This book is full of variety and interest — a most suitable tribute to a writer and teacher, Professor Neville Brown of Birmingham, whose lively but careful scholarship has enriched the life of the law in Britain, in the British Commonwealth and in Europe. The book’s 25 essays begin with a personal appreciation of Neville Brown by his Birmingham colleague, Brian Harvey, and are rounded off with Neville Brown’s own Presidential Address to the Society of Public Teachers of Law in 1985, “Confessions of a Comparatist”. In this he traces his odyssey from airborne radar in the RAF, through Cambridge, Lyon, Sheffield and Birmingham, to Ann Arbor and Quebec and, eventually, to Community law. He confesses cheerfully to having accepted F.H. Lawson’s belief that a generalist approach can still be scholarly and his advice that a legal writer should have the courage to be incomplete.

Neville Brown is, above all, a comparatist who is concerned to achieve practical results of benefit to a community wider than that of academic lawyers. Birmingham’s Institute of Judicial Administration, which he helped to found and manage, was, as Sir Gordon Borrie explains in the first essay, based on the belief which they set out in a joint article in 1968 that:

“The man in the street will derive real benefit from improvements in the substantive law only if they are accompanied by improvements in the administration of justice in our courts and tribunals, in the procedures which are followed and in the practices of the legal profession.”

Faithful to this approach, the other essays in the book cover substantive, procedural and “professional” law.

In “What is Comparative Law?”, Neville Brown’s co-author, J.F. Garner, draws attention to the rewards and pitfalls of comparative law. As a subject for students, it may easily degenerate into nothing more than legal geography. The study of comparativ-
tive law must be based on a sound understanding of the legal principles current in the systems being compared. This is easier where the systems have common roots and use a common language. The study of legal diversity is not only a fascinating intellectual exercise in itself, but a way to a wider knowledge of basic principles, and therefore an essential tool in law reform.

Neville Brown's interest in French and French-inspired law is reflected in five essays. In “La fonction et le rôle du notaire en France”, Louis Chaine begins by explaining the key function of the notary, the authentication of acts. This is followed by a brief historical survey which shows how, contrary to much that is written about them, today's Latin notary and English notary have a common medieval parentage. The article then goes on to explain the organization of the modern profession of notary in France and to survey the range of work undertaken by the profession. The article concludes with some reflections on the problems facing the profession – notably Anglo-American law, practices and language – and proposals for reform. The author favours the Dutch solution of interprofessional partnerships between advocates and notaries rather than their amalgamation into a single profession.

Pierre Verge's article on “Influences externes dans la formation du droit québécois des rapports collectifs du travail” shows how the law of Quebec drew on sources as distant from each other as New Zealand, France and the Weimar Republic in the search for a principle to reconcile the conflict between the contractual liberty of employer and employee, the pluralist preferences of the indigenous Catholic trade unions, and the American solution giving a monopoly of representation to the majority union. The second part of the essay deals with the problem of reconciling the American solution, which was finally adopted, with the public law principles derived from Britain and the private law principles derived from France.

Kenny Anthony examines “Approaches to the common law trust in codified mixed jurisdictions” with particular reference to the experience of Quebec, St. Lucia, Louisiana and Seychelles. The common law trust, the most valuable creation of Equity, has proved such a useful tool for a variety of purposes that mixed systems, working alongside “pure” common law systems, have had to find ways of adopting it. The core problem has been that of reconciling a device in which the search for an owner is inappropriate with the insistence of civilian doctrine that an owner be identified. Of the four systems examined, the Quebec code did not face the problem head on, but left it to the Supreme Court of Canada to identify the trustee as owner of the property conveyed to him in trust. St. Lucia eventually incorporated the common law trust as such, the relevant provision of the Civil Code referring expressly to the law of England. The Louisiana Trust Code referred to “title” rather than “ownership”, leaving it to the courts to hold that the result is the same. In Seychelles, the reformer of the Civil Code, Professor A.G. Chloros (later, but sadly only briefly, the Greek judge at the EC Court of Justice), held out against “a concept based on a foreign tradition and a more sophisticated framework of legal relations than was available in Seychelles”. He therefore applied, where necessary, the concept of the fiduciary.

On a quite different theme, Denis Lemieux examines “Le cadre juridique de la direc-
tive en droit québécois”. As he explains, the public administration of Quebec is resorting more and more to the directive as a means of ensuring conformity with major lines of policy. The Quebec directive is a rule of conduct, of general application, based on the inherent or conferred power of the administration to give directions, in order to provide a framework for action by those to whom it is addressed. The sanctions are essentially administrative and the directive confers no rights on third parties. The article explains how, and to what extent, directives are subject to judicial control and ends with a discussion of its advantages and disadvantages. As might be expected by those who are familiar with its Community cousin, the principal problem with the Quebec directive is that of defining its legal effect.

