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Stories of the Code

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MERCANTILE STORIES & POSTCOLONIAL STORIES

STORIES OF THE CODE

Allen Kamp

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I. INTRODUCTION

My article is a story about the stories of the Uniform Commercial Code, those told by its drafters and its detractors, especially how it was sold to those it would affect and those who had the power to enact it or not. I think it is an interesting story that not only tells us something about the development of a commercial statute, but also gives insights into the values of the legal and the commercial world in the Twentieth Century.

II. PRE-CODE

A. *The Old Law*

The story told of the state of commercial law before the drafting of the Uniform Commercial Code began is that it was a mess: chaotic, outmoded, based on yesterday's business practices, queerly complex with fine distinctions. In Grant Gilmore's words, "[p]re-Code personal property security law may be described as closely resembling that obscure wood in which Dante discovered the gates of hell."¹

1. Grant Gilmore, *The Good Faith Purchase Idea and the Uniform Commercial Code: Confessions of a Repentant Draftsman*, 15 GA. L. REV. 605, 620 (1981).

The Modernists, including Karl Llewellyn, saw the culture they were trying to supplant as chaotic. The old legal world emphasized ornament, not function,² and had to be replaced by action, rationalization, and new ideas.³ This characterization of chaos prevailed in art as well as law. The Museum of Modern Art's exhibit of avant-garde architecture in 1932 rejected the eclectic Beaux-Arts tradition.⁴ The proposal for the exhibit described the then current state of architecture to be chaos.⁵

Pre-Code law was in the "horse-and-buggy" era, based on the business practices of a by-gone age; thus, Llewellyn's "Struggle to Unhorse Sales."⁶ Sales law had developed around the typical face-to-face dickering of the horse trade, but people needed to create a law for the age of mass-production.⁷ As Grant Gilmore said in 1948, "There is apparently wide agreement that the law of sales, in particular, is hopelessly behind the times. Horse law and haystack law are uneasily tolerated in the complex business of mass production and national distribution."⁸

The old law was too complex. Llewellyn compares it to an "old New England farmhouse, added to, patched, rearranged, 'modernized'—and still with no closets, where closets are wanted, with the kitchen occupying the best prospect, with upstairs traffic clogged by corners and sudden shifts of level, with plumbing and heating 'in,' but unappily cumbersome in placement, use, and repair."⁹

The law was metaphysical, instead of based on reality. As the Comment to the first section of the Sales Article states, the U.C.C. replaces the old metaphysical law, which "turn[s] upon . . . an intangible something . . . which no man can prove by evidence and to substitute for such abstractions proof of words and actions of a tangible character."¹⁰

2. See Karl N. Llewellyn, *Some Realism about Realism—Responding to Dean Pound*, 44 HARV. L. REV. 1222, 1222 (1931).

3. For example, Walton Hamilton prescribed a cure for the bituminous coal industry: a national corporation that would mine and sell all coal in the United States. In addition, both Jerome Frank's and Thurman Arnold's books explained that prosperity could be achieved just by abolishing outmoded practices. See Jerome Frank, *SAVE AMERICA FIRST: HOW TO MAKE OUR DEMOCRACY WORK* 7 (3d ed. 1938); THURMAN W. ARNOLD, *THE FOLKLORE OF CAPITALISM* 1 (13th prtng. 1937).

4. See Brendan Gill, *The Sky Line: 1932*, NEW YORKER, Apr. 27, 1992, at 94.

5. See *id.* at 96.

6. Karl N. Llewellyn, *The First Struggle to Unhorse Sales*, 52 HARV. L. REV. 873, 873 (1939).

7. See *id.*

8. Grant Gilmore, *On the Difficulties of Codifying Commercial Law*, 57 YALE L.J. 1341, 1341 (1948).

9. K.N. Llewellyn, *Problems of Codifying Security Law*, 13 LAW & CONTEMP. PROBS. 687, 688 (1948). It was a "queerly complex, inaccessible . . . structure." Letter from Karl N. Llewellyn to W.P. Lewis (1943) (on file with the Texas Wesleyan Law Review).

