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Yiannopoulos Book Review

BOOK REVIEW

CIVIL LAW OF PROPERTY. (Volume I) The Law of Things — Real Rights — Real Actions. By A. N. Yiannopoulos. St. Paul: West Publishing Co., 1966. Pp. xvi, 501. (Louisiana Practice Series.) $20.00.

"Doctrine" plays an important role in civil law methodology. In the famous law review debate of the Thirties,[1] for instance, a lack of doctrinal writings was cited as one of the reasons why Louisiana should not be considered a civilian jurisdiction. Doctrine, of course, is the interpretation of law by legal scholars through treatises and articles. Doctrine gives orientation, direction, and synthesis to the development and application of law.

In this respect, the publication by the Louisiana State Law Institute in 1959 of its translation of Planiol's *Civil Law Treatise* added another dimension to legal research in Louisiana insofar as the day-to-day civil code problems of the ordinary practitioner and of the intermediate and trial courts are concerned. Interpretation of the Louisiana articles is aided by resort to Planiol's analysis of the historical background and functional purpose of the equivalent predecessor articles of the French Code. The availability of the Planiol treatise in English and within the reach of every practitioner and lower court judge has since 1959 resulted in far more ready willingness than previously to apply Louisiana civil code articles in the light of their purpose and their civilian tradition, rather than, say, of a meaning derived only exegetically.[2] Added momentum to this trend may be expected from the recent publication of English translations by the Law Institute of additional authoritative French treatises on obligations and on property.[3]

Yet, invaluable as these French treatises are, they do not of course take into consideration the parallel but perhaps di-

1. The several articles in the debate are summarized and cited at Brosman, *A Controversy and a Challenge*, 12 TUL. L. REV. 239 (1938).

2. See, *e.g.*, Dainow, *Use of English Translation of Planiol by Louisiana Courts*, 14 AM. J. COMP. LAW 68 (1965).

3. AUBRY & RAU, OBLIGATIONS (LSLI Translation, 1965) and AUBRY & RAU, PROPERTY (LSLI Translation, 1966). These are Volumes 1 and 2 respectively, of "Civil Law Translations," published as an integral part of West's Louisiana Statutes Annotated. A third volume of Aubry & Rau on *Donations* is presently being translated for the Institute by Professor Carlos Lazarus of the Louisiana State Law School; it is expected to be published also in this series.

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verging development of the civilian code concepts by the Louisiana jurisprudence in the light of differing conditions of the New World. Aside from scattered law review articles and from Judge Saunders' published lectures on our Civil Code,[4] there has been no work which analyzes Louisiana Civil Code articles from the triple standpoint of their original historical background, their conceptual function as part of an integrated code, and their *actual* application and interpretation by the Louisiana courts over the decades. We may hail the appearance of Volume I of Professor A. N. Yiannopoulos' *Civil Law of Property*, the subject of this review, as the first major Louisiana treatise of this nature.

The present volume of the treatise deals with the Louisiana law of "things," of "real rights," and of "real actions." As now planned, a second volume will consider the law of usufruct and of predial servitudes, with the third and final volume to consider security rights. The treatise as a whole will be a comprehensive and critical analysis of the entire Louisiana law of property. It is designed not only to aid the scholar and practitioner to understand our present property law. It is specifically designed also to assist the contemplated revision of the property articles of the Louisiana Civil Code now under way,[5] by reason of the treatise's critical analysis of hiatuses and of conceptual deficiencies in jurisprudential or statutory development and of its discussion of comparative civil-law developments.

The scope and plan of the treatise can be no better expressed than by the words of its author:

> "The study focuses attention on Louisiana legislative texts. The gloss of jurisprudence, however, which has developed around the various texts cannot be and is not ignored. Cases are extensively used to illustrate the interpretation and application of the Civil Code and other statutes. Leading decisions are discussed in text, particularly in the event of

4. SAUNDERS, LECTURES ON THE CIVIL CODE (Bonomo, ed., 1925).

5. By Act 335 of 1948, the Louisiana legislature directed the Louisiana State Law Institute to prepare a proposed *projet* for revision of the Louisiana Civil Code. In 1966, the Institute appointed an advisory committee with Professor Yiannopoulos as Reporter to prepare a draft for the revision of Book II ("Of Things. . ."). This advisory committee held its first meeting on October 21, 1966. Perhaps over-optimistically, the Reporter and the committee hope to have prepared a draft of the revision for submission to the Institute's Council commencing in 1967.

deviation from the letter of the written law and from traditional civilian solutions.

"Since, in its present form, the Louisiana law of property derives essentially from French sources and to a large extent from Roman texts, much attention is focused on French doctrine and jurisprudence and on the fundamentals of Roman legal institutions. This undertaking is expected to establish the historical continuity of the civilian tradition, to shed light on the purpose of the rules in the Code, and to facilitate further developments in the light of contemporary needs. . . ."[6]

Executed successfully according to these aims, the present volume is in my opinion an outstanding accomplishment and a real contribution to Louisiana law.

The treatise is principally organized according to the scheme of the Louisiana Civil Code's Book II, which is entitled "Of Things, and of the Different Modifications of Ownership." Nevertheless, rules pertaining to the principal real rights are included within the coherent framework of the analysis even though based on other parts of the Code or on enactments other than the Code. With a view to their possible usefulness in the contemplated Louisiana code revision, the author also analyzes comparative concepts of the German and the Greek Civil Codes, the former being specifically designed to apply to an industrialized society as ours now is, and the latter being one of the most recent codifications as well as a product of the comparative method which likely will also be used in the contemplated revision of our own Civil Code.

When completed, the treatise will analyze and discuss the Louisiana concepts, rules, and practical applications relating to the determination of rights to the exclusive use and enjoyment of corporeal things, that is, to the principal real rights that a person may have on "things." The seven chapters of the present volume discuss, as follows: I. The Domain of Civil Law Property; II. Things in General; III. Common, Public, and Private Things; IV. Movables and Immovables; V. Patrimony and Patrimonial Masses; VI. Real Rights; and VII. Real Actions.

The exhaustive analysis in the first two chapters of the dif-

6. The subject work, at Section 8, pp. 15-16.

fering meanings and connotations of "property" and "things" as institutions in the Louisiana civil law and in other law systems is provocative and stimulating. The scholarly battles over differing conceptual theories take on practical meaning through the examples given of the particular problems posed by application of the contrasting concepts used to explain property rights. The discussion of "common, public, and private things" (chapter iii) and of "movables and immovables" (chapter iv) comprehensively and with insight analyzes the Louisiana jurisprudential applications of the code concepts, including the practical problems and the confusion sometimes resulting from imprecise judicial understanding of a principle applied. The treatise finally suggests clarifying and unifying concepts of these property classifications which may usefully preserve what is good in our code articles as presently applied, but which may avoid the harsh or confusing or impractical applications sometimes resulting from previous characterizations of these classifications.

For a Louisiana lawyer, the rarely articulated concepts of "patrimony" and "patrimonial rights" (chapter v) are elusive, although of doctrinal interest and significance to a civilian scholar. Briefly, a person's patrimony may be said to consist of his entire assets and liabilities, with the assets being "patrimonial rights" susceptible of pecuniary evaluation and the liabilities being credits of other persons against the debtor's patrimony. In his analysis of this basic civilian characterization (probably the first in Louisiana legal theory), Professor Yiannopoulos suggests that, from a functional point of view, the concept is of limited usefulness in Louisiana and that for us it should be approached not in the abstract but rather in the light of a particular purpose where the concept has significance, *e.g.*, in real subrogation, in (formerly) separation of patrimony, in the revocatory action afforded a creditor by an unfair preference given by the debtor to another creditor, etc.

The analysis of Louisiana "real rights" (chapter vi) clarifies insofar as possible the generic nature, structure, and function of these rights as contrasted with "personal rights." The obscure and confusing theoretical generalizations of our Louisiana jurisprudence are tested by functional analyses of each of some twenty rights characterized by it, sometimes incorrectly, as "real." Some of these are specifically created by our Civil Code (ownership, usufrust, predial servitude, etc.), some by statute (chattel

mortgage, timber, estates, etc.), some by jurisprudential recognition (mineral estates, building restrictions, etc.).

The characterization of a right as "real" — a right based upon a direct relationship to the *thing* (whether the thing be immovable *or* movable, incidentally) — has practical consequences in, for instance, the prescriptions applicable or the remedies available. Thus, by virtue of a "real right" a creditor may enforce rights with reference to the thing itself, while a "personal right" (based upon a relationship between persons) may confer rights only against a person rather than to enforce preferential rights against the thing itself. An example that leaps immediately to mind is the sorry history of the judicial and legislative difficulties in defining the rights of a mineral lessee, in large part because of the incoherences of present Louisiana theory as to the characterization of real rights.[7] It is probably safe to say that no future analysis or application of any real right question will be made in Louisiana without reference to the insight afforded by this perceptive Yiannopoulos treatise.

The treatise concludes with a discussion of "real actions" (chapter vii). The purpose is to clarify the notion of real actions and their relations to real rights in Louisiana law and also in comparative jurisprudences, Roman, French, Greek, German, common-law, and contemporary American. While paying tribute to the creative contribution to legal science of innovations by the new Louisiana Code of Civil Procedure, the treatise analysis also points out a hiatus in that Code's classification of actions. The real actions recognized by the Code relate only to enforcement of rights affecting *immovables*. This omits characterization of the remedies jurisprudentially recognized in Louisiana to enforce real rights affecting *movables* (*e.g.*, the restoration of possession). The synthesis of the jurisprudential rules in this latter regard is probably the most useful feature of this chapter.

