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Book Reviews

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BOOK REVIEWS

SECURITIES LEGISLATION. By Louis Loss. Boston: Little, Brown & Company, 1951. Pp. xxvii, 1283. $17.50.

Lawyers, law teachers, brokers, underwriters, bankers—in fact all segments of the financial and legal professions have been awaiting the publication of *Securities Legislation* by Louis Loss. Something that was sorely needed has arrived. And well worth the wait it was. Here for the first time all aspects of securities regulation are treated in a single volume. And one of the most commendable features of this volume is that it was prepared by the man most qualified to do the job. For Louis Loss, who is now Associate General Counsel of the Securities and Exchange Commission, has been with SEC for fifteen years. In addition to acquiring this practical experience as background for his book, Loss has been a constant student of his own work and that of the Commission; he has taught SEC Aspects of Corporate Finance for several years both at the Yale and George Washington law schools and has this year joined the faculty of Harvard Law School.

Any book of this kind, by a specialist, about a specialized field, is apt to be directed at specialists alone and therefore too technical and too boring for reading by the average person. Not so with *Securities Legislation.* The author has handled this complicated subject matter with ease; this book is understandable from cover to cover.

It would serve no useful purpose to set down here a detailed list of the several topics treated in this volume. The point is that *all* aspects of securities regulation are treated, each with a thoroughness characteristic of the author himself.

In addition to presenting a crystal-clear picture of the workings of the various securities acts, the author does not hesitate to criticize legislation whenever he deems it necessary. From the layman unfamiliar with the technicalities of modern corporate business, the most oft-heard criticism of the federal securities acts centers on the length and complexity of the registration statement and prospectus. That there is some basis for this criticism, however, cannot be denied. Loss, in commenting upon this state of affairs, admits that, ". . . the typical prospectus is still a substantial document which is apt to bear more resemblance to a corporate trust indenture than to a piece of selling literature." He is quick to add that, "It is unrealistic to expect to be able in the modern financial world to form an intelligent investment decision on the basis of a document which will make good bedtime reading for the

average investor." (P. 158.) The fact remains, however, that the philosophy of federal securities legislation is *disclosure*. In short, the theory is that if all material facts are disclosed in the prospectus, at least the prospective investor has the opportunity of reading those facts before making up his mind whether to buy or not to buy. Doesn't it stand to reason, then, that the prospectus, which is required for the very purpose of being read, should be a readable document? This is far from being the case, however. Many lawyers throw up their hands when confronted with a typical prospectus. How can the average investor, then, be expected to sit down and read one, let alone understand it? The Commission has worked constantly in an effort to simplify the prospectus, but, unfortunately, little progress has been made along these lines. While Loss does state that, "a document substantially more readable than the typical prospectus currently in use is essential" (p. 159), I had hoped that he would suggest some concrete manner in which this desirable objective could be accomplished without sacrificing the main purpose of the 1933 Act: to get the truth, the whole truth, and nothing but the truth into hands of investors before they buy securities.

Although the cry of "too much" is heard in connection with the statutory prospectus, another cry, that of "too little," is often raised in connection with investment advisers. The Investment Advisers Act, enacted in 1940 by Congress, was supposed to protect the investor when he sought advice on his securities dealings. But the Act has amounted to little more than an empty gesture. Star-gazers and dreamers can furnish investment advice today—for a price—with almost no check on their activities. As long as they register with the Commission, they are free to operate; and their activities, in all probability, would not come under the definition of "fraud" in the Act. Not only that, but no educational background whatever is necessary for one to qualify as an investment adviser. Finally, the Commission does not even have the power to inspect the books and records of advisers. Thus commingling of clients' funds and innumerable other admittedly fraudulent practices can go undetected for long periods. It is high time that this toothless statute took a trip to the congressional dentist. In directing sharp criticism at these glaring defects in the Act (p. 801), Loss cites an interesting comment and bill in the *Vanderbilt Law Review*[1] proposing immediate and effective revision.

For those attorneys and financial men who have no contact with SEC and the federal acts, this book is still valuable for its discussion of state "Blue Sky" legislation. Familiarity with state securities acts is a must for those who participate in stock or bond financing. The author has given a concise treatment to this topic. Equally commendable is his exhaustive handling of

1. Note, *The Investment Advisers Act of 1940*, 1 VAND. L. REV. 68 (1947).

such topics as exchange regulation, proxy regulation, insider trading, the over-the-counter markets, federal registration procedure, and all of the remaining phases of the securities industry included in this volume.

In summation, *Securities Regulation* will serve as an excellent desk book and reference work for anyone who has occasion to come in contact with state or federal laws pertaining to securities. Equally appropriate it is as a textbook for use by law students in Corporate Finance. In this connection, the author has interlaced key cases with text discussion.

Judge Jerome Frank has remarked that *Securities Regulation* will be the *Wigmore* in its field. After reading this book, there is no alternative but to agree wholeheartedly.

