precedents—it is still not so easy to distinguish both theoretical projects (despite some of the author's hints at p. 227 on where he disagrees with Dworkin).

Second, Waldron in a new article responding to some reactions to his recent work ((2006) 115 Yale L.J. 1379), explicitly considers the claim that judges are better suited to deal with the particularity of concrete cases: "But this is almost a myth. By the time the cases reach the high appellate levels…almost all trace of the original flesh-and-blood right-holders has vanished, and argument just as it is revolves around the abstract issues of the right in dispute…Hard cases make bad law, it is sometimes said. To the extent that this is true, it seems to me that legislatures are much better positioned to mount an assessment of an individual case in relation to a general issue of rights that affects millions".

This new objection makes a relevant point, which is even clearer in systems that adopt the Germanic abstract model of judicial review, where a concrete case does not even have to exist for judges to be able to strike down a statute. If the particularities and unforeseen circumstances of concrete hard cases are not at stake, but only the purely abstract moral judgements about a statute, is the common law methodology still preferable? Unless Waluchow is able to demonstrate that his methodology is present also in abstract judicial review, his argument loses a powerful weapon to build a theory of general application.

Constitutional theory has already profited from this debate, and our understanding of the role of courts has been refined by both Waldron and Waluchow. Legal theorists and constitutional scholars must now hope that Waldron will come back to re-evaluate his arguments in the light of Waluchow's challenges. In his most recent article, Waldron made concessions to the effect that judicial review is acceptable in situations that do not match his "core case": in essence, a community fits the "core case", and does not need judicial review, if it accomplishes certain qualitative conditions related to its institutions and to the way its political culture deals with individual rights. Waluchow's book allows us to speculate that he will agree with Waldron regarding the conditions in which judicial review would be unnecessary (p. 256), but disagree radically as to whether any contemporary democracy achieves those standards.

This book will probably come to form part of the canon of constitutional law literature, not only because it provides a sound justification for the existence of judicial review, but also because it gives a compelling orientation as to how it should be exercised. A note that might be added here is that common law methodology is a tool for civil law constitutional courts as well, which are sometimes keen to despise the value of precedents and integrity, let alone the transparent incremental development of rights, as a way of justifying their legitimacy in a democracy.

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Giudici e Accademia nell'esperienza inglese [Judges and academics: the English experience]. By ALEXANDRA BRAUN. [Bologna: Il Mulino. 2006. 560 pp. Paperback €41.00. ISBN 8815113487.]

GIUDICI E ACCADEMIA is a thorough coverage of the development of an academic profession in England and its influence on legal development. Like

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Lawson, Hamson and Schwartz looking at the civil law in the 1950s, Braun tries to offer the view of an outsider on the development of English academia. In this she tries to update and provide more depth than Kötz in the 1980s. But, unlike those authors with their short overviews strong on insight and short on detail, this work is heavily referenced with secondary literature. The strength of the work is its thorough review of that literature, but that leaves limited space for the author's own analysis and evaluation.

This impressive book is based on a continental European expectation that academic lawyers will play an important part in the development of the legal system. As the academic education of lawyers increases, so do the numbers of academics and their writings. With the increase both in those writings and the number of university-educated judges, so the influence of academics on the Bench increases. The author provides a significant amount of evidence for this hypothesis, but there are some distinctive features of the English system to which she could have given more space.

The work systematically produces information found predominantly in a wide variety of secondary sources. The author is to be congratulated on the thoroughness of her research. While a few points may be less well expressed than they might, the overall impression presented is accurate and comprehensive. There is inevitably a difficulty in "proving" the influence of academics on judges. Particularly in the second half of the twentieth century, as the author notes, the number of academics increased twentyfold, whilst the number of senior judges (High Court, Court of Appeal and House of Lords) only doubled. The difficult question is whether there has been a qualitative increase in impact, rather than just a quantitative increase in citations. The author does well to show enough information that could justify the conclusion that, in general, judicial decisions are increasingly taking account of the work of academics. But the individual character of English judgments inevitably leads to the conclusion also that particular judges are likely to cite particular academics with a reputation in their field. The links that exist between those particular academics and particular judges may be as important as the general acceptability of judges using academic writing as a persuasive source of arguments.

Chapter 1 charts legal education up until the nineteenth century and the nature of legal literature. The theme is the dominance of the "third university"—the Inns of Court—on the study of the common law. Chapter 2 provides us with an analysis of the development of law schools from the early nineteenth century, both in terms of student and staff numbers. Braun is right to be surprised about the small scale of legal education as an enterprise before 1945, and the small size of any academic profession until well into the 1960s. Her "critical look" at the end of the chapter suggests that the standing of the academic profession is changing as it provides candidates for the Bench, but perhaps overlooks the need for judicial candidates to have practical judicial experience as recorders and thus to be practitioners to some extent. The third chapter charts the rise of academic literature on English law, through textbooks and law reviews. For her the interesting point is the extent to which the university teacher transformed legal literature. Her suggestion is that textbooks and articles were mainly concerned to summarise and systematise the solutions of case law, rather than to engage in the kind of substantial critique of the law that has been common in many European jurisdictions for over a century, but that such criticism has been far more prominent in the ambitions of writers in the last quarter of the twentieth century. Her evidence

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of a change in attitude of academics towards judicial decisions focuses more on the language used by academics from the 1930s when commenting on judicial decisions (pp. 220–226).

