

“Grievance before Supply”: Omnibus Budget Implementation Legislation as a Case when
Party Discipline Damages Parliamentary Democracy

by

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ABSTRACT

This thesis explores the circumstances under which party discipline damages parliamentary democracy in the Canadian House of Commons. It uses omnibus budget implementation legislation as a case study of an instance when party discipline damages parliamentary democracy. While party discipline is central to parliamentary democracy, it can also undermine it if imposed too strictly. This thesis establishes a model of parliamentary democracy in which the House of Commons is meant to scrutinize, deliberate on, and occasionally amend legislation. It then identifies omnibus budgets as a trend in Canada through the following data on budget bills: number of pages, number of amendments, and length of debate. Finally, this thesis describes three key ways that omnibus budget legislation damaged the model of parliamentary democracy outlined at the beginning. The passage of omnibus budget legislation is a perfect illustration of the “parliamentary decline” thesis and provides a useful departure for future efforts at the reform of parliament to enhance the role of backbench members.

LIST OF ABBREVIATIONS USED

MP	Member of Parliament
FINA	Finance Committee of the Canadian House of Commons

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CHAPTER ONE - INTRODUCTION

This thesis will explore the circumstances under which party discipline damages parliamentary democracy in Canada. It will use the case study of omnibus budget implementation bills as an instance when party discipline damages parliamentary democracy. While party discipline is central to the functioning of parliamentary democracy, it can also undermine it if imposed too strictly. This thesis will propose a model of parliamentary democracy through which I will seek to demonstrate that parliament is a deliberative and legislative body. Parliament is meant to improve legislation, not to give blind legitimacy to decisions that have been made by executive power. Omnibus budget implementation legislation is problematic in the context of parliamentary democracy because it amends legislation that would not otherwise be under the purview of budgetary matters. Therefore non-budgetary legislation is placed under the unique (and often secretive) procedural rules that budget bills are subject to in Westminster parliamentary democracies.

To begin, it is important to define two key terms; parliamentary democracy and omnibus budget legislation. Parliamentary democracy in this case will refer to the institutional workings of the Westminster form of responsible government. Responsible government is a system in which the executive is responsible to the legislature. In other words, the legislature can, if it chooses to, lose confidence in the government and make it fall on a confidence vote. In the system of responsible government the electorate chooses members of parliament, who then choose the government.¹ By extension, it is the duty of the House to approve the expenditures and budgetary policy of the government. In other words express grievance before approving government budgets. In recent years the media as well as opposition MPs have noticed a trend towards budget implementation bills growing larger in both size and scope. Budget bills of this sort are characterised as omnibus budget bills.

While omnibus budget legislation has been mentioned many times in newspaper opinion-editorials, in opposition press releases, there is no standard definition. For the purposes of this

¹ Peter Russell, *Two Cheers for Minority Government*, (Toronto: Emond Montgomery Publications Limited, 2008),

thesis omnibus budget implementation legislation will be defined as a budget implementation act that amends many pieces of legislation only tangentially related to budgetary matters. A fuller explanation and discussion of omnibus budget legislation will be included later in this thesis.

During the passage of omnibus budget bills C-38 and C-45, the most far reaching both in terms of size and scope, there was media and opposition outrage. Headlines screamed epithets like “Frankenomnibudget;”² opposition members moved points of privilege against the bills and issued angry press statements. The general complaint from the media and official opposition was that there was not enough time to debate the bills, especially in proportion to their size and scope. While there has been substantial media coverage of omnibus budget legislation, the social scientific analysis has been scant. One of the secondary goals of this thesis is to try to determine the validity of media and opposition claims that the passage of omnibus budget bills has become a trend in Canada. It will do this by examining data on budget legislation. Specifically, this thesis will try to determine the size and scope of the bills and how long they were considered in the House of Commons. This quantitative analysis, which looks at budget bills from 1994-2013, will form the empirical core of this thesis. A fuller explanation of the logic behind this thesis as well as methodology is offered below.

- 1) There is a model of parliamentary democracy. In summary, this model is based on the idea that parliament is meant to deliberate on, scrutinize and occasionally amend legislation. This model will be explained further in chapter two.
- 2) For parliament to fulfill this scrutiny and accountability role, members must be sufficiently independent to scrutinize government bills and actions. This includes government MPs, who, while generally supportive of most government policies and actions, must still fulfill a scrutiny and accountability role.
- 3) However, members are weak and this weakness is caused by party discipline
- 4) Members are too weak to resist the passage of omnibus budget implementation legislation, despite the fact that the passage of omnibus budget legislation fundamentally undermined their role, which is to scrutinize, deliberate on and occasionally amend legislation.

² Kady O'Malley, Inside Politics Blog, cbc.ca http://www.cbc.ca/news/politics/inside-politics-blog/2012/10/orders-of-the-day---who-will-be-the-first-to-call-it-frankenstomnibudget.html?utm_source=dlvr.it&utm_medium=twitter

5) There has been a trend towards the passage of omnibus budget legislation in Canada and this merits study.

To demonstrate this pattern of logic, this thesis will first outline the Westminster budget procedure and the historical relevance of budgets to the Westminster form of government. This will form the first part of the second chapter. Chapter two will also include a model of parliamentary democracy. The final section of this chapter will inform the reader of the place party discipline has in a parliamentary democracy but also its nuances; party discipline cannot be so strict as to undermine the model of parliamentary democracy outlined at the start of this thesis.

Chapter three will introduce omnibus budget bills as a case study of an instance when party discipline damages parliamentary democracy. It will also further defend why the passage of omnibus budgets deserves to be studied. This chapter will establish that budgets that are large in both size and scope are a problem in Canada's parliament by including data on budget implementation acts from 1994-2013. Data on budget bills passed between 1994-2013 will be displayed in four figures in the form of bar graphs. Figure one will show the number of pages included in budget legislation. Figure 2 will show the number of non-budgetary amendments included in budget legislation. Figure 3 will show the time each bill was considered in the House of Commons and figure 4 will show how long each page of each bill was considered in the House. This data can also be found in the form of a table in Appendix A of this thesis. This table includes the following: the title of the bill, the parliament it was passed in, whether it was passed in a minority or majority government, the date it was tabled in the House, the date it was passed and the length of consideration, the number of pages and number of amendments, plus proportionality (average minutes per page). The final part of chapter three will comprise an analysis of this data on budget implementation bills.

Chapter four will expand upon the data on omnibus budget bills included in chapter three and the implications of omnibus budgets for the standard of parliamentary democracy outlined at the beginning of this thesis. Chapter four will highlight the three primary ways in which omnibus budget legislation damaged parliamentary democracy in Canada.

Chapter five will conclude by offering some minor procedural changes in order to enhance the role of backbench government members, and therefore better able to fulfill their scrutiny and accountability function in parliament.

So, why use omnibus budget bills as a case study of an instance when party discipline damages parliamentary democracy? Implementing budget legislation is one of the most important legislative actions of a government, and by extension, voting on a budget act is one of the most fundamental acts of an MP. Not only are budgets historically significant in the long struggle towards the creation of parliamentary democracy, they allocate large amounts of public money. If there something wrong with the process, it is important to discuss it both in the public sphere, the media and, but also in academia. Further, Canada is unique among its Westminster counterparts in passing omnibus budget legislation. While omnibus budgets are common in non-Westminster systems like the United States, their passage is an aberration from the traditional Westminster budget process.

This thesis will thus contribute to the literature on the democratic deficit in parliamentary democracy. Omnibus budget bills are a perfect illustration of the “parliamentary decline” thesis and provide an excellent departure for future efforts at practical reform of parliament to enhance the role of backbench members. “Grievance before Supply” will try to provide a clear example of the Canadian parliament’s “democratic deficit” in practice.

CHAPTER TWO - WHAT IS AT STAKE? AN EXAMINATION OF THE BUDGET PROCESS IN THE WESTMINSTER SYSTEM AND PARLIAMENT'S SCRUTINY AND ACCOUNTABILITY ROLE

The struggle between parliament and the royal prerogative³ over the power to disburse public funds is an enduring theme in the development of Westminster parliamentary democracy.⁴ Its genesis was the circumstances surrounding the establishment of the Magna Carta when English Barons at Runnymede in 1215, among voicing other demands, tried to vest control over taxation from the Crown. Donald Savoie explains that as the Westminster system began to take form with the establishment of the House of Commons as a counterweight to royal prerogative: "...the first principle of the British constitution was the "omnipotence of parliament."...no public money can be spent without parliamentary approval."⁵ As the Westminster system began to take shape, so did the budget process.

In Canada the struggle between royal prerogative and the elected colonial legislatures played out slightly differently. This was a fight for a government that was responsible to the House of Commons and provincial legislatures rather than the Governor in Council of the British North American Colonies or the colonial office in London. Before the implementation of responsible government in Canada, the provincial legislatures that existed in the British North American provinces did not have control over public funds. The annual budget in these colonies was normally imposed by executive control, not voted upon by elected members of the legislature. As R. MacGregor Dawson explains, "A part (and, until recent years in some colonies, a very large part) of each government's revenue and expenditure was not dependent upon the annual vote of the legislature...the fundamental weakness common to all the governments was their failure to meet the elementary political needs of their communities for the control of their own affairs through the subordination of the executive to the legislative authority."⁶ The advent of responsible government in Canada from 1848 onwards heralded democratic financial control in the colonial legislatures.⁷ Thus, the Westminster system of responsible government is

³ Which now vests power in the cabinet.

⁴ Donald Savoie, *Whatever Happened to the Music Teacher: How Government Decides and Why*, (Montreal-Kingston: McGill-Queen's University Press, 2013), 38.

⁵ Savoie, *Whatever Happened to the Music Teacher*, 38.

⁶ R. MacGregor Dawson, *The Government of Canada*, (Toronto: University of Toronto Press, 1949), 16.

⁷ Dawson, *The Government of Canada*, 16.

inextricably linked to the legislature's control of public funds. Despite the different historical evolution of the British House of Commons and Canadian federal and provincial legislatures, they all came from the same lineage and the same tension between executive and parliament remains present.

Indeed as Canada developed from a colony into an independent dominion, its governing practices, including the implementation of financial procedure, began to mirror that of the Westminster system in the UK. Canada's constitution states that it is supposed to be "similar in principle to that of the United Kingdom." Hence the budgetary process is meant to mirror Westminster procedure as well.⁸ Essentially this principle means "that the House of Commons has the right to have its grievances addressed before it considers and approves the financial requirements of the Crown."⁹

This old adage: "Grievance before Supply" captures the operation of parliamentary democracy in its essence. In the Canadian context, the phrase refers specifically to the supply and estimates process authorised by parliament through the annual appropriation act. "Grievance before supply" can also apply to the passage of budget implementation acts, which authorise tax revenues and government spending priorities. In this thesis, "Grievance before supply" refers to the idea that parliament is meant to express "grievance"; in other words, rigorously scrutinise, deliberate on budget bills before they are passed and given royal assent. Indeed, this illustrates the tension between legislative efficiency (i.e. the executive's requirement to pass its mandate within a reasonable time frame) and the right of parliament to scrutinise, deliberate on and amend bills. C.E.S. Franks explains that the principle of "grievance before supply" is at the heart of parliamentary governance and articulates the tension thus:

"A delicate balancing act is required to make this principle work. A government cannot be so insistent that it rushes business through parliament without adequate opportunity for discussion, consideration of the issues, exposure of the faults, as well as virtues, and the formation of an

⁸ Audrey O'Brien and Marc Bosc, *House of Commons Procedure and Practice 2nd Edition*, (Quebec: Editions Yvon Blais, 2009), 822.

⁹ O'Brien and Bosc, *House of Commons Procedure and Practice*, 822.

informed opinion in parliament and the country; however parliament cannot be so wilful and reluctant that it denies the crown the resources and powers necessary for good government.”¹⁰

The passage of omnibus budget legislation in the Canadian House of Commons during the period from 1994-2013 is a fascinating example of this struggle in a contemporary context. In the case of omnibus budget legislation, the tension between the royal prerogative and parliament is played out quite differently. The passage of omnibus budget legislation in Canada from 1994-2013 shows that the balance between legislative efficiency and the right of parliament to express “grievance” before the passage of legislation has swung too far in the direction of executive dominance.

The struggle between royal prerogative and parliament over “power of the purse” has deeper significance than determining which body has control over the approval of public funds. The process was vital to the creation of democracy in the political systems where it developed. It was an important component in the development of a democratic legislature that serves as a check on the Crown (whose power is now vested in the cabinet). As Posner and Keun Park explain: “The independent exercise of the “power of the purse” was a primary anchor of the legislature’s emerging role in the governance process. Determining the allocation of resources among competing claims was critical to establishing the legitimacy and authority of the legislature as an institution competing with the monarchy.”¹¹ In his explanation of the principle of “Grievance before supply,” Franks traces its historical roots back to the time when parliament sat only to approve the public spending of the Crown. In exchange for the approval of public funds, the Crown agreed to hear the “grievances” of parliament. Over time this basic parliament developed into the Westminster system of government.¹² This brief history lesson is relevant because it illustrates how central the budget process is to parliamentary democracy. It further shows the importance of debate and scrutiny to make government accountable during the parliamentary budget process. The fundamental value of budgets in the Westminster system of governance makes damaging legislative behavior, like the passage of omnibus budget legislation, all the more important to study.

¹⁰ C.E.S.Franks, *The Parliament of Canada*, (Toronto: University of Toronto Press, 1987), 127.

¹¹ Paul Posner and Chung Keun-Park, “Role of the Legislature in the Budget Process: Recent Trends and Innovations,” *OECD Journal of Budgeting* 7, no.3 (2007), 3.

¹² Franks, *The Parliament of Canada*, 127.

The Parliamentary Budget Process

This long period of struggle between the royal prerogative and parliament over the disbursement of public funds has led to budgetary practices that have become conventional in the Westminster system. There are two important financial procedures in the House of Commons; the business of ways and means (the budget- the device by which parliament approves the general taxation and spending objectives of a government) and the estimates and supply process (approbation – when parliament approves the amount of government spending forecast for that year). This thesis will concentrate on the first, but will briefly discuss the second as it relates to the budget.

Government budgets perform two main functions: first they establish annual rates of taxation and second they outline and authorize the government's spending objectives and priorities.

Essentially, budgets impose taxes, which are collected in the consolidated revenue fund and allocate this revenue in a way that is consistent with its priorities and (hopefully) promises at election time. Peter Dobell and Martin Ulrich give a useful definition of the role of budgets in Canada: "A budget is the government's key device for converting its obligations, promises and policy into concrete and integrated plans-what actions are to be taken, what results are to be achieved, at what cost and who will pay how much of the cost. The budget connects a government's aspirations with its analysis of affordability."¹³ Budgets are usually tabled as budget implementation acts, pieces of legislation that implement measures included in the budget speech into law.

The first phase of the budget process is the budget speech, which outlines the measures to be included in the budget. After the budget speech, the finance minister proposes a "ways and means" motion that the "That this House approve in general the budgetary policy of the government."¹⁴ A budget implementation act is usually tabled in the days following. There are rules highlighted in the standing orders for how much time budgets should be debated for, as well as allocated opposition days for scrutiny and debate. As will be further explained in chapter three, there are no rules surrounding the legislative parameters of a budget, although the *Canadian House of Commons Procedure and Practice 2nd Edition* states that budgets should only

¹³ Peter Dobell and Martin Ulrich "Parliament's role in the budgetary process," *Policy Matters* 3, no.5 (May, 2002), 6.

¹⁴ Standing Orders, Chapter 10,
<http://www.parl.gc.ca/About/House/StandingOrders/chap10-e.htm>.

change financial legislation. The conventional parameters of a budget bill include these four pieces of legislation: the Income Tax Act, Excise Tax Act, Excise Act and Customs Tariff.¹⁵ In other words, budget implementation acts normally only amend these four pieces of legislation. As C.E.S. Franks explains budget implementation acts have “traditionally been short, non-contentious and useful mechanisms for implementing changes announced in the budget speech.”¹⁶

House procedure for implementing budget bills is different from other pieces of legislation. As Allen Schick explains:

“it must be recognised that budgeting is inherently a confining process. To budget is to routinise financial choice in accord with – set of rules and procedures, to bar action outside the boundaries of the budget, to rule out certain actions and to rule in others. Budgets bring discipline to legislatures, just as they do to governments. In the absence of budget rules and procedures, decisions can be taken whenever there is the will to do so; with budgets, decisions must be orderly and consistent, and framed in both time and amount within pre-set boundaries. *A legislature behaves in a more disciplined manner when it budgets than when it doesn’t.*”¹⁷

David Good gives three reasons for the opaque and restrictive nature of budgetary procedure: the first is that parliament approves appropriation acts after some of the consolidated revenue fund has been already spent.¹⁸ This is an historical practice, developed from the basis that the crown’s funds were co-mingled with the general government revenue. Essentially this means that parliament merely endorses spending that has already occurred.¹⁹ While this feature of the estimates process only roughly impacts budget implementation acts (in the sense that spending for measures included in the budget is already approved before a budget implementation act is passed), it nevertheless highlights the inappropriateness of including non-financial (and often significant) pieces of legislation into budgetary procedure.

