LEGAL EDUCATION AND THE RESTATEMENT OF THE LAW BY THE AMERICAN LAW INSTITUTE.*

During the last three years there have been two developments in the legal profession that promise to have far-reaching consequences. One is the effort to raise the standards of legal education, and the other to improve the law and bring it into harmony with modern life through its restatement.

Both of these movements originated in the leading Law schools of the country and both of them have received the approval and support of the American Bar Association and generally of the State and Local Bar Associations of the Country.

That both of these efforts were much needed has been demonstrated by the increasing volume of criticism of the profession and the law during recent years. This criticism has come both from within and from without the profession. It has expressed the growing conviction that the profession as a whole was not commending itself to public confidence and approval, and that the law as an agency for the settlement of private controversies and the maintenance of the peace and order of society was proving inadequate and inefficient. The discussion as to the proper standards of legal education, which began many years ago, culminated in the adoption by the American Bar Association in 1921 of a resolution for which Senator Elihu Root was the sponsor, declaring that law schools should require as a condition for

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matriculation at least two years of college work, should possess an adequate library and force of full-time teachers, and give a course of instruction of three years' duration. In the following February, at a meeting of delegates from State and Local Bar Associations, representing every State in the Union, this resolution was endorsed and approved, and, at the meeting of the American Bar Association in 1922, its Council on Legal Education was directed to classify and make public the classification of the law schools which did and those which did not comply with these standards. This work has been completed and only thirty-nine law schools out of the 146 in the country have been found to comply with the standards fixed. Thus there are 107 law schools that the organized legal profession has declared inadequate for the proper training of a lawyer.

I do not propose to argue the correctness of this issue. I know that law schools failing to measure up to the standards fixed by the American Bar Association have on their faculties many capable lawyers and teachers, some of whom are my close personal friends who are earnest in their work and confident of its value to their students. But their standard of legal education is in conflict with that which the profession has proclaimed through its organized agencies as necessary, if our profession is to be a profession of properly trained lawyers. That education will not always accomplish the desired result is of course true, but unless the whole theory upon which we pay over half of our public revenue for the support of education is wrong, then the profession is fully justified in its efforts to raise the standards of education for admission to the study and the practice of the law.

While the profession in its organized capacity can exert an effective influence in the fixing of the standards in legal education, the more serious problem that confronts us is to

raise the standards fixed by legislatures and courts for admission to the Bar. For instance, in this State four of the six law schools do not comply with the standards of the American Bar Association in the opinion of its Council on Legal Education. But each of these schools that do not comply is, I have no doubt, doing more and requiring more of its pupils in general education and in legal knowledge than do the statutes of the State require for admission to practice. Of all the States which fix a standard of general education for admission to the bar, Missouri's standard is the lowest. But to the credit of the Supreme Court and the State Examining Board, the educational requirements fixed by statute as the equivalent of a common school education, have been interpreted as a requirement for a high school education. But the statute fixes no limit of time in which the general or legal education shall be acquired. While our present law, which was passed during my term as Governor, was a distinct improvement over the methods of admission to practice then provided for, they are strikingly deficient when compared today with the standards fixed by the American Bar Association.

So to the credit of our sister State of Kansas let it be noted that she is the first State to provide practically the same requirements for admission to the practice of the law as the American Bar Association has declared are necessary for the education of a properly trained lawyer.

The history of legal education in this country is an interesting one and reflects in a way the development of the country itself. The one notable contribution of our country to education is the case system of instruction, which is now being adopted in other departments of education. But even with the case system of instruction in use in the leading law schools of the country, our law schools up to the last five years have been generally nothing more than trade schools,

whose curricula and whose methods of instruction were devised to equip one for the effective practice of the law. It is only in the last decade that such subjects as the history and the philosophy of the law, comparative jurisprudence, and the civil law have generally been found in the courses of study; it is only in recent years that it began to be felt that a lawyer should, by his course of study, be made to feel that he was the administrator of a system of jurisprudence which is the product of centuries of human life and experience, that he owes duties and obligations to the law as a system which constitutes the basis of all enduring human institutions.

With this growing recognition of the obligations incident to the study and the practice of the law, there has come a wider sense of obligation on the part of those who have done the work of instruction in the leading law schools of the land. Originally the teachers of law were simply a substitute and sometimes a poor substitute for the lawyer in whose office the law student had previously studied. Generally, however, these teachers of law did their work earnestly and effectively, particularly after the adoption of the case system of instruction and the evolution of the law school from a money-making enterprise to a recognized part of a university education. But with a few notable exceptions the work of the teachers was confined to the work of instruction, the collection of cases for instruction, and the writing of law books in the nature of a digest or encyclopedia. Little effort was made to examine the history and analyze the theory of different legal subjects. The few works of a really scientific character written by our teachers of law, of which Wigmore on Evidence stands as a notable example, emphasize the vocational character of our system of legal education up until a few years ago. However, a few thoughtful teachers of the law, under the