If I were forced to make any criticism of the contents of this excellent work, I would note the perhaps overdetailed analyses of the French and German real actions in this last chapter. This is one of the infrequent instances in the treatise where I would say that the autor's vast knowledge of civilian

7. See, *e.g.*, Comment, *The Louisiana Mineral Lease as a Contract Creating Real Rights*, 35 TUL. L. REV. 218 (1960), which notes the practical consequences of the mineral lessee's interest being characterized as a "personal right" as (formerly) depriving him of standing to sue third persons other than his lessor to protect possession, as well as of the protection of recordation statutes.

theory and practice has led him to freight his text with unnecessary erudition which affords little basic insight. However, as with the fascinating description of the Roman origins of the civil law actions, the use of comparative law materials elsewhere in the text generally sharpens our appreciation of the distinctions and meaning of Louisiana property law. Also, as an American pragmatist, I occasionally became a little impatient with descriptions and analyses of doctrinal disputes of continental scholars. Yet undoubtedly the discussions of these disputes do contribute to understanding of the essential and functional nature of the Louisiana characterizations as contrasted with the practical consequences of differing conceptual approaches.

Professor Yiannopoulos' work is indeed an authoritative treatise of Louisiana property law. This reviewer predicts that its usefulness and value will survive for many decades to come. For the present, any Louisiana lawyer or judge with a property-law problem must commence his research in the Yiannopoulos text. The insight to be derived stems not only from the author's own perceptive and comprehensive analyses. Illumination is also afforded by his concise reference to the analytic characterizations of many other civilian scholars which have catalyzed civilian thinking to a truer understanding of the basic nature of a particular property institution or legal concept.

One of the outstanding features of this work is its completeness. The Louisiana property rules derived from our Code articles, other statutes, and judicial decisions are comprehensively discussed and analyzed in the light both of their conceptual base in theory and of their functional application in practice. Louisiana property law is brought into focus as a coherent whole. In the treatise can be found analyses and explanations both of troubling minute property-law distinctions and applications, as well as of the broad generalizations and of the central civilian property theories which the busy lawyer or judge does not worry about — until a practical problem suddenly forces him to attempt within a limited time to digest decades of legal scholarship and jurisprudential development.

As a practicing judge forced to live with an overcrowded docket and the lack of enough hours in the day to spend on desirable background and context research, this reviewer is impressed by the practical research potential of Professor Yian-

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nopoulos' work. For this reason, I regret the lack of a table of citations to Louisiana cases and Civil Code articles. This tends to inhibit immediate access to the insight and perspective available in the Yiannopoulos text as to a particular decision or article.[8] However, the publisher, noted for its cooperation with the Louisiana bar, has indicated that the so-called library or research references published as "cross references" under each L.S.A.-Civil Code article will include a citation of the Yiannopoulos' treatise reference, as well as of the Planiol treatise (as at present) and of the Aubry & Rau works (as contemplated).[9] Also, the research usefulness of the subject treatise is keyed into standard research tools by library references at the commencement of each text chapter to the Corpus Juris Secundum sections and to the West's Key Number Digest numbers relating to the topics discussed in the treatise chapter.

The practical research value of this treatise is great. However, even more valuable probably is the promise of the treatise in the influence it must have in directing the development, both jurisprudential and statutory, of our property law of the future. For if our Civil Code is revised as contemplated, then this treatise is almost a *projet* in itself and will in the future be the source book explaining the conceptual framework and policy choices in the light of which the code revision of the property articles was formulated. But whether or not these articles of our Louisiana Civil Code are revised as planned, the Louisiana bar and courts will for many years to come inevitably use the guidelines furnished by this authoritative and perceptive treatise in the formulation and resolution of problems involving Louisiana property law.

Although the reviewer is not competent to judge the work by the following additional criterion, I cannot help but believe that civilian scholars everywhere will regard Professor Yiannopoulos' treatise as a major contribution to civil law scholarship. The brilliant, incisive, all-inclusive analysis of the institution of

8. However, a great deal of the text was published in Louisiana Law Review articles at Volumes: 21:697; 22:517; 22:756; 23:161; 23:518; 25:589. Therefore, as we discovered in practical research this summer, the researcher may find the Yiannopoulos treatise references to a particular decision or code article by shepardizing the citation and then translating any Louisiana Law Review reference to the citation into the appropriate treatise text section. (The treatise table of contents roughly parallels the subheadings of the law review articles.)

9. Letter from Victor J. Holper, Vice-President and Editor-in-Chief of the West Publishing Company, dated September 29, 1966, in files of Louisiana Law Review.

Louisiana private property rights should, it seems to me, be of value to other law systems as a comparative study of Louisiana law, just as the subject treatise draws upon French, German, and Greek scholarship to assist us better to understand fundamental legal institutions and concepts of our own Louisiana civil law.

Volume 1 of the Yiannopoulos *Civil Law of Property* treatise is the initial publication in a series of Louisiana doctrinal studies entitled (somewhat misleadingly) the "Louisiana Practice" series. Under immediate plans, the publication plan will include the two further volumes of the property treatise and Professor George W. Hardy III's work in progress on Louisiana mineral law. Other treatises on Louisiana legal subjects will likewise be published in the series, such as Professor Yiannopoulos' projected work on Louisiana obligations. Together with the Civil Law Translations of the Louisiana State Law Institute (which the publisher furnishes as an integral part of the West's Louisiana Statutes Annotated), this coordinated publication plan promises to furnish Louisiana law with a substantial body of doctrinal materials.

The author, Athanassios Nicolaos Yiannopoulos, has been at the Louisiana State University Law School since 1958, a full Research Professor since 1963. Born in Greece in 1928, he has graduate law degrees from the Universities of Chicago, California, and Cologne, including doctorates from the latter two institutions. He is also co-author of *American-Greek Private International Law* (1957) and author of *Negligence Clauses in Ocean Bills of Lading* (1962), as well as the editor of that excellent symposium, *Civil Law in the Modern World* (1965). In the reviewer's opinion, the present first volume of this young professor's *Civil Law of Property*, his first major work on Louisiana doctrine, must be regarded as a truly significant civilian treatise of the first order. We may hope that Louisiana law will continue to be enriched by the further perceptive and creative contributions of this prolific and erudite scholar.

*Albert Tate, Jr.**

*Judge, Court of Appeal, Third Circuit, State of Louisiana.

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Book Review

YIANNOPOULOS: 3 Louisiana Civil Law Treatise, Personal Servitudes, Usufruct-Use-Habitation. West Publishing Co., 1968.

Until recently, the bench and bar of this state in dealing with property rights have tended to overlook the fact that Louisiana is a civil law state, and that a civilian approach should be taken in resolving legal issues in that area of the law. Such an approach should begin with research into the applicable code or statutory provisions, followed by a study of the available treatises, and finally, by a consideration of the jurisprudence. Heretofore, judges and lawyers generally have been inclined to look first, and sometimes solely, to prior jurisprudence for the answer to legal problems, and to apply that jurisprudence without considering the treatises which may exist relating to it.

This departure from a civilian approach to the solution of legal problems has been due, perhaps, to the lack of scholarly, comprehensive treatises on the civil law in English. In recent years, however, great strides have been made in Louisiana toward providing access to treatises which formerly were available only in French.[1] Until 1966, treatises in English by modern authors on Louisiana's basic law consisted largely of law review articles. In that year, however, Professor A. N. Yiannopoulos, of Louisiana State University, contributed *Civil Law of Property* (Volume I),[2] a comparative analytical discussion of the Louisiana Civil Code provisions on the law of things, real rights, and real actions. It has been said about that work by Professor Yiannopoulos that "any Louisiana lawyer or judge with a property law problem must commence his research in the Yiannopoulos text."[3]

The same observation should be made about this scholar's most recent contribution to our legal literature, *Personal Servitudes*, Volume III, of the Louisiana Civil Law Treatise series. This treatise encompasses Book II, Title III—"Of Usufruct, Use, and Habitation"—of the Louisiana Civil Code. A comparative approach is employed with discussion of the Roman law and of

1. PLANIOL, TREATISE ON THE CIVIL LAW, 3 volumes (transl. La. St. L. Inst. 1959); GÉNY, METHODE D'INTERPRETATION ET SOURCES EN DROIT PRIVE POSITIF (transl. La. St. L. Inst. 1963); 6 AUBRY ET RAU, DROIT CIVIL FRANÇAIS (transl. La. St. L. Inst., 6th ed., 1965); 2 AUBRY ET RAU, DROIT CIVIL FRANÇAIS (transl. La. St. L. Inst., 7th ed. 1966); AUBRY ET RAU, DROIT CIVIL FRANÇAIS, Vol. X, §§ 643-676 and Vol. XI, §§ 677-744 (transl. La. St. L. Inst., 6th ed. 1969).

2. 1 YIANNOPOULOS, CIVIL LAW OF PROPERTY (1966).

3. 27 LA. L. REV. 153, 158 (1966).

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similar legal provisions found in the laws of France, Germany, and Greece. Professor Yiannopoulos has, for the most part, carefully segregated his treatment of each jurisdiction so that a Louisiana lawyer or judge using the work can easily confine his research to the discussion of Louisiana law, if he chooses to do so. However, the importance of considering the analyses of the law of other jurisdictions, particularly those of France, cannot be over-emphasized, because our courts in interpreting our own laws are now more frequently consulting the interpretations placed on similar laws of foreign jurisdictions.

Chapter I, entitled "Usufruct: General Principles," is subdivided into two parts. The author begins his work appropriately by explaining all of the various kinds of usufructs, including perfect and imperfect, conventional and legal, universal usufruct, usufruct under universal or particular title and usufruct in undivided shares. In the second part he discusses the methods by which usufructs may be created. This will be of particular assistance to lawyers who are called upon to draft wills placing restrictions on legatees without the use of the trust device, and to lawyers and judges who are confronted with problems of prohibited substitutions and fidei commissa. Part two contains an extensive discussion of the problems of successive usufructs and of donations of usufruct to forced heirs, to a surviving spouse, and to strangers. The author also discusses fiscal legislation, both state and federal, pertaining to the valuation of usufruct for estate and inheritance tax purposes, problems which are not inconsequential to attorneys drafting estate plans.

