

REVIEWS

REAL COVENANTS AND OTHER INTERESTS WHICH "RUN WITH LAND." By Charles E. Clark. Chicago: Callaghan & Co., 1947. Pp. iv, 310. \$6.00.

THIS second edition of Judge Clark's classic little book is designed to serve the same purpose as the first: to bring clarification to that peculiarly obscure body of doctrine and practice known as the law of "rights in the land of another." The first edition was hailed, despite its brevity, as one of the few great law books of our time;¹ this new edition merits and is receiving similar acclaim.² In the first edition the author, restricting himself largely to the problem of "the transferability of those non-possessory interests in land traditionally known as incorporeal hereditaments," announced his aim as being "to state clearly the conflicting views of policy" and "to set forth a more accurate historical perspective, particularly in the law of covenants running with the land where it is believed that false notions of history have hampered the development of a consistent modern doctrine."³ In the present edition he elaborates his purpose as, not "reform or rewriting," but "clear exposition," "exposition and clarification through analysis of precedents."⁴ This objective will not be scorned by scholars and practitioners who are concerned to preserve the widest possible scope for private agreement and to make private agreement a more effective instrument of land planning and development in individual and community interest.

In structure and thought the book remains much the same, though its substance is vastly enriched by a new chapter, three appendices, new critical comments in the old text, and extensive new citations to cases, statutes, articles, and books. The original chapters on licenses, the running of easements and profits, the running of real covenants, party-wall agreements as real covenants, the running of equitable restrictions, and the running of rents, are presented in their original order, without important change, and the principal instruments of clarification are still incisive use of Hohfeld's dichotomy between "operative facts" and "resulting legal interests," a vigorous scalpel on "false notions of history," and a Connecticut Yankee's wise intuition of relevant community policy. The new chapter, on "Legislative Restriction of Running Interests," eloquently urges reform by way of statutory time limit on restrictions of all

1. The reviews are collected in Farnham, Book Review, 33 CORN. L. Q. 153 n. 1 (1947).

2. Farnham, note 1 *supra*, and Tefft, Book Review, 15 U. CHI. L. REV. 490 (1948). See also Book Reviews by Sims, 33 A.B.A. J. 1130 (1947); Jones, 61 HARV. L. REV. 376 (1948), Schuyler, 42 ILL. L. REV. 833 (1948); Bailey, 64 L. Q. REV. 272 (1948); Carnahan, 7 LAW. GUILD REV. 232 (1947); Rapacz, 32 MINN. L. REV. 94 (1947); Conard, 23 N.Y.U.L.Q. REV. 371 (1948); Roberts, 96 U. OF PA. L. REV. 301 (1947).

3. Preface (1st ed.), p. v.

4. P. 9.

forms.⁵ The appendices contain the author's magnificent demolitions, previously published in this Journal⁶ and the *Cornell Law Quarterly*,⁷ of some of the ill-founded archaisms of the Restatement of Servitudes. With pardonable pride, the author observes "all conclusions previously stated have been thoughtfully reconsidered; but, whether because of the author's obstinacy of belief or because of their fundamental soundness, such a reconsideration afforded conviction that no changes of substance should be made in those conclusions."⁸

It is obvious, however, that the author's "conclusions" have not succeeded in bringing clarification to this important domain of doctrinal strife. Apart from unslaked bewilderment in judicial opinion and decision⁹ and the insistent demand of reviewers of the new edition for still further clarification,¹⁰ the most striking and compelling evidence of continued confusion is that prime object of the author's animus, The Restatement of Property, Division V, Servitudes. Prepared after the appearance of Judge Clark's first edition and published with all the authority of the American Law Institute, this volume offers a complicated body of black-letter doctrine which utterly ignores the Hohfeld distinction between "operative facts" and "legal consequences," rejects Judge Clark's policy preference for reasonable restrictions as instruments of land planning, and invents some new and "false notions of history" all its own. Thus, this authoritative volume distinguishes between "possessory" and "non-possessory" interests by the "presence or absence of the exclusive privilege of occupation" and,¹¹ similarly, distinguishes between easements and licenses by criteria in which the purported distinguishing characteristics are the very questions in issue. An easement as defined by the Restatement is an interest in land in the possession of another which (a) entitles the owner of such interest to a limited use or enjoyment of the land, (b) entitles him to protection as against third parties, (c) is not a normal incident of the possession of any land possessed by the owner of the interest, and (d) is capable of creation by conveyance.¹² A license is said, in supposed contrast, to denote an interest in land in the posses-

