ABSTRACT: A “New Managerial Revolution” is sweeping over business enterprises in the 21st century as they struggle to adapt to changing economic conditions triggered by globalization and the rapid pace of technological innovation. This “New Managerial Revolution” is of a scale and scope equivalent to the old “Managerial Revolution” described in Alfred Chandler in The Visible Hand which fueled the rise of large, hierarchical business bureaucracies in the 20th century. New administrative processes based on both technological innovation and the discipline of continuous improvement and technological innovation provide the business foundation for the New Managerial Revolution, and new contractual governance mechanisms provide its legal framework.

The new contractual governance mechanisms are known as master agreements or framework agreements. When parties use framework agreements for sale of goods contracts, then issues such as the “Battle of the Forms” cease to have any relevance. In addition to organizing transactions, framework agreements also clarify the status relationships among members of production networks. Two examples of framework contract terms—rolling forecast and collaborative inventory replenishment terms—illustrate how the “move to the middle” toward relational contracts and away from market transactions and hierarchical entities works in practice. The problem of contractual incompleteness which seemed to be both fundamental and intractable when viewed from the perspective of the Old Managerial Revolution looks more like an archaic technical artifact produced by the constraints of outdated bureaucratic processes when viewed from the perspective of the New Managerial Revolution.

It is ironic that Llewellyn’s attempt to create a “common law code” that could continuously adapt to changing business practice may have obscured the rise of these new contractual governance mechanisms in American commercial law, while the commercial laws in of civil law countries conventionally assumed to be less sensitive to changing business practice were able to recognize and accommodate their rise more easily. It is even more surprising that American commercial lawyers and academics have largely disregarded the emergence of new contractual governance mechanisms as the legal foundation of global economic networks rather than seizing the opportunity to expand their prerogative.