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BOOK REVIEWS

GIFTS AND PROMISES. By John P. Dawson. New Haven: Yale University Press. 1980. Pp. ix and 240.

*Shael Herman**

In an individualistic, market-oriented society, generous impulses mystify and confound. Find a generous gesture and one wonders about the donor's ulterior motives. Psychologists tell us that even when we prefer others over ourselves we seek our own gratification. Legal doctrines effectuating generous impulses also mystify. Scratch a good Samaritan and we find an "altruistic intermeddler."¹ Assuming no one does anything freely, a first-year contracts course teaches that even an offer must be supported by consideration to be enforceable,² though a hawk, a robe, a hairpin, or a false recital of "one dollar paid in hand" might serve as consideration. It also teaches that charitable subscriptions are enforceable if they comport with important social policies;³ and, if they do, then the compensation for such promises might take the hazy form of the donee's reliance or the donor's anticipated pleasure. Equally troublesome is the notion that the donor's gratuitous cause renders enforceable a promise of a liberality. The *animus donandi* does not hold up well under rigorous analysis.⁴ So it is a rare treat to see such analysis attempted, especially when the effort is sustained for a whole book.

Professor Dawson's new book, an expanded version of his Storrs Lectures at Yale in 1978, offers rich and provocative comparative perspectives upon the treatment of gratuitous promises. His focus can be summarized in a short question familiar to first year contract

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1. On the attitude of the common law regarding the duty to render aid in an emergency, see Bohlen, *The Moral Duty to Aid Others as a Basis of Tort Liability*, 56 U. PA. L. REV. 217 (1908); Note, *The Failure to Rescue: A Comparative Study*, 52 COLUM. L. REV. 631 (1952). On compensation for rescuers see Dawson, *Negotiorum Gestio: The Altruistic Intermeddler*, 74 HARV. L. REV. 817 (1961).

2. See J. DAWSON, GIFTS AND PROMISES 211-12 (1980).

3. *Allegheny College v. National Chautauqua County Bank of Jamestown*, 246 N.Y. 369, 159 N.E. 173 (1927). A comparable doctrine was established in Louisiana nearly 150 years ago. See *Louisiana College v. Keller*, 10 La. 164 (1836).

4. Eisenberg, *Donative Promises*, 47 U. CHI. L. REV. 1 (1979).

students: "Can a fully capable person make a binding promise to another to give or do something for nothing?"⁵ The answer, given at once, is also short:

For countries within the sphere of influence of the English common law the standard answer would be no, almost never. For the more civilized countries of western Europe the standard answer would be yes, since they have never suffered from the blight that afflicts countries adhering to the English common law—the requirement of bargain consideration.⁶

Though the focus of this book appears assiduously narrow, it has kaleidoscopic potential. Professor Dawson moves over fascinating terrain including the treatment of gifts in the law of classical Rome, France, Germany, England and the United States. By focusing serially upon the problem of gratuitousness in several systems, he uncovers unsuspected links between the enforcement of gratuitous promises, the origins of forced heirship, the role of the notary, mixed gifts, and bargain consideration. For readers of *Oracles of the Law*,⁷ Professor Dawson's monumental work on judicial lawmaking, the landscape of *Gifts and Promises* is familiar. In his latest book, the oracles speak; what they tell us is as fascinating as his earlier doctrinal work, *Unjust Enrichment*.⁸ Professor Dawson's purpose, as he tells us in the preface, is to discover whether we have something to learn from the treatment of gratuitous promises by certain foreign legal systems. Is there greater readiness in France and Germany than in the United States to enforce promises for which there is to be no exchange? If so, do France and Germany have reasons for enforcement absent in the United States? Do we enforce promises for reasons not accepted in France and Germany? In the process of answering these questions, he teaches us much about legal method under codes. Because Louisiana is the only state with a continental-style "Romanesque" code, the book can prompt Louisiana attorneys to introspection. For them, an added purpose of this study is to discover if they have anything to learn from their own experience. If so, the question becomes whether they have anything to teach.