¹⁵ O’Brien and Bosc, *House of Commons Procedure and Practice*, 887. The purpose of these four acts is to raise money for the consolidated revenue fund, O’Brien and Bosc, *House of Commons Procedure and Practice*, 887.

¹⁶ C.E.S Franks, “The Canadian House of Commons under Stress: Reform and Adaptation,” In Herman Bakvis and Mark D. Jarvis eds. *From New Public Management to New Political Governance* (Montreal and Kingston: McGill-Queen’s University Press, 2012), 88.

¹⁷ Allen Schick, “Can National Legislatures Regain an Effective Voice in Budget Policy?” *OECD Journal on Budgeting* 1, no.2 (2001/2002), 35. My italics

¹⁸ David Good, *The Politics of Public Money: Spenders, Guardians, Priority Setters, and Financial Watchdogs inside the Canadian Government*, (Toronto: University of Toronto Press, 2007), 235.

¹⁹Schick, “Can National Legislatures Regain an Effective Voice in Budget Policy?”, 18.

The second reason derives from the principle that parliament “...shall not accept any petition for any sum of money...unless upon recommendation of the Crown.”²⁰ This means that, unlike other bills, only the Crown, through members of the cabinet in the House of Commons can initiate budget legislation. Indeed this is the case for all money bills (pieces of legislation which authorize the spending of public money). This principle derives from the struggle between royal prerogative and parliament and contributes to the unprecedented amount of secrecy that surrounds budget bills prior to their passage. The budget is developed in concert with the Prime Minister and Minister of Finance.²¹ Donald Savoie explains that these two individuals are the architects of the budget and that “The two, along with their most trusted advisors, determine the broad contours of the budget, decide which new spending commitments they are prepared to support...”²² The contents of a budget bill will not be shared until the finance minister gives his budget speech in parliament, this rule is to prevent the public from taking advantage of financial measures outlined in the budget before they are implemented. In this way, budget bills are necessarily secretive with disproportionate cabinet involvement in relation to the House. Backbenchers do not have much opportunity for legislative involvement at any stage. Schick writes further on the nature of the legislature and the budget: “Budget deals are made outside Parliament, within government or by party functionaries, and then ratified within it. Extra-parliamentary budgetary arrangements prevail in majoritarian regimes where the budget is imposed on Parliament by government *diktat*.”²³ Good offers this analysis on the executive dominant nature of budgetary procedure:

“...the formalization and institutionalization in eighteenth-century England of what is known today as the budget – a comprehensive statement of revenue and expenditure – served to further reinforce the balance of financial power of the government over legislatures. Ministries of Finance became responsible for developing the government’s budget...The result, as we have seen, is that the government knows a great deal about what is in and behind a budget and the legislature knows very little, with the consequence that legislators rarely acquire a deep understanding about how public money is spent or the implications of appropriating more or less.”²⁴

²⁰ Good, *The Politics of Public Money*, 235.

²¹ Savoie, *Whatever Happened to the Music Teacher*, 42.

²² Savoie, *Whatever Happened to the Music Teacher*, 42.

²³ Schick, “Can National Legislatures Regain an Effective Voice in Budget Policy?”, 23.

²⁴ Good, *The Politics of Public Money*, 236

Third, there is a limited scope in what parliament can do to amend the taxation rates included in the budget bills, even after they are tabled in the House. Some rates of taxation are retroactive, and come into effect immediately after a budget is tabled.²⁵ It should be mentioned here that this retroactivity rule only applies to taxation (traditionally within the scope of a budget implementation act) and not the amendments to many non-budgetary acts passed as part of omnibus budget legislation. Nevertheless this further elaborates how little input parliament has in the passage of budget legislation.

The procedural rules surrounding the implementation of budget bills necessarily mean that members are not allowed very much legislative input.²⁶ Essentially, the only method backbench MPs have to alter the bill in any significant way is the pre-budget consultation process. This is when the finance committee in the House of Commons, hereafter referred to as FINA, hears from witnesses who have a stake in the budget process. Good implies that this input is merely to give the impression that MPs have involvement in the budget process, and that really they have very little influence at all.²⁷

A fourth component of budgetary procedure that limits legislative involvement is the enforcement of a confidence vote on all budget bills. This makes sense as budgets typically encompass key government policies. The contention here is not that the implementation of a confidence vote is problematic, I mention it to further highlight the disproportionate lack of influence parliament has in the budget process. Joachim Wehner explains the implications of enforcing a confidence vote on budget legislation this way: "...the confidence convention reduces legislative authority to a stark choice between accepting the budget unchanged or forcing the resignation of government and fresh elections."²⁸ Essentially, the House can attempt to make changes to the budget (which is unlikely for the reasons highlighted above), make the government fall on a confidence vote, or else accept the budget in its entirety. This lack of legislative involvement, as will be further explained below in the discussion on why the budget

²⁵ David Docherty, *Legislatures* (Vancouver: UBC Press, 2005), 144.

²⁶ Docherty, 145.

²⁷ Good, *The Politics of Public Money*, 229.

²⁸ Joachim Wehner, "Assessing the Power of the Purse: An Index of Legislative Budget Institutions," *Political Studies* 54 (2010), 770.

process is so executive dominant, is vital to ensure that the provision of government services runs as smoothly as possible.

Budget implementation acts differ from the supply and estimates process. It is important to distinguish this process from budgetary procedure as the title of this thesis, “grievance before supply” can be misleading. Again, the principle of “grievance before supply” that was outlined at the outset of this thesis is a principle that can be used to refer to budgetary procedure as well. However, the etymology of the term can be found in the supply process.

Government “supply” is granted through an annual approbation act. The supply process is different from the budgetary process as it does not outline spending objectives, it grants parliamentary authorization for the government to use public funds. While the supply and estimates process is a fundamental part of the financial cycle of parliament, and impacts the budget, it is not the central concern of this thesis. The supply and estimates process has come under similar criticism as omnibus budget legislation; there is not enough scrutiny and according to some “parliament has all but abandoned its constitutional responsibility for supply.”²⁹ Writers, like Donald Savoie, believe that members do not have sufficient political rewards for properly scrutinizing the estimates and this contributes towards a lack of parliamentary scrutiny.³⁰

The contention of this thesis is not that the procedural rules that are unique to the budgetary process should be changed; the confidence convention, secrecy are all consistent with the Westminster style of government. In the context of Westminster parliamentary democracy, the imposition of a confidence vote on budget bills makes a lot of sense; budgets outline government spending objectives, and therefore represent the government’s *modus operandi*. Nor does this thesis mean to suggest that parliament ought to have no voice in the budget process. Indeed, as was discussed earlier, the principle that parliament approve budgetary and financial policy of the government is extremely important in the Westminster system of parliamentary democracy. Despite not being able to change budget bills substantively, backbench MPs must have a right to express grievance before their passage. The deliberative function of parliament is very important as it provides scrutiny of the bills, an opportunity for the government to explain the logic and

²⁹ Savoie, *Whatever Happened to the Music Teacher*, 39 and David Good “Parliament and Public Money: Players and Police.” *Canadian Parliamentary Review*. (Spring 2005)

³⁰ Savoie, *Whatever Happened to the Music Teacher*, 49.

reasoning behind budgetary policy. Essentially, it is parliament's approval that adds democratic legitimacy to budgetary policy that has been formed by the executive. As David Docherty explains: "Even though the government usually get their way [during the passage of the budget], the requirement that bills pass through the legislative process is critical to good democratic practice."³¹

It is the omnibus nature of recent budget bills, in other words the amendments included in them that have nothing to do with the budget that damage parliamentary democracy. The merits and demerits of the Westminster budgetary process is a subject for another thesis. The issue with omnibus budget legislation is its large scope, and the fact that many amendments are included that are usually outside the scope of budgetary matters. In other words, the amendments included in budget acts that are not budgetary matters still have to be passed under the same procedure as budget legislation, regardless of the attendant difficulty for parliament to have influence on the non-budgetary aspects of the bill. Parliament acts to give [sometimes noisy] approval or disapproval to budget legislation, this is different from other pieces of legislation where backbench and opposition MPs have a more active legislative role (this will be further explained in the second part of this chapter).

International Literature on Legislative Input in the Budget Process

There is a robust international literature on the role of legislatures in the budget process. Most of these authors single out Westminster democracies as having especially executive-dominated budget processes. In his article "Assessing the Power of the Purse: An Index of Legislative Budget Institutions," Joachim Wehner uses variables to determine how much power 36 different national legislatures have in the budget process. These variables include: the ability of legislators to make amendments to the budget, the amount of time allocated for budget scrutiny, the capacity of committees to review budgets and finally access to budgetary information. Wehner used a wide sample of legislatures in his study so much of his data was not useful for the purposes of this thesis. However, it provides a comparative example of how much power Westminster parliaments have in the budget process. In Wehner's index of legislative power in

³¹ Docherty, *Legislatures*, 139

the budget process, Canada scores in the lowest percentile.³² This is in comparison to the United States Congress, which Wehner found to have the strongest power in the budget process.³³ David Good explains this difference by writing: “In Britain and Canada, budgetary conflicts between spenders and guardians has traditionally been privately absorbed and often quietly managed. In the United States it has been publicly exposed and sometimes not managed at all.”³⁴ A report by the National Democratic Institute for International Affairs entitled “Legislatures and the Budget Process” echoes this analysis. In the report it posits that in Westminster parliamentary democracies the executive branch of government plays a disproportionately large role in the budget process.³⁵ This is in contrast to presidential systems where weak party discipline means that legislators have much more power to amend budgets.

Indeed, strong legislative input in the budget is problematic as the complex nature of the modern state requires a strong and focused government. This is in contrast to focusing on individual constituency needs that do not paint a coherent picture of state action. Without discipline during the budget process, Members of parliament may put constituency needs before national goals as this would otherwise lend them the most political rewards.³⁶ Posner and Chung Keun-Park suggest that legislatures play a legitimising, rather than amending legislative role in the budget process. Schick expands upon this by suggesting that the role of legislatures is not to “control” the budgetary process, but to focus more on the areas of accountability and performance.³⁷ In the words of Posner and Chung Keun-Park: members are “expected to be highly responsive to individual constituencies, legislatures are perennially challenged to produce simultaneously high levels of constituency responsiveness while taking responsible actions on behalf of the entire country.”³⁸ Following from this, the centralisation of the budgetary process in the executive promotes fiscal restraint. If backbench members had more control over the budget, more capacity to amend the budget as well as more involvement during the development of budgets, they would

³² Wehner, “Assessing the Power of the Purse: An Index of Legislative Budget Institutions,” 770

³³ Wehner, “Assessing the Power of the Purse,” 777.

³⁴ Good, *The Politics of Public Money*, 26.

³⁵ “Legislatures AND the budget process: An International Survey,”
(*The National Democratic Institute for International Affairs, 2003*), 5.

³⁶ Posner and Chung Keun-Park, “Role of the Legislature in the Budget Process: Recent Trends and Innovations,” 20.

³⁷ Schick, “Can National Legislatures Regain an Effective Voice in Budget Policy?,” 17.

³⁸ Shick, “Can National Legislatures Regain an Effective Voice in Budget Policy?” 17

have more scope to include measures that benefit their constituents. A greater level of legislative input in the budget process would necessarily mean higher deficits as members may lobby for government services for their constituents. Interestingly, the budget process in the North West Territories legislative assembly, which is a Westminster-style parliament where no party system exists, has been accused of a similar process of “pork barreling.”³⁹ It provides an example of how other Westminster legislatures might look without party discipline, and underlines the problems that result of having too much legislative input in the budget process.

Indeed, outside of the budgetary conventions that have grown as a result of unique historical circumstances of the development of Westminster democracy, there are other reasons why budget bills are subject to secretive, opaque and executive dominated implementation practices. A key reason is that the expanding scope and size of government necessitates legislative efficiency to meet the demand of the wants and needs of the public. In developed democracies, citizens have become accustomed to government involvement in their lives; the state provides services like healthcare, social security, education, among other things. This has led to a large and complex government which is more efficiently run with a dominant executive, rather than with strong legislative input.

Elaborating further on the concept of “grievance before supply,” Franks introduces three conceptions of parliamentary governance that are useful in understanding this tension Executive-centred Collectivist Parliament-centred.⁴⁰ These three approaches illustrate the tension between legislative efficiency and the ability of parliament to fulfill its scrutiny and accountability role. The executive centred conception puts emphasis on a strong government and weak parliament. It has its roots in conservative paternalism, the idea that the government which derives their authority from the monarchy. Interestingly, the executive centred conception has much in common with that of the collectivist conception. The latter advocates for executive dominance over the House to accommodate the increasing scope of the state. The collectivist conception stems from the rise of leftist extra-parliamentary parties and the interventionist welfare state during the latter half of the 20th century. This, as much of the literature on budget processes

³⁹ Graham White, *Cabinets and First Ministers*, (Vancouver, UBC Press, 2005), 61.

⁴⁰ Franks, *The Parliament of Canada*, 19.

describes, necessitates executive dominance. In the third, parliament-centred conception, MPs act as independents. Rather than being required to submit to party discipline, in the parliamentary conception, the behavior of MPs is guided by the views of their constituents or they rely on their personal judgment.⁴¹

Arguably, the “collectivist conception” most accurately describes the contemporary Canadian state. Modern big government is in contrast to the *laissez faire* state that typifies “parliament-centred” conceptions of government in the 19th century. Donald Savoie in *Whatever Happened to the Music Teacher: How Government Decides and Why* quips that Prime Minister Earl Grey had to debate the government’s sale of a surplus horse, and to hire an engineer, clerk or secretary.⁴² In this instance, members had more independence. However, the UK Westminster system during the so-called “golden age” of parliamentary democracy in the 19th century would be unrecognizable to the modern Canadian landscape. The franchise was limited to landowning males, private commercial interests dominated parliament and the scope of government services was much smaller than the modern day.⁴³

While this literature offers a useful explanation of the role of legislatures in the budgetary process, few sources address omnibus budget implementation legislation. Indeed most items in this literature review were published after the trend towards implementing budgets with a larger size and scope began. The fact that few of these texts addresses omnibus budget legislation implies that it is both a recent development and an extraordinary case study.

Donald Savoie’s *Whatever Happened to the Music Teacher*, C.E.S. Franks’ article “The Canadian House of Commons under Stress: Reform and Adaptation” and Louis Massicotte’s article “Omnibus bills in theory and practice” are an exception to this. All three sources mention omnibus budget legislation, but only briefly and not in any comprehensive way. In short, none of these authors uses evidence to identify a trend. Savoie, as part of a wider discussion on public spending in Canada, explains that parliament has a scrutiny and accountability role in the passage of budget implementation legislation. His thesis focuses on the problems parliament has

⁴¹ Franks, *The Parliament of Canada*, 18.

⁴² Savoie, *Whatever Happened to the Music Teacher*, 41.

⁴³ For more information, see Gary Cox, *The Efficient Secret*. (Cambridge, Cambridge University Press, 1987).

encountered in performing this role. C.E.S. Franks offers a useful analysis of omnibus budget legislation, although this is only part of a chapter that addresses the decline of the House of Commons in Canada. Massicotte's article, "Omnibus bills in theory and practice" was written during a period when large omnibus budget bills were passed, and seems to be a response to this trend. Massicotte writes very generally about the usefulness of omnibus bills in removing archaic or irrelevant statutes, as well as problems with omnibus legislation, such as not allowing for enough scrutiny. There is a small mention of omnibus budget legislation at the end of Massicotte's piece, but he focuses on the size, rather than the scope of the bills. While Massicotte makes a useful point about how recent budget implementation acts are less likely to be amended than in the past (i.e. the size of omnibus budget legislation remains the same during its passage through the House), he does not attempt to "prove" the trend in Canada towards budget bills with a larger non-legislative scope.⁴⁴ Outside of op-ed pieces, these are the only sources which address omnibus bills. This thesis will hopefully contribute to this literature and aid in developing a better social scientific understanding of omnibus budget bills.

Parliament's Role Outside of the Budget Process

This chapter will now turn to the role of parliament outside of the budget process. In other words, what role does parliament have in the passage of legislation outside of the budget? The role of parliament in amending legislation outside of the budget is much greater and it is important to separate the role of the House during the budget procedure and its role when passing legislation outside of the financial process. While the principle of "grievance before supply" is important during the passage of the budget, in the system of Westminster parliamentary democracy, the legislature's influence on the budget process is necessarily limited, at least more so than parliament's role in the passage of non-financial legislation. This discussion will be useful as it relates to the non-budgetary amendments included in budget bills. The end of this chapter will propose a "model" of parliamentary democracy to provide a standard to gauge how omnibus budget bills damaged parliament.

