a crisis of UK Government democratic legitimacy in Scotland), there was a window of opportunity for radical reform to take place (which was the devolution process), and the result was major institutional change (the establishment of the parliament itself).

Scottish Constitutional Convention

The parliament's proponents emphasised the transformational impact which the Scottish Parliament would have on Scottish politics. The initial high level blueprint for the parliament, the Scottish Constitutional Convention's (SCC) 1995 report "Scotland's Parliament, Scotland's Right', envisaged a 'new politics' (Mitchell 2000, p.605) "that is radically different from the rituals of Westminster: more participative, more creative, less needlessly confrontational" (1995, The Scottish Constitutional Convention section, para. 2). Much of the report emphasises the benefits which would come from establishing a parliament more in tune with, and responsive to, its electorate. The SCC's report is emblematic of the high hopes and aspirations of the parliament's proponents.

Although it is the absence of a discussion of the role of parties in modern political democracies which is most commonly identified (for example, Megaughin and Jeffrey 2009, p.11) as the main gap in the SCC's report, it is just as striking (particularly from my perspective as a career civil servant) that virtually all responsibility for the success of devolution was placed on the parliament itself, with almost no attention given to the normal role of government. Not only did this make the parliament the focal point for the devolution campaign, it established in people's minds the parliament's performance as being the yardstick for whether devolution had been successful, and the parliament as responsible for functions not ordinarily performed by Westminster-style legislatures. For example, various policy functions, such as in relation to transport, energy and the utilities would be for the parliament rather than a new executive (1995, Creating a Prosperous Scotland section, para. 1). Various powers vested with UK Government Secretaries of State (for example, 1995, Creating a Prosperous Scotland section, para 4), were envisaged as transferring to the parliament rather than to a new set of Scottish Ministers. Civil service recruitment was to

be a matter for the parliament (1995, The Civil Service section, para. 1). The discussion about a new form of central and local government relationship involved only the parliament and local authorities (1995, Scotland's Parliament and Local Authorities section, para 1), and makes no mention of the role of a new executive. Indeed, the report went as far as to say that there would not be "an extra tier of government" in Scotland (1995, What Price Accountability? section, para 2). There were only passing references to a new executive in the document, and these were in relation to it leading certain UK delegations to the EU's Council of Ministers (1995, Scotland's Voice in Europe section, para 1), and in the need for a process for appointing a new set of Scottish Ministers (How Scotland's Parliament Will Work section, para 5), with the result that the report was essentially silent on what functions those new Ministers would perform.

Nor did the SCC's report go into detail about how the prospective parliament's legislative process would operate, although the ambition for procedures enabling rigorous scrutiny of proposed legislation (1995, How Scotland's Parliament Will Work section, para. 6) was made clear along with the desire for a system of powerful committees (1995, Standing Orders section, para 2). The ability for those committees to initiate legislation as well as scrutinise government Bills (1995, Standing Orders section, para 2) is identified, but there is no substantive discussion about how that ability might be used or what volume of legislation it might lead to.

UK Government White Paper and Scotland Act 1998

The UK Government's 1997 White Paper, *Scotland's Parliament*, and the resultant Scotland Act 1998 took the SCC's proposals and gave them more concrete form. This can be seen as a pivotal moment in the establishment of the Scottish Parliament, although curiously it is often overlooked in the literature. The White Paper and Scotland Act are important because they represent the point at which the SCC's proposals were translated into a much more traditional form of parliamentary democracy in the mould of Westminster than its proponents seem to have envisaged. For example, the White Paper made clear at its outset that there would in fact be a new tier of government, the Scottish Executive. The White Paper's observation (1997, p.ix). that the new government would "operate in a way similar to the UK Government and will be held to account by the Scottish Parliament" sits uncomfortably with much of the new politics rhetoric surrounding the parliament's establishment, and indeed with much later descriptions of what type of parliament it was thought had been established.

Many of the SCC's assumptions about the role and primacy of parliament were translated into new roles for the executive - the parliament's key role was to be much less in leading transformational change and much more about holding the new Scottish Executive to account for its actions (1997, p.13). Statutory powers and duties exercised by Ministers of the Crown were to be transferred to Scottish Executive Ministers rather than the parliament (1997, p.7). The executive was inserted back into the relationship between parliament and local government (1997, p.18). The Scottish Executive would be the key liaison with UK Government departments rather than the parliament (1997, p.14). And there is a clear assumption that the Scottish Executive would be the principal initiator of legislation (1997, pp.14-15). The observation that committees of the parliament "might" initiate legislation (1997, p.30) is hardly suggestive of an expectation that they would be important policy drivers. Instead, the clear intention is that having strong committees would mean that the proposals of the executive would be appropriately scrutinised (1997, p.30). Existing civil servants from the Scottish Office would transfer to the executive rather than the parliament, with the latter envisaged as having a relatively small staff of non-civil servants (1997, p.32).

The UK Government's White Paper was given statutory form through the Scotland Act 1998, establishing in law an obviously Westminster-style of parliamentary democracy, with an executive drawn from amongst those MSPs elected to the new unicameral parliament, which would continue in existence only for as long as it commanded the support of the parliament. Reflecting the Westminster norm of reflecting party balance in parliament and anticipating how important parties would be in the life of the new parliament, it also included provision requiring that, in appointing members of committees and sub-committees, regard should be had to the balance of political parties in parliament. Other key aspects of the new parliament's structure set by the 1998 Act are discussed below.

A unicameral parliament

The Scotland Act 1998 established the Scottish Parliament as a unicameral chamber of 129 MPS. The choice of a single chamber legislature was a pragmatic one on the part of its founders, keen to avoid public criticism of the creation of new layers of governmental and parliamentary structures in Scotland. Academic analysis at the time (The Constitution Unit 1999) provided comfort that the absence of a revising chamber would not stop a unicameral parliament from holding government to account, particularly if power was dispersed through a proportional representation electoral system and the committees of the parliament had sufficient power and autonomy.

<u>Limited range of competencies</u>

The Scottish Parliament does not have the unfettered ability to make law in any area of policy. Section 29 of the Scotland Act 1998 establishes the "devolved competence" of the Scottish Parliament, which is essentially the sphere of activity within which the Scottish Parliament may operate, particularly in terms of the legislation it can bring forward. Although some important subject areas are within the parliament's legislative competence (and this competence has been gradually expanded since 1999), such as justice, education and the environment, others such as defence, international relations and significant areas of taxation are not. The boundaries of the parliament's legislative competence are set by the parliament being able to act in areas which are not specifically "reserved" to Westminster. The current list of reserved areas, and the areas which are correspondingly devolved, are summarised below.

Table 9 – Legislative competence of the Scottish Parliament

Powers devolved	Powers reserved
• Agricultural, forestry and fisheries • Education and training • Environment • Health and social services • Housing • Land use planning • Law and order • Local government • Sport and the arts • Some forms of taxation • Many aspects of transport	• Macroeconomic and fiscal issues • Foreign policy and international relations • The Constitution • Defence and National Security • Employment • Equal opportunities • Broadcasting • Immigration • Trade and industry, including international trade • Many aspects of benefits and social security • Financial services and pensions

(Table derived from https://www.deliveringforscotland.gov.uk/scotland-in-the-uk/devolution)

It is possible that the Scottish Parliament's restricted legislative competence means that, all other things being equal, the legislation which the Scottish Government brings forward will in overall terms be less likely to be politically polarising than it would have been had it had the ability to bring forward legislation on the full spectrum of topics. That does not mean that all of the government's legislation will necessarily be without controversy, just that there will potentially be fewer controversial Bills in the Scottish Government's legislative programme than, for example, the UK Government's legislative programme (which can legislate on a much wider range of topics).

<u>Proportional representation electoral system</u>

The Scotland Act 1998 also established that the Scottish Parliament would be elected through a form of proportional representation, with the total of 129 MSPs comprising 73 MSPs elected to first past the post constituencies and 56 MSPs elected to regional lists according to their share of the vote in that list. The system was designed with the principled intention that no single party should dominate the parliament in the way that frequently occurred at Westminster, and with the less principled intention (Miller 1999, p.304) of making it very difficult for a nationalist government to secure a majority of votes which would act as a springboard to independence.

What has actually transpired since 1999 is a mixture of government formations as set out below. Although the neutral position of the Presiding Officer of the Scottish Parliament reduces the total number of participating MSPs to 128, the number of votes which parties require to obtain a majority remains at 65.

- Session 1 (1999-2003) – A coalition government of Labour and the Liberal Democrats with a large combined majority of votes in the parliament. Following the election the coalition had a combined total of 73 seats.

- Session 2 (2003-2007) – A continuation of that Labour/Liberal Democrat coalition government, with a reduced majority of votes in the parliament. Following the election the coalition had a combined total of 67 seats.

- Session 3 (2007-2011) – A new SNP single-party minority government, with a share of votes in the parliament substantially short of a majority. Following the election, the SNP held 47 seats, 18 short of a majority and only one more seat than the next biggest party, Labour, which had 46.

- Session 4 (2011-2016) – A continuation of the SNP single-party government, but this time with a small majority of votes. Following the election the SNP held 69 seats, which reduced to 68 when Tricia Marwick was appointed as the parliament's Presiding Officer.

- Session 5 (2016-2021) – A further continuation of the SNP single-party government, with a large minority of votes in parliament. Following the election the SNP held 63 seats just short of the 65 needed for a majority.

The impact of this changing picture of majority and minority government administrations is one of the key focuses of this thesis. Blondel's theory of legislative viscosity predicts that the single party SNP governments of sessions 3 and 5 (and session 3 in particular) should have struggled to secure the passage of their legislative programmes in comparison with the majority governments of session 1, 2 and 4.

Analysis of data collected for this thesis on voting coalitions (the extent to which two parties voted in the same way on Bill-related votes) provides an insight to the extent to which the minority governments of sessions 3 and 5 were operating as fully independent minority governments or whether there was an informal coalition at play. This helps explore whether, for example, there was a 'hidden' coalition between the SNP and the Green Party, a plausible scenario given that the SNP has been dependent on Green votes on many occasions to secure its annual budget.

A useful starting reference is the formal Labour-Lib Dem coalition government of sessions 1 and 2. In both sessions, in all Bill-related votes in plenary and at committee, the two parties voted together over 99% of the time. By contrast, since the both parties left government they have voted together 53%, 71% and 61% of the time in sessions 3, 4 and 5 respectively.

How do the two SNP minority governments of sessions 3 and 5 compare? The voting coalitions between the SNP and other main parties are set out below in figure 2. The data demonstrates that the SNP did not have a voting coalition with any single party on a par with the coalition governments of the first two sessions, and its experience of voting coalitions appears to be different in sessions 3 and 5. In broad terms figure 2 could be interpreted as suggesting in session 3 that the SNP Government relied heavily on the Conservative party for votes (with the two parties voting together 70% of the time), and had to look to all parties in session 5 (with its strongest voting coalition with the Green party amounting to only 53%). The absence of a permanently stable coalition of votes, particularly in session 5, may explain why the SNP has in session 6 entered into a co-operation agreement with the Green Group, which should secure a stable working majority on votes - at least for any topics falling with the shared policy programme set out by the two parties.

Figure 2 – Voting agreement between parties
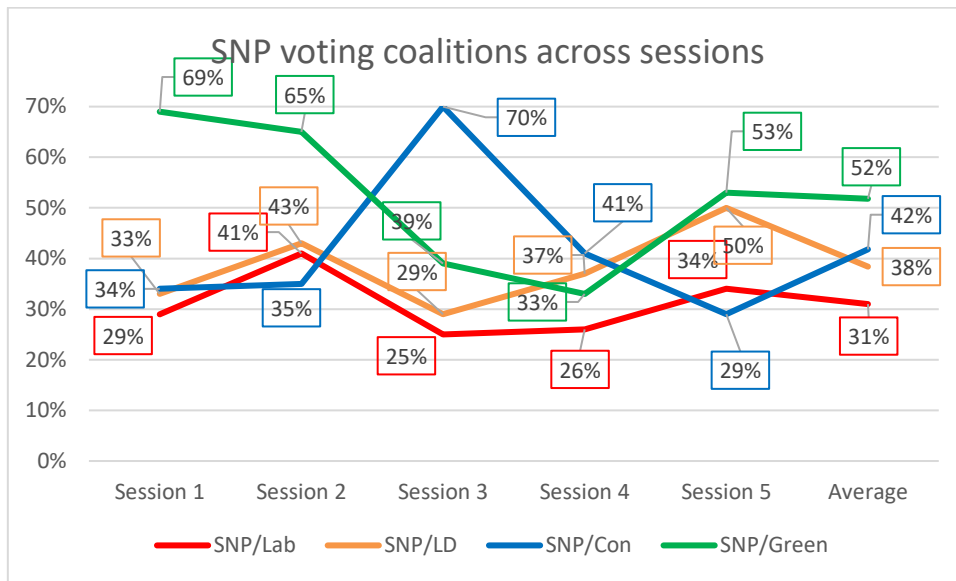
However, the overall voting results do not tell the full picture and it changes significantly when considering voting coalitions on individual Bills. In session 3, for example, the overall 70% voting coalition between the SNP and Conservatives masks considerable divergence across Bills – for example, on the session 3 Climate Change Bill the two parties voted together on 98% of votes, whereas on the session 3 Alcohol Bill the parties voted together only 26% of the time. This feature can also be found in session 5 with the SNP and Greens voting together on 70% of votes in relation to the Transport Bill (a key element of which was a workplace levy scheme agreed between the parties as part of their Budget negotiations) and on only 14% of the Social Security Bill. These results suggest that there was a fundamental difference between the experience of coalition majority governments (able to rely on a majority on essentially all votes on all Bills) and that of single party minority governments (which had no such guarantee). The Bill level results suggest that what was at play in minority government sessions was shifting coalitions of votes depending on the subject matter dealt with in the Bill.

It is also worth noting the potential for a qualitative difference in the experience of the three majority governments in the Scottish Parliament since 1999. The first two Labour/Liberal Democrat administrations both enjoyed healthy double-figure majorities over the course of the first two parliamentary sessions, compared with the SNP government of the fourth session which started with an effective majority of only three which gradually dissipated over the course of the parliamentary term to less than an effective majority (as a result of the resignation from the party of John Finnie and Jean Urquhart in October 2012; the expulsion from the SNP of Bill Walker in 2012; and the resignation from the party of John Wilson in

2014). It is also worth noting that John Finnie and Jean Urquhart remained as members of two of the most important committees in the parliament (Justice and Finance respectively) meaning that the SNP was unable to appoint replacement members to those committees.

Consultative Steering Group

Returning to the chronology of the establishment of the Scottish Parliament, following the successful passage of the Scotland Act 1998, the UK Government established the Constitutional Steering Group (CSG) to develop further detail on how the Scottish Parliament would operate on a day to day basis. As the CSG report noted (1998, introduction section, para 2), now that the broad framework for how devolved Scotland would be structured had already been set, this meant the CSG's focus was very much on the "nuts and bolts" (1998, introduction section, para 7) of the operation of the parliament itself. The CSG report identified four key principles (power-sharing, accountability; accessibility, openness, responsive and participatory; and equal opportunities) (1998, section 2, para 2) which guided its work.

Despite these aspirational principles, much of the content of the CSG's report can be seen as a continuation of the traditional Westminster-style roles and responsibilities and structures envisaged in the UK Government's 1997 White Paper. There was a clear emphasis, for example, on "the need for the Executive to govern, including enacting primary and subordinate legislation…" (1998, section 1, para 6) and for parliament to have the "time and opportunity to scrutinise the work of the Executive" (1998, section 1, para 6). The pre-eminence given to government business throughout the CSG report, and the placing of the parliament principally in reaction to that business, conflicts with Mitchell's view (2000, p.610) that the CSG envisaged "a situation in which a government party lost control of its legislative agenda". Instead, the CSG report explicitly recognised that "one of our key principles relates to accountability and we believe that much of the work of the Parliament will focus on scrutinising the Scottish Executive in exercising its functions" (1998, section 3.4, para 1). Indeed, the section of the CSG report dealing with "accountability" (1998, section 3.4, paras 1-33) is concerned exclusively with the different ways (through scrutiny of its annual budget, its future legislative programme, general debates, Ministerial statements, votes of no confidence, committee scrutiny, PQs etc.) in which parliament could hold the executive to account for its actions.

The traditional approach to allocating roles to the executive and legislature is exemplified by the CSG's approach to the policy development process. Here the CSG's recommendations

envisaged a "process which involves genuine participation and consultation led by the Executive". (1998, section 2, para 18). Although Cairney (2011c, p.11) has suggested the CSG had recommended that "the Scottish Parliament would have a formal pre-legislative role" it is arguable that the practical result was precisely the opposite. The Parliament's duty to consider what pre-legislative scrutiny had been undertaken by the executive was to occur *after* the pre-legislative phase had concluded (1998, section 3.5, para. 5), at a point in time when it was too late to meaningfully influence what had gone before. Instead of an active role in that pre-legislative stage, what the CSG envisaged was a "supervisory role" (1998, section 3.5, para. 6) for the parliament, "freeing up valuable committee time, allowing committees to focus on proposals which have already been the subject of participative involvement of interested bodies" (1998, section 3.5, para. 6). So, despite Mitchell's claim (2000, p.610) that "the CSG's working assumption appears to have been that the Parliament would be important in policy-making", it is arguable the CSG report seems to point in the opposite direction.

It seems clear that the main purpose of establishing strong all-purpose committees, combining the Westminster Select and Standing Committee roles, was to enable them to "develop an expertise in particular areas and to bring an informed view to the consideration of legislation and scrutiny of the Executive." (1998, section 2, para 13) The CSG report recognised the benefits of parliamentary structures (mainly in the form of committees) mirroring the structure of the Scottish Executive "which would facilitate close scrutiny of Executive actions" (1998, section 2, para 14). The statutory requirement in the Scotland Act 1998 to have regard to the balance of parties within the Parliament was recognised (1998, section 2, para 97), and the CSG went further by applying the same concept to the selection of committee conveners, with the clear implication that parties would be allocated 'their' share (1998, section 2, para 98). The balance of plenary time was also slanted towards scrutiny of government business, with members' business pushed into the evening slot after votes at the end of the day had been dealt with (1998, section 3.3, para 7), no minimum amount of time allocated for committee business to be debated in plenary (1998, section 3.3, para 9) and a relatively small number of days (12) per year recommended as a minimum allocation to non-government parties (1998, section 3.3, para 10).

Finally, the CSG report also explicitly recognised that "there appears to be little doubt that, while Members and Committees in the Scottish Parliament will have the power to initiate legislation, the majority of legislation will originate from the Executive" (1998, section 3.5, para 5). It is not obvious from the relatively brief consideration given to the matter in the SCC report, the UK Government White Paper or the CSG report, that a significant number of

committee Bills was what was envisaged. Indeed, the CSG report's analysis of the committee Bill process is strongly suggestive of it envisaging the capacity to initiate legislation as a strong agenda-setting device as much as a route through which committee Bills would be processed. That can be inferred from the specific recommendation that "if the Executive indicated that it would bring forward the relevant legislation, then the Committee should not proceed to instruct" (1998, section 3.5, para 20).

The Scottish Parliament's Standing Orders

The final part of the creation of the Scottish Parliament's legislative process was the development of its Standing Orders rules (for the latest version see Scottish Parliament (2021)). These were modelled on the CSG's recommendations, and adopted by the new parliament. They set out the parliament's three stage legislative process, the main elements of which are:

- Stage 1 - Scrutiny of the general principles of a Bill by a lead committee, whose report on the general principles informs a plenary debate on whether the Bill should progress to Stage 2.

- Stage 2 – Section by section consideration of the Bill by the lead committee, and lead committee consideration and voting on any amendments proposed to the Bill.

- Stage 3 – Consideration by plenary of any further amendments to the Bill, and a final plenary vote on whether the Bill should be passed.

Some of the key features of this three step process are set out below.

<u>No formal pre-legislative scrutiny</u>

Standing Orders make no provision for the Scottish Parliament's role in the development of government Bills before they are formally introduced. Instead, they place a requirement on the Scottish Government to set out what consultation it has undertaken in developing its Bill (Rule 9.3.3(c)). Standing Orders do not prohibit the parliament from becoming more actively involved in the pre-legislative phase, whether in considering government consultations on Bill proposals or conducting formal pre-legislative scrutiny on draft Bills in the way that the UK Parliament does. However, the general approach of the parliament has been to leave the

development of government Bills to the government, with parliament's role to scrutinise what is brought forward. This is partly pragmatism (with committees feeling they have insufficient capacity to conduct pre-legislative scrutiny in addition to their other functions) and politics (with opposition parties not wishing to compromise their ability to challenge the legislation which government brings forward).

A package of information to support scrutiny

As well as requiring the text of a Bill to be provided, the parliament's Standing Orders require that contextual information is provided along with Bills when they are introduced (Rule 9.3). The purpose of this material is to enable parliamentarians to understand the purpose of the Bill, any consultation carried out, its financial implications and so on. This accompanying documentation reduces the technical barrier of entry to parliamentarians and stakeholders engaging with draft legislation, and provides avenues for further scrutiny.

The Stage 1 process

The Stage 1 process is usually driven by a lead committee (the committee of the parliament within whose remit the Bill falls) which is responsible for considering the general principles of a Bill. Choosing the lead committee in this way is a deliberate design choice (Rule 9.6.1), intended to ensure that those who are responsible for scrutinising the Bill have much more experience of the general subject matter than if an *ad hoc* committee was established.

The lead committee's scrutiny usually involves gathering written evidence, then taking oral evidence from key stakeholders, and concluding with evidence from the government Minister in charge of the Bill. This investigation of the general principles is supported by parallel work by the Delegated Powers and Law Reform Committee (which looks at any subordinate legislation powers, powers to issue guidance, powers of direction etc. – Rule 9.6.2) and the Finance Committee (which may scrutinise the financial implications of Bills – Rule 9.6.3), which come together into a 'Stage 1 report' (Rule 9.6.3). This Stage 1 report of the lead committee usually sets out whether it recommends that the parliament should agree to the general principles of the Bill, and will invariably make recommendations to the government about what changes it would like to see made to the Bill at the amending Stages. Only after the Stage 1 report is published does the full parliament debate whether the general principles of the Bill should be agreed and the Bill can proceed to Stage 2, with the Stage 1 report usually informing the topics raised in that debate. This is the key decision-point in

Stage 1 – if the parliament agrees to the general principles the Bill continues to Stage 2; if it doesn't the Bill falls.

The parliament's approach to Stage 1 is defined as much by convention as it is by the rules set out in Standing Orders. For example, there is no minimum/maximum period for the duration of Stage 1, but it is typical for this to last several months. There is no guide to the balance of time which should be spent between committee scrutiny and plenary scrutiny at Stage 1, although the practical reality is that plenary's role is usually limited to a single debate at the conclusion of Stage 1. Although there is no requirement to obtain external (e.g. stakeholder or members of the public) views on a Bill, issuing a call for evidence to obtain those views is now standard practice. There is no detailed template for what issues Stage 1 reports should address or how lead committee recommendations should be framed, although it is standard for lead committee's to shape reports according to the structure of thematic issues in a Bill and to set out views for and against those elements it has obtained from stakeholders.

The Stage 2 process

If a Bill passes Stage 1, it is usually referred back to the lead committee which scrutinised it at Stage 1 (Rule 9.7.1), ensuring that the committee is able to bring its knowledge to bear at the Bill's first amending stage. Scrutiny of Bills at Stage 2 usually takes two main forms which run alongside each other.

The first element is the consideration of amendments to a Bill (Rule 9.7.5). Any MSP, including government Ministers, can lodge amendments to a Bill at Stage 2, but only members of the committee can vote on them. This means that although Stage 2 is led by the committee, and committee members and the government tend to dominate the lodging of amendments, other MSPs are not excluded from participating, and sometimes do (for example if they have a personal or constituency interest in the subject matter of a Bill). At Stage 2 the committee has complete authority to amend the Bill in any way it wishes to, as long as amendments meet the required lodging criteria. The two main admissibility criteria are essentially that the amendment is relevant to the subject matter of the Bill (which places restrictions on the ability to introduce substantially new topics via amendment (Scottish Parliament 2018, paras 4.14-4.21)), and will not wreck it (by removing one of its fundamental components (Scottish Parliament 2018, paras 4.22-23)). This obviously place restrictions on the extent to which the Parliament can add to or remove from a government Bill, and

therefore limits how fundamentally amendments can alter Bills, which is an issue I explore in later chapters.

The second element is a non-binding decision on whether each section of the Bill should be agreed to, once any relevant amendments to it have been disposed of (Rule 9.7.3). This is the procedural requirement - that "each section and schedule and the long title of the Bill shall be considered separately and the committee shall decide whether to agree to them" – which conveys the impression that the lead committee undertakes line by line scrutiny at Stage 2. In reality, because a decision by the committee to vote against a section does not actually remove it (the interpretation being that sections can only be removed by way of amendment) most sections are simply nodded through without any substantive debate. Lead committees seldom undertake detailed line by line scrutiny and it is instead the lodging of amendments which dictates where the lead committee's focus of scrutiny will be at Stage 2.

Like at Stage 1, the basic framework of Stage 2 scrutiny (and again at Stage 3) also does not formally address a number of important issues. There is no time limit on debates on amendments, although the pattern which is followed is that the MSP with the first amendment in a group opens and closes the debate on those amendments, with other MSPs normally allowed to make a single contribution. There is no limit on the number of amendments which can be lodged, with the number in practice ranging from none to several hundred depending on the Bill. There is no legislative competence check on amendments which are lodged, although the government will typically make clear if it thinks an amendment would take the Bill outwith the legislative competence of the parliament. There is no requirement to take evidence on amendments and most Stage 2 sessions proceed immediately to consideration of amendments. There is no requirement for any policy, financial or explanatory information to be provided with an amendment, which means that the intended purpose and effect of some technical amendments may only become clear when the committee comes to debate them.

The Stage 3 process

Stage 3 is almost always the final element of the scrutiny of government Bills. The focus shifts from committee to plenary, with the full parliament given the opportunity to accept or revisit what the lead committee has done with the Bill at Stage 2. There are two main parts to Stage 3.

There is no further requirement for the parliament to consider individual sections of a Bill. The first part of the Stage 3 is therefore driven by whether any further amendments to a Bill have been lodged (Rule 9.8.3). The same admissibility criteria for lodging amendments applies again at Stage 3, but with the Presiding Officer having discretion on the selection of amendments (Rule 9.8.4). So, if an amendment lodged at Stage 2 had support from only one MSP or party, the Presiding Officer may determine that it need not be considered again by parliament at Stage 3.