Chapter II, entitled "Rights of the Usufructuary," is subdivided into six parts. The substance of the chapter is revealed by the titles of these parts: "The Usufructuary's Right of Enjoyment in General"; "Trees in Usufruct"; "Products of the Subsoil in Usufruct"; "Herd of Animals in Usufruct"; "Shares of Stock in Usufruct"; "Business Enterprise in Usufruct"; and "Rights in Usufruct." Our Louisiana code articles on these subjects have almost exact equivalents in foreign civil codes, so it can readily be seen that the author's discussion of comparative law on these provisions of the Civil Code will be most helpful in understanding and solving the problems which have arisen and which may arise in Louisiana. Of particular interest and importance to Louisiana lawyers and judges is the author's treatment of the subject of mineral rights and the usufructuary.

Many of the landmark Louisiana cases in this complex area of the law are cited, discussed, and criticized, and one cannot help but gain new insight to this problem from the incisive commentary of this author.

Chapter III, "Legal Powers of the Usufructuary," treats generally of the powers of administration of the usufructuary, his power to alienate or encumber the usufruct or the property subject to usufruct, and his recourse to legal action for the protection of the usufruct. Chapter IV, "Obligations of the Usufructuary," deals with the security which the usufructuary must post for the protection of the naked owner prior to taking possession of the usufruct and the specific obligations of the usufructuary with regard to the preservation and upkeep of the property subject to the usufruct. While the subject matter of both of these chapters applies to all areas of the law pertaining to usufruct, this writer believes that the discussions contained therein, particularly when considered with legal usufructs in Chapter VII, are of particular usefulness in dealing with the rights and obligations of a surviving spouse holding a usufruct on the community property estates of his or her minor children.

Chapter V is entitled "Rights and Obligations of the Naked Owner." Much of the material which ordinarily would be covered in this chapter was discussed in the two preceding chapters dealing with the rights and obligations of the usufructuary. The author concisely points out, however, that the naked owner has a number of rights and obligations relating to the property which are often overlooked in dealing with usufructs.

The final two chapters dealing with usufruct are, in this writer's opinion, the two most interesting and perhaps most important. Chapter VI is entitled "Termination of the Usufruct." It is divided into two subtitles which discuss the causes and the consequences of termination. Professor Yiannopoulos points out that there are at least eight specific ways in which a usufruct may terminate, other than by death, and that even the death of the usufructuary does not necessarily bring the usufruct to an end, e.g., as in the case of the testamentary creation of a single usufruct with right of survivorship of co-beneficiaries or the creation of successive usufructs.

Legal usufructs, the subject matter of and title of Chapter VII, are those usufructs which are created by operation of Lou-

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isiana law. The statutes creating those usufructs are scattered throughout the Civil Code, but the general statutes regulating usufruct are as applicable to legal usufructs as they are to conventional usufructs. This chapter contains a comprehensive discussion and compilation of those myriad code articles so important to the general practitioner. The usufruct of the surviving spouse, the parental right of enjoyment over the property of minor children, and the marital portion and widow's portion in usufruct are all discussed in depth. Chapter VIII, entitled "Use, Habitation, and Limited Personal Servitudes," is limited to a discussion of articles 626-645 of the Louisiana Civil Code and their continental counterparts. As is appropriate for a subject which has not created many legal problems in Louisiana, the discussion is short and concise.

Thus far these remarks have been limited to the textual content of the book, but I would be remiss in failing to comment on several other features of the treatise. It is extensively footnoted with citations to Louisiana cases, correlative code articles, French and other continental commentators, law review articles, and other reference sources. A table of statutes with cross references to sections of the book, an alphabetical table of cases, and a well constructed index is included. In short, it is a valuable and excellent addition to our too-sparse collection of Louisiana civil law materials, and this writer is confident that it will be widely used and quoted by the courts and lawyers of this state.

*John T. Hood, Jr.**

* Judge, Court of Appeal, Third Circuit, State of Louisiana.

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PROPERTY

LOUISIANA PRACTICE. Vol. 2, Civil Law of Property (The Law of Things—Real Rights—Real Actions); vol. 3, Personal Servitudes (Usufruct—Use—Habitation). By A.N. Yiannopoulos. St. Paul: West Publishing Company. Vol. 2 (1967) pp. 499; vol. 3 (1968) pp. 478.

*Reviewed by Murad Ferid**

I

Although law is often accused of dryness, certain legal works exceptionally attract the reader from the very first. Professor Yiannopoulos' monumental treatise of the Louisiana Law of Property is one such work.

As the reader finds his way through the two huge volumes, the clear arrangement, the precise diction and the abundance of documentation become obvious. It soon becomes apparent that the title "Louisiana Law of Property" is quite an understatement, for we are confronted not only with a most accurate representation of Louisiana law in this field, but also with a comprehensive comparative study of property law in general. For the first time, in any language, has this subject been treated in a comparative manner on so grand a scale. The learned author not only shows us the background of Louisiana law leading back to French Law and compared with the common law, but also presents a detailed picture of other continental legal systems, such as the German and the Greek, tracing their common origins back to Roman law.

To appreciate fully the theoretical weight and the practical importance of this successful comparison of these thoroughly different systems of property law, one must remember that this branch of the law, at least where immovables are concerned, does not easily lend itself to a comparative approach. The reason is that everywhere property law is closely interwoven with, and highly conditioned on, historical, economic and social surroundings. Hence systematization and conceptual categories differ here more than in other areas of the law. It was with good reason that states with non-unified legal systems, when trying to abolish their diverging local laws in favor of a unified law, approached the field with utmost reluctance. For example, in Switzerland the law of contracts and torts (*droit des obligations, Schuldrecht*) was unified in 1881, while the law of things (*les droits réels, Sachenrecht*) only followed in 1911. Similarly in Germany, after the political union in 1871 had stimulated a renaissance of the old idea of a uniform German private law, the Constitution of the "Reich" nevertheless limited the legislation to the law of obliga-

* Emeritus Professor of Law and Director of the Institute of Comparative Law, University of Munich.

tions (*Recht der Schuldverhältnisse*). Miquel-Lasker's proposal for a unification of the law of property was rejected five times before it was formally approved by the Reichstag and, although the German Civil Code 1896 included property law, it nevertheless left many gaps due to the difficulty of establishing uniform rules for the various regions of the "Reich". Hence these questions were left to the legislatures of the single federated states. Even the strictly unitary codification of the French Civil Code was unable to discard all local differences regarding real property law. Its unity in this field is misleading, as often, when rights concerning land are in question, the Code refers to local customs which differ greatly from one region to another.

In spite of these great difficulties, Professor Yiannopoulos gives us a truly stimulating and thoroughly comparative study of this complex topic. He does not, as is too often the case with comparative treatises, restrict himself to general views from a high observation-stand, like a commander-in-chief from his headquarters. Rather, he goes to the trenches and spares no pains to get into the most intricate details in order to connect and compare them.

As he penetrates more deeply into these two volumes, the reader will become aware why the author has been able to combine *la grande conception* with the *culte du détail*: he masters thoroughly the various legal systems, a mastery which gives the work an abundance of ideas and a singular charm.

II

With masterly organization, Yiannopoulos follows a universally valid systematization by providing—before his detailed description of the various real rights and actions — headings such as "property" or "things" (including their subdivisions) and "patrimony". He skillfully avoids getting entangled too deeply in endless discussions of purely theoretical questions; yet far from avoiding the complexities involved, he gives the reader all necessary information with rich documentation and useful library references.

Yiannopoulos never fails to develop carefully his own views on these most controversial questions. His originality becomes especially apparent in ch. 5, when dealing with the extremely complex concept of "patrimony". The chapter is an outstanding example of a particularly masterly synoptic analysis of a most difficult topic. Here Yiannopoulos shows, in a very convincing way, not only to what degree purely academic debates can result in neglect of the practical issues, but also how a lack of doctrinal study may become an obstacle to the actual development of a legal institution.

Ch. 6, on real rights, includes a thorough analysis of the various classifications in the different legal systems. A continental lawyer will be induced to reconsider carefully the distinction, fundamental in civil law, between real and personal rights, and absolute and relative rights, and will find many fresh arguments, both pro and

con. A common law-trained reader, on the other hand, will be confronted with a precise and clear review of distinctions and subdivisions, as well as with certain intermediate categories which may appear quite strange to him. These concepts will offer him the key to an understanding of civil law and to a clearer view of his own legal system. Moreover, he will find that conceptual categories do not prevent the growth of living law in the civil law world.

Ch. 7, on "real actions", contains a most successful comparison of legal remedies, in the various systems, for the infringement of real rights. This area of the law presents great difficulties for comparative treatment, since the theoretical bases, as well as the practical details involved, are so fundamentally different from system to system, and so entangled with diverse procedural institutions.

While the origin of the common law distinction between real and personal actions rests upon the physical difference between land, which is immovable and indestructible, and goods, which are movable and perishable, the nature of an action as personal or real in the civil law orbit does not depend on the nature of the asset involved, but on the right to be protected. Yiannopoulos makes clear that, notwithstanding the profound differences in remedies, the protection of rights must be regarded as adequate and nearly complete in both worlds. But he describes most clearly how in Louisiana, a meeting-place of common and civil law, confusion arises out of the overlapping of the various differences. He also points out the contradictions in Louisiana law which result from the efforts made there to fill, with tort institutions derived from the common law, the gaps in the system of the Louisiana Code which, following the pattern of the famous article 2279 of the French Civil Code, does not accord a real action for the recovery of movables.

