

Donations - Capacity of United States Government to Accept Donations Mortis Causa Under Louisiana Law

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Repository Citation

Charles G. Gladney, *Donations - Capacity of United States Government to Accept Donations Mortis Causa Under Louisiana Law*, 24 La. L. Rev. (1964)

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The proposed revision of the Code of Criminal Procedure being prepared by the Louisiana Law Institute conforms with the *Barnes* principle that the defendant's right to a bill of particulars must be fully safeguarded. It gives the defendant a right to request a bill of particulars "before trial or within ten days after arraignment, whichever is earlier," and further provides that "after the expiration of the ten day period the court may permit the filing of such motion until the commencement of trial."²⁵ By giving the defendant the right to request a bill of particulars for a specified and reasonable time after the arraignment, the Supreme Court will have more assurance that the trial court did not abuse its discretion in denying a delayed motion on the grounds that it was dilatory in nature; but the rule of the *Barnes* case should still require the trial judge to assign his reason for denying a motion after the ten-day period.

David L. French

DONATIONS — CAPACITY OF UNITED STATES GOVERNMENT TO ACCEPT DONATIONS MORTIS CAUSA UNDER LOUISIANA LAW

Decedent, a Louisiana domiciliary with no forced heirs, bequeathed all his property to the National Institutes of Health, Public Health Service, for research into the cure and prevention of chronic spastic constipation. Decedent's nephew alleged he was the sole heir and brought suit to invalidate the testamentary disposition and to obtain an order to distribute the property in accordance with the law of intestate succession.¹ The district court held the will valid, and plaintiff appealed. The Fourth Circuit Court of Appeal reversed. *Held*, the United States government, its agencies and subdivisions are not considered "persons" within the meaning of Louisiana Civil Code article 1470,² and are therefore incapable of receiving a donation mortis causa

25. LOUISIANA STATE LAW INSTITUTE, EXPOSÉ DES MOTIFS no. 12, *Indictment and Information* tit. XII, art. 24 (March 16, 1962).

1. LA. CIVIL CODE art. 1096 (1870): "A succession is called intestate when the deceased has left no will or when his will has been revoked or annulled as irregular.

"Therefore the heirs to whom a succession has fallen by the effects of law only, are called heirs *ab intestato*."

2. *Id.* art. 1470: "All persons may dispose or receive by donation *inter vivos* or *mortis causa*, except such as the law expressly declares incapable."

under Louisiana law. *In re Shepard's Succession*, 156 So. 2d 287 (La. App. 4th Cir. 1963), *cert. denied*, 158 So. 2d 612 (La. 1963).

The inherent power of the United States government to receive testamentary gifts is well established.³ It is equally well settled that under the tenth amendment the states have retained the power to determine the manner in which and to whom testamentary dispositions may be made by its citizens.⁴ Language in *United States v. Burnison*,⁵ however, indicates that under the supremacy clause⁶ a state may not interfere with the federal government's inherent power to receive, but may only limit its domiciliary's power to give to the federal government.⁷ The question whether Louisiana citizens may donate mortis causa to the federal government was *res nova* in the instant case. Civil Code article 1470 provides "all persons may dispose or receive by donation *inter vivos* or *mortis causa*, except such as the law expressly declares incapable."⁸ Subsequent code articles enumerate certain absolute and relative incapacities,⁹ none of which preclude donations to the federal government.¹⁰ Nor is there any other statutory provision which expressly denies testators the power to make dispositions to the United States government. As recognized in the instant case

3. *United States v. Burnison*, 339 U.S. 87 (1950); *United States v. Perkins*, 163 U.S. 625 (1896); *United States v. Fox*, 94 U.S. 315 (1876); *Mager v. Grima*, 49 U.S. 490 (1850).

4. See note 3 *supra*.

5. 339 U.S. 87 (1950).

6. U.S. CONST. art. VI: "2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding."

7. *United States v. Burnison*, 339 U.S. 87, 91 (1950), in which the government contended that capacity to receive was a governmental power, the exercise of which the state was prohibited to restrict. To this the Court replied: "This argument fails to recognize that the state acts upon the power of its domiciliary to give and not on the United States' power to receive. As a legal concept a transfer of property may be looked upon as a single transaction or it may be separated into a series of steps. The approach chosen may determine legal consequences. Where powers flow so distinctly from different sources as to the power to will and the power to receive, we think the validity of each step is to be treated separately."

8. See note 2 *supra*.

9. LA. CIVIL CODE art. 1471 (1870): "The incapacities are absolute or relative:

"Absolute incapacities prevent the giving or receiving indefinitely with regard to all persons.

