MINORITY DECISION MAKING: CAN LOW INTEREST LEGISLATION CARRY PARLIAMENTARY APPROVAL?

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Abstract

The law is granted legitimacy by the public because people believe that an assembly of democratically elected representatives have debated and voted on clauses within Bills that require a majority to be passed into law. The reality is very different. Much legislation is passed 'on the nod' by what is often less than a quorum in a deserted House of Commons. This paper suggests a lack of legitimacy inherent in both primary and secondary legislation as a result of an antiquated voting system, procedure and 'rules'.

The study examines the introduction of compulsory motorcycle helmets and car seat belts to illustrate these points and offers possible reforms.

Suggestions are made in the paper that enabling powers in primary legislation are more easily passed than a clause that directly produces law due to an inferred lessening of responsibility on the part of a member or peer. These enabling powers can then be used at any time without being tested against current necessity. The statutory instruments that then follow are, it is argued, virtually impregnable to attack. Both the negative and affirmative procedures are considered.

Changes to the voting system, including a review of the quorum, are proposed as a way of recovering legitimacy for decisions. Taking account of Condorcet's criticisms of majority decision making, the paper widens the debate by calling into question the suitability of parliament and majority decision making to be used for the regulation of minorities or consideration of specialist subjects.

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There are certain types of legislation that attract little interest from MPs and peers that, as a result, are not debated before an even moderately attended chamber or voted on – if at all – by the sort of numbers that a member of the public might assume. This is not necessarily boring legislation; it certainly will not be boring to those it directly affects. This paper concentrates on the passage of two regulations and their Primary Acts which, although widely accepted now, aroused passionate public debate at the time. They are the compulsory wearing of crash helmets on motorcycles and seat belts in cars.

Consideration is given to the quality of decision making in debates that have essentially a small self selecting attendance. Condorcet's theories on decision making are coupled with the libertarian theories of John Stuart Mill to suggest that those most likely to attend low attendance debates are possibly the least suitable to decide on these matters. In addition to the probability that their vote has been decided in advance, the quality of the debate will also suffer.

Televised Prime Minister's Question Time and reporting of divisions on critical issues gives a false impression of parliament's activity. The figures for divisions in these cases show that only low percentages have taken part in divisions. Indeed: much legislation is passed without division. Proposed reforms to voting procedure are made to overcome some of these problems and legislative review is examined.

It has been suggested that the use of Statutory Instruments eases the path of primary legislation by assuring members that the responsibility of the decision is not entirely theirs. However, the procedure for secondary legislation, I argue, provides no further safeguard or parliamentary scrutiny.

1.1 A History of the Case Studies

Compulsory motorcycle helmets became a cause for some members and peers in the mid fifties but was resisted by government until a successful amendment to the 1962 Road Traffic Act put the enabling powers into primary legislation. This was passed "on the nod" without a division. However, successive ministers declined to introduce compulsion until 1973. As the regulation was made by the negative procedure, the only scope for parliamentary influence was by a prayer to annul. Such a prayer was laid by Ronald Bell but time was not allowed within the forty days required. As a concession, a motion to "take note" of the regulation was permitted and provided debate on the subject even though it could have no effect.

Although previous assurances were made that helmet compulsion would not lead to legislation regarding seat belts, the same year saw the first attempt to do just that. Unlike the helmet legislation, every year saw a new attempt to make seat belts compulsory and many divisions occurred. The enabling powers for seat belt compulsion were passed in the 1981 Transport Act and the regulations tabled in 1982 under the affirmative procedure with a requirement for the regulations to be confirmed after a three year trial period.

1.2 Majority Decision Making

If a wise person is twice as likely to make a correct decision as a wrong one, then he or she is likely to make one bad decision in three. If an assembly of wise persons were collected in order to take decisions on a majority vote, then decisions are likely to be correct every time on a majority of two to one. This is the assumption, illustrated by Condorcet (Baker, 1976), that supports majority decision making.

