

Louisiana Law Review

Volume 44 | Number 3

January 1984

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St. Paul: West Publishing Co., 1983. Pp. 520. \$51.00

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Repository Citation

William H. McClendon III, *PREDIAL SERVITUDES*. By A.N. Yiannopoulos. St. Paul: West Publishing Co., 1983. Pp. 520. \$51.00, 44 La. L. Rev. (1984)

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*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 series¹ 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. YIANNPOULOS, PROPERTY IN 2 LOUISIANA CIVIL LAW TREATISE (2d ed. 1980); A. YIANNPOULOS, 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. YIANNPOULOS, *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.

Among the many particular principles addressed by Professor Yianopoulos, 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.

immediately preceding the disturbance.¹⁰ Furthermore, he suggests that since the requirement of continuity of possession is satisfied when a servitude is used regularly according to its nature, one may have possession of a servitude for at least one year after the date of the last use.¹¹

One of the most interesting chapters in the book is chapter X dealing with building restrictions (a subject added in 1977 to the Civil Code under title V, book II),¹² and containing separate analyses of the various aspects of the creation, enforcement, termination, and effect of zoning ordinances on property rights. Professor Yiannopoulos believes that these relatively new and increasingly challenging concepts should not be termed as real obligations accompanying the land (utilizing, as some courts have, the general language of Civil Code article 2012), or classified as covenants running with the land (following the common law terminology of sister states), but preferably should be classified as *sui generis* real rights akin to predial servitudes (adopting the language of new Civil Code article 777).¹³ Furthermore, restrictions imposed by individual landowners as a group in accordance with a general plan, as distinguished from the restrictions imposed by a developer alone (where there are not separate servient and dominant estates), may qualify as predial servitudes.¹⁴

The appeal of the book, beyond the brilliance of its ideas and the vigor of its style, is that the reader is given a glimpse of how the law, as a self-correcting system, evolves into general patterns. Professor Yiannopoulos navigates the currents of other legal systems with the surehandedness of a true lover of the law, makes specific that which heretofore sometimes has been implicit, and helps the reader see these patterns. The reader may then say to himself, "I can see a lot farther now than I did when I first started to look."

10. *Id.* § 183, at 480-81.

11. *Id.* § 183, at 482.

12. 1977 La. Acts, No. 170, § 1.

13. A. YIANNOPOULOS, *supra* note 2, § 192, at 504.

14. *See id.* § 193, at 505.