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2012

Transatlantic Perspectives On Humanised Public Law Campaigns: Personalising And Depersonalising The Legislative Process

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TRANSATLANTIC PERSPECTIVES ON HUMANISED PUBLIC LAW CAMPAIGNS:
PERSONALISING AND DEPERSONALISING THE LEGISLATIVE PROCESS

By

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Key Words: Humanised Public Law Campaigns, Personalised Law, Emotional Law,
Legislative Processes, Westminster Parliament, Scottish Parliament, US Congress

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ABSTRACT

This exploratory article uses interviews from lawmakers, government officials, bill drafters and parliamentary journalists from Westminster, the Scottish Parliament and the US Congress to determine humanised law campaigns potential impact on the legislative process. It hypothesised that emotional law is prevented through the depersonalisation of such statutory or regulatory instruments, and that more UK and Scottish interviewees would embrace this perspective than US interviewees. Humanised campaigns and personalised statutory law in the US Congress appears to be on the rise. In Britain such campaigns are a rarity, yet over the past few years the Sarah's Law campaign in England and the Mark's law campaign in Scotland have each contributed to sexual offender disclosure schemes being introduced in the respective jurisdictions, the latter of which bypassed the legislature completely. When asked about such matters a clear transatlantic discrepancy appeared. American insiders on the legislative side surmised that personalising statutory law made it easier for proposals to pass through Congress and that such personalisation tactics were warranted, though there were dissenters. Westminster and Scottish interviewees focused on three main issues: protecting the law from being overly emotional; protecting general parliamentary process issues that could be influenced by humanised public law; and not letting a sympathetic individual grace a bill's short title. Yet some Westminster interviewees believed the latter issue could eventually come to fruition in their lawmaking institution, thus threatening the previous two concerns.

1. INTRODUCTION

It seems that whatever contemporary problem the United States Congress may be facing, there is an accompanying sympathetic figure to assist with the legislative proposal. In many instances these figures are inscribed on the short title of the bill, thus signifying their place in the American statute book. Some prominent examples from recent legislative sessions are: Megan's Law,¹ the Ryan White HIV/AIDS Acts,² the Adam Walsh Child Protection and Safety Act of 2006,³ and the Lilly Ledbetter Fair Pay Act of 2009.⁴ These laws, and other personalised measures, have had a significant impact on US public policy throughout the years. But these instruments are also problematic, as they inject a significant amount of emotion into the lawmaking process by personalising such legislation. Many of the above measures are very difficult to oppose because of the individuals they are purportedly modelled after, tragic victims, and a vote against such emotional measures could put legislators in exceedingly precarious political positions. Drawing upon experiences in the Westminster Parliament, the Scottish Parliament and the US Congress, this paper explores the different experiences that humanised public law campaigns have had on each lawmaking institution, and inquires as to whether the personalisation of law should be employed in the legislative process.

¹ Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345.

² This act was originally passed in 1990 as the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Pub. L. No. 101-38, 104 Stat. 576, available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d101:SN02240:|TOM:/bss/d101query.html>. However, it has been reauthorized four times since, in 1996 (Ryan White CARE Act Amendments of 1996, Pub. L. No. 104-146, 110 Stat. 1346), 2000 (Ryan White CARE Act Amendments of 2000, Pub. L. No. 106-345, 114 Stat., 1319), 2006 (Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. No. 109-415, 120 Stat. 2767), and 2009 (Ryan White HIV/AIDS Treatment Extension Act of 2009, Pub. L. No. 111-87, 123 Stat. 2885).

³ 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.4472>:

⁴ Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:s.00181>:

Taking a page from the US Congress the now defunct *News of the World* newspaper launched a campaign in 2000 for Sarah's Law in England and Wales, which was from the outset was a mirror of the US Megan's Law. Though it took eight years to accomplish, a scaled-down pilot project based on the Sara's Law proposal was implemented in four jurisdictions in England and Wales in 2008. The Home Office notes on their website that the scheme was 'developed in consultation with Sara Payne, the former victims champion'.⁵ The project received favourable reviews from an independent review board⁶ and was expanded in 2010 to every police jurisdiction in England and Wales.⁷ Thus, after ten years, the Sarah's Law campaign produced large scale legal and public policy results. Yet the term 'Sarah's Law' was not used in any official capacity during the process, as the government and Westminster shied away from such terminology.

According to legislative record, the Westminster Parliament approved how disclosure should be approached in the Criminal Justice and Immigration Act 2008, which amended the Criminal Justice Act of 2003.⁸ Westminster provided a general set of guidelines for disclosure in the 2003 Act and allowed the Home Office Secretary to provide specific regulatory guidance to

⁵ UK Home Office, 'Child sex offender disclosure scheme'. Available at: <http://www.homeoffice.gov.uk/crime/child-sex-offender-disclosure/>

⁶ H Kemshall and J Wood, 'Child Sex Offender Review (CSOR) Public Disclosure Pilots: A Process Evaluation' (2nd Ed.) Available at: <http://webarchive.nationalarchives.gov.uk/20110218135832/rds.homeoffice.gov.uk/rds/pdfs10/horr32c.pdf>

⁷ United Kingdom Home Office, Child Sex Offender Disclosure Scheme. Available at: <http://www.homeoffice.gov.uk/crime/child-sex-offender-disclosure/>. The website even notes that the Scheme was 'developed in consultation with Sara Payne, the former victims champion, along with the police, and children's charities'.

⁸ Criminal Justice Act 2003 c.44, Part 13, s. 325-327. UK Home Office, Child Sex Offender Disclosure Scheme Guidance Document. Section 2.6. Available at: <http://www.homeoffice.gov.uk/publications/crime/disclosure-scheme-guidance/disclosure-scheme-guidance?view=Binary>. The law took a little under a year to pass, as it was introduced to the Commons on 26 June 2007, and received Royal Assent on 8 May 2008.

authorities regarding the Disclosure Scheme.⁹ When the Disclosure Scheme was expanded to all jurisdictions in 2010, seemingly a significant legal change, no subsequent votes or statutory changes were undertaken.