In his *Essay on the Application of Mathematics to the Theory of Decision Making*, (Baker, 1976) Condorcet maintained that the likelihood of a correct decision being made by an assembly by majority vote was the product of the number of members multiplied by the competence of the average member. However, the larger the assembly becomes, the more difficult it is to recruit members with a high level of competence. So wide is the area of expertise required of a modern legislator, that many will be ignorant in many fields. He illustrated the fallibility of the system:

> It is even probable that those comprising such an assembly will on many matters combine great ignorance with many prejudices. Thus there will be a great number of questions upon which the probability of the truth of the vote or each voter will be below ½. (Baker ed. 1976, p49)

This suggests that matters outside of the member's experience are likely to be judged incorrectly and the larger the assembly the more probable a mistake will be made. On these case studies *Hansard* shows that attendance, and subsequently the divisions, were limited to a small minority of passionate adherents to each side of the argument and the debates were not generally attended by those with no firm opinion willing to be persuaded by presentation of facts and rational analysis. It seems likely that, although there is a concentration of interest, those inclined to devote time to these particular debates are those, on both sides of a given controversy, will, in Condorcet's terms, "combine great ignorance with many prejudices". The procedure on council planning committees is to exclude councillors that have previously voiced an opinion on a proposal coming before them. In Westminster, the participants select themselves in accordance with their own interests. We therefore have a 'prejudiced' group from a larger assembly. Possibly too large to be comprised of wise persons.

Libertarian political theory follows a similar direction to Condorcet's arithmetical conclusions. The assertion that the majority is more likely right than wrong is least probable, according to Mill, in those matters involving paternalism and is more likely to be no more than an expression of public opinion. Parties now seek to match policy to public opinion and utilise 'focus groups' to form priorities. In spite of these trends, I suggest that public opinion should not be a sufficient basis for law making. Although technical and statistical support may be provided for members to become better informed, the likes of John Stuart Mill and Wilhelm von Humboldt would suggest that those who represent a majority, as members of parliament do, may not be qualified to make a judgement on the activities of a minority or to empathise with their values.

Of the two types of legislation provided by parliament – private and public – this type of legislation is clearly public: it is a law that applies equally to all. Whilst it would be very wrong to suggest anything else, it might be said that some public legislation applies, for all practical purposes, to peculiarly distinct groups where the rule of the majority ought to consider a more pluralist approach. The motorcycle helmet law, for example, applies to anyone who rides a motorcycle. The fact that only

a small percentage of road users choose to travel that way does not deny its position in public law. I suggest here however, that perhaps more account should be taken of the groups directly concerned with the regulation rather than the mass of opinion outside of that interest. However, any special position as a minority group for motorcyclists is dubious in much human rights discourse as they are entirely self selecting; they are not forced to ride motorcycles they are granted the privilege of a licence on condition that certain regulations are complied with. Neither, I suggest, are motorcycling Sikhs whose religion and culture may be controversially suggested as either accident of birth or choice but whose mode of transport is no more or less a matter of choice than non-Sikh motorcyclists. The exemption of Sikhs from the regulation appears to grant special privilege to a group over and above the will of the majority that is not granted to other members of that group. Although the political reasons for the different treatment are well understood, the principle has been applied inconsistently.

Much of the debate on seat belt compulsion involved those seeking exemption from the regulations. These included delivery drivers, taxi drivers, police officers whilst on duty, driving instructors and examiners, pregnant women and people of unusual height or bulk. Had all of these exemptions been granted, there would be more people exempted from wearing seat belts on the basis of their membership of a particular group than people obliged to wear crash helmets on the basis of theirs.

