A Statute by Any Other (Non-Acronomial) Name Might Smell Less Like S.P.A.M., or, The Congress of the United States Grows Increasingly D.U.M.B.

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Abstract:

Why we name our statutes is a rarely asked and non-obvious question, but it turns out to be deeply illuminating. This essay examines one little-noticed trend in particular, which has simply exploded within the U.S. Congress during the past twenty years. What at first might seem a frivolous, innocuous, and maybe even sort of likeable kind of statute name appeared perhaps three times in the entire history of the Republic before 1988. In the twenty years since, there have been nearly seventy of them. But much more important than its recent and arresting profusion will be the deeper philosophical insight this behavior sheds upon our representatives and the politics over which they preside.

Namely, it appears to have occurred to those on Capitol Hill that something can be gained by devising statute names that spell out clever acronyms. A trite diversion? Hardly. Thinking about it turns out not to be really that amusing at all, and in its detail it says something fairly sobering about who our elected representatives are as people, how they see their responsibilities, and just how low their opinions of we their constituents really must be. The ugliest thing about it is that, with we Americans, this sort of thing works.

As in other circuses, where clowns sometimes cry poignant tears, humor in the U.S. Congress can be tinged with a certain sadness. Under the actual Big Top the irony is deliberate.

To wit, it appears to have occurred to a number of lobbyists, Hill staffers, Members, and other drafters of legislation that there is something
to be gained rhetorically in our American institution of “popular” statute names. Few outside the Beltway have really noticed, as not many of us are in the habit of reading the *Popular Names Table* for fun,¹ but the gimmick is to specify a short name in a given bill whose initials spell out some clever acronym. They have started doing this a lot. There appear to have been three of these things in the entire history of the Republic prior to 1988. In the twenty years since then, there have been more than seventy.

It appears that the cuter the name is the better, and a few of these have actually been pretty amusing. The 2003 CAN-SPAM Act, for example, whose title presumably consumed at least a few lobbyist billables, seems pretty funny to me.² Also fairly charming is a bill introduced several times to combat the power of foreign oil producers, the No Oil Producing and Exporting Cartels Act—you guessed it, NOPEC.³ Some other statute names of late have been almost laugh-out-loud funny, mainly by exploiting the power to laugh at one’s self. Witness California’s recently proposed How Many Legislators Does It Take to Change a Light Bulb Act.⁴ So when I first decided to look into this trend, I expected with what I think was a reasonably open mind to find it quite fun.

Sadly, it was not. However witty any individual member of our Congress might be, as a collective soul it has neither any humor whatsoever nor capacity to discipline its unintended ironies. Among many other disappointments, one of these titles even appears to contain an

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Still, this project would have been merely tedious were it no more than a tour through the abject horror of U.S. congresspersons trying to be funny. Instead, the real message turned out to be nothing contained in any particular joke itself. The message was an ugly one, because I think the people drafting most of these bills aren’t actually trying to be funny. I think they are doing the very thing that often makes our form of government such an awful, transparent charade; even a U.S. Attorney General found one of these titles, a much talked-about abomination couched in an elaborate and rhetorically manipulative acronym, to be “Orwellian.” The feeling flows not only from the sense that our lawmakers should have something better to do; it reflects the contrast between the titles and the laws they announce. Many of these titles—so seemingly happy and clever when the acronym is worked out—conceal legal substance that is at best innocuously ineffective, and in many cases genuinely malevolent. The case here will be that they betray a more general malaise of the men and women by whom we are governed. As Desmond Manderson has powerfully shown, to examine the specific words lawmakers choose, apart from their context, is “a means of revealing . . . social attitudes and values,” which “yield[s] evidence [of] . . . the role of law at different times and different places.” The lesson the words teach in this case is that trading in symbols, for their own sake, is coming to replace even bare familiarity with substantive policy or responsibility for its consequences as the measure of a lawmaker’s performance. And much as one might like to blame someone else’s heroes for it, it is not a failure of only one party or faction.

5 See infra note XXX.


8 Prior to about 2006, some might have explained the trend as just familiar Bush administration behavior, critics of which blamed that President for showy slogans that lacked substance. And indeed, the Bush White House and Republican congressional leadership were very fond of cute acronyms. Fearing no confusion of themselves with The Man from U.N.C.L.E., the administration established not one but two totally unrelated programs with no less preposterous a title than Operation F.A.L.C.O.N. (the one being “Federal and Local Cops Organized Nationally,” a cooperative law
And so, alas, what follows is not just a drab tale of humorless drivel. The ugliest thing about it is that, with we Americans, this sort of thing works.

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Why we name our statutes is a rarely asked and non-obvious question. Titles in general, including both legal and literary titles, are the subject of a small but elaborate theoretical literature.9 As we now know them, titles are relatively recent things in the West, both in literature10 and in law,11 enforcement effort established by the U.S. Marshals Service, see http://www.usmarshals.gov/falcon/index.html, the other being a Defense Department experimental aircraft program called Force Application and Launch from the Continental United States, see http://www.darpa.mil/Docs/Falcon-Blackswift%20FS%20Oct08.pdf). But since the election of Democratic House leadership in 2006 and Democratic control of the White House and Senate in 2008, the pace of aspirationally clever, acronomially named statutes has only quickened. Some of them, like the signature “cash for clunkers” incentive program of 2009, formally called CARS, are closely linked to the White House itself. See infra notes XXX and accompanying text.


10 Formal titles of academic and literary works were by no means unknown prior to the Renaissance, and they can be found in antiquity. Prior to the 15th century, however, no standard practice existed by which they were recorded or recognized. The “title page,” in particular, was an invention of the 1470s. Prior to then, such titles as there were commonly grew through tradition and were handed down orally or by way of informal record keeping by book sellers and librarians. Even when title pages became common, they were routinely crowded with editorial and preambular language, no specific piece of which could be clearly identified as “the” title. During the next few centuries it was
and therefore they are evidently not logically necessary. Critics pondering this fact have surmised dozens of different purposes they might serve. Critics labor over the schizoid, borderline nature of titles, living both within and without the text, or between text and reader. There is something lurking in the ambiguity of their purpose and their mysterious relevance to the main text. Even in

routine for some shortened version to achieve authoritative status only through custom. See generally Genette, supra note XXX, at 699-700, 703-05.

