

How do small parties try to influence legislation in the British House of Commons?

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Abstract

Legislative scrutiny in the UK House of Commons is dominated by the 'Official' Opposition. Yet a range of other small parties are represented in the chamber and also seek to carry out legislative scrutiny. This paper draws on a series of interviews with MPs from small parties and a content analysis of parliamentary debates to discuss the contribution of small parties to the scrutiny of legislation in the 2015 Parliament. It considers firstly the procedural and parliamentary constraints facing small parties at Westminster, including the limited representation on legislative committees and the struggle to be heard in debates on the floor of the House. Secondly, it considers the success (or not) of these parties in making changes to government bills, mapping the different strategies used to overcome the parliamentary obstacles in front of them. It finds that small parties can – and do – influence legislation but that this often requires strong intra-party cohesion, informal channels of communication with government and the very targeted use of party resources and parliamentary opportunities.

Introduction: The dominance of the two main parties at Westminster

The UK is generally described as a Westminster model' system, characterised by two party dominance (Lijphart 2008, p. 12) and adversarialism (McEwan et al 2012, p. 187). This is reflected in the binary style of parliamentary politics at Westminster, in which an elected government is opposed by an 'Official Opposition'. This is reinforced by the design of the House of Commons chamber and by the parliamentary procedures used within it. The former includes the opposing green benches (not to mention the bill committee rooms), as well as the two despatch boxes which ensure that attention is always on the respective government minister and official opposition spokesperson. The latter includes the privileged role of the largest opposition party in terms of speaking rights, committee positions and office provision. Small political parties receive no guaranteed representation in terms of

either speaking rights or committee appointments. Indeed, as Kaiser (2008, p. 21) suggests, discussions of the British House of Commons often proceed as though there are only two parties in existence.

But this adversarial system is being increasingly challenged by smaller political parties. On a national level these parties are becoming ever more prevalent and seemingly more popular (Audickas et al 2016, p. 4). The two largest parties (Conservative and Labour) accounting for only 67% of the vote in the 2015 general election; a far cry from the 90% which they regularly received in the mid twentieth century (Audickas et al 2016, p. 6). We have witnessed the first elected representatives of the Green Party (2010), Alliance (2010) and UK Independence Party (2014) MPs at Westminster over the last decade, as well as a dramatic increase in the size of the Scottish National Party (SNP) from six to 56 MPs at the 2015 general election. A total of eleven political parties gained representation in the 2015 House of Commons, accounting for 85 MPs, or 13 per cent of the chamber. For UKIP, the SNP and the Greens, 2015 brought their best general election performance ever. The election was also significant in that five small parties (Green Party, Liberal Democrats, Plaid Cymru, Scottish National Party and UKIP), were given a platform during the televised leaders' debates for the first time (Curtice et al 2016, p. 408). On a sub-national level the UK's devolved legislatures, aided by their use of mixed electoral systems, have also seen greater representation of smaller parties. The 2016 Welsh Assembly elections saw UKIP gain six elected representatives, while the Northern Ireland Assembly saw the People Before Profit Alliance (PBP) gain two seats, both achieving representation for the first time. In Scotland, the Green Party overtook the Liberal Democrats to become the country's fourth largest political party (BBC News 2016). Although the 2017 General Election saw the number of small parties falling slightly at Westminster, the resulting hung parliament has potentially enhanced the power of the remaining six small parties, particularly that of the DUP.

Small opposition parties are therefore becoming increasingly important in the House of Commons. But they are rarely the focus of significant research. Although there are several studies of small parties within the wider political system (e.g. Lynch, 1999; Hassan 2009; Ford & Goodwin, 2014; Dennison & Goodwin, 2015; Johnson &

Middleton, 2016; Rose & Shephard 2016; Mitchell & Johns 2016), we have little to no understanding of their ability to carry out the core functions of parliamentary parties: holding the government to account and scrutinising legislation. There has been a substantial amount of research into the scrutiny capacity of the UK Parliament over the last decade (e.g. Goodwin & Bates 2016; Russell et al 2017; Thompson 2013), but the focus is fundamentally on the traditional government/opposition dynamic. It has neglected to discuss the role or impact of smaller opposition parties as separate entities from the largest opposition party.

