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For Arthur Leff

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I first heard of Arthur Leff in 1967, when the *University of Pennsylvania Law Review* published his article *Unconscionability and the Code—The Emperor's New Clause*.¹ The author's erudition was awesome; his legal analysis was formidably sophisticated; his style was graceful, witty, and irreverent. As the title itself suggested, he was out to upset applecarts, gore some respectable oxen, tilt gaily at one of the legal establishment's most admired windmills. It seemed incredible but was true that the article represented the scholarly debut of a young man who was identified by the editors of the *Law Review* as "Assistant Professor of Law, Washington University Law School." It was entirely clear that the ranks of Assistant Professors of Law in American Law Schools were about to be depleted by one.

The article was a study of section 2-302 of the Uniform Commercial Code, captioned Unconscionable Contract or Clause. At the time Arthur wrote, that section had become the subject of a massive law review literature. Academic liberals had praised it to the skies: section 2-302 stood for the triumph of living realism over dead formalism; it was, unquestionably, a Good Thing. Attacks on the section had come from conservative traditionalists of the right: it went "too far"; it was destructive of the "fundamental principles of the common law" enshrined in treatise and Restatement. It took Arthur half a paragraph to demonstrate that there was a great deal to be said about section 2-302 that neither the liberals nor the conservatives had so much as guessed at. He was not primarily interested, he wrote, in "an essay on commercial law"; the paper was, rather, "a study in statutory pathology," an object lesson in how not to draft anything. In a remarkable piece of legal detective work, he traced the evolution of section 2-302 through the many drafts of the Code (and its prede-

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1. 115 U. PA. L. REV. 485 (1967).

cessor the Uniform Revised Sales Act) that had appeared during the 1940's: the truth was that section 2-302 had, draft by draft, kept changing into its own opposite but without, in each of its new incarnations, quite sloughing off what it had once been (and might, quite possibly, again become). The end result was a meaningless mish-mash—which, as Arthur carefully pointed out in his Conclusion, did not necessarily mean that section 2-302 was a Bad Thing. It would become a Bad Thing only if it was taken seriously as a meaningful statement of a rule of law, and the vice of the section 2-302 literature, including the contributions of the Code drafting staff, was that both those who praised it and those who damned it had so taken it.

In all his writings, Arthur seemed incapable of saying an ordinary thing about anything. His research was always scrupulous; his vision was personal, idiosyncratic, even eccentric. He defied classification as conservative or liberal, formalist or realist, traditionalist or futurist. He was at all times his own man. The last project that engaged him—the Legal Dictionary—was one that no one else would have thought of. Had he lived to complete it, the Dictionary would have been the strangest, and I have no doubt, the most wonderful law book ever written.

If you go around upsetting applecarts, goring oxen and tilting at windmills, you must expect to be attacked. The owners of the applecarts, oxen and windmills will declare your work to be perverse, indeed unsound. Arthur expected to be attacked, was attacked, and seemed to enjoy every minute of it.

Within the framework of academic debate, it is legitimate for a critic to say that Professor *X* has evidently misread the few cases he appears to be familiar with; or that Professor *Y* has no more sense about construing statutes than a babe in arms. It is quite a different thing for a critic to say that his opponent's work is "unsound." Whoever says "unsound" is claiming that he knows what is "sound"—that he knows the truth. And in the law it is the truth that will make us slaves.

The material that we deal with, the only material we have to deal with, is plastic, malleable, fragmentary, incomplete, ambiguous. It lends itself to diverse interpretations. It does not lend itself to flat statements of black or white, truth or error.

Throughout his career, Arthur set himself against the prevalent dogmatisms. He told us many interesting, challenging, highly original things. For all these things we are and long will be in his debt. But, most of all, he has left us with a shining example that the path of the law leads not to the revelation of truth but to the progressive discovery of infinite complexity.