11 Preambular, explanatory language, which might in some sense foreshadow the later rise of recognizably title-like language, appeared in even the earliest English legislation. Originally apologetic and justificatory in nature, over some centuries this language became standardized into routine, incantatory formulas that indicated compliance with procedural formalities (A typical formula came to read as follows: “It is ordained, established, and enacted by the Advice of the Lords, Spiritual and Temporal, and the Commons in the said Parliament assembled, and by the Authority of the same,” and so on). Insofar as these introductory bits often stated reasons for which the laws were passed, they seemed to perform functions familiar from more modern titles. See Manderson, Early English Legislation, supra note XXX, at 334-38. Still, it was not until the late 15th century that a more familiar practice arose of including “long titles” in the text of legislation itself. See Orr, Names Without Frontiers, supra note XXX, at 192.

12 A convenient explanation is that they help organize large numbers of documents, but that is only the most mundane of the range of possibilities. In literature obviously titles now constitute a part of the story being told. Importantly, the changing function of the literary title—in general, its increasing significance as part of the story’s rhetoric—paralleled the diminution of the authorial voice. As the title in fiction now normally constitutes the author’s most or only direct commentary on the substance of the story, it has grown into an important opportunity for the author’s own critical commentary. See Sawyer, supra note XXX, at 378. But titles can do more unsavory things, too, like state untoward proprietary claims or sell books or otherwise meddle. See infra note XXX.

13 That titles are simply strange is a basic complaint. As Nicholas Horn put it, “[a] title is a monster which is neither one thing nor the other: neither part of the entitled text nor entirely separate from it; at the same time an indication of the debt owed by the text to its origin and an indication of the text’s unique identity.” Horn, supra note XXX, at 49. Moreover, even in literature and especially in law titles are not simply denomination, but are to some degree arguments. The literature is especially fond of an observation of Umberto Eco, who—writing as an author with regrets about his own title—said that “[a] title already—and unfortunately—is a key of interpretation. One cannot avoid [its] suggestions . . . .” Genette, supra note XXX, at 719 (quoting UMBERTO ECO, Post Script to the Name of the Rose, in THE NAME OF THE ROSE (Harvest in Translation ed., 1994) (1980)). See also Manderson, Semiotics of the Title, supra note XXX, at 165-66; Orr, Names Without Frontiers, supra note XXX, at 190. As Manderson writes, “[t]he title in law or literature is . . . a normative and interpretive argument which participates in the power struggle for the legitimacy of its subject-matter.” Manderson, Semiotics of the Title, supra, at 166.
literary circles, where lawyers at least might have thought the concern would be only an innocuously aesthetic one, the worries are quite serious, and they have direct relevance to the critique of legislation. Gérard Genette warns that we should “not overperfume our roses,”

lamenting titles that betray their text and cheapen the art through their effort to seduce.\textsuperscript{15} In lawmaking the matter seems especially dire, if nothing else because of the seriousness of what is going on. Statutes, like other law, are written on a field of pain and death, and manipulation or sleight of hand seem very grave.

But in any case, there remains the question why U.S. statutes have names at all. While statute names and preambular verbiage are old in England and some other common law countries, their origins overseas reflect factors never present in the United States. Changing ways of entitling laws followed changes in the role of law itself throughout the Renaissance,\textsuperscript{16} the increase in their number during the 15th century,\textsuperscript{17} and, later, parliamentary procedural rules that were keyed to long-title language.\textsuperscript{18} They also may have some actual substantive significance in English law,\textsuperscript{19} a thing largely unheard of here.

So, our statutes might all be known by citation only, as indeed some are. Lawyers all know § 1983, antitrust lawyers all know §§ 1, 2 and 7, and litigators all know § 1331. Or, they might all have purely functional

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\textsuperscript{14} Genette, \textit{supra} note XXX, at 720.
\textsuperscript{15} Genette, \textit{supra} note XXX, at 719.
\textsuperscript{16} A very sensitive study of which is in Manderson, \textit{Early English Legislation, supra} note XXX. As he explains, the earliest English statutes merely codified existing norms, and mainly comprised mere administrative directives between the Crown and its functionaries. Not until hundreds of years into the common law era did English statutes routinely specify \textit{new} norms, and routinely direct them to the populace. Along with that evolution there came a need both to legitimize the legal creation of norms, and to legitimize the new coercive tools thought necessary to implement them. This changing overall conception of law and normativity is relevant here because the government’s legitimization of it took place in part through statutory titles and preambular language.
\textsuperscript{17} So implies Orr, \textit{Names Without Frontiers, supra} note XXX, at 192.
\textsuperscript{18} In the British Parliament, long titles help define the scope of a bill, for purposes of rules governing debate and the adding of amendments. \textit{See} Orr, \textit{Names Without Frontiers, supra} note XXX, at 194.
\textsuperscript{19} \textit{See} Orr, \textit{Names Without Frontiers, supra} note XXX, at 193-94 (noting the possible significance of titles in English statutory construction).
names, as they sometimes do in the United States\textsuperscript{20} and commonly do elsewhere.\textsuperscript{21} There also was a time when we frequently called statutes by their sponsors’ names, but that appears to be more and more a thing of the past.\textsuperscript{22} In any case, in this country statutes normally are not known by purely functional names. The 2009 \textit{Popular Names Table} is 1419 pages long and contains something in the neighborhood of 10,000 entries; really quite few of them are merely functional or commonplace.

And among those many thousands of not-simply-functional names, in about the past 20 years or so quite a large number have come to be clever in some way. Admittedly, cleverness is not entirely new. At least one of them happens to be very old, arising during a central moment in the early Republic: Thomas Jefferson’s response to the British attack on an American cargo ship in Boston Harbor, the infamous Embargo Act of 1807, which precipitated the War of 1812. For its economic consequences the public came to know the Embargo Act by mocking, anagrammatic names like “go bar ’em” and “mob-rage.” Even now \textit{Popular Names} identifies it as the “O Grab Me” Act, which is “embargo” spelled backwards.