10. U.C.C. § 2-201 cmt. at 79 (2003).

B. *The Solution*

The new law needs to be based in reality. A contemporary, G. Edward White, describes the mindset of the Realists: “their environment was one of economic deprivation; their mood, cynicism; their fantasy heroes, hardboiled men of action; their academic tools, the behavioral sciences; their philosophy of government, experimentalist and pragmatic.”¹¹

In an unpublished essay from the ‘20s, Llewellyn wrote of the necessity for “action directed” thinking as opposed to degenerate intellectualism.¹² The essay was headed, “1. Our present intellectualism is on the road to annihilation and will reach its goal.” The intellectual’s credo, “You work, you pay, while I loaf, study, cultivate myself . . . your physique mentality turn soft and gooey like a spotted apple. Action directive thinking is an orderly projection of the imagination into the future, with strict adherence to the facts of experience. It is checked up constantly, and therefore useful. It makes action produce more results and more enjoyment for self and others.”¹³

The Code, based on commercial reality, would be a law that worked. It must meet people’s needs and be rooted in market practices.¹⁴ Basing it on trade practice was of paramount importance to Llewellyn, a theme he kept repeating. He saw the adoption of good trade practices as the cure for commercial law.¹⁵ Llewellyn celebrated trade practices as folk culture, “when I listen to my friend discuss tar paving I sit in the presence of a devotee, I hear the ritual of a faith, I bow before the art and glory of a craftsman.”¹⁶ The law should follow the good practice of the market place.¹⁷

11. G. Edward White, *The Evolution of Reasoned Elaboration: Jurisprudential Criticism and Social Change*, 59 VA. L. REV. 279, 281–82 (1973), in G. EDWARD WHITE, PATTERNS OF AMERICAN LEGAL THOUGHT 139 (1978). Allen R. Kamp, *Between-the-Wars Social Thought: Karl Llewellyn, Legal Realism, and the Uniform Commercial Code in Context*, 59 ALB. L. REV. 325, 330 n.18 (1995).

12. See Karl N. Llewellyn, *Our Present Intellectualism* (unpublished manuscript, on file with The Texas Wesleyan Law Review).

13. *Id.*

14. The larger-scale search, that after structured harmony of rules, alone, is also a search after false gods. This time, however, it is a tragic search. “‘For,’ wrote Teufelsdröckh, ‘a Structure of Rules, however majestic in Simplicity or Grandeur, in logical Design and Harmony—such a Structure, if it be once accepted into a legal System, must house People and the Work of People. If its Beauty be a Beauty for the Eye only, or of the Mind only, if it be not in first instance a *working* Beauty in and for the People and the People’s Needs, then it is false. It is falser than mere false Architecture. False Architecture, save when it crashes, is but Waste, Inconvenience, or Hypocrisy. But a Structure of legal Rules, howsoever fair of Face, must function well or be an active Evil to the Men and Work it houses.’” K. N. Llewellyn, *On the Good, the True, the Beautiful, in Law*, 9 U. CHI. L. REV. 224, 230 (1941–1942).

15. See *id.* at 264.

16. Not by choice. The publisher’s rejection letters are in the archives, Llewellyn Papers B. X. 3. j.

17. A conversation at the 1940 NCC Conference went as follows:

The law should be simple, clear, and capable of merchant use. Professor James Whitman describes Llewellyn as Frank Capra-esque, of legislating a community of merchants:

The Llewellyn of 1941 was guided as much by the social vision of Frank Capra as by the legal-historical vision of [German philosophers]; behind Llewellyn's theorizing lay a Depression-era longing for small-town cooperation and social normalcy; in which the power of the community would stand by the "little man" in his conflict with the "big man." . . . Rule of merchant jurors, premised on staunch anti-formalism, would be the rule of the people. Commercial "reasonableness" would be a subset of the American people's "reasonableness and decency."¹⁸

The Code would be nice; provide for decent workable standards, built on structure of commercial fairness.

A large number of the protections hitherto commonly sought by clauses are now made available without the need for clauses by this Act which sets forth a body of rights and duties whose prime characteristic is *balanced* adjustment of the rights and interests of both the buyer and the seller.¹⁹

The needed law would be clear and make sure it would explain its reasons, principles, and how its parts fit together. It would be put in terms that a layman could use.²⁰ It would be a "friendly, even neighborly law."²¹

Mr. Harno: . . . [My] thought was that you are asking us to instruct the Committee to bring in a draft which complies with or in accordance with the practices of the market-place. Now, that may be . . .

Mr. Llewellyn: There was no such intention. [I believe] in controlling the practices of the market-place where the practices of the market-place need control. That is my personal opinion. I believe in conforming to the practices of the market-place where they are sound to conform to. The law is not to abdicate to business.

Mr. Harno: Then it is the good practices of the market-place?

Mr. Llewellyn: Right!

