The Modern Way to Write a Statute Is to Tell a Story

Richard K. Neumann Jr.
Maurice A. Deane School of Law at Hofstra University

Follow this and additional works at: https://scholarlycommons.law.hofstra.edu/faculty_scholarship

Part of the Law Commons

Recommended Citation
Richard K. Neumann Jr., The Modern Way to Write a Statute Is to Tell a Story, 28 LEGAL WRITING: J. LEGAL WRITING INST. 217 (2024)
Available at: https://scholarlycommons.law.hofstra.edu/faculty_scholarship/1418

This Article is brought to you for free and open access by Scholarship @ Hofstra Law. It has been accepted for inclusion in Hofstra Law Faculty Scholarship by an authorized administrator of Scholarship @ Hofstra Law. For more information, please contact law.scholarlycommons@hofstra.edu.
The Modern Way to Write a Statute is to Tell a Story

Richard K. Neumann, Jr.*

Abstract

Except for the United States, the English-speaking world has been moving toward writing statutes as stories with characters and plot tensions. British statutes are the most advanced in this respect.

To illustrate the British method, this article shows the key statutes in the Mar-a-Lago Indictment as they would have been written if recently enacted by Parliament. The article compares the statutes and redrafts side-by-side, and it does the same thing with sections of the Electoral Count Act, which governs what Congress does on every January 6 following a presidential election year.

The article explains how the British drafting process differs from Congress’s and how the British have gradually been abandoning statute-writing customs that still prevail in the United States. And it explains how a writer can tell a story in a statute: sequencing events, blocking to set up a scene, and managing the action and dialog.

1. Introduction 218
2. Redrafting Crimes Charged in the Mar-a-Lago Indictment 221
3. Drafting in Congress 227
4. Drafting for Parliament 231
5. Four Models of Statute Design and Drafting 235
6. How the British Left the Common Law Patchwork Model 238
7. Organizing and Sequencing a Story (Voter Initiatives) 240
8. Blocking to Set a Scene (Electoral Count Act, 3 U.S.C. § 16) 243
10. Conclusion 255
Appendix 257

* Professor of Law, Maurice A. Dean School of Law, Hofstra University.
1. Introduction

During the Parliamentary debate leading up to enactment of the U.K.’s Mental Capacity Act 2005,¹ a member of the House of Lords said,

Clause 1 contains a statement about a vision of humanity and how humanity is to be regarded. I hope children in generations to come will study that as one of the clearest and most eloquent expressions of what we think a human being is and how a human being is to be treated.²

Wait. Children should read a statute? And they should read it because it eloquently expresses what it means to be human as well as the treatment every human deserves—in other words, for the same reasons we read Dickens, Joyce, Melville, and Twain when we were young?

Here is the Mental Capacity Act’s clause 1 (which we would call section 1):

1. The principles
   (1) The following principles apply for the purposes of this Act.
   (2) A person must be assumed to have capacity unless it is established that he lacks capacity.
   (3) A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
   (4) A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
   (5) An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
   (6) Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person’s rights and freedom of action.³

¹ British legislation omits the word of between the act’s title and its date.
³ Mental Capacity Act 2005, c. 9, § 1.
On stage is a protagonist—“a person”—who has difficulty navigating life. Other characters on stage find the person’s behavior inconvenient, burdensome, or annoying. Later still other characters make decisions under the law about the person. The plot tension is about what those decision-making characters will do. The Act is instructions to them.

They are to take “all practicable steps to help” before limiting freedom. They are not to treat unwise decisions as proof of an inability to make decisions. The person has a right to make unwise decisions. They are to create solutions that are “less restrictive” of the person’s rights and freedom of action. The Act’s words require that the person be treated with dignity, respect—and empathy.

A later section tells the decision-making characters to “consider . . . (a) the person’s past and present wishes and feelings . . . (b) the beliefs and values that would be likely to influence his decision if he had capacity, and (c) the other factors that he would be likely to consider if he were able to do so.” The person has a legal right to be understood as a human being.

Intellectually a rule of law is a formula based on symbolic reasoning with elements or factors tests. Most American statutes are collections of abstract concepts, which might or might not be coherently expressed.

But in the real world, law isn’t applied as abstract concepts. Instead a legal rule is applied over and over again to sequences of events that occur over and over again—in other words, to stock stories with predictable plot tensions, which the law calls issues. As Stephen Paskey put it in a pioneering article,

> [E]lements of the rule correspond to the elements of a story and have a logical relationship that qualifies as a “plot.” [A]nalytical moves we think of as rule-based reasoning are often a form of narrative reasoning, in which the story in a given set of facts is compared to the stock story embedded in the rule.

---

4 Id. at § 1(3).
5 Id. at § 1(4).
6 Id. at § 1(6).
7 Id. at §4(6) (italics added).
A statute is instructions to the people in the stock story. Those people—the characters in the story—want to know, or should want to know, what the law expects of them.

There is a well-developed literature on law expressing itself as stories, beginning with widely read work by Ruth Anne Robbins.9 Lori Johnson, Susan Chesler, and Karen Sneddon have written in depth on storytelling through drafted language in contracts and wills,10 which are private law governing those subject to them.11

The common law is built on stories. Lawyers in the U.S. and the U.K. have always thought of law in story terms. We remember Mrs. Palsgraf, standing on a train platform and hit by a falling scale,12 British lawyers remember Mrs. Donoghue, sitting in a pub and discovering a decomposed snail in her ginger beer.13 The two cases were decided only four years apart and had similar effects on the evolution of the two countries’ tort law. But common law stories are specific to the parties. A statutory story is generic. A statute would omit the falling scale and the ginger beer and would instead tell the stock story.

---

11 “Contracts legally formed take the place of law for those who make them.” ("Les conventions légalement formées tiennent lieu de loi à ceux qui les ont faites.") FRENCH CIVIL CODE, art. 1103 (2016). Identical wording dates from the 1804 French Civil Code, art. 1134. The same concept is assumed, although not expressed, in the U.S. Uniform Commercial Code and Restatements of Contracts.
We nod off mentally when we see a series of thoughts with no plot tension, which is why law books can seem boring even to lawyers. When you read a statute and have that nodding-off feeling, either of two things is the cause. Possibility A is that the statute addresses some subject for which there is no natural story. Possibility B—perhaps the much more frequent possibility—is that the drafter didn’t understand stories and how to tell them by implication.

What does a storytelling statute actually look like? This article’s Part 2 illustrates that by comparing sections in the U.S. Code at issue in the July 2023 Mar-a-Lago indictment \(^{14}\) with redrafts in the style now used in U.K. criminal statutes. Parts 3 and 4 compare statutory drafting in Congress with statutory drafting for Parliament. Part 5 compares the American, British, French, and Swedish models of statute design and drafting. Part 6 explains how the British stopped drafting statutes the way we do and developed a modern method that involves a significant amount of storytelling.

What does it take to tell a story through a statute? Some characteristics are organizing and sequencing events to produce a plot (this article’s Part 7); blocking to set up scenes (Part 8); and writing dialog and action (Part 9). Parts 8 and 9 analyze the Electoral Count Act in light of what happened on January 6, 2021.

2. Redrafting Crimes Charged in the Mar-a-Lago Indictment

The July 2023 Mar-a-Lago indictment alleges 42 counts (separate crimes) involving subsections of various federal criminal statutes. Using the current U.K. storytelling style, I redrafted the U.S. Code sections at issue in 37 of the 42 counts. In Tables A and B, the statute is in the left column, and the redraft is in the right column. (An actual U.K. statute in this style is in this article’s Appendix.)

**18 U.S.C. § 793(e)—Willful Retention of National Defense Information.** The first 32 counts allege violations of this subsection of the Espionage Act. The entire Espionage Act is § 793, which was enacted in 1917;\(^ {15}\) codified into positive law in 1948;\(^ {16}\) amended in 1986;\(^ {17}\) and amended again in 1994.\(^ {18}\) Section 793’s subsections don’t have captions (names), but the indictment calls the

---

\(^{14}\) Superseding indictment in U.S. v. Trump, Nauta & Oliveira, No. 9:23-CR-80101-AMC, filed July 27, 2023. (The original indictment was dated June 8, 2023.)


\(^{17}\) Pub. L. 99-399, 100 Stat. 853, 898.

crime in § 793(e) willful retention of national defense information, which perhaps is the name judges and lawyers use in federal prosecutions. 

The statute and the redraft mean exactly the same thing.