Like *Oracles of the Law*, Professor Dawson's new study begins with a chapter on the legacy of Roman law. This chapter requires close reading: its main themes recur as variations in succeeding chapters. According to Professor Dawson, "the promise of gifts as a distinct contract type, fully enforceable in undisguised form was not

5. J. DAWSON, *supra* note 2, at 1.

6. *Id.*

7. J. DAWSON, *ORACLES OF THE LAW* (1968).

8. J. DAWSON, *UNJUST ENRICHMENT, A COMPARATIVE ANALYSIS* (1951).

recognized until very late near the end of the Roman law as an operative system."⁹ Early on, however, a Roman donor could disguise a gift within a standard *mancipatio*; if he was not yet ready to convey the object, he might bind himself by a *stipulatio*, the all-purpose formality of Roman law. Roman law featured several unremunerated transactions, which are familiar institutions of the Louisiana Civil Code: the deposit (*depositum*),¹⁰ loan for use (*commodatum*),¹¹ loan for consumption (*mutuum*),¹² mandate,¹³ and suretyship.¹⁴ These gratuitous contracts, all commonly used by the Romans, were enforced because Romans who occupied high social positions could not countenance being caught taking money for their services:

[A]cceptance of payment for personal services was demeaning, even sordid The admired posture was that of the generous friend, ready to give aid or render service but finding abhorrent any notion of an agreed, enforceable reward. If the enterprise undertaken because of friendship, mutual respect, or personal honor was left incomplete or was carelessly managed, the compulsion to adhere to high standards of conduct was felt strongly enough so that it was appropriate for courts to intervene and administer correctives.¹⁵

Though an American lawyer might be hardpressed to find links between family stability and contracts, the Romans found them and made them durable enough to recur in modern German and French law. The legitimacy and even nobility of unremunerated transactions were confirmed by an important Roman practice: a flat prohibition against gifts between husband and wife because "marital harmony must not appear to be 'procured at a price.'"¹⁶ This prohibition applied to transfers of goods, not services. In other words, a transfer, to fall into a prohibited class, had permanently to diminish one spouse's patrimony and correspondingly to increase the other's. Within the narrow range specified by the rule, however, the prohibition was so strictly enforced that if the donee spouse exchanged the donated asset for another, the donor could trace it and claim ownership of the substituted asset.¹⁷

9. J. DAWSON, *supra* note 2, at 7.

10. See LA. CIV. CODE arts. 2926-81.

11. See LA. CIV. CODE arts. 2893-2909.

12. See LA. CIV. CODE arts. 2910-22.

13. See LA. CIV. CODE arts. 2985-3034.

14. See LA. CIV. CODE arts. 3035-70.

15. J. DAWSON, *supra* note 2, at 13.

16. *Id.* at 14.

17. *Id.* at 17.

Rescripts in Justinian confirm that all kinds of gifts, so long as they did not run afoul of this interspousal prohibition, might be valid. By the twelfth century, when intensive study of Roman law was resumed in Italy, medieval jurists discovered that the array of contract types, both remunerated and unremunerated, left many gaps. There were consensual transactions that did not fit a particular recipe or formula. Some glossators called these misfits "nude pacts" and searched for doctrines to clothe them. Tests for defining nudity in pacts tended to coalesce with tests defining absence of cause. Even in medieval scholarship, however, the idea of cause, already denatured and sapped of meaning, did not help to mark off promises of gift as especially vulnerable. Though gifts were valid, doctrinal foundations for their enforcement were tricky. One can only guess at the frustration of medieval jurists in search of a theory, a cause, or a garment to clothe gifts. The authoritative Accursian gloss was as laconic and unhelpful as any; it declared that promises of gifts were "clothed 'with the aid of the law.'"¹⁸

As indicated earlier, one of Professor Dawson's goals is to show the interaction between forced heirship and the legal treatment of uncompensated promises, and he begins this demonstration in earnest in his chapter on French law. The law of France, unlike that of England, is marked by a standard feature of forced heirship, a set of guarantees aiming to ensure that close relatives of every owner will inherit a substantial predetermined share of his estate on his death. Although the antecedents of this institution are obscure, they are probably rooted in notions of family solidarity that date back to rescripts in Justinian. Long before modern psychology taught of the emotional ambivalence between parent and child, the institution of the legitime concentrated attention on the blood relatives for whom the decedent's personal attachment and sense of personal responsibility ought to be strongest: his own children, their descendants, his parents, and other ancestors in a direct line. This same concentration is evident in the principles of forced heirship in Louisiana.¹⁹ The purpose of the legitime—to prevent dissipation of family resources—was also apparently a reason in France for strict public records requirements that all inter vivos gifts be registered either with a notary public or in the local court records where the donor resided. According to Professor Dawson, the French public registration rules seemed so much in the natural order of things that they were maintained in force throughout the Revolution and then without debate preserved for the future by being securely lodged in

18. *Id.* at 26.

