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# Drafting Commercial Law for the New Millennium: Will the Current Process Suffice?

Neil B. Cohen

*Brooklyn Law School*, [neil.cohen@brooklaw.edu](mailto:neil.cohen@brooklaw.edu)

Barry Zaretsky

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# DRAFTING COMMERCIAL LAW FOR THE NEW MILLENNIUM: WILL THE CURRENT PROCESS SUFFICE?

*Neil B. Cohen\* and Barry L. Zaretsky\*\**

## I. INTRODUCTION

The Uniform Commercial Code is in the midst of an era of unprecedented revision. In the quarter-century following the promulgation of the first widely adopted official text of the Code in 1962, there were only three sets of amendments. In 1966, minor amendments were made to Article 2; in 1972, several revisions to Article 9 were promulgated; and six years later, in 1978, Article 8 was revised. In the last half-dozen years, however, every substantive article of the Code has either been revised, entered the process of revision, or become the subject of a study that will likely lead to revision. In addition, in this short span, Article 2A (Leases) and Article 4A (Funds Transfers) have been added to the Code, and Article 6 has been the subject of a "delete or revise" recommendation.

The recent frenzy of revision has not always been met with unanimous acclaim. Some of the products of this process have been controversial, and not all revisions have been adopted quickly. Moreover, commentators have recognized that some of the new drafting has fallen short of perfection.<sup>1</sup>

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\* Professor of Law, Brooklyn Law School, Brooklyn, New York; S.B., 1974, Massachusetts Institute of Technology; J.D., 1977, New York University School of Law.

\*\* Professor of Law, Brooklyn Law School, Brooklyn, New York; B.A., 1971, New York University; J.D., 1974, University of Michigan Law School. Of Counsel, Kelley, Drye & Warren.

1. See, e.g., Gerry W. Beyer, *Pay to the Order of Whom?—The Case of the Ambiguous Multiple Payee Destination*, 21 U. Tol. L. Rev. 685 (1990) (criticizing 1989 revision of Article 3 for failing to address adequately multiple payee designations); Mark E. Budnitz, *The Consequences of Bulk in Our Banking Diet: Bulk Filing of Checks and the Bank's Duty of Ordinary Care Under the 1990 Revision to the Uniform Commercial Code When It Honors Forged Checks*, 63 Temp. L. Rev. 729 (1990) (criticizing 1990 revision of Code for allowing comparative negligence as method of loss allocation); Nan S. Ellis & Steven B. Dow, *Banks and Their Customers Under the Revisions to Uniform Commercial Code Articles 3 and 4: Allocation of Losses Resulting from Forged Drawers' Signatures*, 25 Loy. L.A. L. Rev. 57 (1991) (criticizing revised Articles 3 and 4); Gail K. Hillebrand, *Revised Articles 3 and 4 of the Uniform Commercial Code: A Consumer Perspective*, 42 Ala. L. Rev. 679 (1991) (noting inadequacy of con-

One need not be pejorative to recognize that the road to Nirvana has been somewhat bumpy for this second generation of the UCC. Perhaps this is at least partially attributable to the accelerated revision process. It must be remembered that ten years elapsed between promulgation of the first full text of the UCC in 1952 and the significantly improved official text of 1962. During those ten years, the 1952 draft was subjected to intense scrutiny and a large dose of constructive criticism.<sup>2</sup> In contrast, recent drafts generally have moved directly from promulgation of an initial "official text" to adoption without significant input from constituencies not directly involved in the drafting process.

This process has sometimes resulted in statutory provisions with problems that did not become apparent until after the new statute had been adopted by, or submitted to, the state legislatures. Because of the practical difficulties involved in amending a statute after its adoption in multiple jurisdictions, and the perceived political difficulties involved in amending a promulgated but not yet enacted article, resolution of these problems has typically been left to the courts or addressed through the use of post hoc Permanent Editorial Board (PEB) commentary or official comments.

