

From the Innocuous to the Evocative: How Bill Naming Manipulates and Informs the Policy Process

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TABLE OF CONTENTS

Abstract.....	viii
Chapter I: Introduction.....	11
Main Research Questions.....	13
Chapter II: Rationale and Methods.....	18
America’s Tipping Period.....	18
Westminster and Holyrood Differences and Developments.....	29
How and Why Jurisdictions Were Chosen.....	34
UK and US Comparability.....	38
Constitutional Differences Between UK and US.....	43
Initial Explanation and Justification of Methods Chosen.....	50
Qualitative Concerns.....	54
Quantitative Concerns.....	60
Five Classifications of Bill Names.....	62
Humanized Naming.....	63
Desirable Characteristic Naming.....	65
Overt Action Naming.....	66
Combination Naming.....	67
Descriptive or Bland Naming.....	68
Other Methodological Considerations.....	69
Sample/Participants.....	69
Interview and Questionnaire Procedures.....	74
Determining Quality.....	81
Hypotheses.....	85
Qualitative.....	85
Quantitative.....	88
Chapter III: Literature Survey.....	90
The Evolution of Evocative Language in State Policymaking.....	94
The Importance of Language in Policymaking.....	100
How Political Marketing Tactics Affect Short Bill Titles.....	111
The Structural Context of Lawmaking and Political Consultants... ..	115
Plastic Words and Re-contextualisation.....	118
Insights from Psychological Research and Evocative Naming.....	121
The Constitutionality of Insufficient, Uninformative and/or Misleading Short Bill Titles in the US.....	130
The Necessary and Proper Clause.....	131
Historical Background.....	132
Restricting Modifier or Ratchet to Enhance Congressional Power.....	135
Necessary without Being Proper.....	138
Determining ‘Proper’ Meaning.....	140
Historical Meaning.....	141
Contemporary Meaning of Proper.....	144
Constitutional Conclusion.....	148

Chapter IV: Formal Parliamentary Procedure in Three Jurisdictions.....	150
The Westminster Parliament.....	151
Formal/Informal Rules or Policies on Short Titles.....	153
Opportune Moments in the Parliamentary Process.....	165
Spotlight: Private Members’ Bills.....	172
The Scottish Parliament.....	175
Formal Rules or Policies on Short Titles.....	179
The US Congress.....	186
Formal Rules or Policies on Short Titles.....	190
Opportune Moments in the Legislative Process.....	197
Spotlight 1: Personalised Bills as Commemorations.....	207
Spotlight 2: State Legislature Rules and Recommendations for Short Titles.....	214
Chapter V: Results.....	227
Hypothesis 1.....	228
Hypothesis 2.....	238
Hypothesis 3.....	248
Hypothesis 4.....	259
Hypothesis 5.....	272
Hypothesis 6.....	283
Hypothesis 7.....	291
Hypothesis 8.....	299
Hypothesis 9.....	305
Hypothesis 10.....	313
Hypothesis 11.....	323
Hypothesis 12.....	329
Hypothesis 13.....	334
Hypothesis 14.....	343
Hypothesis 15.....	356
Hypothesis 16.....	358
Hypothesis 17.....	359
Hypothesis 18.....	360
Chapter VI: Discussion and Conclusions.....	363
Developing an Analysis of the Constitutional Place of Short Bill Titling.....	363
Qualitative Interview Portion – Comments and Themes.....	372
All Countries.....	372
Westminster and the Scottish Parliament.....	384
The Westminster Parliament.....	388
The Scottish Parliament.....	395
The United States Congress.....	401
Quantitative Survey- Short Discussion.....	409
Short Title Recommendations.....	412
Limitations and Possible Future Studies.....	415
Concluding Statements.....	419
Appendix I: US Bill Survey Results.....	425

Appendix II: Interview Question Examples.....	438
Appendix III: Questionnaire Examples.....	444
Appendix IV: Quantitative Survey Statistical Details.....	456
Bibliography.....	464

LIST OF TABLES

Table 1: Short Bill Title Length (US).....	24
Table 2: Number of Humanised and Acronym Short Titles (US).....	26
Table 3: Bills Initiated/Enacted/Failed in the Scottish Parliament.....	178
Table 4. Acts on Name Changing, by Congress.....	207
Table 5. Overall Favourability for Naming Types (Scotland).....	357
Table 6. Overall Favourability for Naming Types (US).....	358
Table 7. Why the Measure Was Supported, by Name (Scotland).....	359
Table 8. Why the Measure Was Supported, by Name (US).....	360
Table 9. Percentage that Wanted More Information, by Name (Scotland).....	361
Table 10. Percentage that Wanted More Information, by Name (US).....	361
Table 11. Short Title Length Model Summary.....	425
Table 12. Short Title Length ANOVA.....	425
Table 13. Short Title Length Coefficients.....	426
Table 14. Humanised Bill Model Summary.....	426
Table 15. Humanised Bill ANOVA.....	427
Table 16. Humanised Bill Coefficients.....	427
Table 17. Acronym Bill Model Summary.....	428
Table 18. Acronym Bill ANOVA.....	428
Table 19. Acronym Coefficients.....	428
Table 20. Evocative Words Used.....	430
Table 21. Evocative Words Model Summary.....	431
Table 22. Evocative Words ANOVA.....	431
Table 23. Evocative Words Coefficients.....	431
Table 23.1 Evocative Terms Coefficients (cont.).....	431
Table 24. Technical Words Used (93rd – 110th Congress).....	433
Table 25. Technical Words Model Summary.....	433
Table 26. Technical Words ANOVA.....	433
Table 27. Technical Words Coefficients.....	434
Table 27.1 Technical Terms Coefficients (cont.).....	434
Table 28. Evocative and Technical Use (%).....	435
Table 29. Evocative & Technical Use % (Including Humanised Names).....	436
Table 30. Bills on Name Changing Model Summary.....	437
Table 31. Bills on Name Changing ANOVA.....	437
Table 32. Bills on Name Changing Coefficients.....	437
Table 33. Chi-Square Tests for Favourability.....	456
Table 34. Model Fitting Information for Favourability.....	456
Table 35. Likelihood Ratio Tests for Favourability.....	457
Table 36. Parameter Estimates for Favourability.....	457
Table 36.1. Parameter Estimates for Favourability (cont.).....	458
Table 37. Chi-Square Test For Why Measure Was Supported.....	458
Table 38. Model Fitting Information for Why Supported.....	459
Table 39. Likelihood Ratio Tests for Why Supported.....	459
Table 40. Parameter Estimates for Why Supported.....	460
Table 40.1 Parameter Estimates (cont.) for Why Supported.....	461
Table 41. Chi-Square Tests for More Information.....	461

Table 42. Model Fitting Information for More Information.....	462
Table 43. Likelihood Ratio Tests for More Information.....	462
Table 44. Parameter Estimates for More Information.....	462
Table 44.1 Parameter Estimates (cont.) for More Information.....	463

LIST OF FIGURES

Figure 1. Evocative v. Technical Language Used (93rd – 111th Congress).....	28
Figure 2. (Evocative + Humanised) v. Technical Language (93rd – 111th Congress).....	29
Figure 3. Example of the Contents page of the Protection of Freedoms Bill (2010-12).....	163
Figure 4. A Copy of the content page of the Scottish Schools (Parental Involvement) Act 2006 (asp8).....	183
Figure 5. Stages in the Passage of a Public Bill (Scotland).....	186
Figure 6. A Copy of the First Page of the Stop Online Piracy Act (2011).....	195
Figure 7. Favourability for Naming Types (Scotland).....	357
Figure 8. Why the Measure Was Supported, by Name (Scotland).....	360

ABSTRACT

This thesis analyses the legal status and the importance of short titles in the legislative processes of the Westminster Parliament, the Scottish Parliament, and the US Congress. Through a large quantitative survey of US short titles that spanned over 30 years and 18 Congresses, it was demonstrated that there has been a paradigm shift in the way the US Congress titles its bills, in which it transitioned from a largely descriptive, technical style to a wider range of styles, among which a more explicitly evocative style became both acceptable and frequently used. Such titles are permeating the legislative process and the US statute book with what I argue is overly political language, and are blurring the lines between proselytizing and what has historically been regarded as a formally descriptive (not political) element of legislative drafting. Conversely, save for a few choice titles, the Westminster Parliament and Scottish Parliament continue to employ mostly descriptive short titles, similar to the previously innocuous style of the US Congress. From a contemporary and historical perspective in all three jurisdictions, the short titles of bills have been viewed as relatively insignificant reference points for those engaged and/or interacting with legislation from a drafting, legislative process or larger legal or political perspective, and have subsequently received little attention in the academic community.

By employing a comparative research approach primarily focused on a cross-disciplinary literature review and hypothesis testing through three empirical projects, this thesis draws upon both qualitative and quantitative methods of research to answer the primary research questions. The main empirical method used was a qualitative

analysis of semi-structured interviews with lawmakers, staffers, bill drafters, government officials and media members from all three jurisdictions. Although the legal status of short bill titles in each jurisdiction differed, many individuals from each jurisdiction viewed short bill titles as a considerably important part of the lawmaking process. Also, to varying degrees in each jurisdiction, interviewees repeatedly offered the opinion that short titles: may affect a bill's chances of becoming law; are at times misleading; serve as more than referential points; at times may pressure legislators to vote for a bill; may be used as framing devices; and sometimes employ language that is not justified during the legislative process. These support the proposition that short titles have legislative process and political implications.

The interviews support the legislative process analysis of the three jurisdictions that Chapter IV discusses, which is that the Scottish Parliament operates with the strictest regulations in regards to short title accuracy. In addition to being the only jurisdiction studied that openly endorses a 'proper form' in which bills must be drafted (which explicitly mentions short titles), many Scottish interviewees stated that such titles were important in the legislative process for different reasons than US and Westminster interviewees, stressing descriptive legal accuracy and taking care in regard to bill scope, among other concerns.

The thesis' quantitative survey portion includes separate surveys and sample populations from the US and Scotland. Though data collection was marred by an error in the US, thus hindering the analysis of such data, the Scottish results suggested that short bill titles may have psychological effects when analysing the favourability of proposals: all four evocative naming types produced higher favourability ratings than bland titles, and some results were statistically significant. However, the naming types

were not statistically significant in assessing why the measure was supported or whether participants desired more information on bills.

In response to the absence of short bill title standards in the US Congress and Westminster Parliament, and with the aim of describing how the Scottish Parliament standards might be made more thorough, the thesis provides short title recommendations that are suitable for all three jurisdictions. These recommendations largely accentuate proper form for language and processes in order to ensure short title accuracy, and have the potential, if applied consistently, to significantly reduce the chances of overtly political or evocative language entering the country's legislative processes or statute books. While acknowledging that in all three institutions studied short bill titling may be in many respects a small aspect of the monumental and lengthy policy process, this thesis advances the proposition that it is considerably important to those who interact with and encounter legislation frequently, and that preventing evocative language from entering short bill titles is a benefit for the legislative processes of all three jurisdictions.

Chapter I: Introduction

It could be persuasively argued that the most evocatively titled piece of legislation from British history is the Magna Carta ('Great Charter'), granted by King John in 1215.¹ Beyond this Britain's short titles have remained blandly innocuous, almost to the point of boredom. They certainly do not compare to other common law jurisdictions, such as their commonwealth partner Australia (e.g. the More Jobs, Better Pay Bill, the Fair Prices and Better Access for All Bill)² or, as we shall see in much more detail, their transatlantic neighbour the United States (e.g. USA PATRIOT Act of 2001,³ No Child Left Behind Act of 2001⁴). In fact, most major pieces of major UK legislation throughout the years do not even come close to resembling the evocative tones of the 'Great Charter'. The Petition of Right 1628 contained laws on taxation, arbitrary imprisonment and use of martial law commissions.⁵ The Act of Settlement 1700 included provisions related to throne succession.⁶ Yet both of these monumental Acts had quite modest titles. Other major constitutional Acts were innocuously titled as well,

¹ Magna Carta 1215; Bradley, A.W. & Ewing, K.D. (2011). *Constitutional and Administrative Law* (15th Ed.) Harlow, UK: Pearson, p. 13.

² Orr, Graeme. (2000). Names Without Frontiers: Legislative Titles and Sloganeering. *Statute Law Review* 21(3), 188-212.

³ USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat 272. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d107:H.R.3162:>

⁴ No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat 1425. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d107:H.R.1:>

⁵ The Petition of Right 1628 c.1; Bradley, A.W. & Ewing, K.D., *op. cit.*, 13. Although this is a monumentally important Act that uses the word 'right' in the title, it is important to note that the political significance of the word then was not as strong as it is today. The creation of the Universal Declaration of Human Rights (UDHR) in 1948 popularized the idea of 'rights' on an international level, and created a 'human rights movement' around the world that continues to this day. (C. Devine, C.R. Hansen, & R. Wilde, (1999). *Human Rights: The Essential Reference*. Oryx, Phoenix, AZ: Oryx, p. 59)

⁶ Act of Settlement (1700) c.2

such as the Union with Scotland Act 1707,⁷ the Parliament Acts 1911⁸ and 1949,⁹ the Crown Proceedings Act 1947,¹⁰ the European Communities Act 1972,¹¹ the Scotland Act 1998,¹² and the Human Rights Act 1998.¹³ So while other parliaments in common law legal systems appear to be using evocative short titles for more than referential purposes, Westminster, and the relatively recently formed Scottish Parliament, have refrained from doing so. Thus, it begs the question as to how and why short titles in both jurisdictions have remained relatively undisturbed, and also whether or not short titles bear much significance in both Westminster and the Scottish Parliament past their referential designations.¹⁴

The United States Congress has a very different approach in regard to short titles. Though once under British colonization, and having adapted many legislative and bill drafting functions from the Westminster Parliament, the US Congress has developed an approach to contemporary short bill titling which seems to serve larger legal, political and cultural functions. Overall, Congressional short titles appear to have become more accustomed to employing evocative, rather than descriptive, language. This phenomenon will be explored more in the following chapters. However, many of these small fragments of law serve as ubiquitous placards in American culture, as can be seen from examples such as the No Child Left Behind door entryways attached to

⁷ Union with Scotland Act 1707 c.40

⁸ Parliament Act 1911 c.13

⁹ Parliament Act 1949 c.103

¹⁰ Crown Proceedings Act 1947 c.44

¹¹ European Communities Act 1972 c.68

¹² Scotland Act 1998 c.46

¹³ Bradley, A.W. & Ewing, K.D., *op. cit.*, p. 15; Human Rights Act 1998 c.42

¹⁴ Some material above taken from: Jones, Brian Christopher. (2012). Research Note: Do Short Titles Matter? Surprising Insights from Westminster and Holyrood. *Parliamentary Affairs*, 65(2), 448-462.

the Department of Education;¹⁵ the American Recovery and Reinvestment Act road signs appearing next to construction sites;¹⁶ or the speciality websites that are created for Bill proposals and Acts.¹⁷ These are just a few illustrations of Congressional short bill titles that have gained prominence outwith their referential statutory functions. However, it will be demonstrated at the beginning of Chapter II that this use of short titling in the US Congress was not always the case.

Main Research Questions

As will be seen in the coming chapters, the naming of legislation historically has not attracted much attention from the legal or academic communities. However, because of the increase in evocative short titles in the US throughout recent decades, compared to the more descriptive, slowly changing nature of legislative titling trends in Westminster and the Scottish Parliament, the study of such phenomena require academic attention. It is suggested below that there may be a legislative and political strategy behind evocative titles. Also, it is possible that legislators, media members, and the general public are affected in various ways by such titles, though it is unknown to what extent. For the main empirical element of my research I carried out interviews with individuals engaged in the legislative process, from legislators to civil servants to journalists. In

¹⁵ These were inserted after passage of the No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat 1425.

¹⁶ These were inserted after passage of the American Recovery and Reinvestment Act of 2009. Pub. L. No. 111-5, 123 Stat. 115. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:h.r.00001:>

¹⁷ The ‘American Recovery and Reinvestment Act’ was given its own website and own symbol, located at: www.recovery.gov. And the proposed American Jobs Act was given its own website as well, at: www.americanjobsact.com.

addition to my interviews, I also carried out a survey of selected groups from the UK and US public, seeking their reactions to a set of hypothetical short titles. Below I outline the important research questions this thesis seeks to answer.

Given the differential states of short bill titles in Westminster, the Scottish Parliament and the US Congress, this thesis poses two major research questions: (1) *what is the legal status and importance of bill naming in the legislative context in the three jurisdictions studied and (2) what are the major political and psychological implications of such names (i.e. does evocative bill naming have any type of effects on those that encounter such titles, such as politicians and/or media members)?*¹⁸

The two questions above structure the thesis, but there are a number of other enquiries this study attempts to answer, many of which are proposed, developed and partially analysed throughout the first four chapters of this thesis. The first major research question of this study is in regard to the legal status and importance of short titles in the legislative context. Related to this question are additional questions, such as:

- Are titles still merely referential points for those interacting with legislation (i.e. those engaged in debate or citing a particular law), or do they serve other purposes?

¹⁸ It should be said at the outset that one of the main research questions has altered since the beginning of my doctoral studies. Originally, the first primary research question was in relation to why and how the short titles of bills transformed from a bland referential style to a more evocative style of naming. However, I felt that this constrained the other jurisdictions involved in the study, such as Westminster and the Scottish Parliament, as their short bill titles still largely employ the more bland referential style. In addition to being a better and more challenging research question (at least in my opinion), changing the question to ascertain legal status and importance is more inclusive of all jurisdictions studied. It however is not uncommon for qualitative researchers to alter their major research questions during the course of study. In fact, Diefenbach states that, “Qualitative researchers should felt[sic] encouraged to ask themselves throughout the whole research process whether they ask the right questions, to change these whenever it seems appropriate, to challenge their even most basic assumptions and to see ‘things’ from as many different perspectives as possible”. (Diefenbach, Thomas. (2009). Are Case Studies More Than Sophisticated Storytelling? Methodological Problems of Qualitative Empirical Research Mainly Based on Semi-structured Interviews. *Quality & Quantity*, 43, 875-894.) The change did not undermine the validity of the research, as the original question regarding the change in naming style was still asked to many interviewees in all jurisdictions. However, it did make a small change to the focus of the research, as the new focus examined bill naming in both a more practical and larger context.

- What is the purpose, nowadays, from a legislative or constitutional perspective, of short titles? How have different jurisdictions conceived of a purpose and how do these conceptions differ?
- Does an evocative short title format conform to any applicable constitutional principles in the UK, Scotland and the US?
- Is bill naming required to adhere to legislative drafting norms or standards in the three jurisdictions studied?
- Are certain names explicitly misleading in scope, intention, and perceived overall effectiveness of the intended bill in any manner?
- Should bill naming be reformed in any manner, either in the UK, Scotland or the US?
- Does evocative naming have any positive or negative effect on the measures' chances of becoming law?

Aside from legal status and importance of such titles, other questions must be answered related to the political and psychological implications of short titles, and specifically if/how evocative naming affects those that encounter such titles. The following questions are in regard to these elements:

- What are the advantages and disadvantages of evocative bill naming? In what roles in particular?
- Why are names of certain bills titled with more evocative language than other bills (especially those concerning similar topics)?
- Are there circumstances in which politicians draft names in any way to persuade or manipulate people (be they colleagues, media members, or the general public) into favouring the legislation?

- How has the phenomenon of evocative titling developed with regard to the framing, symbolic politics and marketing techniques?
- Has communication over legislative short titles between politicians and the media changed over the past few decades, and if so, how?

Chapter II of this thesis primarily focuses on the methods employed in examining this thesis' research questions in the three jurisdictions studied. However, the rationale for choosing the jurisdictions is more thoroughly developed at the beginning of the chapter, and some of the main constitutional and parliamentary differences between legislatures are explored. Chapter III of this thesis is a critical literature survey that examines the relatively small amount of research and practical knowledge that is available on the topic. Some political and psychological research related to short titles is also examined in this chapter to better understand the strategy and potential implications of evocative bill naming. Finally, the constitutionality of evocative short bill titles in the US Congress is analysed. Chapter IV focuses on the parliamentary rules and procedure of short titles in Westminster, the Scottish Parliament and the US Congress. Each of these jurisdictions has different regulations and drafting techniques in regard to short titles, and thus each is examined individually. Also, more of the intricate constitutional differences between legislatures are detailed, as are key opportune points in the legislative processes of each institution in relation to short titles. The results of this project are provided in Chapter V, and evaluated in order of hypothesis. Finally, Chapter VI provides a discussion of my research findings and analysis, which includes a section attempting to develop a constitutional analysis of short bill titles, and sections on bill title phenomena at both the collective and individual levels. A short piece devoted to the quantitative survey results is provided next. After this, a section setting out short titling recommendations for all jurisdictions

is included, followed by a section reflecting on the project's research limitations. The thesis ends with concluding statements.

Chapter II: Rationale and Methods

This chapter begins by further describing the rationale for studying the three jurisdictions. Firstly, a survey of Congressional short titles from 1973 – 2010 is provided, which demonstrates how such titles changed in recent decades. Next, some differences in titling between the US Congress and Westminster are demonstrated, and some potential developments in Westminster and the Scottish Parliament are noted. The constitutional similarities and differences between each system are then discussed from a broad perspective. Next there is an explanation and justification of methods chosen, followed by an introduction to this thesis' classification system of short titles, all of which are involved in the quantitative portion of the thesis. Structure and quality of the thesis are given consideration after that, while presentation of the sample/participants and procedures for both the qualitative and quantitative portion is subsequently detailed. The chapter ends by detailing the eighteen hypotheses for the thesis.

America's Tipping Period

While the language of UK and Scottish short titles has remained fairly similar throughout the years, the short title situation in the US has changed drastically. An examination of some major pieces of legislation prominent in American history reveals

that many of the nation's most important bills were graced with very bland short titles, designed to do little more than summarise the bill's contents. The first-ever session of the US Congress passed the Judiciary Act of 1789 which constructed the entire federal court system, a monumental achievement.¹ The same is true for more recent history. The 1913 Federal Reserve Act,² the 1935 Social Security Act,³ the 1961 Peace Corps Act,⁴ the Civil Rights Act of 1964⁵ and the landmark Voting Rights Act of 1965⁶ are just a few of the most important and historically controversial pieces of legislation the United States Congress has ever produced. Put simply, they are innocuously-titled bills that easily inform lawmakers and the public about the bill's contents.⁷

In contrast, an examination of some noteworthy laws over the past two decades shows a drastic difference in naming style. Many bills (especially major ones) are cloaked in evocative language, seemingly designed to garner sympathy, support and political advantage. Many of these titles appear to be crafted as policy statements rather than provide information on what the proposed measure is. Some prominent examples from the 1990s are: the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990;⁸ the Judicial Improvements Act of 1990,⁹ the Religious Freedom

¹ Judiciary Act of 1789, 1 Stat. 73. Text of the Act available here: http://www.constitution.org/uslaw/judiciary_1789.htm;

² Federal Reserve Act, Pub. L. No. 63-43, 38 Stat. 251; also see: Smale, Pauline H. (1995). Board of Governors of the Federal Reserve System: History, Membership, and Current Issues. *Congressional Research Service*, p. 1.

³ Social Security Act, Pub. L. No. 74-271, 49 Stat. 620; also see: Quadango, Jill S. (1984). Welfare Capitalism and the Social Security Act of 1935. *The American Sociological Review*, 49(5), p. 634.

⁴ Peace Corps Act, Pub. L. No. 87-293, 75 Stat. 612.

⁵ Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241.

⁶ Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437.

⁷ Some material in this section is taken from: Jones, Brian Christopher. (2012). Drafting Proper Short Titles: Do States Have the Answer? *Stanford Law and Policy Review*, XXIII (print details forthcoming).

⁸ Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Pub. L. No. 101-381, 104 Stat. 576, Available at: [http://thomas.loc.gov/cgi-bin/bdquery/z?d101:S2240](http://thomas.loc.gov/cgi-bin/bdquery/z?d101:S2240;); In fact, this name is

Restoration Act of 1993,¹⁰ the Congressional Accountability Act of 1995,¹¹ the Antiterrorism and Effective Death Penalty Act of 1996,¹² the Personal Responsibility and Work Opportunity Reconciliation Act of 1996¹³ and the Defense of Marriage Act.¹⁴

Yet the past decade provided perhaps the most evocatively named laws the US Congress has ever bequeathed to the statute book, with such titles as: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001,¹⁵ the No Child Left Behind Act of 2001,¹⁶ the Prosecutorial Remedies and Other Tools to end the Exploitation of Children

an example of a short title that positively affected bill passage. The passage is fully reiterated later in the Discussion Chapter, but an excerpt is provided here as evidence of the power that some short titles may hold in the legislative process. USMM6 (United States Media Member 6) stated the following: ‘I can actually give you an example of a story where the name of a bill did change, and led to passage ... They changed the name of the bill in the Senate from the HIV and whatever act to the Ryan White Act, as a means of pressuring Dan Coats into supporting the bill. Because if Coats didn’t support the bill, which was named after his own constituent, this poor kid dying of AIDS, he’d look horrible. And in the end Coats supported the bill’. More on how the titles for this particular bill changed as it travelled through the legislative process is available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d101:SN02240:@@T>.

⁹ Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d101:HR05316:TOM:/bss/d101query.html>

¹⁰ Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d103:h.r.01308>:

¹¹ Congressional Accountability Act of 1995, Pub. L. No. 104-1, 109 Stat. 3. Available at: <http://www.govtrack.us/congress/bill.xpd?bill=s104-2>. This Act was very symbolic in nature, as it was the first passed by the 104th Congress after the big Republican sweep in the 1994 elections. Given the Republican focus on ‘responsibility’ and ‘accountability’ at the time, it set the tone for this parliamentary session, and promoted such language in future Bills and Acts as well. The act made the legislature subject to a plethora of Acts they were previously immune to, including the Fair Labor Standards Act of 1938, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and many more.

¹² Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d104:s.00735>:

¹³ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d104:HR03734>:

¹⁴ Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d104:h.r.03396>:

¹⁵ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat 272.

¹⁶ No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat 1425.

Today (PROTECT) Act,¹⁷ the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act of 2003,¹⁸ the Unborn Victims of Violence Act 2003,¹⁹ the Adam Walsh Child Protection and Safety Act of 2006²⁰ and the Emergency Economic Stabilization Act of 2008.²¹

The 111th Congress continued the evocative title trend, providing titles such as: the Lilly Ledbetter Fair Pay Act of 2009,²² the American Recovery and Reinvestment Act of 2009,²³ the Serve America Act,²⁴ the Helping Families Save Their Homes Act of 2009,²⁵ the Credit Card Accountability Responsibility and Disclosure (Credit CARD) Act of 2009,²⁶ the Patient Protection and Affordable Care Act²⁷ and the Dodd-Frank

¹⁷ Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act, Pub. L. No. 108-21 117 Stat. 650. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:SN00151:@@L&summ2=m>

¹⁸ Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act of 2003, Pub. L. No. 108-187, 117 Stat. 2699. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:s.00877:>

¹⁹ Unborn Victims of Violence Act 2003 (Laci and Connor's Law), Pub. L. No. 108-212, 118 Stat. 568. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:H.R.1997:>

²⁰ Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:h.r.04472:> Adam Walsh was a child murder victim who's case was given widespread media attention in the US. There was a film made about his story, and his dad went on to host a very popular show called 'America's Most Wanted'.

²¹ Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:H.R.1424:>

²² Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5. Available at: <http://www.thomas.gov/cgi-bin/bdquery/z?d111:SN00181:>

²³ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115.

²⁴ Serve America Act, Pub. L. No. 111-13, 123 Stat. 1460. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR01388:>

²⁵ Helping Families Save Their Homes Act of 2009, Pub. L. No. 111-22, 123 Stat. 1632. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:s.00896:>

²⁶ Credit Card Accountability Responsibility and Disclosure (Credit CARD) Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:H.R.627:>

²⁷ Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:H.R.3590:>

Wall Street Reform and Consumer Protection Act.²⁸ It seems from these examples that the recent trend in evocative naming is not abating and only appears to be gaining in importance. Thus, a serious investigation into the frequency of occurrence, characteristics, implications and the legality of such names is needed.

The short examination of US titles above demonstrates that many names are overtly tendentious, displaying actions the sponsors would like to proclaim the bill accomplishes (e.g. defending marriage, protecting children, or saving homes), while also listing alleged bill characteristics, such as whether measures are ‘responsible’ or ‘accountable’, or inherently ‘American’. Many bills display ideologically incontestable statements through the wording of their titles: one is either patriotic or not; one is either for helping families save their homes or one is against it; one is either for credit card accountability or against it; one is either for consumer protection or against it. This framing technique downplays the fact that these pieces of legislation are complicated proposals designed to tackle sometimes intractable social and economic problems, and essentially boils them down to an exceedingly positive policy statement.

Although the above survey of Congressional short titles displays some interesting changes for major bills throughout the years, it does not systematically demonstrate that such titles became more evocative. In order to demonstrate the tipping period for American short titles, a targeted quantitative study of such names was performed from the 93rd – 111th Congress (1973 – 2010). The results are summarized in greater detail below and in Appendix I, and demonstrate that: short titles have become more popular in relation to long titles; Bills on name changing in the US Congress have increased dramatically throughout the years; short title length has increased; the number and prevalence of, in particular, ‘humanised’ bill titles has increased; the

²⁸ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:H.R.4173:>

number of short titles employing acronyms has increased; the number of evocative words used throughout the period studied has increased; and the number of descriptive, non-evocative words has dramatically decreased throughout the period studied. Additionally, these data were analysed using statistical techniques showing that many of the changes are indeed highly significant. According to my literature and grey material search, this is the first quantitative study of US short titles demonstrating that approaches applied to the naming of legislation have radically changed over the past four decades.

The United States' official Congressional website, 'Thomas', contains electronic records on all public laws from the 93rd Congress (1973 – 74) to the present day.²⁹ This time period is ideal for the current study, as I previously surmised that the onset of evocative naming arose in the 1990s. Thus, acquiring information dating from 1973 – 2010 provides a better picture of just how naming evolved in these crucial years during Congress. In total I classified 10,167 public laws from the time period studied.³⁰ Although I mostly focused on those laws that employed short titles, I also charted the use of long titles, and especially those long titles that were in regard to naming.³¹

The main findings revealed below are that the length of short titles show a consistent increase when the titles of early Congresses are compared to the later ones, and that the prevalence of humanised and acronym words in such titles has also increased in the time period studied. Additionally, and most importantly, it is demonstrated that evocative words have been on the increase since the 93rd Congress, while technical or non-evocative words have fallen sharply over such a time. All the above findings have been analysed through simple linear regressions, thus comparing

²⁹Available at: www.thomas.loc.gov

³⁰ This figure includes resolutions.

³¹ There will be more information provided on long titles that are in regard to naming in Chapter IV.

between Congresses, and all of the findings are significant at the .01 level. The data thus reveals that from 1973 – 2010 Congressional short titles went through quite a transformation, as new types of naming methods were emphasised, while the technical wording of previous years fell out of favour.

Firstly, the study shows that short title length has increased from the 93rd – 111th Congresses, as can be seen in the table below. The length in wording increases from over five words per title (94th & 95th), to over seven words per short title after the 100th Congress (1987 – 88), and has consistently fluctuated around this mark since. The 109th Congress (2005 – 06) carries short titles to near the eight word mark.

Table 1: Short Title Word Length (US)³²

<u>Congress</u>	<u>Short Titles</u>	<u>Words</u>	<u>Word Avg.</u>
93	246	1650	6.71
94	155	820	5.29
95	211	1101	5.22
96	201	1365	6.79
97	132	871	6.60
98	178	1174	6.60
99	170	1183	6.96
100	237	1724	7.27
101	250	1876	7.50
102	257	1979	7.70
103	206	1556	7.55
104	160	1149	7.18
105	213	1596	7.49
106	302	2207	7.31
107	183	1423	7.78
108	251	1812	7.22
109	253	2011	7.95
110	205	1544	7.53
111	197	1456	7.39

The use of humanised and acronym titles also becomes more prevalent in Congress over the past couple decades. I will say a little at this point to introduce the

³² Research performed by author. Based on a linear regression, the change in word average is significant at the .01 level. Details of the regression are available in Appendix I.

five classifications of styles of bill naming which I develop and explain in Chapter II. Briefly, for present purposes, when I refer to ‘humanised’ titles what I am referring to is a style of evocative titles which are personalised, and thus employ an individual in the title of the Act. Acronym titles, on the other hand, can be placed under any type of short title style, depending on what the acronym spells.³³

Though this trend was posited through the interview data in the results chapter below, no previous research has verified this in any quantified analysis. The increases in such titles, however, can be seen in Table 2 below. The use of both humanised and acronym titles gained momentum throughout the time period studied. Humanised titles abruptly increased in popularity in the 105th Congress (1997 – 98) and have remained popular since, while acronym titles gradually increased from the 99th Congress onward. Both the humanised and acronym data are significant at the .01 level in linear regressions.

³³ For example, the USA PATRIOT Act of 2001 would be put under the ‘desirable characteristic’ label, which are titles that employ some type of positive characteristic that can be applied to the bill, the sponsors and co-sponsors and ultimately to those who vote for it. A name such as the GIVE Act would be classified under the ‘overt action’ category, as there is a specific action that the Act is performing.

Table 2: Number of Humanised and Acronym Short Titles (US)³⁴

<u>Congress</u>	<u>Humanised</u>	<u>Acronym</u>
93	4	1
94	0	0
95	2	3
96	0	0
97	3	0
98	5	0
99	2	3
100	8	2
101	8	2
102	8	5
103	7	1
104	4	2
105	14	3
106	20	7
107	13	6
108	13	9
109	18	11
110	22	16
111	12	17

The increase in humanised and acronym titles do not tell the whole story. It appeared from the earlier survey of Congressional titles that evocative terms such as ‘improving’, ‘prevention’, ‘protection’, etc. were creeping into short titles, while more technical terms, such as ‘amend’ seemed to be decreasing.³⁵ Based on the five short title classifications developed for this thesis that I discuss in Chapter II, for the purpose of this study I chose twelve ‘evocative’ terms and six ‘technical’ terms to track from the 93rd Congress forward. The ‘evocative’ terms included were: control, prevention, protection, efficient, effective, America, responsible, accountable, improve, security,

³⁴ Research performed by author. Both increases in humanised and acronym bill titles are significant at the .01 level in linear regressions. More detailed information is located in Appendix I.

³⁵ I place these terms in the category of ‘overt action’ style of naming.

modernise and emergency; and the ‘technical’ terms chosen were: reform, amend, correct, authorise, revision, appropriation.³⁶

In terms of how I chose the words for both the ‘evocative’ and ‘technical’ terms, these were determined after I had amalgamated each and every public Act from the 93rd – 111th Congress, which totaled 10,167 Acts. The words chosen for the evocative section largely complement the classifications used in the quantitative portion of this thesis. The technical terms chosen are those in which closely correspond with the technical aspects of short title drafting, including those which are common in legal and statutory language. For example, in the US House legislative drafting guide, ‘amend’ is recommended in the use of a short title when a new bill is amending a particular piece of legislation. The ‘evocative’ terms are those which have very little connection to the technical aspects of legislative drafting and statutory language, and seem to provide short titles with language that is a bit more tendentious and/or promotional. It should further be noted that I based the choice of terms selected on my analysis of the entire database of the public Acts to ensure that I had not inadvertently excluded evocative or technical terms that appeared in the earlier Congressional titles and whose absence might have thus skewed the data.

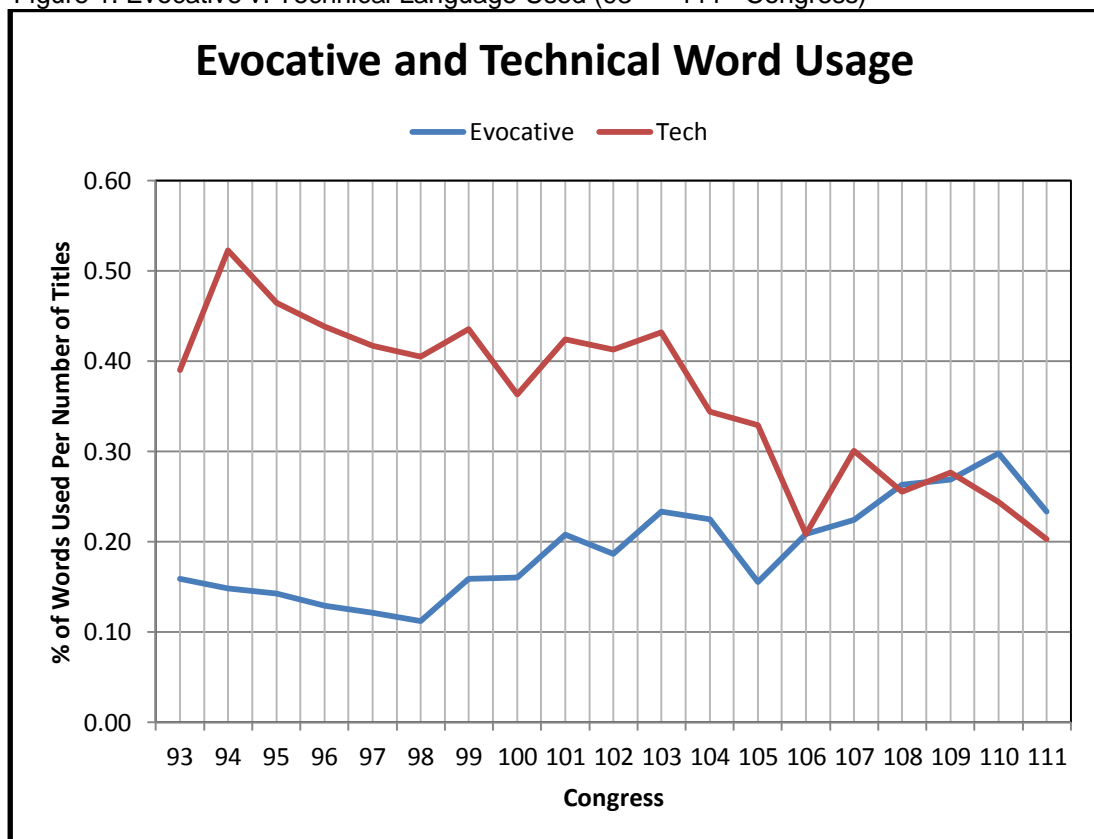
Results of the analysis complemented the finding above that congressional short titles have become more evocative.³⁷ As Figure 1 shows below, the incidence of evocative word usage steadily increased from the 97th Congress to the 101st Congress (1981 – 1991). After this time, it was not uncommon for evocative wording to get pushed up to the sixty word mark. Conversely, the figure shows how technical words during the time period studied peaked in the 94th Congress (1975 – 76), given that over

³⁶ Of course, all derivatives of words were used as well (i.e. secure, securing, etc.).

³⁷ Appendix I contains tables of both evocative words and technical words and how often they were used in each Congress.

fifty percent of statutes contained a technical word; yet they gradually declined from that point forward. This decrease has much to do with the word ‘amend’, which was used in the thirty, forty and fifty range from the 93rd – 103rd Congress (1973 – 1994), but was not used more than eighteen times from the 104th Congress onward. As evidenced in the figure below, evocative words now outnumber technical words in short titles for public Acts, because they overtook such titles in the 110th and 111th Congress. In the 110th Congress thirty percent of short titles used some type of evocative word, which was a high for the time period studied.

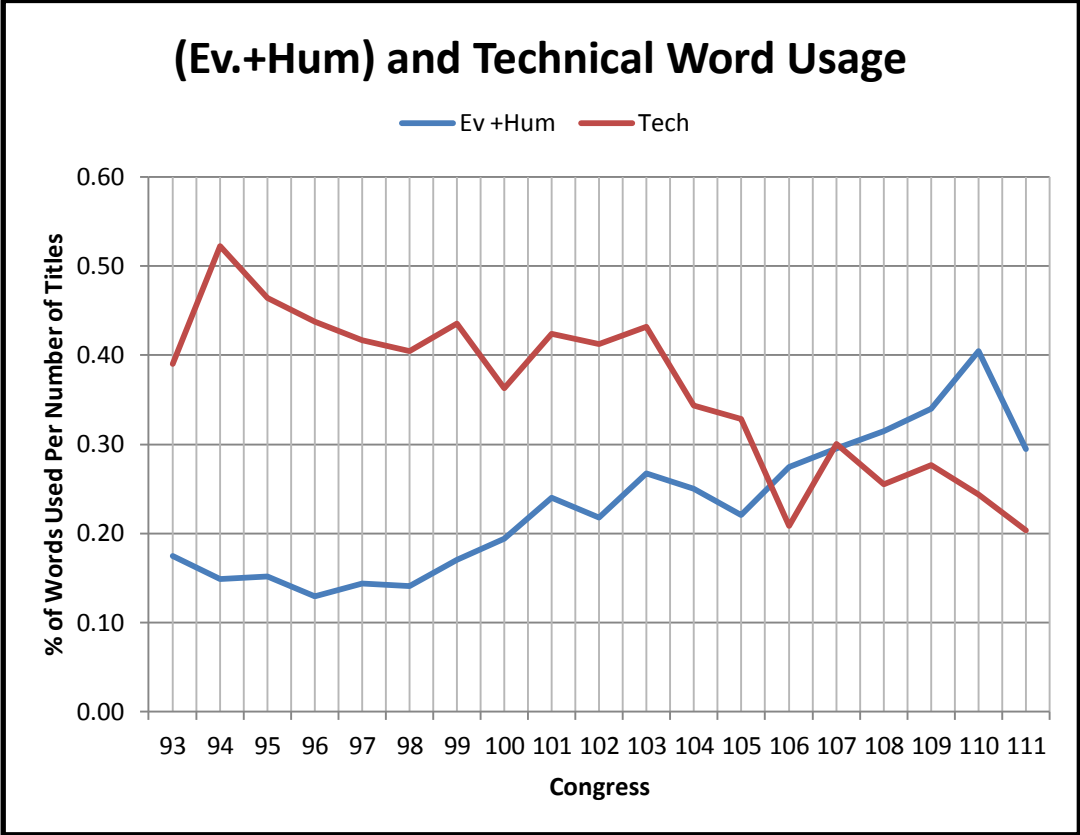
Figure 1. Evocative v. Technical Language Used (93rd – 111th Congress)



The figure above is also skewed by the fact that humanised titles are not included in the analysis. If these are included, the discrepancy and rise of evocative titles is much more apparent, as seen in Figure 2 below. In this figure evocative wording in short titles overtakes technical wording in the 106th Congress, and though it ties technical language percentage in the 107th, it sharply rises above such language in

successive Congresses. The 110th Congress reached the 40th percentile for evocative language, which is where technical language was routinely found before it took its steep fall after the 103rd Congress. The figure also demonstrates the steep fall in evocative language that took place in the 111th Congress, although technical language during that same Congress also fell.

Figure 2. (Evocative + Humanised) v. Technical Language (93rd – 111th Congress)



Westminster and Holyrood Differences and Developments

Chapter IV deals with the many differences between legislative drafting, legislative procedure, and the legal status of short titles between jurisdictions. However here I will

provide a short introduction by way of some high-profile examples of how Westminster and Holyrood differ from the US Congress. The language used in short titles by each institution after major world incidents was visibly dissimilar. After the terrorist attacks of September 11th, 2001 Congress responded by passing the shockingly evocative Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001,³⁸ while Westminster passed the blander (but not altogether unevocative) Anti-Terrorism, Crime and Security Act of 2001.³⁹ Moreover, Westminster's response to the London bombings of July 2005 did not come until March of 2006, when they enacted the innocuously titled Terrorism Act 2006.⁴⁰ When the latest financial crisis was first perceived in 2008 Congress passed the Emergency Economic Stabilization Act of 2008,⁴¹ while the UK enacted the Banking (Special Provisions) Act 2008.⁴² The US government's later response to the financial crisis was the Dodd-Frank Wall Street Reform and Consumer Protection Act,⁴³ while the UK's other major responses to such matters were the Banking Act 2009⁴⁴ and the Corporation Tax Act 2009.⁴⁵

³⁸ USA PATRIOT Act of 2001, Pub. L. No. 107-110, 115 Stat 1425.

³⁹ Anti-terrorism, Crime and Security Act 2001 c.24. Available at: http://www.legislation.gov.uk/ukpga/2001/24/pdfs/ukpga_20010024_en.pdf

⁴⁰ Terrorism Act 2006 c.11. Available at: http://www.legislation.gov.uk/ukpga/2006/11/pdfs/ukpga_20060011_en.pdf

⁴¹ Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765.

⁴² Banking (Special Provisions) Act 2008 c.2. Available at: http://www.legislation.gov.uk/ukpga/2008/2/pdfs/ukpga_20080002_en.pdf

⁴³ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376.

⁴⁴ Banking Act 2009 c.1. Available at: http://www.legislation.gov.uk/ukpga/2009/1/pdfs/ukpga_20090001_en.pdf

⁴⁵ Corporation Tax Act 2009 c.4. Available at: http://www.legislation.gov.uk/ukpga/2009/4/pdfs/ukpga_20090004_en.pdf; additionally, although it can be argued that the US legislation amounted to a stronger legislative response to the financial crisis, it was not so radically different to merit such variation in the use of language.

But examples lie in other unexpected areas as well, such as mental health.

While the subject is not usually a radically divisive issue by most standards, Congress apparently feels the need to employ evocative language in titles relating to such matters, while Westminster titles appear more measured. For example, Congress passed the Combating Autism Act in 2006,⁴⁶ while Westminster passed the more functionally-titled Autism Act 2009.⁴⁷ Moreover, the UK passed the innocuously titled Mental Health Act 2007,⁴⁸ while next year the US Congress approved the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.⁴⁹ Thus, even subjects or issues that are not usually politically divisive may display vastly different short titles in the respective legislatures.

Nonetheless, some examples from Westminster in the past decade border on the evocative rather than functionally descriptive, such as: the Children, Schools and Families Act 2010;⁵⁰ the Apprenticeships, Skills, Children and Learning Act 2009;⁵¹

⁴⁶ Combating Autism Act of 2006, Pub. L. No. 109-416, 120 Stat. 2821. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:SN00843:>

⁴⁷ Autism Act 2009 c.15. Available at: http://www.legislation.gov.uk/ukpga/2009/15/pdfs/ukpga_20090015_en.pdf

⁴⁸ Mental Health Act 2007 c.12. Available at: http://www.legislation.gov.uk/ukpga/2007/12/pdfs/ukpga_20070012_en.pdf

⁴⁹ Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, Pub. L. No. 110-343, 122 Stat. 3881. Title V, Subtitle B of Act. Available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ343.110.pdf. Interestingly, these two Acts were similar in some respects, but produced opposite outcomes. The UK bill declassified dependence on alcohol or drugs as a disorder, while the US bill mandates insurance companies to cover ‘disorders’ such as alcohol and drug dependence and other disorders, such as anorexia.

⁵⁰ Children, Schools and Families Act 2010 c.26. Available at: http://www.legislation.gov.uk/ukpga/2010/26/pdfs/ukpga_20100026_en.pdf. See footnote 61 regarding the name change of the respective Department.

⁵¹ Apprenticeships, Skills, Children and Learning Act 2009 c.22. Available at: http://www.legislation.gov.uk/ukpga/2009/22/pdfs/ukpga_20090022_en.pdf

the Green Energy (Definition and Promotion) Act 2009;⁵² the Counter-Terrorism Act 2008;⁵³ the Safeguarding Vulnerable Groups Act 2006;⁵⁴ the Violent Crime Reduction Act 2006;⁵⁵ and the Prevention of Terrorism Act 2005.⁵⁶ In addition, there is currently a Protection of Freedoms Bill that is very close to receiving the Royal Assent.⁵⁷ The UK has also been branding and rebranding their ministerial departments as of late. The Department of Education was changed to the Department of Children, Schools, and Families, but then changed back to the Department of Education when the new coalition government came into power in May of 2010;⁵⁸ the Department of National Heritage is now the Department of Culture, Media and Sport,⁵⁹ and the Department of Business and Regulatory Reform is now the Department of Business, Innovation and Skills (which un-coincidentally spells 'BIS' in acronym form).⁶⁰ The renaming of these departments utilizes positively-connoted words that do not necessarily provide a clearer picture of what their functions are, and they all seem to come in three-word

⁵² Green Energy (Definition and Promotion) Act 2009 c.19. Available at: http://www.legislation.gov.uk/ukpga/2009/19/pdfs/ukpga_20090019_en.pdf

⁵³ Counter-Terrorism Act 2008 c.28. Available at: http://www.legislation.gov.uk/ukpga/2008/28/pdfs/ukpga_20080028_en.pdf

⁵⁴ Safeguarding Vulnerable Groups Act 2006 c.47. Available at: http://www.legislation.gov.uk/ukpga/2006/47/pdfs/ukpga_20060047_en.pdf

⁵⁵ Violent Crime Reduction Act 2006 c.38. Available at: http://www.legislation.gov.uk/ukpga/2006/38/pdfs/ukpga_20060038_en.pdf

⁵⁶ Prevention of Terrorism Act 2005 c.2. Available at: http://www.legislation.gov.uk/ukpga/2005/2/pdfs/ukpga_20050002_en.pdf

⁵⁷ Protection of Freedoms Bill 2010-12. The bill started in the Commons and, as of this writing, is in the final stage before the Royal Assent, that of Consideration of Amendments. If it were to pass, it would be only the second time in the history of Westminster that the word 'freedom' was used in the short title of an Act. The previous instance was the Freedom of Information Act 2000 c.36.

⁵⁸ Department of Education. Available at: <http://www.education.gov.uk/>. Also, see footnote 57, which was titled the Children, Schools and Families Act.

⁵⁹ Department of Culture, Media and Sport. Available at: <http://www.culture.gov.uk/>. The most recent 1997 name change was a formality, while the 1992 name change included merging different departments.

⁶⁰ Department of Business, Innovation and Skills. Available at: <http://www.bis.gov.uk/>

characterisations. Though perhaps a bit more subtle, such changes may be a restrained development of US-style practices in the UK. This departmental re-titling could be an interesting subject for future research, but is beyond the remit of this thesis.⁶¹

Since its first session in 1999 the Scottish Parliament's legislative short titles have been very similar to Westminster's titles, and thus usually more descriptive than evocative. In essence they have to be, because the two Parliaments share a statute book. Yet the Scottish Parliament has produced a few statutes in which the language of the short title seems to be evocative beyond what the content requires, such as: the Ethical Standards in Public Life Act 2000;⁶² the Standards in Scotland's Schools etc. Act 2000;⁶³ the Protection from Abuse (Scotland) Act 2001;⁶⁴ the Protection of Children (Scotland) Act 2003;⁶⁵ the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005;⁶⁶ and the Protection of Vulnerable Groups (Scotland) Act 2007.⁶⁷ These titles, compared to older statutes in the UK, are more likely to display what I call 'overt action' techniques,⁶⁸ which include a verb or action in the short title of the act

⁶¹ Indeed, similar to the Ryan White example above, a Westminster drafter reveals in the Results Chapter (Hypothesis 2) that a change in a short title for a Private Members' Bill may likely have been the reason that it was passed.

⁶² Ethical Standards in Public Life etc. (Scotland) Act asp 7. Available at: http://www.opsi.gov.uk/legislation/scotland/acts2000/asp_20000007_en_1

⁶³ Standards in Scotland's Schools etc. Act 2000 asp 6. Available at: http://www.opsi.gov.uk/legislation/scotland/acts2000/asp_20000006_en_1

⁶⁴ Protection from Abuse (Scotland) Act 2001 asp 14. Available at: http://www.legislation.gov.uk/asp/2001/14/pdfs/asp_20010014_en.pdf

⁶⁵ Protection of Children (Scotland) Act 2003 asp 5. Available at: http://www.legislation.gov.uk/asp/2003/5/pdfs/asp_20030005_en.pdf

⁶⁶ Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 asp 9. Available at: http://www.legislation.gov.uk/asp/2005/9/pdfs/asp_20050009_en.pdf

⁶⁷ Protection of Vulnerable Groups (Scotland) Act 2007 asp 14. Available at: http://www.legislation.gov.uk/asp/2007/14/pdfs/asp_20070014_en.pdf

⁶⁸ See below in regard to the nomenclature of various bill naming techniques identified by this thesis.

(e.g. ‘protection’, ‘prevention’). This is a very popular style of bill naming. A further examination of Scottish short bill titles will be given in the chapters that follow.

How and Why Jurisdictions Were Chosen

After studying a multitude of legal systems over extended periods of time, Alan Watson came to the conclusion that ‘the picture that emerged was of continual massive borrowing and longevity of rules and institutions. The prevalence of borrowing suggested a key to understanding patterns and change. Systems related to one another through a series of borrowings might in their similarities and differences indicate the impetus to growth’.⁶⁹ The types of borrowing Watson speaks of are ubiquitous in legal systems around the world, and as will be seen below and throughout the remaining chapters, are apparent in the institutions studied in this thesis. The US short title survey above demonstrated that the US Congress changed their short bill titling from a more bland style to more evocative style, and that a degree of change could potentially be on the horizon for Westminster. Therefore, as this thesis develops, it is important to keep in mind Watson’s observations regarding rules, institutions, legal systems and change.

This thesis’ comparative legal approach between three jurisdictions was challenging but rewarding. It has been argued that comparative law provides richer solutions than do single-nation inquiries, and also that ‘[l]egislators all over the world have found that on many matters good laws cannot be produced without the assistance

⁶⁹ Watson, Alan. (1993). *Legal Transplants: An Approach to Comparative Law* (2nd Ed). Athens, GA: Georgia University Press, p. 107.

of comparative law'.⁷⁰ Cotterrell observes that comparatists (i.e. comparative law researchers) often concern themselves with practical, specific questions related to particular systems;⁷¹ and this comparative work does so in many respects, as shall be seen below. Also, in terms of the insight gained from employing such a perspective, it has been said that the 'primary aim of comparative law, as of all sciences, is knowledge',⁷² and Kennedy asserts that the 'whole point of a knowledge project like comparative law is to affect what people know'.⁷³ This latter quote is especially apt for this thesis, as it appears that short bill titles have been taken for granted in the three jurisdictions studied and not been given much academic attention. Individuals have often hinted at the fact that they may be significant at some level, just as drafters have noted their relative importance, but to date there has been very little empirical research on the subject.

From a related academic perspective many aspects of this thesis also touch the discipline of comparative politics, a field that is acknowledged as both a method and a subject of study. As a method, it is 'based on learning through comparison'; as a subject, it 'focuses on understanding and explaining political phenomena that take place within a state, society, country, or political system'.⁷⁴ Essentially there are no limitations to the number of countries, issues, or levels of analysis that can be

⁷⁰ Zweigert, Konrad & Kotz, Hein. (1998). *An Introduction to Comparative Law (3rd Ed.)*. Oxford, UK: Oxford University Press, p. 15-16.

⁷¹ Cotterrell, Roger. (2003). *Comparatists and Sociology*. In: Legrand, Pierre & Munday, Roderick. (2003). *Comparative Legal Studies: Traditions and Transitions*. Cambridge, UK: Cambridge University Press, p. 131.

⁷² Zweigert, Konrad & Kotz, Hein. (1998). *An Introduction to Comparative Law (3rd Ed.)*. Oxford, UK: Oxford University Press, p. 15.

⁷³ Kennedy, David. (2003). *The Methods and the Politics*. In: Legrand, Pierre & Munday, Roderick. (2003). *Comparative Legal Studies: Traditions and Transitions*. Cambridge, UK: Cambridge University Press, p. 409.

⁷⁴ Ishiyama, John T. (2012). *Comparative Politics: Principles of Democracy and Democratization*. West Sussex, UK: Wiley-Blackwell, p. 3.

performed within a particular study; given the ambitious nature of the field of comparative politics, similar to comparative law, it is no secret that such research is ‘demanding’.⁷⁵ Although the empirical element of the field is recognised by most to have its origins in Aristotle’s *Politics*,⁷⁶ in 1971 Arend Lijphart went through the pains of delineating comparative politics while it was still being established as a trusted academic approach.⁷⁷ Among his assertions were that comparative politics: was ‘definitely a method’ of study; was ‘one of the basic scientific methods, not *the* scientific method’ (emphasis in original); should be regarded as ‘a *method of discovering empirical relationships among variables*, not as a method of measurement’ (emphasis in original); and that the ‘comparative method is a broad-gauge, general method, not a narrow, specialized technique’.⁷⁸

Yet as fruitful as the comparative method may be at times, there are definite problems and limitations that accompany such research. Lijphart states that the main problem of the comparative method is: ‘many variables, small number of cases’.⁷⁹ This is also noted by Landman, who states that ‘if a study has too many unknowns (i.e. inferences or possible explanations) and not enough equations (i.e. countries or observations) then solving for the unknowns is problematic’.⁸⁰ Included in his main four points to reduce these problems, Lijphart suggests, among other things, that one

⁷⁵ Barrington, Lowell, Bosia, Michael J., Bruhn, Kathleen, Giaimo, Susan, & McHenry, Jr. Dean E. (2010). *Comparative Politics: Structures and Choices*. Boston, MA: Wadsworth Publishing, p. 2.

⁷⁶ Goodin, Robert E. & Klingemann, Dieter (Eds.). (1996). *A New Handbook of Political Science*. Oxford, UK: Oxford University Press, p. 307, citing Aristotle’s *Politics*, parts II & IV.

⁷⁷ Lijphart, Arend. (1971). Comparative Politics and the Comparative Method. *American Political Science Review*, 65(3).

⁷⁸ *Id.*, pp. 682-83.

⁷⁹ *Id.*, p. 685.

⁸⁰ Landman, Todd. (2011). *Issues and Methods in Comparative Politics* (2nd Ed.). London, UK: Routledge, chp.3, para. 8 (electronic book).

should '[f]ocus the comparative analysis on the "key" variables'.⁸¹ In order to minimise the inherent problems associated with comparative work, this study has attempted to focus on key variables (i.e. parliamentary rules in regard to naming, the roles of lawmakers and civil servants in titling bills, etc.) while attempting to answer the main research questions.

Another common problem that Landman points to is that '[t]oo often, both the choice of countries and the way in which they are compared are decided for reasons not related to the research question', and he further notes that, 'scholars must be attentive to the research question that is being addressed and the ways in which the comparison of countries will help provide answers'.⁸² Landman's focus on the centrality of the research question/s at hand while comparing countries was of particular importance to the construction of this thesis, as detailed below.

The choice of jurisdictions in this thesis was no coincidence.⁸³ Through a 'focused comparison' approach this study uses three jurisdictions to explore the main research questions in regard to short bill titles. It has been noted that a 'focus on one country or a few countries means that the researcher can use less abstract concepts that are more grounded in the specific contexts under scrutiny'.⁸⁴ Additionally, 'studies using this method are more intensive and less extensive since they encompass more of

⁸¹ Lijphart, Arend, *op. cit.*, p. 690.

⁸² Landman, Todd, *op. cit.*, part I, para. 1 (electronic book).

⁸³ Practically, my work in Washington D.C. from 2005-07 at the National Institute of Justice's International Center exposed me to a plethora of governments and laws around the world in relation to criminal justice matters. One of the countries that I was most frequently exposed to was Britain, and this repeated exposure led me to notice the discrepancy of short bill titles in Westminster compared to the US Congress. Given the legal and historical similarities that are more fully detailed below, I decided to pursue an academic examination of the incongruity in short bill titles between the institutions.

⁸⁴ Landman, Todd, *op. cit.*, chp. 2, para. 3 (electronic book).

the nuances specific to each country'.⁸⁵ Though there are many other variables that differ in regard to this study, as detailed below, the main concept of a 'short bill title' for bills (and subsequently statutes) in each jurisdiction studied is similar, and therefore readily comparable.

However, comparing international lawmaking institutions is problematic, because legislatures can take many forms.⁸⁶ Drewry notes that even conversations between highly specialised experts from relatively similar countries can 'quickly throw up very real difficulties of cross-national comparability'.⁸⁷ Given this difficulty, Drewry put forward three propositions to bear in mind while performing such research, which are: 'that the law-making function is not confined exclusively to the body that bears the title of the "legislature"'; 'that the "parliamentary" stages of the legislative process are just one part of the legislative process – and not necessarily the most important part'; and that 'a legislative process is continuous'.⁸⁸ These proposals were helpful when cutting through the multitude of variables presented by the three lawmaking institutions and attempting to ascertain the relevant and significant pieces of information that led to answering the main research questions.

The discussion below analyses the jurisdictions from a broad constitutional and lawmaking perspective in order to enable the key variables to become more readily discernible.

⁸⁵ *Id.*, chp. 2, (comparing few countries), para. 1 (electronic book).

⁸⁶ Wilson, Graham K. (2009). Congress in Comparative Perspective. 89 *B.U.L. Rev.*, p. 827.

⁸⁷ Drewry, Gavin. (2008). Law-Making Systems – How To Compare. *Statute Law Review*, 29(2), 100-110.

⁸⁸ *Id.*, pp. 105-06.

UK and US Comparability

The governments and institutions studied in this thesis have very real differences between them. Given how deeply intertwined the legal, social and cultural histories of the United States and the United Kingdom are, both nations have uniquely evolved throughout the years and have many distinguishable qualities. However, as a member of the US House Legislative Counsel once noted when speaking about the differences between Ireland and the US:

‘[t]hat is precisely why we can benefit from each other’s experience. So similar in many ways, we can by our differences gain perspective in order to detect what are the fundamental questions which we must answer in order to have a more effective legislative drafting operation’.⁸⁹

The sentiments of this US drafter are shared by others. The legislative process and the drafting of legislation is becoming a global interactive phenomenon. In 2002 a Canadian bill drafter penned an article revealing that his office has worked with a number of governments throughout the years, including both developed and undeveloped countries (i.e. France, Italy, Argentina, and Vietnam) and countries that are attempting to improve their overall legislative capabilities (Russia and China).⁹⁰ The consultation developing between these countries is surprising, because many of their societies, legal systems and especially lawmaking institutions are vastly different from one another. Nonetheless, they have sought outside consultation in order to ascertain best practices. Noting that this ‘globalization of legislative drafting’ is ‘not

⁸⁹ Bellis, M. Douglass. (2001). Drafting in the U.S. Congress. *Statute Law Review*. 22(1), 38-44.

⁹⁰ Bergeron, Robert C. (2002). Globalization of dialogue on the legislative process. *Statute Law Review*, 23(1), 85-90.

just a flash in the pan’, Bergeron concludes his article by acknowledging that though a rigid international uniformity of such practices is not likely to develop, a ‘crying need worldwide for experts in legislative drafting’ is expanding, and argues that the interaction between countries will only improve the constitutional implementation of individual states.⁹¹ Therefore interaction between experts will ensure that statutes are better drafted, which will in turn increase the likelihood that states are implementing their constitutions in ways they deem suitable. Jamieson believes that with the globalisation of legislative drafting the probability that statutes will resemble one another from jurisdiction to jurisdiction is likely to increase, thus giving rise to a so-called Global Statute.⁹² However the future of legislative drafting works out, it is very likely that experts from different countries will have more interaction with one another than they previously shared.

From afar the US Congress and Westminster Parliament may look quite similar: they both operate in a democracy; they both operate in common-law jurisdictions; many historical and social roots are undoubtedly linked with one another; they both have two chambers; bills travel from one house to the other; committees are usually the first major arbiter of proposals; one house usually controls most of the legislative output; the nomenclature both use is quite similar; many legislative steps are readily comparable; and the drafting of legislation is similarly congruous with one another. In fact, it has been acknowledged that the American founding fathers ‘could hardly avoid modelling some part of their new Congress on Westminster’,⁹³ because they ‘derived

⁹¹ *Id.*, p. 90.

⁹² Jamieson, Nigel. (2007). The Scots Statute – Style and Substance. *Statute Law Review*. 28(3), 182-198.

⁹³ McKay, William & Johnson, Charles W. (2010). *Parliament and Congress: Representation and Scrutiny in the Twenty –First Century*. Oxford, UK: Oxford University Press, p. 3.

their polities for the most part directly from England, and many of the men who created the US Constitution were veterans of colonial legislatures'.⁹⁴

Much of the founding nomenclature and legislative processes of Congress had much Westminster influence. When analysing the roots of the 'necessary and proper' clause in the US Constitution, an exercise that is performed in the next chapter, experts on the subject devoted more than two chapters in a manuscript to emphasise the similarities and differences between American and English drafting around that period, and how it could explain the contemporary significance of the clause.⁹⁵ The separation of powers doctrine detailed in the US constitution is said to be conceived from a tenet of British constitutional theory;⁹⁶ also is the common-law US legal system for that matter.⁹⁷ Although it is acknowledged in the next section on UK and US constitutional differences that these two institutions, Westminster and Congress, have since taken quite different paths in terms of both the constitutional significance and the place in which they operate in their own respective governmental systems, Bilder's discussion of the influence that the Laws of England had on the United States is compelling.⁹⁸ A

⁹⁴ *Id.*, p. 3.

⁹⁵ Lawson, Gary, Miller, Geoffrey P., Natelson, Robert G. & Seidman, Guy I. (2010). *The Origins of the Necessary and Proper Clause*. Cambridge, UK: Cambridge University Press.

⁹⁶ Bradley, A.W. & Ewing, K.D. (2011) *Constitutional and Administrative Law (15th Ed.)*. Harlow, UK: Pearson Education Limited, p. 82.

⁹⁷ For a deeper discussion of this see: Bilder, Mary Sarah (2004). *The Transatlantic Constitution: Colonial Legal Culture and the Empire*. Cambridge, MA: Harvard University Press.

⁹⁸ *Id.* She notes that the 'transatlantic constitution was our first constitution; it shaped the new country and in surprising respects continues to define the nation we share today' (p.11). For example, she notes how the right to a jury was a central tenet set forth in the Laws of England by the Magna Carta. When the US gained independence from England, laws such as these were questioned as to whether they were applicable or not in the new US states. She notes that this 'was the perfect test issue to discover whether rights accepted under the transatlantic constitution survived' (p. 188). In the end the judges declared that the 'Laws of the Land' did indeed protect this particular right, and this was applied to other laws such colonies had during colonial times. This led Bilder to conclude that the 'Revolution and independence had made "no change" to the legislature's inability to pass laws repugnant to such a fundamental part of "our legal constitution"' (p. 189), thus ensuring that the laws of England are still influential in US constitutional culture to this day.

Legislative Guide published for US citizens in 1853 which contains the standing rules of the House and *Jefferson's Manual*, among other documents, frequently mentions the House of Commons and the Laws of England when referring to Congressional business and parliamentary procedure.⁹⁹ Even modern UK and Scottish constitutional law texts devote space to concentrate on similarities and differences with the US constitution, something they do not do with many other countries, including many of their more proximal or commonwealth partners.¹⁰⁰ McKay and Johnson's book *Parliament and Congress*, which thoroughly details the similarities and differences between the two legislative bodies, is itself an example of the deep interest that individuals have in these two unique institutions.¹⁰¹

It is because of the association and comparability between these parliamentary bodies that they were chosen for study; each has deep historical and contemporary connections to one another in numerous ways. The US Congress' historical 'roots are in the soil of Westminster',¹⁰² and it should not be forgotten that '[w]hen the details of the origins and operations of the two principal legislatures in the Anglo-Saxon tradition have been teased out and their many differences explained, it would be a pity to lose sight of how much they have in common'.¹⁰³

⁹⁹ Burleigh, Joseph B. (1853) *The Legislative Guide* (4th Ed.). Philadelphia: Lippincott, Grambo & Co.; Included in this packet is a four page description entitled 'A Synopsis of English Legislation', which describes the English constitutional structure in place at the time, detailing the king's role in the lawmaking, and also the House of Peers and the House of Commons. This is likely included for the many references that the documents make to the Laws of England. No other governmental synopsis of any country is included in the document.

¹⁰⁰ Bradley, A.W. & Ewing, K.D, *op. cit.*; Himsworth, C M G & O'Neill, C M. (2009). *Scotland's Constitution: Law and Practice*. Sussex, UK: Bloomsbury Professional Limited, p. 21.

¹⁰¹ McKay, William & Johnson, Charles, *op. cit.*

¹⁰² *Id.*, p. 3.

¹⁰³ *Id.*, p. 9.

Constitutional Differences Between the UK & US

Though the historical ‘established point of comparison’ for both Westminster and the US Congress may indeed be one another,¹⁰⁴ the lawmaking bodies have major constitutional differences that must be acknowledged before this thesis can further proceed. Discussion of the differences between jurisdictions in terms of their legislative drafting policies and procedures, and also the differences in some parliamentary processes, is located in the following chapters.

The main constitutional difference between jurisdictions is that the UK and Scottish Parliaments operate within a parliamentary democracy, while the US Congress operates within a constitutional republic.¹⁰⁵ Both are forms of electoral liberal democracy, but just as the Presidential, Prime Ministerial, and First Minister duties in each system vary, thus so do the operations of the lawmaking institutions functioning within each system. In terms of executive/legislative relations, the US operates on ‘presidentialism’, while the relationship in the UK is one of ‘parliamentarism’.¹⁰⁶ There is more on executive/legislative relations below.

The constitutional bases of both the US and UK are also quite different, given that the UK has an uncodified constitution developed mainly from Acts of Parliament, administrative law and judicial precedent, while the US has a written Constitution created in 1787 and shaped through various amendments and court decisions.¹⁰⁷ In differing ways both states have a constitution today which accords weight to the

¹⁰⁴ Wilson, Graham, *op. cit.*, p. 831, citing: Wilson, Woodrow (1885). *Congressional Government: A Study in American Politics*, pp. (58-60, 128-30 & 223-28).

¹⁰⁵ And, many may characterize the United Kingdom as a ‘constitutional monarchy’ as well.

¹⁰⁶ Landman, Todd, *op. cit.*, chp. 8 (electronic book).

¹⁰⁷ Bradley, A.W. & Ewing, K.D., *op. cit.*, p. 12.

‘separation of powers’, where legislative, executive and judicial functions provide constitutional checks and balances; but the relationships of these three bodies have unique differences in each system.¹⁰⁸ For example, the status of Acts of Parliament in Westminster is governed by the doctrine of the legal supremacy of statute as a key principle of UK constitutional law;¹⁰⁹ conversely, US Congressional Acts are formally subordinate to the country’s written Constitution, and therefore subject to more extensive powers of judicial review regarding the constitutionality of such measures.

The United States operates on a presidential, federalist system, in which the federal government and the states share lawmaking powers provided by the Constitution, and it is the Supreme Court’s task to uphold constitutional integrity.¹¹⁰ Congress’ powers themselves are prescribed in Article I, Section 8 of the Constitution, while their limits are acknowledged in Section 9. The powers of the Federal government, however, have been interpreted broadly, and federal law overlaps with and pre-empts state law in most instances.¹¹¹ One of the main provisions that have granted

¹⁰⁸ *Id.*, p. 78. Although, as noted below, it is acknowledged that these powers in the UK system are much more entangled, as the Executive in the British parliamentary system plays a much larger role in legislative affairs, and essentially has much more power and legislative influence than the Executive in the US system. Nevertheless, McKay and Johnson note that ‘the term “checks and balances” is derived from the philosophy of “mixed government”, a classical notion applied to the British system at the time of formulation of the US Constitution based on aristocratic assumptions of a vertical alignment of classes which seeks a social equilibrium by arming the different orders of society – the monarch, the aristocrats and the people – with a means to check each other’ (p. 2). Also Included in their text is a quote from Lord Mustill in the case of *R v. Home Secretary, ex p Fire Brigades Union* [1995] 2 AC 513, 567, that notes: ‘It is a feature of the peculiarly British conception of the separation of powers that Parliament, the executive and the courts have each their distinct and largely exclusive domain. Parliament has a legally unchallengeable right to make whatever laws it thinks right. The executive carries on the administration of the country in accordance with the powers conferred on it by law. The courts interpret the laws, and see that they are obeyed.’ (p. 78).

¹⁰⁹ *Id.*, pp. 49-77 (53). The concept and current state of this “parliamentary sovereignty” has been recently questioned: some have argued that the UK has moved or is moving toward a “bi-polar sovereignty, intermediate between parliamentary supremacy and constitutional supremacy. See Turpin, Colin and Tomkins, Adam *British Government and the Constitution* (7th ed.) Cambridge University Press, ch.2 (who disagree with the claim).

¹¹⁰ Hague, Rodd & Harrop, Martin (2004). *Comparative Government and Politics* (6th Ed.) Palgrave Macmillan, p. 8.

¹¹¹ McKay, William & Johnson, Charles, *op. cit.*, p. 11.

this vast expansive power is the ‘necessary and proper’ clause, located in clause 18 of Article I, Section 8, which notes that Congress shall have the power ‘To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof’.¹¹² The clause shall be examined in more detail in the following chapter, in relation to the constitutionality of evocative Congressional bill titles.

One of the main constitutional differences relevant to this study is the legislative/executive relationship in each jurisdiction. Congress itself is not controlled by the Executive, which, in contrast, is the case in both the Westminster and Scottish Parliaments, as these respective institutions are largely run by the party/ies in power.¹¹³ Thus, the UK and Scottish governments propose a legislative programme of bills each year, and these take priority through both lawmaking institutions. The Executive does not have nearly as much power to propose legislation in the US system, although this does happen fairly frequently through ‘executive communication’. Cabinet ministers in the UK are also sitting parliamentarians, and retain a much larger role in proposing, scrutinising and voting on legislation than members of the US Cabinet, who possess little of these functions. This stems from a stronger separation of powers in the US, and the fact that the President and Congressional members are elected independently from one another. Drewry, however, points out that the term ‘executive’ in the UK is now

¹¹² US Const., art. I, § 8, cl. 18. However, the Commerce Clause has also granted Congress much in the way of legislative power, if not as much as the Necessary and Proper Clause. This is located in art. I, § 8, cl. 3 of the Constitution and gives Congress the power ‘to regulate commerce with foreign nations, and among the several states, and with the Indian tribes’.

¹¹³ The Executive in the US Presidential system, however, can be from a separate party than the parties that control the House of Representatives and/or the Senate. In fact, even the House and Senate are often controlled by separate parties.

subject to much confusion regarding its meaning, especially in relation to its constitutional character.¹¹⁴

Since the Executive controls much of the proposed legislation in Westminster, the lawmaking role of Parliament has been challenged, as many consider its function to be a ‘rubber stamp’ for the Government of the day, while others view it as having an integral role in the shaping of legislation.¹¹⁵ Congress, meanwhile, is more of an official ‘legislature’, because many of the bills arising are initiated by legislative members themselves.¹¹⁶ On a continuum, this has led some researchers to characterise Westminster as reactive (‘arena’) legislature, while characterising Congress as a proactive (‘formative’) legislature.¹¹⁷ The lack of party discipline in Congress has also been celebrated, as some think that it contributes to the ‘continued vitality’ of the institution.¹¹⁸ This is in contrast to the House of Commons, where, being a parliamentary system, party discipline is in strong supply and MPs in the majority are sometimes referred to as governmental ‘sheep’.¹¹⁹ Even after a bill enters Parliament, the government ‘continues to have a great deal of control’ over the measure, especially

¹¹⁴ Drewry, Gavin. (2004). *The Executive: Towards Accountable Government and Effective Governance?* In: Jowell, Jeffrey & Oliver, Dawn. (2004). *The Changing Constitution (5th Ed.)*. Oxford, UK: Oxford University Press, pp. 281-82.

¹¹⁵ Brazier, A. Kalitowski, S., & Rosenblatt, G. (2007) *Law in the Making: A Discussion Paper*. London, UK: *The Hansard Society*, p. 4.

¹¹⁶ However, the UK and Scottish Parliaments do consider Private Member’s Bills, as will be discussed in the next chapter.

¹¹⁷ Drewry, Gavin (2008), *op. cit.*, p. 105.

¹¹⁸ Wilson, Graham, *op. cit.*, p. 829. However Wilson also notes that Congress is becoming more similar to a Parliamentary system, where party discipline is becoming stronger and therefore more polarising.; Also noting this is: Urh, John. (2009). *Comparing Congress: Bryce on Deliberation and Decline in Legislatures*. 89 *B.U.L. Rev.*, p. 849.

¹¹⁹ *Id.*, citing, for example: Cowley, Philip & Stuart, Mark (2004). *When Sheep Bark: The Parliamentary Labour Party Since 2001*. *Journal of Elections, Public Opinion and Parties*, 14, 211.

in the Commons, as Standing Order 14 states that ‘government business shall have precedence in every sitting’.¹²⁰

Certain restrictions and limitations to the powers of Westminster have arisen in recent years. One major challenge to Parliamentary supremacy is the status of European Union law.¹²¹ EU law must become part of domestic law and be readily enforceable by courts in EU member countries, and must also ‘be given priority over any conflicting domestic law’.¹²² The Human Rights Act 1998 has especially impacted on UK legislation, because before the second reading of all proposed legislation the minister responsible for the measure must certify that it is compatible with the European Convention on Human Rights. However EU law and the impact that it has had on both Westminster and the Scottish Parliament is outwith the aim and scope of this thesis, and will not be covered in any detailed manner from hence forth.

Devolution throughout the UK has shifted the balance of legislative responsibility, and hence, in effect, the political exercise of power, from Westminster. The Scotland Act 1998 received Royal Assent on 21 November 1998 and was brought into effect through stages on 1 April 2000.¹²³ This monumental Act established the Scottish Parliament, which was granted the power to legislate on many subjects, including fiscal, economic and monetary policy, data protection and insolvency; while Westminster retained such subjects as the Crown, foreign affairs, defence, immigration, and nationality.¹²⁴ Although the power of Westminster was apparently not affected by

¹²⁰ Brazier, A. Kalitowski, S., & Rosenblatt, G., *op. cit.*, p. 7.

¹²¹ McKay, William & Johnson, Charles, *op. cit.*, p. 19.

¹²² Himsworth & O’Neill, *op. cit.*, p. 49 (3.11).

¹²³ *Id.*, p. 59 (3.18).

¹²⁴ McKay, William & Johnson, Charles, *op. cit.*, p. 21.

the Scotland Act,¹²⁵ it has to date not used such powers to override Scottish Parliament authority.¹²⁶ In fact, on many occasions, some feel too many, the Scottish Parliament has exercised Westminster to draft legislation for them under the Sewel Convention.¹²⁷

Just as in Westminster the elected Scottish Executive, headed by the First Minister, sets out a legislative programme each year.¹²⁸ The main procedural variation that differentiates the Scottish Parliament from Westminster and the US Congress is that it is unicameral, and therefore legislation must only travel through one chamber in order to become law; also, the role of committees in the process is enhanced.¹²⁹ The idea of having a second chamber was not discussed at the Scottish Constitutional Convention and nor during the formation of the Scottish Parliament.¹³⁰ Yet lately arguments have been made for having such a second body, because some contend that existing committee procedures are insufficiently revising proposed Bills, and many believe that those who do not wish to seek elected office should still be able to contribute to Scottish politics in some form or fashion.¹³¹ To date, however, there has

¹²⁵ McKay & Johnson note that, ‘the same section of the Scotland Act which devolved the law-making power also stipulated that ‘this section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland’’, p. 21.

¹²⁶ The two parliaments find themselves in a somewhat odd juxtaposition at the moment, as Scotland considers having an independence referendum against the wishes of the current coalition government. There have been carrot and stick approaches thus far by the current Westminster government, as PM Cameron noted that if Scotland were to vote for independence they could lose a seat on the UN Security Council, UK armed forces, the pound, UK security services and it would increase the difficulty of fighting terrorism alone. However, PM Cameron also claimed that should they vote against independence, they would be offered much more control over their domestic policy and economy, something which has been termed ‘devo max’. (Jowit, Juliette. Cameron offers Scotland more powers if it votes no to independence. *The Guardian*. Published 16 February 2012. Available at: <http://www.guardian.co.uk/politics/2012/feb/16/freedoms-scotland-no-independence-cameron>).

¹²⁷ Bradley, A.W. & Ewing, K.D., *op. cit.*, p. 22; Himsworth and O’Neill, *op. cit.*, 5.22, p. 141.

¹²⁸ This relationship will be detailed more thoroughly in Chapter IV.

¹²⁹ Himsworth & O’Neill, *op. cit.*, p. 82 (4.12).

¹³⁰ *Id.*, p. 86 (4.14).

¹³¹ *Id.*

been no serious discussion by Westminster and the Scottish Parliament of adding such a second body to its proceedings. Nevertheless, since the Parliament was developed and implemented so recently within the UK's devolved governmental structure, it provides an excellent comparative perspective by which to juxtapose both Westminster and the US Congress. As Jamieson states, '[n]ew or renewed legislatures afford opportunities for reassessing old legislatures, and introducing new and improved forms of legislative composition'.¹³²

As set out in the literature above, a straightforward comparison between the three jurisdictions studied was not possible, because even from a general standpoint the constitutional and parliamentary differences between legislatures are quite apparent. This makes the more detailed constitutional differences between institutions introduced in Chapter IV that much more important, because each lawmaking body has numerous characteristics that make it unique. For example the role of civil servants in the drafting, naming and approving of legislation have different roles in each jurisdiction, and these are further detailed in Chapter IV. The chapter also discusses the implications for bill titling in regard to the differing power of legislators. Congressional members have an active and significant role in creating and sponsoring legislation; in Westminster and Holyrood, as we saw above, it is the executive which dominates the legislative process. Furthermore, a much smaller proportion of bills will succeed in Congress, so the pressure is also greater on members to make their bills stand out and attract support: one means of doing this is by titling. Nonetheless, the validity of this study is supported by the findings from other researchers who note that legislative drafting is becoming a global interactive phenomenon; and it is further supported if it is considered that the study focuses on a small aspect of legislative bill drafting, short

¹³² Jamieson, Nigel, *op. cit.*, 182-198.

titles, and that the legislatures being studied in this thesis perform all their drafting in English. It seems that though the United States and United Kingdom have evolved in quite different manners throughout the years, their legislatures still provide recognised points of comparison.

This section has outlined general constitutional distinctions between the UK and US, including those that applied to the three major institutions involved in this study. It can be seen that these are relevant to the comparative exercise in this thesis. More detailed constitutional differences between these lawmaking bodies (especially those related to bill drafting) are located below and in Chapter IV, and are discussed in more depth at each point in order to maintain the validity of the comparisons. This chapter now explains the more specific theoretical and practical methods chosen to answer the research questions proposed in the previous chapter, and ends with a number of hypotheses for the current study.

Initial Explanation and Justification of Methods Chosen

Similarly to other disciplines, research in the areas of law and politics employs a wide range of methods utilized to gather data; from methods as broad as first-hand chronicled accounts,¹³³ to observational or case studies,¹³⁴ to moderated environment

¹³³ Redman, Eric. (2001). *The Dance of Legislation*. Seattle, WA: University of Washington Press.

¹³⁴ Edelman, Murray (1985). *The Symbolic Uses of Politics* (2nd Ed.) Champagne, IL: The University of Illinois Press; Baumgartner, Frank R. & Jones, Bryan D. (2009) *Agendas and Instability in American*

experiments.¹³⁵ Yet this and other chapters of this thesis demonstrate that there is presently little research available in the academic community related to short bill titles. Because of this dearth of evidence and lack of established methods towards the issue, the focus of this study was largely exploratory in nature. Arthur and Nazroo state that data may be less structured ‘in an area about which little is so far known, or if a key objective is to understand how participants’ conceptions or values emerge through their speech and their narrative’.¹³⁶

However, this thesis is a comparison among three separate legal jurisdictions, which requires a more precisely-defined research framework in order to achieve valid results. Arthur and Nazroo state that ‘studies with a particular emphasis on comparison will usually also require more structure, since it will be necessary to cover broadly the same issues with each of the comparison groups’.¹³⁷ This statement is appropriate regarding the nature of my experiment, as making valid comparisons between the three sets of interviewees from different jurisdictions was essential to the overall quality of my work. Zweigert and Kotz state that the main methodological principle of comparative law is functionality.¹³⁸ My primary endeavour is analysing the legal status and importance, along with the political and psychological implications of short bill

Politics (2nd Ed.). Chicago, IL: University of Chicago Press; Kingdon, John. (2002). *Agendas, Alternatives, and Public Policies* (2nd Ed.). Old Tappan, NJ: Longman Publishing; Rochefort, David A. & Cobb, Roger W. (1994) *The Politics of Problem Definition: Shaping the Policy Agenda*. Lawrence, KS: University of Kansas Press.

¹³⁵ Brader, Ted. (2005). *Campaigning for Hearts and Minds: How Emotional Appeals in Political Ads Work*. Chicago, IL: University of Chicago Press; Callaghan, Keren & Schnell, Frauke. (2005). *Framing American Politics*. Pittsburgh, PA: University of Pittsburgh Press.

¹³⁶ Arthur, Sue & Nazroo, James (2003). Designing Fieldwork Strategies and Materials. In: Ritchie, Jane & Lewis, Jane (Eds.). *Qualitative Research Practice: A Guide for Social Science Students and Researchers*. London, UK: Sage Publications, p. 111.

¹³⁷ *Id.*, p. 111.

¹³⁸ In the sense of comparing like functions. Zweigert, Konrad & Kotz, Hein. (1998). *An Introduction to Comparative Law* (3rd Ed.). Oxford, UK: Oxford University Press, p. 35.

titles; in doing this I take account of the functions that such titles take in the respective institutions.

By employing an element of contextual description but primarily focusing on hypothesis-testing, this thesis seeks to compare the legal status and importance of short bill titles, along with the political and psychological implications of such names, in Westminster, the Scottish Parliament and the US Congress. In terms of ‘old’ and ‘new’ comparative approaches, this thesis was a mix of both. By employing contextual description of the three jurisdictional norms in relation to short bill titles, and specifically in regard to the institutional policies, practices, legislative processes and the actors involved in such processes, I have escaped my ‘own ethnocentrism by studying those countries and cultures foreign to’ me.¹³⁹ I am an American, and for the duration of my research I was based in UK and focused on two lawmaking institutions from this jurisdiction. Though this is thought to be an ‘old’ comparative politics approach, Landman notes that ‘all systematic research begins with good description’.¹⁴⁰

In regard to the ‘new’ comparative approach, this thesis largely relies on hypothesis-testing in both the qualitative and quantitative forms. Scholars use this method to ‘identify important variables, posit relationships to exist between them, and illustrate these relationships comparatively in an effort to generate and build comprehensive theories’.¹⁴¹ The present thesis relied on qualitative interview data and a quantitative survey to address the principal research questions, though it leans heavily on the former. As will be seen below, eighteen hypotheses have been developed that

¹³⁹ Landman, Todd, *op. cit.*, chp. 1, para. 4 (electronic book).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*, chp. 1, para. 8 (electronic book).

focus on the main research questions and test what individuals in the three jurisdictions who frequently encounter short titles think about such names.

Academic researchers such as Wood¹⁴² and Orr¹⁴³ have identified similar types of short titles being attached to various pieces of legislation and policy documents, but have largely relied on unverified data in their articles. While intriguing, these observations are merely arguments or presentations of phenomena and not based on any targeted research design or resulting representative data. Wood used case studies to demonstrate how crime victim policy in the US is increasingly titled after crime victims, especially white, female, middle class victims, but did not apply any thorough method of selecting them.¹⁴⁴ Orr used Australian case studies to demonstrate how some legislative short titles have evolved into sloganeering, but similarly did not indicate a specific research design.¹⁴⁵ These two examples (and the journalist examples below) fall within the ‘normative’ philosophical tradition; this thesis takes a more ‘empirical’ approach to the study of short bill titles than the authors presented above.

Acknowledging he is a journalist, the same lack of an adequate body of data is true for Safire,¹⁴⁶ who asserts that the US government increasingly uses acronyms for legislative short titles, but has not followed up this revelation with any research evidence as to whether or not these names affect individuals in any particular manner.

Thus, none of those mentioned above conducted any further empirical research or

¹⁴² Wood, J. K. (2005). In Whose Name? Crime Victim Policy and the Punishing Power of Protection. *NWSA Journal*: 17(3), 1-17.

¹⁴³ Orr, Graeme. (2000). Names Without Frontiers: Legislative Titles and Sloganeering. *Statute Law Review*, 21(3), pp. 188-212; Orr, Graeme. (2001). From Slogans to Puns: Australian Legislative Titling Revisited. *Statute Law Review*, 22(2) pp 160-61.

