Whether one agrees with the author's views on the choice of law rules for torts, the discussion is very effectively organised by dividing it into two chapters, on single-State torts and multi-State torts. The issues raised by each are quite different. Furthermore, although the author's main concern is with methodology, it adds significantly to the strength of his approach that he concludes with discussion of some concrete examples in the areas of product liability, misrepresentation, defamation and vicarious liability.

Unlike some (most notably the late Dr F. A. Mann 107 L.Q.R. 353), the author finds much to commend in the provisions of the Rome Convention on the Law Applicable to Contractual Obligations (Contracts (Applicable Law) Act 1990, Schedule 1). In particular, he sees Article 4, which determines the applicable law in the absence of choice, as a provision which is very much in line, or can be made to be very much in line, with his own preferred approach. If the parties have not chosen the applicable law, the law of the place of the party whose performance is characteristic of the contract is rebuttably appropriate on the grounds of convenience. It is more likely that the party whose role is the more active, substantial and complex will have to ascertain and act on rules of law in the course of his performance. This presumption may be rebutted if outweighed by the other criteria identified by the author which should be taken into account when determining whether the contract is more closely connected with another country (Article 4(5)). It is difficult to disagree with many of the solutions which the author offers for determining the applicable law but one wonders whether he is guilty, despite his protestations to the contrary, of ignoring realities. It is difficult to believe that the language of the Convention will support the interpretations which he proffers, particularly in the hands of the European Court of Justice (which does not yet have authority to provide interpretative rulings).

One factor which the author has not taken sufficient account of in updating and amending the articles upon which this book is based is the increasing importance of jurisdiction. This is reflected in a seemingly never-ending flow of litigation and the constant expansion of the relevant chapters in the leading textbooks. This comment may seem unfair in relation to a book about choice of law, and only certain topics in choice of law at that, but the interrelationship of jurisdiction and choice of law is a great deal more significant than the fleeting references in this book would suggest.

Overall, this book presents, as the author had hoped, a coherent theory for the formulation and interpretation of choice of law rules. It is a sophisticated analysis and it is impossible to do it full justice within the confines of this review. Not all will agree with the author's views, but this is an area notorious for the differing views of its commentators. This book will deservedly stimulate further debate.

EDWIN PEEL

Interpreting Precedents: A Comparative Study. Edited by D. NEIL MACCORMICK and ROBERT S. SUMMERS. [Aldershot: Dartmouth Applied Legal Philosophy Series. 1997. xi + 585 pp. inc. index. ISBN 1–85521–686–8. £65]

LITERATURE on the interpretation of precedent has of late struggled to keep pace with that concerning statutory interpretation, at least in terms of quantity. This book provides a welcome companion volume to the well-known *Interpreting Statutes: A Comparative Study*, issued in 1991 by the same editors. It was prepared by the same special research group as the earlier volume: the membership now contains professors of law from universities in 11 different countries (England, Italy, Finland, France, Germany, Norway, Poland, Scotland, Spain, Sweden and the United States). Due to the composition of the research group, all but two of the systems studied are Western European.

Focus and structure are achieved by following substantially the same format as Interpreting Statutes: the group set itself a series of general questions (reproduced in the appendix) to be discussed in respect of each jurisdiction represented. This volume also includes a chapter

on the use of precedent in European law. Thus the majority of the contributions are largely descriptive of individual systems, offering extensive bibliographies but few comparative references. Although this technique leads to some repetition between chapters, there is much useful material here for students of foreign systems, including practical information as to where case reports can be found. This section of the book also prepares the way for the comparative analysis of the final chapters.

The general conclusion reached is hardly a new one, in that the editors identify "substantial functional equivalence despite considerable difference in the forms in which law and legal reasoning are presented" (p.540). Nevertheless, as Cappelletti has pointed out, it has become fashionable for comparative lawyers to "de-emphasise" differences in the use of precedent ("The Doctrine of *Stare Decisis* and the Civil Law", in Bernstein *et al.* (Eds), *Festschrift für Konrad Zweigert zum 70*, pp.381–393 at p.383). MacCormick and Summers do not belittle the distinctiveness of common law and civil law systems. Instead, this forms the basis for a series of tentative suggestions in the final chapter as to how the systems might learn from each other's strengths. Whether or not such suggestions are convincing, the work which precedes them is undoubtedly a valuable resource for the comparative study of this important topic.

ELSPETH REID

A Continental Distinction in the Common Law—A Historical and Comparative Perspective on English Public Law. By J. W .F. ALLISON. [Oxford: Clarendon Press. 1996. 270 pp. ISBN 0–19–825877–1. Price not given]

JOHN Allison's basic contention in this historical and comparative analysis of the public law/private law distinction is that the English distinction is a judicial transplantation, and an ill-considered one at that. While not opposed to transplantation *per se*, Allison insists on the importance of context. He therefore begins by offering a Weberian "ideal type" distinction in an appropriate legal and political setting. He argues that the distinction is only workable given a particular theory of the State; a categorical approach to law; a particular separation of powers between judiciary and administration; and inquisitorial judicial procedures. He concludes that, while France embodies each of these features, England does not. Consequently, while a public/private divide may be apposite in France, the transplant has failed to "take" in England.

Allison does not advocate abandonment of the distinction, but argues that if it is to be retained comprehensive reforms are required to align the English system (roughly) with his "ideal type". Two points might be made. First, the efforts of the courts to develop a workable distinction since *O'Reilly* v. *Mackman* have met with limited success. Moreover, since *O'Reilly*, reforms such as privatisation have rendered the distinction, never clear, even more fuzzy. Second, however, if we continue to measure the scope of judicial review by reference to a public/private divide of sorts, it is doubtful whether even such intensive historical and comparative study as that undertaken by Allison can guide English lawyers to a better understanding of where exactly to draw the line. Weberian "ideal types" are likely to offer still less assistance. Allison makes no inflated claims for his method, admitting that "the generalisations justified by a comparative-historical analysis and Weberian method are tentative, provisional and explicitly one-sided". The insights offered by the book are illuminating nonetheless, and it is to be hoped that Allison's work does engender further "supplementary and corrective research".

JANE CONVERY