The difficulties with recent amendments to the Code should prompt a reexamination of the way we create commercial law. After all, the fact that the original process worked well is no guarantee that the current approach is the appropriate process for the present or the future.

Under the current process, two nonlegislative entities—the American Law Institute (ALI) and the National Conference of Commissioners on Uniform State Laws (NCCUSL)—assemble a team of the "best and brightest" to draft a statute that is sent (along with "official comments") to the states for adoption. States are discouraged from adding their own wisdom to the drafting process by strong reminders that local "improvements" will result in dreaded non-uniformity. While this process seems reasonably well suited for swift enactment of well-drafted statutes, legitimate questions can arise about the nature of the statutes created by this process and the practical ability of the process to respond meaningfully to disagreements about policy decisions made by the drafters and about drafting choices made to effectuate those policies.

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sumer protection under revised Articles 3 and 4). For criticism of Article 2A, see *infra* notes 8-11 and accompanying text.

2. See, e.g., Robert Braucher, *The Legislative History of the Uniform Commercial Code*, 58 COLUM. L. REV. 798, 798-806 (1958); William A. Schnader, *A Short History of the Preparation and Enactment of the Uniform Commercial Code*, 22 U. MIAMI L. REV. 1, 7-9 (1967).

This Essay informally examines the current process and contrasts it, for the sake of argument and analysis, with the hypothetical alternative of a national commercial code. After all, the development of the UCC as state uniform law (or "uniform state law") owes at least as much to the fact that it was replacing prior state law as it does to any particular determination that state law, rather than federal law, was the appropriate home of commercial law.

## II. BACKGROUND

Prior commercial statutes, such as the Uniform Sales Act<sup>3</sup> and the Negotiable Instruments Law,<sup>4</sup> harken back to the late nineteenth century and the establishment of the NCCUSL. While commercial law quite obviously has a major impact on interstate commerce, Congress simply did not have the inclination in that era to pass a law to address every issue affecting interstate commerce. Indeed, the late nineteenth century represents a very early stage of the awakening of Congress to the broad range of powers it possesses under the Commerce Clause.<sup>5</sup> Although this awakening—and the constitutional development that accompanied it—has led to a broad range of federal legislation on issues affecting interstate commerce, until recently commercial law was only peripherally addressed at the federal level. Even today, although federal legislation and regulation have largely supplanted the UCC in certain areas,<sup>6</sup> the bulk of commercial law is still found in the UCC. Yet, there is no particular reason that governmental theory dating to the late nineteenth century should determine the nature of commercial law as we enter the new millennium. Consequently, at this critical juncture in commercial law, it is useful to consider alternative processes regardless of whether such an evaluation results in confirmation of the current process or proposals for change.

## III. THE CURRENT UNIFORM LAW PROCESS

In order to evaluate the current mechanisms by which uniform commercial law comes into being, it is helpful to focus on concrete examples rather than abstract theory. The Article 2A experience is instructive here.

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3. UNIF. SALES ACT (1906) (superseded by U.C.C. art. 2).

4. UNIF. NEGOTIABLE INSTRUMENTS LAW (1896) (superseded by U.C.C. art. 3).

5. U.S. CONST. art. I, § 8.

6. See *infra* notes 22-25 and accompanying text.

In 1987 NCCUSL promulgated new Article 2A of the UCC governing personal property leases.<sup>7</sup> As the first entirely new article since the promulgation of the original UCC, the drafting of Article 2A represented a daunting challenge. The drafting committee and the reporter did an outstanding job of crafting an article from scratch. Indeed, as professors, we would probably give their product a grade approximating 95, and we are not easy graders. Proposed legislation should probably be at the 99 or 100 level, however, before it is enacted. This does not mean that the drafters or the drafting process were deficient in any way; rather, merely that there are limits to what can be accomplished by a single reporter and a small drafting committee, no matter how competent and dedicated they are.

