The Revision of the Uniform Commercial Code--How Successful Has It Been

Henry Gabriel
I should say from the outset that my perspective is not one of a disinterested academic: I am both a Commissioner on the National Conference of Commissioners on Uniform State Law as well as a member of the American Law Institute, and I have served on the Drafting Committee to revise Article 2 since 1992. I have served as Reporter for the revision of Article 2 and 2A since 1999, and I am the Chair of the Drafting Committee to revise Article 7. If I did not believe the work of these organizations have had, and will continue to have, significant and positive influences on American law, I would not continue my involvement with them—but I do believe quite strongly in the value of these organizations.

What I would like to focus on today is the question of the continued validity of the Uniform Commercial Code ("UCC") as the basis for and the development of contemporary commercial law in America.

As a preliminary matter, it is important to remember that although it is often said that commercial law in America is primarily state, not federal, law, such an assertion is an overstatement. For example, as soon as bankruptcy is considered, we are in the realm of federal law. Much of banking law and consumer rights legislation and regulations are federal. In addition, much of this federal law preempts the state law—a prime example of this is Article 7 of the UCC which is greatly restricted by the preemption of federal law

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governing bills of lading and warehouse receipts. With this present
duality of law, it might be seen as easy enough to allow the whole
field of commercial law to be preempted by federal legislation and
regulation, and such a result has often been suggested and may in fact
be our future. However, anyone who has had the opportunity to
compare the Uniform Electronic Transactions Act, which is a state
statute, with the new Federal E-Sign Act has probably concluded that
as a matter of drafting and precision, as well as thoughtful analysis,
we are still better off with the uniform state legislation being drafted
than the federal equivalent.

I think it is also important to remember that the present state of
commercial law in America, as with so much of the law, did not begin
as part of some grand plan, but to a large extent is simply the result of
accidental historical development. Until the late nineteenth-century,
American commercial law was based on English common law, and
the merchant law and commercial law became part of a State’s law
initially from the reception of the English Common law by the
respective State, with each State’s law evolving independently of the
other States’ laws.

Obviously, because of the national nature of commercial
transactions, a system of individual state laws was destined to collapse
under its own Tower of Babel. What saved commercial law as state
law was the founding and development of NCCUSL (National
Conference of Commissioners on Uniform State Laws). Because of
NCCUSL, large portions of commercial law are still the law as
adopted by the individual States. Commercial law is primarily
uniform throughout the United States because of the existence and
passage of the UCC in all of the States\(^1\) and the District of Columbia.

However, I think it is fair to say that just because the UCC and
its earlier manifestations have been the basis for much of the success
of uniformity and utility of commercial law, we cannot just
automatically conclude that the past success should govern the future.

However, there is a lot of successful history behind the Code.
The Code in some form is almost 100 years old. Beginning early in
the last century, several discrete uniform acts were drafted by
NCCUSL to codify areas of commercial law. These acts covered
negotiable instruments,\(^2\) sales,\(^3\) documents of title,\(^4\) and security rights
in personal property.\(^5\) These uniform acts were widely adopted by

\(^{1}\) Louisiana has adopted all of the UCC except Articles 2 and 2A.
\(^{2}\) UNIFORM NEGOTIABLE INSTRUMENTS LAW (1896).
\(^{3}\) UNIFORM SALES ACT (1906).
\(^{4}\) Documents of title were governed by both the UNIFORM WAREHOUSE RECEIPTS
ACT (1906) and the UNIFORM BILLS OF LADING ACT (1909).
\(^{5}\) UNIFORM CONDITIONAL SALES ACT (1918) and the UNIFORM CHATTEL
MORTGAGE ACT (1926).
the various States, and made substantial progress in unifying the commercial law in America.

For the present, the UCC is now fifty years old, and it has been showing its age. There has been widespread agreement that revisions to the Code are necessary, and to a great extent, the question is now somewhat moot. Articles 3, 4, 5, 8 and 9 have recently been revised, and Articles 2, 2A, and 7 are currently in the grinder.