19. LA. CIV. CODE arts. 1493-95.

the *Code civil*. When, during the Revolution, it became clear that there would be no wide dispersal of land ownership, the legislature settled for a somewhat less ambitious goal also said to be in conformity with natural order: limitation of the power of disposition to donees beyond the immediate family. Professor Dawson's impatience is evident in his account of French jurists' changed assumptions about the natural order. If in nature there was no love more constant or general than that of a father for his children, why was any law needed to restrain dispositions to outsiders? Even more disturbing, how could a natural order in one moment dictate equal ownership by all and in the next moment the unequal ownership entailed by keeping wealth in families through forced heirship? Apparently no one asked. And French drafters also took for granted several other rules, all of which Professor Dawson attacks. These included a sweeping requirement of notarization, the donor's power to revoke a gift for specified causes, and fictitious collation, the rule that all gifts made by a decedent must be inventoried to determine if he exceeded the disposable quota.

To Professor Dawson, fictitious collation and reduction are especially bothersome because they make all inter vivos gifts conditional until the donor dies and his will is probated. Failure to state a prescriptive period for fictitious collation has complicated the lives of notaries and title examiners in Louisiana. Suspicions about a title's merchantability arise whenever a gift appears in the chain and the title examiner suspects that a forced heir might be lurking somewhere. This suspicion usually impels him to advise clients to disguise donations of land as simulated sales.²⁰ According to Professor Dawson, strict adherence to forced heirship produces many curiosities in addition to fictitious collation. First, as a result of forced heirship, parties are compelled to swear falsely and courts must speak in baffling riddles. Second, French law defines a gift as a transfer between patrimonies. Arbitrarily excluded from this definition are human services rendered and the mere use of physical assets. This definition has puzzling corollaries familiar to tax lawyers: a donee does not get a gift even when his father conveys possession of land to him and authorizes the donee to collect fruit and revenues from the land;²¹ renunciation of a forced share is a surrender of a right—it is not a gift unless donative intent can be clearly shown;²² a beneficiary of a life insurance policy does not receive a

20. As the reader shall see, these disguised gifts also are targets of Professor Dawson's relentless attack.

21. J. DAWSON, *supra* note 2, at 61.

22. *Id.* at 59.

gift when his father, the insured, pays the premiums—even though the purpose of the policy is to create a capital fund.²³

According to Professor Dawson, French notarization requirements for all inter vivos gifts were so strict that French lawyers soon devised escape routes from them. Predictably, their first route was through the *don manuel* or manual gift; there was no way to stop a donor from physically giving an asset away. The other escape route, according to Professor Dawson, was the disguised donation, which he describes at various points as bizarre, cynical and transparent because it embodies false recitals. In this reviewer's opinion, Professor Dawson overreacts to the disguised donation. All legal systems depend at times upon falsehoods and fictions; the French do not have a monopoly on them. One reason Louisiana has the disguised donation is that lesion rules bind parties to recite a true price, not merely "one dollar and other valuable considerations," a recital so typical of conveyances elsewhere in the United States. Even if there were no forced heirship, lesion doctrine would make parties lie.²⁴ Before the enactment of the Louisiana trust code, simulations and disguised donations²⁵ were vehicles whereby an owner, seeking to conceal his identity, could let a nominal title holder negotiate with third parties, remitting proceeds to him at the conclusion of the sale. Simulation, so long as it is not used to defeat revenue collectors, creditors, and forced heirs, is a valid and useful device. As the French do not have trusts, perhaps they were impelled to discover the legitimate uses of simulation centuries ago.

The remainder of the chapter on France concerns other escape routes from notarization requirements in addition to the manual gift and the disguised donation. In Louisiana these are also well-

23. *Id.* at 62.

24. For four years from the date of a sale of an immovable, the vendee risks a suit for rescission, "even . . . [if] he [the vendor] had expressly . . . abandoned the right of claiming such rescission, and declared that he gave to the purchaser the surplus of the thing's value." LA. CIV. CODE art. 2589. A better obstacle to gifts of immovables could hardly have been imagined. The Louisiana doctrine of lesion is sketched in Herman, *The Anomalous Institution of Lesion*, 10 REV. GÉN. DE DROIT 192 (1979).

