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THE AMERICAN LAW INSTITUTE

The organization at Washington on February 23rd of The American Law Institute was an event which is likely to be of prime importance to the law. Mr. Elihu Root who presided at the organization meeting characterized it as the most distinguished legal gathering he had ever attended and said that only within recent years could it have been possible to bring such a body together. Members of the bar of forty-six states were present. The supreme courts of twenty-seven states were represented, in most instances by the chief justice, a fact which led Mr. Chief Justice Taft to remark that being a chief justice in Washington had temporarily lost its distinction.

The object of the Institute as stated in its constitution is:

“To promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work.”

The specific task to which the Institute proposes primarily to devote itself is a restatement of the body of the law, bringing to bear for its accomplishment the available skill and knowledge of all branches of the legal profession, bench, bar and law schools, in the hope of producing a series of publications so clear, comprehensive and accurate as to command an acceptance and carry an authority equal, at least, to that which has attached to the recognized masterpieces of legal

authorship in the past. It is hoped thus to relieve in great measure the bench and bar from the burden of searching out and appraising the enormous and increasing mass of decisions, often conflicting, whose underlying principles are frequently dubious or hard to ascertain. So long as there is no statement of law which commands general acceptance, this burden is inseparable from our legal system; but under it our system is threatened with collapse. It is rarely possible for lawyers to present or for courts to consider all the precedents bearing upon a particular case, or to appraise the part that incomplete or divergent views have had in their formation. Decisions are made upon a partial knowledge of the action of other courts and conflicts of authority and a tendency to follow cases rather than principles is likely to increase to the detriment of law and the disadvantage of society.

"The tendency of some courts," said Attorney-General Daugherty, in a letter to Mr. Root, "yearly growing more pronounced, to ignore fundamentals and to render decisions based on inclination rather than principle has contributed in no small degree to the present complexities of the situation. With a learned judiciary, relieved of the embarrassment of irreconcilable inconsistencies which a restatement of the law will effect, a scholarly and scientific administration of justice must be the inevitable result."

The need today, declared Mr. Root, is a restatement of American law by competent authorities which will be not only an interpretation but a *prima facie* basis on which American law may rest. It should supply a ready reference to which judge and lawyers may turn without having to pore over thousands of books. No Congress or Legislature, he said, can make such a restatement; it must be done by the judges and lawyers themselves, and "must have such power that anyone who stands in its way will be in danger of being run over."

There is no thought of enacting the conclusions of the institute into a code, or of attempting to give them an adventitious authority beyond that which will attach to them from their own merits, the knowledge of the skill and care expended, and the reputations of those who have produced and approved them. Moreover the Institute believes that it should restrict its activities to existing law. "It should not promote or obstruct political, social or economic changes."

Such a restatement of the law will be a labor of years. It may continue indefinitely, calling for constant revision. It is proposed to take up a few subjects at a time. The subjects which have been suggested for earliest treatment are Conflict of Laws; Negligence in the law of torts; Corporations, especially with a view to the nature of corporate being; and, since uniformity and precision in the use of terms must accompany any attempt at an adequate statement of law, legal terminology.

The control of the work is vested in the governing body of the Institute, a council of twenty-one to be chosen by the members of the Institute for terms of nine years. The council expects to follow a plan similar to that which the Commissioners on Uniform State Laws have pursued in drafting statutes. Each subject will be placed in the hands of a committee of experts on that subject. The committee will appoint a draftsman with such assistants as may be needed. The tentative draft will be revised by the committee and the revision published and widely distributed among judges and lawyers for criticism and suggestions. Thereafter it will be again revised and finally submitted to the Institute as a body for approval.

The members of the council just elected are Elihu Root, honorary president, George W. Wickersham, executive president, Judge Learned Hand, Judge Benjamin N. Cardozo, Chief Justice Arthur P. Rugg, George E. Alter, John W. Davis, Herbert S. Hadley, William B. Hale, James Parker Hall, Alexander King, William Draper Lewis, Edward J. McCutcheon, John G. Milburn, A. J. Montague, Victor Morawetz, George Welwood Murray, E. N. Parker, Cordelio A. Severance, Harlan F. Stone and Samuel Williston.

The Institute expects to number among its ex-officio members the senior judge of each of the United States Circuit Courts of Appeals, the Attorney-General and the Solicitor-General of the United States, the Chief Justice of the highest court of each state, the president of the American Bar Association and the members of its executive committee, the president of each state bar association, the dean of each school belonging to the Association of American Law Schools, the commissioners on Uniform State Laws, and the presidents of several learned legal societies. The membership also includes upwards of two hundred other persons elected because of their professional standing and interest in the improvement of the law. Among them besides those already mentioned are United States Senators Bayard, Borah, Ernst, King, Pepper, Reed of Pennsylvania, Shields and Spencer, Hampton L. Carson, Frank B. Kellog, Walter George Smith and Henry St. George Tucker, former presidents of the American Bar Association; and such well known lawyers as James Byrne, Charles F. Choate, Robert Lansing, Louis Marshall, Herbert L. Parsons, John Barton Payne, Henry L. Stimson and Moorfield Story.

The members elected from Illinois are as follows: Hon. Andrew A. Bruce, Jacob M. Dickinson, Walter F. Dodd, Victor Elting, Walter L. Fisher, Hon. Clarence N. Goodwin, Frederick Green, William B. Hale, James Parker Hall, Herbert Harley, Albert J. Harno, Hon. Marcus A. Kavanagh, Roy D. Keehn, Floyd R. Mechem, Nathan William MacChesney, John R. Montgomery, Hon. Floyd E. Thompson, Edgar B. Tolman, and John H. Wigmore.