by the civic leaders who wanted a South Side branch to the Hospital; although motivated by the best of intentions, they overlooked entirely the "racial" aspect of their proposal. A single decision maker might well have fallen into the same error without being aware that he was doing so.

This is but a small part of Professor Banfield's book, but it should be enough to give a sense of its subject matter and a suggestion of its merit.

*Preble Stolz**

ANTITRUST LAWS, ET AL. v. UNIT OPERATION OF OIL OR GAS POOLS. By Robert E. Hardwicke. Dallas: Society of Petroleum Engineers of American Institute of Mining and Metallurgical Engineers. 1961. Pp. 352. $8.00.

Thirteen years ago Robert Hardwicke, already one of the grand old men of oil and gas law, was asked by the American Institute of Mining and Metallurgical Engineers to write a chapter on legal problems for a Henry L. Doherty Memorial Fund volume entitled *Petroleum Conservation*. The chapter Hardwicke prepared turned out to be of such length and quality that the Institute published it as a separate book. This "chapter," to no one's surprise, was the most valuable and popular contribution of the entire project, and the book was soon out of print. It is representative of the personal esteem the profession feels for Hardwicke and his work, and a credit to the Institute that his book has now been reprinted.

Petroleum conservation can take many forms. Hardwicke is concerned with "unitization." A definition of "unitization" can have almost unlimited shadings of detailed sophistication, but the word refers generally to the operation of an oil field as a unit without regard to surface property lines. Because oil exists underground not in pools or lakes but in strata of sand, only a fraction of total reserves is brought to the surface. When individual owners drill more wells than necessary to remove the oil, and withdraw it fast without maintaining natural gas pressure, recovered oil may be as little as 20 per cent of reserves. (The drilling of unnecessary wells that may cost $200,000 or more is additional economic waste.) Unit operations can increase recovery to as much as 80 per cent of reserves. The advantages are obvious, not only for the long-range interests of the individual owners, but for the public's interest in maintenance of adequate petroleum resources.[1]

Hardwicke's book does not discuss the many legal problems of unitization,[2] but rather contains a goldmine of information about the history of the unitization

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[1] There is no point in recounting here the political arguments surrounding recent California referendums on compulsory unitization. It should be noted, however, that California statutes already approve voluntary unitization, CAL. PUB. RESOURCES CODE § 3301, and compulsory unitization both of tracts under one acre, CAL. PUB. RESOURCES CODE § 3608, and of those necessary to effect repressuring to prevent subsidence (Wilmington Field), CAL. PUB. RESOURCES CODE § 3320.2.

[2] A unitization program faces legal problems at many stages. These include the effect of prior leases, methods of forming units, negotiating formulas for sharing costs and profits, obtaining administrative approval of voluntary plans, processes for effectuating "compulsory" unitization, tax consequences, unitization of federal lands, and the problems of operating a unit. The legal problems are treated in some detail in two excellent books: MYERS, THE LAW OF POOLING AND UNITIZATION (1957); and HOFFMAN, VOLUNTARY POOLING AND UNITIZATION (1954).

movement from December 1924, when Henry Doherty made his famous conservation speech before the shocked Directors of the American Petroleum Institute, to the post-War year of 1948. Hardwicke describes the work of the federal and state governments, the American Bar Association, the American Petroleum Institute, the American Institute of Mining and Metallurgical Engineers, the Interstate Oil Compact Commission, and the Mid-Continent Oil and Gas Association. Throughout he includes citations to trade journal articles and speeches that would otherwise be available only after months of search, if then. With the recent lively interest in unitization, particularly in California, many of us may be unaware of the very serious attention unitization received in the 1927-1931 period. Some oilmen and government officials were concerned then, as their successors are today, that our oil resources would soon be exhausted. Unitization seemed a logical solution. The Thirties brought a rash of alternative conservation measures that served to divert interest from unitization. Statutes were enacted regulating the wasteful flaring of natural gas, spacing of wells, and production from each well ("prorationing"). The War, and the years after, have brought a renewed interest in unitization and disenchantment with the adequacy of the alternatives of the Thirties. It is a most readable, relevant, and amply researched story that Hardwicke has to tell, and it is well worth our attention.[3]

In the light of the rather formidable achievement this book represents, it is unfortunate that the original title was retained. *Antitrust Laws, et al. v. Unit Operation of Oil or Gas Pools* is not only an initially confusing title in its suggestion of the transcript from an in rem proceeding, but is misleading once understood.

