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UNJUST ENRICHMENT: A COMPARATIVE STUDY, by John P. Dawson.\* Little, Brown & Co., Boston, 1951. Pp. viii, 201. \$4.50.

René David

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## Book Reviews

UNJUST ENRICHMENT: A COMPARATIVE STUDY, by John P. Dawson.\*  
Little, Brown & Co., Boston, 1951. Pp. viii, 201. \$4.50.

Professor Dawson's book reproduces a series of lectures delivered by him under the auspices of the Julius Rosenthal Foundation at Northwestern University School of Law in April 1950. In the first chapter the author points out briefly how a variety of techniques are resorted to in the United States in order to remedy a number of cases of unjust enrichment. In the second chapter Professor Dawson describes the wholly different techniques used for the same purpose by the Roman law, until a general formula was arrived at in the time of Emperor Justinian. The rules of Roman law, evolved through the work of glossators and post-glossators, have met with a different success in France and in Germany. In both countries, however, the ultimate result has been, as in Byzantine law, the adoption of a general formula. The Germans find it in a specific provision of their civil code, while in France it has been elaborated in recent years by the courts, contrary to the opinion, generally considered as authoritative, of Pothier and in spite of the silence of the Code Napoleon. In his third chapter Professor Dawson compares the solutions which have been adopted in the United States, in France, and in Germany; and he wonders to what extent and in what manner American law might derive a profit from the thinking of the civilians. He tries to ascertain whether a variance in the basic concepts of justice accounts for the existing differences in the various laws or whether such differences are the product of chance and the various techniques used by the lawyers in the different countries.

Professor Dawson's Unjust Enrichment is the work of a scholar. It is, in the true sense of the word, a model study of comparative law. Unjust enrichment has been in recent times the matter of numerous studies, in France as well as in Germany, but never had the comparative method been used so far, in such a field, with the same proficiency. The book is particularly valuable to make clear the relation, in Rome, between the doctrines of unjust enrichment and *negotiorum gestio* and to explain why

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the general principle of unjust enrichment has been evolved, in France as well as in Germany, from the starting point of *actio de in rem verso* rather than from the Roman *condictiones*. The French law of unjust enrichment appears in a new light when it is put into relation with the Roman law of ancient times and of the Middle Ages and when its evolution is contrasted with the different evolution which has taken place in Germany. It is rightly stressed, also, that the recent development of the doctrine of unjust enrichment in France represents in no way a trend towards a socialization of the law, but a reinforcement by the French courts of the most individualistic notion of "subjective rights." Professor Dawson also states, in an interesting way, the hostility of the common law towards any person who meddles with other people's business. As a result of this attitude the doctrine of *negotiorum gestio*, although it appears to be most necessary in the eyes of a continental lawyer, is one which has been less developed in the common law countries, while in the field of unjust enrichment proper more liberal solutions are admitted in the United States than on the European continent.

In both systems the doctrine of unjust enrichment remains at present unsettled and has not attained its final stage. Speaking of the difficult problems which it raises in America, Professor Dawson writes: "Our present deep involvement with the problems of unjust enrichment was inevitable and predictable and was merely long delayed. The remarkable thing is that when we began we drew hardly at all on so rich a fund of ideas [i.e., the European experience]. For in these matters, as in most others, we have followed our own course. We are now concerned with questions on which hard thinking began more than two thousand years ago. We have defined the questions in our own terms and now see that they are the same."<sup>1</sup>

The book illustrates the practical value of comparative legal studies, and shows how it would be possible in many cases to take advantage of the examples set up by foreign laws and of the work done by foreign lawyers to find a guidance in a development felt necessary in our own law. The same problems arise, at present, as they have always arisen in the whole Western world. Professor Dawson's book calls upon us to meditate, and to question the reality of the opposition, traditionally made, between civil law and common law. Are the differences between

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the systems the outcome of ideals which are different, or are they not mainly due to a variety in legal techniques? Louisiana lawyers are particularly apt to investigate such question and to give it a proper answer.

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INTRODUCTION TO THE STUDY OF LAW, by Bernard C. Gavit.† The Foundation Press, Inc., Brooklyn, 1951. Pp. xvi, 388. \$4.25.

OUR LEGAL SYSTEM AND HOW IT OPERATES, by Burke Shartel.‡ University of Michigan Law School, Ann Arbor, 1951. Pp. xxvii, 629. \$6.00.

The inclusion of an orientation freshman law course under a variety of designations such as "Introduction to Law" or "Legal Method" or "The Legal System" has long been a disputed matter. On the one hand, a small number of teachers and schools have always felt that the study of law was such a different discipline from the student's previous experience that some orientation was indispensable at the beginning of his work in the law school. On the other hand, the majority had felt that the existing practice of letting them acquire the orientation in connection with the concrete substantive learning of the regular courses was still the best method.

During the past five or six years, starting with the very large classes of veterans who were resuming an interrupted educational program, the proportions have been reversed. Many schools instituted courses of an introductory nature, and in some instances the professors undertook the preparation of teaching materials which would serve appropriately to accomplish their pedagogical objectives in the course. As was to be expected, there emerged widely different ideas as to the purposes and objectives of an introductory freshman law course; two of the latest books of this sort are the immediate concern of this review.

Dean Gavit has long been a proponent of an introductory law school course, and in 1936 he published a book of *Cases and Materials on an Introduction to Law and the Judicial Process*. Despite the inclusion of many of the former topics, the present volume is not merely a revised edition; it is a new book. Pre-

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