

Jean Jacques Du Plessis, James McConvill
and Mirko Bagaric,
Principles of Contemporary Corporate Governance,
Cambridge University Press, 2005

Du Plessis, McConvill and Bagaric's *Principles of Contemporary Corporate Governance* merits a place among the best texts on the topic. It is clear, comprehensive, and well-thought out. It develops nicely the ideas of the underlying theory and draws from them their practical manifestations in the various corporate organs, regimes and programs. This alone is worth the price of the book.

The book begins with a thorough overview of the topic and general difficulties encountered in dealing with the terms and notions of corporate governance. It next moves on to an exciting discussion of the role of stakeholders in the corporation. This chapter builds expectations of a broader, more inclusive approach to the topic of corporate governance. The next chapter sets out various theories of corporate boards, and is well illustrated with helpful diagrams showing the different approaches to Boards of Directors.

Unfortunately, at this stage the book begins to under-deliver its promise as a critical comprehensive re-thinking of this important topic, corporate governance. This comment is not to find fault with the book's presentation or careful analysis of the situation. It is a complaint about the failure to follow

through as one might have hoped on the critical position taken in the introduction, and particularly the second chapter vis-à-vis the stakeholder in the corporation. Rather than continuing in that line of innovative, forward thinking, the book reverts to a standard, although very competent, review of the status quo. The explication and justification for the status quo continues through chapters on directors, the various reports on corporate governance in Australia, regulation of corporate activity and regulators, and the important role of auditors. The chapter on directors' duties is well done, like the rest of the book. It also offers a helpful case study of the *ASIC v Adler* litigation. Unfortunately, like many law texts, the explanation of the facts of the case are a bit difficult to work through (even given the complexity of the case itself), although clearly the authors have made an effort to present them in a clear fashion.

Another strength of the work is its international comparative perspective. The authors begin this right on the first page of the text. This perspective is critical because it places the corporate governance debate in its context, and provides a helpful platform from which to review the historical and current concerns in the Australian debate. The issues of corporate governance are not *sui generis* to Australia, and Australia has both benefited from and contributed to the international community on matters of corporate governance. Contributions from the international community are found in the chapters dealing with boards, and directors. Further, a later chapter devoted to the topic compliments handsomely this international flavour. That chapter too is well thought out, well laid out, and deals nicely with the main drivers of the corporate governance debate and various positions. In dealing with this material, as with all of the book, the authors have been even handed, neither fawning inappropriately over other systems, nor disdaining those whose approach is different.

The authors have done an outstanding job of identifying in simple language the complex issues in the corporate governance debates. In addition, they often raise the more difficult and sophisticated issues underlying the various positions, for

example, the thinking behind shareholder primacy and the role generally of shareholders in the corporation. They examine evidence for and against shareholder participation, empirical studies, and they do the same for independent directors without significant shareholdings.¹

They also have moved beyond the traditional command and control approach to directors' behaviour and the simplistic view of human behaviour advocated by neo-classical economists—namely that humans are merely exclusively self-interested utility maximisers. Their analysis is systematic, thorough and captures the subtleties of the developing field of behavioural law and economics.² This discussion too has much to commend itself to the reader's attention and critical thought in the area of director's behaviour. The important discussion of the role of norms in corporate behaviour and management culture too deserves and received good attention. In this reader's view, these items are the most innovative and commendable portions of the book.

The book is logically and carefully laid out, with an encouraging nod toward the increasing importance of the role of stakeholders by making that discussion the topic of the second chapter. Unfortunately, despite having carefully and properly identified the role, justification and importance of the various stakeholders, they then settle back to the common shareholder primacy model and then defend it.

This approach is most unfortunate because of the book's many strengths including strong writing, clear thinking, comprehensive and balanced treatment of relevant materials. Of particular disappointment is the main recommendation being a shareholder committee assigned to work to deal with shareholder complaints and offer some check and balance to

¹ Jean Jacques du Plessis, James McConvill and Mirko Bagaric, *Principles of Contemporary Corporate Governance* (2005) 320-42.

² *Ibid* 374-81.

the board. One would have hoped that the authors would have taken their approach a bit further and considered some broader more justifiable approaches that meet their stated objectives.

Further, none of their recommendations do much to address the very important issue of the control and liability of middle management in corporate wrong-doing. The authors highlight this issue particularly with reference to the Owen Report on the HIH collapse; however, they fail to suggest how their shareholder participatory model addresses this increasingly important vulnerability.

Finally, and perhaps most disappointingly, the authors fail to discuss the pre-existing legal commitments in which the law has decided to privilege investors and/or directors over the employees, customers and people living in society. At several points through the text they appeared to be on the cusp of such a discussion and then stopped short. Indeed, in certain instances they revert to natural law language to support political decisions. For example, they state: '[a] natural consequence of the fact that shareholders own the company is that it is their interests which should be most closely aligned with the interests of the company'.³ What the company's interests are is highly contested, and the notion that shareholders are a monolithic group is simply not the case. Furthermore, the position that the shareholders "own the company" is certainly a contentious view. Had they taken a more critical approach to these issues, certainly their contribution would have been invaluable because it would make absolutely clear the openness of the discussion and the legitimate role of these other stakeholders in the activities controlled by the select and privileged few involved in the undemocratic governance of the corporations that dominate our society, our lives and our culture. Further, such an approach

³ Ibid 324-5.

may have led to more of the valuable innovative and critical thinking they demonstrate when dealing with other matters they have identified as problematic. That said, the book is certain to be a leading text and an invaluable resource to those involved in matters pertaining to Corporate Governance.

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