leadership of William Draper Lewis of the University of Pennsylvania, began a few years ago a consideration of the subject of the restatement of the law by which it could be freed from its present confusion, complexity and uncertainty, and made clear, simple and adapted to the needs of our present day life. While the increasing complexity, confusion and conflict in our laws were daily made more evident by the increasing volume of case-made and statute-made law, the general practitioner was disposed to be sceptical of any substantial improvement. With the varied sources of law pouring forth their several streams into the reservoirs of State and National jurisprudence, the task did seem almost a hopeless one. But while to all some escape from the "wilderness of single instances," the jungle of confusing and conflicting decisions seemed desirable and necessary, only a few saw clearly the hope of better conditions in an effective restate ment of controlling legal principles. And in reaching the decision to inaugurate such an ambitious and difficult undertaking the fact that it was largely through restatement that the Roman law had acquired its harmony, its simplicity, and its adaptability to different conditions of civilization was an encouraging and inspiring influence. So with the assistance of some of the leaders of the practicing profession, among whom was Senator Root, and with the encouragement of a few of our able judges such as Judge Cardozo of the New York Court of Appeals, and Judge Learned Hand of the United States Circuit Court, a conference of representatives of the Bench, the practising profession and the teachers of law was called to meet at Washington, D. C., last February.

At this meeting, after a full explanation of the plans and purposes of the enterprise, there was organized the American Law Institute to carry on this important work. The plan of organization is a simple one and, I believe, will secure

for the work undertaken the best thought of the profession. The membership of the Institute consists of the Justices of the Supreme Court of the United States, the presiding judge of the highest court of appeals in each State, the presiding judge of the different United States Courts of Appeal, the officers of the American Bar Association, the president of each State Bar Association, the dean of the law schools which are members of the Association of American Law Schools, and 150 to 200 representative members of the profession. A Council, consisting of twenty-one members, was elected to be the Managing Board of the Institute, the number of the Council being subject to increase to thirty-three, the terms of one-third of the members expiring every two years. The work of the Institute is, in a general way, in charge of the Council, which determines the subjects for restatement, selects those who will do the work, and in the first instance passes upon the restatements proposed. But no restatement becomes final until approval at a meeting of the Institute, and such restatements must be submitted to the members of the Institute sufficiently in advance of the meeting to make the criticisms of the members worth while.

I have neglected to mention a matter of particular importance, and this is that the Carnegie Corporation was so favorably impressed with the necessity and practicability of the work planned that it has given to the Institute something over one million dollars, which provides approximately $10,000 a year for the payment of expenses for the next ten years. The Council was fortunate in securing, as Director of the Institute, William Draper Lewis, who is a man of large experience in public life, a thorough scholar, an able lawyer, a man of broad vision, great tact and fine capacity for organization and direction of large enterprises. Elihu Root is the Honorary President, George W. Wickersham

active President, and the Council, composed of practising lawyers, judges and teachers of law, represents every section of the country.

At the meeting of the Institute, last February, there was some discussion of the subjects that the Council should first select for restatement, and the importance of a restatement of the criminal law and the law of criminal procedure was strongly urged and strongly opposed. The opposition was largely based upon the contention that the principal defect in the administration of the criminal law in this country was not in the law itself, but in the incapacity of those who administered it, including the trial juries. In view of the divided opinion, the Institute declined to give any directions to the Council as to the selection of subjects. But the Council, feeling that the defects in the administration of criminal justice constituted in the public mind at least one of the principal causes of dissatisfaction with our profession and the law, decided to appoint a committee to examine and report as to the defects in the administration of criminal justice, and inferentially at least to suggest methods of correction. The Committee, consisting of Honorable John G. Milburn of the New York Bar, Dean William M. Mikell of the University of Pennsylvania Law School, and the writer as Chairman, has been engaged in this work for the past four months, and the report is now in the hands of the Council. I should not, of course, anticipate its statements or conclusions; but some reference will not be inappropriate to the general plan followed.

In addition to securing valuable criminal statistics, the Committee secured through the presiding judge of the highest court of appeal and the attorney-general of each State information as to the present system of criminal procedure in the different States, and from these officers and the presi-

dents of the State Bar Associations, the members of the Council of the American Law Institute for each State, and the prosecuting officers of fifty of the largest cities in the country, an expression of opinion as to the principal defects in the administration of justice in this country. The answers were interesting and illuminating, and warrant some definite conclusions. A significant fact is that the several Chief Justices who expressed the most complete satisfaction with our present system of criminal procedure and who were most emphatic that there were no defects in the administration of criminal justice, were of the States which have the largest number of unlawful homicides in proportion to the population. What connection, if any, there is between this judicial attitude and the frequency of the crime of homicide I will leave to the members of this Association to decide.