Westminster now has another humanised public law campaign gaining momentum: Clare's Law. Clare Wood was killed by George Appleton in February of 2009, after the Manchester police reportedly failed to act on Wood's previous allegations of harassment, assaults and threats.¹⁰ Modelled after Sarah's Law, Clare's Law would allow police to notify women if their partners had a violent past.¹¹ This campaign is being propagated by the *Daily Mail* newspaper, and though it formally has not been presented to Westminster in a legislative capacity at the time of this writing, some ministers have already commented on the proposal.¹²

The relatively young Scottish Parliament has had one major humanised public law campaign: Mark's Law. In terms of policy it was a mirror image of the 'Sarah's Law' proposal throughout England and Wales. The campaign for Mark's Law was initiated in 2004 after a known sex offender killed eight-year-old Mark Cummings.¹³ For such a campaign to thrive in Scotland, it seems that all the law needed was a change of incident, and therefore a change of name. In 2001 the Scottish Executive ruled out the possibility of a Sarah's Law,¹⁴ but once the

⁹ Id., s. 325-327. Specifically on the Secretary of State see: s 325 para. 8.

¹⁰ J Meilke, 'Women may be warned of partners' violent pasts under new 'Clare's Law' (17 July 2011) *The Guardian*. Available at: <http://www.guardian.co.uk/society/2011/jul/17/women-warned-partners-clares-law>

¹¹ B Carlin, 'Clare's law: After mother's brutal murder, women to get right to check abusive partners' criminal records' (16 July 2011) *The Daily Mail*, Available at: <http://www.dailymail.co.uk/news/article-2015564/Clares-law-After-mothers-brutal-murder-women-right-check-abusive-partners-criminal-records.html>

¹² J Meilke, *op. cit.*

¹³ BBC News, 'Mother in Call for Mark's Law' (8 September 2005), Available at: <http://news.bbc.co.uk/1/hi/scotland/4224334.stm>

¹⁴ D Mitchell, 'Scotland rules out Sarah's Law' (13 December 2001) *The Guardian*, Available at: <http://www.guardian.co.uk/society/2001/dec/13/childrenservices1>

Mark's Law campaign commenced perspectives began to change. Perhaps it stemmed from the fact that the story was now local (from Glasgow), and made the situation more relevant to policymakers and the Scottish public. Unofficially, 'Mark's Law' manifested itself as a pilot program in Tayside in 2009¹⁵ and recently expanded in March 2011 to every police jurisdiction in Scotland as the Keeping Children Safe initiative, implemented by ACPOS (Association of Chief Police Officers in Scotland).¹⁶ Though there was no formal mention of Mark by the government, *The Herald* called the expansion a 'Victory for Mark's Law'.¹⁷ Unlike Westminster, however, the Scottish Parliament did not formally recognize such a scheme through statute of any sort, even in relation to disclosure guidelines. Yet similar to the Westminster experience, the term 'Mark's Law' was never used as part of the official implementation of the disclosure scheme.

While it took ten years and a thorough pilot study for the scaled-down 'Sarah's Law' proposal to be implemented and five years for 'Mark's Law' to come to fruition, transatlantic US proposals have had vastly different experiences, as the personalisation of such public law proposals has become ever more common throughout the years. Wood touched on this in terms of US criminal justice bill titles, as she used case studies to demonstrate how crime victim policy over the past decade has been increasingly titled after victims, especially white, female, middle

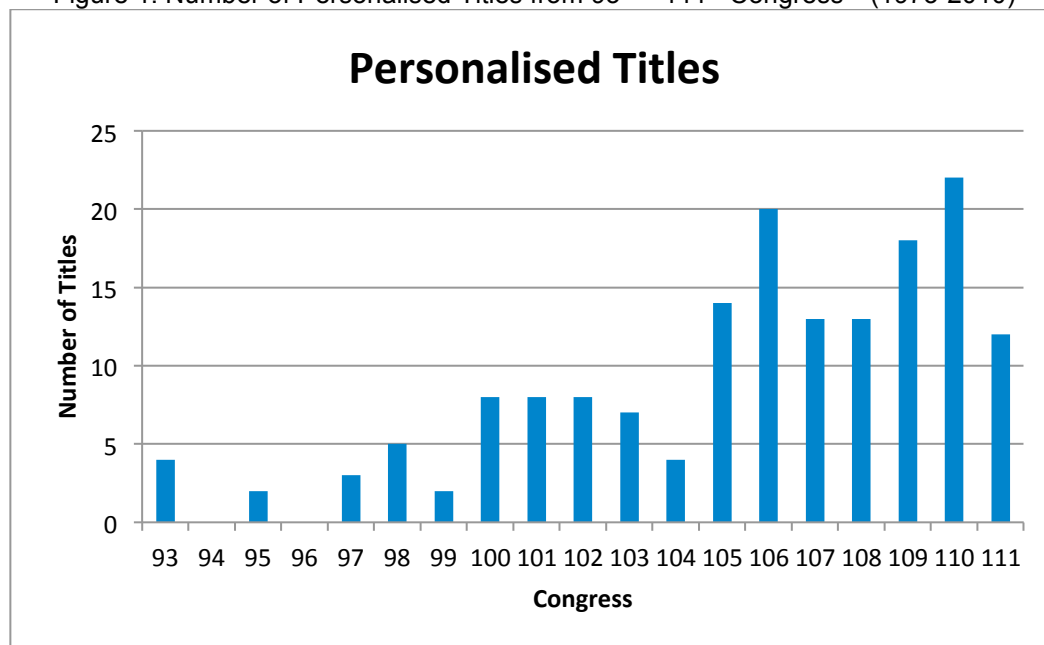
¹⁵ M Williams, 'Victory for Mark's Law campaign' (31 March 2011) Herald Scotland. Available at: <http://www.heraldscotland.com/news/home-news/victory-for-mark-s-law-campaign-1.1093670?98673>