While adopted quickly in several states, Article 2A soon ran into trouble. The California Bar Association prepared a detailed evaluation criticizing many aspects of the article.<sup>8</sup> Shortly thereafter, the new article was the subject of a largely uncomplimentary symposium in the *Alabama Law Review*.<sup>9</sup> Some of the criticism from these sources related to policy choices made by the drafters and promulgators of Article 2A. Most of the criticism, however, concerned the effectiveness of the article's language in effectuating the policies it adopted.

A standby committee established by the NCCUSL and the ALI to monitor the adoption of Article 2A issued a response to the California Bar report.<sup>10</sup> That response rebutted the Bar report's criticisms—both as to policy choices and drafting—and declined to recommend any changes in the official text of Article 2A.<sup>11</sup> The California Legislature was not convinced by the standby committee's response, and proceeded to adopt a version of Article 2A that differed from the official text in numerous respects.<sup>12</sup>

Faced with the unhappy choice between, on one hand, continuing to call for the enactment of the official text of Article 2A, thereby giving rise to a statute from which one of the nation's leading commercial jurisdic-

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7. See U.C.C. art. 2A, 1B U.L.A. 647, 649 (1989).

8. Amelia H. Boss, *The History of Article 2A: A Lesson for Practitioner and Scholar Alike*, 39 ALA. L. REV. 575, 603-04 n.110 (1988) (setting forth certain portions of California Bar report).

9. See Symposium, *Article 2A of the Uniform Commercial Code*, 39 ALA. L. REV. 559 (1988).

10. NCCUSL, *THE CALIFORNIA AMENDMENTS TO UCC ARTICLE 2A* (1989). A copy of the report may be obtained from the NCCUSL, 676 North St. Clair Street, Suite 1706, Chicago, IL 60611.

11. *Id.*

12. See Act of Sept. 25, 1988, ch. 1359, 1988 Cal. Stat. 4495 (codified as amended in scattered sections of CAL. COM. CODE).

tions differed significantly and, on the other hand, concluding that the official text of Article 2A could be improved and setting out to improve it, the standby committee stuck to its guns and continued to promote the official text. Only after a study conducted by the New York Law Revision Commission tentatively concluded that the official text of Article 2A should not be introduced in New York without significant improvements<sup>13</sup>—some of which were based on the California changes—did the standby committee agree that Article 2A should be amended. The result, drafted in consultation with the New York Law Revision Commission, was the 1990 official text of Article 2A, which represents a significant improvement over the original version.

The saga of Article 2A was a troubled one largely because of the drafting and enactment process. The original draft was probably as well-crafted as humanly possible, but, of course, like humans, no draft is perfect. Unfortunately, by the time the flaws in the draft were discovered and debated, the enactment process had begun. As a result, the NCCUSL and ALI were faced with a choice between calling the enactment process to a screeching halt and admitting error, or forging ahead despite criticism. Perhaps the ideal solution would have been to enact the statute as drafted, and then to fix those areas in need of improvement. This is frequently done in federal tax legislation, in which a major tax reform act in one year is typically followed by a "Technical Corrections Act" the following year.<sup>14</sup> Yet, that alternative is not available in the uniform law process, because fifty state legislatures—rather than one Congress—would have to be convinced to pass the corrective legislation. The failure of even a few jurisdictions to pass the corrective legislation would destroy the uniformity that is one of the primary goals of a uniform law process.

#### A. *PEB Commentaries*

One response to the imperfections discovered after promulgation is the recently accelerated Permanent Editorial Board's proclivity to issue new or revised comments to sections of the statute already adopted by the legislatures. Until recently, revised comments were issued for only a few sections. In 1987, however, the Permanent Editorial Board resolved to issue, from time to time, supplemental commentaries (PEB Commen-

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13. See Gerald T. McLaughlin & Neil B. Cohen, *Changes Under Way*, N.Y. L.J., Apr. 8, 1992, at 3, 5. Professor Neil B. Cohen, one of the authors of this Essay, was a consultant to the New York Law Revision Commission on this matter.

