Law Making by Professional and Trade Associations

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When the government of the United States was established, it adopted in its complete form the English legislative system which existed at the foundation of the colonies. This structure, including the committee systems, has come down almost unchanged to modern times. In addition there are in the United States fifty other independent law-making bodies having a large measure of sovereignty of their own which govern the forty-eight states and our two major territories now petitioning for statehood. To these there should be added over one hundred thousand local legislative bodies such as city councils, county commissioners, school boards, irrigation districts and the like—all with some degree of sovereign law-making power. Connected with and subsidiary to all these more-or-less independent law-making bodies within their own jurisdiction are myriads of administrative units with delegated legislative rule-making powers—such rules having the force of law when they are applied.

The output of all of these organs of law-making bodies is astronomical both in volume and diversity. A glance at the Statutes at Large will show that the average Federal Congress alone enacts over fifteen hundred laws per session out of about ten times that number of bills introduced. When there is added to this product, the session laws of the fifty state and territorial legislatures, the rules of the federal administrative bodies found in the Federal Register and the Code of Federal Regulations, together with their counterparts in all the states, some of which are

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3 This figure does not include joint resolutions or reorganization plans. For example see Calendar of the House, 79th Cong. 303 (1945).
not even published, it become obvious that it would be more than a full-time task for a substantial research body to attempt to understand and digest this crop of current legislation. This may be the reason why there is not in existence a workable centralized index to this subject corresponding to the American Digest System covering court decisions.

There are two major characteristics of all American law-making bodies. With rare exceptions found only in some administrative agencies, the law makers are elected or appointed officials with no previous expert knowledge of the myriad subjects upon which they are expected to legislate. Outside of some administrative agencies, the “legislatures” are almost entirely devoid of expert advisors who are part of the legislative system, and they rely largely upon personal contact or hearings for their knowledge of the subject matter of the laws which they are expected to create. The second characteristic of American legislative bodies is that they are all tribunals of limited jurisdiction. These are limitations both of territory and subject matter. For example, interstate commerce is governed by Congress but powers over intrastate commerce and interstate commerce where the Federal Government has not acted are split up geographically among the fifty states and territories. Within the state and territorial limitations there are further jurisdictional divisions for cities, counties, and other areas. If one were to drive cross country from New York to Los Angeles, he would pass through literally thousands of legal jurisdictions each having its own code of traffic regulations, few of which are uniform.

I. The Pressure of Organized Interests on Legislation

The legislatures themselves on their various levels must rely largely for information upon voluntary approach by interested persons either in lobby activities or at the hearings. Chief among those contacting the law makers with information and requests for action are representatives of numerous voluntary organizations whose combined activity is commonly said to constitute the lobby.

It is commonplace that lobbying has been recognized as a practical and legal part of law making. Lobbyists are always admitted to hearings and often to the floor of law-making bodies. In the State of Nebraska, for example, registered lobbyists, who legally take part in lawmaking and even have a space reserved for them on the floor of the Unicameral Legislature, outnumber the elected senators by approximately two to one. This may be taken as a modest measure of the average which obtains in all American legislative bodies.
Many of these lobbyists are regularly constituted representatives or members of the various voluntary national associations which number over four thousand and represent trade, business, professional, educational, racial, religious, fraternal, public official, patriotic and numerous other organized interests. Together with their local divisions these organizations maintain over sixteen thousand national, state, and local headquarters. It would be impossible in an article of this kind to attempt to summarize in detail the nature of the activities involved in this group of associations. The mere listing of their addresses and a short summary of their activities fills a substantial volume which is by no means exhaustive of all such business and professional associations in the United States. It is fair to say, however, that at some time or other almost everyone of these organizations has been known to take part in a limited or very extensive way in lobbying and other law-making activities.

Although it is impossible to be concerned here with a detailed census of these law-making activities by professional and trade associations, it might be worthwhile to describe briefly some of the legally recognized devices for transmitting the pressures from these groups into law. One familiar with the subject will recognize at least three areas in which these organizations exercise a very potent influence. The first is legislative and administrative hearings of various kinds which are the common habitat of the lobbyist and need not be discussed here. The second, is the legally recognized delegation of law-making powers under which affected professional and trade organizations are required or allowed to bring in information, to fill in details, or to vote on variations of laws or rules which are later to have the effect of law. The third is the situation where the bill which is intended to be law is drafted within the association itself and presented to the law-making body as a finished product ready for enactment. In both of these latter fields, professional and trade associations exercise law-making power that is far beyond anything known at the time of the origin and crystallization of our legislative systems and therefore beyond the contemplation of the founding fathers.

