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Preamble

Herbert Wechsler

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Preamble

*Herbert Wechsler**

As readers of the *Review* are undoubtedly aware, the American Law Institute was organized in 1923 as a permanent organization of lawyers, judges, and law teachers "to promote," as its charter recites, "the clarification and simplification of the law and its better adaptation to social needs." It has been engaged for more than fifty years in the continuous restatement of important aspects of the common law and, in predominantly statutory fields, in drafting model codes and other systematic legislation. Its legislative contributions have included the Uniform Commercial Code (1952, 1958, drafted in collaboration with the Commissioners on Uniform State Laws), the Model Code of Evidence (1942), the Model Penal Code (1962), the Model Code of Pre-Arrest Procedure (1975), the Model Land Development Code (1975), Study of the Division of Jurisdiction Between State and Federal Courts (1968) (proposing revisions of Title 28 of the United States Code), and important work in federal taxation.

Given this background, it is not surprising that the Institute responded with enthusiasm to the proposal, originating with Professor Louis Loss and strongly seconded at conferences convened by the Committee on Federal Regulation of Securities of the American Bar Association Section of Corporation, Banking, and Business Law, that it undertake to codify—and in the process to systematize, clarify, rationalize, and, within limits, seek to improve—the federal statutes governing the regulation of securities.

Work on the Code began¹ in 1969 with Professor Loss as the Reporter, aided by consultants and advisers whose experience and expertise is equaled only by their high distinction in this field. Five tentative drafts have been printed in the years from 1972 to 1976

* Director, The American Law Institute. Harlan Fiske Stone Professor of Constitutional Law, Columbia University. A.B., City College of New York, 1928; LL.B., Columbia University, 1931; LL.D., University of Chicago, 1962; LL.D., Harvard University, 1967.

1. Resources for the project were provided by the American Bar Endowment, the Avalon Foundation, the Ambrose Monell Foundation, and the Beaumont Foundation, with supplementary grants from the Bar Endowment and the Andrew W. Mellon Foundation.

and a sixth, which now is off the press, completes the basic coverage envisaged. The remaining task, which is of crucial import, is to take account of the revisions in the drafts developed in the course of their consideration, and to reach agreement on such other changes as criticism or reflection shows to be required. It is hoped, but of course cannot be assured, that this can be accomplished in the course of 1978.

This symposium represents the first thorough and critical examination of the product of this labor, apart from the successive reviews of the submissions by the consultants and advisers, the American Bar Association Committee on Federal Regulation of Securities (which has met annually to discuss the tentative drafts), the Council of the Institute, and, finally, the annual May meetings. The two issues of the *Review* devoted to the subject will permit the kind of in-depth study that alone can make a useful contribution. The papers here presented are of the highest quality and, considering the authors of the studies still to come, one may be confident that quality will be sustained. It goes without saying that the support that here is indicated for the code endeavor is extremely welcome but, even more important, that recommendations for constructive change will be considered carefully in the final process of revision. We are, indeed, immensely grateful to the *Review* and to its authors that the publication has been timed to precede the completion of the Code.

It risks the tedium of twice-told tales to say more about the background and objectives of the Code than Professor Loss says hereafter in the Introduction. I should be remiss, however, if I did not make clear what everyone connected with the effort knows: the project was made possible by the willingness of Professor Loss to serve as the Reporter. His distinguished treatise gave systematic clarity and coherence to the first six of the seven Acts of Congress that comprise our subject (The Securities Investor Protection Act of 1970 having followed his latest revision). His judgment that the integration of these statutes in a single overall enactment would be feasible and useful, his status as a disinterested scholar in the field with full grasp of both its practical and theoretical dimensions, his integrity and fairness in approaching controversial issues, were crucial determinants of the conclusion that it was prudent to proceed. If a Code emerges from this effort, its paternity will never be in doubt, however significant and pervasive the influence of others on its maturation.

One may perceive in this, I think, a point of cardinal import-

ance for the future of our law. In an age of incredible legal proliferation at the hands of both the legislatures and the courts, the sense of perspective and of balance that derives from viewing any given subject as a whole often is sorely missing in the process. Where in the culture can an antidote be found if not in the patient, systematizing impulse of the legal scholar, involved in current controversies, to be sure, but motivated to withdraw sufficiently to differentiate the forest from the trees? I have said before, and welcome the opportunity to say again, that our law has no greater need today than the pedagogue who deems himself a trustee of the law that he professes, steadfastly concerned with its consistency, its grace, its articulation, and improvement, viewing the subject in its entirety, disinterestedly and over time. This was the classic view of our seniors in the schools in the era of the famous treatises. It is no less the need today, though with a different emphasis, since progress rests so much more largely upon legislation. I should be hard put to find a better illustration than the work of Professor Loss, which paved the way for and in large part shaped the codification effort that is the subject of these interesting and important papers.