1.3 Quality of Debate

A study of the parliamentary debates on these issues from the 1950s through to 2001 leaves one with the impression that a change has occurred in the character of Members of Parliament over these years. During the 1950s there were more references to individual liberty, to freedoms fought for in two world wars and the right of individuals to do as they wish providing they harm no other. In more recent years there seems to be little if any questioning of the role of Parliament to proscribe actions for the individual's own good. Debates on cycle helmets seem to have little opposition to compulsion other than the difficulties of enforcement; libertarians have all but disappeared from the debate. In the early stages of the motorcycle helmet case, even the pro-compulsionists were treading with extreme caution in order to not extend the role of parliament into private behaviour; in the recent cycle helmet debates there are no qualms expressed whatsoever over Parliament's intrusion into the private sphere.

The obvious assessment on the quality of debate drawn from the two case studies, particularly in the House of Commons, is that it is very poor. Given that the responsible Departments and various issue groups have worked hard to produce scientific and statistical data to support their own cases and that the House has compiled material for the use of members from academic and medical journals, it is thoroughly depressing that so much of the debate is confined to personal experience and the opinions of unqualified others. Anecdotes range from Gerald Nabbaro's belief that he would certainly have died if he were not wearing a steel helmet when his vehicle overturned (although the driver who was not wearing a helmet suffered only concussion) (HC debs. 31/5/56, 493), through to Peter Bottomley's relating of Oleg Gordievsky's experience of passing through a car windscreen. "His life was saved because he was wearing a cycle helmet" (HC debs. 3/5/95, 414). In between these two tales, the debate is littered with stories authoritatively asserted that members, or members' spouses or friends, would not be alive today if they had not been wearing a helmet or seat belt and, in the seat belt case, just as many assertions that they would not be alive today if they had been wearing a seat belt.

It is doubtful if any of the members making these claims were qualified to do so with such certainty or even if authoritative figures quoted were qualified to be so certain. “The Coroner said that he would be alive today had he been wearing a helmet...” (Gresham Cooke, HC debs. 17/7/62, 275). It appears sufficient to have been involved in an accident to claim that death would have been certain if one had not (or had) been wearing a seat belt. Such claims may be the normal currency of saloon bar conversation but it is depressing that they are used as concrete evidence for decision making on the formation of national legislation.

1.4 Divisions

The size of the House of Commons has steadily increased after its drop following the loss of Irish MPs, and throughout the period spanned by these cases has remained above 600 members. From 1955 until the beginning of 1974 there were 630 members: the elections from 1974 onwards returned 635 members and in 1983 and 1987, 650. In spite of the controversy and the vigour of opposition in the debates, compulsory motorcycle helmets entered primary legislation without a division (HC debs. 17/7/62, 283). The Motorcycle (Crash Helmet) Regulation, which was enabled by the Road Traffic Act, did not need to pass through the House as the Statutory Instrument operated under the negative procedure. Ronald Bell’s prayer to annul was not granted debating time within the forty days but a motion to ‘take note’ of the regulations was passed on a division of 54 to 15 (HC Debs. 5/4/73, 776). This motion could not have any effect but, having denied time to opposition of a previous motorcycle related SI, it was felt that this concession could be made safely. Low numbers were also recorded for the introduction of compulsory seat belts as shown in the following table which includes both ayes and noes (contents and not contents) in the division numbers.

A percentage figure is not shown for the House of Lords as the average attendance was a few hundred but the official number of listed peers crept into four figures. A percentage would therefore be both difficult to assess and quite meaningless. There were 635 members of the House of Commons in all these divisions except those shown in brackets.

