he should be praised for introducing a far broader and more analytical perspective than most writings on organised crime, Ruggiero does not seek readily to illuminate how crimes came to be organised that way, and how and why patterns of organisation change. True, the evidence permits this only to a limited extent, but it would be preferable to tell readers about which important things are not known about organised and corporate crime in Europe. The material on money-laundering, for example, is rather dated. I remain puzzled by remarks (when analysing the barriers which prevent the upward mobility of criminals) such as that on p 155: 'it is legitimate to ask: is excess of socialisation, rather than lack of it, one of the causes of crime?' This may be true of corporate criminals, though the cluster of scandals cited obscures major intra-capitalist variations and informal sanctioning of some conduct (while permitting others): indeed, though I may be accused of failing to see the wood for the trees, the book would have benefited from much greater refinement in models of capitalism. I would prefer to have seen some sophisticated discussion of influences on law-making and law-enforcement, rather than the simple redefinition of corporate search for profits (aka greed) as corporate 'crime at work'. The fact that corporate actors find some forms of criminal behaviour (which at times seems to equate merely with exploitative behaviour) easy to rationalise compared with 'mainstream' crimes may make it psychologically easier to commit them, and the amount of formal social control ranged in opposition may be modest: however, whether this actually makes violation of law more likely, as he suggests, or that wealth, rather than poverty, causes crime, may produce some scepticism among readers.

Finally, it cannot be correct to assert, starkly (at p 155) that:

'Criminal labourers do work, they are employed. Only occupational alternatives which actually compete with their illegal jobs, in terms of status and income, may entice them to early retirement from crime.'

Though this welcome focus on 'crime as work' is stimulating, how early is 'early retirement'? The fact is that, as offenders get older, or become embedded in more conventional activities, many do drift out of crime without better weekly incomes (which might have to be discounted to take account of incarceration).

In short, this book is thoughtful, stimulating and a welcome change from arid criminology, but in places, it would have benefited from some more rigorous auto-critique. Where it scores is in following through in an organisational and social context the rational-choice approach that crime is an option, rather than being 'caused'. Perhaps the criticisms offered here constitute an argument for the author's preparing a second edition of this stimulating introduction to corporate and organised crime in Europe.

MICHAEL LEVI

Proprietary Interests in Commercial Transactions by SARAH WORTHINGTON
Oxford: Clarendon Press, 1996, xlvii + 245 + (bibliography and index) 25 pp

The first thing to note about this book is its title; it speaks indifferently to all forms of property. Yet it is personality, above all, that stretches its ambition and, if one weighs the book accurately, has been the most challenging category of
property for the author. The title also reveals the book’s concern with commercial transactions; it does not mention insolvency. Nevertheless, as a practical matter, the two subjects of commercial transactions and insolvency are much the same if one excludes the important topic of public authorities speculating in the financial markets in excess of their powers. It is the insolvency process, above all, that has awakened interest in this subject and transformed perceptions of personal property law, which is now seen to be rather more than a compendium of colourful stories concerning heirlooms and the capturing of swarming bees. Insolvency is the anvil on which the modern law of personal property is being hammered into shape. Given the paucity of assets to be distributed on an insolvency, the law should recognise this fact by exercising some restraint in recognising the emergence of property interests. An ever-present question should be whether this particular creditor deserves to be singled out from the pack. A danger inherent in a developing law of restitution is that proprietary interests will be recognised in the abstract without recourse to hardheaded commercial realism.

Sarah Worthington has written an uncompromisingly analytical and systematic book. It is a challenging work, which deserves to be taken very seriously indeed and treated as an indispensable source of reference for those working in the field. It is a brave piece of work: the author takes clear and firm positions. By her own (correct) account, it is a principled work. The entire subject is mapped out: the work is divided into interests arising by agreement and interests arising by operation of law. The former category is devoted to retention of title clauses, Quistclose trusts, floating charges and covenants attached to chattels. The latter category contains chapters dealing with the effect on legal and equitable title of void and voidable contracts, property interests in new and substituted products, constructive trusts and equitable liens. The book is clearly written and the structure is well conceived. It contains much useful material, particularly in areas like equitable liens (somewhat neglected in this country) and contractual covenants (the rule in De Mattos v Gibson (1858) 4 De G & J 276). It reads rather like a PhD thesis, which the Preface suggests was the origin of it. With many of the judgments expressed in the text, I should agree. In the case of others, I am not so sure, especially where the author is attempting to subject, indeed to subjugate, all types of property to the same rule. And I have real doubts about the driving philosophy of a work that sets aside practical, commercial considerations. It is in the nature of review essays of this kind that criticism crowds out plaudits. I should not like to think that what follows conceals my admiration for what is a very considerable achievement.