14. See, e.g., Technical Corrections Act of 1982, Pub. L. No. 97-448, 96 Stat. 2365, repealed by Tax Reform Act of 1984, Pub. L. No. 98-369, 98 Stat. 556.

taries) on various issues within the scope of the UCC. The purpose of these commentaries is:

(1) to resolve an ambiguity in the UCC by restating more clearly what the PEB considers to be the legal rule; (2) to state a preferred resolution of an issue on which judicial opinion or scholarly writing diverges; (3) to elaborate on the application of the UCC where the statute and/or the Official Comment leaves doubt as to inclusion or exclusion of, or application to, particular circumstances or transactions; (4) consistent with UCC § 1-102(2)(b), to apply the principles of the UCC to new or changed circumstances; (5) to clarify or elaborate upon the operation of the UCC as it relates to other statutes (such as the Bankruptcy Code and various federal and state consumer protection statutes) and general principles of law and equity pursuant to UCC § 1-103; or (6) to otherwise improve the operation of the UCC.<sup>15</sup>

To date the PEB has promulgated nine commentaries pursuant to this resolution.<sup>16</sup>

Whatever the status of PEB Commentaries in their own right, these commentaries conclude with additions or amendments to the official comments to the UCC.<sup>17</sup> New official comments, along with the commentaries from which they spring, are of uniformly high quality as to the persuasiveness of their analysis, yet they inspire a nagging question: What authority do new "official" comments—promulgated subsequent to the enactment of a statute and never submitted to the legislatures responsible for enactment—have?

To begin with, as commercial law professors have emphasized from the onset of the UCC, comments (even those promulgated along *with* the UCC) are *not* the law. At best, they represent a sort of super legislative history, serving as both an elucidation of the statute before the legislature legitimately considering enactment and as the drafters' notes.<sup>18</sup> Thus,

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15. *PEB Resolution on Purposes, Standards and Procedures for PEB Commentary to the UCC*, [PEB Commentaries] U.C.C. Rep. Serv. (Callaghan) vii (Mar. 14, 1987).

16. *See PEB Commentary Nos. 1-7*, [PEB Commentaries] U.C.C. Rep. Serv. (Callaghan) (Mar. 10, 1990); *PEB Commentary No. 8*, [PEB Commentaries] U.C.C. Rep. Serv. (Callaghan) (Dec. 10, 1991); *PEB Commentary No. 9*, [PEB Commentaries] U.C.C. Rep. Serv. (Callaghan) (June 25, 1992).

17. *See* sources cited *supra* note 16.

18. Frequently, the comments were drafted by different individuals than those who drafted the sections to which they are appended. As a result, the comments might have been drafted in reference to a previous version of the section. *See, e.g.*, Letter from Professor Grant Gilmore to Professor James J. White (Sept. 10, 1980), *reprinted in* RICHARD E. SPEIDEL ET AL., *COMMERCIAL LAW* 467-68 (4th ed. 1987).

the "original" comments can be used as an aid in determining what rule the legislature enacted.

With their post hoc status, however, the PEB Commentaries cannot claim this link to the legislative enactment. Commentaries written twenty or more years after a legislature passed the underlying statutes simply cannot be said to reflect the intent of the legislature. Rather, their "authority," such as it is, must come from the persuasiveness of their analysis. Without exception, the PEB Commentaries are quite persuasive, a phenomenon arising both from the inherent quality of analysis and the commentaries' status as essentially peer-reviewed analyses of exceedingly high standards.

Given the high intellectual content of the commentaries and the additional fact that they rest on a quarter-century of Code experience, it is unfortunate they are limited by their post hoc nature. Yet, this limitation is an inevitable result of the current NCCUSL/ALI-drafted, state-enacted uniform law process.

### *B. A Modest Solution?*

Comparing the current uniform law process to a hypothetical process of national enactment of commercial law is useful in identifying problems with the current process. Although federal commercial law exists, it is generally limited in scope and is typically not the result of any evaluation of broad commercial policy issues. Consequently, there is no obvious federal experience to use as a guide for comparison.