While in Canada there seems to be a convention that every bill introduced by the government, similar to budget bills, is a confidence vote (indeed the imposition of a confidence vote in this

⁴⁴ Louis Massicotte, "Omnibus Bills in Theory and Practice" *Canadian Parliamentary Review* (Spring 2013), 16.

context is problematic and is one of the features that distinguishes Canadian parliamentary democracy as having a stronger executive power than its Westminster counterparts,⁴⁵ the legislature has greater influence in amending non-financial legislation. In other words, the secretive rules that budget bills are subject to do not apply to non-financial legislation. A government can announce the general intention of a particular piece of legislation before it is tabled in parliament; it is not bound to make the contents of a bill secret before its passage. Similarly, government legislation (or at least the spirit of it) is presumably introduced to caucus before it is tabled in parliament. The introduction of legislation before backbench government members, despite the fact that caucus proceedings are closed to the public, provides greater scope for legislative involvement.

It is reasonable to assume that had the non-budgetary amendments (i.e. amendments outside the purview of the Income Tax Act, Excise Tax Act, Excise Act and Customs Tariff) included in omnibus bills, been tabled and passed separately, the unique procedures that apply to budget legislation would not have applied to them and greater legislative involvement would have been allowed. This chapter will outline how parliamentary democracy is meant to work outside of the budget process to establish a model of parliamentary democracy.

So, what is parliament's role outside the budget process? R. Macgregor Dawson, in his seminal text about the federal House of Commons explains is "the grand inquest of the nation, the highest political tribunal and that no other political body is democratically able to speak on behalf of the public." Dawson writes further that "the electors choose cautiously and confide liberally; then, after the term has expired, they will review the conduct of the member and pronounce on his stewardship as a whole. No cabinet which keeps in constant touch with [parliament] can be very far removed from public opinion for the House is always acting as an interpreter and forcing this opinion on the attention of its leaders."⁴⁶ Despite the increasing prevalence of opinion polls, interest groups as a measure of public opinion, none of these have the same democratic legitimacy as the House of Commons.⁴⁷ David Smith explains "Whatever the conceit of the

⁴⁵ Jonathan Malloy, "The Executive and Parliament in Canada," *The Journal of Legislative Studies* 10, no.2/3 (Summer/Autumn 2004), 207.

⁴⁶ Dawson, *The Government of Canada*, 358.

⁴⁷ David Smith, *The People's House of Commons*, 105.

PMO, hubris of the media or moral entrepreneurship of public interest groups, the House of Commons is the first, last and only authoritative voice of the Canadian people.”⁴⁸

So, the federal House of Commons is the most democratically accountable space in Canada. Its role is to deliberate on, scrutinize and occasionally amend legislation that the government puts forward. Responsibility for the deliberative, scrutiny and accountability function of parliament lies with the opposition, and to a lesser extent with government backbench members. Donald Savoie explains that members, by extension of the function of parliament, are meant “to review, refine [if needed] and pass legislation...authorize the spending of public money and hold government accountable, and decide to support or withdraw confidence from the government.”⁴⁹

In addition to having democratic legitimacy through its elected members, debate in parliament is the public’s window on the legislative process. The debate process further ensures that government is made accountable for its actions. Through moderated debate that is publicly available through Hansard and reported on in the media, the government is forced to defend its actions and consider alternative approaches. When the parliamentary system is healthy, this kind of deliberation is far more valuable to the accountability and scrutiny process in parliamentary democracy than extra-parliamentary forums. As C.E.S. Franks explains: “Words and discussion are the core of effective parliamentary government. In parliament the government explains and defends its policies and actions to the nation, the nation through its representatives tells the government what it likes, doesn’t like, wants, doesn’t want. This complex dialogue teaches and informs both the nation and government.”⁵⁰

Interactions with private members is a vital component of accountability and scrutiny through deliberation. As Turnbull explains: “The primary role of the private member in the legislature is to voice opinions on the government’s ideas. The cohabitation of the executive and legislative branches in parliament – and the resulting accessibility and proximity of cabinet ministers to ordinary MPs – means that private members are able to make significant contributions to

⁴⁸ David Smith, *The People’s House of Commons*, 106.

⁴⁹ Donald Savoie, *Whatever Happened to the Music Teacher*, 40.

⁵⁰ Franks, *The Parliament of Canada*, 15 .

transparency in governance”.⁵¹ Turnbull writes further that private members are essential to the process of accountability as “They compel cabinet ministers to explain, answer and defend themselves as trustees of the public interest.”⁵²

Maintaining party cohesion is a key strategic problem of responsible government in Canada.⁵³ Government success in passing its mandate will vary depending on whether or not the government has a majority or minority. While from the perspective of a prime minister, a majority parliament means they can pass their agenda efficiently; it is problematic for the scrutiny and accountability role of parliament. Russell writes:

“it really is easier to govern when your party has a majority in the House...A majority government can stay totally “on message” – even if that message has been rejected at the polls by a majority of voters. There is no need to make any concessions to opposing points of view. A majority government will not have to bother with tiresome parliamentary debates or parliamentary committees it cannot control.”⁵⁴

Russell’s analysis leads again to the tension between legislative efficiency and the right of parliament to review, deliberate on and occasionally amend legislation. In a minority parliament, despite the government’s inability to do whatever it wants, there is greater scope for consensus, deliberation and input from members.

Indeed, there is a sub-genre on the desirability of minority governments in Westminster parliamentary democracies. The earliest paper that advocated for minority government in the Canadian context was likely Eugene Forsey who mocked the widespread public disapproval of minority governments. Forsey wrote that many politicians and academics described minority government as a “nameless, faceless horror, the political fate worse than death.”⁵⁵ He wrote

⁵¹ Lori Turnbull “Minority Government in Nova Scotia: does it empower private members?” *Journal of Parliamentary and Political Law*, 138.

⁵² Turnbull, “Minority Government in Nova Scotia,” 183.

⁵³ Christopher Kam, *Party Discipline and Parliamentary Democracy* (Cambridge, Cambridge University Press, 2009), 6.

⁵⁴ Russell, *Three Cheers for Minority Government*, 3.

⁵⁵ Eugene Forsey, “The “Problem” of Minority Government in Canada,” *The Canadian Journal of Economics and Political Science / Revue canadienne d’Economie et de Science politique*, 30, no.1 (February 1964), 1.

further that the popular view of minority governments was that they were necessarily bad, they are “...incompetent, weak, indecisive, if not worse.”⁵⁶ However, a parliament that exemplifies these principles of debate is normally viewed as weak by the Canadian public. In other words, it is a “winner takes all” scenario. He explains: “Compromise, bargaining, negotiation, and accommodating differences – the daily fare of minority parliaments puts people off.”⁵⁷ However, this is problematic in the context of parliamentary democracy as the Westminster system is structured in such a way that the prime minister has the power of a president without being constrained by the checks and balances of Congress.⁵⁸ Essentially Russell argues that minority parliaments, due to their increased bargaining power, are better at making government accountable. Forsey makes roughly the same argument as Russell; minority parliaments allow more input from backbench members, which allows governments to reflect more upon their mandate. It also means that a government does not have the luxury of a disciplined majority and may face a confidence vote at any time. The following paragraph summarises Forsey’s argument very well:

“When a government knows it may be hanged in a fortnight, the knowledge may broaden its mind wonderfully. Having to get support from outside its own party may not only help a government to do good and sensible things but also prevent it from doing bad and foolish things. This, as King once pointed out, is just as important, and may even be more so. The idea that “doing something” is always good, doing nothing always bad, that action is always better than inaction, is a strange, but apparently powerful, delusion. A government with a clear majority may go lickety-split in the wrong direction. A government without a clear majority is more likely to stop, look, and listen.”⁵⁹

One cannot help thinking that this idea that minority governments are negative comes from the need for a strong national government in Canada. The size diversity of the country requires a unified government in Ottawa to ensure that state programs and services are delivered efficiently, and also to cement national unity. Paul E.J. Thomas in his article in *Canadian Parliamentary Review* entitled: “Measuring the Effectiveness of a Minority Parliament,” applies Forsey’s argument into the present day. Thomas argues that the fears that minority parliaments breed disunity and inefficiency are untrue. He compiles data from the 38th parliament (2004-2005) to

⁵⁶ Forsey, “The “Problem” of Minority Government in Canada,” 3.

⁵⁷ Russell, *Three Cheers for Minority Government*, 95.

⁵⁸ Russell, *Three Cheers for Minority Government*, 75.

⁵⁹ Forsey, “The “Problem” of Minority Government in Canada,” 4.

show that this particular minority parliament passed legislation efficiently, but with greater scope for deliberation and backbench and opposition input.⁶⁰ Indeed, Thomas shows that in the 38th parliament, which was a minority, 56% of bills were amended in committee, and that most of these bills were passed in the House.⁶¹ By the logic of minority/majority government, members have greater scope for independence in a minority, rather than a majority parliament, considering the tremendous discipline members are subject to. In a majority the government can force its caucus to “rubber stamp” legislation.

The decline of parliament is said to have started during the Prime Ministership of Pierre Trudeau. The reasoning goes that Trudeau centralized the office of the Prime Minister, and consequently made backbenchers weak. The parliamentary decline thesis has two main threads. The first is that parliament is undemocratic, due to certain elements that render it executive-dominant, at least compared to other types of political involvement. The second is that parliament is irrelevant because it has little power over the executive. Parliamentary reporter Adam Wherry in a 2011 *Maclean's* article articulates the parliamentary decline thesis very well:

“Thousands and thousands of words are spoken [in the House of Commons] to little obvious notice or consequence – the press gallery mostly ignoring the proceedings and almost all votes of importance destined to break along party lines. Power has coalesced around the offices of party leaders. Decisions are made elsewhere and then imposed on this place, debate seemingly rendered moot. For all its hallowed tradition and sombre ritual, the floor of the House of Commons cannot now be said, except on a purely geographic level, to be at the centre of political life. But for all the modern laments about the emptiness of our politics, here would seem to be the yawning gap at the heart of it all.”⁶²

As part of this parliamentary decline thesis, the claim that the executive is dominant is prevalent. The Prime Minister is often compared to a dictator⁶³ and despite the role of parliament in the struggle for responsible government in Canada, there is also claim that the Prime Minister has

⁶⁰ Paul E.J. Thomas “Measuring the Effectiveness of a Minority Parliament,” *Canadian Parliamentary Review* (Spring 2007), 29.

⁶¹ Thomas, “Measuring the Effectiveness of a Minority Parliament,” 23.

⁶² Adam Wherry, “The House of Commons is a Sham,” *Maclean's*, February 18, 2011, <http://www2.macleans.ca/2011/02/18/the-house-of-commons-is-a-sham/>

⁶³ Peter Russell, *Three Cheers for Minority Government*, (Toronto: Emond Montgomery Publications Limited, 2008), 75.

merely replaced the monarchy in all but name.⁶⁴ Excessive party discipline makes parliament weak.

Indeed, a theme that runs through the literature on parliamentary decline is the role of party discipline. For the purposes of this thesis, the analysis of party discipline will mainly focus on the scrutiny role of government members. This is because government backbench members have the greatest scope to prevent the passage of omnibus budget bills. As the parties developed in the system of parliamentary democracy, along with a wider scope of government, the division of responsibilities between government backbenchers and opposition MPs became much clearer.⁶⁵ The opposition serves to criticize the government, and backbench government MPs serve to support the government. This is not to say that government MPs do not have a scrutiny role at all. They certainly do. Unlike members of the cabinet, who, in a system of responsible government, are bound by the principle of cabinet solidarity, it is not necessary for government backbench MPs to show the same degree of loyalty. Brent Rathgeber, a rare rebel MP, explained in an interview with *Maclean's* magazine that there is scope for government backbench MPs to be critical of their caucus, and that it is even desirable for the government. Rathgeber explains: "...you can be a constructive critic, you don't need to be a blind cheerleader to be a loyalist. In fact, I think the constructive critic does a bigger favour to government than a blind cheerleader because the critic will point out problems before they bubble into debacles, where the blind cheerleader will keep blindly cheerleading at imminent policy derailment."⁶⁶

Party discipline is a central component of responsible government. As stated previously, it fulfills a vital organizational function by distinguishing between government and opposition, it ensures a balance between national and constituency interests. Finally, it ensures that MPs are

⁶⁴ Franks, *The Parliament of Canada*, 11.

⁶⁵ Jack Stillborn, "The Roles of the Member of Parliament in Canada: Are They Changing?", *Library of Parliament – Political and Social Affairs Division*, <http://www.parl.gc.ca/Content/LOP/researchpublications/prb0204-e.htm>.

⁶⁶ Dean Bennett, 'I won't answer to the PMO anymore: Alberta MP Rathgeber quits Tory caucus,' *Maclean's*, June 6, 2013, <http://www2.macleans.ca/2013/06/06/alberta-mp-brent-rathgeber-quits-conservative-caucus-over-lack-of-transparency>

less likely to submit to special interests.⁶⁷ Further, most Canadian voters base their choice on party affiliation, for an MP to stray too far from their party's principles is undemocratic.

However, party discipline in Canada is famously strict compared to other Westminster democracies. Canadian MPs are heavily disciplined and less independent than their British, Australian counterparts. It is further very difficult to distinguish between the ideological cohesion of political parties and the enforcement of discipline.⁶⁸ The mentality of most Canadian MPs can be articulated thus: "To me [said the candidate being interviewed]...the job is to support the prime minister in whatever way that he thinks."⁶⁹ Indeed, the independence of members (or lack of it) is a key departure for efforts at parliamentary reform in Westminster democracies. MPs in Canada have been described variously as "\$100,000 voting machines,"⁷⁰ potted plants and trained seals. Many have also pointed to the fact that the House now exists merely as an electoral college; no longer useful for its deliberative function.

Perhaps the most enlightening source on the declining role of backbench members of parliament in Canada is a series of exit interviews from MPs, conducted by Samara Canada, a public interest group. Samara Canada interviewed former MPs from several different parliaments, and gathered some useful insights. The MPs who were interviewed were retired; they were no longer constrained by their party caucuses so they spoke candidly. There were several main findings from Samara's interviews, these included that the process for disciplining MPs was arbitrary and opaque, that MPs' speeches and actions were heavily controlled by their caucus leadership. Further, MPs did not agree on the role they were meant to perform in the House, and complained that they hadn't been given sufficient mentorship or aid by the House of Commons staff to find a meaningful role in the House.⁷¹

⁶⁷ Jennifer Smith, "Democracy and the House of Commons at the New Millennium," *Canadian Public Administration* 42, No. 4 (winter), 405.

⁶⁸ Jonathan Malloy, "High Discipline, Low Cohesion," *Journal of Legislative Studies* 9, no.4 (Winter 2003), 121.

⁶⁹ Andrew Coyne, "Repairing the House," *The Walrus* (October 2013), <http://thewalrus.ca/repairing-the-house/>.

⁷⁰ Andrew Coyne, "The Alarming State of Canada's Democracy," accessed via youtube: http://www.youtube.com/watch?v=HIGO6QYL-ng&list=WLIHrXa8x-Wk3Gze_842QF6vZwg78xRjqW

⁷¹ Samara's Exit Interviews can be accessed here: <http://www.samaracanada.com/research/mp-exit-interviews>

This lack of independence for Canadian MPs is in stark contrast to their British counterparts. As Christopher Kam explains, at Westminster government defeats are not uncommon, and not every vote is a confidence measure.⁷² In the United Kingdom (UK) there has always been a healthy amount of scrutiny on behalf of both opposition and government backbench members in both the House and in the media. Government defeats in the UK parliament are neither novel or trendsetting.⁷³ A prominent British example of this backbench dissent was a vote on whether the UK should intervene in the Syrian Civil War. The government lost the vote, due to a handful of rebellious Conservative MPs, who sided with Labour over non-intervention.⁷⁴

Indeed, there are many factors that facilitate this level of dissent that have to do with British political culture, but there are also institutional mechanisms that make Westminster backbenchers more independent. There are other reasons for this difference in backbench input, which lie outside the scope of this thesis, in particular the different ways that parliamentary democracy developed in the United Kingdom and Canada. These differences make the historical antecedents of parliamentary tradition in the UK much more hallowed. Franks writes about this in *The Government of Canada*. He explains that in Canada, the parliamentary system was imposed, unlike its UK counterpart, it did not develop organically.⁷⁵ Some of these mechanisms will be outlined in chapter five as a departure for reform. The UK House of Commons allows for scrutiny and accountability of government in a way that is almost impossible to imagine in Canada without significant procedural reform to enhance backbenchers.

Model of Parliamentary Democracy

The model of parliamentary democracy that will be used for this thesis will respect the integral role party discipline plays in the system of responsible government. It will put forward a realistic model that takes into consideration that parliament is meant to scrutinise, review deliberate on and amend legislation. The most important principle in this model is that party discipline, while

⁷² Kam, *Party Discipline and Parliamentary Democracy*, 2.

⁷³ Kam, *Party Discipline and Parliamentary Democracy*, 1.

