

When to go local, when to go national: Determinants of private members' legislation in the 38th and 39th Parliaments

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Introduction

On December 1st, 2004, Liberal Wajid Khan rose in the House of Commons and moved that his private members' bill, on amending the Food and Drugs Act, be read a second time. In speaking in favour of the bill, Khan noted its importance to all Canadians: "Madam Speaker, I take this opportunity to acquaint my hon. colleagues further on Bill C-282, a bill designed to safeguard Canadians and their prescription drug supplies..." Several months later, Conservative Pierre Poilievre also moved that his private members bill be read a second time, but with a different rationale. "Mr. Speaker, it is often that we rise in this House to discuss matters of important national character... Today I have the distinguished pleasure of speaking on a matter of local importance to my constituents." Poilievre's bill would have seen land transferred from the federal government to a hospital in his riding for the cost of a dollar a year.

The contrast between Khan and Poilievre's bills illustrates that Members of Parliament (MPs) may introduce private members' bills on a diversity of topics. Whereas Khan drafted a bill of national importance, Poilievre took the opportunity to legislate on a topic that mattered only to his constituents. Other MPs draft legislation that appears to be tailored to the wishes of neither national nor local interests, but rather special interests within Canadian society. But why do MPs introduce these different types of private members' legislation? And how do other members respond to different types of legislation?

We argue that MPs' legislative actions can be shaped by both background and opportunity. Background primarily comprises a MPs' experience as a member of one party or another and their electoral experience in previous election campaigns. And by opportunity, we mean the lottery system that has since the 38th Parliament been used to determine the order in which MPs are permitted to present their bills to the House for second reading. MPs may draft exceptional bills, but without the opportunity to move them forward, the bills languish. Our goal in this note is to determine whether background and opportunity systematically affect the types of legislation that members introduce and whether they affect the manner in which other members respond.

We do this in five sections. We first briefly situate our analysis within the Canadian literature on legislative behaviour and the roles of MPs. In doing so, we posit that private members' business plays a more important role than perhaps previously assumed. Second, we present an inductively developed typology of private members' bills based on the primary interests towards which these bills appear to be directed. We then present our data. Fourth, we present several empirical models and tests aimed at answering three questions:

- 1.) Are government members more or less likely to introduce certain types of legislation?
- 2.) Does an MP's margin of victory in the last election campaign influence the type of legislation that they introduce?
- 3.) When does private members' legislation generate polarization between parties and cohesion within parties?

Next, we discuss the limitations of our findings and briefly discuss the consequences of our findings for how we understand Members of Parliament and private members business in the House of Commons.

Review

The conventional literature on Canadian MPs holds that they do not play important, autonomous legislative roles. This results largely from the high degree of party discipline in the House of Commons, which makes it difficult for individual MPs to be policy entrepreneurs or effective constituency representatives (Docherty, 1997: 34). MPs that are strongly committed to a particular policy goal and who pursue these goals relentlessly are likely to eventually run afoul of their parties' leadership and be subject to discipline. Given that Canadian party leaders hold the ultimate sanction over MPs--the ability to decline to sign renomination papers and deprive MPs of the right to run under the party banner--MPs are unlikely to antagonize their leaders by pursuing individual policy agendas (Carty and Cross, 2006: 106). In any case, parties control the vast majority of the legislative agenda, and so individual MPs have few opportunities to pursue their own agendas (Stilborn, 2002: 7).

The high rate of turnover in Canadian elections also exhibits a negative impact on MPs' ability to pursue individual legislative agendas. Canada has one of the highest turnover rates of any parliamentary democracy (for example, Matland and Studlar, 2004: Table 1). The result is that MPs have few opportunities to develop legislative specializations.

Since MPs are also unlikely to have experience in provincial legislatures before arriving in the national Parliament, they are unable to draw on any legislative experience to pursue such agendas (Barrie and Gibbins, 1989; Docherty, 1997: 41-42) As a result, Canadian MPs are oftentimes referred to as 'amateurs', particularly in contrast to American legislators (for example, Atkinson and Docherty 1992).