Nonetheless, let us imagine a new national commercial law—the National Commercial Code (NCC). First, Congress would enact the NCC, which would essentially consist of the current UCC, minus conflict-of-law provisions currently needed to resolve conflicts between different state versions.<sup>19</sup> (It could also create a national filing system to replace state and local filing under Article 9.)

In this hypothetical scenario, perhaps new commercial legislation under the NCC would be drafted under the auspices of a commission appointed by Congress. The commission might retain a reporter and designate a drafting committee and additional advisors as needed. The draft proposals could, if approved by the commission, then be sent to the relevant congressional committees, which could be expected to examine closely the policy choices, but (hopefully) defer to the commission on the "drafting" issues. Unlike state legislatures, these committees would

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19. See, e.g., U.C.C. §§ 1-105, 9-103 (1990).



likely have—or have available to them—the resources and expertise to thoroughly consider the policy determinations inherent in the draft.

Congress could also establish a commission to oversee operation and development of the NCC. Congress could give this commission the authority to promulgate rules consistent with the NCC to cover situations not clearly addressed by the text of the NCC. The commission might also, from time to time, issue reports and recommendations to Congress about the operation of the NCC and the need, if any, for amendments. Thus, this commission could be similar to the current Permanent Editorial Board, except that its products, unlike current PEB Commentaries, would carry the force of law.

Would this hypothetical model represent an improvement over the current UCC process? That certain advantages would exist is undeniable. For example, commercial law would be uniform—a result that has eluded the NCCUSL and ALI ever since the initial promulgation of the UCC. Of course, the cost of this uniformity would be centralized federal control of the rules governing commercial transactions, an area traditionally governed by state law.

Is centralized federal control itself problematic? As a nation, we appear to have moved beyond states' rights slogans to accept broad federal power over matters once considered local. Nonetheless, state regulation of commercial matters has a long, and generally favorable, history in the United States, and a proposal to nationalize commercial law should not be embraced perfunctorily.

Another advantage of nationalizing the commercial law process would be that minor errors could be corrected more easily. Because such errors will always be with us, it is no criticism of the current drafting process to observe that glitches occasionally occur. Yet, just as Congress frequently passes a technical corrections act after major changes in the Internal Revenue Code, errors or ambiguities detected in a new or revised article of the NCC could be quickly and painlessly corrected or clarified after enactment. Under the current process, correction is difficult because each of the fifty state legislatures must act on amendments.

In addition, it would be easier to update the NCC in light of new developments. Because only one legislature need act, it would be possible to revisit regularly the NCC as new issues arise. Consequently, there would be no need to rely on post hoc "official" commentaries and comments to respond to such developments.

Of course, the relative ease with which federal law can be amended is itself problematic. As we have seen with the Bankruptcy Code, interest groups can and do lobby Congress for the passage of special interest

legislation that is often inconsistent with the statute's underlying policies. Although interest groups can be, and often are, represented in the current UCC drafting process, they tend to assert less overtly self-interested influence over the policy choices than seems to occur in the federal legislative process. Moreover, once a proposed article is promulgated, whatever influence interest groups normally have with state legislatures is usually reduced to veto power because state legislatures generally are not inclined to deviate from the promulgated uniform text in support of an alternative proposed by an interest group.

On the other hand, although interest groups may have greater influence under a federal model, that model may also be more democratic in terms of providing representation to a broader array of interests. Although recent UCC drafting committees seem genuinely interested in obtaining input from a wide range of interests, the success of that endeavor is unclear. Some groups seem so oriented to the traditional legislative process that, despite an opportunity to participate in the UCC drafting process, they do not become seriously interested in a proposed statute until it reaches the legislature. At that point, under the current UCC process, it is too late to have any real influence. Still other groups are oriented to proposing statutes to resolve identified problems rather than to participating in the drafting of a broad-based statute to avoid problems. In general, because many interest groups pay more attention to federal lawmaking, it is more likely that such groups concerned about commercial issues will take notice of a federal process.