Table Showing Total Numbers of MPs and Peers Taking Part in Divisions

Motion	Number of MPs taking part in division	Percentage of MPs taking part in division	Number of peers taking part in division	Hansard date and column number
Motion to take note of Motorcycle (crash helmet) Regulations	69	11 (630)		5/4/73 776
Addition of seat belt clause to Road Traffic Bill 1974 Committee Stage			121	11/6/74 380
Leave out seat belt clause Road Traffic Bill 1974 Report Stage			151	25/6/74 1368
Road Traffic (Seat Belts) Bill 1976 2ndR	388	61		1/3/76 1048
Road Traffic (Seat Belts) Bill 1976 Report Stage	84 66 80	13 10 12		25/6/76 2078, 2106, 2116
Road Traffic (Seat Belts) Bill [HL] 1977 2ndR			108	26/4/77 514
Road Traffic (Seat Belts)(N°2) Bill [HL] 1977 2ndR			148	24/5/77 1244
Road Traffic (Seat Belts) Bill 1980 2ndR Private Members' Bill			108	15/12/80 961
Addition of Seat Belt Clause to Transport Bill 1981			224	11/6/81 357
Transport Bill 1981 Consideration of Lords' amendments	365	57		28/7/81 1071
Approval of Seat Belt Regulations	240	38		22/7/82 648
Approval of Seat Belt Regulations			154	30/7/82 490
Confirmation of Seat Belt Regulations	242	37 (650)		13/1/86 895

It would perhaps be acceptable to argue that the low figures in the House of Lords do not damage the claim to legitimacy in majority decision making as firstly it is only a complementary second chamber and does not seek democratic legitimacy and secondly, an absolute majority would be difficult to define. Attendance is always low in the House of Commons on a Friday, which is usually the day Private Members' Bills are dealt with but on the 25 June 1976 the Road Traffic (Seat Belts) Bill was a government bill. Taking into account all these qualifications, it is possible to make the following statements.

1. The only division that occurred on the subject of compulsory motorcycle helmets involved only 69 MPs.

2. No division on the subject of compulsory seat belts was ever carried, either way, with an absolute majority of MPs.

3. Only two divisions (on the 1 March 1976 and the 28 July 1981) on compulsory seat belts, had a majority of members present.

The size of these divisions hardly justifies the assertion that they express the democratic will of the people. A constituent may feel justifiably aggrieved if an issue they granted great importance was not even voted on by their MP.

It is understood that members will invariably follow party discipline during a whipped vote. When there is no whip, influence may be best brought to bear on those already interested. The most efficient activity of a pressure group, in these instances, is probably to persuade the converted to vote rather than to change the minds of the waverers.

It is clear from the voting figures that, not only is there a woefully low involvement in divisions that are not whipped, but most decisions are made without either a division in the House or a vote in committee. Amendments in both Committee and Report stages are 'by leave withdrawn' if it is likely to fail or if the minister promises to 'look at the matter again'. In both Houses, when the question is put, if the weight of the ayes or noes when called is clear, the Speaker will declare that either the ayes or noes (contents or not contents) have it. Only a doubtful balance or an objection to the Speaker's call will then lead to a division. The reason for a reluctance to divide the House is obvious; each division is a time consuming business and voting on every amendment and every clause would have members and peers walking to and fro all day.

Although avoiding divisions is understandable it raises a number of problems for researchers and issue groups. Firstly, apart from the recent practice of televising parliament which gives some impression of attendance, there is no method by which the attendance at debates can be quantified. Secondly, without division there is no record of the names of members that may be used for research purposes. Thirdly, the ability of members to avoid commitment supports a lack of accountability and permits MPs to privately promise support to opposing sides and avoid being pestered. The significance of the above table and the arguments based on low participation are obviously lessened by the fact that many decisions are made without record. There is no reason to assume, however, that there are any more members participating when amendments are withdrawn or questions are decided by call than when the House divides. It may be that compulsory crash helmets passed into the 1962 Road Traffic Act with as few members present as those who attended Ronald Bell's motion 'to take note' in 1973 or an overwhelming majority of the House may be present: there is simply no way of knowing for certain.

The practical result of the lack of urgency invested by government in measures that are neither manifesto commitments nor party driven programmes is that the issues re-emerge continuously due to a lack of conclusion (Hogwood, 1987, p106). Those that promote the legislation object that their proposals are frustrated by lack of parliamentary time and, when resurrected from the government benches, are squeezed into unpopular times in the week where unforeseen business is likely to eject them. It is equally irksome for those who oppose such legislation. It must have appeared to them that compulsory seat belts were to be debated every year for a decade until the measure eventually passed into law. That occurred with a majority of only 77 members or 12% of the overall membership of the Commons whilst 43% stayed away. If an issue is continuously on the agenda for a number of years, then weight is added to the possibility that such types of legislation are inevitable.