5. Note how the author's discussion and recommendations in this chapter cut across all traditional categorizations.

6. 52 YALE L.J. 699 (1943); 53 YALE L.J. 327 (1944).

7. 30 CORN. L. Q. 378 (1945).

8. Preface (2d ed.), p. iii.

9. Some of the cases are collected in McDUGAL AND HABER, PROPERTY, WEALTH, LAND: ALLOCATION, PLANNING, AND DEVELOPMENT c. IX (1948). For excellent example, see *Frye v. Sibbett*, 145 Neb. 600, 17 N.W. 2d 617 (1945), noted, 13 U. CHI. L. REV. 202 (1945).

10. See note 2 *supra*. Note especially Jones and Tefft who renew Chafee's earlier demand for a clarifying statute. Chafee, Book Review, 43 HARV. L. REV. 334 (1929). It is sometimes forgotten that legislation cannot bring rationality to practice in the absence of a real clarification of community interests, the de-mystification of technical ambiguities, and the establishment of agencies of administration competent to give effect to clarified policies.

11. RESTATEMENT, PROPERTY 2897 (1944).

12. *Id.* at § 450.

sion of another which (a) entitles the owner of the interest to a use of the land, (b) arises from consent, (c) is not incident to an estate in the land, and (d) is not an easement.¹³ When the issue before a court is whether a party has the privilege of exclusive occupation, or whether an interest entitles the owner to protection against third parties, or whether an interest is subject to the will of the possessor of the land, these criteria are not likely to be very helpful; on other issues, the probabilities that courts might reach such and such results on these issues may or may not be relevant. The Restatement's strong hostility to private agreement as an instrument of land planning appears at its boldest in some of the sections in Part III, "Promises Respecting the Use of Land." Here are stated, as Judge Clark tellingly documents, inhibitory requirements of "privity of estate" and "touch and concern" such as were never before seen in book or opinion.¹⁴ These requirements become somewhat farcical, however, when in subsequent sections there are stated doctrines for "equitable obligation" which explicitly reject both antiquated mysticisms.¹⁵ It can safely be ventured that Judge Clark, with all his strong language, has only begun to probe the vulnerabilities and clarify the obscurities of the Restatement of Servitudes.

With all deference to a great educator become one of our greatest judges, it may be suggested that Judge Clark himself does not always escape the bogs of semantic confusion. Though in many instances he explicitly recognizes that "easements," "licenses," "profits," "covenants running with the land," "equitable servitudes," and so on, are largely functional equivalents in comparable contexts,¹⁶ the basic organization of his book is still, as indicated above, in terms of these traditional technical distinctions. In defining "license" he insists upon a clear distinction between "physical operative facts" and "resulting legal interests" and states a preference for a definition in terms of "operative facts," but overlooks that it is courts who make facts "operative" and offers a five-fold classification of licenses ("mere license," "always 'revocable'"; privilege plus a power of extinguishing a legal interest; privilege accessory to exercise a power, etc.) which is in considerable measure in terms of legal consequences.¹⁷ He apologizes for the distinction between easement, "considered as if attached to the land itself so as to pass with it," and real covenant, "passes only to successors to the estate," as one "in theory,"¹⁸ but does not pursue his insight. He makes "possession" (fact or legal consequence?) the test of a "possessory interest" and in denying the creation of such an interest in certain instances he suggests that "historically it would seem clear that the seisin of the servient estate would not pass in such situation" and explains that "this appears

13. *Id.* at § 512.

