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**PROCESSES, STANDARDS AND POLITICS:
DRAFTING SHORT TITLES IN THE
WESTMINSTER PARLIAMENT, SCOTTISH
PARLIAMENT, AND U.S. CONGRESS**

Brian Christopher Jones, *Academia Sinica*



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*Brian Christopher Jones**

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I. INTRODUCTION

After the terrorist attacks of September 11th, 2001 the U.S. 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 2001,¹ while the Westminster Parliament, though not directly affected by the incident, passed the blander, but not altogether unevocative, Anti-Terrorism, Crime and Security Act of 2001.² Moreover, Westminster's response to the London bombings of July 2005 did not come until March 2006. This time the terrorist incident had occurred in their own country, yet the response in terms of short titles was even less evocative: the legislature responded by enacting the innocuously titled Terrorism Act 2006.³ When the financial crisis was first perceived in 2008 Congress passed the Emergency Economic Stabilization Act of 2008,⁴ while Westminster enacted the Banking (Special Provisions) Act 2008.⁵ Congress's subsequent major response to the financial crisis was the Dodd-Frank Wall Street Reform and Consumer Protection Act,⁶ while Westminster's other major responses to such matters were the Banking Act 2009⁷ and the Corporation Tax Act 2009.⁸

But differences in short titling between the lawmaking bodies lie in other unexpected areas as well, such as mental health. While the subject of mental health is not usually a 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

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

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

3. Terrorism Act, 2006, c.11 (U.K.).

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

5. Banking (Special Provisions) Act, 2008, c.2 (U.K.).

6. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

7. Banking Act, 2009, c.1 (U.K.).

8. Corporation Tax Act, 2009, c.4 (U.K.); additionally, although it can be argued that the U.S. 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.

2006,⁹ while Westminster passed the more functionally-titled Autism Act 2009.¹⁰ Moreover, the United Kingdom passed the innocuously titled Mental Health Act 2007,¹¹ while next year the U.S. Congress approved the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.¹² Thus, even subjects or issues that are not politically divisive display vastly different short titles in the respective legislatures.

What Westminster does have in regard to evocative short titles do not come close to the tendentious and promotional titles of the U.S. Congress. Over the past decade the following have been among Westminster's more "evocative" short titles: the Protection of Freedoms Act 2012;¹³ the Children, Schools and Families Act 2010;¹⁴ the Apprenticeships, Skills, Children and Learning Act 2009;¹⁵ the Green Energy (Definition and Promotion) Act 2009;¹⁶ the Counter-Terrorism Act 2008;¹⁷ the Safeguarding Vulnerable Groups Act 2006;¹⁸ and the Violent Crime Reduction Act 2006.¹⁹

The situation in the Scottish Parliament is similar. Since its first session in 1999 the 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. The Scottish Parliament's only titles that may border on

9. Combating Autism Act of 2006, Pub. L. No. 109-416, 120 Stat. 2821.

10. Autism Act, 2009, c.15 (U.K.).

11. Mental Health Act, 2007, c.12 (U.K.).

12. Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, Pub. L. No. 110-343, 122 Stat. 3881; tit. V, Subtitle B of Act. Interestingly, these two Acts were similar in some respects, but produced opposite outcomes. The U.K. bill declassified dependence on alcohol or drugs as a disorder, while the U.S. bill mandates insurance companies to cover "disorders" such as alcohol and drug dependence and other disorders, such as anorexia.

13. Protection of Freedoms Act, 2012, c.9 (U.K.). However, the United Kingdom has been 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 2010; the Department of National Heritage is now the Department of Culture, Media and Sport; 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). The renaming of these departments utilize 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 characterizations. Though perhaps a bit more subtle, such changes may be a restrained development of U.S.-style practices in the United Kingdom. This departmental re-titling could be an interesting subject for future research, but is beyond the remit of this Article.

14. Children, Schools and Families Act, 2010, c.26 (U.K.).

15. Apprenticeships, Skills, Children and Learning Act, 2009, c.22 (U.K.).

16. Green Energy (Definition and Promotion) Act, 2009, c.19 (U.K.).

17. Counter-Terrorism Act, 2008, c.28 (U.K.).

18. Safeguarding Vulnerable Groups Act, 2006, c.47 (U.K.).

19. Violent Crime Reduction Act, 2006, c.38 (U.K.).

the “evocative” are: the Ethical Standards in Public Life Act 2000;²⁰ the Standards in Scotland’s Schools etc. Act 2000;²¹ the Protection from Abuse (Scotland) Act 2001;²² the Protection of Children (Scotland) Act 2003;²³ the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005;²⁴ and the Protection of Vulnerable Groups (Scotland) Act 2007.²⁵

In essence, the tendentious and promotional titles employed by the U.S. Congress are a form of political marketing practices. These tactics have been practiced in U.S. politics since the 1950s, but had not started invading laws and the statutory titles that accompany them on a large scale until the 1990s.²⁶ Historically, U.K. politics on the whole was relatively immune to such political marketing practices until the past couple of decades. Influential researcher Jennifer 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.²⁷ She says that some of these public relations campaigns started in the 1990s, with movements such as “Ready for Government” and “Made in Britain,”²⁸ though these were not legislative initiatives.

Some of the marketing ideas appear to have come directly from the United States—in 1997, the Labour Party used a 10 point Contract with the People, similar to the Republican 1994 Contract with America.²⁹ Also, at one point the Conservative Party in Scotland adopted the “No Child Left Behind” slogan to convey their new approach, mimicking the No Child Left Behind Act of 2001 (NCLB) of the U.S. Congress.³⁰ The

20. Ethical Standards in Public Life etc. (Scotland) Act (A.S.P. 7).

21. Standards in Scotland’s Schools etc. Act, 2000 (A.S.P. 6).

22. Protection from Abuse (Scotland) Act, 2001 (A.S.P. 14).

23. Protection of Children (Scotland) Act, 2003 (A.S.P. 5).

24. Protection of Children and Prevention of Sexual Offences (Scotland) Act, 2005 (A.S.P. 9).

25. Protection of Vulnerable Groups (Scotland) Act, 2007 (A.S.P. 14). These titles, compared to older statutes in the United Kingdom, are more likely to display what I call “key action” techniques, which include a verb or action in the short title of the act (*e.g.*, “protection,” “prevention”). This is a popular style of bill naming in all three legislatures studied throughout this Article. More discussion on these types of names is located below.

26. Brian Christopher Jones, *The Congressional Short Title (R)Evolution: Changing the Face of America’s Public Laws*, 101 KY. L.J. ONLINE 42, 44 (2013) [hereinafter Jones, *The Congressional Short Title (R)Evolution*].

27. JENNIFER LEES-MARSHMENT, *THE POLITICAL MARKETING REVOLUTION: TRANSFORMING THE GOVERNMENT OF THE UK* (2004); JENNIFER LEES-MARSHMENT, *POLITICAL MARKETING AND BRITISH POLITICAL PARTIES* (2008) [hereinafter LEES-MARSHMENT, *POLITICAL MARKETING*].

28. LEES-MARSHMENT, *POLITICAL MARKETING*, *supra* note 27, at 149.

29. *Id.* at 187.

30. *Id.*; No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425.

U.K. media has also ceded to more evocative naming practices, as the BBC started changing the names of their political talk shows to attract more viewers (*e.g.*, changing “On the Record” to “The Politics Show”); they thought that the implementation of the word “show” in the new title sounded more entertaining.³¹ Changes such as these are ominous signs for the short titles of legislation, especially given that such titles in the U.S. Congress were unaffected by political marketing tactics for many years, yet eventually succumbed to such practices on a large scale.³² Because of the proliferation of evocative titles, congressional insiders, including lawmakers and staffers, now note that:

Short titles are no longer referential in nature, but have multiple purposes; bill titles may affect whether measures become law; some are not content with the tendentious and evocative language used in short titles; and that naming is now an important part of the lawmaking process . . . all of which takes away from the substance of the legislation.³³

While a historical account of these tactics is outside the focus of this Article, the legal and parliamentary conditions in each legislature that have led to contemporary short titles will be further explored.

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. As a member of the U.S. House Legislative Counsel once noted when speaking about the differences between Ireland and the United States: “[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.”³⁴

The sentiments of this Legislative Counsel member are shared by others. The legislative process and, more importantly to this article, 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 developing countries; countries that were attempting to improve their overall legislative capabilities (*e.g.*, Russia,

31. *Id.* at 84.

32. Jones, *The Congressional Short Title (R)Evolution*, *supra* note 26.

33. Brian Christopher Jones, *Drafting Proper Short Titles: Do States Have the Answer?*, 23 *STAN. L. & POL’Y REV.* 455, 459-62 (2012) [hereinafter Jones, *Drafting Proper Short Titles*].

34. Douglas M. Bellis, *Drafting in the U.S. Congress*, 22 *STATUTE L. REV.* 38 (2001).

China, France, Italy, Argentina, and Vietnam).³⁵ 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 just a flash in the pan,” Canadian legislative drafter Robert Bergeron states 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.³⁶ New Zealand law professor Nigel Jamieson believes that because of the globalization 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.³⁷ 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.

The main focus of this Article is to explore the differences between legislatures in terms of short titles, and why there is such a transatlantic divide. Specifically, I want to address how the U.K. Parliament and the U.S. Congress, steeped in such history and both employing a common language, now produce such radically different titles for their laws, as seen in the introduction above. Additionally, the Scottish Parliament is included as a contemporary example of a recently formed parliament, and is used to juxtapose the findings from the other two legislatures. First, this Article takes into consideration some of the main constitutional differences between legislatures. Then, it explores some of the main structural and legislative drafting differences in regard to short titles, as well as demonstrating how short titles are used in bills and laws in each jurisdiction from a presentational perspective. Next, it examines some of the attitudes that lawmakers and those close to the lawmaking process have about short titles, by revealing interview data I accumulated while researching the topic. Finally, this Article presents the main findings from a general point of view, and then lays out findings specific to each legislature.

35. Robert C. Bergeron, *Globalization of Dialogue on the Legislative Process*, 23 STATUTE L. REV. 85 (2002).

36. *Id.* at 90.

37. Nigel Jamieson, *The Scots Statute – Style and Substance*, 28 STATUTE L. REV. 182 (2007).

II. INSTITUTIONAL COMPARABILITY

A. *The United States and the United Kingdom*

From afar the U.S. Congress and Westminster Parliament look quite similar: they both operate in democracies; 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 modeling [sic] some part of their new Congress on Westminster,”³⁸ because they “derived their polities for the most part directly from England, and many of the men who created the U.S. Constitution were veterans of colonial legislatures.”³⁹

Much of the founding nomenclature and legislative processes of Congress had much Westminster influence. For example, when analyzing the roots of the “necessary and proper” clause in the U.S. Constitution, experts on the subject devoted more than two chapters in a manuscript to emphasize the similarities and differences between American and English drafting around that period, and how it could explain the contemporary significance of the clause.⁴⁰ The separation of powers doctrine detailed in the U.S. Constitution is said to be conceived from a tenet of British constitutional theory;⁴¹ also is the common-law U.S. legal system for that matter.⁴²

Although it is acknowledged in the next Part on U.K. and U.S. 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, Mary Sarah Bilder’s discussion of the influence that the Laws of England had (and continue to have) on the United States is compelling.⁴³ A *Legislative Guide* published for

38. WILLIAM MCKAY & CHARLES W. JOHNSON, *PARLIAMENT AND CONGRESS: REPRESENTATION AND SCRUTINY IN THE TWENTY-FIRST CENTURY* 3 (2010).

39. *Id.* at 3.