Thus to a large extent, the question of whether there is continued validity of the UCC as the basis for and the development of contemporary commercial law in America has already been answered. Much of the Code has been revised to reflect contemporary business practices and it continues to guide commercial law and practice in America. Success is success.

So where are the problems? I am not sure there are any. There may only be unfinished business. On the other hand, there may be problems.

There is the overarching question of whether the UCC and the processes and institutions that create and update it are the proper mechanisms for maintaining American commercial law. At the present time, the system appears to work well. I base this judgment on the fact that the Code is still intact and doing its job after fifty years, and that the completed revisions are being widely adopted and accepted.

So where is the unfinished business? Articles 2, 2A, and 7 are being revised. I cannot imagine that Article 7, the part of the Code that governs documents of title, will have many bumpy roads ahead of it. The present provisions present no real problems for those transactions that they govern; however, there is a whole new world of electronic transactions in documents of title that have to be accommodated in the Code. But this merely requires thoughtful additions to the existing Code to accommodate newly developed and developing electronic transactions in this area, and there is no opposition to doing so.

Yet, there is the lingering question of whether state law, even if uniformly adopted, is the proper loci for commercial law. Article 7 is a prime example of where federal law has already preempted so much of the field that the utility of the UCC to regulate the area is put into question. We also all know that irrespective of the excellent revisions of Article 5 on Letters of Credit, that a substantial amount

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6. Article 3 was last revised in 1990; Article 4 was last revised in 1990; Article 5 was revised in 1995; and Article 8 was revised in 1994. The revision of Article 9 was completed in 1998, and is scheduled for a nationwide uniform adoption in July 2001.

of the letters of credit in use are actually governed by the Uniform Customs and Practices of the International Chamber of Commerce. And that poses to me the biggest challenge in the future of the UCC: whether individual state law, even if uniform throughout the nation, will be able to adjust and reflect our national and global economic structure. But thus far, it has done so well.8

We should return to the question of the unfinished business: the revision of Articles 2 and 2A.

By UCC standards, Article 2A is still a child, having been first promulgated in 1989, and it is largely based on the structure and conceptual framework of the Article 2 sales provisions. The proposed revisions to this Article are framed in terms of making it consistent with Revised Article 9 and Revised Article 2; therefore, the revision of Article 2A is a mop up job.

Therefore the big and unknown task yet to be done is the revision of Article 2. As part of the UCC, the revision of Article 2 evolved as a normal part of the continuing process of the Code.

The two organizations which have developed and continue to revise the UCC, the National Conference of Commissioners for Uniform State Laws ("NCCUSL") 9 and the American Law Institute ("ALI"),10 agreed in 1935 to sponsor jointly the drafting of

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9. NCCUSL was created in 1892, and it consists of representatives ("Commissioners") from each State, the District of Columbia, Puerto Rico, and the United States Virgin Islands. The Commissioners are appointed by their respective States, either by the State's Governor or the Legislature of the State. All Commissioners are lawyers, and they serve without compensation. The purpose of NCCUSL is to determine what areas of private state law might benefit from uniformity among the States, to prepare statutes or "uniform acts" to carry that object forward, and then to have those statutes enacted in each American jurisdiction. The work of the Commission is done through Drafting Committees of appointed Commissioners, and through an annual meeting of all of the members that lasts eight days each summer. For a history of NCCUSL, see generally WALTER P. ARMSTRONG, JR., A CENTURY OF SERVICE, A CENTENNIAL HISTORY OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (1991).

10. The stated purpose of the Institute is "to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work." ALI BY-LAWS Article 1, reprinted in 2 A.L.I. PROC. 429 (1923). The ALI was organized in 1923 following a study conducted by a group of prominent American judges, lawyers, and teachers known as "The Committee on the Establishment of a Permanent Organization for the Improvement of the Law." The Committee had reported that the two chief defects in American law, its uncertainty and its complexity, had produced a "general dissatisfaction with the administration of justice." COMMITTEE ON THE
commercial law legislation. In 1940, NCCUSL adopted a plan to unify all of the commercial law in one Commercial Code, and the ALI was invited to join in the task: an invitation which the ALI accepted. And the two organizations have worked together on the UCC since then.