14. *Id.* at §§ 534, 537.

15. *Id.* at § 539 *et seq.* We do not ignore an attempted distinction between liability as "promisor" and liability in equity. The confusion in this distinction is particularly transparent in Rundell, *Judge Clark on the American Law Institute's Law of Real Covenants: A Comment*, 53 *YALE L. J.* 312 (1944).

16. Pp. 24, 36, 173, 176.

17. Pp. 15, 25.

18. Pp. 65, 93.

to be as satisfactory an answer as is possible, since the line must be drawn somewhere."¹⁹ Though he inveighs admirably and mightily against "privity of estate," apparently he would preserve that other barnacle, "touch and concern." He approves a verbalism taken from Dean Bigelow as "a scientific method of approach to the problem which seems to afford the most practical working tests." The method is described as "a measuring of the legal relations of the parties with and without the covenant: If the promisor's legal relations in respect to the land in question are lessened—his legal interest as owner rendered less valuable by the promise—the burden of the covenant touches or concerns that land; if the promisee's legal relations in respect to that land are increased—his legal interest as owner rendered more valuable by the promise—the benefit of the covenant touches or concerns that land."²⁰ It should be reasonably obvious that this test is completely circular: if the court holds a covenant enforceable, the promisor's legal relations are lessened, his interest as owner rendered less valuable, and the promisee's legal relations are increased, his interests as owner rendered more valuable; aliter, if the contrary decision. Certainly there is nothing in the formula which offers any intelligible policy for drawing a line between agreements which should and should not run. Though, for a final example, he recognizes that "there will be numerous cases where the doctrines of covenants and restrictions overlap, and where the plaintiff should have a remedy under either doctrine,"²¹ he does not equate "legal" and "equitable" interests in the comprehensive way that our procedural and recording reforms, and any rational policy, demand.

All this continued confusion suggests that such instruments as the Hohfeld dichotomy, a few pungent lessons in legal history, and a simple contraposing of polar policies of "unincumbered titles" and "permanence of development of land," as useful and as advanced over previous insights as they are, are not alone adequate to bring clarity and rationality into the obscurities and vagaries of "rights in the land of another." A more comprehensive theory and something more than theory, to wit, new institutions of administration, may be required. Elsewhere the reviewer, with others, has suggested the vague outlines of such a theory and measures.²² This theory begins with the recognition that the traditional technicalities, "possessory interest," "easement," "license," "profit," "covenant running with the land," "equitable servitude," and so on, make a completely confused reference to facts, to official responses to facts, and to relevant policies, and that operational meaning can be given to such technicalities only by locating them in context. This context includes community officials responding to a great variety of *controversies*, where the identifications