¹⁶ Scottish Government, 'Keeping Children Safe: Information Disclosure About Child Sexual Offenders' (December, 2010). Available at: <http://www.scotland.gov.uk/Resource/Doc/336961/0110415.pdf>; Scottish Government, 'Keeping Children Safe: What We All Need to Know to Protect Our Children' (March, 2011) Available at: <http://www.scotland.gov.uk/Resource/Doc/345186/0114874.pdf>; and 'Keeping Children Safe: Preventing abuse among young children and young people' (March, 2011). Available at: <http://www.scotland.gov.uk/Resource/Doc/345203/0114879.pdf>

¹⁷ M Williams, 'Victory for Mark's Law campaign' (31 March 2011) Herald Scotland. Available at: <http://www.heraldscotland.com/news/home-news/victory-for-mark-s-law-campaign-1.1093670?98673>

class victims.¹⁸ But it is not only criminal justice bill titles that are becoming more common to personalise in the US Congress. Such personalised titles have noticeably increased from the 105th Congress (1997-1998) forward, as the number of Acts emanating from Congress with such monikers has exceeded ten in every Congress since (see below).

Figure 1: Number of Personalised Titles from 93rd – 111th Congress¹⁹ (1973-2010)



Additionally, many US Acts have had questionable legislative process experiences in terms of both debate and accompanied political tactics. The Lilly Ledbetter Fair Pay Act of 2009²⁰ was introduced to Congress on 8 January 2009, and was signed into law by President Obama less than a month later on 29 January 2009. Megan’s Law took a little under a year to

¹⁸ J K Wood, In Whose Name? Crime Victim Policy and the Punishing Power of Protection. (2005) NWSA Journal: 17(3), 1-17.

¹⁹ Research performed by author. The official US legislative website Thomas has information from the 93rd Congress (1973-74) to present, which was a perfect sample for this article. I included any and every title that had a person’s name in it and was passed as an Act of Congress.

²⁰ The Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:s.00181:>

become an Act as it passed the Senate, the self-proclaimed ‘greatest deliberative body in the world’,²¹ in less than one day.²² The initial passing of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 was accompanied by dubious political tactics. The measure passed the House known as the ‘AIDS Prevention Act of 1990’, but in the Senate it was changed to the aforementioned title and was passed as such. It turned out that Ryan White was a constituent of Indiana Senator Dan Coats, the main opposition to the Bill, and once the Bill’s sponsors inscribed him on the bill’s face Mr. Coats rethought such opposition.²³ The Adam Walsh Child Protection and Safety Act had a similar experience in the Senate. The wide-ranging measure passed the House as the ‘Children's Safety and Violent Crime Reduction Act of 2006’, while the Senate changed it to the former title and also noted in the long title that the measure was passed to ‘honor the memory of Adam Walsh and other child crime victims’.²⁴ Thus in the US it seems that the personalisation of titles in some cases is unnecessarily expediting the legislative process and also being used as a procedural parliamentary tactic designed to acquire support.

The strategy behind personalising statutory legislation, at least for contentious measures, involves gathering sympathy for proposals by using a recognized and sympathetic figure who encountered an unfortunate situation. Doing this expands the consequences of voting for, and especially against proposals, because public policy outcomes are at times subordinate to personalised circumstances. Thus, a legislator who feels sympathy for the individual but may

²¹ W McKay and C W Johnson. *Parliament and Congress: Representation and Scrutiny in the Twenty-First Century* (2010), Oxford, UK: Oxford University Press, p. 421.

²² Megan’s Law, Pub. L. No. 104-145, 110 Stat. 1345. Thomas website, All Congressional Actions. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d104:HR02137:@@X|TOM:/bss/d104query.html>

²³ See n. 29. Also, further information provided by interviewee USMM6 (United States Media Member 6)

²⁴ Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587. Thomas website, Titles. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR04472:@@@T>

fundamentally disagree with the measure can be put in a very uncompromising position, especially when such a law could significantly impact the statute book. After all most personalised statutes in the US are passed as public, not private, laws.

Although there has been little research in academia on humanised public law campaigns and the personalisation of legislation, there has been especially scant research on what lawmakers and other legislative insiders think about such proposals. From an exploratory perspective, this article uses interviews from those involved in or close to the lawmaking process to further illuminate the issue. It is hoped that the below evidence provides a glimpse into how individuals close to the lawmaking process feel about humanised law campaigns, the personalisation of legislation and the potential effects of each on their respective lawmaking bodies.

In the summer and autumn of 2009 I interviewed lawmakers, bill drafters, government officials and journalists from the Westminster Parliament, the Scottish Parliament and the US Congress about whether or not personalised statutory law campaigns make such proposals more appealing to legislators and others,²⁵ and specifically whether the tragic victims behind such campaigns would start gracing the short titles of bills in the Westminster and Scottish Parliaments,²⁶ similar to how the US Congress titles their legislation. From Westminster I interviewed: seven MPs, two Lords, one Baroness, one Bill Drafter and five parliamentary Journalists; from the Scottish Parliament I interviewed: seven MSPs, two Bill Drafters, two Government Employees and two parliamentary Journalists; and from the US Congress I

²⁵ The specific question that I asked interviewees was: ‘Do you believe the humanising 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?’