But those names were not intended by Thomas Jefferson. “O Grab Me” was apparently coined in a famous political cartoon,\textsuperscript{23} and the

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\item While of course there are still statutes named after their sponsors, it is telling that nowadays the choice seems most commonly made to indicate that a bill had bi-partisan co-sponsors. McCain-Feingold and Sarbanes-Oxley come to mind. This seems telling because it shows that the practice of statutory short names is now mainly a practice of strategic rhetoric.
\item Background of the Act and its various names are examined in Thorp Lanier Wolford, \textit{Democratic-Republican Reaction in Massachusetts to the Embargo of 1807}, 15 NEW ENG. Q. 35, 46 (1942).
\end{enumerate}
original text identifies the bill only as “An Act Laying an Embargo on all Ships and Vessels in the Ports and Harbors of the United States.” In fact, it appears that even though vernacular short-hand names were fairly common throughout the 19th century, in this country they arose purely through popular usage. The practice of deliberately including statutory short names in bills themselves did not flourish in America until the New Deal, and appears to have occurred for the first time no earlier than a federal statute of 1916. That gesture itself may have been in response to a formal request by law librarians in 1914, who had come to find the profusion of new statutes unmanageable. In other words, the origin of U.S. popular names as we now know them was not any legislator’s idea at all. A similar history played out not long before that in the United Kingdom and some other common law countries, with some differences but for apparently similar reasons.

In any event, in this country there was apparently not a deliberately clever statute name until 1950, when the U.S. adopted the AID Act for humanitarian assistance overseas. A few more trickled in during the next few decades, the next one possibly being the FINS Act of 1964

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24 Ch. 5, 2 Stat. 451, 451 (1807).
25 A similar, purely informal nick-naming tradition goes back much further overseas. As Orr notes, English statutes came to have nicknames as early as the 13th century, and these informal names evolved into substantively descriptive short titles as early as the Tudors. His earliest example of the latter, which seem rather obviously the forebears of our modern titles, is the Statute of Uses of 1536. Orr, Names Without Frontiers, supra note XXX, at 192-93.
26 See Whisner, supra note XXX, at 175-76 (surveying the New Deal legislation and reporting as the earliest instance she was able to discover the Federal Farm Loan Act, ch. 245, § 1, 39 Stat. 360, 360 (1916)).
27 This fact too was uncovered in Whisner’s remarkable article. See Whisner, supra note XXX, at 176 & n.52 (citing a request formally made that all state and federal legislation contain short titles, a request made by the American Association of Law Libraries in Report of the Committee on Legal Bibliography, 7 L. Lib. J. 53, 57 (1914)).
28 Late in the 19th century the British Parliament deliberately renamed masses of statutes then in force. The renaming statutes simply made reference to statutes in force and gave each one a new, manageably short name. This was strictly a matter of housekeeping. Similar steps were taken in some other common law countries, though not the United States. See Orr, Names Without Frontiers, supra note XXX, at 191-93.
(which sets aside a “national seashore” and so might have been intended to allow visitors to observe finned sea-life), though that appears to have been a coincidence. There has also long lingered a suspicion that the RICO statute of 1970 conceals a pun. But the first clearly, deliberately clever acronyms after the AID Act were the IDEA Act of 1970, relating to public school special education programs, and the VISTA Act of 1973, which set up a federal volunteer service program. The next would not follow until fully fifteen years later, the WARN Act of 1988.

The long, elaborately engineered titles that are now common came shortly thereafter. It turns out that they began much earlier than the infamous USA PATRIOT Act in 2001. The first seems to have been a foreign aid bill of the early 1990s, which tried to capture the post-Cold War spirit by naming itself the FRIENDSHIP Act. (Perhaps it is a clue that the same era of late-cold-war politics gave us the similarly optimistic START treaty of 1991.) FRIENDSHIP was followed some years later

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35 The Treaty between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms, S. Treaty Doc. No. 102-20 (Nov. 25, 1991), is commonly known as the Strategic Arms
by the bill to finally undo the FDA’s long campaign against saccharin, the SWEETEST Act of 2000.\textsuperscript{36} The genuine explosion of acronyms occurred only at about that time.

To be fair, among the surge of acronomial names many are not just allegedly amusing little puns. Some, like the FACE Act and one of the two (count ’em, two) FACT Acts, don’t even bear any obvious connection to their legal subject matter.\textsuperscript{37} A few are basically only inside jokes or matters of personal amusement, like the 2005 highway spending bill named for the relevant committee chairman’s wife.\textsuperscript{38}

But in any case, we have arrived in a world in which there have come to be a lot of these statutes. For whatever it may be worth, the following will list every single one of them. These are in roughly alphabetical order, with such commentary as seems fitting: AID\textsuperscript{39}, AMBER\textsuperscript{40}, ART\textsuperscript{41}.


\textsuperscript{38} The bill, which, following amendments that among other things made its short name even acroniomically cuter, is the Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users, known as “SAFETEA-LU,” see Pub. L. 109-59, 119 Stat. 1144 (2005). SAFETEA-LU was drafted by Chairman Don Young of the House Committee on Transportation and Infrastructure, whose wife’s name is Lu.

Fareed Zakaria, noting that SAFETEA-LU was among the most pork-laden bills in American history, wondered if the next highway spending bill would grant Mrs. Young a necklace. See Fareed Zakaria, Leaders Who Won’t Choose, NEWSWEEK, Sept. 26, 2005, p. 38.

\textsuperscript{39} See supra note XXX.

\textsuperscript{40} See the America’s Missing Broadcast Emergency Response Alert Act, Pub. L. No. 108-21, Title III, Subtitle A (§§ 301 to 305), 117 Stat. 660 (2003), now codified at 42
BEACH\textsuperscript{42}; CAN-SPAM\textsuperscript{43}; CARE\textsuperscript{44}; the recent cash-for-clunkers experiment known as CARS\textsuperscript{45}; the superficially-but-evidently-not-quite-so humane CHIMP law\textsuperscript{46}; COATS\textsuperscript{47}; two bills that milk that old cow of Yankee do-it-yourselfism, COMPETE\textsuperscript{48} and America COMPETES\textsuperscript{49}, neither of which of course turns out to have much to do with price competition or allocational efficiency\textsuperscript{50}; CREATE\textsuperscript{51}; Credit CARD\textsuperscript{52};
ENHANCE 911\textsuperscript{53}; E-SIGN\textsuperscript{54}; FACE\textsuperscript{55}; two things called FACT,\textsuperscript{56} two things called FAIR (each of which no doubt seems to someone somewhere to be not fair at all),\textsuperscript{57} two other things called HOPE,\textsuperscript{58} another two things called PROTECT,\textsuperscript{59} yet another two things, both apparently misspelled, called HEROS,\textsuperscript{60} and no fewer than three separate things called SAFE\textsuperscript{61};

\textsuperscript{51} See the Cooperative Research And Technology Enhancement Act of 2004, Pub. L. No. 108-453, 118 Stat. 3596 (2004), now codified at note following 35 U.S.C. § 103 (dealing with the patentability of inventions that were collaboratively developed by more than one person).