19. Pp. 90, 91.

20. P. 97.

21. Pp. 131, 131.

22. McDUGAL AND HABER, *op. cit. supra* note 9, c. IX. The inadequacies of Hohfeld's dichotomy are indicated on p. 28.

and demands of the parties are quite different ("cases between the immediate parties when the issue was whether an enforceable agreement ever had been made, cases where it was assumed that an enforceable agreement had once been made between the original parties but raising questions of what protection should be given to this agreement against third parties, cases involving the assignability of the benefits of an agreement, cases requiring a determination of the rights and duties of the parties with respect to matters which they did not anticipate in their agreement, cases involving the termination of a once enforceable agreement, and cases concerning the subjection of private agreements to specific claims or general regulation by the community"), about *agreements* purporting to segmentize in infinite ways the continuum of possible uses of land that the community will protect, on *facts* involving very different kinds of *uses* (habitation, productive, servicing, governmental) and hence very different *objectives* of the parties, or different forms of "*land*" (surface, air, light, water, minerals, oil, sub-surface, etc.), or different *durations* (temporary, specified period, indefinite, permanent), or different numbers of *users* (public generally, specified private parties) or different forms of *evidence* of the agreement (non-verbal behavior, oral permission, action in reliance, unsealed writing, sealed writing, language of promise, language of grant), and using the traditional technicalities now as semantic equivalents, and again as opposites, to effect various distributions of individual and community values. An exposition which seeks to clarify the objectives of community intervention in this process, making wise choice between, and giving concrete detail to, such high level prescriptions as "unincumbered alienability" or "reasonable permanency in land planning and development," must make at least the minimal discriminations indicated above and identify such other variables, in different specific institutional contexts, as may be significant for determining what wise community policy may be in such contexts. Once policies are so clarified, an observer—making the same discriminations—may study in detail trends in official response, appraising their compatibility with such clarified policies, and noting with a new precision any differences in response that vary with different technical and policy arguments or with other environmental and predispositional factors. With the trends and conditions of official decision, and incompatibilities with community policies, so ascertained, it may become relevant to consider, not doctrinal purification alone, but a whole range of alternatives as rational means to a more effective securing of individual and community interest. It could be found that what private agreement needs most to make it efficient is an effective framework of public controls (to set basic design and minimum standards and to prevent irrational movement away from basic design), and that the task of clarifying and implementing community objectives is not one which can be performed once and for all, by rigid doctrinal prescriptions such as arbitrary time limits, but requires rather flexible doctrine and a continuous, expert supervision of constantly changing variables. The most effective reform of "rights in the land of another" might be the adminis-

tration in the first instance of private agreement, from creation to termination, by the same public officials who are charged with the duty of effecting a rational general plan by public controls. It is unlikely that Judge Clark would disagree with these proposals.²³ It is to be hoped that in his third edition he may bring his surpassing acuity and powerful rhetoric to their militant advocacy.

MYRES S. McDOUGAL†

THE LEGACY OF SACCO AND VANZETTI. By G. Louis Joughin and Edmund M. Morgan. New York. Harcourt Brace & Company, 1948. Pp. xvii, 598. \$6.00.

MORE than twenty years have passed since Nicola Sacco and Bartolomeo Vanzetti, convicted of murder in connection with a payroll holdup twelve miles south of Boston, were put to death by the Commonwealth. A generation new to the facts and concerned with the administration of justice from a moral and social point of view is now presented with a highly readable and scholarly study and evaluation of a case which still has profound reverberations and significance on current issues.

In an unusual type of collaboration, Professor Joughin of the New School for Social Research, a scholar in the field of literature, and Professor Morgan of the Harvard Law School, bring historical perspective to bear on the case. They examine respectively the social and literary impacts and the legal aspects of the case. Conclusions arrived at and formulated separately about the law, society and literature receive integrated consideration in a concluding chapter and are presented, with cautious avoidance of overstatement, as "the beginnings of historical judgment."

In dealing with the legal features of the case, Professor Morgan analyzes in some detail the records of the Plymouth and Dedham trials, the numerous motions for a new trial, the two hearings before the Supreme Judicial Court of Massachusetts, the petition for executive clemency and the hearings and decisions of the Advisory Committee which was headed by President A. Lawrence Lowell of Harvard. His conclusion is that Sacco and Vanzetti "had a trial according to all the forms of law, but it was not a fair trial"; they were "the victims of a tragic miscarriage of Justice."¹

The failure of the legal system in the case is ascribed by Professor Morgan to a tragic combination of an incompetently handled defense, a biased and prejudiced judge, and "an astute and able prosecutor whose ideals and practice did not require him either to present before the court or to disclose to counsel for the defense competent and testimonially qualified witnesses whose evidence would help the accused and damage the claims of the state—a prosecutor who

23. Note his comments on "Possibilities of Reform in the Law," pp. 9-12.

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1. P. 157.

did not hesitate to use against the defendants material likely to inflame the prevailing prejudices against men of their opinions, even though its legitimate bearing upon any issue in the case was so slight as to be negligible."²