Unlike at Stage 2 when debate on amendments is unrestricted (although typically self-regulating given the small number of members participating and the need to complete proceedings by the date set by Parliamentary Bureau for the completion of Stage 2), the parliament can and usually does set time limits for debates on groups of amendments (Rule 9.8.4A). This is because, in theory, 128 MSPs could seek to take part in all debates on amendments with the potential for Stage 3 proceedings to take place out over multiple days. In practice, most Stage 3 proceedings take place on a single afternoon of parliament.

The second part of Stage 3 is a debate and vote by the parliament on whether the Bill should pass in its final form (Rule 9.8.2). Before that process completes there are two further procedural issues which can arise. The first is that although virtually all aspects of voting connected to the legislative process operates on the basis of a simple-majority system there is an exception in relation to legislation which would make changes to who is entitled to vote in Scottish Parliament elections; the voting system for Scottish Parliament elections; the number of constituencies; regions or any equivalent electoral area; and the number of members to be returned for each constituency, region or equivalent electoral area – in these cases a 'super-majority' of two-thirds of all MSPs entitled to vote is required (Rule 9.8.5BA). The second procedural issue is that the parliament can pause to consider whether any tidying-up issues which arose during Stage 3 need to be addressed (Rule 9.8.5) or to refer back parts of a Bill for further consideration at committee (Rule 9.8.6). In practice these issues rarely arise.

After a Bill has passed

There is one final hurdle which Bills need to get over before they secure Royal Assent and can be commenced, and that is the ability of the UK and Scottish Law Officers, and the UK Government, to refer a Bill to the Supreme Court for adjudication under a set of criteria in the Scotland Act 1998. The principal one relates to legislative competence, and allows for Bills

to be referred to the Supreme Court if it is considered that the parliament has legislated in areas beyond its competence.

The cumulative impact of structural decisions on the Scottish Parliament and its legislative process

The main point from this analysis of the SCC's report, the UK Government White Paper and the CSG report, and the parliament's Standing Orders, is that it is by no means obvious that radical forms of 'new politics' or 'power-sharing' should automatically have emerged from the new institution which was being established. It is instead arguable that the new parliament was being set up in an entirely traditional mould, with the pre-eminent role in policy development given to the new government and principal role of the new legislature to scrutinise and hold the executive to account for its actions.

LITERATURE ON THE LEGISLATIVE PERFORMANCE OF THE SCOTTISH PARLIAMENT

The second part of this chapter considers what research is available on the Scottish Parliament's legislative process.

Literature on the Scottish Parliament directly relating to parliamentary impact in the legislative process

Few studies focus directly on the Scottish Parliament's legislative process. Some look at specific policy topics (for example, Keaney and Hutton (2000) analysed the constraints on the economic development potential of the new Scottish Parliament; Cairney (2007) considered the drivers for legislation on smoking in public places; Laible (2008) looked at the Land Reform Bill; Katikreddi et al (2014) studied the development of the Minimum Unit Pricing policy; King (2015) looked at implementation of homelessness legislation; and McKenzie-Skene (2015) reviewed the substantial changes to bankruptcy legislation since devolution) but none of these deal directly with the issue of government dominance of the legislative process.

The only systematic consideration of parliamentary impact in the legislative process is that identified earlier from Shephard and Cairney. The principal piece of work is their 2005 analysis of amendment outcomes, with the authors also jointly working (2004) on related research which considered the government's approach to amendments under different First

Ministers, and Cairney (2006) then investigating differences between committee and plenary outcomes and the extent to which non-government successes were subsequently overturned. All of this work focused on amendment outcomes in the first session of the Scottish Parliament from 1999 to 2003.

Shephard and Cairney's works demonstrated that the Scottish Parliament's legislative process was dominated by the government from its inception in the traditional Westminster mould, in the sense of the government being responsible for initiating the vast majority of Bills and for authoring the vast majority of amendments. However, like Griffith (1974) before them in his seminal study of amendment outcomes in the UK Parliament, they also demonstrated that it is necessary to look beyond headline statistics to properly understand the nature of parliamentary influence. By controlling for initial inspiration of amendments they demonstrated conclusively that the Scottish Parliament's actual impact was not negligible. The major limitation of Shephard and Cairney's research is that it covers only the first session of the Scottish Parliament in a coalition government setting. There is no other comparable research which looks at amendment outcomes in later sessions of the parliament, or which compares amendment outcomes between minority and majority government sessions. Views on the legislative process from 2003 onwards are therefore much more impressionistic, particularly in relation to what difference periods of minority and majority government have made.

For example, the initial view (Torrance 2019, p.173) was that the first SNP minority administration of 2007-2011 would not last beyond its first year. When it did last beyond that initial year, the view was that the government had brought forward less legislation than its predecessors (Arnott 2019, p.56; Gallagher 2019 p.244 and that "The ability to pass legislation in the Scottish Parliament would prove difficult for a minority administration" (Arnott 2019, p.56), although there is a lack of detailed analysis to corroborate those assumptions. Another view by McAngus (2019 p.139) is that much of the first SNP minority government's legislation was fairly managerial and low-key, although there is again a lack of analysis of whether this differed from other sessions of the Scottish Parliament. Finally, there is the identification of cases of the anticipated reaction of government with McAngus (2019 p. 139) arguing that parliamentary arithmetic in the first minority government session meant flagship policies such as the creation of a local income tax were dropped, as well as the commitment to introduce a Bill on holding a referendum on Scottish independence.

The key point from periods of minority government, as noted by Cairney (2011c, pp.50-51), is that even if the absolute and relative proportion of Bills introduced by the minority SNP

government between 2007-2011 did drop, it was still by far the main initiator of legislation and was by far the most active participant in the amendment process. This is because, as suggested by Cairney (2011, p.39), the Scottish Parliament does not have the resources to do much more than perform a traditional parliamentary role, monitoring government departments and scrutinising legislation proposed by the Scottish Government. So, although some of the views expressed in the literature are suggestive of the potential for government dominance of the legislative process to have fallen in minority government periods, there is also a view that minority government sessions have not been fundamentally different from majority government sessions.

How might the Scottish Parliament be 'improved'?

Despite a lack of empirical analysis of the legislative process much attention has been focused on what improvements to the Scottish Parliament legislative and other processes might be made. This reflects a desire to recapture some of the initial spirit of what it was hoped the parliament would achieve, a response to the changing devolution settlement and the increased powers and responsibilities of the parliament, and a general desire to see incremental improvement. All of these drivers for change can be found in the literature or in externally commissioned work by the Parliament itself such as the 2017 report by the Commission on Parliamentary Reform, set up by the Scottish Parliament's Presiding Officer to make recommendations for improvements to the operation of the parliament.

However, a lack of external pressure (for example, there is no equivalent in Scotland to the pressure brought to bear on the UK Parliament by bodies such as the Institute for Government, UCL Constitution Unit and Hansard Society) and the lack of internal impetus (for example, opposition parties could have sought to impose changes to key areas of the Parliament's rules in periods of SNP minority government but did not do so) partly explains why no genuinely transformational changes have been made to the Scottish Parliament's processes and ways of working since 1999. Shephard (2019 pp.97-104) sets out a range of ways in which the Scottish Parliament's committees could be reformed to make them stronger and more effective, but many would require parties within the parliament to fundamentally rethink the relationship between government and parliament, and how the parliament should carry out its scrutiny function. Cairney (2013a) has identified five common criticisms of the parliament – it simply hasn't lived up to expectations (2013a 2-3); that it does not scrutinise government legislation sufficiently (2013a pp3-4); does not have a large enough permanent staff (2013a pp4-5); its independence is undermined by the prevalence of the party whip (2013a pp.5-6) (also identified by Arter's (2004) committee analysis); and it

would benefit from a revising chamber (2013a pp.6-7). Some of these ambitions seem unlikely to arise for pragmatic political reasons (few, if any, political parties are likely to stand on a campaign for more resource or more politicians) and others (removing party politics from parliamentary scrutiny) seem incredibly difficult to deliver in a culture built around elections based on parties.

Those who call for reform of the parliament need to address the fact that much of the analysis of the Scottish Parliament's performance is inward looking, with judgements typically made about the extent to which it has delivered on its original (unrealistic) expectations. A more outward looking perspective would draw attention to the nature of the relationship between executive and legislature in other jurisdictions, which legislatures have succeeded in the areas in which the Scottish Parliament is currently thought to be failing, and then to what specific changes might be made in Scotland. The fact that it is not easy to come up with a long list of exemplar legislatures may reflect the fact that many of the perceived problems with the Scottish Parliament are endemic to parliamentary democracies.

The impact of party dynamics

Like other modern parliamentary democracies, the Scottish Parliament operates through the formation of cohesive political parties. Despite the Scottish Parliament being a new institution in 1999, elections and political parties were not new to Scotland. The established political parties in Scotland – the Conservative Party, Labour Party, the Liberal Democratic Party, and the Scottish National Party – all transferred across to the new Scottish Parliament and have taken the vast majority of votes in each of the election since 1999, with the Scottish Green party also securing regular representation. The proportional representation electoral system has enabled smaller parties and independent MSPs to be elected, most notably in the second session of the parliament dubbed the 'rainbow parliament' (Scotsman article 2003) which saw the Scottish Socialist and Scottish Senior Citizens parties both return members, along with three independent members (Margo MacDonald, Dennis Canavan, and Jean Turner).

One of the criticisms of the Scottish Parliament is that the prevalence of party politics, and the whipping of votes, is an unwelcome repeat of the negative template of Westminster from which it was supposed to diverge. Cowley's analysis of the first session of the Scottish Parliament demonstrated that Scottish MSPs appeared to be voting much as UK MPs did (2001, p.99) with the three main parties seeing small and infrequent rebellions (in less than 10% of votes) on a par with the behaviour of political parties at Westminster (2001, p.100).

Anecdotal evidence from some members of the Scottish Parliament (for example, Lamont 2019, p.263) suggests that parties have become more cohesive since that analysis was undertaken.

Although it is not the principal focus of this thesis, the data which I have collected for my principal research sub-questions can be used to provide an updated picture of voting cohesion in the Scottish Parliament. Using data on the outcome of any legislation-related votes (whether on amendments, Stage 1 votes, or Stage 3 votes), figure 3 below sets out the voting cohesion scores (using the agreement index developed by Hix et al (2005, p.15.) for each of the four main parties (SNP, Labour, the Liberal Democrats and the Conservatives) in each session of parliament. Values can range between 0 and 1, with a value of 1 representing perfect cohesion and a value of 0 reflecting no cohesion at all (which would require an equal distribution between yes, no and abstain votes).

Figure 3 – Voting cohesion agreement index results
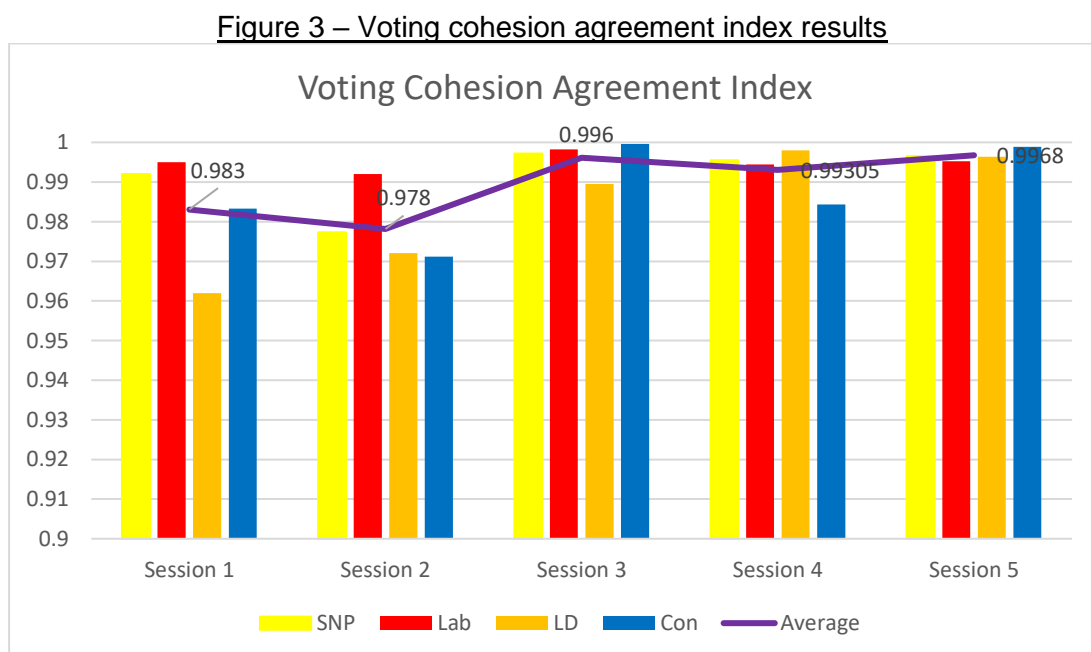
Figure 3 shows a generally high level of voting cohesion across all parties in all sessions. Even at its lowest point for the Liberal Democrats (which reflects repeated voting dissent from individual members of the party such as Donald Gorrie and John Farquhar Munro rather than wider rebellions) the overall voting cohesion remains extremely high and close to a perfect score of one. So, although there is evidence of an increase in voting cohesion in later sessions of the Scottish Parliament, it represents only a minor increase from an already very high starting point. These results reinforce Cowley's findings for the first year of the

operation of the Scottish Parliament that parties in the Scottish Parliament reflect their Westminster counterparts.

That this is so is perhaps less surprising than is sometimes suggested. Members of parliament are required to engage with, and vote on, a multitude of topics on a daily basis. The challenge of this is illustrated well by the legislative process where amendments on Bills can reach several hundred, often on extremely complicated topics. It is unreasonable to expect individual MSPs to be conversant with the technical details of every single piece of legislation, and one of the functions of political parties is to provide a central source of advice to them on what they should do. That, combined with the public policy literature expectations about most policy being incremental and consensual, should mean that on most occasions members of parties will vote with the party steer they have been given. Indeed, voting on technical legislative provisions may be almost the least likely place to find routine breakdowns in party consensus. Rebellions within parties are most likely to occur when the subject matter is on a topic which raises significant concerns or gives rise to strong personal or constituency views, and these should arise relatively infrequently. This is illustrated in figure 4 below which shows the voting agreement index scores for each Scottish Government Bill introduced to the Parliament in session 4. The vast majority of Bills saw little or no voting dissent within parties, but with one generating relatively significant dissent across all parties (to a scale not seen on any other Bill in any other session of the parliament). This was the Marriage and Civil Partnership Bill, which introduced same-sex marriage rights in Scotland, and is a relatively rare example of where some parties gave their members a free vote.

<u>Figure 4 – Session 4 voting cohesion</u>

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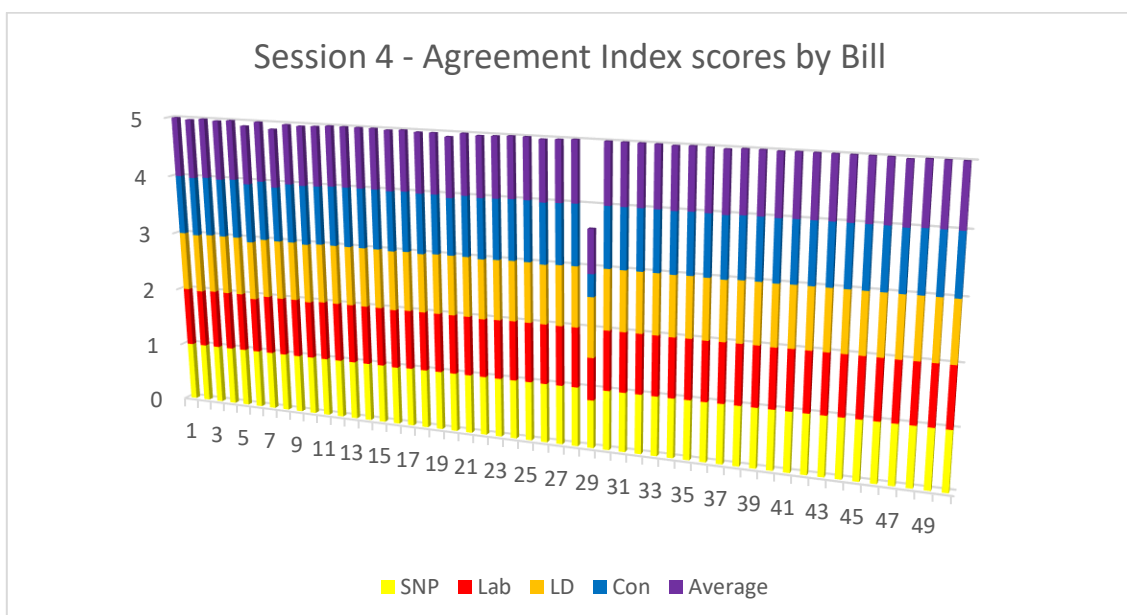
The general perspective on the Scottish Parliament's performance

Finally, the literature also offers some more general perspectives on the Scottish Parliament's performance.

A glass half-full perspective can be discerned, for example from the authors of the original 1998 Consultative Steering Group report, reflecting on delivery of the recommendations on the parliament's 20th anniversary observed (Consultative Steering Group 2019, para 5.) that "We see – and applaud – a great deal of success in the Parliament's first 20 years. World class legislation on, among other things, different approaches to the funding of higher education, climate change, free personal care, the smoking ban, proportional representation in local government elections, land reform and many other areas has more than vindicated the case for a legislative body in Scotland." Mitchell (2010, p. 113) and others (for example, St Denny (2019 p. 76)) note that the main achievement of devolution has been the restoration of legitimacy to the government of Scotland. The Consultative Steering Group also observed (2019, para. 7) that "our vision for a participative, open and accessible Parliament holding the executive to account shone through and has thrived in the first 20 years of devolution." Davidson and Stark (2011 p.156) found evidence of the parliament's committees successfully institutionalising public deliberation, undertaking a range of diverse, innovative and frequent deliberative events which compared well with Westminster practice (particularly where these deliberative events were undertaken as part of the legislative scrutiny process).

There is a general sense of relative success on equalities issues, with Brown et al (2002 p.71) highlighting the critical mass of female MSPs elected in the first Scottish Parliament as an important development differentiating the Scottish Parliament from Westminster and Malley (2012 p.715) suggesting that this had manifested itself, at least when perceived in terms of gender norms and the perception of female MSPs, in a much more informal and inclusive atmosphere, even if retaining many elements of the yah-boo politics of Westminster.

However, arguably the much more prevalent view is the glass half-empty perspective that the Parliament has failed to live up to expectations. A common perspective is that first two sessions of the Parliament demonstrated the limitations of what a new electoral system could deliver. Mitchell (2010 p.112) notes that first two Labour-Lib Dem coalitions operated

almost as any majority government at Westminster in its relations with Parliament by using its combined voting strength to push through its partnership agreement.

Hassan (2019, p.3) puts it bluntly by noting that the arrival of a real parliament made up of real politicians ended the fiction of the fantasy parliament which some proponents had believed could be brought into existence. Stolz (2019 p. 86) takes the view that expectations that the Scottish Parliament would turn into something other than a home for professional career politicians selected by their political parties have proven to be ill-founded. Stolz (2019 p.87) also takes the view that the few independent-minded party candidates who had been able to beat the system have mostly now gone, with Lamont (2019 p.263) corroborating this with the view that "the unquestioning support of government backbenches is now a given".

Bonney (2007 p.307) identified a number of perceived failings of the Parliament – no real reduction in government dominance of parliamentary business compared with Westminster; the continuance of petty partisan and personal point-scoring; mimicking of PMQs; the suggestion of policies being biased towards certain interests; and a lack of strategic approach from committees. There are also counterbalances to the earlier positive views on accessibility and civic participation, such as in relation to equalities issues where the percentage of female MSPs suffered setbacks after initial success (Mackay and Kenny 2007; Kenny and Mackay 2011).

There is also a view, typified by Hassan (2019 p.13), that the committee system's performance has declined from the early days in which they "succeeded in throwing the light of scrutiny on aspects of public life previously unexamined, but in recent years has become less effective in holding government and public agencies to account, limited by the ties of party loyalty". So too Lamont (2019 p.262), who takes the view that in their early years committees "were often where muscle was exercised against Ministers with government backbenchers entirely uninhibited in taking on their own party colleagues" and that "there is a whole study to be done on the nature of committee now where defensiveness of the party position is much more the norm".

CONCLUSION

The purpose of this chapter was to investigate whether government should be expected to dominate the Scottish Parliament's legislative process.

Looking at the question from a historical perspective, the answer is broadly yes. The parliamentary democracy which was formed from devolution was heavily weighted towards government being the primary initiator of legislation and parliament as a scrutinising body. The general view of the Scottish Parliament's performance is that it has fallen far short of the ambitions of its proponents, and has settled into a role with strong parallels to the relationship between government and parliament at Westminster. With a common thread in the literature being about how the Scottish Parliament could be strengthened or recapture the bold ambition of its early years it is clear that the general perception is that parliamentary business is dominated by government.

Looking at the question from the perspective of what analysis has been carried out of the parliament's legislative process, the answer is again broadly yes. Shephard and Cairney's analysis of the first session of the Scottish Parliament mirrors the findings of similar studies of the UK Parliament which show that government gets almost all of its legislation passed. Although this conclusion is qualified by noting that parliament was responsible for prompting many government amendments, and sometimes its impact on government Bills was substantive, the overall perception is of general government domination of the legislative process.

Looking at the question from the perspective of what has happened in periods of minority government the answer is more equivocal and ultimately unclear. The literature suggests that minority governments have not enjoyed the easy success of majority governments, with legislative programmes smaller and less ambitious, but the lack of empirical data beyond simple counts of the number of Bills per session to back this up means that it is difficult to draw definitive conclusions.

The general conclusion to be drawn from this chapter is that there is still much to be understood about the Scottish Parliament's legislative process, and the extent to which it is dominated or not by government. This thesis provides the opportunity to bring the empirical picture up to date and to explore in more detail whether the transitions backwards and forwards from majority to minority government have made a substantive difference to government dominance or not. The next three results-focused chapters of this thesis explore these issues, with the aim of allowing a fresh conclusion to be reached on whether government dominates the Scottish Parliament's legislative process.

CHAPTER 5 – WHAT HAS HAPPENED TO GOVERNMENT BILLS SINCE THE SCOTTISH PARLIAMENT'S ESTABLISHMENT?

Does government dominate the legislative process? A case-study of the Scottish Parliament.

INTRODUCTION

This chapter sets out the results for my first research sub-question – what has happened to government Bills since the Scottish Parliament was established in 1999?

The chapter has an empirical focus, and provides the most comprehensive picture to date of what has happened to government Bills in the Scottish Parliament. It conveys the big picture perspective on the legislative process from an analysis of all 272 government Bills and 39,847 associated amendments from 1999 to 2021.

The main purposes of the chapter are to provide an initial high level perspective on government dominance of the legislative process, and an initial test of the predictions of Jean Blondel's concept of legislative viscosity (that parliament should have the ability to block or substantially amend Bills in minority government sessions) and of the predictions of the public policy literature (that most Bills should in fact be consensual and incremental and not subject to significant parliamentary controversy even in minority government sessions). If the prediction of legislative viscosity holds true, the results should show a clear pattern in minority government situations of fewer government Bills being brought forward, fewer government Bills being passed, more time being spent on scrutiny and more non-government amendments being passed. If the prediction of the public policy literature holds true, the results should show a clear pattern of low controversy Bills being brought forward across all parliamentary sessions and less divergence between minority and majority government sessions than Blondel's concept predicts.

To structure the analysis in this chapter I use eight hypotheses, grouped under four general themes in Table 2 below. Three of these themes (Bill volumes and success rates, time spent on scrutiny and amendment outcomes) are direct indicators of whether the predictions of legislative viscosity hold true. The fourth theme (Bill contentiousness) is an indicator of whether the prediction of the public policy literature holds true.

Topic	No.	Hypothesis
Bill issues – volumes and outcomes. This theme gives a basic picture of what happened to government Bills – how many were introduced and passed?	1	Fewer government Bills should have been introduced to the Scottish Parliament in minority sessions 3 and 5 than in majority sessions 1, 2 and 4.
	2	Fewer government Bills should be passed in minority sessions 3 and 5 than in majority sessions 1, 2 and 4.
Bill issues – contentiousness. This theme explores the nature of government Bills – were they consensual or did they generate controversy?	3	The policy controversy of Bills should be lower in minority government sessions than in majority government sessions.
Time issues. This theme explores another key feature of parliament's reaction to government Bills – how long did it spend scrutinising them?	4	The parliament should spend longer scrutinising government Bills in minority government sessions.
Amendment issues – volumes, outcomes, authorship, persuasive versus coercive capacity. This theme explores what happened to amendments – who lodged them, who was successful with them, and in what way did the parliament achieve its amendment impact.	5	There should be an increase in non-government amendments in sessions 3 and 5.
	6	Government amendments should have an extremely high pass rate, but with an observable reduction in minority government sessions.
	7	Non-government amendments should be less successful than government amendments, but their success rate should increase in minority government sessions
	8	The coercive impact of the parliament should be greater in sessions 3 and 5 than in sessions 1, 2 and 4.

PART 1   BILLS VOLUMES AND OUTCOMES

Hypothesis analysis - Bill volumes

<u>Hypothesis</u>

H1 – fewer government Bills should have been introduced to the Scottish Parliament in minority sessions 3 and 5 than in majority sessions 1, 2 and 4

The first hypothesis tests the relationship between the size of the legislative programmes which governments brought forward and whether or not those governments commanded a majority of votes in parliament. Blondel's theory of legislative viscosity suggests that there should be an anticipated reaction on the part of minority government that because it could not be certain of securing passage of legislation it should bring forward less legislation than a majority government which had more certainty about being able to use its voting power to secure its delivery. By contrast, if the public policy literature is correct that most government Bills are consensual and incremental, then minority governments may not have been put off from bringing forward normal sized legislative programmes because they would assume that parliament would not irrationally block such legislation and there should therefore be minimal difference in the sizes of legislative programmes brought forward by minority and majority governments. In the Scottish context, the annual publication of the government's programme for government and, within that, its annual legislative programme is a significant parliamentary event. A key focus is what type of legislation government is bringing forward,

and how those legislative programmes compared to previous years, previous governments, and the legislative ambitions of opposition parties. Two limiting factors are at play in determining the size of a government legislative programme regardless of whether it is in a minority or majority position. The first is resources – Scottish Government resources (policy, legal and drafting capacity) and Scottish Parliament time (committee scrutiny capacity) place an effective cap on how many Bills government will be able to bring forward in any given year. The second is perception – bringing forward a very small legislative programme of e.g. low single figure Bills is likely to attract accusations that the government of the day has run out of ideas.