\textsuperscript{55} See supra note XXX.

\textsuperscript{56} See supra notes XXX.

\textsuperscript{57} See supra notes XXX.


GRAD\textsuperscript{62}; FREEDOM,\textsuperscript{63} FRIENDSHIP\textsuperscript{64}; an item of which everybody needs a little, that is, HELP\textsuperscript{65}; HEART\textsuperscript{66}; HERO\textsuperscript{67} (not to be confused with the already-mentioned HEROS); HITECH\textsuperscript{68}; IDEA\textsuperscript{69}; KIDS\textsuperscript{70}; LEGACY\textsuperscript{71}; the unaccountably culturally ecumenical LIBERTAD\textsuperscript{72};


\textsuperscript{64} See supra note XXX.


\textsuperscript{69} See supra note XXX.


\textsuperscript{72} See the Cuban Liberty and Democratic Solidarity Act of 1996, Pub. L. No. 104-114, 110 Stat. 785 (1996), now codified at 22 U.S.C. §§ 6021-91. The main effect of this statute, which is more commonly known as the Helms-Burton Act, was to impose sanctions and embargo on Cuba; it has been fairly controversial and has been the subject of WTO action against the United States.
the LOCAL TV law, which despite its promising title will do precisely nothing to put hard-hitting, “investigative” local news reporters in prison; MD-CARE; MEDS; MINER; NET; NET 911; No FEAR; ORBIT; PACE Energy; PEP; PREEMIE;
PRICE of Homeland Security; PRIME; REAL ID; the REAP law, which of course could be introduced only after the SEED law; SAFE- ID; SAFETEA-LU; SAFETY; SAVER; SCAMS; SPARTA;

STOP\(^97\); SWEETest\(^98\); TREAD\(^99\); the disappointingly predictable USA Act,\(^100\) which followed only shortly after the aesthetically and otherwise execrable USA PATRIOT\(^101\); VISTA\(^102\); and—phew—two different things called WARN.\(^103\)

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for acquiring or trafficking in fraudulent government ID documents with technological “authentication features”).

\(^92\) See supra note XXX.

\(^93\) See the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, Pub. L. No. 107-296, tit. VIII, subtit. G, 116 Stat. 2135 (2002), now codified at 6 U.S.C. §§ 441-44 (tort reform provision limiting recovery where plaintiff’s injury arises from the use of “qualified anti-terrorism technology” during a terrorist attack, if defendant is a third party manufacturer who sold the technology to a federal, state, or local government, and if the technology was first certified by the Secretary of Homeland Security).


\(^98\) See supra note XXX.


\(^100\) See the Unity in the Spirit of America Act, Pub. L. No. 107-117, § 1301, 115 Stat. 2230 (2002), now codified at 42 U.S.C. § 12671 (providing funds for memorials to September 11 victims, the funds to be administered through the Points of Light Foundation, a non-profit organization dedicated to encouraging private altruistic volunteerism, which was itself created by Title III, §§ 301-05 of the National and Community Service Act of 1990, Pub. L. No. 101-610, 104 Stat. 3127, 380-83 (1990), now codified at 42 U.S.C. §§ 12661-64; see generally POINTS OF LIGHT FOUNDATION, STRATEGIC PLAN 2004-2009 (2003), available at www.pointsoflight.org)).

\(^101\) See supra note XXX.

\(^102\) See supra note XXX.

\(^103\) As to the first, the Worker Adjustment and Retraining Notification Act, see supra note XXX. The second is the Warning, Alert, and Response Network Act, Pub. L. No. 109-347, tit. VI, 120 Stat. 1936 (2006), now codified at 47 U.S.C. §§ 1201-05 (directing the FCC to develop program for emergency alert capabilities over cell phone services).
A sociology or a semiotics of acronyms might explain why we do these things. Acronyms are now of course pandemic.\textsuperscript{104} Also, revealed preference suggests that the public (or at least the practicing bar) wants acroni\textemdash"ally clever statutes and otherwise adorable public policy. A 1991 transit policy bill, with the clunky title “Intermodal Surface Transportation Efficiency Act” or “ISTEA,” is apparently known—and even listed in \textit{Popular Names}—as “Ice-Tea,” even though the original bill does not so specify.\textsuperscript{105} The unmusical Public Company Accounting Reform and Investor Protection Act of 2002,\textsuperscript{106} which could probably have gone by “PCARIPA” (one might say pik-\textaelip-rip\textaelip), and commonly goes by “Sarbanes-Oxley,” has become colloquially known as “SOX.”\textsuperscript{107} Among transportation lawyers the U.S. Surface Transportation Board is known as the “Surf Board,” and rumor has it that within the agency entrusted with its administration the Federal Oil and Gas Royalty Management Act is known as “Foggy Grandma.”\textsuperscript{108} How adorable is that? Lawyers even complain about failure to come up with a clever acronym, or at least an easily pronounceable one, as in belly aching over the so-called “all-vowel statute,” the IAEAA.\textsuperscript{109} The lay public does this too, “COBRA” being an example. The leaving of a job with portable health insurance rather unexpectedly took its name from the bureaucracy of the federal budget process, and is now known as “COBRA-ing.”\textsuperscript{110}

\textsuperscript{104} One website that collects and defines acronyms claims to contain more than four million entries. See http://www.acronymfinder.com.


\textsuperscript{107} See, e.g., Roberta Romano, \textit{The Sarbanes-Oxley Act and the Making of Quack Corporate Governance}, 114 \textit{YALE L. J.} 1521, 1523 (2005).