John Bell’s essay on the procedure of the French Conseil d’Etat will be particularly valuable for those who wish to compare the current procedures of the EC Court of Justice with those of the system on which they were based. It is based on his experience “as a special kind of stagiaire” for a period of six months during which he was able to observe and discuss how the Conseil d’Etat works. It is therefore an insider’s view written by an English law teacher. It is divided into four parts devoted, respectively, to the written and oral character of proceedings; individuality, collegiality and judicial style; judicial style and precedent; and conclusions.

In the first part, the author shows why the rôle of the French administrative judge is thought to be, but really is not, “inquisitorial”. He emphasizes the central importance of the dossier (the file) on the basis of which the rapporteur, réviseur and commissaire du gouvernement each take their turn in considering the case. This explains the relatively greater significance attached to written pleading and “evidence” in written form. The rapporteur has an inquisitorial rôle in the sense that he, and not the parties, is responsible for ensuring that the file contains all factually and legally relevant material, but the scope of the enquiry is nevertheless defined by the pleadings of the parties.

Critics of European Court procedure will be interested to note that, although oral pleading plays virtually no part in Conseil d’Etat procedure, parties are entitled to draw attention to omissions and misinterpretations in the conclusions of the commissaire du gouvernement. Those who hanker after more written procedure in the British courts will do well to note that in the Conseil d’Etat, as in the ECJ, such procedure can be much slower in reaching a result than the oral exchange of arguments tested, there and then, by the judge.

The second section explains in some detail the balance struck in Conseil d’Etat procedure between the individual input of the rapporteur and the commissaire du gouvernement, and the collegial character of the ultimate judgment. Collegiality extends to a desire for institutional consistency and, as one of the judges of the ECJ has remarked to the present reviewer, the délibéré (discussion of the draft judgment) is the heart of the judge’s activity under this system. It is at this stage, when the legal issue is focused by the facts of a particular case, that the search for coherence of approach is pursued by the judges as a body, each of whom is responsible for helping to make the end product as good as it can be.

The third section develops the similarities and differences between this approach and
the common law doctrine of precedent. The search for consistency and coherence is, of course, quite unlike a mechanical application of _stare decisis_ but, as the author observes, there is a fundamental similarity in much of the judicial reasoning of both systems. What is particularly useful is to have the French (and, substantially, the continental) approach to case law brought out so well by an English lawyer. It would be interesting to see whether a French observer could give an equally coherent picture of the use of precedent in the British courts today.

In his conclusion, the author emphasizes that the French administrative law judge is an administrator, trained as an administrator and concerned, through judicial decisions, to teach the administration to behave properly. He says that, in the final analysis, the French judge is a bureaucrat and the English an advocate. If this is perhaps rather tendentious and not wholly accurate (at least in the use of the word “bureaucrat” – “technocrat” might be better), it does point up the difference in cast of mind and in attitude to the reasoning of decisions (the relaxed argumentative style of the British judgment compared with the dense staccato style of the French).

Neville Brown’s interest in family law is reflected in four essays. In “The contribution of comparative (or foreign law) studies to family law reform”, Jacques-Michel Grossen emphasizes that while foreign law may simply be used as an instrument of propaganda, it may also provide a reservoir of possible solutions. He goes on to discuss how comparisons ought to be used in law reform, stressing the need for thorough groundwork and informed exchange of ideas. If his conclusion is questionable, that similarities can often be explained just as well by common factors of political and social change, he is surely right in insisting that “il n’y a pire folie que d’être sage tout seul”.

In “Marital Violence and the Act of 1978”, A.H. Manchester reminds us of the highly idiosyncratic – not to say primitive – attitude of the English common law to the status and rights of wives, and traces the course of statutory reform culminating in the Matrimonial Causes Act of 1878 which made available to the battered wife a range of remedies in the magistrates’ courts.

In “Domestic influences on private international law: the case of nullity”, C.A. Weddon shows how idiosyncrasies of English domestic law were reflected in English doctrines of private international law. These have survived longer than the doctrines that produced them, with consequent difficulties in adapting to modern cross-frontier problems.

P.M. Bromley discusses another area where the real-life problems are ahead of the law, “The legal position of unmarried cohabitants”. He pleads for the recognition of cohabitation contracts and a discretionary power in the courts to grant appropriate relief.

Constitutional law is represented by an article of special importance by G.J. Hand on “A.V. Dicey’s unpublished materials on the comparative study of constitutions”. This should be prescribed reading for those who misuse Dicey’s _Law of the Constitution_ to obstruct rational thinking about constitutional reform in the United Kingdom and about the relationship between the United Kingdom and the European Community.