However, there is some evidence that parties are open to allowing individual MPs to pursue individual legislative agendas through private members' legislation. Blidook draws on interviews with MPs to demonstrate that they encounter few pressures from their parties in the topics they select, with the result that the private members bills span a wide range of topics (Forthcoming). More anecdotal evidence suggests that the prime minister's office (PMO) does take an interest in the topics that MPs legislate on; PMO officials may demand that MPs not introduce private members' bills on certain topics, for fear that doing so may conflict with the government's own key legislative themes. Notes one journalist of the present Conservative government: "It was widely known among Conservatives that bills dealing with justice or finance issues were to be introduced by cabinet only, as justice and the economy are the pillars of this government" (Rabson, 2009).

But even if MPs were free to pursue legislative agendas, the conventional literature holds that there appear to be few electoral incentives to do so. Canadian parties and election campaigns are strongly leader-focused (Carty, 2002: 740). The 'presidentialization' of Canadian election campaigns means that incumbent MPs' electoral fate is oftentimes in the hands of the party leader (Mughan, 2002). In addition, Canadians are thought to be more likely to vote for parties rather than for individual candidates. As common sense dictates, Canadians tend not to know who their MP is, and so MPs are unlikely to draw any electoral advantage from their legislative activities. Given this state of affairs, it is little wonder that so little attention has been given to private members' legislation.

We argue that this should not be the case. First, as Blidook (Forthcoming) has convincingly shown, private members business plays an important role in the legislative process, particularly in doing spadework for eventual government legislation. Second, there exists good evidence that some Canadians are influenced by the actions of individual members. Blais et al. find that five per cent of voters in the 2000 election were motivated primarily by their local candidates (2003: 662). And there is also evidence that incumbent MPs can develop a small "personal vote" within their constituencies (Docherty, 1994: 252-53). Third, exploiting the natural experiment present in the random assignment of the right to introduce private members' legislation, Loewen, Koop and Fowler (2009) have shown that private members business does confer significant electoral benefits on members of the government party. Indeed, their estimates suggest that private members' business was pivotal in the reelection of approximately 10% of incumbents in the 2006 and 2008 elections. Private members' business may matter much more than previous analysts have assumed.

Three types of Private Members' Bills

Following recent institutional changes, the right of MPs to introduce private members' bills for second reading in the House of Commons is now determined randomly. At the

beginning of each Parliament, the Speaker of the House holds a lottery to determine the order of eligible MPs on the *List for the Consideration of Private Members' Business*. That list is then used to determine the parliamentary *Order of Precedence*, which determines the order in which MPs may present their private members' bills for second reading. MPs may introduce private members bills for first reading; however, MPs only have the opportunity to present their bill for second reading once their turn on the *Order of Precedence* arrives. This means that the opportunity to introduce private members' bills in the Canadian Parliament is now determined by a lottery.

The first type of private members' bill appeals to interests located within members' individual constituencies. Conservative MP Inky Mark's Bill C-331 proposed to recognize the internment of Ukrainians from 1914 to 1920 and have the Canadian government enter into negotiations with Ukrainian organizations to address this injustice. The bill resulted in extensive positive coverage for Mark from Ukrainian organizations - the Ukrainian Canadian Congress, for example, issued a complimentary press release and Ukrainian groups organized a rally in Toronto to draw attention to the MP's efforts. But while the effort provided Mark with nation-wide exposure, the bill had a particular local appeal, as twenty-one percent of the population of his constituency in the 2006 census identified themselves as ethnically Ukrainian. Mark's private members bill was likely intended to enhance his own local re-election constituency.

The second type of private members' bill appeals to particular special interests within Canadian society. Conservative MP Leon Benoit's Bill C-295--the unborn victims of violence bill--provides a good example of this type of bill. Benoit proposed the creation of a separate criminal offense when a fetus is harmed during a violent attack on a mother. The bill appealed to social conservative interests in Canadian society that hold that the fetus is a person, and was disseminated through socially conservative newsletters and websites. The prominent social conservative website Life Site News, for example, covered the introduction of Benoit's bill and its subsequent failure to pass the muster of the parliamentary subcommittee, ensuring that social conservatives throughout the country could follow the progress and subsequent failure of the bill.