III

Vol. 3 includes personal servitudes (usufruct, use, habitation), considered in Louisiana (and French) law as components of ownership. A monumental commentary on usufruct occupies the lion's share of the volume. Understandably, this volume does not include comparison with the common law (although here too everything is set down against the background of Anglo-American legal thinking), for in this field the two legal systems differ too greatly in their basic conception to be usefully compared in their details. Civil law, as the author points out in vol. 2, s. 3, is based on the idea of full ownership, inspired by the Roman "dominium". This full ownership can be encumbered by certain rights, among them usufruct. Since English law, on the other hand, is based on a system of tenures without full ownership, except by the Crown, there is quite obviously no room for real rights like usufruct and personal servitudes. In Anglo-American law the function of usufruct—the right to use a thing and to draw its fruits — is handled in a far more flexible manner by the institution of trust, which has developed out of "use" in its techni-

cal sense. Yiannopoulos' treatment of usufruct is exhaustive. Not even for any of the individual legal systems considered does there exist a law book as complete. Interestingly, in West Germany the concept of usufruct may be of great and even painful current interest due to the views of the "young Socialists" (*Jusos*), who would divide land ownership into two rights:

1) "ownership of disposal", to be transfered from the private owner to the state or a special public fund, and

2) "ownership of use", a sort of life interest similar to usufruct but heritable and transferable.

The reformers are of course unaware that these plans, far from leading to progress, will push us back to the Middle Ages with all the complexities of feudal tenure. In any case we would return to a situation more complex than in England before the Law of Property Act 1925. The discussion of these plans in West Germany will profit from the many arguments provided by Yiannopoulos' treatise.

The chapters on usufruct are not limited to usufruct on land but extend to the subsoil, shares of stock, business enterprises, claim and negotiable instruments, etc., pointing out the great economic importance of the institution.

In Louisiana (as in France) the importance of usufruct is far greater than, say, in Germany, due to the existence of certain legal usufructs (especially of the surviving spouse and the parental right over the property of minor children). In the sections dealing with these legal usufructs we are given a highly interesting *tour d'horizon* of difficult problems related to family law and the law of succession.

Because of the inherent difficulty of comparing use (in the sense of the Louisiana Civil Code) and habitation with the common law institutions of *profits a prendre* (rights of common) and easements, here too Yiannopoulos wisely limits his comparative study to Louisiana and France. It is striking to observe the great flexibility of these legal institutions. In the beginning only quite primitive rural interests were involved: Blackstone in his *Commentaries* (Book II, ch. III, no. III) subdivided these rights of common into pasture, piscary, turbary and estovers. But today in all legal systems great efforts have been made to accommodate contemporary needs into the framework of traditional institutions. So in this last chapter we observe the fascinating phenomenon that legal institutions may for a long period drop into obsolescence, only to reappear and serve quite different purposes.

The chapter on limited personal servitudes also points out the evils of attempting to forge ideology and philosophy into legal rules. In France, for example, the ideas of the great revolution created sharp restrictions of real and personal servitudes. The resulting state of law created by revolutionary fears, and the fading out of

progressive institutions due to the complete change in the social and economic milieu, hampered French legal and economic life for generations.

IV

Yiannopoulos' treatise is singularly attractive for civil and common law readers. The broad comparative base and the profound historical background make this monumental work especially valuable as a source of new insights and powerful arguments. The treatise will be (in fact, is already) highly appreciated far beyond the borders of Louisiana and the Anglo-American orbit and even beyond the other legal systems expressly covered. This reviewer has found many new ideas in the two volumes for his own course on Real Property.

TAXATION

TAXES AND PEOPLE IN ISRAEL. By Harold C. Wilkenfeld. Cambridge, Mass.: Harvard University Press, 1973. Pp. xviii, 307.

*Reviewed by Lawrence M. Stone**

Like everything else about the State of Israel, its tax system is a unique mixture of the ideological and practical, the new and the old. The ideological is represented by sharply progressive income tax rates that serve the ideology of egalitarianism in Israel. A system of intertwined and inter-related salary scales indicates substantial equality in the distribution of income in a country in which most salaried persons (who include doctors, professors and many other professionals) are represented by the nation's large labor union (the *Histadrut*). Indeed, many either work for companies owned or controlled in part by the *Histadrut*, the Jewish Agency, or the government. The practical is represented by a widespread system of allowances (for books, automobile, telephone, vacation, overtime work, cost of living increases, etc.) which are tax-free (or taxed at low rates) and which are not distributed progressively. It is also indicated by a vast array of indirect taxes (sales, excises and import duties), a property tax (also imposed on stock-in-trade) and compulsory defense loans (generally imposed on income, but likely to be less progressive than the income tax proper). The "old" is the income tax ordinance, which is a holdover from the days of the British mandate; the new—a complex array of tax incentives to accomplish various economic and social objectives of the government.

The tax system in Israel operates in the context of fierce independence of individuals nurtured by the frontier-like atmosphere

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Yiannop. — 1980

REVIEW

PROPERTY: THE LAW OF THINGS—REAL RIGHTS—REAL ACTIONS (LOUISIANA CIVIL LAW TREATISE VOLUME 2). By A.N. Yiannopoulos. St. Paul, Minnesota: West Publishing Co. Second Edition, 1980. Pp. xxxi, 755. $47.00.

In 1967 civil law and Louisiana legal literature was enriched by the publication of Professor A.N. Yiannopoulos' treatise on the Louisiana law of property.[1] This brilliant study of Louisiana legislation and jurisprudential interpretations concerning things, real rights, and real actions furnished a comprehensive, authoritative, and perceptive exposition of the principles and applications of Louisiana property law; so much so, that "Yiannopoulos on Property" immediately became the starting point (and often the ending one, too) whenever the Louisiana legal profession and judiciary became concerned with an issue of property law.

Yet the work went beyond exposition and analysis in its critique and comparative evaluation, in light of civilian doctrine, of the Louisiana Civil Code concepts. As contained in the 1870 version of the Code, which was mostly based on text of the 1808 and 1825 codifications, some of the concepts had become anachronistic. Over the decades, some also had become distorted by judicial improvisation, either to fit new social conditions or through lack of insight as to their functional purpose. As a result, current interpretation sometimes produced doctrinally incoherent or functionally non-utile principles for the decision of issues arising from the evolving needs of a changing Louisiana social scene.

In a real sense, the work was a *projet* for the revision of the Louisiana Civil Code articles of Book II pertaining to the law of things, which was achieved through a series of comprehensive legislative enactments from 1976 through 1980. The basis of the revision was legislation recommended by the Louisiana State

1. A. Yiannopoulos, Property (La. Civ. L. Treatise vol. 2, 1967).

Law Institute after ten years of preparatory study, accomplished mainly under the commanding leadership of Professor Yiannopoulos as Reporter of the work for the Institute.

Indeed, the success of the first edition of this work is largely the occasion for the second edition, presently reviewed. The first edition in many instances influenced jurisprudential clarifications and modifications in cases critically assayed by the initial text. More fundamentally, the substanial revision of the Code articles in Book II, largely due to Professor Yiannopoulos' work as Reporter and to his evaluation in the first edition, made imperative a revision of this treatise, so heavily relied upon by the Louisiana legal profession and judiciary. The second edition not only incorporates in its exposition of Louisiana property law these recent legislative changes, but it also explains the prior legislation and the reasons for the new text, both conceptual and functional—a role Professor Yiannopoulos is peculiarly fitted to perform as the jurisconsult who proposed and drafted much of the present Code's property provisions.

For those familiar with the first edition, it is unnecessary to reiterate that the scholarship and insights of the author are expressed lucidly in a comprehensive, thoughtful, and easily quotable, authoritative text. Although the work focuses on the legislative texts, it does not stop there. The reader is likewise given the benefit of the author's intensive understanding of the Louisiana jurisprudential gloss on the text and its applications of the property concepts, together with evaluations of their doctrinal soundness, and immediate cross-reference and caveat as to related or inconsistent jurisprudential development. Despite civilian theory that reasoning from legislation alone should be determinative while jurisprudential (mis)applications are of secondary importance in resolving an issue of law, the Louisiana lawyer or judge—for better or for worse—tends to reason from jurisprudence (the legislation in application) as well as from the legislation itself, to determine the correct application of a code article or principle. It is probably safe to say that Yiannopoulos has not overlooked or failed to cite any significant Louisiana decision that might be relevant to resolution of a property issue; and, as an improvement over the first edition, Yiannopoulos includes a table of cited cases that allows the user of the treatise immediate access to the author's evaluation (sometimes critical), in context, of any such Louisiana decision.

The structure of the revised edition is quite similar to the first, although new chapters have been added. As in the first edition, the respective chapters systematically give an overview of their subject, contain a historical and comparative law analysis of the dominating concepts and values in the area, summarize and analyze the legislative texts, and fully critique the jurisprudential gloss that is relevant to an understanding of the legislative principle and its application. In addition to the much-revised chapters concerning "Things," "Common, Public, and Private Things," "Movables and Immovables," "Patrimony and Patrimonial Rights," "Real Rights," and "Real Actions" found in the first edition, the second edition contains chapters dealing with "Navigable Water Bodies," "Public Use of the Banks of Navigable Rivers," "Dedication to Public Use: Highways, Roads, and Streets," and "Protection of Movables." The expanded and comprehensive analysis of authority concerning these latter topics responds to the need of Louisiana law to synthesize a coherent and rational doctrinal foundation for development in these areas, which only recently are of great concern in Louisiana—a state which of late has become increasingly urbanized, with more movable than immovable property, and with waterways that are central to petrochemical development, and environmental and recreational concerns.

Particular comment should be made about a feature of the work that greatly contributes to its usefulness to a Louisiana practitioner or judge, but that is also necessary for a comparative scholar from elsewhere to understand the Louisiana law of property *in action*. In addition to providing a comprehensive analysis of the concepts of property law, the treatise thoroughly analyzes the procedural law by which these concepts are translated from the abstract into determinative principles that govern the property rights of litigants. The chapters on "Classification of Actions," "Real Actions," and "Protection of Movables" represent the most complete and perceptive treatise treatment possible of the Louisiana procedural law that must be understood and used to implement the substantive property interests recognized by the Civil Code. Likewise, illuminative footnotes throughout the work tie in the procedural consequences of the substantive classifications of property law. The comparative law sections here, as elsewhere, enhance our understanding of Louisiana procedural concepts. Thus, independent of the treatise's

contribution to understanding of our substantive law, its procedural chapters by themselves are a monumental contribution to Louisiana (and indeed to comparative) procedural law.