40. GARY LAWSON ET AL., *THE ORIGINS OF THE NECESSARY AND PROPER CLAUSE* (2010).

41. A.W. BRADLEY & K.D. EWING, *CONSTITUTIONAL AND ADMINISTRATIVE LAW* 82 (15th ed. 2011).

42. For a deeper discussion, see MARY SARAH BILDER, *THE TRANSATLANTIC CONSTITUTION: COLONIAL LEGAL CULTURE AND THE EMPIRE* (2004).

43. *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.” *Id.*

U.S. citizens in 1853 which contains the standing rules of the House of Representatives 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.⁴⁴ Even modern U.K. and Scottish constitutional law texts devote space to concentrate on similarities and differences with the U.S. Constitution, something they do not do with many other countries, including many of their more proximal or commonwealth partners.⁴⁵

It is because of the association and comparability between these lawmaking bodies that they were chosen for study; each has deep historical and contemporary connections to one another in numerous ways. The U.S. Congress's historical "roots are in the soil of Westminster,"⁴⁶ 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."⁴⁷

B. Major Constitutional Differences

Though the historical "established point of comparison" for both Westminster and the U.S. Congress may indeed be one another,⁴⁸ the lawmaking bodies have major constitutional differences that must be acknowledged before this Article can further proceed. The

at 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 United States gained independence from England, laws such as these were questioned as to whether they were applicable or not in the new U.S. states. She notes that this "was the perfect test issue to discover whether rights accepted under the transatlantic constitution survived." *Id.* at 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'" (at 189), thus ensuring that the laws of England are still influential in U.S. constitutional culture to this day. *Id.* at 189.

44. JOSEPH B. BURLEIGH, *THE LEGISLATIVE GUIDE* (4th ed. 1853). Included in this packet is a four page insertion 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 synopsis of any other country's legislation is included in the document.

45. BRADLEY & EWING, *supra* note 41; C.M.G. HIMSWORTH & C.M. O'NEILL, *SCOTLAND'S CONSTITUTION: LAW AND PRACTICE* 21 (2009).

46. *Id.* at 3.

47. *Id.* at 9.

48. Graham K. Wilson, *Congress in Comparative Perspective*, 89 B.U.L. REV., 827, 831 (2009) (citing WOODROW WILSON, *CONGRESSIONAL GOVERNMENT: A STUDY IN AMERICAN POLITICS* 58-60, 128-30 & 223-28 (1885)).

constitutional bases of both the United States and the United Kingdom are also quite different, given that the United Kingdom has an uncodified constitution developed mainly from Acts of Parliament, administrative law, and judicial precedent, while the United States has a written Constitution that was adopted in 1787 and shaped through various amendments and court decisions.⁴⁹ In differing ways both states have a constitution today which accords weight to the “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.⁵⁰ 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 U.K. constitutional law.⁵¹ Conversely, U.S. 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.⁵²

49. BRADLEY & EWING, *supra* note 41, at 12. Also, perhaps the main constitutional difference between jurisdictions is that the U.K. and Scottish Parliaments operate within a parliamentary democracy, while the U.S. Congress operates within a constitutional republic. 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 United States operates on “presidentialism,” while the relationship in the United Kingdom is one of “parliamentarism.” There is more on executive/legislative relations below.

50. *Id.* at 78. As noted below, it is acknowledged that these powers in the U.K. 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 U.S. 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 U.S. 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. *Id.* at 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 H.L. 513, at 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.” *Id.* at 78.

51. *Id.* at 49-77. The concept and current state of this “parliamentary sovereignty” has been recently questioned: some have argued that the United Kingdom 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. 2011) (disagreeing with the claim).

52. *Marbury v. Madison*, 5 U.S. 137 (1803); The United States operates on a presidential, federalist system, in which the federal government and states share lawmaking powers provided by the Constitution, and it is the Supreme Court’s task to uphold constitutional integrity. Congress’s powers themselves are prescribed in Article I, Section 8 of the Constitution, while

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.⁵³ Thus, the U.K. and Scottish governments propose a legislative program 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 U.S. system, although this does happen fairly frequently through “executive communication.” Cabinet ministers in the United Kingdom are also sitting parliamentarians, and retain a much larger role in proposing, scrutinizing and voting on legislation than members of the U.S. Cabinet, who possess little of these functions. This stems from a stronger separation of powers in the United States, and the fact that the President and Congressional Members are elected independently from one another.

Because the Executive controls much of the proposed legislation in Westminster, the lawmaking role of Parliament has been challenged. 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.⁵⁴ Congress, meanwhile, is more of an official “legislature” because many of the bills arising are initiated by legislative members themselves.⁵⁵ On a continuum, this has led some researchers to characterize Westminster as a reactive (“arena”) legislature, while characterizing Congress as a proactive (“formative”) legislature.⁵⁶ The lack of party discipline in Congress has also been celebrated, as some believe that it contributes to the “continued vitality” of the institution.⁵⁷ This is in contrast to the House of Commons, where,

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. One of the main provisions that have granted 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.” U.S. CONST. art. I, § 8, cl. 18.

53. The Executive in the U.S. 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.

54. ALEX BRAZIER ET AL., *LAW IN THE MAKING: A DISCUSSION PAPER*, THE HANSARD SOCIETY 4 (2007).

55. However, the U.K. and Scottish Parliaments do consider Private Members’ Bills, which are similar to how legislation is proposed in the U.S. Congress.

56. Gavin Drewry, *Law-Making Systems – How To Compare*, 29 *STATUTE L. REV.* 100, 105 (2008).

57. Wilson, *supra* note 48. However Wilson also notes that Congress is becoming more

being a parliamentary system, party discipline is in strong supply and MPs in the majority are sometimes referred to as governmental “sheep.”⁵⁸ Even after a bill enters Parliament, the government “continues to have a great deal of control” over the measure, especially in the Commons, as Standing Order 14 states that “government business shall have precedence in every sitting.”⁵⁹

Devolution throughout the United Kingdom 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 November 21, 1998 and was brought into effect through stages on April 1, 2000.⁶⁰ 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, defense, immigration, and nationality.⁶¹ Although the power of Westminster was apparently not affected by the Scotland Act,⁶² it has to date not used such powers to override Scottish Parliament authority.⁶³ In fact, on many occasions (some feel too many) the Scottish Parliament has exercised Westminster to draft legislation for them under the Sewel Convention.⁶⁴

Just as in Westminster, the elected Scottish Executive, headed by the

similar to a Parliamentary system, where party discipline is becoming stronger and therefore more polarizing. *Id.* at 836; see also John Urh, *Comparing Congress: Bryce on Deliberation and Decline in Legislatures*, 89 B.U. L. REV. 849 (2009).

58. Wilson, *supra* note 48, at 829 (citing Philip Cowley & Mark Stuart, *When Sheep Bark: The Parliamentary Labour Party Since 2001*, 14 J. ELECTIONS, PUB. OPINION & PARTIES 211 (2004).

59. BRAZIER ET AL., *supra* note 54, at 7.

60. HIMSWORTH & O’NEILL, *supra* note 45, § 3.18, at 59.

61. MCKAY & JOHNSON, *supra* note 38, at 21.

62. *Id.* at 21. The authors 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.’” *Id.*

63. The two parliaments find themselves in a somewhat odd predicament 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 U.N. Security Council, U.K. armed forces, the pound, U.K. 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.” Juliette Jowit, *Cameron Offers Scotland More Powers if it Votes No to Independence*, THE GUARDIAN (Feb. 16, 2012), available at <http://www.guardian.co.uk/politics/2012/feb/16/freedoms-scotland-no-independence-cameron> (last visited June 24, 2012).

64. BRADLEY & EWING, *supra* note 41, at 22; HIMSWORTH & O’NEILL, *supra* note 45, § 5.22, at 141.

First Minister, sets out a legislative program each year.⁶⁵ The main procedural variation that differentiates the Scottish Parliament from Westminster and the U.S. 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.⁶⁶ The idea of having a second chamber was not discussed at the Scottish Constitutional Convention and nor during the formation of the Scottish Parliament.⁶⁷ Yet lately arguments have been made for incorporating 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.⁶⁸ To date, however, there has 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 United Kingdom's devolved governmental structure, it provides an excellent comparative perspective by which to juxtapose both Westminster and the U.S. Congress. As Jamieson states, "[n]ew or renewed legislatures afford opportunities for reassessing old legislatures, and introducing new and improved forms of legislative composition."⁶⁹

C. Major Structural/Drafting Differences

Even from a general standpoint the constitutional and parliamentary differences between legislatures are quite apparent. This makes the more detailed constitutional differences between institutions that much more important, because each lawmaking body has numerous characteristics that make it unique. For example the role of civil servants (*i.e.*, drafters and House Authorities) in the drafting, naming and approving of legislation have different roles in each jurisdiction. This Article also discusses the implications for bill titling in regard to the differing power of legislators, drafting guidelines and legislative process issues. Let us now take each characteristic in turn.

1. Drafters

The role of drafters displays a large gulf between the U.S. and U.K. institutions in terms of short titles. The U.S. Congress, U.K. Parliament,

65. HIMSWORTH & O'NEILL, *supra* note 45, § 8.9, at 226-27.

66. *Id.* §§ 4.12, 8.9, at 82, 226.

67. *Id.* § 4.14, at 86.

68. *Id.*

69. Jamieson, *supra* note 37, at 182-98.

and Scottish Parliament each have an Office of Parliamentary Counsel that is composed of civil servant attorneys who specialize in drafting legislation.⁷⁰ However, drafters in the Westminster and Scottish Parliaments are much more involved in bill titling than drafters in the U.S. Congress. In both U.K. Parliaments, it is the drafter that provides the bill its original title, and usually, though not always, these remain unamended.⁷¹ In the U.S. Congress drafters do not participate in some of the “policy,” aspects of legislation, presumably under which short titles fall, and thus take a passive position on this subject, leaving short titles to individual members.⁷² Having unbiased civil servant drafters title legislation seems much more likely to result in descriptive short titles, than in a system where legislators provide such titles.

2. Legislators

Another major transatlantic gulf is apparent in regard to the involvement of legislators in the bill titling process. As pointed out above, drafters in the Westminster and Scottish Parliaments usually supply short titles to government bills. However, that is not the end of the story. In Westminster the minister sponsoring legislation has responsibility over a good amount of what is in the legislation, which can at times include the short title.⁷³ In fact, it is noted in Westminster’s Cabinet Office Drafting Guidelines that “[t]he Bill Minister is likely to take a particular interest in the short title given possible presentation issues.”⁷⁴ The same is not true in the Scottish Parliament, because they have specific guidelines in regard to short titles.

In Westminster Public Bills can also be introduced by members that are not part of the government, and these are called “Private Members’ Bills.”⁷⁵ They do not account for all that much in terms of number, but many of them are quite significant to the substantive nature of

70. In fact, each chamber of the U.S. Congress, the Senate and the House, have their own Parliamentary Counsel. This is not the case in Westminster, where there is only one Office of the Parliamentary Counsel.

71. This was confirmed in my interviews. *See also* CABINET OFFICE GUIDE TO MAKING LEGISLATION, Drafting the Bill, § 9.31, *available at* <http://www.gov.uk/government/publications/guide-to-making-legislation> (last visited June 24, 2012).

72. This was also confirmed in my interviews. *See also* statements from the websites of both the House and Senate Legislative Councils. Office of the Legislative Counsel, U.S. House Office of Representative, <http://www.house.gov/legcoun/> (last visited Nov. 9, 2012); Office of the Legislative Counsel, U.S. Senate, <http://slc.senate.gov/> (last visited Nov. 9, 2012).

73. Brian Christopher Jones, *Westminster’s Impending Short Title Quandary: and How to Fix It*, [2013] 2 PUB. L. 223 [hereinafter Jones, *Westminster’s Impending Short Title Quandary*].