II. Government Cooperation with Associations in Law Making

The delegation of law-making power to administrative bodies

4 Judkins, National Associations of the United States c. vii (1949).
5 For the distribution of these pressures in Massachusetts, see Beutel, The Pressure of Organized Interests as a Factor in Shaping Legislation, 3 So. Cal. L. Rev. 10 (1929).
is a well-recognized phenomenon and needs only passing attention here. As is well known this activity reached its height under the National Industrial Recovery Act\(^6\) by which the Federal Government attempted to recognize the needs of trade associations and bring them directly into the law-making process by the creation of the so-called codes of fair competition. With this pervasive bit of law-making machinery, under which the business and trade activities of the entire United States were attempted to be governed by codes, there were created and approved over seven hundred and fifty official codes of fair competition\(^7\) governing most of the aspects of assembling raw materials, labor relations, manufacturing and regulation of competition of every type of business unit. In addition to the codes which actually received approval there were thousands of others in process when the Federal Government realized that it had created a monster and the Supreme Court obligingly declared the whole process unconstitutional.\(^8\)

Although this was the widest effort to take trade and professional associations into the law-making machinery, its constitutional demise by no means ended the process. There are on the books many statutes providing that particular administrative agencies in their rule-making power shall consult or cooperate with various trade associations. The task of merely listing such federal and state laws would require extensive and expensive research. A few examples will suffice here. Under agricultural laws governing the production of milk\(^9\) and other products,\(^10\) distributors and farmers may vote to determine when certain quota laws compiled by administrative officers with cooperation of the people regulated shall take effect. In the field of bituminous coal\(^11\) and under the Fair Labor Standards Act\(^12\) committees from the industry have a broad say as to the law governing labor and the compensation paid to workers.

Similar state statutes granting such control over production and requiring the concurrence of the persons regulated before the

\(^6\) 48 Stat. 195 (1933).
\(^7\) Rees, N.R.A. Economic Planning 537 (1937).
\(^12\) 52 Stat. 1060 (1938), 29 U.S.C. §§ 201, 205 (1941); see Opp Cotton Mills v. Administrator, 312 U.S. 126, 146 (1940).
rules have the effect of law are common phenomena. In all of these instances, however, it is to be noted that the regularly constituted government officials retain control over the rule-making process; and no rule becomes law without a careful analysis of its material and content by officials who have expert aid, are under the control of the government and, to a large extent, are compensated from the public and not private budgets.

III. Complete Law Making by Professional and Trade Associations

There remains a large field of law-making activity which falls into the third class indicated above. Where the law is drafted within the professional or trade association itself and where the determination of its provisions has passed out of the control of regularly constituted governmental officials, the legislature or government official is little more than a rubber stamp or a cooperating tool of the association. This usually occurs in areas where the nature and subject matter of the law to be enacted is so complicated or technical that the legislator because of his own lack of knowledge of the subject of the proposed law and because the government supplies him with no technical staff is unable to cope with the problems involved. When this situation arises the law is created in the professional association itself and may often pass through the legislative body without the law makers knowing what they are doing, but simply relying on the integrity of the association or yielding to its pressure in passing the law.

The volume and nature of statutes created by this process is far larger than even lawyers and legislatures themselves realize. Statutes of this kind created wholly by interested associations are to be found on both the state and federal level. Sometimes they are out-and-out class legislation created by the associations, for the associations and to the detriment of all their competitors or customers. In other instances they are brought forward by the association as a public service in the interest of creating uniformity among the states, the advancement of science or some other laudatory end. The first type of law created by the association—the pure class legislation—is known to all legislators; but is not always easily recognizable either by the amateur legislator or even a professional legislative expert. Such bills are usually drafted in the association intended to be benefited by its own legal staff and handed complete to some obliging member of the legislative body who, either innocent of its implications or knowingly,