¹⁴⁴ Wood, J. K., *op. cit.*, p. 1-17.

¹⁴⁵ Orr, Graeme (2000), *op. cit.*, pp. 188-212.

¹⁴⁶ Safire, William. (2004). *The Right Word in the Right Place at the Right Time: Wit and Wisdom From the Popular Language Column in the New York Times Magazine*. New York, NY: Simon & Schuster Press.

analysis that probes into the legal status and/or importance of such titles, and/or explores whether certain types of naming may affect individuals who encounter evocative legislative short titles. The primary aim of this thesis is to shed light on an issue that has received little attention in all the jurisdictions studied.

Qualitative Concerns

The research questions located in the Introduction chapter provide the basis for a focused empirical investigation into short bill titles, and also complement the hypotheses for this project located at the end of this chapter. In regard interviewing, perhaps the most central methods text in this field, the Sage Handbook for Qualitative Research, states that

‘both qualitative and quantitative researchers tend to rely on the interview as the basic method of data gathering, whether the purpose is to obtain a rich, in-depth experimental account of an event or episode in the life of the respondent or to garner a simple point on a scale of 2 to 10 dimensions. There is inherent faith that the results are trustworthy and accurate and that the relation of the interviewer to respondent that evolves in the interview process has not unduly biased the account’.¹⁴⁷

Uwe Flick states that ‘qualitative research has come of age’¹⁴⁸ and is used by many contemporary researchers in almost every field of study. Indeed, it is an accepted and widely used form of study in the field of comparative research.¹⁴⁹ Landman notes that

¹⁴⁷ Fontana, Andrea & Frey, James H. (2000). The Interview: From Structured Questions to Negotiated Text. In *Handbook of Qualitative Research*. London, UK: Sage Publications, pp. 645-672.

¹⁴⁸ Flick, Uwe. (2007). *Managing Quality in Qualitative Research*. London, UK: Sage Publications, (p.1).

¹⁴⁹ Landman, Todd, *op. cit.*, chp. 1, Quantitative and qualitative methods, para. 2 (electronic book).

such ‘methods seek to identify and understand the attributes, characteristics, and traits of the objects of inquiry’, and that it usually requires focus on a small number of countries.¹⁵⁰ Others have deemed qualitative methods ‘the central resource through which contemporary social science engages with issues that concern it’.¹⁵¹ For this thesis such interview practices were chosen as the main method of study and carried out with legislative insiders and media members in the three jurisdictions studied.¹⁵² A supplemental quantitative survey was also conducted in the UK and US, and was used to both complement the qualitative data and investigate in more depth the effects, if any, of nuanced evocative bill names.

One of the main rationales for using qualitative interviews and the resulting sample populations was to engage those individuals who interact with bill names frequently, and especially those individuals for which bill names have practical implications. Being an exploratory study, qualitative interviewing was the method most likely to draw out meanings from complex practices. Two main groups of people were interviewed: legislative insiders, those on the legislative and/or policy side of the lawmaking process (legislators, staff, bill drafters, a government official, and a policy analyst), and those on the media side of the policy process (in this case, a variety of parliamentary-based and other print journalists focusing on politics and/or law from newspapers and magazines).¹⁵³

An inherent part of lawmaking lies in interacting with legislation and the legislative process on a frequent, if not daily, basis, and at any given time legislators are

¹⁵⁰ *Id.*

¹⁵¹ Rapley, Tim. (2004). Interviews. (p. 15). In Seale, Clive, Gobo, Giampietro, Gubrium, Jaber F. and Silverman, David. London (Eds.). *Qualitative Research Practice*. London, UK: Sage Publishing.

¹⁵² Further justification of these methods, however, is located later in this chapter.

¹⁵³ A variety of journalists were interviewed, but all of them wrote about politics and/or law for their respective publications, and many of them were based at the lawmaking institutions in the respective jurisdictions.

engaged with numerous measures (and thus short titles) in one way or another. All three jurisdictions studied in this thesis require legislators to vote on particular laws to give them legal effect, and thus they are accountable for their decisions regarding various bills. As will be further explained in Chapter IV, the US Congress allows individual lawmakers and their staffs to draft the short titles of legislation, but in Westminster and the Scottish Parliament civil servant bill drafters usually pen such titles. Obtaining insights from these perspectives were essential to this project. While the three jurisdictions may go about naming in a different manner, this project takes into account the different constitutional roles of these parliamentary actors, and thus the differences in the contexts of naming do not invalidate the cross-national comparisons between legislatures. Additionally, designated authorities in both the UK and Scottish Parliaments are responsible for approving such legislation before it officially goes to the floor. The interviewees for this project therefore included one such individual, a civil servant government employee from the Scottish Parliament who has such responsibility. Thus, individuals occupying several different roles on the drafting side were represented in this thesis.

Parliamentary-based and other political media members, whose main role is to report on the activities of legislative bodies, lawmakers, and the bills (and subsequently laws) produced by these bodies, also frequently encounter short bill titles. Their jobs entail writing about such legislative activity, which at times likely includes naming a short title (or a derivative of such) in their stories, and their perspectives on the issues surrounding such names were also an essential complement to the insights of the drafters and other political actors obtained for this thesis.

The interviews for this project thus constitute the key empirical element of this thesis, as they put me in direct personal contact with those who interact most with

legislation during the legislative process. Many significant academic studies in the legal and political fields have been based primarily on interviews. For instance, two major projects related to this one depended largely on this method. In his groundbreaking book regarding how agendas, ideas and policies take shape and subsequently travel through the political process, Kingdon performed 247 interviews with a number of policy insiders and experts over a four year span, from 1976-1979.¹⁵⁴ Ewick and Silbey conducted 430 interviews for *The Common Place of Law*, which provides a narrative view of legality, and how this concept is constructed in people's minds and through their behaviour.¹⁵⁵ They state that since many phenomena in the law are complex and socially constructed it is best to study them from 'the ground up'.¹⁵⁶

Nonetheless, the numbers of participants interviewed by Kingdon and Ewick and Silbey are quite far from the norm, especially in regard to doctoral research. Kuzel states that there are no 'hard and fast rules' when it comes to qualitative sampling, but that qualitative studies are usually small, containing five to twenty units of analysis; and five to eight units for a homogenous sample is usually sufficient.¹⁵⁷ In fact, Patton notes that many qualitative interviewers typically focus on small samples, sometimes purposely choosing only one interviewee.¹⁵⁸ Additionally, a recent sample of 560 PhD theses employing qualitative interviews found that the mean sample size was 31.¹⁵⁹ The sample in this thesis consisted of a minimum of fifteen from each jurisdiction and

¹⁵⁴ Kingdon, John, *op. cit.*

¹⁵⁵ Ewick, Patricia & Silbey, Susan S. (1998) *The Commonplace of Law: Stories From Everyday Life*. Chicago, IL: University of Chicago Press.

¹⁵⁶ *Id.*

¹⁵⁷ Kuzel, Anton J. (1999). Sampling in Qualitative Inquiry. In Crabtree, Benjamin F. & Miller, William L. (Eds), *Doing Qualitative Research* (2nd Ed.), Thousand Oaks, CA: Sage Publications, p. 34 & 42.

¹⁵⁸ Patton, Michael Q. (1990). *Qualitative Evaluation and Research Methods* (2nd Ed). Thousand Oaks, CA: Sage Publications.

¹⁵⁹ Mason, Mark. (2010). Sample Size and Saturation in PhD Studies Using Qualitative Interviews. *Forum: Qualitative Social Research*, 11(3), Art.8.

forty-nine interviews in total. The interviews were analysed using thematic coding techniques, which incorporated the qualitative software package, NVivo.

Yet when it comes to academic literature of a legal and/or political nature, the most frequent methods of study appear to have been observational studies and textual analysis of legal documents. This is perhaps because the events of law (court hearings, legal decisions, statute books, etc.) and government (the legislative process, speeches/public statements, official government statistics, etc.) tend to be publically available in various forms and/or usually covered by the media in some form or fashion. The interview approach can require an element of ingenuity and persistence, and is a costly method to adopt. Nonetheless, for a project of the kind carried out in this thesis, an exploratory study designed as much around hypothesis formation as question formulation, requires a more interactive approach. Many previous studies were innovative because they adopted an empirical approach to research questions which had before then been refined and studied by what is often misleadingly called a 'black letter' documentary method using traditional legal resources. In contrast this thesis investigates a phenomenon which has attracted little attention and which has been under theorised. The process of lawmaking and its construction through the work of media actors is not usually as readily accessible as the public judicial stages of the criminal justice process. An interview approach is therefore the most appropriate primary method for the topics of this thesis.

Therefore because of the competing characteristics that open, unstructured exploratory studies usually confront, but that more structured comparison studies also tend to encounter, it was determined that semi-structured interviews would be most appropriate for the primary focus of the current project. The semi-structured approach allows me to balance both of these aspects and also gather important information in a

similar manner for each jurisdiction studied. At the same time, employing this method allows me to guide discussion of the topic in response to unanticipated insights offered by individual participants and also to gain more detailed information when appropriate. Others have noted that ‘when researchers want more specific information, they use semi-structured (also called focused) format’.¹⁶⁰ I also included some more ‘open’ questions that allowed the interviewee more freedom to lead discussion without the strictures of prior question design (e.g. a question about the function of short titles; a question about communication and language in politics, among others). Having these questions grouped with more specific questions is quite common in qualitative research: ‘many qualitative interviews have both more structured and less structured parts but vary in the balance between them’.¹⁶¹

Additional considerations also encouraged pursuing a semi-structured approach. It was anticipated that because the participants were drawn from social elites (for which there are special methods considerations, discussed below) many interviewees would have varying time schedules, and therefore interviewees on a tight time schedule were asked the most important questions available, compared to those on more flexible time schedules who could provide enough time to engage with the whole interview schedule. The order of questions also fluctuated from interviewee to interviewee, because at times it was determined by the information provided. Some questions were more appropriate after certain answers than others. The interview schedule was also designed to incorporate probe and follow-up questions to be asked on occasion, and many of these enquiries provided revealing and useful information which could not have been

¹⁶⁰ Merton, R.K., Fiske, M., & Kendall, P.L. (1990). *The Focused Interviews: A Manual of Problems and Procedures (2nd Ed.)*. New York, NY: Free Press. Taken from: Rubin, Herbert J. & Rubin, Irene S. (1995). *Qualitative Interviewing: The Art of Hearing Data*. London, UK: Sage Publishing, p. 5.

¹⁶¹ *Id.*, p. 5-6.

obtained by an overly closed design. Probing questions differed from follow-up questions in that probing questions were asked when answers by an interviewee lacked sufficient detail or clarity, while follow-up questions were used to ‘pursue the implications of answers to the main questions’.¹⁶²

When examining the structure of qualitative data it is important to remember that ‘all qualitative data collection will have some intention as to structure...But the extent to which the structure and coverage of data collection can usefully be envisaged or planned in advance will vary, depending on the specific purposes of the study’.¹⁶³ Additionally, although I deem the above questions semi-structured, researchers have pointed out that ‘there are different methods of semi-structured interviewing, and terms are not necessarily used consistently so that what some commentators describe as “semi-structured” interviews may be described by others as unstructured or in-depth or, at the other end of the spectrum, open-ended survey interviews’.¹⁶⁴ Mine were located at the in-depth end of the spectrum.

Quantitative Concerns

This thesis also includes a quantitative study participated in by selected groups of members of the public from the UK and US. This study was not a traditional survey, but adopted a technique more familiar in social psychology, in which participants were required to read and compare several texts and then provide answers to closed questions. These answers were then logged and analysed in a quantitative format using

¹⁶² *Id.*, p. 146.

¹⁶³ Arthur, Sue & Nazroo, James (2003). *Designing Fieldwork Strategies and Materials*. (p.110). Located in: Ritchie, Jane & Lewis, Jane (2003). *Qualitative Research Practice: A Guide for Social Science Students and Researchers*. London, UK: Sage Publications.

¹⁶⁴ *Id.*, p. 111.

social science statistical software, SPSS. The questionnaire portion of the study complements the interview data, and provides a robust examination into the possible effects of bill naming. By employing this additional research method, this breaks from the literature-based research techniques that tend to dominate legal scholarship. Providing quantitative support for the qualitative data and investigating possible effects of nuanced short bill titles, within the limits of doctoral study, provided the most insightful methods practicable for reaching a deep understanding of the legal and political dynamics surrounding short bill titles.

The two surveys employed were five condition randomized experiments, one with US participants and one with UK participants.¹⁶⁵ The five conditions represented the types of bills: humanized, overt action, desirable characteristic, combination and descriptive/bland.¹⁶⁶ The main dependent construct the survey attempted to establish was the participant's attitude toward the bill – that is, how favourably the participant felt about the bill. I wanted to determine if people looked more favourably on bills with evocative (humanized, overt action, combination or desirable characteristic) names, compared to non-evocative names. Two other dependent constructs were present within the surveys as well: why the participants favoured or opposed the measure, and whether or not the participants desired more information on the bill. Thus, every survey included an informed consent page at front, followed by four vignettes of bills containing four questions about each bill, and then a page of descriptive characteristic questions. In total twenty two questions were presented on every survey.

The surveys were constructed with primary consideration of the traditional measures of reliability and validity to examine whether or not there is a causal relationship between the independent and dependent variables. Twenty different

¹⁶⁵ Samples of both US and UK versions of the surveys are located in Appendix III.

¹⁶⁶ These are described in more detail in the next section.

versions of the surveys for each country were composed based on a modified Latin Square Design.¹⁶⁷ Using this method counterbalances the order of media stories and the order of titles. This technique allows the researcher to have each story appear in each position an equal number of times, and also have each title condition appear an equal number of times. The bland titles were considered the control measures in the experiment. Randomising the survey versions and the names in the questionnaires using this method increases the reliability and validity of the experiment.

The more detailed procedures in regard to both the interviews and the questionnaires are located after the bill classification section.

Five Classifications of Bill Names

Before a more precise description of the qualitative and quantitative sample populations and procedures are provided, an explanation of the bill naming classifications found in this thesis must be specified. For, two of the hypotheses in regard to the quantitative survey, and elements of key questions in the qualitative interviews, rely heavily on these short bill title classifications.

After researching legislation from Westminster, the Scottish Parliament, and the US Congress, I have identified five particular styles of naming: humanised, desirable characteristic, overt action, combination and bland naming.¹⁶⁸ In this study, the first

¹⁶⁷ Though this was based on such a design, a true Latin square design must have equal parts, such as 4X4, or 5X5, and my study was a 4X5 design (5 types of bill names for 4 bills). It was determined that adding another bill would have made the surveys too protracted.

¹⁶⁸ Acronyms are encompassed in this list. The fact that acronyms spell certain words or phrases makes them a part of the above lists. Usually the word or phrase spelled is how the title is classified.

four naming types are classified as ‘evocative’, while the bland naming style is classified as ‘unevocative’. It may seem tautological to acknowledge, but the ‘evocative’ naming types all use nouns, proper nouns, verbs, adjectives, or a combination of such terms to present legislation in the most favourable light possible. And while the differences between these words are at times nuanced and subtle, it is important to remember that ‘[b]ecause the weight of a word can tip political balances, politicians are wise to concern themselves with distinctions’.¹⁶⁹

Humanised Naming

The beginning of this chapter demonstrated that humanised bill titles dramatically increased in the US from the 105th Congress (1997 – 1998) forward. The Westminster Parliament does not employ the use of such titles, and the only place that it is seen in the Scottish Parliament is in relation to Private Bills (e.g. The William Simpson’s Home (Transfer of Property etc.) (Scotland) Act 2010¹⁷⁰ and the Ure Elder Fund Transfer and Dissolution Act 2010).¹⁷¹ These names serve nothing more than their specific descriptive function. Its use in the US is much more extensive, because it is usually always employed in public bills. This technique is found in a number of recent public bill proposals which employ victims’ names in the title of the bill (i.e. Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act,¹⁷² the Adam Walsh Child

¹⁶⁹ William, Safire. (2008), *op. cit.*, p. xiv.

¹⁷⁰ William Simpson’s Home (Transfer of Property etc.) (Scotland) Act 2010 asp 12. Available at: http://www.legislation.gov.uk/asp/2010/7/pdfs/asp_20100007_en.pdf

¹⁷¹ Ure Elder Fund Transfer and Dissolution Act 2010 asp 7. Available at: http://www.legislation.gov.uk/asp/2010/12/pdfs/asp_20100012_en.pdf

¹⁷² Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Pub. L. No. 111-84. The Act is actually Section 2(a)(5) of the National Defense Authorization Act for Fiscal Year 2010. Available at:

Protection and Safety Act of 2006,¹⁷³ Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act¹⁷⁴). Humanised legislation can have anyone's name attached to a proposal, especially if they are recognisable in some form or fashion, but many of the recent proposals employ a sympathetic figure. In the criminological context, Jennifer Wood commented on how contemporary crime victim policy, such as Megan's Law,¹⁷⁵ Laci and Connor's Law,¹⁷⁶ and the national AMBER Alert¹⁷⁷ exploits these victims, and reinforces the image of victims as 'young, white, female and middle class.'¹⁷⁸ These contentious pieces of legislation have far-reaching legal and public policy effects.

The strategy behind humanised legislation in the US Congress is to garner sympathy for the measure during the legislative process in order to aid passage. This is done by using a recognized and usually sympathetic figure who encountered an unfortunate situation. It appears to be designed as follows: when legislation is humanised a policymaker is not just voting for or against a particular policy, such as reducing sexual abuse or increasing penalties for such abuse. Those who oppose a proposal such as Megan's Law are implicitly portrayed as indifferent to Megan, her family and/or others affected by the crime, and additionally to those who empathize

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ084.111.pdf

¹⁷³ Adam Walsh Child Protection and Safety Act of 2006 , Pub. L. No. 109-248, 120 Stat. 587.

¹⁷⁴ Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322. The Act is actually Title XVII(a) of the Violent Crime Control and Law Enforcement Act of 1994.

¹⁷⁵ Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d104:h.r.02137:>

¹⁷⁶ Laci and Connor's Law, Pub. L. No. 108-212, 118 Stat. 568. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:H.R.1997:>

¹⁷⁷ Amber Hagerman Child Protection Act of 1996, Pub. L. No. 104-208

¹⁷⁸ Wood, Jennifer, *op. cit.*, pp. 1-17.

with her situation. The bill may no longer be just a crime bill (or a health bill, or a transportation bill for that matter). The measure becomes a remembrance for the person whose name appears in the title, and bears significant legal effects. Therefore an opposition legislator who feels sympathy for the *individual* but may not agree with the legislation proposed can be put in a very compromising position when they are voting on a public bill proposal.

Desirable Characteristic Naming

These titles employ language in which particular characteristics may be applied to parties who propose such legislation and/or legislators who vote for or against the measure, such as: responsibility, patriotism, accountability, etc. The beginning of this Chapter demonstrated that while technical word usage has declined since the 93rd Congress (1973 – 74), evocative wording has increased. Many of these new words are desirable characteristic in nature. Most of the additions to desirable characteristic naming are adjectival. A good example of this classification is the USA PATRIOT Act of 2001.¹⁷⁹ This statute was enacted shortly after 9/11 and included a large number of controversial measures. The consequences of a vote for or against this bill are fairly obvious: a vote for the bill implies patriotism, and portrays legislators as advocates of safety and security in America. A vote against portrays a legislator as unpatriotic and/or unconcerned with national security issues. Jess Bravin from the *Wall St. Journal* noted that former President George W. Bush has acknowledged, and regretted, that the name of the USA PATRIOT Act implied that those who voted against the measure were

¹⁷⁹ USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

unpatriotic.¹⁸⁰ Yet the Act, and the name for that matter, is still active in the US statute book.

Overt Action Naming

These names include language that explicitly states an action will take place, and are perhaps the most tendentious of the different styles. The most common words used in these titles are ‘prevention’ and ‘protection’, and this is the most common form of ‘evocative’ naming employed by the UK and Scottish Parliaments. The title of the Violent Crime Reduction Act,¹⁸¹ for example, implies that this particular Act will reduce violent crime. Opponents of such measures are implicitly portrayed as aloof or unsympathetic to the reduction of such crime. Conversely, those who vote for it may be looked upon as more assertive or effective politicians. This language is demonstrated in a number of US bills, such as the recent American Recovery and Reinvestment Act of 2009,¹⁸² Helping Families Save Their Homes Act of 2009,¹⁸³ and the Protect America Act of 2007.¹⁸⁴ The UK Parliament and Scottish Parliament, as was pointed out above, have also used this style. Examples from Westminster are: the Counter-Terrorism Act 2008;¹⁸⁵ the Safeguarding Vulnerable Groups Act 2006;¹⁸⁶ and the Prevention of

¹⁸⁰ Bravin, Jess. (14 Jan. 2011). Congress Finds, In Passing Bills, That Names Can Never Hurt You, *Wall St. J.*, A1, available at <http://online.wsj.com/article/SB10001424052748703820904576057900030169850.html>. (citing Bush, George W. (2010). *Decision Points*. New York, NY: Crown Publishing.)

¹⁸¹ Violent Crime Reduction Act 2006 c.38. Available at: <http://www.legislation.gov.uk/ukpga/2006/38/contents>

¹⁸² American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115.

¹⁸³ Helping Families Save Their Homes Act of 2009, Pub. L. No. 111-22, 123 Stat. 1632.

¹⁸⁴ Protect America Act of 2007, Pub. L. No. 110-55, 121 Stat. 552. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:SN01927:>

¹⁸⁵ Counter-Terrorism Act 2008 c.28. Available at: http://www.legislation.gov.uk/ukpga/2008/28/pdfs/ukpga_20080028_en.pdf

Terrorism Act 2005.¹⁸⁷ Examples from Holyrood are the: Protection from Abuse (Scotland) Act 2001;¹⁸⁸ the Protection of Children (Scotland) Act 2003;¹⁸⁹ the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005;¹⁹⁰ and the Protection of Vulnerable Groups (Scotland) Act 2007.¹⁹¹

At times it can be the case that overt action names are more descriptive than some of their evocative naming counterparts, and they need not carry an overtly tendentious message. The Abolition of Feudal Tenure etc. (Scotland) Act 2000¹⁹² is a good example. The bill did exactly what the name suggested, and eliminated feudal tenure. Yet it is not always this clear cut. In cases where the action is not specifically defined and therefore uncertain to happen, the use of an action word that is hopeful or aspirational would be considered evocative.

Combination Naming

Many evocative names nowadays employ a combination of the tactics mentioned above, seemingly designed to garner as much support as possible through the use of

¹⁸⁶ Safeguarding Vulnerable Groups Act 2006 c.47. Available at: http://www.legislation.gov.uk/ukpga/2006/47/pdfs/ukpga_20060047_en.pdf

¹⁸⁷ Prevention of Terrorism Act 2005 c.2. Available at: http://www.legislation.gov.uk/ukpga/2005/2/pdfs/ukpga_20050002_en.pdf

¹⁸⁸ Protection from Abuse (Scotland) Act 2001 asp 14. Available at: http://www.legislation.gov.uk/asp/2001/14/pdfs/asp_20010014_en.pdf

¹⁸⁹ Protection of Children (Scotland) Act 2003 asp 5. Available at: http://www.legislation.gov.uk/asp/2003/5/pdfs/asp_20030005_en.pdf

¹⁹⁰ Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 asp 9. Available at: http://www.legislation.gov.uk/asp/2005/9/pdfs/asp_20050009_en.pdf

¹⁹¹ Protection of Vulnerable Groups (Scotland) Act 2007 asp 14. Available at: http://www.legislation.gov.uk/asp/2007/14/pdfs/asp_20070014_en.pdf

¹⁹² Abolition of Feudal Tenure etc. (Scotland) Act 2000 asp 5. Available at: http://www.legislation.gov.uk/asp/2000/5/pdfs/asp_20000005_en.pdf

multiple tactics. Once again, this is mainly performed in the US Congress. Therefore, bills may employ both humanised and desirable characteristic qualities (i.e. the Daniel Pearl Freedom of the Press Act of 2009¹⁹³), humanised and overt action qualities (i.e. the Adam Walsh Child Protection and Safety Act of 2006¹⁹⁴), or even overt action and desirable characteristic qualities (i.e. Patient Protection and Affordable Care Act¹⁹⁵). There are many possibilities when it comes to combination naming. This type of naming could heighten the political consequences of voting against the measure: the more tactics used, the more positive policy statements that reside in the title. However it could also raise the stakes for politicians who vote for the law, as should the statute not fulfil its intended aspiration, the increase in tendentious language located in the title could potentially be an accountability problem.

Descriptive or Bland Naming

These are names in which none of the previous three naming methods have been employed, and thus they are more descriptive or innocuous in nature. As I stated above, the UK and Scottish Parliaments employ this type of title more than any other (i.e. the Energy Act 2010;¹⁹⁶ the Banking Act 2009;¹⁹⁷ and the Policing and Crime Act 2009¹⁹⁸). Since the names are not as explicit or tendentious in terms of policy statements or

¹⁹³ Daniel Pearl Freedom of the Press Act of 2009, Pub. L. No. 111-166, 124 Stat. 1186. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR03714:|TOM:/bss/d111query.html>

¹⁹⁴ Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587.

¹⁹⁵ Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119.

¹⁹⁶ Energy Act 2010 c.27. Available at: http://www.legislation.gov.uk/ukpga/2010/27/pdfs/ukpga_20100027_en.pdf

¹⁹⁷ Banking Act 2009 c.1. Available at: http://www.legislation.gov.uk/ukpga/2009/1/pdfs/ukpga_20090001_en.pdf

¹⁹⁸ Policing and Crime Act 2009 c.26. Available at: http://www.legislation.gov.uk/ukpga/2009/26/pdfs/ukpga_20090026_en.pdf

implications, a vote for or against these bills would not appear to carry as much weight. The resulting bills could still be considered controversial by some, but for the sake of this project these titles do not have any inessential controversial evocative terms or statements located in the short titles.

Other Methodological Considerations

Sample/Participants

When I began this project I sought a combination of 15-25 interviewees from each jurisdiction studied, and this was achieved. The participants in my interviews were politicians, bill drafters, government employees and journalists from the UK, Scotland and the US. The total interview breakdown was as follows:

Total (UK, Scotland and the US): 49 interviews

- UK: 16 interviews (7 MPs, 2 Lords, 1 Baroness, 1 Member of the Parliamentary Counsel, and 5 Journalists)
- Scotland: 15 interviews (7 MSPs, 2 Bill Drafters, 2 Government Employees, and 4 Journalists)

- US: 18 interviews (2 Congresspersons, 7 Congressional Staffers, and 9 Journalists)

Interview times were wide-ranging, as some individuals had more time than others. The shortest interview length was 8:08, while the longest took 1:01:03. Other researchers have noted that interviewing MPs and other elite individuals is a very difficult task, because access and time are the two main factors to take into consideration.¹⁹⁹ I anticipated this obstacle. Once access is gained time becomes the most important consideration, and my interview questions were tailored to account for this. The majority of my interviews fit within the 10-20 minute time-frame initially set, although many went over twenty minutes, and a couple were under ten, because some interviewees were extremely rushed for time. This is not surprising; others have found that researchers can never be sure of the actual amount of time interviewees will grant, particularly elite interviewees, who at times cut the requested length in half, while others extend them to great lengths.²⁰⁰ My interview experience appears to be quite typical.

In respect to Westminster eleven legislative insiders and five media members were interviewed. The legislative portion included interviews from seven MPs, two Lords, one Baroness, and one member of Parliamentary Counsel. In terms of political affiliation there was a blend of interviewees: two Conservative, three Labour, four Liberal Democrat and one crossbench member in the Lords.²⁰¹ Regarding those in the

¹⁹⁹ Puwar, Nirmal. (1997). Reflections on Interviewing Women MPs. *Sociological Research Online*, 2(1).

²⁰⁰ *Id.*

²⁰¹ Including both the Commons and Lords interviewees.

media sector, one interviewee was from a high-circulation tabloid, and the remaining were journalists from broadsheet papers.²⁰²

The Scottish Parliament produced fifteen interviews in total, and also contained the most diverse set of interviewees. All the major parties were represented in my interviews: four members of the Scottish National Party, and one member each from Labour, Conservative and Liberal Democrat. Additionally, two bill drafters and two government employees (one House Authority and one policy analyst) were interviewed. On the media side three major newspapers and one small, partisan political magazine was represented.

In the US I obtained an even number of legislative insiders and media members, acquiring nine interviews for each. Most of my interviews on the former side were with House staff members, but I did interview two Congressional lawmakers. I had a tough time procuring many individuals on the Senate side, and I only interviewed one Senate legislative staffer. In terms of political affiliation, Democratic offices were a bit more receptive: six Democratic offices were interviewed, in comparison to only three Republican offices. The interviews from the non-legislative side included print journalists at some of the largest circulating newspapers and political magazines in the US; six media members were from newspapers and three from magazines.²⁰³

The participants for my questionnaires were university students located in Scotland and the United States. Although students are not an ideal population sample for many research purposes, it is important to remember the role of the empirical element is exploratory. A large proportion of funded academic researchers in the behavioural sciences use college students for their sample population, as they are easily

²⁰² The actual periodicals are hidden for confidentiality purposes.

²⁰³ Once again, these are not listed for confidentiality purposes.

accessible, and provide a population to test theories that are still in their infancy.²⁰⁴ As mentioned earlier, my empirical study was largely conducted inside the realm of social psychological methodology, and thus has followed the dominant method of sampling, however flawed this method may indeed be in terms of generalizability. In the *Journal of Personality and Social Psychology*, the top social psychological journal, Arnett found that of the samples on which the research findings were based in the articles published by the journal in 2007, ‘67% of the American samples (and 80% of the non-American samples from other countries) were composed solely of undergraduates in psychology courses’.²⁰⁵ Indeed, over the last two decades, psychological research using students as subjects has increased from 82.7% to 91.6%.²⁰⁶ Thus my sampling population is an accepted, indeed the dominant, population sampled for the purposes of the most high-status journal in American social psychology, the discipline within which my empirical study was conducted. Though this may not be a good trend for social psychological research, it does demonstrate that my sampling methods are well within accepted standards for high quality academic research, and therefore especially for doctoral research.

Additionally, money and time were limited resources for the quantitative exercise. Obtaining a highly generalizable population, although ideal, was not feasible and probably decreased the external validity. Nevertheless, other researchers believe that using students is justifiable and indeed valuable. Gächter notes that, ‘Because students are typically above average with regard to cognitive sophistication, they are

²⁰⁴ Henrich, Joseph, Heine, Stephen J., & Norenzayan, Ara. (2010). The Weirdest People in the World? *Behavioral and Brain Sciences*, 33, 61-135; Henrich, Joseph, Heine, Steven, J. & Norenzayan, Ara. (2010). “Most people are not WEIRD” Volume 466/7302 *Nature*, 29.

²⁰⁵ Arnett, Jeffrey (2008). The Neglected 95%: Why American Psychology Needs to Become Less American. *American Psychologist*, 63(7), 602-614.

²⁰⁶ Henrich, et al., *op. cit.*, 6.1.1.

often a perfect subject pool for first tests of a theory. Moreover, students, unlike most other subject pools, are readily available (and cost effective)'.²⁰⁷ It can also be argued that the response rate can be very high from this sample group compared to others. However, Gächter further cautions that 'observed results hold only for the subject pool from which evidence is collected', and this is true in my experiment as well.²⁰⁸

To gather survey participants I selected five schools from the US and one from the UK through convenience sampling. In total I recruited 551 people, 258 from the University of Stirling and 293 being from various schools in the US. Survey distribution in the UK commenced in February of 2010 and finished by the middle of March. All the courses solicited were Law School courses at the University of Stirling, and the congenial instructors were a very large help throughout the data collection process.

Data collection in the US was performed in the autumn of 2009, and was mostly acquired in conjunction with the interviews. Solicitations for survey distribution began during the fortnight before I left for Washington D.C. and continued into late autumn. The five schools surveyed in the US were Marymount University (Virginia), George Mason University (Virginia), St. Louis University (Missouri), University of Missouri St. Louis and St. Louis Community College (Missouri). I knew colleagues teaching at Marymount and George Mason University, and that is how I gained access to classes at those universities. Survey distribution at the Missouri schools was a bit more difficult, as the school's semesters were coming to a close, and I was not personally acquainted

²⁰⁷ Gächter, Simon. (2010). (Dis)advantages of Student Subjects: What is Your Research Question? *Behavioral and Brain Sciences*, 33, 92-93.

²⁰⁸ *Id.*

with any individuals at those universities. However, some very gracious instructors at three institutions allowed me into their classes.²⁰⁹

Interview and Questionnaire Procedures

Solicitations for interviews began with the Scottish Parliament in early June of 2009. Requests were sent out mostly by email and occasionally by telephone. Given the elite status of participants, there was little response within the first couple of weeks, but interview responses started appearing after about a month. If individuals responded to my initial contact and were interested in setting up an interview, I responded with available dates. Yet many individuals replied to say that they were not available for an interview. My response rate was not especially high, as many legislators and media members ignored my requests or were not interested in an interview.²¹⁰ Examples of the questions asked to both UK and US interviewees are located in Appendix II.

The locus was also arranged to suit the participants. Most of the Scottish interviews were conducted in the Scottish Parliament offices at Holyrood, but there were exceptions. Two lawmaker interviews were conducted in constituency offices, and both of the bill drafters were interviewed at their respective offices on Scottish Government premises. Also, one interview with a government employee was performed in a coffee shop. The fact that most were conducted at Holyrood ensured that I was interviewing people who were close to the lawmaking process.

²⁰⁹ There was, however, a major error in data collection in the US, as a professor at St. Louis Community College gave out multiple versions of the same survey, Form (S), to many of her students. She was providing extra credit for completing the survey, and mistakenly decided to make copies of the one form instead of using the surplus of other surveys (including various forms) that I provided her. This mistake is also mentioned later in Chapter V, and also in Appendix IV.

²¹⁰ I do not have specific numbers on how many emails I sent out soliciting interviews. I've had inbox capacity problems on my university email service and have had to delete a number of old emails. I would estimate that I sent out approximately 300-400 emails in total.

The interviews in Edinburgh were conducted from July to late September of 2009; I travelled from Stirling to the Scottish Parliament on days I had meetings scheduled. However, I did have one MSP electronically complete the set of questions and send it back via email in early January of 2010. That was the only individual who chose to conduct the interview via email; all other interviews were completed in person.

Interviews in London regarding the Westminster Parliament took place during the week of October 12th – 16th of 2009. I began soliciting interviews in early September, and this process continued until I arrived in London on October 11th. Most of the interviews were conducted in or around Westminster, again ensuring I was talking to lawmakers and those who encounter legislation frequently; some interviews were performed in the lobby of Portcullis House, while others were in personal offices of the same building or in various rooms of the Lords chambers.

Shortly after my trip to London I travelled to Washington D.C., where I spent nearly two weeks conducting interviews, from October 19th – 30th of 2009. Solicitations for these commenced in early September, and continued throughout my time in Washington D.C.²¹¹ All of the interviews with legislators and staffers were conducted in House offices, such as Rayburn, Longworth and Cannon. Most of my interviews with journalists were conducted in their respective offices around D.C. rather than at the Capitol or official House offices.

In every location interviews were performed in a similar fashion. I arrived with my list of questions, a recording device, and a writing instrument and writing pad in case the recording device failed.²¹² In order to reduce bias, I dressed in the same formal

²¹¹ Some of the people I originally emailed asked me to contact them when I got in town. Thus, I was still arranging meetings throughout my time there.

²¹² In one instance with a MSP the device did fail from the beginning, and I had to paraphrase by hand what the legislator told me.

and conventional manner for all the interviews conducted: black shoes, smart trousers, a button-down shirt and a tie. Ethical considerations were a major consideration when conducting every interview. All participants signed a consent form and were given a University of Stirling information and contact sheet before the interview started. Confidentiality was maintained for all interviewees, and all interviewees could have requested at any time that the interview be suspended or terminated, although none did. Examples of the consent form and information sheet are located in Appendix III. Recordings and transcripts of the interviews were kept in my possession, and secured in accordance with the University of Stirling's security guidelines.²¹³ Most interviewees were extremely gracious throughout the interview process, and I emailed a thank you note to all participants a couple days after the interviews were conducted.

A number of questions or topics were adjusted for comparative purposes from jurisdiction to jurisdiction. The majority of changes were adjustments for linguistic or systemic matching (such as assuring that examples provided by various questions matched the corresponding jurisdiction). One example of this was the second interview question, which named bills on similar topics and asked why at times some received evocative titles while others received fairly bland names. For example, in 2008 the US Congress passed the Economic Stimulus Act of 2008,²¹⁴ while later in 2008 they passed the Emergency Economic Stabilization Act of 2008.²¹⁵ The UK and Scottish Parliaments have also done this. In the past decade Westminster has produced six Acts related to terrorism, many of which bear different names: Terrorism Act 2000;²¹⁶ Anti-

²¹³ University of Stirling *Code of Good Research Practice Guide*. Available at: <http://www.research.stir.ac.uk/documents/newCODEOFGOODRESEARCHPRACTICE.pdf>

²¹⁴ Economic Stimulus Act of 2008, Pub. L. No. 110-185, 122 Stat. 613. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR05140:>

²¹⁵ Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765.

²¹⁶ Terrorism Act 2000 c.11. Available at: http://www.legislation.gov.uk/ukpga/2000/11/pdfs/ukpga_20000011_en.pdf

terrorism, Crime and Security Act 2001;²¹⁷ Prevention of Terrorism Act 2005;²¹⁸ Terrorism Act 2006;²¹⁹ Counter-Terrorism Act 2008.²²⁰ The Scottish Parliament did this in relation to protection of children, enacting the Protection of Children (Scotland) Act 2003,²²¹ and then later enacting the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.²²²

Only two questions required relatively significant changes among jurisdictions.²²³ one in regard to humanised legislation and one in regard to promotional language in short titles. Regarding humanised legislation, American interviewees were asked whether or not they believe that humanised legislation makes the measure more appealing to lawmakers, media members and the general public. Conversely, since neither the UK nor the Scottish Parliament employs the use of humanised legislation for public bills,²²⁴ those interviewees were usually asked whether or not their respective Parliaments were likely to ever adopt the practice. The second major change was tailored to differing linguistic usages. One of my questions mentions that some short bill titles now employ promotional language. In the UK I gave the example of particular titles using the words ‘protection’ or ‘prevention’. However, since US bills

²¹⁷ Anti-terrorism, Crime and Security Act 2001 c.24.

²¹⁸ Prevention of Terrorism Act 2005 c.2.

²¹⁹ Terrorism Act 2006 c.11. Available at:
http://www.legislation.gov.uk/ukpga/2006/11/pdfs/ukpga_20060011_en.pdf

²²⁰ Counter-Terrorism Act 2008 c.28. Available at:
http://www.legislation.gov.uk/ukpga/2008/28/pdfs/ukpga_20080028_en.pdf

²²¹ Protection of Children (Scotland) Act 2003 asp 5.

²²² Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 asp 9.

²²³ There were some other changes in questioning, however, as I had to account for the fact that many of my interviews in the US were with staff members, not legislators. Thus, instead of using ‘you’, I would substitute it with ‘your office’ and/or ‘your boss’.

²²⁴ At least for public bills. It was mentioned earlier that the Scottish Parliament passed two pieces of Private legislation.

contain such evocatively named legislation, I chose to ask American interviewees about the stronger words they have used, such as ‘efficient’ and ‘effective’.

Unlike with the qualitative interviews, in which I was very upfront regarding the topic of discussion, some very slight deception took place with the questionnaire participants in both countries. When introducing myself I informed them that I was performing a study on reactions to various legislative proposals, and did not mention naming or short bill titling in any manner. This slight deception was ethically harmless to the participants’ involvement.

All participants read and signed a consent form before commencing the actual survey, and a copy of this form is located in Appendix III. The consent form stated that participation was voluntary, and that the participant could have terminated their participation at any point. All surveys were confidential. Students were asked to read and sign the consent form, tear off the first page, and then pass the form to the front of the room before they commenced the survey. In total the process to completion usually took about 15-20 minutes.

Each survey consisted of four different bill vignettes, and the real-life bills used in the study are in bold below. For every original bill name, four other types of names were contrived for each bill (therefore totalling 20 separate names for each country). For example, the Standards in Scotland’s Schools Bill, since its original name is classified as desirable characteristic, had a humanised, overt action, combination, and bland name contrived for use in additional survey news stories. Some supporting text for contrived humanised bill names was needed for explanation purposes, but this only consisted, at most, of two sentences. Every survey had an almost identical vignette of each actual bill. Only the bill’s name varied, drawing on the following five types of names in the survey:

UK Bills (original name in bold):

- Humanised Names - The Kim Rogers Violent Crime Act, The Tim Hopkins Bill, The Ron Jones Torture Damages Bill, The Lindsay Newsome Scotland's Schools Bill
- Desirable Characteristic Names - **The Ethical Standards in Public Life Bill**, **The Standard's in Scotland's School's Bill etc.**, The Common Sense Violent Crime Act, The Rational Torture Damages Bill
- Overt Action Names - **Violent Crime Reduction Act of 2006**, Reviewing Public Life Bill, Restoring Scotland's Schools Bill, Providing Torture Damages Bill
- Combination Evocative Names - Reviewing Ethical Standards in Public Life Bill, Restoring Standard's in Scotland's Schools Bill, The Common Sense Violent Crime Reduction Act, The Rational Providing of Torture Damages Bill
- Control/Bland Names - **Torture Damages Bill**, The Violent Crime Act, The Public Life Bill, The Scotland's Schools Bill

US Bills (original name in bold):

- Humanised Names - The Paul Wellstone Act, The Brock Stevens Military Tax Act, The Christine Thompson Mortgage and Lending Act, The Peter Jenkins Electronic Surveillance Act
- Desirable Characteristic Names - **HEART Act**, The Responsible and Effective American Security Bill, The Fair Mortgage and Lending Act, The Mental Health and Addiction Equity Act

- Overt Action Names - **RESTORE Act**, The Heroes Earnings and Assistance Relief Act, The Mortgage and Lending Reform Act,
- Combination Evocative Names - **The Mortgage Reform and Anti-Predatory Lending Act**, The Honorable Heroes Earnings and Assistance Relief Act, Responsible Electronic Surveillance that is Overseen, Reviewed and Effective Act, **The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008**
- Control/Bland Names - The Mortgage and Lending Act, The Electronic Surveillance Act, The Military Tax Act, The Mental Health and Addiction Act

The articles were all actual news stories on the bills and contained (by substitution when necessary) the contrived bill name, a brief synopsis of what the bill entails, and other relevant information regarding the bill. The articles from the UK were taken from the *Guardian*, the *Times*, and the *Scotsman*. The actual articles from the US were taken from the *New York Times*, *The Washington Times* and the *Washington Post*. A few of the articles have been altered for research purposes, and are not exact replicas of the newspaper articles.²²⁵ Participants were asked to read the article and then asked how familiar they were with the issues presented in the articles. Next, they were asked whether or not they would support the bill given the information provided, or be unsure or have no opinion. This was the main dependent variable for the questionnaire, as the participant's support for each naming type was compared with the others.

²²⁵ The only articles that were altered were the humanised vignettes for both countries. Since humanised names needed to be contrived for most of the bills used, besides the Paul Wellstone and Pete Domenici Mental Health Act, there was a line added to some of the vignettes that explained why the Act was named as such. Also, in regards to the humanised names used in these bills, most of them were contrived completely at random, and the names used are fictional. However, there are instances, such as in the UK Torture Damages Bill, where the name of the humanised bill is drawn from the actual article on the bill, and thus the name is an actual person involved in the issue.

If the participant favoured or opposed the measure, they were instructed to go to question 3. If they chose the unsure/have no opinion option, they were instructed to go to question four. Question 3 asked why the participant favoured or opposed the measure, and had three options: (1) they liked/disliked the sound of it; (2) they favoured/opposed the description or policies of the legislation; or (3) Other. This question attempted to ascertain the separation between actual bill policies and naming. This was another major dependent variable for the questionnaire. The fourth and final question on the survey asked the participants whether or not, if offered, they would like more information on the bill. Here the participants were merely given a choice of yes or no. This question attempted to explore whether or not people desire more information about bills, other than the small vignette that is provided with the questionnaire. Given the confidential nature of the questionnaire, the subjects were provided every opportunity to answer the questions honestly.

The survey ends with the following questions concerning background and general information: gender, age, race/ethnicity, grade level, political orientation, and level of interest in politics. These questions were mainly used to gather a better overall picture of the participants.

Determining Quality

Determining quality for qualitative studies is not as established or focused as it is for quantitative work. Silverman notes that interviews are the most common qualitative method used, but acknowledges that they are not always the best method chosen.²²⁶ He lists two main problems that such research may encounter: (1) assuming there is a

²²⁶ Silverman, David (Ed.) (2004). *Qualitative Research: Theory, Method and Practice*. London, UK: Sage Publications, p. 360.

stable reality or context to which people respond; and (2) a gap between beliefs and actions and between what people say and what they actually do.²²⁷ These are important to keep in consideration, because Silverman further notes that many types of qualitative research are ‘fundamentally concerned with the environment around the phenomenon rather than the phenomenon itself’.²²⁸ I have taken these important aspects of quality into consideration; by using both qualitative and quantitative data, by incorporating the disciplines of law, and to a lesser extent politics and psychology, in the topic design, and by carefully crafting both my interview and research questions, I have aimed to focus primarily on the phenomenon of evocative bill naming, and yet also devote a significant portion of this thesis to the environment around the phenomenon.

Flick states that the three main factors that determine quality for academic work (reliability, validity and objectivity) require a particular set of interpretations for qualitative work. In terms of reliability, he notes that assessing the reliability of data and procedures ‘in the traditional sense’ of seeking data replication is ‘useless’ for qualitative data, and that ‘[i]dentical repetition of a narrative in repeated narrative interviews is rather a sign of a “constructed” version than of the reliability of what has been told’.²²⁹ Regarding validity, Flick says that the traditional quantitative model which sets out a ‘necessary degree of standardization’ does not fit the strengths of qualitative data, and neither do many other concepts of validity.²³⁰ The third factor Flick mentions is objectivity, stating that in qualitative research the term should be expanded beyond the classical usage that refers to ‘consistency of meaning, when two

²²⁷ *Id.*, pp. 360-61.

²²⁸ *Id.*, p. 361.

²²⁹ Flick, Uwe. (2007). *Managing Quality in Qualitative Research*. London, UK: Sage Publications, (p.15).

²³⁰ *Id.*

or more independent researchers analyze the same data or material' and reach the same conclusions.²³¹ Recognizing that these traditional methods of evaluation are problematic for qualitative research, Flick suggests a reformulation of traditional criteria for determining qualitative research quality, and examines a number of other suggestions provided by various academics.

One of the examples Flick discusses to determine quality is provided by Charmaz.²³² In assessing quality, Charmaz uses four criteria: credibility, originality, resonance, and usefulness. In determining whether studies have met these criteria, Charmaz lays out a set of central questions and qualities that each piece of qualitative research must contain under each criterion:

'Credibility:

Has your research achieved intimate familiarity with the setting or topic;
Are data sufficient to merit your claims? Consider the range, number
and depth of observations contained in the data; Have you made
systematic comparisons between observations and between categories;
Do the categories cover a wide range of empirical observations; Are
there strong logical links between the gathered data and your argument
and analysis; Has your research provided enough evidence for your
claims to allow the reader to form an independent assessment – and
agree with your claims? (emphasis in original).

Originality:

Are your categories fresh? Do they offer new insights; Does your
analysis provide a new conceptual rendering of the data; What is the

²³¹ *Id.*

²³² Charmaz, K. (2006). *Constructing Grounded Theory: A Practical Guide Through Qualitative Analysis*. Thousand Oaks, CA: Sage Publishing, pp.182-183.

social and theoretical significance of this work; How does your grounded theory challenge, extend, or refine current ideas, concepts and practices?

Resonance:

Do the categories portray the fullness of the studied experience; Have you revealed both liminal and unstable taken-for-granted meanings; Have you drawn links between larger collectivities[sic] or institutions and individual lives, when the data so indicate; Does your grounded theory make sense to your participants or people who share their circumstances? Does your analysis offer them deeper insights about their lives and world?

Usefulness:

Does your analysis offer interpretations that people can use in their everyday worlds; Do your analytic categories suggest any generic processes; If so, have you examined these generic processes for tacit implications; Can the analysis spark further research in other substantive areas; How does it contribute to making a better world?²³³

I believe that a close examination of the current study shows that it fulfils all four of the above criteria, and that its chief merits are originality, resonance and usefulness. Many of those I interviewed had never consciously focused on the issue of bill naming and the ancillary factors involved in the short titling of bills, and instead brought together disparate and previously unconnected insights. Several were interested in looking at the results of my thesis and one US political commentator wrote an article

²³³ Charmaz, K. (2006). *Constructing Grounded Theory: A Practical Guide Through Qualitative Analysis*. Thousand Oaks, CA: Sage Publishing, pp.182-183. Taken from Flick, Uwe. (2007). *Managing Quality in Qualitative Research*. London, UK: Sage Publications, (p.20-21).

about bill naming as a result of the interview, in which this work was mentioned.²³⁴

Others I talked with had given thought to the issues and dynamics involved in short bill titling, and were also consequently interested in the practical implications of my research. Additionally, three academic publications have already resulted from the current thesis work: one has been published in *Parliamentary Affairs*,²³⁵ and other articles are forthcoming in the *Stanford Law and Policy Review*²³⁶ and *Legisprudence*.²³⁷

Hypotheses

The eighteen hypotheses presented below were amalgamated from the research questions, issues and evidence presented in this thesis, and are separated into two categories, one for the qualitative portion and one for the quantitative portion. They are as follows:

Qualitative Interviews:

²³⁴ Bravin, Jess, *op. cit.*, Wall. St. Journal (A1).

²³⁵ Jones, Brian Christopher. (2012). Research Note: Do Short Titles Matter? Surprising Insights from Westminster and Holyrood. *Parliamentary Affairs*, 65(2), 448-462.

²³⁶ Jones, Brian Christopher. (2012). Drafting Proper Short Titles: Do States Have the Answer? *Stanford Law and Policy Review*, 23(_). (forthcoming, print details undetermined).

²³⁷ Jones, Brian Christopher (2012). Transatlantic Perspectives on Humanised Public Law Campaigns: Personalising and Depersonalising the Legislative Process. *Legisprudence*. (forthcoming, print details undetermined)

- Hypothesis 1: Legislative insiders and media members from the UK and Scotland will state that short titles still serve their original referential purpose. Legislative insiders and media members from the US will state that short titles do not just serve their original referential purpose, but have multiple purposes.
- Hypothesis 2: Legislative insiders from all jurisdictions will state that titles of legislation, whether evocative or not, are not misleading and could not be construed as misleading. Media members from all jurisdictions will state that many titles of legislation are misleading, and could be construed as misleading.
- Hypothesis 3: Legislative insiders from all jurisdictions will state that evocative naming does not have an impact on the measure's chances of it becoming law. Media members from all jurisdictions will state that evocative naming does have some type of impact on a measure's chances of becoming law.
- Hypothesis 4: Legislative insiders from the UK and Scotland will state that using promotional language in their titles, such as 'prevention' and 'protection' should not be used. Legislative insiders from the US will state that short titles should use promotional language when naming bills, such as 'efficient' or 'effective'. Media members from all jurisdictions will state that promotional language should not be used in short titles.
- Hypothesis 5: Legislative insiders and media members from the UK and Scotland will state that humanised bill naming is not likely to happen in their current system. Legislative insiders and media members from the US will state that using a humanised title makes the measure more appealing to legislators, the media and the public.
- Hypothesis 6: Legislative insiders and media members in the UK and Scotland will state that the naming of legislation is not important in the lawmaking

process. Legislative insiders and media members from the US will state that the naming of legislation is important in the lawmaking process.

- Hypothesis 7: Legislative insiders and bill drafters from all jurisdictions will state that legislators fully understand legislation before voting on it. Media members from all jurisdictions will state that legislators do not fully understand legislation before voting on it.
- Hypothesis 8: Legislative insiders and media members from the UK and Scotland will state that legislators have enough time to read all the bills before they vote on them. Legislative insiders and media members from the US will state that legislators do not have enough time to read all bills before they vote on them.
- Hypothesis 9: Legislative insiders from all jurisdictions will not provide adequate explanations as to how and/or why some bill names have become evocative in nature and others have not. Media members from all jurisdictions will supply many explanations as to why and/or how bill names have become evocative in nature.
- Hypothesis 10: Legislative insiders and media members from both countries will state that communication between politicians and the general public regarding bills and bill naming has changed throughout the past few decades.
- Hypothesis 11: Legislative insiders from all jurisdictions will state that they have not gravitated towards the language of the marketplace, especially when it comes to bill naming. Media members from all jurisdictions will state that legislators have gravitated towards the language of the marketplace.
- Hypothesis 12: Legislative insiders and media members from all jurisdictions will state that specific bills (or laws) are often mentioned on the campaign trail.

- Hypothesis 13: Legislative insiders from all jurisdictions will state that bill names very infrequently affect them when voting on a piece of legislation. Media members from all jurisdictions will state that bill names do have an impact when legislators are voting on them.
- Hypothesis 14: Legislative insiders from all jurisdictions will not provide evidence that politicians draft names that in any way tend to manipulate or persuade people (be them colleagues, media members, or the general public) into favouring the legislation. Media members from all jurisdictions will provide evidence that politicians do draft names that intend to manipulate or persuade people (be them colleagues, media members, or the general public) into favouring the legislation.

Quantitative Survey:

- Hypothesis 15: Bills with evocative titles (humanised, desirable characteristic, combination and overt action) will receive higher favourability rates than bills with non-evocative (bland/control) titles. This will be true at the aggregate-level.
- Hypothesis 16: Bills with combination evocative titles will receive higher favourability than other evocative titles (humanised, desirable characteristic, overt action) and also non-evocative (bland) titles.
- Hypothesis 17: For those participants that favoured or opposed the measure, a majority of them will have done so because they favoured or opposed the description or policies of the legislation.
- Hypothesis 18: After they have read the short newspaper story of the bill, participants will not desire more information on the legislation in question.

This chapter has discussed the rationale and justification of the thesis, detailed the methods, and provided the hypotheses for study. The following chapter is the main literature survey which includes the relatively little academic material related to short bill titles in the three jurisdictions studied. Also included are topics such as: the evolution and importance of evocative language in policymaking; how political marketing techniques have affected bill language; insights regarding the psychological aspects of evocative language; and a discussion of the constitutionality of evocative bill naming in the United States.

Chapter III: Literature Survey

‘It is not society that lives, it is people, and it is to people the law must be communicated.’

-G.C. Thornton¹

The previous chapter examined the rationale and methodology in regard to this thesis and also detailed the specific hypotheses. This chapter now explores the literature surrounding the topic, while the following chapter will detail the formal parliamentary rules and procedure concerning bills in all three jurisdictions from a short titling perspective. This chapter starts by explaining evolution of evocative language in lawmaking from both a US and UK perspective. It then talks about the importance of evocative language from a general public policy perspective, and examines the relevant academic literature on the subject. The structural considerations of evocative lawmaking are subsequently considered, followed by a short note on plastic language and re-contextualisation. In order to better understand the topic from an interdisciplinary point of view, the potential psychological effects of evocative naming are considered in the following section. Lastly, the constitutionality of evocative short titles in the US Congress is considered.

There is very little academic research related to short bill titles in the US or UK. In fact there is not much research related to bill titles in any jurisdiction, even those that practice evocative bill title naming (e.g. Australia, United States). As noted in the

¹ Thornton, G.C. (1996). *Legislative Drafting (4th Ed.)*. West Sussex, UK: Tottel Publishing, p.44.

previous chapter, Wood² and Orr³ have touched on the subject, but only from unverified observational, non-empirical viewpoints. Some anecdotal evidence from other works seem to suggest that bill naming can be important in particular instances,⁴ but none of these materials are specifically about short titles, and therefore do not elaborate on their significance or potential effects. However, these are discussed below.

Authoritative UK texts on statutory drafting such as Bennion,⁵ McLeod,⁶ Craies⁷ and Thornton⁸ mention short titles, but mostly from an instructional perspective.⁹ Bennion discusses short titles far more than others do. He observes that some legislatures, such as the United States, use political short titles, and tries to point out where certain UK titles have been misleading in the past.¹⁰ Legislative processes texts such as and Miers and Page¹¹ do not touch on bill naming much either. However,

² Wood, J. K. (2005). In Whose Name? Crime Victim Policy and the Punishing Power of Protection. *NWSA Journal*: 17(3), 1-17.

³ Orr, Graeme. (2000). Names Without Frontiers: Legislative Titles and Sloganeering. *Statute Law Review*, 21(3), pp. 188-212; Orr, Graeme (2001). From Slogans to Puns: Australian Legislative Titling Revisited. *Statute Law Review*, 22(2) pp. 160-61.

⁴ Rochefort, David A. & Cobb, Roger W. (1994). *The Politics of Problem Definition: Shaping the Policy Agenda*. Lawrence, KS: University of Kansas Press; Redman, Eric. (2001). *The Dance of Legislation*. Seattle, WA: University of Washington Press; Safire, William. (2004). *The Right Word in the Right Place at the Right Time: Wit and Wisdom from the Popular Language Column in the New York Times Magazine*. New York, NY: Simon & Schuster; Luntz, Frank. (2008). *Words That Work: It's Not What You Say, It's What People Hear*. New York: Hyperion.

⁵ Bennion, Francis. 2008. *Statutory Interpretation* (5th Ed.). London, UK: Butterworths.

⁶ McLeod, Ian. (2009) *Principles of Legislative and Statutory Drafting*. Oxford, UK: Hart Publishing.

⁷ Greenberg, Daniel. (2008). *Craies on Legislation* (9th Ed.). London, UK: Sweet and Maxwell.

⁸ Thornton, G. C. (1996). *Legislative Drafting* (4th Ed.). London, UK: Butterworths.

⁹ Some of these instructions will be covered in the following chapter, which details recommendations by legislative drafting experts.

¹⁰ Bennion, Francis, *op. cit.*, p. 736-37. My doctoral work on short titles is mentioned by Bennion as well (p. 737 FN 3).

¹¹ Miers, D. and Page, A. (1982). *Legislation*. London, UK: Sweet & Maxwell. It should be noted that the updated, 1990 second edition of Meirs & Page's *Legislation* took out a good section of work on the particulars of legislation, including the section on the particular components of an Act, which included this reference. I have not seen any change in the regulations regarding this, so I assume that the statement is still valid.

the latest Hansard Society text on *Making Better Law* stresses the importance of long titles, but does not mention short titles at all.¹² Even the current *Erskine May's Parliamentary Practice* provides minimal information about short titles, as the topic is only given a few paragraphs under the 'Form of a bill' section.¹³ It seems quite easy to discount short titles, because the handful of words that make up these names are usually not all that enticing. My own recent piece which considered the importance of short bill titles in the Westminster and Scottish parliaments according to insiders from each lawmaking institution,¹⁴ appears to be the only piece of scholarly literature specifically in regard to such matters in the UK.

The only major UK work to give recognition to short titles outwith the realm of technical advice is provided by Greenberg, in *Laying Down the Law*.¹⁵ A former Parliamentary Counsel bill drafter for almost two decades, he notes that short titles have 'considerable practical significance', and acknowledges that the 'main issue that arises as a matter of controversy over short titles concerns their use for political propaganda by the Government'.¹⁶ He further states that adding only one word to a short title, such as 'reform' or 'modernisation', can make a bill sound that much more exciting. His statements complement the nomenclature of evocative short titles that I presented in Chapter II, especially in regard to overt action and/or desirable

¹² Fox, Ruth & Korriss, Matt. (2010). *Making Better Law: Reform of the Legislative Process from Policy to Act*. London, UK: The Hansard Society.

¹³ Jack, Sir Malcolm. (2011). *Erskine May's Parliamentary Practice (24th Ed.): The Law, Privileges, Proceedings and Usage of Parliament*. London, UK: LexisNexis. What the text does say in relation to short titles, however, will be discussed in the next chapter.

¹⁴ Jones, Brian Christopher. (2012). Research Note: Do Short Titles Matter? Surprising Insights from Westminster and Holyrood. *Parliamentary Affairs*, 65(2), 448-462.

¹⁵ Greenberg, Daniel. (2011). *Laying Down the Law: A Discussion of the People, Processes, and Problems that Shape Acts of Parliament*. London, UK: Sweet & Maxwell.

¹⁶ *Id.*, pp. 101-102.

characteristic titles. Greenberg warns that ‘once you start to categorise particular Bills as being reforming or modernising, you start a trend that Ministers will neither be able nor want to resist, and there will be pressure for every single Bill to include one or other of the words’.¹⁷ More on Greenberg’s comments regarding short titles is located below and in Chapter IV.

Although evocative bill titling has changed dramatically in the US, as seen in the previous chapter, the academic literature on the topic is surprisingly sparse. A few senior journalists in the popular press have noticed the stylistic transition that Congressional bill titles have experienced in recent years. Former *New York Times* reporter William Safire has deemed the titling of bills in Congress ‘acronymia,’ and he uses the USA PATRIOT Act as the most prominent example.¹⁸ Jess Bravin from the *Wall St. Journal* recently penned an article complimenting Safire’s observations, and further notes that ‘[e]ven when they can’t coin an acronym, legislators use loaded language that raises the stakes for voting no.’¹⁹ It appears that some are irritated with the practice. Bravin cites a couple of lawmakers who oppose such methods. As I noted in the previous chapter, Bravin also states that former President George W. Bush has acknowledged, and regretted, that the name of the USA PATRIOT Act implied that those who voted against the measure were unpatriotic.²⁰

The literature in the US is similar to the UK in respect to evocative bill titling. Legislative processes texts such as Jefferson’s Manual²¹ and Senate Procedure²²

¹⁷ *Id.*, p. 102. Indeed, this statement could be in line with how the major change in short bill titling in the US Congress occurred.

¹⁸ Safire, W. (2004), *op. cit.*, p. 5.

¹⁹ Bravin, Jess, *op. cit.*

²⁰ *Id.*, citing: Bush, George W. (2010). *Decision Points*. New York, NY: Crown Publishing.

²¹ Jefferson, Thomas. (1856). *A Manual of Parliamentary Practice: Composed Originally for the Use of the United States Senate*. New York, NY: Clark Austin and Smith.

manuals make no mention of short titles, and major legislative and public policy works from Kingdon,²³ Baumgartner & Jones,²⁴ and Sinclair²⁵ also make little to no acknowledgement of them. Even political communication and political marketing texts such as Maarek²⁶ and Sussman²⁷ fail to shed much light on such evocative titles. Eskridge et al.'s book, *Legislation and Statutory Interpretation*, does touch on the subject briefly while mentioning one-subject clauses, and is covered below.²⁸ Barring the couple of media articles mentioned above, both the US academic and legal communities have largely neglected short bill titles and the legal and political consequences of employing evocative language in titles.

The Evolution of Evocative Language in State Policymaking

²² Gold, Martin B. (2008). *Senate procedure and Practice* (2nd Ed). Lanham, MD: Roman & Littlefield Publishers, Inc.

²³ Kingdon, John W. (2003). *Agendas, Alternatives, and Public Policies* (2nd Ed.). New York, NY: Longman Publishing.

²⁴ Baumgartner, Frank R. & Jones, Bryan D. (2009). *Agendas and Instability in American Politics* (2nd Ed.). Chicago, IL: University of Chicago Press.

²⁵ Sinclair, Barbara. (2007). *Unorthodox Lawmaking: New Legislative processes in the U.S. Congress* (3rd Ed). Washington, D.C.: CQ Press.

²⁶ Maarek, Philippe J. (1995). *Political Marketing and Communication*. New Barnet, UK: John Libbey Publishing.

²⁷ Sussman, Gerald. (2005). *Global Electioneering*. Lanham, MD: Roman & Littlefield Publishers.

²⁸ Eskridge, William N., Frickey, Philip P. & Garrett, Elizabeth. (2006). *Legislation and Statutory Interpretation* (2nd Ed). New York, NY: Foundation Press.

Shortly after the Second World War, the United States enacted the National Security Act of 1947. This act changed the name of the War Department to the less controversial Department of Defense.²⁹ Though subtle, this change is significant when examining the interaction between a government and its people. ‘War’ in many instances has negative connotations, even if the underlying purpose is seen to be justified. ‘Defense’, on the other hand, is more delicate and ultimately less oppositional. The change in wording transforms the name of the agency into something less controversial, and puts a decidedly positive spin on the role of the Department. A US Admiral aptly commented on the nature of the change, stating that ‘[u]p till that time, when you appropriated money for the War Department, you knew it was for war and you could see it clearly. Now it’s for the Department of Defense. Everybody’s for defense. Otherwise you’re considered unpatriotic. So there’s absolutely no limit to the money you must give to it’.³⁰ This linguistic manipulation is an interesting precursor for a study of how some bills and laws are named in regard to contemporary policymaking (especially in the US Congress). For instance, even the bills relating to the Department sound more positive than their predecessors. Instead of names such as the War Revenue Act of 1917,³¹ Congress currently passes ‘defense’ bills, such as the National Defense Authorization Act For Fiscal Year 2010³² and the Department of Defense Appropriations Act, 2010.³³

²⁹ Edelman, Murray. (1985). *The Symbolic Uses of Politics* (2nd Ed.). Champagne, IL: University of Illinois Press, p. 63.

³⁰ Quoted in Zinn, Howard & Arnove, Anthony. (2004). *Voices of a People’s History of the United States*. New York, NY: Seven Stories Press, p. 374.

³¹ War Revenue Act of 1917, 40 Stat. 300; See: Blakey, Roy G. (1917). The War Revenue Act of 1917. *The American Economic Review*, 7(4), p. 791.

³² National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84, 123 Stat. 2190. Available here: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:h.r.02647:>

³³ Department of Defense Appropriations Act, 2010, Pub. L. No. 111-118, 123 Stat. 3409. Available here: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR03326:TOM:/bss/d111query.html>. The renaming of departments and the subsequent legislation resulting from such changes was also mentioned earlier regarding the Westminster Parliament, with the Children, Schools and Families Act 2010.

This approach to naming was also seen with the US Department of Homeland Security formed in 2002. Before the word ‘homeland’ was chosen for the department, the creators were advocating the word ‘domestic’. However they thought this term was too similar in meaning to ‘internal security’, a term that some believe draws negative connotations.³⁴

The change from the War Department to the Department of Defense is also important because of the time in which it was done: 1947. Around this period is when researchers state that the US started to employ political marketing techniques on a large scale,³⁵ as politicians began using marketing and public relations tactics to promote themselves, champion policies and win elections. Maarek posits that political marketing originated in the United States from the years 1952 – 1960.³⁶ In 1964, a few years after these techniques were said to be developed and implemented, Murray Edelman published his mightily influential work *The Symbolic Uses of Politics*. Here Edelman demonstrated how much governmental action that is ‘dramatic in outline’ is actually ‘empty in realistic detail’, and thus serves more symbolic, as opposed to substantive, purposes.³⁷ He further acknowledges how these symbols of governmental achievement are designed and championed to appeal to and appease the masses, although the outcomes of the policies usually affect only small groups of people. The connection of these political marketing and symbolic politics techniques to the titling of bills and laws has developed more slowly than in other arenas, such as political advertising on radio and television.

³⁴ William, Safire. (2008). *Safire’s Political Dictionary*. New York, NY: Oxford University Press, p. 321.

³⁵ Though, it was not called ‘political marketing’ at the time, as this is a more modern phrase for the use of such tactics.

³⁶ Maarek, Philippe, *op. cit.*

³⁷ Edelman, Murray (1985), *op. cit.*, p. 9.

In 1952 Presidential candidate at the time Dwight D. Eisenhower employed the first ever media relations firm to be used in a presidential election, and he was also the first to use television advertisements for his re-election campaign of 1956.³⁸ The latter was also the first year that negative or ‘attack’ television advertisements were used in presidential campaigns, when Eisenhower employed them against Adlai Stevenson. Though such practices marked the beginning of such tactics, Maarek states that political marketing’s formative years in the US were from 1964-76, when these practices were adopted on a much larger scale.³⁹ Yet even in these years the significant bills passed by the US Congress did not typically employ evocative naming in their titles. For example, three extremely contentious Acts passed in 1965 employed distinctly innocuous short titles: the Elementary and Secondary Education Act,⁴⁰ the Social Security Act⁴¹ and the Voting Rights Act.⁴²

There were some initial indications that symbolic political marketing language was beginning to appear in US short bill titles during and after these ‘formative years’, but not to any significant degree. The Government in the Sunshine Act⁴³ was passed in the mid-1970s to purportedly provide for more openness in government agencies, although it came with a list of ten key exceptions, including national defence and

³⁸ Maarek, Philippe J, *op. cit.*

³⁹ *Id.*

⁴⁰ Elementary and Secondary Education Act, Pub. L. No. 89-10, 79 Stat. 27. This Act provided extensive funding for education, determined there should be no federal curricula. It was the precursor to the No Child Left Behind Act of 2001.

⁴¹ Social Security Act, Pub. L. No. 89-97, 79 Stat. 286. This Act set up Medicare and Medicaid health care.

⁴² Voting Rights Act of 1965, Pub. L. No. 89-110 79 Stat. 438. This Act prohibited many discriminatory voting practices that were widespread at the time.

⁴³ Government in the Sunshine Act, Pub. L. No. 94-409, 90 Stat. 1241. Available here: <http://thomas.loc.gov/cgi-bin/bdquery/z?d094:SN00005:/TOM:/bss/d094query.html>. Also known as the ‘Sunshine Act’.

foreign policy. The Comprehensive Crime Control Act of 1984⁴⁴ was an omnibus measure that included a plethora of smaller Acts, including: the Armed Career Criminal Act of 1984, the Aircraft Sabotage Act, the Dangerous Drug Diversion Control Act of 1984, the Insanity Defense Reform Act of 1984, the National Narcotics Act, the Missing Children's Assistance Act, the Sentencing Reform Act of 1984, and the Victims of Crime Act, among others.⁴⁵ Yet the tendentiously named Act certainly failed to comprehensively control crime, and especially violent crime, which rose to historically high rates almost a decade later.⁴⁶

As this thesis demonstrated in the beginning of Chapter II, the tipping period for evocative bill naming in the US did not appear until the early 1990s. Yet the relationship between the increased use of political marketing techniques from the 1950s forward and the major focus on symbolic politics by Edelman was no coincidence. The increase of such practices in the political sphere largely relies on enhancing the symbolic value of products it is attempting to promote (i.e. governments, laws, lawmakers, etc.). Though Edelman did not specifically focus on the short titles of legislation in his seminal work, and for good reason (because there were not many evocative bill names at the time), he did put a large emphasis on the language of politics, which was an essential component to his theory.⁴⁷ In fact, it was this focus on language that gave rise to contemporary studies in agenda setting, framing, and problem definition, which are discussed below.

⁴⁴ Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, *op. cit.*

⁴⁵ *Id.*, Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d098:HJ00648:@@T>

⁴⁶ Bureau of Justice Statistics (2010). Key Facts at a Glance. Department of Justice. Available at: <http://bjs.ojp.usdoj.gov/content/glance/cv2.cfm>

⁴⁷ Edelman, Murray (1985), *op. cit.*; Edelman, Murray. (2001). *The Politics of Misinformation*. New York, NY: Cambridge University Press.

The UK appeared to be relatively immune to such political marketing practices until the past couple of decades. Lees-Marshment believes that a so-called ‘political marketing revolution’ is currently sweeping not only the British political system, but every organization in the public or governmental sphere.⁴⁸ She says that some of these public relations campaigns started in the 1990s, with movements such as ‘Listening to Britain’ and ‘Conservative Future’.⁴⁹ In one of the few examples of a controversial UK short title, Willet questioned whether the Food Safety Act 1990⁵⁰ was more symbolism than substance, while deriding the ‘safety’ aspect of the measure and the government’s inclusion of the term in the short title.⁵¹ In regard to the Act he further notes that ‘the legislative process – from White paper to statute book – manifests a significant degree of symbolism’.⁵²

Lees-Marshment also acknowledges that at one point the Conservative Party in Scotland adopted the ‘No Child Left Behind’ slogan to convey their new approach to the people, mimicking the 2001 NCLB Act of the US Congress. The UK media have also succumbed to more evocative naming practices, as the BBC started changing the names of their political talk shows to attract more viewers, for example, changing ‘On the Record’ to ‘The Politics Show’; they thought that the implementation of the word ‘show’ in the new title sounded more entertaining.⁵³ Also, I demonstrated in the previous chapter how the UK recently started renaming their ministerial departments

⁴⁸ Lees-Marshment, Jennifer. (2004). *The Political Marketing Revolution: Transforming the Government of the UK*. Manchester, UK: Manchester University Press; Lees-Marshment, Jennifer. (2008). *Political Marketing and British Political Parties*. Manchester, UK: Manchester University Press.

⁴⁹ *Id.*

⁵⁰ Food Safety Act 1990 c.16. Available at: <http://www.legislation.gov.uk/ukpga/1990/16/contents>

⁵¹ Willitt, Chris. (1991). The Food Safety Act 1990: Substance or Symbolism? *Statute Law Review*, 12(2) pp. 146-55.

⁵² *Id.*, p. 155.

⁵³ *Id.*, p. 84.

(e.g. the former Department of Business and Regulatory Reform is currently the Department of Business, Innovation and Skills (BIS)), and that some parliamentary bills are indeed named after these governmental departments.⁵⁴ Changes such as these are ominous signs for the short titles of legislation, especially given that short titles were unaffected for many years in the US by political marketing tactics, yet eventually succumbed to such practices on a large scale.

More on how political marketing practices of the US and UK may affect short bill titles is located below. However, in order to better understand the ‘linguistification’ of the political field⁵⁵ and how much political language (and more important to this thesis, legislative language), is structured to achieve political goals,⁵⁶ an examination in relation to symbolic politics, framing and problem definition is located below, along with a look into the relatively sparse academic literature on and around short bill titles.

The Importance of Language in Policymaking

The importance of language for Edelman was paramount to his theory of symbolic politics. Writing in 2001, Edelman declared that ‘language is a tool that creates worlds and versions of worlds’,⁵⁷ and this statement is no more true than in legislatures, where

⁵⁴ The Children, Schools and Families Act 2010 c.26 is one such example.

⁵⁵ Butler, Judith. (1997). *Excitable Speech: A Politics of the Performative*. New York, NY: Routledge.

⁵⁶ Chilton, Paul A. & Schaffner, Christina. (2002). *Politics As Talk and Text: Analytic Approaches to Political Discourse*. Herndon, VA: John Benjamins Publishing, p. 23; Wilson, John. (1990). *Politically Speaking: The Pragmatic Analysis of Political Language*. Blackwell Publishing, p.10.

⁵⁷ Edelman, Murray. (2001). *The Politics of Misinformation*. New York, NY: Cambridge University Press, p. 82.

competing ideas about proposals battle for supremacy. Others have noted this importance on a more general scale, maintaining that ‘language as symbol is the instrument and tool for human action and expression and the means of sharing social, political, and cultural values’,⁵⁸ and that it ‘acts as the agent for social integration, the means of cultural socialization, the vehicle for social interaction, the channel for the transmission of values, and the glue that bonds people, ideas, and society’.⁵⁹ When examining subjects closely related to Edelman’s theory of symbolic politics, such as agenda setting, framing and problem definition, his research could not have been more prescient.

Recognizing the importance of language as symbol is essential to understanding the potential implications of short bill titles and related subject areas. In his seminal work on agenda-setting, Kingdon defines agenda as ‘the list of subjects or problems which government officials, and people outside of government closely associated with those officials, are paying some serious attention at any given time’.⁶⁰ Other researchers note that it is ‘an important component of the social construction of public problems’ as it ‘analyzes the interaction among the media, the public, and policymakers as different political issues compete for the limited resource of attention’.⁶¹ Steven Lukes wrote a seminal work on the power of agenda setting in politics, suggesting that this may be the most influential aspect of such power.⁶²

⁵⁸ Stewart, Charles J., Smith, Craig Allen, & Denton Jr., Robert E. (2006). *Persuasion and Social Movements* (5th Ed.). Long Grove, IL: Waveland Press, p. 155.

⁵⁹ *Id.*, p. 155.

⁶⁰ Kingdon, John W, *op. cit.*, p.3.

⁶¹ Lawrence, Regina G. (2001). *Defining Events: Problem Definition in the Media Arena*. In Hart, Roderick, P. & Sparrow, Bartholomew H. (2001). *Politics, Discourse, and American Society*. Lanham, MD: Rowan & Littlefield, pp. 92-93.

⁶² Lukes, Steven. (1974). *Power: A Radical View*. New York, NY: Palgrave, p. 24. He observes, ‘is it not the supreme and most insidious exercise of power to prevent people, to whatever degree, from having

Problem definition, on the other hand, occurs within agenda setting, and is a term that applies to how the government, legislators and the media succeed in defining a particular issue or policy. Rochefort and Cobb refer to it as the ‘process of characterizing problems in the political arena’,⁶³ while others note that ‘in more formal political arenas such as legislatures and bureaucracies, particular problem definitions are enshrined in the very act of policymaking’.⁶⁴ Baumgartner and Jones believe that problem definitions contribute to an overall policy image, which is ultimately ‘how a policy is understood and discussed’.⁶⁵

Central to this is the act of ‘framing’, based partly on the insight that problems exist in perception as much as they do in reality,⁶⁶ and that the selective focus of chosen language, or ‘framing’, is the vehicle that fuels this perception. It is acknowledged that other elements (i.e. auditory and/or graphic cues) also contribute to these perceptions. Nevertheless, it is language which is critical to defining such concepts and problems.⁶⁷ Lawrence notes that the ‘fundamental premise of framing is that people generally cannot process information without (consciously or unconsciously) using conceptual lenses that bring certain aspects of reality into sharper focus while relegating others to the background. Frames are the basic building blocks with which public problems are

grievances by shaping their perceptions, cognitions and preferences in such a way that they accept their role in the existing order of things, either because they can see or imagine no alternative to it, or because they see it as natural and unchangeable, or because they value it as divinely ordained and beneficial?’

⁶³ Rochefort, David A. & Cobb, Roger W. (1994). *The Politics of Problem Definition: Shaping the Policy Agenda*. Lawrence, KS: University of Kansas Press, pp. 3-4.

⁶⁴ Lawrence, Regina G., *op. cit.*, p. 105.

⁶⁵ Baumgartner, Frank R. & Jones, Bryan D. (2009). *Agendas and Instability in American Politics* (2nd Ed.). Chicago, IL: University of Chicago Press.

⁶⁶ Lawrence, Regina G., *op. cit.*

⁶⁷ Stewart, Charles J., Smith, Craig Allen, & Denton Jr., Robert E., *op. cit.*, p. 165.

socially constructed'.⁶⁸ Thus, frames are not specific informational devices but competing perspectives that use conceptual lenses to construct (or deconstruct) problems. It is not uncommon for there to be two competing images for a particular policy, as 'every public policy problem is usually understood, even by the politically sophisticated, in simplified and symbolic terms'.⁶⁹ It has been observed by researchers that these frames, especially ones provided by elites, 'may have a significant effect on interpretation and public opinion'.⁷⁰ The short titles of bills are part of these building blocks when considering legislative proposals.

Therefore located in the arena of agenda setting and problem definition lies the short titles of bills, because these names are essential in constructing and defining the problems that pieces of legislation are attempting to alleviate. This language contributes to the frame in which people encounter the legislation, and could affect the way they understand or view the proposal. While there may be evidence that frames have certain effects on issues, there remains very little empirical evidence in the way of research on short bill titles, something this thesis attempts to address. Some research discussed below does broach the topic, but ultimately these anecdotes are too brief to provide a nuanced understanding of short title effects.

Writing in 2001 Deputy Legislative Counsel of the US House of Representatives Douglas Bellis penned an article on legislative drafting in the US Congress.⁷¹ In it he notes how one of the jobs of the drafter is to be an interpreter between lawmakers and the courts, and how the drafter should always attempt to use

⁶⁸ Lawrence, Regina G., *op cit.*, p. 93.

⁶⁹ Baumgartner, Frank R. & Jones, Bryan D. (2009), *op. cit.*, p. 26.

⁷⁰ Chilton, Paul A. & Schaffner, Christina, *op. cit.*, p. 229.

⁷¹ Bellis, M. Douglass, *op. cit.*, pp. 38-44.

neutral terms and explain to politicians how certain language may damage their bill.

Though he does not specifically mention short titles, he does elaborate on this by maintaining

‘The politician much prefers the slogans, of course, and part of the job of the drafter is to explain the probable confusion that may arise from using them. At times, too, the slogans actually somewhat obscure what the politician really wants to do, and the ambiguities introduced by them are real. On those occasions, the drafter can ask the politician to resolve those ambiguities before the bill is enacted. Otherwise, under the American system, one is inviting the courts in effect to choose the policy they like best and read it into the ambiguous language of the bill...

It turns out that sometimes politicians actually want the same end result, but use differing catch phrases to describe it, catch phrases that are anathema to their political opponents. A draft that uses neutral terms to effectuate the same ends, when explained to those same political enemies by a neutral drafter, may find favour where a more partisan expression of the policy will not even be understood’.⁷²

This statement is telling about the juxtaposition the US Congress finds itself in regard to legislative drafting and, ultimately, their statute book. Politicians appear to prefer political slogans and policy statements to adorn their bills rather than technical and legal accuracy. In closing his piece Bellis notes one of the major rules drafters should follow is to avoid ambiguity, declaring that a ‘good drafter avoids aspirational statements (statements of hopes and opinions rather than commands) for the same

⁷² *Id.*, pp. 42-3.

reason. Either they have no effect, or can be used to undermine the specific provisions of the draft. By introducing those and other uncertainties into the law, they diminish its effectiveness by creating opportunities for imaginative reinterpretation'.⁷³

Speaking about one-subject clauses for legislative bills, Eskridge et al. note that nearly all US state constitutions employ such clauses, and that most also require that this subject be expressed in the title of the bill.⁷⁴ Declaring that such requirements may 'improve deliberation', the authors also state that 'rules that reduce the number of omnibus bills and require the title to reflect the contents of the proposal increase the chance that lawmakers will know what they are voting on'.⁷⁵ This appears to be an endorsement of accurate legislative bill titles. The closest that the US Congress comes to such rules is internal House and Senate rules that limit amendments not relevant to the legislation being debated. Yet since these internal Congressional rules can be waived by the body and are not constitutionally bound in any manner, the courts do not tend to involve themselves in these matters of legislative due process. State single-subject constitutional clauses and the matter of legislative due process will be addressed later in this thesis.

Writing in 2007 about the style and substance of the Scots statute, Jamieson wondered whether devolution and the new Scottish Parliament would bring about a distinctive style to such documents, noting that new (or 'renewed') legislatures bring about the possibility of new and improved forms of legislative composition.⁷⁶ Yet Jamieson's ultimate motive behind his article is examining the concept of the 'Global

⁷³ *Id.*, p. 44.

⁷⁴ Eskridge et al., *op. cit.*, p. 176.

⁷⁵ *Id.*, p 177.

⁷⁶ Jamieson, Nigel, *op. cit.*, pp. 182-198.

Statute’, and especially the English-speaking statute, in terms of whether or not statute law is moving towards more ‘harmonization, rationalization, and eventual uniformity’.⁷⁷ Eventually the author derides the Scots statute as being ‘disappoint[ing]’, because it has perpetuated the weaknesses of the English statute without adding much of their own distinctive style to the documents. He states that the current Scots statute has relied too highly on small print (subscripts, superscripts, headnotes and footnotes), and that he hopes such ‘mischief’ is merely a ‘passing fashion’ of the Global Statute.⁷⁸ Jamieson acknowledges the political aspects of statutes in his piece. He notes that though all statutes are indeed legal documents, and while legislative counsel may try to preserve neutrality as best as possible, ‘they still maintain, as everyone knows and as sometimes politicians seek to preserve, a second-order level of political reference’.⁷⁹

As mentioned earlier, Orr has commented on the state of Australian short titles, which he believes have morphed into sloganeering.⁸⁰ The author stresses the power of language and naming, and how these sometimes erroneous names may lead to mistakes when interpreting the statute. In an updated piece on the issue the author observed that Australian titles have gone from sloganeering to punning with the enactment of ‘The Roads to Recovery Act 2000 (Cth)’.⁸¹ He further explains that this title was likely inspired by the marketable titles of the US Congress, where such titles run amok and are propagated by even the most literate of lawmakers. Also, the author perceives there to be a larger change in where Australia receives their linguistic cues, noting that the

⁷⁷ *Id.*, p 184.

⁷⁸ *Id.*, p 195.

⁷⁹ *Id.*, p 193.

⁸⁰ Orr, Graeme (2000), *op. cit.*, pp. 188-212.

⁸¹ Orr, Graeme (2001), *op. cit.*, pp. 160-61.

once fashionable British English could be falling out of favour to American English.⁸² But while Orr does a laudable job of presenting the problem and analyzing its possible effects, he does not present any empirical evidence that naming affects people's perceptions of particular legislation. Orr also fails to adequately address whom the potential audiences may be when names are being drafted.

In his chronicles as a Senate staffer Redman provides some anecdotal examples regarding the importance of short titles. He recounts how certain legislators were happy they were mentioned in the title of a bill throughout the *Congressional Record*, a periodical covering the activities of the US Congress.⁸³ He notes that the main sponsor of his bill in the House would not use the same name as the one proposed in the Senate. Thus the House member changed his version of the title from the 'National Health Service Corps Act' (Senate version) to the 'Emergency Health Personnel Act of 1970' (House version).⁸⁴ Although Redman does not stress short titles in his manuscript, his examples provide evidence that naming is an important aspect of the legislative process at some level for lawmakers. One of the main goals of this thesis is to determine with more precision how important, if at all, these names are to lawmakers and those close to the legislative process in the three jurisdictions studied.

Rocheffort and Cobb champion the importance of language more generally in policymaking by stating that 'language can be the vehicle for employing symbols that

⁸² However, I take issue with the concept of marketable legislative bill titles being classified as 'American English'. Acknowledging that such titles are more prevalent in the US Congress than other legislatures, the use of such titles does not pioneer new wordage or a different mode or way of speaking the language. US short bill titles merely demonstrate that it is using the English language (both British and American) to convey, even if faulty, the essence of a bill. Perhaps Orr should have used the phrases 'British conventions' and 'American conventions', which seems a bit more accurate.

⁸³ Redman, Eric. (2001). *The Dance of Legislation*. Seattle, WA: University of Washington Press.

⁸⁴ *Id.*

lend legitimacy to one definition and undermine the legitimacy of another'.⁸⁵ They point out that a free-trade issue in Canada had differing levels of support regarding two different names: the Canada-US Trade Agreement and the Mulroney Trade Deal. This finding was demonstrated by a longitudinal opinion survey on the issue. The authors even contend that 'how the issue was named and what associations this name carried in the minds of the voters made a world of difference'.⁸⁶ Yet the primary subject of their study was not naming, and the authors do not elaborate on the matter in much length.

Arnold asserts that a common technique for naming legislative proposals is giving them names that lack definition about what the particular policy has set out to accomplish.⁸⁷ He points out that these are usually omnibus bills, given very 'amorphous sounding' names. The vagueness of the name appears to give the bill legitimacy, as people would actually have to read the text of the bill, or at least sort through relevant summaries, to ascertain how the bill will accomplish its goals, something which inattentive publics rarely do.⁸⁸ Therefore many of those who encounter it are left with a positive notion of what the proposal is supposed to accomplish, even if such knowledge is devoid of the proposal's details. This language is similar to the words described by Poerksen's work below.

Luntz provides numerous examples of how framing language affects attitudes towards various issues. He proudly notes that he was the person who killed the 'Estate Tax' by referring to it as the 'Death Tax',⁸⁹ which taxed the heirs of millionaires once a

⁸⁵ Rochefort, David A. & Cobb, Roger W., *op. cit.*, p. 9.