The British system of parliamentary democracy has such faith in the legitimacy of majority decision making that legislation once passed is very rarely

questioned. Even those members who fought vigorously against a particular measure during its passage through parliament find it hard to condemn once given royal assent (one notable exception from recent years is the 'poll tax' which suffered the indignity of being replaced). If new legislation is proposed and partly justified by the precedent of similar legislation, it is extremely unusual for a member or peer to claim that the original legislation was wrong – that it was a 'bad law'. To do so would question the infallibility of parliament and the collective wisdom of its members. In these cases, the admission that parliament had created a 'bad law' was only voiced once by Ivan Lawrence "two wrongs do not make a right" (HC debs. 28/7/81, 1036) and implied by Enoch Powell (HC debs. 1/3/76, 949-951) when the motorcycle helmet regulations were used to justify compulsory seat belts. The assumption is taken that statutes have consensus even though they did not have whole hearted support during their passage.

In contrast to what may be called back bench instigated legislative proposals, government legislation is subjected to the party whip and commands a high level of attendance. As government controls the parliamentary timetable, it is able to banish matters with which it is not particularly concerned to the less popular slots in the business week. In addition, Private Members' Bills are always dealt with on Friday when most members with distant constituencies have already left London.

An example of how the timing of debates affects the attendance of members is illustrated by the division on the 1976 Road Traffic (Seat Belts) Bill. This was introduced as a Government Bill in order to give the House an opportunity to form an opinion and continue to discuss the issue after the measure had previously failed due to pressure of business. As may be seen in the above table, the second reading of this Bill was agreed to with the highest division numbers in the parliamentary history of seat belts but the report stage, debated on a Friday, saw the lowest.

As mentioned previously, the assumed infallibility of Parliament and faith in majority decision making leads to an acceptance of legislation once granted the royal assent. This faith makes it difficult to present any objective assessment of the effects of legislation and allows previous regulation to be used to justify further measures – even if that legislation may have failed in its declared objectives. There is no mechanism for assessing existing statutes other than provisions made in the primary legislation as occurred in the 1981 Transport Act, which required compulsory seat belt regulations to be approved by both Houses three years after coming into force[1]. Even in that instance it would have required the most overwhelming evidence to overturn an existing regulation of this nature. To do so might send a message that parliament believes seat belts should not be worn: a view that few in parliament believed for only the element of compulsion was disputed. Whether or not the primary legislation would have passed if the life saving claim was for the actual 200 lives saved per year[2] rather than the proclaimed 1000 can only be guessed. Especially when one considers the simultaneous changes in drink driving legislation[3]. Certainly the life saving benefits of compulsory motorcycle helmets never transpired and yet it was heralded as an overwhelming success with little challenge, other than that from Enoch Powell, and later used to justify compulsory seat belts.

[1] Transport Act 1981, Part IV section 27 subsection 3.
[2] Mitchell HC debs 13/1/86 876.
[3] Adams J 'Seat belts, drink and statistics; UK road safety' *Financial Times*, 20/12/85 s1, p17 and Lawrence HC debs 13/1/86 881.