As in the first edition, most of the chapters of the second edition contain a general section dealing with historical development and comparative civilian law relative to the property law concepts and institutions. Compared with the first edition, the comparative law sections are somewhat abbreviated, because their *projet*-type functions (alternative prototype approaches towards meeting Louisiana revision needs) are no longer necessary after the Seventies legislative property-article revisions. Nevertheless, of great value and interest are the work's brief excursions into the Roman and French predecessors of our own property concepts, the German (a legally scientific codification for an industrialized society) and Greek (a modern code using comparative sources, as does our own recent revision) codifications, and (occasionally) the Anglo-American common law's treatment of the property interest at issue. The pragmatic value of these comparative analyses to a Louisiana lawyer is that the varying (or similar) approaches of these other jurisdictions illuminate the functional purposes and social policies underlying their respective property classifications or institutions. This illumination enables us to understand better the functional purposes of, and social and doctrinal reasons underlying, the concepts expressed by our own Louisiana property articles, both for present application and also for future extensions of them.

Beyond their pragmatic usefulness to the Louisiana law, however, these historical and comparative sections are an indicium of the penumbral value of this work as an important treatise on the comparative civilian law of property that should be of interest to scholars throughout the world. As the great civilian law authority, Professor Lawson of Oxford, noted in his review of the first edition, the work links up Louisiana law with the leading systems of pure civil law and with the Roman origins of all of them.[2] Just as we in Louisiana may learn to understand law itself as well as our own law from exposure to comparative treatments, so will Yiannopoulos' brilliant exposition of the origins, purposes, and applications of property law in Louisiana

2. Lawson, Book Review, 41 Tul. L. Rev. 965 (1967). *See also* Tate, Book Review, 27 La. L. Rev. 153 (1966).

contribute to scholarship and understanding of law far beyond the borders of our state.[3]

Dr. Yiannopoulos, since 1979 W.R. Irby Professor of Law at the Tulane University School of Law, taught at the Louisiana State University School of Law from 1958 to 1979. Born in Greece in 1928, he has graduate law degrees from the Universities of Chicago, California, and Cologne. To his credit are other major works in private international law and in admiralty, and he has been editor of several civil law symposiums. He is recognized as an authentic genius of the civil law. In Louisiana, we are fortunate that Louisiana law has been enriched by "the perceptive and creative contributions of this prolific and erudite scholar,"[4] and that through his writings Louisiana law may enrich the lore of international comparative law scholarship.

ALBERT TATE, JR.*

3. The revised edition reviewed here is the first volume of a three-volume treatise on the Louisiana law of property. The second volume, *Personal Servitudes*, was published in 1968 (2d ed. 1978). The third volume, *Predial Servitudes*, is scheduled for publication during 1981. This treatise of the law of property will comprise volumes 2, 3, and 4 of the Louisiana Civil Law Treatise, a comprehensive multivolume work that already includes: S. Litvinoff, Obligations (La. Civ. L. Treatise vol. 6, 1969); S. Litvinoff, Obligations (La. Civ. L. Treatise vol. 7, 1975); L. Oppenheim, Successions and Donations (La. Civ. L. Treatise vol. 10, 1973); L. Oppenheim and S. Ingram, Trusts (La. Civ. L. Treatise vol. 11, 1977); F. Stone, Tort Doctrine (La. Civ. L. Treatise vol. 12, 1977); W. Malone and A. Johnson, Workers' Compensation (La. Civ. L. Treatise vols. 13, 14, 2d ed. 1980). As presently planned, volume 1, scheduled for publication after completion of the major portion of the subject volumes, will be a comprehensive introduction to the Louisiana civil law system, probably presented through a series of expositions by different scholars on various aspects of Louisiana's civilian and mixed-law legal heritage as a living system.

4. Tate, *supra* note 2, at 160.

* Circuit Judge, United States Court of Appeals for the Fifth Circuit.

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John H. Runnels

BOOK REVIEWS

[*Editor's Note.* The following articles comprise a joint book review of Professor Yiannopoulos' treatise on Predial Servitudes. Professor Abbott's review offers a common law perspective on the treatise; Mr. McClendon presents a Louisiana perspective.]

PREDIAL SERVITUDES. By A.N. Yiannopoulos. St. Paul: West Publishing Co., 1983. Pp. 520. $51.00.

*Guthrie T. Abbott**

My charge in reviewing this third and last volume of Professor Yiannopoulos' treatise on Louisiana property law was to view the work from the perspective of the members of the bar in common law jurisdictions. After reading the work, I must echo the comment of Judge Albert Tate, Jr., in the foreword to the book, where Judge Tate quotes Professor Ferid, Director of the Institute of Comparative Law, University of Munich, from his review of the first two volumes:

> Yiannopoulos' treatise is singularly attractive for civil and common law readers. The broad comparative base and the profound historical background make this monumental work especially valuable as a source of new insights and powerful arguments. The treatise will be (in fact, is already) highly appreciated far beyond the borders of Louisiana and the Anglo-American orbit and even beyond the other legal systems expressly covered.[1]

The language quoted above certainly applies as well to the third volume on predial servitudes. Through teaching during two summer sessions at the Louisiana State University law school, this reviewer has learned the additional insight one can develop into one's own system of jurisprudence by comparing the companion theories and concepts of a sister system. My teaching sojourn into Louisiana brought much enlightenment, but it was gained in a haphazard manner as students would ask questions comparing the civil law to the common law approach. Reading through Yiannopoulos' treatment of predial servitudes further demonstrated the value of the comparative method of study and did so in a more orderly fashion. Any lawyer in the common law tradition who desires a deeper knowledge of the law of easements will certainly gain insights into the foundation and underpinnings of that law by reading this work on the civil law counterpart to the common law easement. Approaching the work from the common law perspective forces comparisons and makes one rethink the rudiments of the common law approach. On those occasions when

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1. Tate, *Foreword* to A. YIANNOPOULOS, PREDIAL SERVITUDES in 4 LOUISIANA CIVIL LAW TREATISE at vi (1983).

the civil law and common law principles on the same subject diverge as to rights, duties, or remedies, one must ponder the efficacy of each approach. Such analysis is healthy and leads to a deeper understanding of any subject approached in such a manner.

The scope of the text under review transcends the title *Predial Servitudes*, as the book gives consideration to almost every aspect of the rights and duties evolving from the ownership of neighboring tracts of land. As the chapters move from chapter I, with its definitions of fundamentals such as servient estates and dominant estates, to the last chapter, which deals with building restrictions, the reader runs the gamut of legal theories surrounding the real property area. As with most areas of the civil law when compared to common law, the vernacular is quite different but the rights and duties created are very similar, if not identical. This point is well illustrated in chapter II, sections 18-22, where Professor Yiannopoulos gives an overview of the general law of water rights under the general heading of "Natural Servitudes."[2] However, it will not take the common law reader long to become acclimated to the linguistic differences, and the careful job of historical development set forth by the author on each topic covered is helpful in understanding the conceptual basis for the doctrine. The author not only traces the genesis of doctrine from its civil law roots in Roman, French, German, or Greek law, but in numerous parts of the book (such as sections 36-42, which discuss the nature of responsibility with regard to the obligations of neighborhood), a careful analysis and comparison is made to the analogous common law theories of liability for nuisance under the common law of torts. Again, in discussing "Enclosed Estates: The Right to Forced Passage," the author points to the value of making the common law/civil law comparison when he states: "For purposes of comparison and for a better appreciation of problems and solutions, reference will be made to *common law* and to the legal systems of France, Germany, and Greece."[3]

Having extolled the virtues of reading Yiannopoulos' treatise from cover to cover, this writer must admit that the book was not a spicy novel, and he is well aware that most attorneys will use the volume on predial servitudes together with the first two volumes as a reference and research tool. Such usage can well prove invaluable to the attorney in a common law jurisdiction who needs a new perspective in marshaling arguments to persuade a court or legislative body that a developing area of law should move in one direction as opposed to another.

Two examples of rights which developed in ancient times but which have taken on new dimensions in modern American society are hunting and fishing rights and servitudes of light and view. Yiannopoulos gives

2. *Id.* § 18, at 58.
3. *Id.* § 90, at 261 (emphasis added).

brief but solid treatment to the civil law development in both areas and provides ample citation to the derivation of the views taken by France, Greece, and Germany as well as Louisiana.[4] Recent years have seen quite a controversy arise in the common law jurisdictions with regard to whether the right to use real property for recreational purposes such as hunting, fishing, camping, and sports should be recognized as an easement or estate in land of a perpetual nature, or as a mere license or easement in gross (which was traditionally nontransferable at common law).[5] Yiannopoulos' treatment of the power to subject real property to a predial servitude for such recreational-type purposes is set forth at section 107 and takes the reader from Roman Law to the present Louisiana Civil Code, with a discussion of the views taken in France, Germany, and Greece from ancient to contemporary times. It is suggested that any thorough analysis of the problem of recreational use of land should include the reasoning and results reached in civil law jurisdictions, and Professor Yiannopoulos has done most of the work for the researcher in this regard.

The emerging use of solar energy has brought renewed interest and increased litigation in common law jurisdictions with regard to the right, *vel non*, to acquire easements for light and air by implication or by prescription. Section 135 of the text under review deals with "Creation of Servitudes of Light and View by Prescription" and outlines carefully the civil law approach to resolving conflicting interests that neighbors develop more and more in today's high density living with regard to land development causing obstructions to light, air, and view.