As for the current revisions of the UCC, to a large extent, they have followed the same process of the drafting or revision of any uniform law. First, NCCUSL forms a Study Committee of Commissioners to examine a suggestion for a new uniform statute or the need to revise an existing uniform statute. With the UCC, this step is often performed instead by the Permanent Editorial Board for the UCC ("PEB") or a body of American Law Institute ("ALI")

ESTABLISHMENT OF A PERMANENT ORGANIZATION FOR THE IMPROVEMENT OF THE LAW, REPORT PROPOSING THE ESTABLISHMENT OF AN AMERICAN LAW INSTITUTE 11 (1923), reprinted in AMERICAN LAW INSTITUTE 50TH ANNIVERSARY (2d ed. 1973). The Committee recommended that a lawyers' organization be formed to improve the law and its administration. This led to the creation of the ALI.

The Institute is a self-perpetuating voluntary organization, and under its bylaws has authorized an elected membership of 3,000. This membership consists of judges, lawyers, and law teachers from all areas of the United States as well as some foreign countries, selected on the basis of professional achievement and demonstrated interest in the improvement of the law.

From its founding, the ALI has defined its purpose to address uncertainty in the American law through a series of restatements of the basic legal subjects that would allow judges and lawyers to know what the law is. Between 1923 and 1944, Restatements of the Law were written on Agency, Conflict of Laws, Contracts, Judgments, Property, Restitution, Security, Torts, and Trusts.

In 1952, the Institute began the drafting of the Restatements (Second). These were updated editions of the original Restatements, which reflected new analyses and concepts, as well as expanded use of authorities. Restatements (Second) also covered subjects not included in the first series of Restatements. In 1987, a third series of Restatements were inaugurated.

Since 1923, the Institute has also drafted several Model Codes, such as the Model Penal Code, a Model Code of Evidence, and, as mentioned above, in collaboration with NCCUSL, the Institute has drafted and promulgated the UCC.

Fred Miller, the Executive Director of NCCUSL has explained the source of the current revisions of the UCC:

In three situations, the revision effort sprang from an influential law review article. In several more cases, the work began with a study and, in one case, a further drafting effort, under the auspices of the Permanent Editorial Board (PEB) for the Uniform Commercial Code. Finally, the remaining Code revision efforts began with work in the American Bar Association, particularly in the UCC Committee of the Business Law Section. Thus, none of the Code revision efforts began without some respectable reasons, and basic plans.


11. Fred Miller, the Executive Director of NCCUSL has explained the source of the current revisions of the UCC:

12. The ALI and NCCUSL jointly sponsor the Permanent Editorial Board for the UCC (PEB). The ALI and NCCUSL created the PEB under an agreement on August 5, 1961. That agreement was superseded by an agreement dated July 31, 1986, which presently governs the PEB's operations and existence. The PEB Governing Agreement
members and Commissioners acting on behalf of the PEB, or, in some cases, by the American Bar Association ("ABA") or the ALI.

If the study group recommends that a statute be prepared, before any drafting begins, then the recommendation must be approved by the Scope and Program Committee of NCCUSL, as well as the Executive Committee of NCCUSL, and in the case of the UCC, by the ALI as well. Once the decision to prepare a proposed statute is reached, a Drafting Committee composed of six to ten Commissioners is appointed, and with the UCC, because it is produced with the ALI, one or more ALI members are also appointed to the Drafting Committee. In addition, under an agreement with the ABA, each Drafting Committee has an ABA Advisor appointed to work with it.  