The restructuring of the UK economy from the 1980s onwards, coupled with global recession and the instability of world financial markets, has spurred the development of the subject by offering up a mass of case law in this country supplemented by a generous contribution from the courts of Australia and New Zealand. If any one event has, above all others, irked company liquidators and receivers in the last 20 years it has been the proliferation of proprietary claims, which often possess only nuisance value. It frustrates the liquidator in dispensing pari passu justice to the general body of unsecured creditors and, probably to a greater extent, it impedes the receiver’s single-minded pursuit of the bank’s interests. The expansion of proprietary claims is particularly evident in the case of title-retaining sellers. The author’s concern is not to weigh the merits of title
retainers against those of secured, unsecured and preference creditors. As she herself writes: 'Retention of title clauses... are seen, unfairly perhaps, as a licence to contract out of the insolvency laws. These practical and policy issues are not elaborated upon here, where the focus is exclusively on the legal reasons for the success or failure of retention of title clauses' (p 10).

Without rehearsing here in full the fate of title retention clauses, they have been conspicuously unsuccessful when extended beyond the original goods supplied. The seller's 'success' in acquiring a charge that is not, and cannot practicably be, registered is of course a hollow one. In case after case, attempts to 'retain' interests in newly manufactured goods, or in the money proceeds of the original or newly manufactured goods, have failed. If one looks only at the text of the judgments in these cases, one might think that, if only the draftsmen of these clauses had more accurately expressed the true intent of the contracting parties, their efforts would have been crowned with success. In the case of proceeds, the author writes that 'there is scope to frame such a clause successfully, although it requires a subtle appreciation of the reasons for the failure of the past' (p 37). This is not unlike the credo of the horse, Boxer, in Animal Farm who, faced with ever higher production targets, thought the answer was to try harder. Mercifully, Boxer's fate, a one-way trip to the specificatio factory, will not be shared by the unsuccessful draftsman. The author believes that promising avenues open to sellers include Quistclose trusts declared by buyers of the money proceeds (p 70). And there are others. It certainly is a useful exercise for a class to work out the broad details of a workable title retention clause extending beyond the original goods. I can see the merits of the tenancy in common idea and have an impeccable clause that involves a bailment to the seller coupled with a trust receipt to the buyer. But all of this is beside the point. These clauses do not pass muster and, however well expressed, will not pass muster as genuine title retentions. A comparison with the escalating judicial hostility towards wide-ranging exclusion clauses in the years preceding the passing of the Unfair Contract Terms Act 1977 is instructive. With respect to the author, surviving judicial scrutiny is more than just a matter of ensuring that the seller does not obtain a windfall (p 32). When construing title retention clauses, the conduct of the courts, so yielding to the principle of freedom of contract when dealing with secured credit properly so-called, can only be explained as guided by distributional considerations. Title retention is seen as appropriate in the case of the original goods; in extended reservation cases, the rights of third parties come into play and contractual construction is inappropriate. The real puzzle is not about the drafting of a proper extended title retention clause; it is why courts are so indulgent to security-taking banks and so demanding of title-retaining suppliers. It is unfortunate that the author excludes such considerations from her inquiry.

