

Tribute to Geoffrey Hazard

THE HONORABLE ANTHONY J. SCIRICA[†]

It is with unbounded admiration that I join in these wonderful tributes to an extraordinary man, Geoffrey Hazard. A few years ago, I joined several friends in a tribute to Geoff published in the *University of Pennsylvania Law Review*.¹ It is entirely fitting that Geoff be similarly honored by the *Hastings Law Journal*. Geoff was a treasure of integrity, incandescent insight, and wise counsel. And he was an incomparable friend.

It is difficult to overstate the profound influence that Geoff has had on the state of the law during his distinguished career as legal scholar, rule-maker, and former Director of the American Law Institute. But I would like to relate some personal stories.

If you ever played tennis with Geoff, the first thing you noticed was that he was a good athlete. The second thing you noticed was that he had no apparent weakness. The third was that he played to win. And the last was that he was generous, gracious, and fun to play with. And if you played mixed doubles—as we often did together with our wives, Beth and Sue—all of the above also applied.

If Geoff had been a professional tennis player, he would have won multiple grand slams on different surfaces on different continents, having displayed unmatched skill, unflagging stamina, and extraordinary finesse, all the while earning the respect and admiration of younger players, as he nurtured their careers.

In short, he would have been one of those magnificent players who transforms the game.

Our friendship began soon after Geoff left Yale Law School to join the law faculty of the University of Pennsylvania, and he and Beth moved to Philadelphia. We had known each other from our service on the Supreme Court procedural rules committees, Geoff on the parent Committee on Rules of Practice and Procedure, and I on the Advisory Committee on Civil Rules. Our

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1. See Anthony J. Scirica, Tribute, *A Wise Man of the Law*, 158 U. PA. L. REV. 1301 (2010).

friendship deepened when I was appointed chair of the Committee on Rules of Practice and Procedure, commonly known as the Standing Committee.

At that time, I was an adjunct professor at Penn and had the good fortune to have been invited by Professor Stephen Burbank to join in his seminar on civil procedure. When Steve went on sabbatical leave, Geoff suggested that we teach the seminar together. The pairing stuck, and Geoff and I went on to teach that seminar together for almost two decades. When Geoff and Beth moved to San Francisco and Geoff joined the law faculty at Hastings, we had the providential good fortune to be joined by Professor Catherine Struve, whom Geoff greatly admired. Geoff continued to teach the seminar with us by video conference.

Year after year, students were quick to recognize their great good fortune. As his former student Michael Fitts put it, Geoff had “a serious and penetrating style that deeply challenged the class and brought the subject matter to life.”² He effortlessly wed doctrine with practice, drawing on history and deep principles of the law without overcomplicating matters. An apostle of rigorous thinking and clear exposition (as he used to say, “describe the metes and bounds”), Geoff took time to help students refine their analytical skills. He was patient, welcoming, and generous. The students were thrilled. On a recent occasion, Geoff remarked, “I have always cherished the opportunity to teach. I have also cherished the opportunity to learn.”

Geoff was also a rule-maker. For several years, we served together on the Standing Committee. No member made a greater contribution. He was patient and sympathetic, and, when necessary, constructively critical. His advice was precise and essentially pragmatic, informed by decades of rigorous thought on a multitude of topics and first-hand experience as a lawyer, scholar and educator. As with the Restatements he guided to fruition that profited from his insight and care, Geoff’s learning, intellect, and unerring judgment were invaluable. And his value was appreciated and recognized when, at the end of his term of service, Chief Justice William Rehnquist appointed Geoff as consultant to the Standing Committee.

The range of Geoff’s interests was astounding. But none was more important to Geoff than the administration of justice, and building and strengthening institutions that safeguard the rule of law. In this regard, he had a sharp eye on our constitutional system’s separation of powers and checks and balances, and on the proper but indefinite lines dividing authority between our three branches of government, so essential to the functioning of a stable democracy.