HUGH L. SOWARDS*

PRIVATE PROPERTY, THE HISTORY OF AN IDEA. By Richard Schlatter. New Brunswick: Rutgers University Press, 1951. Pp. 284. $2.50.

Property, like the Constitution, is pretty much what the courts say it is. Justice Jackson quite candidly asserted that "not all economic inerests are 'property rights'; only those economic advantages are 'rights' which have the law back of them."[1] If this assertion is a fact then we would expect that a history of private property in the Western World would devote some space to important judicial pronouncements on property. Not in this book, however. The failure to make any respectable comment (see pp. 194-5) on property in the law suggests that this writer feels that concepts and attitudes with respect to property are developed elsewhere than in the courtroom.

Richard Schlatter is a Professor of History at Rutgers University. He wrote this essay during the last war and he asserts that: "It served the purpose, for me, of demonstrating the essential continuity of Western civilization . . ." What he has done is write a history of theories about property. Such theories are allegedly important because the place of property in society is the primary problem of the political scientist. But, Prof. Schlatter has limited his consideration to those theories of property which discuss property as being a natural right. He recognizes at least two meanings of "natural"—"primitive" and "fully developed or perfect." In contrast to property being "natural," it may be "conventional," (p. 10) but this latter expression is not defined and I don't remember ever seeing it again. In accordance with these two opposing meanings of "natural," the property discussed in this book is

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1. United States v. Willow River Power Co., 324 U.S. 499, 502, 65 Sup. Ct. 761, 89 L. Ed. 1101 (1945).

either an historical fact, no longer existent, or an ideal that men strive for. But what is property that men have now? (See Justice Jackson above.) The answer to this question would involve a history of the actual protection afforded to different types of property interests when owned by particular persons. This story is not told in this book and the author never intended to take it up. He confines himself to attitudes toward property in the belief that such views show an unbroken and significant historical thread.

There are numerous continuities in history, but not all are equally important. Any theme, unbroken in time, is not necessarily significant. For instance, at all times since Plato, men have discussed food. Since enough men got enough to eat, our physical continuity has been assured. And all hands have agreed that eating was natural. Again, ever since Plato, men have discussed property. Then and now, their interest was in protecting what they had and getting more. But those who have discussed property have been in different positions, socially and politically. James I of England had a theory that the King of England was absolute owner of all the property (Schlatter says "property" but James I said "land") in England and could take and dispose as he saw fit (p. 115). But this Stuart view had a variety of opponents going all the way to the extreme Leveller view which would have equalized the portions of property owned by all men. (p. 133) In short, the continuity in history cannot be explained in terms of theories of property. The continuing fact of the existence of theories about property is not significant. One's attitude towards property is but a facet of one's complete attitude towards life and its activities.

The book suffers from a lack of precision of intent and definition. The constant appearance of the word "natural" in writing can indicate an emotive word meaning roughly "the way I conceive it." Professor Schlatter seems to be taking this word at its face value whenever he finds it. The closing sentence of the book is: "The natural right of property is not yet a dead idea, and its future is clearly linked with the outcome of that struggle between rival social systems which dominates the thinking and acting of our age." (p. 281) The rival social systems are capitalism and socialism. "Today the natural right theory of property, restated to fit a complex system of cooperative production, is the officially recognized rule for the distribution of wealth in those parts of the world where socialism has prevailed." (p. 281). Unless I failed to pay attention, this means that Stalin is in the direct line of Plato, Aquinas, Grotius, and Locke.[2] As indicated above the continuity of the Western World can be found but the various theories of property based on some claim of natural right isn't a good place to look for it.

2. Stalin might agree. The Marxist dialectic would support the thesis of the golden age of happy men destroyed by capitalism out of whose ashes emerges the Soviet State. But this doesn't seem like what Prof. Schlatter has in mind.

The real merit of this book is that it tells the story of the Atlantic Community (Greece is now in it) with a clear description of the political theories prevailing at the various times of crisis in the turbulent history of political power in Western Europe. And, of course, in describing these political theories there is emphasized the attitude towards property adopted by the various writers.

STANLEY D. ROSE

OIL AND GAS LAW. Collection of articles from TEXAS LAW REVIEW. Austin: Texas Law Review, Inc., 1951. Pp. xix, 1736. $15.00.

A book review by a non-Texan included in this collection admits, "We who inhabit Texas' united satellite states have long envied the resources so plentifully conferred upon her by nature."[1] The publication of this strapping, Texas-size volume must give all who peruse its 1736 pages cause for further envy of Texas' intellectual resources which are here so ably inventoried. No less than 49 leading articles, 27 comments, 82 casenotes and 9 book reviews, comprising everything printed in the *Texas Law Review* through 1951 on oil and gas law and related subjects, go into this compilation. The arrangement of the book is chronological, with each piece found in the same order as it was originally published. Only an occasional maverick comment is out of place—an excusable occurrence in this mass of materials. A weakness of this type of organization is that it makes the reader rely completely on the somewhat inadequate index for any systematic use of the work.

