NOTE

THE DOCTRINE OF STARE DECISIS AND THE PHILOSOPHY OF LAW IN A CHANGING WORLD

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It is often remarked that where legal and political matters are concerned, there is too wide a divergence between theory and practice. This is usually the case where the theory is so impractical as to be rendered useless in actual life, or where the theory is advanced for a particular set of conditions and circumstances. In the first case, the theory is a dogmatic attempt to state a principle, arrived at through an inductive process of reasoning which overlooks part or the whole of reality. In the second case, the theory is at first practicable, but since it contemplates a particular set of conditions, changes in these conditions may render its application either impossible or inequitable in the future.

Such is the case with the law. One would like to think that the law is a living thing. But living things are subject to many stresses and changes. A man is born, he matures, and he dies. The law is born in the consciousness of men, and it matures into a systematic set of principles and mandates, but whether it dies or not is determined by its own constitution. The law is a dynamic thing. A law that may be fair and equitable now may prove inequitable in the future because conditions then may be different. How to adapt the particular provisions of the law to changing world conditions should be of great concern to a large number of people, for law that is stagnant loses its force and its direction.

The doctrine of *stare decisis* may best be briefly described as adherence to judicial precedents. Such a doctrine involves many questions. Is it to be interpreted strictly, or taken as a flexible principle? Does the doctrine take into consideration the dynamic nature of the law? If it does, is the doctrine, too, a dynamic thing? The answers to these and other questions are important if one is to retain and increase his faith in our laws and our courts. This article attempts to bring into focus the diverse opinions on the exact nature of the doctrine, its interpretation and application in American and Philippine legal processes. It also attempts to reconcile the doctrine with the dynamic philosophy which underlies the law.

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THE DOCTRINE OF STARE DECISIS

The doctrine of *stare decisis, et non quieta movere*, which means to adhere to decided cases and not disturb matters established, is the doctrine of precedents. A precedent is a judicial question which serves as a rule for future determination in similar or analogous cases. A decision is to be regarded as a precedent when it furnishes rules which may be applied in settling the rights of parties in other cases.[1] The doctrine proclaims, in effect, that where a principle of law has been established by a series of decisions, it is binding on the courts and should be followed in similar cases.[2] While the rule of *stare decisis* does not require the contrivance of recognized error, it does call for settlement of principle and consistency of ruling when due consideration has been given and error is not clearly apparent.[3] The origin and continued observance of this doctrine may be traced to the recognition of the necessity for stability and uniformity in the construction and interpretation of the law,[4] so that the subjects or citizens whose duty it is to respect and obey the law have a clear idea of what they should expect should they violate the law.

There are two ways of considering this doctrine. One is to look at the doctrine itself and consider it precisely as a doctrine and nothing else. The other way is to look at the application of the doctrine in actual legal processes. It is with the second way that we are interested in this article, because the doctrine is there, and the intention in effecting this doctrine remains.

Does the doctrine in its application call for strict adherence to judicial processes where precedents are concerned, or for flexible adherence? The interpretation given to this doctrine will determine the attitude that one will take towards the doctrine of *stare decisis*. If strict adherence is what is called for, then the

[1] 26 AMERICAN AND ENGLISH ENCYLOPEDIA OF LAW 158, 159-160 (2nd ed. 1904)
[2] State v. Ballance 51 S.E. 2d 731, 733, 229 N.C. 764, 7 A.L.R. 2d 407 (1949)
[3] Glines v. Main Cent, R.R., 52 A.2d 298, 301, 94 N.H. 299.
[4] 26 AMERICAN AND ENGLISH ENCYCLOPEDIA OF LAW 158, 160, 2d ed. 1904).

doctrine is not in actual force in American and Philippine law, for the Supreme Courts of both the United States and the Philippines have continually reversed themselves in their decisions. But if one is to take the other point of view, that of flexible adherence, then one must admit that the doctrine is actually observed.