For fifteen years Geoff was the director of the American Law Institute (ALI), which has long been recognized worldwide as a uniquely valuable institution. Under Geoff’s leadership, the ALI thrived as a “cooperative venture

2. Michael Fitts, *Tribute, A Time-Honored Model for the Profession and the Academy*, 158 U. PA. L. REV. 1289, 1289 (2010).

of concerned professionals” from across the law, engaging “matters of public interest.”³ Geoff recognized that there was “no single viewpoint—no Olympian height—from which to contemplate a legal system in a comprehensive way.”⁴ So he encouraged lawyers from all corners of the profession to engage what he called “operative law”—that is, “with the legal system itself—inside the sausage factory.”⁵ The results spoke for themselves. Other countries considering whether to create a similar model asked Geoff for advice and counsel. In recent years, Geoff was sought out by legal institutions in the European Union and in Latin America.

A few years ago, we travelled to Buenos Aires, Argentina, where we participated in several conferences with Argentine judges and lawyers. Of particular interest to the Argentine legal community was the role and experience of the American Law Institute. And then, in 2009, the Chief Justice of Argentina convened a Conference of the Supreme Courts of the Americas in Buenos Aires. Geoff and I were invited.

Geoff and I collaborated on a paper that was presented to the Conference, entitled “The Constitutional Role of the American Law Institute.”⁶ Geoff gave a stunning talk at the conference, explaining the role and value of the American Law Institute. The paper was later published abroad. I include the concluding paragraphs, which capture how the ALI was able to masterfully bridge and connect the worlds of the academy, law practice, and the administration of justice:

The [ALI] project technique brings about a convergence of viewpoints and experience from the various professionals in the law—judges, lawyers, and academicians. It can be said that the judges bring to the deliberations their sense of responsibility to the law and knowledge of administering the law; that the lawyers bring their knowledge of the practical working of the law and the viewpoints and interests of those affected by the law; and that the academics contribute their familiarity with legal theory and legal history and the tradition of legal scholarship.

However, there is no division of responsibility and competence, but rather mutual appreciation and respect. All participants are expected to leave their professional affiliations “outside the door,” whether the interests of clients of the lawyers, the interests of judges in their positions in the judiciary, or the interests of academicians in their academic reputations.

The product of the projects—the Restatements and the Principles in various subjects—represents the convergence of intellectual effort among the branches of the professions. The Restatements and Principles have achieved a respected reputation in the judicial and professional community outside the ALI. The final texts are not legally official or obligatory, but rather educational and persuasive.

3. Geoffrey C. Hazard, Jr., *The American Law Institute Is Alive and Well*, 26 HOFSTRA L. REV. 661, 664 (1998).

4. *Id.*

5. *Id.*

6. Geoffrey C. Hazard, Jr. & Anthony J. Scirica, *The Constitutional Role of the American Law Institute*, in CONFERENCE OF THE SUPREME COURTS OF THE AMERICAS 463–68 (2009).

Over the years since the ALI was founded, its work has come to be accepted as very reliable, both within the United States and in the international legal community.

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The work of the ALI has brought together members of the judiciary, the practicing legal profession, and the law faculties in a common purpose of improving and refining the law. Pursuing that purpose has become of increasing practical importance as the rate of social change has accelerated in the modern era. The work of the ALI therefore has never been more significant in practical terms. It represents an unofficial but serious and respected “voice” concerning the community’s law and its administration.

A by-product—a secondary consequence—of the ALI’s work has been the continuous strengthening of the professional relationships among the judiciary, the practicing legal profession, and the faculties of law. These relationships have yielded greater understanding and acceptance of the various aspects of the law—the responsibility for its administration by the judiciary, the awareness of its practical effects through the legal practitioners, and, through the academicians, appreciation of specific subject matter in the larger fabric of law. It has thus contributed to what may be called professional solidarity among the judiciary, the practicing profession, and the legal academy.

This increased solidarity in turn is a source of strength in the relationship between these professionals and the public at large, particularly in the political and constitutional processes in which the law must be administered, practiced, and studied. In the common-law tradition, as in the United States, the underlying affinity within the branches of the profession is probably greater than in many civil-law systems. An institute similar to The American Law Institute could increase the affinity within the professions in a civil-law system.⁷

Geoff impressed us all with how deeply he played so many and such varied roles in the law. We are fortunate that he imbued his energy and vision for collaboration into the American Law Institute and all of the other institutions of which he was a part. Geoff’s ability to foster professional solidarity among different institutional players in the law will reward us for generations to come.

7. *Id.* at 467–68.