13 For example, see Cal. Gen. Laws art. 146.1 § 9 (1944); 17 Fla. Stat. Ann. § 598.12 (1943).
drops it into the hopper and starts it on its way through the hear-
ings and the legislative process. Although some of its proponents may recognize its purpose, bills of this kind are usually disguised as something for the public benefit. On the federal level the re-
cent Tidelands Oil Legislation is a well-known example of this sort of thing. On the state level a recent amendment to the pub-
lic housing authority acts, providing that no public facilities such as water, light, and sewage were to be furnished to public housing projects without a referendum by the people of the area involved, is a beautiful example of such a law.\(^1\) It was drafted by a na-
tional real estate association and introduced simultaneously into many legislatures with the obvious intent of killing public housing activity by the simple device of making it administratively im-
possible under the guise that it was “democratic” to require public approval by an area-wide election of many of its details. A simi-
lar act on the state level was the so-called Bank Collection Code which has been adopted in eighteen states.\(^5\) This act, drafted by
counsel of the American Bankers’ Association for the purpose of throwing all the risk and cost of the bank collection process on the depositors and retaining the profits and control in the banks, has been declared invalid as class legislation by at least two juris-
dictions.\(^6\) But it is still the governing law in eighteen of our leading commercial states. Other examples of this sort of thing are the Federal Administrative Procedure Act\(^17\) and the proposed so-called Bricker Amendment to the Constitution,\(^18\) both of which were drafted by committees of the American Bar Association. The former is an attempt to force judicial processes and judicial review upon all administrative agencies which would not have existed had the judicial process been able to cope with the prob-
lems which they were created to solve.

**IV. The Creation of Uniform Laws**

A second field where law making by private associations has become dominant and commonly accepted is in the area of Uni-
form Laws. Although trade, transportation, and even social ac-
tivities have become nation-wide, jurisdiction over these activities remains split among fifty state and territorial legislatures and thousands of local law-making bodies. There is, therefore, a con-

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\(^5\) See Beutel’s Brannan, Negotiable Instruments Law 133 (1948).
\(^6\) See Beutel’s Brannan, Negotiable Instruments Law 133 (7th ed. 1948).
\(^10\) People v. Union Bank & Trust Co., 362 Ill. 164, 199 N.E. 272 (1935);
Note, 104 A.L.R. 1090 (1936); Jennings v. United States, 294 U.S. 216 (1935);
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stant pressure that nation-wide activities be governed by uniform statutes and it is in this field where the drafting of laws has entirely been taken away from the local legislatures and placed in hands beyond their control.

In some instances federal agencies in cooperation with trade and professional associations have created statutes intended to be uniformly adopted among the states, cities, and counties. Here the federal body takes some responsibility for the drafting of the law in cooperation with national associations. The local legislative bodies are then expected to adopt the model law as drafted. Examples of this sort are numerous and the laws created due to the supervision of federal officials have usually been of excellent quality. Among these are the standard ordinances governing purity of milk\(^{19}\) adopted in thirty-two jurisdictions having a population of over fifty-eight million people,\(^{20}\) motor vehicle codes,\(^{21}\) and sanitary regulations for dining, and other food handling\(^{22}\) facilities.\(^{23}\) These laws have been scientifically drafted and their effects carefully watched and checked by the federal agencies.\(^{24}\) No parti-

\(^{20}\) List of American communities in which the Milk Ordinance recommended by the Public Health Service is in effect, Div. of Sanitation, F.S.A. (1950).
\(^{21}\) Model Traffic Ordinances, Part II, Dept. of Agri. § 3 at 12, 13 (1934); Uniform Vehicle Code, Act V, Pub. Rds. Adm’n. §§ 28, 57-59, 60B, 161, 163 (1945). For the adoption of the model traffic ordinance and the uniform state statutes see Report of Committee on Laws and Ordinances, The President’s Highway Safety Conference 17, 45-47 (1949); see Report of Committee on Laws and Ordinances, The President’s Highway Safety Conference 19 (1949), showing the states that have adopted Act V of the Uniform Vehicle Code.
cular harm has been done here by the fact that the local legislatures have lost control over these statutes.