STARE DECISIS IN AMERICAN LAW

Strict adherence appears to be the point of view expressed by Black in his statement that:

> The principle of *stare decisis* applies with special force to the construction of constitutions, and an interpretation once deliberately put upon a provision of the constitution should not be departed from without grave reasons, for the stability of many of the most important institutions of society depends upon the permanence, as well as the certainty of the construction placed by the judiciary upon the fundamental law.[5]

We do not believe, however, that "strict adherence to precedent" is entirely the content of this statement. At best, it is a moderately strict adherence that is advocated, not an absolute one. This may be gauged from the phrase "grave reasons". This phrase can apply to a number of things, but most of all, it implies that there are instances when departure is possible or even advisable. The two views are therefore not extreme points, for moderately strict adherence merely approximates one extreme, as does flexible adherence the other extreme.

Flexible adherence is the more popular point of view as far as the actual application of the doctrine is concerned. One must exercise some amount of care at this point in discussing the statement. Where the law is unambigous and fair and the precedent applies the law without having to construe anything, then one must indeed follow the ruie laid down in the precedent. There is no actual application of the doctrine here, strictly speaking, because the law is already clear, and neither interpretation nor construction is necessary.

Application of the doctrine perches on an unsteady limb where the construction of statutes is concerned. In both cases, however, it is sometimes necessary to depart from precedent and hand down a contrary decision if the case and its circumstances or changes in public policy and social conditions require it.

[5] Black, CONSTITUTIONAL LAW, 44 (2nd ed., 1897).

This is the point of view expressed by Benjamin Cardozo:

> In these days, there is a good deal of discussion whether the rule of adherence to precedent ought to be abandoned altogether. I would not go so far myself. I think adherence to precedent should be the rule and not the exception. I have already had occasion to dwell upon some of the considerations that sustain it. To these I may add that the labor of judges would be increased almost to the breaking point if every past decision could be reopened in every case, and one could not lay down one's own course of bricks on the secure foundation of the courses laid by others who had gone before him. xxxxI think that when a rule, after it has been duly tested by experience, has been found to be inconsistent with the sense of justice or with the social welfare, there should be less hesitation in frank avowal and full abandonment xxx "That court best serves the law which recognizes that the rules of law which grew up in a remote generation may, in the fullness of experience, be found to serve another generation badly, and which discards the old rule when it finds that another rule of law represents what should be according to the established and settled judgment of society"... If judges have woefully misinterpreted the *mores* of their day, or if the *mores* of their day are no longer those of ours, they ought not to tie, in helpless submission, the hands of their successors.[6]

Justice Brandeis expressed a similar view in his dissenting opinion in *Burnet v. Coronado Oil and Gas Co.*,[7] where he stated that:

> The decision of the Court, if, in essence, merely the determination of a fact, is not entitled, in later controversies between other parties, to that sanction which, under the policy of *stare decisis*, is accorded to the decision of a proposition purely of law. For not only may the decision of the fact have been rendered upon an adequate presentation of then existing conditions, but the conditions may have changed meanwhile.... Moreover, the judgment of the Court in the earlier decision may have been influenced by prevailing views as to economic or social policy which have since been abandoned.

Flexible adherence to the doctrine of *stare decisis* has been largely the practice in the United States federal and state Supreme Courts.

Smith v. Allwright[8] well illustrates this. In this case, the United States Supreme Court noted that:

> [they] are not unmindful of the desirability of continuity of decision in constitutional questions. However, when convinced of formal error, this Court has never felt constrained to follow precedent. In constitutional questions, where correction depends upon amendment

[6] Cardozo, THE NATURE OF THE JUDICIAL PROCESS, 149-152 (1921).
[7] 285 U.S. 393, 405, at 412 (1932).
[8] 321 U.S. 649, 88 L.Ed. 987 (1944).

> and not upon legislative action this Court throughout its history has freely exercised its power to re-examine the basis of its constitutional decisions. This has long been accepted practice, and this practice has continued to this day. This is particularly true when the decision believed erroneous is the application of a constitutional principle rather than an interpretation of the Constitution to extract the principle itself.

In *Brown v. Rosenbaum,*[9] it was noted that *stare decisis* is not an inflexible doctrine applicable to all situations without exception, but the degree of control to be allowed a prior judicial determination depends largely on the nature of the question at issue and the circumstances attending its decision.