1.5 Suggestions for reform

Central to the problems of disputed legitimacy highlighted in this paper is the method of decision-making in both Houses of Parliament. It hardly seems legitimate that contentious and wide sweeping legislation may be introduced, amended and passed into law with the support of no more than a handful of members of parliament, although it fails to receive the serious analysis it deserves. The most obvious reform would be the requirement of an absolute majority of members to vote either for or against a motion for it to be valid. The European Parliament operates in a similar manner except that an absolute majority is required to overturn a Commission proposal or it is automatically carried. The European Parliament is however a very different institution to the British Houses of Parliament; an MEP is elected to sit only as a representative member of the chamber during the relatively short plenary sessions whereas an MP may have other roles to fulfil in a busy timetable. The British government is drawn from the membership of both Houses – mainly the House of Commons – keeping ministers, junior ministers and parliamentary private secretaries busy outside of the debating chamber, while other members are involved in a busy schedule on a variety of committees throughout a crowded parliamentary year. Requiring an absolute majority would lead to very little legislation being concluded and seriously hamper the business of government, committees, party and international affairs. In short, the low participation in most divisions is, to a large extent, understandable.

A compromise position might be to operate a quorum significantly higher than the existing one of forty. An inquorate division under the existing system is merely suspended to the next sitting which, combined with the low threshold, does not constitute a great incentive for attendance. An increase of the quorum to say 50% of the House would, without major changes elsewhere, cause havoc. If such a quorum was necessary, the practice of deciding a question on the Speaker's assessment may fall from use as more calls would be challenged. This would be welcomed by those who wish to examine voting records, disliked by members hoping to avoid commitment and would be unjustifiably time consuming. The ensuing chaos could only be rectified by an electronic voting system which has been proposed before but been rejected.

In 1966 electro-mechanical voting was proposed by the Select Committee on Procedure but was rejected as it would either require fixed desk positions for each member – quite impossible in a chamber that does not even have sufficient seats for a full house – or voting stations outside of the chamber which would save very little time (Crick, 1970, p223). It was considered again in 1998 but it was felt that it would not result in a significant saving of time and there was some value in the lobby as a meeting place where colleagues' presence could be guaranteed[4]. As most members may be contacted by the Whips' office with a hand held device, it must surely be possible for a hand held transmitter – with security coding – to be used for electronic voting. It would also be possible to place geographical limits on its use in order to have it operable only within the House; it would quickly become disreputable if it were possible to vote from the *Red Lion*.

Setting a higher quorum would raise the objection that it would be unworkable: particularly for Friday's business when attendance is particularly low.

[4] *Divisions*, House of Commons Factsheet P9, London, House of Commons Information Office, 2000 p4.

However, setting a quorum to suit the existing arrangements is, I suggest, the wrong way round. Surely an adequate quorum should be decided upon in order to grant some legitimacy to statute and arrange parliamentary business to suit. If electronic voting eliminates passing legislation "on the nod" when even forty members cannot be mustered, that also should be welcomed.

1.6 The Use and Abuse of Statutory Instruments

When a legislature is worked as hard as the House of Lords and House of Commons, it is necessary to delegate the implementation and detailed amendment of some regulation to government departments. It is obviously not necessary for Parliament to consider every year the level of fines, charges for licences and tax allowances. Regulations that do not radically change that which has gone before are rightly seen as the appropriate realm of delegated legislation or statutory instrument (S.I.) There are concerns however that the power to make regulations may be abused (Beith,1981).

The Select Committee on Statutory Instruments is a body that has existed only post-war. It had very limited terms of reference that have been extended marginally over the years of the case studies. Its role is limited to bringing to the attention of the House any unusual or unexpected use of the provisions enabled by primary legislation[5]. Such a report was compiled by the Committee on the draft seat belt regulations (1982). Apart from the Committee, the only action that can be taken by Parliament in relation to a statutory instrument is that granted to them, in the primary legislation, under either the affirmative or negative procedure. Neither of these methods permit amendment to regulations, only an annulment of the complete order. This inability to scrutinise S.I.s was of concern to John Hughes-Hallet during the first debate on compulsory motorcycle helmets. He hoped that, should the minister decide to take up these powers, the regulations would come before the House and be debated (Hughes-Hallet, HC debs. 31/5/56, 498).

Although helmet and seat belt compulsion were always the subject of a free vote during their progress into primary legislation, the introduction of regulations were inevitably more partisan. Not only is the granting of time for a prayer to annul a statutory instrument under the negative procedure in the gift of government, but under either process a vote against the order is a vote against the minister and therefore becomes a party issue. Ronald Bell highlighted the shortcomings of the procedure.