"Relative incapacities prevent the giving to certain persons, or receiving from them."

10. *Id.* arts. 1476-1479, 1481, 1483, 1484, 1784.

the central inquiry is therefore whether article 1470 authorizes a testamentary disposition to the federal government.

The court in the instant case declared that the federal government did not have the capacity to receive a donation mortis causa since it was not a "person" within the intendment of article 1470. Article 1470 was said to grant capacity to receive only to natural persons. This interpretation was grounded on three observations: First, Article 433 of the Civil Code specifically grants corporations capacity to receive by stating that they are "substituted for persons."¹¹ The court reasoned that this provision would have been unnecessary if "persons" in article 1470 had a broad meaning. Second, article 3556 (23)¹² indicates that "person is applicable to men and women, or either." Third, the court interpreted article 1470 to contemplate as "persons" only those who could dispose and receive by both donation inter vivos and mortis causa.¹³ To the government's contention that Louisiana's gift tax statute¹⁴ exempting gifts to the United States evidenced the capacity of the federal government to receive, the court pointed out that the statute applied only to donations inter vivos, and in any event, there is no necessary connection between a statute regulating succession to property and one setting forth tax exemptions.¹⁵

The court denied the federal government the right to take

11. *Id.* art. 433: "Corporations legally established are substituted for persons, and their union which renders common to all those who compose them, their interests, their rights and their privileges, is the reason why they are considered as one single whole. Hence it follows that they may possess an estate, and have a common treasury for the purpose of depositing their money; that they are capable of receiving legacies and donations; that they may make valid contracts, obligate others and obligate themselves toward others; exercise the rights which belong to them; manage their own affairs; appear in courts of justice, and even enact statutes and regulations for their own government, provided such statutes and regulations be not contrary to the laws of the political society of which they are members."

12. *Id.* art. 3556: "Whenever the terms of law, employed in this Code have not been particularly defined therein, they shall be understood as follows: . . . (23) Person—Person is applicable to men and women, or either."

13. *In re Shepard's Succession*, 156 So. 2d 287, 291 (La. App. 4th Cir. 1963).

14. LA. R.S. 47:1204 (1950): "The following transfers shall be exempt from, and excluded in computing, the tax transfers imposed by this chapter:

"(1) Gifts made exclusively to charitable, religious or educational institutions located within the State of Louisiana, provided no part of the net earnings of such organizations inures to the benefit of any private shareholder or individual.

"(2) Gifts made to the United States, the State of Louisiana, or any political subdivision thereof, or civic organizations, provided that the donor does not benefit directly or indirectly by such donations."

15. It could be argued that Louisiana would not provide a tax exemption for a gift that could not be validly made.

under the will in the instant case because it had not been granted "the capacity to receive a donation mortis causa in Louisiana."¹⁶ The power of a state to deny the federal government the capacity to receive is subject to grave constitutional doubt in light of language in *United States v. Burnison*.¹⁷ Although the court in *Burnison* held that a state may prohibit testamentary dispositions by its citizens to the federal government, there was a strong implication that the state could not deny the government the power to receive and that "the approach chosen may determine the legal consequences."¹⁸ It would be difficult to read article 1470 as denying the capacity of a person to dispose to the federal government rather than as failing to grant the federal government the capacity to receive.¹⁹ Hence there is serious doubt whether article 1470 may constitutionally be invoked to deny the government the right to receive under an otherwise valid will.

In addition to the constitutional question raised by the application of article 1470, the court's narrow construction of "persons" seems questionable in view of the prevailing civil law classification of "persons" into both natural persons and artificial persons.²⁰ There appears to be no compelling reason

16. *In re Shepard's Succession*, 156 So. 2d 287, 291 (La. App. 4th Cir. 1963).

17. 339 U.S. 87 (1950). See note 7 *supra*.

18. 339 U.S. at 91.

19. The statutes under consideration in *United States v. Burnison*, 339 U.S. 87 (1950) and *United States v. Fox*, 94 U.S. 315 (1876) are not subject to the same criticisms as the Louisiana court's interpretation of article 1470, because they stipulate to whom the donor can give, and do not specify who cannot receive.

CALIF. PROBATE CODE § 27 provides: "*Who may take by will*. A testamentary disposition may be made to the state, to counties, to municipal corporations, to natural persons capable by law of taking the property, to unincorporated religious, benevolent or fraternal societies or associations or lodges or branches thereof, and to corporations formed for religious, scientific, literary, or solely educational or hospital or sanatorium purposes, or primarily for the public preservation of forests and natural scenery, or to maintain public libraries, museums or art galleries, or for similar public purposes. No other corporation can take under a will, unless expressly authorized by the statute."