⁷⁴ “Syria and the Use of Chemical Weapons — 29 Aug 2013 at 21:41,” www.publicwhip.org.uk, <http://www.publicwhip.org.uk/division.php?date=2013-08-29&number=70>

⁷⁵ Franks, *The Government of Canada*, 21.

central to the functioning of parliamentary democracy, especially in a country like Canada where diverse regional interests necessitate a strong, and disciplined, national government, has the ability to damage parliamentary democracy if it is imposed too strictly. As Turnbull, Aucoin and Jarvis explain: "...if responsible government is not to generate into a process simply for electing the government, then MPs cannot be merely voting robots controlled by party leaders."⁷⁶In other words, party discipline must not be so strict as to prevent members from fulfilling their scrutiny and accountability function. The scrutiny and accountability function of MPs is especially important if governments act in a way that is harmful to parliamentary democracy. If the scrutiny and accountability function is stifled, then MPs are not independent enough to raise concerns about problematic government action (like the passage of omnibus budget legislation).

In conclusion then, the assumption of this thesis is that parliament is a body that is meant to deliberate on, scrutinize and occasionally amend legislation. Essentially, it must express grievance before legislation is passed. While the budget is subject to unique procedural rules that make it difficult for MPs to propose amendments, the principle that parliament "approve" the budget by deliberating and voicing scrutiny is important. For this scrutiny and accountability process to be effective, parliamentarians must be somewhat independent. This is where party discipline fits into this thesis. In sum, party discipline must not be so strict as to undermine the model of parliamentary democracy outlined in this chapter. This is especially important for MPs on the government side if their leader performs behavior that damages parliamentary democracy. How party discipline operates on the opposition side is less of a concern in this model, as long as the opposition scrutinises government effectively. So, how do omnibus budget bills fit into this model? The following chapters will hopefully elaborate on this. While the historical development of the Westminster system has led to less parliamentary input in the budget process, parliament still must be able to deliberate on and scrutinize budgets. Further, non-budgetary amendments should not be subject to the financial process.

This discussion will be useful for later discussions on omnibus budget legislation, as a lot of amendments included in budget legislation are not typically within the purview of budgetary matters. It is the application of budget procedure to non-budgetary amendments that is the

⁷⁶ Aucoin, Jarvis and Turnbull, *Democratizing the Constitution* 133.

primary way omnibus budget legislation damages parliamentary democracy. However, other key ways that party discipline damages parliamentary democracy will be highlighted in chapter four.

CHAPTER THREE - DEFINING THE PROBLEM OF OMNIBUS BUDGET IMPLEMENTATION LEGISLATION: DATA ON BUDGET BILLS FROM 1994-2013

The purpose of this chapter is to show that the passage of omnibus budget implementation legislation has become a trend in the Canadian House of Commons. It will present the following data on budget bills passed during the period from 1994-2013: their size, their scope, time considered in the House and the average number of minutes each page was debated for. Analysing data on the number of pages included in budget legislation will determine the extent to which budgets have grown in size. Analysing the number of amendments will determine whether or not budgets have grown in scope. By analysing the last two charts on the length of consideration and proportionality, I will try to determine whether or not omnibus budget legislation was debated for long enough in Canada. Quantitative analysis of this sort is important to determine the validity of claims from the opposition and the media that omnibus budget legislation has become a trend in Canada.

What is Omnibus Budget Legislation?

Before analyzing the data on budget implementation bills, it is worth repeating and further exploring the definition of an omnibus budget bill that was highlighted in chapter two of this thesis. An omnibus budget bill is a budget implementation act that includes amendments to many major acts, only roughly related to budgetary matters. In other words, omnibus budget implementation bills are defined by the scope of the legislative changes they bring, rather than their size. As highlighted in chapter two, there are some pieces of legislation that apply to the consolidated revenue fund, and are therefore legitimate within the purview of budgetary legislation. This includes the Income Tax Act, Excise Tax Act, Excise Act and Customs Tariff, these will not be included in the table as “amendments” and are excluded from the data in the table and the charts. Amendments included in the budget outside of these acts will be defined as “non-budgetary” amendments. Exceptions will be made for acts that perform legislative functions within the purview of a budget. These exceptions include the allocation of funds for specific government action. Amendments to this type of legislation are deemed budgetary matters as they conform to the definition of a budget laid out in chapter two of this thesis. In

other words, amendments that provide for the dispersal of public expenditure reflects the idea that budgets are “a series of goals to which price tags are attached.”⁷⁷

Amendments to acts that change social security provisions (like the *Employment Insurance Act*) and changes to the labour code in Canada are deemed non-budgetary amendments. These two types of legislation are categorised as non-budgetary as they would be better dealt with passed outside of the budget. Many amendments included in omnibus budget bills could arguably be considered budgetary matters but limiting the definition of acceptable acts to the Income Tax Act, Excise Tax Act, Excise Act and Customs tariff is a decent “cut-off” point. Without narrowing the definition of an omnibus bill, this thesis will be vulnerable to the argument that budget bills can encompass anything.

Traditionally budget implementation acts have included only budgetary measures, however, in the past ten years budgets have increased in size and scope. As C.E.S. Franks explains: “These co-called budget implementation acts are far more than simply measures to implement the budget. The implementation act of 2010 was entitled *An Act to Implement Certain Provisions of the Budget tabled in Parliament on March 4, 2010, and other measures*. The kernel lies in the “*other measures*.””⁷⁸ It is the non-budgetary amendments included in these bills that make them omnibus budget legislation.

This emphasis on the scope of omnibus budget legislation is not to suggest that the size of budget implementation bills is not a problem; indeed size presents difficulties for members to scrutinize the bills. It is the size of omnibus budget bills that has been much maligned in the media, rather than their scope.

⁷⁷ Adam Wildavsky quoted in Joachim Wehner, *The Myth of Fiscal Control*, 2

⁷⁸ C.E.S Franks, “The Canadian House of Commons under Stress: Reform and Adaptation,” In Herman Bakvis and Mark D. Jarvis eds. *From New Public Management to New Political Governance* (Montreal and Kingston: McGill-Queen’s University Press, 2012), 88

“The kitchen sink approach”⁷⁹

The above definition still poses questions however: how many amendments should a budget bill contain before it is considered omnibus budget legislation? Is not every government action related to spending, and therefore under the purview of a budget bill? In response to these questions, I contend that all budget bills that include non-budgetary amendments can be defined as omnibus budget bills. This is not to say that all omnibus budget bills have the same impact on parliamentary democracy; the greater the number of non-budgetary amendments included in budget bills, the more damaging omnibus budget bills are to parliamentary democracy. I further contend that most pieces of legislation amended in budget implementation acts would be better dealt with as separate bills and that including all legislation in the scope of budgetary matters creates a “slippery slope” towards bundling more and more amendments into omnibus budget bills. Speaker Lameroux articulated a similar concern after a member raised a point of privilege about an omnibus bill⁸⁰ passed through parliament in 1971:

“...where do we stop [with the passage of omnibus bills]? Where is the point of no return? ... we might reach the point where we would have only one bill, a bill at the start of the session for the improvement of the quality of life in Canada which would include every proposed piece of legislation for the session.”⁸¹

To be clear, this thesis is not concerned in principle with omnibus bills, although they do pose similar problems for scrutiny and accountability in parliament. Omnibus bills are “seen as an exception to the usual legislative process”⁸² and there are unique procedural rules surrounding their passage. According to O’Brien and Bosc’s definitive guide to parliamentary procedure:

⁷⁹ Canada. *House of Commons Debates* (Mr. Stephen Harper), March 25th 1994, <http://openparliament.ca/debates/1994/3/25/>. Ironically, despite the fact that Stephen Harper’s 2006-2014 government passed omnibus budget bills with the largest size and scope, the party that was its genesis, Reform, was also a prominent voice against including non-budget amendments into budget bills. C-4, passed in 1994, only comprised 24 pages included 1 amendment. Nevertheless, Harper raised a point of privilege and described C-4 as a “kitchen sink” bill.

⁸⁰ Omnibus bills, although they pose similar problems for scrutiny and accountability in parliament, are not the central concern of this paper. This will be fully explained later in this chapter

⁸¹ Canada, *House of Commons Debates*, 4 June 2012, (Ms. Elizabeth May, Green), <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=41&Ses=1&DocId=5638903>. A fuller articulation of the arguments against omnibus budget implementation legislation will comprise chapter four.

⁸² Michel Bedard, “Omnibus Bills: Frequently Asked Questions,” *The Library of Parliament – Legal and Legislative Affairs Division*,

“...there is no precise definition of an omnibus bill. In general, an omnibus bill seeks to amend, repeal or enact several Acts, and is characterized by the fact that it is made up of a number of related but separate initiatives.^[76] An omnibus bill has “one basic principle or purpose which ties together all the proposed enactments and thereby renders the Bill intelligible for parliamentary purposes”.^[77] One of the reasons cited for introducing an omnibus bill is to bring together in a single bill all the legislative amendments arising from a single policy decision in order to facilitate parliamentary debate.”⁸³

Omnibus bills are different from omnibus budget bills for three reasons. First omnibus bills can relate to one central theme that requires a diverse set of legislative changes. In this case omnibus bills serve both to focus parliamentary debate and ensure that legislative proposals that relate to a similar theme are considered in relation to each other, not just as a set of disparate initiatives. i.e. they all connect to one central theme of a government’s mandate and have a clear theme.

⁸⁴Second, they can be used as “housekeeping” to eliminate archaic or superfluous acts from the statute book.⁸⁵ In theory a government may want to update mistakes or loop holes in legislation. Omnibus bills are an efficient vehicle for this. Third, they are not necessarily an automatic confidence vote, nor are they subject to the procedural rules – i.e. retroactivity, the confidence convention - that are unique to budget legislation. In sum, non-financial omnibus bills are normally used as a means to pass thematically related legislation to ensure that Commons procedure is conducted in an efficient and focused manner.

Omnibus budget bills, by contrast, seem to reflect an attempt to bypass parliament in the name of legislative efficiency. Omnibus budget bills, despite the fact that they include amendments to many different pieces of legislation and present problems for the model of parliament highlighted at the beginning, are procedurally admissible. The inclusion of “other measures” in the title of omnibus budget bills allows for the inclusion of the many amendments that comprise the bills. This procedural rule seems only to apply to omnibus budget bills with a large scope. Budget bills C17, C-38, C-45, C-60 and C-4 all include “other measures” in the title. Budget bills

<http://www.parl.gc.ca/content/lop/researchpublications/2012-79-e.htm> 5.

⁸³ O’Brien and Bosc, *The House of Commons: Procedure and Practice*, 724.

⁸⁴ Bedard, “Omnibus Bills: frequently asked questions.”

⁸⁵ Massicotte, “Omnibus bills in theory and practice,” 13.

that were passed in the years previous to C-38 in 2012 seem to have been exempt from convention; this is despite the fact that many of them include amendments unrelated to the budget.

To further highlight the reasons that omnibus budget bills are procedurally admissible, here is a good example of the imposition of the rules in practice. During the passage of C-38 in 2012, Elizabeth May, MP for Saanich Gulf-Islands, raised a point of order based on the fact that the bill was in an imperfect shape, and therefore in violation of standing order 69 (3). Standing order 69 (3) states that: No bill may be introduced either in blank or in an imperfect shape.⁸⁶

In her point of order, May argued that C-38 was in an “imperfect shape” as it addressed acts of parliament that were unrelated to budgetary matters. This meant that the bill did not have one unifying theme, and was therefore not a “proper bill.”⁸⁷ Speaker Scheer’s ruling in response to this point of order argued that the title of the bill implied that C-38 included a wider scope of legislative changes than just budgetary matters by naming the bill “an act to implement the budget and *other measures*.” The inclusion of the term “other measures” in the title encompassed the non-budgetary acts in the bill. As Speaker Scheer explained in his ruling:

“It would be useful, at this juncture, to remind members that the long title of Bill C-38, An Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures, is very broad, as is typical in bills of this kind. Clause 1 of the bill, which contains its short title, provides that “This act may be cited as the Jobs, Growth and Long-term Prosperity Act” and thus restates the very broad scope of the measure. O'Brien and Bosc, at page 731, notes that the long title sets out the purpose of the bill, in general terms, and must accurately reflect its content. Speaker Fraser, on June 8, 1988, at page 16257 of the *Debates*, also referred to the use in our practice of generic language in bill titles and stated that, “every act being amended need not be mentioned in the title.”⁸⁸

⁸⁶ Standing Order 68 (3), Standing Orders of the House of Commons, http://www.parl.gc.ca/About/House/ASOII/13_ASOII_Chap09-e.html.

⁸⁷ Adam Wherry, “To allow C-38 to masquerade as a legitimate omnibus bill will bring our institutions into greater disrepute,” *Macleans*, <http://www.macleans.ca/politics/ottawa/point-of-order-2/>.

⁸⁸ Canada. *House of Commons Debates*, (Mr. Andrew Scheer), June 11th, 2012, <http://openparliament.ca/debates/2012/6/11/the-speaker-5/>.

Hence the bill was rescued by its title alone. The implications of this ruling, and others like it, will be further explored in chapter five. However, May's ruling and Scheer's response illuminates the nature of omnibus budget legislation, and the procedure for its passage.

Data on Budget Legislation in Canadian House of Commons: 1994-2013

This thesis will now turn to the quantitative analysis of data on omnibus budget legislation. It is important to verify whether or not the trend towards omnibus budgets, identified by the opposition and media is true. The data used in figures 1, 2, 3, and 4 is from the website LEGISinfo, the Library of Parliament's online database of legislation passed in the House of Commons in Canada. The data for the number of pages was readily available on the website and the number of amendments was extrapolated from a section of the LEGISinfo website which offers a summary of each of the bills. The data for the length of consideration and the proportionality was gathered from Hansard, the record of debates in the Canadian House of Commons and openparliament.ca. The figures show a trend towards the introduction and passage of omnibus budget legislation in Canada. These figures can be found at the end of this chapter on pages 40, 41, 42 and 43. A table of the data in these figures is included in the appendix to this thesis.

The data for the original and supplementary budget bills have been amalgamated in figures 1, 2, 3 and 4 (but not the table of data in the appendix) to illustrate a clearer trend towards budget bills with a larger size and scope. For example, C-10 and C-51 were both passed as budget implementation bills in 2009. C-10 comprised 552 pages with 8 amendments, C-51 was much smaller in size and scope and included 60 pages with no amendments. This data was merged to reflect the overall number of budget pages and amendments passed in 2009. C-10, passed in 2009 was a budget bill large in size and omnibus in scope, comprising 552 pages and 8 amendments. C-51, the budget bill that was passed later in 2009 as a supplement to C-10 was much smaller. C-10 comprised 60 pages and 10 amendments, a bill with a much smaller size and scope. In other words, these two budgets were not distinct; C-51 was a supplement to the original budget bill, C-10, passed earlier that year. Criticisms from the official opposition, journalists, that omnibus budget bills have grown both in size and scope, find credence in the quantitative analysis on budget legislation in this chapter. There are some exceptions to the trend

towards the increase in budget bills that are larger in size and scope. These exceptions are almost always budgets that have been passed as supplement budget bills. In other words, these are bills that have been passed to add further amendments to budget acts that were passed earlier that year. For example C-9, the budget bill passed in 2010, comprised 904 pages with 14 amendments. C-47, the supplementary budget act passed later that year comprised 152 pages with 2 amendments.

Figure 1 confirms that the number of pages included in budget implementation acts has increased since 2006. There is a strong and consistent trend towards a greater number of pages in budget bills over time. The number of pages in budgets increased during the period from 1994-1998, then decreased slightly in the period from 1999 to 2000 before a increase after 2001. After 2001 none of the budget implementation acts had fewer than 100 pages.

It was not until 2006 that budget acts began to comprise over 150 pages. During the period from 2006-2013, the number of pages included in budget bills increased dramatically. This substantial shift coincided with a change from a Liberal to a Conservative government. Conservative budgets generally comprise three times the number of pages as Liberal governments have in the past. Only one budget bill, passed in 2008, consisted of fewer than 150 pages. The peak of this increase came in 2010 with a total of 1100 pages. 2012 is another notable year, with a total of 882 pages.

Following from the discussion earlier in this chapter on the size and scope of omnibus budget bills, figure 1 does not necessarily show a trend towards omnibus budget legislation. Nevertheless, the increase in number of pages included in budget bills presents problems for scrutiny.

In addition to showing which party passed each budget bill, figure 1 shows whether or not each budget bill was passed under a majority or minority government. There is no clear indication that majority parliaments pass omnibus budget bills more than minority parliaments. In other words, omnibus budget bills are as common in minority governments as they are majority parliaments. This raises some interesting questions. Returning to the literature in chapter two, minority

parliaments are supposed to produce greater scope for both government backbenchers and opposition members to make changes to legislation.⁸⁹ In minority parliaments, members' votes

are meant to hold greater weight as governments do not have the safety of a compliant and disciplined majority. So what does this reluctance on the part of the opposition and backbenchers to prevent the passage of omnibus budget bills indicate? The implications of this minority/majority trend are interesting; perhaps the fact that members are not even able to hold government to account properly during a minority government illustrates the prevalence and strength of party discipline in Canada. In other words, the legislature is now so weak that even under a minority government, where government backbench and opposition members are supposed to have more independence and stronger influence on legislation. This inability to hold government to account seems to encapsulate the "parliamentary decline" thesis very well. On the part of government backbench members, the enforcement of a confidence vote on all budget legislation is the principle reason for legislative acquiescence of omnibus budget bills. While the enforcement of a confidence vote is consistent with the implementation of budgets, its enforcement with regards to other principles is not so clear. Party discipline in Canada is strict in comparison to other Westminster democracies.