²⁶ The specific question that I asked interviewees was a follow-up to the question in footnote 23, and was asked in the following manner: ‘Do you believe that the Westminster Parliament (or Scottish Parliament, for Scottish interviewees), will ever start labelling their bills with the tragic victims of humanized campaigns?’

interviewed: two Congresspersons, seven Congressional staffers, and nine journalists. The US responses focused on the merits and demerits using personalised legislation to make the measure more appealing to fellow legislators and others, while the Westminster and Scottish answers, were more varied, and focused on three main issues: keeping emotion out of the law; general legislative process concerns; and determining whether their lawmaking bodies would travel down the short titling route of the US Congress, and start gracing short bill titles with sympathetic individuals. Before the interview data is revealed, however, a short introduction to some key differences between the institutions is described.

Though the historical ‘established point of comparison’ for both the US Congress and Westminster may indeed be one another,²⁷ the lawmaking bodies have major constitutional and legislative processes differences; and though Westminster and the Scottish Parliament share a statute book, they have differences as well. Analysing many of the differences between such institutions is outside the remit of this article. However, three major differences may play a large role when considering humanised public law campaigns: (1) Executive involvement in legislative affairs; (2) structural institutional characteristics; and (3) the role of parliamentary counsel in titling legislation.

Firstly, the main difference relevant to this article is that Congress itself is not controlled by the Executive, which, in contrast, is the case in both Westminster and the Scottish Parliament, as these respective institutions legislative programme’s are largely run by the party/ies in power. Thus, the UK and Scottish governments propose a legislative programme of bills each year, and these take priority through both lawmaking institutions. Cabinet ministers in the UK are also sitting parliamentarians, and retain a much larger role in proposing, scrutinising and voting on

²⁷ G K Wilson, *Congress in Comparative Perspective* (2009), 89 B.U.L. Rev., p. 831, citing: Wilson, Woodrow (1885). *Congressional Government: A Study in American Politics*, pp. (58-60, 128-30 & 223-28).

legislation than members of the US Cabinet, who possess little of these functions. The Executive does not have near as much power to propose legislation in the US system, although this does happen fairly frequently through ‘executive communication’. Congress, meanwhile, is more of an official ‘legislature’, as all of the bills introduced are initiated by legislative members themselves.²⁸ On a continuum, this has led some researchers to characterise Westminster as reactive (‘arena’) legislature, while characterising the US Congress as a proactive (‘formative’) legislature.²⁹ This stems from a more robust separation of powers in the US, and the fact that the President and Congressional members of both houses are elected independently from one another. Additionally, the lack of party discipline in Congress has also been celebrated, as some believe it contributes to the ‘continued vitality’ of the institution.³⁰

The differences in policy formation and the power of the executive in the lawmaking institutions are quite important in regard to this article. Since Westminster and the Scottish Parliament are largely run by the Executive, if the respective governments wish to support a humanised law campaign then a resulting legislative proposal is likely to pass both institutions. In contrast, successful humanised public law campaigns in the US Congress need not be proposed by the party in power nor supported by the Executive.³¹

Secondly, Westminster and the US Congress are bicameral, while the Scottish Parliament is unicameral. Although legislative bills in Westminster must be approved by both chambers, it is

²⁸ The UK and Scottish Parliaments do consider Private Members’ Bills, but governmental business dominates the landscape in both institutions.

²⁹ G Drewry *Law-Making Systems – How to Compare* (2008), *Statute Law Review* 29(2), p. 105.

³⁰ G K Wilson, *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 phenomenon is: J Urh, *Comparing Congress: Bryce on Deliberation and Decline in Legislatures* (2009), 89 *B.U.L. Rev.*, p. 849.

³¹ The President does have veto power, but this can be overridden by a 2/3 majority in both Chambers (U.S. Const., art. I, § 7)

widely acknowledged that the Commons is more powerful. In fact it is ensured dominance over the Lords through legislative mandate, via the Parliament Acts of 1911 and 1949; these Acts provide that the Lords cannot block legislation arising in the Commons, but only (and not in all circumstances) delay it.³² Although both houses may initiate legislation, most government bills are first presented to the Commons.³³ The fact that the Commons has more lawmaking authority than the Lords in Westminster, and the Scottish Parliament being unicameral, makes the previously noted legislative process difference of Executive involvement that much more important in the respective institutions. The House and Senate in the US Congress share co-equal legislative authority, with certain exceptions.³⁴ This makes the prospect of successful legislation more difficult, as neither chamber is obligated to take-up the other chamber's legislation, and both chambers (and/or the Presidency) could be controlled by different parties at the same time.³⁵ Therefore, producing a sympathetic personalised bill that will unite legislators in both parties and chambers under a common cause could be one result of having co-equal legislative chambers.

Lastly, all three institutions have parliamentary counsel that aids in drafting legislation for the respective chambers.³⁶ However the Westminster and Scottish Parliamentary Counsels

³² A W Bradley & K D Ewing, *op. cit.*, p. 203; A Brazier, S Kalitowski, & G Rosenblatt, *Law in the Making: A Discussion Paper* (2007). London, UK: The Hansard Society, p. 12.

³³ S M Jack. *Erskine May's Parliamentary Practice* (24th Ed.): The Law, Privileges, Proceedings and Usage of Parliament. (2011), London, UK: LexisNexis, p. 526; A Brazier, S Kalitowski, & G Rosenblatt, *op. cit.*, p. 12-13

³⁴ W McKay and C W Johnson. *Parliament and Congress: Representation and Scrutiny in the Twenty-First Century* (2010), Oxford, UK: Oxford University Press, p. 421.

³⁵ Additionally, for a bill to be passed to the president it must be approved in the same form by both houses (US Const., art. I, § 7).