Each Drafting Committee has a Reporter. With the notable and glaring exception of my appointment, the Reporter has been a legal expert in the subject of the proposed statute and serves to collect information about the subject for the education and use of the members of the Drafting Committee. The Reporter presents the information with policy choices in alternative draft language. The Reporter in this process does not decide what goes into the statute, but simply drafts the statute consistent with the decisions of the members of the Drafting Committee. The Drafting Committee determines the particular policy and provisions of the proposed statute based on the work of the Reporter, on advice received from various relevant constituencies concerning those policies and provisions, and on the experience of the members in their practice in the various States.

The proposed statute is then discussed and debated at the annual meetings of NCCUSL during each of at least two years and, in the case of the UCC, at least at one annual meeting of the American Law Institute. The Act is approved only by a majority of the votes, in the case of NCCUSL, by a majority of the States, and with the ALI, by a majority of the membership attending the meeting. Once an addition or revision to the UCC is completed and approved by NCCUSL and

provides that "it shall be the function of the PEB to ... monitor the law of commercial transactions for needed modernization or other improvement." Agreement Describing the Relationship of the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and Permanent Editorial Board with Respect to the Uniform Commercial Code, 64 A.L.I. PROC. 769, 774 (1987). In March 1987, the PEB resolved to issue, from time to time, supplementary commentary on the UCC to be known as PEB Commentary. These PEB Commentaries seek to further the underlying policies of the UCC by affording guidance in interpreting and resolving issues raised by the UCC or the Official Comments. Thus far, the PEB has issued fourteen Commentaries.

13. The function of the ABA Advisor is to solicit and collect input from every interested constituency in the ABA, and to convey this advice to the Drafting Committee.
the ALI, the Commissioners from the various States are charged with
the duty of getting the uniform statute enacted by the Legislature in
each jurisdiction.  

For those who find that the current revisions seem to be taking
too long, one should remember that William Schnader, the President
of NCCUSL from 1939-42 was the instigator and force behind the
UCC as we know it today, and he worked closely with Karl Llewellyn
to get the project started in 1940. It took eleven years to have a
draft that was promulgated by the Conference in 1951, and even then
questions of enactability were still being seriously debated. It took
two years for the first enactment (Pennsylvania), and another four
years for a second enactment (New York), and then only after
substantial revisions. This is about the same time frame as the
current revisions. There ain't nothing new in the universe.

Given this lengthy and arduous process, combined with the fact
that meetings and drafts are all public, the opportunity for the
creation of fair and balanced uniform acts is certainly present.
However, there has been significant commentary in recent years
about whether the UCC revision process has produced the type of
thoughtful, balanced and fair acts that the proponents of the acts
suggest have (or should have) occurred. A major theme of the

14. It is important to note that although NCCUSL is a government organization (the
ALI is not), neither organization, nor the combination of the two, has the power to create
positive law. The UCC, and the subsequent revisions of it, are presented to the various
State Legislatures for adoption, and the Code only becomes the law of a respective State
when it is adopted by that State's Legislature. It is also important to realize that because
the individual States have the power to adopt whatever version or modifications the State
pleases, there is a substantial amount of non-uniformity among the States. The fact that
the legislation had to pass the Legislatures of fifty-one jurisdictions, and also has some
non-uniform amendments by some States, has not been a problem for the creation of a
general uniform commercial law in the United States, as the UCC has accomplished.

