Commonwealth actually more concerned about possible international embarrassment? In any case, it is clear that, to this day, the States (including here the NT wannabe) — as the successors of the old-style Protectors — know or care little about international embarrassment, which probably suits the current federal government just fine.

PAUL J. WATSON

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Proprietary Claims and Remedies

by Malcolm Cope; The Federation Press, 1997; 218 pp; $60.00 hardcover.

Professor Cope has carved out for himself an extensive niche in trust and equity law. Six years ago, he published his treatise on constructive trusts (*Constructive Trusts*, Law Book Company, 1992). Now he has published a companion work that both expands and contracts on the previous book. It expands by examining other proprietary remedies besides constructive trusts, such as tracing. It is more narrow in focus by excluding other issues and concentrating solely on the remedial aspects of disputes.

Although Cope states in the introduction that the focus is on England, Australia and New Zealand, with lesser emphasis placed on Canadian cases, this seems an unfortunate restriction. Both Canadian and US courts have developed some interesting principles regarding proprietary remedies (their differing interpretations on unjust enrichment especially) and even a limited exploration of these jurisdictions would have proved fruitful.

The book opens with an exploration of proprietary claims in the context of bankruptcy and insolvency as if they should be the main determinants in assessing the nature of a remedy. Obviously, the effect on creditors is important, but surely there are other reasons for awarding or not awarding proprietary remedies. Much of common law experience in this area can be explained by historical accident. In some countries, France for instance, the normal remedy for breach of contract is specific performance, because it was seen as important for the State to encourage the keeping of promises. Other legal systems award proprietary remedies in very different circumstances from common law countries. One would have at least expected an introduction into what proprietary remedies are, and why specfic performance, to take just one example, is not considered to be one.

In my view, this is an area of law that suffers from too much thought. Legal academics are in the business of categorising and pigeonholing sometimes irreconcilable decisions, but the multiplicity of opinion between scholars in the overlapping fields of restitution, equity, contracts and trusts, as to when proprietary remedies are acceptable and when not, at times numbs the mind. For instance, many have searched for common factors or underlying principles that reveal the true nature of a constructive trust. Some have tried to categorise the diversity of cases into a few simple statements or rules (see, for example, B. McDonald, 'Constructive Trusts' in *Principles of Equity*, ed. P Parkinson, Law Book Company, 1996, p.709 at 718-20). Others, such as Lord Goff and Professor Gareth Jones argue that proprietary claims should be available to do 'justice' in the individual case (R. Goff and G. Jones, *The Law of Restitution,* 4th edn, Sweet & Maxwell, 1993). According to Roy Goode, in order to properly analyse a remedial proprietary remedy such as a constructive trust, it is necessary to separate events relating to substantive property rights from events that bring upon the court's discretion (R.M. Goode, in *Essays on the Law of Restitution,* ed. A.S. Burrows, Oxford, 1991 at pp.219-22). Peter Birks, in contrast, shuns this kind of conceptual distinction in favour of a division between enrichment received and enrichment surviving claims (see P.B.H. Birks, *Restitution — The Future,* Federation Press, 1992 at p.122). There are more theories on how best to analyse and remedy these kinds of wrongs than is warranted. It would be interesting to know how many practising lawyers are familiar with these theories, and how everyday practice is affected by them.

The difficulty then, is finding where *Proprietary Claims and Remedies* fits in, and what it adds to the debate. Unfortunately, for me, there is a pervasive feeling that this book is simply foundering at sea. Despite the abundance of scholarly comment and classification schemes, the judiciary continues to chart its own course in developing equitable proprietary claims. None of the classification schemes developed by commentators has found absolute favour with judges, and I can comfortably predict that Cope's attempt will similarly be adopted where necessary, and discarded where inappropriate.

Even if the book did present a substantive revolution, the ideas are often drowned out by obfuscation. Sometimes the diction is virtually impenetrable or unfathomable. Here are a couple of examples:

> In this case [*Lord Napier and Ettrick v. Hunter*] it was held that stop loss insurers were entitled to injunctions restraining a party in receipt of damages from paying out of damages to Lloyds' names and from each Lloyds' name receiving without first providing amounts which had or shall be found due to each name to the insurers by way of subrogation. [p.58]

I could not begin to say what that case stands for. And similarly:

> The principles adopted in *In re Hallett's Estate* were applied in *Aluminium Industries v. Rompalpa* [presumably meaning *Romalpa*] . . . According to this analysis the goods were sold as agents for the plaintiffs to whom he stood in a fiduciary relationship and they were therefore accountable for those goods and their proceeds to the principal. [p.69]

This is a recurring problem. Also common are smaller, perhaps typographic, errors that render some of the sentences nonsensical or confusing. A typical example occurs in the description of *Sinclair v Brougham.* Cope states: 'It is therefore difficult to see how the position of the shareholders [party A] was any different to the shareholders who paid money in consideration for the shares [party B] . . .' (p.74). It would have been better to refer to the two distinct groups as members and non-members, or members and *ultra vires* lenders, not only because that is how the judges in the case refer to them, but also simply as an easy way to keep the competing parties and interests separate.