There are other areas of uniform laws, however, where this is not the case. There the statutes are drafted completely under the control of private organizations not responsible to any government agency and presented to the legislature as an accomplished fact ready for enactment. The complicated nature of these laws is such that the legislatures with their medieval structure and lack of research machinery are unable to analyze them. Further, the valid argument for uniformity makes such analysis undesirable insofar as it would result in change by individual states. The law maker receives the statute on a take-it-or-leave-it basis under a strong pressure for uniformity of law which has been created by the standardization and mass production processes in our civilization. The extent of legislative abdication in this field and the adoption of a system of private law making is quite shocking. Such statutes are created by many organizations, including the American Bankers' Association, the real estate lobby already mentioned, the National Manufacturers' Association, the Chamber of Commerce, national labor unions, medical associations, which devised the famous "Briggs Law" of Massachusetts\textsuperscript{25} covering some aspects of psychiatric criminology, by simply copying statutes from other states and by many other means.

The most active of all associations in this field as one might expect has been the American Bar Association, operating through its so-called Commission on Uniform Laws. The Commission on Uniform Laws is a subsidiary of the American Bar Association created specifically for drafting and pushing the enactment of uniform statutes. This Commission was begun as a branch activity of the American Bar Association in 1889 when the Association appointed a special committee on uniform laws. Partly due to the pressure of this committee the various state governments have adopted statutes under which the governor appoints two or more Commissioners on Uniform Laws. These gentlemen are members of the American Bar Association, serve without pay, meet annually with the Bar Association to draft uniform statutes on all sorts of subjects which are then offered to the legislatures of the various states for adoption. The history and activity of this Commission have been set out in detail elsewhere\textsuperscript{26} and need

\textsuperscript{25} See Weihoffen, Insanity as a Defense in Criminal Law 401 (1933).

\textsuperscript{26} See The Handbook of National Conference of Commissioners on Uniform Laws 525 (1952) which contains the complete history and proceedings of the organization; Hurst, op. cit. supra note 1, at 363.
not be repeated here other than to note that in the approximately sixty years of its existence it has drafted or approved over one hundred and thirty separate acts mostly in the field of commercial law, but covering additional areas such as marriage and divorce, real property, veterans' rights, probate of wills, proof of paternity, and hundreds of other subjects. So active has been this law-making organization that its output has resulted in over thirteen hundred and fifty separate statutes adopted in the various states or an average of approximately thirty statutes per state. In the commercial field where these acts are best known, they cover a subject matter broader than the commercial codes of Europe. In addition they operate in areas of paternity, wills, trusts, estates, criminal extradition, narcotic drugs and many other fields\textsuperscript{27} closely affecting individual persons and their rights. They exert a very wide influence. A glance at the annual Handbook of the National Conference of Commissioners on Uniform State Laws will show in detail the extent to which the law-making activities of the American Bar Association have completely displaced the legislatures in a wide area governing the intimate and commercial activities and contacts of the citizen with his fellowmen.\textsuperscript{28} All of this activity has been ostensibly carried on \textit{pro bono publico}. But it should be observed that although the governors of the various states may appoint the Commissioners on Uniform Laws, they exert no control over their activities. The work of the Commission is purely a Bar Association operation under the direction of that Association, financed by the Association; and none of its laws is offered for approval of the state legislatures without first having been approved by the Bar Association.\textsuperscript{29} As will be seen later this process contains the potentiality of dangerous class legislation.

Recently private law making has received further impetus in the activities of the American Law Institute. This private and purely voluntary organization, which had its origin in a scholarly attempt to restate the common law, has now moved into the broad field of legislative activity. The Institute, like the Commission on Uniform Laws, is also an adjunct of the American Bar Association. Although on paper it is an independent entity made up of prominent lawyers, judges, and outstanding law professors, it is common knowledge that it is controlled by the same group of blue-

\textsuperscript{27} For the scope and extent of these laws and the states where they have been adopted, see Uniform Laws Ann., a series of reports on these laws.

\textsuperscript{28} See note 26 supra.