15. See generally William Twining, Karl Llewellyn and the Realist
Movement 270-301 (1973).


17. Armstrong, Jr., supra note 9, at 77.

18. Several commentators have been quite critical of the process. For a select list
made by the Executive Director of NCCUSL, see Miller, supra note 15, at 708 n.5. See
also generally Richard A. Elbrecht, The NCCUSL Should Abandon Its Search for
Consensus and Address More Difficult and Controversial Issues Applying "Process"
Concepts, 28 Loy. L.A. L. Rev. 147 (1994); Donald B. King, Major Problems with Article
2A: Unfairness, "Cutting Off" Consumer Defenses, Unfiled Interests, and Uneven
Adoption, 43 Mercer L. Rev. 869 (1992); Kathleen Patchel, Interest Group Politics,
Federalism, and the Uniform Laws Process: Some Lessons from the Uniform Commercial
Code, 78 Minn. L. Rev. 83 (1993); Donald J. Rapson, Who Is Looking out for the Public
Interest? Thoughts About the UCC Revision Process in the Light (and Shadows) of
Professor Rubin's Observations, 28 Loy. L.A. L. Rev. 249 (1994); Edward Rubin,
Efficiency, Equity and the Proposed Revision of Articles 3 and 4, 42 Ala. L. Rev. 551
criticism of the revision process is that NCCUSL and the ALI have been dominated by special interest groups that employ professional and academic representatives to articulate the views of these special interests.\(^\text{19}\) Focusing back in on Article 2, which is where I can speak from experience, this dominance by special interest groups has not been the case.

Before responding to this criticism directly, it seems appropriate to point out that this specific critique is one that could be lodged against any federal or state legislative process, and therefore one response could be that the revision process of the UCC simply mirrors the democratic process as it now and always has existed in the United States. However, in my opinion, this is both an inaccurate and unacceptable response.

First, it should be noted that it is wholly inappropriate for members of NCCUSL or the ALI to assume partisan views in their work on the UCC.\(^\text{20}\) Second, it should be noted that the work of the


19. For the most articulate explication of this position, see generally Schwartz & Scott, supra note 18. All drafting committee meetings are open to the public, and it is not unusual for high profile Committees to have two or three “observers” for every drafting committee member in attendance. It has always been the custom of drafting committee meetings to allow all attendees to express views and opinions.

20. Members of NCCUSL are, by virtue of their appointments, government officials. As such, each member is bound by the relevant regulations requiring impartiality in government work. Although not a government body, members of the ALI are likewise bound by similar requirements:
Drafting Committee is intentionally insulated from political pressures.\textsuperscript{21}

But are the members of the Drafting Committees free of bias or partisan interests? My friend Arthur Rosett suggests that the experience and training that provides the expertise necessary to work on a Drafting Committee probably shades one’s perspective toward the views of the clients who provided the experience to gain the expertise.\textsuperscript{22} However, on this point, I think it is important to separate

\begin{quote}
\textit{Members’ Obligation to Exercise Independent Judgment.} To maintain the Institute’s reputation for thoughtful, disinterested analysis of legal issues, members are expected to leave client interests at the door. Members should speak and vote on the basis of their personal and professional convictions and experience without regard to client interests or self-interest. It is improper under Institute principles for a member to represent a client in Institute proceedings. If, in the consideration of Institute work, a member’s statements can be properly assessed only if the client interests of the member or the member’s firm are known, the member should make appropriate disclosure, but need not identify clients.

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\textsuperscript{21} Thus, the Conference is representative of the States only in the sense that it draws its membership from them. The States have no official control over its procedures or over the subject matter of the laws it promulgates, and its members do not view themselves as official representatives of their States’ interests in the process. Indeed, the primary defining characteristic of the National Conference of Commissioners on Uniform State Laws is that it is neither a democratically elected representative body, nor one owing allegiance, or having any accountability, to any political body. Conference supporters have pointed to this lack of political accountability as one of the Conference’s best features. Their theory is that the lack of accountability insulates the laws the Conference promulgates from political pressure. Uniform laws are the product of a neutral group of experts, whose solutions will represent the “best” way in which to regulate the particular subject matter involved, rather than the product of political compromise.

\textsuperscript{22} Patchel, \textit{supra} note 18, at 91-92.