<table>
<thead>
<tr>
<th>The Statute</th>
<th>A Redraft in the U.K. Style</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Whoever having unauthorized</strong></td>
<td></td>
</tr>
<tr>
<td><strong>possession of, access to, or control</strong></td>
<td></td>
</tr>
<tr>
<td><strong>over any document, writing, code</strong></td>
<td></td>
</tr>
<tr>
<td><strong>book, signal book, sketch,</strong></td>
<td></td>
</tr>
<tr>
<td><strong>photograph, photographic negative,</strong></td>
<td></td>
</tr>
<tr>
<td><strong>blueprint, plan, map, model,</strong></td>
<td></td>
</tr>
<tr>
<td><strong>instrument, appliance, or note</strong></td>
<td></td>
</tr>
<tr>
<td><strong>relating to the national defense</strong></td>
<td></td>
</tr>
<tr>
<td><strong>which information the possessor</strong></td>
<td></td>
</tr>
<tr>
<td><strong>has reason to believe could be used</strong></td>
<td></td>
</tr>
<tr>
<td><strong>to the injury of the United States or</strong></td>
<td></td>
</tr>
<tr>
<td><strong>to the advantage of any foreign</strong></td>
<td></td>
</tr>
<tr>
<td><strong>nation, willfully communicates,</strong></td>
<td></td>
</tr>
<tr>
<td><strong>delivers, transmits or causes to be</strong></td>
<td></td>
</tr>
<tr>
<td><strong>transmitted, or attempts to</strong></td>
<td></td>
</tr>
<tr>
<td><strong>communicate, deliver, transmit or</strong></td>
<td></td>
</tr>
<tr>
<td><strong>cause to be communicated, or</strong></td>
<td></td>
</tr>
<tr>
<td><strong>transmitted the same to any person</strong></td>
<td></td>
</tr>
<tr>
<td><strong>not entitled to receive it, or willfully</strong></td>
<td></td>
</tr>
<tr>
<td><strong>retains the same and fails to deliver</strong></td>
<td></td>
</tr>
<tr>
<td><strong>it to the officer or employee of the</strong></td>
<td></td>
</tr>
<tr>
<td><strong>United States entitled to receive it.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>. . . shall be fined under this title or</strong></td>
<td></td>
</tr>
<tr>
<td><strong>imprisoned not more than ten</strong></td>
<td></td>
</tr>
<tr>
<td><strong>years, or both.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(1) A person (“P”) commits a felony</strong></td>
<td></td>
</tr>
<tr>
<td><strong>if either of the following applies:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Case 1 is where –</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(a) P has unauthorized access to</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(b) an object or information</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(c) relating to the national</strong></td>
<td></td>
</tr>
<tr>
<td><strong>defense,</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(d) which P has reason to believe</strong></td>
<td></td>
</tr>
<tr>
<td><strong>could be used to</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(i) harm the United States or</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(ii) benefit a foreign nation,</strong></td>
<td></td>
</tr>
<tr>
<td><strong>and</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(e) P willfully does or attempts to</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(i) deliver or communicate,</strong></td>
<td></td>
</tr>
<tr>
<td><strong>or</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(ii) cause to be delivered or</strong></td>
<td></td>
</tr>
<tr>
<td><strong>communicated</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(f) the information or object</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(g) to a person not entitled to</strong></td>
<td></td>
</tr>
<tr>
<td><strong>receive it.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(2) Case 2 is where –</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(a) P has unauthorized access to</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(b) an object</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(c) relating to the national defense</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(d) which P has reason to believe</strong></td>
<td></td>
</tr>
<tr>
<td><strong>could be used to —</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(i) harm the United States or</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(ii) benefit a foreign nation,</strong></td>
<td></td>
</tr>
<tr>
<td><strong>and</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(e) P willfully —</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(i) retains the object and</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(ii) fails to deliver it</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(iii) to the officer or employee</strong></td>
<td></td>
</tr>
</tbody>
</table>
The redraft can be understood by any well-educated person who takes the time to read it carefully.19

The redraft differs from the original in only two ways. One is coalescing concepts. Section 793(e) has a long list: “any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, map, model, instrument, appliance, or note.” These are just examples of objects, some of which—signal books, photographic negatives, and blueprints—are historical curiosities and no longer matter. The redraft deletes the examples and replaces them with the basic concept—an object.

The other difference is that the redraft is in the U.K.’s storytelling style for criminal statutes. (An actual example, from the Anti-Bribery Act 2010, is in this article’s Appendix.) In the Office of Parliamentary Counsel’s drafting manual, these are the first two commands:

1.1 Telling the story
   1.1.1 Take readers by the hand and lead them through the story you have to tell. Imagine that you are trying to explain something orally to interested readers. Where would you start? What will they want to know first?
   1.1.2 It may help to give readers an overview of the whole story at the outset, so that they can understand each part in the light of the whole. Readers are more likely to understand something if they know why you are telling them.20

The U.K. style has something in common with what Francis-Noël Thomas and Mark Turner call the classic style of prose, which they trace from Thucydides and Euclid through Pascal, La Rochefoucauld, A.J. Liebling, and E.B. White.21

---

19 Except perhaps for “fined under this title,” which can’t be reworded because of the arcane way that punishments are provided for in Title 18.
20 OFFICE OF THE PARLIAMENTARY COUNSEL, DRAFTING GUIDANCE 1 (2020)
The model of classic style is the voice of conversation. . .
Classic style models itself on speech and can be read aloud properly the first time [a reader sees it].

In speech, an expression is gone the moment it is spoken, and has only that one instant to enter the mind and attain its place in memory. . .

The ideal speech of classic style appears to be spontaneous and motivated by the need to inform. . .

This is a silent conversation between the writer and a reader whom the writer will never meet. The reader can’t speak, but the writer understands the reader’s thinking and converses with it.

The Table A redraft has something of the experience of conversation even if the reader is actually sitting alone quietly in an office. The reader and the drafter might as well be sitting on a park bench while the drafter explains § 793(e)’s two crimes—as though those crimes are interesting. Embellishment isn’t needed. Just tell the story. Stories are interesting.

**Classified documents vs. unclassified documents.** Why do people talk about § 793(e) as though a document’s classification status is relevant? It has never been relevant. The Act’s test—bluntly stated inside Congress’s thicket of words—is whether a defendant had reason to believe that a document “could be used to the injury of the United States or to the advantage of any foreign nation.” Classification status doesn’t matter. There are two reasons.

One is that it was impossible in 1917 for Congress to enact a statute referring to a document classification system. There was no document classification system in 1917. It was created three decades later through executive orders and administrative regulations (not even through legislation). It’s just a bureaucratic method of putting labels (“Secret,” “Top Secret,” etc.) on documents to manage who sees them. A label is just a label. Changing the label doesn’t change a document’s contents.

The other reason is that the only logical way to draft this crime is to base it on a document’s inherent characteristics—whether it could harm the U.S. or help another country. Thousands of government employees and military personnel are authorized to classify and declassify documents. If the crime were based on a document’s

---

22 In Table A, would you have been able to read the right-column redraft aloud, without stumbling or mistakes, the first time you saw it? What about the original statute in the left column?

23 **THOMAS & TURNER, supra** note 21, at 37 (italics added).
classification, any of those people could declassify it, sell it to an enemy, and not have committed a crime.

If § 793(e) had been drafted as in Table A’s right column, would so many ignorant statements have been made—and taken seriously—about this statute? Or would people—including non-lawyers—have read it and known what it means?

Subsections of 18 U.S.C. § 1512—Withholding a Document or Record; Corruptly Concealing a Document or Record; and Conspiracy to Obstruct Justice. Section 1512 includes 21 different crimes. Three of them are alleged in the July 2023 Mar-a-Lago indictment:

§ 1512(b)(2)(A)—which the indictment calls withholding a document or record (Counts 34 & 40);

§ 1512(c)(1)—which the indictment calls corruptly concealing a document or record (Counts 35 & 41);

§ 1512(k)—which the indictment calls conspiracy to obstruct justice (Count 33).

Subsection (b) was in the original 1982 enactment of § 1512. Subsection (c) was added by the Sarbanes-Oxley Act in 2002. Subsection (k) was also added in 2002, but not through Sarbanes-Oxley.

Again the statute and the redraft have exactly the same meaning.

---

24 Nine in subsection (a); five in subsection (b); two in subsection (c); four in subsection (d); and one in subsection (k).
25 Section 1512’s subsections don’t have captions, which would have created Congress’s names for these crimes. The names in italics are the ones used in the indictment and perhaps are the names judges and lawyers use in federal prosecutions.
26 Pub. L. 97-291, 96 Stat. 1248, 1249–50. In the original enactment, the current subsection (b) was subsection (a).
### Table B
Subsections from 18 U.S.C. § 1512

<table>
<thead>
<tr>
<th>The Statute</th>
<th>A Redraft in the U.K. Style</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades</td>
<td></td>
</tr>
<tr>
<td>another person, or attempts to do so, or engages in misleading conduct</td>
<td></td>
</tr>
<tr>
<td>toward another person, with intent to —</td>
<td></td>
</tr>
<tr>
<td>(2) cause or induce any person to —</td>
<td></td>
</tr>
<tr>
<td>(A) withhold testimony, or withhold a record, document, or other object,</td>
<td></td>
</tr>
<tr>
<td>from an official proceeding . . .</td>
<td></td>
</tr>
<tr>
<td>shall be fined under this title or imprisoned not more than 20 years, or</td>
<td></td>
</tr>
<tr>
<td>both.</td>
<td></td>
</tr>
<tr>
<td>(c) Whoever corruptly —</td>
<td></td>
</tr>
<tr>
<td>(1) alters, destroys, mutilates, or conceals a record, document, or other</td>
<td></td>
</tr>
<tr>
<td>object, or attempts to do so, with the intent to impair the object’s</td>
<td></td>
</tr>
<tr>
<td>integrity or availability for use in an official proceeding . . .</td>
<td></td>
</tr>
<tr>
<td>shall be fined under this title or imprisoned not more than 20 years, or</td>
<td></td>
</tr>
<tr>
<td>both. . .</td>
<td></td>
</tr>
<tr>
<td>(k) Whoever conspires to commit any offense under this section shall be</td>
<td></td>
</tr>
<tr>
<td>subject to the same penalties as those prescribed for the offense the</td>
<td></td>
</tr>
<tr>
<td>commission of which was the object of the conspiracy.</td>
<td></td>
</tr>
</tbody>
</table>

A person “P” commits a felony if any of the following applies:

(b)(2)(A) Case 10 is where —
(1) P corruptly does or attempts to —
(a) persuade,
(b) intimidate, or
(c) mislead another person (“A”)
(2) intending to hinder A from —
(a) testifying or
(b) producing an object
(3) at an official proceeding.