³⁶ For Westminster, see: Office of the Parliamentary Counsel Website. Available at: <http://www.cabinetoffice.gov.uk/parliamentarycounsel/counsel.aspx>; For the Scottish Parliament, see: Scottish Parliamentary Counsel Website. Available at: <http://www.scotland.gov.uk/About/Directorates/OSPC>; For the US Congress see: (House) House Office of the Legislative Counsel. Available at: <http://www.house.gov/legcoun/> And (Senate) Senate Office of Legislative Counsel. Available at: <http://slc.senate.gov/>.

possess a heavier hand in titling legislation than the parliamentary counsels of the US Congress, who usually reserve this privilege for legislators.³⁷ For Congress, this inevitably leads to a higher number of personalised bill titles resulting from humanised public law campaigns. The fact that short titles in Westminster and the Scottish Parliament are largely written by unbiased civil servants, while short titles in the US Congress are inscribed by lawmakers themselves, likely makes the lure of an advantageous title that much more enticing in the latter.

2. WESTMINSTER RESPONSES

One of the main effects that humanised public law campaigns produce is connecting a problem or incident to a human face, thus providing a lens through which individuals analyse such legislation. In theory, providing this human connection enhances the emotion behind the law, thus enhancing favourability for the measure. Essentially, it is a political pressure point for lawmakers, who have to maintain a certain amount of respect for the individual incident and also for the law. From lawmakers perspectives this was seen as quite a problem, as many Westminster interviewees focused on the need for separation between emotion and the law. One MP 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’.³⁸ Another MP declared the law ‘shouldn’t be an emotional thing. Because that’s what law is

³⁷ 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; Jones, Brian Christopher (2012). Drafting Proper Short Titles: Do States have the Answer? *Stanford Law and Policy Review* (print details forthcoming).

³⁸ HC1 (House of Commons Interviewee 1)

about...to take the emotion out of many of these things',³⁹ while another a colleague maintained that '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'.⁴⁰

Some interviewees were even acutely aware of how the psychological processes of such campaigns operate. A Lords member acknowledged 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 beyond into broadening out that particular crime...it should extrapolate from the individual to the general'.⁴¹

Thus, the emotional side of humanised public law campaigns was recognized by Westminster interviewees, as participants consistently highlighted the negative aspects of injecting too much emotion into the law, and seemed acutely aware of the ramifications of such actions.

Other interviewees approached the topic from a broader legislative process and lawmaking perspective. One 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'.⁴² This answer was quite surprising considering that Westminster does not seem to have all too many evocative measures, and it certainly does not come close to the US

³⁹ HC2 (House of Commons Interviewee 2)

⁴⁰ HC6 (House of Commons Interviewee 6)

⁴¹ HL1 (House of Lords Interviewee 1)

⁴² HC3 (House of Commons Interviewee 3)

Congress in terms of humanised public law campaigns or the personalisation of legislation.

Another MP expounded on the ‘dignity of Parliament’, noting that it should be ‘professional’, as they are ‘passing laws’.⁴³ This same legislator further maintained that ‘if populism is on the face of the bill or the title, it doesn’t work’.⁴⁴ Thus, thoughts of humanised public law campaigns caused lawmakers to call into question the character of parliament, and therefore the impetus behind the consideration or enactment of such proposed laws.

While Westminster does not officially humanise their titles, six of fifteen interviewees surprisingly took the view that they could materialise at Westminster. Some unabashedly stated that the UK continues to seek many of its political cues from the US, which personalises a significant amount of their short bill titles. Yet the majority of interviewees stated that though humanised public law campaigns may continue to occur in the UK, personalised bill titles would not transpire. One bill drafter did not believe that Parliament would start using such titles anytime soon, as he maintained the main difference between the US and UK in this respect was the way bills are produced.⁴⁵ Others had stronger assertions, as one legislator said that there was ‘never any chance we would do it’⁴⁶, while a colleague proclaimed that ‘I don’t think it would happen, and nor do I think it’s desirable’.⁴⁷

Several politicians acknowledged that such naming could happen in the popular press, such as with Sarah’s Law, but maintained that the tradition would never be something Parliament

⁴³ HC5 (House of Commons Interviewee 5)

⁴⁴ Ibid

⁴⁵ UKBD1 (United Kingdom Bill Drafter 1). As mentioned above, in the US Congress lawmakers are seemingly free to inscribe whatever short title they want on the bill. This is not the case in the Westminster Parliament, where bill drafters usually title laws in consultation with ministers, and these titles also have to be approved by House authorities.

⁴⁶ HC2

⁴⁷ HC6

would adopt. An MP remarked 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’.⁴⁸ A Lords member 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 will not change.⁴⁹ Adding to the depth of these answers, a journalist stressed that a name such as Sarah’s Law would not be the official name of an Act.⁵⁰ 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’.⁵¹

Conversely, some interviewees thought that such titles could indeed be manufactured by Westminster. A Sunday newspaper journalist ominously stated that ‘we follow what happens in the States eventually’, and, referring to policy initiatives rather than bills, acknowledged that ‘there is a tendency already in government departments to name initiatives with American style titles, like “Every Child Matters”’.⁵² Another journalist asserted that ‘the next government’ (now the current government) will start personalising 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’.⁵³ She went on to

⁴⁸ HC4 (House of Commons Interviewee 4)

⁴⁹ HL2 (House of Lords Interviewee 2)

⁵⁰ UKMM1 (United Kingdom Media Member 1)

⁵¹ UKMM2 (United Kingdom Media Member 2)

⁵² UKMM3 (United Kingdom Media Member 3). Department of Education ‘Every Child Matters’ initiative was set up by the Children Act of 2004. More information is available at: <http://www.education.gov.uk/consultations/downloadableDocs/EveryChildMatters.pdf>

⁵³ UKMM5 (United Kingdom Media Member 5)

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’.⁵⁴ A couple legislators agreed with the journalists, as one seemed to advocate the practice, stating ‘maybe we should...maybe we should be more robust about it. But, it’s not in our nature to be like that’,⁵⁵ while another noted that ‘[o]n the basis that everything the States do we eventually do some day, um...yes, we will probably get to that point’.⁵⁶

The above interviews highlight some concerns from lawmakers and those close to the legislative process regarding humanised public law campaigns. On the whole Westminster interviewees, and lawmakers especially, desired a clear separation from the legislative process and the emotional baggage that accompanies public law campaigns. They looked at an intermingling of these factors with an uncomfortable disdain. In doing so, they questioned the integrity of Parliament for even considering such populist and overly emotional legislation. However, a surprising number of interviewees thought that Westminster could start humanising their bill titles in the future, akin to current US Congress practices. If these latter inclinations are ever realised, there is likely to be a marked increase in emotional and political lawmaking inside Westminster.