\textsuperscript{21} The revision process used by the Uniform Commissioners and the American Law Institute is based on the assumption that experts can be objective, surmount personal professional interests, and put aside the influences that would distort their judgment. From their beginnings, these institutions have depended heavily on the voluntary participation and support of talented generalists, academics and judges who contribute selflessly and thoughtfully to the project. In reality it is difficult to lay aside the particular monetary interests of paying clients. Yet few practicing lawyers become expert in a highly technical field or are in a position to form a sound judgment regarding them unless they have clients who create such distorting interests. Academics and judges may operate from a more detached perspective, but many professors also advise clients on a regular basis and a judge’s expertise will grow rusty when the issues are technical and arise only infrequently in litigation . . . . Most of the people in the room at any meeting are there for a reason. It may be that a few persons wandered into the meeting because it is raining or cold outside and they prefer to be dry and warm. A few
the members of the Drafting Committee, NCCUSL Commissioners and the ALI representatives, from the rest of the persons attending drafting committee meetings. It is certainly true that most of the observers, be they a lawyer in private practice, employed by a trade organization, or a law professor, are at the meeting on behalf of and representing the specific interests of some organization. But this is well known to all, and the opinions stated and positions taken by these observers are assumed to be that of the group the speaker represents. It is also, in my experience, a fact that many observers may be consumed by a platonic interest in the subject or suffer from a rare mental illness that leads them to prefer attending a drafting committee meeting rather than joining their family by the seashore or the mountains. Nevertheless, most of the practitioners and academics at such meetings are there because they are being paid directly or indirectly for their attendance by someone who wants their views represented.


23. I cite here at some length the observations of the Executive Director of NCCUSL on this point. Having served as a member of the Drafting Committee to Revise Article 2 of the UCC since 1992, the Drafting Committee to Revise Article 2A since 1994, and the Drafting Committee of the Uniform Electronic Transactions Act since 1996, I have participated in many drafting committee meetings. Based on my participation and observation, I agree completely with Professor Miller's observations.

[Participation of interest groups] builds a consensus for the rule chosen by the drafting committee and, thus, for enactment. This is the case because, as the various views are discussed, participants observe that their view, while valid, may also be more parochial than they perceived, or at least not the only defensible position on the matter. It, therefore, often becomes feasible to devise a middle ground to resolve an issue when everyone's position is known and appreciated. The consensus gained, given the recognized detriments in continued nonuniformity, has sufficient value so that the consensus normally is not renegotiated on a State-by-State basis during enactment in an attempt to gain further advantage.

Nonetheless, while widespread participation on the whole clearly benefits the process, it has brought problems as well. There is a perception that numbers count, and so the belief is that the more observers representing a particular point of view appearing at the table, the more likely it is that viewpoint will prevail. This view may be reinforced by the practice, not uniformly used, of taking votes on an issue of the persons not on the drafting committee before the drafting committee itself votes.

... [T]he viewpoint of observers is an important consideration, but it does not control. This is evidenced by the fact that a drafting committee often will adopt a position not favored by the observers. The floor of the National Conference and the Institute at their annual meeting may vote to overrule the position of the drafting committee even though it has stated that the position of the committee is in accord with the position of the advisors and observers to the drafting committee.

Fred Miller, supra note 11, at 717-19.
to the drafting process, regardless of who they represent, put forth sound arguments of legal and public policy, and for that reason, have a positive influence on the process. Not all arguments and points of view prevail, but they do help to set the parameters of the debate.

The question, then, is not whether special interest groups have a voice during the revision process, the question is whether the Drafting Committees and then the full bodies of NCCUSL and the ALI, those actually responsible for the final acts, have been "captured" by these various interest groups that seek to influence the result of the acts.24

There are two places where this capture may occur: First, by the influence on the members of the Drafting Committees,25 and second, in pressing for suggested changed in the individual Legislatures that need to adopt the legislation for it to become law.26 Different concerns are raised by each potential place of capture.

The first question is whether the Drafting Committees (and subsequently in the review of the drafting committee work, NCCUSL and the ALI as a whole) have a predisposition toward certain interest groups to the exclusion of others. This predisposition could be preexisting based on a member of the Drafting Committee's background, training, and experiences, or it could be developed by the influence of the interest groups in the drafting process. In my experience, neither of these has been determinative.