The two examples set forth above illustrate the great utility of the comparative approach in seeking arguments and solutions to the common societal problems shared by residents and lawyers in common law and civil law jurisdictions. Professor Yiannopoulos with his work on predial servitudes has made the comparative method of study in the area of easements (predial servitudes) as easy as removing his work from the shelf. The reviewer hopes that many attorneys will take the time to benefit in this manner from the work that went into developing this treatise and that such comparisons will benefit the corpus of jurisprudence throughout the common law jurisdictions.

4. *See id* § 107, at 315; § 135, at 389.

5. For a full discussion of the arguments and approaches to the recreational use problem taken throughout the common law jurisdictions, see Hamilton, *Recreational Estate in Land*, 41 TEX. B.J. 511 (1978).

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PREDIAL SERVITUDES. By A.N. Yiannopoulos. St. Paul: West Publishing Co., 1983. Pp. 520. $51.00

*William H. McClendon, III**

> "The little prince, who asked me so many questions, never seemed to hear the ones I asked him. It was from words dropped by chance that, little by little, everything was revealed to me."
> *The Little Prince*, by Antoine De Saint-Exupéry

In reading Professor Yiannopoulos' book, questions which at first seemed of importance appeared otherwise, and little by little, a more important observation was made. The initial reaction to his latest volume in the Louisiana Civil Law Treatise series[1] was that it would probably be recognized as a reference book, well organized and indexed; or a treatise, expanded in broad style with clarity; or simply another volume which every law library should contain. But after reading it from beginning to end, this reviewer discovered that indeed it is a book to be read and enjoyed because it highlights the relationship between Louisiana law and that of other jurisdictions and brings sharply into focus the pattern which our civil law tradition shares with these other legal systems.

When teaching law students how to draft documents and counsel clients, this reviewer places the emphasis on learning how to think and listen imaginatively, by layers, as though one were using the doctor's "cat scan"—thoroughly analyzing each layer of the problem and creating a whole range of options from which to choose before a solution is forced through the point of a pen. Professor Yiannopoulos' latest work is well suited for a practicing attorney, law student, or teacher, in that it stimulates the reader to recognize patterns in the law, to gain new insights as to alternate solutions, and to advance rapidly to a point at which he can begin to think more independently about predial servitudes and building restrictions under the Louisiana civil law.

If one first considers how others have addressed a similar problem and reads together applicable codified principles of law from several legal systems, a pattern becomes recognizable; Louisiana law becomes clearer and its meaning is accentuated. Professor Yiannopoulos' treatise enables one to read civilian concepts in relation both to one another and to other legal systems, rather than in isolation. The author's approach affords the reader an appreciation of the broad principles of law bearing on the particular issue being discussed, and this history or philosophy of a property

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1. Previous works in this series are A. Yiannopoulos, Property in 2 Louisiana Civil Law Treatise (2d ed. 1980); A. Yiannopoulos, Personal Servitudes in 3 Louisiana Civil Law Treatise (2d ed. 1978).

law principle surfaces as a pattern or grid which aids in the reader's understanding. For example, the author contrasts the common law concepts of "implied easement" or "way of necessity" (and the resulting problem when the ownership of adjoining lands is traced to a common ancestor) with the civil law right to a forced passage, and refers to the equivalent in the Civil Codes of France, Germany, and Greece in such areas as the extinction of predial servitudes.[2] Thus, the reader is able to catch glimpses of the broader nature of law. As pointed out by Judge Albert Tate, Jr. in the Foreword, Professor Yiannopoulos' analysis of property law concepts through an evaluation of "comparable Roman, French, German, and Greek treatment, will afford both practitioner and academic, in Louisiana and elsewhere, functional and doctrinal insights by which imaginatively to extend property principles to evolving contemporary needs to come."[3]

Where to begin and in what order to proceed are threshold questions which face a researcher. No matter where one begins in Professor Yiannopoulos' book, one will discover that knowledge of no other introduction or section is presupposed. Each numbered section treats a particular concept and relates it, in the civilian tradition, to other particular concepts as well as to general principles. Through a whole network of connections radiating from each legal concept, the reader, starting at any point in his research, can explore all related areas of the law through any one of the many connections available. If the reader's interest is aroused sufficiently to inquire further into the history of the particular legal concept, its various meanings, and the problems or controversies it has raised, the extensive citations, tables showing derivation and disposition of particular codal articles, and footnotes and cross references to other sections in the book, all provide the means for a fuller exploration and parallel concept study. There is included material which could serve as a source for innovative legal solutions and which has mostly an academic significance, but again and again the reader is propelled to a clearer focus on his problem and apposite law. One sentence exemplifying the energetic positive approach to complex questions reads: "The contours of the [public records] doctrine have not been fully defined, but its general outlines are settled."[4] The author then expands on the three basic tenets of the doctrine. Similarly, in areas where there has been some confusion (for example, creation of, and prescription relating to, servitudes of light and view),[5] the author steps back and gives the reader a separate analysis of legislation, jurisprudence, and governing doctrine.

2. A. YIANNOPOULOS, PREDIAL SERVITUDES § 92 in 4 LOUISIANA CIVIL LAW TREATISE 265 (1983).

3. Tate, *Foreword* to *id.* at v.

4. *Id.* § 125, at 360.

5. *See id.* § 135, at 389.

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6. *Id.* § 152, a

7. *See id.* § 16

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9. *Id.* § 182, a

Among the many particular principles addressed by Professor Yiannopoulos, several seem especially worthy of mention here. The author observes that while the hairsplitting distinction between the use of a servitude according to title or possession (following former Civil Code article 778 and a provision in the French Civil Code) and the prohibition against changes aggravating the condition of the servient estate was not carried over into the new law (where there is no corresponding provision to former article 778), nevertheless, the law dealing with this subject remains unchanged.[6] A stimulating question is also raised as to the impact of a different manner of use of a servitude on the prescription of nonuse,[7] and very useful comments are given as to a cause of extinguishing a predial servitude which is not mentioned in the Louisiana Civil Code.[8]

In the section dealing with continuity of possession, the author states that the Louisiana Legislature in 1977 suppressed the distinction between continuous and discontinuous servitudes and provided that only apparent servitudes may be acquired by prescription, thus implying that all apparent servitudes are susceptible of continuous possession.[9] Since this continuity of possession is satisfied when the servitude is used, not necessarily through acts performed or constructions functional at all times, but regularly according to its nature, an apparent servitude may be continuously possessed without actual use at all times. The author then comments on the availability of the possessory action for the protection of the possession of a nonapparent servitude or a servitude which, under the pre-1977 law, would have been classified as discontinuous, and suggests that this action is available today for the protection of the possession of servitudes created by title as well as all servitudes that may be acquired by acquisitive prescription. The question is raised whether one may acquire the right to possess a servitude that may not itself be acquired by possession. The author succinctly points out that the question, thus posed, contains its own answer, because one may not acquire the right to possess a nonapparent servitude without title because he cannot acquire such a servitude by possession.

In a similar vein, the author also points out, in the section dealing with interruption of possession, that the redactors, in accordance with French doctrine and jurisprudence, certainly intended to accord possessory protection to a person who acquired the right to possess and did not lose that right (as distinguished from mere loss of physical control) in the year

6. *Id.* § 152, at 420-21.

7. *See id.* § 168, at 448.

8. "A predial servitude may be extinguished when an adverse possessor acquires ownership of the servient estate by prescription. This cause of extinction is not mentioned in the Louisiana Civil Code; it is the result of the application of the provisions of the Civil Code governing acquisitive prescription." *Id.* § 174, at 459 (footnote omitted).

9. *Id.* § 182, at 478.

fer the more restrictive right to inhabit or to use the land or premises.[7] By contrast, "predial servitudes" are said to be so numerous and multifaceted that their enumeration would be impractical.[8] They may be given only for specified purposes such as passage or aqueduct, or they might allow an extraction of earth, stone, water, or wood, regardless of purpose. The taking of minerals such as oil and gas, however, enjoys its own characterization as a "limited personal servitude."[9]

I must confess that I had not heard about "dismembered" forms of ownership until I took a graduate seminar on comparative real property law from F.H. Lawson, the great English comparativist.[10] One of my classmates uncovered a citation by an English judge (whose name and decision I have regrettably forgotten) who defined an estate as "nothing more than time in the land." I asked Lawson why the civil law's conception of property rights was so closely tied with the thing owned while the common-law notion was separate and almost ethereal, to the point of being equated with time. Lawson provided an explanation which, in large measure, I believe is still valid. Given the scarcity of agricultural land in Great Britain, as compared with countries such as France, Italy, or Spain, English law had to produce a system of rights in the land that would allow for more simultaneous and fragmented forms of land exploitation and use.

Additional, albeit not inconsistent, explanations for the difference between civil- and common-law notions of property exist. For example, Great Britain's seventeenth-century commercial revolution encouraged commercial transactions in land to a degree unrivaled in civil-law nations like France, whose 1804 Civil Code, although antifeudalistic, still referred to property rights in absolute and static terms.[11] In addition, the common law traditionally disdained metaphysical legal exercises in the form of searches for the "essences" of legal institutions such as property, contract, or delict—pursuits dear to the civilian commentators trained in the scholastic fashion. The analytical skep-

7. *See id.*

8. *See id.* at 8.

9. *Id.* § 4, at 11-12.

10. This was in 1959, when Professor Lawson taught law at the University of Michigan.

11. *See generally* Kozolchyk, *The Commercialization of Civil Law and the Civilization of Commercial Law*, 40 LA. L. REV. 3, 12-17 (1979).

ticism of common-law attorneys is not only apparent in the legal philosophies of thinkers like David Hume or Jeremy Bentham, but is present as well in my anonymous judge's formulation of the concept of estates. I can easily hear this judge muttering to himself: "Whatever else may be said about fees, remainders, or reversions, what is of interest to their recipients is the enjoyment of time in the land."