This same predilection shows in the \textit{Schadenfreude} we all savor when catching someone in an accidental acronomial malaprops. Consider the ill-advised “Ohio Department of Development,”\footnote{No kidding. \textit{See} http://www.odod.state.oh.us.} or the acronym under which the 2003 invasion of Iraq was announced.\footnote{The invasion was initially announced by White House Press Secretary Ari Fleisher as “Operation Iraqi Liberation.” \textit{See} Ari Fleischer, \textit{Press Briefing} (Mar. 24, 2003), \textit{available at} www.whitehouse.gov/news/releases/2003/03/20030324-4.html. That is to say, the present U.S. military misadventure was originally named “OIL,” a fact the political blogosphere did not require long to pounce upon. Like the Lady who protested too much, the White House proved the rhetorical power of meaningful acronyms by the very speed with which the war was renamed; it is now officially referred to as Operation Iraqi Freedom. The incident and the operation’s renaming are discussed at some length in \textsc{Steven Poole}, \textit{Unspeak: How Words Become Weapons, How Weapons Become a Message, and How That Message Becomes Reality} 104-07 (2006). \textit{See also Greg Palast}, \textit{Armed Madhouse} 51-54 (2007).} Some groups try to short-circuit this risk pro-actively, though it turns out not to be that easy to give yourself your own nickname. (I recall a colleague once named Gordon who was known by precisely no one as “Gordo” despite his signing of every email as “Gordo.”) The National Association of Area Agencies on Aging, evidently to avoid undue negativity, markets itself as “N4A” (because otherwise they would be “NAAAA”),\footnote{\textit{See} www.n4a.org.} and one wonders just exactly why the professional association of British law professors recently changed its name to the Society of Legal Scholars, whereas they had been the Society of Public Teachers of Law.\footnote{\textit{Cf.} www.legalscholars.ac.uk/text/about/page.cfm?no=11.} (Admittedly I may just be trying too hard to find these things. I hesitated recently, for example, for fear of the tragedy of colo-rectal cancer it might presage, before joining the American Society of Political and Legal Philosophy.)

In a similar vein, the explosion of acronomial statute titles could be a purely aesthetic innovation. While many statutes are commonly known by non-clever acronyms, most of them are awkward and peculiar, like the “4R Act,” which in part kicked off deregulation in the 1970s.\footnote{\textit{See} the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31 (Feb. 5, 1976), now codified at various sections of Title 45, U.S.C.} Neither is much warmth kindled in one’s heart by a title like, say, ACFCMA,\footnote{The Atlantic Coastal Fisheries Cooperative Management Act, Pub. L. No. 103-206, Title VII, 107 Stat. 2447 (Dec. 20, 1993), now codified at various sections of Title 16, U.S.C.}
which someone somewhere no doubt calls “ack-‘fick-ma.” There are simply thousands of such things, statutes with unbelievably long, many-word titles that, according to Popular Names, are commonly known by unpronounceable acronyms like NAGPRA, NANPCA, FRRRPA and FRRRRRA.117 Non-acronomial short names too can be unlikable. Consider the Hog Cholera Serum Act, the Pickle Amendment, or the very cheery old Bill of Abominations of 1828,118 and junior high must have been rough indeed for the Dick Act119 and the Gay Act.120 So maybe the trend in funny acronyms is really just a would-be beautification effort, and maybe a clever title of some kind would have been better in all of these cases. The Fastener Quality Act,121 which bars federal contractors from bilking the government by providing goods with substandard nuts and bolts, surely would be less forgettable if it were named the Secure Connector Reliability, Efficiency, Workability and Justice On Building Act.

On a more homely level, the trend might just reflect our large amount of legislation. One can’t actually say how many federal statutes there are in force, but on one reasonable estimate the number is well into the tens of thousands.122 Cute and funny names might make all these thousands of

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119 See the Militia Act of 1903, ch. 196, 32 Stat. 775 (1903).


122 See Email from Shameema A. Rahman, Legal Reference Specialist, U.S. Library of Congress, to Schuyler Cook, Librarian, Cleveland State University Cleveland-Marshall College of Law (Sept. 29, 2005) (explaining that, excluding private laws and simple resolutions, the number of federal laws adopted through the end of the 108th Congress...
statutes easier to remember. Plainly, ordinary acronyms (i.e., those that
don’t spell something) can no longer do that job. According to
Popular Names, three separate statutes are commonly known as the FAA,\textsuperscript{123} two
are known as FAAA,\textsuperscript{124} and one is known unbelievably as FAAAA (do people say
“F-quadruple-A,” or “F4A,” or just faaaaaaaaaaaaaahhhhhhhhh?\textsuperscript{125}) So clever acronyms might help keep our
legislation straight, perhaps through a minor anthropomorphosis.

* * *

But in fact, for having said all that, the reason why Congress has
started making these things aspirationally clever or funny seems to be a
special case, and no benign explanation really fits. Surely the purpose is
not just housekeeping. There now exist so many clever acronomial
statutes that it’s hard to believe they actually help in that respect, and
indeed several now even have the same clever acronym. There are two
different FACT Acts, two PROTECT Acts, two WARN Acts, three SAFE
Acts, and not only are there already two different FAIR Acts in force, but
just in the past few years four other FAIR Act bills have been introduced
unsuccessfully.\textsuperscript{126} Likewise, even though many other countries have just

\textsuperscript{123}The Federal Arbitration Act, ch. 392, § 1, 61 Stat. 669 (1947), now codified at 9
731 (1958), revised title now codified at 49 U.S.C. §§ 40101 et seq., and the Foreign

\textsuperscript{124}The Federal Alcohol Administration Act, ch. 814, 49 Stat. 977 (1935), now
codified at 27 U.S.C. §§ 201-219a , and the Federal Aviation Administration

\textsuperscript{125}This statute is actually one of the two known as “FAAA”—the Federal Aviation

\textsuperscript{126}Those that became law were the Federal Agriculture Improvement and Reform
and the Federal Activities Inventory Reform Act, Pub. L. No. 105-270, 112 Stat. 2382
(1998), now codified at 31 U.S.C. § 501. Those that did not or have not yet passed
despite several introductions were the Fairness, Accuracy, Inclusivity and
Responsiveness in Ratings Act, S. 1372, 109th Cong., 1st Sess. (2005), the Free...
as many statutes and regulations as we do, no other country in the world
does this—no other country so far seems interested in the aspirationally
clever acronymial statute-name game. This may bear some relationship to
our American solitude in other fetid embarrassments, like the Freedom
Fries fiasco (launched by my fellow Ohioan and a convicted felon). 127
Admittedly, a few other countries have recently begun sneaking some
sloganeering into their statutes, 128 but the degree of it pales in comparison
to our own, and what is really telling is that observers in those countries
suspect that its origin actually lies in U.S. influence. People overseas
blame our legislature for having tainted their own. 129

One other observation before moving on. If this trend really were to
betray some new willingness of federal policymakers to laugh at
themselves, that might not be an unwelcome thing, even if the jokes are
normally not that funny. Surely the great scourge of the weak has been
the distinguished self-importance of gray-haired men in high office,
because it is often in taking government too seriously that abuses occur on
that field of pain and death that is our law. But in drafting these statutes I
think they are not laughing at themselves. If they are laughing at anyone
in particular, I expect it is us.