U.S. v. State of Minnesota[10] further elaborates that the *stare decisis* doctrine is entitled to great weight and should ordinarily be adhered to unless reasons therefore no longer exist, are clearly erroneous, or manifestly wrong. The doctrine, furthermore, is subordinated to legal reason and is properly departed from if and when such departure is necessary to avoid the perpetration of error.

The decision in the case of *Daniel's Adm'r v. Hoofnel*[11] enunciated that the doctrine is not inflexible or so imperative as to require perpetration of an error but departure from the policy it declares can be justified only upon substantial grounds and the force of the rule depends on the nature of the question to be decided and the extent of the disturbance of rights and practices which a change in interpretation of the law or the course of judicial opinions may create.

Justice Frankfurter sums up the attitude of flexible adherence very aptly: "This court unlike the House of Lords, has from the beginning rejected a doctrine of disability at self-correction."[12] One reason for this is that "*stare decisis* is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience."[13]

Another reason is advanced by Justice Douglas: "In the field of constitutional law, judges do not feel bound by rulings of their predecessors. It is the constitution they swore to uphold

[9] 23 N.Y.S. 2d 161, 171, 175 Misc. 295.
[10] C.C.A.Minn., 113 F.2d 770, 774 (1940).
[11] 287 Ky. 834, 155 S.W. 2d 469, 471.
[12] Helvering v. Hallock, 309 U.S. 106, 60 S.Ct. 44, 452, 84 L.Ed. 604, 125 A.L.R. 1368 (1940).
[13] *Ibid.*, 344.

and defend, not the gloss which an earlier Court has put on it.... Age does not necessarily give sanctity to a decision."[14]

STARE DECISIS IN PHILIPPINE LAW

Article 8 of the Civil Code of the Philippines states: "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." This article is an acknowledgment of the doctrine of *stare decisis.* The courts do not make the laws; they merely apply or interpret them. They thus have a double function:

> First, to fill the deficiencies of legislation and provide a rule for the facts of a given case for which there is neither positive provision of law nor established custom; and second, to adapt and adjust rigid and inflexible provisions of law, rendered inadequate by time and circumstances, to the changing conditions of life and society, so that the law may accomplish its social mission. Because of this, jurisprudence must necessarily be flexible, capable of receiving impressions from without, so that it can be an advance guard in the equitable application of law, an active instrumentality in the progressive development of the law.[15]

Article 8 makes no attempt to enforce the doctrine at all times. It says "shall", not "must", for indeed decisions may be both good and bad at one time or another, and the latter are not desirable elements in the development of a progressive legal system. Such is the "stuff" of the law. It does not seek to be an air-tight, leak-proof thing at all times, but its makers realize that life is characterized by changes and developments for the better.

The Philippine courts, in practice, do not strictly adhere to precedents. This is most evident in the case of the Supreme Court. In *Philippine Trust Company and Smith, Bell and Co. vs. Mitchell,*[16] the Court ruled:

> The rule of *stare decisis* is entitled to respect. Stability in the law, particularly in the business field, is desirable. But idolatrous reverence for precedent, simply as precedent, no longer rules. More important than anything else is that the court should be right. And particularly is it not wise to subordinate legal reason to case law and by doing so perpetuate error when it is brought to mind that the views now expressed conform in principle to the original decision and that since the first decision to the contrary was sent forth there has existed a respectable opinion of non-conformity in the court.

[14] Douglas, AN ALMANAC OF LIBERTY, 48 (1954).
[15] [1Valverde 194-196] cited in Tolentino, 1 THE CIVIL CODE OF THE PHILLIPPINES 35 (1960).
[16] 59 Phil. 30, 36 (1933).

During the early post-war years, when cases involving citizenship and the principles of *jus soli* and *jus sanguinis* besieged the courts, the Supreme Court held in *Tan Chong vs. Secretary of Labor*[17] that the common law principle of *jus soli* does not apply in the Philippines. In this consideration, the Court noted:

> The principle of *stare decisis* does not mean blind adherence to precedents. The doctrine or rule laid down, which has been followed for years, no matter how sound it may be, if found to be contrary to law, must be abandoned. The principle of *stare decisis* does not and should not apply when there is conflict between the precedent and the law. The duty of this court is to forsake and abandon any doctrine or rule found to be in violation of the law in force.