The legacy of the Sacco-Vanzetti case to the law, Professor Morgan believes, is the defects revealed in our system of administering criminal justice. He points out that our adversary system of litigation in criminal trials does not afford equal opportunity to prosecution and defense, that the use made of expert testimony is scandalous rather than wise and that a defendant who is the object of community hostility—a Negro in the South for example—is hardly assured of a fair trial by an impartial tribunal.³ Professor Morgan advocates adoption of the following safeguards "by statute, rule or judicial decision": (1) required disclosure by the prosecution to the defense of the existence of witnesses with relevant knowledge favorable to the defendants, and discretion in the trial judge also to require the prosecution to disclose to the defense relevant information and documentary evidence in its possession; (2) power in the trial judge, especially in criminal cases, to select impartial, competent experts responsible solely to the court, with the parties still permitted to call other experts whose testimony would, however, be subject to discount because of partisanship; and (3) granting to an accused the privilege of being tried by a judge or body of judges in cases where local feeling and prejudice make it difficult to secure an unbiased jury.

In his discussion of the adversary system of litigation in criminal trials, there is one point deserving of study which Professor Morgan fails to mention. So long as crime is news, the prosecutor's office will remain a choice stepping-stone for political advancement. And so long as basic constitutional and procedural safeguards remain matters on which the American public is comparatively uninformed and insensitive, political premium will continue to be paid to the convicting prosecutor rather than to the one with a sense of fairness or higher duty.

In the social history, Professor Joughin has collated and set forth a rich storehouse of material illustrating and documenting the reaction to and upon the case of various groups and representative individuals—the foreign-born, labor, political parties of the left, intellectuals, the church, the bar, the press and the international and diplomatic world.

The Sacco-Vanzetti case gave rise to sharp, social cleavage and conflict. On the one hand were those who felt that injustice was being done. On the other hand were those who felt that the state's authority and the integrity of Massachusetts institutions were challenged and that this issue transcended in importance the issue of innocence or guilt. The line was drawn not in accordance with the orthodox Marxian concept of the class struggle but rather,

2. P. 157.

3. On the related problem of the impact of community prejudices on law enforcement, particularly in civil rights cases, see *TO SECURE THESE RIGHTS, REPORT OF THE PRESIDENT'S COMMITTEE ON CIVIL RIGHTS*, 124 (1947).

translated into today's semantics, between "the forces of democratic and un-democratic action".⁴ Sacco and Vanzetti, as anarchists, held the concept that the minimum of governmental regulation of private life yields the maximum of individual human happiness. Whatever else may be said about it, this credo is the direct opposite of a totalitarian, state-ist political philosophy. As between the "radical" ideas of the two men and the authoritarian caste which anti-Sacco-Vanzetti thinking assumed, the former would today have to be regarded as more nearly consistent with the "democratic" ideal.

There emerges from the social history of the case a myriad of issues and problems which continue to beset us today. Among these were the failure of the press to give the public enough of the facts or any comprehension of the real issues; as well as the inability of critics to state views to which their employers objected (*e.g.*, the refusal of the *New York Times* to print articles it engaged H. G. Wells to write and the similar experience of Heywood Brown leading to his discharge by Ralph Pulitzer from the old *New York World*). An especially timely issue is touched upon in Professor Joughin's pre-1948 election assertion that, although a meticulous qualitative analysis may be possible, quantitatively "[p]ublic opinion cannot be characterized with any high degree of statistical accuracy."⁵

Much of the factual material detailed by Professor Joughin in this section of the book is of high incidental interest—including the Wigmore-Frankfurter battle of titans and the relationship to the case of numerous prominent persons, among them many well-known figures of bench and bar. The legal profession was divided on the case. Many of its scholars and teachers believed that injustice was being done. "On the other hand," Professor Joughin observes, "the practicing students of those teachers, a group several hundred times as large, were strongly of the opposite opinion. The causes of this separation are not pleasant to contemplate; . . . they relate to the whole problem of the position of the legal profession in society. . . ."⁶ While only a small minority of the practicing bar saw fit to protest, it may be noted that included in that group, as might be expected, were some of the most eminent, courageous and articulate lawyers.