Political commentary surrounding government legislative programmes in Scotland supports the legislative viscosity hypothesis. For example, in its first two parliamentary sessions when the government was in a coalition majority position, it was suggested that the Scottish Parliament had become a "legislative sausage machine" (Arter 2002, p.105) with a government which had "rushed to legislative as the easy option at every turn" (Murdo Fraser MSP, Scottish Parliament debate 5 September 2007). By contrast, the SNP minority government in the third session was portrayed as having brought forward "the lightest legislative programme that has ever been presented to the Parliament" (Nicol Stephen MSP, Scottish Parliament debate 5 September 2007), amounting to a "string vest of a programme, which is more noticeable for the holes than for the material" (Murdo Fraser MSP, Scottish Parliament debate 4 September 2007).

Results

Figure 5 – Average number of Bills per year

Average number of Bills in each year

Total Bills in session — Average Bills per year

	Session 1 Coalition maj	Session 2 Coalition maj	Session 3 Single party min	Session 4 Single party maj	Session 5 Single party min
Total Bills in session	51	53	45	67	61
Average Bills per year	13	13	11	13	12
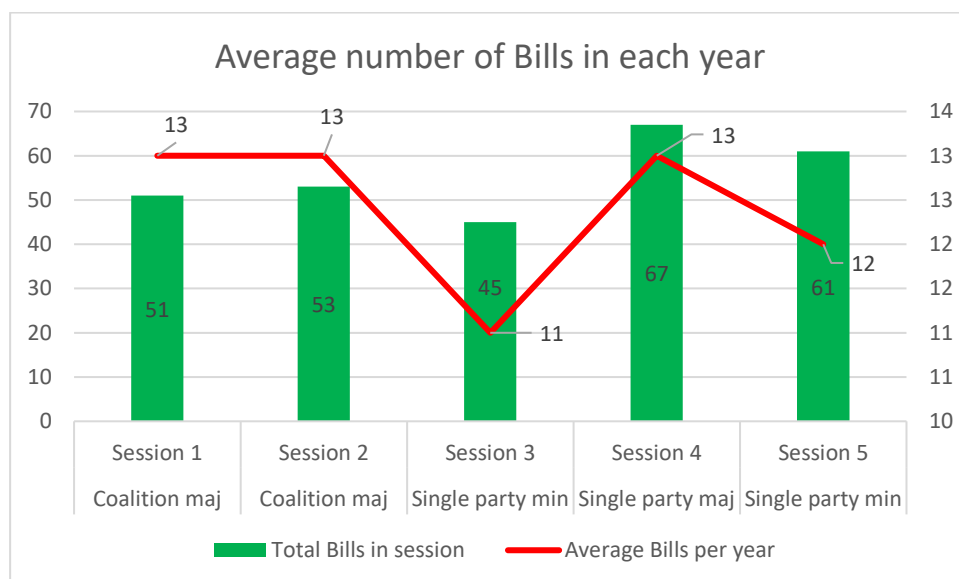
The results in figure 5 above show the total volume of government Bills which were brought forward in each parliamentary session (in columns) and the annualised figure (as a line). The chart also shows what type of government structure was in place in each session. The annualised figure is required to address the variation in term lengths across sessions, with sessions 1 to 3 having four year terms, and sessions 4 and 5 having five year terms.

Analysis

The volumes per session results in figure 5 provide some evidence in support of legislative viscosity. Although the total figures per session give the sense of larger majority government programmes (not dipping below 50 Bills per session) compared with minority government sessions (with only 45 Bills) introduced in session 3, the annualised figures demonstrate that the difference is marginal. On average, thirteen government Bills were introduced to the parliament each year in Sessions 1, 2 and 4, and eleven in Session 3. An average annual difference of only two Bills per year between majority governments and the first minority government session suggests that that the 2007-2011 SNP administration was still ultimately confident enough to introduce relatively full legislative programmes each year in line with the predictions of the public policy literature. This conclusion is strengthened with the inclusion of session 5 results, where the average number of Bills was only one less than in majority sessions.

Further analysis of session 3 volumes provides additional evidence for doubting the significance of the difference in size between minority and majority government sessions. Figure 6 below shows the rate of introductions in each calendar year in session 3.

Figure 6 – Session 3: Bills introduced per year
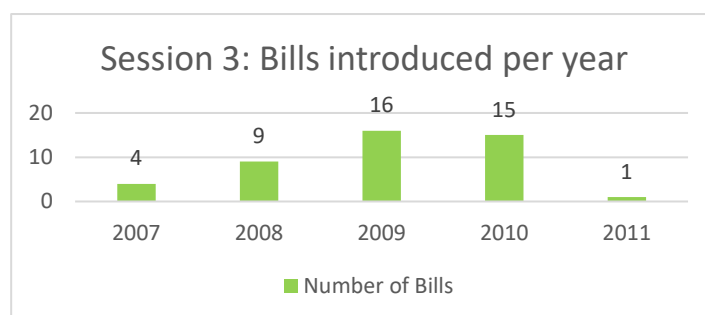
These figures demonstrate that in Session 3 the government did initially bring forward a small number of Bills per year, but by the second half of the session the figures were actually higher than the annual average for majority government sessions.

This trajectory can be explained by a number of factors. The SNP government in 2007 was new to power, was the first minority government since the parliament was established in 1999, and did not have an off-the-shelf legislative programme ready to progress in the way in which an incumbent government might. It is also likely to have started off on a precautionary basis with small legislative programmes until it became clearer whether it could successfully secure the passage of its Bills in a minority government setting. Indeed, that cautious approach was expressed by what the then First Minister said when announcing his government's first legislative programme in 2007, when it was unclear if and how the government could get legislation through what was anticipated to be a hostile parliament - 'in truth, most people believe that there is already too much legislation, and they yearn for a more considered and restricted approach. I embrace that sense of legislative restraint. It is not the purpose of a government to legislate; rather, it is for government and parliament to legislate with a purpose.' (Alex Salmond MSP, Scottish Parliament debate 4 September 2007)

Hypothesis analysis - Bill outcomes

Hypothesis

H2 – fewer government Bills should be passed in minority sessions 3 and 5 than in majority sessions 1, 2 and 4

The second hypothesis shifts the focus from the size of programmes brought forward by governments to their success in securing the parliamentary passage of those programmes. The hypothesis is based on the legislative viscosity prediction that minority governments, because they cannot by definition mobilise a majority of votes on their own, are at risk of opposition parties combining to block their Bills. Given the small minority position of the SNP administration in session 3 (with its 47 seats substantially short of the 65 needed for a majority) and again in session 5 (with its 63 seats higher than the first minority administration but still short of a majority), it could reasonably be assumed that there would be a lower success rate for government Bills compared with the majority governments of session 1, 2 and 4. From the perspective of the public policy literature, however, if most government Bills are consensual and incremental then even minority governments should not have suffered defeat on large parts of their programmes (on the assumption that parliament would act rationally when presented with uncontroversial legislation based on extensive stakeholder engagement) but would be susceptible to any part of its programme which was genuinely controversial.

Results

Figure 7 – Fate of government Bills per session: percentage outcome
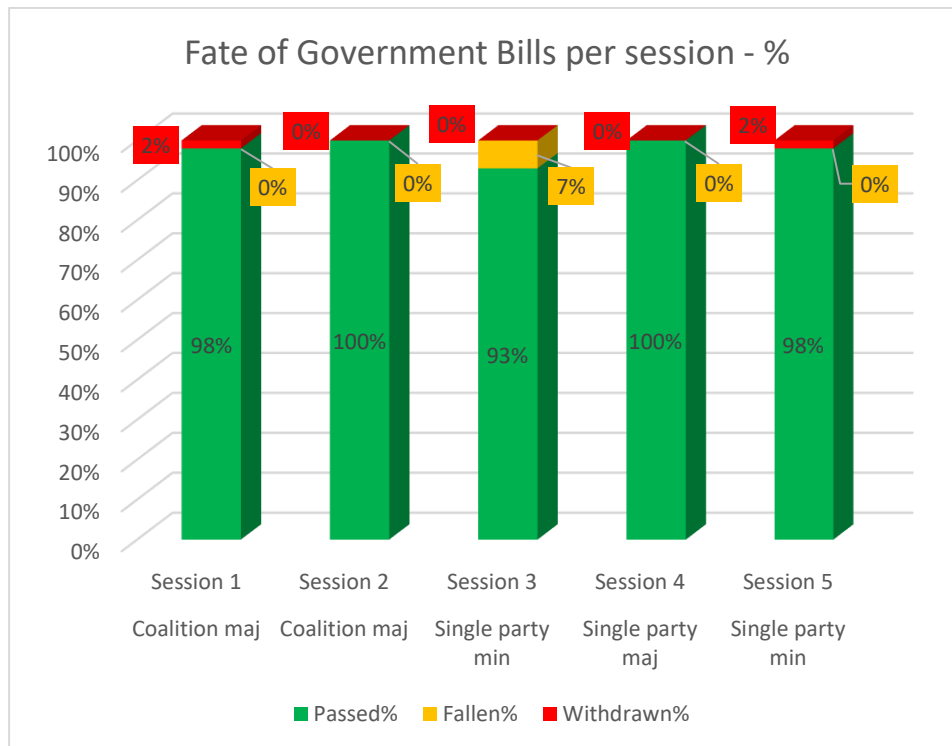
The results in figure 7 above show the percentage outcome result for all of the government Bills introduced in each session. Three types of result are shown – those Bills which completed their parliament journey are counted as "passed"; those which were introduced but were withdrawn by the government before they could be passed or which were rejected by the parliament are counted as "withdrawn"; and those which were rejected by the parliament or did not complete their parliamentary passage for some other reason are counted as "fallen".

Analysis

The results in figure 7 again provide some evidence in support of the hypothesis. There is a dip in the success rate of government Bills in session 3 to 93% and although this is not repeated in session 5 the withdrawal of the government's named person legislation in that session was clearly as a result of parliament having made clear it was opposed to the legislation. The principal conclusion to be drawn is that the government's success rate was extremely high in all five parliamentary sessions.

Further analysis of the small number of government Bills which have fallen since 1999 gives reason for suggesting the hypothesis is not fully supported. Table 10 below sets out the reasons why government Bills did not complete their parliamentary passage and what then happened to them. This shows the single withdrawn Bill in session 1 was reintroduced very quickly and completed its parliamentary passage, and that in two of the cases of fallen Bills in session 3 the government was able to bring back the legislation which had been defeated and secure its passage at the second time of asking in the same session. In real terms then, of these four examples only one did not ultimately get passed in the parliamentary session in which it was introduced. Even in that case (the session 3 Long Leases Bill), the Bill was a long overdue piece of law reform and parliament had agreed to support its general principles at Stage 1 before it timed out at dissolution (having been introduced by the government at a point in the session where there was insufficient time left to complete its scrutiny), and it was brought back by the government in session 4 and secured its parliamentary passage early in that session.

Table 10 – What happened to government Bills which did not pass Stage 3

Session	Bill	Outcome
1	Education (Graduate Endowment and Student Support) Bill	Withdrawn by the government to address issues raised during its Stage 1 scrutiny, and was then brought back a month later. New Bill subsequently completed its parliamentary passage.
3	Creative Scotland Bill	Although the parliament voted in favour of the Bill's general principles at Stage 1, it fell due to the parliament voting down the associated Financial Resolution (the effect of which was to stop the Bill progressing to Stage 2). The Creative Scotland Bill provisions were brought back as part of a wider Public Service Reform Bill later in the session.
3	Budget Bill	The 2009 Budget fell on 28 January 2009, and was brought back by the Government the following day and then passed.
3	Long Leases Bill	The Long Leases Bill was introduced on 10 November 2010 and timed out on 22 March 2011 when the parliament dissolved ahead of the 2011 elections. The Stage 1 report of the lead committee had recommended that the parliament agree the general principles of the Bill. A Long Leases Bill was passed in the next session.

PART 2   BILL CONTENTIOUSNESS

Hypothesis analysis – contentiousness and minority and majority governments

Hypothesis

H3 – the policy controversy of Bills should be lower in minority government sessions than in majority government sessions

This hypothesis investigates how controversial government Bills were, and whether Bills were more controversial in majority sessions. The hypothesis is based on the legislative viscosity assumption that the relative strength of a government in parliament will make a difference to how controversial that government's legislative programme is. That is, a minority government, like the SNP governments in sessions 3 and 5, may be more inclined to bring forward legislation which is likely to attract support from other parties and not generate significant opposition. Consequently, it should be expected that the legislative programmes of those governments should be lower in controversy than the case for majority governments, because majority governments should have the confidence to push through more controversial Bills against potential parliamentary opposition. The public policy literature's prediction of consensual and incremental policy being the defining feature of most governments would, on the other hand, suggest that very few truly controversial Bills should emerge in any parliamentary session.

Results

Figure 8 – Policy controversy across individual sessions
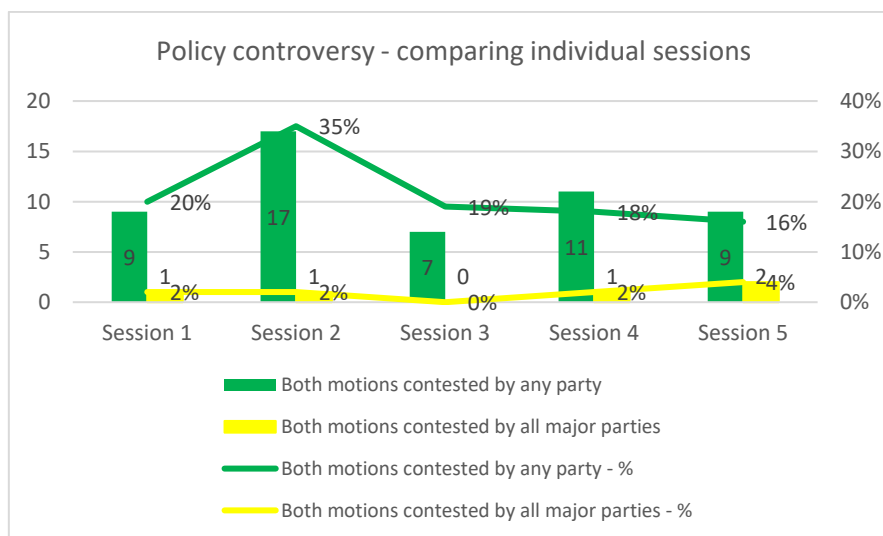
Figure 8 shows low-threshold controversy results in green (was a Bill objected to by a single party at both Stage 1 and Stage 3) and high-threshold controversy results in yellow (was a Bill objected to by all major parties at both Stage 1 and Stage 3) on a sessional basis.

Analysis

The results in figure 8 above do not support the hypothesis. With the exception of session 2, which I will return to below, the average result for the low-threshold controversy test (any

party or any independent MSP voting against a Bill at both stages) hovers just below 20%. The results of session 3 of 19% and Session 5 result of 16% are not dramatically lower than the sessional average. Instead, the main point is that no government legislative programme since 1999 has been so devoid of controversy that it has failed to attract any opposition at all.

Nor is the hypothesis supported when the high-threshold controversy test (all major parties voting against a Bill at both stages) is applied. It is true that session 3 was the only session in which no policy Bill was controversial enough to attract opposition from all major parties at both Stages 1 and 3 but that is unremarkable given that in all of the other sessions only one Bill reached that level of policy controversy.

The principal conclusion to be drawn from the results is not that minority government Bills were uncontroversial (although they were), but that it is a lack of controversy which defines legislation brought before the Scottish Parliament since 1999 in general. This is, of course, the key explanation for why the results in the previous section of this chapter showed that minority governments of session 3 and 5 were able to secure the passage of substantial legislative programmes – there was no concerted effort by opposition parties to block them.

The results in this section strongly suggest that no government in Scotland has sought to deliver a legislative programme which strayed far from the political central ground. They also demonstrate clearly that the legislative game being played out in the Scottish Parliament is not simply "the government proposes and the parliament opposes", and that the public policy literature prediction of mainly consensual and incremental legislation is supported.

This view does need to be qualified by the potential impact of the anticipated reaction of government, and there is some evidence in minority government sessions that governments have been reluctant to bring forward their most controversial Bills. In session 3, for example, the first SNP minority government announced its intention to introduce a Referendum Bill as part of its 2009/10 legislative programme but did not ultimately do this on the basis that it should not be "blocked by politicians who would reject the right of the people to have their say in a referendum". (Scottish Government 2010, pp.04-05) This is a clear example of a government's decision-making on what legislation to bring forward being influenced by its anticipated reaction of what parliament would then do to that legislation. Similarly, in session 5 the Scottish Government chose not to bring forward legislation on education reform in the face of significant opposition from other parties. Such examples do, however, appear to be

exceptional and do not detract from the general conclusion that government legislation in Scotland since 1999 has typically not been highly controversial.

Finally, the session 2 outlier of 35% for the low threshold policy controversy result in figure 8 needs some explanation given it is almost double the percentage seen in all other sessions. The most logical explanation for this is the nature of the parliament in that session, which was dubbed a 'rainbow parliament' (Scotsman article 2003) because of the number of small parties which were elected. Over the course of session 2, there were a total of 11 parties or independent MSPs who voted on Bill proceedings, compared with 5, 5, 4 and 6 respectively for sessions 1, 3, 4 and 5. Not only does the increase in parties in that session mean there is more chance of at least one party opposing a Bill at Stage 1 or Stage 3, but the relatively radical political perspectives of some of the parties in session 2 (such as the Scottish Socialist Party) compared with other sessions meant there was a higher probability of government Bills being opposed on policy grounds.

PART 3   TIME ISSUES

Hypothesis analysis - overall timescales in minority and majority government sessions

Hypothesis

H4 – the parliament should spend longer scrutinising Bills in minority government sessions

This hypothesis shifts the focus from Bill outcomes to the time it takes Bills to complete their parliamentary passage. It is designed to test the basic legislative viscosity assumption that there will be a difference in the amount of time spent scrutinising government Bills depending on the extent to which the government controls parliamentary proceedings.

When government has more control over proceedings it should be able to dictate the pace at which Bills are scrutinised. In the Scottish Parliament context, Bill timetables are formally proposed by the Parliamentary Bureau, which is responsible for scheduling parliamentary business. The government business manager on the Parliamentary Bureau carries with them their share of the party vote which they can mobilise in any vote taken by Parliamentary Bureau. In situations of majority government this means that government business managers could impose their preferences on the Parliamentary Bureau and then use their majority in the Parliament to secure ratification of Bureau's timetabling proposal. In

situations of minority government, by contrast, opposition parties could, if they worked together, combine to impose a timetabling preference on Bureau and again secure ratification by combining to secure majority support in Parliament for the Bureau proposal.

Therefore, if the theory of legislative viscosity holds there should be a discernible increase in the amount of time spent scrutinising government Bills in minority sessions 3 and 5.

Results

Figure 9 – Scrutiny time (sitting days)

Time taken for Bills to pass - sitting days

Session	Sitting: Intro-S1	Sitting: S1-S2	Sitting: S2-S3
Average	68	25	21
Session 5	88	25	26
Session 4	72	27	20
Session 3	73	24	20
Session 2	69	26	21
Session 1	38	22	17
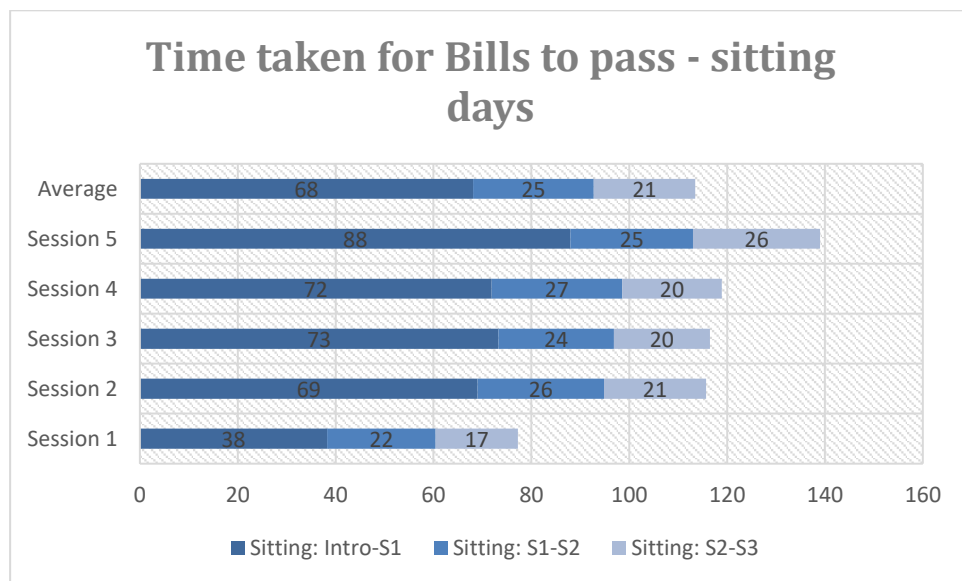
Figure 9 shows the average amount of time the parliament spent scrutinising government Bills on a sessional and overall basis. It shows scrutiny time on the basis of sitting days from introduction of a Bill to completion of Stage 1, from completion of Stage 1 to the completion of Stage 2, and then from the completion of Stage 2 until the Bill is passed at Stage 3. Sitting days excludes weekends, public holidays and periods when parliament is in recess. Focusing on sitting-days rather than calendar days has the advantage of ensuring that summer recess periods, which are typically about two months long, are removed and do not skew the results.

Analysis

The results in figure 9 provide partial support for the hypothesis. Legislative viscosity should result in two clear spikes in the chart in session 3 and 5, evidencing significantly longer scrutiny time. Although the current minority government session 5 session does have the

longest average timescale for the passage of Bills, there is no comparable spike for session 3. The session 3 average timescale for scrutiny of a Bill of 117 sitting days is in fact marginally lower than for the majority government session 4 average of 119 days, and only marginally higher than the majority government session 2 average of 116 days. It cannot be said conclusively that parliament has subjected minority government legislation to longer scrutiny than majority government legislation.

Instead, what the results in figure 9 suggest is that the parliament, after a relatively rapid first session average of 77 sitting days to scrutinise a Bill, quickly settled into taking between 115-120 sitting days in sessions 2-4, followed by a spike in session 5. A better explanation for these results than legislative viscosity may be a process of institutionalisation of a new legislature as it settled into its preferred working pattern. Whatever the precise drivers for the changes in timescales, it can said with certainty that the parliament now spends considerably more time on scrutiny of government Bills than it did when first established – the session 5 average of 139 sitting days is almost double the 77 sitting days in session 1.

These results demonstrate the importance of having data to back up perceptions of what happens in the legislative process. This can be seen in an issue closely related to the time it takes parliament to scrutinise government legislation, and that is the volume of government legislation which it scrutinises. The prevailing view since 1999 (Mitchell 2000, p.611; Johnston 2009, p.32; Shephard 2019, p. 98; St Denny 2020, p.489) is that the parliament has been subject to a significant volume of government business which has impacted its ability to scrutinise that legislation properly, and to discharge its other non-legislative functions. However, analysis of Bill volumes suggests that the burden of government legislation has not been as high as suggested for many, if not most, of the committees of the parliament.

Table 11 – Distribution of government Bills in session 4

Committee	Number of Gov Bills	Per year in session 4
DPLRC	2	<1
Devolution (Further Powers)	1	<1
Economy, Energy and Tourism	3	<1
Education and Culture	6	1
Equal Opportunities	1	<1
European and External Relations	0	0
Finance	11	2
Health and Sport	7	1
Infrastructure and Capital Investment	6	1
Justice	14	3
Local Government and Regeneration	3	<1
Public Audit	0	0
Public Petitions	0	0

Rural Affairs, Climate Change and Environment	5	1
SPPAC	2	<1
Welfare Reform	2	<1

Table 11 above shows the distribution of government Bills across parliament committees in session 4. This shows that some committees had a relatively light loading (none, or just a handful of Bills over the whole 5-year parliamentary session), some with medium loading (about 1 Bill per year), and only a couple of committees with high loading (2 or more per year. The results earlier in this chapter showed that the average number of Bills brought forward by government since 1999 has remained constant at around a dozen per year. What has been happening since 1999 then is not that more government legislation has been introduced, but that parliament has been spending more time scrutinising that legislation, which may explain why there continues to be a view that committees are overburdened.

PART 4   AMENDMENT OUTCOMES

Hypothesis analysis – who lodges amendments

Hypothesis

H5 – there should be an increase in non-government amendments in sessions 3 and 5

This part of the chapter shifts the focus on to the final unit of analysis – amendments. The first hypothesis explores who lodges the most amendments. The hypothesis tests whether, as predicted by legislative viscosity, there is an increase in non-government amendments in minority government sessions on the basis that parliament would be emboldened to try and change what was brought before it compared with a parliament which knew it could always be outvoted by government. By contrast, from the perspective of the public policy literature if Bills are consensual and incremental and developed in consultation with stakeholders then parliament should not be significantly more likely to seek to challenge that consensus in minority than majority sessions. The exception to that is in relation to those Bills in minority sessions which were controversial and where the parliament would feel it would have a chance of success if it tried to change them. As shown in earlier part of this chapter on Bill contentiousness, such Bills seem to be exceptional. On that basis, the general assumption of the public policy perspective that there should be no significant difference between volumes of non-government amendments between sessions should hold.