\textsuperscript{29} See note 26 supra, at 527.
stocking lawyers who run the American Bar Association and the Commission on Uniform Laws. Like the latter it attempts to operate *pro bono publico* and receives its financial support from large endowments such as the Rockefeller Foundation, the Frick Foundation, and the Carnegie Endowment. Since the completion of the Restatements, the Institute has gone very strongly into the field of law making. First among its recent activities in this area are the Code of Criminal Procedure, the Youth Correction Authority Act, the Model Code of Evidence, the Uniform Commercial Code, recently completed in cooperation with the Commission on Uniform Laws, the Model Penal Code and the Federal Income Tax Statute.\(^\text{30}\) In their sweep and scope these last three undertakings will be immediately recognized as tremendous projects. Here is an attempt by a private body to codify most of the commercial law, to reorganize the penal law and to re-draft the federal income tax statutes—the greatest source of present income to the Federal Government. The cost of the research and compilation of these three statutes alone which will run into millions of dollars is being supplied wholly from private funds.

It should be noted also that in the case of the Uniform Commercial Code and the Penal Code the drafts when finished will have to be final because of the complicated nature of the material with which they deal and the fact that they are drafted for uniform adoption. Because of their complexity and desire for uniformity, material changes by the state legislatures to which they are being presented for adoption is inadvisable.

V. **Dangerous Defects in Private Law Making**

The false implications in such private legislation and its threat to the fairness of government and the democratic process should be apparent to all thoughtful persons. The following brief summary of arguments against the continuation of such a system of law making shows that its dangers are not only theoretical, but are present and real.

In the first place it should be recognized that where uniform laws are drafted by interested associations the law-making process receives the benefit of the knowledge of individuals and groups most intimately acquainted with the field which the laws attempt to regulate. The draftsmen under these circumstances, it is argued, are experts. But their expertness comes at a high price. No matter how public spirited the draftsmen and the persons promoting the statute are, or pretend to be, even an honest person's ideas of fairness are bound to be influenced by his own interests.

or those of his client. Thus, the interests of the association for which they are working as against the good of the rest of the body politic inevitably receives paramount consideration. Since the statute is promoted and drafted by experts, the interests of the particular organization promoting the statute receive expert protection. Examples of this may be found in the Bank Collection Code mentioned above which was drafted by counsel of the American Bankers' Association, but which was so one-sided in its outlook and which so expertly protected the interests of the bankers that it was declared invalid by the courts because it was class legislation running contrary to the Equal Protection Clause of the Constitution. In like fashion the Federal Administrative Procedure Act, although it is ostensibly an effort to force fairness upon administrative agencies, adopts for itself in the name of fairness the pattern of judicial process which is best known to and a monopoly of its promoters—the legal profession. As experience has shown, such procedure is not fitted to the problems which many administrative agencies falling under its ken are supposed to solve.31

Another obvious difficulty is that important social interests other than those of the promoting organization are excluded or ignored in the drafting and are often muscled out of the regularly constituted legislative hearings before which the draft of the law is presented. This was the case with the Federal Administrative Procedure Bill. This act, although it was denounced by most of the federal administrative agencies and by many impartial experts in the field,32 was shepherded through Congress by a committee of the bar which even went so far as to stack the hearing process so that opponents of the bill were denied opportunity to testify against it.33 This is only one of many examples where a professional or business association has created a statute favorable to itself and shepherded it through the legislative process with the connivance or tolerance of the legislators themselves. The process

31 For one example of the failure of this act, see Fuchs, The Hearing Examiner Fiasco under the Administrative Procedure Act, 63 Harv. L. Rev. 737 (1950).
32 For an early discussion of the bill and problems involved, see Beutel, The Problem of Reform of Administrative Procedure, 6 Fed. B.J. 264 (1945).
33 The congressmen promoting the Administrative Procedure Act twice adjourned the appointed hearings when the writer and other experts were to testify against the bill. So successful was this maneuvering that this adverse testimony never appeared in the record which was used extensively in later arguments in support of the bill.
by which this is accomplished has been discussed at length elsewhere and need not be further examined here.