74. CABINET OFFICE GUIDE, *supra* note 71, § 9.35.

75. SIR MALCOLM JACK, *ERSKINE MAY’S PARLIAMENTARY PRACTICE: THE LAW, PRIVILEGES, PROCEEDINGS AND USAGE OF PARLIAMENT* 525 (24th ed. 2011).

legislative output.⁷⁶ In fact, they are very similar to the Public Bills put forward in the U.S. Congress.⁷⁷ 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.⁷⁸ 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.⁷⁹ 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 U.K. Government. For example, some Private Members' Bills presented to Parliament in the 2010-2011 session were titled: Apprehension of Burglars Bill;⁸⁰ Employment Opportunities Bill;⁸¹ Rights Bill;⁸² Smoke-Free Private Vehicles Bill;⁸³ and the Dangerous and Reckless Cycling (Offenses) Bill.⁸⁴ These names would not likely adorn a governmental proposal.⁸⁵

76. DAVID MEIRS & ALAN PAGE, *LEGISLATION* 98 (1990). Also, it was a Private Members' Bill that eliminated the Death Penalty in the United Kingdom in 1965, called the "Murder (Abolition of the Death Penalty) Act." They have also been used to decriminalize abortion and homosexuality. BRADLEY & EWING, *supra* 41, at 189-90; BRAZIER ET AL., *supra* note 54, at 9.

77. 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, 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 these measures. From 1983-2008 some 230 Private Members' Bills were enacted, and many have had a significant impact on the statute book.

78. MCKAY & JOHNSON, *supra* note 38, at 394. However, the authors state that it is impossible to know how many such bills were acting on the requests of the government.

79. BRADLEY & EWING, *supra* note 41, at 190.

80. Apprehension of Burglars Bill 2010-12, UK Parliament, <http://services.parliament.uk/bills/2010-10/apprehensionofburglars.html> (last visited June 24, 2012).

81. Employment Opportunities Bill 2010-12, UK Parliament, <http://services.parliament.uk/bills/2010-11/employmentopportunities.html> (last visited June 24, 2012).

82. Rights Bill 2010-12, UK Parliament, <http://services.parliament.uk/bills/2010-11/rights.html> (last visited June 24, 2012).

83. Smoke-Free Private Vehicles Bill [HL] 2010-12, UK Parliament, <http://services.parliament.uk/bills/2010-11/smokefreeprivatevehicleshl.html> (last visited June 24, 2012).

84. Dangerous and Reckless Cycling (offences) Bill 2010-12, UK Parliament, <http://services.parliament.uk/bills/2010-11/dangerousandrecklesscyclingoffences.html> (last visited June 24, 2012).

85. Interview with House Staffer 2 (HOUSESF2) in Wash. D.C. (Oct. 21, 2009)

Additionally, a short survey of Private Members' Bills in the session mentioned above does seem to conjure up more use of key action words, such as "regulation," "prevention," or "protection." However, though these titles may be a bit more evocative than government bills, they certainly do not come close to resembling the tendentious and promotional short titles of the U.S. Congress.

Members of the Scottish Parliament have a small but active role in naming legislation, as evidenced by one of my interviewees who was highly involved in parliamentary business, who stated that they had taken special notice of short titles recently, in order to ensure that they accurately reflect the contents of the legislation.⁸⁶ Similar to the Westminster Parliament, Private Members' Bills are also presented in the Scottish Parliament. However, in terms of short titles, these legislators are acting under the Presiding Officer's guidelines for Public Bills, noted below. Therefore they are more constrained in terms of the language that they can use than are legislators in the Westminster Parliament, and especially in the U.S. Congress.

U.S. Congressional Members are granted unfettered license to name their bills whatever they like. There is no evidence that I have come across that Parliamentary Counsel or any House or Senate Authorities constrain legislators in any way when it comes to short titles.⁸⁷ Thus, for many it may come as no surprise that contemporary short titles often contain tendentious and promotional language.

3. House Authorities

Regardless of how bills originate in Westminster, they usually go through some pre-legislative consultation. Consultation among ministers, departments, drafters and outside organizations may take place during this process, and "green papers" and "white papers" are occasionally published and debated by Parliament.⁸⁸ And although there has been an effort made to enhance pre-legislative scrutiny (especially by the House of Commons Modernisation [sic] Committee), this process is still largely "carried on within government and behind the

[hereinafter HOUSESF2]; Interview with House Staffer 3 (HOUSESF3) in Wash., D.C. (Oct. 26, 2009) [hereinafter HOUSESF3]; Interview with House Staffer 5 (HOUSESF5) in Wash. D.C. (Oct. 22, 2009) [hereinafter HOUSESF5]; Interview with House Staffer 6 (HOUSESF6) in Wash., D.C. (Oct. 21, 2009) [hereinafter HOUSESF6].

86. Interview with Member of the Scottish Parliament 2 (MSP2) in Stirling, U.K. (Sept. 19, 2009) [hereinafter MSP2].

87. The contention that the short title was entirely in the purview of the member was confirmed throughout my interviews. HOUSESF2, *supra* note 85; HOUSESF3, *supra* note 85; HOUSESF5, *supra* note 85; HOUSESF6, *supra* note 85.

88. BRADLEY & EWING, *supra* note 41, at 283-84.

closed doors of Whitehall.”⁸⁹ 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.⁹⁰ However, Greenberg states that a request of name change does not mean that there indeed will be one.⁹¹ This technical consideration before formal presentation and during the legislative process may be one reason why evocatively named pieces of legislation are not very common in Westminster.

Scottish Parliament House Authorities, led by the Presiding Officer, have ultimate responsibility for the form and content of the bills presented. If there is a tendentious or promotional title when the bill is given to House Authorities, they will confer with the drafter and the minister responsible in order to decide on an appropriate name. This is similar to the process that occurs in Westminster, but in the Scottish Parliament they are acting under the rules handed down from the Presiding Officer on the form and content of bills.

Another large transatlantic divide is noticeable here, and was touched on above. Similar to Parliamentary Counsel drafters for each chamber, House and Senate authorities take a “hands-off” approach when it comes to short titles. This factor also contributes to the current state of congressional short titles.

Employing civil servants to draft legislation and, most importantly to this Article, to devise bill titles is one of the primary functions that could allow U.K. bill titling to maintain its independence from such policy branding. U.K. civil servants and House Authorities (including those in the Scottish Parliament) take much more interest and are often more involved in the naming of parliamentary short bill titles. In contrast, their transatlantic counterparts leave this privilege to the legislator sponsoring the bill for several reasons. One of these is the

89. *Id.* at 194.

90. DANIEL GREENBERG, CRAIES ON LEGISLATION 102 (9th ed. 2008) [hereinafter GREENBERG, CRAIES ON LEGISLATION]; DANIEL GREENBERG, LAYING DOWN THE LAW: A DISCUSSION OF THE PEOPLE, PROCESSES, AND PROBLEMS THAT SHAPE ACTS OF PARLIAMENT 56, 101-02, 130-31 (2011) [hereinafter GREENBERG, LAYING DOWN THE LAW]. This was also mentioned by a U.K. 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. Interview with U.K. Bill Drafter (UKBD1) in London, U.K. (Oct. 13, 2009) [hereinafter UKBD1]. 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.

91. GREENBERG, LAYING DOWN THE LAW, *supra* note 90, at 101-02, 130-31; Jones, *Westminster’s Impending Short Title Quandary*, *supra* note 73.

different system for naming bills.

4. Drafting Guidelines

Westminster decided through a series of Acts (the Short Titles Act of 1896, the Statute Law Revision Act 1948, and the Statute Law Revision (Scotland) Act 1964) that every bill and Act produced by their legislature, past and present, would contain a short title.⁹² Though this was decided, no formal guidelines, directives or instructions for short titles have ever been developed by the lawmaking body.⁹³ Throughout the years they have relied on collegiality and compromise when providing short titles, and this appears to have sustained them well thus far. Short titles are usually provided by drafters, but these are subject to change with input from House Authorities. During my interviews on this topic I asked a bill drafter how they gauge what a proper or improper short title is. He responded by saying, “the tests are: is it helpful to people looking for legislation; does it tell people what the bill is really about . . . the House authorities would have had a test of whether or not its tendentious.”⁹⁴ Because Westminster does not have any formal rules or regulations in relation to bill titles, it can be deduced that those are the standards that the Parliamentary Counsel and the House Authorities have for testing the legitimacy of titles, and these are perhaps the two main actors in the short titling process.⁹⁵

The Scottish Parliament is unique to this Article in that it does have formal guidelines on short titles, as its Standing Orders note 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.”⁹⁶ During the

92. GREENBERG, CRAIES ON LEGISLATION, *supra* note 90, at 103; JACK, *supra* note 75, at 527.

93. As pointed out in a forthcoming article of mine: Erskine May’s Parliamentary Practice is the main U.K. 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.” JACK, *supra* note 75, at 527. However, others have disputed this, as former Parliamentary Counsel drafter Greenberg notes that if a Minister wanted to put forward a propagandistic name, there are no means to stop this from going forward. Jones, *Westminster’s Impending Short Title Quandary*, *supra* note 73.

94. UKBD1, *supra* note 90. He further noted that “you draft bills because they need to get through Parliament, and that’s the first process . . . the short title is a relatively harmless place in order to do the sort of presentational stuff. *Id.*”

95. That is, if a Minister does not have a short title preference. If a Minister does have some type of short title preference, then they are indeed one of the main, if not the main actor, involved in titling the bill.

96. THE SCOTTISH PARLIAMENT, GUIDANCE ON PUBLIC BILLS: DIRECTORATE OF CLERKING AND REPORTING 56 (3d ed. 2007), available at <http://www.scottish.parliament.uk/parliamentary-business/Bills/25697.aspx> [hereinafter GUIDANCE ON PUBLIC BILLS].

preparation of a bill for introduction to Parliament, the House Authorities 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.”⁹⁷ Thus, the Scottish Parliament takes short titles very seriously, and for all intents and purposes these directives appear to be followed, as their contemporary short titles are mainly descriptive and neutral.

Neither the standing orders of the House⁹⁸ or the Senate⁹⁹ contain guidelines or standards in regard to short titles. However, both chambers have drafting manuals¹⁰⁰ and each contain similar guidelines in relation to short titles. The manuals are outdated, however, as the House version is from 1994 and the Senate version is from 1997. As a previous piece of mine has pointed out, what the manuals offer in advice is not usually heeded by members.¹⁰¹ Both manuals note that short titles should only be used for major legislation and cross-references.¹⁰² Other major directives that the manuals point out is that if a bill is amending a piece of previous legislation, then it should include “Amendments of [year]” somewhere in the short title.¹⁰³ Additionally, it notes that short titles should be “*short*.”¹⁰⁴ However, contemporary titles demonstrate that these are rarely followed.¹⁰⁵ In this respect Congress has again differentiated itself from the U.K. institutions; though they have short title directives in place, albeit in drafting manuals rather than in standing orders, such guidelines are often not followed.

97. *Id.* at 5.

98. JOHN V. SULLIVAN, U.S. GOVERNMENT, CONSTITUTION JEFFERSON’S MANUAL AND RULES OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES ONE HUNDRED TWELFTH CONGRESS (2011), <http://www.gpo.gov/fdsys/pkg/HMAN-1212/pdf/HMAN-112.pdf> (last visited Nov. 9, 2012). The House standing rules state 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.” *Id.* at 705. But, that is all that is mentioned in regard to short titles.

99. SENATE STANDING RULES, 112th Congress, available at <http://rules.senate.gov/public/index.cfm?p=RulesOfSenateHome> (last visited June 24, 2012).