Who are the small parties?

There is a lack of consensus among scholars of party politics as to the characteristics of 'small' parties with consideration of party members, the number of votes received in general elections, the ability to put forward candidates for election and of course the number of these candidates who are successfully elected to parliaments. Among legislators and parliamentary officials, the characterisation of small parties would likely be interpreted differently in every legislature. The notion of small parties in the Westminster context is much more straightforward. Given the examination of small party impact on legislation, it necessarily includes only those parties which have (or have had) at least one elected representative in a UK legislature during the period under study, something Smith (1991) describes as a 'minimum threshold of recognition'. It excludes parties which hold government status (either as single party or as a formal coalition partner). It also excludes the largest opposition party. Thus, in the 2015 House of Commons the SNP, Liberal Democrats, DUP, SDLP, UUP, Plaid Cymru and UKIP would be considered to be small parties. In the 2017 House of Commons, the focus is on the SNP, Liberal Democrats, Plaid Cymru and the Green Party. The DUP hold an interesting position in the 2017 Parliament, given that they are providing support to the minority Conservative Government. They are still considered here as a small party given that the agreement with the Government is one of confidence and supply (Prime Minister's Office 2017). DUP MPs are have no formal role within government and continue to sit on the opposition benches in the Commons chamber.

Literature on Small Parties and Legislative Scrutiny

The work of the UK Parliament in legislative scrutiny has been a focus of much academic study over the last ten years, whether this be the House of Commons (e.g. Thompson 2015), the House of Lords (Russell 2013) or Parliament as a whole (Kalitowski 2008; Bates & Goodwin 2016; Russell & Gover 2017). It has demonstrated that executive dominance of the legislative process is not as strong as observers may think (Russell et al 2016) and that MPs can make a 'huge difference to British law' (Thompson 2015, p. 127). What sets this recent research apart from others is its intentions of going 'beneath the public façade of parliament' (Flinders & Kelso 2011, 262), looking at 'less visible' features (Thompson 2015, p. 69) or conflicts (Russell et al 2016, p. 304).

Although it is well understood that the Commons is 'not a collective body speaking with a unified voice' when it comes to legislative scrutiny (Kalitowski 2008, p. 704), discussions of scrutiny tend to group MPs together into categories which are underpinned by the binary division typical of the Commons chamber and which therefore make no party distinctions. These include 'backbench' members (e.g. Bates & Goodwin 2016, p. 244), 'non-government' MPs (Russell 2011, p.174; Thompson 2015, p. 51; Russell et al 2016, p.293) or 'opposition' (Thompson 2015, p.59; Kalitowski 2008, p.696). This means that although we can find evidence of parliament's success (or failure) in amending government legislation (e.g. Thompson 2015, p. 52), evidence of the success of different party groups within the Commons is non-existent. The methodology behind these studies can underpin the dominance of the government/opposition framework. Thompson for instance focuses heavily on public bill committees – arenas in which small party representation is very minor. Similarly, in their study of the Human Fertilization and Embryology Bill, Bates & Goodwin focused heavily on what they describe as 'activist' members of the Commons and Lords. This included those members of commons bill committee, as well as MPs speaking at second reading debates etc. It is not surprising then that once again small parties were excluded.

Discussions of factors enhancing scrutiny include 'strategic positions' (Bates & Goodwin 2016, p. 249) such as committee memberships, the stage at which MPs engage (Bates & Goodwin 2016, p. 249), select committee engagement (Bates &

Goodwin 2016, p. 251) and use of evidence from outside (Thompson 2015, pp 94-118). Nowhere is the size of the party group considered explicitly to be a factor.

Constraints on small parties when scrutinising government legislation

We have noted already how House of Commons procedures privilege the role of the governing party and the 'official' opposition. Focusing on legislative scrutiny in particular, we can see that smaller parties in the Commons face something of an uphill struggle through all of the legislative stages of a bill.