National Conf. Comm'rs on Uniform State Laws, Forty-Ninth Ann. Conf., at 14 (1940) (on file with the Texas Wesleyan Law Review).

18. James Whitman, *Commercial Law and the American Volk: A Note on Llewellyn's German Sources for the Uniform Commercial Code*, 97 YALE L.J. 156, 173 (1988).

19. A Task Force of the A.B.A. Subcomm. on Gen. Provisions, Sales, Bulk Transfers, and Documents of Title, Comm. on the UCC, *An Appraisal of the March 1, 1990, Preliminary Report of the Uniform Commercial Code Article 2 Study Group*, 16 DEL. J. CORP. L. 981, 1278 (1991).

20. See Memorandum from K.N. Llewellyn to the Executive Committee, Committee on Scope and Program Section on Uniform Commercial Acts (Sept. 3, 1937) (on file with the Texas Wesleyan Law Review). See Allen R. Kamp, *Uptown Act: A History of the Uniform Commercial Code: 1940-49*, 51 SMU L. REV. 275, 279-80 (1998).

21. Memorandum from K.N. Llewellyn to the Executive Committee, *supra* note 20.

III. THE DRAFTING YEARS

The drafting years ran roughly from 1939 to 1954. During these first years resemble the proposals for a new commercial law. The current law was scattered, non-uniform, and outmoded by modern business conditions.²² One must “gather, unify, and simplify the statement of the law, and to adjust it to the permanent modern trends.”²³

The new Code was to be fair and balanced and fit to the particular trade,²⁴ promote equal bargaining,²⁵ and involve those affected.²⁶

The code proposes . . . to do it in terms simple enough to make the law clear to lawyers and easy to find, and also to make the law clear enough to business men whose law it is so that they can both know when they need a lawyer and understand his advice.²⁷

It would provide a solid and clear basis for counseling.

Another aspect involved is what is now called dispute resolution. The Code was to provide for informal adjustment of disputes.²⁸ In fact, litigation would wither away.²⁹ It would provide for Merchant Panels to set standards of commercial reasonableness and for merchant juries to resolve disputes, substituting for judicial litigation.

There was an attempt to link the Code to war-time conditions. Just as “[w]ar . . . once organized, has shown up prior production methods—even at their best—as curiously blind and wasteful[],”³⁰ the Code would subject the law to a serious “production analysis.”³¹

22. See Karl Llewellyn, *The Uniform Commercial Code 3* (unpublished manuscript, on file with the Texas Wesleyan Law Review).

23. *Id.* at 4–5.

24. “A fair and balanced set of provisions more particularly fitted to the needs of any particular trade or type of situation.” Revised Sales Act, Second Draft at 16, 9/5/41.

25. See Karl N. Llewellyn, *What Price Contract?—An Essay in Perspective*, 40 *YALE L.J.* 704, 725 (1931). Other thinkers also saw the current scene as chaotic, for example, Hamilton’s plan to reorganize the coal industry was to do away with the “chaos” of free competition. See WALTON H. HAMILTON & HELEN R. WRIGHT, *A WAY OF ORDER FOR BITUMINOUS COAL* 24–29 (1928).

26. See Llewellyn, *supra* note 14, at 263 (stating that “[a] man’s rights must be accessible, but to be right rights, they must call also for some share on his part in initiating or in working out their procurement, their fulfillment. Else law remains remote, the government becomes an enemy or a dairy-cow . . .”).

27. Karl N. Llewellyn, *Suggested Statement for a Foundation Project for a Uniform Commercial Code and Commentary* (1943).

28. Letter from Karl N. Llewellyn to W.P. Lewis, *supra* note 9.

29. *Id.*

30. Llewellyn, *supra* note 22, at 1.

31. See Karl Llewellyn, *The Uniform Commercial Code 1* (unpublished manuscript, on file with the Texas Wesleyan Law Review).

IV. COMING OUT

A. *Selling the Code*

Starting in the late 1940s, the drafters began selling the Code to the organized bar and the affected businesses. Many of the same arguments were made, along with some new ones. A 1947 memo, *About The New Commercial Code*,³² reiterated that business law had to catch up to changed conditions, and that the new act would facilitate business planning.³³ The Code would contain the four essentials for a commercial statute: being clear, relating to present day problems, being based on the legal consequences of acts, and fitting together as a whole.