The New York statute under consideration provides that a devise of land may be made "to any person capable by law of holding real estate; but no devise to a corporation shall be valid unless such corporation be expressly authorized by its charter or by statute to take by devise."

20. SAUNDERS, LECTURES ON THE CIVIL CODE 10, 11 (1925). Here the author states that persons are divided into two categories: natural persons and artificial persons. Examples of these persons are charitable institutions, and public and private corporations.

1 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 3023 (1959). In speaking of the territorial subdivisions which have domains of their own and those that do not, it is said: "[T]he first of all these subdivisions in terms of importance, that which today is the support and basis of all of them, is the State. In all countries, the State is deemed to be a person, representing the entire nation in its sovereignty and

why "persons" in that article should not be accorded its usual treatment as a generic term referring to all legal entities. Article 1470 is derived from article 902²¹ of the French Civil Code which, rather than restricting the power to dispose and receive by donation, appears to be a codification of Pothier's theory of autonomy of the will.²² The scheme of the article is a broad general grant of capacity which is thereafter limited by specific exceptions.²³ A similar Civil Code article states that "all persons have the capacity to contract, except those whose incapacity is specially declared by law."²⁴ It seems unlikely that by the use of "persons," the redactors intended not to grant the federal government the capacity to contract under Louisiana law.²⁵ Article 493 of the Civil Code is a further indication that "persons" is used generically throughout the Code: "The right of ownership necessarily supposes a person in whom this right exists; whether the owner be a real person, such as an individual, or a civil or intellectual person, such as a corporation."²⁶

The reasons given by the court for restricting "persons" to natural persons do not seem convincing. From the context of article 433, the purpose of the provision that corporations are "substituted for persons"²⁷ is to constitute corporations legal entities separate from those who compose them. That corpora-

its independence. The nation thus personified possesses, under this name, a great deal of property which forms its collective domain."

Contra, United States v. Fox, 94 U.S. 315, 321 (1876), in which the court was dealing with a statute which prevented receipt of donations unless the recipient was a "person" or authorized corporation. The court stated: "[T]he term 'person' as here used applies to natural persons, and also to artificial persons, — bodies politic, deriving their existence and powers from legislation, — but cannot be so extended as to include within its meaning the Federal government. It would require an express definition to that effect to give it a sense thus extended."

The United States Supreme Court in United States v. Cooper Corp., 312 U.S. 600 (1941) recognized that "there is no hard and fast rule of exclusion. The purpose, the subject matter, the context, the legislative history, and the executive interpretation of the statute are aids to construction which may indicate an intent, by the use of the term, to bring state or nation within the scope of the law." *Id.* at 604-05.

It is submitted that the Louisiana courts should follow the civil law classification of "persons" — that it does include the state or nation within the meaning of persons.

21. FRENCH CIVIL CODE art. 902: "*Toute personnes peuvent disposer et recevoir, soit par donation entre vifs, soit par testament, excepté celles que la loi en déclare incapables.*"

22. *Cf.* 7 POTHIER, OEUVRÉS COUTUMES DES D'ORLÉANS tit. 15, § 1, at 276 (1830); POTHIER, OEUVRÉS SUR LES TESTAMENS 48-50 (1810).

23. See note 10 *supra*.

24. LA. CIVIL CODE art. 1782 (1870).

25. It is clear that under the supremacy clause a state could not so interfere with the activities of the federal government. See note 7 *supra*.

26. LA. CIVIL CODE art. 493 (1870).

27. *Id.* art. 433. See note 11 *supra*.

tions, which are creatures of state law, are specifically granted the capacity of persons would not seem to foreclose the possibility that there may be other such entities contemplated within the generic term "persons." It seems beyond question that the United States government is a legal entity. The reliance on article 3556(23)²⁸ as indicative of a restriction of "persons" to natural persons seems tenuous. It does not define persons as men and women, but only provides that it is "applicable" to both.²⁹ No compelling reason appears why article 1470 should be read to contemplate only "persons" who can both dispose and receive by both donations *inter vivos* and *mortis causa*. That such was not intended is evidenced by the statement in article 433 that as a result of the substitution of corporations for persons "it follows . . . that they are capable of receiving legacies and donations. . . ."³⁰ If the court's interpretation of article 1470 is sound, it would not follow that a corporation was capable of receiving legacies since it cannot both dispose and receive by both donations *mortis causa* and *inter vivos*. Therefore, it is submitted that the reasons advanced by the court in the instant case do not compel that the grant of capacity to receive in article 1470 be limited to natural persons.

