access) has been added (presumably as an afterthought) in an appendix. Other chapters carry advice on the mechanics of legal research and on the form and style of legal writing—in the form of opinions, correspondence and scholarly publication. A separate chapter is devoted to that pedant's delight, citation; here the authors recognize that there are no objectively correct citations—just those citations that make sense and efficiently convey information. I do not doubt that to many of its potential readers these concluding chapters will be superfluous, perhaps presumptuous. But they do represent the serious opinions of two experienced legal scholars on common (but often unresolved) problems of legal communication. As such, they make worthwhile reading; and no-one can gainsay the immense value of the earlier chapters of this book, and the real contribution they make to the practice of the "learned profession of the law".

P. J. HANKS.*

Cases and Materials on Administrative Law (2 ed.), by Peter Brett and P. W. Hogg. Sydney, Butterworth & Co. (Aust.) Ltd., 1967. 672 pp. ($11.00).

Britain today has many toilers in the vineyard of administrative law. This is in sharp contrast to the situation only a few years ago. Dicey had virtually denied that such a field existed, and claimed that the phenomenon in question, the rapid and diversified growth of governmental powers, was adequately kept under control by means of the doctrines, techniques and procedures employed by judges in other fields, notably that of torts. Dicey's great contemporary, Maitland, had a clearer view of events. He perceived that governmental powers were, in fact, growing like weeds and would need specialised cultivation. Dicey himself, in his later years, conceded that a problem existed. But the optimism he had engendered prevailed until Lord Hewart and others sounded desperate notes of alarm in the 1920's.

Since that time the investigations of *ad hoc* committees (Donoughmore, Franks) have been reinforced by the efforts of Parliament (the Statutory Instruments Act, 1946, the Crown Proceedings Act, 1947, the Tribunals and Inquiries Acts, 1956, 1966, the Parliamentary Commissioner Act, 1967), by the work of permanent institutions (the Council on Tribunals, the Parliamentary Commissioner) and, of course, by the continuing development of case law by the judges. Increasingly in recent years the profuse growth has been pruned and restored to some semblance of order.

But this crash programme has had little overall coherence. There are many varieties of governmental power. There are several possible forms of control — administrative and political as well as judicial. Judicial control itself works through a bewildering array of doctrines and procedures. When any one type of plant has suddenly appeared to present a threat to "rule of law" ideals, the cultivators have rushed in with whatever tool happened to be at hand to cope with that particular growth.

Thus the typical British book on administrative law follows the judges in highlighting the bewildering diversity of the subject. Perhaps the major work is S. A. de Smith's *Judicial Review of Administrative Action* (1959 — now published in a second edition). This monumental work is based mainly on an intensely detailed study of case law from the Year Books to modern times, from the courts of Britain to those of the Commonwealth and the United States. It thus perpetuates the diversity of the procedures and doctrines of judicial control. It emphasises what is special to administrative law. To

extend the agricultural analogy, it can be likened to a work exploring the history and special characteristics of different seed types, fertilisers, implements, weed killers and pruning methods. This, of course, is essential and of immense value.

By contrast, H. W. R. Wade's *Administrative Law* (2 ed., 1967) can be likened to a study of the overall principles of cultivation. Accepting the diverse origins of the doctrines and procedures of administrative law, he takes the subject as a whole and seeks to treat it as a *system*, to discover "the real unity of the subject". He is impatient with the verbal misunderstandings that are so prone to clutter the field. He stresses the intrinsic ordinariness of the procedures for judicial review. And he contends that "the general theory of judicial control is . . . simple. It is commonly called the doctrine of *ultra vires*". This doctrine covers excess of power and abuse of power in terms of the limits under the statute which conferred the power, whether those limits be express, or whether they be implied by the courts as a matter of interpretation. Thus the language of jurisdiction is assimilated to that of *vires*. The doctrine of natural justice becomes an implied statutory procedural obligation. Judicial review, as distinct from appeal, is a question of power and its limits (subject only to the special case of review for error of law within jurisdiction on the face of the record).

Wade's approach is of beguiling simplicity. It would make comprehension and exposition of this difficult field of law much easier. It might also encourage judges to think in terms of a vision of the system as a whole, and to write their judgments on the basis of broad principles. Unfortunately, in terms of what judges are doing and saying at present, it is an oversimplification. Wade however recognises this, and attempts to meet complicating factors that would threaten coherence, such as the void-voidable question.

There is room, especially in writing on administrative law, for both analysis (as exemplified by de Smith) and synthesis (as exemplified by Wade). The need for the synthetical approach is perhaps greater because of the predominance to date of the analytical approach, and, particularly, because of the continued and confusing judicial practice of treating the subject in a number of separate and unrelated compartments. One judge's approach to the arrangement and contents of compartments will frequently differ from another's. Basic principle, and sometimes justice itself, may be lost in the shuffle.

All this activity in Britain finds little counterpart in Australia. There has been little Parliamentary activity. Only recently has there been any study of the problems of judicial review of administrative action (by the Victorian and New South Wales law reform bodies). And yet we have "weeds" enough, not surprising if we accept A. F. Davies' dictum that "Australians have a characteristic talent for bureaucracy".