A stream of cases[18] involving reversals of previous decisions by the Supreme Court give the clear impression that precedents are never the last word.

Lawyers, too, are constrained to take precedents with less than a dogmatic view: "Adherence should caution the lawyer to distinguish the *ratio decidendi*, which is the underlying principle, the legal reason for the decision of the courts as enunciating or affirming a doctrine, from the mere *dictum* of a particular justice, which may be included in the decision as a mere expression of an opinion partaking of his personal comments, neither essential to nor determinate of the facts and the law in litigation."[19]

All the foregoing discussions on the doctrine in actual practice would serve little use if there were no unifying element to be

[17] 79 Phil. 249, 257 (1947).

[18] Tañada and Carreon, 1 POLITICAL LAW OF THE PHILIPPINES 113-114. The authors give a list of cases where decisions have been reversed. For purposes of simplification, this writer has re-grouped them under headings. The slanting line (/) used in the following enumeration stands for "overruled by". The cases are as follows: (1) On the effect of a verbal decision — *Talabon v. Provincial* Warden, 78 Phil. 599 (1947) / *Araneta v. Dinglasan*, 84 Phil. 368, 431 (1949); (2) Double Jeopardy — *People v. Tarok*, 73 Phil. 260 (1941) / *Melo v. People*, 85 Phil. 766 (1950) — *People v. Tan*, G.R. No. L-2705, Resolution, Inn. 18 1949 / *People v. Salico*, 84 Phil. 722 (1949) / *People v. Bangalao*, 50 O.G. 4860 (1954) / *People v. Hernandez*, 51 O.G. 2408 (1955); (3) Security of Tenure — *De Los Santos v. Mallare*, 87 Phil. 289 (1950) / *Jover v. Borra*, 49 O.G. 2765 (1953); (4) President's Power over local affairs — *Villena v. Secretary*, 67 Phil. 451 (1939) and *Villena v. Roque*, L-6512, June 19, 1953 / *Mondano v. Silvosa*, 51 O.G. 2884 (1955); (5) Reappointment of Commissioners on Elections — *Nacionalista Party v. De Vera*, 85 Phil. 126 (1949) / *Republic v. Imperial*, 51 O.G. 1886 (1955); (6) Citizenship — *Torres v. Tan Chim*, 69 Phil. 518 (1940) / *Tan Chong v. Secretary of Labor* and *Lam Swee Swang v. Commonwealth*, 79 Phil. 249 (1947) / *Uy v. Talaroc*, L-5397, Sept. 26, 1952; (7) Election of Philippine Citizenship — *Torres v. Tan Chim*, 69 Phil. 518 (1940) / *Villahermosa v. Commissioner*, 80 Phil. 541 (1948) / *Cu v. Republic*, L-3018, July 18, 1951.

[19] Padilla *The Doctrine of Stare Decisis*, 4 FEU LAW JOURNAL 101-103 (1956).

found in them. Facts are cold realities. It is to be human to look beyond the facts of the cases, so as to perceive the reasons underlying the facts. Thus it is that one must look to the philosophy underlying the law if one is to arrive at a greater understanding of the doctrine.

STARE DECISIS AND THE NATURAL LAW

Literary criticism evidences an awareness that a work of literature, if one is to be fair, must be judged according to the circumstances and standards of its times. An early Filipino novel like "Ninay", for instance, was no achievement, if one is to consider its content and its style. As one of the first Filipino novels, however, it must be looked at as an achievement, in spite of its literary flaws. There are some works that can stand up to any test, but these are very few in comparison. Literary works like Shakespeare's "Hamlet", Homer's "Iliad" and Sophocles' "Oedipus" are of this nature. While their intrinsic merits remain, however, new ideas have opened up new vistas as far as their interpretations and their implications are concerned. This is especially true of the advent of the modern science of psychology, for now a work like "Hamlet" is considered not simply as a literary work or a medium of dramatic expression, but also as a work rich with pregnant psychological implications.