(c)(1) Case 15 is where —
(1) P corruptly does or attempts to —
(a) alter
(b) destroy, or
(c) conceal an object
(2) intending to impair its
(a) integrity or
(b) availability in an official proceeding.

(k) Case 21 is where P conspires with at least one other person to commit at least one of the crimes in Cases 1 through 20.

(l) A person guilty under subsection (b), (c), or (k) may be fined under this title or imprisoned not more than 20 years, or both.
Here, we have the object problem again. Section 1512 uses the formulation “record, document, or other object.” “Record” and “document” are unnecessary examples. Obviously they are objects. Sometimes a list of examples is necessary. But a chaotic legislative process produces unnecessary lists as every cook, in a crowd of cooks, throws a pet idea into the pot on the stove, producing incoherence rather than a well-told story.

3. Drafting in Congress

Before the early twentieth century, Congress had virtually no professional staff. Bills were written by senators and representatives themselves. Some of them felt insulted when suggestions were made to hire professional drafters. During a 1913 floor debate, Senator Bacon of Georgia said that “when Senators are going to need a schoolmaster to teach them how to draft a bill, . . . [they] should retire to their homes . . . and let somebody else come here who is capable of doing such work.”

In 1916, Middleton Beaman, a librarian and a member of the Columbia Law School faculty, was allowed to draft some legislation, at first on a volunteer basis. Because Beaman actually understood how to write tax statutes, a subject that baffled elected legislators, Congress included in the Revenue Act of 1918 a provision creating a small drafting office for the House and another for the Senate. By design, the House office “was constructed around one man”—Beaman. The Senate got a drafting office for balance. These evolved into today’s Senate Office of the Legislative Counsel and House Office of Legislative Counsel.

30 Jarrod Shobe, Intertemporal Statutory Interpretation and the Evolution of Legislative Drafting, 114 COLUM. L. REV. 807, 819 (2014); George K. Yin, Textualism, the Authoritativeness of Congressional Committee Reports, and Stanley Surrey, 86 LAW & CONTEMP. PROBS. 107, 111 (2023) [hereinafter, Yin, “Textualism”]; Yin, Gridlock, supra note 29, at 2294.
31 See Shobe, supra note 30, at 819; Yin, Textualism, supra note 30, at 112; Yin, Gridlock, supra note 29, at 2294.
32 50 CONG. REC. 2376 (1913).
34 Shobe, supra note 30, at 820; Yin, Textualism, supra note 30, at 113; Yin, Gridlock, supra note 29, at 2295.
Beaman was a “caustic, redheaded Yankee.”36 Something of his work style can be seen in meetings of the House Ways and Means Committee on the bill that became the Social Security Act of 1935.37 The Act created a retirement income system, a separate income system for disabled people, and a system of unemployment benefits. Various executive branch agencies had drafted parts of the original bill, which the White House had stitched together and sent to Congress. The Ways and Means Committee met in executive session for weeks, with Beaman in the room, going over the bill line by line, trying to convert it into enactable legislation. The assistant solicitor for the Department of Labor was also in the room and later remembered it this way:

The committee’s procedure was to read the bill, paragraph by paragraph. No sooner was a sentence read, however, than Mr. Beaman was on his feet asking questions: Where the bill said that employees should receive old age benefits, did it mean to include American employees stationed abroad? If the committee members said No, then Mr. Beaman, terrierlike, would ask: What about a contractor, in Detroit, who sent his regular crew on a job for a few days in Windsor, Ontario? What about seamen on the Great Lakes? A cook on a ship that went from Seattle to Alaska, through Canadian waters? He insisted on answers, and the committee members generally complied.38

This is the kind of quality control needed to produce coherent, complete, and unambiguous legislation. Beaman was given a deference no Congressional drafter receives today. When he retired in 1949, the U.S. Code was four volumes.39

38 Eliot, supra note 36 (“Drafting is not just a technical job; it requires foreseeing every possible question that may arise and eliminating every ambiguity. This I really learned in the winter of 1935 from [watching Middleton Beaman].”).
39 1946 edition, not counting tables, indices, and supplements.
In 1954, when the Code was only five volumes, Reed Dickerson called it “a vast tower of Babel.” Now it’s 36 volumes, the incoherent result of a chaotic process with very little research and development at the design stage and very little quality control at the production stage. Individual senators and representatives have plenty of opportunities to throw pet ideas into a bill even if it’s not clear what those ideas mean and how they are related to the rest of the bill.

Bill drafting is done, without coordination, all over Capitol Hill—in the Senate Office of the Legislative Counsel; in the House Office of the Legislative Counsel; by staff in Senate committees and House committees; by individual senators’ and representatives’ own office staff; by executive branch agencies; and by outside interest groups that lobby for language they have drafted. In the last decade, some very good studies have been based on interviews with congressional staff involved in bill-drafting. (The block quotes below come from those studies.)

There is no central bill drafting authority, and no one controls a bill’s language throughout the time preceding enactment. A bill that was coherent when first written can quickly become incoherent as it is marked up in committee meetings and amended on the floor. The process can look like this (summarizing and quoting from interviews with staff drafters):

_Drafting on the Floor:_[43] In the Senate, where there are virtually no rules, it is possible that senators will choose to construct a bill

---

40 1952 edition, not counting tables indices, and supplements. 
41 Reed Dickerson, *Legislative Drafting: A Challenge to the Legal Profession*, 40 ABA J. 635, 635 (1954). Dickerson had an international reputation as a drafter and pioneered the teaching of drafting in American law schools. 
42 2018 edition, not counting tables, indices, and supplements. (This is the official version, from the Government Printing Office. It is not the West version, which is further bulked up by case annotations.) 
during [floor] debate. Indeed, at least a part of every major bill is so constructed in the form of “managers’ amendments,” which are typically provisions deemed acceptable . . . to both political parties and included in one omnibus attachment. If this is where a bill is drafted, then the normal processes of drafting change. As one staffer put it, “There is no chance to do legal research here. . . . There is no ‘adult supervision. We do a quick read and correct it on the fly.”44

After this, a bill can be marked up again in a conference committee made up of members of both houses who combine bills from each house on the same subject to produce one piece of legislation that can be approved with identical wording in both houses for enactment.

Like drafting on the floor, drafting in conference was described by staffers with a significant measure of concern. . . . Indeed, one staffer emphasized that while it was well and good to draft a bill clearly, there was no guarantee that the clear language would be passed by the House or make it through conference. . . . [I]n House-Senate conferences: . . . “[T]here are deals cut with four people in the room, deals on the floor are dropped, nobody knows what’s in the bill. . . . You can draft carefully and then it gets dropped in conference, and they put in something from the House that you never saw.”45

At every step in this process, any individual senator or representative can have an opportunity to fiddle with the wording.

When bills are drafted on the floor or in conference, time pressures can be intense; a staffer may have only “thirty minutes to get something done” on a “high profile issue.” . . . Sometimes it’s sloppy drafting. And sometimes it’s because the people doing the drafting are young and inexperienced. There is a lot of turnover, and [there] are a lot of young people in these jobs. They can be smart but still inexperienced.46

The two offices of legislative counsel have drafting manuals,47 but they bind only the drafters who work in those offices. No one really controls drafting in Congress. Committees are free to ignore drafting

44 Nourse & Schacter, supra note 43, at 592 (words in quotations are staffers’ comments).
45 Id. at 593.
46 Id. at 595.
manuals. Conventions followed in one part of the U.S. Code are violated in other parts.

In some ways, congressional drafting customs still reflect the way statutes were worded in the nineteenth century, when senators and representatives wrote bills themselves. For example, in Title 18, most crimes are created in formulaic sentences structured like this: “Whoever [does X, Y, and Z] shall be [fined, imprisoned, etc.].” Section 1503 (obstruction of justice), enacted in 1831, is built around a 163-word sentence structured this way. Section 793 (the Espionage Act), enacted in 1917, contains an 803-word sentence with the same structure. That structure is still being used, for example in § 2421A (sex trafficking), enacted in 2018.

With few exceptions—one of which is explained in this article’s Part 9—congressional legislation has no author—a person or a small group of people who wrote the words. It takes an author to tell a story.

4. Drafting for Parliament

Drafting does not occur *in* Parliament. Drafting is done *for* Parliament.

The British legislative process is easier to understand if you visualize it geographically as we do when we speak of Capitol Hill and the White House. The three branches of British government are on different sides of Parliament Square. Westminster means the legislative branch of government because Parliament meets in the Palace of Westminster east of the Square. Whitehall means the executive branch, which is headquartered along Whitehall, a street leading north off the Square. The Supreme Court is at the Square’s southwest corner.

---

48 Some clarification of terminology: The United Kingdom is a union of four countries: England, Wales, Scotland, and Northern Ireland. The national legislature is the Parliament of the United Kingdom or, for short, the U.K. or British Parliament, which is made up of the House of Commons and the House of Lords. Legislation can be introduced in either House and will be debated in each House.