⁸⁶ *Id.*, p. 14.

⁸⁷ Arnold, R. Douglas. (1990). *The Logic of Congressional Action*. New Haven, CT: Yale University Press, p. 102.

⁸⁸ *Id.*, p. 68-71.

⁸⁹ Luntz, Frank. (2008). *Words That Work: It's Not What You Say, It's What People Hear*. New York: Hyperion, p. 164.

loved one had passed away. After performing research and polling on the issue Luntz found out only a slight majority agreed with eliminating the ‘estate tax’, while over 70 percent agreed with eliminating the ‘death tax’.⁹⁰ In 2001 Luntz’s polling paid off, as Congress repealed the Estate Tax until 2010.⁹¹ Luntz goes on to tout other linguistic achievements, as he claims to have originated ‘exploring for energy’ rather than ‘drilling for oil’.⁹² In fact, he notes that public opinion support for ‘exploring for energy’ in the Alaskan National Wildlife Reserve (ANWR) was 10 percent higher than ‘drilling for oil’ in ANWR.⁹³ He also advocates the use of ‘American’ rather than the word ‘domestic’, because he acknowledges that the former ‘has a more patriotic feel to it’.⁹⁴ Moreover, he notes that reiteration of the word American, although redundant, is ‘absolutely’ a word that works.⁹⁵ This finding has obvious significance for bill naming. As noted in Chapter II, the word ‘American’ and its derivatives are commonly used in US short bill titles.

Thus, although many researchers have touched on naming and how various policies have been framed, no systematic academic research seems to have conducted a thorough inquiry into the legal status of short titles and how bill titles may affect politicians, media members and the general public. It is clear from the research presented above that framing political issues can present certain advantages and that many researchers and practitioners are aware of the benefits of an evocative short bill

⁹⁰ *Id.*, p. 164.

⁹¹ Under recent legislation Congress agreed to bring the Estate tax back in 2011: Sullivan, Paul. (17 Dec. 2010). Estate Tax Will Return Next Year, but Few Will Pay It. *New York Times*. Available here: <http://www.nytimes.com/2010/12/18/your-money/taxes/18wealth.html>

⁹² Luntz, *op. cit.*, pp. 166-169.

⁹³ *Id.*, p. 168.

⁹⁴ *Id.*

⁹⁵ *Id.*

title. Yet overall these findings remain cloudy and unsubstantiated, something that this thesis seeks to remedy.

As important as language may be to the policymaking process, many of the same individuals who note the importance of political communication also acknowledge many problems that employing evocative language may bring. Although he was not focusing specifically on bill titles, Edelman declared that ‘the terms and symbols (most) widely disseminated to the public as descriptive of much of the leading federal and state regulation of the last seven decades are precisely the descriptions shown...to be the most misleading’.⁹⁶ These symbolic messages are important because, ‘the very heart of democracy is public communication. The quality of that public communication directly impacts the quality of our democracy and society at large’.⁹⁷

When Orr wrote about the sloganeering nature of Australian legislative bills, he noted that using such titles for formal, government sponsored legislation may indeed be hastening ‘a decline in respect for democratic governance’.⁹⁸ Others have had similar notions. Andrew Samuels concludes that evocative political imagery not only misleads, but ‘promotes conflict, engenders emotion and infects institutions’,⁹⁹ and Richard Perloff maintains that ‘the fact that citizens of the United States hold their elected representatives and the institution that houses them in low esteem is a serious problem for representative democracy’.¹⁰⁰ While lawmakers, public officials or others may feel that they are immune to the effects of such language, they may want to heed many of

⁹⁶ Edelman (1985), *op. cit.*, p. 26.

⁹⁷ Denton Jr., R.E. (2000). *Political Communication Ethics: An Oxymoron?* Westport, CT: Praeger Publishers, p.xiv.

⁹⁸ Orr, Graeme (2000), *op. cit.*, pp. 189.

⁹⁹ Samuels, Andrew. (1993). *The Political Psyche*. Oxford, UK: Routledge Press, p. 61.

¹⁰⁰ Perloff, Richard. (1998). *Political Communication: Politics, Press and Public in America*. London, UK: Routledge, p. 140.

these warnings. Ted Brader has carried out extensive research on emotive political advertising, and found that those more familiar with politics, issues and politicians are more affected by these types of advertisements than those less familiar.¹⁰¹ Therefore many tactics aimed at uninformed or inattentive individuals may affect those that are more involved or knowledgeable about such issues. This is especially relevant in regard to evocative short titles, because ‘an occasional memorable or quotable phrase seems to be more persuasive than an argument that is empirically and logically impeccable and thorough’.¹⁰² The statement is important to remember when considering the use of symbolic, emotive, and exceedingly positive language located in the short titles of bills, no matter what jurisdiction they are found in. Taken on their face many evocative titles sound like panaceas for some of the most important and highly sophisticated problems and issues of our times, but ‘[i]t can rarely be known what concrete future effects public laws and acts will bring.’¹⁰³

How Political Marketing Tactics Affect Short Bill Titles

Earlier I noted Graeme Orr’s comments on the state of Australian short bill titles, and how they have transitioned into government sloganeering and punning efforts.¹⁰⁴ The same is true of the US Congress in the past two decades, as some such titles are no longer designed to provide information as much as they are to persuade individuals, be it a lawmaker or constituent, to support the measure. And although Westminster and

¹⁰¹ Brader, Ted. (2006). *Campaigning for Hearts and Minds: How Emotional Appeals in Political Ads Work*. Chicago, IL: University of Chicago Press.

¹⁰² Edelman, Murray (2001), *op. cit.*, p. 97.

¹⁰³ Edelman, Murray (1985), *op. cit.*, p. 193.

¹⁰⁴ Orr, Graeme (2000), *op. cit.*; Orr, Graeme (2001), *op. cit.*

Scotland have not witnessed as drastic a political marketing influx as the US Congress and other legislatures have, Lees-Marshment has provided evidence that the public sector in Britain is currently undergoing major changes,¹⁰⁵ which could potentially affect future short titles.

In adopting these political marketing methods some researchers claim that politicians have skirted their duties as information providers, and thus now rely on sound bites to relay information to their constituents (the consumers). Maarek claims that one of the main causes for the reduction of content in political communication is structural: the fact that most issues must now be over-simplified for easy dissemination for the media.¹⁰⁶ These sound bites provide constituents with just the ‘right’ amount of information they need, and exclude almost all other relevant information regarding an issue.

Lees-Marshment stresses that people are demanding government become more responsive to them, and further notes that the UK government has hired professional staff which uses market intelligence to respond to a critical public.¹⁰⁷ The US has done the same, and in both countries polling has become a dominant force in the ever-increasing battle to draw and respond to the public’s wants and needs.¹⁰⁸ Lees-Marshment proclaims that, ‘the people want results: they want a product geared to suit their needs and wants, and they want it to be delivered in a satisfactory manner’.¹⁰⁹ An increase in evocative naming could originate from governments attempting to become more responsive to the people. But this evolution may not be such an exceptional

¹⁰⁵ Lees-Marshment (2004), *op. cit.*; Lees-Marshment (2008), *op. cit.*

¹⁰⁶ Maarek, Philippe J., *op. cit.*, p. 47.

¹⁰⁷ Lees-Marshment (2004), *op. cit.*, p. 44.

¹⁰⁸ Sussman, Gerald, *op. cit.*, p. 39, 54.

¹⁰⁹ Lees-Marshment (2004), *op. cit.*, p. 5.

advancement for political discourse. Maarek states that political marketing, and specifically the over-simplified messages people receive from their leaders, is ‘creating an even bigger distance between the voter and elected official’.¹¹⁰

Lees-Marshment also suggests that ‘a party or any political organization can engage in political marketing without spin-doctoring or using sound-bites’.¹¹¹ While certainly an optimistic statement, the reality encompassing political marketing is that spin-doctoring and sound-bites are products of these methods. In fact, that is the ‘marketing’ side of political marketing which embraces such features and uses them to lead the consumer (constituents) into believing what politicians are selling (policies, issue frames or themselves). In essence, ‘citizen consumers’ are increasingly choosing, and being encouraged to receive, their news about politics and legislative activity from these methods. As Sussman details, ‘a convergence of techniques drawn historically from propaganda, public relations and advertising is used to deluge the public with a continuous repackaging and repetition of populist themes, which are insinuated as part of the candidate persona’.¹¹² Sussman further notes that the average political sound-bite has been reduced to ‘single-digits’.¹¹³ Though efficient, the author considers this the lowest common denominator for political education.¹¹⁴ Perloff noted that the ‘the news media have trouble conveying complex aspects of the legislative process’,¹¹⁵ so it comes as no surprise that sound-bites are becoming shorter.

¹¹⁰ Maarek, Philippe J., *op. cit.*, p. 226.

¹¹¹ Lees-Marshment (2004), *op. cit.*, p. 9.

¹¹² Sussman, Gerald, *op. cit.*, p. 14.

¹¹³ Sussman, Gerald, *op. cit.*, p. 43.

¹¹⁴ *Id.*

¹¹⁵ Perloff, Richard, *op. cit.*, p. 157.

Perhaps the most important implication of using evocative short bill titles as slogans to promote policy or law is that doing so instantly classifies many bill topics as ‘all-or-nothing’ support statements, eliminating the gray area usually needed to construct reasonable debate about such measures. Use of overly emotive slogans such as the Heroes Assistance Relief Act, the Protect America Act, or humanized names such as Megan’s Law or Laci and Connor’s Law leave very little room for political manoeuvrability (which is what they are designed to do). Stewart et al. argue that ‘slogans simplify complex issues, problems, solutions, and relationships. They bifurcate choices into ‘America-love it or hate it’ (pro-Vietnam War) and ‘Abortion kills babies-choose life’ (pro-life). Other slogans propose simple solutions, such as ‘No more nukes’ (antinuclear power) and ‘Go vegetarian’ (animal rights)’.¹¹⁶ The language of this bifurcation process displays how complex problems are whittled down to an overly emotive cluster of words that often does not even constitute a complete sentence. Consequently the research presented later about how both complex and simple moral judgments require similar thought calculation is particularly pertinent, because this is often how issues are presented to audiences, in a bifurcated, all-or-nothing manner. Indeed, the reader will see in Chapter V that many interviewees touched on the fact that short titles can influence the debate surrounding the Bill.

The importance of naming to the media and general public must also be examined. Arnold asserts that many constituents may support a proposal simply because they ‘like the sound of it’.¹¹⁷ Politicians are likely aware of this phenomenon, and may be already taking advantage of it through the political marketing techniques mentioned above. Therefore the use of short titles in the media domain must be taken

¹¹⁶ Stewart, Charles J., Smith, Craig Allen, & Denton Jr., Robert E., *op. cit.*, p. 168.

¹¹⁷ Arnold, R. Douglas, *op. cit.*, p. 119.

into consideration, because they are the primary source by which the public receives their information. In his examination of attentive and inattentive publics, Arnold argues that attentive publics have a large influence over a legislator's actions.¹¹⁸ He states that at times they can force a legislator into voting for a particular proposal, and constituents have also been known to constrain a legislator's actions as a result of the use of certain types of framing regarding an issue.

The Structural Context of Lawmaking and Political Consultants

Given that voting on these measures could affect their future political careers, legislators could be the group most susceptible to evocative short titles. However that does not mean they are paying meticulous attention to their work at all times. A Congressman in the United States House of Representatives told two researchers that it is not uncommon to 'go to the floor with bells ringing, votes being taken...on a bill or issue that I haven't the remotest idea of the issues involved'.¹¹⁹ This phenomenon is not all too uncommon in contemporary legislatures, especially ones that consider a large amount of legislation in each session. Schneier and Gross point out that 'simply to read (much less understand) all the bills introduced in a recent session of Congress would be beyond the capacity of the most advanced student of speed-reading'.¹²⁰ Politicians work under very busy time schedules, and simply do not have the time to read or understand

¹¹⁸ *Id.*, p. 64-68.

¹¹⁹ Matthews, Donald R. & Stimson, James. (1975). *Yeas and Nays: Normal Decision-Making in the U.S. House of Representatives*. Jon Wiley & Sons, Inc., p. 25.

¹²⁰ Schneier, Edward V. & Gross, Bertram. (1993). *Congress Today*. New York, NY: Palgrave Macmillian, p.5.

every bill they vote on, which may well make the alluring sound of an evocative name that much more appealing. Further, it has been noted that some bill sponsors ‘know little or nothing about the bills that bear their names’,¹²¹ and others have pointed out that many MPs are neither lawyers nor familiar with the law.¹²² Yet there remains insufficient research on the extent to which short titles could be considered cues that legislators look to when assessing a piece of legislation. Nevertheless, the drafters of evocative bill titles, or those who wish to have such names attached to their bills, may believe that because of the time constraints on lawmakers, providing such titles may be one way to enhance the favourability of particular bills, making them more likeable and therefore more enactable. The issue of reading and understanding legislation, and whether short titles are taken into consideration by legislators, is taken up in this study for all jurisdictions and is discussed in Chapters V and VI.

Schneier and Gross acknowledge that many Congressional bill titles attempt to conceal information rather than provide it (something one of my UK interviewees suggested as well), and point to an act titled An Act to Reduce Taxation, which ultimately raised taxes on every item in the bill.¹²³ Schram also touches on the subject in an article about the Family Support Act of 1988 in the US Congress, stating that the title was inherently misleading, because the Act was ‘almost exclusively about welfare rather than families.’¹²⁴ In terms of the Congressional parliamentary process, short titles in the US can be used to manipulate committee referral, as some members would rather

¹²¹ *Id.*, p. 350.

¹²² Miers, David R. & Page, Alan C. (1982). *Legislation*. London, UK: Sweet & Maxwell.

¹²³ Schneier, Edward & Gross, Bertram, *op. cit.*, p.370.

¹²⁴ Schram, Sanford F. (1992). Post-Positivist Policy Analysis & the Family Support Act of 1988: Symbols at the Expense of Substance. *Polity*, 24(4), p. 645.

have bills go to committees that would look more favourably on their legislation.¹²⁵ Rieselbach reiterates this point, and suggests that titles do influence which committees bills are received by.¹²⁶ It would seem reasonable to conclude that most of these intentional manipulations are doing a disservice to legislation. If short titles are concealing rather than providing information, not specifically related to the body of the legislation or are being named to gravitate to sympathetic, as opposed to appropriate, committees then surely there is room for improvement in the way that short titles are dealt with by lawmaking institutions. Given this, I asked lawmakers, bill drafters and media members whether or not they thought using such tendentious language was appropriate in the short titles of legislation, and their responses, located in Chapter V, were enlightening.

Political consultant Frank Luntz provides an intimate glimpse into his linguistic political methods through his recent book *Words That Work*.¹²⁷ In 1994 the *Contract with America* was one of the major reasons the Republican Party prevailed in that year's mid-term elections.¹²⁸ Luntz was one of the principal creators of that document, which included ten bills that leaders believed would resonate with the American people. The timing of the *Contract* is integral to the study of naming, because it was in the 1990s that evocative bill naming started gaining steam as a practice in the US, and it is likely this contract was one of the major forces fuelling the momentum. In the document was a bevy of evocatively named pieces of legislation, including: the Fiscal Responsibility Act, the Taking Back our Streets Act, the Personal Responsibility Act,

¹²⁵ Schneier, Edward & Gross, Bertram, *op. cit.*, p. 370.

¹²⁶ Rieselbach, Leroy N. (1995). *Congressional Politics*. Boulder, CO: Westview Press, p. 110.

¹²⁷ Luntz, Frank, *op. cit.*

¹²⁸ *Ibid.*, pp. 149-160.

the Family Reinforcement Act, the American Dream Restoration Act, the National Security Restoration Act, the Senior Citizens Fairness Act, the Job Creation and Wage Enhancement Act, the Citizen Legislature Act¹²⁹ and the Common Sense Legal Reform Act.¹³⁰ The most glaring aspect of these bills is that they are not primarily descriptions of bills; they are policy statements.

A later chapter of Luntz's book details 'Twenty-one Words and Phrases for the Twenty-first Century'.¹³¹ It should be noted that he does not focus on short bill titles in any of these sections, but the words and phrases chosen were those that Luntz determined to be the most important and effective through his political and marketing research. However many of the words he accentuates are occasionally found in bill titles, including: accountability, innovation, restore, renew, revitalize, efficient, investment, and financial security, among others. Some of the linguistic terms mentioned and employed by Luntz are akin to the 'plastic' words that Poerksen has identified in his academic studies.

Plastic Words and Re-contextualisation

In a key work on the topic, *Plastic Words: the Tyranny of a Modular Language*, Uwe Poerksen examines language that he describes as originally specific and defined, yet throughout the years has become arbitrary and essentially all-encompassing.¹³² He concentrates on a cluster of words he describes as 'plastic'. Many of these words

¹²⁹ This is bland-sounding, but was actually quite a radical proposal. It was a bill to enact term limits for career politicians and replace them with 'citizen legislators'.

¹³⁰ Luntz, Frank, *op. cit.*, p. 154.

¹³¹ *Ibid.*, pp. 239-264.

¹³² Poerksen, Uwe. (1995). *Plastic Words: The Tyranny of a Modular Language*. University Park, PA: Penn State University Press.

originated in the hard or soft sciences, and have made their transition into contemporary language through politics, media and general usage. Most of these words transcend their relevant associations and connotations, and render their past definitions inadequate and archaic in the face of modern-day vernacular. Poerksen identifies common places that one may encounter plastic words, such as political speeches, city planning drawing boards, academic conferences, and throughout the media. Yet the words are not constrained merely to the above places, as they are ubiquitous in languages and countries throughout the globe.

Poerksen's theory of plastic language touches policymaking and bill drafting, as such words often adorn the titles of bills produced by the law-making bodies I study here. Terms such as responsibility, accountability, protection, prevention, efficiency, and effectiveness all have distinct dictionary denotations, yet in modern-day usage, and in legislative bill naming in particular, their meanings encompass an extremely wide range of interpretative possibilities. Take the word 'security', for example. Analysing some recent Acts from the US Congress, it is tough to discern what exactly the legislature means when it uses such a term (e.g. Farm *Security* and Rural Investment Act of 2002,¹³³ the Homeland *Security* Act of 2002,¹³⁴ the *Secure* Fence Act of 2006,¹³⁵ the Foreign Investment and National *Security* Act of 2007,¹³⁶ the Energy Independence

¹³³ Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d107:HR02646:>

¹³⁴ Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d107:HR05005:>

¹³⁵ Secure Fence Act of 2006, Pub. L. No. 109-367, 120 Stat. 2638. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR06061:>

¹³⁶ Foreign Investment and National Security Act of 2007, Pub. L. No. 110-49, 121 Stat. 246. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:H.R.556:>

and *Security Act of 2007*¹³⁷). Poerksen's observation in regard to plastic words, that 'a diffuse image with nuance replaces precise description. Language grows thin and watery', is quite apt regarding the above examples.¹³⁸ It is through these vague, but positive, qualities that attraction to such titling is developed.

While the thesis of Poerksen's work points to many words that have become plastic, and increased in usage, many other ordinary terms are in contrast becoming taboo for politicians. Sussman declares that politicians in America are now shying away from using the word 'democracy' because they do not want to be construed as anti-business.¹³⁹ Thus, the founding ideal behind American politics; the essential glue of the American nation and a goal of many governments around the world, has become undesirable for politicians to use in public. This has happened with other words as well in the US, such as 'liberal', a term that John F. Kennedy readily embraced during his presidential campaign, and which is now taboo for those on the left to use.¹⁴⁰

Just as plastic words can give a title an arbitrary, all-encompassing description, other additions to short titles could be considered a re-contextualization of sorts, or a new sub-type of framing. This is quite apt in regard to humanised (and therefore personalised) legislation (i.e. the Lilly Ledbetter Fair Pay Act of 2009¹⁴¹). Instead of a bill being merely a legislative proposal, it can be subsequently re-contextualized into a moral obligation, because the legislation is usually passed in honour of a sympathetic figure who encountered an unfortunate situation. And this is true for other short title

¹³⁷ Energy Independence and Security Act of 2007, Pub. L. No. 110-140, 121 Stat. 1492. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR00006>:

¹³⁸ Poerksen, Uwe, *op. cit.*, 19.

¹³⁹ Sussman, Gerald, *op. cit.*, p. 7.

¹⁴⁰ Luntz, Frank, *op. cit.*, p. 62; Safire, William (2008), *op. cit.*, p. 389.

¹⁴¹ Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5.

classifications as well. It is difficult to look at the Helping Families Save Their Homes Act of 2009¹⁴² or the No Child Left Behind Act¹⁴³ as anything more than moral re-contextualizations. Smith (1984) points out that this type of wording has been used in political discourse since the late 1800s and early 1900s.¹⁴⁴ She stresses that ‘distorting the meaning of vocabulary and events gives extravagant arguments a superficial air of sense’.¹⁴⁵ This appears eerily similar to what most political rhetoric and evocative legislative bill titling attempts to accomplish in contemporary society.

Insights from Psychological Research and Evocative Naming

‘The political and social effectiveness of ideas about language derived from the presupposition that language revealed the mind’.

-Olivia Smith¹⁴⁶

The involvement of psychology in law and politics is nothing novel to the research community, but the actual study of psychological phenomena in legal and political language is a relatively new frontier. While previous sections demonstrated the

¹⁴² Helping Families Save Their Homes Act of 2009, Pub. L. No. 111-22, 123 Stat. 1632.

¹⁴³ No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425.

¹⁴⁴ Smith, Olivia. (1984). *The Politics of Language: 1791-1819*. New York, NY: Oxford University Press.

¹⁴⁵ *Id.*, p. 72.

¹⁴⁶ Smith, Olivia. (1984). *The Politics of Language: 1791-1819*. New York, NY: Oxford University Press, p.2.

importance of language to lawmaking and public policy, this section shows that such research is also connected to the studies in the psychology of symbolic language and its context. In fact, throughout his 1964 classic Edelman frequently mentions psychological effects, as he argues that language can become ‘a sequence of Pavlovian cues rather than an instrument for reasoning and analysis if situation and appropriate cue occur together’.¹⁴⁷ Additionally, he concludes that, ‘the shrewder and more effective politicians probably appreciate intuitively the validity of the psychological finding ... that where public understanding is vague and information rare, interests in reassurance will be all the more potent and all the more susceptible to manipulation by political symbols’.¹⁴⁸

From the perspective of social and cognitive psychology, naming is highly valued in various political and legal situations. Indeed, some researchers believe that with naming comes not only a sense, but a realization of power,¹⁴⁹ and this ‘power is not a distant abstraction but an everyday reality’.¹⁵⁰ Research into semantic language processing and the effects of language on the human brain is crucial to understanding the potential implications of evocative bill titles. Though expanding rapidly, relatively little is known in the field of neuroscience about the neural systems that support communication in regard to morality, valuation and emotion.¹⁵¹ While some believe

¹⁴⁷ Edelman, Murray. (1985), *op. cit.*, p. 116.

¹⁴⁸ *Id.*, p. 38.

¹⁴⁹ Butler, Judith. (1997). *Excitable Speech: A Politics of the Performative*. New York, NY: Routledge, pp. 28-35.

¹⁵⁰ Conley, John M. & O’Barr, William M. (1998). *Just Words: Law, Language and Power*. Chicago, IL: University of Chicago Press, p. 2.

¹⁵¹ Van Berkum, Jos J.A., Holleman, Bregje, Nieuwland, Mante, Otten, Marte, & Murre, Jaap. (2009). Right of Wrong: The Brain’s Fast Response to Morally Objectionable Statements. *Psychological Science*, 20(9), p. 1092.

that individuals may read a statement and then decide how they feel about the text,¹⁵² others have demonstrated that the initial valuation of a statement is processed as the reading of a sentence unfolds, and such processes are computed in matter of a few hundred milliseconds.¹⁵³ Researchers have evidence to state that individuals making value judgments on a statement tend to do this on a word-by-word basis, as any word that clashes with a person's value-system triggers an immediate negative neural response.¹⁵⁴ Results such as these provide an insight as to why evocative short titles are usually cloaked in words with positive connotations: because our neural pathways respond better to positive language. Short titles provide positive and at times emotionally arousing descriptions of bills that implicitly subjects individuals to make value judgments. Therefore, the more positive words located in the short title the more likely a positive value judgment will occur.

Such findings would also have implications for short titles that incorporate 'negative' or 'unmoral' sounding words located in their titles, such as the Westminster Parliament's Corporate Manslaughter and Corporate Homicide Act 2007¹⁵⁵ or the Female Genital Mutilation Act 2003.¹⁵⁶ This may indeed be why the Scottish Parliament instead passed the Prohibition of Female Genital Mutilation (Scotland) Act 2005, as the title is seen as doing something positive.¹⁵⁷ Both Acts pursued the same

¹⁵² *Id.*, p. 1093.

¹⁵³ *Id.*

¹⁵⁴ *Id.*, p. 1095.

¹⁵⁵ Corporate Manslaughter and Corporate Homicide Act 2007 c.19. Available at: http://www.legislation.gov.uk/ukpga/2007/19/pdfs/ukpga_20070019_en.pdf

¹⁵⁶ Female Genital Mutilation Act 2003 c.31. Available at: http://www.legislation.gov.uk/ukpga/2003/31/pdfs/ukpga_20030031_en.pdf

¹⁵⁷ Prohibition of Female Genital Mutilation (Scotland) Act 2005 asp 8. Available at: http://www.legislation.gov.uk/asp/2005/8/pdfs/asp_20050008_en.pdf

outcome, but the Scottish Parliament acknowledged the prohibition aspect in the title of the Act.

Experimental psychology has also discredited the rationalist conception that moral judgment is based on thoughtful calculation. Evidence has demonstrated that such judgments are based on ‘quick, automatic feelings of approval or disapproval’, and this is true for both complex and simple stimuli.¹⁵⁸ Therefore merely because something is more complicated (i.e. larger societal problems) and could be solved through legislative means, we cannot infer that individuals who encounter these problems are necessarily giving their judgments more than cursory thought. This has significant implications for the naming of legislation, as a perfunctory glance at most evocative legislation may invoke positive feelings. Van Berkum, *et al.* surmise that ‘the evolutionary significance of being able to rapidly tell good from bad suggests that valuations might be among the first bits of information to be computed’.¹⁵⁹

Nonetheless, psychological responses to evocative names will vary, especially in terms of which naming classification (humanised, overt action, etc.) is proffered. Some researchers note that proper names can be richly suggestive, and can invoke strong emotional empathy at times, even if one does not know the person.¹⁶⁰ Other findings are relevant to overt action names, which use action verbs in their titles. Speer *et al.* note that ‘neuroimaging studies of single-word reading have also provided initial support for the hypothesis that readers’ representations of word meaning are grounded in visual and motor representations. These studies have demonstrated that brain regions involved in reading action words are some of the same regions involved in performing

¹⁵⁸ Van Berkum *et. al.*, *op. cit.*, p. 1093.

¹⁵⁹ *Id.*, p.1093.

¹⁶⁰ English, G. (1916). On the Psychological Response to Unknown Proper Names. *The American Journal of Psychology*, 27(3), p. 434.

analogous actions in the real world'.¹⁶¹ The authors go on to state that 'readers dynamically activate specific visual, motor, and conceptual features of activities while reading about analogous changes in activities in the context of a narrative'.¹⁶² A useful example the authors employ to demonstrate this is when somebody watches a goal kick or performs the act of kicking a football: the same brain regions are activated when reading about such an activity. Therefore people who read about 'taking back our streets', 'helping families save their homes' or 'protecting children' may activate the same neural pathways they would be if they were actually engaged in performing the action. By supporting such legislation individuals may be predisposed to develop a narrative in which government, lawmakers, lawmaking bodies, or even themselves are assisting in the action represented in the title of the Act.

Debunking evocative names could prove problematic as well, as this would require an element of resistance to the pre-conscious perception. The fact that short bill titles are sanctioned and sometimes prominently displayed by such a powerful authority such as the state makes them that much more potent. As noted above, Baumgartner and Jones found that most problems are understood 'in simplified and symbolic terms', even for the politically sophisticated.¹⁶³ In fact, Ewick and Silbey propose that, although not mutually exclusive, there are three main perspectives that individuals incorporate when viewing the law or legality: 'before the law', 'with the law', and 'up against the law'.¹⁶⁴ The perspective of Ewick and Silbey's most relevant to this thesis is

¹⁶¹ Speer, Nicole K., Reynolds, Jeremy R., Swallow, Khena M. & Zacks, Jeffrey M. (2009). Reading Stories Activates Neural Representations of Visual and Motor Experiences. *Psychological Science*, 20(8), p. 989.

¹⁶² *Id.*, pp. 995-996.

¹⁶³ Baumgartner, Frank R. & Jones, Bryan D. (2009), *op. cit.*, p. 26.

¹⁶⁴ Ewick, Patricia, & Silbey, Susan (1999). Common Knowledge and Ideological Critique: The Significance of Knowing that the Halves Come Out Ahead. *Law and Society Review*, 33(4). Ewick and Silbey conducted 430 interviews to determine their categories.

the ‘before the law’ designation, in which people view the law as ‘majestic, operating by known and fixed rules in carefully delimited spaces’.¹⁶⁵ Here the law is viewed as a ‘formally ordered, rational and hierarchical system of known rules and procedures’, and legality is conceived of as ‘relatively fixed and impervious to individual action’.¹⁶⁶ Although the authors were examining the effects of law from a wider perspective, it seems reasonable to hypothesise that individuals in this category would be susceptible to evocative naming, and therefore less likely to question a misleading or inadequate short bill title.¹⁶⁷ Those in the ‘with the law’ (in regard to this thesis, legislative insiders and likely media members would fit into this group) and ‘up against the law’ perspective would be less likely to take evocative names at face value, as those in the former tend to look at the law more tactically¹⁶⁸ while those in the latter tend to ‘evade or appropriate’ the law’s power.¹⁶⁹ Anyhow, the discussion of state authority must be taken into consideration for future research on bill naming, as ‘the state is so potent and obsessive a symbol, arousal and emotional engagement are inevitable’.¹⁷⁰

The process of legislating is usually lengthy and is therefore littered with political events and political rhetoric. Furthermore, even though many bills become law, extremely controversial measures can be perceived as aligned with a particular political party. Thus, from whom these messages originate must also be taken into consideration. There is evidence that assimilation effects are present in regards to issue

¹⁶⁵ *Id.*, p. 1028.

¹⁶⁶ *Id.*, p. 1028.

¹⁶⁷ *Id.*, p. 1028.

¹⁶⁸ *Id.*, p. 1031.

¹⁶⁹ *Id.*, p. 1034.

¹⁷⁰ Edelman, Murray. (1985), *op. cit.*, p. 117.

frames: ‘an ideological match between message source and respondent facilitates framing effects, while a mismatch attenuates these effects’.¹⁷¹ Thus, frames provided by political actors are most likely to affect the followers of these actors, and this is true even if the opposition actor is employing exactly the same language in the frame.¹⁷² Yet it is unknown whether certain words and phrases cut across political alliances, although Luntz suggests that there are indeed some that do.¹⁷³ As we have seen, words such as ‘security’, ‘responsibility’, ‘protection’, and ‘America’ have been used in US short titles by both parties, and thus may have been perceived by political actors (perhaps supported by marketing research) as cutting across political affiliations. Additionally, humanised bills with well-known sympathetic figures would appear likely to do the same, as it appears to be how they are designed.

Persuasion may be the most important aspect of whether or not a short bill title resonates with those who encounter it. Perloff notes that ‘members of Congress spend more time today than in previous eras on public persuasion. They appear on television talk shows and regularly poll their constituents to determine how best to frame controversial issues’.¹⁷⁴ Additionally, he observes that ‘making news and seeking publicity are part of a legislator’s job. Making news and maintaining a positive public image are also necessary, if not sufficient, conditions for achieving legislative success

¹⁷¹ Hartman, Todd, K. & Weber, Christopher R. (2009). Who Said That? The Effects of Source Cues in Issue Frames. *Political Behavior*, 31(4), p. 552.

¹⁷² *Id.*, p. 552.

¹⁷³ Luntz, Frank, *op. cit.*, p. 173. He suggests that prevention, protection, accountability and compassion words that represent basic universal principles and values.

¹⁷⁴ Perloff, Richard. (1998). *Political Communication: Politics, Press and Public in America*. London, UK: Routledge, p. 142.

and for building political power'.¹⁷⁵ Therefore, a name that effectively promotes the legislation through its title may aid in garnering support.

Evocative bill naming is however perilous. Most persuasion researchers believe that for a message to be effective it must be attended to at some level.¹⁷⁶ Individuals must therefore be willing to be persuaded by some messages in order for them to be effective. Employing the use of evocative naming produces likely advantages those who desire the bill's success, but these advantages are limited. Those who are not willing or are unlikely to be persuaded on a bill or issue probably will not respond positively or negatively to an evocatively-named bill, as they will not attend to the message. Thus, the positive image of the bill will likely have no effect on those who have already made up their minds on an issue. The people it may affect are those who are willing to be persuaded in some respect, and are attentive to the message being delivered.

Conversely, it has also been demonstrated that when people are more accessible in their attitudes towards an issue, they tend to expend more cognitive effort when interpreting that issue.¹⁷⁷ These accessible attitudes may bias and also motivate the critical processing of information towards these messages.¹⁷⁸ These findings are directly relevant to evocative naming: expanding cognitive effort while interpreting persuasive messages could increase or decrease a person's favourability reaction to evocatively named legislation. Expending more cognitive energy and effort interpreting

¹⁷⁵ *Ibid*, p. 143.

¹⁷⁶Roskos-Ewoldson, David R., Arpan-Ralstin, Laura & St. Peirre, James. (2002). Attitude Accessibility and Persuasion: The Quick and the Strong. In Dillard, James & Pfau, Michael W. (2002). *The Persuasion Handbook: Developments in Theory and Practice*. Thousand Oaks, CA: Sage Publications, p.41.

¹⁷⁷ Fabrigar, L. R., Priester, J. R., Petty, R. E., & Wegener, D. T. (1998). The impact of attitude accessibility on elaboration of persuasive messages. *Personality and Social Psychology Bulletin*, 24, 339-352.

¹⁷⁸ Roskos-Ewoldson, et al., *op. cit.*, p.44.

these messages may only enhance the favourability of an evocative bill name.

However, the reverse may be true as well: findings suggest that people become more critical of messages when their attitudes are more accessible.¹⁷⁹

Expectations regarding persuasive messages also must be taken into consideration when evaluating people's response to various messages. When individuals know that they need to evaluate something in the future, they usually develop an attitude towards the stimulus in question beforehand.¹⁸⁰ This suggests that legislators, media members, and attentive publics may already have certain attitudes towards various bills or types of bills before they ever encounter them. Being experienced political figures and followers, these groups may have highly developed attitudes towards bills proposed by certain members, parties, issues, etc., and could react favourably or unfavourably based on these initial qualities. It is unclear whether or not peripheral issues, such as bill naming, would affect those predetermined attitudes.

Fear appeals have long been used as persuasion techniques.¹⁸¹ Although not as explicit in bill naming, these appeals are used indirectly when examining how short bill titles operate, and are quite common with many evocative titles. These names employ overly positive language that endears the measure to those who encounter it, which appears harmless until one considers how a vote against such a bill will affect perception. A vote against certain bills implies the opposite of what is being inscribed in its title, (i.e. if a bill is deemed 'responsible', those who oppose such measures

¹⁷⁹ *Ibid*

¹⁸⁰ *Ibid*, p.47.

¹⁸¹ *Ibid*, p.49.

appear irresponsible; if a bill is deemed ‘patriotic’, those in opposition appear unpatriotic).

Therefore, recent psychological insights have many implications for how evocative short bill titles may affect individuals that encounter them. What follows now is the second part of the literature review, an analysis of the constitutionality of evocative short bill titles in the US Congress.

The Constitutionality of Insufficient, Uninformative and/or Misleading Short Bill Titles in the US

The legal status, drafting techniques and legislative process experiences of short titles from each jurisdiction are examined in the following chapter. Before this is discussed, however, this chapter now considers problematic US bill titles in a larger realm of lawmaking: whether or not certain titles should be regarded as constitutional. In particular, it examines whether the Constitution or other forms of law could (or perhaps should) have implications for unwieldy bill titles. It was demonstrated in earlier chapters that the US has an evocative short title addiction, as many of their Acts are now adorned with increasingly evocative titles, while the UK and Scottish Parliaments have very few titles that border on the fringe of evocative wording. Therefore by exploring the meaning of a significant constitutional clause and using state-level constitutions in conjunction with drafting policies, the material below investigates whether or not such titles in the US are constitutional.

The Necessary and Proper Clause

The Constitution does not specifically mention a detailed form of Congressional bills or construction of bill titles. Unlike some state constitutions, this was never introduced in Article I of the US Constitution. When the US Congress began making law most Bills went by their long titles (i.e. ‘An Act to...’), and over the years there have been few formal rules or regulations making provision for how legislative short titles should be drafted.¹⁸² For all intents and purposes, the lack of short title acknowledgment in the constitution would make it very difficult to challenge the constitutionality of a short title. Yet that is not the end of the matter, either. Article I, Section 8, Clause 18 of the Constitution proclaims that ‘Congress shall have Power - To make all Laws **which shall be necessary and proper** for carrying into Execution the foregoing powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof’ (emphasis added).¹⁸³ Given the title the ‘sweeping clause’ by some and the ‘elastic clause’ by others, these six words have perplexed legislators, judges, and scholars ever since the Constitution was ratified.

In contemporary legal and political circles the meaning of the clause produces heated debate concerning whether it expands or limits Congressional power, as it has become a lightning rod for advocates of both big and small government, depending on the interpretation one advocates. Indeed, the clause has become so noticeable in recent years that Cambridge University Press recently published a book devoted to the origins

¹⁸² There are no mentions of short titles in the House Rules, which can be found here through the Government Printing Office here: http://www.gpoaccess.gov/hrm/browse_111.html. Additionally, there are only very short mentions of short bill titles in official drafting documents proffered by the US House Drafting Manual, found here: <http://www.house.gov/legcoun/pdf/draftstyle.pdf>. The Senate does not offer a drafting manual at this time; at least not one that is available to the public.

¹⁸³ U.S. Const. art. I, § 8.

of the terse yet powerful clause.¹⁸⁴ However, I wish to separate myself from these arguments at the outset. Although I do acknowledge and talk about both positions in this article in relation to the history and development of the clause, I am more concerned with whether or not the clause, and specifically the word ‘proper’, can be analysed and interpreted in terms of a ‘proper’ drafting form of laws. For in this one word it may be that the drafters of the constitution, perhaps without forethought, have set a standard by which the laws of the United States should be upheld.

This section begins by providing a short historical background on the clause. Using the decision of *McCulloch*, among other sources, it then determines whether or not the phrase is a restrictive modifier or power enhancement, and discusses whether or not laws can be ‘necessary’ without being ‘proper’. The second part of the section is devoted to finding the meaning of the much neglected word ‘proper’. This analysis is performed through both a historical and contemporary perspective. The section concludes by discussing the constitutional implications, and how both a historical and contemporary reading of the clause would likely deem insufficient, uninformative and/or misleading short bill titles unconstitutional.

Historical Background

The addition of the Necessary and Proper Clause into the Constitution is shrouded in mystery. Scholars have noted the clause in question was not ‘the subject of any debate from its initial proposal to the Convention’s final adoption of the Constitution’.¹⁸⁵

Added by the Committee of Detail, the clause inconspicuously made its way into the

¹⁸⁴ Lawson, Gary, Miller, Geoffrey P., Natelson, Robert G. & Seidman, Guy I. (2010). *The Origins of the Necessary and Proper Clause*. New York, NY: Cambridge University Press.

¹⁸⁵ Barnett, Randy. (2008). The Choice Between Madison and FDR. *Harvard Journal of Law and Public Policy*, 31(3), 1007.

final version of the Constitution. Once enshrined into law the clause did receive some attention from federalists and opponents regarding whether or not it expanded or limited Congressional power, but the conversations provided scant evidence of the clause's meaning.¹⁸⁶ Analysis of state ratification debates have also proved unfruitful, leaving scholars to suggest that, 'If there are nuggets to be mined in the standard sources of constitutional history, they seem thus far to have escaped notice'.¹⁸⁷ Yet close to thirty years after the ratification of the Constitution came a decisive moment for the clause.

The most authoritative response as to the phrase's constitutional significance comes from the 1819 Supreme Court decision of *McCulloch v. Maryland*.¹⁸⁸ Much has been written about the case, so it will not be summarized to any great length here. In essence, the case centred on whether or not Congress had the power to create a national bank. In his majority opinion Chief Justice John Marshall stressed that the 'peculiar language of this clause', especially the word 'necessary', can be used in many different ways. Opponents of having such a bank argued that since it was not an enumerated power located in the constitution, it was not 'necessary', and therefore Congress did not possess the power to enact such a law. Justice Marshall rejected this argument, deeming the creation of a national bank constitutional; and the Court's decision has stood the test of time. Detested by some and embraced by others, the decision stands as the most authoritative dictum on the clause (at least, the 'necessary' part of the clause), and is still cited in recent Supreme Court decisions on the subject, such as *Gonzales v.*

¹⁸⁶ *Id.*, p. 1008-1009. In fact, there is still a debate today regarding whether the clause expands or restricts Congressional power. See below for more details.

¹⁸⁷ Gary Lawson et al., in *The Origins of the Necessary and Proper Clause*, *op. cit.*, p. 3.

¹⁸⁸ *McCulloch v. Maryland* 17 U.S. 316 (1819)

*Raich*¹⁸⁹ and *Jinks v. Richland County*.¹⁹⁰ The clause's meaning, however, is still widely debated.

McCulloch is truly significant because in this decision the word 'necessary' in relation to Congressional legislation was expounded upon by the Supreme Court.¹⁹¹ 'Proper', on the other hand, was much overlooked. Discussing necessary, Justice Marshall notes that 'To employ the means necessary to an end is generally understood as employing any means calculated to produce the end, and not as being confined to those single means without which the end would be entirely unattainable'.¹⁹² Thus, he interpreted the term to be an expansion of Congressional powers. He further acknowledges that the clause did not read 'absolutely necessary', as other clauses in the Constitution do.¹⁹³ This reasoning is measured and logical, but the almost complete discounting of proper is questionable, and has left its meaning in the clause open for debate. As will be seen below, both the adjectival components of the Necessary and Proper clause were added at different points.¹⁹⁴ Therefore, they likely had separate and distinct meanings. Presumably Justice Marshall would have known this, and his lack of

¹⁸⁹ *Gonzales v. Raich*, 545 U.S. 1 (2005)

¹⁹⁰ *Jinks v. Richland County*, 538 U.S. 456 (2003)

¹⁹¹ Yet Marshall does say that 'The propriety of this remark would seem to be generally acknowledged by the universal acquiescence in the construction which has been uniformly put on the 3rd section of the 4th article of the Constitution. The power to 'make all needful rules and regulations respecting the territory or other property belonging to the United States' is not more comprehensive than the power 'to make all laws which shall be necessary and proper for carrying into execution' the powers of the Government. Yet all admit the constitutionality of a Territorial Government, which is a corporate body.' The significance of this statement will be explored below.

¹⁹² *McCulloch v. Maryland* 17 U.S. 316 (1819).

¹⁹³ *Id.* (i.e., art. 1 § 10 cl. 2 states 'No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be *absolutely necessary* for executing it's inspection laws'.

¹⁹⁴ Natelson, R.G. *Framing and Adoption of the Necessary and Proper Clause*. Taken from Lawson et al., *op. cit.*, p. 89.

discussion towards the latter part of the clause is perhaps one fault in the momentous opinion.

Restricting Modifier or Ratchet to enhance Congressional Power

A significant portion of debate concerns whether or not the clause is a restricting adjectival modifier or a ratchet to enhance Congressional power. Determination of this conundrum is crucial to this discussion as well, because if the clause, and specifically the word ‘proper’, is determined to be a ratchet as opposed to a modifier, then such evocative titles are likely constitutional, and cannot be challenged. However if it is deemed the latter, then such titles may still be called into question.

Contrary to the *McCulloch* decision, many scholars have deemed the clause a limitation. Lawson and Seidman call the phrase an ‘explicit textual limitation on congressional powers’,¹⁹⁵ and note that it is a ‘sensible, and even obvious place for such a constraint’.¹⁹⁶ In earlier works Lawson unabashedly calls it ‘most obviously...not a self-contained grant of power’.¹⁹⁷ Engdahl considers the clause an ‘intrinsic restraint on federal lawmaking power’,¹⁹⁸ and states that ‘as applied to Congress’s own powers, however, the Clause is not a ratchet; instead, it compounds the discretion given to Congress by the other grants of legislative power’.¹⁹⁹ This is a plausible interpretation, at least according to the way that the phrase is *not* worded. As

¹⁹⁵ Lawson, Gary & Seidman, Guy *Necessity, Propriety, and Reasonableness*. Taken from Lawson et al., *op. cit.*, p. 134.

¹⁹⁶ *Id.*, p. 135.

¹⁹⁷ Lawson, Gary G. & Granger, Patricia B., (1993-1994) The ‘Proper’ Scope of Federal Power: A Jurisdictional Interpretation of the Sweeping Clause, 43 *Duke L.J.* 267.

¹⁹⁸ Engdahl, David E., (1998). The Necessary and Proper Clause As an Intrinsic Restraint on Federal Lawmaking Power. *Harvard Journal of Law and Public Policy*, 22(1), p. 107.

¹⁹⁹ *Id.*

Miller notes, the clause does not say ‘as to it shall seem necessary and proper’; or which ‘it shall judge necessary and proper’; or even which ‘it may deem necessary and proper’.²⁰⁰ Therefore if the drafters wished to express the sentiment that Congress can determine what laws are necessary and proper, then they could have done so very easily. All of the above alternative phrases were common in corporate charters around the same time the Constitution was written, and it is quite significant that none of them were used in the actual clause.

From his analysis on corporate charters around the constitutional drafting period, Miller notes that ‘terms such as “necessary” and “proper” were not defined in colonial or early federal charters’, and although they were used, ‘there is also plenty of variation’.²⁰¹ He later states that ‘[t]here is no evidence in the corporate law background that the Necessary and Proper Clause, standing by itself, confers any authority on the Congress’.²⁰² And he continues by arguing that ‘scope clauses in colonial and early federal charters never convey independent authority. They are adjectival: they modify authority otherwise granted. It is evident that the same is true for the Necessary and Proper Clause. By its own terms it grants no authority to enact legislation...like scope clauses in corporate charters, [the clause] is inserted as a means of modifying the basic authority’.²⁰³

Throughout his opinion in *McCulloch* Justice Marshall noted that the phrase was inserted in ‘Scope of Legislative Power’ not the ‘Limits of Legislative Power’,

²⁰⁰ Miller, G. *The Corporate Law Background of the Necessary and Proper Clause*. Taken from Lawson et al., *op. cit.*, p. 159.

²⁰¹ *Id.*, p. 145

²⁰² *Id.*, p. 155

²⁰³ *Id.*, p. 155

thus enlarging the powers of Congress, not diminishing them.²⁰⁴ But his ambivalent interpretation of the clause is bothersome. While he wants ‘necessary’ to be looked at as an expansion of Congressional power and not be bound by a strict interpretation, he narrowly interprets ‘proper’ to be in regard to ‘propriety’, which suggests that the term is indeed a restrictive modifier. To make his point he observes that the word relates to Article 4 Section 3 of the Constitution, which states that Congress ‘shall make all needful rules and regulations respecting the territory or other property belonging to the United States’.²⁰⁵ Thus, how did two words in the same phrase acquire such radically different interpretations? The answer is that they employ different meanings and functions.

Additionally, Marshall does not acknowledge that section 8 of Article I includes a number of restricting modifiers throughout the text. For example, clause 8 states that Congress shall have the power ‘To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries’.²⁰⁶ The phrase ‘useful arts’ is a restricting modifier in a section of the Constitution that expands Congressional powers. Lucky for judges and constitutional scholars, they are not left guessing, as the answer arises in the same sentence, which states ‘by securing for limited times to authors and inventors’.²⁰⁷ Thus, the clause applies exclusively to authors and inventors. Yet this final portion of the clause, ‘for limited times’, was added as a restricting modifier too, so the government could not secure the exclusive rights of authors and inventors respective writings and

²⁰⁴ *McCulloch v. Maryland* 17 U.S. 316 (1819)

²⁰⁵ *Id.*

²⁰⁶ U.S. Const. art. I, § 8, cl. 8. This phrase actually is the basis for which national patent and copyright laws exist.

²⁰⁷ U.S. Const. art. I, § 8, cl. 8.

discoveries interminably, therefore (albeit somewhat ambiguously) defining the scope of Congressional powers. Congress has since defined what this time period is through statute law. And while the common law has certainly addressed ‘necessary’ at length, especially in *McCulloch*, ‘proper’ has largely been excluded from such discussion.

Another argument against the phrase being a ratchet is where it lies within the document. It is placed at the end of a section which is contained in the middle of Article I. If the framers desired the phrase to enhance powers then surely it would be placed somewhere of obvious significance, such as at the beginning of Article 1, or even at the beginning of Section 8. If the phrase was indeed meant to be used as an important enhancement of Congressional power and not as a modifier, then it is not well placed to do so.

Even if ‘proper’ is construed from a propriety standpoint, that interpretation is still a restrictive modification on Congressional powers, as Congress must ensure that they are not improperly intervening in State territory. Similar to how Justice Marshall adopts a broad interpretation of ‘necessary’ to be a ratchet to enhance Congressional power, it could be that ‘proper’ should be broadly construed in terms of modifying Congressional power. The propriety rationale is a valid interpretation of ‘proper’ in relation to the clause, but it is also a narrow interpretation. Thus, if federal laws are to be deemed ‘proper’, then *all* aspects of such laws should be so, including the drafted form of such laws.

Necessary without Being Proper

There has been some discussion as to whether or not a statute can be necessary without being proper. Some have argued that ‘proper’ is merely a synonym for ‘necessary’.²⁰⁸ If this is so, then the inclusion of both words seems superfluous. Natelson notes that the ‘and proper’ part of the clause was added separately from the original ‘necessary’ portion, but that the record does not tell us why this happened.²⁰⁹ He further states that ‘the manner in which the delegates employed the word “proper” strongly suggested that federal laws, even if “necessary”, would not be “proper” under certain conditions’.²¹⁰

Others seem to agree with this interpretation. In conclusion of his analysis regarding corporate charters Miller notes that ‘proper’ could:

‘convey the idea that in carrying out a given authority, the company or its managers should design the actions taken so as to consider the effect on stakeholders in the firm. As applied to the Constitution’s Necessary and Proper Clause, the message could be that laws must not only serve the general interests of the country as a whole, but must also take into account the individual interests of particular citizens. Thus, even if a law qualifies as “necessary”, it could still be outside congressional authority if, without adequate justification, it discriminates or disproportionately affects the interests of individual citizens vis-à-vis others’.²¹¹

²⁰⁸ Natelson, R.G. *The Framing and Adoption of the Necessary and Proper Clause*. Taken from Lawson et al., *op. cit.*, p. 89 (2010). In fact, this was the opposing view of the attorney in McCulloch, Daniel Webster, who lost the case.

²⁰⁹ *Id.*, p. 89

²¹⁰ *Id.*, p. 93. Natelson states that they would not be proper if they violated Congress’ fiduciary responsibilities.

²¹¹ Miller, G. *The Corporate Law Background of the Necessary and Proper Clause*. Taken from Lawson et al., *op. cit.*, p. 174.

Similarly, Bennett notes that ‘an otherwise necessary law can still be improper if it employs improper *means*’ (emphasis in original).²¹²

Even prominent government officials of the time thought that ‘necessary’ and ‘proper’ were separate entities. Edmund Randolph, the Attorney General for President Washington, stated that,

‘The phrase, “and proper,” if it has any meaning, does not enlarge the powers of Congress, but rather restricts them. For no power is to be assumed under the general clause [i.e. the Necessary and Proper Clause], but such as is not only necessary but proper, or perhaps expedient also. But as the friends to the bill ought not to claim any advantage from this clause [i.e. the Necessary and Proper Clause], so ought not the enemies to it, to quote the clause as having a restrictive effect. Both ought to consider it as among the surplusage which as often proceeds from inattention as caution’.²¹³

Determining ‘Proper’ Meaning

The necessary and proper clause was written over 200 years ago and to date there is still not an authoritative definition of ‘proper’. Therefore to analyze this from a legislative perspective, I will look at both the historical and contemporary meaning of the word in a constitutional context. The lack of discussion throughout the years regarding the second word in the clause has led to a very limited understanding of the

²¹² Bennett (2003), *op. cit.*, p. 220.

²¹³ Opinion of Edmund Randolph, Attorney General of the United States to President Washington. Taken from Lawson et al., *op. cit.*, p. 117.

clause itself. This section questions whether or not the titles of law should properly fit their subject-matter, to thus be considered proper and therefore constitutional.

To date the meaning of ‘proper’ has been limited to a propriety context, essentially determining whether or not Congress has over-stepped its bounds between federal and state law.²¹⁴ In essence the discussion has centred on the proper construction and application of how federalism in the US should operate. This debate seems appropriate regarding use of the word, but also seems to be a somewhat narrow interpretation of a word, ‘proper’, which can bear many possible interpretations.

If the only meaning of the word ‘proper’ in Article I is the separation of powers between Congress and individual states, then one wonders why the word was included. The Constitution certainly elaborates on these powers at length in Articles I and IV.²¹⁵ Could the founders have included the phrase for other reasons than separation of powers, which they had already enumerated? Additionally, as mentioned above, it seems logical to state that they would have desired *all* aspects of laws to be proper, and not merely proper in regard to separation of powers issues. If they simply desired them to be appropriate in a proprietary sense, they could have easily stated this without being ambiguous.

Historical Meaning

Since the Necessary and Proper clause received almost no debate during its constitutional implementation, those wishing to attribute meaning to the clause must

²¹⁴ *Gonzales v. Raich*, 545 U.S. 1 (2005); *Jinks v. Richland County* 538 U.S. 456 (2003); *McCulloch*; Lawson, G. & Granger, Patricia B. (1993-94). *The ‘Proper’ Scope of Federal Power: A Jurisdictional Interpretation of the Sweeping Clause*, 43 Duke L.J. 267; Lawson, Gary, et al., *op. cit.*, p. 1; Barnett, Randy (2004). *The Original Meaning of the Necessary and Proper Clause*. *University of Pennsylvania Journal of Constitutional Law*, 6(2), p. 216; Barnett, Randy. (2003-04). *The Proper Scope of Police Power*, *Notre Dame Law Review* 79(2).

²¹⁵ U.S. Const. art. I & art. IV, *op. cit.*

find alternative ways of doing so. The most recent text devoted to the clause by Lawson *et al.* attempts to shed some light on the clause's origins.²¹⁶ In doing this they analyze a variety of sources that could potentially aid in understanding the clause, such as: 18th century statute drafting in England and America; agency law and the role of fiduciaries; examination of state constitutions and other state statutes; and administrative law and corporate charters.²¹⁷ Their endeavour is interesting and illuminating in many respects, as the authors give substantial significance to the clause and examine it accordingly.

While Justice Marshall only discussed half of the 'necessary and proper' clause in his *McCulloch* opinion,²¹⁸ others have offered their thoughts on the matter, though they admit that 'it is often hard to figure out its meaning'.²¹⁹ Scholars further note that 'the meaning of "proper" seems not to have been defined in reported cases, so we can do no more than deduce it',²²⁰ and another source states that the 'word "proper" has generally been treated as a constitutional nullity or, at best, as a redundancy.' One of the most insightful essays from the Lawson *et al.* text concentrates on agency law and the fiduciary obligations that the clause elicits. While Natelson explains that the jurisdictional boundaries should be taken into consideration regarding the clause, he also expands on this notion by suggesting the following: 'To be "proper," a law had to be, at the least, in compliance with the fiduciary duties expected of all public officials. Thus, to be proper, the law had to be within constitutional authority, reasonably impartial, adopted in good faith, and with due care-that is, with some reasonable,

²¹⁶ Lawson, et al., *op. cit.*

²¹⁷ *Id.*

²¹⁸ *McCulloch v. Maryland*, 17 U.S. 316 (1819)

²¹⁹ Barnett, Randy. (2004). The Original Meaning of the Necessary and Proper Clause, *University of Pennsylvania Journal of Constitutional Law*, 6(2), p. 216.

²²⁰ Lawson et al., *op. cit.*, p. 78.

factual basis’.²²¹ The final three criteria seem especially relevant to this endeavour. Being reasonably impartial, adopted in good faith, and with due care are three valuable criteria that could be ascertained when drafting proper short bill titles. Moreover, the legitimacy of many of the titles mentioned in Chapter II of this thesis would certainly be called into question under these principles.

Another article in the text examines state constitutions around the time the US Constitution was drafted. Lawson and Seidman note that on several occasions ‘the word “proper” is used to mean something quite strict, such as “distinctively fitted to or suited for”’, and at times these referred to: ‘proper forms of government’; ‘proper laws for creating districts and counties’; and ‘proper form for submission to the people for initiatives’.²²² Other authors in the text even went back to dictionaries published around the time the clause was written. They note that Samuel Johnson’s Dictionary of 1786 had two overlapping entries that were adaptable for the legal context, one of which was ‘suitable’ and another stating ‘exact; accurate; just’.²²³ Suitable would seem to fall under both the proprietary meaning and drafting perspective of proper, while the latter could easily fall under the drafting perspective.²²⁴

The overarching themes from the section above are: (1) the definition of ‘proper’ under the Necessary and Proper Clause is still highly unclear; and (2) there are multiple possibilities under which the definition of ‘proper’ may fall, some of them

²²¹ Robert G. Natelson, The Framing and Adoption of the Necessary and Proper Clause. Taken from Lawson et al., *op. cit.*, p. 119.

²²² Lawson, Gary and Siedman, Guy. (2010). An Ocean Away, taken from Lawson, et. al., *op. cit.*, p. 47. State examples taken from Pennsylvania, South Carolina, and Massachusetts Constitutions.

²²³ Natelson, Robert G., (2010). *The Legal Origins of the Necessary and Proper Clause*. Take from Lawson et al., *op cit.*, p. 79.

²²⁴ Although, a ‘suitable’ short title could easily follow from this meaning as well.

more general, (i.e. taking more of a proprietary stance), and others strict (i.e. stressing accuracy, suitability, and proper form).

Contemporary Meaning of Proper

Since the historical attempt to unearth the definition of proper has proved unsatisfying, it is appropriate to look to modern instruments to help guide its meaning. Since the definition was not determined in *McCullogh* and has not been decided in more recent Supreme Court cases, such as *Jinks* or *Gonzales*, it deserves further analysis. Indeed, Miller states that ‘the meaning of the Necessary and Proper Clause today is not necessarily about original understanding’.²²⁵ Simply the fact that the word’s precise meaning in the clause has escaped definition for over two hundred years lends credence to Miller’s statement. To aid in providing a contemporary definition of ‘proper’, the discussion which follows employs state constitutions, legislative drafting manuals and other instruments, such as dictionaries.

It turns out that many state constitutions use the word in relation to laws or bill titles, and these are a great help when attempting to decipher a contemporary meaning for ‘proper’. For example, Florida’s Constitution states that ‘Every law shall embrace but one subject and matter *properly* connected therewith, and the subject shall be briefly expressed in the title’;²²⁶ Idaho’s Constitution says ‘Every act shall embrace but one subject and matters *properly* connected therewith, which subject shall be expressed in the title’;²²⁷ Indiana’s Constitution declares that ‘An act, except an act for the

²²⁵ Miller, Geoffrey P. (2010). *The Corporate Law Background of the Necessary and Proper Clause*. Taken from Lawson et al., *op. cit.*, p. 174.

²²⁶ Florida State Constitution. art. III, § 6, at <http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes&CFID=210251873&CFTOKEN=66663183>

²²⁷ Idaho State Constitution, art. III, § 16, at: <http://www.legislature.idaho.gov/idstat/IC/Title003.htm>

codification, revision or rearrangement of laws, shall be confined to one subject and matters *properly* connected therewith’;²²⁸ Nevada’s Constitution reads ‘Each law enacted by the Legislature shall embrace but one subject, and matter, *properly* connected therewith, which subject shall be briefly expressed in the title’;²²⁹ New Jersey’s Constitution asserts that ‘To avoid *improper* influences which may result from intermixing in one and the same act such things as have no *proper* relation to each other, every law shall embrace but one object, and that shall be expressed in the title’;²³⁰ Oregon’s Constitution declares that ‘Every Act shall embrace but one subject, and matters *properly* connected therewith, which subject shall be expressed in the title’;²³¹ and Arizona’s Constitution acknowledges that ‘Every act shall embrace but one subject and matters *properly* connected therewith, which subject shall be expressed in the title’.²³²

However, to complement the data from state constitutions on the use of ‘proper’, it would be reasonable to examine state legislative drafting manuals to see if they use the word in relation to bills and bill titles. Since these manuals aid in crafting law, their use of the word should provide some guidance for this endeavour. Indeed, many of these legislative drafting instruments do use ‘proper’ frequently. Alaska’s manual consistently mentions ‘*proper* form’ and ‘*proper* technique’;²³³ Colorado’s manual states that ‘The drafter’s function is to devise appropriate statutory language in

²²⁸ Indiana State Constitution, art. IV, § 19, at: <http://www.law.indiana.edu/uslawdocs/inconst.html>

²²⁹ Nevada State Constitution, art. IV, § 17, at: <http://www.leg.state.nv.us/const/nvconst.html>

²³⁰ New Jersey State Constitution, art. IV, § VII, cl. 4, at: <http://www.njleg.state.nj.us/lawsconstitution/constitution.asp>

²³¹ Oregon State Constitution, art. IV, § 20, at: <http://www.leg.state.or.us/orcons/orcons.html>

²³² Arizona State Constitution, art. IV, § 13, at: <http://www.azleg.gov/Constitution.asp>

²³³ Alaska Legislative Affairs Agency. Manual of Legislative Drafting (2007), at: <http://w3.legis.state.ak.us/docs/pdf/DraftingManual2007.pdf>

proper form to carry out the sponsor's objectives',²³⁴ Hawaii's manual acknowledges that 'Use of a findings and purpose, policy, or findings and declaration of necessity section may be advisable in some instances', and the first instance is 'A bill of major significance where the effectiveness of the proposed legislation will be dependent upon a *proper* appreciation of the legislative intent',²³⁵ the second page of Maine's manual states that 'Each legislative instrument must have a *proper* authority for introduction';²³⁶ Maryland's manual notes that 'If a bill's subject matter is broader than its title, the bill is unconstitutional because the requirement of *proper* notice to legislators and citizens is not fulfilled',²³⁷ Montana manual speaks of the '*proper* form and arrangement of a bill',²³⁸ New Mexico's guide declares that 'Since a *properly* prepared title is essential to the constitutionality of any bill that becomes law, the title should be carefully reviewed to determine that it covers everything in the bill',²³⁹ when providing a checklist for legislative drafters, North Dakota's manual asks, 'Does the bill or resolution have a *proper* title?';²⁴⁰ and South Dakota's manual acknowledges that 'A *properly* prepared bill consists of a title, an enacting clause, and a body of

²³⁴ Colorado Legislative Drafting Manual, (2009). The Office of Legislative Legal Services. § II on Short Titles, pp.1-4.

²³⁵ Takayama, K., Hawaii Legislative Drafting Manual, 9th Ed., p. 6, (2007) at: <http://www.state.hi.us/lrb/rpts96/dftman.pdf>

²³⁶ Maine Legislative Drafting Manual. (2009). Legislative Counsel, Main Legislature., p. 2 at: <http://www.maine.gov/legis/ros/manual/Draftman2009.pdf>

²³⁷ Maryland Legislative Drafting Manual. (2010). Department of Legislative Services, p. 29-30, at: http://dls.state.md.us/data/legandana/legandana_bildra/legandana_bildra_bildraman/BillDraftingManual2011.pdf

²³⁸ Bill Drafting Manual. (2010). Montana Legislative Services Division, p. 45, at: <http://leg.mt.gov/content/Publications/2010-bill-drafting-manual.pdf>

²³⁹ New Mexico Legislative Drafting Manual. (2008). New Mexico Legislative Counsel Service, p. 21 at: <http://www.nmlegis.gov/lcs/lcsdocs/draftman.pdf>

²⁴⁰ North Dakota Legislative Drafting Manual. (2011). Legislative Counsel, p. 2, at: <http://legis.nd.gov/information/bills/docs/pdf/2010draftingmanual.pdf>

provisions. The correct form of the title and the enacting clause is specified in the Constitution and further defined by statute and custom'.²⁴¹

Now that state constitutions and legislative drafting manuals have been examined, more contemporary instruments will be consulted concerning the definition of proper, as these should provide a more complete picture of how the term was used in the instruments above. The Oxford English Dictionary supplies three main definitions of the word 'proper', which are: (1) truly what something is said or regarded to be; genuine; (2) of the required or correct type or form; suitable or appropriate; (3) belonging or relating exclusively or distinctively to; particular to.²⁴² Merriam-Webster provides nine definitions of the word, and four of them would help with the current legal analysis: (1) belonging to one: own; (2) strictly limited to a specified thing, place, or idea; (3) strictly accurate: correct; and (4) marked by suitability, rightness, or appropriateness: fit.²⁴³

Contemporary editions of Black's Law Dictionary do not actually define the word 'proper'.²⁴⁴ However, an older version of the Black's Law Dictionary defines the word as: 'That which is fit, suitable, appropriate, adapted, correct. Reasonably sufficient. Peculiar; naturally or essentially belonging to a person or thing; not common; appropriate; one's own'.²⁴⁵ The first line of this definition provided by Black appears to be the most appropriate for legislation in the necessary and proper context. 'Fit', 'suitable', 'appropriate' and 'correct' all suit the 'proprietary' model and the

²⁴¹ South Dakota Drafting Manual, p. 7. Available at: <http://legis.state.sd.us/general/DraftingManual.pdf>

²⁴² Oxford English Dictionary, at: www.oxforddictionaries.com

²⁴³ Merriam-Webster Online Dictionary. Search for 'Proper', at: <http://www.merriam-webster.com/dictionary/proper>

²⁴⁴ Garner, Bryan. (2009). *Black's Law Dictionary*. St. Paul, MN: West Publishing.

²⁴⁵ Black, Henry Campbell. (1991). *Black's Law Dictionary (6th Ed.)*. Definition of 'Proper'. p. 1216.

drafting model of interpretation, and it is not unreasonable to say that titles should ‘fit’ the requisite text of a piece of legislation, or should be ‘appropriate’ or ‘correct’.

Combined with the evidence from state constitutions and state drafting manuals, all three instrument definitions could pose major problems for insufficient, uninformative and/or misleading short bill titles. If such titles had to be genuine, suitable, appropriate, and/or accurate then there certainly many titles of federal statute law would be questioned. Does patriotism *genuinely* describe the USA PATRIOT Act? Is the label ‘No Child Left Behind’ *suitable* or *appropriate* for an education bill (or any bill, for that matter)? Does the CAN-SPAM Act *accurately* or *appropriately* portray the piece of legislation in question? Thus, if one were to draw on the contemporary definitions of the word proper supplied from state constitutions, state drafting manuals and dictionaries, numerous questions arise as to the appropriateness and constitutionality of many Congressional bill titles.

Constitutional Conclusion

After two hundred plus years, it is unlikely that an authoritative and decisive interpretation will be found that will reveal the true meaning of the Necessary and Proper clause. The best that modern scholars can do at this point is to keep constructing, hypothesizing, and providing evidence for the best possible solutions to the ever-elusive phrase.

However, a few features are evident when analyzing the necessary and proper clause: (1) most of the attention throughout the clause’s history has been focused on the meaning of ‘necessary’; (2) the definition of ‘proper’ has yet to be determined; (3) there is more evidence to presume that ‘proper’ was a restricting modifier than a ratchet to

enhance Congressional power; and (4) there are many valid contemporary instruments that could aid in interpreting the clause.

Although most scholars have been concerned with the meaning of proper form a proprietary standpoint, and understandably so, there appears to be a place underneath the necessary and proper clause to incorporate the drafting aspect, and acknowledge the notion that *all* aspects of federal law should be ‘proper’. Laws that mislead legislators, citizens and others about the true nature of what they are going to accomplish or about what they are inherently about would not be ‘proper’ under any of the definitions which this article has examined, historical or modern.

This chapter has examined the literature on short bill titles in the three jurisdictions studied from an academic standpoint. In doing so, it has taken into account the evolution and importance of evocative language and political marketing techniques in regard to policymaking and short bill titles. The chapter also explored some of the psychological implications of evocative titles, and investigated the constitutionality of evocative short bill titles in the US in regard to the necessary and proper clause. The next chapter focuses on the specific parliamentary rules and procedure in relation to short bill titles in the three jurisdictions studied. In doing so, it takes into account how bills come about from a drafting perspective, the role of civil servant drafters in the naming of legislation, the specific parliamentary rules in relation to short titles, and some of the opportune moments in the legislative procedures of the three jurisdictions studied.

Chapter IV: Parliamentary Rules & Procedure in Three Jurisdictions, Etc.

In order to fully understand bill naming it must be examined from the perspective of the legislative procedure, as it is through lawmaking institutions and their formal (and at times, informal) procedures that such proposals progress into the statute book. This being the case, an element of due process of lawmaking¹ arises when analysing the policies and procedures discussed below regarding short titles in the respective institutions, to ensure that bills are being drafted and vetted appropriately. Each institution is likely to have their own nuanced practices in regard to short titles, and these intricacies are explored more fully below.

For each jurisdiction, this chapter first provides a brief description of how bills, and more importantly (to this endeavour,) short titles come into being. Next, it analyzes the policies or procedures engaged in by these legislative bodies that directly or indirectly relate to bill titling, including those related to the independence or clarity of the statute book. The general anatomy of an Act in each jurisdiction is included for reference. Next, the most important, or the most opportune, moments in the legislative process regarding short bill titles is explored from the parliamentary perspective. A general understanding of these moments during the legislative process will provide an

¹ Eskridge, William M., Frickey, Philip P. & Garrett, Elizabeth, *op. cit.*, p. 181. The concept of ‘due process of lawmaking’ derives from a focus on the legislative process, specifically in regard to the fact that ‘laws derive legitimacy in part from the quality of the deliberation accompanying their enactment’, including ‘how specific decisions should be allocated among various political institutions’ (pp. 181-82). More on the due process of lawmaking from a constitutional perspective is discussed in Chapter VI.

institutional context for this thesis' central research questions. Also, it should be noted from the outset this chapter's main focus is on Public Bills in the three jurisdictions, and the drafting and legislative policies related to them.

The Westminster Parliament

Most Public Bills travelling through the legislative process in Westminster are Executive Bills proposed by the government of the day, and many of these are part of the Queen's speech that takes place at the beginning of each parliamentary session. Most of these are known as 'programme' Bills, because they have been 'allocated a spot in the Government's legislative programme for a particular session'.² In fact some experts believe that the 'government has a near-monopoly on the right to legislative initiative' in the Westminster Parliament.³ Apart from this, members of the Commons or Lords that are not ministers can introduce Private Members' Bills, which are another form of Public Bills, but which are not formally endorsed by the current government. These bills are examined more fully in the Westminster 'Spotlight' section below. There are two other types of bills: Private Bills and Hybrid Bills: this thesis does not examine these further because they form a small part of the legislative process and they are usually titled simply by reference to the organisation which promotes them.

Westminster is the primary lawmaking body in the UK, and for well over a century now it has employed a team of lawyers to assist with the preparation and

² Greenberg, *op. cit.*, p. 147.

³ Fox, Ruth & Korris, Matt. (2010). *Making Better Law: Reform of the Legislative Process from Policy to Act*. London, UK: The Hansard Society, p. 22.

drafting of legislation. The Office of the Parliamentary Counsel (OPC) was established in 1869, and was given responsibility for the drafting, co-ordination and progress of all UK government bills. In 1980 there were 20 full-time and three part-time draftsmen. Currently, 56 lawyers and 20 support staff make up the OPC, and they are responsible for drafting most Government Bills with a few exceptions (i.e. Bills of the Westminster Parliament relating only to Scotland).⁴

The Cabinet Office recently released their previously classified ‘Guide to Making Legislation’, and here they assert that ‘Parliamentary Counsel will give the Bill its short and long titles’.⁵ However, as Greenberg acknowledges ‘Sometimes it [the short title] is discussed with the Department with principal responsibility for the Bill, and sometimes aspects of it are discussed with the House authorities’; but the passage goes on to demonstrate that misconceptions have arisen in regard to short titles as well, noting that ‘the Parliamentary Under-Secretary in the Home Office said of the Disqualifications Bill 1999-2000, “The title of the Bill is a matter for parliamentary draftsmen; Ministers have not been involved in decisions of that kind”’.⁶ In accordance with Greenberg’s above statement, my research disputes this claim by the Parliamentary Under-Secretary.

The short title is how a measure is referred to as it is travelling through Parliament.⁷ In fact, one could say that short titles never truly die; even when a statute

⁴ Office of the Parliamentary Counsel Website. Available at: <http://www.cabinetoffice.gov.uk/content/office-parliamentary-counsel/>; Greenberg, *op. cit.*, p. 222.

⁵ Cabinet Office Guide to Making Legislation (2009) Drafting the Bill. Available at: http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/secretariats/economic_and_domestic/legislative_programme/guide_html/drafting_the_bill.aspx

⁶ Greenberg, Daniel. (2008). *Craies on Legislation* (9th edn). London: Sweet and Maxwell, p. 102 (HC Deb. January 25, 2000. c.480’).

⁷ Jack, Sir Malcolm, *op. cit.*, p. 527. D Greenberg, Daniel (2008), *op. cit.*, p. 102.

is repealed, the short title is still used to refer to that Act.⁸ The inclusion of short bill titles started in the UK in 1495, as before this no titles (short or long) were given to statutes.⁹ Bill titles in the UK (including Scottish Bills) are mandatory.¹⁰ Yet such titles were not mandatory for UK bills until the enactment of three separate Acts: the Short Titles Act of 1896, the Statute Law Revision Act 1948, and the Statute Law Revision (Scotland) Act 1964, which provided short titles to almost all UK Acts.¹¹

Formal/Informal Rules or Policies on Short Titles

Once a drafter is given the assignment of drafting a bill, however, he or she will find little information supplied by Westminster or the Parliamentary Counsel in terms of official short title policies. On the Parliamentary Counsel website there are four technical papers regarding drafting practices: Drafting Techniques Group Recommendations, Clarity, Gender-Neutral Drafting, and ‘Shall’.¹² The Group Recommendations article mentions short titles, but only to state that the wording used to confer a short title on an act is: ‘this Act may be cited as’.¹³ The closest the Counsel

⁸ Greenberg, Daniel (2008), *op. cit.*, p. 588.

⁹ Edgar, S.G.G. (1971). *Craies on Statute Law* (7th Ed.). London, UK: Sweet and Maxwell, p. 190 (did not see this passage in the most recent, 2008 9th Ed.)

¹⁰ Jack, Sir Malcolm, *op. cit.*, p. 527; Miers, David & Page, Alan. (1982). *Legislation*. London, UK: Sweet & Maxwell.

¹¹ Greenberg, Daniel (2008), *op. cit.*, p. 103; Jack, Sir Malcolm, *op. cit.*, p. 527. Each of the above three Acts only covered certain measures (i.e. UK Public General Acts, Welsh Legislation, Scottish Legislation, etc.). Thus, it was not until passage of the 1964 Act that most all Acts, including ones that did not previously have short titles, were granted short titles. Greenberg (2008) notes that there remain some past Acts that were never given short titles, but which still have legal effect. These Acts are ‘cited by a combination of regal year and chapter number or by a self-explanatory reference to their provisions’ (p. 103).

¹² Office of the Parliamentary Counsel Website. Available at: http://www.cabinetoffice.gov.uk/parliamentarycounsel/drafting_techniques.aspx. ‘Shall’ deals with where and how to use the word when it is located in legislation.

¹³ *Id.*, paper available at: <http://www.cabinetoffice.gov.uk/media/319008/dtgrecommendations091214.pdf>

comes to offering recommendations on short titles, though indirectly, is displayed in their ‘Clarity’ guidelines.

These begin by saying that ‘[i]t is increasingly accepted that legislative texts should be as clear as possible, as well as accurate and effective’,¹⁴ because this ‘is the fundamental requirement of all our drafting’.¹⁵ Thus, ‘accurate and effective’ could be the barometer by which drafters adhere to when inscribing such titles. The recommendations further note that the drafter must ‘tell their story’, and that ‘your reader does not know what your message is until you deliver it’.¹⁶ This is appropriate for the formal role of the short bill title, as such titles usually provide some description about what the measure is in relation to. It also states that readers can be helped by the ‘words you choose for their headings’, but this statement is more in relation to bill chapters, sections, clause headings, etc., and has little to do specifically with the short title.¹⁷ Additionally, it was noted in the previous chapter that many constitutional and legislative drafting texts give cursory examination to short titles. The same is true for the Cabinet Office drafting guidelines. Though they mention both short and long titles, they note that the ‘long title is of importance’, while they do not elaborate on short title significance at all.¹⁸ In fact, they do not further mention short titles beyond noting that bills have them and parliamentary counsel should draft them.¹⁹

¹⁴ *Id.*, Drafting Techniques Document on Clarity. Available at: <http://www.cabinetoffice.gov.uk/media/190016/clarify%20paper%20with%20hyperlinks.pdf> (p.1). However, they also note that ‘This paper does not cover all of the general principles of good drafting. It covers only one of those mentioned above, clarity. Clarity may overlap with others, and the others may be equally important: but this paper is not about them’. (p.1).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Cabinet Office Guide to Making Legislation (2009), *op. cit.*, Drafting the Bill.

¹⁹ *Id.*, 9.31-9.33.

Erskine May's Parliamentary Practice is the main UK authority on legislative proceedings, and states that the titles of bills must 'describe the bill in a straightforwardly factual manner. An argumentative title or slogan is not permitted'.²⁰ The footnote states that this standard was determined in a private ruling by the Speaker on '16 October 2001, that "Women's Representation Bill" was not an appropriate title for a bill about sex discrimination in the selection of election candidates. Other proposed titles which have given rise to objection have included "Fairness at Work", "Modernisation of Justice", "Safe Communities" and "Constitutional Renewal"'. Indeed, earlier the text notes that 'Speaker's rulings constitute precedents by which subsequent Speakers, Members, and officers are guided...Such precedents are noted and in course of time may be formulated as principles or rules of practice. They are an important source of determining how the House conducts its business'.²¹ It also notes that 'Such private rulings of the Speaker generally settle the questions at issue, but they may, if necessary, be supplemented by rulings given from the Chair'.²² It is interesting to note that the 23rd edition of *Erskine May* (2004), edited by Sir William McKay, did not include the above quoted passages in relation to bill titles, even though the Speaker's private ruling on titles was apparently adjudicated in 2001.²³ Additionally, as shall be revealed below, Greenberg disputes whether or not the Speaker has the power to stop a bill with an unwieldy short title.

²⁰ Jack, Sir Malcolm, *op. cit.*, p. 526.

²¹ *Id.*, p. 62.

²² *Id.*

²³ McKay, *op. cit.*, p. 535. An email was sent to the deputy editor of *Erskine May* to ask why the 2004 version did not include the ruling by the Speaker on short titles. The email was replied to, but the editor did not have any knowledge as to the matter at hand, and could not elaborate on the situation.

Public Bills in the UK Parliament are sometimes subject to scrutiny by a parliamentary committee before they are officially presented to Parliament.²⁴ In fact, from the 1997-98 session to the 2007-08 session, 57 draft bills have been presented to parliament before formal presentation.²⁵ Regardless of how bills originate, they usually go through some pre-legislative consultation. Consultation among ministers, departments, drafters and outside organisations may take place during this process, and ‘green papers’ and ‘white papers’ are occasionally published and debated by Parliament.²⁶ And although there has been an effort made to enhance pre-legislative scrutiny (especially by the House of Commons Modernisation Committee), this process is still largely ‘carried on within government and behind the closed doors of Whitehall’.²⁷ If there is an evocative or misleading name on the bill when given to House authorities (such as the House Clerk, Clerk’s Assistant Directorate/Legislative Directorate, or a Public Bill Office), they may request a name change and speak with the bill drafter and/or minister responsible before it is officially presented as a bill to Parliament.²⁸ However, Greenberg states that a request of name change does not mean that there indeed will be one.²⁹ This is covered in more detail below.

This technical consideration before formal presentation and during the legislative process may be one reason why evocatively named pieces of legislation are

²⁴ Jack, Sir Malcolm, *op. cit.*, p. 533.

²⁵ McKay, William & Johnson, Charles, *op. cit.*, Annex Table 9.5, p. 561.

²⁶ Bradley, A.W. & Ewing, K.D., *op. cit.*, pp. 283-84.

²⁷ *Id.*, p. 194.

²⁸ Greenberg, Daniel (2008), *op. cit.*, p. 102; Greenberg, Daniel (2011), *op. cit.*, pp. 56, 101-102, 130-31; This was also mentioned by a UK bill drafter (UKBD1) in an interview, who stated that often times there are requests for evocative names, but that the drafter will normally resolve this by pointing out that the bill title needs to reflect its content, rather than the policy initiative behind it, before the bill is presented. In essence, the title of the bill receives input from drafters, Ministers, House Authorities and at times others (such as special advisors), and these individuals must work with each other while providing short titles to bills.

²⁹ Greenberg, Daniel (2011), *op. cit.*, pp. 56, 101-102, 130-31.

not very common in Westminster and in the Scottish Parliament. Furthermore, employing civil servants to draft legislation and, most importantly to this thesis, to devise bill titles is one of the primary functions that could allow UK bill titling to maintain its independence from such policy branding. This phenomenon will be further examined in Chapter VI of my thesis. However, it is important to note here that UK civil servants and House Authorities (including those in the Scottish Parliament) take much more interest and are more often involved in the naming of parliamentary short bill titles. In contrast, their transatlantic counterparts, although they are available for advising on and are often involved in drafting the content of bills, leave this privilege to the legislator sponsoring the bill for several reasons. One of these is the different system for naming bills (as discussed elsewhere, there is no legislative requirement for a short bill title in the US).

What short titles in Westminster lack in official parliamentary instructions, they make up for in recommendations from legislative drafting experts, such as Bennion, Greenberg and others. Bennion states that ‘the short title is a brief description by which the Act may be cited or referred to’, and that ‘in a modern Act the short title is usually given by the Act itself’.³⁰ But Greenberg, the current editor of *Craies* notes that ‘[t]here is no legal requirement that the short title of an Act should be an accurate description of the entirety of its contents, nor would that be possible without often requiring a very unwieldy ‘short’ title. A short title that was positively misleading would, however, be likely to be deprecated’.³¹ After all, it was noted almost a century ago in regard to short

³⁰ Bennion, Francis. (2008). *Statutory Interpretation. (5th Ed.)*. London, UK: Butterworths, p. 735.

³¹ Greenberg, Daniel (2008), *op. cit.*, p. 102. He goes on to note that ‘[w]hile it is frequently impossible to find a short description that gives a clear indication of all the contents of the Bill, the aim should be to avoid a title which through apparent accuracy misleads by omitting reference to one or more provisions of the Bill. Necessarily unhelpful generality is to be preferred in this context (and many others) to false accuracy. It is also important to avoid a short title which amounts to propaganda in the sense of an attempt to praise or justify the policy of the Bill: in an extreme case the Speaker of the House of

titles that ‘accuracy must be sacrificed to brevity’.³² McLeod states that ‘wherever possible drafters should nevertheless do what they can to avoid confusion’.³³ Greenberg further states that the sole purpose of such titles is to provide as reference points for legislation, in addition to supplying notice of the subject matter and year in which it was passed.³⁴ Complementing this chorus of authors, Crabbe notes that ‘As the name explains, a short title should be short. It should be designed with great care and concern for those who have to use the Act’.³⁵

Bennion acknowledges that ‘amendments made to an Act may require it to be renamed by changing its short title’.³⁶ For example, the Capital Transfer Act 1984 was later changed to the Inheritance Tax Act 1984.³⁷ But renaming Acts in this fashion is not necessarily ideal, as it ‘falsifies history and may create confusion over references which date from before the change and use the previous short title’.³⁸ In terms of keeping short titles brief, Bennion provides that a title defeats its own purpose if more than three or four words precede the word ‘Act’.³⁹

Misleadingly titled (including misnamed) bills and Acts are a major focus of this thesis, and in regard to such names from Westminster Bennion cites the Criminal

Commons might refuse to print a Bill which a short title which was thought to mislead or to amount to an abuse of the procedures of the House.’ (pp. 102-103).

³² Scrutton, J. in *In Re Boaler* [1915] KB 21

³³ McLeod, Ian. (2009). *Principles of Legislative and Regulatory Drafting*. Oxford, UK: Hart Publishing, pp. 23-24.

³⁴ Greenberg, Daniel (2008), *op. cit.*, p. 103.

³⁵ Crabbe, VCRAC. (2008). *Crabbie on Legislative Drafting* (2nd Ed.). London, UK: LexisNexis Butterworths, p. 114.

³⁶ Bennion, Francis, *op. cit.*, p. 738. This was also mentioned earlier regarding committee proceedings in both Houses.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*, p. 736

Procedure Act 1865 (repealed), which also dealt with civil proceedings.⁴⁰ Others of note are the Laws of Wales Act 1535 (which was given its short title in 1948), and which united England and Wales, essentially making Wales subject to English law.⁴¹ Perhaps an applicable standard to apply when constructing a short title taken from a quote in an earlier version of *Craies*, which states that ‘there may, perhaps, be some obscurity in the words of the statute, but there is none in the title’.⁴²

Most legislative drafting texts state that short titles should not to be used when determining the scope of the bill or when interpreting an Act. But not all drafters tend to agree with this, especially in regard to interpretation. When considering the short title as a guide to meaning, Bennion states that ‘it must be remembered that its function is simply to provide a brief label by which the Act may be referred to’,⁴³ and goes on to state that although brief, they are ‘not infrequently’ looked to by judges when interpreting a statute.⁴⁴ Crabbe observes that ‘In *Lonhro Ltd. v Shell Petroleum Co. Ltd. (No.2)* Lord Diplock stated that the short title may be used to assist in the interpretation of the body of an enactment’.⁴⁵ McLeod states that ‘[t]here is no doubt that the short title is part of the Act, and as such it can be used for the purpose of interpretation’.⁴⁶ Referring to the short title can aid in understanding terms throughout the Act. Bennion also notes that ‘the title of an Act may warn the reader’ as to what certain words

⁴⁰ *Id.*

⁴¹ Another example of a misleading (or misnamed) Bill was provided by a Scottish Bill drafter (SCTBD2). As will also be discussed in Chapter VI, he noted that the Crime and Punishment (Scotland) Act 1997 c.48, was a punishment bill, and the short title was inappropriate.

⁴² (1823). 2 B. & C. 34, 37. Taken from : Edgar, S.G.G. (1971). *Craies on Statute Law. (7th Ed.)*. London, UK: Sweet & Maxwell, p. 192 (again, did not see this in the most recent, 9th Ed. 2008)

⁴³ Bennion, Francis, *op. cit.*, p. 738.

⁴⁴ *Id.*

⁴⁵ Crabbe, *op. cit.*, p. 462, citing: *Lonhro* – [1981] 2 All ER 456.

