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Review of "The Law of Trusts," By Austin Scott

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sions.[12] Without that faith and the courage to follow its lead, his shrewd sensing of issues, his journalistic gifts, and the comforting warmth of friends of all views and social classes would have served merely to warn him from entering in 1927 the already long embittered fight over Sacco and Vanzetti. His topical essay on their case remains to this day capable of stimulating both emotion and reflection because fiercely liberal and democratic convictions are harnessed to the sharply critical observations about evidence and the judicial process.

"I can express with very limited adequacy," he wrote in 1938, "the passionate devotion to this land that possesses millions of our people, born, like myself, under other skies, for the privilege that this country has bestowed in allowing them to partake of its fellowship."[13] Mr. Justice Frankfurter has bravely earned the ideal resources of America which we who are natives inherit in spendthrift trust.

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THE LAW OF TRUSTS. By Austin Wakeman Scott. Boston: Little, Brown & Co., 1939. Four volumes. Pp. 2981. $35.

This treatise on trusts is an outstanding contribution to the law in this field. Its thoroughness of discussion, with the presentation of conflicting views, its compactness of treatment, and its informality and clarity of style will make it an invaluable aid for anyone engaged with trust problems—student, teacher, practitioner or judge.

The book's relationship to the American Law Institute's Restatement of Trusts, for which the author served as reporter, give the book added significance. The entire treatise, except the last part of the third volume, follows the sectional order of the Restatement, including that part of the Restatement of *Restitution* prepared by the author. The author injects additional material at various points through the use of sections which are numbered similarly but with the addition of "A," in order to preserve uniform correspondence with the Restatement. This method of treatment will lend great weight to the force of the Restatement of Trusts in that the reasons and cases upon which the Restatement is based are made generally available for examination for the first time. At the same time there appear to be some disadvantages to this approach. It probably tends to confine the limits of the treatment, and at times it seems that a particular problem could have been comprehensively treated as a whole with greater advantage than was possible by dividing the treatment to match the relevant part of the Restatement. The matter of tort responsibility in the chapter on Liability to Third Persons may be cited as an instance in point.[1]

There will undoubtedly be some who will feel that more statutory

12. E. g., P. 129, Press Censorship by Judicial Construction; and p. 218, Labor Injunction Must Go, both reprinted from The New Republic.

13. P. 198, America and the Immigrant.

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1. Secs. 269.2, 270.2, 271A.2.

material should have ben included, and that certain problems pertaining to property law, taxes, business trusts and conflicts of law, so often encountered in dealing with trust problems, should have received consideration. The author anticipated such criticism and states in his preface:

> It may be thought that a treatise on the law of trusts is incomplete without a consideration of these matters. But I believe that no treatise on trusts could be wholly complete unless it dealt with every matter in which a trust might be involved. It is not within my competence to write such a *corpus juris*.[2]

Even though one is willing to accept this general policy of exclusion, the failure to include more relevant statutory references is more difficult to accept.

It should be made clear, however, that while the book is rather compact in treatment, it possesses a thoroughness of discussion which is remarkable.[3] In fact, the ability of the author to present conflicting arguments and different points of view centering around so many varied trust problems within the space used is most striking. Too often similar attempts have resulted in a spreading of material and discussion which has been more confusing than illuminating. In avoiding this defect the author has scored a marked success. The consideration which he gives to the matter of practical trust administration—this occupies about one-fourth of the treatise—will be especially helpful to lawyers and others engaged in such administration.

If a reviewer is permitted to express desires as to minor mechanics, this one would have appreciated a double-indexing system as to the style of cases. But this desire may be due to a poor memory or, worse yet, to laziness.

In summary, Mr. Scott has written a most significant treatise, one of the outstanding treatises in many years, and it is confidently believed that all branches of the legal profession using it will so declare.

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