The word *English* matters here only insofar as it refers to a language. There is no English Parliament. It abolished itself in 1706 by passing the Union with Scotland Act.

49 Parliament Square is an open space with statues of major figures in the history of the U.K. and its former colonies—Winston Churchill, David Lloyd George, and Benjamin Disraeli, for example, and also Nelson Mandela and Mahatma Gandhi.

50 This location was chosen in part for its symbolic value. The highest tribunal had been the Appellate Committee of the House of Lords, which met
The statute-making process is divided into a Whitehall stage and a Westminster stage. Bills are created in the executive branch during the Whitehall stage. They are enacted by Parliament in the Westminster stage. During the Westminster stage, bills are usually amended to some extent. But Whitehall is involved in amendments, and a bill will be enacted as amended only if Whitehall is satisfied with it.

The Whitehall stage. In a parliamentary system, the party or coalition in control of the legislature forms the cabinet. Thus to some extent, the legislative branch controls the executive branch through a cabinet made up of legislators. But in a practical sense, the executive branch might be the more powerful of the two because the cabinet, once it has been formed, thinks as executives and controls the legislative agenda.

Statutes are drafted in Whitehall by the Office of Parliamentary Counsel, which, despite the name, is not part of Parliament. It is part of the executive branch and is located in the Treasury building in Whitehall.

The Office of Parliamentary Counsel was created in 1869 and was originally two people: Henry Thring and an assistant. In 1961, there were 18 drafters; in the 1990s, about 30 drafters; and now about 60. Two drafters are assigned to each bill. The head of the Office is First Parliamentary Counsel. The office as a whole, and the drafters working on a specific bill, are referred to as Parliamentary Counsel—or just Counsel.

Thring was the British equivalent of Middleton Beaman. Each of them institutionalized legislative drafting. Each could have an acerbic in Parliament’s Palace of Westminster. The Constitutional Reform Act 2005 converted, in 2009, the Appellate Committee into a Supreme Court, which was given its own building opposite Parliament’s. The second major Brexit appeal—R (on appl. of Miller) v. Prime Minister, [2019] UKSC 41—has become Britain’s Marbury v. Madison.

This discussion summarizes a very complex process of law design. For thorough explanations, see the official U.K. CABINET OFFICE, GUIDE TO MAKING LEGISLATION (2022), as well as DANIEL GREENBERG, LAYING DOWN THE LAW: A DISCUSSION OF THE PEOPLE, PROCESSES AND PROBLEMS THAT SHAPE ACTS OF PARLIAMENT (2011); MEG RUSSELL & DANIEL GLOVER, LEGISLATION AT WESTMINSTER: PARLIAMENTARY ACTORS AND INFLUENCE IN THE MAKING OF BRITISH LAW (2017); MICHAEL ZANDER, THE LAW-MAKING PROCESS (2020); and Edward C. Page, Their Word is Law: Parliamentary Counsel and Creative Policy Analysis, 4 PUB. L. 790 (2009). My summary of the British statute-making process is based on these sources.

ZANDER, supra note 51, at 3–142.

Reed Dickerson, Legislative Drafting in London and in Washington, 17 CAMBRIDGE L.J. 49, 52 (1959).

ZANDER, supra note 51, at 19; Page, supra note 51, at 794.
manner when confronted with legislative foolishness. And each was thoroughly respected by legislators, including those who experienced the acerbic manner.

There were three big differences. First, Beaman published very little, but Thring wrote an influential treatise on legislation. Second, Beaman has been largely forgotten while Thring is still known among British drafters. And third, as this article shows, Congress’s structure and practices prevented Beaman from establishing what Thring did accomplish with the Office of Parliamentary Counsel.

Legislative initiatives originate in the cabinet, as part of the majority party or coalition’s legislative goals, or in departments or ministries, as specific needs for new law are discovered. Initiatives of both types become part of the cabinet’s legislative program and are coordinated through the cabinet’s Parliamentary Business and Legislation Committee. Each bill is assigned to a bill team, made up primarily of civil servants, which develops the bill’s policy—-the details of its goals—and creates instructions to Parliamentary Counsel, which is a request that Counsel draft a bill plus the data and background materials Counsel will need in drafting.

55 Once, just before Thring appeared at a cabinet meeting, one of the ministers said, “I think before he arrives we had better carry a preliminary resolution that we are all damned fools.” Henry Thring—A Hundred Years On, 28 Statute L. Rev. iii, iv (2007).

56 Thring’s encyclopedic knowledge “gave him enormous power and authority. It was said that he even ‘thought’ in statutory language.” Alec Samuels, Henry Thring: The First Modern Drafter, 24 Statute L. Rev. 91, 91 (2003).

57 Beaman’s most-cited publication was a co-authored article—Frederick P. Lee & Middleton Beaman, Legal Status of the New Federal Code—which was six pages of tiny print in the American Bar Association Journal, 12 ABA. J. 833 (1926), and 16 pages of normal print when republished in a law review, 11 Marq. L. Rev. 130 (1927). It has value to historians as a first-rate explanation of the creation in 1926 of the U.S. Code—the entirety of which fit into one volume at the time.


59 Except by a few specialists in legislative drafting or the history of tax legislation.

60 Samuels, supra note 56, at 92 (U.K. statute drafters “remember Thring with admiration”); see also Constantin Stefanou, Drafters, Drafting and the Policy Process, in Drafting Legislation: A Modern Approach 321, 321 (Constantin Stefanou & Helen Xanthaki eds. 2016); Henry Thring—A Hundred Years On, supra note 55, at iii.

The drafting process includes frequent dialog among Counsel, the bill team, and others in the relevant department or ministry. Through that dialog, Counsel’s questions and comments cause refinements in the policy. Parliamentary Counsel are expected to do quality control. The cabinet’s manual of procedures to be followed in creating legislation includes this: “The principal contribution [of] the drafter [is] to test the department’s policy proposals . . . [and] sometimes . . . spot potential difficulties that may not have been obvious to the department.” A researcher who studied the bill development process concluded that “[i]f a drafter says that a policy cannot work,” that comment “is taken extremely seriously.” It should be taken very seriously. Parliamentary Counsel’s drafters probably know more about building a statute than any other group of people in the U.K.

The Westminster stage. After a government bill is introduced in Parliament, it is floor-debated and then referred to a committee of legislators specifically created to consider that bill. There it might be amended. It then returns to the floor of each House, the House of Commons and the House of Lords, where it is again debated and then voted on.

Some amendments come from the executive branch in light of comments made in committee and during debate. These are called government amendments and are drafted by Parliamentary Counsel. A non-government amendment, one that did not come from the executive branch, stands little chance of adoption unless accepted by the minister in charge of the bill. A minister is not allowed to accept an amendment unless it has been approved by Parliamentary Counsel. Thus regardless of an amendment’s source, Parliamentary Counsel controls the drafting.

In the end, “99 per cent of the language in the statute book is chosen entirely by Parliamentary Counsel,” according to Daniel

---

63 U.K. CABINET OFFICE, supra note 51, at 49. Also, “[t]he minister in charge of the bill is always welcome to ask the drafter to meet to discuss the bill. Equally the drafter may occasionally request a meeting with the minister.” Id. at 59. Going to the minister amounts to going over the bill team’s head.
64 PAGE, supra note 46, at 791. Counsels’ “main work is analysis.” Id. at 797. A drafter told Page, “The most important thing is to identify the concept behind the legislation. If the concept is right the detail will hang together. If the concept is wrong, you can faff around as much as you like and you’ll still produce garbage.” Id. at 801.
65 A bill sponsored by the cabinet. “To form a government” means to put together a group of people to be ministers in a new cabinet supported by a majority of the members of the House of Commons.
66 GREENBERG, supra note 51, at 182. In practice, the amendment process can be messier than this although Parliamentary Counsel must, in the end, be satisfied with the wording. See id. at 157–58, 182–83.
Greenberg, a former First Parliamentary Counsel.\footnote{Id. at 24.} Greenberg added that “Parliamentary Counsel have something of a reputation within Whitehall for individuality and even eccentricity.”\footnote{Id. at 30.} That might apply to some Counsel more than to others and, to the extent it applies might reflect different ways of looking at one’s work. An administrator’s main work is to administer law as it is. Counsel’s work is more creative: “making the law [and] communicating the law that he or she is making.”\footnote{Id.}

5. Four Models of Statute Design and Drafting

I am familiar with four models of statute design and drafting:\footnote{There are others. I am not familiar with statute-drafting in German-speaking countries; Japan; China; former Soviet bloc countries; etc.} (1) the common law patchwork model, which characterizes nearly all American statutes and which was once traditional in all common law countries; (2) the modern British model, which has emerged in the last three decades and is displacing the common law patchwork model in the U.K. and in other Commonwealth countries; (3) the French model, which is based on tightly constructed Cartesian logic; and (4) the Swedish model, which is both rigorously empirical and disarmingly practical.

Of the four models, the Swedish most closely resembles engineering. The French model most closely resembles math, particularly algebra. The modern British model most closely resembles literature. And the common law patchwork model is a mess.

In common law countries, the law came originally from courts through precedent long before there were law-making legislatures. When eventually legislatures began to legislate, their statutes added to, subtracted from, or modified the common law. Historically in common law countries, statutes have just been patches sewn on to the common law and then statutes sewn onto other statutes.