⁴⁶ McLeod, Ian, *op. cit.*, pp. 23-24.

mean,⁴⁷ and provides an example: ‘The definition of “suspected” as “suspected of being diseased” could be criticized if it were not contained in an Act with the short title the Diseases of Animals Act 1950 (repealed)’.⁴⁸ Another example that Bennion provides is in the Misuse of Drugs Act 1971, noting:

‘Section 5(1) of the Misuse of Drugs Act 1971 makes it unlawful for a person “to have a controlled drug in his possession”. The House of Lords had to decide whether, in view of the short title of the Act, it should be treated as concerned only with possession of a usable quantity of a controlled drug. Was the mischief the possession of any quantity, however minute, or was it the possession only of an amount sufficient for an addict to use? Lord Scarman said: ‘If I were disposed, which I am not, to add to the subsection by judicial interpretation words which are not there, I would not accept the words suggested, ie capable of being used in a manner prohibited by the Act. The uncertainty and imprecision of such a criterion of criminal responsibility *would in themselves be mischievous*. But, further, the view that possession is only serious enough, as a matter of legal policy, to rank as an offence if the quantity possessed is itself capable of being misused is a highly dubious one. Small quantities can be accumulated. It is a perfectly sensible view that the possession of any quantity which is visible, tangible, measurable and “capable of manipulation”... is a serious matter to be prohibited if the

⁴⁷ Bennion, *op. cit.*, p. 573.

⁴⁸ *Id.*

law is to be effective against trafficking in dangerous drugs and their misuse” (emphasis in original).⁴⁹

It was mentioned above that evocative short titles in the Commons are prevented by a 2001 Speaker’s Private Ruling, and that these have binding precedent in the Commons.⁵⁰ However, in a new book on Westminster Parliament legislative processes called *Laying Down the Law*, former Parliamentary drafter Daniel Greenberg notes that ‘it is far from clear whether even the Speaker has the power to intervene formally to prevent a short title of which he or she disapproves on the grounds of propaganda’.⁵¹ This expressly contrasts with the latest edition of *Erskine May*. Indeed, it is a point of contention that may need to be (re)considered in future years. It was also noted above that most of the time bill drafters are the individuals who provide titles to proposals. Greenberg, however, declares that the understanding that drafters bear this responsibility ‘has become considerably eroded throughout the years’, and Ministers and others now have a larger input into such matters.⁵² Thus, if a short bill title is being considered and negotiated on by drafters, Ministers, House Authorities and others, some type of standard drafting and/or resolution procedure/s would likely be of benefit in future situations that arise.

Greenberg further states that when ‘Minsters are determined to exert their fullest influence, there is nothing to stop them from doing as they like. If a Minister directs the drafter to exclude particular materials, or to phrase things in a particular way, the drafter has ultimately no choice but to comply’.⁵³ He does note that drafters

⁴⁹ *Id.*, Example 297.4 , p. 933

⁵⁰ Jack, Sir Malcolm., *op. cit.*, p. 526.

⁵¹ Greenberg, Daniel. (2011), *op. cit.*, p. 102.

⁵² Greenberg (2011), *op. cit.*, p. 54.

⁵³ *Id.*, p. 55.

can appeal to higher authorities, such as the Law Officers, but ‘once Ministers have taken a decision as an appropriate exercise of collective responsibility, the drafter has no further recourse’.⁵⁴ Greenberg also notes that ‘special advisers’ have been known to wield considerable power within Westminster, and he cites one major instance regarding this in relation to a short title, where an adviser was requesting a name change on behalf of a Minister who knew nothing about the matter, and did not especially care whether the short title was changed or not.⁵⁵ Although they have ‘no particular formal role to play in the [parliamentary] process’,⁵⁶ these political appointees often have interchanges with drafters on ‘behalf’ of Ministers in regard to particular bills. Since they are able to be paid and ‘to a great extent treated’ as civil servants, but allowed to ‘retain their party loyalties’,⁵⁷ it would not be surprising if they did have some role in the construction of short bill titles. However, beyond his example in regard to the scope of a particular short title, Greenberg does not single out special advisers as having any considerable influence on the short titles of bills.⁵⁸

Overall, the revelations made by Greenberg regarding short titles in Westminster are provocative (especially to this endeavour), and will be further examined in the Chapter VI of this thesis. The section below examines the anatomy of Bills and Acts of Parliament.

⁵⁴ *Id.*

⁵⁵ *Id.*, p. 130-31.

⁵⁶ *Id.*, p. 30.

⁵⁷ *Id.*, p. 129.

⁵⁸ *Id.*, p. 129-33.

Figure 3. Example of the Contents page of the Protection of Freedoms Bill (2010-12)

--> **Protection of Freedoms Bill**

CONTENTS

--> **PART 1**

REGULATION OF BIOMETRIC DATA

CHAPTER 1

DESTRUCTION, RETENTION AND USE OF FINGERPRINTS ETC.

Destruction rule for fingerprints and DNA profiles subject to PACE

--> 1 Destruction of fingerprints and DNA profiles

Modification of rule for particular circumstances

2 Material retained pending investigation or proceedings

3 Persons arrested for or charged with a qualifying offence

4 Persons arrested for or charged with a minor offence

5 Persons convicted of a recordable offence

6 Persons convicted of an offence outside England and Wales

7 Persons under 18 convicted of first minor offence

8 Persons given a penalty notice

9 Material retained for purposes of national security

10 Material given voluntarily

11 Material retained with consent

12 Material obtained for one purpose and used for another

13 Destruction of copies

A major difference between the UK Parliaments (Westminster and Scotland) and the US Congress is that while bills are going through the formal parliamentary process, they are known and referred to by their short titles (bills in the US are primarily referred to by their bill numbers). For example, when a bill is presented to Parliament, the short title is always the first piece of text printed on the top of the page, as evidenced by the first blue arrow above. The same is true when a bill becomes an

Act: the short title is always the first piece of text printed on the first page.⁵⁹ The short title is in bold print at the top of every bill, and there is a running header throughout the printed versions of bills and Acts that include the short titles. This is quite different from the US Congressional style, and especially in regard to short bill titles, as will be seen below. Because short titles take such a prominent place in UK statutes, there may indeed be much more importance placed on having an accurate short title, because these are the main reference points when parliamentarians discuss, debate and generally refer to legislation.

Figure 3 above shows the first printed page of Protection of Freedoms Bill. Since it is a modern Public Bill, it does not include a preamble, as these have fallen out of favour in contemporary lawmaking (save for Private Bills). Seldom used, the preamble is a purpose clause that states the policy purposes of a piece of legislation.⁶⁰ However, Every Bill/Act will include a long title that ‘must cover all the provisions in the Bill’.⁶¹ Bills/Acts are usually divided between the main body and schedules. If a bill is of significant proportion, such as the above is, the main body is sometimes divided into parts, chapters⁶² and then sections. Part 1 of the above bill is the ‘Regulation of Biometric Data’ (second blue arrow); section 1 of part 1 begins with ‘Destruction of

⁵⁹ Suffice it to say that this is not the way that it occurs in the US. However, the section below on the US Congress goes into more detail regarding how such matters are performed in that jurisdiction. For an example of this from the Westminster Parliament, see the Children, Schools and Families Act, at: http://www.legislation.gov.uk/ukpga/2010/26/pdfs/ukpga_20100026_en.pdf

⁶⁰ Greenberg, Daniel (2011), *op. cit.*, p. 258. Greenberg goes on to state that ‘it is a commonly held myth that the use of statements of purpose is a radical innovation in statutory drafting...

The reality is, however, that in one form or another legislation has for centuries indulged in statements designed to make the underlying policy purpose of the legislation clear; and the courts have routinely allowed themselves to have regard to those statements in construing legislation.

...The great advantage of the preamble was that its placing showed that it contained material that was different in kind from the material forming part of the legislative provisions themselves, and that it was intended to flavour them, and provide background to their construction, rather than take parity with them (which always takes risk of inconsistency)’ (p. 258).

⁶¹ Cabinet Office Guide to Making Legislation. (2009). Drafting the Bill, *op. cit.* More discussion in regard to ‘scope’ of legislation is offered in Chapter VI.

⁶² Not to be confused with the chapter numbers following the short titles of Acts.

Fingerprints’ (third blue arrow). Smaller bills and Acts do not usually include parts or chapters, and sometimes commence with numbered sections. Following the main body of legislation most Bills/Acts include schedules, which often provide ‘information about repeals and amendments resulting from the Act’.⁶³ Unsurprisingly, Scottish Parliament legislation follows a very similar structure in terms of the main body and schedules, although it differs slightly in regard to the presentation of short titles.⁶⁴

Opportune Moments in the Parliamentary Process

Westminster has two separate chambers, the House of Commons (the Commons) and the House of Lords (the Lords). Although the two houses may both initiate legislation, most government bills are first presented to the Commons.⁶⁵ Also, the Commons is ensured supremacy over the Lords through legislative mandate, via the Parliament Acts of 1911 and 1949, as these Acts provide that the Lords cannot block legislation arising in the Commons, but only (and not in all circumstances) delay it.⁶⁶ There are other major differences. The Lords contains independent and crossbench members, who unlike party-affiliated members are not subject to a party-whip (and this includes bishops).⁶⁷ Additionally, the Lords is not subjected by mandate to legislative ‘programming’ and timetabling motions, and thus ‘has greater flexibility over how it

⁶³ University of Oxford, Faculty of Law and Bodian Library. (2012). Legislation. Structure of an Act. Available at: <http://denning.law.ox.ac.uk/lrsp/overview/legislation.php#structure>

⁶⁴ These differences are discussed below.

⁶⁵ Jack, Sir Malcolm, *op. cit.*, p. 526; Brazier, A., Kalitowski, S. & Rosenblatt, G. (2007). Law in the Making: A Discussion Paper. London, UK: The Hansard Society, p. 12-13.

⁶⁶ Brazier, A. Kalitowski, S., & Rosenblatt, G, *op. cit.*, p. 12; Bradley, A.W. & Ewing, K.D, *op. cit.*, pp. 194-197.

⁶⁷ *Id.*, p. 13; *Id.*, p. 178.

considers and scrutinises legislation'.⁶⁸ Time is a limited and precious factor in the Commons, where Public Bills (including government bills) only take up two-fifths of the body's work, therefore leaving little space for a government to implement its legislative programme.⁶⁹ Some believe that the Lords debates contain a higher degree of quality than the Commons,⁷⁰ and that the chamber is stronger because of the reforms made in 1999.⁷¹ Since passage the House of Lords Act 1999,⁷² which largely (but not quite altogether) eliminated hereditary peers,⁷³ some assert that government defeats in the Lords have become more frequent.⁷⁴ For example, during the 2002-03 session, the government was defeated 88 times on 14 separate bills, which was the most defeats in one session since 1975-76.⁷⁵

The process of going from a bill to an Act of Parliament is relatively straightforward, at least conceptually, and reasonably similar in both houses.⁷⁶ A bill must ordinarily travel through every stage in both the Commons and Lords, and in

⁶⁸ Brazier, A., Kalitowski, S. & Rosenblatt, G. *op.cit.*, p. 13; Fox & Korris, *op. cit.*, pp. 48-49.

⁶⁹ McKay, William & Johnson, Charles, *op. cit.*, p. 391.

⁷⁰ *Id.*

⁷¹ Russell, Meg. (2009). A Stronger Second Chamber? Assessing the Impact of House of Lords Reform in 1999 and the Lessons for Bicameralism. *Political Studies*, 58, pp. 866–885; Russell, Meg & Sciarra, Maria. (2007). Why Does the Government get Defeated in the House of Lords?: The Lords, the Party System and British Politics. *British Politics*, 2, pp. 299–322.

⁷² House of Lords Act 1999 c.34. Available at: <http://www.legislation.gov.uk/ukpga/1999/34/contents>

⁷³ Bradley, A.W. & Ewing, K.D. *op. cit.*, p. 176. They note that the Act 'provides that hereditary peers are no longer entitled to membership of the Lords. But hereditary peers have not been excluded altogether. In order to expedite the passing of the House of Lords Act 1999, the government accepted an arrangement whereby 90 hereditary peers... would remain in the Lords until the process of reform was completed' (p. 176).

⁷⁴ Brazier, A. Kalitowski, S., & Rosenblatt, G, *op. cit.*, p. 14. They note that in 2003-04 there were 64 defeats in the Lords, compared to only 31 in the 1998-99 session. Also, they cite the 2005 Prevention of Terrorism Bill as 'the biggest row since the early 20th Century' between the government and the Lords.

⁷⁵ Bradley, A.W. & Ewing, K.D. *op. cit.*, p. 194, citing: Crowley, P. & Stuart, M. (2004). *Parliamentary Affairs*, 57(301).

⁷⁶ Jack, Sir Malcolm, *op. cit.*, p. 597, 638, 658.

order to receive the Royal Assent have been approved by both Houses. The origin of a bill will have an impact on its preparation and passage, as some measures will be more expedited than others.⁷⁷ Theoretically bills can originate in either the Commons or the Lords, but most government bills usually begin in the Commons.⁷⁸ Yet all must ordinarily travel through the same stages in both houses. Each House usually requires bills to travel through five main stages in order to obtain the Royal Assent and thus become an Act of Parliament. These stages are: 1) First Reading, 2) Second Reading, 3) Committee, 4) Report, and 5) Third Reading.⁷⁹ At each of these stages, however, various events may occur that can aid or hinder the bill's chances of becoming law. The Commons usually reserves about 30-40% of its time for debating legislation, while the Lords usually spends 50-60% of its time on such matters.⁸⁰ Most legislative proposals follow the appropriate stages and are provided at least a decent amount of time for discussion and debate in both chambers, although there are important exceptions, such as binding EC legislation, which is implemented through secondary legislation,⁸¹ and those measures which need to be enacted with expediency due to external events.⁸²

⁷⁷ Hansard Society. (1992). *Making the Law: The Report of the Hansard Society Commission on the Legislative Process*. London, UK: The Hansard Society, p. 9.

⁷⁸ Jack, Sir Malcolm, *op. cit.*, p. 527; Bradley, A.W. & Ewing, K.D., *op. cit.*, p. 187.

⁷⁹ Jack, Sir Malcolm, *op. cit.*, p. 535, 597; UK Parliament Website, 2012. Passage of A Bill. Available at: <http://www.parliament.uk/about/how/laws/passage-bill/>

⁸⁰ Jones, Bill, Kavanagh, Dennis, Moran, Michael & Norton, Philip. (2007). *Politics UK (6th Ed.)*. Harlow, UK: Longman, p. 423.

⁸¹ Meirs, David & Page, Alan. (1990). *Legislation*. London, UK: Sweet & Maxwell, p. 100. The authors note that the Rent (Amendment) Act 1985 passed its Commons stages in under ten minutes. Yet Bradley & Ewing, *op. cit.*, p. 142, point out that there are two committees set up to scrutinize legislation: the Select Committee on European Scrutiny in the Commons and the European Union Committee in the Lords. However, they note that the impact of these procedures is 'difficult to assess', but 'they no doubt ensure that at least some parliamentarians are well informed about European issues'.

⁸² For example, the Banking (Special Provisions) Bill, went through all of its parliamentary stages (except Lords amendments), in ten hours one day in February 2008. (McKay, William & Johnson, Charles, *op. cit.*, p. 439).

Even though a bill may have gone through a healthy amount of pre-legislative scrutiny, which has been more of a focus at Westminster in recent years,⁸³ the first reading is important when naming is taken into consideration, as it is the formal introduction of the bill to Parliament. Here, the bill's short title is simply read aloud and an order is made to print copies of the bill and set a date for a second reading.⁸⁴ Members are then given time to read and absorb the proposal. The second reading provides a forum for perhaps the most substantial debate, as its merits are discussed at length by the bill's proponents and opponents, and this open forum may have a significant impact on whether the bill travels to the committee stage. Yet 'once bills are introduced to Parliament, they are very rarely rejected in their entirety'.⁸⁵ In fact, the Hansard Society pointed out in 2007 that 'it has been over 20 years since a bill was defeated at the Second Reading stage in the Commons', and that recent backbench opposition has not been enough to block legislation from moving forward.⁸⁶

Parliament contains a number of Public Bill and other committees in which bills are examined, some of which may be convened ad hoc for particular measures.⁸⁷ In the committee stage the bill is examined in detail, clause-by-clause,⁸⁸ and may be amended by committee members.⁸⁹ Although, this is rarely done against the wishes of the government, and even controversial bills at this stage are not likely to encounter much

⁸³ Bradley, A.W. & Ewing, K.D., *op. cit.*, p. 186.

⁸⁴ Jack, Sir Malcolm, *op. cit.*, p. 540-41.

⁸⁵ Brazier, A., Kalitowski, S. & Rosenblatt, G., *op. cit.*, p. 8.

⁸⁶ *Id.*

⁸⁷ Jack, Sir Malcolm, *op. cit.*, p. 553.

⁸⁸ Bradley, A.W. & Ewing, K.D., *op. cit.*, p. 188; Brazier, A., Kalitowski, S. & Rosenblatt, G., *op. cit.*, p. 8.

⁸⁹ *Id.*; *Id.*

trouble (especially in the Commons).⁹⁰ Many UK interviewees in this study mentioned that bills receive informal names quite often, which are usually adopted by fellow legislators and/or members of the press. It is likely during these first few stages (Queens Speech, pre-legislative scrutiny, First Reading, Second Reading, Committee Stage), where debate over measures is getting significant media attention, that a bill acquires an informal name in the popular press or in the chambers of Parliament. And while the informal name will not appear in the statute book, it could potentially affect the tone or substance of the debate surrounding the measure.

In 2010 the Commons approved the creation of a Backbench Business Committee, which focuses on business from MPs who are neither Ministers nor shadow Ministers.⁹¹ The Committee can schedule up to 35 days of debate, and 27 of those are in the main Chamber of the House of Commons.⁹² This is quite a significant development for the Commons, as backbench Private Members' Bills (see the following section) do not receive much attention or time in Westminster. Thus, having a committee that debates everything from banking reform to defence to internet privacy⁹³ is an outlet for such members not only to voice their concerns about contemporary issues but also to champion their own legislative proposals, should they wish to put these forward. However, McKay and Johnson remind (would-be) legislators that, 'Like matrimony,

⁹⁰ *Id.*; *Id.*

⁹¹ House of Commons Backbench Business Committee website. Available at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/backbench-business-committee/>

⁹² *Id.*

⁹³ *Id.*, List of subjects debated during backbench committee current session. Available at: <http://www.parliament.uk/documents/commons-committees/backbench-business/list-for-web.pdf>

legislation is a serious undertaking, not to be entered upon lightly or... at the behest of excited special interest groups, in or out of the House'.⁹⁴

Both the Commons and the Lords committee proceedings take into consideration the titles of the bill. In the Commons, the title of the bill is the final aspect the committee examines, following the clauses, new clauses, schedules, new schedules, and the preamble (if there is one: these are rarely used today other than in Private Bills).⁹⁵ Similarly, the Lords committee proceedings dictate that the preamble and title of a bill be postponed while the clauses and schedules are first discussed.⁹⁶ When the proposal is reported at committee, amendments to the preamble or title of a bill can be taken under consideration, when the Lord Chairman asks 'That this be the title of the bill'.⁹⁷ Amendment of bill titles is also considered during the Report stage.⁹⁸ However the chances of a title changing by amendment at this stage are very uncommon, and usually this only happens to long titles.⁹⁹

Also, the committee stage is where the scope of the bill first becomes a significant issue, as it is here that the measure starts being amended. *Erskine May* notes:

⁹⁴ McKay, William & Johnson, Charles, *op. cit.*, p. 394.

⁹⁵ Jack, Sir Malcolm, *op. cit.*, pp. 583-84.

⁹⁶ *Id.*, pp. 609.

⁹⁷ *Id.*, p. 610-611.

⁹⁸ *Id.*, p. 591.

⁹⁹ However, Jack notes on p. 585 that:

'If the citation clause of the bill has been amended, and it is thought necessary, in consequence, to change the short title by which the bill is known, the entry in the Votes and Proceedings and the Journal describes the bill as '...Bill (changed to ...Bill)'. When the next stage is put down on the order paper the new title is put first, e.g. '...Bill (changed from...Bill)', but in all subsequent proceedings the new title only is employed. Lords bills, however, continue to be referred to as '...Bill [Lords] (changed to...Bill [Lords]) until the relevant amendment has been agreed to by the Lords.

If the short title has been changed by an amendment made by the Lords, on its return to the Commons, the bill is described as '...Bill (changed to '...Bill)'. Until the Lords amendments are agreed to. The changed title is used in any subsequent references.'

‘Standing Order No 65 gives a general authority to any committee on a bill to amend the bill as it sees fit (even if this entails amending the bill’s long title in consequence), provided that the amendments are *relevant to the subject-matter* of the bill, that is to say, *within the scope of the bill*’ (emphasis in original).¹⁰⁰

The text goes on to say that ‘the scope of a bill may change in the course of the bill’s passage through the House depending on the amendments made to the bill’.¹⁰¹

The next few stages are undeniably important but not all that relevant in regard to short bill titles. During the Report Stage a government may encounter a rebellion by backbenchers and thus lose a parliamentary vote.¹⁰² Yet even with rebellions, it is common that proposals still proceed. The 2001-2005 Parliament had the highest rate of rebellions of any Parliament since 1945; however, the government was not defeated in the Commons until the 2005 Terrorism Bill votes.¹⁰³ After the Report Stage bills then proceed to a Third Reading in both chambers and then usually an Amendment Stage, where both Houses must agree to each other’s amendments.¹⁰⁴

Once proposals pass these stages comes perhaps the most important stage of all, passage from a bill to an Act, or the Royal Assent. Regarding short titles the ‘Bill’ portion of the title is changed to ‘Act’ as the measure is officially inscribed into the

¹⁰⁰ Jack, Sir Malcolm, *op. cit.*, p. 564

¹⁰¹ Jack, Sir Malcolm, *op. cit.*, p. 565.

¹⁰² Brazier, A. Kalitowski, S., & Rosenblatt, G, *op. cit.*, p. 9. The authors note that the government is most likely to lose a vote in the Commons or Lords at Report Stage.; McKay, William & Johnson, Charles, *op. cit.*, also note that the ‘Report stage creates the greatest problem for programme motions’ in the Commons (pp. 442-43).

¹⁰³ Brazier, A., Kalitowski, S. & Rosenblatt, G., *op. cit.*, p. 9.

¹⁰⁴ However, because of the Parliament Acts 1911 and 1949 (and to a certain extent, the Salisbury-Addison Convention), the Commons does have the power to push through legislation at this point, under certain rules. Bradley, A.W. & Ewing, K.D., *op. cit.*, pp. 194-98.

statute book. It should come as no surprise that in the rich history of the Westminster Parliament that there have been a few mistakes made in relation to short titles during this process. In 1809 two Bills relating to the town of Worthing had their titles transposed, and thus mistakenly inscribed, with both Bills receiving the Royal Assent.¹⁰⁵ This happened again in 1821 to two local Acts, as both Bills received the Royal Assent with their titles transposed. In this instance, both Acts were corrected by another Act of Parliament.¹⁰⁶ This has not however happened in recent years.

Spotlight: Private Members' Bills

Public Bills can also be introduced by members that are not part of the Government, and these are called Private Members' Bills.¹⁰⁷ There are not many procedural distinctions between these and regular Public Bills in terms of the stages that they must travel through in order to attain the Royal Assent. However, recently adopted standing orders in the House of Commons have limited the time available for such measures.¹⁰⁸ There are four different ways to introduce Private Member's Bills (the first three of which are located in the Commons): 1) ballot bills; 2) ten-minute rule bills; 3) presentation bills; and (4) members bills starting in the Lords.¹⁰⁹ Private Members'

¹⁰⁵ Jack, Sir Malcolm, *op. cit.*, p. 666.

¹⁰⁶ *Id.*, p. 666.

¹⁰⁷ Jack, Sir Malcolm, *op. cit.*, p. 525.

¹⁰⁸ Jack, Sir Malcolm, *op. cit.*, p. 526.

¹⁰⁹ Westminster Parliament Website. Bills Before Parliament 2010-12. Available at: <http://services.parliament.uk/bills/>, also, Private Members' Bills, at: <http://www.parliament.uk/about/how/laws/bills/private-members/>; Also, see McKay, William & Johnson, Charles, *op. cit.*, p. 393; Bradley & Ewing, *op. cit.*, pp. 189-90.

Bills do not account for all that much in terms of number, but many of them are quite significant to the substantive nature of legislative output.¹¹⁰

Balloted bills receive preference in terms of debate time and have the best chance to become law.¹¹¹ Unballoted Private Members' Bills, however, can be used to draw attention to a certain subject or to express an opinion. The first option a member has in this regard is offering a presentational bill. These follow the same procedures in terms of presentation that governmental legislation does, and the member merely needs to give Parliament notice of their intention to introduce the bill.¹¹² Ten-minute rule bills provide lawmakers a 'prime time' chance to 'raise the profile of an issue and to see whether it has support among other Members',¹¹³ although they are 'often not an attempt to legislate'.¹¹⁴ If introduced successfully, such bills still procedurally remain behind balloted bills.

The prospects for all types of Private Members' Bills are ominous, and this is especially true in recent parliamentary sessions. From the 2003-04 session to the 2007-2008 session there were a total of 472 such bills presented, while only 14 of those Bills actually received the Royal Assent.¹¹⁵ That is a 3% enactment rate, which is very low compared to member-initiated legislation in the Scottish Parliament (see below).

However the low enactment rate should not distract the reader from the importance of

¹¹⁰ Meirs, David & Page, Alan. (1990). *Legislation*. Sweet and Maxwell, London. p. 98. Also, it was a Private Member's Bill that eliminated the Death Penalty in 1965, called the *Murder (Abolition of the Death Penalty) Act*. They have also been used to decriminalize abortion and homosexuality; Bradley, A.W. & Ewing, K.D., *op. cit.*, p. 189-90; Brazier, A., Kalitowski, S. & Rosenblatt, G., *op. cit.*, p. 9.

¹¹¹ Westminster Parliament (2012). Private Members' Bills. Available at: <http://www.parliament.uk/about/how/laws/bills/private-members/>

¹¹² *Id.*; McKay, William & Johnson, Charles, *op. cit.*, p. 393.

¹¹³ Westminster Parliament (2012). Private Members' Bills, *op. cit.*

¹¹⁴ McKay, William & Johnson, Charles, *op. cit.*, p. 393.

¹¹⁵ *Id.*, Annex, Table 9.2, p. 560.

these measures. From 1983-2008 some 230 Private Members' Bills were enacted,¹¹⁶ and many have had a significant impact on the statute book.¹¹⁷

This avenue of legislating gives MPs a chance, albeit a small one, of enacting legislation they deem to be most pressing or important, or which is not covered by recent governmental legislative programmes. In some cases the MP may be acting on the government's behalf, putting a bill forward for which there was no time in the official legislative programme.¹¹⁸ Often times such bills are used for issues or subjects that are too publicly divisive and which the government does not want to take the lead on, such as abortion or divorce law.¹¹⁹ The closure of debate on Private Members' Bills can also be tricky. Such measures are not subject to allocation of time orders (i.e. programming) and ending debate requires the support of 100 members, which at times is not easy to find on Fridays, when Private Member's Bills often have priority.¹²⁰ Such Bills lapse at the end of a parliamentary session if they have not yet been enacted.

Though Private Members' Bills are similar to Public Bills in many respects, some of the titles attached to various proposals do seem more evocative than the Public Bills presented by the government. For example, some Private Members' Bills presented to Parliament in the 2010-11 session were titled: Apprehension of Burglars Bill;¹²¹ Employment Opportunities Bill;¹²² Rights Bill;¹²³ Smoke-Free Private Vehicles

¹¹⁶ Bradley, A.W. & Ewing, K.D., *op. cit.*, p. 190.

¹¹⁷ *Id.*

¹¹⁸ McKay, William & Johnson, Charles, *op. cit.*, p. 394. However, the authors state that it is impossible to know how many such bills were acting on the requests of the government.

¹¹⁹ Bradley, A.W. & Ewing, K.D., *op. cit.*, p. 190.

¹²⁰ Bradley, A.W. & Ewing, K.D., *op. cit.*, pp. 189-90. There are 13 Fridays in each parliamentary session when Private Members' Bills have priority over other legislation.

¹²¹ Presentation Bill. Available at: <http://services.parliament.uk/bills/2010-11/apprehensionofburglars.html>

Bill;¹²⁴ or the Dangerous and Reckless Cycling (Offences) Bill.¹²⁵ These names would not likely adorn a governmental proposal.¹²⁶ Additionally, a short survey of Private Members' Bills in the session mentioned above does seem to conjure up more use of overt action words, such as 'regulation', 'prevention' or 'protection'. Though there is no empirical evidence to say whether or not Private Members' bill titles may be where governmental Public Bill titles are headed, it would be prudent of those following such phenomena to keep a close eye on these measures.

The Scottish Parliament

Scotland regained its own Parliament in 1999 after the enactment of the Scotland Act 1998,¹²⁷ which created a devolved Scotland and gave it the power to legislate and create policy on certain matters (among these health, education and prisons).¹²⁸ Most importantly to the devolution campaign, it provided Scotland with its own Parliament,

¹²² Presentation Bill. Available at: <http://services.parliament.uk/bills/2010-11/employmentopportunities.html>

¹²³ Presentation Bill. Available at: <http://services.parliament.uk/bills/2010-11/rights.html>

¹²⁴ Private Members' Bill Starting in House of Lords. Available at: <http://services.parliament.uk/bills/2010-11/smokefreeprivatevehiclesh.html>

¹²⁵ Ten-Minute Rule Bill. Available at: <http://services.parliament.uk/bills/2010-11/dangerousandrecklesscyclingoffences.html>

¹²⁶ Though it is acknowledged that words used in some of the titles, such as 'rights', have been used in previous titles.

¹²⁷ It is interesting to note how neutral and unevocative this name is for an Act that is giving a very large portion of self-government back to a country.

¹²⁸ Scotland Act 1998 c.46. Available at: <http://www.legislation.gov.uk/ukpga/1998/46/contents>; Himsworth, CMG & O'Neill, CM (2009) *Scotland's Constitution: Law and Practice*. West Sussex, UK: Bloomsbury Professional Limited, pp. 121-149.

which resides in Edinburgh.¹²⁹ One of the most significant aspects devolution offered Scotland was a respite from its frustration with the policy and legislative processes in Westminster. The difference the new Scottish Parliament would offer would not only be quantitative, 'but also qualitative, in terms of the way in which policy would be made'.¹³⁰ Lynch notes that the opportunity for the Scottish Parliament was based on a change from the 'highly negative view of the policy process at Westminster' where analysts had long been asserting that there was too much governmental power, whipping, and Whitehall influence.¹³¹ Given this opportunity, the Scottish Parliament implemented numerous changes, and there are many aspects of Holyrood that differ from Westminster. In terms of the policy-making process and in particular to bill-naming and its potential effects, the main differences between the two are: more avenues through which bills can be proposed, greater power accorded to the committee system, enhanced pre-legislative scrutiny and special rules and regulations related to Plain Language in Legislation and the Proper Form of bills in the Scottish Parliament.¹³²

Though the Westminster and Scottish Parliaments differ in many structural and constitutional aspects, the general method of going from a proposal to an Act of Parliament is not all that different. After all, the respective parliaments do share a statute book. The Executive still proposes a Legislative Programme, but unlike in the Westminster Parliament, at least in theory, the resulting bills do not have predominance

¹²⁹ Himsworth, CMG & O'Neill, C.M., *op. cit.*, p. 151.

¹³⁰ Lynch, Peter. (2001). *Scottish Government and Politics: An Introduction*. Edinburgh, UK: Edinburgh University Press, p. 1.

¹³¹ Report of the Consultative Steering Group on the Scottish Parliament (1998). Especially sections 1, 2 & 3.5 Available at: <http://www.scotland.gov.uk/library/documents-w5/rcsg-00.htm>; Lynch, Peter. (2001). *Scottish Government and Politics: An Introduction*. Edinburgh, UK: Edinburgh University Press, p. 1.

¹³² Committees in the Westminster Parliament do not have lawmaking functions. They can scrutinize legislation and recommend changes, but they cannot present legislation in bill form to Parliament.

over other types of legislation because committee and individual MSP legislation was designed to ‘strengthen Parliament against the executive’.¹³³ This focuses the work of the Parliament on democracy and accountability, as it places more power in MSPs’ hands, especially in regards to committees that are well versed in their core areas of work. Yet an examination of the first three sessions of the Scottish Parliament shows that the Executive still remains quite strong. Not surprisingly, it appears to wield the most power when it comes to the legislative process. A breakdown of bills initiated and enacted in the first three sessions of the Scottish Parliament is below:

¹³³ Lynch, Peter, *op. cit.*, p. 89.

Table 3: Bills Initiated/Enacted/Failed in the Scottish Parliament¹³⁴

<u>First Session Bills</u>				
	<u>Executive</u>	<u>Committee</u>	<u>Members</u>	<u>Private</u>
Initiated	51	3	16	3
Enacted	50	3	8	1
Failed	1	0	8	2
<u>Second Session Bills</u>				
	<u>Executive</u>	<u>Committee</u>	<u>Members</u>	<u>Private</u>
Initiated	53	1	18	9
Enacted	53	1	3	9
Failed	0	0	15	0
<u>Third Session Bills</u>				
	<u>Executive</u>	<u>Committee</u>	<u>Members</u>	<u>Private</u>
Initiated	45	2	13	2
Enacted	42	2	7	2
Failed	3	0	6	0

In the three Scottish Parliament sessions to this date, Executive legislation has amounted to just under 70% of the legislation enacted by the Scottish Parliament. Also, the bills have a 98% enactment rate: only four bills out of 149 have failed over the first three sessions. Committee legislation has a 100% enactment rate (yet only six Bills total) and Private legislation has an 86% enactment rate. Member-initiated legislation sits at a 38% enactment rate, which is much higher than Private Members' Bills in Westminster. These numbers demonstrate that non-government Bills still make up

¹³⁴ Scottish Parliament Website. Session 3 Available at: http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/Factsheets/Scottish_Parliament_Legislation_Session_3_NEW_VERSION.pdf; Session 2 available at: http://www.scottish.parliament.uk/SPICeResources/Research%20briefings%20and%20fact%20sheets/Scottish_Parliament_Legislation_Session_2_NEW_VERSION.pdf; Session 1 available at: http://www.scottish.parliament.uk/SPICeResources/Research%20briefings%20and%20fact%20sheets/Scottish_Parliament_Legislation_Session_1.pdf

about 30% of initiated legislation each year, which is in line with the Scottish wishes of taking power away from the Executive. However, it should not be forgotten that Executive Bills boast a 98% enactment rate.

Similar to Westminster, the Scottish government has a team of Scottish Parliamentary Counsel civil servants who work in the drafting and implementation of the government's legislative programme.¹³⁵ The Counsel's website expresses some thoughts on legislation in general, some of which may be relevant to short bill titles. They note that they attempt to develop the government's legislative programme 'through the drafting of effective, clearly-drafted, accessible Bills', and also state that '[m]aintaining the logical and coherent development of the Scottish statute book' is one of their key responsibilities.¹³⁶ While these are not specific to short titles, they do lay the foundation by which the Scottish government would like their statute book to appear: in a clear and logical fashion. Policies more focused on short titles are located below.

Formal Rules or Policies on Short Titles

Although the ideological underpinnings of the Scottish Parliament's system of controlling Executive power may fall short of its intended effects, its detailed and thorough rules and regulations in regard to legislative language and the 'Proper Form' of bills are nothing short of innovative. All bills introduced to the Scottish Parliament must be in 'proper' form. These regulations were introduced under Standing Orders of Rules 9.2.3 and 9A.1.4, and they have major implications for bill titles. The 'Presiding

¹³⁵ Scottish Parliamentary Counsel Website. Available at: <http://www.scotland.gov.uk/About/Directorates/OSPC>

¹³⁶ *Id.*

Officer's Recommendations on the Content of Bills' explicitly states that **'the text of a Bill – including both the short and long titles – should be in neutral terms and should not contain material intended to promote or justify the policy behind the Bill, or to explain its effect'**.¹³⁷ This regulation is a monumental effort to keep the Scottish statute book free from overt policy statements. The document specifically includes both short and long titles, indicating that these items are part of the text of a bill. Neither Westminster nor Congress have similar rules or recommendations in relation to the 'proper form' of legislation; and they certainly do not have specific rules related to eliminating promotional language from short and long titles. The fact that Scotland illuminates this problem markedly differentiates it from the UK and US lawmaking bodies.

Bill drafters and the Presiding Officer are not the only individuals who scrutinise short titles in the Scottish Parliament. Before the bill is introduced, there is a three week period when the drafter sends the proposal to Parliamentary authorities, and '[t]his period begins with the drafter sending a copy of the draft Bill to the Head of the Chamber Office and to the Parliament's Director of Legal Services, together with a note of the Executive's view on legislative competence, draft accompanying documents and a covering letter'.¹³⁸ In this cover letter the drafter notes 'whether the Bill conforms to the Presiding Officer's recommendations on the content of Bills – **in particular, whether the short and long titles accurately and neutrally reflect what the Bill does**'.¹³⁹ Again, this is an aspect of scrutiny that is not detailed in the Westminster

¹³⁷ The Scottish Parliament. Guidance on Public Bills. Annex A: Form and Content of Bills. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25697.aspx>

¹³⁸ Scottish Parliament. Guidance on Public Bills. The General Rules (Section 2.4). Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25685.aspx>

¹³⁹ *Id.*, (Section 2.5)

Parliament, and, as shall be seen below, the US Congress does not come close to providing such attention to bill drafting accuracy.

Because of its rules and regulations in regard to the ‘proper’ form of legislation, the Scottish model of proper legislative Bill drafting and scrutiny is innovative and thorough. Therefore it is no surprise to see that the latest version of the Scottish Ministerial Code, released in 2008, is thorough as well.¹⁴⁰ Section 1.3 of the Code notes that while the Ministers must abide by the Code, they must also abide by Section 39 of the Scotland Act 1998,¹⁴¹ which contains directive guidelines. They must also comply with the Interests of Members of the Scottish Parliament Act 2006.¹⁴² Relevant to the naming of legislation, the Scottish Code states in section 2.4 that ‘Collective decision-making is supported and facilitated by evidence-based policy, which enables Ministers to reach clear, defensible and consistent decisions on matters which they need to settle collectively in order to achieve their political objectives and fulfil their statutory and legal obligations’.¹⁴³ And although it does not define the concept of ‘evidence-based policy’, this is a foundation on which could be developed a progressive standard for lawmaking, potentially mitigating the use of overt action titles that may use tendentious language. The Scottish Code even has a special section, 3.3, related to the Introduction of Bills, which states that:

‘Ministers responsible for Bills being introduced in the Parliament should ensure that the Bill is accompanied by clear, informative and comprehensive explanatory notes, by an appropriate policy

¹⁴⁰ Scottish Ministerial Code. (2008). Available on the Scottish Parliament website, and here: <http://www.scotland.gov.uk/Resource/Doc/276226/0082926.pdf>.

¹⁴¹ Scotland Act 1998 c.46. Available here: http://www.opsi.gov.uk/acts/acts1998/ukpga_19980046_en_1

¹⁴² More information on such matters here: <http://www.scottish.parliament.uk/msp/conduct/index.htm>. Also, the specific bill is here: <http://www.scottish.parliament.uk/business/bills/44-interestsMembers/index.htm>


¹⁴³ *Id.*, Section 2.4.

memorandum detailing the policy objectives of the Bill and the consultation which has been undertaken on it, and by an appropriate Financial Memorandum setting out the best estimates of the administrative and compliance costs arising under the Bill, as required by the Parliament's Standing Orders. Draft Financial Memoranda must be cleared by the Cabinet Secretary for Finance and Sustainable Growth prior to Bills being introduced. A Bill must also be accompanied by a statement, which will in practice have been cleared with the Law Officers, that the Bill is within legislative competence of the Scottish Parliament.¹⁴⁴

¹⁴⁴ *Id.*, Section 3.3.

Figure 4. A Copy of the content page of the Scottish Schools (Parental Involvement) Act 2006 (asp8)

---> *Scottish Schools (Parental Involvement) Act 2006 (asp 8)*



---> **Scottish Schools (Parental Involvement) Act**
 ---> **2006**
 ---> **2006 asp 8**

CONTENTS

---> Section

Involvement, ambitions, objectives and performance

1 Duty of Scottish Ministers and of education authorities to promote involvement of parents in school education etc.
 2 Strategies for parental involvement
 3 Ambitions and objectives for a school
 4 Review of school performance

Parent Forums and Parent Councils

5 Parent Forum and Parent Council
 6 Scheme for establishment of a Parent Council
 7 Restrictions as to composition and chairing of a Parent Council
 8 Functions of a Parent Council
 9 Meetings of a Parent Council
 10 Financial powers of a Parent Council

Duties, reports, appointments and complaints

11 Duties of education authority and headteacher to a Parent Council etc.
 12 Duties of education authority to parents generally
 13 Headteacher's report to Parent Council, Combined Parent Council or Parent Forum
 14 Procedures for appointment of headteacher or deputy and participation of a Parent Council
 15 Complaints procedure

Combined Parent Councils

16 Establishment etc. of Combined Parent Council
 17 Withdrawal from represented schools

Miscellaneous and general

18 Abolition of School Boards

There are not many differences between Westminster and Scottish Parliament in terms of the presentation of short bill titles on Bills and Acts.¹⁴⁵ A copy of the content page of the Scottish Schools (Parental Involvement) Act 2006 is shown above. One can see from the very first blue arrow that the short title is used as a running header, above the crest, and the larger printed version of the short title (second blue arrow) is located below. This is similar to what particular US states do in regard to short titles, in terms

¹⁴⁵ In regard to Westminster Bills, as evidenced above, the short titles are the first pieces of text on the page. However, when a Bill becomes an Act, the crest is placed before the Bill title.

of employing them as running headers. Also, this structure is similar to Bills currently travelling through the Scottish Parliament, as all bills include a running header of the short title.¹⁴⁶ The bill is then followed by its chronological number in terms of enactment for a session (third blue arrow) and then by its contents (fourth blue arrow, which often begins with sections and ends with schedules). Similar to Westminster, short bill titles in the Scottish Parliament do not usually change throughout the course of their parliamentary stages, barring the change due from the Royal Assent.

The Scottish Parliament is unicameral, and thus bills only pass through one chamber to be enacted. This is different from the bicameral chambers of the Westminster Parliament and the US Congress. Bills are, however, generally subject to a good amount of pre-legislative scrutiny from relevant agencies and pressure groups before they are presented to Parliament, in addition to the scrutiny by the Parliament's Director of Legal Services and others mentioned earlier.¹⁴⁷ Once bills enter the Parliamentary legislative process they are subject to scrutiny by committees at Stages 1 and 2, and subject to full Parliamentary debate at stages 1 and 3. After they pass all Scottish Parliamentary stages they head to the Advocate General at the Westminster Parliament, who determines whether the Act is in accordance with the powers devolved to the Scottish Parliament.¹⁴⁸ Once finalized the measures end up in the UK statute book, which is why most of the bills the Parliament enacts have the word 'Scotland' in brackets. If there is an express mention in the title of something inherently referring to

¹⁴⁶ For example, see the current (as April 2012): Alcohol (Minimum Pricing)(Scotland) Bill, available at: [http://www.scottish.parliament.uk/S4_Bills/Alcohol%20\(Minimum%20Pricing\)%20\(Scotland\)%20Bill/Bill_as_introduced.pdf](http://www.scottish.parliament.uk/S4_Bills/Alcohol%20(Minimum%20Pricing)%20(Scotland)%20Bill/Bill_as_introduced.pdf)

¹⁴⁷ Lynch, Peter, *op. cit.*, p. 90; The Scottish Parliament. Guidance on Public Bills. The General Rules. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25685.aspx>

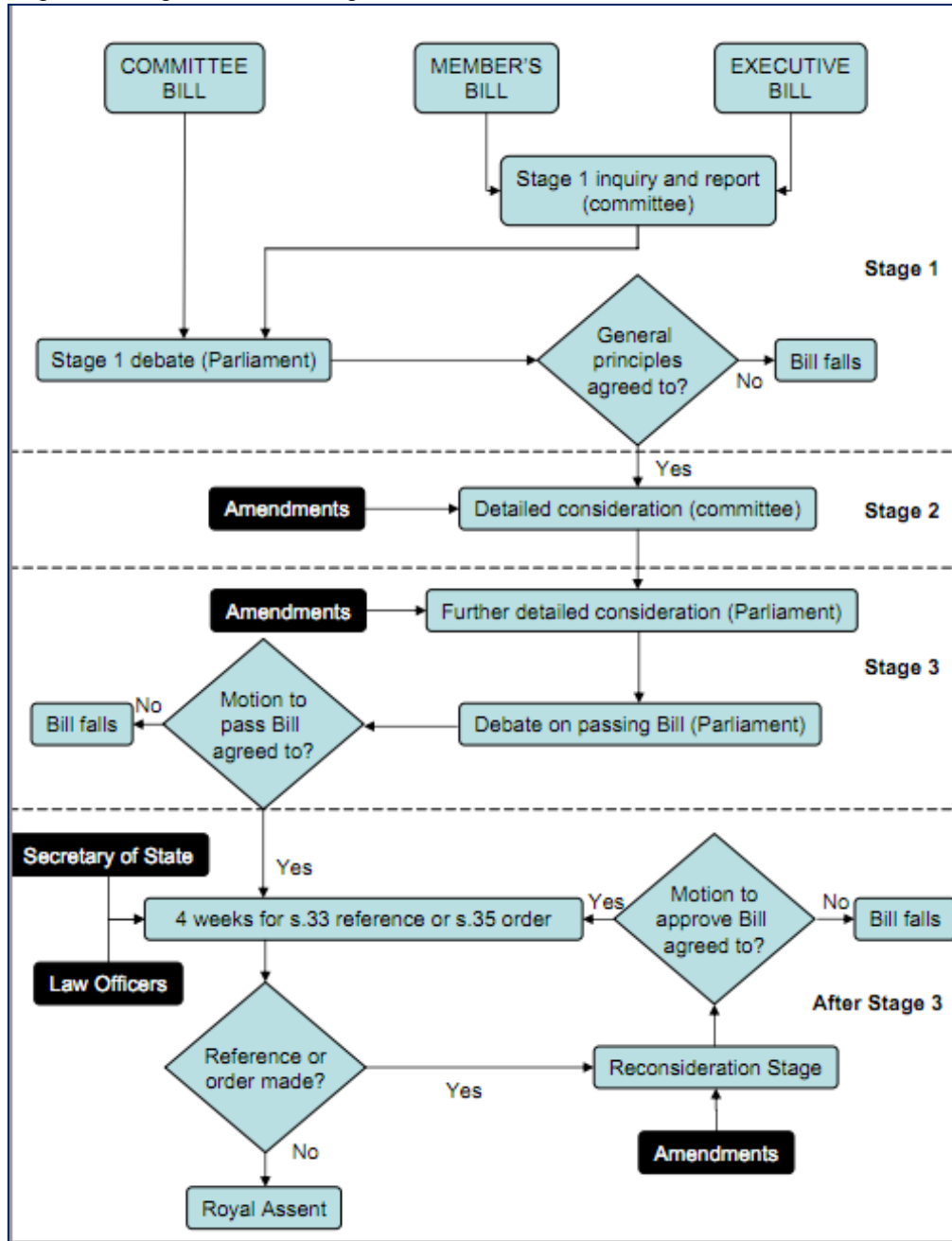
¹⁴⁸ Scottish Parliament Website. Stages in the Passage of a Public Bill. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25685.aspx> Scotland Act 1998 c.46. Available at: <http://www.legislation.gov.uk/ukpga/1998/46/contents;>

Scotland (i.e. Airdrie-Bathgate Railway and Linked Improvements Bill), then the bill does not need such a bracketed reference.¹⁴⁹

Below is a figure that demonstrates the parliamentary stages that bills travel through in the Scottish Parliament.

¹⁴⁹ These are most common in Private Members' bills, since they deal with local issues.

Figure 5. Stages in the Passage of a Public Bill¹⁵⁰



The US Congress

¹⁵⁰ Scottish Parliament. Guidance on Public Bills. Stages in the Passage of a Public Bill. Available at: http://www.scottish.parliament.uk/S3_Bills/gpb-AnnexE.pdf

This thesis has already acknowledged that the US situation in regards to legislative bill naming is quite different from Westminster, whose titles tend to be blander and less political, and the Scottish Parliament, which is more regulated in regard to such matters than both the other jurisdictions. This section explores how bills come about in the US Congress, the policies and procedures regarding the drafting of short bill titles and some significant legislative process moments for such titles. It additionally includes two sections which spotlight: (1) that some humanised legislation is very close to being against House rules, and (2) whether state drafting and constitutional regulations can provide any examples for reform of federal short title drafting practices.

Unlike the Westminster and Scottish Parliaments, the US Executive does not propose a legislative programme of bills at the beginning of each parliamentary session. Instead, all legislation is introduced by members of either the House or Senate.¹⁵¹ This is important for a comparative study of bill titling in two major respects. The first is that a much smaller proportion of bills will succeed in Congress when compared to the Westminster and Scottish Parliaments: hence there is more pressure on members to make their bills distinctive and attractive. The second is that there is a much more diverse range of bills in Congress: rather than being predominantly Executive in origin, these proposals will very often have originated from the office of one member, or one group of members. The sources of legislation are many, including: interest groups, constituents, a legislator's own issue interests and the Executive.¹⁵² In the House members just drop their proposals (even hand-written proposals are accepted) into the

¹⁵¹ Sinclair, Barbara. (2007). *Unorthodox Lawmaking: New Legislative Processes in the US Congress*, Washington, D.C.: CQ Press, p. 43.

¹⁵² Sinclair, *op. cit.*, p. 44. Sinclair further notes that 'many legislative proposals originate in the executive branch' (p. 102).

‘hopper’¹⁵³ when the House is in session, while Senators usually introduce them on the floor or with the clerks while the Senate is in session.¹⁵⁴ At introduction in either the House or Senate most proposals already have a short title, although this is subject to modification, as will be seen below.

The main difference between the US Congress and Westminster/Scottish Parliament is that short bill titles in the US are not mandatory, and are usually only required for major legislation.¹⁵⁵ Yet in practice short bill titles are frequently adopted by legislators for large or small measures, and this usually stems from attention-seeking purposes. Another main difference regarding US bills is that all of them are given a specific number to be referenced by. For instance, the USA PATRIOT Act of 2001 was known as H.R. 3162,¹⁵⁶ and the Prevent All Cigarette Trafficking (PACT) Act was known as S. 1147.¹⁵⁷ The designation ‘H.R.’ means that it originated in the House, while the ‘S.’ means it originated in the Senate. Additionally, as bills travel through the US legislative process, the word ‘Act’ is usually used in lieu of ‘Bill’. For example, in the 112th Congress, H.R. 3261, the Stop Online Piracy Act, is currently held up in a House subcommittee, but is still referred to as an ‘Act’, even though technically it is a ‘Bill’.¹⁵⁸ It is unclear why House and Senate authorities authorise this usage, as it is bound to cause confusion to those who do not know specific bill numbers and those who do not know if the legislation has indeed become law yet; and it seems especially

¹⁵³ A wooden box located at the front of the House chamber.

¹⁵⁴ Sinclair, *op. cit.*, p. 11 & 44.

¹⁵⁵ House Legislative Manual on Drafting Style. (1995). Government Printing Office: Washington D.C. (p. 26). Also Available at: http://www.llsdc.org/attachments/files/94/Manual_on_Drafting_Style.pdf

¹⁵⁶ USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

¹⁵⁷ Prevent All Cigarette Trafficking (PACT) Act, Pub. L. No. 111-154, 124 Stat. 1087. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:SN01147:|TOM:/bss/d111query.html/>

¹⁵⁸ As of March 22, 2012. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h.r.03261:>

problematic for the public or outsiders who are just cueing into legislation and/or the legislative process.

There is an Office of Legislative Counsel for both the House¹⁵⁹ and the Senate.¹⁶⁰ The House Legislative Counsel employs 40 attorneys, and declares its impartiality regarding the policy aspects of legislation throughout its website. It states that its ‘Office is impartial as to issues of legislative policy and does not advocate the adoption or rejection of any proposal or policy’.¹⁶¹ It further states that its office will analyze legislative outcomes for certain proposals, but ‘will not advocate any position’.¹⁶² The Senate Office incorporates similar wording on its website, stating that ‘the Office is strictly nonpartisan and refrains from formulating policy’.¹⁶³ In fact, it even goes so far as to say that its drafters ‘strive to turn every request into clear, concise, and legally effective legislative language’.¹⁶⁴ Yet besides these offices, a host of executive departments and independent agencies employ bill drafters who routinely create legislation that is passed to Congress. One of the primary differences between the US Congress, and the Westminster and Scottish Parliaments is that members of the US Legislative Counsels do not participate in the short bill titling process, and usually reserve this aspect of lawmaking to individual legislators. Parliamentary Counsel

¹⁵⁹ House Office of the Legislative Counsel. Available at: <http://www.house.gov/legcoun/>

¹⁶⁰ Senate Office of Legislative Counsel. Available at: <http://slc.senate.gov/>

¹⁶¹ House Office of the Legislative Counsel. (2012). About Us. Available at: <http://www.house.gov/legcoun/about.shtml>

¹⁶² *Id.*

¹⁶³ Senate Office of Legislative Counsel. Available at: <http://slc.senate.gov/>

¹⁶⁴ *Id.*

members will write the text of a bill, but will not handle some of the ‘policy’ aspects of legislation, which bill naming falls into under in the US system.¹⁶⁵

Formal Rules or Policies on Short Titles¹⁶⁶

Though the previous chapter argued that short titles may fall under the constitution’s ‘necessary and proper’ clause, there are no specific mentions of short titles in the constitution, and there very little mention of such titles in Jefferson’s Manual,¹⁶⁷ and the House¹⁶⁸ and Senate Standing Rules.¹⁶⁹ At the beginning of each legislative session, there are usually no standing rules in House of Representatives, as adopting new rules is usually the first order of business in each parliamentary session. This is in accord with Article I, Section 5 of the US Constitution, which states that each House may adopt their own rules.¹⁷⁰ Therefore, these rules can and do change from session to session. The only documents that I found in regard to the style and form of legislation in the US Congress are discussed below.

¹⁶⁵ This was confirmed throughout my interviews by: Congressional Staffer 2 (CONSF2); Congressional Staffer 3 (CONSF3); Congressional Staffer 5 (CONSF5); Congressional Staffer 6 (CONSF6).

¹⁶⁶ Some of the below material from this section is taken from: Jones, Brian Christopher. (2012). Drafting Proper Short Titles: Do States Have the Answer? *Stanford Law and Policy Review*, XXIII (specific print details forthcoming).

¹⁶⁷ Jefferson, Thomas. (1856). *A Manual of Parliamentary Practice: Composed Originally for the Use of the United States Senate*. New York, NY: Clark Austin and Smith.

¹⁶⁸ House Standing Rules. Available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_house_rules_manual&docid=110hruletx-73.pdf; The House standing rules mention that ‘An amendment to the title of a bill or resolution shall not be in order until after its passage or adoption and shall be decided without debate’. But, that is all that is mentioned in regard to short titles.

¹⁶⁹ Senate Standing Rules. Available at: <http://rules.senate.gov/public/index.cfm?p=RulesOfSenateHome>

¹⁷⁰ McKay, William & Johnson, Charles, *op. cit.*, p. 148; US Constitution, art. I, § 5.

The House Legislative Counsel has produced two Manuals on Drafting Style, one in 1989 and one in 1995.¹⁷¹ Both of them briefly mention short titles, and the information contained in both Manuals in relation to such matters is identical. This is intriguing, as the tipping period for evocative short titles occurred early in the 1990s, yet there was no update in regard to the information on the style manual. As I mentioned earlier in this section, short titles for US laws are not compulsory (despite their importance in practice in the legislative process), and this may be the major difference from both the UK and Scottish Parliaments when examining this issue. The 1995 House Manual notes the proper form of conferring a short title ('this Act may be cited as the ___ Act'),¹⁷² and states four aspects related to short title usage. It first denotes when short titles are appropriate, and reads: '(A) for major legislation; and (B) to facilitate cross references'.¹⁷³ However, it does not define 'major legislation'. It goes on to note in subsection (2) that providing multiple short titles in the same Act for each title or subtitle 'generally should be avoided'.¹⁷⁴

However there are some exceptions subsection 2, such as in aggregate (i.e. 'omnibus') legislation, where short titles can substitute for titles and subsections of an Act. For example, take the Adam Walsh Child Protection and Safety Act of 2006.¹⁷⁵ There is a plethora of smaller Acts, and thus short titles, inside this large Act. Some mentioned throughout the text of the Act are: TITLE I—Sex Offender Registration and Notification Act; Subtitle C, § 153-Safe Schools Act; TITLE VI, Subtitle A, Mentoring

¹⁷¹ It is unknown what manual the Senate Legislative Counsel uses.

¹⁷² House Legislative Manual on Drafting Style. (1995). Government Printing Office: Washington D.C. (p. 26). Also Available at: http://www.llsdc.org/attachments/files/94/Manual_on_Drafting_Style.pdf

¹⁷³ *Id.*

¹⁷⁴ *Id.*, p. 27

¹⁷⁵ Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587.

Matches for Youth Act; Subtitle B—National Police Athletic League Youth Enrichment Act; TITLE VI, Subsection C, § 639. The Justice for Crime Victims Family Act; and TITLE VII—Internet Safety Act.¹⁷⁶ This practice is fairly common for many contemporary statutes.

Subsection (3) details that if an Act is mainly Amendments to another Act, then it is ‘appropriate for the short title to include “. . . Amendments of [year]”’.¹⁷⁷ Despite this specific instruction, the practice is not usually adhered to by legislators. For example, the No Child Left Behind (NCLB) Act was largely an amendment to the Elementary and Secondary Education Act of 1965.¹⁷⁸ NCLB obviously did not mention this in its short title. But that does not mean that the tradition is altogether lost. One of the most contentious pieces of legislation in the 110th Congress was the FISA Amendments Act of 2008. The short title that it contained when passed in the Senate and that is located in the text of the Act is the Foreign Intelligence Surveillance Act of 1978 (FISA) Amendments Act of 2008.¹⁷⁹

Subsection (4) is concise, and declares ‘(4) LENGTH.—Keep it *short*’ (emphasis in original).¹⁸⁰ However, the manual does not specify what ‘short’ means. Is short a few words, a sentence, an acronym? Presumably it would mean just a few words, perhaps three or four, such as what Bennion recommended for short titles.¹⁸¹ But it is impossible to know. The USA PATRIOT Act’s full short title is: Uniting and

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*, p. 27

¹⁷⁸ No Child Left Behind Act of 2001, Pub. L. No. 107–110, 115 Stat. 1425.

¹⁷⁹ Foreign Intelligence Surveillance Act of 1978 (FISA), Amendments Act of 2008, Pub. L. No. 110–261, 122 Stat. 2436. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR06304:@@T>

¹⁸⁰ House Legislative Manual on Drafting Style. (1995). Government Printing Office: Washington D.C, p. 27. Available at: http://www.llsdc.org/attachments/files/94/Manual_on_Drafting_Style.pdf

¹⁸¹ Bennion, Francis. (2008). *Statutory Interpretation (5th Ed.)*. London, UK: Butterworths.

Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, which is six words shorter than its long title: An Act to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.¹⁸² Another example is the PROTECT Act, whose short title is: ‘Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003’, which is only one word shorter than its long title: ‘An Act to prevent child abduction and the sexual exploitation of children, and for other purposes’.¹⁸³ Additionally, other pieces of legislation employ short titles that are almost as long as their long titles, and many of these have acronym short titles.

Another interesting point about the House Drafting Manual is that there is no mention of accuracy in relation to short titles. It mentions accuracy for long titles, as the document states in subsection (a) that ‘A title should accurately and briefly describe what a bill does’.¹⁸⁴ Is the failure to mention short title accuracy intentional, or is one to assume that the accuracy standards in relation to long titles applies to short titles as well? There is no mention of such a standard throughout § 323 of the document that deals with short titles, and it is separate from § 321 that deals with long titles.¹⁸⁵

Neither is there a mention of accuracy in the only drafting manual the Government Printing Office makes available on its website.¹⁸⁶ This manual provides two recommendations for short title use. Firstly, drafter Donald Hirsch states that the year

¹⁸² USA PATRIOT Act of 2001. Pub. L. No. 107–56, 115 Stat. 272.

¹⁸³ PROTECT Act, Pub. L. No. 108–21, 117 Stat. 650.

¹⁸⁴ House Legislative Manual on Drafting Style. (1995). Government Printing Office: Washington D.C., p. 25. Also Available at: http://www.llsdc.org/attachments/files/94/Manual_on_Drafting_Style.pdf

¹⁸⁵ *Id.*

¹⁸⁶ Hirsch, Donald. (1989). *Drafting Federal Law. (2nd Ed)*. Government Printing Office: Washington D.C. Available at: <http://www.llsdc.org/attachments/files/92/Drafting-Fed-Law.pdf>

should not be used in the short title.¹⁸⁷ Justifying his rationale behind this claim, he writes that ‘trying to remember, and having to restate, that year will be a nuisance to everyone who has to cite the law’.¹⁸⁸ Secondly, he states that the drafter should ‘not lose sight of the objective of a short title, which is to make it easy to refer to the bill’.¹⁸⁹ This is perhaps the closest thing Hirsch says in relation to short title accuracy without explicitly mentioning it. Anyhow, it remains to be seen why neither the House Manual nor Hirsch’s manual mention accuracy in relation to short titles.

The below figure shows an example of a Congressional Bill, and discusses the anatomy of Bills and Acts in terms of short bill titles.

¹⁸⁷ *Id.*, p. 29.

¹⁸⁸ *Id.*, p. 29.

¹⁸⁹ *Id.*, p. 29.

Figure 6. A Copy of the First Page of the Stop Online Piracy Act (2011)

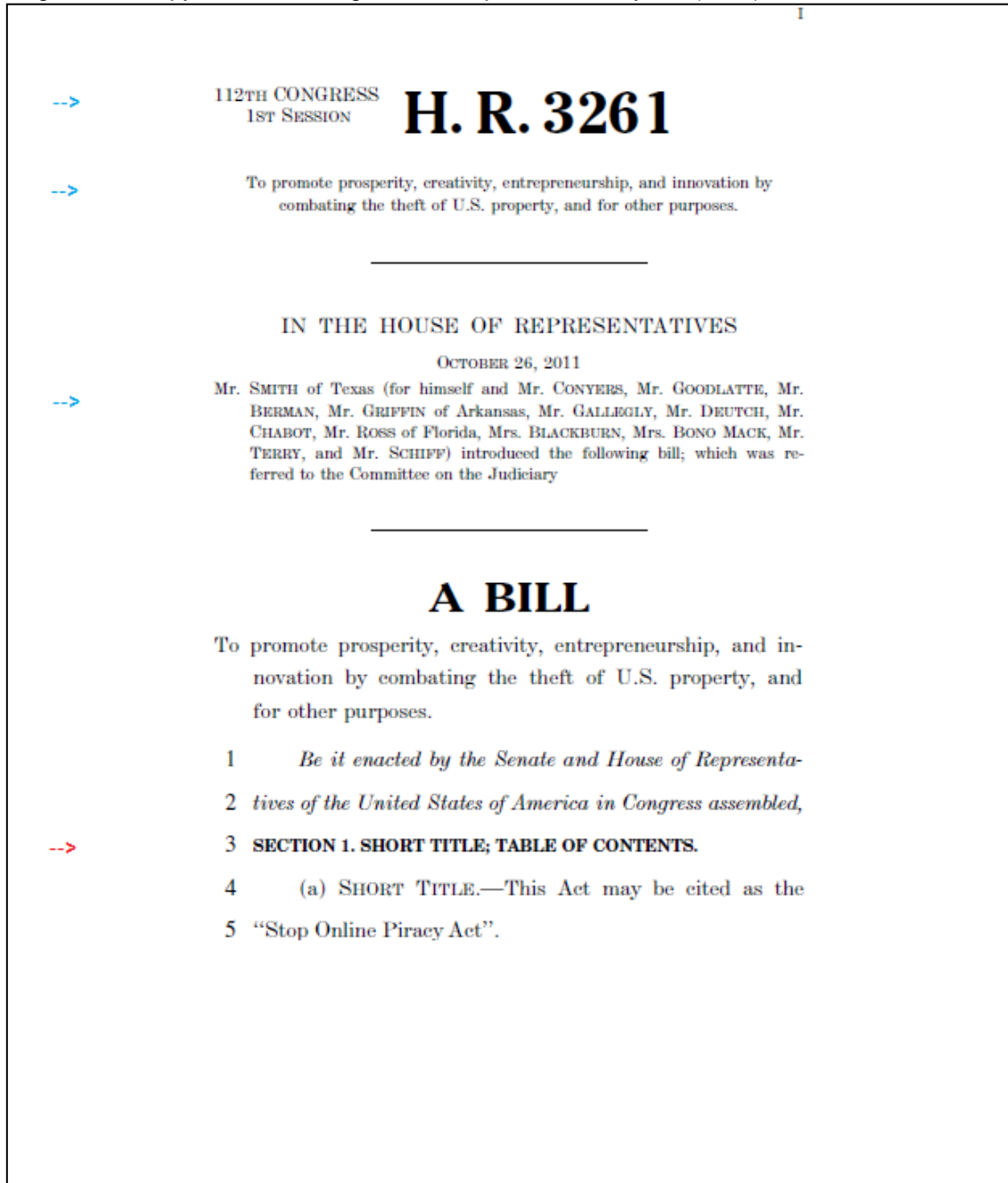


Figure 6 shows the first page of a bill travelling through the House. The first major item located on the document is the bill number, which is shown in large bold at the top of the page.¹⁹⁰ This is in contrast to the Westminster and Scottish Parliaments, where the first piece of text on any bill is the short title. Below the bill number, the second blue arrow above marks the long title of the bill, followed by information

¹⁹⁰ The number and session of Congress is also listed beside the bill number.

regarding the date it was published and the sponsors. The short title on most bills (and Acts) is usually not presented until the actual text of the legislation begins, usually provided in Section 1 (above, it is denoted by the red arrow). In the US there is no running header, but there is a running footer (not pictured), which also provides the number of the bill in small font. Notice above that the long title is mentioned twice: directly under the bill number and again under the bill sponsors. Indeed, long titles in US legislation serve a similar function to those in Westminster and the Scottish Parliament: they briefly a more detailed (than short titles, at least) explanation as to what the bill is supposed to do. However, as evidenced above, short titles are not very prominent in the textual presentation of Congressional bills.

If a bill becomes law in the US Congress, the situation is similar in regard to short titles. While there are running footers for bills, there are also running headers for Acts of Congress;¹⁹¹ but, again, short titles are not presented here. Headers contain the public law number (Pub. L. No.), the date that the measure was passed, and where it is contained in the statute book (___ Stat. ___). Similar to bills, the short title is usually not mentioned until Section 1 on the formal text of the Act. This textual versus verbal discrepancy is surprising, as although short titles have become more prominent and evocative throughout the past couple decades, their place in the text of legislation is far less distinguished. Similarly to Westminster and the Scottish Parliament, legislation is usually first divided into sections. Larger pieces of legislation, however, are divided by titles (similar to how ‘parts’ are used in the UK), and then by sections.¹⁹²

¹⁹¹ For an example of this, see a printed copy of the CAN-SPAM Act of 2003 at: <http://www.gpo.gov/fdsys/pkg/PLAW-108publ187/pdf/PLAW-108publ187.pdf>.

¹⁹² For an example of this, see the Adam Walsh Child Protection and Safety Act of 2006, at: <http://www.gpo.gov/fdsys/pkg/PLAW-109publ248/pdf/PLAW-109publ248.pdf>, or the USA PATRIOT Act of 2001, at: <http://www.gpo.gov/fdsys/pkg/PLAW-107publ56/pdf/PLAW-107publ56.pdf>

The section below focuses on formal legislative procedure in the US Congress from a short title perspective.

Opportune Moments in the Legislative Process

Formal legislative procedure in Congress is not nearly as straightforward as it is in the Westminster or Scottish Parliament. Over the past couple decades Sinclair has documented many unorthodox lawmaking practices in both the House and Senate, including legislation that encounters: multiple committee referral, bypassing committee altogether, unusual suspension of the rules and use of special rules and new parliamentary devices that have emerged in Congress (i.e. ‘king/queen of the hill’ provisions).¹⁹³ In fact, it has led Sinclair to state that because of the changes and unorthodox practices that have developed in Congress, ‘no two major bills are likely to follow exactly the same [parliamentary] process’.¹⁹⁴ Indeed, McKay and Johnson note that ‘the two Houses remain very different, and the rules, practices, and traditions of the other House are not always understood, much less appreciated and respected by the corresponding leaderships or rank-and-file membership of “the other body”’.¹⁹⁵ Both Sinclair and McKay and Johnson note the extremely high partisanship of both Houses, which only complicates the legislative process even further.¹⁹⁶ However, the discussion

¹⁹³ Sinclair, *op. cit.* ‘A “king of the hill” provision in a rule stipulates that a series of amendments or entire substitutes are to be voted on ad seriatim and the last one that receives a majority prevails.’ A ‘queen of the hill’ provision ‘allows a vote on all the versions [of amendments] but specifies that whichever version gets the most votes, so long as it receives a majority, wins’ (p. 32-33). Multiple committee referral, however, is more of a problem in the House than in the Senate, where the Presiding Officer of the Senate works to ensure that multiple referral remains a seldom occurrence. Thus, when it was mentioned in the previous chapter about bill titles influencing committee referral, this is probably more pronounced in the Senate, as they attempt to only send bills to a single committee, rather than refer them to multiple committees at once.

¹⁹⁴ *Id.*, p. 42.

¹⁹⁵ McKay, William & Johnson, Charles, *op. cit.*, p. 438.

¹⁹⁶ Sinclair, *op. cit.*; McKay, William & Johnson, Charles, *op. cit.*

below does its best to generally outline the parliamentary processes of Congress, and especially in relation to short bill titles.

The United States Congress is divided into two branches, the House of Representatives (the House), and the Senate. Either branch may introduce legislation, but the House tends to produce more legislation than the Senate (similar to the Commons in comparison to the Lords in Westminster), because the Senate has other duties it must perform besides lawmaking duties (for example, confirming presidential appointees, ratifying international treaties, etc.). Both Public and Private Bills are put forward in both chambers, and essentially all bills in Congress are equivalent to Private Members' Bills in Westminster. In relation to Private bills, it should be noted that the 'practice of Congress in passing private bills for the benefit of specific persons or entities was taken from the British Parliament and began with the First Congress'.¹⁹⁷

Bills can originate from a number of different sources, and similarly to the UK, individuals and smaller organizations can introduce legislation as well; yet all bills must be sponsored by a member of Congress.¹⁹⁸ A common method used in contemporary lawmaking is executive communication, in which the President or members of his government will draft legislation to be given to House or Senate members for introduction,¹⁹⁹ which are similar to Executive bills in the UK and Scottish Parliaments.²⁰⁰ When Executive communications occur, it is common for the

¹⁹⁷ McKay, William & Johnson, Charles, *op. cit.*, p. 388.

¹⁹⁸ Sullivan, *op. cit.*, Sections III, IV, & V. Available at: <http://thomas.loc.gov/home/lawsmade.bysec/sourceofleg.html>

¹⁹⁹ Sullivan, *op. cit.*, Sources of Legislation. Available at: <http://thomas.loc.gov/home/lawsmade.bysec/sourceofleg.html>.

²⁰⁰ Although, once passed to a legislator for introduction, the Executive loses all power over the measure. Conversely, the Executive in the UK retains power over much of the legislation they put forward.

chairmen of committees or subcommittees, or ranking members of either party, to sponsor the legislation.²⁰¹

Although each chamber has variations regarding how bills are received, vetted, etc., in theory there are similar general processes that each bill should go through in both houses.²⁰² All measures must be introduced by at least one member of the House or Senate, and Public Bills may have an unlimited number of sponsors throughout the process.²⁰³ These sponsorships have ‘symbolic as well as positional and substantive significance’.²⁰⁴ Many members, although they did not write or propose the legislation, may want their names associated with its contents, as they can later use this as political leverage on the campaign trail. Also, if they are important enough, some bill introductions have press conference releases in which the short title is usually displayed somewhere, either on the podium or a background banner.²⁰⁵

After a bill is introduced, it is then directed to the appropriate standing committee, and then usually sub-committee, where the measure undergoes rigorous debate if it is given time for consideration.²⁰⁶ This is the most important stage for a bill, as it is here the measure is vetted more thoroughly than at any other stage and its likelihood of failure is highest.²⁰⁷ Rieselbach declares that ‘if a bill fails at any stage, its

²⁰¹ McKay, William & Johnson, Charles, *op. cit.*, p. 387.

²⁰² Sullivan, John V. (2007). Library of Congress Website. From A Bill to A Law: How Our Laws Are Made. Available at: <http://thomas.loc.gov/home/lawsmade.toc.html>.

²⁰³ McKay, William & Johnson, Charles, *op. cit.*, p. 387. Meanwhile, Private Bills may have only one sponsor.

²⁰⁴ Schneier, Edward V. & Gross, Bertram, *op. cit.*, p. 352.

²⁰⁵ See the example in the Introduction section in regard to Health Care legislation, where the name of the Bill was on the front of the podium.

²⁰⁶ Many bills are not even considered by committees, as a vast amount of bills are introduced each session, and there is just not enough time on the legislative calendar.

²⁰⁷ Sullivan, John V., *op. cit.*, Available at: <http://thomas.loc.gov/home/lawsmade.bysec/considbycomm.html>

prospects virtually vanish',²⁰⁸ and it has been postulated that close to nine out of ten Bills die in committee.²⁰⁹ This is quite different from the UK and Scottish processes, as committees do not encounter as much legislation as their counterparts in the US Congress.²¹⁰ Thus, legislative competition in Congress is much more prevalent, and therefore a catchy or evocative name could more powerfully aid a bill's chances of passage. During the committee stage a bill is read section by section, and there can be mark-ups and amendments throughout.²¹¹ In terms of the committee agenda and what bills and resolutions will be considered, this is largely determined by the chairman, who has wide but not exclusive latitude over such matters.²¹² An intriguing name could potentially catch the chairman's eye, but it also could dissuade them from considering the legislation.²¹³ Much of this agenda setting, however, is wildly partisan, which has led some authors to content that much House business is 'lacking institutional memory and leadership appreciation', reflecting a 'wide ideological divide in the nation'.²¹⁴

Provided the bill passes committee, the measure is then presented to the whole House (or Senate) for a formal second reading. After this reading a number of things may happen, but usually there are a number of proposed amendments, all of which need

²⁰⁸ Rieselbach, Leroy N. 1995. *Congressional Politics (2nd Ed.)*. Boulder, CO: Westview Press, p. 8.

²⁰⁹ Schneier, Edward V. & Gross, Bertram, *op. cit.*, p. 411.

²¹⁰ 'During the 109th Congress (2005-2006), 10,558 Bills and 143 joint resolutions were introduced in both Houses.' Sullivan, John V. (2007). Library of Congress. How Our Laws Are Made: Part IV, Forms of Congressional Action.

²¹¹ McKay, William & Johnson, Charles, *op. cit.*, pp. 408-09.

²¹² *Id.*, p. 414.

²¹³ Bravin, *op. cit.* The author notes in his article that the previous chairman of the House Financial Services Committee refused to consider Bills that had acronym titles.

²¹⁴ McKay, William & Johnson, Charles, *op. cit.*, p. 418.

to be voted on.²¹⁵ Once this process is complete, a formal vote on the bill is taken, and the measure is either passed or rejected.²¹⁶ If a bill makes it to the floor, there is fewer than a one in ten chance it will be killed there, in conference, or on the President's desk.²¹⁷ If a bill completes its journey in either the House or the Senate, it then goes to the other body for the same consideration. It can only advance to the President once the same version has been approved by both bodies.

Article I, Section 7 of the Constitution provides that the President has the power to veto any bill passed by Congress.²¹⁸ Presidential approval or veto is another point in the process where short bill titles may become a factor. A popular evocatively-titled bill could prove to be a publicity magnet too tempting to pass up for many Presidents, but such 'well-crafted' legislation could also spell treacherous ground if a Presidential veto is in order. If a President wishes to champion a bill that has been passed by Congress, at times they employ Presidential Signing Statements.²¹⁹ Here the bill is further publicised and promoted, and some Presidents have even tried to use such statements to influence the court's interpretation of such statutes.²²⁰ Yet courts rarely look to such events when interpreting legislation. If a President does veto a piece of legislation then the short title could become a rallying cry to overturn the veto, which must pass both Houses again by a two-thirds vote in order to become law.²²¹

²¹⁵ Sullivan, *op. cit.*, Part IV, Forms of Congressional Action.

²¹⁶ If rejected, this does not necessarily end the measure's chances of it becoming law, as it could always be proposed again in a future Congress, and start the process over.

²¹⁷ Schneier, Edward V. & Gross, Bertram. (1993). *Congress Today*. New York, NY: Palgrave Macmillan, p. 411.

²¹⁸ U.S. Const. art. 1, § 7. Available at: <http://www.law.cornell.edu/constitution/articlei#section7>

²¹⁹ Law Library of the Library of Congress website. Presidential signing statements. Available at: <http://www.loc.gov/law/help/statements.php>

²²⁰ *Id.*

²²¹ U.S. Const. art. 1, § 7, cl. 2; Sinclair, *op. cit.*, p. 89.

Though a bill may be signed by the President and become law, it is becoming increasingly common for them to have ‘sunset’ clauses, or clauses that assure that future Congresses will have to take up the legislation in some manner, as policies or revenues must be re-enacted and/or periodically reviewed.²²² An evocative short title can make a future vote on these laws that much more difficult and politically charged. This continually happens with the USA PATRIOT Act of 2001, which was renewed in 2005²²³, 2006,²²⁴ and in 2011.²²⁵ Though the original measure was passed over a decade ago by the 107th Congress, the measure will likely still be debated (at least in part), by many future Congresses.

It is important to note that, unlike the legislative processes in the Westminster and the Scottish Parliament, bills in the US often have different names at different points in the process, and especially when they change houses (but their official numbers remain the same). For example, one of the bills that was used in the quantitative portion of this study was presented as the RESTORE Act, or Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective Act of 2007. The progression below displays how the name changes throughout the process:

POPULAR TITLE(S):
*FISA bill (identified by CRS)*²²⁶
↓
SHORT TITLE(S) AS INTRODUCED:
Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective Act of

²²² McKay, William & Johnson, Charles, *op. cit.*, p. 383.

²²³ USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, 120 Stat. 192. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:H.R.3199:>

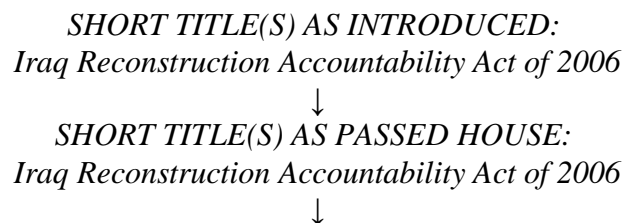
²²⁴ USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006. Pub. L. No. 109-178, 120 Stat. 278. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:s.02271:>

²²⁵ FISA Sunsets Extension Act of 2011, Pub. L. No. 112-3, 125 Stat. 5. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h.r.00514:>

²²⁶ Thomas Website. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR03773:@@T.> More on popular titles below as well.



As can be seen above, the name changed between houses. Throughout its time in the House it is known as the RESTORE Act, but known colloquially as the FISA Bill. Then in the Senate it is voted on as the FISA Amendments Act of 2008/Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008. Thus, as the above sequence demonstrates, bill titles may change drastically throughout the legislative process in the US. However, many bills will keep their names throughout the legislative process, as displayed by the example below:²²⁸



²²⁷ This is actually the long title of the Act.

²²⁸ Iraq Reconstruction Accountability Act of 2006, Pub. L. No. 109-440, 120 Stat. 3286. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:SN04046:@@@T>

*SHORT TITLE(S) AS REPORTED TO SENATE:
Iraq Reconstruction Accountability Act of 2006*



*SHORT TITLE(S) AS PASSED SENATE:
Iraq Reconstruction Accountability Act of 2006*



*SHORT TITLE(S) AS ENACTED:
Iraq Reconstruction Accountability Act of 2006*



*OFFICIAL TITLE AS INTRODUCED:²²⁹
A bill to extend oversight and accountability related to United States reconstruction funds and efforts in Iraq by extending the termination date of the Office of the Special Inspector General for Iraq Reconstruction.*

However, as the Congressional Research Service points out (see FISA Bill above), most bills usually attain a colloquial or ‘popular’ name at some point, be it given by members of Congress, the media or others. Many times these colloquial names can trump the official titles given to legislation in terms of how these measures are referred to. Although this phenomenon is not traditionally a legal issue, it is included in this section because many of the popular legislative websites which provide information on Congressional Bills and US law also include sections in which browsers can search by ‘popular name’. This phenomenon is explored more fully below.

The House of Representatives has an Office of Law Revision Counsel for the US Code which manages a searchable database of thousands of popular names for laws in the Code.²³⁰ It even has an explanation page that ‘justifies’ why it has such a page devoted to popular names.²³¹ However, the explanation merely states that the page is an alphabetical listing of popular names for Acts of Congress, and does not provide much in the way of a justification for such a database. The Cornell Legal Information

²²⁹ This is the long title of the bill.

²³⁰ Office of Law Revision Counsel. United States Code. US House of Representatives. Popular Name Tool. Available at: <http://uscode.house.gov/popularnames/popularnames.htm>. They also have a PDF copy at: <http://uscode.house.gov/popularnames/popularnames.pdf>

²³¹ *Id.*, Available here: <http://uscode.house.gov/popularnames/popularnamesexplanation.htm>

Institute is another influential website that has a database of popular names that correspond with the US Code.²³² Unlike the Law Revision Counsel, however, it gives certain examples as to why and how bills develop popular names. The rationales given by the Institute for adoption of popular names include: ‘Sometimes these names say something about the substance of the law (as with the ‘2002 Winter Olympic Commemorative Coin Act’). Sometimes they are a way of recognizing or honouring the sponsor or creator of a particular law (as with the ‘Taft-Hartley Act’). And sometimes they are meant to garner political support for a law by giving it a catchy name (as with the ‘USA Patriot Act’ or the ‘Take Pride in America Act’) or by invoking public outrage or sympathy (as with any number of laws named for victims of crimes)’.²³³ This explanation appears a bit more forthright and accurate in regard to how many popular names may be designed.

Even the Library of Congress website, THOMAS, usually provides a popular name listed when searching for legislation. As one can see in the flow chart above, the 2007 FISA Amendments Act was known popularly as the ‘FISA Bill’.²³⁴ Thus, if people only know the popular name of a bill as it travels through the legislative process, they are still able to find it on many websites. This includes websites that will give them a bevy of information about the proposal,²³⁵ including major Congressional actions and a full text of the legislation, and also ones that will help them find it and link to it in the US Code. With tools such as these at public and lawmaker disposal, it

²³² Cornell University Law School. Legal Information Institute. Popular Names of Acts in the US Code. Available at: <http://www.law.cornell.edu/topn/0>

²³³ *Id.*

²³⁴ FISA Amendments Act of 2008. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR03773:@@T>. This law was also known as the RESTORE Act in the House. But, ultimately, although going through both Houses successfully, the bill did not pass.

²³⁵ See THOMAS. www.thomas.loc.gov, and Govtrack, <http://www.govtrack.us/>, among others.

remains to be seen why Congress continues to permit evocative, misleading and/or uninformative names in the US Code.

In connection with the quantitative material presented in Chapter I regarding the US Congress' transition to evocative short titles, I further analysed how many bills over that same period were enacted in relation to naming. When examining bills from the 93rd – 111th Congress, I found that measures in regard to naming were very commonplace. Most of these proposals are in regard to the naming or renaming of Post Offices or Federal buildings around the nation. In fact, in contemporary Congresses about 20% of the bills and resolutions enacted are in regard to naming, as evidenced by the figure below. These are most always passed in quick clustered votes, or 'wrap up' sessions, that do not require any discussion or debate.²³⁶ However, the volume of such legislation demonstrates how much naming conventions are highly valued in Congress.

²³⁶ Sinclair, *op. cit.*, p. 57.

Table 4. Acts on Name Changing, by Congress²³⁷

<u>Congress</u>	<u>Total Acts</u>	<u>Naming Acts</u>	<u>% of Total</u>
93	649	33	5.1%
94	588	20	3.4%
95	633	32	5.1%
96	613	37	6.0%
97	473	22	4.7%
98	623	33	5.3%
99	663	19	2.9%
100	713	40	5.6%
101	650	27	4.2%
102	590	36	6.1%
103	465	45	9.7%
104	333	34	10.2%
105	394	27	6.9%
106	580	88	15.2%
107	377	66	17.5%
108	498	106	21.3%
109	482	118	24.5%
110	460	146	31.7%
111	383	85	22.2%

Spotlight 1: Personalised Bills as Commemorations

Particular rules in the House of Representatives may prove problematic for short titles.

When considering humanised legislation (i.e. the Lilly Ledbetter Fair Pay Act),²³⁸

certain types of this increasingly common evocative legislation are close to being

against House Rules. The House has a special prohibition on commemorations for bills

in its Rules for the 111th Congress.²³⁹ The statute is under Section 5 of Rule XII,

Receipt and Referral of Measures and Matters, the Rules of the House,²⁴⁰ and it reads:

²³⁷ Research performed by the author, and is further detailed in Appendix I.

²³⁸ Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5.

²³⁹ This rule has been in effect since the 104th Congress; McKay, William & Johnson, Charles, *op. cit.*, p. 418-19.

‘5. (a) A bill or resolution, or an amendment thereto, may not be introduced or considered in the House if it establishes or expresses a commemoration. (b) In this clause the term “commemoration” means a remembrance, celebration, or recognition for any purpose through the designation of a specified period of time.’²⁴¹

Not every humanised bill may ‘establish’ a commemoration per se, but a humanised bill can express a commemoration through its name alone (especially in regards to sympathetic figures that have been victims or wronged in some way). Additionally, under the definition of commemoration provided by the House, a humanised name could easily be regarded as a ‘remembrance’, ‘celebration’, or ‘recognition’, as long as the bill has a proper name in the short title. Subsection (b), however, limits the extent to which humanised names could be classified as commemorations. This section states that the commemoration must be ‘through the designation of a specified period of time’.²⁴² McKay and Johnson note that once this rule came into place ‘drafting techniques rapidly developed which avoided the strict prescriptions of the rule, while still commemorating or acknowledging the importance of a matter in a more general time-unspecific sense.’²⁴³

While topically many humanised bills may express remembrances, celebrations, and/or recognitions, they do not establish periods of time for doing so per se (i.e. there is no specified day, week, etc.). Yet under scrutiny should be what the House actually means by designating specified periods of time. Depending on how strict or open of a

²⁴⁰ Rules of the House of Representatives . Rule XII, Section 823. Receipt and Referral of Measures and Matters. Available at: <http://www.rules.house.gov/singlepages.aspx?NewsID=133&rsbd=165>

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ McKay, William & Johnson, Charles, *op. cit.*, p 419.

legal interpretation one would like to infer from the clause, many bills establish periods of time. For example, many bills establish dates for votes on reauthorization (i.e. the sunset provisions mentioned earlier),²⁴⁴ dates for reports due to Congress on the progress of bills,²⁴⁵ new prison terms,²⁴⁶ or periods of time that a person must register for on a sex offender registry.²⁴⁷ The definition of commemoration that the House uses does not state that the specification of time should necessarily be a specific date on the calendar. A specific calendar date would suggest that a commemoration would be a celebration or recognition of that specific day (e.g. President’s Day). Yet the rule explicitly states that a commemoration under these House Rules refers to a ‘specified period of time’; a loosely-wound statement that could be interpreted in a number of different ways.

A more concrete example is an Act that figures prominently throughout this thesis, the Adam Walsh Child Protection and Safety Act of 2006. The official printing of the Act is replete with memorials and commemorations throughout the text. For example Section 2 of the official Act reads:

**‘SEC. 2. IN RECOGNITION OF JOHN AND REVE’ WALSH ON
THE OCCASION OF THE 25TH ANNIVERSARY OF ADAM
WALSH’S ABDUCTION AND MURDER.**

(a) ADAM WALSH’S ABDUCTION AND MURDER.—On July 27,
1981, in Hollywood, Florida, 6-year-old Adam Walsh was abducted at a

²⁴⁴ USA PATRIOT Act of 2001, Pub. L. No. 107–56, § 224.