It appears that the rationale of the court in the instant case would also preclude the State of Louisiana from receiving dispositions *mortis causa* made by its citizens. There is no provision expressly granting the State of Louisiana the capacity to receive donations. Nor can it be said that the state would qualify as a natural person under article 1470.³¹ It is submitted

28. *Id.* art. 3556(23). See note 12 *supra*.

29. This provision was adopted in the Civil Code of 1870.

30. *Id.* art. 433. See note 11 *supra*.

31. It is submitted that it cannot be argued that since the state can take by intestate succession that, by analogy, it can take by testate succession. It is established that the state does not take as an heir but by a form of escheat.

See Louisiana v. Ames, 23 La. Ann. 69, 71-72 (1871), in which it was contended that the state took as an irregular heir under LA. CIVIL CODE art. 917 (1870) (providing for the right of the state to take where a vacant succession exists). The court, replying to this contention, stated: "This doctrine we are unable to assent to. In no proper sense, we apprehend, can the State be styled an heir, when, in the absence of heirs of every denomination by law capable of succeeding by inheritance, the property of the deceased owner becomes vested in the public, and is at the disposal of the government. On this point Demolombe says: 'the fourth law of the Code of Justinian, De bonis vacantibus, declared, Bona vacantia mortuorum tunc ad fiscum jubemus transferri, si nullem ex qualibet sanguinis linea vel juris titulum legitimum relinquerit intestatus haeredum.' Such, then, is the true cause of acquisition to the profit of the State; the State is not in reality an heir or successor, in the technical sense of the word, for it acquires by the title of escheat, that is to say, precisely in virtue of a title which supposes, necessarily, that there are no heirs; which caused Bacquet to say that, when a man dies without heirs, the goods left by his death non vocantur bona

that this is further evidence of the generic use of "persons" in article 1470 in that the legislature surely did not intend to preclude the state from receiving donations. The decision in the instant case does not endanger the right of many state agencies to receive, since they are treated as corporations,³² or there is specific legislation authorizing them to receive.³³

It is submitted that the court's conclusion that the federal government is without capacity to receive in Louisiana is subject to grave constitutional doubt in light of language in *United States v. Burnison*.³⁴ Further, it is submitted that the court should not have narrowly construed³⁵ article 1470, and that "person" should have been treated in the generic sense to encompass all legal entities. Therefore, it is submitted that the federal government, as well as the State of Louisiana, should have the capacity to receive donations mortis causa under Louisiana law.

Charles G. Gladney

hereditarea sed vacantia nominantur. In a word, the State exercises in this matter the eminent right of sovereignty, in virtue of which it appropriates all property without a master which is found within its territory."

See 3 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 1922 (1959): "If there are no heirs, the State acquires the succession as a vacant property, without an owner. (Art. 768) State is not an heir; it does not succeed by an inheritance title, but by exercise of its sovereignty.

"The succession obtained by the state is called escheat (*déshérence*). The right of escheat is exercised by the Administration of Public Property (*Administration des domaines*; now merged with the system of public finance agencies); under Arts. 769 and 772. Formerly, the State had to request delivery of possession, with the same formalities as an irregular successor. This procedure was simplified by the Act of October 30, 1935."

32. LA. R.S. 22:331 (1950) (non-profit Funeral Services Association); *id.* 34:203 (Lake Charles Harbor and Terminal District); *id.* 34:243 (New Iberia Port District); *id.* 34:293 (Lafayette Harbor and Terminal District); *id.* 34:323 (Morgan City Harbor and Terminal District); *id.* 34:333.3 (Abbeville Harbor and Terminal District); *id.* 34:334.3 (Vinton Harbor and Terminal District); *id.* 48:225 (State Department of Highways).

33. *Id.* 25:9 (Louisiana State Library); *id.* 25:343 (Louisiana State Museum); *id.* 25:304 (Louisiana Art Commission).

34. 339 U.S. 87 (1950).

35. The court appears to have used the exegetical method of Code interpretation which requires that every solution be based on the enacted legislative texts. It is submitted that a more liberal interpretation would have been accorded in the instant case had the court used the method of "free scientific research" as advanced by GENY, *METHOD OF INTERPRETATION AND SOURCES OF PRIVATE POSITIVE LAW* (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE (1963)). See LOUSSOUARN, *The Relative Importance of Legislation, Custom, Doctrine, and Precedent in French Law*, 18 LA. L. REV. 235 (1958).