A third group of bills appeals to neither special nor local interests, but rather to the national interest on the basis of a pressing need identified by Members of Parliament. These private members bills therefore naturally cover a wide range of topics. For example: Liberal MP Hedy Fry proposed criminalizing the use of mobile phones to engage in bullying; Liberal MP Mark Holland proposed lowering the voting age from 18 to 16; and NDP MP Pat Martin introduced a bill that banned cosmetic use of pesticides on lawns. Such private members bills provide MPs with opportunities to address pressing topics that are not being addressed by the government's legislative agenda.

Data

Our data consist of 50 and 70 pieces of private members business – both bills and motions – that reached second reading in the 38th and 39th Parliament respectively. For each piece of business we also observe the party of the member introducing the bill, their margin of victory in the last election, and their place on the order of precedence. Finally,

we have collected data on recorded votes for 48 of these pieces of legislation.¹ By limiting our analysis to bills that were on the order of precedence we are naturally constraining our examination to bills that had an actual (if terribly small) chance of becoming law.²

Analysis

We begin our analysis by recalling our three questions of interest:

- 1.) Are government members more or less likely to introduce certain types of legislation?
- 2.) Does an MP's margin of victory in the last election campaign influence the type of legislation that they introduce?
- 3.) When does private members' legislation generate polarization between parties and cohesion within parties?

We begin by considering questions related to the introduction of bills and then turn to questions about how MPs vote following second reading.

The introduction of legislation

We begin by asking if government members are more likely to introduce some types of legislation than other members? Table 1 suggests that Conservative and Liberal members appear more likely to introduce national interest legislation than opposition parties. However, there is no clear pattern on the other two types, as the Liberals alone appear unlikely to introduce local legislation and the Conservatives to introduce special interest legislation. Overall, there are significant differences by party ($X^2=11.4$, $p=.076$).

Table 1: Legislation Type by Party, 38th and 39th Parliaments

| Legislation Type | BQ | Conservative | Liberal | NDP | Total |
|------------------|-----|--------------|---------|-----|-------|
| Local | 31% | 33% | 14% | 33% | 27% |
| National | 34% | 50% | 42% | 17% | 40% |
| Special | 34% | 18% | 44% | 50% | 33% |
| Total | 32 | 40 | 36 | 12 | 120 |

$X^2 = 11.4$, $p=.076$

¹ This number includes votes on private members' legislation only, not on motions. Many bills are not voted on because of the end of a Parliament or because they are declared non-votable by the Standing Committee on Procedure and House Affairs. Other votes are unrecorded if there is an overwhelming voiced opposition.

² Of the 120 pieces considered, 44 (or 36.7%) passed third reading in the Commons or passed as motions on second reading. Only a subset of these were bills, and only of subset of those bills then made it through the Senate and received royal ascent. Thus the terribly small chances.

Given that Conservative and Liberal members appear to introduce more national legislation than New Democratic and Bloc members, we ask if this is a function of these parties being in government or being nationally oriented parties generally? To answer this, we compare introduction rates of national legislation in and out of government with the same rates for the Bloc and New Democrats. Conservatives appear more likely to introduce national legislation when in government than when out. When in opposition, Conservative members introduced national legislation 45% of the time, while the two opposition parties introduce it 33% of the time ($X^2=0.59$, $p=.44$). When in government, we find a larger and significant difference. In the 39th parliament, Conservatives introduced national legislation 57.9% of the time, compared to 26% for the opposition parties ($X^2=3.7$, $p=.05$). The Liberal party exhibits a similar trend, though differences do not reach statistical significance. In the 38th Parliament, Liberal members introduced national legislation 55.6% of the time, compared to 33% for the opposition ($X^2=1.29$, $p=.26$). In the subsequent Parliament, their rate of introduction of nationally focused legislation fell to 37% versus 26% for the opposition ($X^2=0.68$, $p=.41$).