The further work undertaken by the Council includes a restatement of the law of contracts, under the direction of Professor Samuel Williston of Harvard University Law School, who has been justly regarded as one of the leaders in legal education in this country and whose work on the law of Contracts in a measure constitutes a restatement of that important subject. Professor Bohlen of the University of Pennsylvania Law School was selected for a restatement of the law of Torts, a subject to which he has given many years of careful consideration as a teacher and a writer. Joseph H. Beale of Harvard University Law School, who needs no introduction to the profession, has been selected to direct the restatement of the confused subject of the Conflict of Law. Professor Floyd R. Mechem of the Law School of the University of Chicago has been selected to restate the subject of Agency, with the discussion and clarification of which he has for so many years been identified.

In addition to these initiated restatements Dean Roscoe Pound has prepared a report on Legal Classification and

Terminology, and Mr. Lewis (the Director of the Institute) a report on the Practicability and Advisability of a Restatement of the Law of Business Associations. Each of the men named, who have taken the responsibility for a restatement of any legal subject or report, has called for counsel and assistance members of the faculties of the principal law schools of the country, such as Yale, Columbia, Harvard, Northwestern, Cornell, Washington, and others, and both the form and the substance of the work so far accomplished represent the result of extended discussion and careful investigation. The work now initiated by the Council of the Institute is of importance as evidencing the most comprehensive and best organized effort towards the clarification and simplification of our laws that has ever been undertaken in this country; and it also evidences something which is of even more importance to the profession. It presents the leading law schools of the country in a new status, or rather in a new relation to our profession and the law. Hitherto, as I have said, the principal work of the Law Schools has been the preparation of their students for admission to the bar and the practice of the law. This work has been well or poorly done according to the standards and the practices of the different schools. In recent years many of our best schools have endeavored to, and have done more than this; they have dignified the law as a profession by requiring that those who entered upon its study have the preliminary training of a broad, liberal education, and that by their course and methods of study in the law schools they should come to know the history and the philosophy of the law, its relation to all activities of life and its value and importance as the cement that binds together the structure of human institutions. Now, the law school has come to have a new and different meaning to the profession through the organization and the work of the American Law Institute. They had

the same centers of juristic thought for the improvement, the simplification and the adaptation to modern life of the law itself. The profession and the judges have apparently welcomed this leadership of the teaching profession realizing that this work cannot be done in the hurried law office of the day or in the courts, subject as they are to the constant pressure incident to the consideration and decision of cases. The profession has also realized that while commercial enterprises for the compilation of encyclopedias and digests have done much to lessen the work of the lawyer and the judges, they have not met the ever-increasing demand for an improvement and simplification of the law itself. The profession and the judges have by force of conditions been compelled to deal with each case as it arises as a part of the day's work and the final decision of which must of necessity be determined by a selection from a conflicting line of authorities. A decision stating clearly and forcibly correct principles of law was simply another authority added to the already over-burdened shelves of our law libraries. The increasing volume of adjudicated cases pouring forth from courts of appeal in forty-eight States, from the United States trial and appellate courts, and from the Supreme Court of the United States constitutes a mass of law which, as Gibbon said of the Roman law in its period prior to the restatements of Theodosius and Justinian, "No fortune could purchase and no capacity digest." And when to this mass of adjudicated cases is added the statutory enactments of 48 legislatures and the national Congress and the decisions of almost innumerable boards and commissions of the National Government and the different States with judicial or semi-judicial powers, we find a most impressive demonstration of the imperative need of some restatement of the principles of the law which defines our rights and our duties and regulates the increasing complexity of modern society. The

work to be done is manifestly both important and difficult. But it is evident that we will accomplish nothing by emphasizing our difficulties and doing nothing.

The work of the American Law Institute may fail to realize the high hopes and expectations of those responsible for its existence, but that it will accomplish much of good seems definitely assured. Its work of restatement may be but the prelude to other similar undertakings, for we find that at least three comprehensive restatements, including the commentaries of many able jurists, made possible the notable work of Justinian. But a start has been made and it is with the legal profession as a whole to determine whether the undertaking shall realize the hopes of those who have organized it and meet the pressing need for an improvement of our laws. I will feel well repaid for my presence here today, if I have helped to impress upon your minds the importance of our doing all that we can do to make more definite, harmonious and adaptable to modern life that great system of jurisprudence which we have inherited and developed; and we will justify or disappoint the confidence and the hopes of the public as we fail or succeed in the execution of this important work. Let us strive at least to give to the future as great a gift as we have received from the past.

It is ten years since I have attended a meeting of this Association, and a good deal of water has gone by the mill in that time. Through the work of what Walter Williams called, when I was elected Governor, an all-wise but unscrupulous providence I have been not only absent from the State, but removed from active association with the lawyers of Missouri. And yet throughout all this period, and even now I find it hard to think of myself otherwise than as a Missouri lawyer anxious to go into the trial of a jury case or an argument before the supreme court. Though I value as a high privilege the opportunity for service in the work in

which I am now engaged, as I valued highly the opportunity to teach law, I feel that the happiest years of my life were those I spent as a practicing lawyer in Missouri. I look back with pride and satisfaction to my relations with my fellow-lawyers, and if there is one with whom I had anything but the most pleasant relations, I do not know it.