Indeed, there was much media attention on the voting divisions for C-9 in 2010, passed under a Conservative minority government. While the opposition criticised the omnibus nature of the bill, they did not prevent the passage of C-9, even though their seat share in the House would have allowed them to do so. Indeed, instead of voting against the bill, many members of the official opposition were absent from the final vote in the House. Concerns about the previous year's coalition debacle (which was not looked on favourably by Michael Ignatieff, the then official opposition leader) and also the threat of an election due to a non-confidence vote, perhaps caused these Liberal abstentions. Despite opposition on the part of some of the Liberal caucus to omnibus budget legislation, it seems as though the party would rather allow it to pass than risk another expensive and excessively combative election.

⁸⁹ Peter Russell, *Two Cheers for Minority Government*. See also 'Measuring the Effectiveness of a Minority Parliament' by Paul E.J. Thomas in *Canadian Parliamentary Review* 30, no.1 (Spring 2007), <http://www.revparl.ca/english/issue.asp?param=180&art=1229>.

Even in a majority situation, Conservative caucus dissent was evident during the passage of omnibus budget legislation. Video footage taken by constituents in MP David Wilkes' riding of Kootenay-Columbia, showed he, as a Conservative backbencher, was concerned about the passage of bill C-38 in 2012. Wilkes even admitted he had considered voting against the bill, and decided not to because he was concerned that his dissenting vote would be the only one. In this case his refusal to toe the party line would have harmed his chances of rising higher in the party and his revolt would have been of little consequence to the passage of the bill. This is despite Wilkes' assertion that some of his fellow caucus members also had reservations about the bill.

Figure 2 shows the number of non-budgetary amendments that were included in budget bills from 1994-2013. This figure reveals the prevalence of omnibus budget bills and therefore, out of the four figures gives a more accurate indication of whether a budget bill is omnibus in nature. It illustrates an increase in the scope of omnibus bills over time. This increase is incremental until 2005. Before 2005, the highest number of amendments included budget bills totaled around 15. In the 1998, and the years from 2004-2008, there were no omnibus budget bills at all.

Every budget bill passed after 2010 contains more than 10 amendments. There was a large spike in the number of non-budgetary amendments in 2012, with 46 in C-38 and 25 in C-45. 2013 marks back down to 18 amendments, but still substantially higher than the earlier period from 1996-2006. It is important to note that even in the years when the amendments in budget bills decreased, they were still large in scope. Further, following from the definition of omnibus budget legislation proposed earlier in this chapter, that omnibus budget bills are defined as budget bills that include amendments outside of the excise tax act, , it seems that any budget bill that includes amendments outside of the budget acts is considered an omnibus bill, and therefore problematic in the context of parliamentary democracy. In other words, even a small number of non-budgetary amendments is damaging to the model of parliamentary democracy outlined in chapter two

Figure 2 shows a change in the scope of omnibus budget bills after a change from Liberal to Conservative government in 2006. The passage of omnibus budget bills is more prevalent under

Conservative than Liberal governments. Conservative governments from 2006-2013 also pass omnibus budget bills that are large in size and scope compared to earlier bills. However, there is no clear correlation between majority governments and minority governments passing budget bills with a large or small scope. Indeed the first omnibus budget bill to total over 20 amendments was passed in 2005 under a minority government. Again, one can speculate that this is because parliament is so weak, that the usual influence of members in a minority is moot.

It also shows that the number of amendments included in budget bills has increased over the past five years. In other words it shows that budget implementation bills have grown in size and scope over time. To cite an extreme example of the increase in amendments in budget bills, if we compare C-17 in 1994 to C-38 in 2012, amendments to acts in budget bills has increased over 10 fold; only 10 amendments to acts were included in 1994, with 71 included in 2012.

Figure 3 shows how much time each budget bill was considered from 2002-2013. The data in this chart was collected from legisinfo.gc.ca. To determine how long each budget bill was debated for, I reviewed the dates on which budget bills were debated on, and then reviewed the Hansard for those dates. I copied and pasted the Hansard record from these dates into a word document and read through them. I then tallied the length of debate and placed the duration of debate in a spreadsheet to calculate how many minutes each bill was debated for each day. Figures 3 and 4 only include data from 2002-2013 as LEGISinfo did not provide the dates budget bills were debated before 2002 in an electronic format. Figure 3 is entitled *minutes of consideration* rather than *minutes of debate* as the figure does not only include the times each budget bill was debated in the House, but almost every point the bills were debated in parliament. The minutes of consideration calculated include: government sponsored debate in the House, deliberation in FINA, oral questions and members' statements which address matters connected with the budgets, points of order, time allocation motions, Speaker's rulings and finally voting procedure.

Figure 3 displays the same pattern as illustrated in figures 1 And 2. The pattern is more conveniently expressed in hours for textual discussion here. Similar to figure 1, the pattern shows a slight increase from 2003-2006, rising to 4000 minutes in 2007. There is a decrease in 2008, then the trend resumes until 2011. As in figures 1 and 2, there is a sharp spike in 2012, and a decrease in 2013.

The noticeable increase in length of debate in 2012 deserves some consideration. The total length of time that C-38 and C-45 were debated comprised 241 hours, which was at least a four-fold increase from the previous year, and is at least double the length of every other bill included in the table. A possible explanation for this is that the size and scope of the bills caused many opposition members to put forward points of order. These points of order, as well as the speakers' rulings in response inevitably increased the time C-38 and C-45 were considered in the House. Of course, there was much debate from both the government and opposition sides of the House about the nature of omnibus budget legislation. Finally, there was a "marathon" voting session at the end of the third reading of the bill (which lasted 22 hours). This voting session inevitably increased the number of hours the bill was considered in the House.

One possibly mitigating argument in favour of omnibus budget legislation is that while budget bills in the past five years have been large in size and scope, they have at least been debated for longer in the House. Figure 4 grapples with this precise point. It shows proportionality, in other words how many minutes were debated for each page on average. Figure 4 shows that the time of consideration given to budget bills in the House has increased since 2001. Figure 4 does seem to lend credence to the view that, although omnibus budget legislation meant that, the larger the bill in size and scope, the bills were debated for a longer time period. This is how it appears on the surface but does not reflect the time they were debated for in proportion to their size and scope. Figure 4 shows proportionality; the time of consideration in proportion to the number of pages that comprise the budget bill. In other words how many minutes on average each page was debated for. Figure 4 does not show a trend in the proportionality of budget implementation. There is no clear increase or decrease in the average number of minutes each page of each budget bill was debated for.

The argument that the amount of consideration of omnibus budget bills has increased, and therefore makes their increasing size and scope acceptable seems credible on the surface. However when one looks at proportionality, the picture becomes less clear. Proportionality in this case is somewhat moot anyway; recent omnibus budget bills, particularly C-38, C-45 and C-60 included significant amendments to many major acts in Canada. These changes were often included as a small clause in a single page, so each page makes a substantial difference. Take for example, the merger between DFIAT and CIDA, included in C-60. The table indicates that each page of this budget bill was debated for 22 minutes. Had the amendments to the *Department of Foreign Affairs, Trade and Development Act* in bill C-60 been introduced in parliament as a separate bill, it would have been debated for a considerably longer than 22 minutes.