> We know what happens in relation to Statutory Instruments. They come before the House at 10 o'clock at night, when the party Whips are put on, we cannot amend them and we either have to vote against the Government or let them go through. That proposal seems to me to be useless as a safeguard. (Bell, HC debs. 31/5/56, 500)

It appears that some members believe, in spite of the lack of ability to amend, that voting for a motion to give powers to the minister is in some way less of a commitment than implementing the measure directly by primary legislation. It seems inevitable that a minister (not necessarily the current minister who may enjoy some degree of trust) will make use of powers placed before him or her. Ronald Bell detected this readiness to pass legislation with what some members felt was a

[5] See Crick, 1970, for reform of this committee pp93, 94, 229.

lightened level of responsibility and urged that they should treat it with the seriousness that would be given to directly applied statute.

> The only difference between "permissive" and "mandatory" is the difference that it rests with my right hon. Friend whether he shall use it or not, but the effect on the subject is precisely the same. (Bell, HC debs. 31/5/56, 500)

These cases provide us with examples of empowering the minister to make a single regulation more or less in line with expectations. In other words, Parliament defines the objective and leaves the timing and detail to the minister. However, there are greater concerns expressed over some kinds of primary legislation which gives ministers – or in some cases outside agents – open ended and wide sweeping powers of regulation without parliamentary scrutiny. Singled out by Richardson and Jordan (p118) for criticism were the Acts which enabled the European Union, under the European Communities Act, to introduce regulations into UK law and the way in which the International Monetary Fund could influence UK economic policy without parliamentary scrutiny. It was also possible for government departments to introduce measures additional to the requirements of EU directives. Directives are not regulations but a requirement for member states to enact secondary legislation to bring about specified effects thus giving departments a free hand to write regulations aimed at the declared goal but including clauses not intended by the EU and avoiding parliamentary scrutiny[6].

It is easy to see why these wide sweeping statutory instruments have given rise to concerns over the diminution of parliamentary sovereignty. The type of statutory instrument considered in these case studies however is relatively benign and does not seem to have the potential for executive abuse. After all, when parliament votes to give powers to the minister to make regulations, they do not always know what the consequences may be, but in the helmet and seat belt cases, members knew precisely what they were permitting the minister to do. They may not have known whether helmet compulsion would apply to pillion passengers or whether seat belts need to be worn when reversing, but the intention was clear. I suggest that there are only two peculiar features that make the use of secondary rather than primary legislation different in these cases: a slight relief in the burden of responsibility of parliament – favouring a positive vote – and, I suggest more importantly, the political advantage gained from being able to implement regulations at exactly the right time.

1.7 Conclusion

The public conception of the law is that it carries some authority due to its consideration by our elected representatives and voted on by substantial numbers. This is not always the case. Apart from the two case studies in this paper, many others, including EU directives, find their way into law without the weight of substantial support from parliament.

The quality of decision making in parliament is variable. If we consider the theories of Condorcet and his arithmetical analysis of decision making bodies and the philosophy of John Stuart Mill, we may decide that legislation not subjected to the whip is not attracting either enough or the right sort of members. The passionate

[6] The second EU driving licence directive is an example of how a simple requirement by the Union led to a complete overhaul of the licensing, training and testing regime for motorcycles.

believers in a cause or its opposition are not the sort of people who should be making such decisions. Public expectation of informed debate and significant voting numbers are also confounded by what might be called low interest legislation.

Proposals for reform of the voting system are explained within this paper as a way of encouraging more divisions without the time burden currently experienced and with an increase in the quorum in order to endow some legitimacy on legislation currently being enacted “on the nod”. Although no proposals are offered for the alleged problem of delegated legislation being used to ease primary legislation through and to avoid scrutiny later, it certainly deserves further consideration.

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