The literature which emerged from the Sacco-Vanzetti case is evaluated by Professor Joughin from two aspects: its value as social criticism and its intrinsic literary worth. The Sacco-Vanzetti literature thus reviewed and appraised includes 144 poems, 6 plays and 8 novels—the work of such figures as Witter Bynner, Countee Cullen, Edna St. Vincent Millay, Maxwell Anderson, S. N. Behrman, James Thurber and Elliot Nugent, Upton Sinclair, H. G. Wells, Bernard DeVoto, John Dos Passos, Ruth McKenny and James T. Farrell. The chief literary use of the case was in the novels and Professor Joughin lays stress on special qualities to be found in *The Big Money* by

4. P. 372.

5. P. 297.

6. P. 370.

Dos Passos and in Sinclair's *Boston*. In the latter, Professor Joughin believes there is "a fidelity to the factual records . . . seldom met with in historical novels. . . ."7 In both books, he finds "a type of direct moral judgment not ordinarily associated with writers of the left" suggesting "the existence of a pattern in American fiction which has been unduly neglected"8 and which warrants further study.

In two poignant and penetrating chapters entitled "The Murders" and "The Mind and Thought of Vanzetti," Professor Joughin reviews and appraises the private character and personal quality of the two men. The manner in which Sacco and Vanzetti lived through the seven years of public notice which intervened between their arrest and their execution, their words, their conduct and the way they met death are themselves a saga. Here is a great history of human courage and dignity and, in the case of Vanzetti, an immigrant fish peddler, of the development, through self-education, under hardship, of a gifted, superior, philosophic mind of disciplined, scientific quality.

In 1947, a group of distinguished citizens offered to the Commonwealth of Massachusetts for erection on Boston Common a bas-relief plaque of Sacco-Vanzetti by Gutzom Borglum. The plaque was rejected by the Governor on the ground that public opinion in the state was still divided.

LEO ROSEN†

GOVERNMENT AS EMPLOYER. By Sterling D. Spero. New York: Remsen Press, 1948. Pp. 497. \$5.65.

PEOPLE who love liberty should read *Government As Employer*. Sterling Spero has made a tremendous contribution to a difficult field, that of the basic conflict between authority and liberty in a democratic society. In the past, the subject of government as employer has been approached from the completely negative point of view of rights employees do not enjoy. Dr. Spero, however, bases his discussion upon an antithetical postulate. He points out that organization by public employees to bring pressure on the government-employer does not necessarily "represent a derogation of sovereignty and an attack on the authority of the state."¹ And, although the book is neither pro-government nor pro-union, one gets the impression that in the interest of liberty "it is a primary obligation of those in authority in a free society to guard the rights of citizens including the freedom of association of those employed by the government." Certain factors naturally limit the exercise of absolute authority by any free government over its employees. Dr. Spero names these factors. It will be helpful to public administration if officials learn what they are and consider them.

7. P. 454.

8. P. 454.

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1. P. 1.

Government officials delight in saying that collective bargaining in the public service is impossible; yet it has worked in actual practice. Experience in the Tennessee Valley Authority, the Inland Waterways Corporation, and certain other government agencies indicates that the greatest efficiency actually results when administrative discretion in the field of labor relations is exercised democratically through negotiation with the employees. "If half the energy spent in trying to prove that states, municipalities or federal agencies cannot bargain collectively with their employees were devoted to finding ways to meet the understandable desire of the employees to exercise as large and direct a role as possible in the fixing of their working conditions, sound administration would be more effectively advanced."²

In the central chapters, *Government as Employer* presents much helpful, factual information. The historical material on the fight for the shorter work-day and on the postal organizations shows extensive research. Probably some of the information will have value only to practitioners in the field and students of the labor movement, but it would be difficult to understand the present problems of government employees without it.