Gilmore, in his article *On the Difficulties of Codifying Commercial Law*,³⁴ pointed out how the present law was based on a commerce outmoded by mass production.³⁵ Allison Dunham, the co-drafter of Article 9, pointed out that most uniform acts in force were drafted at the turn of the twentieth century or worse, copied from England.³⁶

A new theme emerged, that the Code was the product of a rigorous, thorough drafting process that involved all those affected by it. In the words of Soia Mentschikoff, it was "An Experiment in Democracy in Drafting."³⁷ Only a discussion at length can capture the exhausting description of the exhausting drafting process. A drafting staff of about fifty consulted with about twenty-five to thirty persons from all walks of commercial life. This consultation "started prior to the creation of the first drafts and continued . . . through the final draft."³⁸ After these drafting and redrafting sessions, the proposed draft was presented to the Institute.

Literally, hundreds of issues were debated and settled by majority vote—not one but several times as subsequent drafts of the same sections appeared. We can safely say that at these meetings, the democratic process had started. The "tentative drafts" were recommended in a torn and haggard aspect to the draftsmen, their advisers and the Council for further mediation and prayer.³⁹

. . .

32. Karl N. Llewellyn, *About the New Commercial Code* (1947) (unpublished manuscript, on file with the Texas Wesleyan Law Review).

33. *See id.*

34. Gilmore, *supra* note 8, at 1341.

35. *See id.*

36. "In fact the Sales Act and the Negotiable Instruments Act were not even drawn to meet the American situation—they were copies of English Acts drafted 25 or 30 years before." Allison Dunham, *The New Commercial Code*, 55 *COM. L.J.* 197, 197 (1950).

37. Soia Mentschikoff, *The Uniform Commercial Code: An Experiment in Democracy in Drafting*, 36 *A.B.A.* 419, 419 (1950).

38. *Id.*

39. *Id.* at 420.

[T]he redrawn drafts . . . [then] went to the Section[] of the Conference [on Uniform State Laws]. . . . Again the review down to the very commas, [s]ection-by-section and line-by-line consideration of a Uniform Act is the pride and tradition of the Conference floor. It followed that tradition. . . . More than 800 lawyers had chewed on substance and form, more than twelve drafts had been expended and still the material was tentative. . . . It was time now to further broaden the base. Experts in various fields—that is, attorneys representing special interests—were then consulted.⁴⁰

There was one story that was told once but never repeated. Grant Gilmore stated that the Code, specifically Article 9, offered financial institutions a deal.⁴¹ They would get an efficient system of security but in return would be subjected to debtor protections. He ends his article with the wish, “May their choice be wise.”⁴²

B. *The Reception*

The financiers did not take the deal. The Code received an often hostile reception, yet few rejected it outright.⁴³ Most of the organized bar and the affected businesses took a “go slow” attitude, that the Code could be put into shape even if it were unacceptable as written.

There was a spectrum of reaction to the U.C.C., ranging from the left seeing it as a sell-out to the bankers to that of the right who saw it as communist-inspired. Professor Beutel’s *The Proposed Uniform[?] Commercial Code Should Not Be Adopted*⁴⁴ proposed that the Code was a sell-out to the banking lobby and called Article 4 “A piece of vicious class legislation.”⁴⁵ Aside from Professor Beutel, most of the concerned lawyers thought the Code to be too far to the left. Francis Ireton, an attorney for financing institutions, was typical of the practicing attorney commentators on the Code; he thought many of the secured transactions sections to be “impracticable and unworkable.”⁴⁶

The drafters disagreed on whether the Code would be considered reform legislation. In response to Soia Mentschikoff’s complaints that the Code was being amended to accommodate special interests, Schnader stated, “It seems to me we are drawing an Act to regulate

40. *Id.*

41. See Grant Gilmore, *The Secured Transactions Article of the Commercial Code*, 16 *LAW & CONTEMP. PROBS.* 27, 48 (1951).

42. *Id.*

43. See Allen R. Kamp, *Downtown Code: A History of the Uniform Commercial Code 1949–1954*, 49 *BUFF. L. REV.* 359, 361 (2001).

44. Frederick K. Beutel, *The Proposed Uniform [?] Commercial Code Should Not Be Adopted*, 61 *YALE L.J.* 334 (1952).

45. *Id.* at 357.