For a French, German, Italian, or Spanish legal metaphysician, such a statement begs the ultimate question of the legal nature or "essence" of estates. After all, what is "time," and how does it relate to rights *in rem* or *in personam*? Can time be included as a "right" in an exhaustive list of rights *in rem*? To the English judge, conveyancer, or litigant, on the other hand, the statement sufficed as long as it indicated what made the estates marketable entities or what would be the most likely object of disputes among grantors, grantees, and third parties.[12]

The preceding reasons for the differences between estates and absolute ownership are consistent with Lawson's explanation. Scarcity of resources only heightens their marketability, and the common-law lawyer's analytical skepticism is frequently indistinguishable from his and, more importantly, his client's utilitarianism. Simply stated, the common law of property has been, for a significant period of time, a law for hard-headed, profit-oriented land traders. How this attitude is reflected, if at all, in Louisiana's law of predial servitudes, inspired as it is by civilian institutions, is a fascinating question for comparative lawyer and cultural legal anthropologist alike.

Not long ago I was fortunate to spend a semester teaching at Louisiana State University's Law Center, where I was exposed to Louisiana's confluence of legal systems and cultures. Unlike the western United States, Louisiana does not suffer from scarcity of water. In fact, it has too much of it, at least from its citizens' vantage point. Legal problems created by the exploitation of aqueducts, waterways, and riparian rights are therefore quite common. In addition, Louisiana and adjoining coastal states contain some of our richest energy reservoirs, including

12. By the "marketability of estates," I mean the grantor's ability to convey economically valuable rights in immovable property, including but not limited to the fee simple absolute, to parties other than members of the grantor's family.

highly sought after minerals and timber as well as sea and freshwater food of great variety and taste.

The marketability of predial and personal servitudes that provide access to such wealth in a state that has an active market economy can, therefore, be taken as paradigmatic. Yet, there is no doubt but that many of Louisiana's legal institutions derive from legal systems and cultures not as concerned with promoting the marketability of real estate as was the English common law after the seventeenth-century's commercial revolution. Yiannopoulos' treatise provides several good illustrations of the extent to which judicial adaptations of the traditional civil-law notions became necessary and of the difficulties inherent in their adaptation.

The Louisiana Civil Code, for example, embodies the principle that a predial servitude might not involve affirmative duties for the owner of the servient estate. As stated in article 651 of the Louisiana Civil Code, "[t]he owner of the servient estate is not required to do anything."[13] But, how should a court interpret a stipulation for a supply of timber wherein the seller requires the purchaser to transport the timber on the seller's own railway? Should that requirement be nullified because it incorporates an obligation *in faciendo*?[14] The contract of sale clearly could be interpreted as embodying not only the buyer's obligation to have the timber transported by the seller but also the seller's obligation to transport the timber. As well, the obligation assumed by the buyer did not result from a permanent manorial relationship between lord and vassal. Instead, it ensued from a fluid capitalistic relationship between supplier and user of raw materials. Although the user may at one point have lacked the supplier's bargaining power, he later could have acquired such power.

The Louisiana Supreme Court's response to arguments based upon the traditional meaning of the Civil Code's provision reflects the contrasting contexts and the inherent difficulties in choosing one argument over the other. In *Louisiana & Arkansas*

13. LA. CIV. CODE art. 651; *see also* A. YIANNOPOULOS, *supra* note 1, § 5, at 14.

14. This was a principal issue in Louisiana & Arkansas Railway v. Winn Parish Lumber Co., 131 La. 288, 59 So. 403 (1911). For a discussion of this case, see A. YIANNOPOULOS, *supra* note 1, § 5, at 14-15.

Railway v. Winn Parish Lumber Co.,[15] the court first held that the obligation created by the vendee was a "real obligation, other than a servitude, as to the property and the vendees."[16] Upon rehearing, this holding was repudiated, and the court held that the contract established valid personal obligations, although the court further ruled that the defendant had not violated his obligations. The court also found that the stipulation requiring the timber's transportation by the seller's railway suggested "a return to feudal times, when the lord of the manor held the small farmers under his control and domination."[17] The court refused, nonetheless, to pass on the legality of the stipulation, referring the issue to the legislature.[18] A dissenting opinion concluded that real rights and real obligations were synonymous, that all innominate land charges were servitudes, and that the stipulation for transportation was a reprobated servitude *in faciendo*.[19] Although this decision cannot be regarded as clarifying the impact of a contemporary capitalistic culture upon feudalistically inspired rules, it clearly reveals the court's difficulties in coming to grips with the unavoidable adaptation.

More substantial support for marketability emerges in other areas of predial servitude law. For example, what happens if property burdened by a predial servitude is expropriated for public use? Is the owner of the dominant estate entitled to compensation for the taking of his property, or does his right to economic exploitation die with the public takeover of the servient estate?[20] Article 722 of the Louisiana Civil Code states: "Predial servitudes are established by all acts by which immovables may be transferred."[21] Since Louisiana courts have determined that predial servitudes are immovable property,[22] the owner of the dominant estate has been deemed entitled to compensation for the expropriation of the servient estate.[23]

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15. 131 La. 288, 59 So. 403 (1911).
16. *Id.* at 303, 59 So. at 408, *quoted in* A. YIANNOPOULOS, *supra* note 1, § 5 at 14.
17. 131 La. at 312, 59 So. at 411.
18. *Id.*
19. *Id.* at 313, 59 So. at 428 (Monroe, J., dissenting).
20. This was at issue in Michigan Wisconsin Pipe Line Co. v. Fruge, 210 So. 2d 375 (La. App. 3d Cir. 1968), *writ refused*, 255 La. 151, 229 So. 2d 733, (1920), *cited in* A. YIANNOPOULOS, *supra* note 1, § 6 at 19.
21. *See* LA. CIV. CODE art. 722.
22. *See supra* note 15. *See also* A. YIANNOPOULOS, *supra* note 1, § 6, at 19.
23. *Id.*

This judicial characterization has been refined to distinguish the species of predial servitudes—an "incorporeal" immovable—from the genus of immovables.[24] This distinction, reminiscent of the anonymous English judge's definition of estates, also enhances the marketability of predial servitudes by excluding certain impediments to their sale. One such impediment could have been "lesion," a ground for rescission of sales of immovables based upon a statutorily specified differential between what was paid for them and their market value.[25] Yet, as a result of the characterization of predial servitudes as "incorporeal immovables," lesion has been held inapplicable to a conveyance by the owner of the dominant estate to a third party.[26]

One of the clearest indications of judicial support for the marketability of estates in the common law has been the courts' willingness to imply or to find an easement or forced right of passage in favor of the landowner who is cut off from access to a road or from the "outer world."[27] Since the common law was so keen to protect the economic value of real estate in accordance with its exploitation or use, one of my property teachers was able, with a bit of exaggeration and melodrama, to announce that "there is not such a thing as a landlocked estate in the common law." The Louisiana Civil Code provisions which address access to public and private roads[28] add considerably to the original legislative model. In fact, article 682 of the French Civil Code of 1804 restricted the right of access to agriculturally related activities.[29] It was not until 1967 that the French amended the text of this provision to include not only agricultural, but also commercial and industrial purposes, as well as "the carrying

24. A. YIANNOPOULOS, *supra* note 1, § 6, at 19-20.

25. *See* Kozolchyk, *supra* note 8, at 9-12.

26. A. YIANNOPOULOS, *supra* note 1, § 6, at 20.

27. *See* A. YIANNOPOULOS, *supra* note 1, § 90, at 261; 2 AMERICAN LAW OF PROPERTY §§ 8.31-.39 (1952); RESTATEMENT (SECOND) OF PROPERTY §§ 474-476 (1944); 2 G. THOMPSON, COMMENTARIES ON THE MODERN LAW OF REAL PROPERTY §§ 362-368 (1980).

28. *See* LA. CIV. CODE art. 689. For a brief legislative history of this provision, see A. YIANNOPOULOS, *supra* note 1, § 91, at 261-64.

29. Article 682 of the French Civil Code provides:

> Every proprietor whose fields are surrounded, and who has no outlet to the *public road*, may claim a passage over the fields of his neighbours for the agricultural purposes of his estate, on condition of an indemnity proportioned to the injury that he may occasion.

CODE NAPOLEON art. 682 (1804) (unnamed trans. 1827).

out of construction for allotment."[30] By contrast, article 689 of the Louisiana Civil Code appears to be an omnibus authorization of forced passage: "The owner of an estate that has no access to a public road may claim a right of passage over neighboring property to the nearest public road."[31]

The Louisiana Supreme Court also supports marketability regardless of the exploitive activity:

> While [the right of passage] has been generally accepted as designed to benefit the landowner so he could produce profit for himself and obtain full utility of his land, it must now be deemed also to offer protection of public interest. As land becomes less available, more necessary for public habitation, use, and support, it would run contrary to public policy to encourage landlocking of such a valuable asset and forever removing it from commerce and from public as well as private benefit.[32]

Marketability is obviously not the only concern of Louisiana's predial servitude law. Under the heading "The Obligations of Neighborhood,"[33] Yiannopoulos discusses tortious and nontortious liability flowing from the presence and exploitation of a predial servitude in a neighborly context. Here, again, an interesting interplay between continental civil law and common law institutions and attitudes takes place.