Mr. Hardwicke says very little about antitrust implications of unitization operations. This is commendable, for there is little to say. He sums it up:

> In the book, written in 1948, the statement was made that no instance was known where violation of antitrust laws was claimed for carrying on secondary recovery operations by agreement of operators. No instance is known by me as of April 1, 1961. This is not to say that a violation may not be claimed or exist if the agreement goes beyond the reasonable necessities for conservation and protection of correlative rights, and includes provisions that are violative of antitrust laws.[4]

The limitations imposed by the Sherman and Clayton Acts upon unitization operations are similar to those imposed upon agricultural cooperatives. As Justice Black wrote for the Supreme Court in *Maryland and Virginia Milk Producers Ass'n, Inc. v. United States:*

> [The legislative history of the Capper-Volstead Act] indicates a purpose to make it possible for farmer-producers to organize together, set association policy, fix prices at

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[3] Hardwicke's touch even carries over into the appendix. Usually the dusty resting place for small print and large numbers, his book's appendix is anything but vestigial. Here is Henry L. Doherty's letter to President Coolidge in 1924, the preface from the Doherty Memorial volume on petroleum Conservation, the valuable documents from the Cotton Valley suit (complaint, signed by James R. Browning, now Ninth Circuit Judge, press release, and Attorney General's letter to the Interstate Oil Compact Commission), Texas Attorney General opinion letters on proposed legislation exempting unitization operations from the State's antitrust laws (written by Joe R. Greenhill, now Texas Supreme Court Justice), and two delightful humorous pieces that you will soon find yourself reading aloud to select audiences, "A Bearish Chronicle of Some Bulls," by Dr. L. C. Snider, and "Archy on Bull Stories," by Dr. E. DeGolyer.

[4] HARDWICKE, ANTITRUST LAWS, ET AL. V. UNIT OPERATION OF OIL OR GAS POOLS 309 (rev. ed. 1961) [hereinafter cited as HARDWICKE].

> which their cooperative will sell their produce, and otherwise carry on like a business corporation without thereby violating the anti-trust laws. It does not suggest a congressional desire to vest cooperatives with unrestricted power to restrain trade or to achieve monopoly by preying on independent producers, processors or dealers intent on carrying on their own businesses in their own legitimate way.[5]

There is no equivalent Congressional enactment authorizing unitization agreements, but because they are necessary to efficient oil and gas production, have little effect on market prices, and are not entered into for monopolistic purposes, there is little likelihood that agreements essential to maximum recovery of oil would be found to be violations of the Sherman or Clayton Acts.[6] The converse is also true, as in *Maryland and Virginia Milk Producers Ass'n.* Those agreements, operations, and practices that are not essential to cooperative production may subject the operators to the same antitrust restraints as are imposed on every other business. This was essentially the view of Attorney General (now Justice) Tom Clark in his press release regarding the antitrust action brought in 1947 against a group of companies engaged not only in unitization production operations, but in cooperative processing, refining, and sale.[7] The primary significance of the antitrust restraints on unitization lies in the historical role that antitrust fears (whether legitimate or feigned) played in preventing the adoption of unitization programs, the enactment of state statutes alleviating such fears, and their effectiveness in removing the opposition.

This reviewer would like to believe the Institute's primary purpose in reissuing Hardwicke's book is to make it available to those who need or desire a copy and cannot find a secondhand one. Because it is dubbed a "revised edition with supplement by the Author," however, some owners of the 1948 edition may think they need the "revised edition," like Pepsi, to "keep up to date." In fact, the text is *not* revised—except for the insertion of marginal numbers where supplement material is relevant. The supplement, although it contains forty pages of notes and text (with additional supporting indices),[8] tells very little that is indispensable to an understanding of the main text or necessary to its current accuracy or value. A. W. Walker, Jr., in his review of the 1948 edition, commented upon the "cheap price" of $1.50 per copy.[9] Cheap it was, even in 1948. By the

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[5] 362 U.S. 458, 466–67 (1960).