²⁴⁵ *Id.*, Section 303; Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109–248, § 604, 635.

²⁴⁶ Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109–248, Title II.

²⁴⁷ *Id.*, § 115.

mall. Two weeks later, some of Adam's remains were discovered in a canal more than 100 miles from his home.

(b) JOHN AND REVE' WALSH'S COMMITMENT TO THE SAFETY

OF CHILDREN.—Since the abduction and murder of their son Adam, both John and Reve' Walsh have dedicated themselves to protecting children from child predators, preventing attacks on our children, and bringing child predators to justice. Their commitment has saved the lives of numerous children. Congress, and the American people, honor John and Reve' Walsh for their dedication to the well-being and safety of America's children.²⁴⁸

The above explicitly points out that the Act is **in recognition of the 25th Anniversary of the abduction and murder of Adam Walsh**. One could surmise this is the very definition of a commemoration expressed in a piece of legislation. But this is not the only bothersome point of the Adam Walsh Act from a legislative drafting perspective. Title I of the Act is known as the Sex Offender Registration And Notification Act and the Declaration of Purpose for the Act reads as a list of remembrances for crime victims rather than focusing on the law. Section 102 reads:²⁴⁹

'SEC. 102. DECLARATION OF PURPOSE.

In order to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators against the victims listed below, Congress in this Act establishes a comprehensive national system for the registration of those offenders:

²⁴⁸ *Id.*, § 2.

²⁴⁹ *Id.*, § 102.

- (1) Jacob Wetterling, who was 11 years old, was abducted in 1989 in Minnesota, and remains missing.
- (2) Megan Nicole Kanka, who was 7 years old, was abducted, sexually assaulted, and murdered in 1994, in New Jersey.
- (3) Pam Lychner, who was 31 years old, was attacked by a career offender in Houston, Texas.
- (4) Jetseta Gage, who was 10 years old, was kidnapped, sexually assaulted, and murdered in 2005, in Cedar Rapids, Iowa.
- (5) Dru Sjodin, who was 22 years old, was sexually assaulted and murdered in 2003, in North Dakota.
- (6) Jessica Lunsford, who was 9 years old, was abducted, sexually assaulted, buried alive, and murdered in 2005, in Homosassa, Florida.
- (7) Sarah Lunde, who was 13 years old, was strangled and murdered in 2005, in Ruskin, Florida.
- (8) Amie Zyla, who was 8 years old, was sexually assaulted in 1996 by a juvenile offender in Waukesha, Wisconsin, and has become an advocate for child victims and protection of children from juvenile sex offenders.
- (9) Christy Ann Fornoff, who was 13 years old, was abducted, sexually assaulted, and murdered in 1984, in Tempe, Arizona.
- (10) Alexandra Nicole Zapp, who was 30 years old, was brutally attacked and murdered in a public restroom by a repeat sex offender in 2002, in Bridgewater, Massachusetts.
- (11) Polly Klaas, who was 12 years old, was abducted, sexually assaulted, and murdered in 1993 by a career offender in California.

(12) Jimmy Ryce, who was 9 years old, was kidnapped and murdered in Florida on September 11, 1995.

(13) Carlie Brucia, who was 11 years old, was abducted and murdered in Florida in February, 2004.

(14) Amanda Brown, who was 7 years old, was abducted and murdered in Florida in 1998.

(15) Elizabeth Smart, who was 14 years old, was abducted in Salt Lake City, Utah in June 2002.

(16) Molly Bish, who was 16 years old, was abducted in 2000 while working as a lifeguard in Warren, Massachusetts, where her remains were found 3 years later.

(17) Samantha Runnion, who was 5 years old, was abducted, sexually assaulted, and murdered in California on July 15, 2002.’

If some of these individuals look familiar, they should be, as most of the names and incidents were vastly reported throughout the press, and many have other significant achievements attached to them. Jacob Wetterling,²⁵⁰ Megan Kanka,²⁵¹ and Pam Lyncher²⁵² all have federal legislation passed under their names. Jessica Lunsford²⁵³ and Sarah Lunde²⁵⁴ had a federal bill introduced in both their names in

²⁵⁰ Violent Crime Control and Law Enforcement Act of 1994. Title XVII, Subtitle A: Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322. Available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=103_cong_bills&docid=f:h3355enr.txt.pdf

²⁵¹ Megan’s Law, Pub. L. No. 104-145, 110 Stat. 1345.

²⁵² Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, 110 Stat. 3093. Available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=104_cong_public_laws&docid=f:publ236.104.pdf

²⁵³ Jessica Lunsford and Sarah Lunde Act, S. 1407. Introduced on 7/14/2005. Available at: <http://www.govtrack.us/congress/bill.xpd?bill=s109-1407&tab=summary>

²⁵⁴ *Id.*

2005, and Jessica had a bill passed in her honour by the state of Florida. The murder of Polly Klass in California sparked national outrage and led to a smattering of state 3 Strikes Legislation. The California three-strikes law also garnered the distinction of becoming the ‘the fastest qualifying initiative in California history’.²⁵⁵ Elizabeth Smart’s story was widely publicized as she was kidnapped and held for 9 months before being released. She was present at the PROTECT Act Presidential signing statement with George W. Bush in 2003.²⁵⁶

However, if one does not know these victims through previous media exposure then they certainly will after they read the Adam Walsh Child Protection and Safety Act 2006, because many of the individuals are mentioned throughout the Act in various capacities. Section 103 states that ‘This Act establishes the Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program’;²⁵⁷ Section 111 includes the ‘Amie Zyla Expansion Of Sex Offender Definition And Expanded Inclusion Of Child Predators’;²⁵⁸ Section 120 is the ‘Dru Sjodin National Sex Offender Public Website’;²⁵⁹ Section 121 is the ‘Megan Nicole Kanka And Alexandra Nicole Zapp Community Notification Program’;²⁶⁰ Section 202 is the ‘Jetseta Gage Assured Punishment For Violent Crimes Against Children’;²⁶¹ Section 301 is the ‘Jimmy Ryce State Civil Commitment Programs For Sexually

²⁵⁵ *Ewing v. California*, 538 U. S. 11 (2003). Opinion by O’Conner, p. 2. Also available at: <http://www.law.cornell.edu/supct/pdf/01-6978P.ZO>

²⁵⁶ ABC News. Ron Edmonds, AP Photo. Available at: <http://abcnews.go.com/widgets/mediaViewer/image?id=4431534>

²⁵⁷ Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109–248, § 103.

²⁵⁸ *Id.*, § 111.

²⁵⁹ *Id.*, § 120.

²⁶⁰ *Id.*, § 121.

²⁶¹ *Id.*, § 202.

Dangerous Persons’;²⁶² Section 631 is the ‘Jessica Lunsford Address Verification Grant Program’;²⁶³ and Section 707 is known as ‘Masha’s Law’.²⁶⁴

Perhaps it is not enough that seventeen high-profile crime victims are mentioned in section 102, the ‘remembrances’ section, of the AWA, because apparently the drafters of the landmark bill had to repeatedly mention these victims throughout the text of the Act as well. The fact that these names are inscribed into the actual text of legislation in various parts of the Act is an ominous omen for the state of federal drafting policy in the US, as it is indicative of an overly political, overtly manipulative, all-around dishevelled statute book. It is unknown why the names of crime victims that already have their own federal statutes or were the impetus behind other federal or state legislation, were inscribed inside the Adam Walsh Act. Discussion of the strategy behind humanised naming, and evocative naming in general, was located in Chapter II. It is safe to say at this point that using such sympathetic figures in the titles of legislation would unnecessarily politicize both the bill as it travels through Congress and the statute book, should it ultimately be enacted. In terms of remedying the evocative title addiction in Congress, many state legislatures could provide as an example to the federal government, and this is covered below.

Spotlight 2: State Legislature Rules and Recommendations for Short Titles²⁶⁵

²⁶² *Id.*, § 301.

²⁶³ *Id.*, § 631.

²⁶⁴ *Id.*, § 707, who was victim of child sex trafficking, and was apparently forgotten in § 102.

Examining the abundance of laws and the intricate processes of federal legislation, one can sometimes overlook the fact that there are 50 states that draft their own legislation and could have their own policies related to short titles. It is important to note that a significantly large number of Congressional members matriculate to Washington D.C. from these Statehouses. For example, the 111th Congress had 229, or close to half, of lawmakers that described themselves as former state or territorial legislators.²⁶⁶ Although this thesis in relation to the US deals mostly with federal legislation, state policies related to short title drafting could potentially be used as an example for federal legislation. In fact, it is not uncommon for the US federal government to use laws or policies first enacted by states, and vice versa (Megan's Law and Three-Strikes Legislation both started out as state laws); and it also is not uncommon for the Supreme Court to look to how many States have abolished or enacted a law when determining whether or not it is constitutional (i.e. such as in death penalty legislation).²⁶⁷ Therefore, the section below analyzes state legislation drafting manuals and state constitutions to ascertain whether or not: (a) there are rules and/or policies related to short titles, and (b) whether these policies could serve as examples for federal legislation.

Perhaps because of the lack of policies related to short titles or proper bill form in federal statutes, it was surprising to find that many states do have policies related to short titles, and some of them are very thorough and detailed. In fact some regulations regarding bill titles are located in state constitutions. Bill titles have specific provisions

²⁶⁵ Much of this section is taken from: Jones, Brian Christopher. (2012). Drafting Proper Short Titles: Do States Have the Answer? *Stanford Law and Policy Review*, XXIII (forthcoming, print details undetermined).

²⁶⁶ Manning, Jennifer E. (2010). Membership of the 111th Congress: A Profile. *Congressional Research Service*.

²⁶⁷ See *Furman v. Georgia*, 408 U.S. 238 (1972) or *Gregg v. Georgia*, 428 U.S. 153 (1976).

or mentions in 41 State Constitutions.²⁶⁸ Most of these provisions relate to a one-subject clause in constitutions, which usually states that a specific bill of the [add in state name] State Legislature should only contain one subject, and this subject should be clearly enumerated in the title of the bill. Other states mention that a title of a bill must meet certain requirements, and if these are not met, then the whole bill may be invalid.²⁶⁹ An example of such a provision is provided by Colorado Constitution, which states that:

‘No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed’.²⁷⁰

Most states mandate the use of long titles in statutes, while the use of short titles is less frequent and even discouraged by many states.²⁷¹ Others, such as Maryland, either do not expressly differentiate between short titles and long titles, or do so in an arbitrary fashion. The below section commences with provisions or recommendations specifically related to short titles, and then moves onto general provisions related to bill titles that are relevant to this thesis.

The State of Arizona employs what they call ‘reference titles’ on all its bills, which is a collection of words in the upper right-hand corner of measures to ease

²⁶⁸ Singer, Norman, J. & Singer, Shambie. (2009). *Statutes and Statutory Construction* (7th Ed.), New York, NY: Thompson Reuters, § 17:1.

²⁶⁹ These statements are usually found in state Legislative Drafting Manuals or from State Court decisions. Please see links to the manuals at the end of this document for details how to access the electronic drafting manuals.

²⁷⁰ Colorado State Constitution. art. V, § 21. Available at: <http://www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp=>

²⁷¹ Alaska, Arizona, Oregon, Indiana, South Dakota.

indexing.²⁷² They are called ‘short titles’ by the Arizona legislature, but they are more similar to running headers/indexing terms (very similar to the Westminster and Scottish Parliament running headers on Bills and Acts). The Arizona Legislative Council adopted council rule 22 in 1996, which specifies that ‘the reference title must be an accurate and inclusive description of the contents of the measure and shall not reflect political, promotional or advocacy considerations. Legislative council staff shall make the final determination of the contents of the reference title of each measure that is introduced’.²⁷³ This rule specifically addresses the fact that the Arizona legislature does not wish its statute book to appear overtly political or as promotional of certain laws, and therefore strives for accuracy in its legislative endeavours.

Colorado provides short titles on all bills, resolutions and memorials, and the Office of Legal Services has been responsible for drafting these since 1995.²⁷⁴ It classifies such titles as ‘unofficial’ because the names do not appear on the bill itself, unlike federal short titles, but they are used on the voting machines of the House chambers and on bill status reports and other legislative records.²⁷⁵ And although these unofficial aspects of Colorado law do not carry much legal weight, they do bear significance, as there are thirteen short title recommendations provided in its Drafting Manual.

Many of Colorado’s drafting recommendations in regard to short titles are prescriptive, such as: the restriction of such titles to 40 characters (including punctuation, spaces and numerals); the short title should identify the primary topic of

²⁷² Arizona Legislative Bill Drafting Manual. (2009). The Arizona Legislative Council. Available at: <http://www.azleg.gov/alisPDFs/council/2010%20Bill%20Drafting%20Manual.pdf>

²⁷³ *Id.*

²⁷⁴ Colorado Legislative Drafting Manual. (2009). The Office of Legislative Legal Services. Section II on Short Titles, p. 52.

²⁷⁵ *Id.*

the bill; the use of abbreviations is discouraged; making up abbreviations is discouraged; there should be a focus on the subject matter; think about who the bill affects when drafting the title; using the same words in short titles is useful, as it groups together similar acts in the statute book and they are thus easier to locate.²⁷⁶ However, one of the most significant recommendations it makes regarding short titles is the following:

‘(10) Apply this TEST: Separate out the words from the proposed short title and think about whether the average subject index user would think of that individual word to try to find this bill? If the answer is no, then the short title needs modification.’²⁷⁷

This very basic but meaningful test would likely solve many short title problems. As mentioned previously, short titles’ original function were to be used as reference points. If the person indexing the measure could not reasonably place it from among the language contained in the short title, then it should be modified to conform to this standard. If these recommendations were applied to federal legislation, many short titles would likely have to be changed. Additionally, it would be interesting to see how this would apply to federal legislation that uses acronyms, as although the words the acronym uses sometimes describes what the bill does or what its intentions are, albeit ambiguously, the word or phrase that the acronym spells might not give any an indication of the bill subject.

Montana limits the short titles of its bills to 80 characters (including spacing, punctuation and numerals), and these titles are originally drawn up by the Legal

²⁷⁶ *Id.*, p. 53 & 54.

²⁷⁷ *Id.*, p. 53.

Services Director.²⁷⁸ Although this is twice as long as Colorado allows, the 80 character limit is still quite short. New Mexico also believes that short titles should be just that - short - and expresses its views on the subject by declaring:

‘A short title defines a specific, discrete, cohesive body of law. If a draft of original legislation meets that description, it is useful to give it a short title for reference purposes. A short title is a drafter's tool and must be short to be worthwhile. It is a reference, not an exhaustive description of what the act does. Since the New Mexico legislature can legislate only for New Mexico, there is no reason to put ‘New Mexico’ as part of a short title. As well, there is usually no good reason to put the year of enactment in the title’.²⁷⁹

Corresponding states have similar regulations. The Texas legislative drafting manual also discourages use of the word ‘Texas’ in the short title, considering such use ‘superfluous’ to the drafting of any law.²⁸⁰ Federal legislation frequently uses the words ‘America’ or ‘American’ in its short titles (i.e. American Recovery and Reinvestment Act of 2009,²⁸¹ Serve America Act,²⁸² or the Protect America Act of 2007²⁸³) although doing so seems especially redundant.

Other Texas drafting recommendations include not using or capitalizing ‘the’ in front of a short title, and not using a date at the end of a short title. It further states that

²⁷⁸ Montana Bill Drafting Manual. (2008). Legislative Services Division. Helena, MT, p. 49. Available at: http://leg.mt.gov/content/publications/2008_bill_drafting_manual.pdf

²⁷⁹ *Id.*, p. 26-27.

²⁸⁰ Texas Legislative Counsel. Drafting Manual. (2011) Section 3.05, p. 10. Available at: <http://www.tlc.state.tx.us/legal/dm/draftingmanual.pdf>

²⁸¹ American Recovery and Reinvestment Act, Pub. L. No. 111 – 5, 123 Stat. 115.

²⁸² Serve America Act, Pub. L. No. 111 – 13, 123 Stat. 1460.

²⁸³ Protect America Act of 2007, Pub. L. No. 110 – 55, 121 Stat. 552.

in most cases short titles should be used for ease of citation with major acts. However, the legislature notes that short titles ‘should *not* be used to make otherwise routine bills look important’ (emphasis in original).²⁸⁴ This is another provision that dissuades drafters, lawmakers, and others from using short titles for political advantage or policy promotion.

States such as North Dakota believe that short titles ‘should not be used’ at all, and note that, ‘with statutory codification, every codified section has a Century Code number and is placed with provisions reflecting the subject matter involved’, and thus there is no reason for the use of such titles.²⁸⁵ And other states, such as Illinois, took a firm but humorous position on short titles, as its recommendations state that ‘every new Act should have a short title for ease of reference. A short title should be short, accurate, and unique. The ‘Village Library Act’, 75 ILCS 40/, is a good short title. The ‘Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act’, 320 ILCS 25/, is an awful short title; no wonder most people refer to it colloquially as the Circuit Breaker Act’.²⁸⁶

Many states also had general recommendations in relation to bill titles, many of which are worth mentioning in this thesis. These statements usually made reference to or recommendations on clarity, accuracy, and/or an ease of understanding the bill’s contents for those looking at or interacting with the measures in question. In fact, a number of states included accuracy and non-misleading titles as their top priorities. Indiana declares that ‘The title should not state what the bill does but should provide a

²⁸⁴ Texas Legislative Counsel. Drafting Manual. (2011). Section 3.05, p. 10. Available at: <http://www.tlc.state.tx.us/legal/dm/draftingmanual.pdf>

²⁸⁵ North Dakota Legislative Drafting Manual. (2011). Part 2: Bills, p. 20. Available at: <http://www.legis.nd.gov/information/bills/docs/pdf/part2.pdf>

²⁸⁶ Illinois Guide to Drafting Legislative Documents. Short title section. Legislative Reference Bureau. Available at: <http://www.ilga.gov/commission/lrb/lrbguide.htm#TITLE>

short, general statement of the subject matter of the bill’;²⁸⁷ Maryland notes that ‘Titles that are misleading or deceptive must be avoided’;²⁸⁸ Minnesota states that ‘The title of each bill shall clearly state its subject and briefly state its purpose’;²⁸⁹ Maine suggests that ‘To ensure that the title accurately reflects the subject matter of the bill and is not misleading or incorrect, a drafter should draft the title to fit the bill; a drafter should never draft the bill to fit the title’;²⁹⁰ New Mexico regulations declare that ‘a properly prepared title is essential to the constitutionality of any bill that becomes law, the title should be carefully reviewed to determine that it covers everything in the bill’;²⁹¹ Oregon suggests that ‘the title should express the subject of the bill, not what the bill does or how the bill accomplishes its purpose’;²⁹² and Kentucky proclaims that ‘Indeed, the cardinal sin in preparing titles is to use language that misleads about the contents of the bill. The highest degree of care, therefore, must be exercised to make certain that the subject of the bill is embraced plainly in the title’.²⁹³

Recommendations by other states note the importance of accuracy for those interacting with legislation: Montana’s recommendations state that ‘The main purpose of the constitutional provision is to ensure that the title of a bill gives reasonable notice

²⁸⁷ Indiana Form and Style Manual For Legislative Measures. (1999). Office of Code Revision Legislative Services Agency, p. 24. Available at: <http://www.in.gov/legislative/session/manual/PDF/PART1.PDF>

²⁸⁸ Maryland Legislative Drafting Manual. (2010). Department of Legislative Services, p. 31.

²⁸⁹ Minnesota Bill Drafting Manual. (2002). Chapter 3.2(c). Joint Rule 2.01. Office of the Revisor of Statutes. Available at: https://www.revisor.mn.gov/revisor/pubs/bill_drafting_manual/Cover-TOC.htm

²⁹⁰ *Id.*, p. 14.

²⁹¹ New Mexico Legislative Drafting Manual. (2008). New Mexico Legislative Counsel Service, p. 21. Available at: <http://legis.state.nm.us/lcs/lcsdocs/draftman.pdf>

²⁹² *Id.*

²⁹³ Bill Drafting Manual for the Kentucky General Assembly. (2011). Chapter 2, Form of Bills, Section 202, pp. 5-6. Legislative Research Commission, Frankfort, KY. Available at: <http://www.lrc.ky.gov/lrcpubs/IB117.pdf>

of the content to legislators and the public’;²⁹⁴ New Mexico states that ‘Drafters should keep in mind that titles are used by legislative staff and others as quick references and the titles should contain as much information as possible within the confines of the request. Everything from committee referrals to subject and bill indexing is made easier with an informative title’;²⁹⁵ and South Dakota proclaims that ‘the title should be written so that the reader can understand what the enactment of the bill will accomplish without reading the body of the bill’.²⁹⁶

A few drafting manuals were very thorough when it came to the issues of accuracy and clarity. In fact, West Virginia’s bill title section is 28 pages long.²⁹⁷ Yet the manuscript is more technical in nature, and does not get into many of the accuracy and notification issues that the above discussion is centred around. The length is worth noting, however, as they certainly take their legislative titles seriously. One manual that did get into some of the issues important to this thesis was the Oregon manual, which stated the following:

‘By reading the title, a person should be able to determine whether the bill deals with a subject in which the person is interested. The purpose of the constitutional title requirement is to prevent the concealment of the

²⁹⁴ Montana Bill Drafting Manual. (2008). Legislative Services Division. Helena, MT, p. 45. Also available at: http://leg.mt.gov/content/publications/2008_bill_drafting_manual.pdf

²⁹⁵ *Id.*, p. 21.

²⁹⁶ South Dakota Legislative Drafting Manual, p. 8. Available at: <http://legis.state.sd.us/general/DraftingManual.pdf>

²⁹⁷ West Virginia Legislature Bill Drafting Manual. (2006). Legislative Services. Part III: Bill Titles and Enacting Sections, pp. 51-79. Available at: http://www.legis.state.wv.us/Joint/Bill_Drafting/Drafting_Manual.pdf

true nature of the provisions of the bill from the legislature and the public’.²⁹⁸

It goes on to contend that:

‘The constitutional restriction on titles is designed to prevent use of the title as a means of deceiving legislators and others, and to assure people who cannot examine the body of the bill itself that the bill does not deal with a subject not disclosed in the title. The courts construe this requirement liberally,²⁹⁹ and the courts will not hold an Act to be in violation unless the insufficiency of the title is ‘plain and manifest’ or ‘palpable and clear.’’.³⁰⁰

These Constitutional provisions were noticeable in other states as well. Article 3, Section 35(b) of the Texas Constitution reads: ‘The rules of procedure of each house shall require that the subject of each bill be expressed in its title **in a manner that gives the legislature and the public reasonable notice of that subject.** The legislature is solely responsible for determining compliance with the rule’ (emphasis added).³⁰¹ It is interesting to note that both the legislature and the general public were mentioned in this statement, as it clearly establishes that the laws of Texas are not written just for lawmakers or authorities, but for the citizens of the state as well. And, in doing so, the

²⁹⁸ *Northern Wasco County PUD v. Wasco County*, 210 Or. 1, 305 P.2d 766 (1957); *State v. Williamson*, 4 Or. App. 41, 475 P.2d 593 (1970). Citation from the Oregon Drafting Manual. 2008. Section 5.2. Available at: <http://www.lc.state.or.us/pdfs/BillDraftingManual/dmchp5.pdf>

²⁹⁹ *Anthony v. Veatch*, 189 Or. 462, 220 P.2d 493, 221 P.2d 575 (1950). Citation taken from the Oregon Drafting Manual, Section 5.2. Available at: <http://www.lc.state.or.us/pdfs/BillDraftingManual/dmchp5.pdf>

³⁰⁰ *Warren v. Marion County*, 222 Or. 307, 353 P.2d 257 (1960) (citations omitted). See also *Croft v. Lambert*, 228 Or. 76, 357 P.2d 513 (1961) Citation taken from the Oregon Drafting manual, section 5.2. Available at: <http://www.lc.state.or.us/pdfs/BillDraftingManual/dmchp5.pdf>

³⁰¹ Texas Const. art. III, § 35(b). Available at: <http://www.statutes.legis.state.tx.us/Docs/CN/htm/CN.3.htm>

statement puts responsibility with the legislature to be sure that these rules are complied with.

Washington also has the one-subject clause in its Constitution. In 1952 a Washington State Court of Appeal decided that ‘the purposes of the constitutional provision are to: (A) Protect and enlighten members of the legislature; (B) apprise the people generally concerning the subjects of legislation being considered’.³⁰² Again the legislature and the general public are used in conjunction with one another, and not treated as if they are inherently independent entities. This theme of interdependence will be an increasingly important as this thesis progresses, and is therefore vital to note at this juncture.

Kentucky is another state that takes bill titling seriously and also has a Constitutional single-subject provision. It notes that ‘No question of the form of legislation comes before the courts more persistently than the validity of titles to acts. The constitutional provision for titles is mandatory, and failure to comply with it will invalidate a measure’.³⁰³ Further, it states that the ‘the title of a bill should be broad and general because any provision of a bill that has a natural connection with the subject expressed in the title is valid’, but also notes that ‘It must not be so broad, however, as to be misleading. Any title that misleads makes the act void’.³⁰⁴ New Mexico even acknowledges in its manual that ‘There are two schools of thought concerning the drafting of titles. The first school, which has gone out of favor over the last couple of decades, believes that a title should be written as tightly as possible; this has the effect

³⁰² *Rourke v. Dept. of Labor & Ind.*, 41 Wn.2d 310, 312 (1952). Taken from: Washington Bill Drafting Guide, 2009. Office of the Code Reviser, Washington State Legislature, Part II, Section 7, Bill Titles. Available at: http://www.leg.wa.gov/CodeReviser/Pages/bill_drafting_guide.aspx

³⁰³ Bill Drafting Manual for the Kentucky General Assembly. (2011). Chapter 2, Form of Bills, Section 202, p. 5. Legislative Research Commission, Frankfort, KY. Available at: <http://www.lrc.ky.gov/lrcpubs/IB117.pdf>

³⁰⁴ *Id.*

of severely limiting amendments to the bill. The other school holds the opinion that titles should be general in nature, with only enough detail to inform the reader of the contents of the bill'.³⁰⁵ But there appears to be a third school, the federal school, where no drafting conventions are followed and (clandestinely) the more evocative, emotive, and/or misleading the short title, the better.

Other states were concerned about inflammatory language being used in bill titles (perhaps from the plethora of federal examples), and thus provided recommendations to avoid it. Maine declares that 'The title of a bill should state the subject of the bill in an objective manner. Avoid using inflammatory or biased language in the title, such as 'An Act To Improve the Moral Character and Health of the Citizens of Maine by Prohibiting the Drinking of Liquor on Sunday.' The Revisor of Statutes has authority under the joint rules to correct inaccurate, generalized or misleading bill titles.'³⁰⁶ This again is in contrast to federal legislation, which often uses morally descriptive words (i.e. responsibility, accountability), or overtly moral phrases (i.e. Helping Families Save Their Homes Act³⁰⁷).

Thus although bill titles may look as if they are easily drafted, there are important constitutional provisions and other recommendations implemented by various states in the US. The art of drafting bill titles is perhaps summed up best by a statement from the Alaska drafting manual, which states that 'The title looks like a simple label. It is not, however, an inconsequential part of the draft. There are many requirements it must meet. If they are not met, the entire bill may be invalid'.³⁰⁸

³⁰⁵ New Mexico Drafting Manual, *op. cit.*, p. 21.

³⁰⁶ Maine Legislative Drafting Manual. (2009). Legislative Counsel, Main State Legislature, p. 13. Available at: <http://www.maine.gov/legis/ros/manual/Draftman2009.pdf>

³⁰⁷ Helping Families Save Their Homes Act, Pub. L. No. 111 – 22, 123 Stat. 1632.

³⁰⁸ Alaska Manual of legislative Drafting. (2007). Legislative Affairs Agency. p. 10. Available at: <http://w3.legis.state.ak.us/docs/pdf/DraftingManual2007.pdf>

The above chapter has detailed parliamentary rules and procedures in relation to short titles for all three jurisdictions studied. In doing so it has accentuated some of the main actors in the short titling process, detailed how such names come about, and also described some of the most important legislative processes moments in relation to short titles. Private Members' Bills were covered in the Westminster spotlight section, while personalised bills as commemorations and state legislative drafting standards were covered in the US Congress' spotlight sections. The next chapter presents the results of this thesis in sequential order for all the qualitative and quantitative hypotheses presented in Chapter II.

Chapter V: Results

The results of this project span a wide net for such an intricate, specialized topic of study. The subject of bill naming has many legal and political implications for each jurisdiction's legislative structure, legislative processes and statute books. Also involved are the psychological aspects of language and naming, because short titles are likely to affect those who encounter them on both a conscious and unconscious level. Below I return to the eighteen hypotheses for the qualitative and quantitative portions of this thesis along with the data either supporting or challenging them. Many of these directly correlate with the research questions located in Chapter I of this thesis. For each hypothesis the results are separated by jurisdiction, and are examined in the following order: UK Parliament, Scottish Parliament, US Congress. There were occasions where one or two key words could easily encapsulate some of these responses, but the inclusion of a longer piece of text is designed to show that the author has not taken anything out of context or misrepresented any interviewee statements. At the end of every hypothesis a short descriptive summary of the results is provided. The next chapter includes an analysis and discussion of this data, and focuses on key themes among and between countries.

Hypothesis 1: Legislative insiders¹ and media members from the UK and Scotland will state that short titles still serve their original referential purpose. Legislative insiders and media members from the US will state that short titles do not just serve their original referential purpose, but have multiple purposes.

United Kingdom

A majority of UK respondents (nine of fourteen) contended that names still served their original purpose, thus supporting the hypothesis. Yet many caveats were made: even those who believed them to be referential had many practical and policy concerns.

Some MPs wished to have short titles that were ‘easily remembered’ because long titles are too difficult to reference,² and wanted titles differentiated over time, because many tend to be given similar names.³ One MP observed that sometimes the only defining characteristic distinguishing short titles is the ‘year by which they were passed’.⁴

Interestingly, only one member took the public into consideration when he declared short titles ‘should be informative, that’s the most important thing about it. And it

¹ This was already detailed in the methods section, but as a reminder, it refers to the individuals on the legislative side of the Westminster Parliament that the candidate interviewed for his qualitative data (MPs and a drafter). Also, this term is also used in relation to the Scottish Parliament and the US Congress. In Scotland it refers to the legislators, drafters, a House Authority and a policy analyst; and in the US it refers to legislators and staffers.

² HC4 (House of Commons member 4)

³ HL3 (House of Lords member 3)

⁴ HC2 (House of Commons member 2)

should give some clarity to people who are not necessarily directly involved, can understand what the point of it is, or what the context of it is'.⁵

Others focused on the policy aspects of short titles. A LibDem MP declared that 'there has always been an element, certainly in my political lifetime, which now goes back to 1980, of governments using the short title to make a political point', but went on to say that their primary function was referential.⁶ Agreeing they were mainly reference points, a Lords member added that 'there's obviously some attempt to make them more evocative so they can resonate better in the public eye'.⁷ Other MPs were more cautious: one stated that 'it's wrong really to try and incorporate political sloganising[sic] into the title of a bill' and further noted, 'the fact that a bill exists to have a political purpose doesn't mean it delivers that purpose'.⁸ Comparing titles to their transatlantic neighbour the US, a Lords member noted 'I don't feel particularly strongly about following the American line, although I think it can easily get gimmicky, almost Disneyland in the extreme use of language'.⁹

However the only UK Parliament drafter interviewed, and the only one who actually drafts short titles, believed that names served multiple purposes. When responding to this question he hesitated for a moment, and then expressed the opinion that short titles were indeed employed to identify legislation. When asked why he hesitated before his answer he provided an intriguing response:

'Well, I mean there is a tendency...there is and there always has been a tendency for ministers to want labels for their bills that immediately tell

⁵ HC5 (House of Commons member 5)

⁶ HC1 (House of Commons member 1)

⁷ HL1 (House of Lords member 1)

⁸ HC6 (House of Commons member 6)

⁹ HL2 (House of Lords Member 2)

people what they are about from a political point of view. And there is always this tension, as legislating is a political process. Um...there's a view that it should be left to lawyers, and there's a view it should be left to politicians. But in fact there has to be a balance between the two. The whole purpose of legislating is to give effect to government policy. I mean it's part of the political process and so it has a political element in it. Um, and yet legislation itself depends on its effectiveness in being regarded as...um...in a positivist way as law. And so you have to balance the purpose of...the purpose of legislation which is to change the law, and the purpose of legislating which is to give effect to policy.'¹⁰

This was perhaps the most insightful answer that I received to this question, because it demonstrates the genuine struggle between law and the legislative process. I followed up with a question about whether or not the UK Parliament has a good balance between these two at the moment, and he said that they were getting it 'about right'.¹¹

Also recognizing the tension between legal and political forces, a Labour MP declared that 'my understanding is that on occasions, departments have tried to use these more descriptive titles, the sorts that you find in the United States of America, but that...these more evocative titles, but the Parliamentary authorities here have protected the unwritten convention that we don't use these'.¹² Notice that he used the words 'unwritten convention'; while UK short titles are not too evocative in nature, it was

¹⁰ UKBD1 (United Kingdom Bill Drafter 1).

¹¹ *Id.*

¹² HC3 (House of Commons member 3)

observed in the previous chapter that Westminster does not have a written set of regulations or prohibition on such titles. Of course, the role of uncodified conventions is a constitutional motif in the UK, but it is interesting to find it at this regulatory level.

Parliamentary journalists mostly agreed with the notion that short titles are referential in nature. One tabloid reporter said that they tend to have ‘long, boring names’ in the UK, and suggested they are ‘way behind America’ in terms of using evocative bill titles.¹³ Concurring, one journalist said that they ‘use very legalistic...very legal, descriptive names’,¹⁴ while another said that ‘broadly’ they are used as referential points.¹⁵ Attempting to explain the rationale behind bill naming, a journalist suggested that ‘lawmakers, when they’re dealing with law want to deal with it rationally, and sanely and with a long time-frame in mind. So, they’ve kind of veered away from giving them nicknames or short-code names’.¹⁶

Yet some media members declared it is not only the evocative or promotional titles that should be focused on: one reporter stated that the blandly-labelled Terrorism Act was a very simple name but had some extremely contentious issues in it.¹⁷ When she expressed this sentiment the other reporter being interviewed with her chimed in,¹⁸ saying ‘It’s a good example of how naming a law can simplify the message and gets the message out quite quickly. At the same time it hides a lot of stuff as well’.¹⁹

¹³ UKMM1 (UK Media Member 1)

¹⁴ UKMM4 (UK Media Member 4)

¹⁵ UKMM3 (UK Media Member 3)

¹⁶ UKMM4

¹⁷ UKMM5 (UK Media Member 5)

¹⁸ This was the only instance where two people were interviewed at once. I contacted them both individually, but on the day of the interview they insisted on performing the interview together.

¹⁹ UKMM4 (UK Media Member 4)

Scotland

The hypothesis in Scotland was supported by most: ten out of twelve of interviewees maintained that short titles still serve primarily as reference points. Only two interviewees disagreed, a journalist and an MSP.

One SNP member suggested that short titles should be more descriptive and less general, and gave an example of how one bill started as the Bankruptcy Bill, but was then later changed to the Debtors Home Act, to make it more relevant to the general public.²⁰ He further noted that ‘legislators tend to be...more introspected [sic], and look at what the bill means from their perspective, rather than looking at what the bill might mean from the public’s perspective. And I think it’s beginning to shift in the UK...particularly it’s beginning to shift in the Scottish Parliament, which is a lot more open and accessible to its people’.²¹ Another SNP colleague agreed, adding that naming bills has ‘been tightened up quite a lot in the past few years’, and especially when it comes to ‘having them reflect what they actually do’.²² However, most of the other MSPs gave short answers to this question, asserting that titles still do mainly serve as referential points.²³

One experienced drafter said that ‘because of the sort of constraints around them, that is what short titles are really. They are a label and a descriptor of what a

²⁰ MSP2 (Member of Scottish Parliament 2)

²¹ *Id.*

²² MSP3 (Member of Scottish Parliament 3)

²³ MSP1 (Member of Scottish Parliament 1), MSP4 (Member of Scottish Parliament 4), MSP5 (Member of Scottish Parliament 5), MSP6 (Member of Scottish Parliament 6), MSP7 (Member of Scottish Parliament 7)

piece of legislation is. That's what they have to be in the Scottish Parliament'.²⁴

Another drafter stated the same, suggesting they 'are very necessary, simply from the point of view of finding anything, and trying to find anything that might be relevant to a particular topic'.²⁵

A Scottish House Authority supported the above statements, declaring that 'the main purpose of a bill, the short title of a bill, is to say, in as short a way as possible, what the bill does, and to act as an index in the UK statute book'.²⁶ Others agreed, suggesting that this is even more so in Scotland, because their 'hands are fairly tied by the outstanding set of protocols that bills names must describe, fairly succinctly, what they do. And, there's not really a lot of scope, even if we want to, to start using... certainly to do anything that might suggest that it has a wider effect than it does'.²⁷

Scottish media members were mostly in agreement with short titles being primarily a referential device: one stated that 'it always seems that...the titles are fairly concise, and do refer, specifically, to what the bills are about. I don't think they try to disguise anything in the titles. It's usually fairly straightforward'.²⁸ Another journalist maintained that the titles 'should be pretty straight' when they are drafted.²⁹

United States

²⁴ SCTBD1 (Scottish Bill Drafter 1)

²⁵ SCTBD2 (Scottish Bill Drafter 2)

²⁶ SCTGOV1 (Scottish Governmental employee 1)

²⁷ SCTGOV2 (Scottish Governmental employee 2)

²⁸ SCTMM1 (Scottish Media Member 1)

²⁹ SCTMM2 (Scottish Media Member 2)

The hypothesis regarding US legislators and media members was largely supported. Most took the view that short titles are multi-dimensional or do not serve merely a referential purpose, although reasons for justification varied. A minority of six respondents (out of eighteen) took the view that the effect of short titles was primarily or wholly to serve their original referential purpose.

From the outset of the American interviews it was apparent that some interviewees were very concerned about the current state of bill titling. One legislative staffer suggested directly from the start of the interview that ‘there should not be names on bills. They should have numbers on them, and that’s what should be used’.³⁰ When asked why, he declared that ‘because sometimes they give the wrong impression of what’s actually inside the bill, language-wise’³¹ – an explicit condemnation of some trends in contemporary bill names. This perception was provided support by a Congressman who stated that with ‘almost every bill, they try to come up with some type of motherhood or apple pie title to it, so that everybody will vote for it’, and further noted that ‘a lot of times a bill might sound like a wonderful thing, but it might be a duplicate of what we are already doing’.³²

Others provided less cynical responses: one US Congresswoman contended they are ‘referential...kind of a populist way of talking about things’,³³ and another staffer declared that, ‘with some of the more controversial or noteworthy pieces of legislation, there is a conscious effort to come up with some kind of short title that will either play well in the media circles, or allow the piece of legislation to be readily

³⁰ HOUSESF1 (House Staffer 1)

³¹ *Id.*

³² MCON2 (Member of Congress 1)

³³ MCON1 (Member of Congress 1)

recognizable'.³⁴ Yet even the majority of those who thought that short titles were more referential in nature acknowledged that some titles still served a 'branding purpose'³⁵ or were sometimes used for 'political gain'.³⁶ Apparently referring to this branding and political gain perspective, one staffer testified that 'there's so much more that you can do with a name now',³⁷ while another staffer stated that 'clearly the use of acronyms has become much more commonplace, to the extent that short titles are, or even that the names of legislation themselves are somewhat manipulated or tortured in ways to create an acronym that is...you know, more useful'.³⁸ This staffer actually went on to provide two examples of bills that his office has recently sponsored that employed acronyms.³⁹

Although two media members thought that titles had remained primarily referential in nature, other interviewees strongly disputed the point. A variety of perspectives were displayed, with some suggesting they were primarily propaganda tools or framing devices employed to gain political advantage. One newspaper journalist said that 'it's consistent with a kind of populist streak in American politics...that may in some ways distort the process',⁴⁰ while another commented that 'there's this sort of post-modern quality where there's a label that is supposed to have its own intent, that may or may not have anything to do with the content of the legislation'.⁴¹ These statements explicitly criticise the methods employed when naming

³⁴ HOUSESF2 (House Staffer 2)

³⁵ HOUSESF3 (House Staffer 3)

³⁶ HOUSESF4 (House Staffer 4)

³⁷ HOUSESF5 (House Staffer 5)

³⁸ HOUSESF6 (House Staffer 6)

³⁹ *Id.*. Bill titles not revealed for confidentiality purposes.

⁴⁰ USMM1 (United States Media Member 1)

⁴¹ USMM2 (United States Media Member 2)

bill titles in the US, and have implications for the legislative process on the whole.

Others interviewees agreed and expanded on these views.

A magazine journalist stated that ‘now their purpose is mainly spin, you know. When you title something the ‘USA PATRIOT Act’ or something, you know, that doesn’t so much reflect the underlying substance of the bill, as it does turn it into a political issue, where if you vote against the bill, you’re voting against patriotism, you’re voting against the USA. So, it’s become kind of a pressure system in a way ...almost Orwellian in the literal meaning of the word.’⁴² In terms of using titles as propaganda props, others agreed. As one journalist went on to say, ‘I think that there are propaganda purposes if you want to use it that way, and there are ways that...um...increasingly I think, although I haven’t done a historical study, that members of Congress, or their staff, or whoever crafts these things, they make efforts to put a title on a piece of legislation that would cast it in the most favourable light in terms of public opinion’.⁴³

Consistent with the thrust of the framing literature in Chapter III, one journalist stated that ‘I think their primary purpose is as a framing device for proponents of the bill...to help the media, or to coax the media to portray the bill in a favourable manner.’⁴⁴ Another journalist noted that one major change over the years is that bills started to get named after individuals, usually lawmakers, to impress or flatter their colleagues, which is perhaps the most expedient of all framing devices.⁴⁵ It was mentioned earlier that this phenomenon also occurs with bills citing crime victims and

⁴² USMM6 (United States Media Member 6)

⁴³ USMM9 (United States Media Member 9)

⁴⁴ USMM7 (United States Media Member 7)

⁴⁵ USMM4 (United States Media Member 4)

other sympathetic figures. This same journalist also elaborated on how naming has changed over the years:

‘Well, they’re not simply descriptive, they’re advocacy. The name, for instance, you mentioned the ‘No Child Left Behind Act’...uh...the real name of that law, or the law onto which that name was grafted, was called the ‘Elementary and Secondary Education Act of 1965’. Now, President Johnson, who championed that act and signed that act in 1965, right...he was someone you could say who was at least as ambitious as the Texan who signed the ‘No Child Left Behind Act’. President Johnson had a very ambitious social agenda in the United States. But, the law was called, very blandly, ‘The Elementary and Secondary Education Act’, which describes what it is. Now this ‘No Child Left Behind Act’, if you were to say that, it 1) doesn’t tell you as much as elementary and secondary education act, because...left behind what? Left behind who? It’s sort of...it begs a question. It doesn’t tell you it’s about education, particularly. It could be about relay races. It could be about video games. It could be about field trips, you know. Maybe it’s an act to prevent children from getting lost when their class goes to the museum on a field trip, you know, there are all kinds of things. But, it seems to me that it is intended, from a rhetorical or propaganda point of view, difficult to be opposed to it, because how could anyone be in favour of leaving children behind?’⁴⁶

Although there were a minority group who disagreed, from the perspectives of legislators, staffers, and media members, it is quite apparent that short titles in the US

⁴⁶ *Id.*

are seen as multidimensional. These titles have blossomed into something more, and many people, including members of Congress, believe that they serve as populist aspirations, framing devices and propaganda tools.

Summary – Hypothesis #1

There was a large discrepancy between the US and UK in regards to this hypothesis. Interviewees from Westminster and Scotland believed short titles are still primarily referential, thus confirming the above hypotheses, while those in the US mostly believed that short titles are not just referential placards. Many media members in the US went so far as to call such naming techniques propaganda and/or spin. This is not too surprising, because the frequent evocative style of US short titles is well documented throughout the first four chapters of this thesis, while the more innocuous style of Westminster and Holyrood is also well chronicled.

Hypothesis 2: Legislative insiders from all jurisdictions will state that titles of legislation, whether evocative or not, are not misleading and could not be construed as misleading. Media members from all jurisdictions will state that many titles of legislation are misleading, and could be construed as misleading.

United Kingdom

The hypothesis in relation to legislative insiders was challenged in the UK: surprisingly, five out of ten stated that short titles are at times misleading, including the drafter interviewed. Two other interviewees said that they were uncertain if names were sometimes misleading. Therefore, only three of the ten legislators interviewed stated that short titles were not in their experience misleading. Most of those interviewed did not think that this was happening on a large scale throughout the UK, but in limited instances. Short titles are just that, short, and in a few words may not be able to accurately describe a piece of legislation.

In reference to Westminster's current titles, a Lords member declared that he was 'very happy with those kind of names. They may not be sexy, but they explain to everyone what they're talking about. And I think that is actually much more important than making it sound sexy'.⁴⁷ A Conservative MP agreed, stating that the UK does not have misleading bill titles, because 'the Speaker and the deputies wouldn't have it',⁴⁸ while a Lords member reiterated this point, adding that 'the bulk of most bills does contain what you would expect to find there having read the title',⁴⁹ while another MP noted that they 'can be a bit misleading',⁵⁰ but only because of the many amendments introduced during the passage of legislation, rather than because of the original content of the bill.⁵¹

Another notable point was made by a Lords member, who stated that identifying misleading titles 'would tend to be a political judgment',⁵² and went on to

⁴⁷ HL1

⁴⁸ HC7

⁴⁹ HL2

⁵⁰ HC2

⁵¹ HC3

⁵² HL3

explain that the Prevention of Terrorism Bill is ‘not, obviously, a straight-forward, neutral description, as we’re all against terrorism, aren’t we? So, prevention of terrorism sounds like a good theme to me. But, there could easily be aspects of the bill which far from preventing terrorism could actually foster it. I’m not saying that that would be a deliberate intent of the bill, but it could do. So, to that extent titles could be misleading...I suppose. But, I don’t think they deliberately mislead’.⁵³ Others expressed scepticism about the Prevention of Terrorism Acts as well: one member called it the ‘most questionable’ name in the UK statute book.⁵⁴

The drafter interviewed stated that the only one he could think of was a private member’s bill a few years back.⁵⁵ The bill in question was for increasing amenities in betting shops to make them more comfortable, and when it was first brought up it was objected to. The short title was changed a day later and the bill was once again put to Parliament with the same content, **the second time passing with no objections, because nobody knew what was in the legislation!** (emphasis added)⁵⁶ The drafter goes on to mention that at times legislators do ask for particular titles that may be misleading. He explained that:

‘there’s always this tension between the fact that bills are enacted to supplement the implementation of policy. And very often the bulk of the policy is in the non-legislative bit of the implementation. And the bill is all in the implementation bit. And that is sometimes where you get asked

⁵³ HL3

⁵⁴ HC6

⁵⁵ UKBD1

⁵⁶ UKBD1 stated that it was titled the ‘Betting and Gaming Amendment Act’, but was not sure of the exact short title. Examining a House of Commons Fact Sheet, he may perhaps be referring to the Betting Gaming and Lotteries (Amendment) (No 2), which was presented by Sir Ian Gilmore in the 1983-84 Parliamentary Session.

to produce misleading titles, because the politicians are thinking about the whole package, and you're thinking about the little bit of the package that's doing the legislation, and it can be misleading if you make out that the little bit is about the whole package rather than the little bit. But, normally those are resolved just by pointing out that we have to give it a title that relates to the contents of the bill than the contents of the whole policy initiative'.⁵⁷

Some MPs were forthcoming in regard to bills they thought were misleading. One LibDem member berated the Parliamentary Standards Bill as nothing more than parliamentary privilege, and then went on to attack the Identity Cards Bill, declaring 'identity cards are a fraction of that bill. If you really wanted to give that bill an accurate title, it ought to be The Identity Cards National Identity Register and National Identity Database Bill'.⁵⁸ Another Conservative MP derided the Coroners and Justice Bill for not being much about justice, and little about coroners.⁵⁹ Another MP stated, 'What bothers me is that the title of one of these things is a populist placebo, to give the impression that a bill has done something. Whereas the detail might tell you it hasn't or its application might tell you it hasn't'.⁶⁰

Media members were strongly split on the issue, but did give answers which supported the second hypothesis. Three of the five interviewed opined that short titles were sometimes misleading, and two thought they were not. The joint interview was interesting: the two journalists disagreed on whether or not certain titles were

⁵⁷ UKBD1

⁵⁸ HC1

⁵⁹ HC4

⁶⁰ HC5

misleading. One stated that he could not think of any,⁶¹ but the other reporter actually brought with her a list of laws she thought were misleading. She cited the Regulation of Investigative Powers Act,⁶² which she said ‘basically allows the government to snoop on your emails’.⁶³ She also cited the Protection from Harassment Act,⁶⁴ which presumably treads a very ‘fine line’ between what they categorize as harassment and other non-threatening behaviours, such as repetitive emails from a protest group.⁶⁵ Finally, she mentioned the Racial and Religious Hatred Act 2006,⁶⁶ and the two journalists disagreed on this one: UKMM 4 said that the bill ‘says what it does on the tin’⁶⁷ while UKMM5 said that it ‘failed’ and went ‘much further’ than many lawmakers led people to believe.⁶⁸ Another journalist could not think of any concrete examples, but said that ‘**when they are removing our civil liberties they will say like Safeguarding the Public Act**’ (emphasis added),⁶⁹ implying that the government and/or drafters were grossly misleading the public on the content of the legislation.

Scotland

⁶¹ UKMM4

⁶² Regulation of Investigatory Powers Act 2000 c.23. Available at: <http://www.legislation.gov.uk/ukpga/2000/23/contents>

⁶³ UKMM5

⁶⁴ Protection from Harassment Act 1997 c.40. Available at: <http://www.legislation.gov.uk/ukpga/1997/40/contents>

⁶⁵ *Id.*

⁶⁶ Racial and Religious Hatred Act 2006 c.1. Available at: <http://www.legislation.gov.uk/ukpga/2006/1/contents>

⁶⁷ UKMM4

⁶⁸ UKMM5

⁶⁹ UKMM1

The hypothesis was supported regarding Scottish legislators: five out of nine said that short titles were not in their experience misleading. Two legislators, however, did take the view that a select few of titles were misleading, and two bill drafters did not provide a definitive answer on the matter. Media members discounted the above hypothesis: two declared that titles were not in their experience misleading, one was uncertain, and one believed them to be all misleading.

A Scottish Labour MP said that some titles dealing with education appear misleading, but argued that ‘very few’ do this, and that people ‘generally get an idea of what it’s doing’.⁷⁰ Another MSP expressed that on the whole the Parliament names are ‘quite boring and straightforward. So, we usually generally understand what they mean’.⁷¹ But most MSPs just gave short, decisive answers that most of the bill names in the Scottish Parliament were not misleading.⁷²

One of the drafters was at a loss for examples of short titles from the Scottish Parliament that may be misleading, but used an example from the UK Parliament in the 1980s of one that could be considered as such. The bill in question was the Abolition of Domestic Rates, etc. (Scotland) Act 1987, which he said dealt with the abolition of said rates in section one, but also was ‘a huge act, introducing an entire new tax’ throughout the rest of the legislation.⁷³ He goes on to say that the tax was ‘very controversial’ and eventually the statutory provision was repealed.⁷⁴ The Act remains infamous in Scotland: it so happens that the tax quickly became known as the ‘poll tax’, a name by which most media at the time routinely referred to the legislation.

⁷⁰ MSP5

⁷¹ MSP3

⁷² MSP1, MSP4, MSP7

⁷³ SCTBD1

⁷⁴ *Id.*

A Scottish House Authority provided an excellent example about a bill that was potentially misleading, but which the House authorities changed. It was in regard to the Standards in Scotland's Schools Bill, which eventually became an Act in 2000. He stated that 'the government's preference was for that to be called...the Improvements in Scotland's Schools Bill. To us that was very much a policy statement. That was about selling this as something better'.⁷⁵ Eventually they had to change the Bill before it was introduced to Parliament. This is an interesting revelation and there will be more about this in the Discussion section below, as having House Authorities provide input on the naming of legislation appears to have many benefits. This same interviewee went on to proclaim that 'I do still have a residual concern that Standards in Scotland's Schools was probably a bit of a compromise on our part. Because, if that was coming from me now, I would certainly question it on the basis that it has the feel of being a policy statement, because of the use of the word "Scotland's" in that way', and he noted that it is somewhat nationalistic, given that Scotland cannot legislate for any other countries schools, so there is no need to use it.⁷⁶ He further noted that the present title still 'has a feel of it being a bit of spin...a bit of policy statement, rather than just a pure, straightforward title of a bill'.⁷⁷

Another drafter maintained that 'in terms of titles that have actually gone through, probably not', but did proclaim that 'Occasionally, just to keep a title short, quite an important part of its content isn't mentioned at all except as an "etc.". So this is

⁷⁵ SCTGOV1

⁷⁶ *Id.*; This is also a common occurrence in American legislation, as many bills/acts have the word America/n in them, as if they had to differentiate or clarify that they were already legislating in the United States Congress.

⁷⁷ *Id.*

slightly misleading there. But, at least people know there's an "etc." there and people know to look at it'.⁷⁸

The hypothesis for media members was challenged outright: only one of the Scottish journalists interviewed said that some short titles were misleading. Most of them said that they could not think of any 'off the top of their heads'.⁷⁹ Nevertheless, some interesting comments resulted from this question. One reporter said that he could not think of any specifically, but that it did sound familiar in terms of the environment and conservation in particular. He noted that 'people have very different ideas about how to conserve things, and the legislators will put a positive spin on what they are trying to do in the environment in that sort of way', and went on to state that it is 'clear in that case that they are taking a name and...by just delineating the subject matter they can get away with it I suppose'.⁸⁰

Another journalist noted that 'almost all' titles are misleading, suggesting that 'anything containing the word "reform" for example – since legislation is really defined as "changing something" it is all reform. Or anything with the word "defence" – again, almost always about attack. Oh, and anything saying regulation – which usually means some kind of opposite'.⁸¹

United States

The hypothesis in regards to American legislative insiders was thoroughly challenged: they were very eager to conclude that short titles were often misleading. In fact, only

⁷⁸ SCTBD2

⁷⁹ SCTMM1; SCTMM2; SCTMM3

⁸⁰ SCTMM2

⁸¹ SCTMM4

one legislator believed that such names were not, although this result often felt like partisan bickering: those from opposing parties would declare each other's titles misleading.

Most importantly, both of the US Congresspersons interviewed said that bill names were often misleading. One said that 'it happens a lot with popular naming of bills'⁸² and the other declared that 'you can make a legitimate argument that most of these bills that have some tear-jerker type names are misleading'.⁸³ Both of them went on to mention the No Child Left Behind Act as an example of a misleading title.

Some staffers remarked that names were misleading, but many of their rationales appeared to stem from different interpretive frames. A Republican staffer thought that the American Recovery and Reinvestment Act was misleading: he deemed it a 'stimulus' bill, and believed the Act was a 'failure'.⁸⁴ Another staffer dramatically proclaimed that they had 'grave' concerns over the recent energy (cap and trade) legislation, entitled the American Energy and Security Act, as to whether that title really does what it proclaims to do.⁸⁵

Perspectives differed on the issue, however: one staffer declared, 'in my experience the name does seem to capture what the intent of the legislation does'.⁸⁶ Other staffers suggested that occasionally titles are misleading, but claimed that they could not think of an example at the time and that it does not happen often. One bold legislative staffer actually offered his own office's bill up as misleading, suggesting that a certain phrase located in the title of the legislation did not do what it

⁸² MCON1

⁸³ MCON2

⁸⁴ HOUSESF3

⁸⁵ HOUSESF1

⁸⁶ HOUSESF2

proclaimed.⁸⁷ He talked so candidly about the issue that he presented naming as if it was a political game rather than the inscription of law, and argued that it was up to legislators and their staffs to figure out whether or not a bill actually did what it said on the tin.

Surprisingly more media members than legislative insiders maintained that short titles were not misleading. Yet the hypothesis was supported nonetheless: a majority of journalists took the view that such names were indeed misleading. Also, it is of note that many of them focused on the legislative process in relation to this issue.

Some journalists believed that many titles were outright deceptive. One remarked that ‘the ‘Clean Air Act’...was actually the opposite. It was a way for polluters getting around having to refit coal plants’.⁸⁸ Another said that ‘they’re all misleading’, and that ‘some of them are just pure propaganda’,⁸⁹ while others stated that ‘it happens all the time’, and ‘it is a form of propaganda’.⁹⁰ An experienced journalist explained that ‘there’ll be bills that maybe the energy industry supports which say the something legislation, you know the Energy Independence Act, or something like that, when in fact it’s a bill, whose main purpose is to promote the oil or petroleum industry or something like that’.⁹¹

A few of the other journalists, however, did believe that legislators were being intentionally deceptive or seemed somewhat indifferent to the matter. One stated that ‘it’s hard to know whether that’s the result of intentional efforts to mislead people, or just the nature of the legislative process’, and later expanded on this by stating, ‘So, I

⁸⁷ HOUSESF6. Phrase was omitted due to confidentiality concerns.

⁸⁸ USMM2

⁸⁹ USMM3

⁹⁰ USMM9

⁹¹ USMM5

don't know that they're really trying to hide it. It's often that that's the nature of the machinery that enacts laws'.⁹² This argument is reasonable: at times it is difficult to sum up the totality of a bill within a few words and be accurate while doing so.

Summary – Hypothesis #2

Overall there were a couple of surprises in the results to this hypothesis. Even though Westminster employs relatively bland, straightforward titles, over half of the legislative insiders interviewed thought that short titles were misleading and a majority of media members did as well. Nonetheless, the Scottish Parliament, which between the jurisdictions of this thesis employs the most accurate titles, was the only legislative body in which a majority of both legislative insiders and media members stated that short titles were not misleading. However, individuals from both the UK and Scotland provided examples of titles that were misleading, although more subtly so than in the US Congress. In the US more media members than legislative insiders believed that short titles were not misleading, and all US legislative insiders but one said that many titles were misleading.

Hypothesis 3: Legislative insiders from all jurisdictions will state that evocative naming does not have an impact on the measure's chances of it becoming law. Media members from all jurisdictions will state that evocative naming does have some type of impact on a measure's chances of becoming law.

⁹² USMM4

United Kingdom

Legislative insiders from Westminster were surprisingly split on this issue: five out of ten interviewees thought that at least sometimes a measure's chances of becoming law was affected by the title, thus exposing a challenge to the above hypothesis. Even though, comparatively, the titles of Westminster bills are much less evocative than US Congressional short titles, it seems that lawmakers still believe they sometimes have an impact on passage.

Many of those in the UK who were particular about legislative titles were nonetheless reluctant to conclude that the names affected whether or not a measure became law. The drafter interviewed did not believe titles had an effect on whether a bill passed through Parliament successfully, but added that it 'may set the tone of the debate on the bill...because, people will talk about the bill as if it is about what its title says it is'.⁹³ One LibDem MP agreed, noting that a good name could 'have a marginal effect', but that when it really mattered was when people were building coalitions for certain bills, and 'having a title like the Sustainable Communities Bill...it was a hook on which they could hang their case very easily'.⁹⁴ Another MP concurred, proclaiming that titles 'possibly have an impact from the wider community out there, because if it's a bill that has a[sic] resonance...Climate Change Bill, Sustainable Communities Bill...then the interest groups will immediately know that that is their bill, that's their focus'.⁹⁵

⁹³ UKBD1

⁹⁴ HC1

⁹⁵ HC4

A Lords member maintained that some names could affect whether they become law, because in his view, ‘in some bills the title is deliberately chosen to evoke support or to elicit support’,⁹⁶ and a LibDem member saw an obvious advantage of using evocative naming, declaring that ‘governments use those kinds of titles in order to a) prove to the popular media that they have taken action on an issue of current public concern, and to some extent pressurize both their own supporters and the opposition that this is not something you can stand against because the popular media are in favour of it, and the name of the bill is certainly a cause for that’.⁹⁷ This same member went on to state that ‘there’s an argument, if I’m that cynical... **that you could just...pass the title and not bother with the bill**’ (emphasis added).⁹⁸ Others affirmed the above statements: a Conservative MP stated that it matters at the margins, and explained that ‘It means that your constituents are more likely to pressure you. And that the pressure groups, and the charities and other organizations are likely to whip-up lobby groups in order to support or object to a particular bit of legislation. Then, the name clearly is evocative, and matters’.⁹⁹

Two of the three UK journalists interviewed maintained that short titles do not have an impact on a measure’s chances of becoming law, thus challenging the third hypothesis. In relation to the Anti-Terrorism, Crime and Security Act, one tabloid journalist said that the name would not even be mentioned in an article in his paper, and thus would not have much effect on either the public or legislators.¹⁰⁰ Another reporter said that they are not usually given these titles because media conventions would

⁹⁶ HL3

⁹⁷ HC5

⁹⁸ *Id.*

⁹⁹ HC7

¹⁰⁰ UKMM1

essentially deter them from doing so; he declared that ‘any bill which has a title...which seems deliberately intended to act as a sort of propaganda, or have a propaganda purpose behind it, will provoke scepticism from the media. Given that the media are pretty hostile to politics and politicians, pretty suspicious of their motives, if you give a bill a silly title, like “Every Child Matters”, then the media are going to be extra hostile to it. Because they will regard that as spin, propaganda and public relations. So, you’re actually much better off just giving it a neutral title, and making the arguments on their merits’.¹⁰¹ This is an interesting perspective on the power of the UK media to be used as a check on government operations, and especially in relation to overly political language.

The journalist who answered in the affirmative took the view that naming could potentially have an impact on a measure’s success, but stated that this probably applied only to ‘extreme cases’.¹⁰² He went on to add that ‘people look more for the titles of white papers, green papers’ than they do at bill titles.¹⁰³

Scotland

Legislative insiders in Scotland also expressed differing views on the above hypothesis: four of eight of them concluded that naming could likely or potentially affect a measure’s chances of succeeding. This response is very telling regarding the Scottish Parliament, and may have to do more with the procedure and principles of the Parliament inclining them to take increased precautions when it comes to drafting ‘proper’ legislation and stressing accuracy in short titles.

¹⁰¹ UKMM3

¹⁰² UKMM2

¹⁰³ UKMM2. Perhaps here he was referring to other journalists.

One MSP replied ‘of course they matter’ when it comes to the media and public attention, but suggested that ‘it’s hard to judge’ whether or not they matter at the legislative stage.¹⁰⁴ He went on to point out that ‘If we brought forward a Bankruptcy Bill instead of a Debtor’s Homes Bill, the media wouldn’t necessarily understand that actually what we’re trying to do is protect people in a time of hard...recessionary times from losing their family home. If we called it the Bankruptcy Act, they may have thought it was just about firms going into bankruptcy. So I think it was quite important not to call it the Bankruptcy Act, but to call it the Debtor Home Act. So that helps the media, in particular, understand...the direction of the government’.¹⁰⁵ In contrast another MSP said that she could ‘see the attraction in it’, and that it would potentially give her ‘something to campaign on’ or a good ‘sound bite’, but further stated that she is happy the Scottish Parliament does not title bills in an evocative manner.¹⁰⁶

A Scottish drafter took the view that ‘a short title possibly influences any sort of legislation’s chances. I suspect that if we did have evocative bill titles, my answer to that would be yes, it would make a difference’.¹⁰⁷ He nonetheless went on to say that he did not deem the Ethical Standards in Public Life Act and the Standards in Scotland’s Schools Act to be evocative. Additionally, he maintained that even if bill titles were evocative, it ‘would be a small difference to a bill’s chance’ of succeeding.¹⁰⁸

A House Authority took the view that this likely does not happen in the Scottish Parliament: in his opinion there are just not any evocatively named bills. However he did note that ‘If you went to the other extreme and you thought of a title which was

¹⁰⁴ MSP2

¹⁰⁵ *Id.*

¹⁰⁶ MSP3

¹⁰⁷ SCTBD1

¹⁰⁸ *Id.*

outrageously evocative...it may well do'.¹⁰⁹ Explaining this comment he said that 'A title with the... 'Stamping Out Corruption in Public Life Bill' or something like that. That may well have attracted a lot more interest, and it may well have led members to think "well, I can't be against that", for example, so I must support this bill. But again, that's one of the reasons we wouldn't allow something like that'.¹¹⁰ Another bill drafter disagreed: he declared that 'people vote on party lines and they are whipped into voting. And if the government wants something, then it will go through'.¹¹¹ Others supported this argument, declaring that 'individual party members won't have much freedom',¹¹² and that 'the public do not really tune into bills anyway'.¹¹³

Two MSPs thought differently, focusing on the substance of the legislation. A Scottish Labour MSP contended that 'some of them have wonderful intentions, but the legislation's not there, and the means to carry out the legislation's not there', thus making it less likely to be enacted.¹¹⁴ Similarly, another MSP declared, 'I mean, the title of a bill expresses what the bill's about, and you might think, "oh, that's a great idea, that's a wonderful bill", but then you read the bill afterwards, and you think, "what idiot suggested this, this is crazy"'.¹¹⁵

Journalists in Scotland seemed to be in agreement that names likely or potentially affect a measure's chances of becoming law: a majority of Scottish journalists provided answers which supported the third hypothesis. However, they all

¹⁰⁹ SCTGOV1

¹¹⁰ *Id.*; There will be much more about this comment in the discussion section.

¹¹¹ UNBD1

¹¹² SCTGOV2

¹¹³ MSP6

¹¹⁴ MSP5

¹¹⁵ MSP7

presented their answers around influences on public or media rather than direct effects on legislator voting. One newspaper journalist seemed to have mixed feelings on the issue: he stated it ‘makes it sound more appealing to start with, and that there is sort of an incentive for people to think that they ought to pass it’, while another said that it ‘quite possibly’ aids the bill in passage, and added that ‘it doesn’t matter what the actual bill is saying...these are positive words. I think that they help. And you would help build up the public mood in a very small way’.¹¹⁶ Although making reference to other potential naming effects, two of them expressed the hope that legislators would nevertheless ‘essentially base their decisions on the contents of what is being proposed’,¹¹⁷ and that ‘they would examine the content of the bill a bit more thoroughly than just sort of a cursory judgment based on the name of the bill’.¹¹⁸ But one acknowledged, ‘I just don’t know’.¹¹⁹

The journalist who disagreed stated that most legislative decisions were made by ‘a tiny elite inside political parties and the rest follow whipped decisions’.¹²⁰ This is an interesting perception, although Chapter IV noted one of the main differences between the Scottish Parliament and the UK Parliament was a diminution of the power of both the Executive and the party whips.

United States

¹¹⁶ SCTMM2

¹¹⁷ SCTMM1

¹¹⁸ SCTMM3

¹¹⁹ *Id.*

¹²⁰ SCTMM4

This finding was particularly important to the thesis, and confirmed what some, such as Murray Edelman, (whose work was discussed in Chapter III) have suspected: that language in politics matters a great deal. A majority of US legislative insiders (5 out of 8) took the view that evocative bill naming does have an impact on the measure's chances of becoming law, thus challenging the hypothesis. Perhaps most telling regarding this finding is that the two Congresspersons said without hesitation that bill names do indeed influence legislative outcomes. Those in the maybe/potentially category were all staffers, who do not have to answer to these outcomes outside of the walls of Congress.

I was expecting it to be very difficult to get straight answers to this question from legislators and staffers, yet many of those interviewed were surprisingly candid regarding this issue. Both members of Congress stated that naming had an effect on bill passage. The Democrat declared that 'what it means is there's either a campaign for or against a bill if it becomes...if it's given a popular name. That means that either this bill is staunchly opposed, or highly supported, and it no doubt is controversial. So, I'm sure it has an effect'.¹²¹ Thus, she appears to be acknowledging that for most of the major controversial bills there is a definite effect. The Republican declared 'I sure do'¹²² when asked this question, but was tough to keep on point and he proceeded into a long diatribe about the No Child Left Behind Act.

Staffers seemed to be a bit more guarded when answering this question than the legislators above. However a very insightful answer came from one legislative staffer who declared that:

¹²¹ MCON1

¹²² MCON2

‘it all goes back to the court of public opinion if you will. And, when you have a bill, the PATRIOT Act, for example, the United States had come through some challenging times, obviously, with 9/11 and so forth and the War on Terrorism, and when the President can come to Congress and say...I challenge you to pass the PATRIOT Act or challenge you to pass the PATRIOT Act so it can be sent to my desk and I sign it, I mean, yeah, it’s a powerful thing, when you have that message going across the TV to millions and millions of people throughout the United States. I mean that sends a clear message to those folks who are on the ground, the advocates on the ground doing grassroots work. And they can get their constituencies fired up and say ‘call your Congressman and tell them to sponsor the PATRIOT Act. That’s kind of a made for TV moment. And the same thing applies to the GREED Act and so forth. You know, obviously we’ve got some terrible things that have happened institutionally, and the GREED Act kind of sends that message that we need to take some steps to reform some of those institutions’.¹²³

Another staffer suggested that ‘the names can be very helpful for us here, but a really well-named bill can certainly attract political currency if, you know, it gets out into the outside[sic]...kind of outside Washington’.¹²⁴ Even one staffer who concluded that it was ‘difficult to say’¹²⁵ whether or not bill titles affect passage later went on to

¹²³ HOUSESF2

¹²⁴ HOUSESF6

¹²⁵ SENSF1

point out that there are implications for a compelling name and that it could be positive or negative for a bill.

Other staffers took the view that naming does not influence passage, but many answers had caveats. A Republican staffer answered in the negative, but also said that ‘it’s useful for the author of the bill to couch it in a way that he would like the underlying policy in it to be viewed’, suggesting the frame was important.¹²⁶ Another staffer went on to say something similar, declaring ‘I think naming is most important in the push before, like selling and persuading people. I think the vote, the up and down vote is more about the substance. Which isn’t to say that the name is not important, it’s just that it’s secondary’.¹²⁷

For media members the result was decisive: almost all of those interviewed stated that naming likely or potentially affected a measure’s chances of becoming law, thus affirming the third hypothesis. Only one media member out of eight stated that naming does not affect a measure’s chances.

Some of the journalists’ answers were forthcoming. One reporter proclaimed that ‘Um...absolutely, yeah. I think it does help...I think...that a lot of legislators are very sensitive about that, and they’re worried about giving fodder to their opponents’.¹²⁸ In fact this answer turned out to be insightful, because many of the legislators in Congress and Westminster that I interviewed were indeed sensitive to such issues. Another journalist supported this statement by declaring that ‘politicians don’t want to be on the hook for voting against something they think is popular’.¹²⁹

¹²⁶ HOUSESF3

¹²⁷ HOUSESF5

¹²⁸ USMM2

¹²⁹ USMM4

Others thought it aided passage as a positive framing device: one such journalist explained when talking about the No Child Left Behind law that ‘it’s one of those things where, not only does it accurately give people a perception of what the bill actually is, but you know it...very much helped politically to call it No Child Left Behind. It tied in very well with something that George Bush said on the campaign a lot’.¹³⁰ He added: ‘but, as a political framing device, it is probably one of the more successful ones. Um...and it was in some ways, of neutralizing Democratic political advantage in education. I don’t think you can isolate the variable and say the name did it, but the name pulled everything together’.¹³¹

One journalist who thought naming did not have an impact on passage stated, ‘I can’t believe legislators actually...maybe I’m naïve, but that just seems unlikely to me’.¹³² But another reporter who was wary of saying that names had an impact on passage later asserted that ‘usually it will get further if they name it a certain way that is flattering to the legislation’.¹³³ Thus, as the interviews progressed, it seemed that some interviewees were re-evaluating how they viewed the issue of bill naming. This is not surprising; it is a fairly uncharted issue, and opinions on the subject may change as they are further explored.

Summary – Hypothesis #3

This was an extremely significant finding for this thesis, because all the hypotheses in relation to legislative insiders were challenged. While a majority of UK media

¹³⁰ USMM7

¹³¹ *Id.*

¹³² USMM3

¹³³USMM8

members thought that titles did not affect whether a bill will be enacted, half of legislators thought that short titles at least sometimes **do** affect whether a bill will be enacted. The same was true for the Scottish Parliament: half of legislators said that bill titles affect legislative success. A majority of Scottish journalists were also in agreement with this. In the US, legislative insiders also challenged the hypothesis, believing naming likely or potentially affects a measure's chances of becoming law, while almost all media members thought the same. Further discussion and analysis regarding this finding is located in the next Chapter.

Hypothesis 4: Legislative insiders from the UK and Scotland will state that using promotional language in their titles, such as 'prevention' and 'protection' should not be used. Legislative insiders from the US will state that short titles should use promotional language when naming bills, such as 'efficient' or 'effective'. Media members from all jurisdictions will state that promotional language should not be used in short titles.

United Kingdom

UK legislative insiders expressed contrasting views on the issue, with four affirming, four challenging, and two stating that it depended on the situation. Thus, determining whether there this hypothesis was supported or challenged was not possible for this contingent. The bill drafter interviewed expressed concern, but also said that sometimes

people can be too ‘protective’ with these issues.¹³⁴ He noted that in previous years House Authorities would not let them use the term ‘reform’, and now it is common practice. He summed up his position by declaring that ‘it is legitimate to name a bill after either what it’s trying to stop or what it’s trying to achieve’.¹³⁵

A LibDem member took a more practical view on the issue, stating, ‘If that’s what you’re trying to achieve...in bringing that forward...you’re trying to send a message, then it’s not particularly objectionable’.¹³⁶ He went on to speak in terms of what would be categorised as attentive and inattentive publics, stating that most people get their cues from personal experiences anyway, and are not ‘looking at the bills in the House of Commons’ to tell them if they are going to be safe, for example.¹³⁷

Stating that titles should be more descriptive, a Labour MP suggested that ‘sometimes you might want to put a word in that indicates on which side of the argument the Act of Parliament is’ on.¹³⁸ She gave the Hunting Act 2004 as an example, arguing that adding in ‘the abolition of’ would have been informative for people who encounter the legislation. One of her Labour colleagues agreed, declaring ‘I would understand why draftsmen would have that reluctance in relation to prevention and protection, but candidly I would disagree with it, you know, because I don’t think there’s anything wrong with passing a piece of legislation expressing an ambition’.¹³⁹

Other lawmakers had difficulties with such language. A Lords member maintained that such wording amounts to ‘political window-dressing’, and added that

¹³⁴ UKBD1

¹³⁵ *Id.*

¹³⁶ HC1

¹³⁷ *Id.*

¹³⁸ HC2

¹³⁹ HC3

in regard to some of these bills, ‘it’s not so much about protection, it’s more about repression, or about curbing liberties’.¹⁴⁰ Others expressed similar views: one MP stated ‘we’ve had rows here about the Prevention of Terrorism Act in the past, because it didn’t prevent terrorism. But what it did do is stigmatize whole sections of the community. And caused a great deal of resentment’.¹⁴¹ He went on to argue that in certain cases it could have been termed the ‘Promotion of Terrorism Act’, and further stated that ‘there is a tendency to try to use words...to define what the bill is intended to do rather than what it does’.¹⁴² Another MP declared that ‘I think by putting protection or prevention, I think you’re implying the bill’s going to succeed before the bill actually becomes law...I think it’s a good intent. But...you shouldn’t be trying to be populist in the bill title.’¹⁴³ And from a sceptical perspective, one MP suggested ‘I think people are very suspicious of bills whose title claims something like that...you know, you’re a good boy if you support it, you’re not if you don’t.’¹⁴⁴

Perhaps the most interesting argument, and one not mentioned by US interviewees, was that using such language could later be turned against legislators. A Lords member suggested that by using policy related titles ‘you’re setting yourself up to fail. Every time you failed to protect a child, somebody would say, ‘look you passed...you voted...your government brought in the Protection of Children Act, and you failed to protect “Baby P”’. So, you’d be setting yourself up to fail. And then the number would mount up, and then somebody would parody it in a newspaper column saying ‘under Tony Blair, 18,000 children were not protected, whereas after John

¹⁴⁰ HL2

¹⁴¹ HC5

¹⁴² HC5

¹⁴³ HC4

¹⁴⁴ HC7

Major, who didn't set out to protect them, 21,000 were protected”'.¹⁴⁵ This was similar to an answer given by a couple of UK media members (see below).

The journalists who responded provided interesting perspectives. None of them advocated using such language, but two were against using it and three were unsure, thus supporting the above hypothesis. A newspaper journalist stated that in ‘an ideal world, I think things should have very dry names, and then you should debate the measures in them, because otherwise it becomes a debate about the marketing rather than the substance’.¹⁴⁶ This journalist declared that he even considered ‘reform’ a loaded word. One of his colleagues disagreed, declaring that ‘if the government wants to enact its platform, you know, manifesto, then it's entitled to call its bills whatever it wants’.¹⁴⁷

Responding very similarly to some of the legislators, other journalists seemed more cautious about the use of such language: one mentioned that ‘politicians might think they're setting themselves up for a fall, by being overly ambitious about...the reduction of crime’, for example.¹⁴⁸ The other journalist in the joint interview agreed, declaring that ‘using words like productive can be counter-productive. It can boomerang back on you quite quickly’.¹⁴⁹ These responses are insightful because both put themselves in the position of legislators and journalists when discussing some of the pitfalls of using inflammatory language.

One British tabloid journalist stated that ‘writing for my paper...a tabloid newspaper, I would not put a long bill name in the paper because it breaks the flow of

¹⁴⁵ HL1

¹⁴⁶ UKMM2

¹⁴⁷ UKMM3

¹⁴⁸ UKMM5

¹⁴⁹ UKMM4

the story up...where as a broadsheet may put, under the new Lotteries...Lotteries Commission Payouts to Winners Act, brackets, 1999. I wouldn't put that. I would just put...“under new laws””.¹⁵⁰ In terms of bypassing the media and going directly to the people for a message (e.g. via Twitter®, Facebook®), another British journalist pondered whether ‘that will have an impact on the naming of legislation because they won't need pesky journalists to look through the bills and interpret in short form for readers. They would just think...alright, everyone would need to know what this particular Act is, because we're going to get our message out there’.¹⁵¹ In fact, one UK legislator said that many laws are enacted to ‘meet media pressures’, as ‘you've got to be seen to be doing something’.¹⁵² Should this pressure intensify, there is a chance some bills may be adorned with evocative titles, especially in a culture where Twitter® and Facebook® are more prevalent.

It is worth noting that some UK journalists stated that one of the reasons Westminster did not have evocative bill names is because the media would mock legislators and/or the government if they tried to do so.¹⁵³ This could be another interesting cultural difference between the US and UK. Although a discussion of these power dynamics is outwith the remit of this thesis, it does raise the question of whether the US media serve as an adequate check on such evocative political language, and whether US legislators enjoy too much power in regard to issue definition.

Scotland

¹⁵⁰ UKMM1

¹⁵¹ UKMM5

¹⁵² HC5

¹⁵³ UKMM3, UKMM4, UKMM5

Legislative insiders in Scotland had differing views on the matter, but many of them surprisingly said that using such language was proper for legislation. Only one said that it was not appropriate and five out of ten stated that it depended on the situation. Thus, the above hypothesis was challenged: most thought that using promotional language was appropriate when naming bills, as long as it did not violate the regulations on ‘proper’ form for the Scottish Parliament.

Without appearing to give the matter much thought one MSP decisively declared ‘yes, these words are justified as that is what the bill intends to do’.¹⁵⁴ Others seemed unaware of the prohibition on promotional titles: one Conservative MSP said he did not think it ‘makes any difference’¹⁵⁵ whether the words were used or not, while an SNP member stated ‘for the life of me I can’t see why there would be any problem with it’.¹⁵⁶ The latter went on to explain that having an all-encompassing title makes the bill vulnerable to amendments, where having a more focused title protects the bill from these and stresses that these are ‘better reasons for constraining what a title might be’.¹⁵⁷ Declaring that the intention of the title does not matter all that much, another MSP said that if it does not do what it says on the tin then it will never become law.¹⁵⁸ She cited a Creative Scotland Bill that got voted down in phase one because, she maintained, it did not do what it said it was going to do.

Other MSPs disagreed. One observed that the use of such language does imply effectiveness and maintained that it ‘creates an expectation that’s maybe difficult to

¹⁵⁴ MSP1

¹⁵⁵ MSP4

¹⁵⁶ MSP2

¹⁵⁷ *Id.*

¹⁵⁸ MSP5

fulfil, which makes it a difficult job as a political being when it's things like protection or prevention'.¹⁵⁹ She went on to say:

'I think using words like protection or prevention, creates that expectation. And then if something happens, and that expectation is not met, which can happen in a small number of cases, the knee-jerk reaction is to think then... "well, the legislation's not working". You know, and that's usually not the case. It's usually naught point naught naught one percent of cases that fall though the net, and that's the one that the media will pick up and focus on, and say the whole system is failing, when actually it's not. But that's what makes it difficult when you use words like "we're going to prevent child sex abuse or we're going to protect children from that". It makes it difficult, and I would understand how that could create an expectation that maybe we can't meet'.¹⁶⁰

Another MSP stated that Parliament must live up to these titles and it would not be the first time that the short titles were deficient.¹⁶¹ He also declared that bill sponsors are using this type of language as if they are 'looking for comment'.¹⁶² A LibDem MSP asserted that using these words 'will convey immediately to people that you're wanting to prevent something happening', but added that it does 'affect people's perceptions of what is then inside the bill'.¹⁶³

¹⁵⁹ MSP3

¹⁶⁰ *Id.*

¹⁶¹ MSP6

¹⁶² *Id.*

¹⁶³ MSP7

Discussing the legality of such language, one drafter observed that those types of words are ‘the ones which are perhaps on the borderline to an extent’.¹⁶⁴ He went on to maintain that the language used on Scottish legislation is more ‘benign’ than a bill that says ‘Improving Public Transport’, and that the word “protection” is roughly where the line falls at the moment’ in terms of bill titles.¹⁶⁵ Another drafter had a similar perspective: he maintained that ‘It is suggesting at the outset that the thing is going to work. It really ought to be neutral, and it really ought to state the topic that it’s dealing with and that’s it’.¹⁶⁶ However, he also suggested that ‘you’re not going in desperately far by taking in “prevention”, for example’.¹⁶⁷

A House Authority who is partially responsible for approving short titles maintained that such language is ‘something that we do consider very carefully if we do get a bill with a title like that’, and that ‘these are words that would flag themselves up to us’.¹⁶⁸ But he went on to explain that the titles are warranted, because the civil servants responsible are rigorous about making sure these titles do what they say they do. Another governmental employee suggested that ‘I think it’s probably the closest in bills that we can get to giving political names’, because ‘it implies a purpose at the very least’.¹⁶⁹ He went on to argue that the one of the most ‘absurd’ words used in titles was ‘reform’, arguing that new law is essentially always reforming the law, so there is no need to put the word in the title.¹⁷⁰

¹⁶⁴ SCTBD1

¹⁶⁵ *Id.*

¹⁶⁶ SCTBD2

¹⁶⁷ *Id.*

¹⁶⁸ SCTGOV1

¹⁶⁹ SCTGOV2

¹⁷⁰ *Id.*

Media members in Scotland also provided answers which challenged the above hypothesis. One said that using such language is acceptable, and the other two maintained that it depended on the situation and the bill. Thus, none of them explicitly denounced the practice. One declared that ‘in a way it’s possibly a more effective way of naming bills in terms of getting the right emotional response because it is a bit more subtle than something like the PATRIOT Act. If you talk about prevention or protection then that’s obviously what you want to achieve. And by putting it in the name of the bill then you maybe imply that you’re half way there already’.¹⁷¹ He went on to conclude that ‘if it doesn’t work then politicians are going to be held to account for it one way or another anyway’.¹⁷² Agreeing, one of his colleagues stated, ‘I don’t think the government wants to pass a bill that’s seen as being ineffective’.¹⁷³

Another journalist appeared conflicted, stating ‘Well, it implies it certainly. It’s rather like the counter and anti-terrorism thing I think, really. It implies that something is being done. But I mean again it would be the difference between the title and the text. If the title says that and it doesn’t come up with the goods in the text, then it won’t affect whether the legislation goes through or not’.¹⁷⁴

United States

Legislative insiders were divided on this issue: even numbers justified and denounced using such language in short titles. However, a majority maintained that it depends on

¹⁷¹ SCTMM1

¹⁷² *Id.*

¹⁷³ SCTMM3

¹⁷⁴ SCTMM2

the situation, because the text of bills must justify the names which are given to them. Although the result of testing the hypothesis was undetermined, some intriguing answers were provided.

One Congresswoman argued that this language was appropriate to use and stated that ‘the popular language reflects the spirit of the times, and because this is a time when people are worried about government spending, the ability of government to do a good job...it’s more reflective of the era that we’re in’.¹⁷⁵ She continued, declaring, ‘it’s just the right of the person sponsoring the bill to design the title to make it sound the most appealing to the most number of people so they can pass it. That’s...that’s what you do. Whether it’s accurate or not is another question, but that’s what the rest of us are supposed to sort out’.¹⁷⁶

However, another Congressman denounced the use of such language, declaring ‘I don’t think it is [justified] at this level here. But, I mean, I understand why they do it’.¹⁷⁷ Others provided similar responses, with caveats. One Chief of Staff said he thought that ‘most authors are earnest, and they believe the net outcome of their bill will be greater effectiveness or greater efficiency’, but went on to state that ‘I think it’s probably...by any reasonable measure, premature to say something’s worked before it’s even passed or been implemented for that matter’.¹⁷⁸ Another staffer said that it is ‘Not necessarily warranted...but every legislator, I hope, introduces a piece of legislation with the hopes that it will be effective’. She also said it is a ‘question of...how truthful they’re being, or how much wishful thinking is involved there’, and

¹⁷⁵ MCON1

¹⁷⁶ *Id.*

¹⁷⁷ MCON2

¹⁷⁸ HOUSESF3

then added that using such language in bill titles ‘sure helps, you know, push that forward’, suggesting that it is indeed useful. Stating that the use of such language was ‘branding’, another legislative staffer declared that using such language was ‘disingenuous’.¹⁷⁹

Media members from the US expressed stronger opinions and more certainty on the matter, maintaining that using such language is justified and has essentially become commonplace, thus challenging the above hypothesis. One observed that ‘it’s the sort of thing you would have hoped you wouldn’t have to say. (laughter) If I were running the world, I would not make the titles of legislation tendentious. But, nor do I think it’s a particularly big problem.’¹⁸⁰ Another political magazine journalist argued ‘I don’t think it has much effect. I mean it’s silly, but I don’t think it really matters’,¹⁸¹ and another stated that ‘in fact I don’t begrudge members of Congress for trying to promote the bills in the best way possible’.¹⁸²

Other commentators made more general observations about the language. One suggested, ‘I mean it’s the same thing...it’s a marketing strategy, absolutely, yeah. And also, it cuts to another...the words “effective” and “efficient” that cuts to a certain scepticism about American...among Americans about their government. That there’s this massive Washington bureaucracy that doesn’t do work [sic]...an ineffective, inefficient bureaucracy’.¹⁸³ Another reporter suggested the same, declaring ‘I think it’s probably a political ploy, because the widespread impression of US voters of government is...corrupt, bureaucratic, wasteful, all of that. So, if you put “efficient” in

¹⁷⁹ HOUSESF6

¹⁸⁰ USMM1

¹⁸¹ USMM3

¹⁸² USMM7

¹⁸³ USMM2

the title, it implies that whatever the bill is about is going to, you know, cut through some of that stuff'.¹⁸⁴

A few of the journalists thoroughly disagreed with the use of such language. Perhaps the most eloquent answer received came from a legal journalist, who offered a perspective that supported the one of the arguments made by Orr, that evocative titles were 'hastening a decline in respect for democratic governance'.¹⁸⁵ He explained that:

'I just think that some of these titles from an aesthetic point of view are so inelegant and clumsy that they demean the...the kind of decorum or the...stature of the institution. I mean, you look at the United States Capitol, it's a beautiful building, and whatever you think of the occupants at any one time, pretty much anyone would have to agree that's a stunning structure. And you go inside it and you see these wonderful murals and statuary and you see paintings and lawmakers from the past and that's very impressive. And then you get one of these juvenile sounding names and it's like what happened, it's like...76 and the barbarians are in Rome and they don't understand the beautiful Latin language and they're just destroying it.'¹⁸⁶

This same journalist finished his answer by providing lawmakers with a straightforward piece of advice, stating that bill titles do not have to 'have a funny acronym that goes with it to persuade you that it's a good idea'.¹⁸⁷

¹⁸⁴ USMM6

¹⁸⁵ Orr, Graeme (2000), *op. cit.*, pp. 189.