We still think that way—which is why in Westlaw you are often offered cases at the top of a menu and must scroll down to find statutes. And when you get into statutes, you find chaos. The U.S. Code or a state’s statutes look organized at first glance, but when you start browsing in the statutes to find something, you quickly discover that there is very little logical structure and that what you’re looking for could be almost anywhere. It might even be in several places if a
legislature legislated at different times on the same subject and put each provision in some place where you’re not likely to look.⁷¹

This article focuses on the common law patchwork model and the modern British model because they are the main types now in the English-speaking world. The common law patchwork model characterizes nearly all American statutes,⁷² but it is in decline elsewhere. The modern British model is in the ascent.

The differences are illustrated in this article’s Appendix with bribery statutes from New York, Britain, France, and Sweden in parallel columns. The French and Swedish statutes are there for context.

The Swedish bribery statute is pragmatic; it just sets out the rules. Swedish statutes “are drafted in layman’s language.”⁷³ A very thick book—Sveriges Rikes Lag—which includes the core statutes of general applicability, such as the criminal code, is in every lawyer’s office and next to judges in courtrooms.⁷⁴ But it is also sold in general-interest bookstores and can be found in the reference sections of public libraries. Before the internet, it might have been seen on a bookshelf in a home.⁷⁵ Now it’s more likely to be an app on a cell phone⁷⁶ although paying for an app isn’t really necessary. Statutes are easily accessible on government websites and are written in straightforward language that non-lawyers can usually understand. Behind this practicality and accessibility is empiricism. Every significant Swedish enactment is preceded by an investigation conducted by a special commission made up of experts in the problems at issue together with stakeholders who are affected by those problems or would be affected by legislation.⁷⁷

The French bribery statute is clean mathematical logic.⁷⁸ In a book that became influential in the U.K., Sir William Dale wrote that

---

⁷¹ The U.K.’s legislation website can at times be a breeze when compared to Westlaw and Lexis. It’s also free. See text at notes 88–93, infra.
⁷² The main exceptions are uniform statutes drafted outside legislatures, especially Articles 1 and 2 of the Uniform Commercial Code.
⁷⁴ Id. at 103.
⁷⁵ See id.
⁷⁶ If you want to see what the book looks like, find Sveriges Rikes Lag in your phone’s app store. The download is free, but researching within the app requires paying a significant fee to the publisher.
⁷⁷ The reports are published as Statens Offentliga Utredningar (SOU), some of which are searchable here: https://government.se/legal-documents/ [https://perma.cc/8NVJ-Q5E9] (last visited Dec. 17, 2023). See also DALE, supra note 73, at 98–99.
⁷⁸ “Legal drafting is . . . the most rigorous form of writing outside of mathematics.” Dickerson, supra note 36, at 635. Math is more than
“Statutory law in France has an order, a logical development, a freshness, a certain elegance... a clarity of utterance, and an overall quality of readability.” A French drafting expert said, “We try to produce... a draft as short and simple as possible, and in good classical French.”

The British bribery statute in the Appendix was enacted in 2010 in the modern British model’s storytelling style for criminal statutes. It has plot lines and characters named P and R.

The New York statute is so overwrought and hyper-intellectualized that it approaches incomprehensibility. One of the reasons for disorganized messes in our statutes is a habit of amending and amending and amending over and over again to respond to lobbying and other forces. That is why New York has 56 types of homicide while Sweden has 12.

Each model’s strength reflects its cultural context. Swedish culture is practical, with great respect for empirically demonstrated facts. French culture is intellectual, with great respect for ideas.

“A mathematician, like a painter or a poet, is a maker of patterns [of] ideas... [fitting] together in a harmonious way.” G.H. HARDY, A MATHEMATICIAN’S APOLOGY 84–85 (1940; Canto ed. 1992) (italics in original).

In math, the simplest solution to a difficult problem is said to be elegant. See STEVEN GOLDBERG, MATHEMATICAL ELEGANCE: AN APPROACHABLE GUIDE TO UNDERSTANDING BASIC CONCEPTS (2015); PAUL LOCKHART, A MATHEMATICIAN’S LAMENT 23 (2009) (“If there is anything like a unifying aesthetic principle in mathematics, it is this: simple is beautiful.”).


Cites are to the N.Y. Penal Law: 15 types of first-degree murder (§ 125.27); five types of aggravated murder (§ 125.26); five types of second-degree murder (§ 125.25); two types of aggravated first-degree manslaughter (125.22); one type of aggravated second-degree manslaughter (§ 126.21); three types of first-degree manslaughter (§ 125.20); two types of second-degree manslaughter (§ 125.15); nine types of aggravated vehicular homicide (§ 125.14); eight types of first-degree vehicular manslaughter (§ 125.13); four types of second-degree vehicular manslaughter (§ 125.12); one type of aggravated criminally negligent homicide (§ 125.11); and one type of criminally negligent homicide (§ 125.10).

Cites are to the Swedish Criminal Code (Brottsbalken): six of what we would characterize as murder (BrB 3:1 & 3:3) and six of what we could characterize as manslaughter (BrB 3:2, 3:7 & 3:10).

Culture affects the way a profession is practiced. For a vivid and somewhat disturbing description of how, among French physicians, ideas outrank empirically proven facts, see LYNN PAYER, MEDICINE AND CULTURE 35–73 (1996).
British culture is narrative, with great respect for stories and well-developed characters.

6. How the British Left the Common Law Patchwork Model

We inherited the common law from Britain, and until relatively recently, British statutes were drafted in the common law patchwork model where a legislature throws words at a problem and waits to see what courts think the words mean. This was often complained about by judges, barristers, solicitors, and anybody else who tried to read a statute.

Change began with the Renton Report in 1975, which told Parliament and Parliamentary Counsel in great detail why their work product was unsatisfactory. Very gradually in the 1980s and 1990s, law-making practices began to improve. Along the way, the storytelling technique began to develop.

In 2013, Parliamentary Counsel participated in the Good Law Initiative to develop criteria for effectiveness in statutes that Parliamentary Counsel and bill teams could treat as benchmarks. The cabinet’s manual of procedures to be followed in creating legislation now treats the Good Law Initiative as Whitehall policy: “An understanding of ‘good law’ should underpin the preparation and promotion of legislation. It should be the default . . . part of the new, user-centered approach across government.”

Now you can browse British legislation on a refreshingly friendly government website. The U.K. National Archives, which operates the site, found that users fall into three categories—the first two of which represent “a very large audience of non-lawyers.”

---


85 For example, in section 21 of the Financial Services and Markets Act 2000.


1. “a non-lawyer who needs to use legislation for work, for example a police officer, a local council official or a human resources professional . . .”

2. “a member of the public seeking to enforce his or her rights or those of a relative or friend, such as rights to welfare benefit claims or appropriate educational provision for children with special needs; [a person in] this category . . . might wish to quote legislation to give weight to her case, or to feel more confident of her own ground, or might have had a particular statutory provision invoked against her and want to see for herself what it says.”

3. “a lawyer . . . [who] typically [has] access to subscription services and look[s] at legislation.gov.uk alongside them.”

If you’re just curious about statutes, the site behaves like a sommelier in a high-end restaurant helping you choose an appropriate wine. Would you like to see legislation enacted in the nineteenth century? The website will be happy to show you all it has. The eighteenth century? The website will offer that, too. The oldest wine in the cellar? That would be an enactment from the year 1267.

There are still criticisms of even recent U.K. statutes, such as John R. Spencer’s well-deserved shredding of the Sexual Offenses Act.
But that is a statute that any American state legislature could enact tomorrow without complaint from anybody here.

7. Organizing and Sequencing a Story (Voter Initiatives)

Characters understand instructions better if the story is organized in a statute the old-fashioned way: chronologically. From Parliamentary Counsel’s drafters’ manual:

1.1.5 Finding a clear order in which to tell your story is fundamental. This goes for a story which is spread across a whole Bill or for a story contained in a single clause.95

This can be illustrated with U.S. statutes on voter initiatives—also called citizen initiatives or popular initiatives—through which voters can enact law themselves without going through a state legislature. Voters can do this in 24 states.96 A voter initiative stock story has seven scenes, which are described below. The characters are—

(a) the proponents, who want to make new law (and will appear in every Scene);
(b) the state Secretary of State or another state agency that supervises elections (Scenes 2, 3, 5, 6, and 7);
(c) the state Attorney General (Scene 3); and
(d) the voters (Scenes 4 and 7).

Each of the 24 states has its own variation of the stock story, and a state’s variation might include other characters. But this is the basic story structure.

**Scene 1**—The proponents decide they want the law changed through initiative. They form an ad hoc organization and create a draft petition.

**Scene 2**—The proponents appear in the Secretary of State’s office and submit a draft of their petition, seeking approval to circulate it among voters. The Secretary of State approves the petition for

---

circulation if it meets the statutory form requirements. There isn’t much plot tension here because form requirements tend to be simple and the Secretary of State’s duty is purely ministerial.

**Scene 3**—The Secretary of State forwards the petition to the Attorney General, who approves it if it meets content requirements (the proposed statute wouldn’t be unconstitutional, etc.—perhaps more plot tension because this duty isn’t purely ministerial). If all goes well, this scene ends with smiling proponents exiting the stage happily holding their petition, which can now be circulated.

