of the law. Such subjects are carefully avoided in our most progressive law schools. Students in whom a responsive chord is struck will find a wealth of footnote references bearing on the subject.

DONALD J. HOLLINGSWORTH

PRECEDENT IN ENGLISH AND CONTINENTAL LAW—*A. L. Goodhart. Stevens & Sons, Ltd., London, Eng., 1934*

In this book Professor Goodhart sets out to compare the merits of the common law doctrine of binding precedent with the continental theory of precedent established by practice.

Becoming particularly interested in the question of just what are the arguments in support of the English system Professor Goodhart discovers that for the most part he can agree with none of them. He does give one justifiable reason for the common law doctrine and that was the early need for certainty in the law of England. This need was not so crying in continental countries for there, even before the Codes, there was the background of Roman law which furnished a legal system of developed doctrines.

In building up a body of law there is a great need for certainty; there must be firm principles upon which the framework rests. This need for certainty in the development of the English law gave rise to the theory of binding precedents, for the entire job of construction was thrown upon the English judges. Precedents were the nails with which the English legal edifice was held together.

It would seem then that if any other binding force is present precedent does not become important unless it would be to bolster up the weak places in the structure. On the Continent the Codes were developed and thus formed a framework for law. The theory of precedent was not necessary but where a general practice developed under the Codes precedent eventually fixed that practice.

Professor Goodhart then takes issue with Mr. W. M. Best who assumes that if the English law were codified, the common law doctrine of precedent would be the better method of interpretation. This is hardly true he maintains, for to impose upon the statutes a doctrine of strict interpretation would soon make them inflexible.

Professor Goodhart then indicates that English law is codified to a far greater degree than most people realize; and claims that the binding precedent theory of interpretation is no longer a good one. His respect for the important part which precedent played in the development of English law is perhaps the only thing which prevents Professor Good-

hart from completely abandoning the doctrine of binding precedents. A legal system thoroughly established no longer requires the use of such a doctrine. Quoting from Professor Carleton Kemp Allen, to whose chair at Oxford he had just succeeded, Professor Goodhart says: "An English statute is not very old before it ceases to be a dry generalization and is seen through the medium of a number of concrete examples. The result is often startlingly different from what the enactment would seem to have intended."[1] Seemingly to prove his point as made in the above quotation Professor Goodhart footnotes a quotation from Joseph Kohler which in part follows: "Interpretation may change and cannot but change. For instance, the interpretation of the French Code Civil has, within a hundred years, undergone many changes. . . . Thus the whole law of unfair competition has grown out of two sections (1382, 1383) to which originally nobody had been able to ascribe any such meaning."[2]

From these quotations can be drawn the author's point of view. While the original intendment of a statute may be completely changed under either a binding precedent or non-binding precedent theory of law, it is far better to follow the non-binding theory thus avoiding the "freezing" of a statute with its first interpretation.

In a brief appendix Profesor Goodhart raises the question as to whether or not the Permanent Court of International Justice will adopt the binding precedent theory. Because of the present state of international law Professor Goodhart discerns a need for certainty which would justify the use of a binding precedent theory until international law becomes more firmly established as a system.

Professor Goodhart thus recognizes the fact that there is much to be said for binding precedents but when their use reaches a certain stage in the development of a legal system—a stage where continued application of the theory obstructs rather than aids further building and improvement, then the theory must be changed if not completely discarded.

DONALD J. HOLLINGSWORTH

[1] *Law in the Making* (2nd ed.), 1930, at p. 110.

[2] Joseph Kohler, *Judicial Interpretation of Enacted Law*, IX Modern Legal Philosophy Series 192.