¹⁸⁶ USMM4

¹⁸⁷ *Id.*

Another journalist responded, ‘I don’t know if it’s warranted’, and went on to declare, ‘that’s why in our...stories we don’t use the titles, because often they suggest an effect that may not be true. That, it’s what the supporters may think is going to happen, but it’s a little bit divorced from reality. So, no, it’s all part of the promotional part of selling a bill’.¹⁸⁸ One of his colleagues agreed, declaring ‘I think it would make me as a reporter even less likely to use the title. That’s just blatant sloganeering’.¹⁸⁹

Another newspaper journalist said that she would stay away from names that sounded like ‘talking points’ and employed ‘inflammatory’ language,¹⁹⁰ while another said that he pays a lot of attention to such titles ‘as a way of avoiding using the titles that are placed on the bills’.¹⁹¹ But journalists did run into problems with not using official short titles. One noted how his outlet tried not to use the title ‘partial-birth abortion’ but when the Partial Birth Abortion Ban Act of 2003¹⁹² officially became law they succumbed: he explained that ‘at that point you start calling it by that name, because if Congress has called it that, that’s what people call it’.¹⁹³

Summary – Hypothesis #4

Those on the legislative side from the UK and US were divided on this issue, and thus the hypotheses could be neither supported nor challenged. Scottish legislators were the only group to advocate such language, but further stressed short title accuracy when

¹⁸⁸ USMM5

¹⁸⁹ USMM9

¹⁹⁰ USMM8

¹⁹¹ USMM9

¹⁹² Partial Birth Abortion Ban Act of 2003, Pub. L. No. 108-105, 117 Stat. 1201. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:S.3:>

¹⁹³ *Id.*

doing so. Surprisingly, US media members were not concerned with promotional language: the hypothesis for this sub-group was challenged. Most of the UK journalists were unsure whether or not using such language was warranted, but two were of the opinion that it was not appropriate in bill titles. And Scottish journalists challenged the hypothesis: none of them expressly rejected the practice.

Hypothesis 5: Legislative insiders and media members from the UK and Scotland will state that humanised bill naming is not likely to happen in their current system.¹⁹⁴ Legislative insiders and media members from the US will state that using a humanised title makes the measure more appealing to legislators, the media and the public.

United Kingdom

The United Kingdom does not officially humanize their short titles, but a surprising number of interviewees took the view that this could happen. While above hypothesis was affirmed, six out of fifteen interviewees suggested that the UK may indeed be travelling down this road, especially given that, in their view, the UK continues to seek many of its political cues from the US.

¹⁹⁴ Since the UK does not incorporate humanised naming into their repertoire, the question was changed to adhere to the parliamentary climate. Thus, the two different hypotheses on humanised naming recognize that the systems studies are indeed different.

The drafter interviewed did not believe that in the foreseeable future Westminster would start humanizing their short titles. He maintained the main difference between the US and UK in this respect was the way bills are produced, and added that even if an incident did spark legislation, a specific name would never be included in the title.¹⁹⁵ Many lawmakers agreed. A LibDem member exclaimed that the ‘law ought to be about a fairly unsexy process of getting everything in the best balance, rather than bringing in a law to hammer terrorists or hammer paedophiles, or hammer people with red hair or big noses or whatever group we want to hammer this week’.¹⁹⁶ A Labour MP said that there was ‘never any chance we would do it’, and that the law ‘shouldn’t be an emotional thing. Because that’s what law is about...to take the emotion out of many of these things’,¹⁹⁷ while a LibDem MP proclaimed that ‘I don’t think it would happen, and nor do I think it’s desirable. I think...case law isn’t a good basis in order to make generalizations. I also think personalizing matters in that way is emotional, evocative, and we want to be rational and objective’.¹⁹⁸

Some interviewees were even acutely aware of how the psychological processes of such personalised laws operate. A Lords member stated that,

‘You narrow yourself in thinking about the crime. One, you don’t recognize that other victims have gone before. And you don’t recognize others will come, and you also don’t recognize that the law covers more than that particular personal circumstance of that person, and goes

¹⁹⁵ UKBD1

¹⁹⁶ HC1

¹⁹⁷ HC2

¹⁹⁸ HC6

beyond into broadening out that particular crime... it should extrapolate from the individual to the general'.¹⁹⁹

Others approached it from a broader lawmaking perspective. One Labour MP thought that there was going to be a resurgence in 'Parliamentary democracy', and that legislators will eventually 'move away from kind of evocative measures'.²⁰⁰ Others touched on this theme. One LibDem MP proclaimed 'there is something related to the dignity of Parliament', and it 'is supposed to be a professional... we're passing laws'.²⁰¹ This same legislator further maintained that 'if populism is on the face of the bill or the title, it doesn't work', and added that he has 'nothing against a bill having a popular title, as long as it's accurate and not sensational and as long as it genuinely reflects the purpose of the bill'.²⁰²

Several legislators said that it could happen in the popular press, but maintained that the tradition would never be something Parliament would adopt. A Conservative MP stated that some particular cases 'will be the cause célèbre as it were. But you wouldn't... imagine it would be the title of the bill'.²⁰³ A crossbench member of the Lords responded that doing so would 'probably go a bit too much over the line of theatricality', but added that shorthand titles are very common in regards to legislation, and that that is something that will not change.²⁰⁴

Yet others thought that such names could arise in Westminster based on the influence from their transatlantic neighbour, the US. One Commons member bluntly

¹⁹⁹ HL1

²⁰⁰ HC3

²⁰¹ HC5

²⁰² *Id.*

²⁰³ HC4

²⁰⁴ HL2

stated, ‘On the basis that everything the States do we eventually do some day, um...yes, we will probably get to that point’.²⁰⁵ One of the only legislators to advocate such a practice stated ‘maybe we should...maybe we should be more robust about it’, but eventually he noted that in Westminster ‘it’s not in our nature to be like that’.²⁰⁶

Media members were decidedly split on the issue. One tabloid journalist said that the government may say off the record that it is named after someone, like Sarah’s Law, but that would not be the official name of the Act.²⁰⁷ Another reporter maintained that it has not happened in the UK, but that ‘doesn’t mean that someone in the future won’t decide to try and do it. But it is one of those things where it wouldn’t occur to people, just because it’s not the way things have ordinarily been done’.²⁰⁸

Media members also touched on Congressional influence in Westminster. One Sunday newspaper journalist ominously stated that ‘we follow what happens in the States eventually’, and, referring to policy initiatives rather than bills, noted that ‘there is a tendency already in government departments to name initiatives with American style titles, like “Every Child Matters”’.²⁰⁹ Another newspaper journalist asserted that ‘the next government’ will start humanizing titles, adding that ‘the Tories will try and tap into mainstream popular culture. And...they’ve already tried to Americanize politics to a certain degree, by talking about trying to make “happiness” a part of a legislators role’.²¹⁰ When the other journalist being interviewed disagreed with this statement, the former shot back that ‘our next probable Prime Minister [the current

²⁰⁵ HC1

²⁰⁶ HC7

²⁰⁷ UKMM1

²⁰⁸ UKMM2

²⁰⁹ UKMM3

²¹⁰ UKMM5

PM], his sole work experience outside of this place has been in public relations’, and that that is likely to have an effect on political messages, including short titles. She went on to declare that she was ‘not saying it will happen, but it will be interesting to speak to the clerks in here to see if they have had to turn down some quite colourful requests, like a General Wellbeing Bill or...the Shiny Happy People Act’.²¹¹ However, in regard to this situation it may ring true that the ‘Americanization of British politics is actually a remarkably slow affair’.²¹²

Scotland

Scottish respondents were unwavering in their belief that their Parliament will not be using humanised legislation anytime soon, thus supporting the fifth hypothesis. Many acknowledged that some laws will be based on tragic events, but maintained that the specific name of the bill would not be based around the events or an individual involved. Also, many argued that legislators should detach themselves from such emotional or evocative distractions, and concentrate on the substance of the legislation.

The professionalization of Parliament and the legislative process was the major consideration of Scottish MSPs. One Conservative MSP took a hard line on the matter, declaring that Parliament would not use humanised legislation because ‘it simply is totally unprofessional. And in a case of tabloid interest, it will be a story for three days and then it’s forgotten about and then we’ve got to live with the legislation for many, many years...with a stupid name’.²¹³ While a Governmental employee declared ‘[t]here’s something about the dignity of the law...there’s something about the law

²¹¹ UKMM5

²¹² UKMM4

²¹³ MSP4

having to define all cases, and we don't just legislate on the back of one horrendous case'.²¹⁴

Others agreed with the above statements. One legislator argued that employing such titles would 'be in danger in these circumstances of bringing legislation to a populist level that actually would **undermine the whole legislative process**' (emphasis added).²¹⁵ A Labour MSP said that it should not happen, insisting that doing so 'is a value judgment, and politicians are not supposed to make value judgments'.²¹⁶ She went on to say that legislators must remember that they are 'enshrining something in law' and that such methods would be too emotive.²¹⁷

Discouraging the use of personalised titles, one legislator noted that such titles could become 'sacrosanct' and serve as 'totem poles' for policies and legislation.²¹⁸ He further noted that it would 'cloud due process'; something that I analyse further in the Discussion Chapter. Adding to the strength of opinion against humanised titles, another MSP stated that 'I'm almost in a way turned off, because I feel that they've taken one particular incident, and now they want to make law because of that one particular incident',²¹⁹ therefore making him less likely to support the legislation.

The depth of negative responses to humanised naming was powerful in Scotland, and it continued with most interviews. A House Authority maintained that they 'would never adopt it' because 'things like this are hugely emotive'.²²⁰ Another

²¹⁴ SCTGOV1

²¹⁵ MSP2

²¹⁶ MSP5

²¹⁷ *Id.*

²¹⁸ MSP6

²¹⁹ MSP7

²²⁰ SCTGOV1

drafter agreed, stating, ‘I think the rules as they exist are sufficient to resist that. A short title is meant to be a description of what is in the bill. And, an expression like Sarah’s Law is not a description of what the bill’s about’.²²¹ Supporting such statements, another government policy analyst declared that there is a line when it comes to issues such as this, and ‘taking a person’s name who’s been a victim of a particular offense, and using that as the name for subsequent legislation would lean very firmly to the other side of that line’.²²²

The only interviewee who was sympathetic to using such names was a newspaper columnist, who stated that ‘Sarah’s Law brings an image of that wee girl...that lovely wee girl that was in all the papers. And immediately, your hackles are rising, you want something done and you’ll support that kind of legislation. I’m a bit like that. I mean, maybe most intelligent people aren’t. But, I think for a lot of people that is a terrifically effective way to get a point across. Bearing in mind, that is the press that are[sic] doing that, and not the legislators’.²²³ Another magazine journalist agreed, arguing that ‘of course’ it would have an influence, because ‘people respond to human contact’,²²⁴ and a newspaper journalist declared that ‘there’s no doubt that a name like Sarah’s Law is going to work’ in terms of ‘drumming up interest’ in a bill.²²⁵ However he suggested that legislators would have to take a more ‘detached view’, because they ‘would have to be sure that the effectiveness of the bill is not compromised by a knee-

²²¹ SCTBD2

²²² SCTGOV2

²²³ SCTMM2

²²⁴ SCTMM4

²²⁵ SCTMM3

jerk emotional [reaction]’.²²⁶ Similarly, another journalist noted that such titles could affect others, stating ‘I mean, obviously people react differently, but I would have thought that a lot of people would respond positively to a law that says “we are going to stop this ever happening again to another child”, while reinforcing that with naming a child whose case has been in the news, it’s bound to have an effect. And again, I suppose, there’s a residual effect on politicians as well’.²²⁷

United States

Both legislative insiders and journalists strongly agreed that personalising a bill name makes such measures more appealing to all those involved, thus affirming the above hypothesis. In fact, only one legislative staffer out of sixteen interviewees countered this view.

Most thought that using such names enhanced attractiveness, but there was disagreement between those who thought it was a manipulative practice and those who thought it was helpful. This split was mainly between legislative insiders and media members: the former took the view that the practice was beneficial, while the latter spoke against such practices. One staffer stated that it was helpful to put a name on a bill, and added that doing so makes it ‘a compelling argument, in plain language’.²²⁸ A Congresswoman agreed, stating that it ‘personalizes a bill’ and ‘makes it easier to talk about it’.²²⁹ Suggesting that it can excite the legislative process, one staffer argued that ‘it goes back to the notion that Congress is this mundane place, we’ve got a lot of

²²⁶ *Id.*

²²⁷ SCTMM1

²²⁸ SENSF1

²²⁹ MCON1

lawyers...you're talking...in all these legalese terms, and...whatever you can do to try and make it...something that conveys or connects with people is a very good idea'.²³⁰

Another staffer's focus was outside of Washington, arguing that it 'provides for a more useful shorthand outside of the beltway',²³¹ while another said that it can 'make the bills more attractive to the public'.²³²

Others on the legislative side seemed somewhat indifferent to the practice. One person suggested that it 'goes back to member's style' and added that 'if a bill calls for it, it can be attractive to members to attach a name to it'.²³³ We might notice in his answer the focus on other Congressional members and not on the media or the public. As Chapter I suggested, this provides support for the argument that many of these names are designed to gather other legislators' votes. Another staffer stated that 'if the name itself is sufficiently well-publicized, and it crystallizes the need for the law, then that can be very effective'.²³⁴

There were a few on the legislative side who disagreed with such tactics. In referring to bill form one staffer declared, 'It should just be the bill number and text. Make it plain and simple, so, you know...so, people, constituents, don't feel misled'.²³⁵ Similar feelings were felt by others, such as a Congressman who declared 'I wish they

²³⁰ HOUSESF2

²³¹ HOUSESF3. The 'beltway' is considered to be Washington D.C. and the immediate surrounding areas. Many politicians and others refer to 'inside' or 'outside' the beltway to explain the differing political contexts, as it is thought that 'inside the beltway' individuals are more highly attuned to politics and political affairs than those 'outside the beltway'.

²³² HOUSESF5

²³³ HOUSESF4

²³⁴ HOUSESF6

²³⁵ HOUSESF1

wouldn't do it, because it is designed to get sympathy, and to get people to vote for things that they probably shouldn't vote for'.²³⁶

Journalists largely spoke against the use of such language, maintaining in one instance that employing such methods 'warps the policy discussion to some extent',²³⁷ while another noted that it is a 'very effective tool'.²³⁸ The latter was critical of the way Congress had handled sex crimes and crimes against children, and also had concerns with using a child crime victim's face as the main talking point. Another stated that 'for politicians, there's a sort of exploitative labour to it, you know, we're going to bank on the public sympathy for the poor crime victim, and we want to be associated with vindicating that. So, you know, that's always there and then you have that dichotomy between politicians wanting you to know what they're doing...that's not a bad thing, people need to know what they're doing, so they can evaluate it. On the other hand, when it becomes a bit treacle and a bit exploitative and manipulative, it kind of, you know, is not very classy'.²³⁹

Some were quite indifferent to the practice, however, and offered opinions from a more pragmatic perspective. One journalist stated that 'it's easy to overstate how much any of this matters',²⁴⁰ indicating that humanised names probably have a negligible effect, while another declared that 'it doesn't really affect how I report it out'.²⁴¹ A magazine journalist focused on the framing aspects of using such tactics, arguing that it 'helps focus the media's attention of a bill. It gives them a frame to think

²³⁶ MCON2

²³⁷ USMM1

²³⁸ USMM2

²³⁹ USMM4

²⁴⁰ USMM3

²⁴¹ USMM8

about it and write about it',²⁴² while one of his colleagues agreed, maintaining that 'it absolutely helps to frame it in those people's minds'.²⁴³

However another magazine journalist said that journalists must be suspicious of humanised titles, stating that what they 'have to be on guard about is when bills are named in such a way that could be misleading, or could pull on emotional heart strings', especially when the naming of a bill 'produces a biased conception of what it [the bill] actually is'.²⁴⁴ Thus, while viewpoints varied as to whether or not using such methods were supported, there did not seem to be any disagreement between legislative insiders and journalists that using personalised titles enhances attention from both legislators and the general public.

Summary – Hypothesis #5

The gap regarding this issue seemed as vast as the Atlantic Ocean which divides these jurisdictions. UK and Scottish legislative insiders and journalists thoroughly deprecated such titles, and focused on the dignity and professionalism of their respective lawmaking bodies. Many interviewees from the UK jurisdictions also mentioned keeping emotion separate from law and the lawmaking process. Conversely, respondents in the US overwhelmingly agreed that using humanised short titles enhanced the appeal of the measure for all of those who encounter it, thus supporting the hypothesis. There was little mention in the US regarding the potential emotional value that personalised laws carry, or how such laws may affect the dignity or

²⁴² USMM6

²⁴³ USMM7

²⁴⁴ USMM7

professionalism of the US Congress. In regard to Westminster, however, a decent minority of interviewees thought they would eventually employ humanised short titles in the future.

Hypothesis 6: Legislative insiders and media members in the UK and Scotland will state that the naming of legislation is not important in the lawmaking process. Legislative insiders and media members from the US will state that the naming of legislation is important in the lawmaking process.

United Kingdom

This sixth hypothesis was challenged by UK interviewees: a majority (nine of sixteen) thought that the naming of legislation was at least somewhat important for a variety of reasons. Although this was the case, there seemed to be a difference in rationale between the UK respondents and the US respondents, a result which is explored more below and in the following Chapter. A mix of legislators and journalists was found on both sides regarding this issue.

A drafter said that indeed bill names matter and thought that they have ‘a role in fixing the context in which the bill is debated’, adding that ‘the context in which that scrutiny takes place begins with the name of the bill’.²⁴⁵ Some lawmakers agreed: one stated, ‘you do have to have a discipline about it, you know, from the point of view just

²⁴⁵ UKBD1

of[sic] the presentation and controlling the debate’,²⁴⁶ while another member declared that names could be used to ‘improve the public’s understanding of and access to legislation. But in terms of the legislation itself, it’s the quality of legislation that matters not the title’.²⁴⁷

Accuracy was a main concern for many interviewees. A Conservative MP explained, ‘I think it’s important to get it right. I think it’s important to have titles that are easy to remember, I think it’s important to keep it simple. I think it’s also important that the title is not misleading’.²⁴⁸ Similarly, one journalist argued that they are important in terms of the avoidance of confusion, but their usefulness stops there. He went on to add that the reason ‘people stick with neutral, inoffensive titles is because it would be counter-productive to try and give them sort of propagandistic names’.²⁴⁹ Agreeing, a journalist pronounced, ‘it’s very important. Important that...it says what’s in the packet’.²⁵⁰ In fact, one Lords member wished to set a rough standard for legislation, asserting ‘I think it should not be so flowery and so theatrical that it diminishes the importance of what is in the bill or in the act. But I think there’s a lot of scope there for going towards theatricality on the one hand or being thoroughly boring on the other. And, I’m pretty tolerant on that middle ground.’²⁵¹

Short titles were regarded as less important by some, however. One lawmaker described them as being ‘an adornment’ or ‘a hook’²⁵² and another chided that ‘on a

²⁴⁶ HC3

²⁴⁷ HC7

²⁴⁸ HC4

²⁴⁹ UKMM3

²⁵⁰ UKMM1

²⁵¹ HL2

²⁵² HC1

score of 1 to 10 about what is really important, way down at the bottom I would have thought'.²⁵³ Interestingly, one Labour member stated that short titles are 'probably less important than legislators think', and went on to say that 'But, I think for most people out there, they just know that the government's passing a law. They actually don't care what it's called, it's what it does that's important'.²⁵⁴ Another journalist explained that he could see certain situations and places where it could be important, but that in the UK system it just is not, adding 'I think when no one's looking out for it, it kind of isn't [important]'.²⁵⁵ And a Commons member noted that 'it only becomes important if people seek to hijack it, which they haven't done'.²⁵⁶

Scotland

Scottish respondents regarded naming as very important. An overwhelming number (twelve of fifteen) believed that the naming of legislation is important in regard to the lawmaking process. This response challenges the above hypothesis, but is consistent with the answers proffered by Scottish respondents and also consistent with the principles underlying the regulations provided by the Scottish Parliament in regard to 'proper' bills. While both the Scottish and US interviews overwhelmingly agreed on this, the rationales for importance tended to focus on different aspects: the Scottish interviewees stressed legal accuracy and the US respondents stressed political advantage and/or increased bill promotion.

²⁵³ HC2

²⁵⁴ HC3

²⁵⁵ UKMM2

²⁵⁶ HC6

The most important aspect of short titles for Scottish respondents was accuracy. A Labour MSP said that bill titles must ‘reflect the legislation that’s going to go forward’,²⁵⁷ while one of her colleagues concurred, stating what the legislation is ‘actually going to achieve’ is ‘the most important part of it’.²⁵⁸ Additionally, a LibDem respondent said that they are important because ‘you’ve got to give an immediate impression about what a bill is about’,²⁵⁹ while another MSP put out a warning of sorts, stressing that naming can ‘distract’ from the actual legislation, and declared that legislators could get into some ‘dangerous territory’ if bills are not discussed in a ‘clear, rational manner’.²⁶⁰ One journalist took an informational perspective, stating that short titles ‘clearly should be accurate’.²⁶¹

Others focused on accuracy in the wording of statutes from a law index perspective. A drafter said that the titles are not ‘particularly important in the Scottish Parliament’ and they don’t ‘play a huge part in the process of getting a bill through’.²⁶² Yet he did say, and this will be a theme for interviewees, that he thought they were important ‘from the perspective of an orderly statute book, sort of that[sic] we have good and proper naming conventions’.²⁶³ Similarly, another drafter said that ‘absolutely’ naming was important, but went on to explain that they are important to him because he ‘wants something he can find in an index’.²⁶⁴ A governmental policy

²⁵⁷ MSP5

²⁵⁸ MSP3

²⁵⁹ MSP7

²⁶⁰ MSP6

²⁶¹ SCTMM2

²⁶² SCTBD1

²⁶³ *Id.*

²⁶⁴ SCTBD2

analyst added to the breadth of these statements, suggesting that ‘in future years if you’re starting from scratch and trying to find where bits of legislation sit, then it’s a tremendous advantage if it’s been halfway sensibly named’.²⁶⁵ A House Authority who approves such titles proclaimed ‘Yes, I think it’s absolutely important...we talked earlier about the index and that’s important in itself. But far more important is to protect the neutrality of the language and that’s our main concern. It’s something that we’ll always be vigilant about, and any moves to be more lax about it, or to allow policy statements is something that we would resist quite strongly’.²⁶⁶

Two journalists seemed to convince themselves during the course of their own responses that bill titles were important. One responded by saying ‘I think that it’s got to have a title that reflects what’s in the bill. And to that extent, and I can see how that if you use emotive titles how that could influence peoples thinking’,²⁶⁷ while another declared ‘I must admit that I haven’t really thought about it too much. But...I can see that it is’.²⁶⁸ Another journalist said that there is more cause for concern in the States rather than the Scottish Parliament, but he did state that bill naming is important in most legislatures, adding ‘Yes...probably at all levels really. I mean, it has to convey for the legislature, and for the fact that it’s going to be written down on tablets of stone, it means it has to be right. And the message it conveys to the three constituencies is fairly important, these being the politicians of all parties, the press and the public. So it has to be right. Whether it can be slangy or proper is another debate. But, I think it’s

²⁶⁵ SCTGOV2

²⁶⁶ SCTGOV1

²⁶⁷ SCTMM3

²⁶⁸ SCTMM1

essential to get it right, just because it's the law. And the law is notoriously, if not almost totally hung up on detail'.²⁶⁹

United States

The above hypothesis was strongly supported: fifteen out of eighteen US interviewees stated that bill naming was at least 'somewhat important' in the lawmaking process.

Only one legislative staffer said that naming is relatively unimportant, and two journalists agreed with this view. Significantly, however, the two lawmakers interviewed believed bill naming was very important.

It should be noted here that this was the final question in most interviews, so people tended to sum up the information they provided throughout the interview in their response to this question. Consistent with their previous answers, the two lawmakers believed naming to be important in the lawmaking process. One stated that titles were 'definitely' important to bills, and went on to declare that 'everything in the lawmaking process should be accurate, and simple to understand'.²⁷⁰ The other Congressman noted that names were indeed important because of everything he had already touched on throughout the interview.²⁷¹ Taking a broader view of naming one staffer suggested that 'coming up with these...short titles is designed to bring the legislative process closer to the average American voter', and went onto declare that 'we do that because we want to peak people's interest, we want people to know that we recognize what the shortcomings are in the nation, or what the problems are in the

²⁶⁹ SCTMM2

²⁷⁰ MCON1

²⁷¹ MCON2

nation, and that we are putting together legislation that is targeted toward attacking those issues. So, I think it's a very important part of the process'.²⁷²

Yet some on the legislative side derided the importance of naming from a technical perspective. One staffer declared that 'I believe the importance is the underlying text of the bill',²⁷³ while another said that it could be useful 'from a branding perspective', but said that the issue is not 'a substantive one'.²⁷⁴ Practically speaking, a staffer declared short titles 'important' but not 'essential'.²⁷⁵ Another staffer agreed, observing that 'it's important, I just don't think it is the primary focus', but added that 'it really helps in getting co-sponsors, in getting organizational support, and just spreading information about legislation, or about what you're working on, or what you're working against'.²⁷⁶ Other answers were very positive towards naming. When asked about short title importance one staffer declared, 'Yes...100%'.²⁷⁷ He went to say that when competing with other bills for attention, a good name can be 'helpful' and a bad name a 'hindrance'.²⁷⁸

Journalists took particularly analytical approaches when analysing whether or not such titles were important. Analysing it from multiple angles, one maintained that, 'it's an effective tool of legislating...and effective political tool'.²⁷⁹ A magazine reporter said that short titles are important 'in the sense of how the issue is thought

²⁷² HOUSESF2

²⁷³ HOUSESF1

²⁷⁴ HOUSESF3

²⁷⁵ HOUSESF4

²⁷⁶ HOUSESF5

²⁷⁷ HOUSESF6

²⁷⁸ *Id.*

²⁷⁹ USMM2

about, and talked about and written about in the media. And also, occasionally, like with the Ryan White Act...if it can influence the final vote total then it really can be the deciding factor in...very tightly contested pieces of legislation’.²⁸⁰ These responses are quite important in regard to the legislative process, because they suggest that short titles have an influence in the mechanics of lawmaking.

Looking at it from an informational perspective, one reporter noted ‘it’s important because you have to encapsulate something...you need to encapsulate often very complicated things within a few words, because people can’t recite and entire bill name every time they mention it...they need to know what they’re talking about’, and he went on to say ‘It doesn’t have to say the “promoting” elementary and secondary education act because why would that even occur to you that it would not be doing that?’²⁸¹ Another journalist succinctly summed up the situation, asserting, ‘Yes...always...no. But, can it be, absolutely. And therefore I think that it is important, and it is something that legislators ought to pay attention to and journalists ought to be aware of and try and...watchdog as much as possible’.²⁸² This same journalist further noted that ‘naming conventions, and broadly to include what the bill becomes colloquially known as, not just what its official titles are, naming conventions are extremely important.’²⁸³

Another important point that was discussed in Chapter IV was that some bills will go through name changes throughout the legislative process. Touching on this, one reporter noted, ‘I think it is important initially, but I think the process ends up taking

²⁸⁰ USMM6

²⁸¹ USMM4

²⁸² USMM7

²⁸³ Id.

over by the end. So, whatever you may have wanted your bill to be named... whatever you name your bill in the beginning, may not be how people see it in the end, especially if the tide turns against the legislation'.²⁸⁴ Agreeing, one of her colleagues declared, 'when you look at the vast majority of pieces of legislation and the incredible number of pieces of legislation that are introduced that never go anywhere, you'd have to assume that the naming piece of it, isn't necessarily dispositive'.²⁸⁵

Summary – Hypothesis #6

Almost all jurisdictions regarded short titles as important in the lawmaking process. Scottish interviewees were adamant that bill titles were important in the process, although their reasons justifying such stances (legislative accuracy, professionalism, etc.) were quite different than the responses from the US (informational/legislative tactics). Additionally, albeit less definitively, UK respondents stated that bill titles were important in the lawmaking process, and had similar sentiments to Scottish interviewees in terms of accuracy. The hypothesis for the US was overwhelmingly confirmed: only three interviewees thought that bill titles were unimportant in the lawmaking process.

Hypothesis 7: Legislative insiders from all jurisdictions will state that legislators fully understand legislation before voting on it. Media

²⁸⁴ USMM8

²⁸⁵ USMM9

members from all jurisdictions will state that legislators do not fully understand legislation before voting on it.

United Kingdom

Westminster legislative insiders unabashedly admitted that they and their colleagues do not always fully understand legislation before voting on it, thus challenging the above hypothesis. In fact, five out of ten said that they usually do not understand legislation, and three out of ten said that they only understand it sometimes. But a cause for concern this was not among the group, considering that legislators often receive their voting cues from a variety of places.

When asked whether legislators understand bills before voting on them, one MP replied, ‘all the time, no...some of the time, yes...most of the time, a little’.²⁸⁶ Others responded that there is just ‘far too much legislation to go through’,²⁸⁷ while another emphatically stated ‘absolutely not...no way, and anyone who told you so is not telling you the truth...we cannot’.²⁸⁸ While some mentioned a lack of qualified lawyers in Parliament,²⁸⁹ time constraints provided the major hindrance in regard to understanding. One member of the Lords mentioned a particular piece of legislation and exclaimed ‘I have no understanding of any of those areas of public policy. It would be a travesty, in terms of the use of my time, for me to read that’.²⁹⁰ Another Lords

²⁸⁶ HC1

²⁸⁷ HC2

²⁸⁸ HL1

²⁸⁹ HC4

²⁹⁰ HL1

member stated ‘I’m sure they’re capable of understanding it, but it’s a question of time and interest...most members of Parliament will not have a detailed awareness of most bills that are going through’.²⁹¹ Commenting on the institutional mechanics of legislative bodies, one MP stated that he does not ‘think the system expects them to’ fully understand legislation.²⁹²

Only one legislator said that his colleagues do usually understand legislation, but it came with a caveat; he said ‘I think they do...if they’re the minister responsible, then yes they do. Because a lot of it, particularly if it has financial implications, is very serious for all the business of government for which they’re responsible’.²⁹³ Other lawmakers held themselves to quite rigorous legislative voting standards: one Lords member declared that, ‘as a crossbencher, and it’s a self-imposed rule, I usually don’t vote on something unless I’ve got a pretty clear idea what it’s about’.²⁹⁴

Media members were much more divided on this issue. Two took the view that legislators did usually understand, while three were firmly in the ‘no’ category. For the small amount of data provided, the hypothesis was supported. One journalist declared, ‘MPs don’t, no. They probably know less than me, half of them’, and added ‘I’m not saying all of them, but a significant minority of them would not know what they are doing at all’.²⁹⁵ He backed up his statements by telling a story about having lunch with an MP who knew nothing about a certain issue when questioned, and claimed to only have a couple issues that he truly cared about. Another journalist agreed, stating ‘most

²⁹¹ HL3

²⁹² HC3

²⁹³ HC7

²⁹⁴ HL2

²⁹⁵ UKMM1

of the time I think they probably don't', but added that 'these things change quite quickly. If you have something that becomes very politically contentious, then lots of MPs that wouldn't know or care about it, would suddenly start to know or care about it'.²⁹⁶

Others asserted that MPs did have a decent understanding of legislation. One journalist claimed 'you don't have to read it to understand it...I mean that's what the media and lobby groups do. They identify the key issues and those are the ones that actually matter';²⁹⁷ an interesting answer in terms of assessing where MPs get their information and voting cues. Another reporter said that most MPs are fairly intelligent people, and proclaimed that 'they ought to know what they're talking about and they ought to know what they're voting about'.²⁹⁸

Scotland

Scottish legislative insiders were decidedly mixed on this issue, but most of them suggested that legislators do have a good understanding of bills before they vote on them, thus supporting the above hypothesis. However, those who suggested they did not offered some decidedly interesting views.

Many mentioned the committee system in response to this and noted that it takes a lot of work to get a bill through this process. Additionally, most thought that those on the committees will have a detailed knowledge of each bill that passes through that respective committee.²⁹⁹ One MSP said that after the bill report is released by the

²⁹⁶ UKMM2

²⁹⁷ UKMM3

²⁹⁸ UKMM4

²⁹⁹ MSP1, MSP5, MSP3

committee, most MSPs will have a pretty good handle on what a bill does,³⁰⁰ while another said that legislators are likely to understand many bill ‘hotspots’.³⁰¹

Others focused more on individual characteristics of members. One Conservative MSP claimed to ‘make a point of reading everything’, and provided a variety of reasons for members not having a keen knowledge of all legislation, explaining that ‘some members are extremely busy. Others find it difficult to apply themselves to something that’s not particularly interesting...because some legislation is worthy, but dull’.³⁰² Adding that most will not have a good understanding of legislation one LibDem MSP qualified this by explaining that ‘they will understand the legislation that they’ve been involved in’.³⁰³

A House Authority tended ‘to think they do’ understand legislation, and added that by ‘the time we get to stage three, which is a debate in the entire chamber with all 129 members, we’re quite often surprised at the depth of that debate, and understanding of the bill. It’s not just the people who are familiar with the bill through the committee stages that contribute to those debates’.³⁰⁴ A governmental policy analyst said that understanding between members of Parliament ‘varies’: some were quite savvy, such as ex-solicitors, but others struggled.³⁰⁵

The two drafters had very similar responses to this issue, which was quite intriguing. Taking a somewhat harsh stance on the matter, one drafter declared, ‘Not at

³⁰⁰ MSP2

³⁰¹ MSP6

³⁰² MSP4

³⁰³ MSP7

³⁰⁴ SCTGOV1

³⁰⁵ SCTGOV2

all, no. The dangerous ones are the ones that think they do'.³⁰⁶ The other drafter responded similarly, noting that MSPs 'can't possibly' understand legislation, especially if the bill is of any 'substance'.³⁰⁷ These utterances were not probed to the extent that they likely should have been, but they seem quite patronising in regard to lawmakers; some of who are putting much work into the crafting of legislation.

Media members in Scotland challenged the above hypothesis: two said that legislators usually do understand bills, while another contended they usually do not. Acknowledging that it would be quite difficult to assess this issue, one newspaper reporter said he suspected 'that they're mostly intelligent enough to be able to do that. I mean...it's their business after all. So, yes, they should'.³⁰⁸ Another columnist suggested that not 'everybody would be interested in every aspect of the legislation', but 'if you took a hundred...say, only seventy might be interested in a bill'³⁰⁹ – which is still quite a lot of interest.

A magazine journalist stated that 'the simple answer is no. But that doesn't really matter too much. Good legislative consultation means that external organizations can look and find problems with legislation and draw the attention of legislators'.³¹⁰ He further argued that 'no one' is going to have a line-by-line comprehension of any bill, and that that should make the civil service a bit 'more accountable' than they presently are.³¹¹

³⁰⁶ SCTBD2

³⁰⁷ SCTBD2

³⁰⁸ SCTMM1

³⁰⁹ SCTMM2

³¹⁰ SCTMM4

³¹¹ *Id.*

United States

Because of time constraints only two lawmakers in the US were asked this question. However both maintained that legislators fully understand legislation before voting on it; quite a different response from those in Westminster, who encounter less legislation on the whole. However, this small amount of data corresponds with the above hypothesis regarding legislators, thus supporting it to the extent that the small sample can be regarded as representative. One Congresswoman diplomatically stated that she thought that lawmakers understood them, but that there were certain issues in which they had more understanding than others,³¹² while a staffer said that her boss (a Congressman) had a pretty good understanding of bills before he voted on them.³¹³

Media members in the US were split on this issue, and thus the hypothesis could not be supported or challenged. Many seemed wary of supplying answers without having first-hand knowledge of whether they understood or not. One reporter replied ‘My strong suspicion is no’³¹⁴ when asked this question, while another said that, ‘a lot of times legislators cast votes on measures they don’t understand, absolutely. But lots of times...it’s just hard to tell’.³¹⁵ Other journalists stated that it varied and that sometimes legislators will understand the content of the bill, especially if they are involved with the legislation, but other times they would not. One journalist expanded on these answers by suggesting, ‘I would also say that many members of Congress don’t. They don’t take the time to understand what the bill actually is...they probably have a staff member who does, but they don’t understand it, and they don’t need to

³¹² MCON1

³¹³ HOUSESF5

³¹⁴ USMM1

³¹⁵ USMM2

understand it until they go on a TV show'.³¹⁶ Another agreed, stating that 'they have staff that are experts on the legislation, because...it would become very onerous for all legislators to understand every piece of legislation they are voting on, which is why you have committees'.³¹⁷

Conversely, other respondents put more faith in lawmakers and their staffs. One said 'most people, generally, have a good idea of what they're voting for' and went on to say that 'the reason that it seems that they don't sometimes is that small provisions which they didn't understand and didn't know about get picked up by the media'.³¹⁸ Another agreed declaring that 'one of the most bogus attacks you can make is say, "well, did you read all 1500 pages of the bill", I mean, the fact is most of it is just legalese and legislative language, and any politician with a staff worth its salt will have been briefed on what the significant issues are, often in quite some detail'.³¹⁹ Similarly, another journalist exclaimed, 'I don't think it's realistic and I don't really think it's important'.³²⁰

Summary – Hypothesis #7

This hypothesis was difficult to assess at times because of limited information, but overall it provided a variety of interesting results. Scottish legislators were somewhat mixed on the view, but a majority agreed with the above hypothesis, mainly because of their strong committee system. Two drafters, however, took a very pessimistic stance

³¹⁶ USMM7

³¹⁷ USMM8

³¹⁸ USMM3

³¹⁹ USMM6

³²⁰ USMM9

on the matter, asserting that MSPs could not possibly understand legislation.

Westminster legislative insiders narrowly denied the hypothesis, however, noting that in many cases it would be impossible to have a thorough understanding of most bills.

Two interviewees on the US legislative side stated that legislators do indeed understand legislation before they vote on it, while journalists had mixed reactions to the issue.

Hypothesis 8: Legislative insiders and media members from the UK and Scotland will state that legislators have enough time to read all the bills before they vote on them. Legislative insiders and media members from the US will state that legislators do not have enough time to read all bills before they vote on them.

United Kingdom

Although Westminster does not pass as much legislation as the US Congress, contemporary legislation is of considerable length, and legislators cannot manage to read all the bills put before them, thus providing a challenge to the eighth hypothesis. Fourteen of sixteen interviewees replied that legislators do not have enough time to read all legislation, and most suggested that this was not a vitally important piece of information.

Legislative insiders decisively challenged the hypothesis that they have the time or inclination to read all bills. One legislator said that he would ‘defy anyone to read all

the bills’,³²¹ noting that he reads those in which he has a particular working interest. He further stated, ‘And I think, candidly actually, that puts me ahead of a lot of my colleagues’.³²² Describing the essence of many bills, he also exclaimed they are ‘increasingly impenetrable’ in terms of reading them.³²³ A Labour MP replied ‘certainly not’³²⁴ when asked this question, while others responded ‘of course not’,³²⁵ ‘not conceivably’,³²⁶ and that it ‘is not expected of people’ inside Westminster.³²⁷

The issue of expertise came into focus, as it did in answers in the previous hypothesis. One member of the Lords stated ‘It’s impossible for everyone in the Lords to become an expert in and comment upon every piece of legislation. It’s just too wide to do that. You have to focus in on areas of expertise and knowledge’.³²⁸ A Conservative MP noted that he would not read all the bills, but would ‘read the briefing on the bill’ and ‘talk to various frontbench colleagues’ who were better versed in such matters.³²⁹

Journalists provided similar answers. One reporter suggested that he ‘suppose[s] they have lawyers that do it for them’, but added that on certain legislation, ‘the key people should have read it’.³³⁰ In particular, he raised an issue regarding the Lisbon

³²¹ HC1

³²² *Id.*

³²³ *Id.*

³²⁴ HC2

³²⁵ HC6

³²⁶ HC7

³²⁷ HC3

³²⁸ HL2

³²⁹ HC4

³³⁰ UKMM1

Treaty, where it did not appear that certain key figures dealing with the legislation had read the document. He added that the political editor of his paper at the time had read the document, and probably knew it better than the legislators. Another journalist quite mockingly said ‘Well, having time and actually doing it are two different things. Do they do it? No, of course they don’t do it’.³³¹ Another added ‘I know they don’t’, and then said that ‘most legislators in Britain, **I mean they’ll probably read the title**’ (emphasis added).³³² Two separate reporters recounted stories about sitting in a bar with legislators who were about to go vote on a bill, but they knew very little about what they were voting on.³³³

Scotland

The Scottish legislature passes considerably less legislation than Westminster. However, the same holds true regarding legislators’ time: they are too busy on the whole to read most legislation. Therefore the above hypothesis was challenged for this legislative body as well, as nine of fourteen of interviewees stated that legislators do not have time to read all bills before they vote on them. Similar to other jurisdictions, there was a widespread and informed perception that legislators do not have enough time to do this, and nor do many consider this a significant problem.

Some legislators were defensive and some were practical when it came to this issue. One SNP member declared that ‘it would be impossible for every MSP to read every single bill its entirety’,³³⁴ while a bill drafter stated that they ‘absolutely’ do not

³³¹ UKMM3

³³² UKMM2

³³³ UKMM2 & UKMM4

³³⁴ MSP1

have enough time to read all the bills.³³⁵ Other legislators concurred that it is impossible to read them all, and instead focused on other issues.³³⁶

Striking a different take on the matter, a drafter and a government employee stated that MSPs do have the time, but nobody knows if they do it or not.³³⁷ A House Authority stated that ‘by-and-large, those that have to certainly do’, and noted that ‘it may not be the case that all 129 members are familiar with every aspect of a bill. But, they know as a party that their views are being represented by the party spokesperson who will definitely have a detailed understanding of the legislation’.³³⁸

One journalist noted that MSPs should have had more time with the SNP government in control, because it was putting forward less legislation than previous governments. But he ultimately reasoned that ‘it probably comes down to the diligence of the individual politicians...whether they actually take the trouble or not’.³³⁹ Another columnist was thinking the question through as he answered, stating he ‘was tempted to say yes right away, but actually now I’m tempted to say no’, and further suggested that ‘I may be doing them a disservice, but if someone sits...wades through every single word of a published bill, that would almost be beyond the call of duty’.³⁴⁰ Finally, and somewhat cynically, a magazine journalist declared that ‘it’s not that they don’t have

³³⁵ SCTBD2

³³⁶ MSP2, MSP3, MSP5, MSP6

³³⁷ SCTBD1, SCTGOV2

³³⁸ SCTGOV1

³³⁹ SCTMM1

³⁴⁰ SCTMM2

time, it's that it's barely worth it when the whips have already told them how they're going to vote'.³⁴¹

United States

The eighth hypothesis was supported: nine out of ten interviewees stated, and some emphatically so, that politicians do not have enough time to read all bills before they vote on them. Although many people seem surprised that legislators do not have enough time to do this, policymakers and journalists understood this issue thoroughly in all jurisdictions. In fact, many of them went out of their way to criticize people who condemn politicians for not reading bills.

This question corresponds with the seventh hypothesis above, because reading bills might ordinarily be expected to lead to some understanding of the legislation. A Congresswoman declared that 'most legislators rarely read the entirety of a bill'.³⁴² Not surprisingly, this function is mostly left to staffers. One Chief of Staff said that his boss would read some legislation, but that it was 'mostly a staff thing', and went on to say that 'Any member of Congress that tells you they read every bill before it comes to the floor is lying right to your face'.³⁴³ Another Legislative Director said it was 'predominantly staff's job' to read all the legislation, but also reinforced that he was 'aware of every bill that's being voted on in a day'.³⁴⁴

Yet given the substantial time commitments and numerous responsibilities, some lawmakers commit themselves to making as informed decisions as possible. One

³⁴¹ SCTMM4

³⁴² MCON1

³⁴³ HOUSESF3

³⁴⁴ HOUSESF4

Congressman told me, ‘I’ve always been a big reader, and I spent my whole career reading, you know, you have to read a lot as a law student, and you have to read a lot as a lawyer and as a judge, and I still read a lot and I try to read as much as I can about every one of these bills... if it’s something significant, I try to find very good reasons to vote for or against something. And so, you know, I try to look below the surface’.³⁴⁵

Journalists were somewhat hesitant to answer this question, because they did not want to be seen as answering for politicians. Distancing himself, one responded, ‘I’m told the answer is no’,³⁴⁶ while another said, ‘I don’t think it’s physically possible to read all of the bills’.³⁴⁷ Another responded by declaring, ‘some bills are very long. Some of them have pages and pages of numbers, or tables or appendixes, and so on. So, I don’t know’.³⁴⁸ Others were more decisive. One stated ‘Oh...absolutely not, no. Not in the United States Congress’,³⁴⁹ and went on to say that the large amount and length of bills makes it virtually impossible. A magazine journalist agreed stating, ‘In terms of having read it, clearly not. I mean, in some ways that’s what they have staff for. If they spent all their time reading legislation they would never get anything done’.³⁵⁰

Summary – Hypothesis #8

It was readily apparent throughout interviews in all jurisdictions that legislators have an abundance of calls on their time and thus cannot read all bills before they vote on them. While this is not necessarily new information, it does have implications for evocative

³⁴⁵ MCON2

³⁴⁶ USMM1

³⁴⁷ USMM9

³⁴⁸ USMM4

³⁴⁹ USMM2

³⁵⁰ USMM7

short titles, because an alluring name could make a bill more attractive. However, in each jurisdiction there are a variety of sources through which legislators get their voting cues, including perhaps the most important: the party whips.

Hypothesis 9: Legislative insiders from all jurisdictions will not provide adequate explanations as to how and/or why some bill names have become evocative in nature and others have not. Media members from all jurisdictions will supply many explanations as to why and/or how bill names have become evocative in nature.

United Kingdom

A variety of responses were delivered by legislative insiders when responding to this question, thus challenging the above hypothesis. When putting this question to Westminster interviewees I gave the example of how terrorism bill titles have developed from the Terrorism Act to the: Anti-Terrorism Act, Counter-Terrorism Act, and the Anti-Terrorism, Crime and Security Act. Probing a drafter about this, he said that ‘the true answer is I don’t know’ why the names have changed, and went on to point out that ‘a lot of importance was attached, from a presentational point of view, to the first of those in getting in the word “anti” included in the titles’.³⁵¹ Thus, pressure was applied on the drafters and the House officials to include this language. But, he did

³⁵¹ UKBD1

point out some practical implications, noting that the government has a ‘Counter-Terrorism’ plan, and the logical step is for there to be a counter-terrorism bill as well.

A LibDem MP pointed out that ‘simply to use the same title year after year...would become more confusing’,³⁵² while another MP suggested that the terrorism bills received different names simply because ‘they were different bills’.³⁵³ Agreeing, a Labour MP explained that there needs to be ‘an element of differentiation between’ the bills,³⁵⁴ and a Lords member declared ‘you have to have that, otherwise we’d all be confused as to which one was which’.³⁵⁵

Sticking with the differentiation hypothesis one MP took a swipe at policymakers, declaring that ‘the government...has bombarded us with terrorism legislation in order to pretend they’re doing something about it. And therefore having many different titles, it helps to differentiate them from one to the other’.³⁵⁶ A Conservative member stated his objections as well, proclaiming that, ‘it indicates that the government is legislating too much. And we’ve felt that for some time. They ought to get the legislation right the first time. But, invariably, they don’t get it right the first time’.³⁵⁷ Another Commons member noted that ‘there is an element of governments naming bills in order to placate the popular press or what I call the “something must be done score”’.³⁵⁸

³⁵² HC1

³⁵³ HC4

³⁵⁴ HC2

³⁵⁵ HL1

³⁵⁶ HC6

³⁵⁷ HC4

³⁵⁸ HC5

Another interesting hypothesis was put forward by a member of the Lords, who said that most governments want ‘to define precisely the subject of the bill, so that you could control the numbers of amendments that could be put down’.³⁵⁹ He further noted that it may lead the bill to ‘run out of control’³⁶⁰ with amendments. However, this Lords member should have known that the short title cannot be used to determine scope in Westminster; that is determined primarily by long titles.³⁶¹

Journalists were more cautious when answering this question, but provided similar explanations as to how or why evocative naming is occurring, thus affirming the above hypothesis. Naming consistency issues were also mentioned as one journalist declared that ‘people will get confused’ if they are all called the same thing,³⁶² while another journalist stated that ‘we hate being inaccurate’, and went on to say that is why they ‘introduce short codes and shorthand names’.³⁶³ Another daily newspaper reporter said that terrorism acts had become more evocative because they were the issue of the day, and now that terrorism is declining (in her view), ‘we’re going to start to see a shift back to naming...you could argue, back to having more emotive naming for criminal justice acts’.³⁶⁴ So, some shared views were present between journalists and legislative insiders regarding explanations for evocative titles.

Declaring the change in naming was due to Prime Ministerial leadership, one journalist explained that ‘some of that’s part of the Blair-era, because he was a great

³⁵⁹ HL3

³⁶⁰ *Id.*

³⁶¹ Cabinet Office Guide to Making Legislation (2009) Drafting the Bill. Available at: http://webarchive.nationalarchives.gov.uk/http://www.cabinetoffice.gov.uk/secretariats/economic_and_domestic/legislative_programme/guide/html/drafting_the_bill.aspx

³⁶² UKMM3

³⁶³ UKMM4

³⁶⁴ UKMM5

communicator’, and more ‘direct’ than previous Prime Ministers.³⁶⁵ He went on to add that he thought he ‘was more in tune, if you like, or more sound-bite happy, and his bills would have a bit more of a buzz to them’.³⁶⁶

Scotland

This is a tough question to answer regarding the Scottish Parliament for two reasons: 1) (in contemporary times) it has only been in existence since 1999; and 2) the short titles of bills during such a short existence have not been all that evocative and have not changed much since Parliament’s inception. Thus, determining whether the hypotheses’ were supported or challenged was impossible. However, some reactions to this question were interesting, and examined below.

The question specifically asked in regards to Scotland was why two bills that seemed to fall under the same remit got two very different names: the Sexual Offences Bill and the Protection of Children and the Prevention of Sexual Offences Bill.³⁶⁷ One drafter said it was because the ‘content’ of the two bills were about different things: the latter bill defined sexual offences, and the former included measures that attempted to protect children and prevent sexual offences.³⁶⁸ A House Authority agreed, stating that it ‘probably [had] something to do with the scope of the bill’.³⁶⁹ He became somewhat defensive towards the end of his answer, stating that ‘there can’t be a political argument that what that earlier bill did was to prevent certain sexual offences, whereas the later

³⁶⁵ UKMM1

³⁶⁶ UKMM1

³⁶⁷ Both of these subsequently became Acts.

³⁶⁸ SCTBD1

³⁶⁹ SCTGOV1

Sexual Offences Bill was about changing the law in a whole range of areas'.³⁷⁰ MSPs also put forward similar arguments, stating that they were two different bills with different content.³⁷¹ But, one said the Sexual Offences Bill could have been named better, while others said that it was the responsibility of drafters to determine names.³⁷² Two legislators wholly rejected the assertion that one title was more evocative than the other: both expressed the opinion that Scottish bill names are not more or less evocative than others.³⁷³

Another drafter disagreed with the above explanations, arguing that 'ministers and their advisors are always interested in media contact, rather than necessarily with the practical concerns that a lawyer would have. And I think that sometimes rules are broken that shouldn't be broken. People just aren't firm enough in preparing legislation'.³⁷⁴ When I asked him if the Protection of Children Bill and Prevention of Sexual Offences Bill title broke those rules he replied in the affirmative.³⁷⁵

One media member, who appeared knowledgeable about the process of naming, stated that 'there's quite a heavy influence from the civil service, in terms of the way that bills should be named. And I suspect that they're quite careful to make sure it doesn't become too emotional or evocative'.³⁷⁶ In terms of the differences in titles, this same journalist suggested that 'maybe some politicians were just a bit more successful at getting through the idea of "protection" and "prevention" in one case than in the

³⁷⁰ *Id.*

³⁷¹ MSP2, MSP3, MSP6

³⁷² MSP2, MSP5, MSP7

³⁷³ MSP1, MSP4

³⁷⁴ SCTBD1

³⁷⁵ *Id.*

³⁷⁶ SCTMM1

other'.³⁷⁷ A columnist suggested that 'they may be aware of a need to communicate what they're doing in the legislation that they are passing to the public', and further noted that 'I don't think we would ever end up doing what I call headline bills, with shorthand scripts on them, necessarily', such as the USA PATRIOT Act.³⁷⁸ In line with the latter comment, another journalist noted that Scottish titles are 'almost a deterrent to scrutiny'.³⁷⁹

United States

A variety of responses were supplied to this question by US interviewees. Most of the legislative respondents ignored the historical basis of the question regarding the transformation, but did provide many reasons that contemporary titles are evocative, thus challenging the ninth hypothesis. One Congresswoman took the view that it was determined on a case-by-case situation, stating that it 'depends upon the political power behind any one bill at any moment in time',³⁸⁰ while another Congressman condemned such titles, stating 'it's not only to get attention', but to 'get sympathy or support' as well.³⁸¹

Staffers varied in their responses to this question. A Senate staffer stated titles were based on informal agreements, and that 'if they [bills] are not controversial, then there is no reason for a clever name'.³⁸² A Chief of Staff agreed, suggesting that 'most

³⁷⁷ *Id.*

³⁷⁸ SCTMM2

³⁷⁹ SCTMM4

³⁸⁰ MCON1

³⁸¹ MCON2

³⁸² SENSF1

of Congress' work is pretty bland, but there are some high-profile pieces of legislation that might move through in any given Congress, that one side or the other wants to raise to another level'.³⁸³ He added that they will 'put a little more effort into coming up with a clever short title, or...brand-worthy short title' if they deem it necessary.³⁸⁴ Other interviewees attributed this phenomenon to 'member style',³⁸⁵ 'lobbying' efforts, and 'press reasons or marketing reasons'.³⁸⁶

One House staffer replied, 'we live in a media-driven society, and the world of the thirty-second sound-bite...you've got these network programs or news programs where all they do is cycle around the same information, you know, repeatedly. And we need to have some...when it comes to naming titles you need to have a conscious effort to develop a name that the people will readily pick up on and understand'.³⁸⁷ Another staffer added that 'if you can somehow create a name that somehow lends itself to an evocative acronym without completely misrepresenting what the bill will do, you will do it' and went on to explain, 'generally, if people had their druthers, they would want an evocative name to all their pieces of legislation'.³⁸⁸

Journalists supplied a bevy of responses regarding how and why evocative naming originates, thus affirming the above hypothesis. One reporter focused directly on political posturing, asserting 'this is speculation, of course...part of it is, um, perhaps defensive on the part of the lawmaker, who is considering how it will be portrayed if he votes for or against a given bill. That is, it's very hard to be attacked for

³⁸³ HOUSESF3

³⁸⁴ *Id.*

³⁸⁵ HOUSESF4

³⁸⁶ HOUSESF5

³⁸⁷ HOUSESF2

³⁸⁸ HOUSESF6

voting for the GIVE Act. It's easy to attack your rival who didn't vote for the GIVE Act, or whatever that good-sounding thing was. It's also possible to mask bills that might not in their entirety be politically popular with voters, by giving it a name that makes it easier for them to swallow'.³⁸⁹ Following up on this, another journalist suggested that, 'it depends on what it is. There are a lot of, you know, legislators will try and name their bills...the HOPE Bill, or the DREAM Bill, and something will spell out hope and dream, and there's so many different DREAM Bills. You know, they usually have something to do with the American dream, or something to do with buying your first house, or obviously, again, just to try and use it as a framing device'.³⁹⁰

Yet some respondents were more pragmatic. One legal journalist said, 'Well, most of what Congress does, just as most of what courts do or journalists do or scholars do, isn't that interesting or important. It's just routine stuff that has to be done and doesn't really excite anyone's attention and doesn't really carry the kind of mass interest that certain selected pieces of legislation do. So...most of those bills just aren't seen as requiring that type of thought. They're not aimed at any kind of political movement or mass communication'.³⁹¹ Thus, the larger and more controversial pieces of legislation are likely to incorporate evocative naming, while other bills do not.³⁹² Declaring he did not know the rationale behind it, another suggested that he 'would guess that the more controversial the bill, the authors would try to put it in as positive light as possible'.³⁹³ Other journalists mentioned that they are more likely to have a

³⁸⁹ USMM1

³⁹⁰ USMM7

³⁹¹ USMM4

³⁹² USMM6

³⁹³ USMM5

fancy name if they are fulfilling a campaign promise,³⁹⁴ have an ‘ideological charge’,³⁹⁵ or some ‘obvious political benefit’.³⁹⁶

Summary – Hypothesis #9

Although a couple Westminster interviewees said that some titles (or words included in short titles) were inserted for political gain, most of them stated that this occurred for differentiation purposes more than anything, because having repetitive short titles year-after-year would become confusing. Determining this for the Scottish Parliament was close to impossible, because the legislative body is so young, and the titles of their legislation are not as evocative as other jurisdictions. However, one journalist in particular stressed the civil service role in devising short titles. Not surprisingly, both US sub-groups provided a variety of responses to this question: legislators and media members took aim at aspects such as member naming style and the media, among other things.

Hypothesis 10: Legislative insiders and media members from all countries will state that communication between politicians and the general public regarding bills and bill naming has changed throughout the past few decades.

³⁹⁴ USMM9

³⁹⁵ USMM2

³⁹⁶ USMM3

United Kingdom

This hypothesis was supported in the UK, where many commented on the language of short titles and bills generally. Speaking in regard to the future of bill titles one LibDem MP noted that,

‘there’s a tendency now to try to find a slightly more evocative one, and stamp your ideology on the face of the title. Um...but that depends how...I mean, it will be interesting to see how, if we have a change of government. You know a conservative government pretending that it’s not right-wing, might want to introduce a radical right-wing agenda but pretend that it’s a progressive centre agenda. And will therefore put misleading, gentle, soft titles onto the bills which have much more radical objectives. So, you could do it the other way around. You could put a placebo on the name of the bill’.³⁹⁷

Another Conservative legislator said ‘Yes, I think that we have moved a bit more to um... to some of these more catchy titles...in that direction: Safeguarding Vulnerable Groups, prevention, intervention, prevention, intervention those words have been used. And I personally think it’s possibly a mistake’.³⁹⁸ This was pointed out by others: another MP stated he sees it ‘as a lowering of standards’.³⁹⁹

The remainder of interviewees took a more general approach to the language of bills. The drafter interviewed stated that they ‘are constantly striving to produce simpler, more straight-forward language’, and noted that the Parliamentary Counsel has

³⁹⁷ HC5

³⁹⁸ HC4

³⁹⁹ HC7

started to use gender-neutral language in drafting.⁴⁰⁰ Also describing the language used in bills, one MP noted ‘there has[sic] been serious attempts by the bill drafters to make them more accessible, and more people-friendly. I don’t know if they’ve succeeded, particularly, but there has[sic] been attempts’.⁴⁰¹ The deep-seated feelings of one Lords member erupted regarding this matter, as she stated:

‘Yes, it tends to be...it tends to be broader in scope. The scope of everything now seems to be all-encompassing. In other words, you have a...I get the impression that we have a very authoritarian government that sees its role...doesn’t see small government as a desirable outcome. Sees its role as being a nanny state, there to intervene in every aspect of a citizen’s life. And therefore there tends to be a trend in draftsman[sic] to encompass as many possible associations they can think through on that day, and you know, so I find that legislation now overlaps into other areas more than it should and it’s very broad... that takes me back to two points, one is that they’re not drafted very carefully, and the quality of draftsmanship is poor. And secondly, that there’s just too much in bills, and so we realize that actually we didn’t want to do that, why did we lock ourselves in by having it so broad...now we need to go take away that clause, that subsection of a clause, because we don’t want to wear a straitjacket. So, I would say getting worse not better’.⁴⁰²

Speaking in regard to other difficulties of legislative language, another Lords member Lords declared that ‘it’s impossible for the average reader. I think it’s

⁴⁰⁰ UKBD1

⁴⁰¹ HC2

⁴⁰² HL1

extremely difficult often for legislators, but I think we have the advantage (a), I suppose, of a degree of familiarity, although I can't say that anyone get completely familiar with subsection 2a, little b that relates to subsection 28c, in appendix Z. I mean, that's not how you talk in the pub really', and then added 'I think it's pretty complicated at the best of times, for everyone'.⁴⁰³ Also speaking about the level of difficulty, one MP noted 'I recognize that a lot of the language that we use both in the bill and in Parliament, in any bill, and in Parliament, is archaic. So, it's not dead, it's just that you need a certain level of understanding, knowledge, practice and custom'.⁴⁰⁴ Commenting on the use of this archaic language, another Commons member noted that, 'Some people will say that it needs the arcane language in order to get it clear. I actually think it's the opposite. I think the arcane language quite often actually obscures what they are trying to...getting[sic] at'.⁴⁰⁵

Others found the language of bills to be quite static in terms of change. One Conservative MP responded 'No, none at all, no, no. There's very little change',⁴⁰⁶ in regard to the language located in bills, while a member of the Lords agreed, noting 'from the days when I was a law student, the language is much the same. The way the arguments are constructed is much the same'.⁴⁰⁷ The latter member went on to say that 'it's all part of this thrust to make complex issues more intelligible, in a world that is more dominated by sound-bites and headlines and tabloid red-top', and further declares 'there is a limit to the degree at which you can popularize the language'.⁴⁰⁸

⁴⁰³ HL3

⁴⁰⁴ HC7

⁴⁰⁵ HC2

⁴⁰⁶ HC4

⁴⁰⁷ HL2

⁴⁰⁸ *Id.*

Expanding on the broader context of political discourse, one journalist proclaimed that ‘the sort of wider language of politics...is widely and rightly mocked. You know this sort of new Labour phraseology has grown up, which is loathsome and embarrassing. You know, all about stakeholders, and forward agendas, and forward (inaudible), and all that kind of gobbledygook really. Where, you know, I prefer plain English in all things...politics has become affected with this unspecific, abstract language’.⁴⁰⁹ This same journalist went on to state that ‘an awful lot of political speeches and political debates in the House of Commons are obscured by, sort of, people using well-meaning jargon’.⁴¹⁰

The names of white papers and green papers were the target of another journalist, who declared that ‘the budget might be called “Building Prosperity for Britain”, where it would have just been called the “Financial and Stability something”. But right now it’s called “Building a More Prosperous Future”’.⁴¹¹ Two other journalists saw the change more as a paradigm shift, focusing on the mediums of how language is delivered: one declared ‘in spoken language they’re in a headlong rush to practice informality, you know, from all politicians. The couch...the TV couch, rather than the podium is the place to be in politics now. So yeah, a massive move toward informalising[sic] the message and making the message more accessible to a broad audience. For sure, yeah. And down to the fact that, politicians are down to, you know, getting their message across in 140 characters or less, when they tweet. Politics has invaded the ‘twittosphere’, if you want. And, people are using every means possible to

⁴⁰⁹ UKMM3

⁴¹⁰ *Id.*

⁴¹¹ UKMM2

get the message across, and that means informality'.⁴¹² The other journalist had similar thoughts, stating, 'They're also moving away from using mediators. They would prefer...I think 99% of politicians would prefer to do a television interview than a newspaper one, because they know their message will get across, most of the time, the way they want it to. So, they'd much rather have twenty minutes on the GMT sofa for the daytime telly viewers than they would be grilled by the Telegraph over an issue'.⁴¹³

Scotland

This again was a tough question to answer because of the short existence of the Scottish Parliament. However, Westminster still drafts some Scottish Bills, and the two countries have shared a statute book for hundreds of years. Altogether there were many examples given of language that has changed throughout the years, thus supporting the above hypothesis.

Speaking especially in regard to short titles, one MSP stood firmly on the ground that there is 'no evidence to suggest that bill titles have become more evocative'⁴¹⁴ in the Scottish Parliament. Another MSP berated the 24-hour media, saying they often rely on 'short, crisp soundbite[s]',⁴¹⁵ which are ideal for evocative titles. He went on to say that quite often he was given twenty seconds to explain an extremely important, complex issue, which for him was just not enough time.

⁴¹² UKMM4

⁴¹³ UKMM5

⁴¹⁴ MSP1

⁴¹⁵ MSP6

Yet one drafter thought that over the course of the past ten years Scottish titles had become more ‘descriptive’.⁴¹⁶ He explained how Parliament went from bland titles, such as the Education Act, to the Education (Additional Support for Learning) Act. He stated that contemporary bills may be ‘doing more targeted things’, whereas past bills were more ‘blockbuster bills’ with a multitude of elements in them.⁴¹⁷ Conversely, another drafter noted that titles have gotten shorter than they used to be. He said that if ‘you go back to the 1800’s you get colossal short titles’.⁴¹⁸ He also stated that there has been an ‘introduction of popular words’ in titles as ‘there is far more of an attempt now to find a campaign flag’ that people can run on.⁴¹⁹

Government employees and journalists were in agreement that titles have not changed that much on the whole for the Scottish Parliament. A House Authority said that they have ‘protected’ the language in bill titles, so it really has not changed much during the recent lifetime of the Parliament.⁴²⁰ From the media perspective, a reporter who said he has worked at the Scottish Parliament since devolution said he was not sure ‘that they have become more evocative’, and further argued that ‘there is quite a concern to make sure that laws are objective and sort of neutral in the sense of not being partisan, or kind of just done in a rush, because, if these are going to be laws that

⁴¹⁶ SCTBD1

⁴¹⁷ This is likely because Westminster used to have large omnibus bills in regard to Scotland that dealt with many miscellaneous provisions at once. (i.e. Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 c.40, Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 c.73, and Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 c.55).

⁴¹⁸ SCTBD2; he probably meant long titles here.

⁴¹⁹ *Id.*

⁴²⁰ SCTGOV1

are on the statute books for years to come, then people want to make sure that they are properly done, and they're not carried away with emotion'.⁴²¹

Another reporter began by suggesting he could not 'imagine there being a paradigm shift there or anything linguistic. I don't see anything certainly sinister in it,' but then went on to note that ... 'counter-terrorism and anti-terrorism sounds like you're doing something about something'.⁴²² This same columnist added that 'it may just be...PR, which is what drives everything in politics now, and has done for the past twenty years...But, one of the things in PR about the product is that you keep saying the product's name endlessly, and you keep saying counter-terrorism, anti-terrorism, counter-terrorism, anti-terrorism...subconsciously, I suppose it builds up a feeling that they are on the job'.⁴²³

Analyzing language in general over the past few decades, one magazine reporter declared that 'we have less of a culture of deference...Increasing "intellectual" democratisation (post '60s) means that 'power' requires to do more persuading and less telling. In addition, language generally has become excessively emotive and descriptive – half the worlds' events are now 'tragedies' or 'victories' or 'farces'.⁴²⁴ This same journalist summed up his answer by further stating that 'Ours is a generation of linguistic excess'.⁴²⁵

United States

⁴²¹ SCTMM1

⁴²² SCTMM2

⁴²³ SCTMM2

⁴²⁴ SCTMM4

⁴²⁵ SCTMM4

The tenth hypothesis was supported by many insightful comments from interviewees in the US. One Congresswoman stated that generally ‘people have only gotten more clever[sic] about naming bills and bill titles’.⁴²⁶ Another House staffer said that there were differences between the parties when naming legislation, and noted that with Republicans ‘there was a push of patriotic themed titles, legislation, names, kind of in an effort to...if you oppose it, you’re unpatriotic. Now with Democrats in control we have very soft sounding names that help people, that make people feel good. You know, if you oppose it, the Republicans oppose it, it’s like ‘oh, you don’t want to help people’’.⁴²⁷ He further stated that this originated from the ‘the philosophical backgrounds of both parties, but also...the political gamesmanship of trying to have the edge’.⁴²⁸

One reporter provided a quasi-theoretical answer, declaring ‘I would say the ‘No Child Left Behind Act’ and the ‘USA PATRIOT Act’ are perfect examples...I would imagine you wouldn’t have seen that 30 years ago, or 20. But you know it’s, this may be too broad for you, but it’s a whole broader trend in the use of the English language is this turn towards post-modernism, where there’s a disconnect between the...I forgot the linguistic terms...but the style and the substance...between the form and the content’.⁴²⁹

A newspaper journalist commented that, ‘people [legislators] think...rightly or wrongly that if they have a controversial bill that they’ve got to get out there and sell it, they got to promote it, and put it in the best light possible. And you see it on TV too,

⁴²⁶ MCON1

⁴²⁷ HOUSESF4

⁴²⁸ *Id.*

⁴²⁹ USMM2

you know, when they promote the energy bill or the health bill, that ah...often they'll frame it in a way that certainly will make it sound as good as possible or as bad as possible'.⁴³⁰ Complementing this response, another reporter proclaimed that 'the language does seem to be more gimmicky than it was in prior generations. How much of that is unique to Congress, or lawmakers, and how much of it is just the nature of the...you know, the 21st century epoch that we're in is hard to know'...and then humorously noted that 'when something is devised for reason, pragmatic reasons, and then it's transmuted, it's like driving an SUV in Beverly Hills, you know, it's maybe a vehicle that makes sense if you're in the Congo, but on Rodeo Drive you don't really need it'.⁴³¹

Summary- Hypothesis #10

The reaction by UK respondents was variable, but many respondents provided interesting and thorough answers as to how the language of Westminster has changed throughout the years. This issue was quite difficult to examine in Scotland because of the youth of the Parliament, but one bill drafter stated that short titles over the recent course of Parliament had become more descriptive and used more 'popular' words, while others believed that titles had remained much the same. This hypothesis was supported for US respondents: many suggested reasons for how political communication, especially related to bills and short titles, has changed throughout the years.

⁴³⁰ USMM5

⁴³¹ USMM4

Hypothesis 11: Legislative insiders from all jurisdictions will state that they have not gravitated towards the language of the marketplace, especially when it comes to bill naming. Media members from all jurisdictions will state that legislators have gravitated towards the language of the marketplace.

United Kingdom

Although this hypothesis partially overlaps with the previous one, here it specifically asks if there has been a change towards the language of the marketplace or business, which is in line with the political marketing literature of Chapter III. Due to time constraints and ancillary factors this question was dropped throughout many of the interviews, and thus not many legislative insiders or media members were able to offer their insights. Therefore, with the limited amount of information, I am unable to offer any support or challenge for the ninth hypothesis.

A LibDem member agreed with the statement in a general context, ‘but not in legislation’.⁴³² He went on to clarify that it has occurred ‘in the way we behave’ as politicians and political entities, ‘but not in the drafting of bills’.⁴³³ However, another Commons member went on to state, ‘Yes, certainly...and I think there are always the buzz words of the day, and the popular phraseology of the day, but most of it I think

⁴³² HC6

⁴³³ *Id.*

can really be described as sort of mannerisms of language'.⁴³⁴ However this statement was not specific to bills: it was more of a general statement on political language.

Two media members took the view that it had occurred on a more broad political/sociological level, and highlighted some practical elements as evidence. One journalist observed that 'There's a lot more of them going in for some media training. And there's a lot of groups around here who teach them what to do'.⁴³⁵ He further noted that, 'a lot of them have got links with, private links with other companies and things...directorships, some of them are taken on as advisers...I've seen a lot more of this lately'.⁴³⁶ Another agreed, stating that 'yeah certainly the trend has always been slogans and phrases in politics, but I think concentrations have gotten shorter', and declared that 'this kind of branding is creeping in'.⁴³⁷

Scotland

MSPs were quite forthcoming about this issue. Most of them stated that they have gravitated towards this type of language, but that it was inevitable and not cause for concern. Thus, the above hypothesis was challenged in relation to those on the legislative side. One MSP pointed out that there are a plethora of different backgrounds in the Scottish Parliament, because it is so new.⁴³⁸ Therefore to have people which have worked in business and use business terminology should not be out of the ordinary or

⁴³⁴ HC7

⁴³⁵ UKMM1

⁴³⁶ UKMM1

⁴³⁷ UKMM2

⁴³⁸ MSP5

condemned. Another LibDem MSP responded quite eloquently in regards to the evolution of language, stating:

‘I mean I think it’s inevitable... You know, inevitably we move on, and if we had gone back thirty years, they might have said, “oh, we can’t use the word ‘preventing’, or whatever, in a bill, and it’s got to be absolutely straightforward. It must not have any implications.” But you know time moves on, and inevitably we’re all affected by that. And I think PR, and the whole question of PR, and the perception of people and the perception of the way politics is run is changing all the time, and perhaps has changed more in the last ten years than in the previous hundred years’.⁴³⁹

A government policy analyst said that ‘politicians all speak in terms that seem borrowed from marketing and business’, and noted a recent change to use euphemisms ‘to describe certain unpleasant realities that get ignored’.⁴⁴⁰

A number of interviewees focused on this issue in relation to bills. An important response came from a drafter who stated that, ‘**There is pressure all the time, if not in short titles, then to use them in the text of the bill. And it is quite difficult battling off these ideas sometimes**’ (emphasis added).⁴⁴¹ This same drafter went on to explain that ‘the word “governance”, for example, just appeared out of nowhere, and suddenly we had to use it in bills, with no sort of background at all. There is nothing wrong with the word governance...there is a genuine meaning and a distinction between the word

⁴³⁹ MSP7

⁴⁴⁰ SCTGOV2

⁴⁴¹ SCTBD2

government and governance and so on, but nevertheless it was coming in from outside, and there's any number of new words that come in and are used in a short time'.⁴⁴²

One SNP member, however, said that this was probably true on the campaign trail or in press releases, but not in the language of bills.⁴⁴³ On the other hand, providing a different perspective on bill language, another SNP member said that the Parliament was prone to using marketplace jargon, but added that 'over the past few years, a lot of the bills...the long titles, and the executive note that comes with them have to an element been "de-jargonated"...to allow people to understand them better'.⁴⁴⁴

Media members in Scotland were quick to observe that the language of politics has indeed gravitated towards the language of the marketplace, thus supporting the above hypothesis. Yet many journalists appeared bothered with such language. One stated he finds it 'quite irritating that a lot of people do use business language which I don't think actually conveys anything at all. Most of it just makes it far less understandable to people'.⁴⁴⁵ He also suggested that politicians may 'mix too much with business people and so they just adopt their language because they are taken in by it', and went on to say that it is 'a bad development' for our political culture.⁴⁴⁶ Another journalist commented that political language has 'very definitely' come from the marketplace, and 'the market is intertwined with politics in a way in this country in a way that it never was in the past'.⁴⁴⁷ He further asserted that, 'there's a need to placate

⁴⁴² SCTBD2

⁴⁴³ MSP1

⁴⁴⁴ MSP3

⁴⁴⁵ SCTMM1

⁴⁴⁶ SCTMM1

⁴⁴⁷ SCTMM2

business and the market, across all parties, from the nominal left to the right. So, the language of the market permeates politics massively. But, they wouldn't just be using language in an empty fashion. I think the language permeates because of the values behind the words and the language and the jargon also permeates politics now'.⁴⁴⁸

Acknowledging that he is unsure if such language has come from the marketplace, one journalist declared that, 'you do get an awful lot of jargon that to me is completely meaningless, and I don't understand half of it. They talk in their own language. I think they should go back to using English in a straightforward manner. And I think they hide and obfuscate behind dreadful language that people don't understand'.⁴⁴⁹ He goes on to refer to such language as 'rubbish' and 'lazy'.⁴⁵⁰

The critical comments were abundant in regard to this topic. Another journalist maintained that 'there is obviously a long-standing criticism of Parliament and the law that the jargon is absurd. And, of course, in the law it almost has to be absurd, because they have to cover every eventuality and possibility and make sure everything's sewn up really tightly'.⁴⁵¹ And taking a cynical view on the matter, he further declared, 'Some of the jargon has come across from the marketplace, and also the marketplace is the one that is coming up all the crap jargon. They are just running flags up a flagpole to see who bites'.⁴⁵²

United States

⁴⁴⁸ *Id.*

⁴⁴⁹ SCTMM3

⁴⁵⁰ *Id.*

⁴⁵¹ SCTMM2

⁴⁵² *Id.*

There were a variety of responses to this question, but for one reason or another, this became another question that was dropped because of interview time or other considerations, and thus no legislative insiders were asked. Therefore I cannot offer support to the hypothesis in relation to that sub-population. Yet several journalists were asked, and many of them stated that politics have gravitated towards such language, thus confirming the hypothesis.

Referring to internal business language and external marketing language, one journalist said, ‘I think politicians are exposed to both and they use both, and their staffs are exposed to both and use both’.⁴⁵³ Another reporter replied, ‘to the extent that politics is marketing, that’s been going on a long time. To the extent that campaign commercials are advertising that’s been going on a long time. To the extent that people are looking for ways to communicate with people in terms that they will understand, that makes sense, and to the extent that marketing or advertising or other realms share a desire to do the same thing, then you’d have a you know, a common language and a common usage’.⁴⁵⁴ The above response seems to echo the perceptions of researchers: the line between politics and marketing was crossed long ago, and the two are becoming increasingly entangled as the years pass.⁴⁵⁵

Chiding the language of business and how it has invaded the political realm, another reporter stated, ‘Yeah, it’s funny, I notice the language of business affecting everything more and more. People talk about efficiency, and productivity, and things

⁴⁵³ USMM4

⁴⁵⁴ USMM9

⁴⁵⁵ Maarek, Philippe J. (1995). *Political Marketing and Communication*. New Barnet, UK: John Libbey Publishing.

like that. So I think that...to that extent, yeah. Which is unfortunate, because the language of business is soul-destroying. But, yeah, I think to some extent, definitely'.⁴⁵⁶

Marketplace language was not the only focus of some responses: one magazine reporter commented that 'the two things that you see are business and sports, you know. 'We're going to move the ball down the field, we're going to...' that sort of thing. But I haven't noticed movement one way or the other. I mean, as far as I can tell, that metaphorical talk has always been more or less a constant in Washington'.⁴⁵⁷ Reiterating this point, another journalist stated, 'there's a lot of sports references actually... somebody is carrying the ball, you know, bringing it towards the end zone, things like that, so. You know, I think politics, sports and business have a lot in common. So, I don't think it's very surprising if that is the case'.⁴⁵⁸

Summary – Hypothesis #11

This question was frequently dropped with Westminster interviewees, but those who answered thought the phenomenon had occurred on more of a broad level, but not necessarily in legislation. Scottish legislators saw it inevitable that this would happen, and did not regard it as alarming. However, in a surprising revelation (especially in regard to the Scottish Parliament), one drafter said that he frequently is pressurised to use buzz words in short titles and inside bills. Scottish journalists also stated that this linguistic influx had taken place and were critical of such language. Many US journalists gave answers that affirmed an arrival of business and/or marketing type language, but found this a common occurrence.

⁴⁵⁶ USMM3

⁴⁵⁷ USMM6

⁴⁵⁸ USMM8

Hypothesis 12: Legislative Insiders and media members from all jurisdictions will state that specific bills (or laws) are often mentioned on the campaign trail.

It must be acknowledged, albeit that exploring the topic further is a matter for other research, that political elections and campaigns differ markedly between the UK and US. Once there is a dissolution of Parliament and an election is called in the UK, candidates are only given a little over three weeks (17 working days) to campaign before the next election is held.⁴⁵⁹ Conversely, in the US they are more protracted, often times taking up months at a time (especially in Presidential contests).⁴⁶⁰ Thus the amount of time devoted to campaigning is distinctly shorter in the UK. The fluid nature of politics and election campaigns allows for lengthier campaigns to react to and discuss more: current events, media inquiries, constituent inquiries, judicial decisions, the enactment or progress of legislation or bills, among other things, that shorter campaigns would not encounter.

United Kingdom

⁴⁵⁹ Representation of the People Act 1983 c.2. Available at: <http://www.legislation.gov.uk/ukpga/1983/2/contents>; Election Timetables, House of Commons Library. Research Paper 09/44. Available at: <http://www.parliament.uk/documents/commons/lib/research/rp2009/rp09-044.pdf>

⁴⁶⁰ The Iowa Caucus, which is the first Presidential primary, usually takes place in January of the election year, a full 11 months before the November elections. More information at: <http://www.iowacaucus.com>

Responses for UK interviewees were mixed on this question. But a majority stated that at least occasionally they have specific bills (or laws) mentioned on the campaign trail, thus verifying the above hypothesis. This finding is not too surprising, because political attentiveness likely differs by constituency, and some will be more politically savvy and tuned into issues more than others.

A few insiders answered emphatically in the affirmative, stating that bills are often mentioned. One Conservative candidate said that ‘Yes, yes, sure. Very much so...yes, yes, yes. And in fact the government on the terrorist legislation, the government were quite prone to use that as a stick to beat and to criticize us by saying ‘this is an anti-terrorism, there’s a huge terror threat, and what are you guys doing you’re voting against it’’.⁴⁶¹ Another Lords member ardently agreed, declaring ‘Oh yes, oh yes...well, quite common anyway. Depends on how controversial the bill was, I suppose. But, when you’re a sitting member of Parliament seeking re-election, very frequently your opponent will go through your record in voting on legislation and if he or she thinks it’s to their advantage they will draw that attention of your voting record to the wider public’.⁴⁶²

Others provided more moderate answers. One MP said it happens ‘not horribly often, but you can get that sometimes’, and referenced the Prevention of Terrorism Bills as one example,⁴⁶³ while another MP noted that it happens ‘on particular issues’, because sometimes during the election season a candidate’s voting record is dispersed

⁴⁶¹ HC4

⁴⁶² HL3

⁴⁶³ HC6

for everyone to see.⁴⁶⁴ Yet two MPs said that bills were hardly or never mentioned on the campaign trail. A LibDem member declared ‘not in my experience, as in my personal constituencies’,⁴⁶⁵ while another MP stated that ‘they wouldn’t use the Act, they would use the issue’, and provided the war in Iraq or identity cards as an example.⁴⁶⁶

Scotland

For a variety of reasons there were only four Scottish respondents that answered this question, two legislators and two journalists. All of them stated that specific bills were not mentioned on the campaign trail, thus challenging the above hypothesis. One journalist said that he could not ‘remember that happening’ at Holyrood,⁴⁶⁷ but he did say that there were a lot of ‘false claims’ that go on, where legislators try to paint somebody as completely against something ‘when all they really did was oppose a particular detail or an addition to it’.⁴⁶⁸ One MSP said that specific bills were never mentioned, only issues,⁴⁶⁹ while the other legislator stated that ‘you would think it would’ come up, but ‘it never has’.⁴⁷⁰ And, similar to some answers from Westminster,

⁴⁶⁴ HC7

⁴⁶⁵ HC1

⁴⁶⁶ HC2

⁴⁶⁷ SCTMM1

⁴⁶⁸ *Id.*

⁴⁶⁹ MSP6

⁴⁷⁰ MSP4

another reporter said that bills will ‘not really’ be mentioned by name, but ‘they’ll be described colloquially’.⁴⁷¹

United States

Four of five US interviewees responded that specific bills or laws are mentioned on the campaign trail, thus supporting the above hypothesis. Also, three of those who answered at least occasionally on this question were on the legislative side, while only one was a media member. Yet for one reason or another, this question was excluded from the American interviews as more pressing issues took priority.

Stating that she was asked on the campaign trail about No Child Left Behind ‘all the time’, one Congresswoman declared that even though she was not in office when the bill was passed, they asked her how she would have voted on the measure. She even noted that her constituents ‘joked about it being a misleading title’ as well.⁴⁷² A House staffer responded ‘Sure, sure, oh yeah, because I think you don’t want to have to explain yourself too much’.⁴⁷³ He went on to state that although sometimes the titles were mentioned, it was probably more common for the informal name to be so, such as the ‘stimulus’ or ‘bailout’.⁴⁷⁴ Another staffer stated that bills were mentioned on the campaign trail, but he had only worked on local, not national elections.⁴⁷⁵

⁴⁷¹ SCTMM4

⁴⁷² MCON1

⁴⁷³ HOUSESF6

⁴⁷⁴ This is in reference to the American Recovery and Reinvestment Act. In regards to the US Code, this is often referred to as the ‘popular title’ of the bill.

⁴⁷⁵ HOUSESF5

Summary – Hypothesis #12

Two-thirds of UK legislators expressed the view that specific bills were at least occasionally mentioned during campaigns, affirming the hypothesis. Conversely, the hypothesis was not affirmed for the Scottish Parliament: respondents stated that bills were not frequently mentioned during campaigns. US respondents affirmed the hypothesis, stating that specific bills and laws are frequently mentioned on the campaign trail, and there was special mention of the No Child Left Behind Act.

Hypothesis 13: Legislative insiders from all jurisdictions will state that bill names very infrequently affect them when voting on a piece of legislation. Media members from all jurisdictions will state that bill names do have an impact when legislators are voting on them.

United Kingdom

There were ambivalent responses to this question from UK respondents. A handful of legislators said that they occasionally felt pressured because of a name, but most legislative insiders suggested that they very infrequently feel pressure to vote for measures because of their titles, thus supporting the above hypothesis.

As expected, lawmakers appeared a little defensive when answering this question, perhaps because the question was more personal to them than others. One Lords member emphatically responded ‘No, never ever. And I never would even if I

were an MP'.⁴⁷⁶ She followed up by stating 'No, nobody's ever asked me. And I, you know, I'd be very happy to answer their questions if they did. Yes, my very simple answer would be, "because it wasn't protecting children". I voted against the Protection of Children Act because it wasn't protecting children. It didn't do what it said on the title'.⁴⁷⁷ Many MPs were in agreement that it was a 'non-issue'. A Conservative member stated 'No, no, no, I look at the substance of the bill always',⁴⁷⁸ while another agreed, stating 'No, no, no...I would not take that into account. It wouldn't influence me either way. I mean, I would look at the content and make sure it's something I should be, or can be involved in'.⁴⁷⁹ And while seemingly acknowledging that some titles are evocative, another MP denied that it affected him, maintaining that 'in opposition you recognize when the government is doing this, and if they are giving the bill a particular title, because they want everyone to think it's a good bill, even if it's rubbish'.⁴⁸⁰ Also noting the quasi-evocative titles, one MP stated 'Yeah, and that's maybe the way in which governments in this country will use a short title. Violent Crime Reduction...who in their right mind would be against the reduction of violent crime? You know, that's nonsense'.⁴⁸¹

Others said that it did have an impact on them sometimes: a Labour member declared that he did feel pressure because 'people always, in every single area, they have a view. And they tell you that you are failing to respond to the overwhelming

⁴⁷⁶ HL1

⁴⁷⁷ *Id.*

⁴⁷⁸ HC4

⁴⁷⁹ HC5

⁴⁸⁰ HC7

⁴⁸¹ HC1

view of your constituents by holding a particular view'.⁴⁸² He goes on to say that 'everybody presents their case as being...a case which has overwhelming support, and that it will have detrimental effects to you on your electoral prospects', but adds that elections are rarely decided by these single issues.⁴⁸³ Others had difficulties with short titles: one MP explained that if he was 'to complain about one particular title' it would be the Prevention of Terrorism legislation in the '70s and '80s.⁴⁸⁴ Another MP declared 'I've probably come to the conclusion that the more sensational or populist the title, the more inclined I am to believe the substance of the bill is weak'.⁴⁸⁵ And, although he said in the earlier paragraph that such titles do not affect him, one MP noted

'I'm not very good at remembering them, but I have found many quite irritating. I mean, I can certainly remember going into the lobby saying "I'm prepared to vote on the measure, but I resent being told this is what it does, because it doesn't". So, I've certainly been irritated by posture, spin if you like...the way our government has tried to portray a bill as doing certain things. **I've certainly voted against bills, because I thought they were posturing**' (emphasis added).⁴⁸⁶

Of the three journalists who answered this question two of them thought that legislators occasionally feel pressured because of bill titles, and one believed that they infrequently do so. This limited response does support the above hypothesis. A tabloid journalist said that 'those titles will have a bearing on' politicians, but added that because of the whipping system in the UK, there is likely to be less of a break with

⁴⁸² HC3

⁴⁸³ *Id.*

⁴⁸⁴ HC6

⁴⁸⁵ HC5

⁴⁸⁶ HC5

party than there is in the US.⁴⁸⁷ Calling into question crime and security measures, another journalist used the Prevention of Terrorism Acts back in the 1970s and '80s as an example, and said that it was very difficult for people to vote against such measures.⁴⁸⁸ This was a common example throughout my UK Parliament interviews of a bill title that was used for political gain in the legislative process, as it is mentioned above on multiple occasions.

