

A Tribute to Geoff Hazard from an Admirer, Colleague, and Friend

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I was introduced to the scholar, Geoffrey C. Hazard, Jr., in my first-year civil procedure course in 1968, where his seminal articles about indispensable parties,¹ interpleader,² and personal jurisdiction³ established him as a leading civil procedure scholar, even though it was still in the early stages of his career. Not surprisingly, subsequent publications and his many leadership roles in the legal profession⁴ now have made his influence legendary. But my first real opportunity to get to know and work with Geoff, and to think of him as a friend and colleague, was through the American Law Institute (ALI). And so, in this brief tribute I will focus on Geoff's contributions as both a Reporter and the Director for the Institute, as well as his continuing contributions after he retired as Director and later joined the Hastings faculty as the Thomas E. Miller Distinguished Professor of Law.

The goals of the American Law Institute are "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."⁵ Geoff's first major substantive contribution to those goals is seen in his work for nine years as the Reporter for the Restatement Second of Judgments, published in 1982. That Restatement exemplifies in every aspect the objectives of the ALI. It approached a field that many would say is extremely complex and masked in mystery, yet it sets forth the underpinning doctrines in clear and effective prose. More important, it transformed the field

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1. Geoffrey C. Hazard, Jr., *Indispensable Party: The Historical Origin of a Procedural Phantom*, 61 COLUM. L. REV. 1254 (1961).

2. Geoffrey C. Hazard, Jr. & Myron Moskowitz, *An Historical and Critical Analysis of Interpleader*, 52 CALIF. L. REV. 706 (1964).

3. Geoffrey C. Hazard, Jr., *A General Theory of State Court Jurisdiction*, 1965 SUP. CT. REV. 241.

4. My personal appreciation of his expertise is, of course, in civil procedure as it is my own field. But, he has been equally influential in the field of Professional Responsibility, where he was the Reporter for the American Bar Association Model Rules of Professional Conduct, promulgated in 1983, and the draftsman-consultant for the ABA Model Code of Judicial Conduct, promulgated in 1972.

5. The goals are set forth in the Institute's 1923 Certificate of Incorporation and have remained consistent through its history.

by importing new terminology that better expressed the policies underlying and the effects of judgments to make more accessible the complicated case law that supports these doctrines. Thus, what was formerly “res judicata” became “claim preclusion” and “collateral estoppel” became “issue preclusion.” The terms had been suggested by an earlier scholar,⁶ but Geoff adopted them and persuaded the Institute’s membership as to the need to use new ways of talking about the binding effect of judgments in order to clarify and simplify this most challenging area of the law. He also introduced a new formulation to define the scope of judgments and the “transaction” standard replaced the outmoded “cause-of-action” standard that was a holdover from the days of code pleading, but not meaningful in the modern joinder era. The influence of this work is seen to this day as this terminology and the transaction standard are now the accepted ways to examine the binding effects of judgments.

In 1984, Geoff succeeded Herbert Wechsler as the ALI’s fourth Director, serving in that capacity for fifteen years. In that role he oversaw numerous Restatement projects, including Agency, Property, Restitution, Suretyship, Torts, Trusts, Unfair Competition, and the Law Governing Lawyers. He also guided less traditional projects, such as the Complex Litigation Project, and other Principles projects, such as the Law on Family Dissolution. Those projects are addressed to courts, legislatures, or agencies and express the law as it should be, but may or may not reflect the law as it is. He also expanded the Institute’s scope to focus on some international projects, such as the one on Transnational Insolvency. The listing of the above projects is not meant to be exclusive, but is designed to illustrate the incredible breadth of his abilities. I say that because, although he was not an “expert” in many of the above fields when those projects were begun, no one would gainsay his expertise at their conclusion. He immersed himself in all the details, but always had a clear vision of the bigger picture. When the projects were brought forward for approval first by the Institute’s Council and then by its membership at the Annual Meeting, he really listened carefully to the competing arguments on controversial topics. And, quite frequently, he was the one who finally would suggest a common resolution to which all could agree.