Figure 1: Number of pages included in budget bills 1994-2013

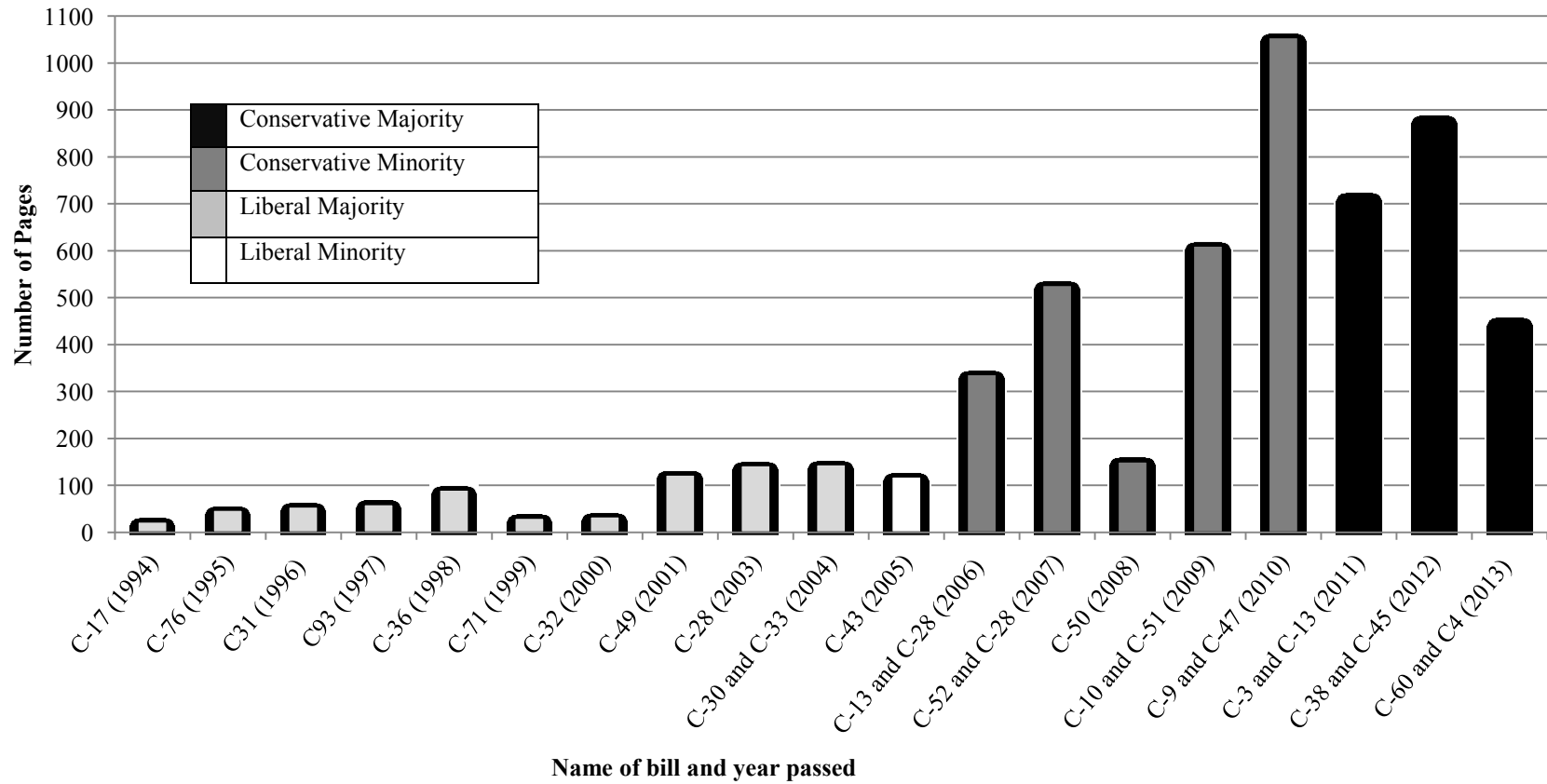


Figure 2: Amendments included in budget bills, 1994-2013

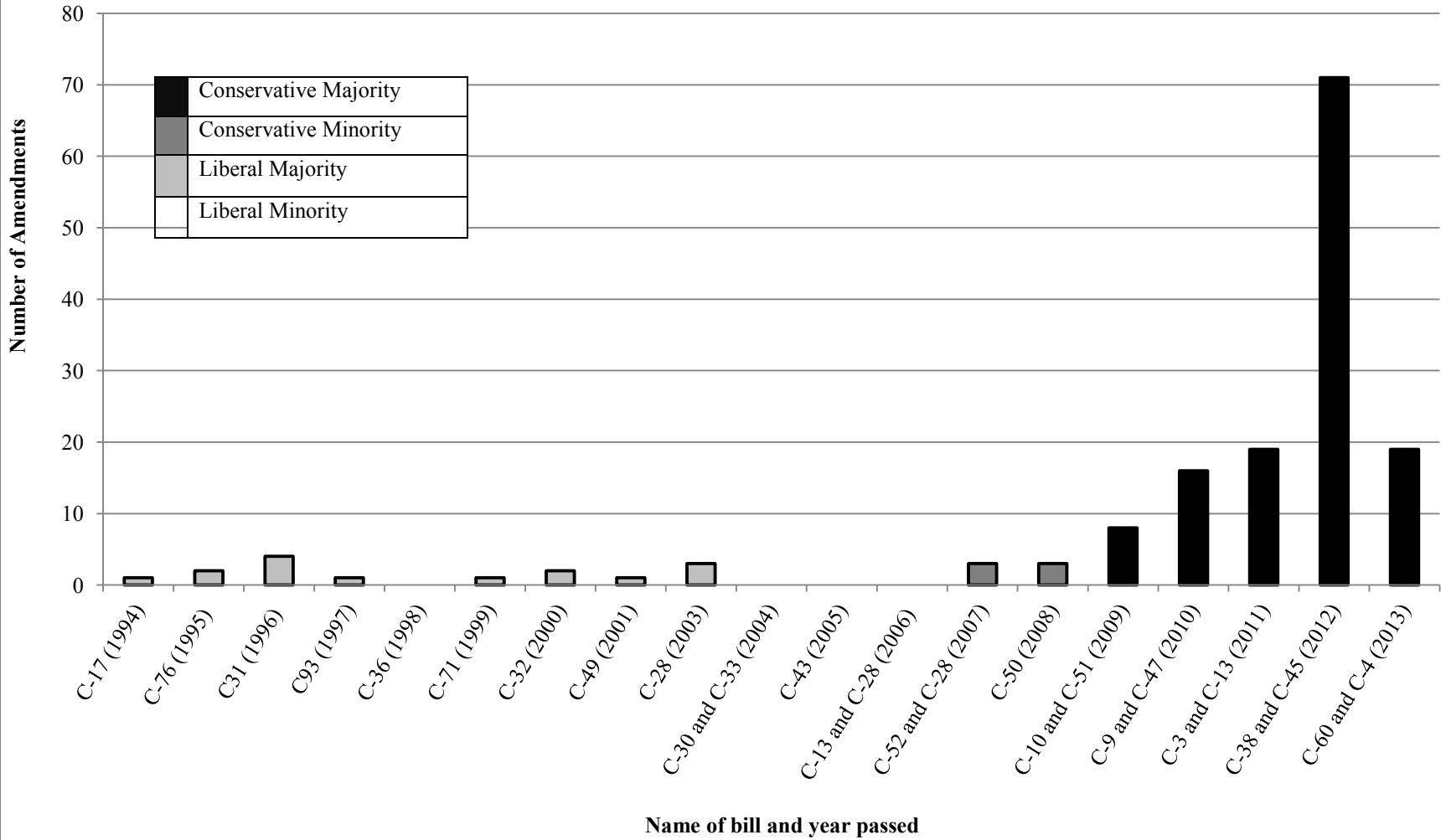
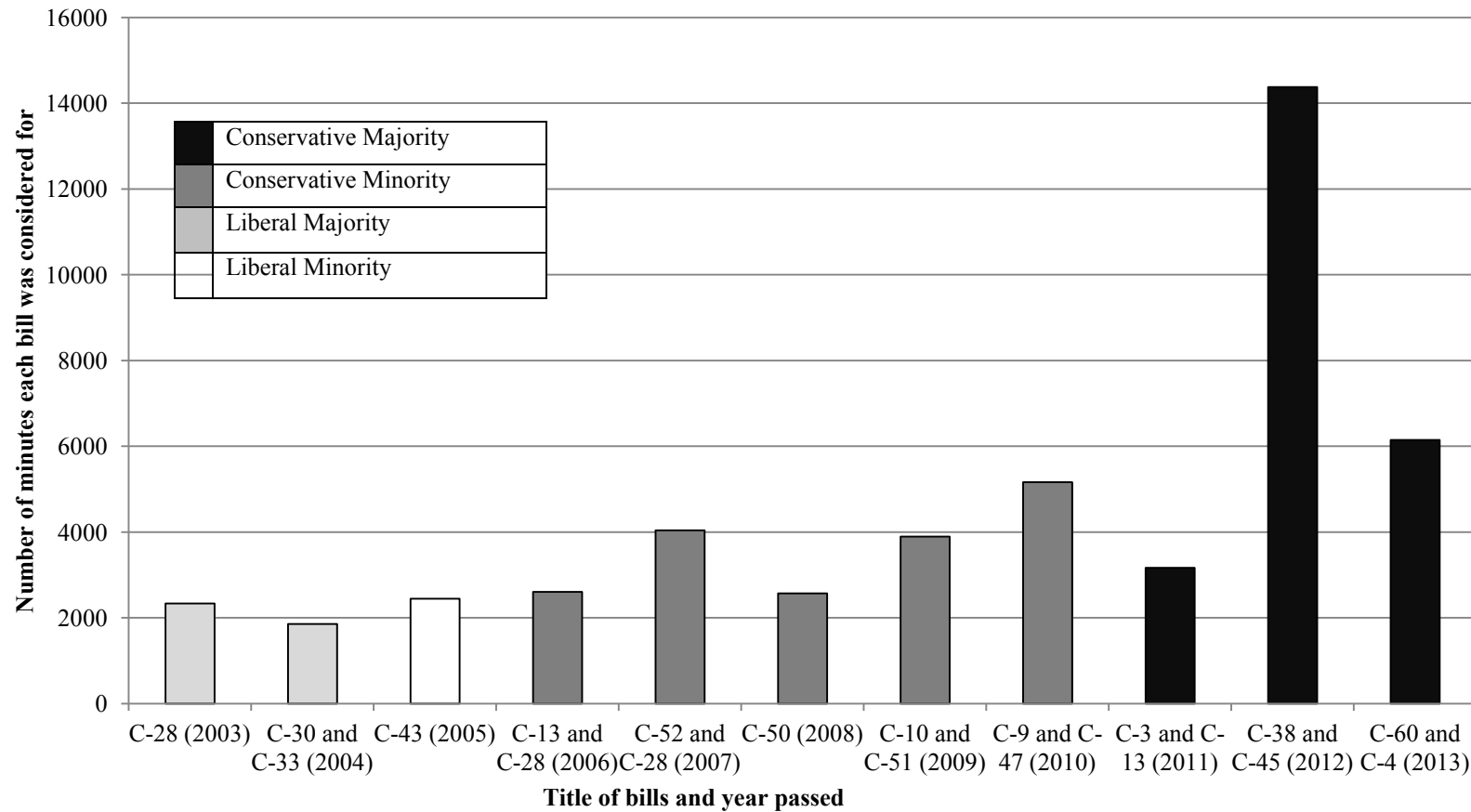
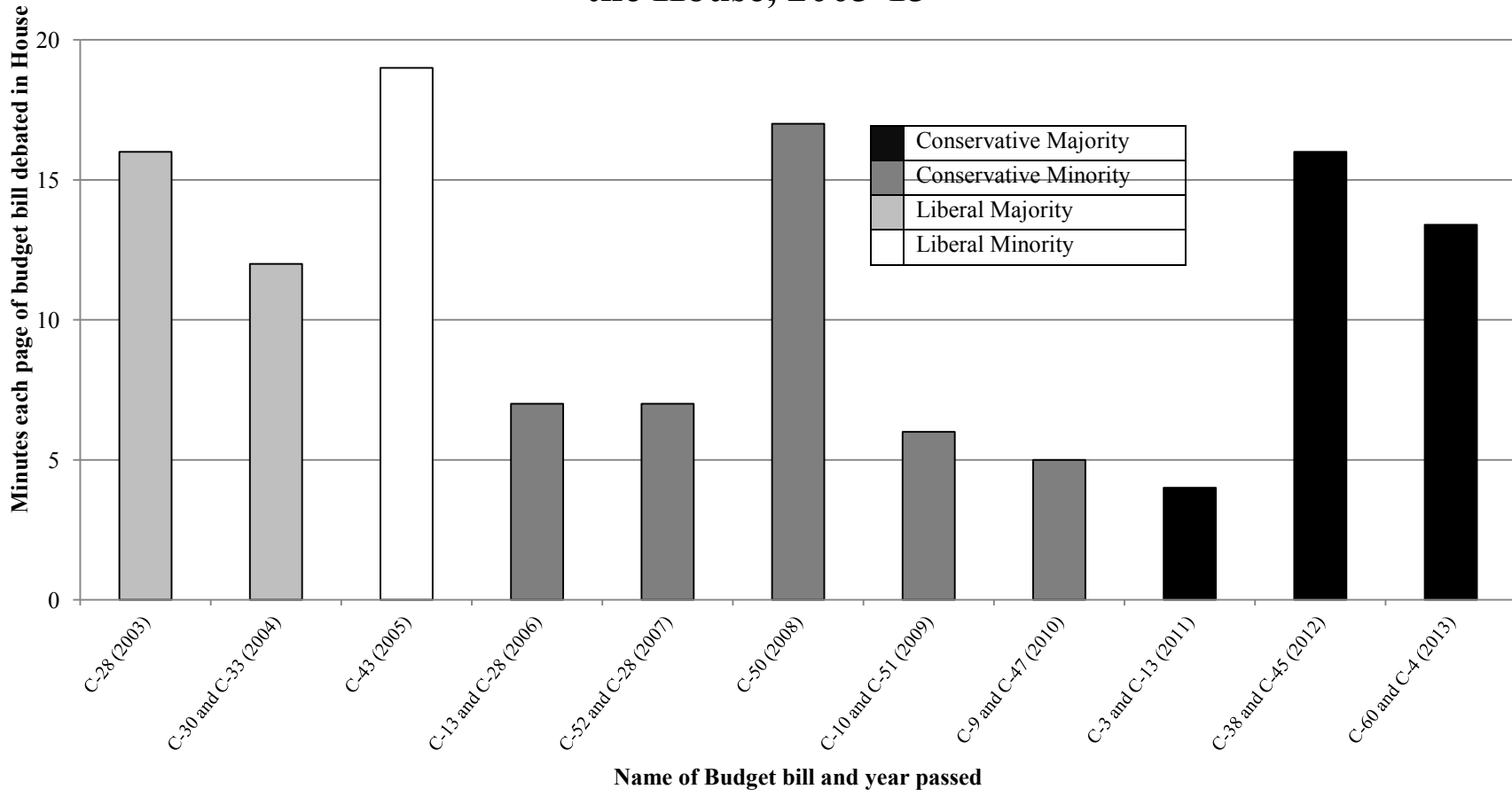


Figure 3: Number of minutes budget bills were considered in the House, 2003-13



**Figure 4: Budget Debate proportionality -
 number of minutes each page of each budget bill was considered in
 the House, 2003-13**



CHAPTER FOUR - AN OMNIBUDGET OMNISHAMBLES: QUANTIFYING DAMAGE TO PARLIAMENTARY DEMOCRACY

On the 18th of June 2012, the Canada's parliament voted on the third reading of bill C-38, the first budget bill passed in 2012. This budget bill comprised 452 pages and 48 amendments. The opposition, in an attempt to filibuster the bill, proposed hundreds of amendments, and called for a recorded vote of them all. Consequentially, the House was subject to a marathon voting session, which lasted 22 hours. The 41st Parliament that passed the bills was a majority government so it was assumed that all government members would vote in favour of the bill, and against the many amendments that were proposed by the opposition. After all, budgets trigger an automatic confidence vote. Had this been any other budget vote, then the imposition of the confidence vote would have been acceptable. However, this was a piece of omnibus budget legislation, and some of the votes the members were disciplined for did not fit under the purview of financial procedure.

The optics of the voting procedure for the third reading of C-38 showed parliament in a negative light. It seemed to illustrate that there was something wrong with parliament; members were reduced to pawns, only useful for their votes on behalf of their respective parties. The voting session became a media spectacle and was treated with humour as members discussed how they stayed awake during the voting process (some wrote Christmas cards to constituents, others watched videos on their laptops). The deliberation and scrutiny function of the House all but forgotten. The House became an expensive, and dysfunctional, show, barely reminiscent of its original scrutiny and accountability function. It is this sort of spectacle that fuels the "parliamentary decline" thesis. During the passage of C-45, the second omnibus budget bill passed later that year, presumably to avoid another marathon voting session, the Speaker bundled amendments proposed by the opposition rather than allowing the House to vote on each separate amendment.

We can only speculate on government motives towards omnibus budget legislation, however some academics posit that it was a means to use legislative efficiency to circumvent parliament.⁹⁰ Instead of being a "check" on government and a body to place democratic

⁹⁰ Savoie, *Whatever Happened to the Music Teacher?.*,40.

legitimacy onto government actions, parliament seemed to be viewed as a nuisance.⁹¹ It is easy to see how including disparate legislative proposals under the guise of a budget bill would facilitate legislative efficiency; applying the unique procedural rules for budget implementation legislation to significant legislative changes (e.g. the merger of the Department of Foreign Affairs and the Canadian International Development Agency in C-60) limits both legislative involvement and, in tandem, facilitates the efficient passage of the bill.

Arguments in Favour of Omnibus Budget Legislation

Returning to the defence of executive-dominated budget processes in the international literature that was cited in chapter two, it will be useful at this point to review some of the arguments that have been made in favour of omnibus budget implementation legislation. These arguments are typically made by members of governments that have passed omnibus budget legislation.

The first of these arguments is that, even though omnibus budget implementation legislation was larger in size and scope, more time was given to debating budget bills. The data in chapter three of this thesis shows that while omnibus budget implementation legislation was debated for longer than other, non-omnibus budget legislation, in comparison to its size and scope this is a rather moot point.

The second argument is that anything is within the purview of budget legislation. This sentiment was articulated by a government member of the finance committee while she was cross-checking a witness during a meeting of the finance committee to address C-38: “... give me a budget implementation act in the past ...that included nothing else [but budgetary matters]—because I believe and our records show that most budget bills.... In fact it was commonplace to have the housekeeping measures and Supreme Court decisions, etc [in budget bills]. Can you give me an example of some bills in the past that...contained only budgetary measures that affect expenses?”⁹²

This point has been addressed earlier in this thesis, that the procedural rules and nature of budget legislation is very different to that of non-financial bills. Further, the argument that

⁹¹ Savoie, *Whatever Happened the Music Teacher?*, 40.

⁹² Canada. *House of Commons Debates*, (Ms. Shelley Glover), May 29th, 2012, <https://openparliament.ca/committees/finance/41-1/63/?singlepage=1>

any legislative measure can be placed under the budget process is a slippery slope. A line must be drawn somewhere.

Finally, members of the government that passed C-38 and C-45 have argued that their status as a majority government means they have a mandate to pass any bill regardless of its size and scope and damage to parliamentary democracy. However, many of the amendments found in omnibus budget bills were not mentioned in the most recent (2011) election platform prior to the introduction of C-38 and C-45. While not strictly in the purview of this thesis, this discrepancy between government promises at election time and government actions during the budget process does raise some questions about how our democracy ought to function between elections. Essentially, omnibus budget bills, while permissible under the standing orders of the House, are damaging to the model of parliamentary democracy outlined in chapter two of this thesis. As C.E.S. Franks explains omnibus budget bills are “among the most offensive to the traditions and principles of parliamentary government.”⁹³

The most common complaint about omnibus budget legislation is the idea that it subverts parliament. Many journalists and authors during the passage of recent omnibus budget legislation commented on the content of the legislation but also on the method by which it was passed. To be clear, the argument in this thesis focuses on omnibus budget legislation as a procedure and does not argue that it is either good or bad.

Damage to Parliamentary Democracy

There are three main ways omnibus budget bills damage parliamentary democracy.

The application of budgetary rules to the non-budgetary amendments included in omnibus budget legislation

The vast number of non-budgetary amendments in some pieces of omnibus budget legislation means that these were under the purview of the secretive and restrictive procedural rules that budget implementation legislation is subject to. This is not to suggest that the budgets should always be amended by the House but that parliament ought to be able to express “grievance” over the ways and means process.

⁹³ Franks, “The Canadian House of Commons under Stress: Reform and Adaptation,” 88.

In other Westminster parliamentary democracies, budgets concentrate strictly on budgetary matters. In this way, legislation that is not under the purview of the budget is not subject to unique procedural rules for budget legislation. Indeed omnibus budget bills are unique to Canada. One useful example of a parliamentary democracy, similar to Canada but which does not pass omnibus budget bills, is the United Kingdom. The UK House of Commons is a useful comparison to Canada as they both operate under the Westminster model. The House of Commons at Westminster is subject to similar budgetary rules as Canada - budgets contain retroactive tax provisions, can only be initiated by the Crown, and are a confidence vote. UK budgets also pass through the House with the same mechanisms – there is a budget speech which is followed by the introduction of a budget implementation act. The number of pages included in UK budget implementation acts (known in the UK as the finance act) is another similarity. UK finance acts, like recent Canadian budget implementation legislation, comprises hundreds of pages.

Despite these similarities, UK budgets are not omnibus in nature. UK budgets, arguably, herald a large scope of policy changes as well. However, these changes are different as they are within the scope of the budget. In other words, policy changes are enacted through tax incentives and disincentives. A good example of this is the “bedroom tax,” which has heralded much media attention in the UK. The “bedroom tax” was a change in the UK taxation that effectively reduced social security benefits to those on social housing assistance receive depending on the number of rooms in their dwelling. In other words, the greater number of rooms in the houses of benefit recipients the less housing assistance they receive. After this measure was included in the 2013 UK finance act, it sparked a lot of debate. Regardless of the nature of the bedroom tax, it is an example of a budget measure that was changed in the budget through taxation, not a legislative amendment to an existing act. In fact, a parliamentary convention mentioned in the British parliamentary guide, *Erskine May* prevents UK governments passing resolutions in the budget that are “...so far removed from central finance as to make their inclusion in the financial bill indefensible.”⁹⁴

Indeed, the ability to change taxation in budgets gives governments a large scope for social control.⁹⁵ Omnibus budget bills are a less subtle method of facilitating significant policy

⁹⁴ Antony Seely, “The Budget and the Finance Bill” House of Commons Library, 14 November 2012, 5.

⁹⁵ Bruce Doern, Allan M. Maslove and Michael J. Prince, *Budgeting in the Age of Crises*, (Montreal: McGill-Queen’s University Press, 2013), 90.

changes via budgets. Changes in taxation, while they have the capacity to alter social policy, are different to changes in legislation facilitated through amendments in omnibus budget bills. The “rules” of secrecy and retroactivity do not apply to non-budget legislation. By including these non-budgetary amendments in budget acts, the government is effectively changing the rules of the legislative game. Essentially pieces of legislation not strictly related to the budget are passed under the same procedural rules as budgets. The application of a confidence vote to budgetary matters brings an interesting dimension to this discussion. Members must vote for budget bills in their entirety, and are not allowed to vote on individual amendments included in the bill. A government backbench member might agree with some amendments and not others, yet they are forced to vote for or against the whole bill. This “zero sum” argument is often aimed at non-budget omnibus bills as well, however their application to budgetary legislation is inappropriate due to the different nature of financial procedure.

Examples of Significant Amendments included in Omnibus Budget Legislation

To show that the amendments included in Canadian omnibus budget legislation are significant, below are some examples of non- budget legislation that have been amended in omnibus budget legislation.

- 1) *Department of Foreign Affairs, Trade and Development Act*. This amendment, included in bill C-60, is one of the most consequential found in budget implementation acts. It amalgamated the Department of Foreign Affairs and International Trade (DFAIT) with the Canadian International Development Agency (CIDA). The function of this merger was to align Canada’s international development objectives with its trade interests. One can debate the merits or demerits of this legislation, but it would have been given more opportunity for discussion had it been introduced as a single act, rather than introduced as an amendment under the guise of a budget bill. The merger of DFAIT and CIDA has huge policy implications and also impacts Canada’s international image. While merging the two departments will likely save government revenue, which could be construed as a “budgetary” matter, such a large public policy decision would have been subject to more parliamentary scrutiny had it been more than a small amendment in a budget.
- 2) *Canadian Security Intelligence Agency Act* In bill C-38 the Canadian Security Intelligence Act was amended to eliminate the position of the Canadian Security Intelligence Service (CSIS) Inspector General, and thus transfer civilian oversight

of CSIS to the purview of the Minister for Public Safety. The implications of this have been disputed, however. The government has argued that civilian oversight of CSIS will remain the same but at least one former public safety official believes that transferring this role to the Minister for Public Safety will undermine the civilian oversight process.⁹⁶

- 3) *The Navigable Waters Protection Act, Canadian Environmental Assessment Act, among other pieces of environmental protection legislation.* The consequential amendments included in budget bills that relate to environmental protection legislation are too numerous to be included here and have been amended in bills C-9, C-38, C-45 and C-60. These changes have been widely interpreted as having the effect of eroding environmental protection legislation and merit consideration as a group. Amendments to environmental legislation has become a theme in budget implementation bills. Again, this thesis makes no comment on the substance of the bills, only that most amendments should have been tabled on their own, separate from a budget bill. Some examples of environmental acts that have been amended in omnibus budget legislation include changes to the *Navigable Waters Protection Act* that reduced the number of waters that were under the purview of the act amendments. Perhaps one of the most egregious changes implemented in the bill was a complete rewrite of the *Canadian Environmental Assessment Act* to replace the former act.⁹⁷ C-45, the second budget bill passed in 2012 included strengthening the power of the minister of natural resources to approve pipelines.
- 4) *The Assisted Human Reproduction Act* An amendment in C-38 eliminated Assisted Human Reproduction Canada, an agency that implemented regulations outlined in the Assisted Human Reproduction Act. While one could argue that this seemingly bizarre inclusion is a budgetary matter, the fact it was hidden as a small amendment in a budget bill meant that its implications and alternatives to it were not properly considered. As a consequence of this amendment, provisions for regulating Assisted Human Reproduction are currently dealt with by Health Canada.