25. Professor Dawson uses the terms "disguised donation" and "simulation" interchangeably, but technically they are different transactions. In a simulation the transferor, declaring that he intends a transfer, actually intends no transfer at all, and the purported transferee gives him a counter letter acknowledging that the transferor retains title. In a disguised donation, the parties intend a transfer, though not the one declared in the act. Thus, in a disguised donation, the vendor declares he is making a sale; but the derisory price indicates that he actually intends a donation. Ordinarily, in a disguised donation, the transferee gives no counter letter because he actually acquires title. See generally Lemann, *Some Aspects of Simulation in France and Louisiana*, 29 TUL. L. REV. 22 (1954); Comment, *Disguised Donations, Donations Omnium Bonorum, and the Public Records Doctrine*, 51 TUL. L. REV. 288 (1977).

travelled roads. Professor Dawson considers the function of natural obligations, *causa*, and onerosity—the familiar trick of finding a slight hint of self-gratification in a donor in order to convert a gift into an exchange transaction, thereby saving it from nullity ordinarily entailed by failure to follow notarization requirements.²⁶ Unadulterated generosity, Professor Dawson argues, must be exceedingly rare when private profit is an organizing principle of society. And French courts adulterate it when necessary; sometimes they find the donor really acted out of a sense of natural obligation, not a spirit of pure liberality. Often they find the donor expected a return benefit from the donee, citing the donor's imposition of a condition or charge on the gift. Here Professor Dawson's remarkable power as a case reader is most apparent. To support his arguments, he has scoured the French reports for a number of illustrative cases. The reader's suspicions about Professor Dawson's attitude toward the French treatment of gifts are quickly confirmed; under his withering pen, French doctrines become targets of ridicule. For him, French judicial diagnosis of natural obligations is haphazard, incoherent, and arbitrary. The doctrine of cause has no meaningful functions:

[i]t has long been clear that the Code provision [French Civil Code articles 1108, 1109] means nothing more than that a contract should have a purpose. With this proposition it is very hard to disagree; indeed, if a contract has no ascertainable purpose the parties to it should probably not be left at large.²⁷

Professor Dawson's treatment of *causa*, like his discussion of disguised donations, is harsh. We sometimes consciously use ragged concepts like cause²⁸ because we want to discourage parties from testing them at their boundaries. Cause provides a way of policing contracts for fairness and legality, in much the same way as unconscionability, another concededly ragged concept.²⁹ Cause is also a handy peda-

26. See, e.g., LA. CIV. CODE arts. 1523-24.

27. J. DAWSON, *supra* note 2, at 115.

28. The Louisiana State Law Institute's proposed "Revision of the Louisiana Civil Code of 1870, Book III, Obligations Revision" reflects the ambivalence of the Louisiana bar toward cause and consideration. Seeking the best of both worlds, the report defines cause as

the reason why a party obligates himself. Nevertheless, a party may be obligated by a promise when he knew or should have known that the promise could induce the other party to rely on it to his detriment and the other party was reasonable in so relying. Reliance on a promise made without required formalities is not reasonable.

The proposed revision cites as sources of this definition Civil Code articles 1824 and 1896 and Restatement of Contracts Second § 90.

29. U.C.C. § 2-302 (1972 version). On the difficulties associated with the concept, see Leff, *Unconscionability and the Code—The Emperor's New Clause*, 115 U. PA. L. REV. 485 (1967).

gical tool for analyzing gratuitous transactions. Unlike bargain consideration, which presupposes a person can be bound only when he acts in his own interest, cause is wide enough to permit open acknowledgment that a party can mean to bind himself to perform liberalities. Common law contracts texts make this last point indirectly, with charitable subscription cases that torture the concept of consideration. The point it is certainly made in equity where the formal incidence of relief seems intentionally (diabolically?) unpredictable. This reviewer's opinion, based on experience, not statistics, is that the French enforcement of gifts is neither more nor less haphazard than that of English law and equity combined. Professor Dawson probably would not disagree with this assessment; German law, more than French or Anglo-American Law, is his model of consistency and logic. He admires the German treatment of gifts as intensely as he dislikes the French.