One or two significant Australian books on the subject have been published. One of these is Benjafield and Whitmore's *Principles of Australian Administrative Law* (3 ed., 1966),[1] in which de Smith's treatment of the subject is influential. The other is Brett and Hogg's *Cases and Materials on Administrative Law*, here under review.

The book provides a valuable balance to the Benjafield and Whitmore work in that its approach is closer to that of Wade. Let me say at the outset that the second edition is a considerable improvement on the first. That was entitled *Cases and Materials on Constitutional and Administrative Law*. "Constitutional Law" has now been dropped. Sufficient discussion of basic constitutional concepts, the authors note, can be found elsewhere, for example in Benjafield and Whitmore. The omission clears space for a fuller,

[1] Reviewed by L. L. Jaffe in (1968) 6 *Sydney L.R.* 148.

self-contained treatment of administrative law, and no one can deny that this is warranted or needed. Although much administrative law material in the first edition has been left out, the second edition is 150 pages longer. This is not only because of the torrent of important new decisions constantly emerging from the courts, but also because the authors have provided for more extended examination of important topics.

I refer to them as authors, rather than editors, because they provide excellent introductory commentaries throughout the book. Major cases are then extracted *in extenso*, and the authors then follow by raising particular questions arising from the decisions and by making concise references to other cases. It is a work of authorship, as well as of editorship. And, of course, the purely editorial work is creative enough.

The reference in the title to "Materials" is slightly misleading, because the emphasis is on judicial review and, thus, on cases. In Chapter 1, "On Remedies", they conclude Part A, "Review by the Courts", with Professor Davis' waspish comments on the prerogative remedies. And Part B, "Review Outside the Courts" (regrettably brief, though realistic), sets out extracts from the New Zealand Ombudsman legislation. Chapter 6, "The Crown", provides extracts from the Commonwealth Constitution, the Judiciary Act, and the Victorian Crown Proceedings Act. Otherwise the book is a collection of cases, not "materials". There were, in fact, more non-judicial materials in the first edition.

What other materials might deserve a place? The Administrative Procedure Act, 1946 (U.S.A.) is one example. Some extracts from reports of the Franks Committee, the Council on Tribunals, or local investigating bodies might also be appropriate. And extracts from a text on Government as to the procedures for parliamentary review of administration would also be illuminating.

Space, of course, is the problem. The authors do provide useful cross-references to other works. But there is so much case law that a book for lawyers must concentrate on judicial review if it is not to become either superficial, on the one hand, or unmanageable, on the other.

As (predominantly) a case book it has several clear advantages over the first edition, quite apart from those already mentioned. For one thing, of course, it is up-to-date, though, in the current highly fluid state of the subject, this advantage has already begun to disappear as this review goes to press.

Secondly, it has less of a "Victorian bias". Leading British cases are given, of course, as well as decisions of the Privy Council and the High Court of Australia. But so, too, are decisions from the United States, New Zealand and various Australian States. Accordingly it deserves a place in law schools and professional offices throughout Australasia.

Then the arrangement of the book has been improved. The arrangement of compartments and categories, as I suggested, goes to the very basis of one's view of administrative law. The ideal is an arrangement which not only has logical coherence and comprehensibility but also coincides with what judges do. The result may well be a compromise. In practice it is necessary to give almost as much space to the peculiarities of the various remedial procedures as to the "substantive" law itself. In this field, the forms of action do not (in Maitland's words) "rule us from their graves" — they remain unburied, alive and kicking.

Chapter 1 is devoted, then, to Remedies, mainly judicial, but with brief reference to administrative and political review. The next three chapters deal with "Scope of Judicial Review". Chapter 2 covers the fact/law distinction and the problem of jurisdictional facts. Chapter 3 then deals with "Discretion". It concentrates on "abuse" rather than "excess" of power, though the latter is a fairly straightforward matter turning directly on questions of statutory

interpretation. Discussion proceeds under such sub-headings as delegation, divesting, acting under dictation, applying rules of policy, improper purpose, irrelevant considerations, unreasonableness, uncertainty, inconsistency with the general law, and negligence.

These headings represent language often used by judges in holding exercises of power invalid. Much of the language, of course, is interchangeable. A case like *Hall & Co. Ltd.* v. *Shoreham-by-Sea U.D.C.*,[2] decided in England primarily on the basis of "unreasonableness", could also have been discussed on the basis of "improper purpose" or "irrelevant considerations" or "inconsistency with the law". At any rate, the headings given seem to represent the principal varieties of substantive *ultra vires* to invalidate administrative action.

"Procedure" is the subject of Chapter 4 which starts, briefly, with (A) a treatment of mandatory and directory requirements, and then goes on to (B), the important topic of natural justice. This juxtaposition is logical. (A) certainly is a species of *ultra vires*. (B), according to Wade, should be. But *ultra vires* renders action void. Denial of natural justice, according to *Durayappah* v. *Fernando*,[3] renders it voidable (in some strange sense). Brett and Hogg conclude the chapter with this important case, which raises as many questions as it answers.[4]

Chapter 5 deals with attempts to oust judicial review. Chapter 6 is about the Crown — its legal liability, "the shield of the Crown", the legal position of Crown servants, the Crown and statutes and Crown privilege.