Antitrust Immunity Reform Act, H.R. 3138, 106th Cong., 1st Sess. (1999), the Fairness
in Asbestos Injury Resolution Act, S. 2290, 108th Cong., 2d Sess. (2004), and the
Financial Accounting for Intangibles Reexamination Act, H.R. 5365, 106th Cong., 2d

127 To wit, in 2003, “french fries” served in restaurants in U.S. House buildings were
renamed “freedom fries” by Bob Ney, a Republican Representative from rural
northeastern Ohio, who had been Chair of the House Committee on Administration. He
did this to protest the now seemingly pretty raisonnable French opposition to the
invasion of Iraq. One must simply love the French for their reactions at the time. The
French Embassy’s only official response was a diplomatic communiqué pointing out that
french fries are actually from Belgium, see Neal Conan, NPR: TALK OF THE NATION,
Mar. 11, 2003 (interview with Andrea Seabrook), and an Embassy spokeswoman told a
reporter that “We are at a very serious moment dealing with very serious issues, and we
are not focusing on the name you give to potatoes,” Tom Feran, Don’t Supersize My

In any case, as evidence that America simply no longer is the country it once was,
we might observe how a real American makes fun of France. Twain said this: “France
has neither winter nor summer nor morals. Apart from these drawbacks, it is a fine
country. France has usually been governed by prostitutes.” 2 MARK TWAIN, MARK
TWAIN’S NOTEBOOKS AND JOURNALS bk. 18 (Frederick Anderson, ed. 1976).
128 Notably Australia, as detailed in the excellent Orr, supra note XXX.
129 See Orr, Names Without Frontiers, supra note XXX, at 208-09.
Instead, the clever-names phenomenon seems to be pretty political. That is, at a minimum, it is intended to persuade. Among other things, it roughly parallels the growth of explicit findings of fact or statements of purpose in legislation, which in modern times will not often have that much legal significance; instead they serve political, polemical goals.\footnote{Vernon Palmer documents this trend. See Palmer, supra note XXX, at 20-22. Though he offers some reasons to expect that it is not simply political, it is hard to take seriously that, at least since 1937, findings of fact and statements of purpose are really only intended to defend against constitutional attack, and they likely have very little influence on judicial construction.} Admittedly, a clever acronym is no guarantee of legislative success. In the federal Congress alone scores of acronomially named bills have failed.\footnote{The list of failed bills is just as ridiculous as those that passed. It includes, among quite a few others, BACK, yet another HERO, yet another HELP, RID, and SMUT.} Just in the past few years no fewer than six have been named “FAIR,” but only two of them passed.\footnote{See supra notes XXX.}

But there is little doubt that the naming of statutes in this country has come to be part of a fairly crass game in service of goals like legislative victory and campaign-trail self-congratulation.

Suasion in itself may not be a sin, even when it amounts to cold strategy in the aggressive zero-sum division of finite spoils, because that is the ugly spectacle of democracies everywhere. It also may be no sin to simplify matters of policy through rhetorically manipulative symbols. Capturing the real complexity of issues in public exchange must be beyond any electorate’s attention span. And so, politically simplifying symbols, like persuasive short names, may be the regrettably necessary compromise of humankind with its own epistemic reality. Perhaps for that reason, symbolism in political rhetoric has always existed, and it has always been simplifying and therefore at least a little misleading.\footnote{\textit{Cf.} LOUIS HARTZ, THE LIBERAL TRADITION IN AMERICA 75-80 (1955) (noting that during the founding generation Federalists called their opponents “levellers,” implying that they plotted for socialist material equality, whereas Anti-federalists decried the Federalists as essentially monarchist “aristocrats”; on Hartz’s view, both criticisms were false because, then and now, American politics has remained one of almost homogeneously bourgeois liberalism, having never had significant radical traditions on either the Right or the Left).}
Possibly too this apparently strategic symbol-game will seem not too terrible if it really is no more than the kind of political talk that Princeton philosopher Harry Frankfurt defined as “bullshit”—talk that does not deliberately lie, but is recklessly indifferent to its own truthfulness. Frankfurt thinks the large amount of bullshit today may simply reflect our advanced state of bureaucracy and mass communication:

Bullshit is unavoidable whenever circumstances require someone to talk without knowing what he is talking about. Thus the production of bullshit is stimulated whenever a person’s obligations or opportunities to speak about some topic exceed his knowledge of the facts that are relevant to that topic. This discrepancy is common in public life, where people are frequently impelled—whether by their own propensities or by the demands of others—to speak extensively about matters of which they are to some degree ignorant.134

So maybe this particular load of bullshit is just one more case in which persons overwhelmed by their duties and political pressures lack the time, resources and incentive for the truth.