Figure 10 – Who lodges amendments?
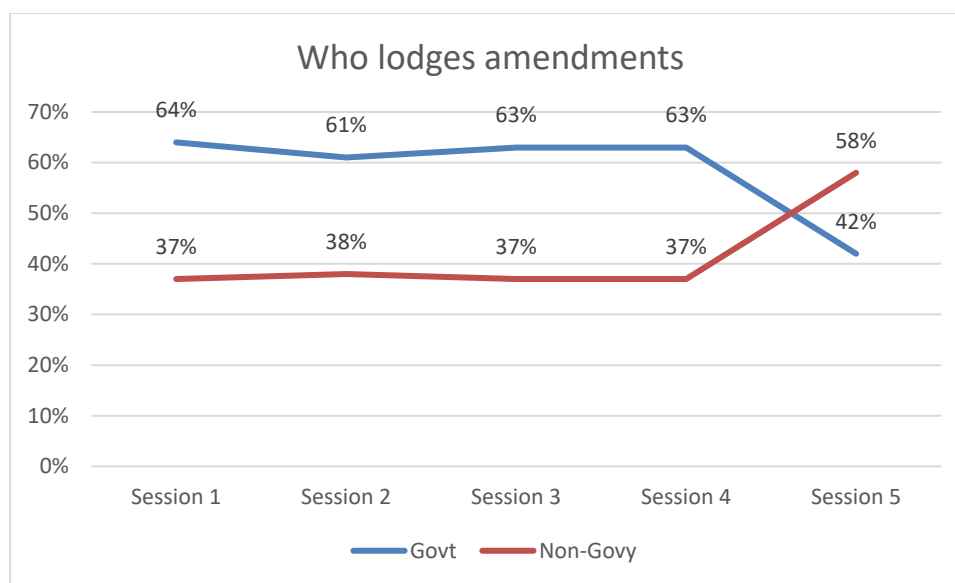
Figure 10 above shows the total volume of amendments, represented in percentage terms, which the government lodged and which all other actors in the Parliament (such as opposition MSPs or government backbench MSPs) lodged.

Analysis

The results for the first part of the hypothesis are mixed. With the exception of session 5, the results in figure 10 show that the government has lodged the most amendments, at a strikingly steady ratio of about two-thirds government amendments to a third non-government amendments. In the first four sessions the government was by far the main amendment initiator.

The results for the second part of the hypothesis are also mixed. Again with the exception of session 5, the results do not show a significant spike in the percentage of non-government amendments lodged in minority government session 3. At least in terms of the first four sessions then it is not clear that there was any change to normal amendment lodging norms with the advent of minority government.

Figure 11 below shifts the focus from percentage volumes of amendments to actual average volumes of amendments lodged, which helps explain the apparent session 5 outlier. The average volume of non-government amendments in session 5 is not abnormally higher than in previous sessions and is instead directly comparable to the average volumes lodged in

sessions 1 and 2. The clear trend, and the reason for the apparent session 5 anomaly, is that the average number of government amendments lodged over time has been dropping steadily and has dipped significantly in session 5. The reasons for the general downwards trend are not obvious, but may reflect a general reduction in the number of tidying-up amendments which the government feels the need to bring forward (i.e. it might be that government Bills are better, or more fully, drafted before they are introduced), the type of Bill which government is bringing forward in session 5 (which needs less amending) or a specific reluctance to bring forward amendments in session 5.

Figure 11 – Average number of amendments lodged
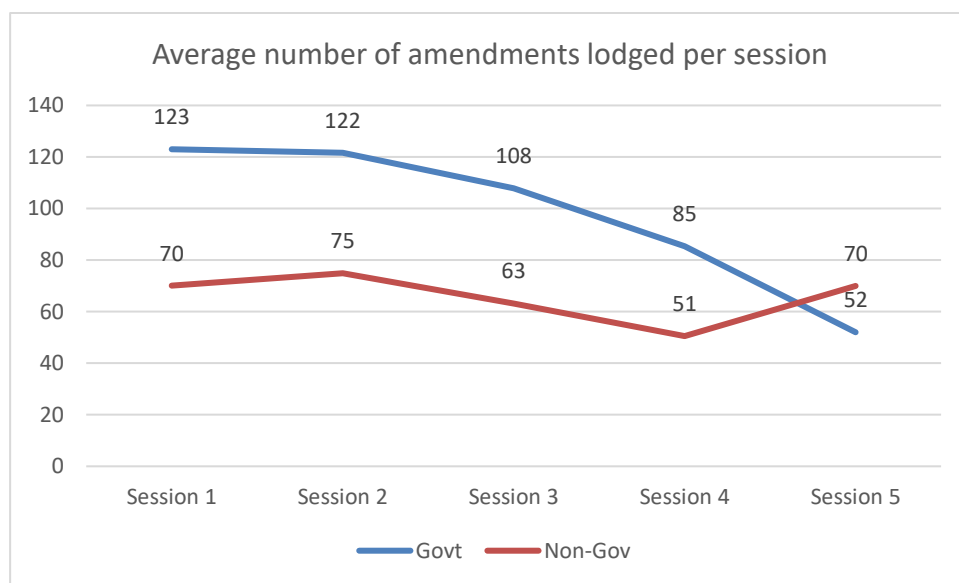
Hypothesis analysis - the fate of government amendments

Hypothesis

H6 – Government amendments should have an extremely high pass rate, but with an observable reduction in minority government sessions

The focus now shifts from who lodged amendments to who was successful in getting their amendments passed, with government amendments considered first. The hypothesis in this section is based on the understood role of government in the legislative process, and the type of amendments it is likely to bring forward. As noted by Shephard and Cairney (2005, pp.312-313) in their analysis of amendment outcomes in the first session of the Scottish Parliament, government amendments are typically uncontroversial, either tidying up the

legislation they had brought forward or responding to issues raised during scrutiny of the Bill. Both of these types of amendment are unlikely to generate opposition from other parts of the parliament. Amendments which are likely to attract opposition – those which generate significant policy controversy or make significant policy changes – are understood to be exceptional.

Shephard and Cairney's (2005, p.310) analysis of session 1 amendments revealed that the government had a 99% success rate. If the same assumptions about the complexion of government amendments hold then that success rate should continue in comparable majority government sessions. However, on the assumption that at least a small part of the total amendments brought forward by the government will generate some level of controversy (whether because they are novel topics brought forward by the government or are attempts by the government to overturn earlier defeats) there should be a dip in government success rates in minority government sessions 3 and 5 because it would not have the majority of votes it had to push through such amendments in sessions 1, 2 and 4.

Results

Figure 12 – The fate of government amendments
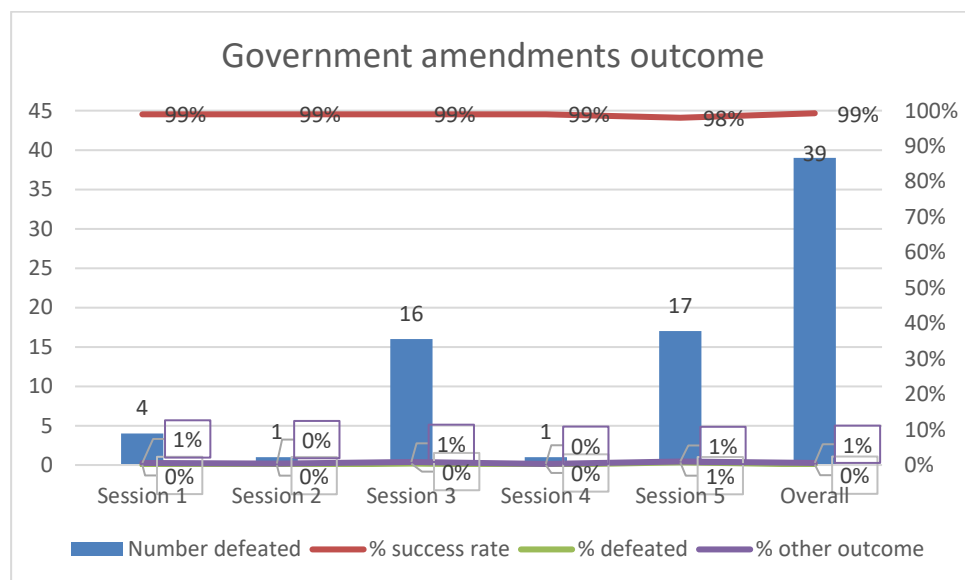
Analysis

The results in figure 12 are strongly in line with the hypothesis in relation to majority government sessions but not for minority government sessions. The 99% rate found by Shephard and Cairney is repeated in majority sessions 2 and 4, and also in minority session

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3. The government's success rate in session 5 is lower, but only drops to 98%. The volume of government amendments defeated in each session (4, 1, 16, 1 and 17 respectively) illustrates how exceptional that phenomenon is, and that the session 5 results are still extremely low. In general, the results are highly suggestive of government amendments being uncontroversial across all sessions.

The question of whether government success rates were as a result of low controversy or through voting victories can be addressed by considering how many of them were put to the vote. It may be, for example, that the high success rate of government amendments in sessions 1, 2 and 4 was a product of those governments being in a majority and able to secure the passage of even controversial amendments. By contrast, the high success rate of government amendments in session 3 and 5 might be a product of the government deliberately avoiding bringing forward any controversial amendments. When investigating this issue, Shephard and Cairney found that in session 1 only 3% of government amendments were put to a vote. (2005, p.311)

Figure 13 – Government amendments pressed to a vote
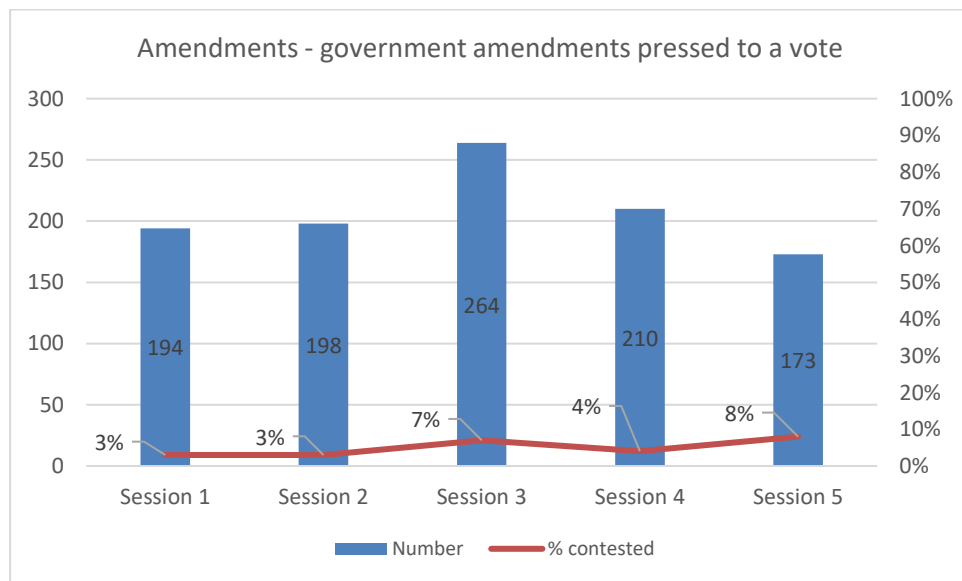
Figure 13 above shows that a consistently small percentage of government amendments were put to the vote across the five sessions, providing strong evidence that the government's amendments are uncontroversial and are likely to be technical in nature or responding to points raised by parliament. In all sessions the volume of government amendments is below 10% and in three sessions below 5%. The fact that the three lowest percentages counterintuitively fall in majority government sessions may suggest that opposition parties were less inclined to push government amendments to a vote when it

seemed certain they would lose (Shephard and Cairney 2005, pp.311-312) whereas in minority government sessions they may have been more inclined to press amendments to a vote because of the increase chance of them being successful.

The pattern of low percentages of government amendments being put to a vote is even more consistent if the results for one outlier Bill (Crofting), which generated 153 contested amendments, are dropped from the session 3 results – doing so brings the session 3 average down to 3%, making the results of the first four sessions virtually identical. The 8% contested result of session 5 is the highest, and significantly so if the Crofting Bill results is removed from session 3. This result may be suggestive of a more fractious parliament in session 5, with the government either more willing to bring forward controversial amendments and/or the parliament more willing to oppose even some uncontroversial amendments.

Hypothesis analysis - the fate of non-government amendments

<u>Hypothesis</u>

H7 – Non-government amendments should be less successful than government amendments, but their success rate should increase in minority government settings

This hypothesis is based upon the different objectives which MSPs have in bringing forward amendments to Bills. Shephard and Cairney's (2005, p.310) session 1 analysis revealed a non-government amendment success rate of 12%, significantly below that of the government. This lower success rate is explained partly by the fact that non-government amendments are rejected more frequently, but also because (Shephard and Cairney 2005, p.315) non-government amendments are more likely to not be pressed to the vote - some amendments are 'probing' amendments (the purpose of which is to enable discussion of an issue rather than being a genuine attempt to amend legislation); some amendments are not moved because, when they form part of a package of amendments on a specific topic, subsequent amendments will often not be moved if the first is defeated; some amendments are withdrawn because the government is able to persuade the author they are unnecessary or potentially harmful; others are not moved because a discussion of them secures a Ministerial commitment to action which renders the amendment unnecessary; and others may be withdrawn at committee stage for further reflection on whether they should be re-introduced at the final plenary stage. The comparable success rate at Westminster is even lower, with both

Thompson (2015b, p.58) and Russell et al (2015, p.292) finding that the non-government success rate there was less than 1%.

If the same patterns from session 1 were to be repeated, non-government amendments should have a relatively low success rate across all sessions, but with an increased success rate in sessions 3 and 5 when the parliament commanded enough votes to push amendments through against the government's will.

Results

Figure 14 – The fate of non-government amendments
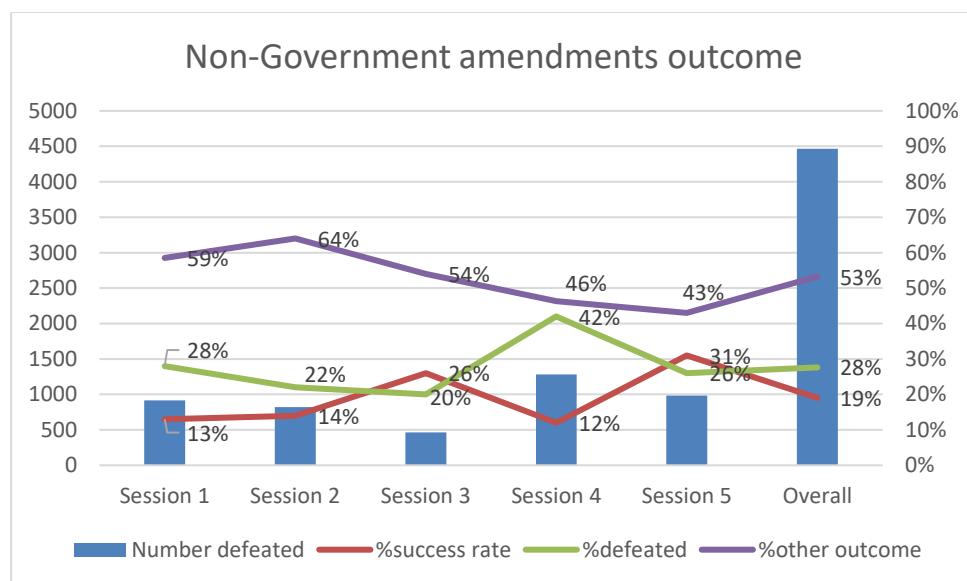
Analysis

Figure 14 provides strong evidence in support of the hypothesis. Non-government success rates were significantly lower than government success rates across all sessions, but with increases in non-government success rates in minority government settings. For majority government sessions, the success rate sits consistently at a little over 10% (13%, 14% and 12% for session 1, 2 and 4 respectively) and then jumps considerably to 26% and 31% for sessions 3 and 5 respectively. These basic statistics are strongly suggestive of the parliament having a greater, and potentially significant, impact on government Bills in minority government settings.

Hypothesis analysis – parliamentary persuasive and coercive capacity

<u>Hypothesis</u>

H8 – the coercive impact of the legislature should be greater in sessions 3 and 5 than in sessions 1, 2 and 4

The final hypothesis in this chapter investigates whether parliament's amendment impact was achieved through persuasion or by coercion. Persuasive impact in this context is when the parliament convinces the government of the merits of proposed amendments and the government either actively supports them or does not seek to block them. Coercive capacity is when the government opposes a non-government amendment which is nonetheless passed. This is a key aspect of Blondel's concept of legislative viscosity, which predicts that parliament should be able to impose its will on government more in minority settings than majority ones.

Analysis of persuasive/coercive capacity is possible if the government's position on an amendment can be established, and it is possible to do so through an interrogation of the official report of debates on amendments. In virtually all cases, the government seeks to make its position on amendments crystal clear. In debates on groups of amendments, Minister will typically conclude by saying – "I invite the committee/chamber to agree amendments a, b and c and to oppose amendments x, y and z." Even in the absence of that clear statement the government's position on opposition amendments can be inferred from whether the governing party voted for or against the amendments. If it votes for an amendment it is reasonably certain that the government supports the amendment, and if it votes against that the government opposes it.

Figure 15 – Parliament's persuasive and coercive capacity

Non-government amendments - coercion and persuasion
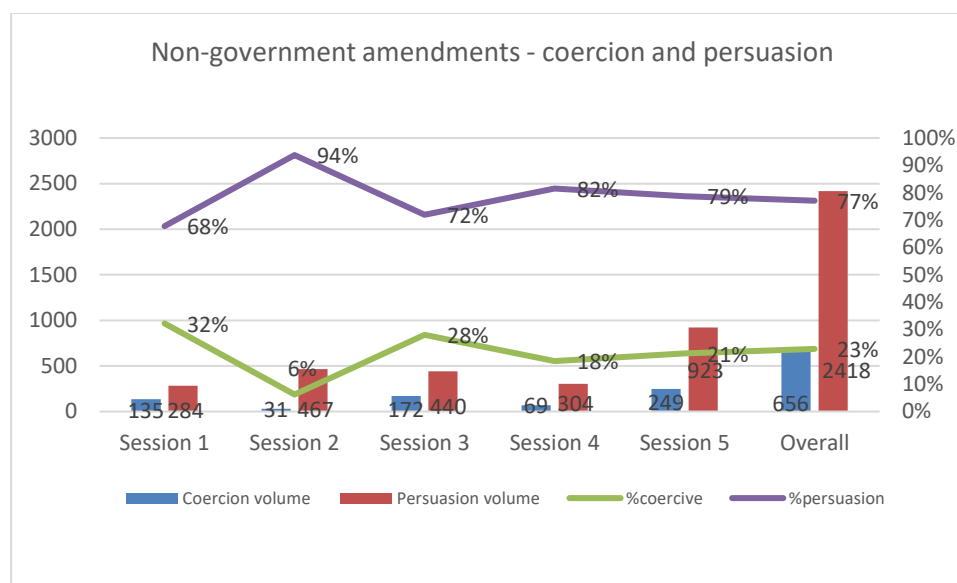
Analysis

The results in figure 15 reveal two clear trends. The first, which supports the hypothesis, is that with the exception of session 1, the parliament's coercive capacity rises in minority government sessions with the session 3 and 5 results of 28% and 21% coercive capacity significantly higher than the 6% and 18% figures of session 2 and 4. The session 1 majority anomaly of 32%, higher than any other session including those in minority government settings, requires explanation and this is considered further below. The second clear trend is that in all sessions, whether minority or majority, non-government amendments were achieved mainly through persuasive capacity. This suggests both that the government in all sessions has clearly not sought to block all non-government amendments (although some of its willingness to accept these amendments might be as a result of the anticipated reaction that the amendments would be voted through even if it objected) and that many non-government amendments are relatively minor in nature enabling the government to accept them whilst still maintaining the policy integrity of their Bills.

The answer to the session 1 outlier result of 32% coercive impact lies in the point at which the coercive capacity arose in parliament proceedings. Figure 16 below shows the distribution of coercive impact between Stage 2 (when, with the exception of Emergency Bills, amendment proceedings are taken in committee) and Stage 3 (when amendment proceedings are taken in plenary). This outlier result, coming in the first session of the

parliament, may be reflective of the newness of the parliament with MSPs still settling into ways of working and new norms not having developed.

Figure 16 – Stage 2 and Stage 3 distribution of coercive impact
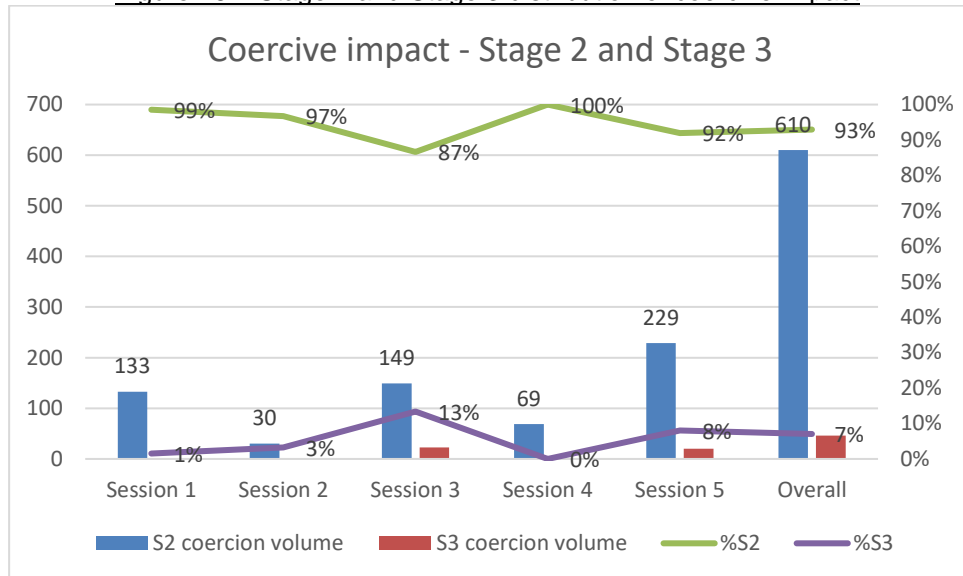
Figure 16 shows clearly that in all sessions the overwhelming majority of parliamentary coercive impact arose at Stage 2 when amendment proceedings were taken in committee – on average 93% of coercive impact at Stage 2 and 7% at Stage 3.

Figure 16 also shows that the Stage 2 coercive impact observed in session 1 is comparable to that seen in minority government sessions in terms of the volume of amendments passed, and it is committee-based coercive impact which causes the overall coercive impact result for session 1 to be so high. The data therefore suggests that government backbench members were willing to be relatively rebellious in session 1 (when it only required one committee member to vote against the government line to cause an amendment to be passed against the government's will) in comparison with other majority government settings. However, a different picture emerges when the results are analysed at the individual Bill level. A full 55 cases of the parliament's coercive capacity at Stage 2 in session 1 can be attributed to 'rebellions' in relation to the Ethical Standards in Public Life Bill. If this outlier is removed, the results for session 1 fall back more into line with those of other majority government settings. This serves as a useful reminder about the potential skewing effect of individual Bills, and the fact that what happens to individual Bills can differ greatly. It also contradicts the view (see, for example, Lamont (2019, p.262) that the Scottish Parliament acted more independently in its early years, and that there has been a significant decline in committee's willingness to challenge government.

CONCLUSION

The purpose of this chapter was to address the question of what has happened to government legislation since 1999, and to form an initial view on whether the Scottish Government dominates the legislative process.

In some respects the results support the picture of a stereotypical parliament with its legislative process dominated by government. The Scottish Government has brought forward over 10 Bills per year on average since 1999 and has secured the passage of almost all of them. It has authored about two-thirds of all amendments, and has been successful with almost all of them. Parliament has brought forward fewer amendments and has been successful with much less of them. It is features of the legislative process such as these which drive the disappointment evident in the literature and from the commentariat that the Scottish Parliament, and its legislative process, have so quickly come to resemble the UK Parliament's relationship with the UK Government.

In other respects the picture is more complicated. It is clear, for example, that the parliament's approach to, and impact on, government legislation is not determined solely by its strength relative to that of the government in the way that legislative viscosity would predict. For example, there is no sharp decline in the number of Bills which minority governments have brought forward, and there is no sharp decline in the number of Bills which minority governments are successful in securing the passage of. Similarly, there is no consistently sharp spike in the amount of time which parliament spends on scrutinising government Bills in minority government sessions, and there is no sudden spike in the volume of amendments which parliament brings forward in minority governments. Instead, the pattern across most of these variables is remarkably stable since 1999. The one clear and important exception to this is the success rate of non-government amendments in minority government sessions. The volume of successful non-government amendments has spiked, and spiked significantly, in both minority sessions, providing clear evidence that the parliament has secured more direct amendment impact in those sessions than in majority government sessions.

The reason why the predictions of legislative viscosity have not been more fully reflected in the results seems to be in line with the prediction of the public policy literature that most government Bills will be incremental and consensual. There is very strong evidence that consensus legislation has typified government legislative programmes across all five sessions of the Scottish Parliament. Indeed, arguably the strongest and most consistent

trend from the results in this chapter is that a tiny fraction of Scottish Government legislative programmes have been controversial enough to mobilise all opposition parties to try to block then. The story of minority government parliaments then is of latent high legislative viscosity which those parliaments have often chosen not to exercise over government Bills.

On a comparative basis, the volume of non-government amendments which have been passed in majority government settings in comparison with Westminster is noteworthy, with even the 13%, 14% and 12% success rates respectively from majority government sessions 1, 2 and 4 representing a dramatically different picture than the <1% success rate found in the UK Parliament in recent studies. These results may suggest that even if many features of the Scottish Parliament's legislative process feel similar to Westminster's, the Scottish Government's willingness to accept non-government amendments reflects a more collaborative approach to the scrutiny and amendment of Bills.

Finally, the results in this chapter already suggest there is reason for doubting that Holyrood's legislative process is wholly dominated in a negative way by government. If these results are augmented by evidence of the parliament having motivated government to bring forward amendments on its behalf, and if many of the amendments made by or inspired by parliament are significant, there would be further reasons for doubt that government dominates the legislative process - and that is the focus of investigation of the next chapter.

CHAPTER 6 – IN WHAT WAYS DOES THE SCOTTISH PARLIAMENT TRY TO CHANGE GOVERNMENT BILLS?

Does government dominate the legislative process? A case-study of the Scottish Parliament.

INTRODUCTION

The purpose of this chapter is to set out the results for my second research sub-question – in what ways does the Scottish Parliament try to change government Bills?

The previous chapter's quantitative analysis suggested there were reasons to be doubtful that government dominates the legislative process. The focus in this chapter is on what insights qualitative analysis of a smaller sample of Bills and amendments (50 Bills (10 from each session) and 2,314 amendments), with 10 Bills drawn from each parliamentary session, reveals about parliamentary impact and whether this qualifies the picture of government dominance further.

