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Guthrie T. Abbott

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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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* Professor of Law, University of Mississippi.

1. Tate, *Foreword* to A. YIANNPOULOS, 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).