These considerations have been brought into the scheme of this article by way of analogy: In much the same way that most literary works must be looked at in themselves and also in the light of evolving trends and recent discoveries, so the doctrine of *stare decisis* must be considered both as an extant doctrine and as a living, dynamic concept.

Adherence to judicial precedents is good in itself. It allows for consistency both in the interpretation and the application of the law. It informs people of what they should expect. When such adherence becomes overly strict and wholly disregards the changing situations, then such adherence becomes dangerous, for it leads to inequity and injustice in the application of the law.

The distinction made between strict and flexible adherence to judicial precedents is of significant importance here. Is one right in saying that there is in actual practice no recognition of the doctrine in the Philippines because of the diversity with which the Supreme Court sometimes judges constitutional issues? If one is to look at the matter with the thought of absolutely strict adherence in mind, then there is none. If, on the other hand,

one is to look at the matter from the point of view of flexible adherence, then one must admit that the doctrine exists in the Philippine courts. All that the diversity of decisions implies is that the Supreme Court recognizes the flexibility of adherence to the doctrine, inasmuch as cases do not often have the same identical sets of circumstances, nor do they occur at exactly the same times and under the same conditions.

It is misleading to say that the doctrine does not stand just because the doctrine is not laid down in univocal terms. The admission of this would be equal to saying that the Natural Law, because it is susceptible of changing interpretations, likewise does not hold water. The doctrine of *stare decisis* and the Natural Law are similar in that they both posit and start out with a basic principle. It is not these initial principles which change, but rather the interpretation and the application of these principles to particular cases. The Natural Law commands men to "do good and avoid evil" while the doctrine of *stare decisis* urges adherence to judicial precedents. Does the Natural Law fall if there are temporary differences in the interpretations of what is good and what is evil? It does not. There may be erroneous interpretations and gross misapplications, but the initial principle remains the same. The charging of any amount of interest in the Middle Ages was considered as Usury. It is not so considered now, if the interest falls within the limit allowed by reason and law. The cause lies in the greater circulation of money and its heightened capacity to earn or produce its kind. So it is with the doctrine of *stare decisis*. It advocates adherence to judicial precedents. But does such advocacy rule out the possibility of new conditions and new circumstances affecting the decisions of the courts? Again it does not.

The doctrine should therefore be viewed with the consideration in mind that the doctrine is a living thing, just as the law is a living thing. For as the mind of man progresses and achieves new vistas, so do the doctrines and content of the law also progress and achieve new meaning.

STARE DECISIS AND EQUITY

There also exists a relation between *stare decisis* and the principle of equity. The relation arises from a common base in the philosophy which underlies the law. Law exists for the governance of human relations, which governance is necessary if the common good is to be attained. Governance is essential

to order. If the law is to be administered properly, there must be a common standard for the interpretation of the contents of the law. Application of clear statutes is not the immediate problem. The interpretation of laws which admit of several meanings poses a graver problem.

The doctrine of *stare decisis* hopes to stabilize some of the ambiguous provisions of the law. Where a statute is not clear, it seeks to attain some amount of order by allowing for a more or less conclusive interpretation of the statute by the courts. Where a different interpretation is called for because of varied circumstances, the only recourse left is to judge the point at issue with equity in mind. Equity is not an abstract thing. It calls for fairness in the consideration of cases and the pronouncement of judgments. It calls for the use of reason in determining the rightness of an act or its wrongness, and fairness in interpreting a statute one way instead of another.

These two doctrines or principles (equity and *stare decisis*) are essential to the attainment of the purpose behind the law: the attainment of the common good or, more immediately, the realization of justice. What is there in the law that appeals to the reason of men? Surely it is not its arbitrary appearance or its beautiful wording, but rather its fairness. We commonly accept law to mean a rule of conduct, just and obligatory, laid down by competent authority for the attainment of the common good. Granted that a law is obligatory, if it be unjust, then it can never appeal to the reason of men, for reason will reflect upon it and discover that it furthers neither the individual's nor the common good.