Article 669 of the Louisiana Civil Code of 1870 was, according to Yiannopoulos, designed "to afford protection to owners and other occupiers of immovable property against damage or inconvenience caused by the emission of *imponderabilia*, such as smoke, soot, fumes, odors, noise, vibrations, and the like."[34] Article 669 does not itself establish a standard of conduct but relies on "rules of police" and "local 'usages.' " Article 2315 makes it clear, however, that, regardless of local rules, a person or entity is liable for acts (including emissions) that cause damage through the actor's fault.[35] In addition, article 667 makes landowners who abuse the right of ownership responsible for emis-

30. *See* CODE CIVILE [C. CIV.] art. 682 (64e ed. Petits Codes Dalloz 1965).
31. LA. CIV. CODE art. 689.
32. *See* Rockholt v. Keaty, 256 La. 629, 641, 237 So. 2d 663, 668 (1970), *cited in* A. YIANNOPOULOS, *supra* note 1, § 92, at 265 n.4.
33. A. YIANNOPOULOS, *supra* note 1, §§ 25-65, at 84-202.
34. *Id.* § 58, at 164-65 (emphasis in original).
35. *Id.* at 165.

sions that cause damage or deprive neighbors of the enjoyment of their property.[36]

From a comparative law standpoint, the interaction between civil-law institutions (in this case a set of seminal concepts) and common-law judicial decisions, which lead to virtually endless rules on the actionability of conduct, could not be more characteristic. In the civil law there is an ability to formulate general principles, which although broad, are still specific enough to encompass basic categories of causes of action. As Andre Tunc insightfully states in respect to tort law principles:

> [O]ne may quarrel with the famous saying of Kant defining law as the means to assure "the coexistence of freedoms." Society is not merely a coexistence of free individuals. It is also built on a solidarity within a community of citizens. Life in society does not only restrict the otherwise unlimited freedom that we would enjoy if we were living alone (assuming man could live alone), it also entitles us to some form of brotherhood. The aim of law, therefore, is not only to protect and harmonize our freedoms, but also to permit and promote the development of our personalities . . . .
>
> [T]his is especially true of the law of civil liability [i.e., tort]. Its main purpose is to harmonize the relations between persons who have no special tie between them.[37]

Tunc concludes that the French Civil Code's generic and open-ended definition of tort has served this purpose by governing a range of conduct as broad as "the lives of tenants in a collective building and the conduct of large corporations engaged in fierce competition with each other."[38]

Accordingly, under the broad heading of "obligations of neighborhood," a civilian interpreting the Louisiana Civil Code might discover distinct nuisance-related causes of action not only in contract (if such an obligation was contractually agreed upon) but also in tort, in property, in administrative law, and in abuse of rights, a hybrid whose remedial potential awaits full exploration.

In the common law, protean remedial activity also exists. As

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36. *Id.*

37. Tunc, *A Codified Law of Tort—The French Experience*, 39 LA. L. REV. 1051, 1059 (1979), *discussed in* Kozolchyk, *supra* note 11, at 18-19.

38. *Id.*

described by the late Dean Prosser, however, the common law's concept of nuisance is less tidy:

> There is perhaps no more impenetrable jungle in the entire law than that which surrounds the word "nuisance." It has meant all things to all men, and has been applied indiscriminately to everything from an alarming advertisement to a cockroach baked in a pie. There is general agreement that it is incapable of any exact or comprehensive definition. Few terms have afforded so excellent an illustration of the familiar tendency of the courts to seize upon a catchword as a substitute for any analysis of a problem.[39]

The gap between general principles and the actionability of specific conduct can only be filled by the hustle and bustle or, in Prosser's words, "the jungle" of case law. How could one otherwise separate a lawful exploitation and enjoyment of property rights from a trespass upon the neighbor's rights or from the rights of undetermined third parties? Carried to their logical extremes, the underlying principles are mutually exclusive. No matter how innocuous an act, occupation, or structure may seem, it could, in some manner or other (tort, property, administrative law, abuse of right), be declared unlawful.

The litigation reviewed by Yiannopoulos bears witness to this assertion. At one time or another, metal works, paper plants, oil refineries, ice factories, saw mills, whiskey distilleries, cotton gins, rendering plants, milk pasteurizing, public works, canals, combustible wooden structures, stockyards, shipyards, and sugar factories were brought into court for having failed in their neighborly obligations.[40] As it happens, Louisiana courts found it necessary in many of these cases to articulate that "[a] lawful business is never a nuisance per se."[41]

Although the reader may, in strict logic, object to a rule which begs the issue of lawfulness (after all, is not a lawful business one that does not engage in unlawful activities such as nuisances?), he receives, nonetheless, the "casuistic" message: "Op-

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39. W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 86, at 571 (4th ed. 1971), *cited in* A. YIANNOPOULOS, *supra* note 1, § 54, at 157.

40. For citations to cases discussing neighborly obligations under these fact situations as well as many others, see A. YIANNOPOULOS, *supra* note 1, § 57, at 161-64 & nn.1-44.

41. Canone v. Pailet, 160 La. 159, 162, 106 So. 730, 731 (1926), *cited in* Graver v. Lepine, 161 La. 97, 100, 108 So. 138, 139 (1926).

eration of a lawful business cannot be enjoined, under the guise of being a nuisance, unless the business is being operated in such a way as to give serious and material discomfort and inconvenience to those who are living in close proximity thereto."[42]

Implicit in this tautological pronouncement is a message that most able practitioners of the law of nuisance can decipher. The court does not tell them what constitutes the "essential" nature of a *per se* nuisance or how it is distinguishable from other areas of civil or criminal liability. It does suggest what facts might be relevant for a given cause of action, such as the location of the business and the manner in which it is conducted in relation to proper authorizations. The court also indicates to the plaintiff that a much heavier burden of proof will be necessary in the absence of a *per se* rule. The message, then, is not a shining example of logical symmetry but a basic road sign of actionability. In this jungle of nuisance law, Yiannopoulos charts a sound course for Louisiana courts and commentators to follow:

> Aware of the solutions reached by courts in a great number of cases, and mindful of the nature of law in a codified system, doctrine must seek formulas that are sufficiently broad to encompass all reported cases, and, at the same time, sufficiently flexible to fit Louisiana's civilian heritage. It might be easy to state that one is responsible in Louisiana, as in sister states, because he has created a private "nuisance." Such a statement, however, would be an analytically useless proposition because nuisance has defied attempts at accurate definition. It is advisable, therefore, to seek the foundation of civil responsibility in fundamental precepts that form the backbone of the civilian tradition.[43]

Not being a specialist in real property law, I am not qualified to assess the degree to which Yiannopoulos has advanced the understanding and application of predial servitude law in Louisiana or in the other jurisdictions constantly referred to in his treatise. As a practitioner and student of the comparative legal method, however, I am certain that the mere ability to relate concepts, rules, and principles of interpretation to various normative contexts with the ease and precision apparent in the

42. Woods v. Turbeville, 168 So. 2d 915, 917 (La. App. 2d Cir. 1964).

43. A. YIANNOPOULOS, *supra* note 1, § 40, at 111; *see also id.* § 65, at 201-02 (summarizing the analysis of civil responsibility under Louisiana legislation, jurisprudence, and doctrine).

treatise is, in itself, a valuable contribution to legal scholarship.

Yiannopoulos' mastery of the subject matter in diverse jurisdictions, so apparent throughout the text and footnotes, often results in helpful suggestions for the jurisdictions involved and particularly for Louisiana. One such instance is found in the discussion of third-party reliance on public records in the acquisition of a dominant estate.[44] Yiannopoulos begins by clarifying the nature of third-party protection in Louisiana law: it is negative in the sense that the protected reliance is only "on the *absence* from the public records of . . . instruments that are required to be recorded."[45] This clarification is only possible by the author's discussion of a contrasting system, like Germany's *Grundbuch*. In the German system, the third party is entitled to rely on what is recorded and on the appearance of the title's validity provided by the registry. By contrasting the two systems and the aims of enhancing the marketability of predial servitudes, Yiannopoulos is able to suggest that the advantages of the German system merit detailed study for possible adoption in Louisiana.[46]

Other helpful suggestions, born from the comparative analysis, are located in issues such as property and negligence rationales in nuisance litigation,[47] prohibition against competition,[48] burden of proof for the extinction of a predial servitude,[49] and change in the manner of exercise of a servitude.[50] If one takes into account the exhaustive coverage, which ranges from the substantive law of conventional servitudes and building restrictions to the procedural law relating to real actions and injunctive relief, one begins to sense the treatise's potential to have a beneficial impact upon lawmaking in Louisiana.

As a student of the comparative legal method, and particularly of the relationship between cultural legal attitudes and official or "positive" legal institutions, I am also grateful for the treatise's depth of coverage, scholarly rigor, and clarity. These

44. A. YIANNAPOULOS, *supra* note 1, § 127, at 365.
45. *Id.* (emphasis in original).
46. *Id.* at 369-70.
47. *Id.* § 65, at 201-02.
48. *Id.* § 108, at 317.
49. *Id.* § 186, at 489.
50. *Id.* § 168, at 448.

features make it possible to ascertain how attitudes favoring the active marketability of time in the land and the vigorous actionability against "unneighborly" behavior—shared by Louisiana with most sister states—have been implemented by legal institutions so apparently different from those used in other jurisdictions. The same features reveal how the "fundamental precepts that form the backbone of the civilian tradition"[51] can be used by courts in a manner highly consistent with the casuistry of their common-law brethren. Thus, civilian concepts and principles of interpretation are used in the same manner that factual analogies are employed in common-law jurisdictions.

The methodological benefit to be derived by those jurisdictions interested in Louisiana's experience is not confined to courts' bolder use of legislative concepts, policies, and principles of interpretation. The legislatures of other states can also benefit from exposure to the precise and rigorous methods of definition, classification, and distinction practiced by a skilled legislative draftsman like Yiannopoulos. Conversely, Yiannopoulos' treatise illustrates how common-law jurisprudence can assist in the development of Louisiana law.

Predial Servitudes, the final volume in Yiannopoulos's trilogy on property law,[52] illustrates the many advantages to be derived from the comparative method when it is skillfully used. Yiannopoulos stands tall in a vanishing breed of devoted comparativists in Anglo-American legal education and research. That the breed is vanishing is unfortunate. The happy note, however, is that he has been able to put his talents to such good use. My hope is that the success that the trilogy deservedly enjoys will encourage continuing comparative-law training and even more ambitious research.

BORIS KOZOLCHYK

51. *Id.* § 40, at 111.

52. Earlier works are A. YIANNOPOULOS, PROPERTY (La. Civ. L. Treatise vol. 2, 2d ed. 1980) and A. YIANNOPOULOS, PERSONAL SERVITUDES (La. Civ. L. Treatise vol. 3, 2d ed. 1978).