Analysis in this chapter is based around an original typology of nineteen different types of policy impact which parliamentary amendments had, and investigates three key issues. In what ways is parliament trying to change government Bills? In what ways is it most successful in changing government Bills? Does government overturn successful parliamentary amendments? I structure the chapter results into three corresponding parts, testing the hypotheses set out in table 5 below, plus a final part which provides illustrative examples of the types of amendments which parliament makes in each of the categories of the typology.

Table 5 (first used in Chapter 3) – Hypotheses tested for research sub-question 2

Topic	No.	Hypothesis
Spread across categories	9	Most lodged parliamentary amendments should not be in the most important categories, and those that are should be concentrated in a small number of Bills.
Parliamentary impact	10	Successful parliamentary impact in the most important categories should occur mostly in minority government.
Overturned amendments	11	More, and more significant amendments should be overturned in majority government sessions.

Part 1 of the chapter tests the hypothesis that amendments lodged by parliament should be spread across the categories in my typology, and that relatively few instances of the first four most important categories of the typology (those amendments which add new policy components, remove original policy components, or expand the coverage of the Bill) will arise. This is based on extrapolating from the public policy literature claim that most public policy should be consensual and incremental, and that parliament should not normally be

seeking seek to fundamentally alter government Bills. This part also investigates that claim from the perspective of whether there is evidence that the most important types of policy amendments are lodged in relation to a small number of Bills.

Part 2 of the chapter shifts the focus from the impact which parliament sought to have on government Bills to the impact it achieved. I firstly address the extent to which government amendments were inspired by parliament and should therefore count as evidence of parliamentary impact. I then look at the general distribution of successful amendments, and whether there is evidence that the most important types of policy impact arise most often in minority sessions, based on the legislative viscosity prediction that such changes should be easier for parliament to make when it is free from government control.

Part 3 of the chapter investigates the extent to which parliamentary amendment successes at Stage 2 of the Bill processes were subsequently overturned by the government at Stage 3. The hypothesis tests the legislative viscosity prediction that majority governments should be better able to use their plenary voting power to overturn amendments made at committee than minority governments.

PART 1 – SPREAD ACROSS CATEGORIES

Hypothesis

<u>H9 – Most lodged parliamentary amendments should not be in the most important categories of the policy typology, and those that are should be concentrated in a small number of Bills.</u>

This first hypothesis explores the types of policy impact the parliament was seeking to achieve by exploring the distribution of all 1,115 non-government amendments which were lodged across the sample of 50 Bills (set out in table 3 below).

Table 3 (first used in chapter 3) – Typology of policy impact

1	An amendment which adds a new topic to a Bill, unrelated to its original content.
2	An amendment which adds a new policy component to a Bill, related to its original content.
3	An amendment which expands or contracts an original policy component of a Bill.
4	An amendment which removes an original policy component of a Bill.
5	An amendment which makes any change to timing, such as the addition of timescales for action to be taken.
6	An amendment which relates to offences and penalties.
7	An amendment which relates to judicial procedure, such as court or tribunal procedures, or evidence or proof.
8	An amendment which relates to consultation processes.
9	An amendment which streamlines, adds detail to, or alters a procedure.
10	An amendment which makes any form of correction, whether through error or omission.
11	An amendment which changes a form of words without any substantive effect.
12	An amendment which relates to Ministerial or public body functions.
13	An amendment which relates to Ministerial or public body powers.
14	An amendment which relates to recruitment or appointment processes.

15	An amendment which relates to changes to delegated powers.
16	An amendment which relates to the production, laying or approval of documents/reviews/reports/evaluations.
17	An amendment which relates to money, such as taxes or fees.
18	An amendment which adds, amends or removes a definition.
19	An amendment which sunsets a provision in a Bill.

The principal point of interest is in relation to categories one to four, which demonstrate evidence of parliament seeking to significantly change the Bills brought forward by government. The hypothesis is based on the public policy literature claim that most public policy should be consensual and incremental. That being so, it should be unlikely that a large part of parliament's amendments would be seeking to fundamentally transform Bills brought forward by government.

Results – frequency of policy type

The first set of results, in table 12 below, shows the distribution of lodged parliamentary amendments across the typology. The 'number' column is the number of parliamentary amendments lodged, and the 'percentage' column is that number as a percentage of the overall number of parliamentary amendments lodged.

Table 12 – Frequency of policy type: lodged amendments from sample drawn from across all parliamentary sessions

Category	Number	Percentage
1	0	0%
2	79	7%
3	315	28%
4	26	2%
5	41	4%
6	20	2%
7	44	4%
8	36	3%
9	156	14%
10	5	<1%
11	34	3%
12	116	10%
13	51	5%
14	20	2%
15	21	2%
16	54	5%
17	32	3%
18	64	6%
19	1	<1%

Analysis – frequency of policy type

The results in table 12 provide strong evidence in support of the hypothesis. With 63% of all amendments lodged by parliament falling outside of the first four categories it is clear that

parliament's main focus is not on substantially transforming government Bills. That view is reinforced when the distribution of amendments within the first four categories is considered. The results show that the parliament lodged no amendments which would have had the effect of adding brand new policy topics unconnected to the original policy of government Bills, and lodged only 26 amendments (2% of the total parliamentary amendments lodged) which would delete original policy components from Bills. However, the results do also provide clear evidence that parliament's interest was not solely on technical and procedural aspects of government Bills. 79 (7%) of parliament's amendments sought to add new policy components associated with the original policy of the Bill and over a quarter (28%) of lodged parliamentary amendments sought to expand or contract the impact of the Bill. The latter result is particularly interesting as it has the largest concentration of amendments for any single category in the typology (more than double the next largest), with the potential for significant parliamentary impact if these lodged amendments were converted into successful amendments.

In terms of the spread of lodged amendments across other categories, there is a fairly even distribution of single-digit percentages with only two categories getting into double-figure percentage points. The first is category 9 (procedural amendments) at 14%, which demonstrates a high level of parliamentary interest in the mechanical aspects of government Bills. The next is category 12 (Ministerial and public body functions), which demonstrates a high level of parliamentary interest in seeking to influence how legislation could be used by key actors in its implementation. It is perhaps surprising that other types of amendment which might have been expected to be common areas of interest to parliament do not feature more prominently. For example, only 4% of lodged amendments sought to apply timescales by which actions had to be taken under Bills. Only 3% related to consultation duties which would have to be followed under Bills. And only 2% related to changes to delegated powers under Bills, which undermines the perception that can sometimes arise that parliament routinely seeks to 'bid up' the scrutiny procedure which applies to delegated powers in Bills. The less than 1% result for category 10 (which relates to any form of correction made to Bills), and of 3% for category 11 (which relates to changes to wording which have no substantive effect) provides clear evidence that parliament was not routinely performing a quality assurance role in relation to the technical drafting of Bills. This is in line with the earlier observation in chapter 4 that parliament seldom undertakes detailed line by line scrutiny of Bills.

Results – concentration of most important types of amendment

The second set of results, in table 13 below, shows the Bill-level frequency distribution of lodged parliamentary amendments of the four most important categories of the typology. The 'Cat' columns relate to the relevant category in the typology. The rows show the number of Bills parliament had lodged amendments in those categories.

Table 13 – Bill frequency: lodged amendments

	Cat 1	Cat 2	Cat 3	Cat 4
0	50	35	19	44
1-5	0	9	15	4
6-15	0	5	10	2
16-25	0	1	6	0
26-50	0	0	1	0
51 and above	0	0	1	0

*Cat 1 is an amendment which adds a new topic to a Bill, unrelated to its original content. Cat 2 is an amendment which adds a new policy component to a Bill, related to its original content. Cat 3 is an amendment which expands or contracts an original policy component of a Bill. Cat 4 is an amendment which removes an original policy component of a Bill.

Analysis – concentration of most important types of amendment

The distribution of lodged parliamentary amendments in these categories (categories 1 to 4) again supports the hypothesis and also illustrates the variation in parliamentary interest across Bills. For category 1 (adding brand new topics to Bills) and category 4 (removing topics from Bills) the picture is clearest. As shown in the previous set of results, there were no examples from the case-study Bills of the parliament was seeking to add entirely new topics to Bills, and this new set of results shows only six Bills where parliament sought to remove topics. It is clear from these results that parliament's attempts to change government Bills were rarely of a truly transformative nature.

The hypothesis is also supported, although less clearly, for categories 2 (adding new topics associated with the original policy content of the Bill) and 3 (expanding the coverage of original topics in Bills). In a substantial majority of cases (35 out of 50) the parliament did not seek to make category two amendments and in a little under half of cases (19 out of 50) parliament did not seek to make category 3 amendments. Overall, it seems reasonable to conclude that the most significant types of policy amendment were concentrated in a minority of Bills and were not a routine feature of the parliamentary passage of Bills.

PART 2 – GOVERNMENT AMENDMENTS INSPIRED BY PARLIAMENT

Hypothesis

<u>H9 – Successful parliamentary impact in the most important categories of the typology should occur mostly in minority government</u>

This hypothesis considers the extent of actual parliamentary amendment impact, and is focused on exploring the legislative viscosity prediction that parliament's success (particularly in the most important categories of parliamentary impact) should arise in minority government sessions. This is on the basis that the government would be better able to resist such changes being made to its Bills in majority government sessions. Before testing that hypothesis directly the first two sets of results explore the extent to which parliament's impact was secured through amendments it authored and those it inspired the government to bring forward, and then the general distribution of successful amendments across the categories in the typology.

Results – extent of government amendments inspired by parliament

Table 14 – Government amendments inspired by parliament

	Number	**Success rate as a % of all amendments lodged by parliament/government respectively**
Pure parliamentary amendments	245	22%
Inspired government amendments	450	n/a
Pure government amendments	728	n/a
Total government amendments	1178	99%

Table 14 above shows the results of coding all 1,423 successful amendments from the 50 case-study Bills. Pure parliamentary amendments are those successful amendments brought forward by parliament. Inspired government amendments are those successful government amendments for which there is evidence they were inspired by parliament. Pure government amendments are those successful government amendments for which there is no clear evidence they were inspired by parliament. Total government amendments are all

successful government amendments, combining the inspired and pure columns. The percentages in the second column for pure parliamentary amendments and total government amendments show the success rate for each category of amendment as a percentage of total amendments lodged by parliament and government respectively.

Analysis – extent of government amendments inspired by parliament

The results in table 14 show an impressive parliamentary amendment success rate of 22% (representing 245 amendments to government Bills), but also that this amounts to about one-third of the parliament's total amendment impact when government inspired amendments are taken into account. The other two-thirds of parliament's impact - those 450 inspired government amendments – amount to over half of all government amendments, which demonstrates the extent to which the Scottish Government was responsive to parliamentary prompting during the scrutiny of Bills. Taken together, pure parliamentary amendments and inspired government amendments account for almost 50% (48.9%) of all successful amendments to Bills. This demonstrates that the already qualified picture of government dominance of the legislative process in the previous chapter definitely does need to be qualified even further.

Results – distribution of successful parliamentary impact across categories

Table 15 below shows those parliamentary amendments which were ultimately successful, and separates out those it made directly and those it achieved indirectly through non-government amendments.

The "Direct parliamentary impact" column shows all successful non-government amendments, with the "% dist" column showing the relative spread of successful amendments compared with other categories and the "% succ" column showing the percentage success rate based on the total volume of amendments lodged in that category. The "Through Govt amendments" shows all those government amendments which the parliament was responsible for inspiring, their relative spread across categories (% dist) and the percentage of all successful government amendments which these inspired amendments comprised (% of gov). The "Total" column shows the total quantum of parliamentary impact and its relative spread across categories. The final column "Pure government amendments" shows, for reference, the volume of successful government amendments in each category which cannot be attributed to parliamentary influence.

Table 15 – Frequency of policy type: successful amendments

	Direct parliamentary impact			Through Govt amendments			Total		Pure government amendments
	N	% dist	% succ	N	% dist	% of gov	N	% dist	N
Cat 1	0	0%	0%	0	0%	0%	0	0%	1
Cat 2	21	9%	27%	8	2%	15%	29	4%	47
Cat 3	66	28%	21%	83	19%	61%	149	22%	52
Cat 4	0	0%	0%	1	<1%	100%	1	<1%	0
Cat 5	8	3%	20%	9	2%	32%	17	2%	19
Cat 6	1	<1%	5%	2	<1%	29%	3	<1%	5
Cat 7	9	4%	20%	65	15%	44%	74	11%	83
Cat 8	17	7%	47%	12	3%	38%	29	4%	20
Cat 9	34	14%	22%	68	15%	40%	102	15%	104
Cat 10	0	0%	0%	6	1%	4%	6	1%	139
Cat 11	24	10%	71%	30	7%	63%	54	8%	18
Cat 12	24	10%	21%	21	5%	34%	45	7%	40
Cat 13	1	<1%	2%	22	5%	33%	23	3%	44
Cat 14	5	2%	25%	6	1%	27%	11	2%	16
Cat 15	1	<1%	5%	55	12%	60%	56	8%	37
Cat 16	16	7%	30%	10	2%	29%	26	4%	24
Cat 17	2	<1%	6%	14	3%	44%	16	2%	18
Cat 18	10	4%	16%	36	8%	31%	46	7%	80
Cat 19	1	<1%	100%	0	0%	n/a	1	<1%	0

Analysis - distribution of successful parliamentary impact across categories

Of particular interest is again the results for the first four categories of policy impact, which deal with the most significant types of changes to Bills – did they grow, shrink, or have new topics added to them? It is instructive that there was only a solitary example of a category 1 amendment (seeking to add a new and unrelated topic to a Bill), and that it was a pure government amendment – this reinforces the results of the previous part of the chapter that only very rarely are brand new policy topics added to government Bills during their parliamentary passage.

Category 2 (adding new topics related to the original topic of a Bill) does however provide evidence of some policy-making capacity of parliament. This category accounts for 9% of all direct parliamentary impact (and 4% of its overall amendment impact), with parliament enjoying an impressive conversion rate of over a quarter (27%) of such amendments. When the milder form of policy-influencing capacity of category 3 (expanding or contracting the original policy content of a Bill) of 66 direct amendments and 83 indirect amendments (accounting for 22% of all successful parliamentary amendments) is taken into account it is clear that parliament's overall impact had some significant consequences and was not solely technical.

Finally, for category 4 (removing original policy components of a Bill), there is only one successful example, providing clear evidence that the government was highly successful at delivering the original policy content of its Bills, even if the evidence of categories 1-3 is that

in some cases at least the final shape and content of the Bill was altered during its parliamentary passage.

Looking at the spread of parliamentary impact across the other categories, the most common type of impact overall was procedural, with category 7 (judicial procedure) and category 9 (administrative procedure) together accounting for about a quarter (26%) of parliament's overall impact.

At the most minor end of the spectrum, there were no successful parliamentary amendments in category 10 (amendments which correct errors), and only 6 amendments in this category were delivered by government for parliament. In total, 96% (139) of amendments in this category were driven by government itself, suggesting that one of the main forms of government dominance of the legislative process lay in the technical drafting aspect of it. In a similarly minor category (category 11), parliamentary amendments which changed words without any significant policy effect, had a high success rate (71%) and most government amendments of this type were inspired by parliament (63%). This might reflect the fact that such amendments are an easy concession for government to make to parliament. The same explanation potentially underlies the relatively high success rate of non-government amendments relating to category 8 consultation processes (47%) given that consultation with stakeholders is an everyday part of the approach of governments to policy development and is therefore an easy thing for government to concede.

Two final points from table 15 which are worth noting. The first is the strikingly low total direct and indirect impact of parliament on offences and penalties (category 6), totalling just 3 amendments. This is perhaps surprising given that the nature of offences and levels of penalties might have been thought to be fertile ground for MSPs to try to effect changes to the government's approach. Changing delegated powers (category 15) is something that the government clearly preferred to do on behalf of parliament (only one amendment in this category was secured directly by parliament, compared with 55 through government), perhaps reflecting the relatively technical nature of such provisions, and that a driver for change was often the recommendations in reports of the Delegated Powers and Law Reform Committee at Stage 1 rather than amendments lodged by MSPs at later stages.

Results – concentration of most important impact in minority government sessions

Table 16 below shows the cumulative results for minority sessions (session 3 and 5) and majority sessions (session 1, 2 and 4) for the two of the first four categories for which there

was sufficient amendments to enable further analysis. The table shows direct amendment success (through parliamentary amendments) and indirect amendment success (through government amendments inspired by parliament). The greyed column shows the figures recalculated to exclude one outlier Bill. This was the Gaelic Language Bill which had a total of 29 amendments in category 3 because of a quirk of drafting in how the Bill was amended to bring into scope a wider range of public bodies.

Table 16 – Sessional success rates for major policy amendments

	Sessional success rates for categories 2 and 3																	
	Direct						Indirect						Indirect (recalculated)					
	Cat 2		Cat 3		Total		Cat 2		Cat 3		Total		Cat 2		Cat 3		Total	
	No.	%	No.	%	No.		No.	%	No.	%	No.		No.	%	No.	%	No.	
Minority	19	90%	52	79%	71	82%	6	75%	36	43%	42	46%	6	75%	36	67%	42	68%
Majority	2	10%	14	21%	16	18%	2	25%	47	57%	49	54%	2	25%	18	33%	20	32%

Analysis – concentration of most important impact in minority government sessions

Table 16 shows some very clear trends between minority and majority government sessions. The parliament's ability to make category 2 changes is particularly stark, with 90% of such amendments arising in minority government sessions. The same is true for indirect amendments, with 75% of those arising in minority government sessions. The difference is less stark, but remains pronounced, in relation to category 3, with 75% of direct parliamentary amendments arising in minority government sessions and (with the Gaelic Bill results excluded) 68% of indirect parliamentary amendments arising in minority government sessions. The general conclusion to be drawn is that the hypothesis is supported and the Scottish Parliament was much more successful at making the most significant types of policy changes in minority government sessions than in majority sessions.

PART 3 - OVERTURNED PARLIAMENTARY AMENDMENTS

Hypothesis

H14 – More amendments should be overturned in majority government sessions

The purpose of this hypothesis is to explore the extent to which parliamentary amendments made at Stage 2 proceedings were subsequently overturned in plenary proceedings at Stage 3. A small number of such reversals would mean the picture of parliamentary impact

set out in the previous sections would remain valid but if a large number were overturned conclusions about parliament's impact would have to be revisited. The hypothesis predicts, in line with the legislative viscosity prediction that parliaments free from government control should have a more significant impact, that the government would be less able to overturn amendments in minority government sessions.

Results

Table 17 below sets out the results of what happened to successful parliamentary amendments at Stage 2, split between minority government and majority government sessions.

Table 17 – Categorisation of overturned amendments

	Fully Reversed		Amended Negatively		Amended Favourably		Total
Minority	6	5%	3	2%	14	11%	123
Majority	1	2%	0	0%	4	9%	43
Total	7	4%	3	2%	18	11%	166

Analysis

The results in table 17 do not provide strong support for the hypothesis, with only a 3% difference between any of the results for minority and majority government sessions. The principal conclusion to be drawn from these results is that the vast majority of non-government amendments which are made at Stage 2 are left broadly intact by the government. This is underlined further by the recalculation of results in table 18 below. If a negative effect on amendments is taken as an amendment either being reversed completely or negatively amended, and a positive effect being that they are left unamended or are amended favourably (i.e. left broadly intact but tidied up), then only 6% of all successful parliamentary amendments at Stage 2 suffered negatively at later stages.

Table 18 – Overturned amendments: negative and positive distribution

	N	%
Reversed or negatively amended	10	6%
Unamended or amended favourably	156	94%

PART 4 – EXAMPLES OF THE SCOTTISH PARLIAMENT'S POLICY IMPACT ON GOVERNMENT BILLS

The purpose of this final part of the chapter is to provide some illustrative examples of the policy impact which arose in each category of my typology to provide a clear sense of the practical effect which the Scottish Parliament had on government Bills.

Examples from each category

Category 1 – Addition of a new and unrelated topic

Although this was not an example of parliamentary influence, I have included for completeness the sole example of when a new topic, unrelated to the original purpose of a Bill, was added. This was in relation to the session 4 Health (Tobacco, Nicotine etc. and Care) Bill, which originally dealt with tobacco and nicotine vapour products (addressing their registration, advertising and promotion), smoking outside of hospitals, a duty of candour procedure, and ill treatment and wilful neglect. The range of topics in the Bill meant that its scope was broad enough to allow other health related topics to be added, and at Stage 2 the Scottish Government brought forward an amendment which dealt with the provision of communication equipment and associated support for children and adults who have lost their voice or have difficulty speaking. The amendment provided a more explicit duty on Ministers to provide or secure the provision of communication equipment and associated support. This amendment was unrelated to any of the original topics of the Bill and is a clear and rare (at least in terms of the case-studies I have investigated) example of completely new material being added to a Bill during its parliamentary passage.

Category 2 – Addition of a new policy topic

An example of a new topic, related to the original purpose of a Bill, being added arose in relation to the session 2 Further and Higher Education Bill. The purpose of this Bill was to merge the Scottish Further Education Funding Council and the Scottish Higher Education Funding Council. The Bill dealt principally with how the new body, the Scottish Further and Higher Education Funding Council, would operate and made some provision about its relationship with bodies it would fund (i.e. individual academic institutions). An opposition amendment at Stage 2 was lodged with the purpose of extending academic freedom to post-1992 universities and further education institutions. This topic was not included in the original Bill but was clearly relevant to its overall purpose. The Government resisted the amendment

at Stage 2 but it was passed against its wishes by the lead committee and the Government brought forward a replacement amendment at Stage 3 which had essentially the same effect as the original.

Category 3 – Expansion/contraction of original content

An example of the original coverage of a Bill being extended arose in relation to the session 2 Gaelic Language Bill. The Bill originally dealt with the establishment of a Gaelic development body and the development of Gaelic Language Plans by Scottish public authorities. An opposition amendment was lodged at Stage 2 to extend the relevant provisions of the Bill to include cross-border public authorities. This was withdrawn following an undertaking that the government would bring forward an equivalent amendment at Stage 3 (which it did), and the government also accepted an opposition amendment at Stage 3 which added the Food Standards Agency (which was covered by neither definition of Scottish public authority or cross-border public authority) to the bodies covered by the Bill.

Category 4 – Deletion of original policy component

The only example of the parliament removing an original policy component from a Bill arose in relation to the session 4 Freedom of Information (Amendment) Bill, the purpose of which was to make a number of amendments to the existing FOI regime in Scotland. One of the provisions of the Bill provided that information relating to communications with current and future heads of state should be given additional protections under the Scottish FOI regime to ensure consistency of approach across the UK. Following concerns expressed by parliament during Stage 1 about the implications of an absolute exemption for such information the government brought forward an amendment at Stage 2 which removed the relevant provision from the Bill, resulting in no change being made to how such communications would be dealt with under the Scottish FOI regime.

Category 5 – Any change to timing

The session 2 Gaelic Language Bill also gave rise to parliamentary influence on timing provisions in a Bill. A number of timing constraints were introduced to the Bill either directly by parliament or by government in response to the prompting of parliament. One example of this was an amendment which the government brought forward in response to a recommendation in the lead committee's Stage 1 report which had the effect of requiring that the National Gaelic Language Plan which would be produced by the Gaelic development

body established by the Bill must be updated at least every 5 years. Under the original provisions of the Bill no timescales were prescribed for updating the Plan.

Category 6 – Offences and penalties

The session 4 Health (Tobacco, Nicotine etc. and Care) Bill gave rise to one of the few examples of parliamentary influence on offences and penalties provisions. Following prompting by parliament, the government brought forward an amendment at Stage 3 of the Bill which had the effect of requiring that one of the new offences established by the Bill (a care-workers offence of ill-treatment or wilful neglect) would be added to the list of offences in separate legislation which governed the regime of disclosure certificates for applications for sensitive roles and jobs.

Category 7 – Judicial procedure

The session 3 Forced Marriage (Protection and Jurisdiction) Bill, the purpose of which was to make provision for protecting people from being forced into marriage without their free and full consent gave rise to a number of changes of judicial procedure. One example of this, following prompting by parliament to clarify powers of arrest under the Bill, was the government bringing forward an amendment to give a specific power for a constable to arrest without warrant any person who was reasonably believed to be committing, or to have committed, a breach of a forced marriage order. Similarly, following parliamentary prompting, the government brought forward an amendment which clarified that a Forced Marriage Protection Order could prohibit a person from taking a victim away from a place specified by the courts, thus potentially preventing removal from Scotland or from a specific place within Scotland.

Category 8 – Consultation

The session 4 Welfare Funds Bill, which made provision for the establishment of welfare funds to be maintained by local authorities following devolution of that function under the Scotland Act in the previous year, includes an example of the parliament effecting consultation related change. The government lodged an amendment in response to a recommendation in the lead committee's Stage 1 report, adding the Scottish Public Sector Ombudsman to the list of bodies that Ministers must consult before making, varying or revoking guidance under the Bill.

Category 9 – Administrative procedure

The session 4 Social Care (Self Directed Support) Bill, which made provision for the operation of self-direct support allowing individuals and families an informed choice about the way support services are provided to them, provides an example of the common occurrence of parliament influencing the administrative operation of Bills. A parliamentary amendment at Stage 2 of the Bill had the effect of introducing a new requirement that children would be involved in decisions about self-directed support options when they directly affected that child.

Category 10 – Any form of correction

As noted in the previous part of this chapter, most errors or omissions in Bills were identified and acted upon directly by the government but there are some examples of this arising from parliamentary prompting. One such example arose in relation to the session 2 Aquaculture and Fisheries Bill which made provision for the operation of fish and shellfish farms. Following a recommendation from the Delegated Powers Committee the government brought forward an amendment which corrected an error in the financial level at which a fixed penalty notice had been set in the Bill.

Category 11 – Any word changes which don't have substantive effect

An example of non-government amendments which changed wording in the Bill without any substantive effect arose in relation to the session 1 International Criminal Court Bill, which made provision for ratification of the Rome Statute of the International Criminal Court (which was established to deal with violations of international law such as war crimes, crimes against humanity and genocide). Non-government amendments were made which had the effect of changing references under the Bill from "register" to "record" to bring those references into line with common usage in Scots law.

Category 12 – Ministerial/public body functions

The session 5 South of Scotland Enterprise Body Bill, which established a new enterprise agency to support development in the south of Scotland, saw a range of non-government amendments made to the functions of the new body. These required, for example, the body to exercise its functions with a view to supporting a working age population, digital connectivity and promoting improved transport services.