The unpublished material consists of successive versions of lectures delivered by
Dicey between 1897 and 1908, and subsequent revisions with an eye to "the book Dicey never wrote". It shows that, long before his death, Dicey had "progressed from the relative simplicities of the original text of the *Law of the Constitution*". Thus, on parliamentary sovereignty, he wrote that

"Even in England the authority vested in Parliament is rather indefinite than absolute, and it would be simply ridiculous to press the theory of representation to such an extent as to make the people of a country the slaves of the very body which exists to carry out the will of the people."

Dicey's approach to French administrative law is more sympathetic than early writings would have led one to expect, and if the material on "local self government and centralism" is thought by the author to be "not very exciting or unobvious material", it seems to have the smell of subsidiarity about it!

The problems of adapting the common law system to a world in which the simplicities attributed to Dicey no longer hold good are illustrated in several essays.

In "The presumption of non-applicability of statutes to the Crown: Canadian comparative notes in favour of its reversal", Mario Bonchard explains how the Courts of Quebec set about curtailing the practical impact of the common law presumption which had been enshrined both in the Quebec Interpretation Act and in the Civil Code. In British Columbia in the west and Prince Edward Island in the east, the presumption has very recently been reversed by statute. In the other provinces and at federal level, the presumption still applies. The author argues that this approach ought not to survive in a federal system based on a written constitution. In particular, he argues in favour of a distinction between the administrative and the constitutional *persona* of the Crown so as to make it possible to recognize the proper legal position of the administration. It is not enough simply to reverse the presumption that statutes do not bind the Crown and so treat the public administration like a private corporation. Drawing on the experience of other jurisdictions with a developed system of administrative law, he points out that the principle of legality implies that both the State and individuals are subject to the law, not that they are the same or should be treated the same.

Some of the practical implications of not treating the State and individuals in the same way are discussed in Michael Purdue's article on "The scope for fact finding in judicial review". The traditional adversarial system of the common law places the parties in a position of equality before the court, whose task it is to do justice between them, applying the law to the facts as established by evidence. Equality of treatment in this context implies two important rights: the right to discovery and the right of cross-examination. To what extent and how are such rights to be exercised in a developed system of judicial review which goes beyond the simplicities of *vires* and error on the face of the record? The article criticizes the rather tentative approach of the English courts to this question and suggests that the problem of fact-finding "will have to be squarely faced by the courts or legislature in the near future".

It is perhaps as well to note that the problem of fact finding in judicial review is not unique to the common law system, though it arises there in a special way because of
the supposedly strict separation of issues of fact and law and the search for “evidence” to settle issues of fact. The European Court of First Instance, set up to deal with complex questions of fact, has not escaped criticism for appearing to usurp the fact-finding function of the decision-maker. There are, however, two important respects in which the Community system differs from that of the common law – the requirement that administrative decisions should state the reasons on which they are based, and the requirement that the material for decision should be assembled in an identifiable dossier.

An alternative approach to providing the citizen with a remedy against the administration is discussed in D.C.M. Yardley’s article on “Local Ombudsmen: Modern Developments”. After explaining how the system of local ombudsmen was set up and how it works, the author draws attention to the erroneous assumption on which it was based: that every local authority would do its best to comply with the recommendations of the ombudsman. In Northern Ireland it has proved necessary to allow a dissatisfied complainant to seek a remedy in the country court, and the question now is whether this right should be extended to England, Wales and Scotland.

The law of the European Convention on Human Rights is represented by Jeremy McBride’s article on “Redress for Human Rights Violations”. The author points out that the European Convention system is “the most extensively used of the individual petition systems that have some prospect of achieving individual justice”, and that the European Court of Human Rights was initially bold in asserting and exercising the jurisdiction to award damages. However, the legal criteria for such awards have not been so thoroughly developed, and the article is helpful in providing an analysis, based on the Court’s case law, of what the applicable criteria are. As the author points out, this is important where national courts have jurisdiction to award compensation for human rights violations, and it could be added that, after Francovich, the ECJ faces a similar problem of defining the criteria to be applied by national courts.

European Community law and Community problems are richly represented. Another of Neville Brown’s co-authors, Francis Jacobs, writes on “The principle of legality – towards a European standard?”. Starting from the well-established application of the principle of legality in the field of criminal law, the article goes on to look at its application in other areas of public law. This leads to the conclusion that there is a single underlying basic idea: “that the exercise of official authority must be subject to rules which enable the individual to foresee its impact”. This is then related to the other aspect of the principle of legality, that all exercise of power affecting the individual should be subject to judicial review.