3. SCOTTISH RESPONSES

⁵⁴ Ibid

⁵⁵ HC7 (House of Commons Interviewee 7)

⁵⁶ HC1

Similar to Westminster interviewees, the Scottish Parliament interviewees touched on three main issues: the emotion involved in public law campaigns; some general parliamentary process issues; and whether or not the Scottish Parliament would ever use sympathetic figures in the titles of their bills.

The depth of negative responses to humanised public law campaigns was noticeable in Scotland. Some of these responses argued that legislators should detach themselves from such emotional or evocative distractions, and concentrate on the substance of the legislation. A government employee declared that they ‘would never adopt it’ because ‘things like this are hugely emotive’,⁵⁷ while an MSP stated that legislators must remember that they are ‘enshrining something in law’ and that using such methods would be too emotive.⁵⁸ 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.⁵⁹ 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-jerk emotional [reaction]’.⁶⁰ Again, the acknowledgment for separation between emotion and the law was a significant concern for interviewees.

Many Holyrood interviewees were also concerned with parliamentary process issues. One legislator argued that there would ‘be a danger in these circumstances of bringing legislation to a populist level that actually would *undermine the whole legislative process*’ (emphasis added),⁶¹ while a colleague noted that it would indeed ‘*cloud due process*’ (emphasis added).⁶²

⁵⁷ SCTGOV1 (Scottish Government Interviewee 1)

⁵⁸ MSP5 (Member of Scottish Parliament 5)

⁵⁹ SCTMM3 (Scottish Media Member 3)

⁶⁰ Ibid

⁶¹ MSP2 (Member of Scottish Parliament 2)

Speaking about law in general, another MSP noted ‘[t]here’s something about the dignity of the law...there’s something about the law having to define all cases, and we don’t just legislate on the back of one horrendous case’.⁶³ Notice that this member used the word ‘dignity’, similar to the Westminster MP above, to describe the lawmaking functions of his respective institution. Another member said that it should not happen, insisting that doing so ‘is a value judgment, and politicians are not supposed to make value judgments’.⁶⁴

Scottish respondents seemed unwavering in their belief that Holyrood would not be using personalised bill titles anytime soon. Some acknowledged that there may be laws that arise which are based on tragic events, but maintained that the specific title of the bill would not be based around the events of an individual involved. One 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’.⁶⁵ Others agreed. Another legislator stated that it should not happen in the Scottish Parliament, because in doing so titles and therefore bills would become ‘sacrosanct’ and serve as ‘totem poles’ for policies and legislation.⁶⁶ Adding to the opposition against such titles, one legislator stated that ‘I’m almost in a way turned off, because I feel that they’ve taken one

⁶² MSP6 (Member of Scottish Parliament 6)

⁶³ SCTGOV1

⁶⁴ MSP5

⁶⁵ MSP4 (Member of the Scottish Parliament 4)

⁶⁶ MSP6

particular incident, and now they want to make law because of that one particular incident’,⁶⁷ therefore making him less likely to support the legislation.

The Scottish Parliament is unique in that it does have rules in relation to short bill titles, which ultimately protects Holyrood from having overly evocative monikers. Specifically, the Presiding Officer’s Recommendations on the Proper Form of Bills, Section 2.5 of the 3rd Ed Guide on Public Bills states under ‘Content’ that they check ‘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**’ (emphasis added).⁶⁸

Additionally, section 9.2.3 of the Scottish Standing Orders details 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**’ (emphasis added).⁶⁹ A Scottish bill drafter touched on the above stipulations, acknowledging, ‘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’.⁷⁰ Supporting this statement, a government employee 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’.⁷¹

⁶⁷ MSP7 (Member of Scottish Parliament 7)

⁶⁸ Scottish Parliament, Guidance on Public Bills (2007) 3rd Ed., Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25656.aspx>.

⁶⁹ Ibid. Available here in Annex A here: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25697.aspx>.

⁷⁰ SCTBD2 (Scottish Bill Drafter 2)

⁷¹ SCTGOV2 (Scottish Government Interviewee 2)

Many Holyrood insiders touched on the same issues as Westminster interviewees, such as keeping emotion and the law separate and some general parliamentary process issues related to humanised public law campaigns. However, the depth of negative responses to potential personalised bill titles was more noticeable with the Scottish cohort. Unlike some of their southern neighbours, no Scottish insiders believed that personalised bill titles were likely to be employed by the Scottish Parliament in the future; something that likely stems from the Presiding Officer's rules related to short bill titles, which are unique to the Scottish Parliament.

4. US CONGRESSIONAL RESPONSES

As seen in the Introduction, personalised short bill titles have significantly increased in the US Congress from the late 1990s onward. Anecdotal examples above demonstrated that some personalised bills were quickly passing through congressional processes at various points, and the titles were being used as legislative tactics designed to gather support for the legislation. Therefore the below investigation centred on whether such titles were indeed parliamentary tactics designed to influence, and also whether or not such titles were warranted on public law documents. It turns out that lawmakers, staffers and media members strongly agreed that personalising a bill title makes such measures more appealing to all those involved, including legislators. Most thought that using such names enhanced bill 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 legislators and media members: the former tended to view the practice as beneficial, while the latter spoke against such practices.