Table 1. *Speaking and amendments rights granted at each stage of the legislative process*

| Party Position | Official Opposition | 2nd largest opposition party | Smaller opposition parties |
|-------------------------------|---|--|-----------------------------------|
| 2nd Reading | Guaranteed Frontbench speech | Guaranteed frontbench speech | No guaranteed speech |
| Public Bill Committee | All may table amendments to legislation | | |
| | Guaranteed Places | Guaranteed Places | No guaranteed places |
| Report Stage | All may table amendments to legislation | | |
| Third Reading | Guaranteed FB speech | Guaranteed FB speech | No guaranteed speech |

In the debating stages (Second Reading and Third Reading), the constraints placed upon smaller opposition parties concern speaking rights. At the beginning of the second reading debate the relevant government minister will make a speech. This

will be followed by the frontbench spokesperson from the 'Official' opposition party. Since the 1970s the third party spokesperson has also benefitted from a guaranteed contribution at the start of the second reading debate. For all other opposition parties however, there is no guaranteed speaking time. These MPs must try to catch the Speaker's eye in the same way as backbench MPs from the larger parties will. In selecting MPs to speak, the Speaker of the Commons tries 'to be fair to every MP' (Rogers & Walters 2015, p.8) and to take account of party balance. This inevitably means that debates are dominated by contributions from members of the governing party and members of the official opposition party. For example, at the second reading of the Children and Social Work Bill (2016-17) the government minister Nick Gibb opened the debate with a speech lasting over 20 minutes, followed by Labour frontbencher Angela Raynor who spoke for 13 minutes and SNP MP Marion Fellows who gave a 7 minute speech. In the two hour plus debate which followed only Labour and Conservative MPs were called to speak.

MPs from smaller parties may struggle therefore to be called to speak during a second reading debate. But even if they are called, they may be impeded by strict time limits on their contributions. Standing Order 47 states that the Speaker may ask any MP 'to resume his seat forthwith' with the exception of the Government minister, Official Opposition spokesperson and third party spokesperson (House of Commons 2017). This means that small party MPs who are called by the Speaker may have to abide by a time limit which can fall as low as just three minutes. Table 2 shows the breakdown of speeches made during the Second Reading of the Digital Economy Bill in 2016. The first twelve speeches made must follow a time limit of ten minutes, but this falls to eight minutes by the time that a smaller opposition party MP is called to speak.

Table 2. *Speeches given during the 2nd Reading of the Digital Economy Bill (2016-17)*

| Time (approx.) | | Time elapsed | Time Limit |
|----------------|----------------------------------|--------------|------------|
| 12:49 pm | Debate begins | 0 | None |
| 2.16 pm | FB speeches (Cons, Lab, SNP) end | 90 | |

| | | | |
|---------|-----------------------------------|-----|------------|
| | 10 speeches from Cons and Lab MPs | | 10 minutes |
| 3.44 pm | SNP MP | 180 | |
| | 1 Speech (Lab) | | |
| | 6 speeches from Cons and Lab MPs | | |
| 4.37 pm | Plaid Cymru MP | 240 | 8 minutes |
| | 3 speeches from Cons and Lab MPs | | |
| 5.15 pm | DUP MP | 270 | |
| | 8 speeches from Cons and Lab MPs | | |
| 6.30 pm | Government Minister ends debate | 340 | |

This is a very typical pattern of second reading debates in the House of Commons. And it is not only the small opposition parties who feel constrained by it. Even the SNP describe themselves as being 'locked out' (Interview, SNP, June 2016) of scrutiny during second reading debates.

The committee stage of a bill is the first point in which MPs can propose amendments to the legislation being considered. Any MP may table an amendment at this stage, though only those who are appointed to the bill committee itself are able to move them. It is this appointments process which again affects small parties wishing to scrutinise a government bill. Standing Order 86 states that the Committee of Selection (which nominates MPs to bill committees) should take into account 'the composition of the House' alongside an MP's expertise when making nominations (House of Commons 2017).