46. Letter from J. Francis Ireton to Herbert F. Goodrich, Director, American Law Institute (Apr. 24, 1950) (on file with the Texas Wesleyan Law Review). “[Article 9] had a more definite and decided slant to the left than any of the other articles in the Code.” J. Francis Ireton, *The Commercial Code*, 22 *MISS. L.J.* 273, 281–82 (1951) (detailing an address pertaining to the Mississippi State Bar).

special interests, and the way they do business. And I don't think any of us entered into this Code project as a reform measure in any sense of the word."⁴⁷

Many commentators criticized the Code for being "'reform,' 'paternalist,' 'leftist,' or 'social' legislation."⁴⁸ (In the post-war era, "social legislation" meant legislation designed to reallocate power and wealth.)⁴⁹ The drafters were seeking to win acceptance in the McCarthy era, and some bankers even considered the U.C.C. to be a communist plot.⁵⁰

V. THE NEW YORK LAW REVISION COMMISSION

Because of its at-best lukewarm reception, the Code was not enacted anywhere except Pennsylvania. The key state was New York; there it was referred by the New York Law Revision Commission (NYLRC) for a lengthy study.⁵¹

There are two stories contained in the NYLRC's study of the Code: that of the Drafters, and that of the Commission.

A. *The Proponent's: "Doubts Vanish like Haze on a Summer Morning"*⁵²

Karl Llewellyn argued forcefully to the NYLRC for enactment.⁵³ His first argument was much the same as his wife Soia Mentschikoff's. The Code had been through a lengthy, meticulous, and exhaustive drafting procedure.⁵⁴ The drafting organizations had a solid record of

47. Karl N. Llewellyn, Saturday Morning Session, Enlarged Editorial Board 320-321 (1951).

48. Kamp, *supra* note 43, at 395. A typical critique is J. Francis Ireton's, "This is embarking upon . . . social legislation, and there can be considerable doubt as to the propriety of including such regulation in a statutory proposal relating . . . to security concepts." J. Francis Ireton, *The Proposed Commercial Code: A New Deal in Chattel Security*, 43 ILL. L. REV. 794, 804 (1949).

49. Kamp, *supra* note 43, at 396.

50. As stated by Grant Gilmore, the history of the banking provisions: "Article 4 became the bloodiest battleground in the entire history of the Code. While Steffen (and others) attacked it as being 'pro-bank,' bank counsel (particularly the New York group) attacked it as a Communist plot designed to destroy the American banking system." Donald J. Rapson, *The Law of Modern Payment Systems and Notes by Fred H. Miller & Alvin C. Harrell*, 41 BUS. LAW. 675, 677 (1986) (book review). Malcolm reported such a comment in April of 1954: "Would you believe it, but in a recent meeting of some fifteen or twenty banks from an equal number of large cities of the United States, the representative of the one New York bank present contended that the Code was communist inspired." Letter from Walter Malcolm to William A. Schnader (April 13, 1954) (A.L.I. Archives, University of Pennsylvania Law Library).

51. See Kamp, *supra* note 20, at 277.

52. Karl N. Llewellyn, *Study of the Uniform Commercial Code/Statement to the Law Revision Commission: A Simple Case on Behalf of the Code* 8/16/54.

53. *Id.*

54. *Id.* at 23-24.

accomplishment.⁵⁵ In the section, “Because of How the Code Was Built,”⁵⁶ the image is of a complex, technologically advanced set of tools constructed by master craftsmen. Those who have used the Code as a tool became enthusiasts. “Doubts vanish like haze on a summer morning.”⁵⁷

On the other hand, the present law is “ununderstandable,” known only to experts,⁵⁸ while “legal advice at a reasonable rate is good for American business and finance: how else is competition to be fair and free?”⁵⁹ But now “we have [sic] almost unbelievable and almost utterly useless complexity . . .”⁶⁰ “How can any honest critic, seriously, and for the supposed reading of intelligent persons, attack ever a small portion of the Code without making clear the unbelievably awful condition of the existing commercial law which the Code so greatly improves?”⁶¹ The modern U.C.C., on the other hand, is simple, clear, easy to use, and does the job efficiently. Llewellyn, who in the ‘20s decried the advertising culture⁶² now used a pitch like those used in the ‘50s to sell new household products, detergents and mops, shown being happily used by the ‘50s housewife.

B. *The NYLRC*

The NYLRC Report buries itself in the details of the Act. It contains multiple volumes of micro-analysis of the U.C.C. sections. The code becomes, what it is now considered, an object of technical legal study, divorced from political goals.

VI. POST-ADOPTION

A. *The Drafters*

After enactment, the Drafters forgot about any political conflicts in the drafting process and looked back with rose-colored glasses, basking in the glory of a job well-done. The Drafters, at the 1982 Ohio State Law Journal Symposium, *Origins and Evolution: Drafters Reflect Upon the Uniform Commercial Code*,⁶³ spoke in terms of “an interest-

55. *Id.* at 25–26.