⁹⁶ Paul Kennedy, "Budget bill undermines oversight of CSIS", iPolitics.ca, May 11, 2012, <http://www.ipolitics.ca/2012/05/11/paul-kennedy-budget-bill-undermines-oversight-of-csis/>

⁹⁷ Andrew Coyne, "Bill C-38 shows us how far parliament has fallen," *National Post*, <http://fullcomment.nationalpost.com/2012/04/30/andrew-coyne-bill-c-38-shows-us-how-far-parliament-has-fallen/>.

- 5) *The Financial Administration Act* This act has been amended several times in budget implementation bills, so its inclusion in this list, as one of the most extraordinary and consequential amendments might seem surprising. However, it was amended in bill C-60 to include a clause that mandated the inclusion of a member of the treasury board secretariat on all collective bargaining negotiations within crown corporations. There was a wide interpretation that the independence of the CBC would be compromised by this amendment. This interpretation rests on the basis that there is a clause in reporter's employment contract that prevents them from being terminated for writing sensitive stories. Media representatives voiced concern that this clause might be vulnerable. The inclusion of a member of the government in collective bargaining negotiations might mean that this clause would change and thus undermine the independence of CBC reporters.

The Problem of insufficient scrutiny and lack of deliberation

In addition to its omnibus nature, in comparison to its size and scope omnibus budget legislation was not debated sufficiently to allow the House much scrutiny. To make this argument it is important to define sufficient scrutiny for budgets passed in the House. I define adequate or sufficient scrutiny as the ability of MPs to review legislation so that they gain appreciation for the scope of the bills. In other words, the criteria for sufficient scrutiny would be to ensure that MPs were able to consider/debate/scrutinise the non-budgetary amendments included in the bills for a similar length had they been passed outside of the budget.

Turnbull, Jarvis and Aucoin offer a good analysis of scrutiny in parliament during the passage of omnibus bills in their book *Democratising the Constitution*: "The practice of tying several pieces of legislation together, especially to the budget, virtually guarantees that some matters will not be given proper scrutiny and MPs will not be given the chance to vote against some of the included legislation based on its merits."⁹⁸

The problem of insufficient scrutiny means there is a lack of deliberation. The principle of "grievance before supply", or the idea that parliament deliberate on budgets, is very important in the passage of financial legislation. Parliament, as this thesis has already established, must express "grievance" over the passage of omnibus budget legislation.

⁹⁸ Aucoin, Jarvis and Turnbull, 136.

Francois Plante in his article on time allocation has illustrated that there is a trend towards using more time allocation motions.⁹⁹ While this is a more general trend, it has relevance to any discussion on omnibus budget legislation. During the passage of the past few budget bills, the government used several time allocation motions to curb debate on the bills.

As illustrated in figure 4 on proportionality, each page of each omnibus budget bill was debated for a very limited amount of time, this is despite the fact that nearly every page contained a significant policy decision. Donald Savoie highlights the deliberative nature of parliament, he writes: “Parliament’s role is to provide a forum where representatives come together from across Canada and *parler*” Savoie repeats Dawson’s conception of parliament by writing [parliament] also functions to express the “mind of the people, teach society and inform both government and citizens of grievances and problems.”¹⁰⁰ Parliament is meant to be the public’s window on the legislative process. By viewing CPAC, reading Hansard or watching snippets of parliamentary debate on the evening news members of the electorate, researchers are meant to be able to work out how parliament has rationalised its decisions, how final decisions came about. That the House of Commons is recorded through Hansard makes it the most appropriate body to fulfill this function. The public is able to re-read debates to see discrepancies in their story. This educative function is a crucial aspect of the accountability role of parliament; by limiting debate and lessening the amount of scrutiny governments are subject to (both with strong party discipline and time allocation motions), this absolves the government from explaining the reasoning behind measures in the budget. Government explanations for their decisions (including in budget legislation) is a crucial part of accountability. As Patricia Day and Rudolph Klein explain accountability is: “a tradition of political through which sees the defining characteristic of democracy as stemming not merely from the election of those are given delegated power to run society’s affairs, ...but from their continuing obligation to explain and justify their conduct in public.”¹⁰¹ While deliberate filibustering and obstruction by the opposition is not desirable, rigorous debate in balance with efficient government is the mark of a healthy parliamentary democracy. To further highlight how central deliberation is during the budget process, Ulrich and Dobell offer this analysis:

⁹⁹ see Francois Plante, “An Historical Perspective: The Curtailment of Debate in the House of Commons,” *Canadian Parliamentary Review*, 36, no.1 (Spring 2013).

¹⁰⁰ Savoie, *Whatever Happened to the Music Teacher*, 39.

¹⁰¹ Quoted in Henry McCandless, “Public Accountability in a Minority Government.” *Canadian Parliamentary Review*, (Autumn 2004): 31.

“It is important to note that such consultation and deliberation by parliament does not reduce the role of executive government. The budget is our system must be the government’s budget – for which the executive fully accountable. It is the executive that decides what advice to take; the executive can articulate why it reflects certain proposals, just as opposition parties and others can explain why they disagree with the government when parliament is visibly and actively engaged in the process of deliberating these matters, it is playing its representative role – whether or not that advice is taken.”¹⁰²

The undermining of the official opposition

As mentioned in chapter two, the inclusion of an official opposition is central to responsible government in Canada. David Smith explains the importance of a loyal opposition by writing: “Parliamentary opposition is loyal opposition...The opposition is loyal because it accepts the rules of the game. For that reason, when a government resigns, it knows that it will be treated, in opposition, in a manner that will permit it in the future to return to power.”¹⁰³ The opposition plays an accountability role in parliament as well. Like private members, its function is to criticize the government, provide suggestions for alternative courses of action and make it accountable.

During the passage of omnibus budget implementation legislation, the role of the opposition was undermined both by the time allocation motions mentioned above, but also by the government’s refusal to consider the amendments put forward by the official opposition to divide the bills. To be clear, it is not the function of the government to cede to every opposition demand. However, the points of order put forward by the opposition seemed to signal that the opposing bench felt their role was undermined. According to Smith, in recent years the official opposition in Canada has been treated as “losers,” instead of acknowledging its important constitutional role as a shadow government and scrutineer of government action.¹⁰⁴

¹⁰² Dobell and Ulrich, “Parliament’s Role in the Budget Process,” 9

¹⁰³ David E. Smith, *Across the Aisle: Opposition in Canadian Politics*, (Toronto, University of Toronto Press, 2013), 6.

¹⁰⁴ Smith, *Across the Aisle*,

CHAPTER FIVE CONCLUSION

The discussion in chapter three about the procedural admissibility of omnibus budget legislation suggests there is not much capacity for preventing the future passage of budgets that have a large size and scope. This practice is not illegal and there seems to be few existing methods for the detractors of omnibus budget legislation to stop its future passage. Omnibus budget legislation is a very attractive device for governments to pass large quantities of legislative amendments without much input from the House. Without discussing how to prevent omnibus bills, the trend will likely continue regardless of which party comes to power in the future. There has been exactly one instance when a government agreed to divide omnibus budget legislation. This was in 2012 when the then Conservative government tabled a motion to separate a provision in C-45 that changed pension contribution amounts for MPs. In this case there was unanimous consent in the House to include that provision in a separate bill and send it straight to the Senate. While the action of separating the pension provision from C-45 seemed to be a step towards dividing omnibus budgets, the remainder of the budget still contained many non-financial amendments.

In chapter four it was established that omnibus budget bills are damaging to parliamentary democracy for three reasons: the application of financial procedure to non-budgetary amendments, inappropriate processes for the latter amendments, undermines the deliberation and scrutiny functions of the House and restricts the role of the official opposition. It therefore makes sense to explore the possibility of preventing the passage of future omnibus budget implementation bills. This chapter will review methods to prevent the future passage of omnibus budget legislation. It will begin by discussing seemingly obvious attempts either to divide omnibus budget bills, remove their non-financial content or prevent their passage entirely. It will then go on to review positive developments to stop omnibus budgets, which as of Spring 2014, are in motion and seem likely to succeed.

Aucoin, Jarvis and Turnbull argue that, absent written conventions to curb prime ministerial power, one of the most effective checks on government action in the Canadian system of Westminster democracy is public perception. The electorate can always threaten to oust a government at the next election in reaction to a policy or action it doesn't like.¹⁰⁵ Further,

¹⁰⁵ Aucoin, Jarvis and Turnbull, *Democratising the Constitution*, 112.

Jack Stilborn writes that despite the difficulty backbench and opposition MPs have in amending bills: “determined opposition to a bill may indirectly influence its content by mobilizing public opinion and bringing indirect pressures to bear, which may induce its government sponsors to modify it.”¹⁰⁶ Public perception of omnibus budget legislation, and indeed the oppositions reaction, hold the budgetary actions of the government in low esteem. Opinion polls have ranked omnibus budget bills very low and many op-ed pieces deride it. There has been some public protest as well, for example, groups of protestors branding placards that urged “13 hero MPs to vote against C-38.” Additional protest against the bill was signified by a social media graphic decrying the decrease in the number of Canadian waterways that were under the purview of the Navigable Waters Protection Act. C-45, the second omnibus budget bill passed in 2012, which amended provisions in the Indian Act that relate to land purchase on First Nations reserves, played a part in spurring the Idle No More protest movement of 2012. While most of these protests focused on the content of the legislation, the nature of the omnibus budget bills was expressed as an underlying problem.

From this picture it seems that governments have more to lose than gain by passing omnibus budget legislation. However, the public outrage expressed after the passage of C-38 and C-45 did little to abate the trend towards the passage of omnibudgets. Months after the passage of C-38 and C-45 in 2012, the largest budget bills in size and scope, and the bills that precipitated some of the most vocal protests against their passage, the government passed C-60 in 2013 and then C-4 later that year. Both C-60 and C-4 were as large or larger than the omnibus budgets that preceded them. Essentially, the threat of losing the next election did not deter the government from passing omnibus budget legislation. Therefore to prevent the future passage of omnibus budget legislation more actionable methods need to be taken into account.

This chapter will now go onto review some possible methods of preventing the future passage of omnibus budget legislation, beginning with methods that have previously been ineffective (and look to be in the future) and then go onto discuss concrete action that is being taken as of Spring 2014. For each of these methods I will review how each would work to prevent the passage of omnibus budget legislation or the likelihood of each method’s success and its impact.

¹⁰⁶ Stilborn, “The Role of Members of Parliament,”
<http://www.parl.gc.ca/content/lop/researchpublications/prb0204-e.htm>

The Senate

The Senate technically has the ability to prevent the passage of omnibus budget legislation, either by vetoing it outright or taking out the non-budgetary provisions and sending the remaining budget back to the House of Commons for approval. One might logically place the Senate as a last resort of accountability in this case since it is the final hurdle in the passage of budget legislation. Indeed during the passage of C-9 (which comprised 904 pages and included 84 amendments) some senators attempted to split the bill up.

While Senate action is theoretically possible, it is unlikely to happen in practice. First, the increasingly partisan nature of the Senate¹⁰⁷, means that senators on the government side are more likely to do the bidding of their party during the passage of omnibus budget legislation. Second, the declining legitimacy of the Senate in the public eye – heightened due to three highly publicised expense scandals in 2013 – may make the Senate more reluctant to amend or reject key pieces of government legislation, like the budget. This is not to say that there is no political will in the Senate to significantly amend legislation that originates in the House. In 2013, a year in which two large omnibus budget bills were passed, the Senate significantly amended a private members bill, C-377. C-377 was a private members bill, heavily supported by the government that would have mandated that unions disclose payments over \$5,000 made to outside individuals or groups. Unions would also be forced to publish the names and salaries of all employees paid over \$100,000.¹⁰⁸ A minority of governing Conservative senators broke rank to support Liberal amendments to C-377. This was a widely publicized example of a “break from discipline” in the Senate, and is the exception and not the norm. Further, a budget carries more weight than a private members bill, and a Senate rejection of a key piece of government legislation would be much more significant. Again, for this method to be effective there would need to be political willingness in the Senate to divide, amend or veto it.

¹⁰⁷ Rosemary Barton, “Tory Senator Pierre Claude Nolin Urges Colleagues To Be Less Partisan,” CBC.ca, <http://www.cbc.ca/news/politics/tory-senator-pierre-claude-nolin-urges-colleagues-to-be-less-partisan-1.2523367>

¹⁰⁸ Bill Curry, “Conservative-dominated Senate blocks union disclosure bill,” *The Globe and Mail*, June 26th, 2013, <http://www.theglobeandmail.com/news/politics/conservative-dominated-senate-blocks-union-disclosure-bill/article12826672/>

Simply, if the Senate acted to divide omnibus budget bills such measures would not reach the stage of Royal Assent. If the Senate's unwillingness to approve omnibus budget legislation becomes the norm, it is unlikely that governments will even bother to pass omnibus budget legislation. However, it must be stressed that the Senate is not as independent of party discipline as might be expected. Reforms of the Senate that to make it a more independent body would engage the constitution, and therefore are unlikely in the foreseeable future

A Speaker's ruling

In theory, the Speaker could make a ruling to either divide an omnibus bill, separating the non-financial provisions from the bill or rejecting omnibus budget legislation entirely. The first ruling on the procedural admissibility of omnibus legislation came in 1969 when Speaker Lucien Lamoureux refused to rule that omnibus legislation is inadmissible and explained that it is the jurisdiction of the House to make its own rules on omnibus bills. In his ruling Lamoureux said: "It is not for the Chair to determine whether it is proper or appropriate or politic for the government to present this legislation in the form of an omnibus bill."¹⁰⁹ Lamoureux repeated this ruling in 1971, when he ruled on the procedural admissibility of another omnibus bill in his famous speech (cited in chapter 3 of this thesis) in which he warned: "However, where do we stop? Where is the point of no return? ... [W]e might reach the point where we would have only one bill, a bill at the start of the session for the improvement of the quality of life in Canada which would include every single proposed piece of legislation for the session."¹¹⁰ The 1971 ruling was slightly different as Lamoureux expressed concern that omnibus bills might undermine the House in future and encouraged the House to change the standing orders to prevent their passage. Lamoureux still deferred to the House to prevent the passage of omnibus budget bills however.

Subsequent speakers who have been asked to rule on the passage of omnibus budget legislation have echoed Lamoureux's 1971 ruling. They have expressed the same concern over the passage of omnibus budget bills while maintaining the "long-established practice" of refusing to divide omnibus bills or rejecting them as procedurally inadmissible. We have already established that the passage of non-financial amendments within budget bills makes omnibus budget bills different to non-budgetary omnibus bills. However, speakers have also applied Lamoureux's 1969 and 1971 rulings on omnibus bills in rulings to omnibus budget

¹⁰⁹ Bedard, "Omnibus bills: frequently asked questions"

¹¹⁰ Bedard, "Omnibus bills: frequently asked questions"

legislation. Thus, Lameroux's rulings on omnibus bills have set a precedent for speakers to refuse to rule on both omnibus and omnibus budget legislation, any action to stop omnibus budget bills has been left to the House.

The Speaker does have the power to overturn this precedent, so a future ruling to divide omnibus budget legislation or to prevent its future passage is technically possible. As O'Brien and Bosc explain in *The House of Commons Guide to Procedure and Practice* "While good procedure requires that there be consistency in the interpretation of practice and in the application of standing orders, Speakers have never shied away from creating new precedents when faced with an apparent contradiction between standing orders and contemporary values."¹¹¹ Further, a future Speaker may not need to break the speaker's precedent on omnibus legislation entirely to rule to prevent the passage of omnibus budget legislation. Theoretically, a Speaker could make a ruling to either divide budget bills that contain non-financial provisions, or else rule them procedurally inadmissible. At the same time they could still leave the House to decide its own rules on non-budget omnibus legislation. As was discussed in chapter three, omnibus bills and omnibus budget bills have different consequences for the integrity of parliamentary democracy; non-financial omnibus bills are more benign than their budgetary counterparts. It is the application of budgetary procedure to the many non-budgetary amendments included in omnibus budgets that makes them damaging to parliamentary democracy. This is the hook that a Speaker could use to rule against omnibus budget legislation, without outlawing the passage of omnibus bills entirely. Concentrating his or her ruling on omnibus budget legislation, rather than omnibus legislation in general might be a more palatable option for a Speaker who is reluctant to stray too far outside the bounds of neutrality.

As numerous points of order have been brought against omnibus budget legislation, there is certainly scope for an activist Speaker to rule against their passage. The Speakers who have presided over the passage of the budget legislation that concerns this thesis (1994-2013), Peter Milliken and Andrew Scheer, have been reluctant to set precedents on omnibus budget bills. This leaves the effectiveness of this method at the mercy of future Speakers, it depends entirely how they chose to rule on future omnibus budget legislation. The impact of a ruling to divide or prevent the passage of omnibus budget legislation would be considerable. Simply

¹¹¹ O'Brien and Bosc, *The House of Commons Procedure and Practice*, 262.

the Speaker would rule against any government who tried to pass omnibus budget legislation. Further, governments may think twice about even trying to pass such a stunt to avoid the embarrassment of having their legislation rejected or divided by the Speaker.