Taking the Digital Economy Bill again as an example, the bill committee contained 18 MPs. Where the government has a majority in the Commons it will always have the majority of MPs on a bill committee and so 10 Conservative MPs were appointed here. The opposition comprised 8 MPs (6 Labour and 2 SNP). No MPs from any other parties achieved representation. The committee stage thus became a discussion between just 3 political parties, despite the fact that a total of 11 parties were represented in the Commons.

The report stage is rather hectic. Amendments to bills are discussed in very large groups and there time available to debate them is very limited. At the report stage of the Digital Economy Bill three groups of amendments were debated, each containing around 20-30 new clauses or amendments. Each group would have less than 2 hours of time allocated to it. The report stage of bills tends to be dominated by members of the bill committee. This is understandable given that they will be highly familiar with the amendments being discussed and will have developed a very detailed knowledge of the bill over the course of many sittings of the committee. But it can be something of a double whammy for smaller parties, who find once again that they are constrained by very limited speaking time and that their amendments are grouped with large numbers of amendments from committee members or from the frontbench spokespersons from the largest opposition party. At the report stage of the Digital Economy Bill, the only smaller party MPs to speak were from the DUP and Plaid Cymru. Only the Plaid Cymru MPs spoke to actual new clauses or amendments. Hywel Williams (Plaid Cymru) was the first to make a contribution, speaking to three new clauses which he had tabled relating to codes of practice for social media platforms concerning online abuse. This is the same MP who spoke during the second reading debate but who was denied a place on the bill committee. Once again, he was constrained by time limits. Indeed, his contribution came just minutes before that group of new clauses would be voted on. He noted that he 'would have talked about this matter extensively had there been the time' (HC Debates, 28 November 2016). He had to hope that this issue would be taken up further in the House of Lords. His colleague Liz Saville Roberts would also later speak very briefly to New Clause 23 regarding bilingual digital platforms. DUP MP Jim Shannon intervened during the debate on the next group of amendments. No other smaller party MPs contributed to the report stage of the bill.

This is a small illustration of the paucity of guaranteed space within the legislative timetable for small opposition parties to get their voices heard. It also helps illustrate how traditional studies of legislative scrutiny will miss many small party voices. Bates & Goodwin's focus on 'activist' MPs for instance (those who were members of the bill committee, tabled amendments, made speeches to bills) will inevitably be overwhelmingly from the two largest parties (see Bates & Goodwin 2016, p. 237).

Other Constraints on Small Parties

Commons procedure, conventions and the requirements of the standing orders can limit the opportunity for small opposition parties to get involved in legislative scrutiny, but there are other important constraints facing MPs from these party groups. These relate predominantly to resourcing. We can see this firstly in the way in which smaller party MPs carry out multiple roles, often at the same time. This goes further than MPs from other parties, in the sense that one small party MP may be required to cover several different policy portfolios. Plaid Cymru MP Jonathan Edwards for example is the party spokesman on four different areas (Foreign Intervention; Treasury; Business, Innovation and Skills; Transport) while Liberal Democrat MP Tom Brake combines three roles (Foreign Affairs Spokesperson, Chief Whip and Shadow Leader of the House of Commons). Secondly, smaller parties tend to receive far less financial contributions from outside donors and will be entitled to less state provided financial assistance through the Short Money allocations. Short Money is available to support parties in carrying out their parliamentary business, but is only provided to parties with 2 MPs in the Commons, unless they have received over 150,000 votes at the General Election (see Kelly 2016, p.4). The largest opposition party receives also support for a Leader of the Opposition's Office –this amounted to 789,000 in 2016 (ibid, p. 5). But similar support is not offered to other opposition parties. This means that there is a very vivid contrast in the financial support received by the Labour Party (£6.4m in 16-17) compared to the smaller opposition parties. The SNP received £1.2m, while Plaid Cymru received £83,000 and the Green Party received £216,000 (ibid, p. 6). This is not the only area in which financial assistance is skewed towards the 'Official' Opposition party. The salaries of the Leader of the Opposition, the Chief Whip and the Assistant Whip from the largest opposition party are also paid for from public funds. The smaller opposition parties therefore have far fewer staff based at Westminster beyond those employed in their own MPs' offices. When the Green Party lost votes in the 2017 General Election its short money allocation was reduced significantly. As a result, Caroline Lucas, the party's only MP in the Commons, began a crowdfunding campaign to raise the £50,000 needed to support her work in Parliament. She described the role of her staff as:

“They work behind the scenes to skewer Ministers with Parliamentary Questions. They scour Government files looking for wrongdoing. They keep an eye on the frackers, the tax dodgers and the arms companies. Despite the Green Party receiving half a million votes, I’m still the only MP, so having a team of dedicated staff really matters.” (Lucas 2017)

Resource constraints mean that smaller opposition parties have very limited central party support in the Commons through which to organise and coordinate their parliamentary work. Combined with the procedural constraints, small parties have something of an uphill battle as they seek to carry out legislative scrutiny in the Commons.

Strategies for Success

In order to be effective, smaller opposition parties must develop ways to navigate these procedural and financial hurdles. Drawing on initial observations of legislative scrutiny and interviews with one opposition party (the SNP), we can identify three basic strategies for success:

i) Focused and very targeted scrutiny

It is more effective for a smaller opposition party to focus all of its resources on a small number of issues. This means pooling its central research expertise and support, but also encouraging all of its members to work towards the same legislative or policy goal. This may mean that work which was initially begun by just one MP will become the focus for the whole party. For example, shortly after the 2015 General Election the SNP, a party of 56 MPs, had only three members of central support staff at Westminster. One early focus for the party was government policy in relation to Trident. All research assistance was geared towards this issue, producing material which could be used by all of the party’s MPs during relevant Commons debates and question times. When the issue was debate, the party encouraged the whole of its parliamentary group to attend in the chamber. Indeed, photos of this particular debate, and the attendance of virtually the whole parliamentary group, spread across social media (@MikeWeirSNP 2015). In terms of legislative scrutiny, the SNP demonstrated this prominently during the scrutiny of the Scotland Bill in the 2015-16 parliamentary session, tabling a large number of

amendments and making a much higher number of contributions to the debate on the bill than their party size would usually bring. In the words of one MP:

“So you could glide serenely on the surface like a swan while kicking furious underneath. And then if the following week the story went somewhere else, these resources were elsewhere and [the MP] would lose these resources.” (Interview, SNP MP, June 2016)

Focusing the activity of the whole parliamentary group in this way offsets some of the challenges associated with financial and staffing constraints and also maximises the chances of the party to overcome procedural constraints which would ordinarily limit its ability to participate in legislative scrutiny.

ii) **Making the most of opportunities to participate**

Given the difficulties for small parties to have any formal, guaranteed involvement in legislative scrutiny, it is important to make the most of opportunities for more formal involvement. This includes for instance, occasions in which a small party MP is appointed to a bill committee. Green MP Caroline Lucas has spoken of her struggle to obtain a place on a bill committee. When she was successful in this in 2011 during the passage of the Energy Bill, she worked hard to make an impact. As Table 3 demonstrates, she was the author of more amendments than any other opposition party on the committee, despite being the sole member of her party in Parliament.

Table 3. *Amendments moved/discussed during the Energy Bill Committee (2010-12 session)*

| Party | Number of Amendments |
|-----------------------|-----------------------------|
| Labour | 39 |
| Conservative (bb) | 5 |
| Liberal Democrat (bb) | 15 |
| Green | 42 |
| Total | 101 |

NB: bb = backbench MPs.

Note: The government moved an additional 102 amendments, all of which were successful.

