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Glass-Steagall, Dodd-Frank, Volcker: Why All the Eponyms?

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There is a distinctive quality of eponymity to modern banking law.

The procreators of banking law have shown a strong and recurring interest in name-identification with their work. The Dodd-Frank Wall Street Reform and Consumer Protection Act is only the most recent and prominent example of this phenomenon. Indeed, the incorporation of the Volcker Rule in the Dodd-Frank Act—an example of what might best be called compound eponymity—epitomizes the power of eponymity in banking law.

Eponymity has a long and distinguished history in banking law. The Aldrich-Vreeland Act, the Edge Act (not an acronym; it was named for Sen. Walter Evans Edge), and the McFadden Act all attest to the appeal of name-identification in banking legislation in the early decades of the twentieth century. But surely the most prominent example of eponymity in banking law in the twentieth century remains the Glass-Steagall Act.

The perceived virtues of Glass-Steagall, such as its simplicity and clarity, are trumpeted today 80 years after its passage, 13 years after its partial repeal in the Gramm-Leach-Bliley Act, and three years after a

partial reinstatement of the repealed provisions through the Volcker Rule.

As with other early examples of eponymity, Glass-Steagall took the form of the popular and not the official name of the legislation with which it is identified, the Banking Act of 1933. The incorporation of an eponym into banking legislation itself appears to have originated with the Garn-St Germain Depository Institutions Act of 1982. The full Garn-St Germain Act title relied on both an eponym and a functional descriptor as did the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.

The Gramm-Leach-Bliley Act in 1999 concluded a century of banking legislation on a note of pure eponymity. It dispensed with any functional descriptor. The Gramm-Leach-Bliley Act was also known on an informal basis as the Financial Services Modernization Act. That name reflected the notion that the legislation would bring up to date the U.S. financial system by removing obsolete Glass-Steagall Act restrictions on affiliations between banks and securities firms and outdated Bank Holding Company Act restrictions on affiliations between banks and insurance companies. Gramm-Leach-Bliley was hailed as the most important banking legislation in 60 years ... by one of its authors and namesakes.

The financial crisis in 2008 led many observers to question the deregulatory policies that underlay Gramm-Leach-Bliley and to urge a reconstitution of our regulatory system with more robust constraints on activities and affiliations. Like the authors of Gramm-Leach-Bliley, the authors of the Dodd-Frank Act regarded their legislation as the most significant banking measure since the time of the Great Depression. The regulatory ethos that animated Dodd-Frank was very different from the deregulatory process that propelled the Gramm-Leach-Bliley Act, but both confirm that eponymity can serve competing policies and philosophies.

An eponym can do more than just signal philosophical differences. It can conjure up emotive reactions. It facilitates the merger of persona and policy. The invocation of an eponym reinforces personalized support or opposition in the way that the invocation of a functional descriptor generally cannot. Consider, for example, the contrasting polling results for references to Obamacare and the Affordable Care Act. The Volcker Rule undoubtedly benefits in the popular mind from the towering figure and reputation of its namesake.

In addition to evocative power, an eponym can have staying power. This is amply demonstrated by the current channeling of the spirit of the Glass-Steagall Act by regulators, legislators and commentators. The wisdom of Gramm-Leach-Bliley's partial repeal of the Glass-Steagall Act has been questioned by certain observers since the 2008 financial crisis. These observers believe that even with the addition of the Volcker Rule, the Dodd-Frank Act did not go far enough in reconstituting a system akin to that which existed before Gramm-Leach-Bliley.

Thomas Hoenig, the Vice Chairman of the Federal Deposit Insurance Corp., has suggested a fundamental restructuring of the U.S. banking industry along lines that are in many respects reminiscent of the original Glass-Steagall Act. The objective of Hoenig's proposal is to limit banks and their affiliates to core commercial banking activities as they were generally constituted at the time of the passage of Glass-Steagall. His proposal would prohibit banks and their affiliates from trading or market-making, either on a proprietary basis or as agents for customers, in securities or derivatives. (His proposal would, however, allow the affiliates of banks to underwrite debt and equity

securities.) Although not wholly symmetrical with the original Glass-Steagall Act regime, the proposal seeks to replicate much of it.

In pursuit of their own remembrance of things past, Senators Elizabeth Warren and John McCain have designed a variation on a Glass-Steagall Act theme. They have introduced the "21st Century Glass-Steagall Act of 2013." To critics, the bill's title sounds as clunky as its underlying concepts. The bill would repeal the basic provisions of Gramm-Leach-Bliley that permit affiliation among banks, securities firms and insurance companies. The bill would also amend the federal banking laws to limit banks' powers to "core" banking services, such as deposit-taking and lending, and limit their derivative activities to narrow forms of hedging. A bemused observer might be forgiven for thinking that this proposal to reverse history must have emerged from a Tea Party convention. It has little or no prospect for passage, but Senators Warren and McCain nonetheless sense the enduring power of the Glass-Steagall eponym for shaping public discourse in the banking arena.

One can only wonder whether the Volcker eponym will have the same staying power.

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