**Scene 4**—On sidewalks, parking lots, and other public places, volunteer and paid circulators try to persuade people that the law should be changed. If a person agrees, the circulator asks whether the person is a registered voter, and, if the answer is yes, asks the person to read the petition and sign it. This scene is long and tedious because the same action happens over and over and over again, with hundreds of circulators and thousands of voters. There is no drama, but there is plot tension. The proponents watch the action anxiously. Will enough signatures be obtained in time? “Enough” will be a specified percentage of the voters who voted for a certain office, typically the governor, in the most recent election. “In time” could involve two deadlines: a specified number of days after the petition was approved (in Scenes 2 and 3) and a specified number of days before the next election.

**Scene 5**—The proponents return to the Secretary of State’s office, or in some states to local elections officials, with thousands of pages of signatures and then watch anxiously as elections staff compare signatures with voter registration records. If there are enough valid signatures and if other requirements are met, the Secretary of State announces that the proposal will appear on the ballot at the next election.

**Scene 6**—The Secretary of State prepares the ballot to reflect the proposal accurately and also prepares voter guides and other publicity educating voters about the proposal and the arguments for and against. There might be some plot tension in the form of disputes about the ballot’s wording and the publicity content.

**Scene 7**—On or before election day, the voters vote. Then the polls close. The votes are counted, and the Secretary of State announces either that the voters have approved and the law has been changed (the proponents leap for joy) or that the opposite has occurred (and the proponents leave the stage in dejection).

Some of the law, such as the number of signatures required, is so fundamental that it will be in a state’s constitution. But everything else will be in a state statute.

The characters in the stock story are also the statute’s users. The statute is their script and stage directions. But the statute will make
sense to them only if it is organized exactly the way the stock story is
because that is how they experience the law on this subject. They are *inside the story and need instructions for each scene*—what they are
required to do, what they are allowed to do, and what they are
forbidden to do *in that scene*.

But these statutes aren’t usually organized that way. They tend to
be organized by topics. Or by a mixture of topical organization with
some chaos thrown in. Or by a mixture of topical, chaos, and a little
bit of story.

For example, here are the California Election Code sections that
govern statewide voter initiatives.\(^7\)

<table>
<thead>
<tr>
<th>Table C</th>
<th>California Elections Code Sections on Statewide Voter Initiatives</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>These sections . . .</strong></td>
<td><strong>Govern these scenes . . .</strong></td>
</tr>
<tr>
<td>9001 to 9007</td>
<td>3</td>
</tr>
<tr>
<td>9009 to 9013</td>
<td>1</td>
</tr>
<tr>
<td>9014</td>
<td>4</td>
</tr>
<tr>
<td>9015</td>
<td>2</td>
</tr>
<tr>
<td>9016 &amp; 9017</td>
<td>4</td>
</tr>
<tr>
<td>9018 &amp; 9020</td>
<td>1</td>
</tr>
<tr>
<td>9021 &amp; 9022</td>
<td>4</td>
</tr>
<tr>
<td>9034</td>
<td>4</td>
</tr>
<tr>
<td>9035</td>
<td>5</td>
</tr>
<tr>
<td>9040 to 9044</td>
<td><em>irrelevant to voter initiatives</em></td>
</tr>
<tr>
<td>9050 to 9069</td>
<td>6</td>
</tr>
<tr>
<td>9080-9082.7</td>
<td><em>irrelevant to voter initiatives</em></td>
</tr>
<tr>
<td>9085 to 9091</td>
<td>6</td>
</tr>
<tr>
<td>about 50 sections between 9091 &amp; 9600</td>
<td><em>irrelevant to voter initiatives</em></td>
</tr>
<tr>
<td>9602, 9604 &amp; 9606</td>
<td>4</td>
</tr>
<tr>
<td>9602, 9604 &amp; 9606</td>
<td>4</td>
</tr>
<tr>
<td>9607 to 9610</td>
<td>4</td>
</tr>
</tbody>
</table>

\(^7\) Not covered in Table C are California statutes specific to local government
data and local government initiatives for things like municipal ordinances.
Another California code—the Government Code—also has two sections specific to initiatives: sections 10243 and 12172. Both sections relate to Scene 1. But they are far apart from each other.

All these statutes are baffling to the audience—the proponents, other political actors, government officials—who are inside the story and need instructions for whatever scene they are in at any given moment.

8. Blocking to Set a Scene  
(Electoral Count Act, 3 U.S.C. § 16)

Two things happen on a theater stage. Dialog is what the actors say. Blocking is everything else: where the actors are when the curtain goes up and how they move during a scene. Dialog is what the audience hears. Blocking is what the audience sees.\(^98\)

The presidential election stock story has four scenes.

**Scene 1**—Voters cast ballots for presidential candidates on or before election day in November. This is governed mostly by state law. Ballots list the names of presidential candidates. But by voting for a candidate, a voter is actually voting for electors who are pledged to that candidate.

**Scene 2**—Electors chosen by the voters meet in state capitals and cast their electoral votes in December. This is governed partly by state law and partly by the federal Electoral Count Act (the ECA).\(^99\)

**Scene 3**—Electoral votes are formalized and sent to Washington. This is governed entirely by the Electoral Count Act.\(^100\)

**Scene 4**—On January 6, at a joint session of Congress, envelopes containing the electoral votes are opened, and the electoral votes are counted.\(^101\) The moment when the totals are announced is the moment when a president is actually elected. Some of the basics are governed by the 12th Amendment to the U.S. Constitution. Other basics and all of the details are governed by the Electoral Count Act.\(^102\)

---

98 How characters move, sit, and stand can reveal the characters’ emotions, especially how they feel about each other and about what other characters have just said or done. Blocking instructions might include phrases like *center stage, stage left, and stage right.*


100 *Id.* § 10–11

101 *Id.* § 15.

102 *Id.*
The ECA was passed in 1887. Because of what happened on January 6, 2021, it was extensively amended in 2022 by the Electoral Count Reform and Presidential Transition Improvement Act (ECRPTIA). But nobody routinely refers to the first 22 sections of Title 3 as ECRPTIA. Their name is the Electoral Count Act as amended.

What Congress does on January 6 is the only time that the Senate and House of Representatives ever meet together to make decisions. Neither body’s rules can govern this joint session, which instead must be governed by a statute.

_Scheduling issues._ How long must all these people be in the same room doing this work? Are they allowed to take breaks? If there is an objection to counting a state’s votes, the two bodies separate, make separate determinations, and then reconvene together. How are the separating and reconvening to be handled?

_Protocol issues._ Each body has a presiding officer—the Speaker of the House and the President of the Senate (who is also the Vice President of the entire government). The President of the Senate presides over this joint session, but the Speaker must be respected. And members of the Senate must be physically separated from members of the House.

Protocol and some of the scheduling is governed by 3 U.S.C. § 16, part of the ECA. The 1887 version of § 16 is still law. The only modification made by the 2022 amendments was to change the phrase “joint meeting” (1887) to “joint session” (2022).

Part of § 16 is scene set-up, telling the characters their stage positions for the beginning of the scene. The rest of § 16 tells the characters how long they are to remain onstage. Section 16 does not tell the characters what to do and say.

Instructions about where to be when the curtain goes up should precede instructions about what to do and say after the curtain goes up. But the action—the what-to-say-and-do instructions—are in § 15. Section 16 is in the wrong place. Here again is a sequencing problem caused by a topical organization instead of a story organization that makes sense to the characters.

But that’s not the biggest problem with § 16, which is an incomprehensible slab of text. In Table D, § 16 is in the left column. In the right column is a redraft reflecting storytelling sensibilities. The two versions have exactly the same meaning.

---


Notice how visual is the storytelling version in the right column. A reader can see the scene.

<table>
<thead>
<tr>
<th>Table D</th>
<th>18 U.S.C. § 16</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1887 ECA as amended in 2022</strong></td>
<td><strong>A Redraft</strong></td>
</tr>
</tbody>
</table>

**§ 16. Same; seats for officers and Members of two Houses in joint session**

At such joint session of the two Houses, seats shall be provided as follows: For the President of the Senate, the Speaker’s chair, for the Speaker, immediately upon his left; the Senators, in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk’s desk, for the other officers of the two Houses, in front of the Clerk’s desk and upon each side of the Speaker’s platform. Such joint session shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this subchapter, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next calendar day, Sunday excepted, at the hour of 10 o’clock in

**§ 16. Schedule and seating during the joint meeting.**

(a) **Seating.** During the joint meeting, the House shall provide seats as follows:

1. for the President of the Senate, the Speaker’s chair;
2. for the Speaker, a seat immediately to the President of the Senate’s left;
3. for the Senators, seats in the body of the Hall to the President of the Senate’s right;
4. for the Representatives, the seats in the body of the Hall not provided for the Senators;
5. for the tellers, the Secretary of the Senate, and the Clerk of the House of Representatives, seats at the Clerk’s desk; and
6. for other officers of the two Houses, seats in front of the Clerk’s desk and on each side of the Speaker’s platform.

(b) **Duration.** The two Houses shall not dissolve the joint meeting until all the electoral votes have been counted and the result
the forenoon. But if the counting of the electoral votes and the declaration of the result shall not have been completed before the fifth calendar day next after such first session of the two Houses, no further or other recess shall be taken by either House.

has been declared under section 15 of this title.

(c) **Recesses.**

(1) The two Houses shall not recess the joint meeting unless an objection is to be resolved under section 15 of this title. If an objection is to be resolved, either House, acting separately, may recess but not beyond 10 o'clock in the forenoon of the next calendar day, Sunday excepted.

