AMERICAN LAW INSTITUTE HOLDS FIFTH ANNUAL MEETING


The fifth annual meeting of the American Law Institute held in Washington, D. C., May 12, 13, and 14, saw the work of restating the law as to Conflict of Laws, Agency, Torts and Contracts carried forward to a substantial and gratifying extent. It also afforded the Director an opportunity to make a statement as to the progress and present status of the work on the Model Code of Criminal Procedure, which has already so far advanced as a result of the labors of Reporters William E. Mikell and Edwin R. Keedy that “it may with reasonable certainty be anticipated that the draft of the Code covering all matters down to Trial can be made public shortly after the first of the year.”

This will include the chapters on Arrest and Bail, the preliminary drafts of which have already been completed, and the chapters on Preliminary Hearing, Methods of Prosecution and Grand Jury, and Indictment. The Reporter announced that the first preliminary draft of the chapter on Indictment was also completed, “with the exception of the commentary dealing with a part of the statutes and decisions on this topic in the several states.” The Reporters and their Advisers are now working on the chapter on Preliminary Hearing.

The Director also announced that the Reporter on Trusts, Mr. Austin W. Scott, had already made considerable progress on the preparation of the preliminary draft of “Trusts,” one of the additional subjects recently taken up by the Institute. He added that Prof. Harry A. Bigelow of the University of Chicago, to whom and a group of advisers the subject of “Property” was recently assigned, has prepared his first preliminary draft of a part of the topic of “Estates.”

There is a natural interest in the proportion of the subjects covered by the Restatements already submitted, and on this point—Director Lewis furnished some definite and interesting information. “The drafts submitted for your consideration,” he told the Institute, “together with those submitted on the same subjects in 1925 and 1926, represent somewhat more than one third of Agency and Contracts and one half of the Conflict of Laws. Torts is, of course, a much more extensive subject than any of the others. But the drafts submitted this year with those previously submitted cover Interests of Personality and Privileges to Commit Intentional Invasions of such Interests. The next topic on Torts and the one on which the Tort group are now engaged is Negligence.”

President Wickersham’s address at the meeting which rounded out the first four years of the life of the Institute was devoted largely to “a consideration of our beginning and our objectives and the nature and the value of the progress we have thus far made.” He deemed this proper because, despite many pronouncements, there still existed in some minds a misconception of the proper function of the Institute. He concluded with an emphatic reassertion of accuracy and clarity as its main object. Chief Justice Taft’s brief address was full of a splendid assurance that the Institute would prove itself by its work, and he especially commended it for having added to its immediate usefulness by the incorporation in its objects of direct aid to the improvement in Criminal Procedure.

The Practicing Lawyer’s Standpoint Asserted

Consideration of the parts of the various Restatements submitted was earnest and careful. Suggestions from the floor were frequent. A point of special interest was the frequency with which the Reporters’ attention was called to the standpoint of the practicing lawyer with reference to the statement of a principle or illustration. It was quite evident that the practicing lawyer was well represented in the membership in attendance and that his idea was not only to help secure a brief and accurate restatement of the law, but also one which would commend itself by reason of its utility to the profession. And at times the point of view of the judge was likewise called to the Reporters’ attention, with a view of making the Restatement as useful as possible to the Bench. Some of the criticisms were merely textual, while some were fundamental, going to the substance of the Restatement itself. Some of the questions raised were immediately settled by a clarifying statement by the Reporter, but many others were noted for further consideration by him and his advisers. And it is safe to assume that the discussion in person with the membership in attendance will cause the Reporters themselves to think of various possibilities of improvement in the text.

The meeting was called to order in the Ball Room of the Mayflower Hotel on Thursday at 10:00 a. m., by President Wickersham. There was a large attendance of the membership, including leading scholars, judges and practicing lawyers from all
parts of the country. President Wickersham de-
delivered his address, and this was followed by the
report of the Treasurer, George Welwood Murray.
Director Lewis then presented his report, which
had previously been printed and distributed to
the members. It began with a statement as to "The
Progress and Present Status of the Work on Crim-
inal Procedure," to which reference has already
been made.

**Progress of Work on the Restatement**

The report next dealt with "Progress of the Work
on the Restatement." It stated that the new
tentative drafts submitted represented the work of the
Editorial Staff from November, 1925, to November,
1926, and comprised in all 291 sections, while the
sections, comments, illustrations and special notes
covered 561 pages. Part of the time of the last
meeting of the Council had been occupied with a
discussion of a part of the preliminary draft sub-
mitted by the group working on Business Associa-
tions, and it was hoped that this draft, after being
reconsidered by the Council in connection with ad-
ditional matter to be submitted, would be ready for
discussion at the next annual meeting.