Equity in the law will afford at least a minimal guarantee that the law will be fair in its application, and the doctrine of adherence to judicial precedents will ensure that under a similar set of conditions and circumstances, a law will apply in this manner, not in another.

JUDICIAL PRECEDENTS AND LEGAL PRACTICE

Lawyers and jurists ought to keep in mind that, in the matter of precedents, an exacting attitude should not be assumed, for it is the philosophy underlying the law that should count in the final analysis, not the weight or number of precedents in support of a contention. For there will always be two sides to every question, the black and the white, the prosecution and the defense in every case, and precedents can always be mustered in support of both. In such a case, it is not the number of precedents that

ought to count most, but the intrinsic merit and the reasons supporting each side should first be considered.

Judicial precedents may affect both the lawyer prosecuting or defending a case and the judges themselves. In the case of the lawyer, if he is to look at precedents with too revering and puritannical an eye, then he will act merely as a compiler of authoritative precedents, not as a lawyer who has his wits about him and, seeing the merits of his case, logically reasons out a probable solution to his case. In the case of the judge, if he is to maintain a dogmatic attitude regarding precedents, he will be acting merely as a scorer in a basketball game, counting the points for each side, instead of acting as a true judge who will weigh the merits of each case that comes before him with a discerning and a reasoning mind.

How should the lawyer act? Ambrosio Padilla struck the crux of the matter:

> It is not good policy, therefore, for a lawyer in every conceivable litigation to place sole reliance on a decision of our domestic courts, or a dictum of foreign courts. Rather, he should first analyze the facts "by sorting the wheat of truth from the chaff of error"; he should study the applicable legal statutes, and by deductive reasoning, he should be able to arrive at what the correct judgment should be as logic and conscience would dictate in accordance with the facts and the law. And after drawing a logical conclusion from correct premises, he can then find support thereto in previous decisions of the courts. He should not look for a decision first and then fit the facts and circumstances of his case to such a decision . . .[20]

The judge should be equally discerning. Justice Marceliano Montemayor wisely pointed this out in his dissenting opinion in *People vs. Santos, et. al.*[21]:

> Incidentally, I wish to register my disagreement to that portion of the majority opinion . . . wherein the trial judge is given a lengthy and stern admonition . . . because of his failure or refusal to follow in deciding the case, the doctrine laid down by the majority opinion in the case of *People vs. Hernandez* . . . I agree with the writer of the majority opinion in the present case that the rule and usual procedure is for judges of inferior courts to abide by and follow the law as interpreted by this tribunal, regardless of their private opinions and convictions. However, when the interpretation or opinion of this tribunal is far from being unanimous . . . and considering the fact that *even the highest court of the land occasionally reverses itself, not only due to a change in the membership thereof, but also to a change in the opinion of the Justices themselves, per-*

[20] *Ibid.*, 103-104.
[21] G.R.No. L-11813 September 17, 1958 [Italics in the cited opinion are mine].

> *chance to attune their opinion to changing times, conditions and public policy,* I believe that inferior courts should be permitted now and then to depart from similar opinions, doctrines or interpretations of a superior tribunal, for that is one and a direct way of provoking a re-examination of an important legal question, and giving the Court of last resort an opportunity of either reaffirming the old doctrine or abandoning it, and adopting a new one.

This above opinion evidences an awareness that while precedents should be followed, one should not maintain so blind an attitude as to totally disregard the changing times, conditions, and public policy.

At this point, other matters come to one's mind. When law examinations, for instance, are so geared to memory and mastery of legal provisions, one begins to doubt whether the examiners and professors expect lawyers to be thinking men or simply robot memorizers. Then again, when a lawyer comes to court, he may perhaps indeed start using his reasoning faculty as he should, but, on the other hand, he might doubt the necessity of such if all it takes to win a case is to muster a convincing list of favorable decisions. One is taught in law school to distinguish the weight of opinions and decisions. He is taught that in Roman times the weight of an opinion by a jurisconsult like Ulpian was less than that of an opinion by Papinian. The weight of authority then enters the scene. But if one will ponder on the question longer, he may arrive at a suspicion that perhaps the latter's opinions appealed more to men's reason and to their sense of justice than did the former's. Why do we give some books the weight of primary authority and classify others as secondary authority? Is it because they are longer or older, or their authors more prestigious? Or is it because they project more wisdom, discernment, and factual support?