Is there a pre-existing disposition toward certain interests groups? I don't think so. For although it is clear that all participants to the Drafting Committees bring to the table their own predetermined legal, political, and societal views, the committee membership itself is not uniform in their views. In fact, the Drafting

24. Several of the critiques have focused on the revisions of Articles 3 and 4: the Payment Codes. See, e.g., Patchel, supra note 18; Rubin, Efficiency, Equity, supra note 18; Rubin, Thinking Like a Lawyer, supra note 18. As I was not involved in the revision of these Articles, I cannot support or refute the claims, and my views are limited to the revisions of Articles 2 and 2A of the UCC.

25. Patchel, supra note 18, at 103-105; Rubin, Efficiency, Equity, supra note 18, at 552-60; Rubin, Thinking Like a Lawyer, supra note 18, at 744-59; Scott, The Politics, supra note 18, at 1822-47.

26. This view has recently been put forth by Professor Edward Janger. See Edward J. Janger, Predicting When the Uniform Law Process Will Fail: Article 9, Capture, and the Race to the Bottom, 83 IOWA L. REV. 569 (1998). Professor Janger suggests that actual capture [of the uniform law process] may not be the problem. Even when an interest group has not captured the uniform law drafting process, the drafters may be forced, in the interest of enactability, to anticipate and approximate the rule that would be produced by a captured State Legislature. Thus, when seeking to predict the success or failure of the uniform law process, it is crucial not only to predict capture, but to predict when the anticipated capture of State Legislatures is likely to drive the uniform law drafting process.

Id. at 579.
Committees are often quite polarized in those views, and this is reflected in the votes as well as the suggested language and concepts put forth by various committee members.

As to the question of whether some groups are better represented, and therefore are able to impart greater influence on the outcome,\textsuperscript{27} although it is true that in sheer numbers, some interest groups, primarily non-consumer interests, have a much greater representation than others, this is not to say that there was a greater impact. In addition to very articulate views expressed from a multitude of viewpoints by observers at meetings, the Drafting Committees are also inundated with written submissions from every imaginable source, and just about every step of the revision of any Article in the UCC has spawned multiple law review symposia where the practicing bar and academics have had a tremendous forum for informing the revision process.\textsuperscript{28}

The other concern, that "[e]ven when an interest group has not captured the uniform law drafting process, the drafters may be forced, in the interest of enactability, to anticipate and approximate the rule that would be produced by a captured State Legislature"\textsuperscript{29} is a more realistic problem because this is often a consideration that will unify the drafting process into taking a position that is based not necessarily on each member's notion of the ideal policy, but on the subsidiary goal of getting the act enacted. No amount of hard work and thought and careful drafting will matter if the uniform act is not one that can be enacted.

Initially, the response might be that enactability is a virtue, and if the uniform act is not enactable, then it is flawed as a matter of public policy. Axiomatically, this is correct. The uniform law process serves the admirable goal of uniformity of law, but embedded in this is the desire to produce uniform acts that are needed and wanted, and one

\footnotesize{27. For an expression of this view, see Patchel, supra note 18, at 129.}


\footnotesize{29. Janger, supra note 26, at 579.}
of the strongest measures of this is whether the individual States will enact the legislation.

Yet it is this question of enactability that I think is the greatest concern in the revision process. For what has occurred in many instances is the realization by those responsible for the drafting that what is needed is a balanced compromise for a middle position that is fair and reasonable to all parties, and what appears at the time is highly polarized views by different groups that have not, for the most part, agreed upon a common ground. The process, though, has been able to accommodate this stress, albeit at substantial time and costs to the process. This accommodation has occurred by the continued lengthening of the time necessary for the revisions, but by so doing, has allowed the slow but steady movement toward consensus that strikes fair and reasonable balances among the competing interests, and are, in my opinion, substantively major improvements over the Articles they replace.