Category 13 – Ministerial/public body powers

Similar to category 12 is amendments which change the powers which Ministers and public bodies are given under a Bill. This arose in relation to the session 3 Public Records Bill, which put an obligation on public bodies to produce and implement a Records Management Plan under the guidance of the Keeper of the Records of Scotland. Following concerns expressed by parliament about the frequency with which such plans might be required, the government brought forward an amendment which restricted how often the Keeper could request a public body to update its plans.

Category 14 – Appointments/recruitments

Examples of changes to appointments or recruitment provisions inevitably only arose when the subject matter of a Bill was relevant, and one such example was the Gender Representation on Public Boards Bill which created a target for public boards to have 50% of non-executive members who are women. During the passage of the Bill a non-government amendment was passed which provided that the duty in the Bill which required public bodies to take such steps as they consider necessary to encourage applications from women should not prejudice their efforts to encourage applications by members of other diversity groups.

Category 15 – Changes to delegated powers

The session 2 Emergency Workers Bill, which made it an offence to assault or impede persons who are providing emergency services, provides an example of parliamentary influence changing the delegated powers in a Bill. In this case, the government responded to pressure from the parliament and brought forward an amendment which changed the procedure for one of the delegated powers in the Bill from negative to affirmative, providing the parliament with a higher degree of control and scrutiny on the use of that power.

Category 16 – Production and approval of reports/review/evaluations

The Gender Representation on Public Boards Bill also saw parliamentary impact on how reviews of its operation would be conducted. In response to parliamentary prompting, the government brought forward an amendment which strengthened the provisions on reporting

in the Bill to make clear that Ministers, other appointing persons and public bodies would all be required to publish reports on the carrying out of their functions.

Category 17 – Spending/raising taxes/fees etc.

Parliamentary influence on provisions which directly impact on spending, raising taxes, fees etc. were rare, but the Child Poverty Bill, which set out targets for eradicating child poverty, contained two such examples. One was a non-government amendment to require the Scottish Government to include in its plans for eradicating child poverty an assessment of the financial resources required. Another required Ministers to regularly consider whether child benefit should be topped up.

Category 18 – Definitions

The parliamentary passage of the session 5 Wild Animals in Travelling Circuses Bill, which made it an offence for circus operators to use wild animals in travelling circuses while in Scotland, was almost entirely defined by discussions over definitions in the Bill and whether other terms should be defined. Following parliamentary prompting, for example, the government brought forward an amendment to establish a definition of "circus" in the Bill and another amendment to clarify that static circuses and other enterprises that are not considered to be travelling circuses were not caught by the provisions of the Bill.

Category 19 – Sunsetting

The only example of a sun-setting provision being added to a Bill by parliament arose in relation to the session 4 Alcohol (Minimum Pricing) Bill, which brought back provisions which would establish a common minimum unit price for alcoholic beverages previously removed by parliament from a wider Alcohol Bill in session 3. A non-government amendment was passed at Stage 2 which provided that the key provisions of the Bill would cease to have effect after 6 years unless the parliament approved that they should continue.

CONCLUSION

The purpose of this chapter was to address my second research sub-question – in what ways does the Scottish Parliament try to change government Bills – building on the quantitative analysis of Bill and amendment outcomes in the previous chapter.

The results further qualify the perception of government dominance of the legislative process. The previous chapter had already established that parliament had a relatively high success rate with amendments (and in the sample used in this chapter the success rate was over 20%), and when the results of this chapter on controlling for the original inspiration of amendments are added parliament becomes responsible for almost 50% of all successful amendments. The results in this chapter show that government rarely sought to overturn successful parliamentary amendments. On the basis of these results, it would reasonable to conclude that parliament cannot be viewed as a marginal actor in the legislative process.

However, volumes do not tell the whole story and understanding the type of policy impact which parliament has is important in determining just how significant its impact on government Bills actually is. Even without accounting for the success rate of parliamentary amendments, this chapter demonstrates that it is absolutely clear from the small number of amendments (about 7%) which *sought* to add new topics to Bills or remove existing ones that the principal focus of parliament and government was not on fundamentally transforming government Bills during their parliamentary passage but on amending the original policy content.

Analysis of the results of successful amendments reinforces that point. A total of 73% of successful direct and indirect parliamentary amendments fell outwith the first four categories in my typology which dealt with the most substantive policy changes. Although much of the parliament's impact is non-trivial it is predominately of a mild policy-influencing or technical type. Importantly, where parliament does effect some important policy change (particularly in terms of expanding the coverage of Bill provisions into new areas) that mostly arises in minority government sessions, providing support to the prediction of legislative viscosity that government will, and will be better able to, resist parliamentary influence in majority government sessions.

The broader conclusion to be taken from the results in this chapter is that they demonstrate that parliamentary impact is highly variable in terms of its impact on Bills and highly dynamic in terms of which government Bills that impact arises on. The purpose of the next chapter is to explore that dynamic variation in parliamentary impact, and to show the extent to which parliament's attempts to change Bills are driven by the type of Bill which government brings forward.

CHAPTER 7 – WHY IS THE SCOTTISH PARLIAMENT'S IMPACT ON GOVERNMENT BILLS SO VARIED?

Does government dominate the legislative process? A case-study of the Scottish Parliament.

INTRODUCTION

The purpose of this chapter is to set out the results for my third research sub-question – why is the Scottish Parliament's impact on government Bills so varied?

The previous two chapters have demonstrated that in investigating government dominance in the legislative process considerable variation lies behind the high level results. In the last chapter in particular the results showed that parliamentary impact on government Bills is highly dynamic – some Bills are not amended at all by parliament, some in very minor ways and some have significant amendments made to them. The results also showed that although more significant amendments were made to government Bills in minority government sessions than majority government sessions, the majority of Bills in minority sessions were not routinely amended in a significant way.

From a practitioner point of view that variation is part of the professional challenge of managing a Bill and a wider legislative programme, and the smooth passage of a government Bill cannot be taken for granted, even in majority government situations. Day to day involvement in the legislative process brings with it the experience of parliamentary reaction to government Bills being far from a uniform thing. Each new Bill brings with it a set of new parliamentary handling considerations – how will parliament receive a Bill? What issues will it focus on? What might it ask government to do? And what might it itself try to do a Bill? However, practitioner experience of the legislative process also suggests that parliamentary reaction to government Bills is seldom random or irrational. A challenging parliamentary passage for a government Bill is not usually the product of parliament being difficult for the sake of being difficult – there is usually something about a Bill (whether its policy content, stakeholder views, or its connection to existing political controversy) which provokes a strong parliamentary reaction.

The analysis in this chapter is designed to illustrate that practitioner experience of dynamic variation in parliamentary impact. The approach I take is to draw on my knowledge of the parliamentary passage of government Bills and use four case-study Bills, all drawn from the first SNP minority government administration of 2007-2011. I use these case-studies to

demonstrate the wide spectrum of parliamentary impact which parliament has, and to test the hypothesis below that there is a direct correlation between the contentiousness of Bills and parliament's reaction to them and impact on them in minority government sessions.

Table 8 (first used in chapter 3) – Hypothesis tested for research question 3

Topic	No.	Hypothesis
Variation in parliamentary amendment impact	20	Parliamentary amendment impact on government Bills should increase the more that those Bills diverge from the incremental and consensual policy predicted by the public policy literature.

To test the hypothesis I use a set of legislative viscosity variables to demonstrate parliament's reaction to and impact on these Bills (how much time did parliament take to scrutinise them, how many amendments were made, how much did the original policy of the Bill change etc.). I then use a set of stress variables to investigate the context surrounding each Bill (how polarising was the policy content, how did stakeholders react, and what political opposition arose).

The chapter has two main parts. The first introduces the policy purpose of each of the four case-study Bills, and the second sets out the results of testing legislative viscosity and stress variables against each of the case-study Bills.

PART 1 - CASE-STUDY INTRODUCTIONS

The summary descriptions of the case-studies in this part are based on the government's presentation of what the Bills were intended to achieve, and the Bills are presented in order of significance and policy controversy.

Scottish Local Government (Elections) Bill

This Bill was introduced to the Scottish Parliament on 3 February 2009. Its principal purpose was to ensure local government elections and Scottish Parliament elections would not be held on the same date in the future. It had a secondary purpose of allowing for the publication of, and access to, a greater level of information about votes cast in local government elections. The Bill was a response to the report of Ron Gould, former Assistant Chief Electoral Officer of Canada and electoral administration expert, who was commissioned to review why voter confusion, and resulting spoilt ballots, had arisen during

the 2007 Scottish elections. One of the key recommendations from his report was that the Scottish Parliament elections should be decoupled from local government elections.

Public Records Bill

The Bill was introduced to the Scottish Parliament on 7 October 2010. The principal purpose of the Bill was to provide a framework to deliver improvements in how records management was carried out across the Scottish public sector, and by private and voluntary organisations which carried out functions on behalf of public bodies. This was to be achieved by requiring those bodies to develop plans which would articulate their approach to record management, with a view to ensuring that records were retained for appropriate periods of time and not disposed of while they were still required for business purposes. This Bill was also brought forward in response to the recommendations of an independent review.

Alcohol Bill

The Bill was introduced to the Scottish Parliament on 25 November 2009. The principal purpose of the Bill was to deliver a range of measures designed to help reduce alcohol consumption in Scotland and reduce the impact which alcohol misuse and overconsumption had on public health and other areas of life. The Bill contained a number of related policy components: minimum unit pricing of alcohol; restrictions on off-sales promotions and promotional activity; requirement for an age verification policy; changes to licence condition; assessment of the impact of off-sales to people under 21; and the establishment of a social responsibility levy.

Referendum Bill

The Scottish Government announced its intention to introduce a Referendum Bill as part of the legislative programme set out in its 2009/10 Programme for Government, with the intention that a Bill would be introduced in 2010 and give the people of Scotland the opportunity to express their view on the future of Scotland in a referendum. The Referendum Bill would provide the framework for the conduct and mechanics of that referendum.

PART 2.   RESULTS OF LEGISLATIVE VISCOSITY AND PUBLIC POLICY STRESS VARIABLES

This part sets out the results for the two sets of variables (legislative viscosity variables and policy stress variables) for each Bill, which are discussed in more detail in my earlier methods chapter (chapter 3).

Viscosity variables - results

Table 19 below sets out the results of coding legislative viscosity variables against each of the case-study Bills. The results in table 19 evidence a very wide range of parliamentary response to government legislation within the same minority government session. The table shows that in virtually all variables there is a clear left to right pattern of more time being spent on Bills, more parliamentary amendments being passed, more coercive impact from the parliament, and with an increasing degree of policy significance. The absence of data in the right-hand column in relation to the Referendum Bill is explained in the Bill-specific analysis below.

Table 19 – Case-study viscosity results

	Scottish Local Government (Elections)	Public Records	Alcohol	Referendum
Time taken to pass Bill	134 days	160 days	350 days	n/a
Number of stage 1 evidence sessions	2	3	8	n/a
Number of stage 2 evidence/amendment sessions	1	1	5	n/a
Total time taken (hours)	4:53	7:08	36:57	n/a
Number of non-government amendments lodged	0	41	62	n/a
Number of non-gov amends (including inspired gov amends) passed	0	56	36	n/a
Number of government defeats on amendments (gov and non-gov)	0	0	9	n/a
Significance of non-gov amendment impact	None	Procedural/cosmetic	Significant policy change	n/a

Scottish Local Government (Elections) Bill

The results in table 19 suggest that Scottish Local Government (Elections) Bill's passage was characterised by a low level of parliamentary engagement, scrutiny and impact. The Bill's rate of passage was the quickest of the Bills, both in terms of the total number of days it took to pass through the parliament and in total direct scrutiny time. The Bill also had the lowest number of Stage 1 sessions, numbing only two in total. The range of oral evidence which the lead committee took on the Bill was relatively narrow, comprising a round table of stakeholders

(covering local government and electoral interests) plus the government. The total of 5 hours spent scrutinising the Bill, and the limited direct stakeholder evidence, suggests that the parliament was satisfied that a cursory level of scrutiny was all that was required.

That perception of the parliament being generally satisfied with the purpose and form of the Bill is reinforced when considering amendment data. No non-government amendments were lodged (nor indeed were any government amendments lodged) which, if taken at face value, means that the parliament considered that no changes were required to be made to the Bill. As a consequence of this, a 'no direct policy impact' label can be used to describe what impact the parliament had on the Scottish Local Government (Elections) Bill.

Public Records Bill

The results in table 19 suggest that the Public Records Bill's parliamentary passage was also characterised by a relatively low level of legislative interest but of a qualitatively different type than that of the Scottish Local Government (Elections) Bill. The total duration of the Bill's parliamentary passage was marginally higher than for the Scottish Local Government (Elections) Bill, totalling 160 days compared to the latter's 134 days. Direct scrutiny time of the Public Records Bill was 50% higher than for the Scottish Local Government (Elections) Bill, totalling over 7 hours compared to the latter's 4 hours and 53 minutes. At Stage 1, one more evidence session was held for the Public Records Bill compared with the Scottish Local Government (Elections) Bill.

An even clearer difference between the two Bills emerges when the analysis shifts from timescales to amendments. A significant number (41) of non-government amendments were lodged in respect of the Public Records Bill compared with none for the Scottish Local Government (Elections), and a large number of amendments (56) delivered parliamentary impact (through amendments lodged directly by the parliament, and amendments which the government brought forward on behalf of the parliament). It is instructive to note that none of the non-government amendments passed by the parliament were opposed by the government, and no government amendments were defeated. This shows that the parliament's impact had no element of coercion and was exclusively persuasive, and that there was a large degree of consensus between the government and parliament about the need for the amendments.

Analysis of these amendments suggests that their policy effect could best be described as 'procedural/cosmetic'. Some amendments changed words without changing the legal effect of

the Bill (e.g. the word 'approval' was changed to 'agreement' in the various places in which it appeared in the Bill). Other amendments introduced new procedural requirements to the Bill, such as placing a duty on the public body responsible for implementing the Bill to consult publicly in the preparation of guidance. None of the amendments made or inspired by the parliament could be said to have fundamentally changed the policy of the Bill - no new policy components were added to the Bill and no original policy components were removed from the Bill. At the end of the Bill's passage, the Bill continued to do deliver on precisely the same ambition which the government had articulated for it in the Policy Memorandum which accompanied the Bill on its introduction. Nonetheless, it is still reasonable to conclude that the parliament's impact on the Bill was an order of magnitude greater than it was in relation to the Scottish Local Government (Elections) Bill.

Alcohol Bill

The results in table 19 suggest that the Alcohol Bill's parliamentary passage was characterised by a relatively high level of legislative interest and its parliamentary passage was again qualitatively different, and parliamentary scrutiny higher, than that of the first two Bills.

The parliament journey of the Alcohol Bill, at 350 days, amounted to almost a full year and was longer than for the first two Bills combined. The total direct parliamentary scrutiny time was also markedly higher, amounting to almost 37 hours, compared with just over 10 hours for the first two Bills combined. The eight Stage 1 evidence sessions was also higher, double that of the first two Bills combined. The results for these variables suggest that the content of the Bill generated a significant amount of stakeholder and parliamentary interest in a way which the first two Bills did not.

The Alcohol Bill looks less unique when the number of amendments are first considered. Although more non-government amendments were lodged (62) in relation to the Alcohol Bill than for the Public Records Bill (41) the figures are in the same ballpark. However, further scrutiny reveals some important differences. The attrition rate for non-government amendments was greater, with only 36 amendments either lodged directly by the parliament or brought forward by the government on its behalf ultimately being passed compared to the 56 of the Public Records Bill. This Bill also reveals the first coercive impact of the parliament with a total of 9 government defeats, comprising amendments passed by the legislature against the will of the government, and the defeat of the government's own amendments.

An even clearer difference between the Alcohol Bill and the first Bills emerges when the policy impact which the parliament had on the Bill is considered. The most illustrative example of this was a parliamentary amendment which removed the key provision of the Bill (the minimum unit price per unit of alcohol provision), with the government unable to reinstate it at Stage 3. From this impact alone it can be said that the parliament fundamentally altered the policy content of the original Bill.

Referendum Bill

The absence of results in table 19 for the Referendum Bill clearly identifies it as a special case. The Referendum Bill was announced as a flagship of the Scottish Government 2009 legislative programme with an expectation that it would be introduced to the parliament in 2010. However, as the parliamentary term unfolded it became clear that all of the main opposition parties in the parliament were willing to combine to block any referendum-related Bill which was introduced by the government. As a consequence, the government did not introduce a Referendum Bill in its minority term of 2007-2011, although it ultimately did in the following majority government session. This is a striking example of Mayhew's (1974) concept of anticipated reaction, with government's decision-making influenced by how it thought a parliament would react to something it intended to bring forward and the political calculation that it is ultimately better to not do that than to try and then be defeated. The Bill illustrates the furthest possible end of the spectrum of parliamentary impact – the government unable to deliver a policy objective which defined its fundamental purpose.

Stress variables - results

Table 20 below sets out the results of coding for the public policy stress variables against each of the case-study Bills. The table again evidences a very wide range of type of reaction from parliament to Bills in the same parliamentary session. It also shows a similar left to right pattern as seen for the legislative viscosity variables in table 19. A Bill-specific analysis of each of the variables is set out below.

Table 20 – Case-study stress results

Stress indicator	Scottish Local Government (Elections) Bill	Public Records Bill	Alcohol Bill	Referendum Bill
Policy divergence	Nil	Nil	Major	Polar opposites
Stakeholder views	Supportive	Mixed	Mixed	Mixed
Political environment	Neutral	Neutral	Antagonistic	Highly antagonistic
Overall level of 'legislative stress'	**Very low**	**Low**	**High**	**Very High**

<u>Scottish Local Government (Elections) Bill</u>

Policy divergence

All of the main parties expressed their support for the Bill at the Stage 1 debate with Jim Tolson of the Liberal Democrats noting (Scottish Parliament debate 14 May 2009) that "this is a difficult debate, not because there will be much argument but rather because there is so much consensus". The Stage 1 vote on whether the Bill should proceed to Stage 2, and the Stage 3 vote on whether the Bill should pass, were agreed by the Parliament without a vote. It is reasonable to conclude that there was a high degree of policy convergence in relation to this Bill.

Stakeholder views

The lead committee's stage 1 report (Local Government and Communities Committee 2009) noted broad agreement amongst stakeholders for the principles of the Bill with no significant criticism raised, and the environment surrounding the passage of the Bill was positive. With no stakeholders criticising the purpose of the Bill or proposing significant changes of approach, stakeholder views could reasonably be described as positive.

Political environment

The absence of any overt political conflict in relation to the Bill is evidenced by the lack of amendments, lack of votes, rapid parliamentary scrutiny and lack of criticism of the Bill's purpose from opposition parties. This was due to the purpose of the Bill stemming from an independent report (The Electoral Commission 2007), which had already received cross-party backing. The political environment could reasonably be described as positive.

Overall level of legislative stress

Taking all of these factors together, it is reasonable to describe the overall level of legislative stress in relation to the Scottish Local Government (Elections) Bill as being very low.

<u>Public Records Bill</u>

Policy divergence

All of the main parties in the legislature expressed their support for the principles of the Public Records Bill during the Stage 1 debate. Ken Macintosh, spokesperson for Labour noted during the Stage 1 debate (Scottish Parliament debate 10 February 2011), that "Members will correct me I am wrong about this, but I think every member of the committee and all the witnesses who gave evidence thought that it was a good idea to try to improve standards of record keeping". That quote is typical of the opinions offered by opposition MSPs and it is clear that there was a large degree of policy convergence.

Stakeholder views

Stakeholders were not universally supportive of the Bill and there was much more policy debate than in relation to the Scottish Local Government (Elections) Bill. There was a clear body of opinion in favour of the purpose of the Bill, particularly from archivist organisations and bodies representing survivors of abuse. The lead committee's Stage 1 report noted that survivors of childhood abuse had "emphasised the importance of being able to access a comprehensive set of records from a childhood spent in care" (Education, Lifelong Learning and Culture Committee 2011 para 19) and that the Scottish Council on Archives had argued that they were "very strongly of the opinion that we need a legislative framework to ensure that we improve record keeping in public authorities". (Education, Lifelong Learning and Culture Committee 2011 para 27) There was a countervailing body of opinion concerned about the potential impacts of the Bill and the decision to take a statutory approach to the management of public records, particularly from public bodies, local government and third sector bodies. The lead committee's Stage 1 report noted that the Scottish Funding Council had argued that the Bill was a "heavy-handed response" (Education, Lifelong Learning and Culture Committee 2011 para 25), and the Society of Local Authority Chief Executives and Senior Managers had argued that "a voluntary scheme could give you all the benefits of legislation without legislating…My instinct is that legislation….is not merited at present". (Education, Lifelong Learning and Culture Committee 2011 para 30)

Political environment

Although there was clearly a split amongst stakeholders about the Bill, the political environment for the Bill could still be described as neutral with the lead committee's Stage 1 report concluding unanimously that "The Committee believes that the case for more effective

and consistent records management relating to former residents of residential schools and children's homes is overwhelming." (Education, Lifelong Learning and Culture Committee 2011 para 47) Like the Local Government (Elections) Bill, the Public Records Bill had its foundations in an independent report – the Historic Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950-95 (Shaw 2007) – which had been initiated by the previous Labour/Liberal Democrat coalition government. The lack of political conflict is reflected in the fact that there were no votes taken in relation to any of the amendments which were lodged at committee at Stage 2, or the amendments which were lodged at plenary at Stage 3, or the motions at Stage 1 and Stage 3 about whether the Bill should proceed.

Overall level of legislative stress

On the basis of stakeholder dissent only, and the fact that this was articulated during the legislative process and inspired a number of opposition and government amendments, the overall 'stress' level of the Bill could be described as low rather than very low.

Alcohol Bill

Policy divergence

There is a mixed picture around policy convergence/divergence for this Bill, principally because of the variety of topics which it contained. Some provisions, such as the proposal for an age verification policy, were supported by all members of the lead committee at Stage 1. Others, such as the proposal to enable licensing bodies to modify the age for off-sales of alcohol at a local level, split committee opinion. The main lightening rod for policy divergence, and arguably the most significant provision of the Bill, was the proposal to establish an alcohol minimum unit price to act as a disincentive to abuse of cheaply available alcohol. The lead committee's Stage 1 report noted that "There is a divergence of opinion on the committee. Some members of the committee are not persuaded that the per-unit minimum pricing proposal would achieve what it sets out to achieve and are not convinced that it would be an effective tool in the drive to lower alcohol consumption… Some members do believe that it would be effective in bringing about a significant change in the population's drinking habits, subject to knowing what the minimum price would be." (Health and Sport Committee 2010, para 179)

Stakeholder views

Stakeholder views were polarised, with the health professions and campaigning groups very supportive of the minimum unit pricing provisions and key elements of the licensed trade opposed, with the lead committee's Stage 1 report accordingly setting out a range of divergent views. For example, Children 1st argued that there was enough evidence to suggest that "as price changes, consumption habits change." (Health and Sport Committee 2010, para 87) By contrast, the Scotch Whisky Association stated that the industry considered minimum pricing to be "the most serious threat to its future competitiveness" (Health and Sport Committee 2010, para 141), and Whyte & Mackay Ltd stated that the introduction of minimum pricing would "lead to significant job losses." (Health and Sport Committee 2010, para 142)

Political environment

The political environment was antagonistic – the minimum unit pricing provision was a key element of the government's policy programme and the main opposition parties were opposed to it, making for considerable friction during debates. This generally took the form of specific criticism of the minimum-unit pricing provision with recognition that other elements of the Bill had merit. For example, during the Stage 1 debate on the Bill Conservative MSP Murdo Fraser said "Some of what is in the bill we can support, some of it we are sceptical about and some of it we must oppose." (Scottish Parliament debate 10 June 2010), and Labour MSP Helen Eadie noted that "Some issues in the bill are worth supporting, such as proof-of-age schemes, restrictions on promotions and the modification of licensing conditions, as well as the social responsibility levy… Minimum unit pricing is a step too far." (Scottish Parliament debate 10 June 2010) Ultimately, this political conflict around minimum unit pricing resulted in an amendment being passed at Stage 2 of the Bill to remove minimum unit pricing, and the government tried and failed to get it reinstated at Stage 3. It is clear that there was a fundamental political disagreement between the SNP government and the main opposition parties on part of the Alcohol Bill, in a form not seen in relation to the Scottish Local Government (Elections) Bill or the Public Records Bill.

Overall level of legislative stress

In light of the clear policy divergence, and stakeholder and political conflict, which arose in relation to minimum unit pricing the level of 'stress' associated with this Bill could be described as high.

Referendum Bill

Policy divergence

The proposal to conduct an independence referendum was a key part of the SNP manifesto ahead of the 2007 Scottish Parliament elections. When the party was elected as a minority government the commitment became a core part of its programme for government, with an expectation that the necessary legislation would be brought forward in 2010. All of the main opposition parties – the Conservatives, Labour and the Liberal Democrats – were fundamentally opposed to the concept of independence, and to the proposal than an independence referendum be held. The issue polarised political opinion in a way that no other topic had done since the parliament was established in 1999.

Stakeholder views

Stakeholder views were equally mixed, with a range of bodies vociferously in favour of an independence referendum and others equally opposed. Standard Life, for example, announced that it was prepared to move its business to England because of the constitutional uncertainty if Scotland became independent. (Citywire article 2014) Public opinion was equally polarised throughout the referendum campaign (Financial Times blog 2011) and indeed beyond. It is no exaggeration to say that the issue polarised stakeholder opinion, and public opinion, to an extent not seen in relation to other policy topics.

Political environment

The political environment on this topic was extremely antagonistic, creating regular arguments between the government and opposition parties. For example, the motion to an opposition debate on the government's record of delivery entitled "Government failures" was amended to instruct the government to "abandon its divisive plans for a Referendum Bill for the remainder of its term of office". (Scottish Parliament debate 2009) That motion was passed and, although it was non-binding, it was clear that the government would thereafter struggle to secure the majority of votes needed to pass any Bill it introduced. A draft Referendum Bill was published in February 2010, but was not included in the government's final legislation programme of the 3rd session in September 2010. Instead, the programme for government document noted that "The future of the nation must be determined by the people – not blocked by politicians who would reject the right of the people to have their say in a referendum, offering the options of independence and fiscal freedom." (Scottish Government 2010, pp.04-05)

Overall level of legislative stress

With the exception of Brexit, it is difficult to think of a policy topic capable of polarising public, stakeholder and political opinion in Scotland in the way that the topic of independence does. The overall level of legislative stress which surrounded the topic could therefore reasonably be described as extremely high.