Professor Dawson's treatment of the German law of gifts is interesting chiefly because of what it teaches about judicial method under a code. His chapter on German law is based on two assumptions about codification. First, a primary advantage of codification is "that it forces the draftsmen to clarify the central store of essential ideas and define both their limits and their numerous interconnections before projecting them forth and assigning them to work."³⁰ Second, the precision and care with which the interconnections are contrived largely determine how much later users will invest in a code to keep it intact. Thus, "when the primary source of most private law is the condensed language of a comprehensive code, how much effort should be spent . . . to maintain coherence and internal consistency in the meanings attached to the code's vocabulary?"³¹ According to Professor Dawson, the German drafters aimed to provide a single set of all-purpose texts to be consistently used whenever the code itself applied. Since enactment of their code, German jurists have made strenuous efforts to maintain its order and internal cohesion. How have these efforts been manifested? They are not apparent in the German forced heirship scheme which, as Professor Dawson notes, is practically like that of the French Civil Code. Nor do they appear in the definition of the kinds of assets that can be given, for these also resemble the provisions of French law. But the German code drafters, more than their French counterparts, avoided dangerous pitfalls. They minimized disruptive effects of collation and reduction by attaching a ten-year prescriptive period to supposedly closed transactions, a reform that Louisiana

30. J. DAWSON, *supra* note 2, at 191.

31. *Id.*

might consider in current revision efforts.³² The German Civil Code also simplified the procedure for retrieving unauthorized gifts by restoring to the heir whose share was infringed the money value of the assets, not the assets themselves. By requiring notarization only for promises of gifts, it also minimized other doctrinal pitfalls encountered by the French. According to German Civil Code article 518(2), an unnotarized promise of gift is "cured" when it is performed.³³ Unfortunately, Professor Dawson fails to stress that German leniency toward notarization expressed in article 518(2) is severely modified by article 313, requiring notarial authentication for transfers of land.³⁴ To validate the promise of a gift of movables,

32. Louisiana Civil Code article 3542 apparently limits the time in which a forced heir can force an outsider to return his ancestor's donation. But the Code is inconclusive on the period granted a forced heir to demand equalization of shares among his co-heirs. Confusion among fictitious collation, actual collation, and reduction can also complicate the search for prescriptive periods. In *Successions of Webre*, 247 La. 461, 172 So. 2d 285 (1965), the court held that the ten year prescription of LA. CIV. CODE art. 3544 applies to a demand for collation. LA. CIV. CODE art. 3544, a catch-all provision, specifies a ten-year prescription for personal actions otherwise lacking a prescriptive period. However, if before the ten-year prescriptive period runs, a succession is opened, administered, and closed and the heirs are put into possession, then the collation action may no longer be available on the theory that there is no longer a succession to which collation can apply. *Succession of McGeary*, 220 La. 391, 56 So. 2d 727, 729 (1951); *Successions of Scardino*, 215 La. 472, 40 So. 2d 923 (1949); *Doll v. Doll*, 206 La. 550, 19 So. 2d 249 (1944); *Mitcham v. Mitcham*, 186 La. 641, 173 So. 132 (1937); *Prichard v. McCranie*, 160 La. 605, 107 So. 461 (1926); *Duffourc v. Duffourc*, 154 La. 174, 97 So. 391 (1923). Thus, the heirs are estopped to demand collation, because they would be forced to make a claim that they failed to make while the succession was under administration.

There may be exceptions to this estoppel rule. First, the collation action may still be available after a judgment of possession if there has been no partition. Commentary states that "a previous judgment of possession should have no effect so long as the succession was never previously partitioned." Comment, *Some Aspects of Collation*, 34 LA. L. REV. 782, 792 (1974). See Note, *Successions—Collation—Prescription*, 3 LA. L. REV. 460, 461 (1941) (the proposition that the action for collation should persist so long as the action for partition of the succession exists). This is the French view. Judgment of 14 Nov. 1849, Cass. Civ., D.1849.1.286; 10 F. LAURENT, PRINCIPES DE DROIT CIVIL FRANCAIS, n° 590 (2d ed. 1876). Cf. 3 G. BAUDRY—LACANTINERIE ET A. WAHL, DES SUCCESSIONS reprinted in 8 G. BAUDRY—LACANTINERIE, TRAITE THEORIQUE ET PRATIQUE DE DROIT CIVIL (2d ed. 1899) (suggests that collation should be prescriptible as any other action). But see Comment, *Collation in Louisiana: Part II*, 27 TUL. L. REV. 232, 245 (1953). Second, if the judgment of possession is annulled on the basis of fraud or another defect, collation may be provoked. See LA. CODE CIV. P. arts. 2001-6 (annulment of the judgment of possession); 3393 (reopening of succession). The research for this footnote was conducted by Mr. J. Lanier Yeates, and his assistance is gratefully acknowledged.