100. HOUSE LEGISLATIVE COUNSEL, 104TH CONG., MANUAL ON DRAFTING STYLE (1995) [hereinafter MANUAL ON DRAFTING STYLE (1995)]; SENATE LEGISLATIVE COUNSEL, 105TH CONG., MANUAL ON DRAFTING STYLE (1997) [hereinafter MANUAL ON DRAFTING STYLE (1997)].

101. Jones, *Drafting Proper Short Titles*, *supra* note 33.

102. MANUAL ON DRAFTING STYLE (1995), *supra* note 100, § 323, at 26. MANUAL ON DRAFTING STYLE (1997), *supra* note 100, § 123, at 16.

103. MANUAL ON DRAFTING STYLE (1995), *supra* note 100, § 323, at 27.

104. *Id.*

105. Neither do many bills nowadays use the “Amendments of [year]” designation, and many contemporary short titles are within a few words to being as long as their long titles (*e.g.*, USA PATRIOT Act of 2001, PROTECT Act of 2003), which in essence does not make them “short.”

5. Legislative Processes Issues

Two major differences between Congress and the U.K. Parliaments in terms of legislative processes issues may impact short titles. Unlike in Westminster and the Scottish Parliament, the U.S. Executive does not propose a legislative program of bills at the beginning of each parliamentary session. Instead, all legislation is introduced by members of either the House or Senate.¹⁰⁶ 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 way that bills are presented in Congress may lead to more evocative wording. House members can drop proposals in a wooden box near the front of the House chamber, called the “hopper,” while Senators can introduce legislation with the clerks or on the Senate floor.¹⁰⁷ Use of the hopper or Senate floor methods are both relatively easy ways to make a political point or draw attention to particular issues, and thus may lend themselves to more evocative short titles.

Another major transatlantic difference is that short titles in Congress often change when bills travel from chamber to chamber, while they do not usually change in the Westminster Parliament on these occasions.¹⁰⁸ For example, look at the progression below of the Ryan White CARE Act of 1990, and how the bill changed as it traveled through the legislative process:

SHORT TITLE(S) AS INTRODUCED:

Comprehensive AIDS Resources Emergency Act of 1990

↓

SHORT TITLE(S) AS PASSED HOUSE:

AIDS Prevention Act of 1990

↓

SHORT TITLE(S) AS REPORTED TO SENATE:

Comprehensive AIDS Resources Emergency Act of 1990

↓

SHORT TITLE(S) AS PASSED SENATE:

Ryan White Comprehensive AIDS Resources Emergency Act of

106. BARBARA SINCLAIR, UNORTHODOX LAWMAKING: NEW LEGISLATIVE PROCESSES IN THE U.S. CONGRESS 43 (2007).

107. *Id.* at 11 & 44.

108. The Scottish Parliament is unicameral.

1990

↓

SHORT TITLE(S) AS ENACTED:

Ryan White Comprehensive AIDS Resources Emergency Act of 1990¹⁰⁹

Legislators from each chamber often wish to change the short titles of bills before they are introduced to their colleagues.¹¹⁰ Additionally, members have been known to change titles to pressurize individuals into voting for legislation.¹¹¹ This is not a frequent occurrence in Westminster or the Scottish Parliament, as titles are usually only changed to accommodate amendments that may have slightly changed the proposal.¹¹²

D. Short Title Textual Presentation

A major difference between the U.K. Parliaments and the U.S. Congress in regard to titles is that while bills are going through the formal parliamentary process, they are known and referred to by their short titles (bills in Congress are formally 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 arrow on the left in Figure 1. 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.¹¹³ The short title is in bold print at the top of every bill, and there is a running header throughout the printed

109. Library of Congress, THOMAS WEBSITE, available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d101:SN02240:@@T> (last visited June 24, 2012).

110. 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 U.S. Congress. 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). ERIC REDMAN, *THE DANCE OF LEGISLATION passim* (2001).

111. HENRY WAXMAN & JOSHUA GREEN, *THE WAXMAN REPORT: HOW CONGRESS REALLY WORKS* 50-51 (2009); Joshua Green, *The Heroic Story of How Congress First Confronted AIDS*, *The Atlantic*, (June 8, 2011), <http://www.theatlantic.com/politics/archive/2011/06/the-heroic-story-of-how-congress-first-confronted-aids/240131/>.

112. FRANCIS BENNING, *STATUTORY INTERPRETATION* 738 (5th ed. 2008).

113. Suffice it to say that this is not the way short titles are presented in the United States. However, this section goes into more detail regarding how such matters are performed in the U.S. Congress. For an example of when a bill becomes an Act in the Westminster Parliament, see *Children, Schools and Families Act, 2010*, available at http://www.legislation.gov.uk/ukpga/2010/26/pdfs/ukpga_20100026_en.pdf.

versions of bills and Acts that include the short titles. This is quite different from the U.S. congressional style, and especially in regard to short titles. Because such titles take such a prominent place in U.K. Statutes, there may indeed be much more importance placed on having an accurate short title, as these are the main reference points when parliamentarians discuss, debate, and generally refer to legislation.

Figure 1. Example of the Contents Page of the Protection of Freedoms Bill (2010-12)

-->	Protection of Freedoms Bill
	<hr/>
	CONTENTS
-->	PART I
	REGULATION OF BIOMETRIC DATA
	CHAPTER I
	DESTRUCTION, RETENTION AND USE OF FINGERPRINTS ETC.
	<i>Destruction rule for fingerprints and DNA profiles subject to PACE</i>
-->	1 Destruction of fingerprints and DNA profiles
	<i>Modification of rule for particular circumstances</i>
	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

Figure 1 shows the contents page of the Protection of Freedoms Bill.¹¹⁴ Because it is a modern Public Bill, it does not include a preamble, as these have fallen out of favor 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.¹¹⁵ However,

114. This has subsequently become an Act. *See supra* note 13.

115. GREENBERG, *LAYING DOWN THE LAW*, *supra* note 90, at 258. Greenberg goes on to state that

Every Bill/Act will include a long title that “must cover all the provisions in the Bill.”¹¹⁶

Bills/Acts are usually divided between the main body and schedules. If a Bill is of significant proportion, the main body is sometimes divided into parts, chapters,¹¹⁷ and then sections. Part 1 of the above bill is the “Regulation of Biometric Data,” (second arrow on the left); section 1 of part 1 begins with “Destruction of Fingerprints” (third arrow on the left). 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.”¹¹⁸ Unsurprisingly, Scottish Parliament legislation follows a very similar structure.

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).

Id. at 258.

116. CABINET OFFICE GUIDE TO MAKING LEGISLATION, *supra* note 71, at 9.31-9.33.

117. Not to be confused with the chapter numbers following the short titles of Acts.

118. UNIVERSITY OF OXFORD, Faculty of Law and Bodian Library, Legislation, Structure of an Act (2012), <http://denning.law.ox.ac.uk/lrsp/overview/legislation.php#structure> (last visited June 24, 2012).

Figure 2. A Copy of the Contents page of the Scottish Schools (Parental Involvement) Act 2006

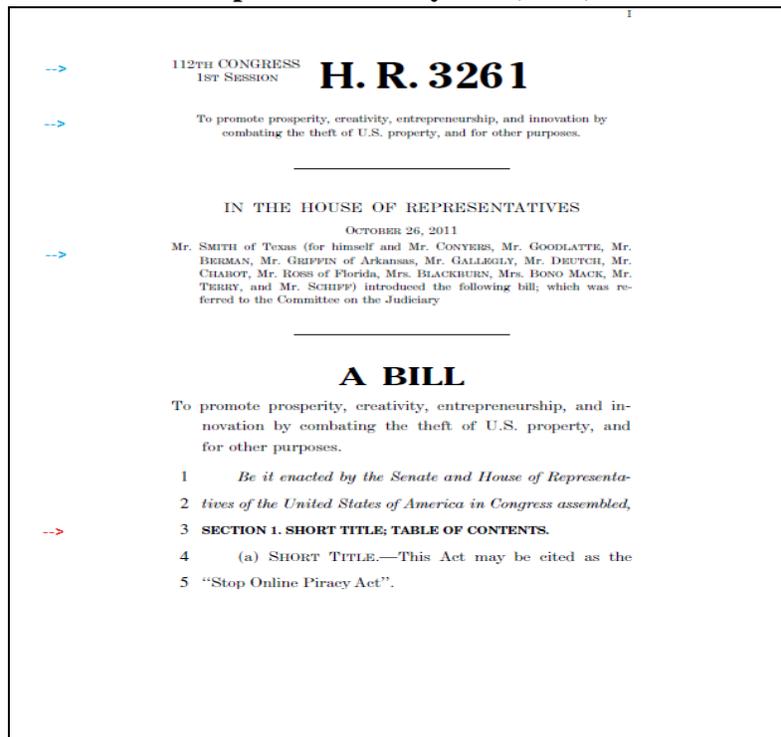
-->	<i>Scottish Schools (Parental Involvement) Act 2006 (asp 8)</i>
	
-->	Scottish Schools (Parental Involvement) Act
-->	2006
-->	2006 asp 8
	CONTENTS
-->	<i>Section</i>
	<i>Involvement, ambitions, objectives and performance</i>
	1 Duty of Scottish Ministers and of education authorities to promote involvement of parents in school education etc.
	2 Strategies for parental involvement
	3 Ambitions and objectives for a school
	4 Review of school performance
	<i>Parent Forums and Parent Councils</i>
	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
	<i>Duties, reports, appointments and complaints</i>
	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
	<i>Combined Parent Councils</i>
	16 Establishment etc. of Combined Parent Council
	17 Withdrawal from represented schools
	<i>Miscellaneous and general</i>
	18 Abolition of School Boards

Scottish Parliament in terms of the presentation of short titles on Bills and Acts.¹¹⁹ A copy of the Contents page of the Scottish Schools (Parental Involvement) Act 2006 is shown above. One can see from the very first arrow on the left that the short title is used as a running

119. 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.

header, above the crest, and the larger printed version of the short title (second arrow on the left) is located below. This is similar to what particular U.S. States do in regard to short titles, in terms of employing them as running headers (*e.g.*, Arizona).¹²⁰ Also, this structure is similar to bills currently travelling through the Scottish Parliament, as all bills include a running header of the short title.¹²¹ The bill is then followed by its chronological number in terms of enactment for a session (third arrow on the left) and then by its contents (fourth arrow on the left, 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 “Bill” to “Act” by the Royal Assent.

Figure 3. A Copy of the First Page of the Stop Online Piracy Act (2011)



120. ARIZ. LEGIS. COUNCIL, THE ARIZONA LEGISLATIVE BILL DRAFTING MANUAL 9 § 2.4 (2011-12), available at <http://www.azleg.gov/alisPDFs/council/2011-2012%20Bill%20Drafting%20Manual.pdf> (last visited June 24, 2012).

121. See, *e.g.*, Alcohol (Minimum Pricing) (Scotland) Bill, 2005, 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) (last visited June 23, 2012).

Figure 3 shows the first page of the H.R. 3621, the Stop Online Piracy Act 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.¹²² 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 arrow on the left marks the long title of the bill, followed by information 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 United States 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. Long titles in U.S. legislation serve a similar function to those in Westminster and the Scottish Parliament: they briefly provide 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 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;¹²³ but, again, *short titles are not presented here.* Headers contain the public law number (Pub. L. No.), the date the measure was passed, and where it is contained in the statute book. Similar to bills, the short titles of Acts are usually not mentioned until Section 1 on the formal text of the Act. This textual versus verbal discrepancy is surprising, because although short titles have become more prominent and evocative throughout the past couple decades in Congress, their place in the text of legislation is noticeably less than distinguished.

