
Robert A. Pascal
Summing up, both Huber and Kaegi try to prove too much, at least insofar as their own bailiwick, the Swiss Confederation, is concerned. The tendencies which they describe and decry so vividly are less present under the conditions of Swiss society than under many other contemporary governments. Yet, foresight is better than hindsight. And we have all reason to be grateful to all those who familiarize us with their present thoughts and concerns on that elusive jewel, the Rechtsstaat.

*Otto Kirchheimer*


This second edition brings up to date and in certain chapters considerably amplifies the original edition of 1940. Ordinarily a second edition merits a book note, but not a review, much less one appearing almost two years after its publication. This book, however, is the only detailed monograph in the English language on the development and substance of the action for unjustified enrichment in French and Quebec law;¹ as such it can be of tremendous influence to the good in Louisiana, where the basic law is so similar, but where this particular subject is all but unknown.

The principle of unjustified enrichment, that no one should be enriched at the expense of another without justification, is the foundation for much that is in any system of law, for it is a corollary of the virtue of justice. Precisely because it is a basic principle, it is applicable to phenomena far too numerous and too varied to permit its abstract statement to serve as a rule of law for all of them, and its articulation for the most part necessarily is in terms of specific rules of law for particular situations. Thus Justice Challies can list sixty-four articles of the Quebec Civil Code which he considers founded on the principle, though

¹ John P. Dawson's "Unjust Enrichment—A Comparative Analysis" (Little, Brown and Company, Boston, 1951), is a splendid book on the level of comparative legal science, designed to provoke thought on the problem in Anglo-American law. It contains an account of the action for unjust enrichment in France sufficient for the author's purpose, but it is not a treatise on the subject, as is Justice Challies' book.
the principle itself is not stated expressly in that code. For the same reason, the Restatement of Restitution states the principle and carefully notes that although it is the basis of the rules in the remainder of that work it itself is not to be regarded as a rule of law.

In a system of customary or common law the articulation of the principle necessarily must be in terms of specific rules of law applicable to particular situations, unless it be in the scientific literature or a restatement or compilation, for customary or unwritten law cannot exist in the abstract. Conversely, this very character of customary or common law compels the admission of principles, unless the customs are to be regarded as whimsical and arbitrary, and it is the rearticulation of these principles in terms of specific norms for particular situations that is the life of such a system. Thus it is that in customary or common law principles are always part of the law, not in the form of rules of law, but as principles proper which may be rearticulated to meet new situations.

In France, however, with the adoption of the Code Civil, the predominant theory equated law with legislation. Thus in theory at least a principle could not be recognized as part of the law unless enacted as such. The Code Civil did not contain a statement of the principle of unjustified enrichment, only specifications of it. Of course these specifications were not co-extensive with the instances in which the principle would have to serve as the basis of the norm of decision. In some of these cases the analogical application of particular specifications sufficed, but not always, for often none of the available specifications were truly suitable to the facts at hand. Thus French jurisprudence fell to misconstruing or twisting the rules of well-defined institutions like negotiorum gestio and restitution for payments made without obligation, all in an effort to achieve a specification of the principle which would suit the particular facts. By 1892, however, legal positivism had lost most of its force in France and no longer was it necessary to clothe the parent in its children's legislative dress. The Cour de Cassation announced it would recognize an action founded directly on the principle of unjustified enrichment. Since that time French jurisprudence has closely defined the action and limited its application to situations involving unjustified enrichment for which the legislation has not provided a specific norm. In other words, through judicial action France has come to accept the principle of unjustified enrichment as a rule of
law of subsidiary character to be used only where specific legislation based on the principle is not applicable.

The Quebec Civil Code was modeled very largely on that of France, but unlike France, Quebec did not make its legislation the sole statement of the law. The then existing customary law was deemed to remain in effect except as modified by the Civil Code. Hence Justice Challies notes well that the principle of unjustified enrichment is still a part of the law of Quebec, for it has never been repealed, and therefore that there is no need to resort to the French theories to substantiate its employment as the basis of judicial specifications of custom for instances not covered in the existing legislation. Nevertheless, Justice Challies recognizes that the basic law of France and that of Quebec are substantially the same and that French doctrine and jurisprudence can be and are looked to for guidance in Quebec. Thus he does not hesitate to discuss the Quebec jurisprudence on unjustified enrichment in the light of the French experience, and his book is as much a source of information on the French law on this subject as it is on that of Quebec.

Whether or not Louisiana law is limited to its legislation, as in France, or includes its prior unrepealed law, and therefore the principle of unjustified enrichment, as in Quebec, is a question which is of no importance here; for Article 21 of the Civil Code directs the judge to decide according to natural law and reason when the legislation is silent or deficient, and certainly the principle of unjustified enrichment may be regarded as part of natural law and reason. But the Louisiana jurisprudence has not much used the principle as a rule of law. Sometimes it has decided unjustified enrichment cases by the application of norms derived from Anglo-American legal institutions, for example, constructive trust and *quantum meruit*, much to the disruption of the scientific plan of our law, which in its civil part at least is very similar to the legislations of France and Quebec. By observing what these jurisdictions have done in the field of unjustified enrichment we might have avoided this and instead have developed a jurisprudence and doctrine consistent with the rest of our legislation. The articles of the French, Quebec, and Louisiana Civil Codes specifying the application of the principle for particular cases being largely the same, as evidenced by a concordance table prepared by Justice Challies (p. 187), the French and Quebec jurisprudence and doctrine would have guided us almost automatically to the proper application of the
principle as a rule of law. Perhaps the scarcity of detailed English language studies on the subject hampered us in this regard, but Justice Challies' book is sufficiently detailed and complete to serve as a practical guide, and where its text itself will not suffice its ample citations will facilitate references to sources.

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Civil Liberties and the Vinson Court, by C. Herman Pritchett.

When Fred Vinson became Chief Justice of the United States in 1946, most of the constitutional issues relating to the scope of federal power under the commerce and taxing clauses and the war power had been resolved by decisions uniformly in favor of national authority. The due process clauses of the Fifth and Fourteenth Amendments had been deprived of vitality as substantive limitations on legislative power in the sphere of economic activity, and civil liberties had become the major area of constitutional limitations and, except for the negative restraints of the commerce clause upon state power, the last outpost of judicial review of legislative action. The developments leading to this state of judicial affairs were treated by Mr. Pritchett in 1948 in a volume entitled The Roosevelt Court (New York, The Macmillan Company, 1948), to which the instant volume is a logical sequel, but unlike most sequels the continuation is even better than its precursor.

Because of the circumscribed area of judicial review, aside from an occasional decision like that of the Steel Seizure case which involved executive action, Mr. Pritchett gives a fairly complete account of the work of the Vinson Court even though he confines his book to civil liberties. Although he depicts in detail the individual differences of the Justices as revealed in their printed opinions he omits the personal antagonisms which rent the Court from 1946 to 1953, and wisely so because however important such conflicts may have been in determining the course of judicial decision data on them are far too meager to be conclusive. Like The Roosevelt Court, Civil Liberties and the Vinson Court is a study in judicial values. In executing this

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