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Review of “Unjust Enrichment: A Comparative Analysis,” By John P. Dawson

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BOOK REVIEWS

UNJUST ENRICHMENT: A COMPARATIVE ANALYSIS.* By John P. Dawson. Boston: Little, Brown & Co. 1951. pp. viii, 201. \$4.50.

The text of Dawson's Rosenthal lectures on Unjust Enrichment looks so attractive and so simple, and the sentences flow so smoothly, that the potential reader is apt to pick it up for light reading. Disillusionment comes quickly, however, for this is no bedtime story. It is a concentrated, erudite essay in comparative law, which will reveal its secrets only to those both initiated in the problems of restitution and at least generally acquainted with Roman law in its classical form and in its later historical development. It reminds one of the classic comparative study of Roman law and common law by Buckland and McNair, for though colorful figures of speech make Dawson's style the more lively, still the text does not inform overmuch unless there is the background of knowledge to give meaning to the otherwise recondite statement. Constantly it will be necessary to refer to such a work as Buckland's text on Roman law to fill in the necessary details about the Roman law materials. If those are understood, the modern civil law development will give no great difficulty. All this boils down to the proposition that Professor Dawson's work is a real contribution to scholarship, but it is for the specialist. The average academician will not find it useful, and it will be a rare practitioner who will be able to read it, much less profit from it. For the undergraduate student it would seem to be of little value. It is a pity that its appeal is so limited, for the insights it provides, if more readily accessible, would contribute greatly to the improvement of our law in the field.

Though primarily a comparative treatment of the problems of unjust enrichment, the book serves also to illustrate techniques of legal development. If one follows the unjust enrichment idea through its long history in the civil law system and compares it with the corresponding development in the common law, the insights one gains are as much in comparative legal method as in comparative substantive law.

There are some respects in which the common law remedies for unjust enrichment are totally inadequate, and though Dawson favors the elimination of the inadequacies, his caveats exhibit an insistence on caution with which it is hard to agree. "Injustice" is done quite as surely in the denial of recovery which should be allowed as in the granting of recovery when it is not warranted. Two weaknesses of our system may be mentioned briefly. Denial of recovery to the *negotiorum gestor*, by calling him a "volunteer" or "officious intermeddler" and by giving those words an unjustifiably wide denotation, seems contrary to the best interests of society. As Dawson points out, "this very widespread acceptance [of *negotiorum gestio* in civil-law systems] suggests that altruism does not deserve the opprobrium that

* A series of lectures delivered under the auspices of the Julius Rosenthal Foundation at Northwestern University School of Law, in April, 1950.

our courts have heaped upon it." The other is characteristic of our common-law methodology. Except for the first section of the *Restatement* and certain judicial dicta, there is an assumption of a general rule of non-liability and the insistence upon a showing of specific grounds for recovery, thus limiting liability to certain classes of cases. The German Civil Code, on the other hand, starts with a general principle of recovery and denies it only if grounds for denial appear. This difference of approach has multiple aspects, for in addition to enlarging the area of recovery, the German method makes it easy to make out a prima facie case, a matter of some practical significance. Our method appears frequently in our system, as in the growth of tort law, in the contemporary development of promissory estoppel, and so on. Eventually we may come to the formulation of general grounds of liability, but not until generations of plaintiffs have been denied "justice" in the process.

While Dawson's book is of somewhat limited utility, it is one which should be known to every scholar in the fields of Restitution and Comparative Law. But even for the specialist it is hardly to be recommended that "Dawson" replace "Conan - Doyle" at the bedside.

Spencer L. Kimball†

SEX AND THE LAW. By Morris Ploscowe.¹ New York: Prentice-Hall, Inc. 1951. Pp. 310. \$3.95.

If it be the aim of law to provide an adequate system of social control, then the reader of this compact little book will be convinced that our legislative and judicial minds are far from achieving this desired aim. In very down-to-earth, non-technical language, Judge Ploscowe has dissected the social scene, and in a very matter of fact manner bores into the evils eating away at the social body, as only one of wide experience can do. Perhaps the title of the book is misleading, in that the author's exposition and criticism reach far beyond the ambit of sex and its immediate effects.

Starting with a more sober subject, the marriage status, Judge Ploscowe hits at the basic difficulties inherent in contemporary law dealing with the formation of the marriage contract. There is no doubting that the marriage contract is one of the most sacred of institutions, whose consequences should endure for life, and one much more complex than the simple commercial agreement. Yet a lunatic may in many cases enter into a valid contract to marry, provided he understands the nature and consequences of the marriage and the responsibilities entailed. This same individual would not be competent to make a binding contract to sell his automobile or a tract of real estate. Some states adhering to the common law will permit a boy over fourteen and a girl over twelve to marry; other states with more stringent age requirements will not void marriages entered into by a party under-age less the incapable party applies for such action. Thus one can readily see that the law cannot serve the interest of the state when it treats the entrance into marriage (as the author puts it) with about the same

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