III. LEGISLATIVE INSIDER PERSPECTIVES FROM ALL JURISDICTIONS

A. Methods

One of the main rationales for employing qualitative interviews 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 topic, qualitative interviewing was the method most likely to draw out meanings from complex practices.

122. The number and session of Congress is also listed beside the bill number.

123. See, e.g., CAN-SPAM Act of 2003, available at <http://www.gpo.gov/fdsys/pkg/PLAW-108publ187/pdf/PLAW-108publ187.pdf> (last visited June 24, 2012).

Interviewees from each jurisdiction consisted of legislative insiders (*i.e.*, those on the legislative and/or policy side of the lawmaking process: legislators, staffers, bill drafters, a government official, and a policy analyst). The following is a jurisdictional breakdown of the thirty-one interviewees:

- Westminster Parliament: 11 interviews (7 MPs, 2 Lords, 1 Baroness, 1 Bill Drafter).
- Scottish Parliament: 11 interviews (7 MSPs, 2 Bill Drafters, 1 House Authority, 1 Government Policy Analyst).
- U.S. Congress: 9 interviews (2 Congresspersons, 7 Congressional Staffers).

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 engaged with numerous measures (and thus short titles) in one way or another. All three jurisdictions studied in this Article require legislators to vote on particular laws to give them legal effect, and thus they are accountable for their decisions regarding various bills. The U.S. 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, as noted above. Obtaining insights from these perspectives was essential to this project. While the three jurisdictions may go about naming in a different manner, this Article 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 House Authorities in both the Westminster and Scottish Parliament are responsible for approving such legislation before it officially goes to the floor. Amongst the interviewees for this project included one such individual, a civil servant House Authority from the Scottish Parliament who has such responsibility. Thus, individuals occupying several different roles are represented in the interview data below.

B. *Selected Results*

Other articles, mostly concerning specific jurisdictions, have brought to light that short titles at times may have significant implications. An article on short title reform in the U.S. Congress demonstrated that legislative insiders and legal/political journalists thought such titles: are no longer merely referential points; may be affecting whether propositions become law; that some close to the legislative process are

not content with contemporary short title language; and are regarded as important aspects in the lawmaking process.¹²⁴ A piece on the Westminster and Scottish Parliament replicated some of these findings,¹²⁵ and also found that some short titles affected legislators when voting on legislation, and that some short titles in Westminster appeared to be written to manipulate or persuade the intended audience into voting for the measure.¹²⁶ Additionally, a recently published article demonstrated the transatlantic differences that Westminster, Scottish and congressional legislative insiders have in regard to personalized public law campaigns and personalized bill titles.¹²⁷ U.S. interviewees tended to view personalized proposals, and thus personalized short titles, as essential parts of the legislative process, while U.K. and Scottish legislators believed that such measures could easily distort the process and over-emotionalize the law. The latter two groups desired a clear separation from emotion and the legislative process.

However, other key findings from my interviews demonstrate the similarities and differences between these legislatures in terms of short titles and help explain the discrepancy among institutions. These are examined below.

C. Misleading Titles¹²⁸

1. Westminster Parliament

Surprisingly, a number of Westminster legislative insiders stated that on occasion short titles are misleading, although it was not deemed a regular occurrence. Others said that they were uncertain and three interviewees stated that short titles were not misleading. Most of those interviewed did not think that this was happening on a large scale

124. Jones, *Drafting Proper Short Titles*, *supra* note 33.

125. Brian Christopher Jones, *Do Short Titles Matter? Surprising Insights from Westminster and Holyrood*, 65 PARLIAMENTARY AFF. 448 (2012) [hereinafter Jones, *Do Short Titles Matter?*]. In both Westminster and the Scottish Parliament it replicated findings that short titles were not merely referential points and that they are regarded as important aspects of the legislative process. *Id.* However, while a significant number in Westminster stated that short titles may affect whether a proposal becomes law, this was *not* replicated in the Scottish Parliament. *Id.* Also, it was found in the Westminster Parliament that some titles were written to manipulate or persuade their intended audience; this was also *not* found in the Scottish Parliament. *Id.*

126. *Id.*

127. Brian Christopher Jones, *Transatlantic Perspectives on Humanized Public Law Campaigns: Personalising and Depersonalising the Legislative Process*, 6 LEGISPRUDENCE 57 (2012) [hereinafter Jones, *Transatlantic Perspectives on Humanized Public Law Campaigns*].

128. The exact question that was asked to all jurisdictions was: “Do you feel as if certain names of legislation are misleading, or could be construed as misleading? If yes, please provide some examples.”

throughout the United Kingdom, but in limited instances. Short titles are just that, short, and in a few words they may not be able to accurately or precisely describe a piece of legislation.

In reference to Westminster's contemporary descriptive 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."¹²⁹ A colleague agreed, stating that the United Kingdom does not have misleading bill titles, because "the Speaker and the deputies wouldn't have it,"¹³⁰ while a Lords member reiterated the accuracy point, adding that "the bulk of most bills does contain what you would expect to find there having read the title."¹³¹ One MP noted that they "can be a bit misleading,"¹³² but only because of the many amendments introduced during the passage of legislation, rather than because of the original content of the bill.¹³³

Another notable point was made by a Lords member, who stated that identifying misleading titles "would tend to be a political judgment,"¹³⁴ and went on to 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."¹³⁵

Others expressed skepticism about the Prevention of Terrorism Acts as well: one member called it the "most questionable" short title in the U.K. statute book.¹³⁶

129. Interview with House of Lords Member 1 (HL1), in London, U.K. (Oct. 14, 2009) [hereinafter HL1].

130. Interview with House of Commons Member 7 (HC7), in London, U.K. (Oct. 14, 2009) [hereinafter HC7].

131. Interview with House of Lords Member 2 (HL2), in London, U.K. (Oct. 13, 2009) [hereinafter HL2].

132. Interview with House of Commons Member 2 (HC2), in London, U.K. (Oct. 15, 2009).

133. Interview with House of Commons Member 3 (HC3), in London, U.K. (Oct. 13, 2009) [hereinafter HC3].

134. Interview with House of Lords Member 3 (HL3), in London, U.K. (Oct. 14, 2009) [hereinafter HL3].

135. *Id.*

136. Interview with House of Commons Member 6 (HC6), in London, U.K. (Oct. 14,

The drafter stated that the only misleading title he could think of was a Private Members' Bill a few years back.¹³⁷ 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!*¹³⁸ 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 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.¹³⁹

Some MPs divulged bills they thought were misleading. One member berated the Parliamentary Standards Bill travelling through Parliament at the time as nothing more than parliamentary privilege, and 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."¹⁴⁰ Another MP derided the Coroners and Justice Bill for not being much about justice, and little about coroners;¹⁴¹ and a colleague added, "What bothers me is that the title of

2009) [hereinafter HC6]. The U.K. Parliament had a series of "Prevention of Terrorism" Acts back in the 1970s and 1980s, and these were mentioned frequently throughout the interviews as short titles that may have had particular implications.

137. UKBD1, *supra* note 90.

138. UKBD1 stated that it was titled the "Betting and Gaming Amendment Act," but was not sure of the exact short title. *Id.* 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.

139. *Id.*

140. Interview with House of Commons Member 1 (HC1), in London, U.K. (Oct. 12, 2009).

141. Interview with House of Commons Member 4 (HC4), in London, U.K. (Oct. 14, 2009) [hereinafter HC4].

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."¹⁴²

Overall, however, most Westminster interviewees thought that very few short titles were misleading, and the ones that did could only point to one or two examples of misleading titles.

2. Scottish Parliament

Most Scottish legislators just gave short, decisive answers that most of the bill names in the Scottish Parliament were not misleading.¹⁴³ One MSP said that some titles dealing with education appear misleading, but noted that "very few" do this, and people "generally get an idea of what it's [the bill] doing."¹⁴⁴ Another MSP expressed that on the whole the Parliament names are "quite boring and straightforward. So, we usually generally understand what they mean."¹⁴⁵

A Scottish House Authority provided an excellent example about a bill that was potentially misleading, but which the House Authorities changed. This example provides a good comparison in regard to what the Scottish Parliament would deem "misleading," compared to Congress. The example 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."¹⁴⁶ Eventually they had to change the title before it was introduced to Parliament. 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,

142. Interview with House of Commons Member 5 (HC5), in London, U.K. (Oct. 13, 2009) [hereinafter HC5].

143. Interview with Member of the Scottish Parliament 1 (MSP1), via email (Jan. 26, 2010) [hereinafter MSP1] (this was the only interview performed via email); Interview with Member of the Scottish Parliament 4 (MSP4), in Edinburgh, Scot. (July 20, 2009) [hereinafter MSP4]; Interview with Member of the Scottish Parliament 7 (MSP7), in Edinburgh, Scot. (Sept. 9, 2009) [hereinafter MSP7].

144. Interview with Member of the Scottish Parliament 5 (MSP5), in Edinburgh, Scot. (Sept. 9, 2009) [hereinafter MSP5].

145. Interview with Member of the Scottish Parliament 3 (MSP3), in Edinburgh, Scot. (Sept. 16, 2009) [hereinafter MSP3].

146. Interview with Scottish House Authority 1 (SHA1), in Edinburgh, Scot. (Oct. 8, 2009) [hereinafter SHA1].

given that Scotland cannot legislate for any other countries schools, so there is no need to use it.¹⁴⁷ 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.”¹⁴⁸ This perspective on such a short title sharply contrasts with many views in Congress regarding the substance of short titles.

Besides the example above by the House Authority, no other “misleading” bills were proffered by interviewees from the Scottish Parliament.

3. U.S. Congress

Unlike the other two jurisdictions, American legislative insiders were very eager to state that short titles were often misleading; although this result often felt like partisan bickering. Most importantly, both of the U.S. Congresspersons interviewed said that bill names were often misleading. One said that “it happens a lot with popular naming of bills,”¹⁴⁹ 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.”¹⁵⁰ Both of them also went on to mention the NCLB as an example of a misleading title.

A number of staffers remarked that names were misleading, but some of their rationales appeared to stem from different interpretive frames. A Republican staffer found the American Recovery and Reinvestment Act misleading: he deemed it a “stimulus” bill, and believed the Act was a “failure.”¹⁵¹ Another staffer dramatically proclaimed that they had “grave” concerns over the recent energy (cap and trade) legislation, titled the American Energy and Security Act, as to whether that title really does what it proclaims to do.¹⁵²

Perspectives differed on the nature of what some considered “misleading,” however; one staffer boldly declared, “in my experience the name does seem to capture what the intent of the legislation does.”¹⁵³ Other staffers suggested that occasionally titles are misleading, but claimed that they could not think of an example at the time and that

147. *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.

148. *Id.*

149. Interview with Member of Congress 1 (MCON1), in Wash., D.C. (Oct. 29, 2009) [hereinafter MCON1].

150. Interview with Member of Congress 2 (MCON2), in Wash., D.C. (Oct. 21, 2009) [hereinafter MCON2].

151. HOUSESF3, *supra* note 85.

152. Interview with House Staffer 1 (HOUSESF1), in Wash., D.C. (Oct. 27, 2009).

153. HOUSESF2, *supra* note 85.

it does not happen often. Yet, surprisingly, 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 proclaimed.¹⁵⁴ 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; a very interesting perspective on the legislative process.

*D. Short Title Discrepancies: Why Are Some More
Evocative than Others?*

1. Westminster Parliament¹⁵⁵

A variety of responses were delivered by legislative insiders when responding to this question. When putting this 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."¹⁵⁶ Thus, pressure was applied on the drafters and the House officials to include this language. But, he did 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.