The UK journalists who answered in the negative supported his statement by noting that 'titles themselves have not entered the American realm of sort of becoming a significant statement in themselves. It's the statements made about bills that are still what matters in this country'.⁴⁸⁹ He eventually said that it was the presentation, or frame, that mattered more than the title.

Scotland

Respondents directly involved in lawmaking were adamant that legislators rarely, if ever, were impacted by legislative bill names, thus supporting the above hypothesis. In total nine out of eleven claimed this to be the case. However one legislator did say that she frequently was affected by bill names, and a House Authority said it is likely that legislators are occasionally affected by bill titles. Despite these responses, the findings below are consistent with most of Scotland's collective data, because the regulations requiring accurate and proper expression of bill titles hinder such names from becoming too politically or emotionally charged during the legislative process.

⁴⁸⁷ UKMM1

⁴⁸⁸ UKMM2

⁴⁸⁹ UKMM3

Many legislators quickly responded that bill names have never had any type of impact on them to any significant degree.⁴⁹⁰ One MSP said that she was ‘prepared to stand up for anything I’ve voted against whether it’s controversial or not’, and that ‘if you take something forward that’s a bit controversial then you just got to go with it’.⁴⁹¹

A drafter explained that bill titles can affect someone’s first reaction to a bill, but stated that his ‘experience has shown that that’s [not] necessarily made people particularly supportive or less supportive of’ particular bills.⁴⁹² He further added that ‘they didn’t seem to be wary of voting down a “protection” bill or an “ethical standards” bill, because of its title’, but said that some titles may have given them “pause for thoughts”’.⁴⁹³ Government employees agreed: a House Authority noted that there are many ‘opportunities as a bill goes through for parties to make their arguments and state their cases’,⁴⁹⁴ while a policy analyst suggested that the short titles of their bills ‘probably wouldn’t prove to be a problem’.⁴⁹⁵

Although clearly in the minority in regard to this issue, one SNP member did say that ‘absolutely’ bill titles have influenced her in certain cases, and further noted that ‘I sort of balance everything that I have to vote on against my own sort of moral barometer’.⁴⁹⁶

Two individuals mentioned the mechanics of politics and why titles are less of a factor in voting decisions. One drafter noted that ‘Behind all this is the party machine

⁴⁹⁰ MSP1, MSP4, MSP2, MSP6

⁴⁹¹ MSP5

⁴⁹² SCTBD1

⁴⁹³ *Id.*

⁴⁹⁴ SCTGOV1

⁴⁹⁵ SCTGOV2

⁴⁹⁶ MSP3

and the government getting its votes. The whips will get their people through the lobbyists, regardless...and there is only an exceptional amount of public opinion that might make the government give way. But, they are really pretty good at delivering what they need to deliver'.⁴⁹⁷ Additionally, one MSP partially explained his own rationale on voting, declaring

'So...you can't please all of the people all of the time. And I just think you have to go with your gut instinct...what you think is right, and that's the way you'll vote on a bill. I mean, very often it's clearly influenced by what your party thinks. And, you know, you have to have discipline, so it might be that you don't think a bill is quite right, but the rest of the group do. Well, unless you've got a particularly fundamental reason...have something to do with your conscience about a bill, then you really got to go along with the Parliamentary group'.⁴⁹⁸

Scottish journalists were split on this issue: half took the view that legislators were occasionally affected by titles, while the other half maintained that they were very infrequently affected by such matters. Thus, the hypothesis could not be supported or challenged when analyzing this sub-population. One newspaper journalist expressed that they 'certainly' impact media members, but when it came to legislators he was not so sure.⁴⁹⁹ He stated that it may have more of an indirect effect through 'heightened publicity' and increased 'media attention', and that they might feel some pressure from their constituents because of this.⁵⁰⁰

⁴⁹⁷ SCTBD2

⁴⁹⁸ MSP7

⁴⁹⁹ SCTMM1

⁵⁰⁰ *Id.*

One columnist suggested that legislators may feel pressure on some superficial level because of the name, and that initially it ‘might be quite awkward to say the least’.⁵⁰¹ But he reasoned that most politicians would be ‘very careful to state why they were opposed to it’, and also said that most politicians retain ‘some principle’ if they feel that a law is not going to achieve the aims that it expresses.⁵⁰² Another journalist said that he suspected ‘there probably is a bit of pressure on them’, but further suggested that ‘the thing that really makes them vote in a certain way is the party whip’.⁵⁰³

United States

As predicted, most legislators stated that bill names very infrequently have an impact on them when voting on legislation, thus supporting the thirteenth hypothesis. Three-fourths of the legislative insiders claimed this. Standing firm on her voting record, one Congresswoman said that ‘for me it’s always on the merit of the bill. And...I’m happy to explain my vote if someone were to say “why did you vote against the Keeping Puppies Safe Bill”’.⁵⁰⁴ Another staffer declared ‘not for this office’ when asked this question, and followed up by stating ‘there’s been some legislation, I won’t get into specifics, but there have been some pieces of legislation out there that have had some pretty admirable names or they seem to have some very admirable purposes, but...that didn’t influence our decision as to whether or not to support it’.⁵⁰⁵ Other staffers had

⁵⁰¹ SCTMM2

⁵⁰² *Id.*

⁵⁰³ SCTMM3

⁵⁰⁴ MCON1

⁵⁰⁵ HOUSESF2

similar comments: one Chief of Staff declared ‘it certainly has never changed any decision-making in here’,⁵⁰⁶ while a Legislative Director specified that ‘we’re about more the substance of the bill’ than the title.⁵⁰⁷ Another staffer who throughout his interview declared that bill titles were very important suggested, ‘by the time it gets through the process, and is brought to the floor of the House, the name often isn’t as important’.⁵⁰⁸

A minority of respondents claimed that naming does affect these decisions. A Congressman candidly stated that ‘sure, you hurt yourself’ and ‘get hurt politically every time you vote against a bill’ with a name such as the USA PATRIOT Act or the No Child Left Behind Act.⁵⁰⁹ He went on to defend his votes and suggested that ‘you just have to get out and explain your decisions to your constituents’.⁵¹⁰ Complementing the Congressman’s answer, one House staffer observed that questions about titles from constituents can be very ‘political’.⁵¹¹ She defended her answer by saying the following:

‘with health care reform, you know the House measure is called “America’s Affordable Health Choices Act”, and I think each one of those terms is very charged. Like “America’s” brings about the patriotic side, “affordable”, cost saving, you know, etc, etc. So, it’s certainly something that the Congressman and the staff worries about, you know.

If there’s a vote against consumer protection, is that going to make him

⁵⁰⁶ HOUSESF3

⁵⁰⁷ HOUSESF4

⁵⁰⁸ HOUSESF6

⁵⁰⁹ MCON2

⁵¹⁰ *Id.*

⁵¹¹ HOUSESF5

look anti-consumer? Is that going to make him look anti-business? So, I would say, yeah, that's a fair concern. Because that's how people refer to legislation, and it's a nice, like in a nutshell, did the Congressman support this legislation, did the Congressman support that? I would say that's a worthy concern'.⁵¹²

Only three journalists were asked this question, but two suggested that on occasion it would be a concern for legislators, thus supporting the above hypothesis. One said that politicians would occasionally feel pressured to vote for certain bills because of the name, but added that 'there's lots of considerations' to take into account besides this.⁵¹³ Another maintained that since there are usually similar pieces of legislation at any given time, politicians are not likely to fall under that much pressure. However, he went on to mention that 'the place that you would see it a lot of times would be in political attack ads, you know, "so-and-so voted three times against the Sexual Predators Act" or whatever. So, yeah, it might make a difference on the margins. It's definitely something that I would think would cross the mind of a legislator'.⁵¹⁴ And another journalist stated he 'would tend to doubt that that is dispositive in most cases. You know just because there are too many other things going on with a piece of legislation'.⁵¹⁵

Summary – Hypothesis #13

⁵¹² *Id.*

⁵¹³ USMM2

⁵¹⁴ USMM6

⁵¹⁵ USMM9

Although a couple Westminster legislators stated that bill titles do at times apply pressure, a majority of them disagreed with this notion. One legislator, however, significantly noted that he has voted against bills because he thought they were posturing. Also, a majority of Westminster journalists thought that titles did apply pressure to legislators. Those on the lawmaking side of the Scottish Parliament were adamant that legislators were not affected by short bill titles, while journalists were split on the issue. Although, one MSP surprisingly noted that bill titles ‘absolutely’ affect her. Most US legislative insiders denied that bill names ever affected them personally, thus adding support to the above hypothesis, while the majority of media members thought that such titles would occasionally be a problem for legislators. However, similar to Westminster and Scottish Parliament responses, one legislator argued that lawmakers take political hits when they vote against bills with evocative titles.

Hypothesis 14: Legislative insiders from all jurisdictions will not provide evidence that politicians draft names that in any way tend to manipulate or persuade people (be them colleagues, media members, or the general public) into favouring the legislation. Media members from all jurisdictions will provide evidence that politicians do draft names that intend to manipulate or persuade people (be them colleagues, media members, or the general public) into favouring the legislation.

United Kingdom

I did not expressly ask interviewees this question during my interviews. However, many responses throughout the interview process in each jurisdiction provided interesting insights regarding the above hypothesis. There was a good deal of evidence that some bill titles in Westminster were constructed to persuade or mislead, but for reasons that were quite different than in the US. Therefore, the hypothesis was challenged in regard to legislative insiders.

Overall, the Westminster drafter appeared guarded about statements that could fall into this category. However, when asked if he thought that evocative names had any effect on the public or the media he responded by saying, ‘I have no way of knowing. But, the people who ask for them think it does’.⁵¹⁶ Others agreed that this may occur at Westminster: a Commons member suggested that ‘although we don’t do it as sensationally as they do in the States, there is still a tendency, a drift in my mind, for governments to try and put labels on bills that...propagandize what the governments are trying to get across. They don’t necessarily describe what the bill is about...It’s what they want you to believe the bill is about’.⁵¹⁷ He went on to contend that the ‘government may sometimes feel that by giving it sort of a populist name, it makes it harder for the opposition’.⁵¹⁸

Some commented on the scope of legislation in regard to this matter. One Lords member suggested that ‘You’re often always getting I think too wide a spread of

⁵¹⁶ UKBD1. Also, as mentioned earlier, if he is getting asked by individuals (presumably government ministers) to provide evocative, misleading or political names to Bills, then this is likely in violation of section 5.1 of the Ministerial Code.

⁵¹⁷ HC5

⁵¹⁸ *Id.*

offences or regulatory matters coming under the umbrella of something which is quite specific'.⁵¹⁹ He went on to say that a good short title could be 'a slightly titillating factor, which would work toward getting interest involved in it', but that is it.⁵²⁰ Also agreeing on the broad content of many Acts nowadays, a LibDem MP stated that the 'title of the bill becomes slightly misleading in a sense that it contains matters which are not related to the title'.⁵²¹ Speaking about the difficulty of accuracy in relation to short titles, one legislator said that most titles are not intentionally misleading, but may suffer from the fact that they have to be succinct. She proposed that 'most government bills are huge things with lots of different bits and pieces. And I think sometimes they might struggle to find a nice shorthand for what the bill really is about'.⁵²²

Giving credence to some earlier comments from UK media members, one legislator stated that evocative naming would not happen on any large scale here, because 'knowing our media, and knowing how sceptical they are of politics...they would make huge fun of evocative naming'.⁵²³ Yet she went on to talk about how there was too much terrorism legislation over the past few years, and why the government chose different names rather than the same name with a date at the end, adding that 'by having broader names, in other words narrative rather than numerical, we hide that from the public. We hide that failure from the public'.⁵²⁴

Defending the drafting of short titles in the Westminster Parliament, one MP observed 'there are conventions in the way in which we title bills in this country which

⁵¹⁹ HL2

⁵²⁰ *Id.*

⁵²¹ HC6

⁵²² HC2

⁵²³ HL1

⁵²⁴ *Id.*

are quite strict. And the Parliamentary authorities here...enforce them. So, you know, there is a convention they have to be not argumentative or contentious, or, actually...they are intended to be straightforward and factual. I suppose in one view they are intended to be objective, right, and not express any view implied, or expressed. So, they are boringly factual and objective'.⁵²⁵

Determining whether this hypothesis was supported or challenged was a bit difficult in relation to journalists. Overall, they took a more practical view of Westminster short titles, thus challenging the above hypothesis. In fact, only a few argued that legislators were involved in 'spin' in regard to titles. Yet when talking about Tony Blair and the way that his government named legislation, one tabloid journalist stated, 'well, we must accept he was involved in spin, political spin more'.⁵²⁶ However, the interviewee did offer the opinion that the titles were not nearly as evocative as in the US, and declared, 'I hope we don't do that here...I really hope we don't do that here. No, that is too far...that is too far'.⁵²⁷ Another journalist mentioned the Constitutional Renewal Bill, and how Gordon Brown initiated this when he first got into office to detach himself from Tony Blair. She said that 'I think Gordon Brown was trying to send out a message that, we're going to renew democracy with this new bill'.⁵²⁸ The other journalist being interviewed agreed, and said that in his view it was definitely an evocatively named piece of legislation.⁵²⁹

⁵²⁵ HC3. However, it is unknown what conventions this legislator is referring to. One MP mentioned 'unwritten conventions' earlier in relation to short titles, but it is not clear to me if this is what HC3 is referring to. The previous chapter mentioned a Speaker's Ruling in relation to short titles, but again, it is unknown if this is what the member is referencing.

⁵²⁶ UKMM1

⁵²⁷ *Id.*

⁵²⁸ UKMM5

⁵²⁹ UKMM4

But many thought that evocative bill titles were not likely to come to fruition in Westminster, in part because of a media culture dedicated to exposing political spin. A journalist noted ‘just because of the traditions in this country, you know, bill titles have tended to be neutral and descriptive. To try and move away from that, you know, would be seen as spin. Would be seen as a way to influence the debate, which would go down badly with many journalists’.⁵³⁰ He went on to express a view somewhat hostile towards this naming style, stating ‘I think we have traditions in this country, and I tend to find attempts to sort of convince people that what you’re doing is right by giving it a title that nobody could disagree with...you know, I think that is a bit...embarrassing really. It’s sort of alien to our political culture. I think the Every Child Matters initiative in the DCSF, I think...it just puts...my teeth on edge’.⁵³¹ Another journalist was against Westminster using names to convey political messages, and declared, ‘I don’t see them using that to ratchet up or convey any political message through the legislation...I must admit I don’t feel that’.⁵³²

Declaring that ‘Brits are more cynical’ in regards to politics than Americans,⁵³³ another journalist followed this up by stating ‘I’m more suspicious of some of the opaque names, to be honest, than the evocative ones. The opaque ones are the ones that you tend to look past. You think that’s boring, there’s nothing of significance in it, and then you read it, and you subsequently realize that there’s some quite serious rights being eroded there for citizens’.⁵³⁴

⁵³⁰ UKMM3

⁵³¹ *Id.*

⁵³² UKMM4

⁵³³ UKMM5

⁵³⁴ UKMM5

Scotland

Legislative insiders overwhelmingly supported this hypothesis in Scotland: throughout the interviews there was not much at all to suggest that bill titles are written to mislead or persuade. In relation to his own personal style, one drafter said, ‘I tend to accommodate what people want to call it, but I won’t let somebody call a “transport bill” the “children’s bill”, you know, obviously. That’s an extreme example, but I will name the bill. I know the constraints that we’re working under with the Presiding Officer’s Recommendations on short titles. So, if a working short title doesn’t conform to that, I will suggest to them what the short title should be’.⁵³⁵

The above statement was supported by a House Authority who said that even if there may be a tinge of policy in the title, ‘we do have to look at the bill and see whether the effect of the bill would be the prevention of something, and it’s not just that somebody thinks this would lead to a prevention. It has to be the actual effect of the bill and not just the policy intention’.⁵³⁶ He further noted that the ‘pre-introduction stage is something that we would need to be very careful about’ in terms of short title language, and on a larger scale stressed that the ‘business of Parliament is to pass good law’.⁵³⁷

One drafter even quoted the recommendations of the Presiding Officer in regards to bill names, noting that Rule 9.2.3 states ‘A Bill is not to be introduced unless it’s in proper form. The presiding officer determines the form’, and continued, ‘The text

⁵³⁵ SCTBD1

⁵³⁶ SCTGOV1

⁵³⁷ *Id.*

of a bill, including the short and long titles should be in neutral terms, and should not contain material intended to promote or justify the policy behind the bill'.⁵³⁸

Others put forth possible reasons that Holyrood legislation is so centred on accuracy: one MSP observed that there is 'much greater scrutiny of our legislation than would exist at the UK level'.⁵³⁹ Also, an MSP who is more involved in the mechanics of Parliamentary business than others stated that they had examined names in more detail than in the past 'to make sure they actually reflect what's going on' in the legislation.⁵⁴⁰

Only a couple of observations were made that might have challenged this hypothesis, but that many others failed to mention. One MSP maintained that 'we have quite a straightforward procedure in bill names here, but they usually don't much reflect what's in the bill sometimes'.⁵⁴¹ She went on to say that the 'title doesn't explain the function' of the legislation a lot of times: she would like them to be more descriptive, adding 'the title should reflect the seriousness of the content'.⁵⁴² The other concern was the use of 'etc.' in the titles of bills. One government policy analyst said that 'In my limited experience of bills where that's been used, it's been used mainly as a way of getting around rules on the accuracy of titles. The one I'm thinking of is the Anti-Social Behaviour Etc. Bill, Act, which it now is. And, it had to have 'etc.' in it because it couldn't be argued that every single provision related to anti-social behaviour'.⁵⁴³ Also, a drafter stated that the Scottish Parliament has had 'a couple [of]

⁵³⁸ SCTBD2

⁵³⁹ MSP2

⁵⁴⁰ *Id.*

⁵⁴¹ MSP3

⁵⁴² *Id.*

⁵⁴³ SCTGOV2

‘protection of children’ bills, and both of them have been the last bills before Scottish Parliament elections. And, the question is: which MSPs are going to vote against protecting children right before an election’.⁵⁴⁴

The comments of most media members challenged the above hypothesis, noting that Scottish legislation had quite bland short titles. One journalist praised how bill titles came about, noting ‘If the legislators themselves are deciding what to call the bills, then there’s a lot more potential for having evocative names in them. Whereas, I think here...the fact that the Civil Service are so influential or controlling in terms of the way that legislation is framed and so on, I suspect that there’s...quite a strong constraint on being too evocative in terms of titles’.⁵⁴⁵ Another newspaper reporter struck a similar tone, declaring ‘I don’t really pay attention to the wording, no...you’ve got to remember there’s a lot of boring legislation that gets passed here’.⁵⁴⁶ He even noted that this frustrates the media to some extent, noting ‘To be honest, the media are always looking for a better short-hand, because these names are pretty boring’.⁵⁴⁷

United States

Although there was not a particular question regarding this, most US interviewees provided many indirect references to the above hypothesis. There were a variety of statements related to this throughout my interviews, because both politicians and journalists were very forthcoming in regard to the purposes behind some short titles.

⁵⁴⁴ SCTBD1

⁵⁴⁵ SCTMM1

⁵⁴⁶ SCTMM3

⁵⁴⁷ *Id.*

Legislative insiders argued that bill titles are constructed to sway potential voters or to influence the public, challenging the hypothesis, while media members argued much the same, thus supporting the hypothesis.

There were two main focuses in regard to this: on legislators (gaining legislative strength), and on the public (increasing awareness and focusing attention on certain matters). First, regarding legislators, one staffer stated that internal Congressional marketing is as important as external marketing, because people were constantly trying to gain co-sponsors for their bills and build legislative momentum.⁵⁴⁸ A Congresswoman said that evocative naming is done to put pressure on legislators to vote for particular measures, but went on to state that she does not ‘think that [it] usually works with people that are actually in the middle of the process’.⁵⁴⁹ However another Congressman repeatedly said throughout the interview that these titles were designed to get sympathy and that voting against such measures can hurt lawmakers from a political perspective.⁵⁵⁰

Examining how some bill language could influence legislators, one Legislative Director said, ‘something like the PATRIOT Act, which...has a feel good, pro-American sense to it...if you oppose it, you’re unpatriotic’, and added that ‘in that sense names can be used for political gain’.⁵⁵¹ Continuing with examination of the PATRIOT Act, which was being considered for reauthorisation around that time, another staffer said, ‘it’s obviously very difficult to be, or to vote, or to take a position against something called the PATRIOT Act...and so that is certainly by design’.⁵⁵²

⁵⁴⁸ HOUSESF2

⁵⁴⁹ MCON1

⁵⁵⁰ MCON2

⁵⁵¹ HOUSESF4

⁵⁵² HOUSESF6

Additionally, another staffer stated that names ‘might play a role in framing our view of the legislation’.⁵⁵³

Secondly, focusing on the public was important for many as well. One staffer stated that bills are designed for those who encounter them, declaring, ‘when the reader sees it they say, “oh, this is interesting”, you know, they want to read more and learn more about it’.⁵⁵⁴ So, they may operate primarily as an attention-getting device.

Another staffer mentioned that this is done with humanised legislation, because it provides a shorthand that ‘personalizes it in the electorate’s mind’.⁵⁵⁵ A Congressman stated that evocative names could be used as ‘publicity gimmicks’ at times,⁵⁵⁶ while a Congresswoman stated that using evocative titles ‘might be more likely to work with the public at times when you don’t have the ability to see all the facts behind the bill’.⁵⁵⁷

Not surprisingly, journalists seemed to focus more on the general public. One journalist noted that evocative naming was ‘a way of bullying people into supporting it [a bill]’.⁵⁵⁸ He went on to state that, ‘no politician wants to be accused of voting against the PATRIOT Act, or...the Keep America’s Children Safe Act’.⁵⁵⁹ Another print journalist said that one of the major statutes he comes across quite frequently is the Bipartisan Campaign Finance Reform Act, or the McCain/Feingold Act (informal

⁵⁵³ HOUSESF5

⁵⁵⁴ HOUSESF2

⁵⁵⁵ HOUSESF3

⁵⁵⁶ MCON2

⁵⁵⁷ MCON1

⁵⁵⁸ USMM2

⁵⁵⁹ *Id.*

name).⁵⁶⁰ He argued that to insert ‘bipartisan’ in the title of a bill was ‘[un]necessary’, and went on to observe that the official name ‘does have a slightly contentious quality’ to it.⁵⁶¹

Stating that naming likely has more of an impact on the public than on legislators, one journalist suggested that such titles ‘might have an effect on the public perception to them, like PATRIOT Act...if you say it enough times, people start to believe’.⁵⁶² Similarly, another suggested that ‘they’re useful tools as lawmakers appeal to the general public in trying to win general support for legislation’.⁵⁶³

Using the Ryan White CARE Act to show how naming attempts to persuade different segments of the population to support a piece of legislation, one journalist explained that the bill was mainly about money for those with AIDS, which at the time was largely believed to be a ‘gay’, not a ‘straight’, problem. However, Ryan White was a child who unfortunately ended up getting AIDS from a blood transfusion, which had nothing to do with any type of sexual activity. Naming the bill in honour of Ryan White in this case ‘was used as a way of humanizing, for straight people, what most straight people thought was limited to gay people’.⁵⁶⁴ The Act subsequently passed and became law.

One experienced reporter declared that bill names are constructed to present legislation in a positive light.⁵⁶⁵ When asked to expand on this, he declared that such titles ‘emphasize the good effects it’s going to have, and the fact that it’s legislation

⁵⁶⁰ USMM1

⁵⁶¹ *Id.*

⁵⁶² USMM3

⁵⁶³ USMM5

⁵⁶⁴ USMM7

⁵⁶⁵ USMM5

people should support’.⁵⁶⁶ Some journalists believed that these titles were ‘placed there for propaganda reasons’,⁵⁶⁷ in order to get ‘the proper political bang for whatever sort of thing they’re trying to do’.⁵⁶⁸ In doing this, however, legislators can ‘risk igniting the other side’.⁵⁶⁹

A different perspective on evocative short titles and how and why they originate was provided by a legal journalist, who stated:

‘leadership involves persuading people and rallying people to your side and getting them to take notice and with any luck make an informed judgment that you’re right. If you’re a leader that’s what you want to do right. You don’t want to mislead people, but you want to excite them somewhat and get them involved and get their attention and so on. So, I don’t fault politicians who are trying, you know, to break through the noise to say this matters, and pay attention and this is something good....and get voters to think about it. Because if the voters don’t know what these politicians are doing they don’t have any grounds to re-elect them or throw them out or what have you. So, that to me seems quite reasonable’.⁵⁷⁰

He later went on to state that ‘the substance of it is more important, but perception does affect how you approach something’.⁵⁷¹

⁵⁶⁶ *Id.*

⁵⁶⁷ USMM9

⁵⁶⁸ *Id.*

⁵⁶⁹ USMM8

⁵⁷⁰ USMM4

⁵⁷¹ *Id.*

Summary – Hypothesis #14

Given the bland nature of Westminster bill titles, it was quite surprising that many legislative insiders provided information that titles were drafted to persuade, thus challenging the hypothesis. UK journalists were split on the issue, thus neither affirming nor challenging the hypothesis. Most Scottish Parliament interviewees stated that titles were meant to inform and not used to persuade, thus affirming the hypothesis in relation to legislative insiders and challenging the hypothesis for journalists. Legislative insiders in the US supplied many statements that refuted the above hypothesis, stating that titles were employed to both sway members to support legislation and positively influence public perception. US journalists agreed that titles were drafted to positively influence those who encountered them; many focused on the general public in their answers.

Quantitative Survey Results

The results of the two separate surveys regarding reactions to legislative bills names are included below. The Scottish and US data is presented according to hypothesis. As I stated before, because of the errors in the US data gathering process, only the resulting tables and a minimal amount of explanation accompany the results for that data set.

Also, no detailed statistical information is supplied for the US data, because it is deeply flawed, and would be misleading for the reader. Further detailed statistical data for the Scottish data is located in Appendix IV. Some of the results for the Scottish data are statistically significant, and are accompanied by further explanation.

Scotland and United States Data

Hypothesis 15: Bills with evocative titles (humanised, desirable characteristic, combination and overt action) will receive higher favourability rates than bills with non-evocative (bland/control) titles.

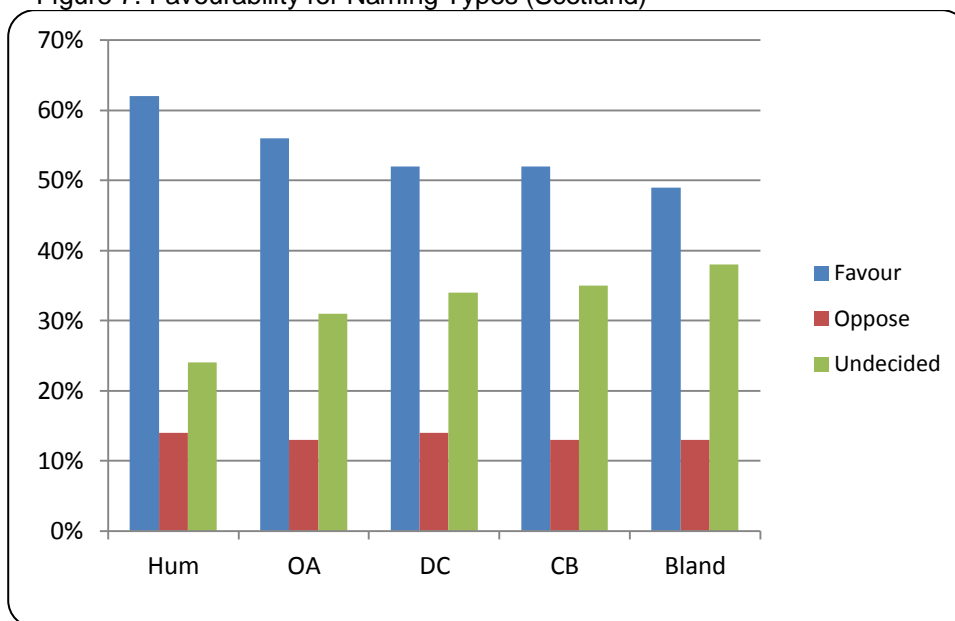
This will be true at the aggregate-level.

In terms of overall favourability for Scotland, the hypothesis was confirmed: all evocative names produced higher favourability ratings than the bland names (see table 5 below). The results were as follows:

Table 5. Overall Favourability for Naming Types (Scotland)⁵⁷²

	<u>Favour</u>	<u>Oppose</u>	<u>Undecided</u>
Humanised	62%	14%	24%
Overt Action	56%	13%	31%
Desirable Ch.	52%	14%	34%
Combination	52%	13%	35%
Bland	49%	13%	38%

Figure 7. Favourability for Naming Types (Scotland)



This is the most significant finding in relation to the quantitative portion of this thesis. As the above figure shows, humanised names were the most popular overall (62%), followed in succession by overt action (56%), desirable characteristic (52%), combination (52%) and bland (49%). The main results to take under consideration in this instance are the ‘Favour’ and ‘Undecided’ bars. Opposition stood quite firm at 13-14% for all naming types. Thus, the undecided category was the difference in this subgroup. In Figure 7, notice how the blue bar (the favour bar), decreases across the

⁵⁷² Results were not significant in a chi-square test for significance (.207). Naming itself was not significant in a logistic regression (.174). However, when compared to bland naming in a multinomial logistic regression, humanised naming was significant on both the favour (.002) and oppose (.083) sides, at the .01 level and .1 level, respectively.

graph, as it approaches bland naming, while the green bar (the undecided bar), increases as it approaches bland naming.

For the US data this hypothesis was challenged, and resulted in almost the inverse of the Scottish data. Bland naming had the highest overall favourability among all naming types (52%), followed by Overt Action (44%), Desirable Characteristic (40%), Combination (34%) and Humanised (33%) (see table below). The data broke down as follows:

Table 6. Overall Favourability for Naming Types (US)

	<u>Favour</u>	<u>Oppose</u>	<u>Undecided</u>
Humanised	33%	23%	44%
Overt Action	44%	20%	36%
Desirable Ch.	40%	17%	43%
Combination	34%	16%	50%
Bland	52%	19%	29%

Hypothesis 16: Bills with combination evocative titles will receive higher favourability than other evocative titles (humanised, desirable characteristic, overt action) and also non-evocative (bland) titles.

This hypothesis was challenged for the Scottish data (see Table 5). Combination names only gathered a 52% favourability rating, which was just above bland naming (49%), but well behind humanised (62%) and overt action (56%).

This hypothesis was also challenged for the US data. Combination names only gathered a 34% overall favourability rating, which was second lowest among US naming types.

Hypothesis 17: For those participants that favoured or opposed the measure, a majority of them will have done so because they favoured or opposed the description or policies of the legislation.

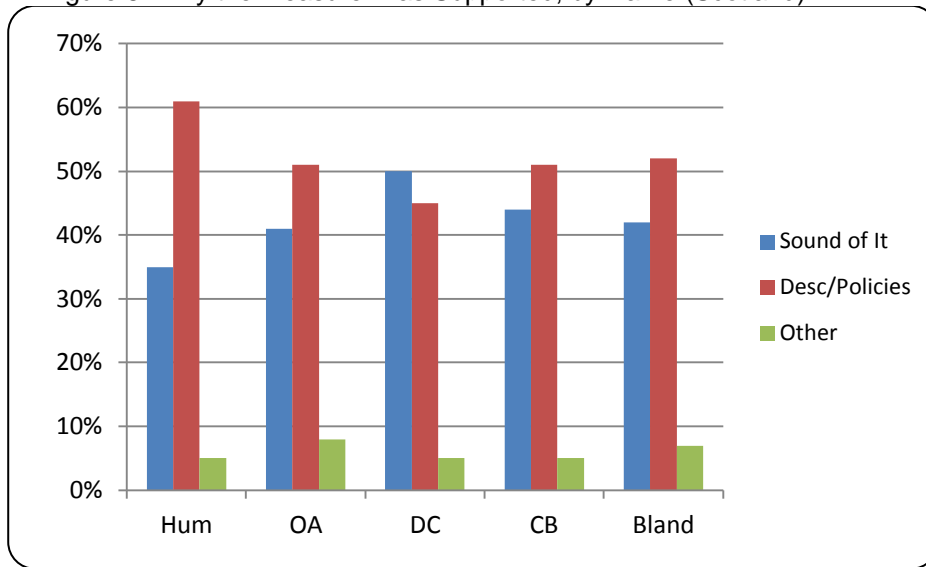
For Scotland this hypothesis was supported for all naming types except for one, desirable characteristic, where 50% of the participants said that they supported it because they liked the ‘sound of it’, while only 45% supported it because of the description/policies of the legislation. Humanised names produced the most interesting results in terms of why the measures were supported: they had the highest measure on the description or policies of the legislation with 61%, and the lowest in terms of participants liking the ‘Sound of It’ (35%). The ‘Other’ category also produced interesting results, because it remained within a similar range for all naming types (5-8%).

Table 7. Why the Measure Was Supported, by Name (Scotland)⁵⁷³

	<u>Sound of It</u>	<u>Desc./Policies</u>	<u>Other</u>
Humanised	35%	61%	5%
Overt Action	41%	51%	8%
Desirable Ch.	50%	45%	5%
Combination	44%	51%	5%
Bland	42%	52%	7%

⁵⁷³ These results were not significant in a chi-squared test for significance (.329), and they were not significant in a multinomial logistic regression either (.419); naming was not significant in the regression (.323).

Figure 8. Why the Measure Was Supported, by Name (Scotland)



This hypothesis was supported in the US as well: every naming type had higher figures for the description/policies of the legislation than any of the other categories.

The results in regard to why the measures were supported are in the table below:

Table 8. Why the Measure Was Supported, by Name (US)

	<u>Sound of It</u>	<u>Desc/Policies</u>	<u>Other</u>
Humanised	40%	52%	8%
Overt Action	34%	59%	7%
Desirable Ch	30%	61%	9%
Combination	38%	54%	7%
Bland	38%	56%	6%

Hypothesis 18: After they have read the short newspaper story of the bill, participants will not desire more information on the legislation in question.

For Scotland this hypothesis was largely supported: three naming types did not desire more information regarding the bills in question. The results for this were not statistically significant either in a chi-square test for significance (.706) or a multinomial regression (.764). However, the Scottish results were noteworthy in terms of how much lower the percentages were than the US ‘More Information’ results. While the US results hovered in the mid to upper sixties, the UK results stayed around the fiftieth percentile. The Scottish results are presented below:

Table 9. Percentage that Wanted More Information, by Name (Scotland)

	<u>Yes</u>	<u>No</u>
Humanised	48%	52%
Overt Action	46%	54%
Desirable Ch.	50%	50%
Combination	53%	47%
Bland	46%	54%

The naming style that garnered the largest percentage wanting more information was Combination (53%), while Desirable Characteristic followed closely behind at 50%. This was contrary to the US data in which Combination and Desirable Characteristic names had the lowest amount of participants wanting more information (see below).

This hypothesis was challenged for the US data: most participants wanted more information regarding the bills in question for all naming types. These results were as follows:

Table 10. Percentage that Wanted More Information, by Name (US)

	<u>Yes</u>	<u>No</u>
Humanised	66%	34%
Overt Action	72%	28%
Desirable Ch.	65%	35%
Combination	65%	35%
Bland	74%	26%

This Chapter presented the qualitative and quantitative results for the thesis for all the jurisdictions studied. The following Chapter discusses the results from a collective perspective, noting major themes among and between countries. Also included in the Chapter are recommendations for short bill titles in all jurisdictions, the limitations of the current thesis and concluding statements.

Chapter VI: Discussion and Conclusions

In this chapter I provide an analysis of the significance of the material presented in the Results Chapter. I begin with a note on the legal status and constitutionality of short bill titles in all three jurisdictions. Then I analyse bill naming in a collective context, stressing overlapping and consistent findings about short bill titles and/or lawmaking that were present throughout all jurisdictions studied. Next I consider issues related to short bill titling on a more specific level, providing sections on the Westminster and Scottish Parliaments combined, then Westminster and the Scottish Parliament individually, and then the US Congress. It is hoped that these more specific sections make it easier to discern the jurisdictional issues each lawmaking body has in relation to short titles. Following this I propose a draft code of short title recommendations for all jurisdictions. Next, limitations of this thesis are explored, in which the potential for future studies is included. The chapter ends with concluding statements.

Developing an Analysis of the Constitutional Place of Short
Bill Titling

'The Government of the Union then...is, emphatically and truly, a Government of the people. In form and in substance, it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit'.¹

-Chief Justice John Marshall, U.S. Supreme Court (1819)

The first major research question of this thesis was to determine the legal status and importance of bill naming in all three jurisdictions. In regard to the importance of such titles, the qualitative interviews provided many insights in regard to the significance that bill naming has in the parliamentary process, and many of these findings are discussed below. Matters regarding the legal status of such titles were discussed in Chapters III and IV, and are also discussed in the analysis below. The previous chapters found that each jurisdiction treats short bill titles differently, especially in terms of formal and informal rules and regulations regarding such titles, and the lack thereof in some jurisdictions.

The constitutional findings and implications of this study are relevant in regard to the analysis and policymaking of short bill titling in each jurisdiction. Indeed, the finding from the qualitative interviews that short bill titles in each legislature are of significant importance, even when such titles are restricted by rules and other protocols, demonstrates the power that these small clusters of words have in the legislative process. Although legislatures are dynamic institutions subject to many individualised rules, procedures and constitutional restrictions, short titles seem to be one element that has the potential to cut across these institutional differences.

Two major constitutional elements related to short titles that accentuate best practices could also cut across jurisdictions: reasonable notice and due process of

¹ *McCulloch v. Maryland* 17 U.S. 316 (1819). Available at: http://www.law.cornell.edu/supct/html/historics/USSC_CR_0017_0316_ZS.html

lawmaking. As pointed out in Chapter IV many US states have regulations regarding bill titles, and in reference to short titles specifically. Some even have constitutional clauses that regulate bill titling and others have quite demanding standards in relation to accuracy. In fact, some of the standards found in Chapter III and IV are even more rigid than the Presiding Officer's determination of 'proper form' in the Scottish Parliament.² Yet the primary difference between many of the US states that have such rules when compared to Congress and Westminster is that those states explicitly require that bill titles provide fair notice and be comprehensible to citizens; and these standards are not limited to legislative or political insiders.

What is recognised here is the fundamental right, where practicable, of citizens to have reasonable access not only to the bills being proposed in the respective legislatures, but eventually to the law that governs them. Montana states that 'the title of a bill gives reasonable notice of the content to legislators and the public';³ Oregon states that 'the purpose of the constitutional title requirement is to prevent the concealment of the true nature of the provisions of the bill from the legislature and the public';⁴ and the Texas Constitution declares that 'The rules of procedure of each house shall require that the subject of each bill be expressed in its title in a manner that gives the legislature and the public reasonable notice of that subject. The legislature is solely responsible for determining compliance with the rule'.⁵

² The Scottish Parliament. Guidance on Public Bills. Annex A: Form and Content of Bills. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25697.aspx>

³ Montana Bill Drafting Manual. (2008). Legislative Services Division. Helena, MT, p. 45. Available at: http://leg.mt.gov/content/publications/2008_bill_drafting_manual.pdf

⁴ *Northern Wasco County PUD v. Wasco County*, 210 Or. 1, 305 P.2d 766 (1957); *State v. Williamson*, 4 Or. App. 41, 475 P.2d 593 (1970). Citation taken from the Oregon Drafting Manual. 2008. Section 5.2. Also, available at: <http://www.lc.state.or.us/pdfs/BillDraftingManual/dmchp5.pdf>

⁵ Texas Constitution. art. III, § 35(b). Available at: <http://www.statutes.legis.state.tx.us/Docs/CN/htm/CN.3.htm>

In regard to endorsing any reasonable notice requirement, the US Congress and, on any formal level, the Westminster Parliament, lack such standards. The Scottish Parliament's regulations do not explicitly mention citizens: they do however state that short bill titles 'should be in neutral terms and should not contain material intended to promote or justify the policy behind the Bill, or to explain its effect',⁶ which undoubtedly takes citizens and fellow legislators into account.

The lack of such formal regulation in the Westminster Parliament is perhaps the most surprising, because it is this institution that implemented a short bill title requirement on each and every piece of legislation, and even mandated short titles on most laws that had been previously passed by the legislature when these rules came into effect.⁷ Although having a short title requirement for all bills is a positive aspect in terms of providing information to citizens, not having any formal requirement in terms of accuracy or proper form is a distressing sign for such an esteemed institution. Thus, the legal status of short titles in regard to Westminster can only be partially determined: there is a requirement that all Bills and Acts have short titles, but there is no official standard for such titles.

Congress, on the other hand, has deeper problems: not only are bill titles optional for legislation, but when provided they are in the privy of the legislator sponsoring the bill. Further, there appear to be no restrictions or standards, formal or informal, in regard to how bill titles are named; and legislator interviewees for this thesis admitted that short titles are often misleading.⁸ In turn, if such titles are misleading to lawmakers, they are likely misleading and confusing constituents, both in

⁶ The Scottish Parliament. Guidance on Public Bills, *op. cit.*

⁷ Greenberg, Daniel (2008), *op. cit.*, p. 103; Jack, Sir Malcolm, *op. cit.*, p. 527

⁸ MCON1, MCON2

terms of the laws proposed and the policies enacted. Chapter III concluded that the ‘proper’ portion of the ‘necessary and proper’ clause should be the standard for legislative bills in general, and this should also include short title drafting. Yet, this is merely a recommendation. The US Congress has no requirement that short titles be applied to bills, no formal or informal standards for short titles, and therefore the legal status of such titles remains largely undetermined.

Describing bills with insufficiently informative titles, one British legislator declared that ‘if you think the title is way off, you can just vote the legislation out...or it becomes law’.⁹ This statement is deeply flawed. Surely some excellent (or even sufficient) legislation suffers from insufficient titling. If legislators in any legislative body are voting down bills because of insufficient titles and not because they fundamentally disagree with the substance of the legislation, then there remains a major flaw in standards by which short bill titles are inscribed. Thus, implementing a set of rules or regulatory guidelines in regard to short titles that provide a necessary informational component to both lawmakers and citizens of the bills introduced and the laws that govern them would be of much constitutional benefit in each jurisdiction studied. As one scholar points out, ‘[t]hat legislation should be accessible, intelligible and clear to all audiences is both a democratic right and also an essential prerequisite in the process of making better law’.¹⁰ Therefore both institutions would benefit if they formally acknowledged, or developed some standard, by which bills accurately gave reasonable notice to legislators and the general public regarding their substance.

⁹ HC6

¹⁰ Fox & Korris, *op. cit.*, p. 99.

A couple of legislators interestingly mentioned due process when referring to legislation.¹¹ This concept is usually applied to court processes, yet in this instance both referred to the legislative process that a bill travels to become law. One Westminster MP used the phrase regarding the rules of debate in Parliament, arguing that Parliamentary leaders must ‘ensure that due process is carried through’ when these debates occur.¹² A Scottish MSP stated that humanised titles may ‘cloud due process’, and that they have the potential to compromise the legislation in question.¹³ The proposition of intertwining legislative due process with the general concept of due process is not a radical notion. Scholars have touched on this subject, though it remains an understudied and largely unacknowledged line of academic exploration. When the concept is applied to the legislative process, a good way to think about it is as a set of standards for parliamentary practice, which are explored more below.

However, perhaps a better way to refer to these standards without compounding the traditional definition of due process would be to expand on this, and suggest an alternative theory that incorporates the structural, procedural and drafting components of the legislative process. Therefore I propose this be called ‘proper statutory process’, a standard which could be adapted for legislatures and legislation in any jurisdiction. However, in order to ascertain how other researchers have incorporated the concept of due process from a legislative process perspective, some of the major works on the matter are summarised below.

In 1975 Tribe proposed a model of ‘structural due process’ which takes into account the legislative institutions by which policies are formed and applied, and stated

¹¹ HC7, MSP6

¹² HC7

¹³ MSP6

that this should firmly stand with the more formal legal doctrines of substantive and procedural due process.¹⁴ He further notes that some commentators have declared that the concept of ‘due process’ is not specifically defined, and is more general in scope than many wish to acknowledge.¹⁵ Describing this general view of interpretation Tribe states that ‘the government of each era would be obliged to apply a contemporary conception of fundamentally fair procedures before impinging on life, liberty or property – even if no single conception of fairness would necessarily apply for all time’.¹⁶ Shortly after Tribe’s proposal, Linde pioneered the phrase ‘due process of lawmaking’ in 1976, and notes that ‘the misdirection of due process to the substance of enactments diverts it from testing the process of enactment itself’.¹⁷ He emphasises that the issues concerning due process have long arisen only after laws have been enacted, while more focus should be placed on the process of enactment. In regard to this study, the innovative nature of the Scottish Parliament’s ‘proper form’ of proposed legislation places the institution at the forefront of the often neglected constitutional aspects of due process of lawmaking, and specifically in relation to bill drafting.

Legislative interpretation texts such as Eskridge *et al.*, also touch on due process of lawmaking and note that in the US courts can use ‘appropriate-deliberation tests’ to determine whether a statute is constitutional,¹⁸ and can also use ‘clear-statement rules of statutory construction’, which often makes it difficult for Congress to pass laws without ‘deliberat[ing] transparently about important values...provid[ing]

¹⁴ Tribe, Laurence. (1975). Structural Due Process, 10 *Harv. C.R.-C.L.L. Rev.*, 269-321.

¹⁵ Dworkin, Ronald. (1972). *The Jurisprudence of Richard Nixon*. *N.Y. Rev. Books* (Published May 4); see also Ratner, Leonard G. (1968) The Function of the Due Process Clause. 116, *U. P.A. L. Rev.* 1048, 1048-50.

¹⁶ Tribe, *op. cit.*, p. 293.

¹⁷ Linde, Hans. (1976). Due Process of Lawmaking. 55 *Neb. L. Rev.* 197.

¹⁸ *Fullilove v. Klutznick*, 448 U.S. 448 (1980)

satisfactory reasons for decisions, and...sett[ing] forth clearly articulated laws on these subjects'.¹⁹ However these standards are not frequently employed by courts, because they inherently come with their own set of problems (i.e. judges that may know little about the legislative process and/or rules or procedures that accompany such processes). Other scholars have suggested that there be 'statutory due process' for legislative proposals, thus ensuring a minimal amount of Congressional deliberation,²⁰ and have also floated concepts of 'rational legislating', which includes providing evidence to support laws that would be essential to presentation and passage.²¹

In regard to the Westminster Parliament, Matt Korris from the Hansard Society recently penned an article in *Parliamentary Affairs* suggesting a Parliamentary Standards Committee, which could act as a gatekeeping mechanism that can decline to consider poorly prepared legislation.²² This concept arose out of the Hansard Society's 2010 *Making Better Law* report, in which the organization studied many aspects of the Westminster legislative process, from the drafting of bills to access to the statute book. In their report Ruth and Korris state that Parliament should have the right to decline to scrutinise legislation that is not in a fit state for consideration, and further recommend that:

'Parliament should therefore establish its own gateway Legislative Standards Committee, ideally on a bi-cameral basis, to assess bills against a set of minimum technical preparation standards that all bills

¹⁹ Eskridge, et al., *op. cit.*, p. 186.

²⁰ Goldfield, Victor. (2004). Legislative Due Process and Simple Interest Group Politics: Ensuring Minimal Deliberation Through Judicial Review of Congressional Processes. *New York University Law Review*, 79, 367-420.

²¹ Martinez, John. (2005). Rational Legislating. *Stetson Law Review*, 34(3), pp.547-621.

²² Korris, Matt. (2011). Standing Up for Scrutiny: How and Why Parliament Should Make Better Law. *Parliamentary Affairs*, 64(3), 564-574.

should be required to meet before introduction is permitted. The committee should agree those standards – narrow, tightly drawn, objective qualifying criteria that establish a minimum threshold for bill preparation – in consultation with the government.²³

The concept of a Legislative Standards Committee is wholly endorsed by this thesis: it would be a welcome addition to the constitutional framework of the Westminster Parliament. The minimum technical preparation standards would likely mitigate some of the major concerns raised by interviewees which were highlighted in the previous chapter. The innovative concept and application of such committees would go some way to providing much needed standards in legislative bill drafting, and also recognise due process of lawmaking (or proper statutory process) as a prominent constitutional foundation for the other legislatures discussed in this thesis.

With these constitutional considerations in mind, the discussion below provides support for the argument that the legal status and importance of short bill titles in each jurisdiction is of concern to those involved in the legislative process and lawmaking in general. Much of the further discussion below, including that in the quantitative portion, centres around and complements the major research questions of this thesis.

²³ Ruth and Korris, *op. cit.*, p. 124. The authors finish this passage by noting, ‘Before legislation is presented to the committee the relevant departmental Secretary of State or the Leader of the House should be required to certify that they believe the bill does indeed meet those qualifying standards’ (p. 124). They further note that ‘scope for objection should be clearly defined and limited such that it cannot be used by the opposition for their own partisan purposes to derail the government’s programme’.

Qualitative Interview Portion – Comments and Themes

All Countries

The previous chapter illuminated a plethora of overarching themes and ancillary factors involved with short titles, and these are brought together in a concluding analysis here.

A discussion of these results is vital to a thorough and informed perspective on the realities and responsibilities that accompany legislative bill naming. This section begins with a few findings that were present throughout every jurisdiction studied.

A Few Overlapping and Consistent Findings

One of most important findings of this thesis was that: **every jurisdiction regarded short bill titles as important in the lawmaking process.** Though this was a consistent finding among jurisdictions, the rationale's provided in regard to short title importance varied. Also, this finding directly responded to the first major research question of this thesis, and also correlates with the second major research question regarding the political implications of short titles.

Although less definitively than the two other jurisdictions, legislative insiders and media members from Westminster thought that short titles were important.

Interviewees stressed such aspects as ‘controlling the debate’,²⁴ ‘improv[ing] the public’s understanding of and access to legislation’²⁵ and legal accuracy.²⁶ An overwhelming number of Scottish legislators, bill drafters, government employees and media members regarded bill naming as an important part of the legislative process. The main rationales the Scottish interviewees provided were based on legal accuracy in both presentation and in regard to an orderly statute book.²⁷ A House Authority also stated that it was important to ‘protect the neutrality of the language’ in the legislative process, and that they will ‘always be vigilant about’ it.²⁸ Even journalists noted that titles ‘could influence peoples thinking’²⁹ and that the messages such names convey to the legislature and to constituents is important.³⁰

Interviewees from the US were also adamant that short bill titles were an important part of the legislative process. However, most interviewees regarded such titles as important for different legislative process reasons, such as to ‘peak people’s interest’ in legislation,³¹ gain co-sponsors,³² or compete with other bills for attention.³³ One journalist called evocative short titles ‘an effective tool of legislating’ and an

²⁴ HC3. Also, to a certain extent, UKBD1, who stated that titles have they have ‘a role in fixing the context in which the bill is debated’.

²⁵ HC7

²⁶ HC4, UKMM3, UKMM1

²⁷ MSP5, MSP3, MSP6, SCTMM2, SCTBD1, SCTBD2

²⁸ SCTGOV1

²⁹ SCTMM3

³⁰ SCTMM2

³¹ HOUSESF2

³² HOUSESF5

³³ HOUSESF6

‘effective political tool’.³⁴ Others thought short titles were important from an informational perspective,³⁵ while one lawmaker thought they were important in regard to ensuring accuracy in the lawmaking process.³⁶ Overall, a majority of interviewees from each jurisdiction provided evidence that short titles are an important part of the legislative process.

Perhaps the most surprising finding of this thesis was: **evocative bill names have the potential to significantly, not just peripherally, affect passage of a bill.** This was one of the main questions that this thesis attempted to answer, and is also one of the major political implications that short bill titles may contain. Many of the legislative insiders and media member interviewees from the US were adamant that this is already happening,³⁷ and some members of the Westminster parliament, surprisingly, stated that even their relatively bland short titles still had some influence on passage. Additionally many Scottish interviewees concluded that, although they did not employ evocative bill names in their Parliament, doing so could likely affect passage. It appeared this was one of the primary reasons they did not endorse such a practice.

I already referred in Chapter V to the dramatic example a Westminster drafter cited, in which the short title of a bill was changed a day after it had attracted criticism in Parliament: when the renamed bill was then put to Parliament with the same content, it was passed.³⁸ However, perhaps the best example of a short title affecting passage

³⁴ USMM2

³⁵ USMM6, USMM4

³⁶ MCON1

³⁷ Indeed, as excerpted in Chapter II and fully revealed in below, USMM6 stated that the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990 was passed because the short bill title was changed to include ‘Ryan White’ a constituent of Senator Dan Coats’, who was the main opposition to the bill from becoming law. Once this change occurred, Senator Coats rethought his stance, and the bill passed.

³⁸ UKBD1

came from a US magazine journalist, who provided direct evidence that a humanised name affected passage of a law. He stated that:

‘I can actually give you an example of a story where the name of a bill did change, and led to passage...the original federal AIDS legislation, which came through Congress in the 1980s...I don’t remember...the original name of it was something you know, HIV prevention...it was very standard, kind of descriptive stuff, and it was clear it was going to come down to like one vote, probably, in the Senate. And the key swing vote, I think it was, Dan Coats, the Senator for Indiana. The poster-boy for AIDS at that time was Ryan White, who was a young, I think eleven or thirteen year-old...they changed the name of the bill...Ted Kennedy did this. They changed the name of the bill in the Senate from the HIV and whatever act to the Ryan White Act, as a means of pressuring Dan Coats into supporting the bill. Because if Coats didn’t support the bill, which was named after his own constituent, this poor kid dying of AIDS, he’d look horrible. And in the end Coats supported the bill’.³⁹

This example demonstrates the pressurising power short titles may contain, and displays how certain titles can directly affect whether or not a Bill becomes an Act.

Yet how these names affect passage is quite a complicated and intricate process to determine, which is what makes this topic of study so difficult. Some legislators indicated that they were affected at an individual level: a few admitted they were hesitant to vote against various pieces of legislation, and especially humanised legislation named after sympathetic figures. One Congressman noted that legislators get ‘hurt politically’ every time they vote against a popular piece of legislation, which in

³⁹ USMM6. Part of this quotation was presented in Chapter I.

turn pressurises him when voting on such measures.⁴⁰ British legislators were afraid of presenting too lofty standards for bills through their titles, and subsequently being held to such standards. And though they were in the minority, legislators from both the Westminster and the Scottish Parliament stated that bill titles affect their voting decisions.⁴¹

Short titles also affect how media members write about bills, which relates to another one of the research questions presented in this thesis in regard to the communication of bill titles, and whether it has changed in regard to bill titles. Many journalists stated that when writing they prefer shorthand names as opposed to official short titles, because they usually have strict word limits on articles. Others said that if a piece of humanised legislation is written about continuously, then those one or two personalised lines about the title will likely be included in most every article. But how often these names affect the voting of legislators and reporting of journalists is tough to determine, and almost impossible to generalize. A UK Bill drafter and a US journalist perhaps summarised the phenomenon best: both admitted that they have no empirical evidence to know whether or not naming matters, but those who ask for it and those who practise it seem to think it does.⁴² The indirect nature of evidence gathering in regard to this phenomenon is the reason that this thesis contained the quantitative survey element of research, the results of which were offered in the previous chapter, and are analysed below.

As seen throughout this thesis, and especially in the results section, in regard providing short titles **not being misleading is difficult**, whether evocative language is

⁴⁰ MCON2

⁴¹ HC5, HC3, MSP3

⁴² UKBD1, USMM1

used or not. This relates to other research questions presented at the beginning of this thesis in regard to whether or not certain short titles are intentionally misleading, and also as to whether or not names are drafted to persuade or manipulate individuals into favouring legislation. Conveying a clear message alongside a policy signal in a short title can at times tax the abilities of even the most gifted drafter. Omnibus or consolidation Acts seemed to be particularly disliked by many interviewees from all jurisdictions, because the short titles of these are sometimes too general and thus allow for too great a variety of legislative objectives to be attached. But much of the data on whether titles were misleading appeared to have political motivations. This was referred to by one Lords member, who noted that identifying misleading titles ‘would tend to be a political judgment’.⁴³

Beyond these political frames, however, many interviewees had genuine concerns over the state of short titles. Some noted that they ‘give the impression that the bill has done something’;⁴⁴ that ‘most of these bills that have some tear-jerker type names are misleading’;⁴⁵ and that ‘some of them are just pure propaganda’.⁴⁶ Some other bold assertions were made in regard to this question. A House staffer offered his own office’s short titles up as misleading,⁴⁷ a UK reporter actually brought with her a list of laws that she believed to be misleading and read them off one by one,⁴⁸ and another journalist noted that ‘when they are removing our civil liberties they will say

⁴³ HL3

⁴⁴ HC5

⁴⁵ MCON2

⁴⁶ USMM3

⁴⁷ HOUSESF6. Phrase was omitted due to confidentiality concerns.

⁴⁸ UKMM5

like Safeguarding the Public Act'.⁴⁹ Considerable concern was expressed by some interviewees that short bill titles may mislead (or at the very least, be misnamed), and this occurred at varying levels in all jurisdictions.

The discussion above leads to the next finding: **many bill names in the US and on occasion names in the UK will be renamed at one point or another, either given a new legal designation in the parliamentary process or given a popular description in public debate.** This finding responds to a couple of the questions presented in this thesis: most specifically, it relates to how the phenomenon of evocative titling has developed with regard to the framing, symbolic politics and marketing techniques. It is also associated with whether communication over bill titles, and especially in relation to journalists, has changed. Chapter IV found that official bill names in Westminster and the Scottish Parliament usually stay the same once they are presented, but bill names in the US frequently change names between houses and sometimes even before they are sent to the President for formal enactment. However, in all jurisdictions bills may be unofficially renamed by opposition parties, media members or others who have an interest in the legislation. In Chapter III this was discussed in the analytical context of the 'framing war', in which issues (and subsequently statutes) are framed in competing ways. A good example of this was provided by a magazine journalist who stated that 'for every controversial issue there's always...a framing war. You know, like the Estate Tax v. the Death Tax', and how the issue decreases in support when framed as the latter.⁵⁰ A staffer agreed, stating that evocative naming 'certainly allows the author to frame the policy, which is very usually

⁴⁹ UKMM1

⁵⁰ USMM7. Also, Luntz mentioned this example in his book.

complex, in a way that's manageable for anyone to understand'.⁵¹ Yet the latter declaration is not entirely accurate. Framing allows for a focus on various aspects of an issue through differing perspectives, but none of them need inherently be accurate; frames are viewpoints or perspectives. In many cases framing wars provide conflicting perspectives that may instead distort the understanding of issues, leading to an oversimplification of the problem/s and a dearth of information and/or understanding of the problem(s) at hand.

This also has implications in terms of journalistic involvement, as they are often the very individuals who are renaming particular bills. One US journalist from a major newspaper noted that he pays attention to official names only 'as a way of avoiding using the titles that are placed on the bills'.⁵² Another US journalist said that short titles were important in the lawmaking process, and because of this 'journalists ought to ... watchdog as much as possible'.⁵³ A tabloid journalist in the UK stated that he would never put the official name of a Bill in an article, and would likely derive his own phraseology in terms of describing a proposal.⁵⁴ Also, another journalist from the UK brought with her to the interview a list of short titles from Westminster she believed were misleading, and said that many of 'the innocuous-sounding bills...actually give away a lot of rights'.⁵⁵ These are important statements from individuals who are providing information about Bills and Acts to the general public. If they are hesitant to put the official names in their articles because they deem them either too tendentious,

⁵¹ CONSF3

⁵² USMM9

⁵³ USMM7

⁵⁴ UKMM1

⁵⁵ UKMM5

too general, or too descriptively boring, then this is a barrier to lawmakers and governments in both jurisdictions.

Yet **once bills are enacted as formal law the presence and force of their short titles are more firmly entrenched**. As will be seen below, this is a distinct advantage of evocative bill naming. Also, this brings to mind a proposition by Drewry that was mentioned in Chapter II, that ‘a legislative process is continuous’, and it does not possess a clear ‘beginning’ or ‘end’.⁵⁶ One US journalist provided support for this finding in regard to an anti-abortion measure. He said that while it was travelling through the legislative process, their newspaper refused to print the official name of the Bill, which was the Partial-Birth Abortion Act.⁵⁷ However, he noted that once the Bill passed and became law, his newspaper relented, stating ‘at that point you start calling it by that name, because if Congress has called it that, that’s what people call it.’⁵⁸ Further examples of this power are taken from two Acts that have figured quite prominently throughout this thesis.

Two of the most (in)famous Congressional bill names of contemporary times, the USA PATRIOT Act of 2001⁵⁹ and the No Child Left Behind Act of 2001 (NCLB),⁶⁰ provide interesting case studies of bills that not only won the framing war, but under heavy scrutiny remain in the statute books a decade after their enactment. Both of these bills were mentioned frequently throughout many of my interviews,

⁵⁶ *Id.*, p. 105-06.

⁵⁷ As mentioned earlier, bills that are travelling through the US Congress are routinely referred to as Acts, though they have yet to become official law.

⁵⁸ USMM1

⁵⁹ USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272

⁶⁰ No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat 1425

because they are two of the most evocative bill titles Congress has ever bequeathed the statute book.

Many interviewees took aim at NCLB. One journalist stated that the law ‘became...kind of like a parody of itself’.⁶¹ She may be correct, because many people continue to mock and rename this Act even today. One Congresswoman interviewed pointed out that the law has developed a number of pseudonyms, including No Child Left In Tact,⁶² and the law has also spawned the name for a piece of legislation intended to encourage children outdoors, called the No Child Left Inside Act.⁶³ Even the British Prime Minister used the phrase in 2007, shortly after rebranding the Department of Education the Department for Children, Schools and Families (which has subsequently been changed back to the original name by the current coalition government).⁶⁴ Just a few weeks after the Obama Administration took office in 2009 Education Secretary Arne Duncan called for a rebranding of the law⁶⁵ and it was reported that most of the NCLB paraphernalia was being removed from the Department of Education website, and official correspondence was using the old bill title, the Elementary and Secondary Education Act (ESEA).⁶⁶ In fact, a recent visit to the Department of Education website confirms that there is frequent use of the ESEA title,

⁶¹ USMM8

⁶² MCON1

⁶³ S.866. Available at: <http://www.govtrack.us/congress/bill.xpd?bill=s111-866>

⁶⁴ Whitebread, Jasmine. (4 July 2007). No Child Left Behind. *The Guardian*. Available at: <http://www.guardian.co.uk/commentisfree/2007/jul/04/nochildleftbehind>

⁶⁵ Ramirez, Eddy & Clark, Kim. (5 Feb. 2009). What Arne Duncan Thinks of No Child Left Behind. *US News and World Report*. Available at: <http://www.usnews.com/articles/education/2009/02/05/what-arne-duncan-thinks-of-no-child-left-behind.html>

⁶⁶ See the New York Times summary of the No Child Left Behind Act here: http://topics.nytimes.com/top/reference/timestopics/subjects/n/no_child_left_behind_act/index.html; Also, see this op-ed piece posed by Education Secretary Arne Duncan on the 10th Anniversary of NCLB: <http://www.ed.gov/blog/2012/01/after-10-years-it%E2%80%99s-time-for-a-new-nclb/>

but the No Child Left Behind Act of 2001 is still prominently displayed.⁶⁷ Although Obama mentioned NCLB frequently on the campaign trail in terms of repealing or heavily amending it, nothing in an official legislative capacity has transpired at this point.

One US newspaper journalist stated that politicians must be careful ‘when they name a bill. They have to be very careful that they don’t inadvertently give it an acronym that would cause people to make fun of it, or would allow it to become the butt of jokes or things like that’.⁶⁸ Yet blatant mockery of both the USA PATRIOT Act and the No Child Left Behind Act by government officials, media members and the general public has not dampened the force of law these measures still contain. Describing the cultural impact of such titles, one journalist stated that that the USA PATRIOT Act title has ‘sticking power’, and if ‘it were called the “Wiretapping Permissions Act”, or the “Domestic Security Act”, it would not have the sticking power it does’.⁶⁹ In fact it is in the nature of modern terrorism legislation that it is regularly revisited in amending and continuing parent statutes, as it was already acknowledged that the Act was reauthorized in 2005,⁷⁰ 2006,⁷¹ and in 2011.⁷² It remains to be seen whether either of these polarizing measures, trailblazing names and all, will be repealed or modified. If this does happen, perhaps even more interesting than the content of the

⁶⁷ US Department of Education website. Available at: <http://www.ed.gov/>. Actually, when you click the ‘No Child Left Behind’ link in the upper right hand corner, it takes you to a page called the ‘Elementary and Secondary Education Act’.

⁶⁸ USMM9

⁶⁹ USMM2

⁷⁰ USA PATRIOT Improvement and Reauthorization Act of 2005. Pub. L. No. 109-177, 120 Stat. 192. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:H.R.3199;>

⁷¹ USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006. Pub. L. No. 109-178, 120 Stat. 278. Available at: [http://thomas.loc.gov/cgi-bin/bdquery/z?d109:s.02271:](http://thomas.loc.gov/cgi-bin/bdquery/z?d109:s.02271;)

⁷² PATRIOT Sunsets Extension Act of 2011. Pub. L. No. 112-14, 125 Stat. 5. Available at: [http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h.r.00514:](http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h.r.00514;)

measures that end up succeeding them will be the titles applied to two of the most controversial and powerful names to ever grace the US statute book.

This section finishes with two previously observed findings that this thesis reinforces. The first is that: **legislators do not have time to read all bills**. This is not a new revelation, and it is not anything that needs further examination in this thesis. As evidenced by the consistent answers in my interviews, time constraints on legislators are extremely taxing, and as one interviewee stated, it would be ‘beyond the call of duty’ for legislators to read every bill that came for a vote.⁷³ The findings of this thesis support that conclusion.

A follow-up question to this in my interviews was whether or not legislators fully understand the measures that they are voting on. The overall verdict from the three legislatures studied was that **politicians do not fully understand all the legislation they are voting on**. This finding is a bit more significant, but still comes with caveats. Most politicians have one or two individual interests (e.g. foreign policy and/or commerce) and then defer to colleagues, their political parties or other outlets for information on legislation that does not fit into their remit. In every jurisdiction studied here, legislators are not expected to read and understand all bills, and, furthermore, many are plainly not interested in particular issues or pieces of legislation, and thus by choice will not apply themselves to understanding them. Therefore when deciding on the merits of particular legislative proposals they are likely to get information from a variety of other sources.

Much of this information gathering is quite sophisticated, because legislators have numerous options available. One Congressman pointed out that, ‘if you went just

⁷³ SCTMM4

by the titles you'd vote for every bill out there'.⁷⁴ That being acknowledged, legislators who are getting their cues elsewhere may be wary to vote against an evocatively-named piece of legislation that has received much positive publicity throughout the legislative process (i.e. a humanised bill of a tragic case). This could be advantageous for those that employ evocative naming, and also connects with whether or not some titles are devised to persuade. Additionally, it is not over-stepping the bounds of plausibility to say that cue givers, whoever they may be, are themselves potentially affected by the title of a piece of legislation. Political interest groups, political parties and in certain cases the media, may well accept a catchy bill name if they champion the cause, because it gives them something to promote (even if they do not agree with all aspects of the legislation). Thus, while this thesis mostly examined how short titles affect various sub-group populations (politicians, staff, government employees, drafters, media members) it is important to remember that such titles have implications for larger institutions and organizations as well (i.e. lawmaking bodies, media outlets, interest groups, think tanks, etc.).

Westminster and the Scottish Parliament

Westminster and the Scottish Parliament have much in common, including a good deal of their statute books. Many Westminster lawmaking traditions have been passed on from the British system since the creation of the Scottish Parliament in 1999, including a strong civil service that has drafters title legislation and parliamentary authorities which affirm these titles, as noted in Chapter IV.⁷⁵ The section below analyzes trends

⁷⁴ MCON2

⁷⁵ In fact this dimension of the British parliaments led one Scottish reporter to note that 'the mutual civil service part of our Constitution...might be one of the better aspects of it. Because it will keep politicians

seen in the results chapter regarding aspects of lawmaking, and specifically bill naming, in both institutions, and accentuates some of the important features these lawmaking bodies share and differ on.

Firstly, both of these systems are heavily whipped, so naming may be less of a factor than in the American system where legislators are freer to vote according to their conscience. This was repeatedly mentioned throughout my interviews,⁷⁶ because politicians rarely break from their parties to vote for or against certain measures. Accentuating material presented in Chapter II, this largely stems from the fact that both Westminster and the Scottish Parliament are largely run by their respective Executives. This Executive involvement does not mean short title influence is diminished completely, however: legislative insiders in both jurisdictions suggested that while titles may not have as big an effect on legislators, they could have considerable influence on other promotional aspects of legislation. The rationales behind name importance were also discussed more thoroughly above.

In terms of using tendentious or promotional language in bill titles, Westminster and the Scottish Parliament essentially drew the line at the same mark. Both allow words such as ‘prevention’ or ‘protection’, but discourage using words such as ‘improving’; both do not use humanised or personalised titles; and both almost never use their respective countries in their titles when they do not have to.⁷⁷ And though they may at times use words such as ‘prevention’ or ‘protection’, these appear to be used

under control a wee bit, in that sense, in terms of naming legislation in a kind of evocative way’.
(SCTMM1)

⁷⁶ UKMM1, UKMM2, UKMM5, SCTMM3, SCTMM4

⁷⁷ Most Scottish legislation includes the (Scotland) in brackets near the end of the short title, because it is used to discern Scottish legislation in the official UK statute book. However, this point was mentioned regarding the Standards in Scotland’s Schools Act, which is referred to below, and which a government employee said sounded like a policy statement in his interview, because of the way the title used ‘Scotland’s’.

with discretion and are not placed on every bill attempting to accomplish such matters. There were still some legislators in both jurisdictions who are opposed to using the words altogether, however, because they thought doing so puts them in a precarious position in terms of following through with legislative outcomes.

A majority of legislative insiders and journalists from both UK institutions were against the idea of employing humanised titles. This runs contrary to the American findings, where most legislators and staffers argued that employing such titles is an easy way to engage and inform constituents regarding certain bills, even though many journalists appeared unimpressed by the practice. On the whole Westminster interviewees, and lawmakers especially, desired a clear separation from the legislative process and the emotional baggage that accompanies personalised bills. They looked at an intermingling of these factors with an uncomfortable disdain. In doing so, they questioned whether the integrity of Parliament could suffice if it considered such populist and overly emotional legislation. However, a surprising number of interviewees thought that Westminster might start humanising their bill titles in the future, akin to current US Congressional practices. If these latter inclinations are ever realised, there is likely to be a marked increase in lawmaking that overtly uses more emotional and political tactics during the legislative process. These could be some of the disadvantages of employing evocative titles. Many Holyrood insiders touched on the same issues that Westminster interviewees did, such as separating emotional legislative tactics from the parliamentary process. However, the depth of negative responses to potential personalised bill titles was more noticeable among the Scottish cohort. Unlike some of their southern neighbours, no Scottish legislative insiders believed that personalised bill titles were likely to be employed by the Scottish Parliament in the future; something that likely stems from their more defined legal

status (e.g. the Presiding Officer's rules related to short bill titles, which are unique to the Scottish Parliament).

The concept of bill 'scope' seems to differ between Westminster and the Scottish Parliament in regard to short bill titles. This finding also adds to the literature on the legal status and importance in the two jurisdictions, and relates to whether or not short titles serve any other purposes in the respective lawmaking institutions. In Westminster short titles are not used to determine the scope of a bill and they may not be used in the formal amending process that takes bill scope into consideration either. The concept of bill scope in Westminster is exclusively determined by what is in the bill,⁷⁸ although Greenberg asserts that 'at some points the long title has also been persuasive'.⁷⁹ Greenberg also pointed out an irritating situation when he was working for the Parliamentary Counsel in which a special adviser to a Minister was objecting to his short title on the basis that the bill had an extremely large scope and was going to be subjected to increased amendments.⁸⁰ After learning of this complaint Greenberg had to explain to the adviser that according to rules of parliamentary procedure short titles may not be used to determine scope.⁸¹

The Scottish Parliament handles scope differently. I found that the legislature seeks to limit the scope of its bills through its short titles, and one legislator heavily involved in the lawmaking process told me that they intentionally draft their short titles to exclude amendments not related to the bill in question.⁸² Official parliamentary

⁷⁸ Cabinet Office Guide to Making Legislation (2009) Drafting the Bill. Available at: http://webarchive.nationalarchives.gov.uk/http://www.cabinetoffice.gov.uk/secretariats/economic_and_domestic/legislative_programme/guide_html/drafting_the_bill.aspx

⁷⁹ Greenberg, Daniel (2011), op. cit., p. 131.

⁸⁰ *Id.*, p. 130-31.

⁸¹ *Id.*, p. 131.

⁸² MSP2.

documents explain the Scottish position in regard to scope and the introduction of amendments. Part 4.11 in their Guidance on Public Bills notes that, ‘the clerks take a general view of the scope of a Bill in advance of introduction. Their aim in doing so is to establish in general terms what advice they would give at later Stages should an amendment of questionable relevance be lodged’.⁸³ They also declare that, ‘It is sometimes wrongly imagined that the long title alone can be used to determine the “scope” of the Bill. The long title is intended to provide a concise description of the main purposes of the Bill and so is a useful guide to scope; but it is not definitive’, while further warning that the ‘wording of the long title can also mislead in relation to [amendment] relevance’.⁸⁴ Thus, the Scottish Parliament adopts a more holistic approach in regard to titling and the scope of legislation, which may make short titles that much more important in their Parliament.

In order to gain a clearer picture of the results, problems and techniques that are unique to each institution, the sections below analyse the findings from the two jurisdictions individually.

The Westminster Parliament

Perhaps the most significant revelation for Westminster in this thesis was that the UK drafter interviewee stated that their office ‘quite often get[s] requests’ for evocative bill names.⁸⁵ This statement is exceedingly important, as it demonstrates that

⁸³ The Scottish Parliament, Guidance on Public Bills. Amendments, Part 4, 4.11. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25695.aspx>

⁸⁴ *Id.*, part 4.12 & 4.13.

⁸⁵ UKBD1

there are individuals involved in the legislative process who desire more evocatively-named bills; an ominous sign for the future of Westminster short titles.

The observation above suggests that Westminster's long-standing tradition of descriptive legal short titles may need active surveillance.⁸⁶ However, there were interviewees on both the legislative and media sides who suggested that more evocative short titles would not necessarily be a negative development for Westminster.⁸⁷ There appears to be some friction between those requesting the evocative names and those who actually draft such titles. Bill drafters, other civil servants (such as the House Authorities) and the Speaker of the House have not allowed short bill titles in Westminster to become overly evocative. It remains to be seen how long this will hold, because currently there is no formal delineation between acceptable and unacceptable short titles.⁸⁸ The drafter who revealed these requests further stated that 'there is always this tension, as legislating is a political process'.⁸⁹ Moreover, when asked whether or not Westminster is striking a good balance between these legal and political aspects of legislation, he declared that they 'were getting it about right', but further noted that 'it's a judgment we have to keep making'.⁹⁰

Additionally, the statement above and the lack of official short title regulation is even more important because of Greenberg's revelation that should an evocative short title be proposed, 'it is far from clear whether even the Speaker has the power to

⁸⁶ However, it is not clear for how long these requests have been happening: it could be a recent occurrence or it could have been quite common throughout the years.

⁸⁷ HL2, HC7, UKMM1

⁸⁸ Aside from the private Speaker's ruling mentioned in the latest *Erskine May* and discussed above in Chapter IV: Jack, Sir Malcolm. (2011) *Erskine May's Parliamentary Practice (24th Ed.): The Law, Privileges, Proceedings and Usage of Parliament*. London, UK: LexisNexis, p. 526. But, this does not seem to provide any standard for legislation.

⁸⁹ UKBD1

⁹⁰ *Id.*

intervene formally to prevent a short title of which he or she disapproves on the grounds of propaganda'.⁹¹ Analysing the situation further Greenberg notes that it becomes one of 'brinkmanship' between Ministers and House Authorities regarding who will relent first, and this yielding largely depends on the individuals involved.⁹² For example, if a special adviser, who is able to retain 'party loyalties' and still be involved in the parliamentary process,⁹³ convinces a Minister to request an evocative short title, it may lead to some controversy between drafters, Ministers, House Authorities and others, as to how to proceed. Therefore the situation is much more ambiguous than *Erskine May* states.⁹⁴ This lack of standard is troubling. Leaving the situation to House Authorities (and/or the media)⁹⁵ to solve such matters without any formal guidelines in place is irresponsible, and the tendentious and evocative short titles that seem so very far away at this point may actually be just around the corner.

Westminster's 1970s and 1980s Prevention of Terrorism Acts may be the most controversial and effective evocative short titles in its recent history, given the frequency with which interviewees referred to them.⁹⁶ One media member said that 'if you didn't vote for it...you would be attacked by the government as being soft on terrorism'.⁹⁷ Others made comments in regard to these acts as well,⁹⁸ many of which

⁹¹ Greenberg, Daniel (2011), *op. cit.*, p. 102.

⁹² *Id.*

⁹³ *Id.*, p. 129.

⁹⁴ Jack, Sir Malcolm., *op. cit.*, p. 526.

⁹⁵ As we saw in the previous chapter, some media members and legislators stated that should evocative names arise in Westminster, the media would mock such titles, and therefore such titling could be controlled.

⁹⁶ It should be noted, however, that I did ask participants about modern-day terrorism legislation during interviews. This is located in the 12th question of the UK Questionnaire template in Appendix II. So, that may be the reason why the Prevention of Terrorism Acts from the 1970s and 1980s are mentioned relatively frequently.

⁹⁷ UKMM3

suggested that some bills were more evocatively titled because governments wanted them to pass. In this case, the addition of ‘prevention’ to the legislation was quite a strong term, as it made those voting against the legislation appear apathetic to ‘preventing terrorism’. In terms of getting the bill through the legislative process, this was advantageous. Yet from a historical perspective it is interesting to note that the UK did not expand on this tradition of evocative naming in other areas of legislation: the inclusion of words such as ‘prevention’ and ‘protection’ is still where the line is drawn in terms of policy-saturated language. Thus, while the practice of evocative naming has grown considerably throughout the years in Congress (as seen in Chapter II), Westminster has yet to expand this technique.

Perhaps, however, other titles have slipped through the cracks. One quite alluring short title provided by a drafter was the Crime and Punishment (Scotland) Act 1997. He referred to it as ‘a splendid one’, and stated that ‘we thought they were joking at first when they wanted to call it Crime and Punishment. That was around 1997... We had considerable fun considering what other literary titles they might choose. But it had nothing to do with crime... it was a punishment bill. It dealt with prisoners, and it just wasn’t appropriate’.⁹⁸ Dostoevsky’s *Crime and Punishment* is one of the most renowned literary texts in the world, and drafters, legislators and Westminster House Authorities certainly knew the connotations of such a name. And although the title does not necessarily employ the emotionally-laden linguistic techniques of US Congressional short titles, it does resonate.

⁹⁸ HL3, HC6, HC5

⁹⁹ SCTBD2

Some practical items relating to the makeup of Westminster and the quality of drafting were also brought up by interviewees. A drafter stated that he saw fewer lawyers serving in the House than in previous years, noting:

‘When I started this job in the 1970’s there were a lot more lawyers...practising lawyers in the legislature than there are now. And the practice of scrutiny was very sort of...directed at the literal wording of the statute books in the House of Commons. I think in recent years scrutiny has concentrated much more on the policy and effects of the legislation, on the assumption that the drafting does what the government says it does. And the thing that politicians need to talk about is...whether or not what it does is what they want...that’s a development. I don’t think it’s right or wrong, I just think it’s the way things are, and the democratic process makes demands on politicians to look at different things according to democratic pressures it seems to me’.¹⁰⁰

This point must be taken into consideration, given that a decline in the participation of legally-qualified members might lead to a declining focus on the technical language of statutes, perhaps shifting attention to the policy and presentational aspects of legislation. When asked about whether or not legislators fully understand legislation, an MP also mentioned the lack of legally-qualified representatives.¹⁰¹ He noted that lawyers have ‘an easy way with bills’, and that the problem regarding understanding legislation stems from a dearth of such professionals in the Commons. Although there is no additional evidence in this thesis to propagate

¹⁰⁰ UKBD1

¹⁰¹ HC4

such a theory, and recognising the lack of previous research related to the short titles of bills, it could be provisionally surmised that more policy-oriented legislators (i.e. less lawyers) may desire more policy-themed bill titles rather than more legal or technical names.

Another practical consideration raised by interviewees included the quality of legislative drafting. One Lords member expressed very strong feelings on the issue, stating

‘the writing has become sloppier. Yes, considerably sloppier, and the quality of legal counsel in the civil service has diminished. They’re not so good anymore, and they don’t think through the implications quite as carefully as they used to. I mean, I have no reference point to judge twenty years before, but I hear other people that I work with, lawyers, saying “nobody worth their salt now becomes a government lawyer”’.¹⁰²

This was a harsh and stinging indictment of the Parliamentary Counsel, but others had complaints as well. Another lawmaker said that ‘explanatory notes have not improved a great deal in my opinion’,¹⁰³ while one MP stated that there have been attempts by drafters to make bills on the whole more accessible, but that she did not think they had succeeded to any great degree.¹⁰⁴ It is difficult to determine whether these complaints stem from the fact that: (1) language is constantly changing, and since this is the case there are likely to be changes in legislative bill drafting; and (2) Parliamentary Counsel has recently put a focus on clarity in statutes¹⁰⁵ in order to remove some of the archaic

¹⁰² HL1

¹⁰³ HC4

¹⁰⁴ HC2

¹⁰⁵ Office of Parliamentary Counsel. (2008). Clarity in Drafting: Principles and Techniques. Available at: <http://www.cabinetoffice.gov.uk/media/190016/clarity%20paper%20with%20hyperlinks.pdf>

language and make legislation more accessible to the average citizen. However, as demonstrated by some of the above comments, it is debateable how successful they have been at doing so.

Westminster has other structural characteristics which may make an evocatively titled piece of legislation more alluring to lawmakers. As one interviewee pointed out above,¹⁰⁶ Westminster occasionally has ‘free votes’, where legislators are not bound to the whip and are free to vote with their conscience. Yet these votes occur infrequently and still tend to fall along party lines.¹⁰⁷ Additionally, the Lords incorporates Crossbench or ‘Independent’ members, an aspect that distinctly separates it from the party-affiliated Commons. In respect to voting and fully understanding bills, one Lords member stated that this independent element was advantageous for the Lords, and further declared that crossbench members in the Commons could be beneficial, noting that ‘the independent element would probably follow the line that I take...they don’t vote unless they know pretty much of what is going on’.¹⁰⁸ This is in stark contrast to how Commons members traditionally vote. While there is currently a House of Lords (Amendment) Bill travelling through Parliament that will further reform the chamber,¹⁰⁹ no bills are presently in front of Parliament regarding reformation of the Commons.

As evidenced from the discussion above, Westminster has many challenges that await it in terms of short bill titles. It remains somewhat puzzling that there are not clearer guidelines or standards in regard to short titles, especially considering the

¹⁰⁶ HL1

¹⁰⁷ Brazier, A. Kalitowski, S., & Rosenblatt, G., *op. cit.*, p. 4.

¹⁰⁸ HL2

¹⁰⁹ House of Lords Reform Bill 2010-12. Available at: <http://services.parliament.uk/bills/2010-11/houseoflordsreformhl.html>

requirement that every bill proposed in Westminster should carry one, and these instructions were implemented some time ago. Though individuals from this jurisdiction regard short bill titles as an important part of the legislative process, and also believe them to have certain political implications, the legal status of such titles remains unclear in the absence of such standards.

The chapter now discusses issues in regard to the Scottish Parliament, where there are more precise recommendations on the matter in regard to short bill titles.

The Scottish Parliament

'I'm just trying to think of all the things that have come up in titles over the years. Not very much I have to say. Less than, perhaps, I would have expected'.¹¹⁰

-Scottish Drafter

This jurisdiction continually emphasized proper bill drafting form. The quotation above is quite apt for this section, as the interviewee struggled to think of much controversy surrounding legislative bill titles in the short history of the contemporary institution.

An example that helps distinguish between Westminster and the Scottish Parliament lies in the responses by two drafters regarding requests for evocative bill titles. In the previous section I noted that a Westminster drafter revealed that he 'quite often' receives requests for evocative bill titles.¹¹¹ A Scottish drafter asked the same question replied that 'occasionally things come with slightly more evocative titles, but not really. I can't remember ever really being asked to give a bill an evocative title'.¹¹²

¹¹⁰ SCTBD1

¹¹¹ UKBD1

¹¹² SCTBD1

The difference between the answers displays the perception that, though both jurisdictions have many similarities, the two drafters operate in different legal and political environments: the former appears to be under more external pressure to include evocative wording in short titles, which the latter encounters little of this pressure. This division could potentially stem from a more defined legal status in the Scottish Parliament for short bill titles.¹¹³

Among the legislatures studied, Scottish Parliament titles are the most specific. For example, during the first session a bill was introduced as the Mental Health (Scotland) Bill that was later changed to the Mental Health (Care and Treatment) (Scotland) Bill, which gave it more specificity as to how it related to mental health.¹¹⁴ In this particular case the added specificity, knowingly or unknowingly, may have provided the bill with some more power and/or gloss, because relatively few individuals are likely to be against the care and treatment of the mentally ill. This is one of the advantages of being more specific without being evocative. Additionally, one Scottish legislator who currently interacts with many bills and appears to have influence over their titles stated that ‘in this program this year, we’ve looked at the names, to make sure they actually reflect what’s going on’.¹¹⁵ This suggests that both legislators, likely in conjunction with parliamentary Authorities and drafters, are currently stressing short title accuracy.

¹¹³ However, this finding may not hold true in all instances. As noted in the previous chapter, another Scottish drafter (SCTB2) noted that in relation to legislation being influenced by the language of the marketplace, ‘There is pressure all the time, if not in short titles, then to use them in the text of the bill. And it is quite difficult batting off these ideas sometimes’. He further noted that ‘there’s any number of new words that come in and are used in a short time’.