My work with Geoff in the ALI began in 1990, when, as Director, he asked me to serve as a co-reporter with Arthur Miller, then of Harvard, for what was to become the Complex Litigation Project.⁷ The Project was designed to develop an understanding of the phenomenon of multiparty, multiform lawsuits and to analyze potentially fruitful options for mitigating the problems those cases pose. Throughout the four years during which we did that project, Geoff shepherded us through the sometimes contentious processes that led to our final

6. For years, Professor Allen Vestal urged the new terminology in a series of articles. One of the earliest is Allan D. Vestal, *Rationale of Preclusion*, 9 ST. LOUIS U. L.J. 29 (1964). Allen Vestal also was one of the Advisers to the Restatement Second of Judgments.

7. AM. LAW INST., *COMPLEX LITIGATION: STATUTORY RECOMMENDATIONS AND ANALYSIS* (1994).

recommendations. He was simply masterful, did not suffer fools gladly, and supported his reporters and their work with grace, skillful political savvy, and carefully crafted suggestions to find common ground among competing ideas.

Our collaboration expanded after he retired as the ALI Director. He immediately embarked as a Reporter on yet a new, international ALI Project—the ALI/UNIDROIT Principles of Transnational Procedure—a project with two other co-reporters in Germany and Italy and one Associate Reporter from Brazil. The Project was designed to craft a set of procedural rules that could be understood and applied in commercial settings in courts around the world, whether civil or common law. The core idea was to find commonalities between procedural systems, rather than focus on the differences, and to build on those common grounds. To accomplish that the ALI did something unique in the way the project was structured. While there was the typical Advisory Committee appointed by the ALI Council of predominantly U.S. experts, we also had advisory committees in countries throughout the world and the Council asked Edward Cooper (of the University of Michigan) and me to serve as Council liaisons to those committees. Thus, for several years we travelled with Geoff (and Mike Traynor who was then the ALI President and Lance Liebman, the then Director) to places around the globe presenting proposals and getting feedback as to what would or would not work in different systems. Not surprisingly, the meetings were totally fascinating and, after each one, the Reporters ably shaped and reshaped their proposed system to meet the concerns and questions of the varying legal communities. The success of the project is seen in the approval of its final set of recommendations separately by the Institute and then by Unidroit in Rome.⁸ Even more impressive is the fact that the proposed transnational rules are spurring law-reform efforts in Europe today with the newly formed European Law Institute engaging in a joint project with Unidroit to try to develop model European rules of procedure, using the earlier project as a starting point.

Travelling with Geoff for the transnational rules project provided me the first real opportunity to know him more than as a procedure colleague. As many know, travelling together can either make you better friends or enemies—fortunately, we remained friends. Watching Geoff adapt to local cultural customs, exercising superb diplomatic skills in doing so, was most elucidating. Anyone who knew Geoff knows that he was a very dedicated and serious worker and that he did not like to waste time on frivolities. And these were working trips. I still remember him complaining to us (his U.S. colleagues) about why it was that in Bologna the Italians insisted on two-hour lunches, with wine served! And in China, we were treated to some very long and elaborate banquets—one of which had some non-identifiable and not very appetizing looking offerings. So much so, that we finally told our interpreter to please not

8. ALI/UNIDROIT, PRINCIPLES OF TRANSNATIONAL CIVIL PROCEDURE (2004).

tell us any more what we were being served because otherwise we might not be able to eat it at all! But I am sure our hosts never had even a vague inkling of his dismay. He understood that our hosts' gracious attempts to entertain us were a necessary part to encourage the intellectual exchange.

I say with no exaggeration, that one of the best professional days I had during my deanship was the one when Geoff telephoned me to say that he and his wife, Beth, were contemplating moving to the Bay Area for the next phase of their lives and he wondered whether Hastings might be interested in having him join the faculty. For the next ten years, Geoff was an integral part of our faculty, offering sage advice to the administration and colleagues about law school matters. (He never missed a faculty meeting!). Even more important, he was deeply involved in the intellectual life of the college, attending colloquia, workshops, lectures, etc. and offering his unique insights to help all of us improve our understanding of the law and our scholarship. There could be no better mentor for junior and senior faculty alike. I am so gratified that my Hastings colleagues had the opportunity to get to know and learn from such a legal giant. His love of the classroom and his students also was on display daily and the students returned it. Indeed, when he was eighty, he volunteered to teach Constitutional Law, which he had not taught in decades, when he learned that we had a sudden need and no one to fill it. He was an institutional loyalist and his lifelong career exemplifies the very best of our profession.