There is no intent here to urge anyone to take precedents with mistrust, for many of them deserve their status. What is urged, however, is that lawyers and judges keep in mind that there is another side to every decision, and that, given other conditions and circumstances in the future, that side may prove to be the better one

CONCLUSION

It has been said that "this is a different country from what it was in 1898, different from what it was in 1916, different from what it was in 1935, different from 1946."[22] Justice Brandeis

[22] Carlos P. Romulo, quoted in Rosál, *The Unjust Position of the Church in the Philippine Constitution,* 34 UNITAS 73 (1961).

also pointed out that "In cases involving constitutional issues . . . this Court must, in order to reach sound conclusions, feel free to bring its opinions into agreement with experience and with facts newly ascertained."[23]

The doctrine of *stare decisis*, in its flexible form, *does* exist here in the Philippines. Existence, though, is different from actual application, even as law may exist in a country while its application or efficacy may be suspended or circumvented by the will of a tyrant or a dictator. Reversals of decisions understandably occur more in the Supreme Court than in the inferior courts. In a great number of their decisions, inferior courts observe the principles laid down in the decisions of the Supreme Court while, at the same time, they are urged to judge matters in a different light where logical reasoning and sound judgment prove such action necessary.

Even as empires and world powers fall with the passing of time, so may precedents fall. For precedents are only good as the laws they clarify, the circumstances and conditions which spawn or generate them, and the rational temper of the men from whom they proceed.

[23] See *supra* note 7.

REFERENCE DIGEST

INTERNATIONAL LAW: INTERNATIONAL LAW AND THE CONSCRIPTION OF ALIENS.—The main question in this article is whether under international law a territorial basis alone is sufficient for the enforcement of military obligations or, in other words, whether the obligation to perform military service can arise from the territorial as well as the personal supremacy of the state. The publicists, who uphold the majority view, believe that such an obligation can arise solely from the personal supremacy of a state. They hold, therefore, that an alien cannot be compelled to perform military service and that such conscription of aliens is forbidden by international law.

The author, on the other hand, believes that such imposition of military obligations on aliens is not contrary to international law. He points out that there is no specific rule of international law which prohibits compulsory military service by aliens. Indeed, the most that may be said is that the claim to exemption of aliens has been based upon treaties, or on the right to reciprocal treatment, or upon a desire to maintain amicable relations between States. The question, therefore, arises whether the effect of these treaties is such as to constitute an established international usage. In other words, is the effect of said treaties such as to contribute in itself to the formation, or confirm the existence of a rule of international law? The author says no. He points out that upon the advent of the First World War, the United States, Great Britain, Canada, France, Italy, and Greece entered into treaties which specifically sanctioned the conscription of aliens in the event that they did not choose to join the forces of their own country. It would seem, therefore, that it is equally as permissible for a state to provide for the conscription of aliens as it is to provide for their total exemption.

So in answer to the question posed in the first paragraph above, the author states that the link of citizenship is no longer the sole criterion for compulsory military service. The link determined by ties arising from residence, and from economic, commercial, or social interests has come to be recognized as a sound basis for the imposition of military obligations. It may therefore be said that a territorial basis is, by itself, sufficient for the enforcement of military obligations; that the obligation to perform military service can arise from the territorial as well as the personal supremacy of a State. (Louis C. Stamberg, *International Law and the Conscription of Aliens*, XXVII ALBANY LAW REVIEW. No. 1, at 11-44 (1963). $2.50 at the Albany Law School, 80 New Scotland Ave., Albany, N. Y.)

REMEDIAL LAW: THE PHILIPPINE DOCTRINE OF PRECEDENTS—Article 8 of the New Civil Code provides that "Judicial decisions applying or inter-