The Foreword says of authors of the collected writings, "It will be recognized that they represent [the] most authoritative sources of legal comment in this extensive field." The truth of this statement is shown by a glance at the list of contributors. A. W. Walker, Jr., is represented by an even dozen selections; Robert E. Hardwicke, Jr., and Walter L. Summers each favor with four articles; Maurice H. Merrill and Leslie Moses follow with three contributions; Tom C. Clark, Kenneth Culp Davis and Victor H. Kulp are among the other distinguished men included. Surely no more illustrious group of petroleum law scholars has ever united between the covers of a single book. Though perhaps overshadowed by this sparkling list of "big name" writers, the many student pieces, scattered throughout the volume and directed to a multitude of the more narrow subjects, are valuable in fleshing out the general coverage of the book.

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1. Bittker, Book Review, 27 TEXAS L. REV. 872 (1949), REPRINT VOLUME 1490 (1951).

The chronological structure employed in this volume offers the reader an interesting commentary on the trends in oil and gas writing. The decade of the 1920's, which saw the birth of the *Texas Law Review,* was the formative period of petroleum law scholarship. It was a time of groping for basic concepts and definitions, of delineating and classifying the confusing maze of precedent springing up in this new and vigorous field. Significantly, not until the latter half of that decade were the first systematic treatises on oil and gas forthcoming—Mills and Willingham[2] in 1926 and Summers[3] in 1927. The first article in this collection reflects the fundamental nature of the research of that time by treating of the problem of whether a landowner may own oil and gas in place.[4] Then in 1928 commences Walker's notable series of articles on the nature of property interests created by oil and gas leases in Texas.[5] This famous set of five articles, greatly expanded from the two originally planned by the author to cover the subject, transcends mere local importance by its breadth and clarity.

Discoveries of vast new petroleum deposits in the late '20's and early '30's, which concurred with the world-wide economic depression to drive the price of crude oil to alarming depths, fixed the attention of legal writers in the 1930's on the vexing subject of public control of the oil industry. Articles on prorationing, well-spacing and, later, unit operation became the order of the day as all concerned with the petroleum industry began to realize the necessity of regulation. The problem of how much and what kind of regulation was desirable proved the focal point of legal writing until the coming of the war years.

With the last war came its modern concomitant—the big income tax. The tenor of petroleum law scholarship in the 1940's accordingly became how to deal with this relatively new element in economic life. The controversial depletion allowance became a term of everyday language and its desirability was duly aired, pro and con, in the 1943 issues of the *Review.* This concern for taxation is further shown by the number of articles on the more detailed aspects of the subject which continued to appear throughout the '40's and into the '50's.

The volume closes with rash of articles on the property rights of states—Texas in particular—to the continental shelf and its huge oil reserves. The

2. MILLS AND WILLINGHAM, OIL AND GAS (1926).
3. SUMMERS, OIL AND GAS (1927).
4. Greer, *Ownership of Petroleum Oil and Natural Gas in Place,* 1 TEXAS L. REV. 162 (1923), REPRINT VOLUME 1.
5. Walker, *The Nature of Property Interests Created by an Oil and Gas Lease in Texas,* 7 TEXAS L. REV. 1 (1928), REPRINT VOLUME 103; 7 TEXAS L. REV. 539 (1929), REPRINT VOLUME 167; 8 TEXAS L. REV. 483 (1930), REPRINT VOLUME 269; 10 TEXAS L. REV. 291 (1932), REPRINT VOLUME 413; 11 TEXAS L. REV. 399 (1933), REPRINT VOLUME 447.

argument for state ownership of these submerged oil fields is ably and exhaustively set out by a number of articles, only to be rejected by the United States Supreme Court in its holding that these areas are under federal dominion.[6] Ironically, the apologia for this action of the Supreme Court appears in an article written by a Texan—Attorney-General Tom C. Clark.[7]

In a field in which law review scholarship has been of unusual importance in influencing judicial decisions, the contribution made by the *Texas Law Review* to oil and gas law is unique in its magnitude. It has become a mecca for the oil and gas writer who wants to be read by experts. From between its covers has come a book which may well render the publishing of a "Selected Essays" series volume in oil and gas law superfluous. In a way this is regrettable, for it may prevent the collection of other worthwhile oil and gas law articles appearing in other reviews—and despite the size and quality of this volume there are a number of valuable articles on petroleum law in other periodicals. The assembling of this great quantity of research into one book, places within the reach of the practitioner materials heretofore obtainable only by the purchase of an entire 29-volume set of the *Review*. The oil and gas bar cannot do less than benefit from the wider dissemination of these articles likely to result from the publication of this volume.

William D. Warren*

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6. United States v. California, 332 U.S. 19, 67 Sup. Ct. 1658, 91 L. Ed. 1889 (1947).

7. Clark, *National Sovereignty and Dominion Over Lands Underlying the Ocean*, 27 TEXAS L. REV. 140 (1948), REPRINT VOLUME 1416.

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