33. According to German Civil Code article 518(2) "Any defect of form is cured by the performance of the promise." BÜRGERLICHES GESETZBUCH [BGB] at 518 (I. Forrester, S. Goren, & H. Ilgen, trans. 1975).

34. See BÜRGERLICHES GESETZBUCH [BGB] art. 313 (I. Forrester, S. Goren, & H. Ilgen, trans. 1975).

both French law and German law focus on execution: the former emphasizes the manual feature of a gift and the latter focuses on performance.³⁵ Furthermore, the false recital problems Professor Dawson noted in French law also exist in German law. The German Code more than adequately acknowledges it, as article 117 expressly covers the effects of simulation.³⁶ Nonetheless, the more lenient notarization requirements have produced positive effects. Confronting the problem of "onerosity" in a gift, German courts, unlike their French counterparts, have developed techniques for disentangling the gift element from the exchange element and have given remedies accordingly. By contrast, French courts, confronting the issue of onerosity in a gift, have refused altogether to attempt judicial surgery and have held fast to the conviction that the transaction is either a gift or an exchange, "never . . . a Siamese twin . . . headed for the surgical ward."³⁷ On the whole, however, German courts, more than their French counterparts, have shown sensitivity to the logic and consistency of their code and to the motives of litigants. They are not as free as French courts "to read words in a code in opposite ways, so that their meaning will . . . depend on the question . . . asked."³⁸ Their willingness to separate gift and exchange elements in a single transaction indicates they are more realistic about the bounds of altruism.

In the last chapter, "The Sources of Our Own Discontent,"³⁹ Professor Dawson returns to the general question raised in the preface: Do we have something to learn from the treatment of gifts in French and German law? His answer is no. "[O]ur disadvantages, the main sources of our own discontent, are those of our own creation, are not found elsewhere and cannot be removed by borrowings from Europe."⁴⁰ To reach this conclusion, Professor Dawson must navigate across the channel and travel English roads, locating the time when consideration first acquired a technical meaning in English law and describing later stages when the functions of consideration were made to proliferate. Along the way, Professor Dawson aims to discredit Professor Gilmore's thesis that the law of contract did not emerge until the nineteenth century and that consideration was a revolutionary invention of Holmes.⁴¹ Professor Dawson, if he is any-

35. See note 30, *supra*.

36. BÜRGERLICHES GESETZBUCH [BGB] art. 117(2) (I. Forrester, S. Goren, & H. Ilgen, trans. 1975): "If a legal transaction is hidden by a sham transaction, the provisions applicable to the hidden legal transaction apply."

37. J. DAWSON, *supra* note 2, at 179.

38. *Id.* at 191.

39. *Id.* at 197.

40. *Id.* at 230.

41. G. GILMORE, *THE DEATH OF CONTRACT* 19-21 (1974).

thing, is a gradualist on the origins of consideration. There are no easy explanations for complicated historical evolution, and the evidence cannot be securely arranged in a neat pattern. In at least two respects Professor Dawson's message is clear: consideration doctrine emerged in the sixteenth century, much earlier than Gilmore says, and it has virtues often ignored by proponents of its abolition.

On the meaning and function of consideration Professor Dawson is a purist. For him consideration is valuable chiefly for determining if a contract was formed; the doctrine's core idea is that a sufficient reason for enforcing a promise is its role in an agreed exchange to enable each party to secure from the other an act or result that he sought.⁴² For Professor Dawson, this essential idea has unfortunately been overloaded with a number of superfluous functions such as the reinforcement of offers, promotion of mutuality, and exclusion as an element in an agreed exchange of any performance required by a preexisting duty. Thus, to save the consideration doctrine for what he deems its proper use, Professor Dawson must define the doctrine narrowly. In the process he jettisons a lot of baggage now considered to be mainstream consideration doctrine.