Others focused on practical matters as well. One MP pointed out that "simply to use the same title year after year . . . would become more confusing,"¹⁵⁷ while another MP suggested that the terrorism bills received different names simply because "they were different bills."¹⁵⁸ Agreeing, another MP explained that there needs to be "an element of differentiation between" the bills,¹⁵⁹ and a Lords member declared "you have to have that, otherwise we'd all be confused as to which one was which."¹⁶⁰

154. HOUSESF6, *supra* note 85. Phrase was omitted due to confidentiality concerns.

155. This exact question was: "Why are certain titles of laws more appealing or evocative than others (such as in terrorism legislation: The Anti-Terrorism, Crime and Security Act of 2001; the Prevention of Terrorism Act of 2005; the Counter-Terrorism Act of 2006; and the Terrorism Act of 2008)?"

156. UKBD1, *supra* note 90.

157. HC1, *supra* note 140.

158. HC4, *supra* note 141.

159. HC2, *supra* note 132.

160. HL1, *supra* note 129.

Sticking with the differentiation theory 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.”¹⁶¹ 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.”¹⁶² However, one Commons member did note 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.’”¹⁶³ It is unknown whether or not this interviewee knew about the pressure that is sometimes applied to drafters to use particular words. However, his view on short titles seems to be in the minority.

2. Scottish Parliament

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. However, some reactions to this question were interesting.

The question specifically asked in regards to Scotland was why two bills that seemed to fall under the same remit got two different names: the “Sexual Offences Bill” and the “Protection of Children and the Prevention of Sexual Offences Bill.”¹⁶⁴ One drafter said it was because the “content” of the two bills were about different things: the former bill defined sexual offences, and the latter included measures that attempted to protect children and prevent sexual offences.¹⁶⁵ A House Authority agreed, stating that it “probably [had] something to do with the scope of the bill.”¹⁶⁶ He further stated “there can’t be a political argument that what that earlier bill did was to prevent certain sexual offences, whereas the later Sexual Offences Bill was about changing the law in a whole

161. HC6, *supra* note 136.

162. HC4, *supra* note 141.

163. HC5, *supra* note 142.

164. Both of these subsequently became Acts. The exact question was: “Why are certain titles of laws more appealing or evocative than others (such as the 2005 bill titled The Protection of Children and Prevention of Sexual Offences Bill and a current bill titled the Sexual Offences Bill)?”

165. Interview with Scotland Bill Drafter 1 (SCTBD1) in Edinburgh (July 28, 2009) [hereinafter SCTBD1].

166. SHA1, *supra* note 146.

range of areas.”¹⁶⁷ MSPs also put forward similar arguments, stating that they were two different bills with different content.¹⁶⁸ 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.¹⁶⁹ 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.¹⁷⁰

Surprisingly, however, 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. I think that sometimes rules are broken that shouldn’t be broken. People just aren’t firm enough in preparing legislation.”¹⁷¹ When I asked him if the Protection of Children and Prevention of Sexual Offences Bill title broke those rules, he replied in the affirmative.¹⁷² But, this drafter seems to be in the minority in regard to this title, and many interviewees defended the short title.

3. U.S. Congress¹⁷³

A variety of responses were supplied to this question by U.S. interviewees. 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,”¹⁷⁴ while another Congressman condemned such titles, stating “it’s not only to get attention,” but to “get sympathy or support” as well.¹⁷⁵

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.”¹⁷⁶ A Chief of Staff agreed, suggesting that “most 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

167. *Id.*

168. MSP2, *supra* note 86; MSP3, *supra* note 145; Interview with member of the Scottish Parliament 6 (MSP6) in Falkirk, (Sept. 25, 2009) [hereinafter MSP6].

169. MSP2, *supra* note 86; MSP5, *supra* note 144; MSP7, *supra* note 143.

170. MSP1, *supra* note 143; MSP4, *supra* note 143.

171. SCTBD1, *supra* note 165.

172. *Id.*

173. The exact question asked was: “Why are certain titles of laws more appealing or evocative than others (bland: Dextromorphan Distribution Act, Water Quality Investment Act; evocative: Generations Invigorating Volunteerism and Education Act (GIVE Act), Helping Families Save their Homes Act; End GREED Act)?”

174. MCON1, *supra* note 149.

175. MCON2, *supra* note 150.

176. Interview with Senate Staffer 1 (SENSF1), in Wash., D.C. (Oct. 27, 2009).

‘raise to another level.’¹⁷⁷ Other interviewees attributed this phenomenon to titling style of individual members,¹⁷⁸ “lobbying” efforts, and wider political marketing efforts.¹⁷⁹

One 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.”¹⁸⁰ Another colleague 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.”¹⁸¹

IV. FURTHER DISCUSSION

This Part analyzes the jurisdictions under study from both meta-analytic and individual perspectives. In doing so, it first lays out findings that were consistent in all jurisdictions. It then examines both U.K. Parliaments together, as these legislatures tend to share many short title qualities. Finally, it focuses on characteristics that are unique to each jurisdiction. Throughout it uses additional quotations from legislative insiders to further validate the findings.

A. A Few Overlapping and Consistent Findings Among Jurisdictions

One of most important findings of this multi-jurisdictional short title investigation 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.

Although less definitively than the two other jurisdictions, legislative insiders from Westminster thought that short titles were important. Interviewees stressed such aspects as influencing debate,¹⁸² enhancing

177. HOUSESF3, *supra* note 85.

178. Interview with House Staffer 4 (HOUSESF4), in Wash., D.C. (Oct. 26, 2009).

179. HOUSESF5, *supra* note 85; Brian Christopher Jones & Randal Shaheen, *Thought Experiment: Would Congressional Short Titles Survive FTC Scrutiny?*, 37 SETON HALL LEG. J. 57 (2012) (citing the “member style” and “press or marketing reasons” quotations).

180. HOUSESF2, *supra* note 85. It was unknown if he meant that people will “understand” the title or “understand” what the bill actually does.

181. HOUSESF6, *supra* note 85.

182. HC3, *supra* note 133. Also, to a certain extent, UKBD1, who stated that titles have

public knowledge and notice of legislation¹⁸³ and legal accuracy.¹⁸⁴ Conversely, an overwhelming number of Scottish legislative insiders also regarded short titles as important components 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.¹⁸⁵ A Scottish 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;¹⁸⁶ strong language from an influential member of the Scottish Parliament.

Interviewees from the United States were adamant that short titles were an important part of the legislative process. However, many interviewees regarded such titles as important for different reasons than noted above, such as: to “peak people’s interest” in legislation,¹⁸⁷ gain co-sponsors,¹⁸⁸ or compete with other bills for attention.¹⁸⁹ Only one interviewee mentioned that they were important in regard to ensuring accuracy in the lawmaking process,¹⁹⁰ which seems telling in regard to where such titles stand in Congress. Thus, rationales regarding short title importance among jurisdictions were noticeably different.

Perhaps the most important overlapping element of the interviewees among jurisdictions was: *evocative bill names have the potential to significantly, not just peripherally, affect passage of a bill*. This is one of the major political implications in regard to short bill titles that must be accepted and addressed by the legal and political establishments in every jurisdiction studied. Many of the legislative insiders from the United States were adamant that this is already happening,¹⁹¹ and some members of the Westminster parliament, surprisingly, stated that even their relatively bland and descriptive short titles still had some influence on passage. Additionally a few 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 the Scottish Parliament did not endorse such a practice*.

they have “a role in fixing the context in which the bill is debated.” UKBD1, *supra* note 90.

183. HC7, *supra* note 130.

184. HC4, *supra* note 141.

185. MSP5, *supra* note 144; MSP3, *supra* note 145; MSP6, *supra* note 168; SCTBD1, *supra* note 165; Interview with Scottish Bill Drafter 2 (SCTBD2) in Edinburgh (July 28, 2009) [hereinafter SCTBD2].

186. SHA1, *supra* note 146. Jones, *supra* note 125, *Do Short Titles Matter?*, at 454 (detailing these two quotations).

187. HOUSESF2, *supra* note 85.

188. HOUSESF5, *supra* note 85.

189. HOUSESF6, *supra* note 85.

190. MCON1, *supra* note 149.

191. Jones, *Drafting Proper Short Titles*, *supra* note 33, at 460-61.

Yet how these names affect passage is quite a complicated and intricate process to determine. Some legislative insiders indicated that certain titles may affect members at an individual level: a few admitted they were hesitant to vote against various pieces of legislation, and especially humanized 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 turn pressurizes him when voting on such measures.¹⁹² British legislators were afraid of presenting too lofty standards for bills through their titles, and subsequently being held to such standards. Though they were in the minority, legislators from both Westminster and the Scottish Parliament stated that bill titles affect their voting decisions.¹⁹³

In regard to providing short titles, *not being misleading is sometimes difficult*, whether evocative language is used or not. While Congress and Westminster had the most examples of misleading titles, there were still a couple examples challenged by Scottish Parliament interviewees. 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, especially in Westminster and Congress. This was referred to by one Lords member, who noted that identifying misleading titles “would tend to be a political judgment.”¹⁹⁴

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,”¹⁹⁵ and that “most of these bills that have some tear-jerker type names are misleading.”¹⁹⁶ Some other bold assertions were made in regard to this question: A House staffer offered his own office’s short titles up as misleading.¹⁹⁷

Thus, 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.

Finally, it was found that *once bills are enacted as formal law the presence and force of their short titles are more firmly entrenched. As*

192. MCON2, *supra* note 150.

193. HC5, *supra* note 142; HC3, *supra* note 133; MSP3, *supra* note 145.

194. HL3, *supra* note 134.

195. HC5, *supra* note 142.

196. MCON2, *supra* note 150.

197. HOUSESF6, *supra* note 85. Phrase was omitted due to confidentiality concerns.

will be seen below, this is a distinct advantage of evocative bill naming. Two of the most (in)famous congressional bill names of contemporary times, the USA PATRIOT Act of 2001¹⁹⁸ and the NCLB,¹⁹⁹ 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, because they are two of the most evocative short titles Congress has ever bequeathed the statute book.

Many interviewees took aim at NCLB. One Congresswoman interviewed pointed out that the law has developed a number of pseudonyms, including No Child Left In Tact,²⁰⁰ 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.²⁰¹ 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).²⁰² Just a few weeks after the Obama Administration took office in 2009 Education Secretary Arne Duncan called for a rebranding of the law²⁰³ 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).²⁰⁴ In fact, a recent visit to the Department of Education website confirms that there is frequent use of the ESEA title, but the NCLB is still prominently displayed.²⁰⁵ Although Obama mentioned NCLB frequently on the campaign trail in terms of repealing or heavily

198. USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (codified as amended at scattered §§ 8, 15, 18, 22, 31, 42, 49 & 50 U.S.C.).

199. No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat 1425 (codified as amended at scattered sections of 20 U.S.C.).

200. MCON1, *supra* note 149.

201. S.866, 11th Cong. (2009), available at <http://www.govtrack.us/congress/bill.xpd?bill=s111-866> (last visited June 24, 2012).

202. Jasmine Whitebread, *No Child Left Behind*, THE GUARDIAN (July 4, 2007), available at <http://www.guardian.co.uk/commentisfree/2007/jul/04/nochildleftbehind>.

203. Eddy Ramirez & Kim Clark, *What Arne Duncan Thinks of No Child Left Behind*, U.S. NEWS AND WORLD REPORT (Feb. 5, 2009), available at <http://www.usnews.com/articles/education/2009/02/05/what-arne-duncan-thinks-of-no-child-left-behind.html>.