CONCLUSION

The purpose of this chapter was to address my third research sub-question – why is the Scottish Parliament's impact on government Bills so varied? My approach was designed to test the hypothesis that in minority government settings, parliamentary impact on government Bills should increase as Bills diverge from the incremental and consensual policy predicted by the public policy literature.

The analysis of the four case-studies in this chapter supports the hypothesis, demonstrating that an increase in parliamentary interest and impact was a function of how controversial each Bill was. Where the controversy was lowest, the Bill passed quickly and with minimal (or no) change. Where controversy was highest, the Bill passed slowly (or not at all) and with significant changes to policy. This differential level of parliament impact helps explain why a minority government may succeed in passing a substantial legislative programme – individual Bills may of themselves not trigger significant political opposition and there may be little obvious benefit (and plenty potential stakeholder and electoral disbenefit) of opposition parties opposing these Bills. Where controversy does arise there is clear evidence that the parliament is able and willing to flex its muscles against a minority government.

My practitioner experience of the legislative process is that this variation is one of the defining features of government-legislature relations and deserves more attention in the literature. Many government Bills in the Scottish Parliament have passed relatively unscathed or unamended not because the Scottish Parliament is weak or has discharged its scrutiny function poorly but because there is no incentive for parliament to block or significantly amend them. But when conflict arises, particularly in minority government sessions, parliament can suddenly become a key actor in the policy process, able and willing to use its power over government to effect significant changes to government Bills. Understanding the interplay between Bill context and parliamentary reaction is, in my view, a fundamental pre-condition to drawing conclusions about whether an absence of parliamentary impact in the legislative process is evidence of parliamentary weakness or not.

Running throughout this thesis has been the question of whether the legislative experience of the Scottish Parliament is best explained by the legislative studies literature or the public policy literature. I set out in the conclusion to this thesis why I think the results in this chapter show that the dynamic variation found in the legislative process is best explained by bringing the two perspectives together.

CHAPTER 8 – DOES GOVERNMENT DOMINATE THE SCOTTISH PARLIAMENT'S LEGISLATIVE PROCESS?

Does government dominate the legislative process? A case-study of the Scottish Parliament.

INTRODUCTION

The purpose of this PhD thesis has been to explore, using the Scottish Parliament as a case-study, whether government dominates the legislative process. This concluding chapter brings together the results and analysis from the preceding chapters in order to reach a view on this question. I group my reflections under my three principal research aims, and I then conclude by addressing the limitations of the thesis, and what future areas of study might be pursued.

THE SCOTTISH PARLIAMENT AND NEW POLITICS – HIDING IN PLAIN SIGHT?

The high expectations for what the Scottish Parliament would deliver, generated by the concept of 'new politics', continue to cast a long shadow over perceptions of its performance. It does not help that 'new politics' itself is a contested concept. A maximalist interpretation suggests that the Scottish Parliament should have delivered a new type of democracy, a new type of politics, a new relationship between political parties, a new role for parliament, new types of policy outputs and so on.

This maximalist interpretation remains pervasive, even though it is generally accepted that it sets unreasonably high expectations. This can result in a catastrophisation of the Scottish Parliament's performance, with some of the literature around the 10th and 20th anniversaries of the parliament reading like an audit of its failure to deliver to a gold standard of parliamentary performance seldom (if ever) seen in other legislatures. The dominant narrative is of a dominant government, the absence of parliament from the policy-making process, the prevalence of party politics, and a lack of radicalism in the Scottish Parliament's policy outputs. The Scottish Parliament even has its own accelerated version of the 'decline of parliaments' story (Elgie and Stapleton, 2006), with some commentators and members appearing to look back fondly to the halcyon days of independent minded committees and backbenchers.

There is an alternative, more realist, interpretation of new politics, both in terms of what the creation of the Scottish Parliament was likely to achieve, and about its performance since 1999. It is striking when re-reading the blueprints for the Scottish Parliament (and particularly the UK Government White Paper (1997) and the report of the Constitutional Steering Group

(1998)) from a distance of time that what is most clearly articulated in them is the traditional roles of government and parliament, and what is most nebulous is aspirational concepts such as 'power-sharing'. It is at least arguable that a dispassionate reading of these blueprints should lead to the conclusion that the structural choices made in the establishment of the parliament were always likely to mean that they would not fundamentally remodel democracy in Scotland but would instead deliver a modernised version of Westminster, perhaps with a Scandinavian tinge.

That is because parliament and government were both placed in their traditional roles, with the latter clearly expected to be the main driver of policy and governmental functions in devolved Scotland. The principal legislative function of the parliament was clearly envisaged as being scrutiny of legislation which government would bring forward after consultation. To offset the absence of a second scrutinising chamber, committees were given a more significant role in the scrutiny of legislation before it reached the chamber, but with the three-stage legislative process obviously modelled on Westminster.

There is little in the blueprints which suggest that the parliament's architects had a clear vision for how committees might use the oft-referenced ability to initiate legislation, and even less to suggest that much thought was given to the policy, legal and drafting support which would be required to turn the power to initiate legislation into actual significant legislation-making capacity. Given the resource imbalance between government and legislature, and the clear pre-eminence given to government business in the parliament's operating procedures, it is perhaps unsurprising that the equilibrium which has been reached is that the government dominates in the initiation of legislation and parliament contents itself to scrutinise the government's legislative programmes.

In drawing conclusions about the Scottish Parliament's performance, it is therefore important to recognise that although it is tempting to see the parliament as having started with a blank slate in 1999 (Judge and Leston-Bandeira 2018, p.155) the constraints imposed by the Scotland Act and Consultation Steering Group mean that it did not, and it was not just decisions made after its establishment which determined how the parliament would function.

There is a strong argument to be made that, with that contextualisation, the Scottish Parliament's legislative performance is better than the commentary might suggest, and that key elements of new politics are in fact hiding in plain sight in the legislative process. Yes government dominates the pre-legislative stage, consulting extensively with stakeholders and the public and seeking to build consensus in the legislation it brings forward. And yes

government dominates the initiation of legislation and is responsible for lodging most amendments. But there is little evidence that any government since 1999 has dominated the legislative process to the extent that it has sought or been able to push through poorly crafted or polarising legislative programmes at a pace which precludes appropriate parliamentary scrutiny, or that the parliament has had no impact, or influence, on that legislation. The results from Chapter 5 arguably point in the opposite direction in some key respects - evidencing, for example, parliament ultimately responsible for the initiation of 50% of all amendments, and a process of timetabling institutionalisation resulting in the amount of time parliament spends on scrutiny of legislation increasing steadily over time. In those senses at least, it is parliament as much as government which has exerted control over the legislative process.

The parliament's architects wanted its committees to be the engine-room of the parliament's scrutiny process and in that they were successful. The results in chapter 5 show that lead committee investigations of the general principles of Bills at Stage 1 take up the major part of the parliament's legislative scrutiny time, which they use to stress-test the policy objectives of the legislation brought forward by government and seek stakeholder views from across the policy spectrum. I know from my practitioner experience that the result is invariably that lead committee Stage 1 reports are consensual, setting out the collective view of the committee for the parliament's wider consideration – 'minority reports' and dissent to individual recommendations by committee members are exceptional. My results in chapter 5 show that this general consensus is usually repeated at the key plenary votes of Stage 1 and Stage 3 about whether Bills should progress or fall.

There is therefore a generally high level of consensus running through the legislative process which is the principal reason why it has been possible for minority governments in Scotland to not just survive but to operate in essentially the same way as majority governments do – the hackneyed caricature of the legislative process as amounting to "the government proposes and the parliament opposes" is not the normal state of the legislative process in Scotland. Again, this is one of the outcomes which proponents of the Scottish Parliament were aiming for, with a predominately diligent and pragmatic approach to the scrutiny of government legislation being the normal state of affairs.

Of course, the realities of modern party politics exist in the Scottish Parliament, and there is plenty of opportunity for political point-scoring at Holyrood, as can be seen most vividly in the weekly spectacle of First Minister Questions and elsewhere in plenary debates and even in debates on Bills and amendments. There is a strong sense in the literature that the

parliament has failed its architects by allowing party politics to permeate to the extent that it does. But it seems unfair to make that criticism when that system of party politics is the foundation upon which Scottish democracy is built, and which is likely to continue to be the case for the foreseeable future. Electoral politics in Scotland is extremely competitive (helped, in part, by the parliament's proportional representation electoral system) and political parties need to differentiate themselves before the electorate. When there is convergence between them on many issues of public policy (as is the case in Scotland), political posturing is likely to play out when the opportunity arises and in a focus on those topics (like the constitutional question) which do in fact demonstrate clear differences between party standpoints. But this is arguably just the duality which plays out in any parliamentary democracy and is not unique to Scotland – on one level, parliaments are pragmatic scrutinising machines, processing government legislation on its merits, and on another level they are a forum for everyday political knockabout. And sometimes parliament may exhibit both characteristics simultaneously.

There is also a tendency in the literature to conclude that, if only it was more powerful, independent minded and less dominated by the government, the Scottish Parliament's outputs and its impact on government legislation would be more impressive. There are three main problems with that line of argument.

The first is that if there is criticism to be directed at the lack of radicalism in policy outputs, that finger should probably be pointed at government rather than parliament. It is parties who set out their policy programmes in manifestos ahead of elections, with the winner (or winners) then seeking to implement them when elected. Culturally, structurally and in terms of resources, the parliament is not set up to be an alternative source of policy formulation and executive action. It is therefore not the parliament's direct failing as an institution if the policy programmes of winning parties fall short of what was hoped for in the lead up to the parliament's establishment.

The second problem is that of the five sessions of the Scottish Parliament, two have seen minority government administrations, and a third saw a majority government with a slender majority lose that majority during the course of the parliamentary session. So it is already possible to look at what happens when government cannot dominate parliament, and it is clear that is not of itself sufficient to generate the more aspirational sort of practices, culture and outputs which proponents of the Scottish Parliament hoped for. Parliamentary impact on legislation in minority government sessions does increase in some cases as government's ability to resist parliamentary changes decreases, but government continues to drive

business and parliament continues to be in traditional reactive mode – scrutinising government business and with parties using the parliamentary arena to showcase themselves as an alternative future government. Short of establishing an equivalent policy-making bureaucracy for the Scottish Parliament to the one the Scottish Government has at its disposal, it seems likely that the roles of the two institutions (policy initiator and policy scrutiniser) will continue regardless of the relative strength of the parliament.

The third problem is that even if an enhanced policy-making capacity for the Scottish Parliament was constructed then, if properly done, it would probably result in the same consensual and incremental legislation brought forward by government - if the claims of the public policy literature about the likely products of the policy process are accepted. The irony that is left is that if it is thought that radical and differentiated policy proposals would result from a stronger legislature, that will probably only happen if the approach taken to policy development ignored stakeholders and focused on the partisan policy agendas of parties – arguably precisely the opposite of what the Scottish Parliament's architects wanted!

None of this discussion should be taken as an argument that the Scottish Parliament is a perfect institution, or that its legislative process is perfect, or that the nature of government-legislature relations is perfect. Far from it, and it is entirely appropriate to question whether government dominates too much and to ask whether the Scottish Parliament has lived up to expectations, and whether there is room for improvement. But the main problem with the state of that debate is that there is little agreement on what alternative to the status quo is sought.

Is it just 'effective' scrutiny which is sought, and would we recognise that when we saw it? Some of the case-studies in this thesis demonstrate that effective scrutiny can be about stress-testing the legislation which government has brought forward rather than blocking or amending it. But it is the absence of blocking or amending legislation which is often taken to be a sign that parliamentary scrutiny is ineffective.

If we are to expect more than simply effective scrutiny then how much more? Should the scales be tilted slightly towards parliament in the mould of the recommendations of the Commission on Parliamentary Reform (2017)? The Commission's recommendations were designed to make a series of incremental improvements to the parliament's working practices across all areas of its operation. Most of these have now been implemented in one form or another but have not fundamentally altered how the parliament operates, nor have

they reduced criticism of its performance. More of the same type of technical reform is unlikely to result in a dramatically different outcome.

So, if genuinely transformational change in the Scottish Parliament's performance is sought then the solution probably lies in genuinely transformational change in how it is structured and the roles and functions it performs. What model parliaments exist which the Scottish Parliament might aspire to emulate, procedurally and in terms of its outputs? Is it an American-style system with a clearer separation between legislature and executive, with the potential for legislative gridlock which that entails? Or is it an even bigger dose of Scandinavia, and the use of pre-legislative cross-party commissions to strengthen the role of parliament (or, more likely (Cairney and Widfelt (2015), parties rather than parliament) in the policy development process? There is very little debate about these questions in Scotland, never mind a settled view on the answers, or what should be done. Until the conditions for that debate exists it seems likely that concerns about the parliament's performance will remain and frustration will grow that procedural and technical changes don't deliver the outcomes which are sought.

Overall, the data and analysis set out in this thesis suggests that there are reasons to be positive about what the Scottish Parliament has achieved since 1999. As well as the general success it has brought about in delivering devolution and bringing government and parliamentary scrutiny closer to the people of Scotland, it has arguably done so in a way which delivers consensual policy development and with some evidence that the amending of government legislation is a more shared endeavour than can be found in the UK Parliament. The key question for critics of the Scottish Parliament is how to frame its performance – should we still look back to the high aspirations of its architects and to a gold-standard of apolitical parliamentary scrutiny, or to a more realist judgement about the role of government and parliament in parliamentary democracies?

MULTIPLE METHODS FOR MULTIPLE INSIGHTS

A detailed look at the legislative outputs of the Scottish Parliament gives further reasons to reject a simple conclusion that government dominates the legislative process in a negative way. My attempt to tell the story of parliamentary impact in the legislative process in this thesis has been deliberately designed to tackle the issue from a number of different perspectives – from a high-level quantitative perspective across two decade's worth of legislative outputs, all the way down to the policy-minutiae of individual case-studies. This

approach has demonstrated that there are different conclusions to be drawn about the nature of government domination depending on the methods used.

At the quantitative level, my data-set of 244 Bills and 36,627 amendments over a 20-year period is the most comprehensive analysis of the Scottish Parliament to date and possibly the largest single study of any legislature in the United Kingdom. The quantitative level results demonstrate that the government does dominate the legislative process in minority and majority government sessions, in the sense of government being able to secure passage of almost all Bills it brings forward and almost all of the amendments it brings forward. But these high level results also demonstrate that the Scottish Parliament is far from a mere rubber-stamp, with an average of 18% of all non-government amendments being passed since. That eclipses the <1% equivalent of non-government amendment successes found in the UK Parliament in recent studies by Thompson (2015b) and Russell et al (2016) and suggests a cultural difference between the Scottish and UK legislative process. At the UK level, the extremely low volume of direct non-government successes is in part put down to the unwillingness of government to relinquish control of the drafting process (Russell et al 2016, p.296.). My results may suggest there is evidence of the legislative process being viewed as more of a shared endeavour between parliament and government in Scotland, and accords with my practitioner experience of government anticipating, and being accommodating within the bounds of its original aspirations for its Bill, an expectation on the part of parliament that it will leave its imprint on the Bills which it scrutinises.

Looking at the quantitative results in longitudinal perspective provides some support for Blondel's concept of legislative viscosity, with a marginally lower success rate for government Bills in minority government sessions and a substantially higher success rate for non-government amendments in minority government sessions (averaging 30%) compared to majority government sessions (averaging 13%). These results, and particularly those for minority government sessions, if taken at face value are suggestive of potentially very significant parliamentary impact on government Bills.

However, one of the purposes of this thesis was not to accept general conclusions of that sort at face value and to explore through further qualitative analysis what further insights might be available. To provide that qualitative perspective I drew on a sample of 50 Bills drawn from across all 5 sessions of the Scottish Parliament, focusing on what additional features of parliamentary impact could be identified – such as the extent to which parliament inspired government amendments, how significant parliamentary impact on Bills was, and how varied that impact was.

Qualitative analysis of the original inspiration for amendments in the legislative process demonstrates that the comparatively high success rates of its own amendments represent just a fraction of the Scottish Parliament's amendment impact. In fact, its amendment impact essentially trebles when government amendments which the parliament inspired are taken into account. The scale of that additional impact is illustrated by the fact that amendments inspired by parliament accounted for almost half (48%) of all government amendments. So, although the earlier quantitative level results suggested that the Scottish Government dominated legislative proceedings in stereotypical fashion, when the original inspiration of those amendments is taken into account there is a strong argument for concluding that the Scottish Parliament has been the government's equal in driving changes to government Bills.

Although not all scholars are persuaded by the importance of nuance (Healey 2017), it is arguably of critical importance in understanding what happens in the legislative process and its value is demonstrated when the policy consequences of parliamentary impact are investigated. The nineteen category typology of policy impact I use in analysing my sample of 50 Bills shows that the parliament has had a wide range of impacts on government Bills, adding topics to Bills, removing topics, extending a Bill's impact to wider range of people and bodies, changing judicial and administrative procedures, altering definitions, introducing time restraints, requiring reviews of implementation and so on. But the key insight from this analysis is that the parliament's impact is only rarely transformative. Most government Bills leave the legislative process in Scotland doing essentially the same thing as when they entered. Only a small minority of parliamentary amendments added new topics to Bills and I found only a single instance of an original component being deleted.

Further nuance can be found when results are disaggregated to the individual Bill level. There is a very clear picture of the most significant types of policy impact arising mainly in minority government sessions (demonstrated by the fact that 90% of cases of new policy topics being added to Bills arose in minority government session), and that within those sessions the most significant types of policy impact were concentrated in a relatively small number of Bills. The variation in parliamentary impact at an individual Bill level is demonstrated clearly in my analysis of the first minority SNP government of 2007-2011 in Chapter 7 where a fuller spectrum of impact can be seen. This ranges from no impact at all, to technical changes, to fundamental changes to the policy content of Bills (the removal of minimum unit pricing provisions) to a Bill not even introduced in anticipation of the reaction of

government. It is absolutely clear from these results that parliamentary impact is not consistent across Bills.

The consequence of looking at parliamentary impact from these different perspectives is that it illustrates the dangers of trying to pigeon-hole precisely what 'type' of parliament the Scottish Parliament is. Taking Norton's (1984) typology, for example, this thesis provides evidence that the Scottish Parliament has been variously a parliament with little or no policy impact, a policy-influencing parliament and occasionally a policy-making or policy-blocking parliament. In short, its impact on government Bills is highly dynamic and context specific both across *and* within parliamentary sessions.

COMBINING THE LEGISLATIVE STUDIES AND PUBLIC POLICY LITERATURE

One of the recurring themes of this thesis is whether the legislative studies literature (with its focus on the power dynamic between government and parliament) or the public policy literature (with its focus on the type of legislation which governments develop) best explains what happens in the legislative process. In this section I set out why I think it is a combination of the two perspectives which best explains what happens in the Scottish Parliament, particularly in minority government sessions. It is the combination of these two perspectives which draws attention to the highly dynamic nature of parliamentary impact in the legislative process and the necessity of taking into account Bill-specific issues in order to understand whether or not parliament has attempted to exert control over government legislation. I set out below two practitioner-focused concepts for how that can be expressed.

Bill elasticity

From a practitioner perspective, a key consideration for government when bringing forward legislation is what the specific character of that Bill might mean for its parliamentary passage. This can be conceptualised as the 'elasticity' of Bills, which is a way of taking account of the fact that not all Bills are the same, and that this has both procedural consequences (which will vary from parliament to parliament) and practical implications for how parliament will want to, and be able to, change them.

Some Bills which government brings forward are narrow in scope, dealing with a very specific policy issue. One example of this from the Scottish Parliament is the Erskine Bridge Tolls Act from the first session of the Scottish Parliament. An administrative error led to the

toll not being renewed at its review period and the purpose of the Act was solely to rectify that error and allow tolls to be collected.

Procedural rules in the Scottish Parliament mean that such Bills are 'scope inelastic' and are essentially take it or leave it options for parliament whether in a minority or majority government setting. This is because rules on the admissibility of amendments mean that amendments are inadmissible if they are not relevant to a Bill. In essence, the narrower and fewer topics which a Bill deals with the narrower its scope and more restricted the type of amendments which can be lodged. Similarly, amendments are not admissible if they are inconsistent with the general principles of the Bill as agreed by parliament at Stage 1, with the purpose of precluding 'wrecking amendments' which would result in a Bill no longer performing its principal purpose. Searching for significant parliamentary impact on Bills which are scope inelastic and constrained by procedural rules on the admissibility of amendments is likely to be a futile exercise.

Other Bills may have much greater scope elasticity. These will typically be multi-topic or 'Christmas tree' Bills which may have a single general purpose (commonly in the Scottish Parliament on criminal justice or criminal procedure, for example) but which include a diverse range of subject matter. The procedural rules on the admissibility of amendments to these Bills are less restrictive and it will often be possible for the parliament to lodge amendments which could fundamentally change existing provisions, add new parts or delete existing parts. The extent to which parliament takes advantage of scope elastic Bills is then a function of two further variables – firstly, does the parliament want, for reasons of policy, stakeholder or political concern, to take advantage of that scope elasticity or not; and secondly, does the parliament have the ability to make such changes.

On the first point, scope elastic Bills may be 'policy inelastic', depending on what the policy is designed to achieve and the extent to which it reflects a broad consensus. For example, in the previous chapter two Bills (the Scottish Local Government (Elections) Bill and the Public Records Bill) were both based on independent reviews which enjoyed cross-party support. The policy development processes were deliberately designed to treat their respective issues on an apolitical basis, asking experts to determine a way forward and come up with technical solutions free from party political or ideological considerations. So, although procedurally the parliament may have had the ability to make significant changes to those Bills, it is doubtful whether they truly did in policy or political terms given their genesis and the overwhelming support there was for them.

On the second point, Bills are more likely to be truly scope and policy elastic in minority government sessions when parliament can take advantage of its ability to pass amendments against the opposition of government. The Alcohol and Referendum Bills from the previous chapter perfectly illustrate this, encountering significant problems in a minority government setting but with both being brought back, and passed relatively easily, by the subsequent majority SNP government in 2011-2016.

Thinking about Bill elasticity in this way illustrates the need to take into account the character of Bills in understanding the nature of parliamentary impact in the legislative process, and not just the power relationship between parliament and government. Lowi (1964, 1972) distinguished between different types of policy (regulatory, distributive, constituent), and (1998) made the argument that every category of Bill has its own political dynamic. This thesis makes the case for taking that argument one step further and recognising that individual Bills have their own policy and political dynamic.

Non-Newtonian Legislative Viscosity

To set that argument about individual Bills having their own policy and political dynamic in the context of existing theory, the starting point is to revisit Jean Blondel's concept of legislative viscosity. The essence of Blondel's theory can be illustrated in figure 17 below. This illustrates a view of the legislative process where the flow of legislation through a parliament is directly related to a parliament's power of reaction. As parliament's freedom increases, so too should its viscosity.

Figure 17 – Visual representation of Blondel's concept of legislative viscosity
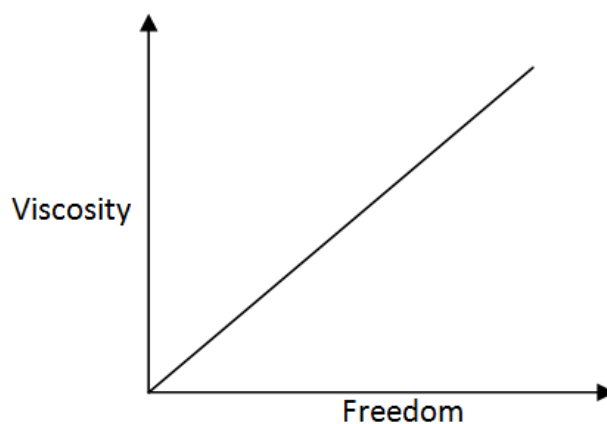
To bring together the legislative studies and public policy literature perspective in a reconceptualization of legislative viscosity it is necessary to go back to where the concept of legislative viscosity comes from. This is rheology, the study of liquids. Most liquids, such as water, are Newtonian liquids. This means that such liquids have a constant viscosity (flow) which objects will encounter as they pass through them. No matter how much stress or strain is applied to Newtonian liquids their viscosity (flow) remains the same.

In rheology, not all liquids are Newtonian and there is a category which contain non-Newtonian properties. This means that the viscosity or flow behaviour of these liquids changes when stress is applied. In some cases, as more stress is applied to a liquid it becomes more viscous and the flow of objects through it becomes slower, and as less stress is applied to a liquid it becomes less viscous and the flow of objects through it becomes quicker.

Non-Newtonian legislative viscosity is the legislative analogue of non-Newtonian viscosity of liquids. As the case-studies in the previous chapter demonstrated, in a minority government the more stress which is applied in the legislative process the more challenging has been the parliamentary passage of a Bill, and the less stress which is applied the quicker and easier they pass through parliament. A revised representation of legislative viscosity in a minority government context, which takes into account actual legislative stress rather than theoretical legislature freedom, can be presented as follows.

Figure 18 – Visual representation of non-Newtonian legislative viscosity
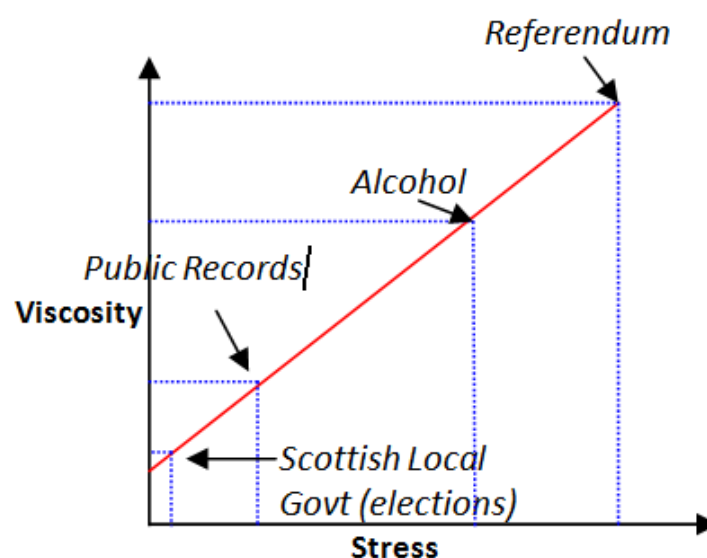
I have plotted approximations of the stress associated with the four case-study Bills to illustrate the relationship between stress and viscosity, although it is of course unlikely that

the relationship between the two sets of variables will always be as precise as suggested by the graph. But the basic point which is illustrated is that there can be significantly varying levels of legislative viscosity within a minority government setting depending on the context of the Bill.