Part III of the report dealt with the "Accelera-
tion of the Payment of the Donation of the Carnegie
Corporation," whereby additional work could
be undertaken by the Institute and that already under-
taken could be carried forward at full speed. This
information appears in the report of the meeting of
the Council in the January, 1927, issue of the
JOURNAL, and in President Wickersham's address.

Part IV of the Report dealt with the work on
the subject of "Property," now going forward along
the lines recommended by Prof. Bigelow's special
report, and the work on Trusts, which Mr. Austin
W. Scott, of Harvard, the recognized authority on
the subject in the United States, has in charge. As
to this subject the Director calls attention to a
slight change in method:

"The Subject of Trusts is much less extensive than
any Subject we have heretofore undertaken. The combina-
tion of these circumstances has led us to try an experiment
which, if successful, may become the model for the way in
which the tentative drafts of Restatements in all compara-
tively small subjects will be produced. The first prelimi-
nary draft on this topic, which has been sent to a group of
Advisers, has not been a part of the Subject Trusts, but
the entire Subject. This draft will then be submitted to a
group of Advisers and thereafter proceed in the usual
way. The work of producing the final draft will not be
completed by the Reporter, and the final draft will not be
submitted to the Council. He has already made considerable progress on the prepa-
ration of the first preliminary draft, but it is too early yet
to predict the exact time when the tentative draft of the
entire Subject can be submitted to you. However, we may
look forward with reasonable confidence to the completion
of the entire Subject in three years."

**Council's Consideration of Tentative Drafts**

"The Relation of the Council to the Tentative
Drafts" was the next topic of the report. The report
called attention to the work of the Council in giving
a searching examination to the tentative drafts sub-
mitted by the Reporters, and the increasing difficulty
of finding a way to do this effectively as the volume
of material increases. It continued:

"The mechanics for treating the drafts submitted by
the editorial force to the Council, so that their function with respect to them may be performed, presents one of the most difficult problems with which they have had
to deal. The first attempt made to solve the difficulty was
the appointment of committees over the various subjects of law appearing in the sections. Experience, how-
ever, has shown that this plan does not work out as well as was hoped. At present the Council are trying the plan
proposed by the President, of the preliminary drafts to be con-
sidered with care before the meeting, small portions, indicated by the President, of the preliminary drafts to be con-
sidered at the meeting; each member undertaking this work in making a report to the Council on the sections referred to him. At the meeting, as each topic treated in the
draft is reached, the criticisms and suggestions made in the
report on the sections in the topic next to be considered	would be varied according to circumstances. What we desire is
to have these suggestions properly considered. We cannot believe that we shall obtain this criticism unless we
devote as much time as possible to serious consideration of the subject. We have decided to appoint one reporter for each
Subject, and to each reporter we have assigned a group of
Advisers. Each reporter will then meet with his group of
Advisers, and the reporter will have to deliver an account of
the progress of his work, including his criticisms of the tentative drafts, to the Council. The Council will then consider
with care the suggestions made, and will the report make any
suggestions which he feels are appropriate to the subject. This
method will enable the Council to consider the criticisms made by other members. The results of this new plan have so
far proved most satisfactory. It apparently enables the
Council to turn at once to the matters in the section which
should receive their attention."

**Plan to Stimulate Bar Criticism of Tentative Drafts**

Under the head of "Cooperation of Bar Associa-
tions in the Preparation of the Final Drafts of
the Restatement," the report said that the invitation
to State and the principal local Bar Associations
to cooperate by appointing committees to consider
the various drafts had been widely accepted.
Twenty of these had appointed committees, some
having appointed separate committees on each sub-
ject undertaken for that purpose. To stimulate Bar
Associations were cooperating by calling attention
of members to the desirability of procuring tenta-
tive drafts, which had resulted in the sale of 4,154
copies of these since the last meeting, exclusive of the
6,751 copies sold to law students for use in connection
with their school work. It continued:

"From all this appointment of committees and distrib-
ution of the tentative drafts we have received a consider-
able number of criticisms and suggestions with a view
to their improvement. Nearly all of these criticisms and
suggestions have some use and some of them are most
carefully considered. The past practice of the Institute
has proved satisfactory. It has received as many criticisms and suggestions as we hoped. This is doubtless due in part to the care with which these tentative drafts have been prepared. But in spite of the
care given to their preparation, the tentative drafts do need
to be subjected to searching criticism. Personally I do
not believe that we shall obtain this criticism unless we
device some plan which will stimulate the committees which have been appointed by the State and local Bar
Associations. Several plans have been suggested to this
end. One suggestion which appeals to me is that the mem-
ber appointed by the Bar Association to work with the
Reporter or one of his principal Advisers or your
Director to be present at these discussions. Thus the
committee appointed in the States of Illinois, Indiana,
Michigan, Wisconsin and Iowa could meet in Chicago,
while those appointed by bar associations on the Pacific
Coast could meet in San Francisco."