Amendments to the standing orders.

The “long established practice” of leaving the House to make its own rules on the procedural admissibility of omnibus budget bills necessitates changes to the Standing Orders of the House of Commons to establish firm rules on budget legislation.

As was pointed out in chapter three, the scope of budget legislation is currently governed by convention. It is the purview of governments to ensure that they introduce budget legislation that fits with the original intent of the scope of budget bills as “...short, non-contentious and useful mechanisms for implementing changes announced in the budget speech.”¹¹² For the House to amend the standing orders a motion to change them must receive unanimous consent.¹¹³ The standing committee on House procedural affairs is responsible for conducting an in-depth review of any changes to the standing orders. After reviewing the existing standing orders and proposals for change, it tables its annual report in the House.¹¹⁴ The House Procedural Affairs committee is the most likely genesis of a standing order to stop omnibus budgets.

Of course, the effectiveness of this method depends on the willingness of the House and Procedural Affairs committee to recommend amendments to the standing orders in their annual report to the House. The majority of members on the committee are government backbenchers and their willingness to put forward amendments to the Standing orders and in their annual report to parliament is governed by how loyal they are to their party. As explained before, omnibus budget bills are a very attractive procedural device for governments, and passing rules to prevent their future passage might lead to heavy discipline for committee members who table or vote in favour of such revisions to the standing orders. A further roadblock to amending the standing orders is that politician who make political promises to change the rules to prevent the passage of omnibus budget legislation have reneged on those statements. Political commentator, John Ivison, shrewdly observed that

¹¹² Franks, “The Canadian House of Commons: Reform and Adaptation,” 88.

¹¹³ O’Brien and Bosc, *The House of Commons: Procedure and Practice*,

¹¹⁴ O’Brien and Bosc, *The House of Commons: Procedure and Practice*,

despite loud opposition to omnibus budget bills from the Liberal benches during the passage of C-38 in 2012, and promises to prevent them if they won a future government, the fact is that the Party had passed several omnibus budget bills during its tenure in power from 1994-2006.¹¹⁵ PM Stephen Harper, who presided over some particularly large omnibus budgets from the period 2006-2013, voiced similar concerns when he was leader of the opposition. Harper described C-4, passed in 1994, as a “kitchen sink” bill, despite the fact it only comprised 24 pages and included 1 non-budgetary amendment.¹¹⁶ It seems then that we ought to take promises for reform on the part of political leaders with a grain of salt.

Other jurisdictions have made provisions to prevent the passage of both omnibus budget bills and omnibus bills in general.¹¹⁷ Again, *Erskine May*, the guide to the rules of procedure and practice of the UK House of Commons recommends that budget bills should not include provisions so far outside of the scope of financial legislation that they are “indefensible.”¹¹⁸ In 2012 there was some movement in the U.S. Congress to prevent the passage of omnibus bills with the introduction of the “One Subject at a Time Act.” This act attempts to stop the practice of including multiple provisions in a single bill by limiting each bill to relate to only one subject.¹¹⁹ The bill was unsuccessful but offers a guide to the sort of rule that needs to be in place to stop omnibus budget bills.

If the standing orders of the House were changed to prevent the inclusion of non-budgetary amendments in financial legislation, then the result would be quite simple. Governments would be prevented from passing omnibus budget bills. If a government was bold enough to try such a move, a Speaker would be able to refer to a clear rule in the standing orders that prohibits the passage of omnibus budget legislation, and the bill would be procedurally inadmissible. Again, the political consequences of having a budget rejected by the Speaker might deter governments from even considering omnibus budget legislation. Changing the standing orders to prevent the future passage of omnibus budget legislation would be the most straight forward way to break the precedent towards governments including greater non-

¹¹⁵ John Ivison, “The Opposition Shares the Blame for Creating Omnibus Bill Mess,” *National Post*, June 11th, 2012, <http://fullcomment.nationalpost.com/2012/06/11/john-ivison-the-opposition-shares-the-blame-for-creating-omnibus-bill-mess/>.

¹¹⁶ ¹¹⁶ Canada. *House of Commons Debates* (Mr. Stephen Harper), March 25th 1994, <http://openparliament.ca/debates/1994/3/25/>.

¹¹⁷ Massicotte, “Omnibus Bills in Theory and Practice,” 14

¹¹⁸ Seely, “The Budget and Finance Bill,” 5.

¹¹⁹ Massicotte, “Omnibus Bills in Theory and Practice,” 15.

financial amendments in budget legislation. The likelihood of such a change, however, depends on the independence of MPs, which is dealt with next.

Empowering MPs

The House of Commons is the first opportunity to prevent the passage of omnibus bills. In particular, MPs on the government side in a majority are the “first line of defence” when it comes to acting against damaging parliamentary practices like the passage of omnibus budget legislation. Following on from this, it seems as though the most feasible tool to curb the effects of omnibus budget legislation is by enhancing the role of parliament, and by extension members of parliament, through procedural reforms to make members more independent. Not only would this lead to greater and more direct legislative accountability over the “public purse”, it may impede the ability of future governments to pass omnibus budget legislation. There is no substitute for a healthy and independent-minded backbench when it comes to the scrutiny, deliberation and improvement of bills passed through parliament. It is the most direct method of keeping the government accountable. Not only would MPs be more likely to reject omnibus legislation if they were more independent but they would be empowered to enact other measures to prevent the passage of omnibus budget legislation. For example, the Standing Committee on House and Procedural Affairs might be more inclined to propose reform of the Standing Orders surrounding omnibus budgets if they were not so heavily disciplined by their parties.

This measure returns to the tension that is present in most discussions on parliamentary reform; between legislative efficiency and the right of members to scrutinise, deliberate on and amend legislation. The pendulum has swung far in the direction of legislative efficiency. Omnibus budget legislation is an extreme device for legislative efficiency, which impedes this function.

To illustrate how party discipline figures here, consider this useful thought experiment: if Members of the House were independent of parties, would the omnibus budget bills have been passed? I contend that they would not. Unfortunately, this imaginary situation would facilitate logrolling, mean a lack of direction in national budgetary policy, which would be equally problematic. A happy medium between legislative efficiency and executive dominance on the one hand and on the other a healthy scrutiny role fits the standard of parliamentary democracy outlined at the beginning. Additionally, the government would get

nothing done; the withholding of funds is common in the U.S. Congress, and this has negative effects on the economy as a whole.

Unfortunately, as chapter two of this thesis explains, party discipline has become a problem in Canada - Canadian MPs do not have sufficient independence to fulfill their scrutiny, accountability and deliberative functions. In the United Kingdom, where the role of a backbench MP is generally viewed as meaningful, there are institutional mechanisms in place to ensure backbenchers have a sufficient scrutiny and accountability role. Some other examples are the imposition of a backbench business committee, which allows backbench MPs to bring forward subjects for debate. Further standing committees, staffed by backbenchers, are influential in policy debates. MPs are able to subpoena people to committees, and this often creates a media sensation. All of this makes the legislative role of an MP much more rewarding, and at the very least it emphasises the legislative role of MPs. One of the probable reasons that omnibus budget legislation is unique to Canada is because the more powerful backbenchers in other parliamentary democracies would not allow omnibus budget legislation to pass.

One positive step towards backbench empowerment is a private member's bill entitled *Act to amend the Canada Elections Act and the Parliament of Canada Act* tabled by Michael Chong MP. Nicknamed the "Great Reform Act", this bill contains provisions to amend the Canada Elections Act to remove the ability of the party leadership to overturn the candidacy of individuals chosen by their local riding associations. The threat of having one's candidacy rejected by the party leadership is a very effective method of party control over members. Chong himself explained that: "If you know that the leader may not sign your papers in the next election or may in fact kick you out of caucus, that is going to colour your judgment about whether or not you're going to support the party on a particular vote."¹²⁰ Transferring this role to local party associations may reduce the power of party leaders, and in turn may heighten the independence of backbench members. The bill further establishes clear rules for the party caucuses to review and remove their leader. The practice of party members outside of the parliamentary caucus voting for the party leader has been a fixture of Canadian politics since 1919 when it was first used in the Liberal leadership convention. As Aucoin, Jarvis and Turnbull have pointed out the "most significant effect of this change, intender or not, was to

¹²⁰ Aucoin, Jarvis and Turnbull, *Democratising the Constitution*, 116.

provide the party leader with greater security as leader by eliminating the caucus's ability to remove a party leader."¹²¹ Giving MPs better clarity on how to review their caucus leadership would make the party leader more accountable to their caucus.

As of Spring 2014 this bill has only passed first reading in the House so it is impossible to determine the likelihood of its success. The signs look positive however, especially since the "Reform Act" has been tabled in a climate in which there seems to be some potential for parliamentary reform in favour of greater independence (and consequentially a better scrutiny and accountability role for MPs.) This is not only present in the academic literature, MPs themselves have signaled an appetite for reform. That most of these proposals for reform have been initiated by government members is very promising in the context of improving parliamentary democracy. It signifies that these reformers recognise that first, they have a scrutiny and accountability function, second that they value this role enough to speak out in spite of the iron rod of party discipline they are subject to, third, that they corroborate the worries about excessive party discipline that are cited in the academic literature. On this last point, the articulation of these worries from MPs themselves means that the subject of parliamentary reform is not just a worry voiced by academics and interest groups but instead has practical implications for change in the conduct of the House. This appetite for reform may improve the prospects of Chong's bill in passing.

An indication of the backbench willingness for reform was a motion by MP Stephen Woodworth to create a committee to examine when life begins. The impetus behind Woodworth's motion was to start a conversation on the permissibility of abortion in Canada. Coined the "backbench Spring" by the media, this was widely interpreted as a signal that the socially conservative roots of the Reform Party had seeped through the iron wall of party discipline. This dissent was forgotten for a brief period until another Conservative MP, Mark Warawa, also of reformist bent, put forward a motion to condemn the practice of sex-selective abortion. This motion was deemed unvotable by the House Procedural Affairs committee. In protest Warawa put forward a point of order deriding the committee's decision. Speaker Scheer's ruling in response to Warawa's point of order is an interesting development for the role of members; it set a precedent that MPs could catch the eye of the Speaker by standing up to speak. Before this ruling, another feature that distinguished Canada from other

¹²¹ Aucoin, Jarvis and Turnbull, *Democratising the Constitution*, 115.

Westminster systems is that members statements and questions had to be submitted to the Speaker by the party whips. This practice originated from a request by Speaker Jeanne Sauve in 1974 that whips put forward the names of the MPs making members statements/ answering questions that day so she didn't forget the names of the members. This stifled the ability of members to ask questions and make statements without the approval of their whip however. In the UK, members stand up to catch the eye of the speaker. The ability to "catch the eye of the speaker" places the power to speak in the House firmly with backbenchers, as opposed to their caucus whips.

Turning a career on the backbenches into a desirable role is important in this context as the struggle for a cabinet position is one method government caucuses use to keep their members in check. To be clear, this reform does not imply that backbench members ought to be entirely independent of their parties. Overall, these institutional reforms are meant to make the role of a backbench MP more fulfilling and meaningful. The health of responsible government rests on having a watchful government backbench, particularly when the government acts in such a way that is damaging to the budget process and parliamentary democracy in general. A watchful parliament is fundamental in enacting other reforms to prevent the passage of omnibus budget legislation, and any other legislative device that skirts the rules in the future.

If Chong's *Act to Amend the Canada Elections Act and the Parliament of Canada Act* is successful, it would align Canada's parliament more closely with that of the UK. Chong's bill would make the party leadership much more attuned to the caucus, and consequentially allow caucus members more independence from their party leader. This legislative independence would ensure that MPs are better able to fulfill their scrutiny and accountability role outlined in chapter two of this thesis. Turnbull, Jarvis and Aucoin put a modern twist on this procedure by suggesting that the non-parliamentary party membership exercise a veto on the caucus's choice.¹²² The inclusion of this veto allows these suggestions to be more relevant to the modern political climate, which puts more emphasis on popular democracy.

¹²² Jarvis, Turnbull and Aucoin, *Democratising the Constitution*, 237.

The Westminster system is very flexible. Chong's reforms do not compromise the spirit of responsible government. Indeed, these measures will ensure that the House returns to its original function, which is to review, scrutinize and occasionally amend legislation. For this, members, including backbenchers on the government side, must be somewhat independent. As C.E.S. Franks states, the House of Commons is in need of more understanding than reform.¹²³ I would argue that both complement the other; reforms must be made to ensure members better understand their scrutiny and accountability role. Further, empowered MPs will be the bedrock of other efforts to stop omnibus budget bills. Without a strong backbench MPs will be unwilling and unable to enact many of these reforms, like amending the standing orders.

Exploring omnibus budget legislation is an excellent departure for reform of parliament. The passage of budget legislation that is large in size and scope illustrates that the pendulum has swung too far in the direction of legislative efficiency; the executive is dominant over a weak parliament. That this problem is centred around budget legislation, which was a vital historical component in the development of Westminster democracy, makes it all the more important to study the implications of omnibus budget legislation and how its passage can be prevented.

¹²³ Jonathan Malloy, "The Responsible Government Approach and its Effect on Canadian Legislative Studies," *Canadian Study of Parliament Group* no.5 (November 2002), 3.

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APPENDIX A TABLE OF DATA ON BUDGET LEGISLATION , 1994-2013

Table 1 includes the following data from budget bills from 1994-2013: name of bill, whether it was passed under a majority or minority, date of introduction to parliament and date of royal assent, number of pages, number of amendments to acts only tangentially related to budgetary matters. The table displays the length of time each budget bills was debated for from 2003 until 2013, and also the average number of minutes each page was considered for in the House.

Table 1

Bill	Parliament	Minority or Majority?	Date tabled in House of Commons	Date passed in House of Commons	Length of consideration by MPs in House of Commons	# of Pages	# of amendments, unrelated to budgetary matters	Proportionality (Mins per Page)
C-17	35 th	Maj	22-Feb-94	15-Jun-94	N/A	24	1	N/A
C-76	35 th	Maj	27-Feb-95	22-Jun-95	N/A	49	2	N/A
C-31	35 th	Maj	06-Mar-96	20-Jun-96	N/A	56	4	N/A
C-93	35 th	Maj	18-Feb-97	25-Apr-97	N/A	61	1	N/A
C-36	36 th	Maj	24-Feb-98	18-Jun-98	N/A	92	0	N/A
C-71	36 th	Maj	16-Feb-99	17-Jun-99	N/A	32	1	N/A
C-32	36 th	Maj	28-Feb-00	29-Jun-00	N/A	35	2	N/A
C-49	37 th	Maj	10-Dec-01	27-Mar-02	N/A	124	1	N/A
C-28	37 th	Maj	18-Feb-03	19-Jun-03	038 h 54 mins	144	3	16
C-30	37 th	Maj	23-Mar-04	14-May-04	021 h 36 mins	64	0	20
C-33	38 th	Min	23-Mar-04	13-May-05	009 h 16 mins	82	0	06
C-43	38 th	Min	23-Feb-05	29-Jun-05	039 h 09 mins	120	0	19
C-13	39 th	Min	02-May-06	22-Jun-06	023 h 48 mins	198	0	07

Table 1.2

Bill	Parliament	Minority or Majority?	Date tabled in the House	Date passed in House of Commons	Length of consideration by MPs in House of Commons	# of Pages	# of amendments, unrelated to budgetary matters	Proportionality (Mins per Page)
C-28	39 th	Min	02-May-06	22-Jun-07	019 h 28 mins	140	0	08
C-52	39 th	Min	19-Mar-07	22-Jun-07	041 h 22 mins	146	1	17
C-28	39 th	Min	30-Oct-07	14-Dec-07	025 h 45 mins	378	2	04
C-50	39 th	Min	26-Feb-08	18-Jun-08	045 h 00 mins	152	3	17
C-10	40 th	Min	27-Jan-09	12-Mar-09	044 h 42 mins	552	8	04
C-51	40 th	Min	27-Jan-09	15-Dec-09	022 h 13 mins	60	0	22
C-9	40 th	Min	04-Mar-10	12-Jul-10	064 h 30 mins	904	14	04
C-47	40 th	Min	04-Mar-10	15-Dec-10	026 h 00 mins	152	2	10
C-3	41 th	Maj	06-Jun-11	20-Jun-11	008 h 28 mins	58	3	08
C-13	41 th	Maj	06-Jun-11	15-Dec-11	044 h 31 mins	658	16	04
C-38	41 th	Maj	25-Mar-12	29-Jun-12	161 h 33 mins	452	46	21
C-45	41 th	Maj	18-Sep-12	14-Dec-12	079 h 34 mins	430	25	11
C-60	41 th	Maj	21-Mar-13	26-Jun-13	049 h 00 mins	128	17	22
C-4	41 st	Maj	21-Mar-13	9-12-13	052h 48 mins	322	22	10