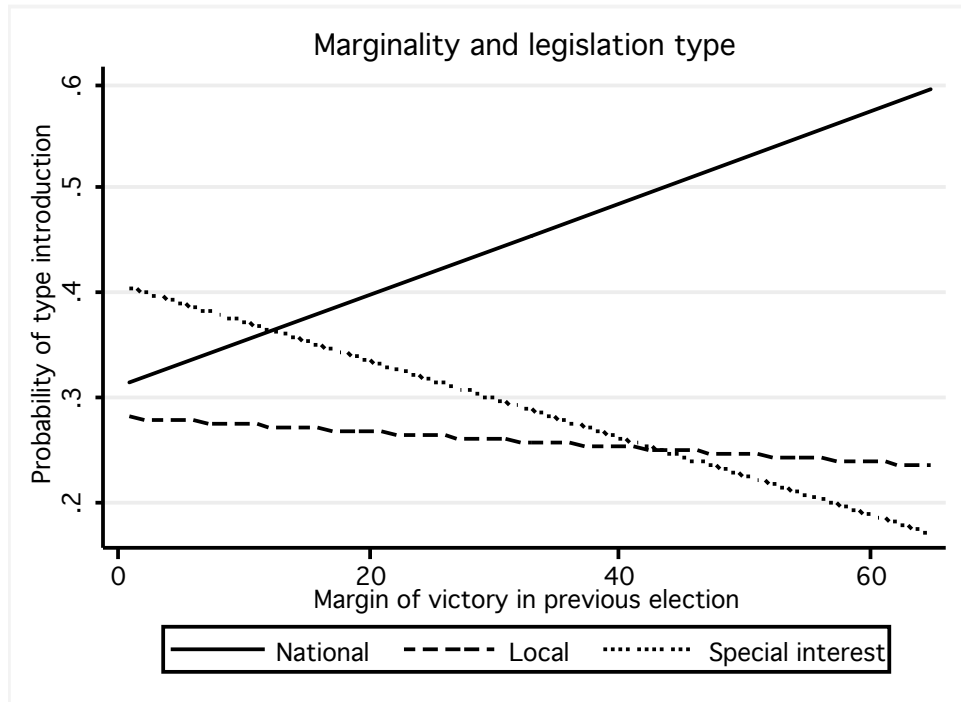
These results suggest that government members are more likely to introduce nationally-focused legislation. This in turn raises important questions about why this trend appears. Is it because private members are persuaded by their party to test out national policies? Or, do government members use this opportunity to act as policy entrepreneurs, showcasing for the cabinet the types of legislation they wish the government to champion? The latter explanation reinforces Blidook's argument that private members' bills—even when failing to pass third reading—can have an important *indirect* impact on public policy by bringing new ideas into the public realm, convincing fellow MPs and cabinet ministers of their worth, and attracting media attention (Forthcoming). It is logical to expect that government rather than opposition MPs would be more likely to introduce national legislation in the hope of convincing the cabinet of their worth.

We next consider the relationship between the marginality of a member and the type of legislation that they introduce. Figure 1 demonstrates the probability³ of a member introducing different types of legislation according to their margin of victory in the previous election. The graph suggests two things. First, the decision to introduce local legislation appears rather independent of margin of victory in the previous election. Somewhere between 25 and 30% of members introduce local legislation when given the chance, regardless of their marginality. Second, lessening marginality⁴ appears to increase the probability of introducing national legislation and decrease the probability of introducing special interest legislation.

³ Strictly speaking, the graph presents linear fits of the data, so these probabilities are generated by a bivariate, linear probability model.

⁴ Marginality refers to a low margin of victory. Accordingly, increasing a margin of victory implies lessening marginality.

Figure 1: Probability of legislation type by marginality, 38th and 39th Parliaments



Note: The figure presents linear probability estimates for each legislation type by the marginality of a legislator. No controls are included.