"I am, of course, aware that no one plan can be put
into operation in all parts of the country. The details must
be varied according to circumstances. What we desire is
that committees appointed by bar associations, some
in brief, is to complete in final form a definite and significant por-

**Complete in Final Form**

The Restatements of the Law of Agency, Contracts,
Conflict of Laws and Trusts and a significant por-
tion of Torts, Business Associations and Property.
To make it certain that this is accomplished, the tentative draft of the last part of the matter should be considered at the Annual Meeting in 1930.

A question to which the Council would give early consideration, was whether the revised drafts of all matter which it was desirable to publish in final form before December, 1931, should be presented for consideration and action all at one time, that is at the Annual Meeting in the spring of 1931, or whether the final draft of the first part of the various subjects now being restated should be presented at earlier meetings. While undue haste in preparation of final drafts was undesirable, there was much to be said in favor of so planning the work as to avoid laying before any one annual meeting all the final drafts covering the entire matter prepared during the first eight years of work.

Chief Justice Taft Makes Brief Address

At the conclusion of Director Lewis' report Chief Justice Taft entered the room and as soon as he was seen the members rose in a body. He was escorted amid applause to a seat on the rostrum. President Wickersham felicitated the Institute on his visit and said he was sure the members would be delighted to hear him. The Chief Justice spoke in part as follows:

"It has been exceedingly interesting and I am delighted that I was able to be here. Of course, I must account to you for my time. This is a period when we are writing opinions, and I am sure there will be some here who will think I would better have spent my time here than in writing those opinions. (Laughter). But it has been full of instruction to hear what you have done as well as to hear what you are going to do.

"I am delighted that you have this money, which is going to make what you do a great work. We do not despise money in this country—and we ought not to—but we may very well rejoice when the money is being devoted to something that will be most useful to the nation and to the people. And I hope you will not be discouraged when you consume the money more rapidly than you expected to spend it, because there is more money that can be gotten for a work which can prove itself, as I am sure this will prove itself...

"I want to felicitate you on your great and chief work, the Restatement of the Law. That is what you organized to do. But it aids your work and it adds much to its immediate usefulness to have incorporated in the objects of your Institute this direct aid to the improvement in Criminal Procedure, and I am delighted that you should have taken it up, and that you should have secured through the Spellman Fund the means of doing this. "No lover of his country can have gone through the last three or four years without having been stirred deep in his heart over the failure of the administration of our Criminal Law. I am no pessimist about that, however much some people may
Every Congressman had two pardons during a Term.' (Laughter.)

"Now that seems to be the view of some counselors with respect to our allowance of certiorari. (Laughter.)

One more thing and I am done, and that is I am glad to say we have got the question of a new building for the Supreme Court of the United States fixed. (Laughter.) I agree that it has not been with the unanimous consent of the Court—but that is not always present. We have, however, secured an appropriation of one million five hundred thousand dollars to buy the lot,—or the two lots, which lie immediately next to the Congressional Library Building and are just opposite The Capitol. We like our court room very much, and if all we had to do was to sit in the court room, it would be all right. But our records are being distributed all over. I sent out for a record the other day and they had to send to the Senate Office Building to get it.

"You gentlemen of the Bar know how little accommodation we can give you in the Supreme Court, and we must look forward to the growth in our records; we must look forward to a building that should be adequate and dignified; and therefore I think it is an occasion for congratulation that that course is settled. And I think it will go through, because we have the money in the treasury and the still more certain assurance that the Senate wishes to get rid of us." (Laughter and applause.)

Drafts Considered Section by Section

The first tentative draft taken up by the Institute, as "Conflict of Laws—Restatement No. 3," prepared by Joseph H. Beale, Reporter—with Mr. Austin W. Scott as Associate Reporter in connection with the Chapters on Status and Corporations—in consultation with the Director and the Advisers. It was considered by the Council at a meeting held December 17-20, 1926, and as amended it was submitted to the Institute with a view to criticism and suggestion for improvement. The Restatement with Indexes and Comment covers 178 pages and makes quite a substantial addition to the work already done on this subject. The topics treated begin with "Status," under which Marriage, Legitimacy, Adoption, and Guardianship are treated. Then follows the Chapter on "Corporations," under the first topic of which—"Creation, Recognition and Dissolution"—there are certain comments emphasizing a distinction between the "corporation, the legal instrument, and the association, the real actor, the recipient of rights and the performer of obligations." And it is stated that "in the Restatement of this subject, therefore, property will be said to be acquired, held and transferred through the corporation; and action will be ascribed to the Association." This distinction called forth objection on the ground that it was a metaphysical view not in accord with the general legal understanding of the matter and unnecessary as comment in a Restatement. One member, for instance, insisted that the corporation was a thing—the real actor—and that it did not help to say the association was the actor and the corporation the mere instrument. Others expressed a similar view. Mr. Beale replied that the parts of the comment which were questioned were necessary to make clear the principle on which...
the Restatement on this subject was based. He suggested that the Restatement be proceeded with, and that this question, if necessary, be taken up later.

