The Uniform Land Transactions Act and the Uniform Simplification of Land Transfers Act Twenty Years Later: Why Have There Been No Adoptions

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The National Conference of Commissioners on Uniform State Laws ("NCCUSL") has been in existence since 1892. It has drafted more than 200 uniform laws during that period. Some are major in scope, the Uniform Commercial Code ("UCC") being the outstanding example. Others cover almost infinitesimal, and many would say inconsequential, areas of the law. Some achieve a significant number of adoptions; others obtain none. The uniform laws that are expected to have a broad scope and impact tend to have a larger number of commissioners and staff appointed for their development and ultimate promulgation by the NCCUSL than is true for subject matter of more limited scope or prospective interest.

All states are entitled to have at least three commissioners, and larger states are entitled to more. Each state must fund its own commissioners at whatever level it deems appropriate. Commissioners usually are appointed by state governors. Governors vary in their zeal in obtaining and appointing the most competent, diligent, and politically effective commissioners. The funding available for commissioners must be appropriated by state legislatures, and the sums and rates of support vary greatly from state to state. Understandably, states with long term, strong, well funded commissioners tend to adopt more uniform laws than do states without such individuals. Clearly, states vary in the degree to which they believe in the uniform laws process.

Inherent in the variances alluded to in the opening paragraphs is the fact that personalities and politics play a significant part in whether and to what degree uniform acts, like any other legislation, is enacted. Advocates are at least as necessary for uniform acts as for legislation which is developed within each state. The likelihood of finding strong advocates for

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2. Id.
any uniform act in a large number of states is small, unless the subject matter of the uniform act has significant impact across state lines.

The UCC was such an act. It encompassed the entire field of transactions involving movable property. The development of the Uniform Land Transactions Act ("ULTA"), before and after parts of it were split off into the Uniform Simplification of Land Transfers Act ("USLTA"), was conceptualized as the equivalent for immovable property. Both the UCC and the ULTA/USLTA went through numerous drafts and many years as they made their way through the legislative process within the NCCUSL. The UCC has been adopted in all fifty states to some degree, in one form or another. Uniform acts do not necessarily remain in their original form—they are revised and amended, just as is other legislation.

Although the UCC now has at least partial adoption in all fifty states (Louisiana was the last state to adopt parts of it, in four steps between 1974 and 1988), its early years were not encouraging. Promulgated by the NCCUSL in 1951, it was first adopted by Pennsylvania in 1953, effective in 1954.3 The New York Law Revision Commission declined to propose it in 1956,4 a stop that was then said to be the death knell of the UCC. However, Massachusetts came aboard in 1957, Kentucky in 1958, Connecticut and New Hampshire in 1959. By 1967 when Arizona and Idaho adopted the UCC, every state but Louisiana had adopted it.

Although it took several years for the UCC to take hold, what is there in its background that enabled it to become a truly uniform law that has eluded ULTA and USLTA? One need look no further than the predecessors of the UCC. The Negotiable Instruments Law ("NIL"), the Bulk Sales Act and the Uniform Warehouse Receipts Act, containing substantial areas of law of what later were included in the UCC, had been adopted in every state and some territories for many years.5 Other acts, uniform or common, whose areas were included within the UCC, also had been enacted in more than thirty states. Thus the concept of the UCC was not wholly new. It is merely an updated and revised version of uniform and common law and principles with which those who operated in the commercial community were familiar and comfortable.

5. See ROBERT BAUCHER & ARTHUR SUTHERLAND, COMMERCIAL TRANSACTIONS at x-xi (1968).
Such a commonality did not exist in the area of real property or immovable property. There was no common body of similar uniform laws with which those who dealt in the area were familiar. True, there was the essentially uniform secondary security market, but there also were community as distinct from common law property; mortgages vis a vis deeds of trust; title insurance and abstracters; and even significant parts of the law going back to feudal times. There were many vested interests who did not wish to see change.

At the law school level, there were individuals who were interested in the implementation of ULTA and USLTA, but they were relatively few and far between. Professors did attend panel discussions on ULTA and USLTA at annual and regional meetings of the Association of American law Schools, but impetus from the law schools also requires student support. Real property does not rank high on the interest level of most law students. Of course, commercial law does not either, but the UCC did have the impetus of the NIL and the Uniform Sales Act to get it by without significant law faculty and student assistance. Students and faculty can get much more excited about constitutional law, criminal law and procedure, and race or sex discrimination.

As suggested earlier, the uniform act process, just like any other legislation, is political. The brief thoughts and beliefs presented here were multiplied many times over, by objections from vested interests in each state, when ULTA and USLTA were tendered by the various commissioners to their respective legislatures for consideration and adoption. The necessary support groups have not been present to overcome the objections and achieve any adoptions.