I also have some, but only a few, substantive legal disagreements with the author. For example, there is her view that the parties can contract out of the rule that ownership of new products can be made to vest originally in the seller without the clause being characterised as a charge. She is critical of views expressed by certain authors (Tettenborn, Muir) that the property in new goods must first have vested, however briefly, in the buyer before becoming subject to the extended title retention clause so that, in consequence, the clause operates as a charge. This, says the author, ignores the fact that the rules of law are merely
‘rebuttable presumptions’ (p 32, note 149; see also p 142, note 128). With respect, this misses the point that the seller needs the active assistance of the buyer in order to be able to divert from the buyer ownership of the new products. This entails a grant back, which is the hallmark of a charge. However weak the ‘presumption’ (if that is the right word) of ownership is, the buyer’s co-operation is still needed. I do not deny that, contractually, seller and buyer are free to contract out of property rules inter se. Property rules can be negatived but they cannot be nullified. They bring in distributional considerations, such as the rights of creditors taking a security interest in the buyer’s stock-in-trade, which cannot be overridden by a mere bilateral provision in a contract to which those creditors are strangers. In such cases, the seller is permitted by the law of property to protect his interests. It is the seller’s misfortune that the law, in the shape of s 395 of the Companies Act 1985, imposes conditions by way of registration of charges with which the seller cannot realistically comply. The answer to this problem is not to play fast and loose with property law but to reform the law of security so that it fairly embraces both title retention and security properly so-called.

This same misconception concerning the initial attribution of new products underlies the author’s criticism of Slade J in Re Bond Worth Ltd [1980] 1 Ch 228 at 248, in which the learned judge says that ‘any contract which, by way of security for the payment of a debt, confers an interest in property defeasible or destructible upon payment of such debt . . . must necessarily be regarded as creating a mortgage or charge . . .’ (emphasis added). According to the author, ‘Taken literally, it would require simple retention of title clauses to be construed as mortgages’ (p 17). Not so. In a simple sale of goods case, it takes both parties to cooperate in the transfer of the general property in the buyer. If the seller signals his intention to delay the transfer of the property by departing from the presumptive rules in s 18 of the Sale of Goods Act, whether in the contract or at any later time before those rules take effect, whether pursuant to the contract or in breach of contract, the absence of the seller’s consent prevents the property from passing. There is nothing the buyer can do to overcome the seller’s resistance. In contrast, the seller cannot unilaterally capture from the outset the ownership of new products. For similar reasons, I disagree with the author that an immediate grant by the seller and grant back by the buyer (which according to Re Bond Worth Ltd [1980] 1 Ch 228 is what happens when the seller purportedly transfers to the buyer the bare legal title) prevents ownership of the original goods from ever vesting in the buyer (p 22, a passage rather difficult to follow). I disagree, too, with the view that the automatic assignment of future assets (proceeds), once they come into existence, prevents the equitable property in them from vesting in the buyer (p 41). Before they come into existence, any purported assignment is merely a promise to assign.

The author’s principled approach to floating charges is another example where the introduction of practical considerations would have enriched the discussion. The contribution of the floating charge to the financing of industry and commerce has been well recognised. It gave the financier a junior but real security in the undertaking of the firm whilst leaving the firm free to deal with its encumbered assets in the ordinary course of business (Re Hamilton’s Windsor Ironworks Co (1879) 12 Ch D 707; Re Castell & Brown Ltd [1898] 1 Ch 315). Creditors making loans on a shorter cycle, secured over a narrower range of assets, were given a higher-ranking priority and execution creditors were protected from selective intervention by the debenture holder (Evans v Rival Granite Co Ltd [1910] 2
In an unstated way, the law thus permitted the grant of a higher-ranking purchase money security interest. In modern times, the loose security of the floating charge has been transformed in the typical bank debenture. The bank will take a residual floating charge, of a ‘lightweight’ nature, to block the appointment of an administrator, and will seek as far as possible to make all assets of the company, down to its book debts, the subject of fixed charges. The key question is whether one creditor should be able in this way to tie up a company’s assets so as to obtain priority over subsequent financiers extending short-term credit secured by a narrower asset base. Should the company, in other words, have practical access to a wider range of credit than that provided by its bankers?