Most of the merits or advantages behind such tactics were noted by interviewees on the legislative side. One Congressional 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’⁷², while a colleague noted that ‘if a bill calls for it, it can be attractive to members to attach a name to it’.⁷³ A Congresswoman agreed, stating that it ‘personalizes a bill’ and ‘makes it easier to talk about it’.⁷⁴ 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 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’.⁷⁵ Another staffer’s focus was outside of Washington, arguing that it ‘provides for a more useful shorthand outside of the beltway’,⁷⁶ while another said that it can ‘make the bills more attractive to the public’.⁷⁷ And in perhaps the most outright endorsement of the issue, one staffer argued that ‘if the **name itself** is sufficiently well-publicized, and it crystallizes the need for the law, then that can be very effective’ (emphasis added).⁷⁸ The above evidence confirms that many short titles are designed to gather support both inside and outside of Washington.

A few on the legislative side disagreed with the use of such tactics. One staffer who stated throughout the interview that he just wanted numbers for bills responded to this question in a similar manner, declaring, ‘[i]t should just be the bill number and text. Make it plain and

⁷² SENSF1 (Senate Staffer 1)

⁷³ HOUSESF4 (House Staffer 4)

⁷⁴ MCON1 (Member of Congress 1)

⁷⁵ HOUSESF2 (House Staffer 2)

⁷⁶ HOUSESF3 (House Staffer 3). 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’.

⁷⁷ HOUSESF5 (House Staffer 5)

⁷⁸ HOUSESF6 (House Staffer 6)

simple, so, you know...so, people, constituents, don't feel misled'.⁷⁹ Others felt the same, such as a Congressman who declared 'I wish they 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'.⁸⁰ He went on to state that 'it's just awful hard for members to say no to anybody up here'.⁸¹

Many parliamentary journalists spoke against the use of such naming tactics. One maintained that employing such methods 'warps the policy discussion to some extent',⁸² while another declared that it is a 'very effective tool',⁸³ but 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 eloquently 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'.⁸⁴

Some journalists seemed quite indifferent to the practice, however, and others offered opinions from a more pragmatic perspective. One stated that 'it's easy to overstate how much

⁷⁹ HOUSESF1 (House Staffer 1)

⁸⁰ MCON2 (Member of Congress 2)

⁸¹ Ibid

⁸² USMM1 (US Media Member 1)

⁸³ USMM2 (US Media Member 2)

⁸⁴ USMM4 (US Media Member 4)

any of this matters’,⁸⁵ indicating that personalised bill names probably have a negligible effect, while another declared that ‘it doesn’t really affect how I report it out’.⁸⁶ 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 about it and write about it’,⁸⁷ while one of his colleagues agreed, maintaining that ‘it absolutely helps to frame it in those people’s minds’.⁸⁸ But this same journalist was also very suspicious of such titles, and noted that his colleagues ‘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 actually is’.⁸⁹

While there was some dispute with American interviewees as to whether using such personalised titles was appropriate in the lawmaking process, there did not seem to be any disagreement that such titles enhance attention from both legislators and the general public. Additionally, most interviewees acknowledged that such titles are primarily used as a procedural parliamentary tactic, and an effective one at that.

5. CONCLUSION

The gulf between transatlantic neighbours on these issues could not be more readily apparent, as this article highlights the major differences between such lawmaking bodies in regard to humanised law campaigns and personalised bill titles. Legislative interviewees in the US stressed

⁸⁵ USMM3 (US Media Member 3)

⁸⁶ USMM8 (US Media Member 8)

⁸⁷ USMM6 (US Media Member 6)

⁸⁸ USMM7 (US Media Member 7)

⁸⁹ USMM7

that such titles could be ‘compelling’,⁹⁰ ‘attractive’,⁹¹ ‘useful’,⁹² ‘effective’,⁹³ and ‘good idea[s]’,⁹⁴ that can make a bill ‘easier to talk about’.⁹⁵ Meanwhile, UK and Scottish interviewees continually stressed de-emotionalised parliamentary processes and especially non-personalised statutory bill titles. A couple respondents from Scotland even noted that the employment of the latter could ‘undermine the whole legislative process’⁹⁶ and ‘cloud due process’⁹⁷ to a certain extent. The ‘dignity of Parliament’⁹⁸ and the ‘dignity of the law’⁹⁹ were also mentioned by UK interviewees, aspects that went unmentioned by their American counterparts.¹⁰⁰ Just as the introduction demonstrated the wide chasm between the three jurisdictions regarding such issues, so too does the interview data.

However, problematically, some insiders in-and-around Westminster believe that the adoption of personalised short bill titles is possible in the future.¹⁰¹ Unlike the Scottish Parliament, Westminster does not have any official rules or regulations in regard to the content

⁹⁰ SENSF1

⁹¹ HOUSESF4

⁹² HOUSESF3

⁹³ HOUSESF6

⁹⁴ HOUSESF2

⁹⁵ MCON1

⁹⁶ MSP2

⁹⁷ MSP6

⁹⁸ HC5

⁹⁹ SCTGOV1

¹⁰⁰ Additionally, rationality and objectivity were mentioned by MP6, and were also two characteristics unmentioned by American interviewees.

¹⁰¹ UKMM3, UKMM5, HC1

of short titles.¹⁰² This is potentially worrying, as it has already come to light that parliamentary counsel bill drafters in the UK ‘quite often’ get requests for evocative short titles.¹⁰³ If these calls increase in number and severity, Westminster may have its hands full.