Of special significance and value is the treatment of police unionism and the Boston Police Strike of 1919. That experience has done more to confuse general thinking about the government as employer than any other. Certainly it has been referred to more than any other, and it is obvious from many of the references made that it is quite thoroughly misunderstood. Dr. Spero gives a clear, thorough, well-documented description of the entire affair.³ He lets the facts speak for themselves. No effort is made to fix responsibility, although the record demonstrates that it rests squarely with the then Police Commissioner and the then Governor of Massachusetts. It is a story of cold, calculating, callous reaction which should be required reading for anyone who says, "But don't you remember the Boston Police Strike?" when public employee unionism is discussed. According to Dr. Spero: "The indications are that Commissioner Curtis, in order to break the strike, turn public opinion against the policemen, and destroy the union, deliberately misled the mayor and left the city unprotected."⁴ Lawlessness and vandalism were invited by the highest authorities. That carefully planned anti-labor campaign, including violation of high public trust, was a large factor in making Governor Calvin Coolidge president of the United States and in placing in a bad light the efforts of public employees to exercise the rights of assembly and petition.

The ghosts which bedevil many public officials and particularly public law officers in no way annoy or confuse Dr. Spero. This is evident from his treatment of political activity. The doctrine of the political neutrality of the civil service, he says, was brought here by admirers of the undeniable merits of the British civil service. However, in Great Britain there are no sweeping

2. P. 348.

3. Pp. 252-281.

4. P. 273.

restrictions on political activity like those found in the United States. In the British civil service this problem is left largely to the individual departments. This agrees with the contention that housekeeping in government should be a continuing process and that it is doubly valuable if undertaken by states and local units of government rather than being forced on them by the long arm of the central government in Washington.

However, the Hatch Act (which the American Federation of State, County and Municipal Employees has consistently opposed) has been of some benefit. Public employees in doing their day by day work should be free from "political interferences." And administrators should be safe from political pressure in doing their administrative work, including the exercise of disciplinary authority over subordinates. Such matters should be decided on the basis of the merits of each case and not on the basis of political expediency or pressure. But the Act, "in seeking to neutralize completely the political influence of the members of the service goes far beyond what is necessary to achieve its universally approved objective of preventing the political exploitation of the staff. At the same time, it does not reach the most serious political abuses still prevailing in the service. Solution of the problem would require a far more thorough program of reform than the policy makers seem to desire." Among the forces which have seen this most clearly are the organizations of civil service employees which have an institutional interest in combatting the evils of outside political interference. It should be possible to change the law so that it does not take away precious and necessary rights and privileges and at the same time retain its benefits.

We need administrators of employing governments who believe in democracy and who will not resist democratizing public administration, which is a major aim of public employees. Change in the basic structure of government certainly is not sought, but the growth of organization demonstrates interest in freedom and a desire to play a larger part in making the determinations which directly affect them. A legalistic approach on the part of public officials will not solve the problems which arise as government employment grows. It would be difficult to state the case better than is done by Dr. Spero in his closing paragraph :

"The public services are expanding and the number of workers in the employ of the government is constantly increasing. The American public service, quite as much as the service of any other country, needs such criticism of its management and such a check upon its authority as only independent employee organizations, supported by a free labor movement, can give. Yet it still remains the duty of government to see to it that the public services operate for the benefit of the whole public. It is out of the inevitable conflicts inherent in this situation that problems of employer-employee relations arise in the government service. Fundamentally these problems are a phase of the perennial conflict between authority and liberty in a free society. The issue admits of no final solution but only of working arrangements which leave intact the basic

claims of each party. If government presses its sovereign authority to its logical end, it may destroy freedom. If the employees of government fully exercise their collective pressure in their own behalf, they may undermine the public security upon which freedom rests. The life of a free society depends upon the maintenance of freedom and authority in delicate balance. The preservation of this balance depends in turn upon mutual restraint on the part of both government and its employees founded upon the recognition of the fact that in real life there is neither complete liberty nor absolute sovereignty."⁵

ARNOLD S. ZANDER†

UNITED STATES CODE ANNOTATED, TITLE 15, SECS. 81-1113. Minneapolis: The West Publishing Co., 1948.