Sarah Worthington’s attention to principle rather than policy diverts her from such important questions. Instead, she devotes her attention to the juridical nature of a floating charge drawing upon her earlier work ([1994] CLJ 31). Now, the above developments in the modern bank debenture mean that the floating charge has become merely a final flourish in the document. The question of what in essence it is has therefore been deprived of much practical significance. The author sets out three theories of the floating charge. The first is that a floating charge creates no present proprietary interest at all, being merely a contingent promise to confer a charge that takes effect upon crystallisation (see WJ Gough, ‘The Floating Charge: Traditional Themes and New Directions’ in P Finn (ed) Equity and Commercial Relationships (1987)). Her own radically different theory is that the floating charge confers ‘the same quality of proprietary interest as is recognized in the context of a fixed charge’, but one that is liable to be divested when the chargor permissibly deals with the encumbered assets (p 80). The intermediate theory, which happens to be the one supported by the case law, is that the chargee has a present security while the chargor has a power, licence or right to deal with encumbered assets in the ordinary course of business. The author recognises that her theory has not been taken up by the courts but asserts that it is ‘consistent’ (p 82) with judicial descriptions of a floating charge (though she has to recognise at p 95 the inconsistency with her theory of execution and garnishee cases, which do set the acid test of what a floating charge is). ‘Not inconsistent’ would be more accurate. She is insistent, too, that her ‘defeasible charge theory’ is not the same thing as a fixed charge with a licence to deal; rather, it ‘gives the chargee the same quality of proprietary interest as a chargee with a fixed equitable interest, except that the floating charge interest is defeasible while the fixed one is not’ (p 80). With respect, this is a distinction without a difference. She has put forward a unilaterally defeasible fixed charge under another name. In view of the need to differentiate between fixed and floating charges in statutes that do not truly define a floating charge (see, for example, Companies Act 1985, s 396(1)(f); Insolvency Act 1986, ss 15, 29, 43, 245), commercial lawyers are bound to maintain the distinction between the two. Given the way that restrictions can be introduced into a floating charge without altering its nature (Re Cossett (Contractors) Ltd [1997] 4 All ER 115), just as a fixed charge can allow some degree of freedom to deal whilst remaining a fixed charge, protecting the distinction is no easy matter. The author’s contribution to the theoretical debate unfortunately buttresses developments in the modern bank debenture that, by threatening the floating charge, assist in the creation of a situational credit monopoly.

A more serious criticism of the author’s theory of a floating charge relates to why it is needed. She does not advance it for its practical virtues and does not
succeed in demonstrating that it better explains the authorities. Is it just a useful counterpoise to the Gough theory so that we are left with the equivalent of a cycle with training wheels? Theory on its own is not enough; it must have an applied dimension.

Finally, I have difficulties with the author’s general tendency to believe that all forms of property – land, goods and money – can be reduced to one type in the interest of principled analysis. Goods and land are not bought and sold in the same way and there is no reason to suppose that principle is insensitive to fact. This attitude seems to underlie the curious argument that, while title to goods cannot be transferred under a void contract, yet ‘perhaps it can be transferred by delivery’ (p 125). There are policy arguments to be made about transforming the rule of *nemo dat quod non habet* and its exceptions but they are not presented here. I also believe it is quite wrong to say that a plaintiff in conversion has no property claims despite being the owner of the chattel (p 183). The plaintiff’s claim is a proprietary one, even though it is unlikely that a court will, exercising its discretion (Torts (Interference with Goods) Act 1977, s 3), grant a real remedy. Unless and until judgment is satisfied in proceedings that are classically seen as a forced judicial sale (*Brinsmead v Harrison* (1872) LR 7 CP 547; s 5(1) of the 1977 Act), the plaintiff most certainly does have a proprietary claim. In the case of book debts, I disagree with the view that a distinction can (practically) be drawn between the tree and its fruits (p 77), though I think the point made about *Re New Bullas Trading Ltd* ([1994] BCLC 485), that it improperly sanctions dealing in the ordinary course with uncollected debts without recourse to the chargee (p 76), is a good one.

In sum, this is a good piece of traditional analytical jurisprudence that would have benefited from the recognition that there are policy considerations to be taken into account. Subject to this point, I should agree with the author that the need for radical legislation is less than might be supposed since ‘existing basic legal principles are sufficient to deliver solutions to many of the pressing legal problems facing commercial parties’ (p 245). The book is a valuable addition to the literature, especially given its capacity for provoking a reviewer to question his own received beliefs. As book reviewers traditionally say, this book should find its way into the library of everyone seriously interested in the subject.

MICHAEL G BRIDGE