Another example of a simple error became an obsession during this review. I was haunted by an incorrect footnote reference early on in the book. A crucial quote was attributed to Lord Goff and Jones at page 61 of their highly respected work, The Law of Restitution, 4th edition. But the quoted text is not there. In fact, it is nowhere to be found

in that edition of Goff and Jones. I tried nearby pages, checked the index for the topic and perused all related pages, to no avail. I inverted the numbers, thinking perhaps the reference meant page 16. No luck. I then tried the same page in the 3rd edition. Wrong again. Desperate, I emailed Professor Cope to sort out the confusion. Three months later came the reply. It seems the passage was removed from the 4th edition, although it did appear elsewhere in previous versions. So now I wonder if the whole theory of the law on proprietary remedies has been changed again...

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Crime and Criminology: An Introduction

Rob White and Fiona Haines; Oxford University Press, 1996; 239 pp; $29.95 softcover.

Crime and Social Control: An Introduction

Rob White and Santina Perrone; Oxford University Press, 1996; 279 pp; $29.95 softcover.

White and Haines have done a great service to Australian criminology. While *Crime and Criminology* is subtitled 'An Introduction' it is a thoughtful and very readable account of past and present criminological thinking which will serve not only those new to the field, but also veterans who wish to pause and reflect on 'what it all means', a not uncommon experience among working criminologists.

The first chapter is essentially a guide, How to Study Crime. Importantly the authors alert the reader to different ways of approaching the task, for example:

- vocational — reform and problem solving
- critical — raising deeper theoretical questions;
- levels of analysis — individual, situational, structural;
- political orientation — conservative, liberal, radical.

Here and throughout the book, they give examples, provide a useful chart, draw links between the phenomena discussed, and give a balanced and fair account of the matters focused on. This chapter should be especially useful for teachers attempting to assist students, both in criminology and other studies, in learning how to think critically in an organised and analytical manner.

The following chapters together provide a clear, succinct, yet fairly comprehensive and balanced discussion of various approaches to thinking about crime and its causes: Classical Theory; Biological and Psychological Positivism; Strain Theory; Labelling Perspectives; Marxist; Feminist; New Right; Left Realism; Republican; and Critical. Each is organised in the following manner: Introduction; Social Context; Basic Concepts; Historical Development; Contemporary Example; Critique; Conclusion and Further Reading (there is also a 10-page list of references including a high percentage of Australian sources).

In their brief Conclusion, the authors provide a useful reminder of reasons for the existence of differing criminological positions on contemporary issues:

> Each theory or perspective embodies particular values regarding 'what is' the nature of present society, and 'what ought to be' the best way to deal with social issues such as crime ... the doing of criminological theory, research and practical intervention is always at one and the same time a statement about the kind of world each of us would like to see, and a response to the world of which we are an integral part. [p.212]

Recognising the political importance of law-and-order debates, they also suggest that

> in the light of current public perceptions about the 'crime threat' and general unease about the future of jobs, the environment, peace and respect for human rights, it is more essential than ever to think critically about the nature of crime, how it occurs, who it affects, and what can be done to prevent or control it. [p.212]

The book is designed for teaching, particularly at first year university level. It should prove highly successful for that purpose, as well as a useful 'refresher' for those already into the thickets of criminology (perhaps too deep to see the forest!).

Crime and Social Control is another introductory text co-authored by Rob White, this time with Santina Perrone. It complements *Crime and Criminology* in subject matter and has the same attributes such as being clearly written, succinct, thoughtful, attentive to theory but not abstract, full of examples, helpful summary charts, and ample references (19 pages, much of it Australian material). Again, an excellent text for students and their teachers. It is also a provocative read for criminologists and those working in criminal justice.

The book is organised around 'five broad areas of topical concern and interest': the police; the courts; punishment and correction; community-based responses (including crime prevention, diversion and ADR); and victims. The authors thus 'provide a broad survey and introduction to the major institutions of criminal justice and the issues specific to these' commenting:

> It is our hope that by combining baseline descriptions with substantive critiques of the institutions of criminal justice, the reader will be better able to appreciate the complexities, limitations and possibilities of the social control of crime in Australian society. [p.9]

It is to be hoped that this book will be read widely. As the authors note: '[a]n informed view of criminal justice is the best guarantee that the use of violence and coercion by the State will indeed reflect concerns with social justice' (p.9).

As noted, the two books complement each other and the authors of this volume signal the importance of the connection:

> The specific ways in which crime control is constructed, and the different orientations of crime control, reflect varying conceptions of the nature of crime and criminality ... how we view the causes of crime has direct implications for how we respond to it and how we attempt to control it ... Thus an underlying concern of this book is to expose the *politics of social control* as this pertains to the criminal justice area. [p.8]

As this description suggests, the former book lays out major 'ways of thinking' about crime while this one is addressed to the policies, practices and politics of dealing with crime.

The authors do not set out to provide a comprehensive account of social control, both formal and informal, state and non-state. It seems a reasonable choice, in an introductory text, to concentrate on 'the state-organised reactions to crime and offending behaviour, with special attention being given to the formal institutions of criminal justice'