The arrangement of topics seems fundamentally sound and clear. I would, however, question the title and structure of Chapter 2, "Scope of Judicial Review: Fact and Law". The chapter deals primarily with the important but difficult topic of jurisdictional questions — that is, with the question whether or not a particular subsidiary finding "goes to" the jurisdiction of the authority to exercise its principal power. To describe this issue as the doctrine of jurisdictional *fact* is itself misleading, for frequently the question will be one of law, or mixed fact and law (as the authors themselves note at p. 205). There may be differences in the actual operation of the doctrine according to the classification of the question. But to raise, for other purposes, the fact-law distinction in the same chapter can create confusion. I would suggest that the fact-law distinction be confined to Chapter 1 (pp. 179ff.), and that the "language" of Chapter 2 be amended under a sub-title such as "Subsidiary Findings" or "Jurisdictional Questions".

Chapter 3 follows Wade in assimilating the doctrines of *vires* (as developed for legislative and administrative action) and jurisdiction (as employed in the judicial or quasi-judicial sphere). There is much to be said for such a merger. The underlying principle is the same and there is no logical reason for any distinction. But some questions may still need to be resolved before a merger can be achieved. For example, some of the defects which, in the non-adjudicative field, constitute *ultra vires* so as to render action void (for example, irrelevant considerations) may be reviewable in the adjudicative field not as jurisdictional error but as error of law within jurisdiction which renders action voidable only. Lord Denning has suggested that if the irrelevant consideration "goes to the very root of the determination" it will become an excess of jurisdiction.[5] But even if he is correct, a difference remains: in the adjudicative field an irrelevant consideration must be dominant to nullify a decision, whereas this need not be established in the non-adjudicative field.

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[2] (1964) 1 W.L.R. 240; (1964) 1 All E.R. 1.
[3] (1967) 2 A.C. 337.
[4] Wade has since discussed it brilliantly in "Unlawful Administrative Action — Void or Voidable?" (1967) 83 *L.Q.R.* 499; (1968) 84 *L.Q.R.* 95.
[5] *R.* v. *Paddington Valuation Officer; Ex p. Peachey Property Corporation Ltd.* (1966) 1 Q.B. 380.

Such anomalies may well be eliminated as a result of the breaking down of the remedial barrier which confined certiorari and prohibition as procedures for reviewing formal adjudications only. Since *Ridge* v. *Baldwin*[6] and *Durayappah* v. *Fernando*[7] a wider range of action will fall within the ambit of these writs and the old distinctions between *vires* and jurisdiction should crumble.

The nature and significance of the void-voidable distinction will also need fuller treatment in the next edition. By that time a clearer assessment should be feasible than at present.

There are one or two other matters I would like to see developed further. One is judicial review of action by private as distinct from public bodies. Trade unions, professional organisations and the like increasingly appear less like voluntary associations than like domestic governments, and their actions are quite as capable of prejudicing the individual as are the actions of public authorities. At present they are regarded as beyond the scope of the prerogative writs, but administrative law doctrines are asserted by the equitable remedies of declaration and injunction. The topic receives only sketchy treatment, but merits more.

Mandamus, too, might merit fuller treatment in future, especially in view of its surprising use in *R.* v. *Metropolitan Police Commissioner; Ex parte Blackburn (No. 1)*[8] at the suit simply of a concerned citizen to compel the police to enforce Britain's gaming laws. And the insistence that it is a remedy confined to the exercise of duties rather than discretions may have to be abandoned after the House of Lords' decision in *Padfield* v. *Minister of Agriculture*.[9]

Some of these comments merely go to matters of emphasis, and some of them are made only in the light of very recent decisions, for it is the curse of any work on administrative law to start to become out of date the moment it reaches the printer. It is an excellent book — thorough in its coverage, judicious in its selection, illuminating and suitably critical in its commentaries. It is, inevitably, long, but cross-references are made throughout, and indexes and tables facilitate reference. It is highly recommended for teachers of the subject and their students, for practitioners, and for judges.

R. G. NETTHEIM*

Sources of Family Law, by J. C. Hall. Cambridge, Cambridge University Press, 1966. xxiii and 514 pp. ($5.15 in Australia).

A textbook can be judged in terms of its legal scholarship. A casebook has to be judged on a different basis. Essentially it is a teaching device and it should be evaluated in functional terms. Of course, in the absence of any agreement as to how family law should be taught, any evaluation of a collection of materials is necessarily subjective. When I say, as I do, that I was discouraged and disappointed by this book, I must add the rider that this comment merely reflects my view of how the subject should be taught. Within his self-imposed limitations Hall has worked carefully and thoughtfully.

In some 507 pages Hall has abstracted some 200 cases, numerous statutory

[6] (1964) A.C. 40.
[7] *Supra* n. 3.
[8] (1968) 1 All E.R. 763.
[9] (1968) 1 All E.R. 694.
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