[6] See, *e.g.*, Sugar Institute, Inc. v. United States, 297 U.S. 553, 597-600 (1936); Appalachian Coals, Inc. v. United States, 288 U.S. 344, 359–61, 372–75 (1933).

[7] Although the action was eventually dismissed, the Attorney General's comment throws light on the Department's thinking.

> This suit does not attack joint activity by the defendants in the production of the wet gas, in the removal of the hydrocarbons, or in the maintenance of underground pressure through a re-injection of a part of the dry gas back into the underground reservoir, or any activity which is necessary or essential to the conservation of natural resources or to the prevention of waste. It does attack the practice of jointly processing and refining the products removed from the wet gas, as well as the joint sale of such products through selected trade channels at fixed prices, terms and conditions. Such practices have resulted in the exclusion of others from engaging in such business and the elimination of competition.

HARDWICKE, app. 225.

[8] One of the outstanding functional features of the book is the abundance of index material. In addition to the usual subject index and index of cases, there are also indices of constitutions and statutes, books and articles, and names of men mentioned in the book. See Johnson, *Book Review,* 39 TEXAS L. REV. 533, 537 n.27 (1961).

[9] Walker, *Book Review,* 3 SW. L.J. 101, 105 (1949).

same token, however, the $8.00 price of the "revised edition" is not "cheap," especially if the purchaser already has the earlier edition and is in reality buying the 40-page supplement at 20 cents a page.

We can delight in the republication of this colorful and creative addition to understanding problems of unitization. It is not only enjoyable reading, but vital for all who have the obligation to be informed about one of the most significant problems affecting the future welfare of our state and nation.

*Nicholas Johnson**

XXTH CENTURY COMPARATIVE AND CONFLICTS LAW. Legal Essays in Honor of Hessel E. Yntema. Leyden: A. W. Sijthoff.[1] 1961. Pp. xv, 544. $12.50.

This *Festschrift* honours Hessel E. Yntema on the occasion of his seventieth birthday. It is presented to him as Editor in Chief of the American Journal of Comparative Law by his fellow Editors, and it consists of thirty-eight essays by American, European, and Asian scholars whose contributions range over a wide area of comparative and conflicts law. There are four groups of essays: the first group deals with general problems in comparative law, the second with more specific treatments of foreign and comparative law problems, the next with conflict of laws themes, and the final group is a series of essays on diverse legal subjects. Finally there is a brief biographical note on Hessel Yntema and a record of his publications which began, fittingly, with a contribution to the Michigan Law Review in 1919 and conclude, also fittingly with work in progress.

The thirty-eight authors who have contributed to this very substantial volume are established scholars many of whom are among the greatest contemporary figures in the fields of comparative and conflicts law. The Editors have required that their contributors discipline themselves in the length of their writings lest an already large volume become altogether unmanageable. Some have obeyed more faithfully than others, and the results are sometimes unfortunate only in the sense that the reader could have wished for the greater ease of understanding that more space would generally, though perhaps not always, allow. But that is in the nature of *Festschriften,* and we have good reason to be grateful for what we have been given.

On the themes of comparative law, others are better equipped to comment than this reviewer. The volume opens fittingly with an essay by Roscoe Pound entitled "The Passing of Mainstreetism." The argument is that the cult of local law (Mainstreetism), which was a characteristic of the nineteenth century local order, is passing; that law now tends increasingly to be universal while it is laws that are local. Roscoe Pound's conclusion is that today "comparative law becomes a book of sketches towards a map of a law of the world, not a chart of a tangle of Main Streets leading nowhere."[2] The practical applications are readily apparent: the work of law reform is now almost invariably undertaken with an awareness of the value of the experience of others. Both the general and the specific treat-

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[1] American distributor: W. S. Barnes, Harvard Law School, Cambridge 38, Mass.

[2] XXTH CENTURY COMPARATIVE AND CONFLICTS LAW 14 (Nadelmann, Von Mehren & Hazard ed. 1961).