204. See New York Topics, *No Child Left Behind*, N.Y. TIMES (July 6, 2012), available at http://topics.nytimes.com/top/reference/timestopics/subjects/n/no_child_left_behind_act/index.html; see also Arne Duncan, *After 10 Years, It's Time for a New NCLB*, OFFICIAL BLOG U.S. DEPARTMENT EDUC.: HOMEROOM, available at <http://www.ed.gov/blog/2012/01/after-10-years-it%E2%80%99s-time-for-a-new-nclb/>.

205. U.S. DEPARTMENT OF EDUCATION, <http://www.ed.gov/> (last visited Oct. 21, 2012). Actually, when one clicks the “No Child Left Behind” link in the upper right hand corner, the resulting page is titled the “Elementary and Secondary Education Act.”

amending it, nothing in an official legislative capacity has transpired at this point.

Yet blatant mockery of both the USA PATRIOT Act and the NCLB by government officials, media members, and the general public has not dampened the force of law these measures still contain. In fact it is in the nature of modern terrorism legislation that it is regularly revisited in amending and continuing parent statutes, as the PATRIOT Act or key parts of it were reauthorized in 2005,²⁰⁶ 2006,²⁰⁷ and 2011.²⁰⁸ 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 measures that end up succeeding them will be the titles applied to two of the most controversial and powerful names to ever grace the U.S. statute book.

B. The Westminster and 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. This Part analyzes trends seen 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 U.S. Congress where legislators are freer to vote according to their conscience. Politicians in parliamentary systems rarely break from their parties to vote for or against certain measures.²⁰⁹ 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 of an effect on legislators, they could have considerable influence on other promotional aspects of legislation. The rationales behind short title

206. USA PATRIOT Improvement and Reauthorization Act of 2005. Pub. L. No. 109-177, 120 Stat. 192 (codified as amended at scattered §§ 8, 15, 18, 21, 28, 42 U.S.C.)

207. USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006, Pub. L. No. 109-178, 120 Stat. 278 (codified as amended at scattered §§ 12, 15, 18, 50 U.S.C.).

208. PATRIOT Sunsets Extension Act of 2011, Pub. L. No. 112-14, 125 Stat. 5 (codified as amended at 50 U.S.C. §§ 1801, 1861-62).

209. Wilson, *supra* note 48, at 833; Philip Cowley & Mark Stuart, *When Sheep Bark: The Parliamentary Labour Party 2001-2003*, 14 J. ELECTIONS, PUB. OP. & PARTIES, 211 (2004), available at <http://www.revolt.co.uk/ECPR%20paper.pdf>.

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 humanized or personalized titles; and both almost never use their respective countries in their titles when they do not have to.²¹⁰ Though they may at times use words such as “prevention” or “protection,” *these appear to be used with discretion and are not placed on every bill attempting to accomplish such matters*. In fact, some legislators in both jurisdictions were opposed to using the words altogether, because they thought doing so puts them in a precarious position in terms of following through with legislative outcomes.

As pointed out in a previous article,²¹¹ legislative insiders from both Westminster and the Scottish Parliament were opposed to employing personalized short titles. In particular, legislators from both institutions stressed that such titles may over-emotionalize the law and the legislative process. A member from Westminster and the Scottish Parliament each noted the “dignity” of parliament and of the law, demonstrating the respect they have for both.²¹² However, Scottish interviewees provided more evidence that they would not be adopting personalized short bill titles anytime soon, as interviewees displayed deep-seated opposition to such titles. These reactions lie in stark contrast to U.S. legislative insiders, who considered personalized short titles a good way to inform constituents about what a particular law is about, and also an effective legislative tactic in terms of procedurally advancing bills in the legislative process.

In order to gain a clearer picture of the results, problems and techniques that are unique to each institution, the sections below analyze the findings from each jurisdiction individually.

C. The Westminster Parliament

Perhaps the most significant revelation for Westminster throughout my interviews was that the U.K. drafter stated that their office “quite

210. 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 U.K. 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.”

211. Jones, *Do Short Titles Matter?*, *supra* note 125, at 451-52.

212. *Id.*

often get[s] requests” for evocative bill names.²¹³ This statement is exceedingly important, as it demonstrates that 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.²¹⁴ However, there were interviewees who suggested that more evocative short titles would not necessarily be a negative development for Westminster.²¹⁵ 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.²¹⁶ The drafter who revealed these requests further stated that “there is always this tension, as legislating is a political process.”²¹⁷

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 intervene formally to prevent a short title of which he or she disapproves on the grounds of propaganda.”²¹⁸ Analyzing the situation further Greenberg notes that it becomes one of “brinkmanship” between Ministers and House Authorities in regard to who will relent first.²¹⁹ For example, if a special adviser, who is able to retain “party loyalties” and still be involved in the parliamentary process,²²⁰ 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 more unsettled than *Erskine May* states.²²¹

213. UKBD1, *supra* note 90. This statement was also revealed in: Jones, *Do Short Titles Matter?*, *supra* note 125, at 451; *see also* Jones, *Westminster’s Impending Short Title Quandary*, *supra* note 73.

214. 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.

215. HL2, *supra* note 131; HC7, *supra* note 130.

216. Aside from the private Speaker’s ruling mentioned in the latest *Erskine May* and discussed above in Chapter IV. JACK, *supra* note 75, at 526. But, this does not seem to provide any standard for legislation.

217. UKBD1, *supra* note 90.

218. GREENBERG, LAYING DOWN THE LAW, *supra* 90, at 102; Jones, *Westminster’s Impending Short Title Quandary*, *supra* note 73.

219. GREENBERG, LAYING DOWN THE LAW, *supra* 90, at 102.

220. *Id.* at 129.

221. JACK, *supra* note 75, at 526; *see also* Jones, *Westminster’s Impending Short Title*

This lack of standard is disconcerting. Leaving the situation to House Authorities (and/or the media) 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.²²² Others made comments in regard to these acts as well,²²³ many of which 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 bills through the legislative process, this was advantageous. Yet from a historical perspective it is interesting to note that the United Kingdom 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 promotional language. Thus, while the practice of evocative naming has grown considerably throughout the years in Congress,²²⁴ 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 1997.²²⁵ 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 . . . 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."²²⁶ 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. Although the title does not necessarily employ the emotionally-laden linguistic techniques of U.S. congressional short titles, it does resonate.

Westminster has some structural characteristics which may make an

Quandary, *supra* note 73, at 225-28.

222. 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 U.K. 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.

223. HL3, *supra* note 134; HC6, *supra* note 136; HC5, *supra* note 142.

224. Jones, *The Congressional Short Title (R)Evolution*, *supra* note 26, at 42-64.

225. In 1997 Scotland did not have their own Parliament. Thus, the bill was drafted and passed by Westminster.

226. SCTBD2, *supra* note 185.

evocatively titled piece of legislation more alluring to lawmakers. As one interviewee pointed out above,²²⁷ 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.²²⁸ 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.”²²⁹ This is in stark contrast to how Commons members traditionally vote. While there is currently a Private Members’ Bill travelling through Parliament that may further reform the chamber,²³⁰ no bills are presently in front of Parliament regarding reformation of the Commons.

It remains somewhat puzzling that there are not clearer guidelines or standards in regard to short titles in Westminster, especially considering the requirement that every bill proposed in the legislative body should carry one, and these instructions were implemented some time ago. Yet, even absent any standards in relation to short titles, there is still a very clear distinction between Westminster short titles and those of the U.S. Congress, as the former are far more descriptive and accurate than the latter.

D. 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.”*²³¹

-Scottish Drafter

Interviewees from 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 Part and in a previous

227. HL1, *supra* note 129.

228. BRAZIER ET AL., *supra* note 54, at 4.

229. HL2, *supra* note 131.

230. House of Lords (Cessation of Membership) Bill [HL] 2012-13.

231. SCTBD1, *supra* note 165.

article, I noted that a Westminster drafter revealed that he “quite often” receives requests for evocative bill titles.²³² 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.”²³³ 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.²³⁴

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.²³⁵ 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 unduly tendentious. Additionally, a Scottish legislator who currently interacts with many bills and appears to have some 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.”²³⁶ This suggests that both legislators, likely in conjunction with parliamentary authorities and drafters, are currently stressing short title accuracy.

A Scottish House Authority 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

232. UKBD1, *supra* note 90.

233. SCTBD1, *supra* note 165.

234. 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.”

235. SCTBD1, *supra* note 165.

236. MSP2, *supra* note 86.

it". We'll maybe go back to the drafts person 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.²³⁷

This is a very important insight into how the bill titling process comes about in the Scottish Parliament. It appears to be taken with care for the legislative process and respect for the views of everybody involved.

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 Schools Act, which was originally proposed as the Improving Standards in Scotland's Schools Bill.²³⁸ 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.²³⁹ And though parliamentary Authorities²⁴⁰ still approved the title, they were not necessarily comforted by the outcome. 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."²⁴¹ 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.

This example and the explanation from the House Authority above

237. SHA1, *supra* note 146.

238. Standards in Scotland's Schools Act, 2000 (A.S.P. 6).

239. SCTBD2, *supra* note 185.

240. Likely the Presiding Officer, along with the Office of the Chief Executive, and the Clerk's Assistant Directorate/Legislation Directorate.

241. SHA1, *supra* note 146.

highlights important aspects 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 U.S. 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 U.S. 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.

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.²⁴² There have been circumstances in which this word was controversially used by the Scottish Parliament.²⁴³ 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 U.S. lawmaking, as the level of evocative language is much cruder.²⁴⁴ 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 United States probably needs “a bill about the naming of bills;”²⁴⁵ in contrast, a Congressional House staffer mentioned that “the system is [currently] working the way that it was designed.”²⁴⁶ Two vastly different perspectives from individuals heavily involved in lawmaking.

Not all Scottish interviewees were necessarily against the idea of evocative bill naming, however. 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.²⁴⁷ These statements in support of such bill language, however, were very infrequent with this cohort.

The Scottish Parliament also demonstrated that humanized titles can

242. SCTBD1, *supra* note 165.

243. Land Reform (Scotland) Act, 2003 (A.S.P. 2); National Health Service Reform (Scotland) Act, 2004 (A.S.P. 7); Crofting Reform Act, 2007 (A.S.P. 7); Public Services Reform (Scotland) Act, 2010 (A.S.P. 8); Crofting Reform (Scotland) Act, 2010 (A.S.P. 14).

244. Unless, perhaps, it was an acronym that stood for something very controversial, and included other evocative words in the acronym. In fact, this Article regards “reform” as a technical word, and uses it in this manner for the U.S. bill survey located in Chapter II.

245. SCTBD1, *supra* note 165.

246. HOUSESF6, *supra* note 85.

247. MSP3, *supra* note 145.

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 Article 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) (Scotland) Act 2010²⁴⁸ and the Ure Elder Fund Transfer and Dissolution Act 2010²⁴⁹ do exactly what they say. The former bill is two pages long, while the latter is only one. Both measures were not titled or designed for political advantage, and they "do what they say on the tin." The U.S. Congress should take note of how to use humanized measures, and members should stop personalizing their Public Bills in order to pressure legislators into voting for such proposals.

The concept of bill "scope" seems to differ between Westminster and the Scottish Parliament in regard to short bill titles. 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,²⁵⁰ although Greenberg asserts that "at some points the long title has also been persuasive."²⁵¹

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.²⁵² Official parliamentary 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."²⁵³ 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

248. William Simpson's Home (Transfer of Property) (Scotland) Act, 2010 (A.S.P. 12).

249. Ure Elder Fund Transfer and Dissolution Act, 2010 (A.S.P. 7).

250. CABINET OFFICE GUIDE TO MAKING LEGISLATION, *supra* note 71.

251. GREENBERG, LAYING DOWN THE LAW, *supra* note 90, at 131.

252. MSP2, *supra* note 86.

253. GUIDANCE ON PUBLIC BILLS, *supra* note 96, amend. pt. 4.11, available at <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25695.aspx> (last visited June 24, 2012).