If, in defining consideration, Professor Dawson aims for less than the doctrine represents, in other respects he aims for too much. This possible flaw may be illustrated by reference to an objectionable aspect of French law: false recitals in disguised donations and simulations. The common law counterpart to a false recital in French law is an acknowledgment of nominal consideration. According to Professor Dawson, this minor form of simulation has crept into American law. He points out that section 82 of the First Restatement of Contracts approved simulation in the form of an acknowledgment of a token payment, even when the payment was never received.⁴³ Fortunately, in Professor Dawson's view, section 82 of the Second Restatement abandoned such approval.⁴⁴ But, as Professor Dawson explains, token consideration persisted in the Second Restatement in sections on option contracts. Section 89B of the Second Restatement declares that such contracts are regularly upheld against proof that the recited consideration was never paid. It borders on utopianism to hope that parties will ever fully abandon the protection afforded by false or vague recitals in their transactions. For good or ill, people want to keep their business private. Their quest for privacy does not always mean that they are seeking to defraud tax collectors, creditors and forced heirs. To avoid arous-

42. J. DAWSON, *supra* note 2, at 221.

43. RESTATEMENT OF CONTRACTS § 82 (1932).

44. The Second Restatement of Contracts omitted section 82.

ing community resentment, some owners—oil companies, foreign millionaires, and others—prefer to remain anonymous and to let their nominees handle negotiations. If Louisiana sellers could recite a true but vague price as “one dollar and other valuable consideration” without running afoul of the lesion regulations, surely they would.

A recurring theme of Professor Dawson's book is that the civil law treatment of gifts is intimately tied to forced heirship. In France, the connection manifests itself in a variety of troublesome doctrines like onerosity and in bizarre institutions like the disguised donation. This argument has merit in the sense that French lawyers, spotting a disguised donation, might then try to discover heirs, but the argument cannot be pushed too far. Take the case of Quebec, a province with a French-style codification in all respects but one. Quebec does not have forced heirship.⁴⁵ A cursory glance at a treatise on the law of Quebec reveals every aspect of the French treatment of gifts in full bloom—notarial authentication,⁴⁶ gratuitous and onerous cause,⁴⁷ the aberrational disguised donation,⁴⁸ and reduction and fictitious collation (called *rapport*).⁴⁹ One can only guess at the reason for this state of affairs. A simple explanation is that an heir, though he cannot demand anything from his *de cuius* as a forced heir, can still inherit from the decedent on intestacy.⁵⁰ Thus, he cannot seek collation and reduction and set aside a disguised donation if his ancestor purposely cut him off with a shilling, but he can seek these remedies if he inherits *ab intestat*. Likewise, creditors can invoke the declaration of simulation and set aside disguised donations without regard to forced heirs. Forced heirship, contrary arguments notwithstanding, has not caused all our problems; its abolition will not get rid of them. Perhaps the truth is that legal institutions are not always rationally interrelated, contrary to what Professor Dawson has argued so provocatively. They may be transplanted from system to system when there is strong cultural and linguistic affinity to assist the move. Because of this affinity, English law was the parent of some American institutions. France has occupied the

45. QUEBEC CIV. CODE art. 831. History behind Quebec's position is discussed in Dainow, *Unrestricted Testation in Quebec*, 10 TUL. L. REV. 401 (1936).

46. See QUEBEC CIV. CODE art. 776. The notary's role is discussed in G. BRIÈRE, *LES LIBÉRALITÉS* 77-80 (1977).

47. G. BRIÈRE, *supra* note 46, at 32-37.

48. *Id.* at 100-03.

49. G. BRIÈRE, *LES SUCCESSIONS AB INTESTAT* 148-165 (1977). QUEBEC CIV. CODE art. 712-34. The reviewer is grateful to Gerald Lebovits, a Quebec lawyer, for the citations to Quebec law.

50. QUEBEC CIV. CODE arts. 598, 624a-35.

same role for legal doctrines of many other nations. But this is a story of heirship and lineage for another day.⁵¹ This reviewer is confident that when the story appears, Professor Dawson's superb study will have a prominent place in it.

51. On legal transplants and their causes, see Watson, *Legal Transplants and Law Reform*, 92 L. Q. REV. (1976); Kahn-Freund, *On Uses and Misuses of Comparative Law*, 37 MOD. L. REV. 1 (1974); Stein, *Uses, Misuses—and Nonuses of Comparative Law*, 72 NW. U.L. REV. 198 (1977).