Although none of her amendments were formally accepted by the government during the bill committee, she could take responsibility for progress in pushing the

government to clarify their position in a number of areas, to make changes to secondary legislation accompanying the bill and on at least one occasion had prompted the government to table a similar amendment before the committee had even begun. Such was the quality of the scrutiny work she performed over the course of the bill's scrutiny that the Secretary of State Chris Huhne commended her during the bill's third reading as someone 'who worked tirelessly and made a substantial contribution to the debate' (HC Debates, 14 September 2011, c1140). Yet this third reading also demonstrated the continued struggle for smaller opposition parties. For despite her contribution to the bill's scrutiny, she was not called to speak until the larger party frontbenchers had spoken. As a result of this, and the very limited time available for small parties at the third reading of bills, her speech was forced to end after only nine words (see HC Debates, 14 September 2011, c1145).

iii) Finding other ways to participate

With no guarantee that MPs from smaller opposition parties will be able to make a speech at any stage of a bill's consideration, it is necessary to find other ways to participate. In terms of legislative scrutiny this very often means making interventions during second reading, report stage or third reading debates on bills in order to express an opinion or raise an issue. This was demonstrated vividly by the SNP at the committee stage of the European Union (Notification of Withdrawal) Bill. Speaking to some of the party's amendments to the bill, Patrick Grady took 41 interventions over the course of a 58 minute speech, overwhelmingly from his SNP colleagues (see HC Debates, 7 February 2017, cc369-391). Government Minister Robin Walker praised 'the ingenuity with which he made sure that the Committee heard so many Scottish voices' (HC Debates, 7 February 2017, c390). Although an extreme example, it enabled a large number of SNP MPs to express their opposition to the bill and to raise particular issues which they were passionate about. Kirsten Oswald for instance was able to raise concerns about equalities legislation (c388). For smaller opposition parties such teamwork is less possible, but smaller party MPs still make a higher number of interventions during debates than their colleagues from larger parties.

iv) Working with other opposition parties or government backbenchers

Finally, in order to maximise the chance of making an impact during the scrutiny of a bill, small opposition parties need to work together with other small parties, or with the official opposition party, in order to strengthen their hand. We can see this once again in the example of the Energy Bill Committee in the 2010-12 session. Caroline Lucas put pressure on the government alongside Labour MP Alan Whitehead regarding issues of consent and evictions processes. As a result, the minister established a stakeholder group during the committee stage in order to consider the issues raised and report back to the House (see Greg Barker, 5th Sitting, Energy Bill Committee, 14 June 2011).

We can also see evidence of this in the 2015 Parliament. Examples include the SNP working closely with Labour MPs during over the issue of VAT on women's sanitary products (the "tampon tax"). This saw Labour support SNP MP Alison Thewliss's amendment during the Finance Bill committee in 2015 (see Finance Bill Committee, First Sitting, 17 October 2015, c17 onwards). This was later raised at the bill's report stage and – although the New Clause itself was defeated – the government announced that it would consider the issue further. As a result of this cross party pressure, it was announced in November 2015 that the money raised from the VAT applied to sanitary products would be distributed to women's charities (HC Deb 25 November 2015 c1368). Following the announcement SNP MP Alison Thewliss stated that it had been 'a privilege to be able to kick start the debate during the Finance Bill deliberations' (Thewliss 2016). A further example would be the party's cooperation with Labour and rebel Conservative backbench MPs during the debate on the EU Referendum Bill to force concessions regarding the day of the referendum and the purdah period. The success of Bernard Jenkin's amendment to the bill saw David Cameron defeated in the chamber for the first time (see McSmith 2015).

Conclusion

Although small opposition parties have a long history in the UK Parliament, the House of Commons can be a very hostile arena for these parties to carry out their scrutiny role and hold the government to account. The Official Opposition is afforded great privileges, reflected in the very design of the Commons chamber, as well as the speaking and membership rights during debates and in committees. This is exacerbated by resource constraints which can hinder the ability of smaller parties to operate effectively in the House. Nowhere is this more apparent than in the process of legislative scrutiny. In order to overcome these obstacles, opposition parties who do not hold 'official' opposition status must develop clever parliamentary strategies: targeting their resources, making the most of the limited opportunities to participate formally in proceedings and by working with colleagues from other parties in order to generate greater momentum around proposals for change. Going forwards, this research will document such changes more effectively and seek to identify areas of best practice.

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