Other significant findings from this piece are that political insiders from Westminster and the Scottish Parliament: (1) wish the law be devoid of emotion; and (2) that they recognize the impact that humanised public law campaigns and personalised titles may have on the parliamentary process. Upholding these values should lessen the chance of short bill titles in either Parliament from ever being graced with sympathetic individuals. Though Britain may at times get their political and legal cues from the US Congress, as some interviewees acknowledged, this could be one area where they do not follow suit. The suggestion that such campaigns could ‘undermine the whole legislative process’¹⁰⁴ and ‘cloud due process’¹⁰⁵ displays the value that lawmakers have for their institutional processes, and also accentuates the threat that such campaigns or over-personalisation may pose to lawmaking in general.

Conversely, US insiders were split on whether humanised law campaigns and personalised bill titles were appropriate tools during the legislative process. These lines were

¹⁰² The closest thing Westminster has to any official proclamation comes from *Erskine May's Parliamentary Practice*, perhaps the main UK authority on legislative proceedings, which states that the short titles of bills must ‘describe the bill in a straightforwardly factual manner. An argumentative title or slogan is not permitted’, and notes that this was determined in a private ruling by the Speaker (Jack, Sir Malcolm. (2011) *Erskine May's Parliamentary Practice (24th Ed.): The Law, Privileges, Proceedings and Usage of Parliament*. London, UK: LexisNexis, p. 526). However, in a new book on Westminster Parliament legislative processes called *Laying Down the Law*, former Parliamentary Counsel 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’. (Greenberg, Daniel (2011) *Laying Down the Law: A Discussion of the People, Processes and Problems that Shape Acts of Parliament*. London, UK: Sweet and Maxwell, p. 102). Thus, the subject remains undecided by Westminster.

¹⁰³ B C Jones, Research Note: Do Short Bill Titles Matter? Surprising Insights from Westminster and Holyrood. (2011), *Parliamentary Affairs* (print details forthcoming, published online in December 2011).

¹⁰⁴ MSP2

¹⁰⁵ MSP6

largely divided between those working inside and outside the halls of Congress. Legislators and staffers believed such titles were beneficial not only to fellow legislators in terms of gathering support and votes for their measures, but also to explain and justify the need for such laws to the wider general public. Yet many journalists took issue with such tactics, stating they are a ‘very effective tool’¹⁰⁶ in terms of a framing device,¹⁰⁷ but warned that such titles are ‘exploitative’,¹⁰⁸ potentially ‘misleading’,¹⁰⁹ and that using such language ‘warps the policy discussion’¹¹⁰ to a certain extent. Thus those detached from attempting to get bills through Congress viewed the legislative tactic less positively, recognising the possible effects that such naming devices could have on those considering such measures, also how they could influence the conversation and debate surrounding such proposals.

US insiders provided little discussion in relation to the potential emotional and/or other effects that such campaigns/titles may have, although a few did mention concerns. One legislator noted they were ‘designed to get sympathy’,¹¹¹ while a staffer desired just bill numbers on proposals so ‘constituents don’t feel misled’.¹¹² Voices such as these could be positive omens for those wishing to de-emotionalise the legislative process in the US Congress. That being said, the chart located above shows that the personalised short title phenomenon does not appear to be abating; there are no formal rules or regulations regarding short bill titles in Congress, and no

¹⁰⁶ USMM2

¹⁰⁷ USMM6, USMM7

¹⁰⁸ USMM4

¹⁰⁹ USMM7

¹¹⁰ USMM1

¹¹¹ MCON2

¹¹² HOUSESF1

serious discussion of such matters has taken place on a formal level by the date of this writing. Those close to the legislative process appear to believe that such titles aid their proposals chances of becoming law.¹¹³ Therefore any incentive to curtail such drafting practices at this juncture seems far-fetched and highly unlikely; however detrimental it may be to finding and enacting the best law and policy available, rather than the most sympathetic name. The very concept of a personalised public law is oxymoronic, and seems to logically defeat the purpose of such a law.

This exploratory study also calls into question many ancillary issues for future articles, such as: does the use of personalised bill titles over-emotionalise the lawmaking process; are humanised law campaigns and personalised bill titles a beneficial and/or ethical parliamentary tactic; would significant legal changes resulting from humanised law campaigns be better vetted in a Parliamentary setting or in a regulatory manner; are personalised bill titles in the Westminster Parliament a possibility; and does the discussion, debate and/or use of humanised public law or personalised bill titles decrease the dignity or professionalization of lawmaking bodies? It may be that the product of humanised public law campaigns are of lower quality than the product of neutral campaigns (or no campaigns at all for that matter), as the focus of debate centres around one individual rather than the society as a whole. Conversely, it may be that the personalisation of statute law eases the understanding of complex issues for both legislators and the general public, thus increasing the quality of discussion and debate both inside and outside lawmaking institutions. However these are questions and hypotheses for future research.

¹¹³ In addition to the evidence gathered in my interviews and located in this article, a Wall St. Journal writer aptly pointed this out in January of 2011. Though he did not focus on personalized titles, he did shed some light on the evocative naming phenomenon in the US Congress. (J Bravin, Congress Finds, In Passing Bills, That Names Can Never Hurt You, WALL ST. J., (14 Jan 2011), at A1, *available at* <http://online.wsj.com/article/SB10001424052748703820904576057900030169850.html>)

Both Westminster and the Scottish Government examples above provide two separate models on how to suffice such campaigns without overly emotionalising the legislative process, and ultimately the law. In neither case was the victim's name used in any official capacity by the respective governments or parliamentarians. By not officially personalising humanised law campaigns both the UK and Scotland have succeeded in de-emotionalising their respective legislative and regulatory processes, and have slowly and deliberately implemented such matters without the weight of a tragic victim explicitly hanging over their heads. Although some Westminster insiders believed that such personalised titles could come to fruition in their parliament, it would behove of the US Congress to at times get their legislative cues from their transatlantic neighbours, and especially in this instance.