Moreover, commentators have argued that some interests, such as those of consumers, get short shrift from the current UCC drafting process.<sup>20</sup> Even when consumer groups express their views before a drafting committee, the ultimate decisions are often made by a group of commercial lawyers who may not be fully sensitive to consumer issues. Furthermore, the process of drafting a statute that will apply to the entire range of possible transactions, from small consumer transactions to multimillion-dollar business transactions, inevitably leads drafters to pay greater attention to getting the larger transactions "right." From this, it is only a short step to deciding that issues unique to consumer transactions ought to be dealt with in separate, local consumer legislation (which, of course, may never be drafted or enacted). In a federal legislative model, however, such policy decisions are ultimately made by legislators who may be more likely to value the strong interest that consumers have in commercial legislation.

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20. Edward Rubin, *Efficiency, Equity and the Proposed Revision of Articles 3 and 4*, 42 ALA. L. REV. 551, 570-79 (1991).

In addition, the process by which policy choices are made under a federal system would likely differ significantly from the process under the current system. Under the current drafting process, it is the understandable desire of the participants to operate by consensus whenever possible. After all, it is unlikely that a provision supported unanimously (or nearly unanimously) by the drafters will later be proven "wrong." On the other hand, this desire for consensus has the serious side effect of creating difficulty in making hard choices. It often results in a statute that avoids hard issues rather than confronts them. By their nature, hard choices are not likely to be made by consensus. While Congress, as an institution, is hardly a hotbed of political courage, it consists of politicians accustomed to resolving many matters by contested votes rather than by consensus. The NCC, therefore, might be more likely to address difficult policy issues. Having a democratically elected Congress debate and decide these issues is likely to bring different results than leaving the issues to the courts.

Federalization of commercial law would also make it easier to harmonize commercial law with other federal concerns. Harmonization has been awkward, at best, under the UCC. For example, Congress was dissatisfied with the provisions in old Article 4 concerning the timing of a customer's right to withdraw deposits from an account.<sup>21</sup> The result of this congressional dissatisfaction was the Expedited Funds Availability Act<sup>22</sup> and its accompanying Regulation CC,<sup>23</sup> which largely superseded Article 4 via the Supremacy Clause.<sup>24</sup> Revised Article 4 sidesteps funds availability issues, leaving banks, customers and their attorneys to deal with a crazy quilt of state law, federal law and federal regulation.

The interaction of the UCC and federal bankruptcy law provides another example of the need for coordination between commercial law and applicable federal law. Although Congress made an attempt in drafting the Bankruptcy Code to harmonize it with the UCC,<sup>25</sup> it is nearly impossible for the UCC to respond in kind. Thus, for example, there are "four-month rules" in the UCC that are derived from the four-

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21. See, e.g., 52 Fed. Reg. 47,112, 47,112 (1987) (to be codified at 12 C.F.R. pt. 229) (stating that "the holds that some banks place on checks deposited into their customers' accounts before the funds may be withdrawn—was a subject of growing concern in the Congress for a number of years" (footnote omitted)).

22. 12 U.S.C. §§ 4001-4010 (1988 & Supp. III 1991).

23. 12 C.F.R. pt. 229 (1992).

24. U.S. CONST. art. VI, § 2.

25. See NATIONAL BANKRUPTCY CONFERENCE, REPORT OF THE COMMITTEE ON COORDINATION OF THE BANKRUPTCY ACT AND THE UNIFORM COMMERCIAL CODE (1970), reprinted in H.R. REP. No. 595, 95th Cong., 1st Sess. 204, 207-08 (1977), and in 1978 U.S.C.C.A.N. 6164, 6167-68.

month preference period in the old Bankruptcy Act, which was repealed in 1978.<sup>26</sup> It will have taken the UCC at least fifteen years to recognize the shorter ninety-day preference period in the Bankruptcy Code.