In the case of bills drafted by legal organizations, such as the American Bar Association and the American Law Institute, there is grave danger that the interests of the clients retaining the lawyers most influential in its organization and in its drafting process will receive tremendous advantages at the expense of other interests represented by lawyers who are members but not particularly influential in the little group which promotes the statutes. The reasons for this are numerous. In the first place bar associations, the American Law Institute and other organizations promoting uniform statutes are only sparetime organizations. All of their important policy-making officials and most of the draftsmen who actually undertake the work of compiling the statutes devote only their leisure time to the activity. Thus it is easy for particular interests pushed by active members of the association to gain advantage in the law-making process because there is nobody giving his major attention to the intricate problem of determining that the proposed statute is fair. This is left to the entire group which has little time to give expert analysis to the details of the proposed statutes. Individual lawyers who can give their attention to the work, usually retained by wealthy clients, are able to manipulate the machinery of the association and to exert influence for themselves and their clients, far out of proportion to their proper position as representatives of the interest affected by the statute. Thus, it was possible in the American Law Institute for certain influential lawyers representing bankers to have the Institute approve Article 4 of the Uniform Commercial Code, Bank Deposits and Collections, which, as demonstrated elsewhere, is an even worse piece of class legislation than the Bank Collection Code. In like manner a few influential members of the American Bar Association, representing a small group of rich isolationists, were able to get the approval of the entire

34 See Cohen, Hearing on a Bill: Legislative Folklore, 37 Minn. L. Rev. 34 (1952).

35 William Draper Lewis was a full-time Director of the American Law Institute; but since his passing, its major officers, like those in the Bar Association, devote their major efforts to other legal activities.


Association of the Bricker Amendment. It is highly doubtful whether this proposed constitutional amendment, even though it carries the official approval of the Association, represents either the sentiment of all the members of the Bar Association or the considered judgment of the majority of those present at the time the convention approved the proposed constitutional amendment. Anyone familiar with the interior politics of associations could add many more examples of how this process works to the detriment of all but a few special interests.

Professional organizations, like the bar associations, also seek the alliance of other powerful interests to help them push their acts through the legislature. What is more natural, then, to get this support, than to make concessions to these interests in the drafting of the statute? This was a familiar process in the creation of the Uniform Commercial Code, and the unfair condition of Article 4, Bank Deposits and Collections, of the Uniform Commercial Code.

Once the statute begins to take concrete form and receives the approval of the promoting association, pressure for professional solidarity is such that even experts in the field hesitate to oppose the entire organization, finding it more advantageous to go along with provisions they do not approve because of fear of losing professional contacts and standing before the association. So even though very strong draftsmen of the Commercial Code have admitted that they do not agree with Article 4, none of them has seen fit to oppose it openly, and very few active members of the Institute have taken a position against any of the provisions of the proposed Commercial Code. Almost all the opposition has come from a small group of law teachers beyond the reach of Institute favors. If this can happen, as it has happened in the American Law Institute, there is no doubt that it is an everyday occurrence in other more partial and admittedly special interest representing associations.

A final defect in law making of this type is that there is no machinery in our entire American law-making process to correct imperfections of the nature indicated, even after they are discovered. Once the law has been drafted and has been presented

38 Supra note 30, at 12.
39 Gilmore, supra note 37.
to the legislatures for adoption, the necessary pressure for uni-
formity puts it on a take-it-or-leave-it basis. Amendment is dif-
ficult, if not almost impossible, because the very proper purpose
of the act, to achieve uniformity, would thereby be destroyed. If
the law has some good features which improve current conditions,
the urge is strong to take the bad with the good. The legal sys-
tem is pushed out of balance with no means of righting the bad
effect of the law. There is no legislative body which has jurisdi-
cion over the entire field attempted to be covered by proposed uni-
form statutes. With rare exceptions\textsuperscript{41} few have experts to analyze
a proposed law or to make studies of the effect of the laws after
they are adopted. When one considers that the American Law
Institute expended about a half million dollars on the drafting of
the Commercial Code, it can be seen at a glance that the cost of
analysis and study of the social effects of such a Code would be
astronomical. No individual state government could be expected
to undertake such a task. Since there is no ministry of justice in
the United States,\textsuperscript{42} there is no official central body to do it. As
a result no one is in a position to point out either the prospective
dangers or actual bad effects of uniform or any other laws.