It might not even be too irreparably dispiriting if the problem were only the ignorance of some of our representatives or their staffers. We might console ourselves by just trying to elect someone else if it were only such things as the two acronomial titles that apparently contain typos,135 or that very odd statute, the REAL ID Act, that looks like it was supposed to be an acronym, because its short-title section gave its name in all-capitals, but as to which there is no evidence anywhere what the capital letters are supposed to stand for.136

134 See HARRY G. FRANKFURT, ON BULLSHIT 63 (2005).
135 See supra note XXX and accompanying text (discussing the two “HEROS” Acts).
136 As enacted, both the Public Law in which the REAL ID Act was contained and a bibliographical note in the U.S. Code contain a short title provision identifying it as the “REAL ID Act of 2005,” capitalized in that manner, but with no explanation what the title might stand for. See Pub. L. No. 109-13, Div. B, 119 Stat. 302; 8 U.S.C. § 1101 note. Neither the Senate nor House bills that ultimately became this statute seem to have explained it either; they both contain the same, unexplained short-title provision. (The bill was introduced only once, during the 109th Congress; the House version was considered by the Senate after House passage, and it became law that year.) See H.R. 418, 109th Cong., 1st Sess. (Feb. 17, 2005). The bill’s sponsor, Representative Sensenbrenner, never seems to have explained the title in press releases or floor statements, and the legislative history is silent. See H.R. REP. NO. 109-72, at 160-87
But this all seems too optimistic. These statutes transgress an institutionally important line of which we in American have apparently become unaware. The line was captured in a superb diagnosis by the Australian scholar Graeme Orr. In what at first seems a bit of doctrinaire resistance to Realist truisms, he complains that sloganeering titles are “eruptions from the political world into the legal . . .”\(^{137}\) But he then continues:

The reticent language that formed the hallmark of . . . common law traditions . . . tended to be studiously indifferent to the political passions and games that dominate parliamentary and political rhetoric . . . . The problem of sloganeering [in legislation] . . . occurs when . . . [that] convention is broken and when the bureaucracy is required not just to translate a government’s policies into legislation, but to adopt and spread the rhetorical ruses that sold such policies. . . . [E]gregious or illegitimate uses of legislative language . . . [seem so because] people generally still make a distinction between government and commerce.\(^{138}\)

Worse, these statutes turn out frequently to conceal legal substance that is highly disagreeable, and so the conflict between their cheery, pun-like frivolity and the darkness they contain verges on the deliberately dishonest or fraudulent. Consider the seemingly well-intended “competitiveness” bill for funding science education, called America COMPETES,\(^{139}\) which appears actually to have been just a fat pile of pork.\(^{140}\) Likewise, the national embarrassment of the MEDS Act\(^{141}\)

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\(^{137}\) Orr, Names Without Frontiers, supra note XXX, at 212.

\(^{138}\) Orr, Names Without Frontiers, supra note XXX, at 190, 193, 205.

\(^{139}\) See supra note XXX.

\(^{140}\) The bill made a large authorization—tens of billions of dollars—for technology education and innovation; the argument for it was that American economic performance in international markets depends on having enough home-grown intellectual firepower in science and engineering. It turns out that many scientists themselves think the money is poorly spent, and impartial observers say that federal policy already causes an overproduction of engineers and scientists for domestic labor market needs. Congress was so told in connection with the America COMPETES Act itself, by no less an impartial authority than the Alfred P. Sloane Foundation. Most suspicious is that private corporations tend to push hard for these kinds of appropriations, and also that a fair bit of the money under the bill will benefit the co-sponsors’ home states. See Richard Monasterskey, Researchers Dispute Notion That America Lacks Scientists and Engineers, CHRON. OF HIGHER ED., Nov. 16, 2007, at 14; cf. Kay Bailey Hutchison, Press Release, Sen. Hutchison Meets With TAIMU GEAR UP Students to Discuss Education,
addressed rising prescription drug prices by allowing Americans to benefit from Canadian health care policy, and the NET law protects multi-billion-dollar, publicly traded corporations from graduate students.\footnote{\footnote{Pub. L. No. 105-147, 111 Stat. 2678 (1997), now codified as amended in scattered sections of Titles 17 and 18 U.S.C. (amending various sections of copyright and criminal codes to reverse United States v. LaMacchia, 871 F. Supp. 535 (D. Mass. 1994), which held criminal penalties unavailable for copyright infringement not involving any commercial gain; see H.R. Rep. No. 105-339, at 3-4 (1997); defendant LaMacchia was an MIT graduate student who had encouraged illegal online sharing of computer games).}}

And so the lesson if anything is that symbolically simplifying rhetoric in Washington is not now simply some heuristic substitute for genuine debate, called for by competition for the public attention span within the daily cacophony. It has something rather to do with Americans as voters and citizens, who the people are in power and where their priorities lie, and, ultimately, just how low their opinion of us really must be.

Whether because their real interests are elsewhere or because they just don’t care, the men and women by whom we are governed appear eager to disguise their absolute lack of concern for substantive policy with symbols, and symbols alone. We should not be surprised by John Conyers’ confession of a few years ago that legislators rarely even read the bills on which they vote (a comment he made about no less an acronymial monstrosity than the PATRIOT Act).\footnote{\footnote{See supra note XXX.}} Among the recent leadership of our federal government, this sort of approach—this evasion of intellectual substance in favor of reductive slogans and catchy one-liners—has come to be so much more than just some calculating and invidious sleight of hand. It is a reflexive tic. Indeed, they seem more than anything to do it just because they do it, even when there is nothing else to gain by it at all. It is a fetish, an encompassing model of governance, a model of perfectly satisfactory policy and statecraft.

A case in point: the “General Accounting Office”—which is, after all, responsible for accounting for things, and seemed to do okay with the one

Nov. 17, 2007. available at www.senate.gov/~hutchison (Sen. Hutchison co-sponsored America COMPETES, a portion of the funding of which goes to Texas).\footnote{\footnote{See Farenheit 9/11 (Lions Gate Films 2004) (Conyers, responding to Moore’s question how so many congresspersons seem to have voted on the USA PATRIOT Act before reading it, said: “Sit down, my son. We don’t read most of the bills.”).}}
solitary title it had had since its creation about 90 years ago—was recently renamed. It is now the “Government Accountability Office,” a title no doubt meant to convey the Old Testament fury with which the bill’s co-sponsors intended to tame our wasteful and jack-booted federal administrivia.\textsuperscript{144} However, not much explanation was given for what was broken at GAO, despite the willingness to fix it, and the statute whose function was to change the agency’s name did \textit{very nearly nothing else}.\textsuperscript{145}

Indeed, not long ago a huge, many year long effort here largely succeeded in making the public-policy symbol fetish take on bizarrely physical manifestation, in the form of a wall across the U.S. border with Mexico.\textsuperscript{146} As if desiring to prove beyond all equivocation that form had fully replaced substance, this very expensive and dominating symbol seemed by fairly common consensus to be one that wouldn’t really

\textsuperscript{144} GAO was created by the Budget and Accounting Act of 1921, Act of June 21, 1921, ch. 18, 42 Stat. 20, section 301 of which named it the “General Accounting Office.” The bill renaming it was the GAO Human Capital Reform Act of 2004, Pub. L. No. 108-271, § 8(b), 118 Stat. 811 (2004), now codified at 31 U.S.C. § 701 Note. It was introduced by three arch-conservative House co-sponsors, Tom Davis of Virginia, the late Jo Ann Davis of Virginia, and Adam Putnam of Florida.

