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Albert Tate Jr.

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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.

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 Yianopoulos 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, usufruct, 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-

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.