The next article by Henry Schermers on “The European Parliament and the European Court of Justice” addresses fundamental questions about the Community’s inchoate constitution: “Is the European Parliament not a proper parliament? Is there anything wrong in the balance between Parliament and Court? Or does the European situation reflect a modern development which national parliaments might follow?” The author observes that, while legislation is the primary function of a parliament, modern legislation is made by the experts of the administration, supervised by the elected parliament. Gradually, the principal task of parliaments has shifted from legislation to super-
vision, a task in which, approaching from another direction, parliaments have been joined by the courts. Thus parliaments and courts have become, instead of natural antagonists, natural allies. This is reflected particularly in the Community system where the principal tasks of the EP and ECJ run parallel: "they both supervise the functioning of the other institutions of the Community, the one from a legal, the other from a political point of view."

The psychological importance of an elected parliament as the ultimate source of law is reflected in Yves Daudet’s article on “L’introduction du droit international et du droit communautaire dans le droit interne français”. The article explains the attitude of the French Conseil d’État to treaty law and its reluctance to accept the primacy of Community norms which were seen as having an executive, as opposed to a legislative origin. The true importance of Nicolo "lies in the fact that the Conseil d’État – perhaps in spite of itself – had to accept all the legal consequences of what has actually happened: the fundamental change in our national society and national (or nationalist) mentality because, but for a major political upheaval, the process of European integration is irreversible".

Evelyn Ellis writes on “The Enforcement of EEC law in the courts of the Member States: What does direct effect really mean?” The aim of the article, written before Francovich, is to draw attention to the disparities of treatment resulting from disparities in national procedures, time limits and remedies. The author emphasizes the need for the ECJ to apply a qualitative standard to the remedies provided by national law. Five possible situations are identified: where there is a fully effective national remedy; where there is no available national remedy or the only available remedy has been cut off (e.g. by a time limit); where an appropriate remedy exists but has to be “borrowed” from another field of national law (e.g. borrowing the remedy of damages from tort law); where there is a remedy but it is inadequate (Marshall II?); and where the remedy, albeit available, will come too late (the problem of interim relief). Like the earlier article on remedies for human rights violations, this article stresses the duty of the European courts to define the criteria that national courts are to apply.

In “Tide or flood?” — the influence of concepts of European Community law in English law”, John Usher looks at the parallel development over the past 20 years of Community law and English national law. Is it due to coincidence, accident, osmosis or direct borrowing that English judges have come so quickly to find themselves at home with purposive interpretation, damages for wrongful state action, fundamental rights and principles of administrative law that bear a striking resemblance to legitimate expectation and proportionality? The discussion of the case law points up a problem alluded to in several earlier essays — the inadequacy of the conventional common law tool kit to mend relationships between the citizen and the State in the late twentieth century. Whether because they wanted to, or because they had to, common law judges have adapted with remarkably little complaint to new methods of thought:

“We have now reached the situation where a senior judge does feel able openly to state a willingness to take conscious account of a principle derived from the
laws of the other Member States and held to be a general principle of community law. . . Perhaps most notable of all, in the context of techniques of interpretation there appears to have been a quiet revolution, so that what was said to be a strange system from which no assistance could be derived appears to be used virtually on a daily basis, even in the context of lawyer’s law.”

The last essay in the book takes the form of a “Letter from Brussels”, in which John Forman reflects on the revolution in Information Technology and its implications for the lawyers of the future. He is right to stress that “not all the discipline in the world or an advanced expertise in information technology will suffice. First and foremost, you must still be a good lawyer, albeit nowadays also conversant with the world of information technology”.

One essay has been left as last, but not least, to be mentioned. In “Small is different?”, Keith Patchett looks at the consequences of independence for the legal systems of the West Indies, Mauritius and the islands of the Pacific. He shows how very difficult it is for small, frequently isolated, societies with limited economic capability and limited skilled manpower to operate an effective legal system, both in terms of producing good substantive law and in terms of operating acceptable procedures. As he says:

“Many commentators have discussed the vulnerability of small States in international affairs. It may be suggested, however, that greater attention could usefully be paid to the need to strengthen the internal institutions of such States, especially the legal system, and to devising effective legal rules and procedures, in ways that are more suited to the circumstances of smallness.”

This intellectual and moral obligation of the former colonial powers of Europe tends all too easily to be forgotten. And, as eastern Europe splits and resplits into even smaller units, it presents an intellectual and moral challenge for the lawyers of western Europe as well. The peoples of the former communist States cannot be expected to find their own way to a working free society without the support of the west in laying the institutional and intellectual infrastructure.

It is hoped that this review will have whetted the appetite of those who can secure a copy of this admirable book. Sadly, it may be difficult to find, having been published by the Holdsworth Club by photoreproduction of typescript (like a volume of FIDE reports), but it can be obtained on application to the Faculty of Law, Birmingham University. Perhaps one of the major publishers will appreciate its value and take it up. If so, it would be helpful if (1) the essays could be grouped according to subject matter, and (2) biographical details of the authors could be included. The use of typescript produced by university secretaries has, however, ensured that the number of typographical errors is, for these days, refreshingly small.

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