the appalling standing regulations at Port Arthur; and the third a reprin of the even more horrifying standing regulations for the Victorian hulks

The author's simply expressed conclusion (page 147) that 'On the whol of the record, John Price was a cruel man', is on the evidence of this book inescapable. Throughout the book the evidence of Price's character, deed and misdeeds is marshalled and evaluated with scrupulous care and pro fessional skill. Wherever the background and surrounding circumstance are relevant they are described in detail. Everything, as the judicial ex pression goes, that could be said for Price is said; and it is said with a coo impartiality that is all the more telling for its restraint. *The Life an Death of John Price* is a very good book. I hope that many people wil read it.

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The Constructive Trust, by D. W. M. WATERS, B.C.L., M.A. (Oxon.) Ph.D. (London) of Lincoln's Inn, Barrister-at-Law, Lecturer in Law University College, London. (The Athlone Press, 1964.) pp. i-xxiii, 1 346, Index 347-353. Price £4 5s. 6d.

English writers on trusts have treated the constructive trust as a typ of substantive institution and have seen no incongruity in including it i a volume which also expounds the law of express trusts. The constructiv trust suffers by comparison with the express trust. The express trust ha developed from a remedial device to an intellectually satisfying system o principles under which widely varying dispositions of property may b made. The usual treatment of constructive trusts discloses a mere cata logue of relationships in which courts have imposed a duty on one perso to disgorge property to another. In the United States of America th constructive trust is regarded as a remedial device to be used in cases o unjust enrichment. The compilers of the Restatement deal with it in th Restatement of Restitution rather than the Restatement of Trusts.

Dr Water's book is a commendable effort to test the value of the trus analogy in a number of relationships other than that created where on person conveys property to another with the intent that it be held o trust for a third person. He takes the relationship of vendor and pur chaser, mortgagee and mortgagor and agent and principal. After a valuabl exposition of the English authorities in these three areas he conclude that the duties arising in each of these relationships which courts hav imposed on the basis of a constructive trust could equally well be impose without the need for any analogy with the law of trusts. His work i useful in clearing the ground to disclose the basic questions of restitution

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Law in the Making, by Sir CARLETON K. ALLEN, M.C., Q.C., D.C.L. Hon. LL.D. (Glasgow), F.B.A., J.P. (Oxford, at the Clarendon Press 1964), pp. 1-649. Price £4 14s. 6d.

This reviewer has long entertained warm affection for *Law in th Making*. After nearly forty years it remains the most generally interestin book written on the working and the history of the English legal system

Its account of custom, of the history and operation of precedent, legislation and statute is unique—not only in the kind of information provided but in the elegance and warmth of its style. One feels a sadness that its distinguished author in this edition is speaking of 'last words' and of 'ageing books susceptible only of a certain amount of rejuvenation'. For no-one has made so clear and attractive for the student the path of the law: the discovery of how law came to be made in England. Allen not only describes that long process accurately: he also *explains* it in the sense of fitting the pieces together and showing the whole rich pattern.

Remarkable, too, is the wisdom and balance of the treatment. Its author is sufficiently an Englishman to be a pragmatist and yet to understand the integrating strength of the principles which cement the individual decisions. He can portray a process of development without any Whiggish notions of the *inevitability* of the progress of legal institutions. His is an admirably balanced survey of the problem 'do judges make law?', and his reply puts the issues in their true proportions. Again, without adopting any 'great man' theory of history, he illustrates vividly the contribution of eminent individuals from Bracton to Lord Atkin, whose wisdom and courage have influenced legal thinking over seven hundred years.