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.”²⁵⁴ 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, and would partially explain their emphasis on accuracy and neutrality.

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 unique to the Scottish Parliament.²⁵⁵ Westminster and the U.S. Congress have no such standard.²⁵⁶ The more precise acknowledgement of the legal status of short titles in Holyrood has likely made such titles that much more important for lawmakers, minimized the amount and severity of any political effects, and also served to improve the quality of legislative drafting in the institution.

E. *The U.S. Congress*

One thing is clear regarding the short bill title situation in the United States: *short bill titles in the United States are not merely referential in nature, and they serve much larger procedural, legal and political goals than the short titles of both Westminster and the Scottish Parliament.* Recent bills such as the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011,²⁵⁷ the STOCK Act,²⁵⁸ and the Jumpstart Our Business Startups Act²⁵⁹ demonstrate that a change in leadership does not equate to a change in rhetoric or a decreased use of propagandistic techniques for major legislation.²⁶⁰ It could be argued that select short bill titles have become even more culturally prominent than in previous years, thus attempting to enhance the political effects of such proposals.

254. *Id.* pts. 4.12 & 4.13.

255. *Id.*

256. Or, at least nothing that is explicitly made public.

257. Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, 125 Stat. 1904 (codified as amended at 49 U.S.C. §§ 60138-60140) [hereinafter Pub. L. No. 112-90].

258. Stop Trading on Congressional Knowledge (STOCK) Act of 2012, Pub. L. No. 112-105, 126 Stat. 291 (codified as amended at 12 U.S.C. § 4518a).

259. Jumpstart Our Business Startups Act, Pub. L. No. 112-106, 126 Stat. 306 (2012) (codified as amended at 15 U.S.C. § 77d-1).

260. However, according to *The Congressional Short Title (R)Evolution*, evocative word use and humanized titles did decrease in the 111th Congress, compared to previous Congresses. Jones, *The Congressional Short Title (R)Evolution*, *supra* note 26. 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. *Id.*

The Recovery Act, or ARRA, has its own symbol and its own website,²⁶¹ and even recent bill proposals, such as the American Jobs Act, are provided their own websites.²⁶²

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 Congress these presentational elements are entirely left to lawmakers and their staff,²⁶³ who churn out a myriad of evocatively-named bills in each legislative session, many of which never come close to becoming Acts (similar to Private Members' Bills in Westminster, mentioned above). This is an interesting practice, because U.S. 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 regarding 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 United States is a separate country with different traditions and nuances of government, this process of drafting short titles for bills and laws needs to be re-examined in light of the results presented in this Article and elsewhere.

A main constitutional concern which arose from my research is that legislators tend to view short titles as "policy" rather than law.²⁶⁴ Short titles are not mandatory in the United States, as they are in Westminster and the Scottish Parliament. Thus they tend to be 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

261. American Recovery and Reinvestment Act website, www.recovery.gov (last visited June 24, 2012). The symbol is located on the website.

262. American Jobs Act, <http://www.americanjobsact.com/> (last visited June 24, 2012).

263. CONSF2 recognized that the short title was "100% on the member," and "almost exclusively in the purview of a member of staff."

264. Jones & Shaheen, *supra* note 179.

Westminster and the Scottish Parliament.²⁶⁵ This stems from one of the fundamental constitutional differences located above, that the Executive is not as powerful in Congress as it is in both U.K. jurisdictions, and there is a stronger separation of powers between the Executive and Legislative branches. Thus, there is no official “legislative program” *per se* 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 could very well 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.

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.²⁶⁶

The staffer went on to explain that titles of these bills are usually located in the subject line of the email.²⁶⁷ Therefore, such letters breed competition (especially in regard to short titles), 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 blandly descriptive name. This is a major hurdle in the step to reform for Congress, as the practice is very commonplace. Yet

265. For example, in the 110th Congress (2007-08) the House of Representatives had 7340 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, *supra* note 38, at 557, 560. Additionally, during the 3rd session of the Scottish Parliament (May 2007- March 2011), there were 62 bills presented in total.

266. HOUSESF2, *supra* note 85.

267. *Id.*

this need not work wholly against the interests of appropriately-titled legislation: it may be that those who consistently present quality legislation in either chamber are more likely to have their emails opened and bills sponsored than those who present bills with catchy names, but that lack the necessary substance. Or, at least, one can only hope that this holds true.

In terms of tendentious and promotional language in bill titles, the United States is grossly at odds with Westminster and the Scottish Parliament, as was detailed above and in earlier chapters of this Article. While the U.K. parliaments are currently debating the use of words such as “prevention” and “protection,” the United States has been consistently using words such as “effective,”²⁶⁸ “efficient,”²⁶⁹ “improving,”²⁷⁰ “certainty,”²⁷¹ and numerous other evocative words; all which promote the policy behind the bill and/or transform the bill in into a moral obligation. Additionally, the United States frequently employs humanized names²⁷² that include overly sympathetic victims tough to oppose (*e.g.*, the James Zadroga 9/11 Health and Compensation Act of 2010²⁷³), and acronyms (*e.g.*, Heroes Earnings Assistance and Relief (HEART) Act of 2008).²⁷⁴

Although evocative language is quite common in Congress, some legislators and staffers opposed such language in short titles. A previous publication of mine²⁷⁵ found that some staffers objected to such language, noting it was not justified at the congressional level,²⁷⁶ and others denoting it “premature,”²⁷⁷ “not necessarily warranted,”²⁷⁸ “wishful thinking,”²⁷⁹ and “disingenuous.”²⁸⁰ This is fairly strong language from a group of people who must interact with legislation on a

268. *See, e.g.*, Effective Child Pornography Prosecution Act of 2007, Pub. L. No. 110-358, 122 Stat. 4001 (codified as amended at 18 U.S.C. §§ 2251-2252A).

269. *See, e.g.*, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. No. 109-59, 119 Stat. 1144 (2005) (codified as amended at scattered §§ 16, 18, 21, 23, 26, 42 U.S.C.).

270. Improving Head Start for School Readiness Act of 2007, Pub. L. No. 110-134, 121 Stat. 1363.

271. *See* Pub. L. 112-90, *supra* note 257.

272. This was detailed extensively in Jones, *Transatlantic Perspectives on Humanized Public Law Campaigns*, *supra* note 127.

273. James Zadroga 9/11 Health and Compensation Act of 2010, Pub. L. No. 111-347, 124 Stat. 3623 (codified as amended at scattered §§ 26 & 42 U.S.C.).

274. Heroes Earnings Assistance and Relief (HEART) Act of 2008, Pub. L. No. 110-245, 122 Stat. 1624 (codified as amended at scattered sections of 26 U.S.C.).

275. Jones, *Drafting Proper Short Titles*, *supra* note 33.

276. MCON2, *supra* note 150.

277. HOUSESF3, *supra* note 85.

278. HOUSESF5, *supra* note 85.

279. *Id.*

280. HOUSESF6, *supra* note 85.

daily basis. However, perspectives differed on this issue, as a Congresswoman stated that such language reflected the “spirit of the times,” and noted that “whether it’s accurate or not is another question.”²⁸¹

A previous article of mine touched on how Congress continues to use the word “America” in some landmark Acts²⁸² (*i.e.*, American Recovery and Reinvestment Act; Leahy-Smith America Invents Act), where states such as New Mexico²⁸³ and Texas²⁸⁴ had explicit instructions in their drafting manuals not to use the state name in bill titles.²⁸⁵ It was noted above that a Scottish House Authority was still upset with the use of “Scotland’s” in the Standards for Scotland’s Schools Act.²⁸⁶ Since this incident, the Scottish Parliament has not performed this action again.²⁸⁷ However, the same cannot be said for the U.S. Congress, who routinely uses “America” or its derivatives with nonchalance.²⁸⁸

What used to be an extremely bland procedural process has become a congressional marketing lion that nobody seems able to tame. While one congressional member stated that evocative bill titles “have too much influence,”²⁸⁹ 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.

VI. CONCLUSION

When I began the study of this subject I sensed, as I still do, that legislators and those involved in the lawmaking process possess a good

281. MCON1, *supra* note 149.

282. Jones, *Drafting Proper Short Titles*, *supra* note 33.

283. N.M. LEGIS. COUNCIL SERV., LEGISLATIVE DRAFTING MANUAL 30 (2008), *available at* <http://www.nmlegis.gov/lcs/lcsdocs/draftman.pdf>.

284. TEX. LEGIS. COUNCIL, DRAFTING MANUAL 10 (2011) § 3.05(b), at 10 (2011), *available at* <http://www.tlc.state.tx.us/legal/dm/draftingmanual.pdf>.

285. These manuals considered such use “superfluous,” as these legislatures cannot legislate for any other state but their own.

286. SHA1, *supra* note 146.

287. Beyond using their name in brackets to identify themselves in the U.K. statute book, as is normal practice for Scottish bills and Acts.

288. Jones, *The Congressional Short Title (R)Evolution*, *supra* note 26; *see also* Brian Christopher Jones, *One Redeeming Quality About the 112th Congress: A Focus Back on Descriptive Rather than Evocative Short Titles*, MICH. L. REV. FIRST IMPRESSIONS (forthcoming 2013).

289. MCON2, *supra* note 150.

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 in two historic democracies stated that such a tiny piece of the lawmaking process, short titles, may be affecting the passage of bills into laws in their respective legislatures is compelling, and only heightens the importance for short title reform. This is especially true for the U.S. Congress, where crude and tendentious language in such titles is the norm, not the exception.

This Article explored the issues and nuances of short titles that most other research has taken for granted. Throughout the course of my research I have stressed that short titles are a small part of a very large puzzle, which I think is a good metaphor for the legislative process. Although such titles are 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 crystallization 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 Article considers 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-politicizing and emotionalizing the legislative process. If some of the larger implications of these 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.²⁹⁰ Because 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.²⁹¹ 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.²⁹² This is a major problem for the lawmaking body, especially as calls for more evocative titles continue.²⁹³

The Scottish Parliament appeared to uphold the maxim that one Scottish legislator advocated in relation to bill titles, that they “should reflect the seriousness of the content.”²⁹⁴ The rules and regulations regarding the drafting of legislation in the Scottish Parliament are precise, and among the three jurisdictions studied they serve as a prominent example of how to legislate effectively and accurately. Throughout the interviews of this jurisdiction, all legislative insiders recognized the importance of technical and legal accuracy in relation to short bill titles.

The U.S. 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 neighbors, as parliamentary counsel drafters (usually always) 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 unduly-evocative. Without any enforceable standards in regard to the proper drafting of bills, and with little congeniality between members, these types of evocative bill names are likely to continue indefinitely.

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

290. GREENBERG, CRAIES ON LEGISLATION, *supra* 90, at 103; JACK, *supra* note 75, at 527.

291. GUIDANCE ON PUBLIC BILLS, *supra* note 96.

292. GREENBERG, LAYING DOWN THE LAW, *supra* note 90, at 102.

293. UKBD1, *supra* note 90. The drafter noted that he “quite often” gets requests for evocative short bill titles.

294. MSP3, *supra* at 145; Jones, *Do Short Titles Matter?*, *supra* note 125.

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. Because this Article relies heavily on the views of legislative insiders, it seems only fitting to end with a piece of advice from a lawmaker in the system that is clearly at odds with other legislatures in terms of short titles; though obviously in the minority in her own legislature on this issue, one U.S. Congresswoman boldly declared “*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.*”²⁹⁵

295. MCON1, *supra* note 149.