56. *Id.* at 26–27.

57. *Id.* at 27.

58. Karl N. Llewellyn, Saturday Morning Session, Enlarged Editorial Board, 320–321 (1951).

59. Llewellyn, *supra* note 52, at 28.

60. *Id.* at 29.

61. *Id.*

62. See K.N. Llewellyn, This Cut Rate American Culture 1 (1927) (unpublished manuscript, on file with the Texas Wesleyan Law Review).

63. Douglas J. Whaley, *Foreword to Symposium, Origins and Evolution: Drafters Reflect Upon the Uniform Commercial Code*, 43 OHIO ST. L.J. 535 (1982) (using glowing language in describing the process); see generally Mentschikoff, *supra* note 37, at 419 (describing the drafting of the Uniform Commercial Code from one who was once part of the rebellion against the banking article).

ing group . . . Willard Luther from Boston, who was a super draftsman and a very, very bright guy. . . . Luther was magnificent”⁶⁴ “In rewriting the law we developed a certain facility in the use of language.”⁶⁵ All conflicts were forgotten.

B. Some Recent Commentators

Although the great majority of present day law review articles on the U.C.C. invoke technical legal analysis of narrow issues, some look at the big picture. One that does and is also an example of an economic analysis of the U.C.C. is Robert E. Scott’s *The Politics of Article 9*.⁶⁶ Professor Scott uses economic models to explain “how such a statute came to exist.”⁶⁷

The essay *Alcoholism and Angst in the Life and Work of Karl Llewellyn* takes a completely different approach.⁶⁸ It focuses on Llewellyn’s alcoholism, depression, and illicit love affair with his graduate student, Soia Mentschikoff.⁶⁹ He is a “brilliant, depressed, resentful, alcoholic.”⁷⁰ Here, Llewellyn is compared with such brilliantly creative and extremely troubled post-war artists such as Ernest Hemingway and F. Scott Fitzgerald.⁷¹ The Uniform Commercial Code is seen as a path-breaking masterpiece created by a tormented genius.

VII. THE POWER OF STORIES

The Conference is entitled the “Power of Stories” and the reader should consider the power of the stories of the Code. The drafters’ rhetoric was successful in the Code becoming the basis of the nation’s and the world’s commerce. It was successful in rejecting older principles of contract and sales law.⁷² It achieved uniformity by being enacted nationally and forming much of the basis for the UNIDROIT.⁷³ Article 9 provides a personal property security interest much easier to

64. Soia Mentschikoff, *Reflections of a Drafter: Soia Mentschikoff*, 43 OHIO ST. L.J. 537, 539 (1982).

65. *Id.* at 543.

66. Robert E. Scott, *The Politics of Article 9*, 80 VA. L. REV. 1783 (1994).

67. *See id.* at 1786.

68. *See* James Connolly et. al., *Alcoholism and Angst in the Life and Work of Karl Llewellyn*, 24 OHIO N.U. L. REV., No. 1, 43, 44 (1998).

69. *Id.* at 46.

70. *See id.* at 98.

71. *See* Robin Room, *A “Reverence for Strong Drink”: The Lost Generation and the Elevation of Alcohol in American Culture*, 45 J. STUD. ON ALCOHOL 540, 541 (1984).

72. For an example of the rejection of the formalistic concepts of offer and acceptance see U.C.C. § 2-101 cmt. 1 (2003); *see generally* Kamp, *supra* note 43.

73. “[T]he proposed Global Commercial Code should adopt the same approach [as the U.C.C.] with a much broader scope of territorial application.” Michael Joachim Bonell, *Do We Need a Global Commercial Code?*, 106 DICK. L. REV. 87, 90 (2001).

use than the predecessors.⁷⁴ It generally simplified commercial law. It was not successful however, in realizing Llewellyn's vision of self-governing merchant groups, or in providing for equal bargaining forums. The Capra-esque vision could not be realized. The final story of experts working in a bureaucratic context was convincing and is the orthodox history today. This history means that most stories of the Code are technical, detailed, analytical, and legal. For some reason, the story of expertise of a technical statute has captured the legal academic establishment. The reader can ponder the implication of the power of that story.

74. *See generally* U.C.C. § 9-101 cmts. (2003) (arguing the article's flexibility and simplified formalities should make it possible for new forms of secured financing as they develop, to fit comfortably under its provision).