One would hate to see this fine work not used adequately by students; for they will learn from it a great deal that no one else will tell them. It is rather a pity, therefore, that by now *Law in the Making* has become a little difficult to fit into the syllabus of an Australian Law School. It is much too large and detailed for first year students—having by successive growths reached a total of 632 pages. For more mature students of Jurisprudence the chapter on Custom is outside the needs of our people; that on Subordinate Legislation fits better the course on administrative law, while the essay on legal philosophies requires some expansion for our purposes. One would hope that the sections on Precedent, Equity and Legislation might be combined in a separate volume (with references placed at the end of each chapter for simpler reading of the text). Such a reduced work would be invaluable for the study of the law as a *process*, while leaving the students to read in other works accounts of lawmaking in the United States and elsewhere. Allen, for obvious reasons, has little to say about such American writers as Fuller, Llewellyn, Patterson, Northrop, Hall, Friedmann, Newman; nor does he attempt a comprehensive analysis of recent European philosophical influences on English law. Nor again, does the name of Sir Owen Dixon appear in the Index.

But, within the limits suggested above, Allen's classic might well continue to enjoy the prestige it has already earned for many further editions. Through his Oxford students, who have since taught here, it has had a long and constructive influence in this country. As he himself comments at the end of his study of precedent: 'the whole system seems to be passing through a critical phase in its long history.' There are judges who declare that the golden age of the common law has now passed and that it will find its remaining territory swiftly occupied by the invading hordes of statutes. If it is to resist, and still be capable of development, its supporters must be aware of the danger and of the need to reshape those traditional principles on which it has built its Jurisprudence.

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The Law of Quasi Contract, by S. J. STOLJAR, LL.B., LL.M., Ph.D. (The Law Book Company of Australasia Pty Ltd, 1964), pp. i-xxviii, pp. 1-223. Price £3 7s. 6d.

Dr Stoljar has set himself a 'dual task: to re-examine analytically and historically . . . the law of quasi-contract'. In a small compass, he sets out to examine the plethora of material sheltering under the umbrella of quasi-contract in a clear and comprehensive manner.

His espousal of a 'proprietary' theory of quasi-contract explains well the division of the subject matter treated, which is novel and of particular interest in the chapter on Reimbursement, Indemnity and Contribution. But, on his own admission, any such theory takes the matter very little further in the present stage of the law's development.

The historical background is of considerable assistance in following the intricacies of the development of the modern law and points the way to an expanded use of, for example, the 'waiver of tort' doctrine.

The gap between the publication of texts in this area, and the use of Australian and American materials would be, in themselves, good reasons for welcoming Dr Stoljar's book. So it is unfortunate that the major criticism of his work relates to the use of such authorities. One would expect that both Australian authorities and Australian problems would be dealt with *in extenso* in a book of this kind. But one of the more pressing current problems in a Federal system, the recovery of moneys paid under a statute subsequently held to be unconstitutional, is barely touched on. A fuller treatment is warranted, with discussion of relevant American authorities and of the problems arising out of the decisions cited by him in this context. In some areas, the impact of Australian decisions on the authorities cited has been overlooked so that the statement of the author is inaccurate, and cannot be relied on in an Australian situation. An example of this occurs in Chapter 8 in the section on illegal contracts where *Lodge v. National Union Investment Co.*[1] is cited without a reference to decisions of the Privy Council[2] and the High Court[3] in which *Lodge* is virtually overruled.

Again, it is surprising to note the omission of a reference to the Australian decisions of *Spedding v. Spedding*,[4] and *Black v. S. Freedman & Co.*,[5] in which the equitable doctrine of tracing was used to enable the owner to recover moneys stolen, passed on to a third party, and mixed by that third party with his own funds, without recourse to the common law action of money had and received.[6]

Despite these criticisms, this book will be of considerable interest to students in this field. It is to be hoped that it will soon be followed by an expanded edition dealing more fully with the Australian material.

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1 [1907] 1 Ch. 300.
2 *Kasumu v. Bab-Egbe* [1956] A.C. 359.
3 *Mayfair Trading Co. Pty. Ltd. v. Dreyer* (1960) 101 C.L.R. 428.
4 (1913) 30 W.N. (N.S.W.) 81.
5 (1910) 12 C.L.R. 105.
6 This principle was also recognized in *Creak v. Moore* (1913) 15 C.L.R. 426.

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