\textsuperscript{145} Admittedly, the bill modified GAO personnel rules in various miscellaneous ways, but it was otherwise unconcerned with the agency’s name and nothing in the bill would seem to have much of anything to do with making the government more “accountable.” It is just a little surprising that the name change was apparently desired by the agency’s head, Comptroller General David Walker, but mainly because he thought it would help in hiring, not in making anybody or anything more accountable. \textit{See} John Kelly, \textit{Answer Man: Name That Agency}, WASH. POST, March 14, 2005, at C11. In any case, the need for the new name was explained in the legislative history thusly, and one simply must \textit{love} the last line:

\ldots The modern [GAO] is focused on improving the performance and assuring the accountability of the federal government for the benefit of the American people. Importantly, although the name has been changed, the well-known acronym for the agency, “GAO,” remains the same.


work, as a practical matter, and so it seemed to have appeal only for what it could signify, metaphorically. And is there any doubt just for whom this show was intended? Refugees of the Central American underclass, who would still get here one way or another, or American voters?

Manipulative language games like these tend to characterize dark times, and reflect not just sloth or incaution as to truth. Famously, at the end of World War II Orwell said that “[p]olitical language . . . is designed to make lies sound truthful and murder respectable, and to give an appearance of solidity to pure wind.” And so it should be alarming that hundreds of federal statutes are wrapped in the flag. Fully fifty different U.S. statutes begin their names with the word “America,” and scores more include it. Moreover, contrary to the Frankfurtian diagnosis of merely careless bullshit, our statute names now pretty often deliberately lie. As a matter of fact the naming of statutes has occasionally seemed almost like some game of self-indulgently deceptive, rhetorical brinksmanship, by which our leaders do no more than show just how virile and ballsy they really are. The American Jobs Creation Act of 2004, for example, included a tax holiday scheme sold as a boon to the American worker, but its chief use in application was apparently to fund severance pay so that American workers could be laid off and their jobs shipped overseas.

Construction cost so far has been on the order of about $3 billion—more than $4 million per mile—and ongoing maintenance will presumably cost much more. See Bracamontes, supra note XXX. While assuredly the project retains passionate defenders, the adoption the Secure Fence Act was denounced before the Organization of American States by Mexico and 27 other states, who threatened appeal to the United Nations, see Mark P. Sullivan & June S. Wittel, Cong. Res. Serv., Mexico-U.S. Relations: Issues for Congress (2009), and immigration experts and observers from various political persuasions doubt that despite its very high cost it will meaningfully control immigration. See Bracamontes, supra; Jerry Seper, Doubts Linger on Feasibility of Barrier, The Wash. Times, Oct. 27, 2006, at A1.

George Orwell, Politics and the English Language, in 4 The Collected Essays, Journalism and Letters of George Orwell 127, 139 (Sonia Orwell & Ian Angus, eds. 1968) (this essay was originally published in the London periodical Horizon in April 1946).

The initiative was designed to encourage the “repatriation” of otherwise non-taxable foreign profits through what was effectively a generous, temporary tax holiday on condition that repatriated funds be reinvested in this country. The provision’s stated purpose was to “stimulate the U.S. domestic economy by triggering the repatriation of foreign earnings,” H.R. Rep. No. 108-548 Part 1, at 146 (2004), but, despite the
But in the end, and whoever is to blame, the saddest aspect of this behavior is neither its shallowness nor the deliberate malfeasance of anyone in government. Like some other tokens of prosaic American simplicity, susceptibility to the USA PATRIOT Act and like nonsense shows just how far our democracy is one of callow children who have earned no right of self-government. For example, as shown by that saber-edged dialectic through which cable news pundits decide whether or not we should “play the blame game,” public debate is now reckoned especially cogent if it can be made to rhyme. No doubt this sort of thing sometimes reflects the psyche of a particular political candidate—that is, a particular person might resort to hollow, jejune sloganeering because he or she really just isn’t that intelligent. More generally it reflects an uninformed and disenchanted electorate disgusted by the personal awfulness of their elected officials, and discouraged by the complex opacity of public issues that actually matter. Their resulting disaffection renders them susceptible to severely reductive, polemical symbols. For example, recall the roughly 1.5 years when our attention was riveted on Oval Office fellatio and the long-term domicile of little Elian. How many of us were really paying much mind back then to the fact that in a nation whose GDP is not only largest in the world, but the largest by a factor of three, infants were dying of things like malnutrition? I mean, F.U.C.K. the poor.

This all might seem more amusing if we were running, say, Liechtenstein. But we are not. Men and women campaigning for the highest office in our order—people who propose that they be entrusted with nuclear bombs—make important arguments out of “put it in a lock-box” and “flip-flopper.” And on arguments like that they win. Our democracy is one in which the whims of a juvenile electorate command an aspirationally imperial, world-wide military force of outlandish power,

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Keynesian rhetoric, repatriated profits could be used in any way and they were rarely if ever used to benefit the working class. Much of the was simply distributed directly to shareholders. See Postcards From a Tax Holiday, N.Y. TIMES, Nov. 12, 2005, §A, Col. 1, Editorial Desk; Timothy Aeppel, Tax Breaks Bring Billions to U.S., But Impact on Hiring Is Unclear, WALL ST. J., Oct. 25, 2005, p. A1; cf. Timothy Aeppel, Buybacks Soar; Firms Deny a Link to Repatriated-Profit-Tax Break, WALL ST. J., Oct. 25, 2005, p. A2 (noting that the other major purpose pursued by many repatriating companies appears to have been stock buy backs).
with plans to nurture and police a worldwide liberalism in its own image.\textsuperscript{151}

American democracy, like the popular names of some recent statutes, is a joke that isn’t funny.