The topics, "Action by a Corporation," "Carrying Business," "Shareholders," "Interference with Internal Affairs," and "Associations Incorporated in More Than One State," were then considered section by section, and numerous suggestions were noted by the Reporter for further consideration. Various sections stating what a state cannot constitutionally provide with regard to the admission of a foreign corporation and conduct of business within its borders were objected to as involving no conflict of laws but as being plain questions of constitutional law. The Reporter met the criticism by saying that these sections were so intimately related to the subject that it was deemed advisable to include them. Chapter 7 was devoted to "Property" and under this general subject the topics of "Property in General," "Immovables," and "Moveables," were taken up.

Consideration of the Restatement on Conflict of Laws was carried over to the session Friday morning. At its conclusion "Agency—Restatement No. 2" was taken up, Mr. Floyd Mecham, the Reporter, being on the platform for the purpose of answering questions and explaining any of the sections or comments which members wished to know more about. This Restatement with comments and index covered 111 pages and embraced the following topics: "Definitions," "Termination of Authority," "Termination of Apparent Authority," "Termination of Power Given for Security," and "Termination of the Principal's Consent that a Sub-Agent May Act." The Reporter explained the terms employed from time to time, as occasion called for it, calling particular attention to the need for the expression "apparent authority" in connection with the rights of third persons without knowledge or grounds for knowledge of termination of authority, or with no understanding that such should not be required, as against principals and agents.

Consideration of "Torts—Restatement No. 3" and of "Contracts—Restatement No. 3" followed the same course as that of the Restatements already mentioned. Mr. Bohlen, Reporter on "Torts," gave such explanations of text and comment as were requested and made various notes for further consideration. This Restatement with the comment and index filled 145 pages and continued the subject of "Privileges to Commit Intentional Invasions of Interests of Personality," dealing with the topics: "Defense of the Actors' Interest in Retaining Possession of Real or Personal Property," "Forcible Entry," "Forcible Taking of Personal Property," and "Arrest." Mr. Williston, Reporter on "Contracts," explained the work of himself and Advisors. This Restatement, with Comment and Index, filled 75 pages, and covered the subjects of "Contractual Rights of Persons not Parties to the Contract," and "Assignment of Contractual Rights and Delegation of Performance of Contractual Duties or Conditions."

At the banquet held on Saturday evening, President Wickersham presided and addresses were made by Prof. William Searle Holdsworth, Vinerian Professor of English Law at the University of Oxford; Owen J. Roberts, Special Counsel in the Government Oil Litigation and Member of the Council of the American Law Institute, and Silas H. Strawn, American member of the Chinese Extra-Territoriality Commission and Member of the American Law Institute. There was an informal reception by the Council of the Institute to members and guests in the Ball Room of the Mayflower Hotel on Wednesday evening, and also a reception and tea on Friday afternoon in the Palm Court of the same hotel.

PRESIDENT WICKERSHAM'S ADDRESS TO INSTITUTE

GENTLEMEN OF THE AMERICAN LAW INSTITUTE:
The rounding out of the first four years of the life of the Institute, marked by this, its fifth annual meeting, justifies, and perhaps requires, a consideration of our beginnings and our objective and of the nature and value of the progress we thus far have made. To some of you it may appear superfluous, but to others it will not seem amiss, while for the public I think it is quite important to state with some particularity just what is the task which the Institute has undertaken. For despite many pronouncements, there still exists in some minds a misconception of our proper function.

Possibly the implications from the title of our organization run far beyond the limits of our task. An institute of law reasonably may be assumed to deal with any portion of that vast field which is connected by the word "law"; a word which in a democracy may imply anything from laying down or interpreting the fundamental organization of the State to the minutest regulations of the habits, manners, dress, education, religion or amusements of a people. But taking it in the sense in which Judge Cardozo and Mr. Justice Holmes have defined it, as the rule which Courts of Justice apply in the determination of cases submitted to them, and the function of the lawyer as the sound prediction of the principle, the rule or the standard which a court will apply in a given case, an institute of law may well be supposed to concern itself with the study and ascertainment of all those factors which, on the one hand, may reasonably be assumed to justify prediction and on the other, which courts of justice with propriety may employ as bases of judgment. Viewed thus broadly, there are scarcely any limits to the legitimate activities of such an organization. But we came into existence for a more definite purpose and with a far more restricted intent.

You will recall that the Institute grew out of a movement in the Association of American Law Schools, which led to a careful inquiry and study