LIMITATIONS OF THIS RESEARCH

There are a number of limitations to the thesis which need to be recognised.

The first is that one of the strengths of the thesis – its identification of the significant variation which arises across individual Bills – highlights a corresponding weakness. For the quantitative analysis part of this thesis (results chapter 5) every Bill between 1999 and the summer of 2019 was included, enabling me to reach conclusions about the general picture of parliamentary impact with a seemingly high level of confidence. However, the identification of significant outlier results (such as my identification of the outlier Crofting Bill when testing hypothesis 6 on how often government amendments were put to a vote), and their potential skewing effect, need to be recognised, and mean that the general conclusions in this thesis need to be qualified with the recognition of the variation which sits beneath them.

A second significant limitation relates to the qualitative aspects of my analysis, Because of the detailed analysis required to test for the policy consequences of amendments it simply wasn't possible to code the full set of Bills for the other chapters. The sample of 50 Bills I used for this purpose is not insignificant, accounting for about a quarter of all Bills over the period, but it means that the conclusions which can be drawn from those chapters are necessarily less robust. My sampling approach (choosing those Bills with around 100 or less amendments to them) also has the potential to skew results. Excluding Bills with large volumes of amendments (with some Bills in the Scottish Parliament attracting several hundred amendments, and in one case over a thousand) may mask particular types of amendment associated with those Bills. Although the correlation will not be exact, it is likely to be the case that the Bills which attract large volumes of amendments are larger in size, and the larger in size they are the more parts they are likely to have in them, which may make it more likely that some of the more significant types of policy impact (adding new topics or existing ones) would be more likely to arise on such Bills. It is therefore important to recognise that while this thesis sets out a comprehensive picture of parliamentary impact in the legislative process it is not a complete one.

A third limitation relates to the potential for longitudinal factors to influence the conclusions which should be drawn about parliamentary influence. I noted earlier in this chapter the significant impact which parliament had in the minority government session 3 when it fundamentally changed the government's alcohol Bill and persuaded the government not to pursue its independence referendum Bill, but with those policies then easily progressed by government in the majority session 4. My focus was principally in tracking the overturning of parliamentary impact between Stage 2 and Stage 3 of Bills, and Shephard (2009) notes the importance of accounting for the overturning of parliamentary policy influence across longer periods of time.

The focus on the Scottish Parliament itself of course also represents a case-study approach. It is possible that the features of parliamentary impact, and the type of government Bills which are brought forward, which I have identified are atypical for parliaments generally and the results would differ significantly were the approach applied to other parliaments. For example, it may be the case that the nineteen type typology I use to categorise parliamentary policy impact is suitable for only the Scottish Parliament and would not work (either because no examples would arise, or because other forms of impact not catered for would arise) for other parliaments. Working across such a wide range of categories also gives rise to issues of replicability, particularly in terms of the challenge of reliably coding examples across those categories.

Another limitation is the reliance in this thesis on public domain resources. Although I have been able to extract a significant amount of information from published resources, further triangulation of methods could have been used, such as by interviews with key actors in the legislative process (such as civil servants who work on Bills, government Ministers in charge of Bills, MSPs and parliamentary officials). Such interviews could, for example, have shed some light on what other forms of influence play out in the legislative process (such as in discussion between Ministers and MSPs which are not formally recorded), whether there were any informal or hidden rules at play which influenced how government and parliament behaved in the legislative process and so on. Although ideally such interviews would have informed this thesis, it has not been possible to do so because of time and resource constraints. Set against that limitation is my own professional background as a civil servant who has worked on Bills for over a decade and now with a general role working across the government's legislative programmes. That gives me an insider perspective to the topic of this thesis and brings me into contact with most of the actors who I might have interviewed formally. Although I do not formally and systematically use this practitioner knowledge as a data-source in the thesis I have been able to draw on that professional background

knowledge to shape my approach to the development of this thesis and in the framing of my results. So the absence of formal interviews is, in my view, less problematic than if I was not grounded in the data. However, the absence of interview data does overall need to treated as a significant limitation since they would have added additional authenticity and internal validity to the combination of my data and insider perspective, and would undoubtedly have provided insightful nuance and insights.

Finally, there is the question of when a minority government is actually a minority government. Although no formal coalitions were in place in either session 3 or 5, the strong voting coalitions in play on some individual Bills mean that the difference between minority and majority government sessions is not entirely clear-cut. Even if the two minority government sessions covered in this thesis are clear examples of minority government it has to be recognised that this represents a small sample and that future minority governments in the Scottish Parliament, or minority governments elsewhere, may not be reflective of that sample.

RECOMMENDATIONS FOR FURTHER RESEARCH

All of my main recommendations for further research stem from the analysis in the first part of this chapter and in the discussion of the limitations of this research.

The first is the desirability of completing the research I have started on the policy consequences of parliamentary impact on Scottish Government Bills. Over 200 government Bills from 1999-2019 remain untested and analysis of them would provide a complete picture of the types of impact which parliament has on government Bills.

The second is the desirability of extending the research on the policy consequences of parliamentary impact to other parliaments, particularly within the UK where the drafting and scrutiny processes are similar. There would be value in understanding whether there is, for example, more or less evidence of strong policy-making capacity (such as adding new topics to Bills) in the UK Parliament or Welsh Assembly.

The third is the desirability of investigating further the linkage between the concept of legislative viscosity and the predictions of the public policy literature. Where legislative viscosity has been considered in the UK context before it has been in relation to the UK Parliament, and mainly in situations of majority government. The resulting low levels of legislative viscosity, which seem to support Blondel's concept, have resulted in little attention

being given to the different ways in which parliaments approach government Bills depending on their context. A further area of analysis could be the role of media scrutiny and public opinion at the time Bills are being scrutinised and how this impacts on parliament's response to government Bills. My analysis shows that there is a need to take that into account in reaching conclusions about parliament's role and impact in the legislative process, and there is scope to extend that type of analysis to other parliaments, in the UK and beyond, to help frame conclusions about the relative strength and weakness of parliaments.

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APPENDIX A
SAMPLE OF BILLS BY SESSION

Session 1 (1999-2003)

Education and Training Bill

Homeslessness etc. Bill

International Criminal Court Bill

Marriage Bill

Police and Fire Service (Finances) Bill

Salmon Conservation Bill

School Education (Amendment) Bill

Sexual Offences (Procedure and Evidence) Bill

Scottish Public Services Ombudsman Bill

Scottish Qualifications Authority Bill

Session 2 (2003-2007)

Aquaculture and Fisheries Bill

Emergency Workers Bill

Environmental Assessment Bill

Further and Higher Education Bill

Gaelic Language Bill

Management of Offenders Bill

Primary Medical Services Bill

School Education (Ministerial Powers and Independent Schools) Bill

Scottish Schools (Parental Involvement) Bill

Transport and Works Bill

Session 3 (2007-2011)

Certification of Death Bill

Damages (Asbestos-related Conditions) Bill

Double Jeopardy Bill

Education (Additional Support for Learning) Bill

Forced Marriage etc. (Protection and Jurisdiction) Bill

Glasgow Commonwealth Games Bill

Home Owner and Debtor Protection Bill

Private Rented Housing Bill

Public Records Bill

Schools (Consultation) Bill

Session 4(2011-2016)

Alcohol (Minimum Pricing) Bill

Freedom of Information Amendment Bill

Health (Tobacco, Nicotine etc. and Care) Bill

Historic Environment Bill

Landfill Tax Bill

Long Leases Bill

National Library of Scotland Bill

Scottish Fiscal Commission Bill

Social Care (Self-directed Support Bill

Welfare Funds Bill

Session 5 (2016-2021)

Child Poverty Bill

Domestic Abuse Bill

Gender Representation on Public Boards Bill

Historic Sexual Offences (Pardons and Disregards) Bill

Human Tissue (Authorisation) Bill

Islands Bill

Railway Policing Bill

South of Scotland Enterprise Bill

Vulnerable Witnesses (Criminal Evidence) Bill

Wild Animals in Travelling Circuses Bill

APPENDIX B
ALL AMENDMENTS BY BILL: DETAILED POLICY TYPOLOGY

		All Government amendments																				All non-Govt amendments																	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
1	Ed&Tr	0	0	0	0	0	0	0	0	0	2	0	0	3	0	0	0	0	0	0		0	0	2	0	0	0	0	0	0	0	0	0	0	1	0	3	0	2	0
2	Hless	0	0	1	0	0	0	0	0	9	0	0	0	1	0	2	0	0	3	0		0	0	15	0	1	0	3	0	5	0	0	0	6	0	0	0	0	3	0
3	ICC	0	0	0	0	0	0	11	0	0	4	2	0	0	0	0	0	0	0	0		0	0	4	0	0	0	6	0	0	1	3	36	0	0	0	0	0	0	0
4	Marr	0	0	0	0	0	0	0	0	4	0	0	0	0	0	2	0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5	PFS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	13	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6	Salm Co	0	0	2	0	0	0	10	1	0	0	0	0	0	0	0	0	0	0	0		0	3	6	0	5	1	0	1	3	0	0	0	1	1	4	4	1	0	0
7	SchEA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
8	SOPE	0	3	0	0	1	0	7	0	0	7	0	0	0	0	0	0	0	4	0		0	2	4	0	0	0	12	0	0	1	0	0	0	0	0	0	1	0	2
9	SPSO	0	0	6	0	0	0	0	0	7	0	14	0	0	1	0	0	0	6	0		0	0	0	0	0	0	0	0	5	0	0	0	0	0	0	0	0	0	0
10	SQA	0	0	0	0	0	0	0	0	1	0	0	0	0	10	0	0	0	0	0		0	0	0	0	0	0	0	0	7	0	0	0	2	1	0	0	0	0	0
11	A&F	0	10	0	0	0	0	0	0	0	6	2	0	1	0	0	0	1	0	0		0	8	2	0	4	0	2	1	0	0	0	0	0	0	0	0	3	2	0
12	EmWo	0	0	12	0	0	0	28	0	0	5	0	0	0	0	2	0	0	0	0		0	4	18	0	1	0	0	0	0	0	0	0	0	0	0	0	0	2	0
13	EnvAss	0	0	0	0	0	0	0	0	2	1	0	0	0	0	1	0	0	0	0		0	4	10	5	0	0	4	6	0	0	0	0	2	0	1	4	2	0	0
14	FHE	0	5	0	0	0	0	0	11	4	2	0	0	3	0	2	0	0	10	0		0	2	1	6	0	0	0	2	2	2	0	0	1	0	3	1	4	10	0
15	GLB	0	0	29	0	3	0	0	1	10	3	3	0	0	0	0	1	0	0	0		0	0	14	0	4	0	0	1	8	0	1	2	1	2	0	1	1	0	0
16	MOO	0	7	2	0	1	0	15	0	2	10	1	24	4	0	0	2	7	8	0		0	3	0	0	1	0	0	0	3	0	0	0	0	0	0	0	0	0	0
17	PMS	0	0	0	0	0	0	0	0	6	10	4	1	4	0	10	0	0	23	0		0	0	7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
18	SEMPIS	0	0	0	0	0	0	0	0	10	4	0	0	3	0	1	0	0	0	0		0	0	40	0	0	0	0	0	6	0	0	0	9	0	0	0	0	0	0
19	SSPI	0	2	9	0	0	0	0	0	14	3	0	0	2	3	0	0	0	1	0		0	6	16	0	0	0	0	0	17	1	1	4	0	8	0	0	0	1	0
20	T&W	0	6	7	0	1	0	2	0	12	17	0	0	0	0	10	1	0	1	0		0	0	4	0	0	0	0	0	0	0	0	0	0	0	5	0	0	0	0
21	CofD	0	0	0	0	0	0	0	0	8	1	0	0	0	0	9	0	1	0	0		0	0	3	0	0	0	0	0	7	0	0	0	0	0	0	0	0	0	0
22	DAR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	8	0		0	0	0	0	0	0	5	0	0	0	0	0	0	0	0	0	1	0	0
23	DJ	0	0	10	0	0	0	21	0	0	6	0	0	0	0	0	0	0	0	0		0	0	0	0	0	0	9	0	0	1	0	0	0	0	0	0	0	0	0
24	EASL	0	8	4	0	1	0	5	0	0	4	1	0	0	0	0	0	0	1	0		0	16	14	0	1	0	1	1	4	0	0	0	0	0	1	0	3	0	0
25	FM	0	0	0	0	0	1	4	0	10	0	0	0	0	0	0	0	0	0	0		0	0	0	0	0	0	1	0	0	0	1	0	0	0	0	0	0	1	0
26	GCG	0	0	6	0	0	2	6	1	0	1	0	0	0	0	10	0	0	16	0		0	0	1	0	2	1	0	1	0	0	0	0	0	0	3	0	0	1	0
27	HODP	0	0	0	0	4	0	20	0	2	22	0	0	4	0	11	0	0	0	0		0	0	0	0	0	0	1	0	6	0	0	0	0	0	0	0	0	1	0
28	PRH	0	0	0	0	0	0	0	3	10	8	0	2	4	0	1	0	0	0	0		0	2	11	0	1	0	1	0	2	0	0	0	1	0	0	2	0	0	0
29	PR	0	0	0	0	0	0	5	4	5	1	16	0	2	0	0	0	0	0	0		0	0	0	0	0	0	0	3	4	0	27	0	5	0	0	0	0	1	0
30	SchCon	0	0	0	0	2	0	0	10	12	0	0	0	0	0	0	0	0	0	0		0	0	16	0	1	0	0	0	5	0	0	0	0	0	0	0	0	0	0
31	AMP	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0		0	0	0	0	0	1	0	0	0	10	0	0	0	0	0	3	2	0	1
32	FOIA	0	0	0	1	2	0	0	0	0	1	0	0	0	0	4	2	0	0	0		0	11	0	0	5	0	0	0	3	0	0	0	0	0	0	0	1	0	0
33	HTNC	1	0	2	0	0	4	0	0	0	1	0	0	1	0	1	0	0	2	0		0	0	2	0	0	7	0	0	7	0	0	0	2	0	0	0	0	0	0
34	HiEnv	0	0	0	0	0	0	0	20	1	0	7	20	0	5	0	0	0	0	0		0	0	0	0	0	0	0	5	0	0	9	5	1	0	0	0	2	0	0
35	LfillT	0	0	0	0	0	0	0	0	0	0	0	0	0	7	0	0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	2	0	0
36	Lleases	0	0	0	0	2	0	0	0	0	0	3	0	0	0	0	0	1	2	0		0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
37	NLS	0	0	0	0	0	0	0	0	3	1	1	1	0	4	0	0	0	6	0		0	0	0	0	0	0	0	0	0	0	0	0	4	0	0	0	0	0	0
38	SFiscC	0	0	16	0	5	0	0	0	1	0	0	1	0	3	0	6	0	0	0		0	0	1	0	0	0	0	0	0	0	0	12	0	0	0	0	0	0	0
39	SCSDS	0	0	1	0	0	0	0	1	4	0	0	1	0	0	3	0	9	8	0		0	2	3	0	0	0	0	0	19	0	0	4	4	2	2	0	10	7	0
40	WF	0	0	3	0	0	0	0	1	0	1	0	0	13	0	6	0	0	0	0		0	0	8	0	2	0	0	0	0	0	3	0	0	0	2	0	0	0	0
41	Cpov	0	13	9	0	2	0	0	0	0	11	0	11	0	0	1	1	0	2	0		0	9	17	0	1	0	0	3	1	0	0	17	0	0	0	4	4	0	0
42	DomA	0	0	9	0	1	0	0	0	0	0	0	0	0	12	0	0	0	0	0		0	0	15	0	1	11	0	0	0	0	0	0	0	0	6	0	0	0	0
43	Grep	0	0	1	0	0	0	0	0	5	0	0	0	0	2	5	0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	1	0
44	HSO	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0		0	0	0	0	0	0	5	0	0	0	0	2	3	0	0	3	1	1	0
45	HT	0	0	0	0	3	0	6	0	22	0	0	0	0	0	0	0	0	3	0		0	0	7	0	3	0	0	0	2	0	1	0	0	0	3	0	15	0	0
46	Isl	0	1	3	0	0	0	0	0	5	1	1	1	0	0	1	0	0	3	0		0	2	63	0	2	0	0	9	21	0	0	3	0	0	5	0	4	0	0
47	Rpol	0	0	2	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0		0	7	3	4	5	0	0	0	0	0	0	0	0	0	0	1	0	0	0
48	SSEB	0	4	0	0	0	0	0	0	0	0	0	6	2	1	0	0	0	0	0		0	2	4	0	1	0	0	7	7	0	0	27	0	3	0	3	0	0	0
49	Vwitn	0	0	1	0	0	0	1	0	0	7	0	0	0	0	0	0	0	0	0		0	0	2	0	0	0	1	0	0	0	0	0	0	0	0	5	0	0	0
50	WAIC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	8	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	11	0

APPENDIX Ci
SUCCESSFUL AMENDMENTS BY BILL: DETAILED POLICY TYPOLOGY

		Successful Government amendments																				Successful direct non-Govt amendments																	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
1	Ed&Tr	0	0	0	0	0	0	0	0	2	0	0	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2	Hless	0	0	1	0	0	0	0	0	9	0	0	0	1	0	2	0	0	3	0	0	0	3	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1	0
3	ICC	0	0	0	0	0	0	11	0	0	4	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	2	0	0	0	0	0	0	0	0
4	Marr	0	0	0	0	0	0	0	0	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5	PFS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	13	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6	Salm Co	0	0	2	0	0	0	10	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7	SchEA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
8	SOPE	0	3	0	0	1	0	7	0	0	7	0	0	0	0	0	0	0	4	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
9	SPSO	0	0	6	0	0	0	0	0	7	0	14	0	0	1	0	0	0	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10	SQA	0	0	0	0	0	0	0	0	1	0	0	0	0	10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0
11	A&F	0	10	0	0	0	0	0	0	6	2	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0
12	EmWo	0	0	12	0	0	0	28	0	0	5	0	0	0	2	0	0	0	1	0	0	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
13	EnvAss	0	0	0	0	0	0	0	1	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14	FHE	0	5	0	0	0	0	0	10	4	2	0	0	3	0	2	0	0	10	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
15	GLB	0	0	29	3	0	0	0	1	10	3	3	0	0	0	1	0	0	1	0	0	0	1	0	4	0	0	1	7	0	0	2	0	0	0	1	0	0	0
16	MOO	0	7	2	0	1	0	15	0	2	10	1	24	4	0	0	2	7	8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
17	PMS	0	0	0	0	0	0	0	0	6	10	4	1	4	0	10	0	0	23	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
18	SEMPIS	0	0	0	0	0	0	0	0	10	4	0	0	3	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4	0	0	0	0	0	0	0	0
19	SSPI	0	2	9	0	0	0	0	0	14	3	0	0	2	3	0	0	0	1	0	0	1	2	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
20	T&W	0	6	7	0	1	0	2	0	12	17	0	0	0	0	10	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
21	CofD	0	0	0	0	0	0	0	0	8	1	0	0	0	0	9	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0
22	DAR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
23	DJ	0	0	10	0	0	0	21	0	0	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
24	EASL	0	4	4	0	1	0	5	0	0	3	1	0	0	0	0	0	0	1	0	0	8	11	0	0	0	1	1	3	0	0	0	0	0	0	1	0	0	0
25	FM	0	0	0	0	0	1	12	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0
26	GCG	0	0	6	0	0	2	6	1	0	1	0	0	0	0	10	0	0	16	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
27	HODP	0	0	0	0	4	0	19	0	2	22	0	0	4	0	11	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	0	0	0
28	PRH	0	0	0	0	0	0	0	3	10	8	0	2	4	0	1	0	0	0	0	0	2	0	0	0	0	0	0	1	0	0	0	1	0	0	1	0	0	0
29	PR	0	0	0	0	0	0	5	4	5	1	16	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	22	0	0	0	0	0	0	0	0
30	SchCon	0	0	0	2	0	0	10	12	0	0	0	0	0	0	0	0	0	0	0	0	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
31	AMP	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
32	FOIA	0	0	0	1	2	0	0	0	0	1	0	0	0	0	4	2	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
33	HTNC	1	0	2	0	0	4	0	0	0	1	0	0	1	0	1	0	0	2	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0
34	HiEnv	0	0	0	0	0	0	0	0	20	1	0	7	20	0	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
35	LfillT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
36	Lleases	0	0	0	0	2	0	0	0	0	0	3	0	0	0	0	0	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
37	NLS	0	0	0	0	0	0	0	0	3	1	1	1	0	4	0	0	0	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
38	SFiscC	0	0	16	0	5	0	0	0	1	0	0	1	0	3	0	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
39	SCSDS	0	0	1	0	0	0	0	1	4	0	0	1	0	0	3	0	9	8	0	0	0	2	0	0	0	0	0	8	0	0	1	0	0	0	0	0	0	0
40	WF	0	0	3	0	0	0	0	1	0	1	0	0	12	0	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
41	Cpov	0	13	9	0	2	0	0	0	0	11	0	11	0	0	1	1	0	2	0	0	7	8	0	1	0	0	2	1	0	0	9	0	0	0	2	2	0	0
42	DomA	0	0	9	0	1	0	0	0	0	0	0	0	0	0	0	12	0	0	0	0	0	6	0	0	1	0	0	0	0	0	0	0	0	0	4	0	0	0
43	Grep	0	0	1	0	0	0	0	0	0	5	0	0	0	0	2	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	1	0
44	HSO	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
45	HT	0	0	0	0	3	0	6	0	22	0	0	0	0	0	0	0	0	3	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	3	0
46	Isl	0	1	3	0	0	0	0	0	5	1	1	1	0	0	1	0	0	3	0	0	1	20	0	1	0	0	6	5	0	0	0	0	0	0	2	0	3	0
47	Rpol	0	0	2	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
48	SSEB	0	4	0	0	0	0	0	0	0	0	12	2	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	6	0	0	11	0	1	0	1	0	0	0
49	Vwitn	0	0	1	0	0	0	1	0	0	7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
50	WAIC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0

APPENDIX Cii

SUCCESSFUL AMENDMENTS BY BILL: DETAILED POLICY TYPOLOGY

		Successful direct and indirect non-Govt amendments																	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
1	Ed&Tr	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2	Hless	0	0	3	0	0	0	0	0	7	0	0	0	0	0	1	0	0	1	0
3	ICC	0	0	0	0	0	0	2	0	0	0	2	0	0	0	0	0	0	0	0
4	Marr	0	0	0	0	0	0	0	0	2	0	0	0	0	0	2	0	0	0	0
5	PFS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	13	0	0
6	Salm Co	0	0	3	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
7	SchEA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
8	SOPE	0	0	1	0	0	0	3	0	0	0	0	0	0	0	0	0	0	1	0
9	SPSO	0	0	2	0	0	0	0	0	1	0	12	0	0	1	0	0	0	4	0
10	SQA	0	0	0	0	0	0	0	0	1	0	0	0	0	1	0	0	0	0	0
11	A&F	0	1	0	0	0	0	1	1	0	1	0	0	0	0	0	0	0	0	0
12	EmWo	0	0	6	0	0	0	27	0	0	0	0	0	0	0	2	0	0	1	0
13	EnvAss	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	0	0	0
14	FHE	0	2	0	0	0	0	0	4	4	0	0	0	0	0	3	0	0	9	0
15	GLB	0	0	30	0	6	0	0	2	12	1	2	2	0	0	0	2	0	0	0
16	MOO	0	0	2	0	0	0	0	0	0	0	0	5	0	0	0	0	0	0	0
17	PMS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
18	SEMPIS	0	0	0	0	0	0	0	0	14	0	0	0	3	0	0	0	0	0	0
19	SSPI	0	1	8	0	0	0	0	0	5	0	0	0	0	1	0	0	0	0	0
20	T&W	0	0	0	0	0	0	0	0	0	1	0	0	0	0	8	0	0	0	0
21	CofD	0	0	0	0	0	0	0	0	9	0	0	0	0	0	3	0	0	0	0
22	DAR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	8	0
23	DJ	0	0	10	0	0	0	8	0	0	2	0	0	0	0	0	0	0	0	0
24	EASL	0	9	11	0	0	0	1	1	3	0	0	0	0	0	0	1	0	1	0
25	FM	0	0	0	0	0	0	7	0	1	0	0	0	0	0	0	0	0	1	0
26	GCG	0	0	6	0	0	0	0	0	0	0	0	0	0	0	8	0	0	1	0
27	HODP	0	0	0	0	0	0	17	0	0	0	0	0	0	0	5	0	0	0	0
28	PRH	0	2	0	0	0	0	0	0	1	0	0	1	2	0	1	1	0	0	0
29	PR	0	0	0	0	0	0	0	4	4	0	38	0	2	0	0	0	0	0	0
30	SchCon	0	0	4	0	0	0	0	0	12	0	0	0	0	0	0	0	0	0	0
31	AMP	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0	0	1
32	FOIA	0	0	0	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0
33	HTNC	0	0	0	0	0	2	0	0	2	0	0	0	0	0	0	0	0	0	0
34	HiEnv	0	0	0	0	0	0	0	0	2	0	0	7	14	0	5	0	0	0	0
35	LfillT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	7	0	0	0	0
36	Lleases	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	1	0	0
37	NLS	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0
38	SFiscC	0	0	0	0	0	0	0	0	1	0	0	0	0	3	0	0	0	0	0
39	SCSDS	0	0	3	0	0	0	0	1	10	0	0	1	0	0	3	0	0	4	0
40	WF	0	0	3	0	1	0	0	1	0	1	0	1	0	0	2	0	0	0	0
41	Cpov	0	7	16	0	3	0	0	2	1	0	0	11	0	0	1	2	2	0	0
42	DomA	0	0	12	0	0	1	0	0	0	0	0	0	0	0	0	4	0	0	0
43	Grep	0	0	0	0	0	0	0	0	0	0	0	0	0	2	2	5	0	1	0
44	HSO	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0
45	HT	0	0	1	0	2	0	6	0	1	0	0	0	0	0	0	3	0	0	0
46	Isl	0	2	23	0	1	0	0	6	8	0	0	0	0	0	1	2	0	4	0
47	Rpol	0	1	4	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
48	SSEB	0	4	0	0	0	0	0	6	0	0	0	17	2	2	0	1	0	0	0
49	Vwitn	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	1	0	0	0
50	WAIC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	9	0