(2) If the counting of the electoral votes and the declaration of the result under section 15 of this title has not been completed before the fifth calendar day after the first meeting of the two Houses, neither House may recess.


The key section of the 1887 Act—the original 3 U.S.C. § 15—is almost incomprehensible. Table E is § 15 as it was enacted in 1887 and was still law on January 6, 2021.

The main character here is the “President of the Senate.” That usually means the Vice President of the United States, who has the constitutional duty of presiding when the Senate is in session. But vice presidents almost never do that. The task is routinely delegated to some junior senator who would rather be elsewhere. The Senate also chooses a senator to be president pro tempore (pro tem). If there is no Vice President or the Vice President refuses or is unable to preside, the president pro tem is President of the Senate, which is why both the ECA and the 12th Amendment use that term.

---

105 U.S. CONST. Art. 1, § 3.
Table E
3 U.S.C. § 15
(enacted in 1887)

<table>
<thead>
<tr>
<th>Comments</th>
<th>Was in effect on January 6, 2021</th>
</tr>
</thead>
</table>
| Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted according to the rules in this subchapter provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes
From here to the section’s end are rules for deciding disputes.

| from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified. If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section 5 of this title to have been appointed, if the determination in said section provided shall have been made, or by such successors or substitutes, in case of a vacancy in the board of electors so ascertained, as have been appointed to fill such vacancy in the mode provided by the laws of the State; but in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as mentioned in section 5 of this title, is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its law; and in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were case by lawful electors appointed in accordance with the last of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No votes or papers from any other State shall be acted upon until the |
objections previously made to the votes or papers from any State shall have been finally disposed of.

Table F below is §15 as it exists today, after the 2022 Electoral Count Reform and Presidential Transition Improvement Act. Here Congress did a fairly good job of storytelling. How could this rare thing have happened? There are two explanations, and they’re probably both accurate.

1. The legislators who created and voted for the new §15 are themselves the characters in the story §15 governs. On every future January 6 following a presidential election, they will need to be able to read §15 in the House chamber—with no time for translation by lawyers—as the story unfolds. Instinctively, and perhaps without realizing what they were doing, they gave instructions to themselves, and to future senators and representatives, by telling a story.

2. Unlike almost every other federal statute, the Electoral Count Reform and Presidential Transition Improvement Act has an author. An author in this sense doesn’t mean a single person. It means a small group of people who create and mostly control the substance and the wording.

Two bills were advanced during 2022. The one that became the Electoral Count Reform and Presidential Transition Improvement Act started as a Senate bill (S. 4573), cosponsored by Senators Susan Collins and Joe Manchin. On the other side of the Capitol, Representatives Zoe Lofgren and Liz Cheney—members of the House Select Committee to Investigate the January 6 Attack on the United States Capitol (also known as the J6 committee)—introduced a House bill (H. 8873), which would have become the Presidential Election Reform Act if it had been enacted. The bills were similar in most respects, but they differed in details, some of which were important to the bills’ sponsors and their allies in each chamber.

Senator Collins introduced the Senate bill on July 20, 2022. She and Senator Manchin persuaded 22 Democrats and 15 Republicans to join them in cosponsoring it. The bill was considered briefly by the Senate Committee on Rules and Administration, which reported favorably and with no significant changes on October 18.

Representatives Lofgren and Cheney introduced their bill on September 19, 2022, and it went straight to the House floor, where it

---

was approved two days later on a largely party-line vote. The yea included all the House Democrats but only nine Republicans.\textsuperscript{107}

If either bill were to become law, it needed to be passed by Congress on December 23 and signed by the President by January 5. In the November 2022 elections, Republicans won enough seats to take control of the House on January 6, when a new Congress would convene. Democrats controlled both the Senate and the House in the Congress that would end formally on January 5, but practically around December 23 because of the holiday break.

By congressional standards, both bills proceeded at warp speed\textsuperscript{108} because the ability to legislate on this subject would soon disappear. No committee could be allowed to redraft. No amendments could be allowed during floor debate. Although each house had passed its own bill, no conference committee would be created to consolidate the two bills into one. One bill or the other would become law with almost no changes. The key people in the Senate and House conferred with each other. The House blinked.

On December 22, the Senate voted to incorporate the Collins-Manchin bill into a 1,653-page appropriations bill that needed to be passed immediately to keep the federal government open and operating. On December 23, the House passed the appropriations bill with the Collins-Manchin bill (and many other non-appropriations bills)\textsuperscript{109} included. President Joe Biden signed the package into law on December 29.

\textsuperscript{107}168 CONG. REC. H8032–H8048 (2022).

\textsuperscript{108}The modern speed record, which will probably never be broken, is held by the 1933 Emergency Banking Act. Every bank in the country had been closed by state bank regulators, and the economy was operating on cash, barter, and IOUs. Drafting was done in the Treasury Department and was finished around 3:00 in the morning on Thursday, March 9, 1933. The bill was introduced in the Senate at 1:40 in the afternoon and the House about an hour later. It passed in the House at 4:05 and in the Senate at 7:23 in the evening. President Franklin D. Roosevelt signed it into law at 8:36. Total elapsed time in Congress: five hours and forty-three minutes. From drafting to becoming law: about seventeen and a half hours. Not a word of the bill was changed in Congress. The banks began to reopen the following Monday. See SUSAN ESTABROOK KENNEDY, THE BANKING CRISIS OF 1933 175–80 (1973).

\textsuperscript{109}Among them: the Unleashing American Innovators Act; the Secure 2.0 Act; the Strong Veterans Act; and a bill forbidding installation of TikTok on government-owned devices. See Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 4461, 5258–5522.
Table F
3 U.S.C. § 15
(as amended in 2022)

<table>
<thead>
<tr>
<th>Comments</th>
<th>In effect today</th>
</tr>
</thead>
</table>
| **Subsection (a) sets the scene.** | § 15. Counting electoral votes in Congress  
(a) In general. Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer. |
| **Subsections (b) and (c) introduce the main characters and define their roles.** |  
(b) Powers of the President of Senate.  
(1) Ministerial in nature. Except as otherwise provided in this chapter, the role of the President of the Senate while presiding over the joint session shall be limited to performing solely ministerial duties.  
(2) Powers explicitly denied. The President of the Senate shall have no power to solely determine, accept, reject, or otherwise adjudicate or resolve disputes over the proper certificate of ascertainment of appointment of electors, the validity of electors, or the votes of electors.  
(c) Appointment of tellers. At the joint session of the Senate and House of Representatives described in subsection (a), there shall be present two tellers previously appointed on the part of the Senate and two tellers previously appointed on the part of the House of Representatives by the presiding officers of the respective chambers.  
(d) Procedure at joint session generally.  
(1) In general. The President of the Senate shall—  
(A) open the certificates and papers purporting to be certificates of the votes of electors appointed pursuant to a certificate of ascertainment of appointment of electors issued pursuant to section 5, in the alphabetical order of the States, beginning with the letter A; and  
(B) upon opening any certificate, hand the certificate and any accompanying papers to |
| **The action starts in subsection (d).** | |

Modern Way
Possibilities for plot tension begin in subsection (d)(2).

How the tension will play out. (The 2022 amendments changed these rules because the stock story went off the rails on January 6, 2021.)

Procedural rules for resolving the plot tensions begin here.

<table>
<thead>
<tr>
<th>Possibilities for plot tension begin in subsection (d)(2).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Action on certificate.</td>
</tr>
<tr>
<td>(A) In general. Upon the reading of each certificate or paper, the President of the Senate shall call for objections, if any.</td>
</tr>
<tr>
<td>(B) Requirements for objections or questions.</td>
</tr>
<tr>
<td>(i) Objections. No objection or other question arising in the matter shall be in order unless the objection or question—</td>
</tr>
<tr>
<td>(I) is made in writing;</td>
</tr>
<tr>
<td>(II) is signed by at least one-fifth of the Senators duly chosen and sworn and one-fifth of the Members of the House of Representatives duly chosen and sworn; and</td>
</tr>
<tr>
<td>(III) in the case of an objection, states clearly and concisely, without argument, one of the grounds listed under clause (ii).</td>
</tr>
<tr>
<td>(ii) Grounds for objections. The only grounds for objections shall be as follows:</td>
</tr>
<tr>
<td>(I) The electors of the State were not lawfully certified under a certificate of ascertainment of appointment of electors according to Section 5(a)(1).</td>
</tr>
<tr>
<td>(II) The vote of one or more electors have not been regularly given.</td>
</tr>
<tr>
<td>(C) Consideration of objections and questions.</td>
</tr>
<tr>
<td>(i) In general. When all objections so made to any vote or paper from a State, or other question arising in the matter, shall have been received and read, the Senate shall thereupon withdraw, and such objections and questions shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections and questions to the House of Representatives for its decision.</td>
</tr>
</tbody>
</table>
(ii) **Determination.** No objection or other question arising in the matter may be sustained unless such objection or question is sustained by separate concurring votes of each House.

(D) **Reconvening.** When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No vote or paper from any other State shall be acted upon until the objections previously made to any vote or paper from any State, and other questions arising in the matter, shall have been finally disposed of.

(e) **Rules for tabulating votes.**

(1) **Counting of votes**

(A) **In general.** Except as provided in subparagraph (B)—

(i) only the votes of electors who have been appointed under a certificate of ascertainment of appointment of electors issued pursuant to section 5, or who have legally been appointed to fill a vacancy of any such elector pursuant to section 4, may be counted; and

(ii) no vote of an elector described in clause (i) which has been regularly given shall be rejected.