Braun's more detailed interest is with the way in which judges and academics communicate. Here she adopts the European concept of a dialogue, and she contributes to that literature by analysing the communication between judges and academic writers. Following a discussion in chapter 5 of the status of "books of authority" within the common law tradition before 1700, chapter 6 discusses the slowness of English judges to treat textbooks or articles as even persuasive authorities in court. From the 1930s, there appeared a greater willingness to cite them and even (in many cases that she documents) to engage in debate with the views expressed in academic writing. Again, the style of language used by judges in judgments and discussions with the Bar is offered as evidence of a change in attitude (pp. 320–327). She is also able to note the increased willingness of senior judges to admit that they read academic writings. Most of the evidence is in formal statements, though she also documents some recent informal interchanges between judges and academics, as well as judicial acknowledgement of the influence that academics have had on their decisions. The critical character of this work is seen in chapter 7, where she explores the ways in which academics exercise influence. It is clear that they have long provided information on case law, particularly of foreign jurisdictions that would not ordinarily be available through counsel. Even as regards the common law, the academic may provide fuller and more systematic analysis of legal doctrines, as well as analysis of fundamental concepts. By contrast, incremental case law is bound to be fragmentary in its approach. At the same time academic criticism may influence the willingness of courts to review decisions, and also the way in which legislation and precedents are interpreted. Undoubtedly this help with interpretation and evaluation is something that significantly enhances the role of the academic in the activity of law creation. The issue of influence is developed further in chapter 8 through an in depth analysis of particular branches of law, including restitution and criminal law. The discussion of these two areas is particularly effective in showing the way in which academics have contributed to the systematic shaping of the law, as well as to specific discrete improvements.

Braun is keen to go beyond summarising the developments and to suggest reasons for the changes in the influence of academic writing. She is, I think, right to suggest that there are multiple interacting reasons for the greater willingness of courts to listen to and use academic writings. Among these were greater honesty in acknowledging influences on decisions, the different education of more recent judges, and the difference in practices in other parts of the common law world. Inevitably, her evidence is dominated by the Court of Appeal and the House of Lords, and within those institutions by the opinions of a small number of consistently prominent members, such as Lords Goff and Steyn. She notes a general tendency for judges to read more widely and for legal arguments presented to the courts to be more widely informed by academic writing, as well as by Law Commission reports and Hansard. The academic and judicial styles are resembling each other much more than in the first half of the twentieth century.

The presentation rightly notes the importance of judges as doctrinal writers. (In this, there are similarities to other jurisdictions where judges are major contributors to doctrinal legal writing.) She perhaps underplays the fact that this has been a longstanding pattern of English legal writing, as has been

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the role of judges extra-judicially in legal associations. As she notes, there have always been informal settings in which judges and academics have met (and she could have given more attention to the role of academics within the Inns of Court). What she documents is a greater theoretical orientation within the writings of academics, which may be the result of greater engagement with other disciplines in the universities.

The final chapter seeks to situate the development of English academic writing within the context of the role of doctrine in some other European law systems. In particular, she notes the way in which English academic writing has not conceived of itself as a body of legal scholarship, but as individual legal scholars (who may be academics or may be practitioners, or may be both). By contrast, Italian and French writers developed a distinct professional identity. She sees the increasing role of universities in legal education as significant, but perhaps misses the continuing importance of the non-lawyer entry to both the leading chambers of the Bar and the leading solicitors' firms (which is greater than the general 25 per cent. figure for all lawyers that she quotes on p. 467). Alongside that diversity of influence on legal education, the continuing major role of practitioners and judges within doctrinal writing gives a less distinctive space for legal academics. In many cases the judges are taking responsibility and are engaged in a leading role, using academic writing in a co-operative manner. In the end, she argues that academic opinions are sources of legal reasoning, rather than sources of law (p. 477). Even if it does not have the same status as the "prevailing opinion" among continental jurists, academic writing has become part of the modernisation of English law.

The role of the Law Commission and its predecessors is mentioned but not subjected to systematic and extensive analysis. I think this is a particular loss, because of the way in which the Commission serves as an intermediary in the transmission and refinement of academic ideas before they influence judges and legislators. It is significant that the judges she cites who came from academic life frequently passed through the Law Commission.

A number of proof-reading problems aside, this is a well-written and well-presented book that deserves a wide readership. There are refinements that the author can make to her argument, but this is a thesis on English legal development that is worth considering alongside the more recent work of authors such as Bradney and Cownie about the role of legal academics within the life of the law.

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