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Parsons, Penn, Raup: Land Tenure

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RECENT BOOKS

LAND TENURE. Edited by *Kenneth H. Parsons, Raymond J. Penn* and *Philip M. Raup*. Madison: University of Wisconsin Press. 1956. Pp. xxiv, 739. \$10.

Neither the principal title, *Land Tenure*, nor the sub-title, *Proceedings of the International Conference on Land Tenure and Related Problems in World Agriculture Held at Madison, Wisconsin, 1951*, adequately describes the content of this new publication of the University of Wisconsin Press. The conference which it reports was sponsored jointly by several agencies of the federal government and the University of Wisconsin and was conducted as a project in the Technical Assistance programs of the Technical Cooperation Administration of the Department of State and the Economic Cooperation Administration, now succeeded by the Foreign Operations Administration. Delegates were, as a rule, technically trained administrators from government bureaus (appearing in their individual rather than their official capacities) and university specialists from the United States and nearly 40 foreign countries. The work under review is devoted almost exclusively to the more than 100 papers read by these representatives, other materials, such as reports of working parties, official welcomes and the like, being of insignificant character. There is no report of business meetings, ordinary committee reports or other routine transactions such as make up the bulk of most volumes of official proceedings. The papers thus reprinted all relate to various phases of the land tenure problem¹ and are arranged in 25 different parts. Three introductory parts are followed by those devoted to the problems of special geographic areas and the last section of the book is divided into parts dealing with specialized topics, such as resettlement, financing, the consolidation of fragmented holdings and the like. Even in this latter portion of the book, however, the individual papers ordinarily relate to problems in particular countries. Nevertheless, this arrangement permits the tracking down of questions by either the topical or geographical method. The geographical coverage thus afforded is somewhat uneven. Iron Curtain countries were, for obvious reasons, not represented at the conference and the few papers devoted to problems in those countries were written by outside specialists. The complete non-representation of Australia is harder to account for, and although African tenure questions are given some treatment, only one delegate from Africa is listed in the table of contributors. More than

¹The reader is cautioned that the expression "land tenure" is one of art to the sociologist and embraces an entirely different context from that in which it has traditionally been thought of by the property lawyer. "We like to use the words 'land tenure' to describe all those arrangements by which farmers or others hold or control land and that condition its use or occupancy. In this context land tenure covers much more than mere rights in land; it encompasses agricultural economic institutions generally, including agricultural land ownership and tenancy, land rents, taxation of agricultural land or income from land, and even rural credit facilities." LAND TENURE 44.

half of the attendance at the meeting was apparently from the United States but only a few of the papers dealt specifically with land tenure in this country. It is pointed out in the preface that this latter omission was intended, as the conference was designed to give expression to issues on a worldwide basis. Most of the papers are short, less than half a dozen running more than twelve pages. The result is something more elaborate than the ordinary volume of select essays but is far from a comprehensive text. The 695 double-columned pages (exclusive of notes index) are filled with redundancies and exhibit many omissions of coverage. But in spite of these deficiencies the book as a whole gives a remarkable insight into the overriding insistence of land problems throughout the world today and especially into the implications of these problems in the struggle between the communist and free worlds. The value of this book is further enhanced by the fact that it contains authoritative treatment of a highly technical subject couched in a readable style and so organized as to permit unlimited browsing.

What significance does such a work have for the lawyer qua lawyer? Even if property practitioners were not largely preoccupied, like their other brethren in the profession, with the settlement and prevention of disputes between private individuals, there are peculiar temptations for them to become legal mechanics. The humdrum of their practice in some of its aspects hardly rises above the skilled clerical level and the solution of legal problems is generally carried out by the technical manipulation of verbal formulae which seldom exhibit any apparent correlation to matters of policy. For this reason property lawyers have not been noted for their awareness of the relation between the legal norms which they administer and the social, economic and political consequences of those norms, and have tended to leave that field of study to practitioners of other disciplines. However, in England more than a century ago and in this country more recently, the extraordinarily regressive influence which a reactionary land law exercised upon efforts at social reform became so apparent as to cause at least some leaders of the bar to think in terms broader than that of mere legal technicality. Although in England this movement led to revolutionary changes in virtually all phases of property law, in this country interest has centered almost entirely upon the more spectacular and pressing problems arising out of the development and redevelopment of urban areas. As a consequence, the bar has paid little or no attention to the influence which legal doctrine can have upon rural life. Sociologists, on the other hand, have been guilty of no such neglect and there exists a voluminous literature upon this subject written by non-legal scholars and investigators. It is to this body of materials that the property lawyer must look if he is to obtain systematic information as to the problem. Such an excursion on his part may be discouraged by two difficulties. In the first place, sociologists have their own peculiar cant and manner of looking at things entirely unfamiliar and sometimes confusing to the lawyer. In the second place, the physi-

cal volume of the materials available² is so great that the lawyer, lacking bibliographical sophistication in this field, is at a loss where to begin. He does not desire to become an "authority" nor to exhaust all that has been written on the subject, but he does not possess enough knowledge at the outset to select from the great mass set before him materials sufficiently compact and at the same time sufficiently comprehensive and intelligible to meet his needs. As a consequence, he may become discouraged and may reach the conclusion that the task is beyond his capacities. The volume under review permits the avoidance of both these difficulties. Its contents, while coming from the pens of sociologists, economists and the like, is highly readable, and if it sometimes lacks the technical specificity which the lawyer prefers, the language does not present difficulties to the uninitiated. The content, as already noted, is sufficiently broad to give an introduction to the problems of agrarian tenure and the reader will be especially stimulated by the current political implications of the systems employed in many of the more backward nations of the world. However, in the long run the most important insight which he may gain is that as to the unexpected effects of legal doctrine so long familiar as to be taken as a matter of course. For example, in English speaking countries, since the abolition of primogeniture, the equal inheritance of all children in the absence of a will has been considered inherently just. However, where such a concept is applied to farm land, it may produce subdivision into units too small for economic efficiency. This danger has been partially removed in common law countries by the readiness of courts to order sale in lieu of division in kind, but in some other areas the rigid application of this principle has resulted in serious fragmentation of farm lands. This is true not merely of "backward" lands but is evidenced by the "ribbon" tracts in such advanced nations as France and Quebec, where forced heirship is the rule. The disastrous effects of certain forms of land tenure also forces upon the reader the fundamental question as to the extent to which concepts of freedom of contract should be applied to agrarian holdings. The arrangement made by the farmer has direct consequences upon the use made of the land itself and an unsatisfactory relationship may encourage abuses which will permanently impoverish the society as a whole by impairing the fertility and productivity of the land upon which it rests. We have had in this country a glaring example of this danger in the ruinous effect upon the South of the crop lien system and equally disastrous consequences have followed from varying systems elsewhere. By contrast, still other systems have apparently encouraged the utmost economy and efficiency in land use. All these systems, it must be remembered, have come into being because they were supported by legal rules. Such rules are subject to alteration and should be examined from time to time to determine whether they are producing desirable effects. Property law is not sacrosanct but is merely

² For example, *LAND OWNERSHIP* (U.S.D.A. 1953), one of the better *selected* bibliographies on land tenure, lists 2969 items.

a tool for society's well-being. If the property lawyer gets nothing else from this book, he must at least learn that property law has consequences and that it can be used as an implement for either the betterment or worsening of society.

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