The UCC and Bankruptcy Code provide still another example of the need for coordination in the provisions concerning reclamation. The provisions in the UCC<sup>27</sup> and the Bankruptcy Code<sup>28</sup> are similar, but sufficiently different, to create unnecessary interpretive difficulties. Federalization of commercial law would enable Congress to create a single reclamation right that would be effective under the same standards, regardless of whether the buyer commences a bankruptcy proceeding.

#### IV. CONCLUSION

Despite the potential advantages of a federal process described above, it is unclear that such a process would be preferable to the current uniform law process. For one thing, the current process, whatever its flaws, is not as susceptible as Congress to blowing with the wind of temporary political fashion. The uniform law drafting process occurs largely out of the public limelight, insulated from many political pressures. While the product of that process must enter the legislative process, it is less likely to be adulterated in that process. It is simply more difficult for a mood or an interest group to capture fifty state legislatures than it is to exert similar influence on one Congress.

Furthermore, although we have hypothesized the existence of a commission that would draft and monitor commercial law, Gresham's law would likely operate to eliminate the advantages of that system. Under the current system, the "best and the brightest" draft a statute that is widely circulated and painstakingly reviewed by both the NCCUSL and ALI for correct policy and for quality of technical draftsmanship. Under a federal system, the inevitable side effect of greater congressional involvement in policy making would be less emphasis on the draftsmanship of the integrated whole. This, in turn, would make it more difficult to attract the high-quality drafters to which we are accustomed. Moreover, a federal statute would, by its nature, be more susceptible to piecemeal revision by Congress. Consequently, there is a significant risk that even an initially well-drafted statute would eventually fall prey to internal inconsistencies and other incoherences that are largely avoided under the current system.

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26. See 11 U.S.C.A. explanation at v (West 1979).

27. U.C.C. §§ 2-507, 2-702.

28. 11 U.S.C. § 546(c) (1988).

In this respect, the Bankruptcy Code provides a useful example. In the early 1970s, a "blue ribbon" commission evaluated the bankruptcy law, issued a comprehensive report, and proposed a draft bankruptcy statute.<sup>29</sup> Five years after that proposal, Congress enacted a Bankruptcy Code that differed significantly from the proposal. Even the Bankruptcy Code as enacted was the subject of intense lobbying, resulting in a plethora of special interest amendments over the years. The statutory language has increasingly come to resemble the more opaque portions of the Internal Revenue Code, with exceptions to exceptions and paragraph-long sentences. The result today is a far cry from the comparative neutrality of the results of the uniform law process.

Should the current uniform law system be replaced? If future products of the current process prove to be controversial or fall short of the universal acclaim that greeted the initially adopted versions of the UCC, there may well be pressure to move to a different system. Perhaps the best solution to the problems in the present commercial law drafting process is to reform the process, rather than replace it, striving to retain its many virtues while minimizing its structural vulnerabilities. In this regard, we understand that it is likely that the Article 9 drafters will seek to introduce significant improvements to the drafting process. One improvement, apparently already implemented, is to more widely publicize and open the policy-making and drafting process in order to obtain the widest possible range of views. Another improvement may be to pause for a period of time between promulgation of an "official" text and the introduction of that text in the state legislatures; this period could then be used for commentators not involved in the drafting process to ferret out any problems in the text.

A reformed process, improved with these changes and others, could retain the structural virtues of the current uniform law process and produce a better product. So improved, the uniform law process would be even more attractive, reducing pressures to utilize federal legislation or other alternative drafting processes.

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29. EXECUTIVE DIRECTOR, COMM'N ON THE BANKRUPTCY LAWS OF THE U.S., REPORT OF THE COMMISSION ON THE BANKRUPTCY LAWS OF THE U.S., H.R. DOC. NO. 137, 93d Cong., 1st Sess. pt. 1, at 1 (1973).