(B) **Exception.** The vote of an elector who has been appointed under a certificate of ascertainment of appointment of electors issued pursuant to section 5 shall not be counted if—

(i) there is an objection which meets the requirements of section (d)(2)(B)(i); and

(ii) each House affirmatively sustains the objection as valid.

(2) **Determination of majority.** If the number of electors lawfully appointed by any State pursuant
The underlined wording has something characteristic of blank verse epic poetry.

The underlined wording at the end of § 15 has been in the ECA since 1887 and might have been in earlier statutes.

If you were Homer reciting your *Iliad* or *Odyssey* aloud for an audience, which is what folk epics were for, and if the underlined wording were a passage in your epic (forgetting for a moment that it needs meter), here’s how you’d recite it, with a short pause at the end of each line to give your listeners a chance to absorb the line before going on to the next one:

The tellers shall make a list of the votes as they shall appear from the said certificates;
and the votes having been ascertained and counted
to the President of the Senate,
who shall thereupon announce the state of the vote,
which announcement shall be deemed
a sufficient declaration of the persons, if any,
elected President and Vice President of the United States

That moment—when the President of the Senate announces the state of the vote—is the exact moment when a president is actually elected. In the blink of an eye, as though by magic, the Electoral Count Act transforms one person into a President-elect and another person into a Vice President-elect.

10. Conclusion

All law is instructions. It is part of our culture generally to think in stories and to communicate by telling stories. The common law communicates its instructions through the stories in the case law, and we analogize to and distinguish from those stories.

Why do American statutes so rarely communicate their instructions with story techniques? Nothing inherent in the concept of a statute would prevent that. We share a language, a legal culture, and intellectual traditions with the British, who have recently figured out how to write stories into statutes.

One cause might be over-intellectualization—an unrealistic and impractical belief that a statute is a collection of ideas rather than instructions to real people in the real world. That belief certainly prevents the development of storytelling skills.

Another cause might be that we can’t expect much from our statutes. Our legislative process is chaotic. But a story needs an author—a small group of people who design a statute and control the wording. When dozens of legislators have the power to throw words into a bill, there is no author. There isn’t even coherence.

A surprising cause—but maybe the most important one—is that we aren’t as democratic as we think we are. For all our talk about open government and government by the people, there is no popular demand in the United States that ordinary people be able to read their statutes. Legislators don’t care about that. And we don’t seem to care that they don’t care.
Telling a story requires audience sense. You tell a story to an audience. A statute’s audience should be the people it governs.
## Appendix
### Comparing Four Statutory Styles (Bribery)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>[overwrought and convoluted]</td>
<td>[telling a story]</td>
<td>[clean mathematical logic]</td>
<td>[pragmatic]</td>
</tr>
</tbody>
</table>

### § 200.00 Bribery in the third degree
A person is guilty of bribery in the third degree when he confers, or offers or agrees to confer, any benefit upon a public servant upon an agreement or understanding that such public servant’s vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

### § 200.03 Bribery in the second degree
A person is guilty of bribery in the second degree when he confers, or offers or agrees to confer, any benefit valued in excess of five thousand dollars upon a public servant upon an agreement or understanding that such public servant’s vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

1. Offences of bribing another person
   (1) A person (“P”) is guilty of an offence if either of the following cases applies.
   (2) Case 1 is where –
      (a) P offers, promises or gives a financial or other advantage to another person, and
      (b) P intends the advantage –
         (i) to induce a person to perform improperly a relevant function or activity, or
         (ii) to reward a person for the improper performance of such a function or activity.
   (3) Case 2 is where –
      (a) P offers, promises or gives a financial or other advantage to another person, and
      (b) P knows or believes that the acceptance of the advantage would itself constitute the improper

2. United Kingdom
   The first paragraph applies even if the act was committed before the perpetrator obtained the position referred to or after the position had ended.

3. France
   A person who receives, accepts a promise of, or asks for an improper benefit concerning performing the duties of the employment or agency is guilty of bribe-taking and is to be fined or imprisoned for not more than two years. . .
   The first paragraph applies even if the act was committed before the perpetrator obtained the position referred to or after the position had ended.

4. Sweden
   A person who receives, accepts a promise of, or asks for an improper benefit for someone else is also guilty of bribe-taking

---


11 Translated by the author.
§ 200.04 Bribery in the first degree
A person is guilty of bribery in the first degree when the person confers, or offers or agrees to confer: (1) any benefit upon a public servant upon an agreement or understanding that such public servant’s vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced in the investigation, arrest, detention, prosecution or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of this part or an attempt to commit any such class A felony; or (2) any benefit valued in excess of one hundred thousand dollars upon a public servant upon an agreement or understanding that such public servant’s vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

§ 200.05 Bribery: defense
In any prosecution for bribery, it is a defense that the defendant conferred or agreed to confer the benefit involved upon the public servant involved as a result of conduct of the latter constituting larceny committed by means of extortion, or an attempt to commit the same, or coercion, or an attempt to commit coercion.

<table>
<thead>
<tr>
<th>Case</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>A person (“R”) is guilty of an offence if any of the following cases applies.</td>
</tr>
<tr>
<td>2.</td>
<td>Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by R or another person).</td>
</tr>
<tr>
<td>3.</td>
<td>Case 4 is where – (a) R requests, agrees to receive or accepts a financial or other advantage, and (b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.</td>
</tr>
<tr>
<td>4.</td>
<td>Case 5 is where R requests, agrees to receive a benefit valued in excess of one hundred thousand dollars, or agrees to receive a benefit upon a public servant upon an agreement or understanding that such public servant’s vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced in the investigation, arrest, detention, prosecution or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of this part or an attempt to commit any such class A felony; or (2) any benefit valued in excess of one hundred thousand dollars upon a public servant upon an agreement or understanding that such public servant’s vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.</td>
</tr>
</tbody>
</table>

§ 5b
A person who gives, promises, or offers an improper benefit in a case referred to in section 5a is guilty of bribery giving and is to be fined or imprisoned for not more than two years.

§ 5c
If a crime referred to in section 5a or 5b is considered grave, the person is guilty of grave bribery taking or grave bribery giving and is to be sentenced to imprisonment for not less than six months and not more than six years. When determining whether the crime is grave, particular consideration is to be given to whether the act involved an abuse of or an attack on a position of special responsibility or involved considerable value or was part of criminal activities conducted systematically or on a large scale or was otherwise of a particularly dangerous nature.

§ 5d
In cases other than those referred to in section 5a or 5b, a person is guilty of influence peddling and is to be fined or imprisoned.
§ 200.10 Bribe receiving in the third degree
A public servant is guilty of bribe receiving in the third degree when he or she solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his or her vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribe receiving in the third degree is a class D felony.

§ 200.11 Bribe receiving in the second degree
A public servant is guilty of bribe receiving in the second degree when he or she solicits, accepts or agrees to accept any benefit valued in excess of five thousand dollars from another person upon an agreement or understanding that his or her vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribe receiving in the second degree is a class C felony.

§ 200.12 Bribe receiving in the first degree
A public servant is guilty of bribe receiving in the first degree when he or she solicits, accepts or agrees to accept: (a) any benefit from another person upon an agreement or understanding that his or her vote, opinion, judgment, or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.

(5) Case 6 is where, in anticipation of or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly –
(a) by R, or
(b) by another person at R’s request or with R’s assent or acquiescence.

(6) In cases 3 to 6 it does not matter –
(a) whether R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party,
(b) whether the advantage is (or is to be) for the benefit of R or another person.

(7) In cases 4 to 6 it does not matter whether R knows or believes that the performance of the function or activity is improper.

(8) In case 6, where a person other than R is performing the function or activity, it also does not matter whether that person knows or believes that the performance of the function or activity is improper.

for not more than two years if the person –
1. receives, accepts a promise of, or requests an improper benefit to influence a decision made or an action taken by someone else in the exercise of public authority or in public procurement or
2. gives, promises, or offers someone an improper benefit to influence a decision made or an action taken by someone else in the exercise of public authority or in public procurement.
| action, decision or exercise of discretion as a public servant will thereby be influenced in the investigation, arrest, detention, prosecution or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of this part or an attempt to commit any such class A felony; or (b) any benefit valued in excess of one hundred thousand dollars from another person upon an agreement or understanding that such public servant’s vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced. Bribe receiving in the first degree is a class B felony. |

| § 200.15 Bribe receiving; no defense |

1. The crimes of (a) bribe receiving, and (b) larceny committed by means of extortion, attempt to commit the same, coercion and attempt to commit coercion, are not mutually exclusive, and it is no defense to a prosecution for bribe receiving that, by reason of the same conduct, the defendant also committed one of such other specified crimes.  
2. It is no defense to a prosecution pursuant to the provisions of this article that the public servant did not have power or authority to perform the act or omission for which the function or activity is improper. |
the alleged bribe, gratuity or reward was given.

§ 200.20 Rewarding official misconduct in the second degree
    A person is guilty of rewarding official misconduct in the second degree when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated his duty as a public servant.
    Rewarding official misconduct in the second degree is a class E felony.

§ 200.22 Rewarding official misconduct in the first degree
    A person is guilty of rewarding official misconduct in the first degree when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated his duty as a public servant in the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of the penal law or the attempt to commit any such class A felony.
    Rewarding official misconduct in the first degree is a class C felony.