To ensure these findings are not an artefact of other unobserved factors, we present a multinomial logistic regression in Table 2. A multinomial logit estimates the independent influence of multiple variables on several categorical outcomes of interest. In our case, we are interested in knowing which factors significantly and independently predict the adoption of one type of legislation over the other two. We consider three factors. First, we control for whether a member had a margin of victory in the last election above or below the median (which is about 18 percentage points). This is intended to account for the possibility that members who are faced with bleaker prospects of reelection may be more likely to introduce legislation that appeals to their constituency or to a particular interest group than to a broad national interest. Second, we control for whether the member sits with the governing party. We have seen previously that government members appear to introduce national legislation at a greater rate than opposition members. The tests below indicate whether this effect persists in the face of other controls. Third, we control for a member's place on the top or the bottom half of the order of precedence among those who introduced legislation. As members get closer to an election, their likelihood of favouring one type of legislation over another could change. This variable accounts for this possibility.

Table 2: Determinants of legislation type, 38th and 39th Parliaments (MLR).

| | Relative Risk Ratio | Standard Error | p |
|-----------------------------|---------------------|----------------|------|
| Local Legislation | | | |
| Margin | 2.06 | 1.00 | 0.14 |
| Government | 1.59 | 1.01 | 0.47 |
| Second half of order paper | 1.19 | 0.58 | 0.72 |
| National Legislation | | | |
| Margin | 2.94 | 1.33 | 0.02 |
| Government | 2.89 | 1.63 | 0.06 |
| Second half of order paper | 1.39 | 0.64 | 0.48 |

N=120. LR $\chi^2=10.82$, Pseudo $R^2=0.04$. The model is a multinomial logit. Relative Risk Ratios report the change in odds of legislation being in the displayed category compared to the special interest category for each independent variable.

Our results suggest that two factors significantly predict the odds of introducing some types of legislation over others. It appears that those with a high margin of victory (18 percentage points or more) and those in government are more likely to select national over special interest legislation. Substantively, these results suggest that the odds of introducing national legislation over special interest legislation are about twice as high for those with large margins and twice as high for those in government. As importantly, we find that none of these variables significantly predict the choice between national and local legislation or between local and special interest legislation.

These results buttress our earlier findings on the relationship between government members and the introduction of national legislation. They also suggest that increased electoral security is associated with an increased probability of introducing national legislation. Electoral stability appears to provide MPs with greater freedom to attempt to influence the government’s legislative agenda through introduction of national bills. In other words, MPs that are less concerned with their own re-election are more likely to be “legislative entrepreneurs” in Parliament (Wawro, 2000).

Finally, we note that close margins do not increase the probability of introducing local versus national or local versus special interest legislation. MPs with close margins appear no more likely to use private members’ bills to establish an “electoral connection” with their constituents (Mayhew, 1974). This is despite other important findings showing the connection between small margins and local advocacy in another realm of Parliament, namely Question Period (Soroka, Penner, and Blidook, 2009: 581).

Voting on legislation

We have uncovered two potentially important regularities in the introduction of legislation. We now examine how members cast their votes once legislation is

introduced. Does voting reflect the polarized and cohesive nature of voting on government bills, or does it exhibit significant variance within and between parties? Is this polarization and cohesion affected by the type of legislation and the time in which it is introduced?

We rely on two measures. *Polarization* measures the absolute value of the percentage of government members voting in favour of a bill or motion less the absolute average percentage of opposition members voting for a bill. A score of 0 would indicate that all present members voted in the same way, suggesting a complete lack of polarization. A score of 100 would indicate complete polarization, as all government members would be voting for (or against) a motion while all opposition members would be voting against (or for) the same legislation. Intuitively, Polarization measures differences *between* parties in their support for a bill or motion. *Cohesion* measures the probability that all members in a party vote in the same way on a bill or motion. A score of 0 would indicate the half of members voted one way while the other half voted the other. A score of 1 would indicate that all members in one party voted against or for a bill. We generate an individual cohesion score for each party. Intuitively, Cohesion measures differences *within* parties in their support for a bill or a motion.

