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Book Reviews

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BOOK REVIEWS

STARE DECISIS: SOME TRENDS IN BRITISH AND AMERICAN APPLICATION OF THE DOCTRINE. By Russell F. Moore. New York: Simmons-Boardman Publishing Corporation. 1958. Pp. 46, with annotations. \$3.00.

In this scholarly study, Mr. Moore has applied himself to a timely and important phase of the legal order. He has traced the pattern of decisions in the American and British judicial systems to give vitality to a principle of considerable amplitude and prominence. It is beyond peradventure that *stare decisis* is imperative to the generation and permanence of any solid system of jurisprudence. It may be said that without this basic principle of adherence we can have no law; for law is a fixed and established rule which does not nor should depend, even in the most inconsiderable degree, on the fancy of those who have been chosen, at the time, to administer it.

Mr. Russell has divided the result of his studies into five phases. The first, under the heading, "The Doctrine of Stare Decisis," is essentially an exposition upon the nature and purpose of the doctrine together with an appreciation of the present day controversy eddying around it. This is followed by a treatment of the place and function of *stare decisis* in the Scottish legal system. It is to be noted that Mr. Russell has accomplished this against a background which may be properly described as a most helpful and admirable analysis of the Scottish legal system. In the succeeding part, the author proceeds, after an analysis of the judicial organization of England, to a study of the application of the doctrine of *stare decisis* in civil as well as criminal causes. Of the latter, the conclusion is made to the effect that there are cases which indicate that the observance of the doctrine of *stare decisis* is less strict in causes of criminal nature. In the fourth part of his studies, the author gives us a clearly reasoned and stimulating analysis of the application of the doctrine in the judicial system of the United States. Among other propositions, and from a well annotated text, Mr. Moore has established the point that the United States Supreme Court declared the need for flexibility in application of *stare decisis* in mid-nineteenth century; that the frequency of overruling precedents in the decade after the year of 1937 has been superseded by a period of disinclination to do so; preserving however, the importance of *stare decisis* as a basic social policy. The concluding part of Mr. Moore's book, bearing the legend, "Summary," is of prime importance to bench and bar alike. Concerning Scotland, the author concludes that the doctrine seems "more independent of ideas of finality and certainty than the equivalent in England." Of the latter, the author finds, "in recent years the tendency of English civil courts has been toward a more strict interpretation of the rule of *stare decisis*." In comparison with the foregoing, the author declares, "As compared with the English and Scot's view of precedent, the doctrine is a somewhat more flexible one in the United States."

The author has shown that the purpose of the doctrine of *stare decisis* is not to enshrine the blunders of the past; to preserve manifest mistakes destructive both of justice and reason; to put beyond the pale of reconsideration the results of inconsideration and impetuosity; nor to preserve obsolescence in the face of alteration in circumstance of social or economic condition and the advance of worth-while public opinion.

Mr. Moore has imparted florescence to his subject with a clarity that is as enlightening as it is succinct. To lawyer and layman alike, *Stare Decisis: Some Trends in British and American Application of the Doctrine* is recommended. They will learn more about the spirit of *stare decisis* from a perusal of the small volume than from the study of many a weightier tome.

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SELF-DEFENSE IN INTERNATIONAL LAW. By D. W. Bowett. New York, Frederick A. Praeger, 1958. Pp. xv, 294. \$7.50.

Self Defense is one of the most widely accepted yet most quizzical concepts. From its application, numerous questions of definition and fact finding will arise, e.g.: what interests are protectable; what force is permissible; may one act in behalf of strangers; must a state of danger exist; is an imaginary threat sufficient? The right *per se*, however, the protection of legitimate interests by appropriate means, is recognized by all legal systems of the world. It is generally agreed that the act of self defense is basically tortious, although, due to the provoking circumstances, not punishable. Its perpetrator does not function as an agent of the law, but simply because help from the authorities is not readily available.

Self defense is thus predicated on the absence of the properly constituted protection agency. In the international field, with centralized protection still in its weak and hesitant beginnings, the major pre-condition for self defense is ever-present. Force, for centuries the *ultima ratio* of foreign policies, will not disappear from the international scene, unless an effective centralized protection agency is created. Until this utopian, but not impossible, state is reached, the preservation of peace requires proper distinction between legitimate self-protection and arbitrary self-gratification.

The author bases his book on the premise that an analysis of self defense is desirable and attainable. He shows that "natural law"—still a major influence in international legal science—proclaims not merely the right but the actual duty of self-preservation. In his own view, he favors the more moderate "empirical" school which sees self defense as a privilege, set apart from self preservation. Another concept in need of demarcation is "self help." It is, like self defense, the answer to a delictual act, but it differs, the author avers, from the broad concept of which self defense is a segment. Self defense tries to restore the status quo, while self help aims at the prevention of further wrongs and becomes more aggressive than plain defense would be.

The author's approach is sound and logical, although his presentation suffers from some sluggishness. He makes state practice rather than general principles the prime target of his examinations. Quoting numerous examples, he explains how individual countries coped with international disputes according to their own notions, and how such settlement fitted into the pattern of international rules and agreements. The substantive rights, most prominently involved, were: political independence; territorial integrity; security on the high seas; protection of citizens; and, economic interests.

Self defense is not synonymous with war, but it may, in the last extremity, lead to it. The spectre of the "just war," raised by Grotius 300 years ago, reemerges under the name of self defense. The idea which, in Grotius' time, had sought to pacify a bellicose world, may today prove the final obstacle to peace. To all advocates of lasting peace, the fateful kinship between "just war" and "self defense" poses a crucial and cruel problem. "Collective self defense" seems to promise a solution, but, as the author rightly points out, many scholars view it as a contradiction in itself; besides, a war undertaken in collective defense still is a war. The U. N. Charter contains little guidance through this dilemma. In pre-U. N. times, the "positivist" theory rejected the thesis of a "just war," but it did not curb the right of a state, to resort to war. This served to compound rather than to clear up the problems of self defense. The author offers his own compelling and convincing lesson: Inherent in the concept of self defense is the moral postulation, that the nations forego their right to unrestricted war making. The thesis of self defense should be counter-balanced by the anthesis of war renunciation.

The book is a rich repository of case decisions, of extracts from national laws, treaties, drafts, writings by international jurists; an opulent source of bibliographies and documents. To wrest the information from its pages is not always easy, but the harvest is well worth the labor.

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