A truly "unusual feature . . . is the practical and scholarly article in this volume, by Daphney Robert on the Lanham Act, which revised the trade-mark laws effective July 5, 1937."¹ The author, whose name is correctly spelled "Daphne Robert" at the beginning of her twenty-three page "Commentary" is described as "a recognized national authority on trade-marks."² So she is; and her authority as the author of a provocative monograph on the new Act is strengthened by her position as trade-mark counsel to the Coca Cola Company.

Is the *U. S. Code Annotated* any place for the expression of controversial opinion on the probable construction of new legislation? True, every school-boy knows that it is not an official publication; but its usually neutral content makes all the more disconcerting the possibility of ambiguous citation to what may be mistaken for canonical pronouncements.

As examples of the views which Miss Robert is certainly entitled to hold, but which may or may not receive judicial concurrence, the following statements may be cited:

1. With respect to the power of the Federal Trade Commission to petition for cancellation of a mark on the general statutory grounds, "It is assumed that [such petitions] must show on their face that the public interest is adversely affected." Also, according to Miss Robert, "it is generally believed that it was included as an auxiliary proceeding after the use of a mark has been made the subject of a cease and desist order under the Federal Trade Commission Act."³

5. Pp. 486-7.

† International President, American Federation of State, County and Municipal Employees; A. F. of L.

1. P. v.
2. *Ibid.*
3. P. 282.

2. With respect to the antitrust violation proviso, Miss Robert takes the position that it affects only a claim to incontestability.⁴

3. She continues in this Commentary her advocacy of the view that the Act draws from the international conventions to which the United States is a party a "Federal code of unfair competition" which nullifies the applicability of *Erie v. Tompkins* in this field.⁵

Discussing the deletion from the new Act of the goods of the "same descriptive properties" classification, she asserts that now "The goods or services need not be identical or *even remotely related*." (emphasis supplied).⁶

Miss Robert's Commentary is in general an able summary of the Act and a clear exposition of her views. It would be an appropriate law review article. The publishers of statutory compilations, however, should stick to their headnotes, and direct elsewhere any urge they have to edit a law review.

RALPH S. BROWN†

BANKRUPTCY PRACTICE AND PROCEDURE. By William Zwanzig. Indianapolis: The Allen Smith Company, 1948. Pp. x, 750. \$15.00.

MR. ZWANZIG, a former referee in bankruptcy who probably encountered during his term of office many a "legal practitioner unfamiliar with bankruptcy procedure," has compiled for such practitioners a handbook designed to "result in a prompt and accurate disposition of the estate with the least amount of effort in reading statutes and decisions." Part I, entitled "Bankruptcy Practice and Procedure" and comprising roughly one-half of the book, presupposes virtually no effort on the part of the practitioner, whether he be representing the bankrupt, the creditors, the receiver or the trustee, and whether the proceedings be straight bankruptcy, Section 75, Chapter X, Chapter XI, Chapter XII or Chapter XIII.

In each instance, Mr. Zwanzig takes him firmly by the hand and conducts him through the procedural steps, supplying him at appropriate places with forms in necessary number and with occasional reminders that "an additional copy would be found convenient for counsel's office files." No attempt is made to improve upon the Official Forms as far as they go, but all omissions in the official compilation are supplied—even including routine orders approving bonds of the receiver and trustee. It seems likely that Part I will be more frequently consulted by legal stenographers than by effortless practitioners. Part II consists of a reproduction of the Bankruptcy Act, sparingly annotated, apparently still with a view to relieving the practitioner of the effort of reading cases, together with the General Orders and Official Forms (again). Part III is a three-way index to the Act and Orders, the forms, and the author's instructions on procedure.

VERN COUNTRYMAN†

4. P. 283.

5. Pp. 284-6.

6. P. 286.

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