We first examine whether polarization is affected by the marginality of the member introducing the legislation (as parties may polarize around legislation introduced by a marginal and vulnerable member); whether it increases or decreases in the second half of a session; whether it changes according to the type of legislation; whether it is higher or lower for bills introduced by government members; and whether it is systematically higher in one parliament than in another.

Table 3 presents our results. We find that the only factor that appears to influence polarization is whether the legislation was introduced in the 39th Parliament. Net all other factors, polarization increased by 22.8 points (95% C.I. 1.85, 43.8) in the 39th parliament. Polarization appears unrelated to the marginality of the introducing member, the timing of the introduction, the government status of the member, or the focus of the bill.

Table 3: Determinants of polarization, 38th and 39th Parliaments (OLS).

| | Coefficient | Standard Error | p |
|-----------------------------|-------------|----------------|------|
| Margin | 0.3 | 10.8 | 0.98 |
| Government | -23.2 | 16.7 | 0.17 |
| Second half of order paper | -1.9 | 10.5 | 0.87 |
| Local Legislation | -3.8 | 12.5 | 0.77 |
| National Legislation | -11.5 | 13.1 | 0.39 |
| 39 th Parliament | 22.8 | 10.4 | 0.03 |
| Constant | 54.2 | 11.8 | 0.00 |

N=48. F (6,41)=1.60, Adjusted R^2 =0.07. The model is a ordinary least squares linear regression.

Turning to Cohesion, we have estimated similar regression for each of the four major parties. We do not, however, present the results as there are no significant predictors, save one. In the case of Conservative cohesion, it appears to increase in the second half of each Parliament by approximately 14.5 percentage points. Second, we do note that each regression suggested that cohesion increased in the 39th Parliament, though none of the coefficients reached conventional levels of significance. Nonetheless, if we simply observe means over these parliaments, we see that Conservative cohesion increased in the 39th Parliament (from 85% to 92%), as did Liberal cohesion (81% to 93%) and New Democrat cohesion (92% to 96%). Bloc cohesion remained essentially the same (100% and 99%). Taken together with our result for polarization, this suggests that private members business has become, in the 39th parliament, increasingly dominated by party concerns. This is consistent with the increased introduction of national legislation by Conservative members. As a result, government and opposition members are differing more sharply in this second parliament, and party members are voting more similarly.

Limitations and Conclusion

These findings have three important limitations. First, these findings are derived from two minority parliaments. It is an open question whether such findings generalize to a majority parliament. Indeed, the increased strength of the executive and the decreased influence of individual members in a majority parliament may lead to a significantly different landscape. Accordingly, these findings should be generalized with caution.

Second, these bills were introduced under a new lottery system rather than an older system that was more likely to reserve private members' business for more experienced and seasoned legislators. It is entirely plausible that the types of legislation introduced in a different selection system would differ.

Third, our findings on polarization and cohesion were generated over a small sample of bills. Moreover, since these votes were recorded they likely differ significantly from other bills introduced in these sessions. Accordingly, our findings on polarization and cohesion may not generalize fully.

Despite these limitations, we do make some important contributions. We began by observing the diversity of subjects addressed by MPs in the private members' legislation. This is an important heterogeneity, and it deserves explanation. We have found that in the 38th and 39th Parliament, government members were more likely to introduce national legislation than special interest or locally focused legislation. We also found that all legislators are more likely to introduce national legislation when they are more secure electorally. Finally, we failed to find a connection between legislation type and either polarization or cohesion. We have found, however, that polarization has increased in the most recent parliament under examination. Cohesion has exhibited a similar pattern.

Reforms to the process of introducing private members' legislation have increased the likelihood that the small number of bills allowed to proceed to second reading will be successful (Stilborn, 2002: 7). However, the background of MPs appears to be more important than the opportunities presented by the lottery system in determining the topics they legislate on. Our analysis buttresses Blidook's argument that MPs use private

members' business to act as policy entrepreneurs in the hopes of influencing the government's policy agenda. We find that this is a role that is particularly important for members of the government, as well as for MPs with the luxury of relative safety in future re-election campaigns. Private members' business matters and analysts should continue to attempt to understand this understudied element of our democratic system.

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