¹¹⁴ SCTBD1

¹¹⁵ MSP2

A Scottish government employee who deals with approving bill titles described what occurs when they come across a name that does not fit within the Presiding Officer's guidelines, stating:

'Yes, well, what we're doing is we ultimately...we're applying the Presiding Officer's direction from 1999, and before we get to that level, we'll probably have an exchange with the draftsman...it's not a case of us sending it back and saying 'change it'. We'll maybe go back to the draftsman and say "we're concerned that this goes against the guidance, can you have a think about it again". So, it will be gentler than that. Ultimately, if we reached a complete impasse, we would then have to go to the Presiding Officer and say "we think this goes beyond, can you give us a ruling". And the Presiding Officer would step in and say "this goes beyond what we set out in 1999". What's likely to happen, and has happened in practice is rather than us getting a bill, and for the first time thinking, "this is a bit dodgy", the draftsman will get in touch beforehand and say, "this is what we are thinking in terms of a short title, can you give us your views on it". So, they already know that there might be a question about it. They don't just send something to us that they think is going to be objectionable. We have quite a good relationship with them, and it's all done in a very, very co-operative way. So, they will seek our advice, rather than trying to impose something on us'.¹¹⁶

A problem the House Authority discussed above occurred with a bill in the Scottish Parliament's first legislative session, called the Standards in Scotland's

¹¹⁶ SCTGOV1

Schools Act, which was originally proposed as the Improving Standards in Scotland's Schools Bill.¹¹⁷ During the three week window that the bill was in the pre-introduction stage with parliamentary authorities, 'Improving' was eliminated from the title. In fact an objection by one of my interviewees may have contributed to this change.¹¹⁸ And though parliamentary Authorities¹¹⁹ still approved the title, they were not necessarily happy with the outcome. As was pointed out in the Chapter V, the House Authority partially responsible for approving such titles stated that the bill's title still had 'a feel of it being a bit of spin...a bit of policy statement, rather than just a pure, straightforward title of a bill'.¹²⁰ He noted that this was due to the use of 'Scotland' in the title, acknowledging that the Parliament cannot legislate for any other country's schools.

The example above highlights an aspect of the deliberative parliamentary structure the institution currently operates in. Because Holyrood has clearly defined the legal status of short titles and also allows civil servants to interact with legislation on a more sophisticated level than the US Congress does, a short title that may begin the process with a somewhat tendentious label may indeed be modified by House Authorities at some point in the future. Institutions such as the US Congress do not allow their civil servants to interact with legislation in this manner, and especially not in relation to short bill titles, which are in the purview of the legislator who sponsors the bill, and nobody else.

¹¹⁷ Standards in Scotland's Schools Act etc. Act 2000 asp 6. Available at: http://www.opsi.gov.uk/legislation/scotland/acts2000/asp_20000006_en_1

¹¹⁸ SCTBD2

¹¹⁹ Likely the Office of the Chief Executive, and the Clerk's Assistant Directorate/Legislation Directorate.

¹²⁰ SCTGOV1

Another example of the distance between the Scottish Parliament and other lawmaking bodies who actively engage in evocative naming (i.e. Congress) was their view on particular ‘evocative’ words. A couple of interviewees mentioned that the word ‘reform’ was somewhat evocative.¹²¹ There could indeed be circumstances in which this would be perceived as evocative in the Scottish Parliament. In contrast, bringing forward a bill in Congress with ‘reform’ in the title would not be seen as very controversial or exciting; such titles are likely regarded as innocuous in US lawmaking, as the level of evocative language is much more crude.¹²² The gulf between the two jurisdictions regarding short titles runs very deep and was quite noticeable throughout the interviews. Acknowledging the USA PATRIOT Act and other evocative legislative language, a Scottish drafter stated that the US probably needs ‘a bill about the naming of bills’;¹²³ in contrast, a Congressional House staffer mentioned in his interview that ‘the system is [currently] working the way that it was designed’.¹²⁴ Two vastly different perspectives from individuals heavily involved in lawmaking.

But not all Scottish interviewees were necessarily against the idea of evocative bill naming. When speaking about the possible effects of such titles one MSP stated that many individuals in contemporary society do not engage with politics, and that introducing evocative titles might ‘spike an interest’ in legislation.¹²⁵ Reinforcing this idea, one journalist supported the Sarah’s Law proposal propagated by the *News of the World*, because he thought that the title was ‘a terrifically effective way to get a point

¹²¹ SCTBD1, SCTMM4

¹²² Unless, perhaps, it was an acronym that stood for something very controversial, and included other evocative words in the acronym. In fact, this thesis regards ‘reform’ as a technical word, and uses it in this manner for the US bill survey located in Chapter II.

¹²³ SCTBD1

¹²⁴ CONSF6

¹²⁵ MSP3

across’, and he further noted that ‘Sarah’s Law brings an image of that wee girl...that lovely wee girl that was in all the papers. And immediately, your hackles are rising, you want something done and you’ll support that kind of legislation’.¹²⁶ These statements in support of such bill language, however, were very infrequent with this cohort.

The Scottish Parliament also demonstrated that humanised titles can have a legitimate place in legislation. This legitimate place is in private bills that relate to a specific person and/or group of people. Outside of this private realm of legislation, this thesis concludes that such titles deserve no place in lawmaking.

Private bills specifically state the person/institution and issue mentioned in the title, and nothing more. The measures are not remembrances dressed in the language of panaceas. Scottish statutes such as the William Simpson’s Home (Transfer of Property etc.) (Scotland) Act 2010¹²⁷ and the Ure Elder Fund Transfer and Dissolution Act 2010¹²⁸ do exactly what they say. The former bill is two pages long, while the latter is only one. They are short and easy to understand. Both measures were not titled or designed for political advantage, and they ‘do what they say on the tin’. The US Congress should take note of how to use humanised measures, and members should stop personalising their Public Bills in order to pressure legislators into voting for such proposals.

One of the primary restraints on evocative bill titling provided by the Scottish Parliament stems from the Standing Rules of the Scottish Parliament, and specifically the Presiding Officer’s detailed rules on the proper form of bill drafting, which are

¹²⁶ SCTMM2

¹²⁷ William Simpson’s Home (Transfer of Property etc.) (Scotland) Act 2010 asp 12. Available at: http://www.legislation.gov.uk/asp/2010/7/pdfs/asp_20100007_en.pdf

¹²⁸ Ure Elder Fund Transfer and Dissolution Act 2010 asp 7. Available at: http://www.legislation.gov.uk/asp/2010/12/pdfs/asp_20100012_en.pdf

unique to the Scottish Parliament. Westminster and the US Congress have no such standard.¹²⁹ The more precise acknowledgement of the legal status of short titles in Holyrood has likely made such titles that much more important for lawmakers, minimised the amount and severity of any political effects, and also served to improve the quality of legislative drafting in the institution.

The United States Congress

One thing is clear regarding the short bill title situation in the United States: short bill titles in the US are not merely referential in nature, and they serve much larger procedural, legal and political goals than the short titles of the UK institutions. Recent bills such as the Patient Protection and Affordable Care Act,¹³⁰ the American Recovery and Reinvestment Act,¹³¹ the Lilly Ledbetter Fair Pay Act of 2009¹³² and the Helping Families Save Their Homes Act¹³³ demonstrate that a change in leadership does not equate to a change in rhetoric or a decreased use of propagandistic techniques.¹³⁴ It could be argued that select short bill titles have become even more culturally prominent than in previous administrations, thus attempting to enhance the political effects of such proposals. The Recovery Act, or ARRA, has its own symbol and its own website,¹³⁵

¹²⁹ Or, at least nothing that is explicitly made public.

¹³⁰ Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119

¹³¹ American Recovery and Reinvestment Act, Pub. L. No. 111-5, 123 Stat. 115

¹³² Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5

¹³³ Helping Families Save Their Homes Act, Pub. L. No. 111-22, 123 Stat. 1362

¹³⁴ However, according to Figure 2 in Chapter I, evocative word use and humanised titles did significantly decrease in the 111th Congress, compared to the 110th Congress. However, the use of technical terms in short titles also decreased. The 112th Congress is still underway, so an analysis of whether this trend continues will be determined after the session closes in January 2013.

¹³⁵ The website for the American Recovery and Reinvestment Act is www.recovery.gov. The symbol is located on the website.

and even recent bill proposals, such as the American Jobs Act, are provided their own websites.¹³⁶

One of the main reasons Westminster and the Scottish Parliament have constrained their bill titles is because they usually have impartial civil servant drafters provide short titles, not legislators. However, in the US Congress these presentational elements are largely left to lawmakers and their staffs, who churn out a myriad of evocatively-named bills in each legislative session, many of which never come close to becoming Acts (the latter being similar to ‘unballoted’ Private Members’ Bills in Westminster). One staffer recognized that the bill title was ‘100% on the member’, and ‘almost exclusively in the purview of a member of staff’.¹³⁷ This is an interesting practice, because US staffers are constructing titles for objects they will likely never personally be held account for; and their bosses (i.e. lawmakers), those who are held account for such matters, appear to have no qualms about this method (or not enough to want to ensure that their power is redistributed). Conversely, it was noted in the previous section on Westminster that many legislators are hesitant to use tendentious titles because they believe that they will be held responsible for such language. Acknowledging that the US is a separate country with different traditions and nuances of government, this process of drafting short bill titles needs to be re-examined in light of the results presented in this thesis.¹³⁸

A main constitutional concern which arose from my research and corresponds with the research questions, is that legislators tend to view short titles as ‘policy’ rather than law. Short titles are not mandatory in the US, as they are in Westminster and the

¹³⁶ Available at: <http://www.americanjobsact.com/>

¹³⁷ CONSF2

¹³⁸ This is also one of the major ‘recommendations’ listed in the below section.

Scottish Parliament. Thus they are viewed more as presentational devices. Considering the myriad of legislation which is presented in Congress every year, it is understandable that such titles could be viewed in this manner. But in actuality short titles are legal and legislative instruments, and should bills become law they are eventually inscribed into the statute book with the remainder of the legislative text. The separation between policy and law by Congress in relation to this matter is misconceived, and the continued use of bill titles as policy instruments rather than legal instruments is likely to further this misconception.

A further challenge for Congressional short title reform is that there is much greater legislative competition in Congress compared to Westminster and the Scottish Parliament.¹³⁹ This stems from one of the fundamental constitutional differences located in Chapter II, that the Executive is not as powerful in Congress as it is in both UK jurisdictions. Thus, there is no official ‘legislative programme’ put forth at the beginning of each Congressional session, and even bills that are proposed through executive communication still must be sponsored by a member of Congress, and are not given priority in any formal sense over other proposed legislation. Thus, a legislative achievement in Congress may require an increased use of legislative or political process tactics, one of which may be to evocatively name a piece of legislation with the hope that it will gather co-sponsors and travel further. This finding responds to the research question regarding whether or not short titles are written to influence or persuade individuals to favour the legislation. It appears that is the case in the US Congress, and even lawmakers had no problem admitting this.

¹³⁹ For example, in the 110th Congress (2007-08) the House of Representatives had 7,340 bills introduced. In contrast, in the 2007-08 parliamentary session of Westminster the Commons was presented with 138 bills (including those brought from the Lords). (McKay & Johnson, *op. cit.*, p. 557, 560). Also, it was revealed in Chapter IV that during the 3rd session of the Scottish Parliament (May 2007- March 2011), there were 62 bills presented in total.

An interesting aspect of the Congressional system that belies this competition is what lawmakers call ‘Dear Colleague’ letters. One staffer describes these in detail by revealing that,

‘through the co-sponsorship process we have a system here...we call them...“Dear Colleague” letters we’ll send around, and members will send them around to different members, and the intent of those letters is to get people to co-sponsor...different members’ legislation. And, it’s an electronic system now. So, on any given day you may have 600 “Dear Colleague” letters in your inbox on a variety of subjects, so it might be education “Dear Colleague”, health care, immigration, whatever the subject is...and that’s one of the roles that these catchy short titles serve. Because when you’re sending an email, it’s a heck of a lot better to be able to say join me in co-sponsoring the GIVE Act 2009 as opposed to “A Bill to Amend Title” whatever’.¹⁴⁰

The staffer went on to explain that titles of these bills are usually located in the subject line of the email.¹⁴¹ Therefore, such letters breed competition (especially in regard to naming), given that it seems reasonable to assume, provisionally, that an email with a pleasant sounding title is likely to be opened by more legislators than one with an innocuous or unevocative name. This is a major hurdle in the step to reform for Congress, as the practice is very commonplace. Yet this need not work wholly against the interests of appropriately-titled legislation: it may be that those who consistently present quality legislation to the House or Senate are more likely to have their emails

¹⁴⁰ CONSF2

¹⁴¹ *Id.*

opened and bills sponsored than those who present bills with catchy names, but that lack the necessary substance.

In terms of tendentious and promotional language in bill titles, the US is grossly at odds with Westminster and the Scottish Parliament, as was detailed above and in earlier chapters of this thesis. While the UK parliaments are currently debating the use of words such as ‘prevention’ and ‘protection’, the US has been consistently using words such as ‘effective’, ‘efficient’, ‘honest’ and ‘fair’, and numerous other evocative words; all which promote the policy behind the bill and/or transform the bill in into a moral obligation. Additionally, as I have discussed here, the US frequently employs humanised names that include overly sympathetic victims tough to oppose (i.e. the James Zadroga 9/11 Health and Compensation Act of 2010¹⁴²), and acronyms (Heroes Earnings Assistance and Relief (HEART) Act of 2008).¹⁴³

But though evocative language is quite common, some legislators and staffers opposed such language in short bill titles. One Congressman stated that it was not justified at the Congressional level,¹⁴⁴ and other staffers called it ‘premature’,¹⁴⁵ ‘not necessarily warranted’,¹⁴⁶ ‘wishful thinking’,¹⁴⁷ and ‘disingenuous’.¹⁴⁸ This is fairly strong language from a group of people who must interact with legislation on a daily basis. However, another Congresswoman stated that such language reflected the ‘spirit

¹⁴² James Zadroga 9/11 Health and Compensation Act of 2010, Pub. L. No. 111-347, 124 Stat. 3623.

¹⁴³ Heroes Earnings Assistance and Relief (HEART) Act of 2008, Pub. L. No. 110-245, 122 Stat. 1624

¹⁴⁴ MCON2

¹⁴⁵ CONSF3

¹⁴⁶ CONSF5

¹⁴⁷ *Id.*

¹⁴⁸ CONSF6

of the times’, and noted that ‘whether it’s accurate or not is another question’.¹⁴⁹ Journalists were more accepting of legislators using such language in short titles, as many thought it was not a major issue¹⁵⁰ or viewed it more as a marketing ploy.¹⁵¹ However, two denounced such practices, and one even went so far as to say that such practices were demeaning the ‘stature’ and ‘decorum’ of US Congress,¹⁵² which were in line with some comments about the professionalism and dignity of Parliament heard in UK interviews. This assertion is also similar to Orr’s prediction in 2000, that such short title slogans would ‘hasten a decline in respect for democratic governance’.¹⁵³ And although at the time he was writing about the current state of Australian short bill titles, his insight on the matter could be employed for any legislature employing evocative titles. This could be a disadvantage of employing evocative bill titles during the legislative process. During one of my interviews a Congressional legislator even mentioned that their office had received numerous letters for the Humanities and Pets Partnered for Years Act that was introduced in July of 2009.¹⁵⁴ If the reader has not already put it together, the acronym stands for: HAPPY Act. Perhaps Mr Orr was indeed onto something.

There is a commonly held belief that not many people follow politics and/or the legislative process in much depth, and that many publics are inattentive and thus

¹⁴⁹ MCON1

¹⁵⁰ USMM1, USMM3, USMM7

¹⁵¹ USMM2, USMM6

¹⁵² USMM4

¹⁵³ Orr, Graeme. (2000), *op. cit.*, p. 189.

¹⁵⁴ H.R. 3501: Humanities and Pets Partnered for Years Act. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:h.r.03501:>

misinformed.¹⁵⁵ In quite a sinister answer, one magazine journalist declared, ‘I mean you can never underestimate how stupid people are. Not to sound like Washington elitist or something. But now, 40% of people think that Saddam was behind 9/11 then presumably people, you know, take their cues from the names of Acts’.¹⁵⁶ Although this answer exudes contemptuous pomposity, media research has shown how lack of adequate context and even falsifying information can impact upon professedly sceptical audiences: without a full range of information to evaluate, the reader or viewer lacks the tools to counteract the misinformation, or could misinterpret information proffered by such sources.¹⁵⁷ Again this raises constitutional questions about the content of bill titles and the role of governments and legislatures in providing fair notice to citizens regarding bills and laws. Also, it raises the practical question of whether or not bill titles are written to influence or persuade individuals into favouring bills. This especially relevant given the findings of the UK quantitative research, which found that all the evocative naming types received higher favourability than the descriptive type. Bill titles may be the initial, at times even the sole, source of information that people receive on bills, and misleading citizens about the true nature of the bill or attempting to persuade them through the short titles raises important constitutional issues.

Chapter II touched on how Congress continues to use the word ‘America’ in some landmark Acts (i.e. American Recovery and Reinvestment Act; Americans With Disabilities Act), and this practice was also mentioned in Chapter IV, where states such

¹⁵⁵ Arnold, Douglas. 1990. *The Logic of Congressional Action*. Yale University Press: New Haven, CT, p. 64.

¹⁵⁶ USMM3

¹⁵⁷ Philo, Greg. (1990). *Seeing & Believing: The Influence of Television*. London, UK: Routledge, pp. 132-205. This was quite evident throughout Philo’s study of the Miners’ Strike of 1984-85: many respondents had competing notions of how much actual violence there was in the strike.

as New Mexico¹⁵⁸ and Texas¹⁵⁹ had explicit instructions in their drafting manuals not to use the state name in bill titles. New Mexico noted they cannot legislate for any other state,¹⁶⁰ and Texas noted that using such language is ‘superfluous’.¹⁶¹ One reporter did mention this phenomenon and provided an interesting angle on the subject. He mused about the Americans With Disabilities Act, which recently celebrated its 20th Anniversary, stating, ‘well, that one to me is more problematic, because firstly, it’s not just about Americans...what it does involves requiring access to buildings and so on, for people who can’t walk. Well, they may not be Americans. I mean, anyone who needs to get into the building, regardless of their nationality, is going to be able to get into the building. So, it’s under-inclusive...but...in naming it that suggests there’s something peculiar about Americans that is involved in this Act, which is not [the case]’.¹⁶² Thus using the word America in that instance makes the Act under-inclusive of its intended effect. Nevertheless, just as the USA PATRIOT Act of 2001 imbues a sense of nationalism and pride for one’s country, so too do bill titles which use the word ‘America’, or any of its derivatives.

While US bill titles certainly provide more drama and theatre to legislation and could potentially foster increased political engagement and serve as better memory aids, they also: blur the lines between the legal and political foundations that govern the country; impose unrealistic panacea-laced expectations on the federal government and

¹⁵⁸ New Mexico Legislative Drafting Manual (2008). New Mexico Legislative Counsel Service, p. 30. Available at: <http://www.nmlegis.gov/lcs/lcsdocs/draftman.pdf>

¹⁵⁹ Texas Legislative Counsel. Drafting Manual. (2011). Section 3.05(b). Available at: <http://www.tlc.state.tx.us/legal/dm/draftingmanual.pdf>

¹⁶⁰ New Mexico Legislative Drafting Manual (2008). New Mexico Legislative Counsel Service, p. 30. Available at: <http://www.nmlegis.gov/lcs/lcsdocs/draftman.pdf>

¹⁶¹ Texas Legislative Counsel. Drafting Manual. (2011). Section 3.05(b). Available at: <http://www.tlc.state.tx.us/legal/dm/draftingmanual.pdf>

¹⁶² USMM4

legislators; overly politicize the details of legislative bills and Acts that already have many contentious issues located within them; and also border on unconstitutionality in terms of reasonable notice to legislators and the citizenry. Thus, where does bill naming go from here for the US? What used to be an extremely bland procedural process has become a Congressional marketing lion that nobody seems able to tame. And while one Congressional member stated that evocative bill titles ‘have too much influence’¹⁶³ and a journalist noted that many are ‘toxic to our system’,¹⁶⁴ no official proposals have been put forth to clarify the legal status of short titles or produce a standard by which such titles should be held to. While it is apparent that short titles are important in the Congressional lawmaking process for a variety of reasons, and that they have many political implications, their legal status will remain undetermined without any further clarification or standards provided.

Specific characteristics related to Congressional legislation were considered in the above section. This thesis now includes a short discussion section on the quantitative survey results.

Quantitative Survey – Short Discussion

The quantitative portion of this thesis complemented the qualitative section in many respects and was a largely practical exercise to determine whether short bill titles had

¹⁶³ MCON2

¹⁶⁴ USMM7

any effects on the favourability of those who encountered legislation. It was also an attempt to answer the second major research question in terms of the potential psychological effects of short bill titles. Because the US data collection was compromised by error and discussion of this data would be obsolete, this section only discusses implications of the UK results. The UK data produced three noticeable findings in regard to: (1) the results for overall favourability; (2) that many people just like the ‘sound of it’; and (3) that many are satisfied with a small vignette of information, no matter the naming type.

One of the most fascinating insights from the UK data was the distribution of the overall favourability results, which supports the proposition that short bill titles may have psychological effects. The continuous drop in favourability and the increase in undecided outcomes were readily transparent, and correlated with each other almost perfectly. Opposition averages for all naming types held constant at 13-14%. This is an important finding of the experiment, as the preliminary results show that bland names could produce more indecision, while more evocative naming could produce a more decisive response. In fact, the results were partially statistically significant, which is a major finding in regard to potential short title effects.

Because of the way combination titles used multiple evocative techniques in their construction, they were expected to score higher on the favourability scale. This was not the case, however: their total was merely three percentage points higher than bland naming. It is no secret that Westminster and Scottish Parliament short titles are much blander than Congressional short titles, which often use a combination of naming techniques. One inference that could be made from the results is that UK participants responded more favourably to the more subtle evocative titles, because that is what they tend to encounter in their respective parliaments. Conversely, they also responded to

humanised names very favourably, which suggests that they are open (or more easily swayed) by short title styles they have not yet encountered in their respective parliaments. In any case, the combination names did not receive high favourability from this population.

The second finding was that a significant amount of individuals supported policies because they liked the sound of them, as opposed to supporting the description or policies of the legislation. This is consistent with Arnold's finding that many people support legislation simply because they 'like the sound of it'.¹⁶⁵ In fact, the lowest total for this category was humanised at a significant 35%, while the highest total was desirable characteristic at 50%. These numbers are interesting because it suggests, for this sample population, that a cursory examination of bills when determining favourability is quite common. Additionally, it should be noted that the UK sample population was highly educated, as most were in years 1-3 of University, which makes the results that much more remarkable.

In regard to participants desiring more information about bills, naming did not make a difference to any statistically significant degree. This result runs contrary to many interviewees in all three jurisdictions who stated that evocative short titles could potentially be effective attention getting devices for legislation. However, this especially challenged some of the data revealed in the 14th Hypothesis in Chapter V, as a number US interviewees stated that short titles could potentially attract interest in legislation. There could be multiple explanations for these findings (i.e. because respondents had previously made up their minds on the proposal or because the vignettes supplied an adequate amount of information, etc.); whatever the explanation

¹⁶⁵ Arnold, R. Douglas, *op. cit.*, p. 119.

many participants were content with the small vignette of information about the proposals.

Overall the UK quantitative results suggest that naming could have some psychological effects, and be a factor in the favourability of proposals. The particular naming styles appeared to affect decision-making at some level for participants. Evidence such as this may have political or procedural implications, as it could provide Ministers with more incentive to employ evocative short titles, especially for contentious legislation that may be difficult to get through a chamber. And though the results were not statistically significant, the fact that many participants claimed to favour legislation because they ‘liked the sound of it’ and felt adequately supplied with an explanatory vignette of bills, rather than acquiring more information on them, are certainly distressing findings. Overall, the results suggest that the sometimes subtle language located within a few words can produce very real outcomes.

The section below provides a list of short title recommendations for all jurisdictions studied in this thesis.

Short Title Recommendations

‘Institutional rules inevitably have policy consequences, which is why seemingly arcane decisions, concerning rules changes in Congress, so often become the subject of intense debate.’

The justification for proposing short title reform and/or guidelines in Westminster and the US Congress was demonstrated throughout the above material and in the previous chapter, because legislators, staffers, bill drafters and media members repeatedly stated that these titles: affect a bill's chances of becoming law; are at times misleading; serve as more than referential points; may make lawmakers feel pressured to vote for a bill because of the name; and make them think many of the words currently being used in short titles are not justified. And while short titling may indeed be a small aspect of the monumental and lengthy legislative process, this thesis has demonstrated that it is important to those who interact with legislation on a daily basis and has the potential to be decisive of a bill's success or failure. Therefore, reform (or an implementation of such practices) is warranted. Additionally, the Scottish Parliament was found to have the highest standards in terms of ensuring accuracy in short bill titles. However, this thesis believes that while the Presiding Officer's determination of proper form is a significant step in the right direction in regard to such standards, the below recommendations are much more thorough.

Although the various circumstances surrounding short titles are anything but easy to comprehend, given their many implications, recommendations and reforms regarding short titles should be straightforward and easily comprehensible, because time spent on the titles of legislation should not be given precedence over time spent on the substance of legislation. This thesis provides five short, easy to implement recommendations/reforms:

¹⁶⁶ Baumgartner, Frank R. & Bryan D. Jones (2009). *Agendas and Instability in American Politics* (2nd Ed.) University of Chicago Press, IL, p. 14.

- Accuracy is paramount. A short title should be as descriptive as possible without being unduly emotive, misleading, tendentious or otherwise controversial in any manner. Accuracy ensures that the bill goes to the correct committee for debate; easily encapsulates the subject of the bill for those who encounter it; aids in the overall interpretation of the bill for legislative, judicial and other scrutiny; and provides for ease of use when placing or referencing an Act in the Statute Book.
- If a short title can be easily construed as a policy statement; if the short title in essence makes suggestive or symbolic assumptions about what it will or will not accomplish with no reasonable measure available (i.e. without the measure being implemented as law and its impact sufficiently definable and susceptible to empirical study); or if the core meaning of the short title can be debated because of the ambiguous language contained within its text (e.g. ‘responsibility’ or ‘accountability’ to one individual does not necessarily mean ‘responsibility’ or ‘accountability’ to another individual); then such language should not be used.
- If the short title of a bill employs the name/s of a victim, member of Congress/Parliament, or anybody who could be used to either assist or hinder the legislation in question, then such language should not be used.
- If the short title of a bill uses language that spells an acronym that either: (a) spells a word or phrase that falls into above categories (1), (2) or (3); or (b) spells a word that misrepresents the legislation in any form or fashion, then such language should not be used.
- In order to ensure accuracy, and in the hopes of removing overtly political or divisive bill names, all bill titles should be provided by (and stay unamended

other than at the insistence of) the lead drafter preparing the statute, honouring the principles provided in the above guidelines and giving ultimate deference to the impartiality, ease of reference and non-political nature of the Statute Book.

These five recommendations are constructed to ensure that short bill titles are easily understandable and representative of the legislation in question; accurate; non-political; and unemotive. The presentation of this material answers one of the key questions of this thesis in regard to short title reformation: that short titles, and the standard's that accompany them, in all jurisdictions studied can be reformed and improved upon. Additionally, and equally importantly, *the recommendations return focus to the substance of legislation*, restoring the original intention behind the short titling of legislation: for titles to be used as referential devices in conversation, writing, debate or in the statute book.

Limitations and Possible Future Studies

Many of the limitations of comparative research between jurisdictions, including the structural and constitutional differences of the lawmaking institutions and the individuals involved in the legislative process, were introduced in Chapter II and further detailed in Chapter IV, where these were relevant to focusing on the primary aspect of the study, short bill titles, and the main research questions presented in Chapter I. Outwith these critical limitations, however, this study was subject to further constraints and limitations.

Firstly, this thesis was subject to time and budgetary constraints. Both of these constraints were most apparent during the interview gathering process, in which I travelled to Edinburgh, London and Washington D.C. Although I was generously supported by the University of Stirling School of Law for much of the travel, I was only able to spend one week in London gathering interviews, and ten days in Washington D.C. The interviews I conducted in Edinburgh were over the course of three months, because I was easily able to travel back-and-forth from Stirling to Edinburgh. However since this project was mostly self-funded, I was not able to spend as long as I would have liked in certain locations, which affected the range of interviews I could carry out and therefore detracts from the generalisability of the study.

My original goal was to gather 15-25 respondents from each jurisdiction studied. While this was accomplished (US-18, UK-16, Scotland-15), generalisability issues still remain. I examined specific jurisdictions below, but must start by saying that in each jurisdiction the amount of interviews performed for each sub-group does not represent the collective views of those sub-groups. In fact, each sub-group is only a tiny fragment of each population, and should not be generalised to account for a representative sample of said populations. Future studies should probably aim for 10-20 participants (where this number exists) for each sub-group studied in each jurisdiction.

There is a chance that my sample population may be biased. I sent a number of requests to legislative insiders and media members throughout all three jurisdictions, and every request had the topic of my thesis shortly summarised in the text. Thus, those who are perhaps more sensitive to issues involving short bill titles, legislative procedure, parliamentary rules, due process of lawmaking, political language, etc. may have been some of the interviewees that responded to my requests. Those who were indifferent to the topics of study may have not responded. Therefore, the participants

interviewed could have been more amenable to the idea of naming having certain effects and ultimately could have skewed the data.

Many interviews were cut short because of interviewee time constraints, and many potential interviews were cancelled because of related reasons. Also, only print media journalists that wrote on politics and law were interviewed for this study, thus excluding television journalists and others. This could be significant, because television is where most people get their news in all three jurisdictions studied.¹⁶⁷ Future studies should include broadcast journalists as well.

In regard to Westminster, I completed a number of legislator interviews (seven MPs, three Lords members), but interviewed only one drafter and five media members, which likely did not give me a full perspective on the latter sub-populations. Also, I did not interview any Parliamentary Authorities. As noted in Chapter IV, these Authorities are instrumental in terms of scrutinizing and approving legislation (including short titles) before it is officially introduced in Parliament. Not obtaining any qualitative data from this sub-population is a considerable limitation for this thesis in terms of generalisability.

While I had the fewest interviews in Scotland, I also had the most diverse set of interviewees, including a Parliamentary Authority and also a government policy analyst. However, only one interview was performed from each of these sub-populations. Regarding media members, only two of them were based at Holyrood. The other two interviewees followed politics and the Scottish Parliament from a more

¹⁶⁷ Saad, Lydia. (5 Jan. 2007). Local TV Is No. 1 Source of News for Americans. Princeton, NJ: Gallup News Service. Available at: <http://www.gallup.com/poll/26053/Local-No-Source-News-Americans.aspx>; Ipsos-MORI. (2001). Sources of Information on Politics and the Political Process. Available at: <http://www.ipsos-mori.com/researchpublications/researcharchive/poll.aspx?oItemId=1238>; Additionally, more people trust television news in the UK, as opposed to newspapers or radio: Ipsos-MORI. (2000). What the Papers Say. Available at: <http://www.ipsos-mori.com/newsevents/ca/ca.aspx?oItemId=350>

distant perspective, which perhaps hindered their insights when it came to the administrative processes of Holyrood and/or legislative bill titling.

In regard to the US Congress, only two actual lawmakers were interviewed. The remainder of interviewees on the legislative side were staffers, including Legislative Directors, Legislative Assistants and a Chief-of-Staff. While many of these individuals had interesting insights, their opinions must be distinguished from those of lawmakers, because ultimately they are not personally responsible or accountable for the decisions made by their offices. Also, at the time of the D.C. interviews I intentionally did not contact or attempt to interview any members of Legislative Counsel for either the House or Senate, mainly because they are not involved in drafting the short bill titles. In hindsight this appears to be a mistake, because even though they do not have a hand in drafting short titles, their knowledge and expertise certainly would have been helpful in shining light on other aspects of the lawmaking process. Also, I only interviewed one person involved in Senate operations, a legislative staffer.

In terms of future studies, perhaps isolating certain variables of the legislative process, including legislative bill naming, is something that needs to be taken into consideration. Qualitatively, an intricate examination of the legislative process and what factors are important at what stages must be developed further. Although, admittedly, it is an extremely difficult issue to analyze, a better understanding of the legislative process will only enhance our understanding of the more intricate aspects of the process, such as short bill titles.

The quantitative component also contained issues and limitations. As mentioned earlier it was affected by major problems with US data acquisition. Additionally, all participants were students, rather than a demographically representative sample of a US and UK population, which, although an accepted sampling group in the social

psychology research community, still hinders the results' generalisability. This component was also subject to the constraints on time and money that I experienced for the qualitative portion.

As I pointed out in Chapter II, my topic of study was an exploratory piece of research. Such topics are usually accompanied with initial qualitative information that suggests it is a topic that is deserving of study. This is what my thesis provides. Future studies should have more sophisticated methods and therefore more sophisticated analysis. On a side note, a couple of interviewees expressed that my research was not an issue that they had previously thought of, but found it interesting and worthwhile.¹⁶⁸ Perhaps that is what led them to respond to my interview request. This confirms that the thesis is not only original but has practical implications for those who work closely with the legislative process. Additionally, the depth of knowledge all interviewees displayed not only of bill titles, but of law, politics and all the issues in between was extremely impressive. It was quite a remarkable group of respondents on the whole.

Concluding Statements

'It is material that order, decency and regularity be preserved in a dignified public body'.¹⁶⁹

-Thomas Jefferson

¹⁶⁸ USMM9, CONSF6

¹⁶⁹ Jefferson, Thomas. (1856). *A Manual of Parliamentary Practice: Composed Originally for the Use of the United States Senate*. New York, NY: Clark Austin and Smith, p. 14.

When I began this project I sensed, as I still do, that legislators and those involved in the lawmaking process possess a good deal of excitement regarding the bills they sponsor and their intended effects, and this is truly encouraging. However, excitement for a legislative proposal cannot be permitted to turn into evocative or promotional statements that may mislead colleagues, constituents or others, especially when such statements are enshrined in the primary legal instrument that governs the respective jurisdictions. The fact that politicians stated that such a tiny piece of the lawmaking process, legislative bill naming, affects the passage of law in two historic democracies is compelling, and only heightens the importance for bill naming reform.

This thesis explored the issues and nuances of short bill titles that most other research has taken for granted, and found some very interesting results. Throughout the course of my research I have stressed that naming is a small part of a very large puzzle, which I think is a good metaphor for the legislative process. Although short titles were used in different manners throughout the three jurisdictions studied, each lawmaking body regarded them as important in the lawmaking process for various reasons. But their significance does not end when the legislative process ends. When these titles become official law and stand as symbols by which countries are governed, they stray beyond this small piece of the puzzle and evolve into something more concrete, and much more formidable: they are no longer ideas or frames or issue definitions, but codified law. And it is through this crystallisation that such a small legislative nuance, at times innocuous and at other times evocative, becomes much more important than many realize.

For legislatures such as Scottish Parliament, and to a large extent, Westminster, short titles have primarily a referential function. But for legislatures that use short titles

for other purposes the full implications of doing so have yet to be determined, although this thesis demonstrates many possible consequences. On a small scale misleading and/or evocative bill titles are despoiling the statute books in which they are placed, and are over-politicising and emotionalising the legislative process. If some of the larger implications of my findings are taken into consideration, such titles could be: shrouding the true intent of legislative bills and laws to legislators, the general public and others who encounter such measures; affecting voting patterns in the lawmaking bodies; blurring the line between the legal and political functions of the respective lawmaking bodies; decreasing the respect with which constituents of these countries have for their laws, lawmakers and lawmaking bodies; and polarizing both lawmakers and electorates on complex issues that require deeper analysis than a cursory response to a tendentious bill title.

Through the Short Titles Act of 1896, the Statute Law Revision Act 1948, and the Statute Law Revision (Scotland) Act 1964 Westminster decided that short titles were legal instruments associated with the statute book.¹⁷⁰ Since the Scottish Parliament shares such a statute book their short titles are also subject to this designation. Indeed, they have gone even further than Westminster by ensuring that short titles are written in proper form and adhere to a set of standards.¹⁷¹ Not only does Westminster not employ such standards, but it is not even settled as to whether the Speaker can prevent a short title that has propagandistic elements.¹⁷² This is a major

¹⁷⁰ Greenberg, Daniel (2008), *op. cit.*, p. 103; Jack, Sir Malcolm, *op. cit.*, p. 527.

¹⁷¹ The Scottish Parliament. Guidance on Public Bills. Annex A: Form and Content of Bills. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25697.aspx>

¹⁷² Greenberg, Daniel (2011), *op. cit.*, p. 102.

problem for the lawmaking body, especially as calls for more evocative titles continue.¹⁷³

Holyrood appeared to uphold the maxim that one Scottish legislator advocated in relation to bill titles, that they ‘should reflect the seriousness of the content’.¹⁷⁴ The rules and regulations regarding the drafting of legislation in the Scottish Parliament are precise, and among the jurisdictions studied they serve as a prominent example of how to legislate effectively and accurately. Throughout the interviews of this jurisdiction, legislators, drafters, governmental employees and journalists all recognized the importance of technical and legal accuracy in relation to short bill titles.

The US Congress is a different matter altogether, as short titles have morphed from precise legal reference points into explicit marketing techniques inscribed by legislators and their staff, not by draftsmen. This is one of the primary divisions between Congress and its transatlantic neighbours, as parliamentary counsel (usually) provide the names to bills in Westminster and the Scottish Parliament. By operating in this manner, many of the short titles provided by Congressional lawmakers have become overly tendentious, misleading and evocative, and this thesis proposes that such titles may indeed be unconstitutional. Without any enforceable standards in regard to the proper drafting of bills, these types of evocative bill names are likely to continue indefinitely.

While the results of this thesis suggest that Congressional short bill titles are important in the lawmaking process and have political implications, the legal status of such titles remains uncertain. This must be determined soon. Either they represent the full force of law, and thus should be subject to the technical accuracy and formal,

¹⁷³ UKBD1. The drafter noted that he ‘quite often’ gets requests for evocative short bill titles.

¹⁷⁴ MSP3

descriptive language of the law. Or they are branding elements, and therefore should not be inscribed on official legal documents. If the former is chosen such titles need rules and recommendations in regard to what are proper and improper short titles, and these must be defined in either the Congressional rules, and/or through other legal devices, such as official Acts. If the latter is chosen, short titles would likely still have informal or ‘popular’ names, but they would not be written on any official documents in relation to a Bill or Act. Just as the Office of Law Revision Counsel in the US House of Representatives has a popular name tool to search for specific measures,¹⁷⁵ if short titles are branding then instruments such as these may be utilized. In either instance, the tendentious and promotional language currently being used in such titles should not appear in any formal manner throughout the legislative process.

In regard to the short title uncertainty before Congress, I strongly agree with classification as the former (official law). In respect to current evocative titling practices, this thesis advocates the straightforward advice one US journalist provided to the US Congress and its respective lawmakers, stating that bill titles *do not have to ‘have a funny acronym that goes with it to persuade you that it’s a good idea’*.¹⁷⁶

Although Thomas Jefferson gives short shrift to bill titles in his Manual of Parliamentary Practice, which was written in a large part under the shadow of the Westminster Parliamentary rules and regulations at the time,¹⁷⁷ his closing statement on the preface to the manual could serve as general guidance on such matters:

‘But I have begun a sketch, which those who come after me will successively correct and fill up, till a code of rules shall be formed for

¹⁷⁵ Office of Law Revision Counsel. The United States Code, Popular Name Tool. Available at: <http://uscode.house.gov/popularnames/popularnames.htm>

¹⁷⁶ *Id.*

¹⁷⁷ Jefferson, Thomas, *op. cit.*, p. 2.

use of the Senate, the effects of which may be accuracy in business, economy of time, order, uniformity and impartiality'.¹⁷⁸

The monumental stature of the substance contained in legislation is vastly encompassing, and its effect as law is ever-present. Debating, conversing, and especially voting on these measures should be about the statutes and substance contained in the law, and how and why they are becoming the law of the land. Anything more, such as short titles affecting whether or not a measure becomes law, or legislators feeling pressured to vote for a bill because of the short title, cheapens the legislative process, the government with which enacts such measures, and ultimately the bill that becomes law. Since this thesis relies heavily on the qualitative interview results it seems only fitting to end with two pieces of advice from those close to the legislative process. Lending credence to the reasonable notice constitutional standard referred to at the beginning of this Chapter, one US Congresswoman declared that '***I think the public has a right to be able to look at a bill, see the title, and know actually what it means...not be misled by the title, or the language contained in the bill***'.¹⁷⁹ Additionally, a Westminster drafter wisely noted, '***An evocative political short title is a transient thing. You know the politics is transient...the law is permanent***'.¹⁸⁰

¹⁷⁸ *Id.*, p. vi.

¹⁷⁹ MCON1

¹⁸⁰ UKBD1

Appendix I: Quantitative Results for US Bill Survey 1973 – 2010

Short Title Length (Table revealed in Chapter II)

Short title length is an aspect that could be relevant when analysing the evocative bill titling phenomenon, as an increase in length may be consistent with an increase in evocative wording used. According to Table 1 in Chapter II, during the 100th Congress short title length increased to seven words and did not fall below this level again. The regression tables are presented below:

Linear Regression Results:

Table 11. Short Title Length Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.742 ^a	.551	.524	.51299

a. Predictors: (Constant), Congress

Table 12. Short Title Length ANOVA^b

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	5.488	1	5.488	20.855	.000^a
	Residual	4.474	17	.263		
	Total	9.962	18			

a. Predictors: (Constant), Congress

b. Dependent Variable: ShTitleAvg

Table 13. Short Title Length Coefficients^a

Model	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error	Beta		
1 (Constant)	-2.954	2.195		-1.346	.196
Congress	.098	.021	.742	4.567	.000

a. Dependent Variable: ShTitleAvg

The above tables show the linear regression for short title average as the dependent variable and Congress as the independent variable. As Table 12 shows, the regression is significant at the .01 level, and as Table 13 shows, the independent variable, Congress, is also significant at the .01 level.

Humanised Bills (Table Revealed in Chapter II)

This is one of the naming classifications that was fully explained in Chapter II and was also used in the quantitative survey portion of my thesis. The data demonstrates a significant rise in humanized bill titles over the period studied. Starting in the 105th Congress (1997-1999), the prevalence increased into the tens and has remained there ever since. On a methodological note, every short title that inscribed a person's name was used for this calculation, as I did not discern between the types of names used.

Linear Regression Results:

Table 14. Humanised Bill Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.850 ^a	.723	.706	3.618

a. Predictors: (Constant), Congress

Table 15. Humanised Bill ANOVA^b

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	580.044	1	580.044	44.300	.000^a
	Residual	222.588	17	13.093		
	Total	802.632	18			

a. Predictors: (Constant), Congress

b. Dependent Variable: Humanized

Table 16. Humanised Bill Coefficients^a

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-94.316	15.482		-6.092	.000
	Congress	1.009	.152	.850	6.656	.000

a. Dependent Variable: Humanized

The linear regression for the number of humanized bills is significant at the .01 level, according to Table 15. The independent variable, Congress, is also significant at the .01 level.

Acronym Bills (Table revealed in Chapter II)

Many US interviewees noted that acronyms have become popular in Congressional short titles. Thus, putting some type of quantitative number on them throughout the years was beneficial to my endeavour. On methodological grounds, I only used the acronym bill titles that were used on the official Thomas website.¹ There were likely more acronym bills Congress passed that Thomas did not display as acronyms, for whatever reason. However, I figured that using as my sampling frame the official Congressional website would be the most authoritative way to gather the data.

¹ www.thomas.loc.gov

In terms of methodology, any and all acronyms that were used in short titles (DNA, AIDS, etc.) or whole acronym titles (USA PATRIOT Act of 2001) were used to quantify this section. If a short bill title had one word that was an acronym, it was included in this analysis. Given that structure, acronym titles were relatively inconsequential in number until the 106th Congress (1999-2001), when it increased to over five; and then in the 109th Congress (2005-2007) it increased to over ten.

Linear Regression Results:

Table 17. Acronym Bill Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.830 ^a	.689	.671	2.993

a. Predictors: (Constant), Congress

Table 18. Acronym Bill ANOVA^b

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	338.107	1	338.107	37.737	.000^a
	Residual	152.314	17	8.960		
	Total	490.421	18			

a. Predictors: (Constant), Congress

b. Dependent Variable: Acronym

Table 19. Acronym Bill Coefficients^a

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-73.926	12.807		-5.773	.000
	Congress	.770	.125	.830	6.143	.000

a. Dependent Variable: Acronym

Similar to humanized bills above, the regression for acronym use was also significant at the .01 level according to the ANOVA table. Independent variable Congress was also significant at the .01 level.

Evocative Terms Used (Results revealed in Chapter II)

Below Table 20 lists the evocative terms used from the 93rd – 111th Congress. Many of the individual words show interesting trajectories. For instance, the use of ‘control’, ‘protection’, and ‘emergency’ have been relatively consistent throughout the time period studied, whereas the use of words such as ‘efficient’, ‘America’, ‘accountable’, ‘improve’ and ‘modernize’ has changed dramatically. For methodological purposes, these figures include the derivatives of all the terms as well (i.e. ‘American’, or ‘accountability’, etc.). Also, the letters next to the Congresses on the spreadsheet stand for House, Senate and President, and the letters next to those stand for who controlled that position or chamber at the time, Republicans (R) or Democrats (D). This allows me to insert them as independent variables in the regression, and ascertain whether or not they impacted the naming of various bills in any significant manner.

Table 20. Evocative Words Used (93rd - 111th Congress)

Congress	Control	Prevention	Protection	Efficient	Effective	America	Responsible	Accountable	Improve	Secure(ity)	Modernize	Emergency	Total
93(H-D,S-D,P-R)	4	3	13	0	1	1	0	0	9	1	0	7	39
94(H-D,S-D,P-R)	4	1	3	0	0	1	0	0	5	1	0	8	23
95(H-D,S-D,P-D)	6	2	3	0	0	2	0	0	7	4	0	6	30
96(H-D,S-D,P-D)	3	3	3	2	0	1	0	0	5	7	0	2	26
97(H-D,S-R,P-R)	2	0	5	0	0	1	1	0	3	2	0	2	16
98(H-D,S-R,P-R)	2	2	4	0	0	1	0	0	4	4	0	3	20
99(H-D,S-R,P-R)	3	1	6	1	0	3	0	0	5	4	0	4	27
100(H-D,S-D,P-R)	4	2	11	0	1	1	0	1	12	1	0	5	38
101(H-D,S-D,P-R)	7	6	12	2	0	7	0	0	13	2	0	3	52
102(H-D,S-D,P-R)	1	4	12	2	0	7	0	0	10	1	1	10	48
103(H-D,S-D,P-R)	3	4	9	1	0	10	0	1	13	3	0	4	48
104(H-R,S-R,P-D)	1	4	7	0	1	3	2	6	7	1	0	4	36
105(H-R,S-R,P-D)	1	6	14	0	0	1	0	1	5	0	1	4	33
106(H-R,S-R,P-D)	2	3	18	0	0	8	0	2	20	7	0	3	63
107(H-R,S-S,P-R)	1	1	5	1	0	9	1	2	7	9	1	4	41
108(H-R,S-R,P-R)	6	6	9	2	0	10	1	4	12	8	2	6	66
109(H-R,S-R,P-R)	3	6	12	4	0	9	0	6	10	6	2	10	68
110(H-D,S-R,P-R)	0	6	9	1	2	11	1	6	15	5	2	3	61
111(H-D,S-D,P-D)	2	5	6	1	0	5	2	2	7	8	7	1	46
Total	55	65	161	17	5	91	8	31	169	74	16	89	781

Linear Regression Results:

Table 21. Evocative Terms Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.781 ^a	.609	.498	11.227

a. Predictors: (Constant), Senate, President, Congress, House

Table 22. Evocative Terms ANOVA^b

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	2751.288	4	687.822	5.457	.007^a
	Residual	1764.502	14	126.036		
	Total	4515.789	18			

a. Predictors: (Constant), Senate, President, Congress, House

b. Dependent Variable: Total

Table 23. Evocative Terms Coefficients^a

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-157.382	56.040		-2.808	.014
	Congress	1.870	.576	.664	3.247	.006
	President	5.260	5.470	.165	.962	.353
	House	8.543	8.222	.258	1.039	.316
	Senate	-8.506	6.480	-.272	-1.313	.210

a. Dependent Variable: Total

Table 23.1 Evocative Terms Coefficients (cont.)

95.0% Confidence Interval for B	
Lower Bound	Upper Bound
-277.576	-37.188
.635	3.105
-6.472	16.992
-9.091	26.177
-22.405	5.392

The above tables show the linear regression figures for the number of evocative words used (dependent variable) throughout the 93rd– 111th Congress, and the regression is significant at the .01 level (.007) according to the Table 22. Also, for this regression I added a couple more independent variables to determine if they had any type of significant effects on the use of evocative language. Though these were added, the only variable that significantly affected the regression was Congress (.006), while the party that controlled the Presidency (.353), House (.316), and Senate (.210) did not.

Technical Terms Used (Results revealed in Chapter II)

The raw data suggests there is a rise and fall with the technical terms in regard to use: they peak in the 101st (1989-1991) and 102nd Congress (1991-1993) at 106, yet then fall off sharply after the 103rd Congress (1993-1995). However, this is largely an illusion. The percentage numbers below reveal that technical term use was most frequently used in the 94th Congress, though that would not be ascertained by examining Table 24.

Some of the words produced interesting trajectories. The term ‘amend’ was used in the 30s and 40s up until the 104th Congress, and ever since it has remained in the **teens**. Even a word such as ‘appropriation’, which started in the low 30s, dropped to teens and low twenties after the 104th Congress.

Table 24. Technical Terms Used (93rd – 110th Congress)

<u>Congress</u>	<u>Reform</u>	<u>Amend</u>	<u>Correct</u>	<u>Authorize</u>	<u>Revision</u>	<u>Appropriation</u>	<u>Total</u>
93(H-D,S-D,P-R)	2	42	3	16	3	30	96
94(H-D,S-D,P-R)	1	32	0	16	0	32	81
95(H-D,S-D,P-D)	5	39	0	25	0	29	98
96(H-D,S-D,P-D)	2	38	2	23	3	20	88
97(H-D,S-R,P-R)	1	24	2	14	1	13	55
98(H-D,S-R,P-R)	1	40	1	15	0	15	72
99(H-D,S-R,P-R)	6	38	2	19	1	8	74
100(H-D,S-D,P-R)	3	47	4	17	2	13	86
101(H-D,S-D,P-R)	9	41	3	26	1	26	106
102(H-D,S-D,P-R)	1	51	2	24	0	28	106
103(H-D,S-D,P-R)	9	38	2	12	0	28	89
104(H-R,S-R,P-D)	7	14	4	12	0	18	55
105(H-R,S-R,P-D)	9	15	2	23	0	21	70
106(H-R,S-R,P-D)	4	18	6	15	0	20	63
107(H-R,S-S,P-R)	3	14	0	17	2	19	55
108(H-R,S-R,P-R)	9	8	6	21	4	16	64
109(H-R,S-R,P-R)	7	10	5	29	2	17	70
110(H-D,S-R,P-R)	2	14	3	25	1	5	50
111(H-D,S-D,P-D)	5	4	5	13	0	13	40
Total	86	527	52	362	20	371	1418

Linear Regression Results:

Table 25. Technical Terms Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.696 ^a	.484	.381	15.27276

a. Predictors: (Constant), House, Congress, Senate

Table 26. Technical Terms ANOVA^b

Model	Sum of Squares	df	Mean Square	F	Sig.
1 Regression	3287.563	3	1095.854	4.698	.017^a
Residual	3498.858	15	233.257		
Total	6786.421	18			

a. Predictors: (Constant), House, Congress, Senate

b. Dependent Variable: Total

Table 27. Technical Terms Coefficients^a

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	306.811	75.064		4.087	.001
	Congress	-2.148	.784	-.623	-2.741	.015
	Senate	5.491	10.997	.135	.499	.625
	House	-14.283	8.758	-.373	-1.631	.124

a. Dependent Variable: Total

Table 27.1 Technical Terms Coefficients (cont.)

95.0% Confidence Interval for B	
Lower Bound	Upper Bound
146.817	466.806
-3.818	-.478
-17.949	28.931
-32.951	4.384

While the regression for technical terms was approaching significance at the .01 level, it barely missed the mark (.017), and thus is significant at the .05 level according to Table 26. Also, I decided to leave out the President in this model, as ultimately he would not have had too much influence on short titles, which are more in the privy individual legislators. (However, the inclusion of President as an independent variable does not affect the significance all that much.) Also, notice that Congress is significant at the .05 level (.015), while the Senate (.625) and House (.124) are not.

Evocative and Technical Terms Expressed as Percentages (Figures revealed in Chapter II)

Two figures in Chapter II demonstrated that while evocative language was on the increase during the time period studied, technical language was on the decline. The table below reveals the numbers represented in those figures, and how they were

calculated. Essentially, the number of technical and evocative terms for each Congress were divided by the number of short titles used in used each legislative session, producing the relevant output. Calculating it in this manner controls for sessions in which more short titles were used, and focuses on the number of evocative and technical terms.

Figure 28. Evocative and Technical Use (%)

<u>Congress</u>	<u>Short Titles</u>	<u>Evocative</u>	<u>Technical</u>	<u>Evocative</u>	<u>Tech</u>
93	246	39	96	0.16	0.39
94	155	23	81	0.15	0.52
95	211	30	98	0.14	0.46
96	201	26	88	0.13	0.44
97	132	16	55	0.12	0.42
98	178	20	72	0.11	0.40
99	170	27	74	0.16	0.44
100	237	38	86	0.16	0.36
101	250	52	106	0.21	0.42
102	257	48	106	0.19	0.41
103	206	48	89	0.23	0.43
104	160	36	55	0.23	0.34
105	213	33	70	0.15	0.33
106	302	63	63	0.21	0.21
107	183	41	55	0.22	0.30
108	251	66	64	0.26	0.25
109	253	68	70	0.27	0.28
110	205	61	50	0.30	0.24
111	197	46	40	0.23	0.20

However, Figure 2 in Chapter II also demonstrated that when humanised names were added to the list of evocative terms the evocative percentage displayed a significant increase over technical term use. This addition of humanised words in Table 29 is presented below:

Table 29. Evocative (Including Humanised Names) & Technical Use %

Congress	<u>Short</u> <u>Titles</u>	<u>Evocative</u>	<u>Humanised</u>	<u>Ev +</u> <u>Hum</u>	<u>Technical</u>	<u>Ev</u> <u>+Hum</u>	<u>Tech</u>
93	246	39	4	43	96	0.17	0.39
94	155	23	0	23	81	0.15	0.52
95	211	30	2	32	98	0.15	0.46
96	201	26	0	26	88	0.13	0.44
97	132	16	3	19	55	0.14	0.42
98	178	20	5	25	72	0.14	0.40
99	170	27	2	29	74	0.17	0.44
100	237	38	8	46	86	0.19	0.36
101	250	52	8	60	106	0.24	0.42
102	257	48	8	56	106	0.22	0.41
103	206	48	7	55	89	0.27	0.43
104	160	36	4	40	55	0.25	0.34
105	213	33	14	47	70	0.22	0.33
106	302	63	20	83	63	0.27	0.21
107	183	41	13	54	55	0.30	0.30
108	251	66	13	79	64	0.31	0.25
109	253	68	18	86	70	0.34	0.28
110	205	61	22	83	50	0.40	0.24
111	197	46	12	58	40	0.29	0.20

Bills on Name Changing (Table revealed in Chapter IV)

When classifying short titles for each Congress I noticed that there are quite a few Acts each year on the naming of particular things (usually federal buildings, such as Post Offices). In fact, over the time period studied Congress became marginally obsessed with naming things, usually government buildings and post offices, but sometimes lakes, parks or other areas. In the 110th Congress such Bills peaked to an all time high, as over 30% of the bills passed were in regard to naming (most of them post offices). These bills take virtually no time during the legislative process, as they are not debated and they are tabled for passing in a swift manner. The sheer number of such Acts is quite surprising, however, and it demonstrates that contemporary Congresses are quite absorbed with naming. The regression figures are presented below:

Linear Regression Results:

Table 30. Bills on Name Changing Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.784 ^a	.615	.592	23.818

a. Predictors: (Constant), Congress

Table 31. Bills on Name Changing ANOVA^b

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	15392.007	1	15392.007	27.131	.000^a
	Residual	9644.414	17	567.318		
	Total	25036.421	18			

a. Predictors: (Constant), Congress

b. Dependent Variable: NameChangeBills

Table 32. Bills on Name Changing Coefficients^a

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-476.674	101.906		-4.678	.000
	Congress	5.196	.998	.784	5.209	.000

a. Dependent Variable: NameChangeBills

The tables above show the main statistics for a standard linear regression with the number of naming bills as the dependent variable, and Congress as the independent variable. According to Table 31 the regression is significant at the .01 level, and according to the Coefficients table, the independent variable Congress is significant at the .01 level.

Appendix II: Interview Question Examples¹

Interview Questions – UK Politicians

1. Historically, the short titles of bills were employed to serve as an easy reference for legislators and those interacting with or citing the measure in question. Do you believe they still serve the same purpose?

2. Why are the titles of certain titles of laws more appealing or evocative than others (such as the 2005 bill titled *The Protection of Children and Prevention of Sexual Offenses Bill* and a current bill titled the *Sexual Offenses Bill*)?

3. Do you have time to read all bills before you vote on them?

4. Do you believe that most legislators fully understand the bills that they are voting on? If no, why?

5. To what extent do you, as a legislator, pay attention to bill names?

6. Does evocative bill naming (such as the *Ethical Standards in Public Life Bill*) have any effect on the measures chances of becoming law? Why or why not?
 - a. Does it have any effect on attention from the public/media?

¹ These questions were just for lawmakers in the UK. Questions were slightly altered for media members, government officials and bill drafters in the other versions.

7. Do you feel as if certain names of legislation are misleading, or could be construed as misleading? If yes, examples.

8. Do you believe the humanizing of legislation (naming a bill after a crime victim, such as the Sarah's Law campaign) would make the measure more appealing to the public, media and legislators? Why or why not?

9. Has the name of a particular bill ever impacted you significantly when voting on a piece of legislation? Could you ever imagine this happening?

10. Have you ever felt pressured to vote for a bill because of the name (e.g. *The Protection of Children and Prevention of Sexual Offenses Bill*, *The Ethical Standards in Public Life Bill*) because you were afraid of the consequences of voting against it (i.e. re-election campaigns, looking apathetic to a certain cause: such as the protection of children, protection from terrorism, etc.)?

11. Do you think the names of legislation impact those who encounter them (politicians, media, public) in any way? Such as viewing the measure more or less favourably?
 - a. Do you think that people make snap judgments on legislation, especially when they hear a title that sounds especially boring or pleasant?

 - b. Are specific bills ever mentioned on the campaign trail (either by yourself or your opponent)?

12. Legislation is often adorned with words such as ‘prevention’ or ‘protection’ in their titles (e.g. *The Protection from Abuse Bill*, or *The Prevention of Terrorism Act*). Do you think that this language implies that the bill will indeed be effective without any evidence to support these claims? Are using these words/phrases justified in these instances?

13. Do you think that in some respects politicians, and politics in general, have gravitated towards the marketing practices of big business? If yes, how? If no, do you think this will happen?

14. Since you’ve been in politics (or from following politics previously), have you seen a change over the years in the way that language has been used? If yes, how has it changed?

15. Do you believe the naming of legislation is important in the lawmaking process? If so, to what extent?

Interview Questions – US Politicians

1. Historically, the short titles of bills were employed to serve as an easy reference for legislators and those interacting or citing the measure in question. Do you believe they still serve the same purpose?

2. Why are the titles of certain titles of laws more appealing or evocative than others (bland: *finance acts or tax acts*; evocative: *Generations Invigorating Volunteerism and Education Act (GIVE Act)*, *Helping Families Save their Homes Act*; *End GREED Act*)?

3. Do you have time to read all bills before you vote on them?

4. Do you believe that most legislators fully understand the bills that they are voting on? If no, why?

5. To what extent do you, as a legislator, pay attention to bill names?

6. Does evocative bill naming (such as the *USA PATRIOT Act*, *No Child Left Behind Act* or the *American Recovery and Reinvestment Act of 2009*) have any effect on the measures chances of becoming law? Why or why not?
 - a. Does it have any effect on attention from the public/media?

7. Do you feel as if certain names of legislation are misleading, or could be construed as misleading? If yes, examples.

8. Do you believe the humanizing of legislation (naming a bill after a victim, such as *Laci and Connor's Law*, *the Jacob Wetterling Act*, or the *Lilly Ledbetter Fair Pay Restoration Act*) makes the measure more appealing to the public, media and legislators? Why or why not?

9. Has the name of a particular bill ever impacted you significantly when voting on a piece of legislation? Could you ever imagine this happening?

10. Have you ever felt pressured to vote for a bill because of the name (e.g. *The USA PATRIOT ACT*, *The No Child Left Behind Act*, etc.) because you were afraid of the consequences of voting against it (i.e. re-election campaign's, looking apathetic to a certain cause: such as the protection of children, protection from terrorism, etc.)?

11. Do you think the names of legislation affect favourability levels of those who encounter them (politicians, media, public) in any way?
 - a. Do you think that people make snap judgments on legislation, especially when they hear a title that sounds especially boring or pleasant?

 - b. Are specific bills ever mentioned on the campaign trail (either by yourself or your opponent)?

12. Recently, legislators have used such words as 'effective' or 'efficient' in their titles (e.g. *Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective Act*, or *Enhancing the Effective Prosecution of Child Pornography Act of 2007*). This language implies that the bill will indeed be effective or efficient without any evidence to support these claims. Are using these words/phrases justified in these instances?

13. Do you think that in some respects politicians, and politics in general, have gravitated towards the language of the marketplace or business? If yes, how? If no, do you think this will happen?

14. There's been a big push in the UK for what they call 'clear language in legislation'. Where, they working to make it easier for ordinary citizens to understand legislation. Have you seen a change similar to that in the States at all?

15. Do you believe the naming of legislation is important in the lawmaking process? If so, to what extent?

Appendix III: Questionnaire Examples

UK Example – Form A *Attempting to Determine Reactions to Particular Pieces of Legislation*

Informed Consent Form

RESEARCH PROCEDURES

This research is being conducted to determine people's reactions to specific pieces of legislation. If you agree to participate, you will be asked to read descriptions of four pieces of legislation, and answer a short questionnaire after each. Also, there is a brief section on your background and some general opinions. This survey will take up to 10 minutes to answer. You must be 18 years old to take part in this study.

BENEFITS

There are no benefits to you as a participant other than to further research in the area of reactions to legislative proposals.

CONFIDENTIALITY

The data in this study will be kept anonymous. Neither your name nor any other identifying information will be written on the questionnaires.

PARTICIPATION

Your participation is voluntary, and you may withdraw from the study at any time and for any reason. If you decide not to participate or if you withdraw from the study, there is no penalty or loss of benefits to which you are otherwise entitled. There are no costs to you or any other party.

CONTACT

This research is being conducted by Brian Jones (PhD candidate at the University of Stirling School of Law, Scotland, b.c.jones@stir.ac.uk), and Kay Goodall (Senior Lecturer, University of Stirling School of Law, k.e.goodall@stir.ac.uk). If you have any concerns about how the research is being conducted, you also have the right to contact our Faculty Ethics Committee, c/o

Elizabeth Robertson, Arts Administrator, Pathfoot A8, University of Stirling,
Stirling, FK9 4LA, Scotland, UK
Telephone: +44 (0) 1786 467.493
Email: elizabeth.robertson@stir.ac.uk

CONSENT

Please sign the consent form below. By signing the form, you indicate your consent to participate.

Signature

Date

Please read the following news excerpts. After you read an excerpt, answer the questions before moving on to the next excerpt.

Gay Campaigners to Celebrate as Section 28 Decision Due

Gay Campaigners claimed victory today as MSPs prepared for the final vote to repeal Section 28, ending months of furious controversy.

Tim Hopkins, of the Equality Network, said: "Everyone who supported this campaign can celebrate today - we have won hands down. The long winter of discrimination against gay people is turning at last to spring."

Section 28, which bans the promotion of homosexuality as 'a pretended family relationship', is being replaced by a clause which talks about the importance of 'stable family life'. And in a last-minute climbdown which finally created consensus on the way forward, the Scottish Executive last week agreed that marriage could be mentioned in the statutory guidance on sex education sent out to local authorities. MSPs will vote for the repeal when they pass the final stage of the *Tim Hopkins Public Life Bill*, named after the aforementioned member of the Equality Network.

Politicians will breathe a sigh of relief that a bitter and decisive row is now at an end.

1. How familiar are you with the issues raised in the above article? [Please fill in one O]:
 - Very Familiar
 - Somewhat Familiar
 - A Little Familiar
 - Not at all Familiar

2. Based on this article, do you think you would favor or oppose the *Tim Hopkins Public Life Bill*, or would you be unsure or have no opinion? [Please fill in one O]:
 - Favor (if selected, go to question 3)
 - Oppose (if selected, go to question 3)
 - Unsure/No Opinion (if selected, go to question 4)

3. Why do you favor/oppose the measure? [Please fill in one O]:
 - Liked/Disliked the Sound of It
 - Favor/Oppose the Description or Policies of the Legislation
 - Other

4. If provided, would you like more information on the bill? [Please fill in one O]:
 - Yes
 - No

Charities Call for Schools Bill Changes

The Scottish executive has been accused of missing a chance to ensure that the fundamental rights of children are fully recognised within the education system.

Children's organizations will make a last-ditch attempt tomorrow to strengthen the *Restoring Standards in Scotland's Schools Bill* which enshrines in legislation a child's right to school education and a new duty to provide education directed to the development of the child. Officials of 12 organisations concerned about the welfare of children have written to *The Scotsman*, saying they believe the bill has failed to adopt key principles in the UN Convention of the Right of the Child.

Writing on behalf of the organisations, Anne Houston, director of Childline Scotland, acknowledges the positive features in the bill, but adds: "We fear that it will be another missed opportunity to ensure the fundamental rights of children are recognised within the Scottish education system."

She says that the UN convention has three key principles: that all children have rights without discrimination; that the best interests of the child are a primary consideration in all actions concerning children; and that children's views must be taken into account in all matters affecting them.

5. How familiar are you with the issues raised in the above article? [Please fill in one O]:
 - Very Familiar
 - Somewhat Familiar
 - A Little Familiar
 - Not at all Familiar

6. Based on this article, do you think you would favor or oppose the *Restoring Standards in Scotland's Schools Bill*, or would you be unsure or have no opinion? [Please fill in one O]:
 - Favor (if selected, go to question 7)
 - Oppose (if selected, go to question 7)
 - Unsure/No Opinion (if selected, go to question 8)

7. Why do you favor/oppose the measure? [Please fill in one O]:
 - Liked/Disliked the Sound of It
 - Favor/Oppose the Description or Policies of the Legislation
 - Other

8. If provided, would you like more information on the bill? [Please fill in one O]:
 - Yes
 - No

Saudi Four Back Compensation Campaign for Torture Victims

Four Britons who claim they were tortured while being detained in Saudi Arabia on trumped up terrorist charges are backing a campaign to allow UK citizens who have been abused abroad to seek compensation in the British courts. Six years ago Ron Jones and three other UK citizens were arrested by the Saudi authorities.

Mr. Jones says he was regularly assaulted, with guards beating his hands and feet with canes and a pickaxe handle, and that he was subjected to sleep deprivation and psychological abuse.

Last year, after a legal action by the four Britons, the House of Lords ruled that foreign states and their officials enjoyed immunity from civil actions.

However tomorrow the four will join other victims of torture in Parliament to lobby in favor of the *Providing Torture Damages Bill*, a private member's bill to introduced by Lord Archer of Sandwell QC, the former solicitor general, which seeks to give torture victims the right to seek compensations and other redress in the British courts if they become victims of torture abroad and cannot obtain redress in foreign courts.

9. How familiar are you with the issues raised in the above article? [Please fill in one O]:
 - Very Familiar
 - Somewhat Familiar
 - A Little Familiar
 - Not at all Familiar

10. Based on this article, do you think you would favor or oppose the *Providing Torture Damages Bill*, or would you be unsure or have no opinion? [Please fill in one O]:
 - Favor (if selected, go to question 11)
 - Oppose (if selected, go to question 11)
 - Unsure/No Opinion (if selected, go to question 12)

11. Why do you favor/oppose the measure? [Please fill in one O]:
 - Liked/Disliked the Sound of It
 - Favor/Oppose the Description or Policies of the Legislation
 - Other

12. If provided, would you like more information on the bill? [Please fill in one O]:
 - Yes
 - No

Future Imperfect: New Crime Bill Expands Police Powers Regarding Sexual Offenders

The Police obtained new powers on 31 May 2007 that enable them to enter premises – using reasonable force if necessary – in order to assess whether or not the person living there was about to commit a crime at some point in the future. It has all the hallmarks of the pre-crime in Spielberg's film *Minority Report*.

The *Violent Crime Bill* section 58 made an amendment to the *Sexual Offenses Act 2003* by inserting a new section 96B. This new section allows police to apply to a magistrate for a warrant to enter premises where a registered sex offender lives in order to carry out a risk assessment.

So the new powers are not to be used on anybody. Just those offenders on the sex offenders register. That group of offenders that nobody has much sympathy for. That group that is somehow 'different' to other offenders and thereby deserving of different treatment.

It makes no difference if the sex offender is fully compliant with all the requirements registration places on him. He may be fully up to date with his 'notifications' to the police regarding changes of address, changes of name or annual verification of exercises. This is all about the police need to assess the likelihood of future offending.

13. How familiar are you with the issues raised in the above article? [Please fill in one O]:
 - Very Familiar
 - Somewhat Familiar
 - A Little Familiar
 - Not at all Familiar

14. Based on this article, do you think you would favor or oppose the *Violent Crime Bill*, or would you be unsure or have no opinion? [Please fill in one O]:
 - Favor (if selected, go to question 15)
 - Oppose (if selected, go to question 15)
 - Unsure/No Opinion (if selected, go to question 16)

15. Why do you favor/oppose the measure? [Please fill in one O]:
 - Liked/Disliked the Sound of It
 - Favor/Oppose the Description or Policies of the Legislation
 - Other

16. If provided, would you like more information on the bill? [Please fill in one O]:
 - Yes
 - No

Background/General Information: Please mark the by the single response that describes you for each item.

17. What is your gender?

- Male
- Female

18. Which range best describes your age:

- 18 to 20
- 21 to 25
- 26 to 30
- 31 to 40
- 40 or above

19. Race/Ethnicity:

- Asian
- Black
- Caucasian
- Indian
- Pakastani
- Other/Mixed Race

20. Grade Level:

- 1st Year
- 2nd Year
- 3rd Year
- 4th Year
- Postgraduate

21. Political Orientation:

- Conservative
- Labour
- Liberal Democrat
- Scottish National Party
- Other

22. What is your level of interest in political affairs?

- High
- Somewhat High
- Somewhat Low
- Low

US Example – Form A
*Attempting to Determine Reactions to Particular Pieces of
Legislation*

Informed Consent Form

RESEARCH PROCEDURES

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There are no benefits to you as a participant other than to further research in the area of reactions to legislative proposals.

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Your participation is voluntary, and you may withdraw from the study at any time and for any reason. If you decide not to participate or if you withdraw from the study, there is no penalty or loss of benefits to which you are otherwise entitled. There are no costs to you or any other party.

CONTACT

This research is being conducted by Brian Jones (PhD candidate at the University of Stirling School of Law, Scotland, b.c.jones@stir.ac.uk), and Kay Goodall (Senior Lecturer, University of Stirling School of Law, k.e.goodall@stir.ac.uk). If you have any concerns about how the research is being conducted, you also have the right to contact our Faculty Ethics Committee, c/o

Elizabeth Robertson, Arts Administrator, Pathfoot A8, University of Stirling,
Stirling, FK9 4LA, Scotland, UK
Telephone: +44 (0) 1786 467.493
Email: elizabeth.robertson@stir.ac.uk

CONSENT

Please sign the consent form below. By signing the form, you indicate your consent to participate.

Signature

Date

Please read the following news excerpts. After you read an excerpt, answer the questions before moving on to the next excerpt.

America's Berlin Wall; International Taxation

Queues of frustrated foreigners crowd many an American consulate around the world hoping to get into the United States. Less noticed are the heavily taxed American expatriates wanting to get out-by renouncing their citizenship. Because of impending legislation on President Obama's desk that is expected to become law by June, any American who wants to surrender his passport has only a few days to do so before facing an enormous penalty.

That penalty is buried in an innocuous piece of legislation, the *Brock Stevens Tax Bill*, named after a soldier who was severely injured in Baghdad in 2007. The new law means active American soldiers will benefit from tax relief. To pay for that, Congress has turned on expats, especially those who, since new tax laws in 2006, have become increasingly eager to give up their citizenship to escape the taxman.

Under the proposed legislation, expatriates surrendering their citizenship with a net worth of \$2m or more, a high income, will have to act as if they have sold all their worldwide assets at a fair market price. If the unrealized gains on these assets exceed \$600,000, capital-gains tax will apply. A study by the Congressional Budget Office guesses that the new law will progressively net the government up to \$286m over five years. It is unclear, however, why people would suffer consequences if they did not expect to save money in the long run by escaping American taxes.

17. How familiar are you with the issues raised in the above article? [Please fill in one O]:
 - Very Familiar
 - Somewhat Familiar
 - A Little Familiar
 - Not at all Familiar

18. Based on this article, do you think you would favor or oppose the *Brock Stevens Tax Bill*, or would you be unsure or have no opinion? [Please fill in one O]:
 - Favor (if selected, go to question 3)
 - Oppose (if selected, go to question 3)
 - Unsure/No Opinion (if selected, go to question 4)

19. Why do you favor/oppose the measure? [Please fill in one O]:
 - Liked/Disliked the Sound of It
 - Favor/Oppose the Description or Policies of the Legislation
 - Other

20. If provided, would you like more information on the bill? [Please fill in one O]:
 - Yes
 - No

Frank Wants Liable Securitizers

Mortgage securitizers would bear some responsibility for loans that go bad under legislation introduced Monday by Massachusetts Democrat Barney Frank, chairman of the House Financial Services Committee.

The *Mortgage Reform and Anti-Predatory Lending Bill*, which is co-sponsored by Reps. Brad Miller and Mel Watt, both North Carolina Democrats, would impose some liability on firms that package mortgage securities. The banks would be legally responsible for loans that violate minimum standards, and borrowers would be granted the right to sue to rescind the loan and recover their costs. "The securitizers will be liable if they package loans that should not have been made in the first place," Frank said in a conference call Monday.

Investors in the securities market would have no liability. Some industry groups have warned that holding investors liable for troubled loans might have a chilling effect on the home loan market as those investors become risk averse and the cost of borrowing increases. Frank's plan would give securitizers 90 days to avoid liability if they fix the flaws with the loan or if they have specific policies in place to avoid such loans. Frank said that it's in the best interest of those who securitize loans to participate in loan modifications.

21. How familiar are you with the issues raised in the above article? [Please fill in one O]:
 - Very Familiar
 - Somewhat Familiar
 - A Little Familiar
 - Not at all Familiar

22. Based on this article, do you think you would favor or oppose the *Mortgage Reform and Anti-Predatory Lending Bill*, or would you be unsure or have no opinion? [Please fill in one O]:
 - Favor (if selected, go to question 7)
 - Oppose (if selected, go to question 7)
 - Unsure/No Opinion (if selected, go to question 8)

23. Why do you favor/oppose the measure? [Please fill in one O]:
 - Liked/Disliked the Sound of It
 - Favor/Oppose the Description or Policies of the Legislation
 - Other

24. If provided, would you like more information on the bill? [Please fill in one O]:
 - Yes
 - No

Mental Health Gets Shot at Parity

Advocates battling for more than a decade for improved mental healthcare coverage may have their labor rewarded this month if federal legislation is passed requiring group health plans to provide equal coverage for mental and physical illnesses.

The *Modernizing and Supporting Mental Health and Addiction Bill* could be signed into law soon if passed by both the House and the Senate. It is estimated that the bill could expand mental health coverage for about 113 million people, and will take effect for most on Jan. 1, 2010.

What does the bill do? The legislation does not require employers to provide mental health coverage, but those that do must offer equality between mental and physical healthcare. Health plans will no longer be able to make enrollees pay a larger share of insurance coverage for mental health and substance abuse coverage than for physical illness coverage.

- Costs such as co-pays, deductibles and out-of-pocket expenses cannot be greater for mental illnesses than they are for physical health issues.
- Separate treatment limitations cannot be applied to mental health coverage -- for example, limiting the number of outpatient visits covered to treat a child with autism but not for one with a broken foot.
- Criteria a health plan uses to determine whether a mental health procedure is "medically necessary" has to be available to patients upon request; Out-of-network benefits -- services provided by physicians not contracted by the health plan -- have to be equal.

25. How familiar are you with the issues raised in the above article? [Please fill in one O]:

- Very Familiar
- Somewhat Familiar
- A Little Familiar
- Not at all Familiar

26. Based on this article, do you think you would favor or oppose the *Modernizing and Supporting Mental Health and Addiction Bill*, or would you be unsure or have no opinion? [Please fill in one O]:

- Favor (if selected, go to question 11)
- Oppose (if selected, go to question 11)
- Unsure/No Opinion (if selected, go to question 12)

27. Why do you favor/oppose the measure? [Please fill in one O]:

- Liked/Disliked the Sound of It
- Favor/Oppose the Description or Policies of the Legislation
- Other

28. If provided, would you like more information on the bill? [Please fill in one O]:

- Yes
- No

House Bill to Intensify FISA Talks; GOP Opposes Tougher Rules

A debate that raged behind the scenes for months about whether federal eavesdropping restrictions undermined U.S. troops in Iraq will be rekindled this week as the House takes up a Democratic bill to restore tougher rules for government wiretaps of foreign terrorism suspects. The administration and both parties have been at odds since May over whether wiretap laws hampered intelligence-gathering in the attempt to rescue three U.S. soldiers abducted near Baghdad.

Democrats say bureaucratic bungling by the Bush administration, not legal constraints of the Foreign Intelligence Surveillance Act (FISA), caused the delay in tracking al Qaeda-linked terrorists who in May kidnapped three members of the Army's 10th Mountain Division. One of the abducted soldiers since was found dead while the other two are still missing.

Republicans say bureaucrats should have been injected into foreign spy operations. The bill that goes to the House floor Wednesday, they say, will return bureaucracy to intelligence work and again jeopardize the global war on terrorism.

"The FISA court should not have a role on the battlefield," Rep. Peter Hoekstra of Michigan, ranking Republican on the Permanent Select Committee on Intelligence, said of the bill, dubbed the *Electronic Surveillance Bill*.

29. How familiar are you with the issues raised in the above article? [Please fill in one O]:
- Very Familiar
 - Somewhat Familiar
 - A Little Familiar
 - Not at all Familiar
30. Based on this article, do you think you would favor or oppose the *Electronic Surveillance Bill*, or would you be unsure or have no opinion? [Please fill in one O]:
- Favor (if selected, go to question 15)
 - Oppose (if selected, go to question 15)
 - Unsure/No Opinion (if selected, go to question 16)
31. Why do you favor/oppose the measure? [Please fill in one O]:
- Liked/Disliked the Sound of It
 - Favor/Oppose the Description or Policies of the Legislation
 - Other
32. If provided, would you like more information on the bill? [Please fill in one O]:
- Yes
 - No

Background/General Information: Please mark the by the single response that describes you for each item.

17. What is your gender?

- Male
- Female

18. Which range best describes your age:

- 18 to 20
- 21 to 25
- 26 to 30
- 31 to 40
- 40 or above

19. Race/Ethnicity:

- Asian
- African American/Black
- American Indian/Alaskan Native
- Caucasian
- Hispanic
- Other/Multiracial

20. Grade Level:

- Freshman
- Sophomore
- Junior
- Senior
- Graduate

21. Political Orientation:

- Republican
- Democrat
- Independent
- Other

22. What is your level of interest in political affairs?

- High
- Somewhat High
- Somewhat Low
- Low

Appendix IV: Quantitative Survey Statistical Details

UK Statistical Details¹

Favourability:

Chi-Square Results for UK favourability data: ($\chi^2=10.735$, $df=8$, $p=.217$)

Table 33. Chi-Square Tests for Favourability

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	10.735 ^a	8	.217
Likelihood Ratio	10.992	8	.202
Linear-by-Linear Association	9.369	1	.002
N of Valid Cases	1026		

Multinomial Regression Results for UK favourability:

Table 34. Model Fitting Information for Favourability

Model	Model Fitting Criteria	Likelihood Ratio Tests		
	-2 Log Likelihood	Chi-Square	df	Sig.
Intercept Only	569.292			
Final	544.409	24.883	12	.015

¹ All data that was significant at the .1, .05, or .1 level is marked in **bold**. Also, the statistical details of the US data are not shown here because the survey procedure was deeply flawed. Thus, the presentation of any statistical analysis of the results would be deeply misleading for the reader.

Table 35. Likelihood Ratio Tests for Favourability

Effect	Model Fitting Criteria	Likelihood Ratio Tests		
	-2 Log Likelihood of Reduced Model	Chi-Square	df	Sig.
Intercept	544.409 ^a	.000	0	.
BillType	557.816	13.407	2	.001
SurvForm	544.901	.493	2	.782
NameType	555.922	11.513	8	.174

Table 36. Parameter Estimates for Favourability

Favorability ^a		B	Std. Error	Wald	df	Sig.	Exp(B)
Favor	Intercept	-.133	.241	.303	1	.582	
	BillType	.175	.063	7.643	1	.006	1.191
	SurvForm	-.003	.012	.063	1	.802	.997
	[NameType=1.00]	.678	.218	9.677	1	.002	1.969
	[NameType=2.00]	.345	.212	2.653	1	.103	1.413
	[NameType=3.00]	.148	.217	.465	1	.496	1.160
	[NameType=4.00]	.129	.207	.388	1	.533	1.138
	[NameType=5.00]	0 ^b	.	.	0	.	.
Oppose	Intercept	-1.945	.370	27.710	1	.000	
	BillType	.308	.093	11.051	1	.001	1.361
	SurvForm	.008	.017	.229	1	.633	1.008
	[NameType=1.00]	.533	.313	2.892	1	.089	1.704
	[NameType=2.00]	.234	.316	.546	1	.460	1.263
	[NameType=3.00]	.150	.319	.222	1	.637	1.162
	[NameType=4.00]	.110	.307	.128	1	.720	1.116
	[NameType=5.00]	0 ^b	.	.	0	.	.

a. The reference category is: Undecided.

Table 36.1. Parameter Estimates (cont.) for Favourability

Favorability ^a		95% Confidence Interval for Exp(B)	
		Lower Bound	Upper Bound
Favor	Intercept		
	BillType	1.052	1.348
	SurvForm	.974	1.020
	[NameType=1.00]	1.285	3.018
	[NameType=2.00]	.932	2.140
	[NameType=3.00]	.757	1.776
	[NameType=4.00]	.758	1.708
	[NameType=5.00]	.	.
Oppose	Intercept		
	BillType	1.135	1.633
	SurvForm	.975	1.043
	[NameType=1.00]	.922	3.148
	[NameType=2.00]	.680	2.347
	[NameType=3.00]	.622	2.172
	[NameType=4.00]	.611	2.038
	[NameType=5.00]	.	.

a. The reference category is: Undecided.

Why Measure Was Supported:

Chi-Square test for Why Measure Was Supported: ($\chi^2=9.162$, $df=8$, $p=.329$)

Table 37. Chi-Square Test For Why Measure Was Supported

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	9.162 ^a	8	.329
Likelihood Ratio	9.063	8	.337
Linear-by-Linear Association	1.086	1	.297
N of Valid Cases	685		

Multinomial Regression Results for Why Measure Was Supported:

Table 38. Model Fitting Information for Why Measure Was Supported

Model	Model Fitting Criteria	Likelihood Ratio Tests		
	-2 Log Likelihood	Chi-Square	df	Sig.
Intercept Only	418.319			
Final	405.985	12.334	12	.419

Table 39. Likelihood Ratio Tests for Why Measure Was Supported

Effect	Model Fitting Criteria	Likelihood Ratio Tests		
	-2 Log Likelihood of Reduced Model	Chi-Square	df	Sig.
Intercept	405.985 ^a	.000	0	.
BillType	408.863	2.878	2	.237
SurvForm	406.374	.389	2	.823
NameType	415.222	9.236	8	.323

Table 40. Parameter Estimates for Why Measure Was Supported

Reason ^a		B	Std. Error	Wald	df	Sig.
Liked/ Dislike d the Sound of It	Intercept	1.708	.581	8.656	1	.003
	BillType	.130	.149	.762	1	.383
	SurvForm	-.017	.028	.383	1	.536
	[NameType=1.00]	.215	.531	.164	1	.686
	[NameType=2.00]	-.232	.476	.238	1	.626
	[NameType=3.00]	.382	.548	.485	1	.486
	[NameType=4.00]	.268	.527	.260	1	.610
	[NameType=5.00]	0 ^b	.	.	0	.
Favor/Oppose Description/Polici es	Intercept	1.685	.575	8.590	1	.003
	BillType	.212	.147	2.090	1	.148
	SurvForm	-.016	.028	.334	1	.563
	[NameType=1.00]	.571	.521	1.204	1	.273
	[NameType=2.00]	-.196	.469	.175	1	.676
	[NameType=3.00]	.054	.548	.010	1	.921
	[NameType=4.00]	.210	.522	.161	1	.688
	[NameType=5.00]	0 ^b	.	.	0	.

a. The reference category is: Other.

Table 40.1 Parameter Estimates (cont.) for Why Measure Was Supported

Reason ^a		Exp(B)	95% Confidence Interval for Exp(B)	
			Lower Bound	Upper Bound
Liked/Disliked the Sound of It	Intercept			
	BillType	1.139	.851	1.524
	SurvForm	.983	.930	1.038
	[NameType=1]	1.239	.438	3.507
	[NameType=2]	.793	.312	2.014
	[NameType=3]	1.465	.500	4.290
	[NameType=4]	1.308	.466	3.673
	[NameType=5]	.	.	.
Favor/Oppose Description/Policies	Intercept			
	BillType	1.237	.927	1.650
	SurvForm	.984	.932	1.039
	[NameType=1]	1.770	.638	4.910
	[NameType=2]	.822	.328	2.062
	[NameType=3]	1.056	.361	3.090
	[NameType=4]	1.233	.443	3.432
	[NameType=5]	.	.	.

a. The reference category is: Other.

More Information:

Chi-Square Results for More Information: ($\chi^2=2.161$, $df=4$, $p=.706$)

Table 41. Chi-Square Tests for More Information

	Value	df	Asymp. Sig. (2- sided)
Pearson Chi-Square	2.161 ^a	4	.706
Likelihood Ratio	2.162	4	.706
Linear-by-Linear Association	.001	1	.980
N of Valid Cases	971		

Multinomial Regression Results for More Information:

Table 42. Model Fitting Information for More Information

	Model Fitting Criteria	Likelihood Ratio Tests		
	-2 Log Likelihood	Chi-Square	df	Sig.
Intercept Only	308.888			
Final	289.818	19.070	6	.004

Table 43. Likelihood Ratio Tests for More Information

Effect	Model Fitting Criteria	Likelihood Ratio Tests		
	-2 Log Likelihood of Reduced Model	Chi-Square	df	Sig.
Intercept	289.818 ^a	.000	0	.
BillType	302.560	12.742	1	.000
SurvForm	293.988	4.170	1	.041
NameType	291.667	1.848	4	.764

Table 44. Parameter Estimates for More Information

More Information ^a		B	Std. Error	Wald	df	Sig.	Exp(B)
Yes	Intercept	-.903	.230	15.398	1	.000	
	BillType	.208	.059	12.601	1	.000	1.231
	SurvForm	.022	.011	4.155	1	.042	1.022
	[NameType=1.00]	.082	.196	.176	1	.675	1.086
	[NameType=2.00]	.058	.199	.086	1	.769	1.060
	[NameType=3.00]	.137	.204	.450	1	.503	1.147
	[NameType=4.00]	.256	.198	1.675	1	.196	1.292
	[NameType=5.00]	0 ^b	.	.	0	.	.

a. The reference category is: No.

Table 44.1 Parameter Estimates (cont.) for More Information

More Information ^a		95% Confidence Interval for Exp(B)	
		Lower Bound	Upper Bound
Yes	Intercept		
	BillType	1.098	1.381
	SurvForm	1.001	1.045
	[NameType=1.00]	.739	1.595
	[NameType=2.00]	.717	1.567
	[NameType=3.00]	.769	1.710
	[NameType=4.00]	.877	1.904
	[NameType=5.00]	.	.

a. The reference category is: No.

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