Our present legislative machinery relies preponderately on
voluntary complaints from interested members of the public to
determine the concrete results of such statutes. But without or-
ganized study and highly financed effort, such complaints are
likely to be both sporadic and ineffective. The law is so compi-
cated that the average person cannot hope to know its effects or
which of its many provisions are causing unfair advantages to
certain interests or detriment to others. And even if he did have
such information, he does not have the financial backing to make
his complaints effective. Only big associations can take such
steps; but most of them represent special interests which are
either directly effective in the organizations drafting the laws or
they create their own new laws to achieve their special desires.
The interests of the great mass of the public are thus pushed
further and further out of the law-making process. For example,
the depositors are not represented in any private organization
which drafts banking laws. Labor, debtors, installment pur-

\textsuperscript{41} For example, New York has a part-time expert body in the Law Revi-
sion Commission which is doing good work on these lines, and has been
especially effective in critically examining the proposed Commercial Code.
See its Annual Reports. It is spending over $300,000 studying the pro-
posed Commercial Code. The Judicial Councils of some states also are
entering the field; but most of them are almost impotent. Cf. Hurst, op.
cit. supra note 1, at 65.

\textsuperscript{42} See Cardozo, A Ministry of Justice, 35 Harv. L. Rev. 113 (1911).
chasers, customers, and insurance policy owners are not present at any of the meetings of the American Bar Association or the American Law Institute, and even their attorneys are seldom active in the organizations which have now taken over the drafting of most of our commercial law and are beginning to invade even the field of control over international relations.

VI. Suggested Remedies

Remedies to offset the dangers inherent in our system of law making by private associations are many and some involved drastic changes in our legislative system.

In the first place it should be recognized that the American legislative system was created to govern a civilization which disappeared with the flowering of the Industrial Revolution. Reorganization of our entire legislative structure has for a long time been an immediate and crying need. If our national and state legislative bodies are to keep abreast of their work, they must be equipped immediately with full-time research agencies to study the effect of law, with a staff of experts in the fields which the law attempts to regulate and with skilled draftsmen capable of performing the tasks which are now volunteered by the professional associations.

There must also be created further centralization and control of the lawmaking functions. The pressure for uniformity has come on account of the numerous geographical and jurisdictional divisions of power among our various law-making bodies. This, of course, means that our national and even international governments must exert a firmer control over law-making power in those fields where uniformity is essential to the operation of our civilization. These larger national and international bodies are the only ones who can afford the expense and command the talent necessary to carry out properly and impartially tasks of the magnitude represented by such a statute as the Uniform Commercial Code.

Of course, it must be recognized that this ultimate solution is one very difficult to achieve. It would not only require numerous constitutional amendments both state and local, the wiping out and consolidation of many units of governments such as cities and counties, but it is also contrary to the dominant political trend in the United States which at the moment is promoting the reactionary process of strengthening local government.

43 This change is dramatically portrayed in Lynd and Lynd, Middletown 10 (1929).
Less drastic but necessary reforms would indicate that control of such bodies as the Uniform Laws Commission and the American Law Institute must be taken out of the hands of private organizations and be supplanted by research bodies like the Council of State Governments, but financed by both the state and federal governments. The law-making functions of these organizations should be returned to the central government agencies, heavily financed from tax funds and responsible to governmental units only. This, of course, would increase the immediate burden on the taxpayers; but it would save the public a far larger sum of money which is now going into the hands of special interests as a result of laws drafted by them especially to favor themselves in commercial transactions. If such a body were created, it is axiomatic that the business and professional associations whose interests its laws touched would, of course, be consulted. But the problem of drafting the laws should be left to the government experts and not to the associations. As was partly the case under the National Industrial Recovery Act, recommendations of the associations and similar interests should be cleared through an expert staff fully equipped with research machinery to determine the prospective and actual effects of the law upon other members of the body politic not represented by the pressure from organized associations. When all the information was gathered, the experts could then draft and recommend to state and other legislatures uniform statutes with much more certainty of fairness than is now the case where the entire process is in private hands. This latter suggestion could be accomplished without any constitutional amendments, either state or federal, simply by the use of the compact power now available in the Federal Constitution.

It should be noted that either of the reforms suggested requires a drastic change in the present concept of the democratic process of legislation. But such a reform is not so great as the revolutionary change which has taken place in the nature and structure of our civilization since the founding fathers created the Constitution in 1789. This is the age of complication and specialization in all fields. If our legal system is not to be subjugated completely by selfish interests which are promoting their own ends to distort the law, the control of the law-making process must be returned to expert and impartial governmental bodies.

44 This organization is financed entirely by appropriations by the states and by the sale of its publications. Its yearly budget now exceeds $400,000. See Baine, Annual Report of the Council of State Government, 26 State Gov't 17, 21 (1953).