

Reviews

Self-Defence in Criminal Law, Boaz Sangero, Hart Publishing, Oxford 2006

This book analyses the rationale for 'private defence', a term that refers to various forms of defence, such as self-defence, carried out by the individual rather than the state. The book develops the analysis offered by the author in a previously published article (Sangero 2005). In defining his field of study, the author states, '[p]rivate defence implies the use of essential and reasonable defensive force against the aggressor who perpetrates the illegitimate attack, in order to repel this attack and to save a legitimate interest from the risk of injury anticipated from the attack' (p 2). The author's main aim is to identify an appropriate rationale for the doctrine of private defence in order to use that rationale to determine the way that the law should approach various situations, but he also argues that the rationale is a helpful tool 'for the interpretation of the existing law' (p 8, apparently referring to various legal systems). The last chapter contains concrete proposals in the form of draft legislation, although the precise construction of the law is not the author's main concern.

The book begins with a discussion of the rationale of private defence. In Chapter 1, the author argues that private defence should be regarded as a justification rather than an excuse, claims that certain types of case should not be included within the field of private defence, and outlines his theory regarding its underlying rationale. His view is that private defence involves a balancing of interests 'that takes into account the expected physical injury to the attacked person (in the absence of defensive action) vis-à-vis the expected physical injury to the aggressor (as a result of defensive action)', as well as three relevant abstract factors: 'the autonomy of the attacked person, the culpability of the aggressor and the socio-legal order' (Preface). Consideration of the 'socio-legal order' reflects the author's opinion that private defence defends 'the (empirical) validity of the norm that is "attacked" by the aggressor' (p 95), such as personal autonomy, and that it therefore serves the public interest in general 'and the legal system in particular' (p 67).

Having formulated a theory regarding the underlying rationale of the doctrine of private defence, the author turns his attention 'to the various issues in the field of private defence' (p 107). Chapter 2 consists of a comparative analysis of private defence as it exists in various legal systems. This chapter focuses on English, United States and Israeli law, and also considers other legal systems incidentally. Its stated purpose is to enrich the subsequent 'discussion of the various issues in the field of private defence' (p 107). The author divides these issues into three groups and deals with them in the next three chapters: Chapter 3 deals with 'the elements of private defence', and 'includes the various conditions required for the establishment' of this defence (p 107); Chapter 4 'deals with the various derivatives of private defence, and especially self-defence, defence of another person and defence of property' (p 107); and Chapter 5 deals with certain additional issues, such as those that the author believes 'require special treatment within the discussion of private defence' (p 279), including the issue of defensive force used by battered women.

This book would have benefited from the inclusion of tables of cases and legislation, and one might wonder why the author decided to use the term 'self-defence' in the title, given his view that 'the more precise term would be private defence' (vii) and the fact that this latter term is used systematically throughout the book. However, these are minor criticisms. The complexity of the subject matter means that the book is inevitably involved in places, but it is well-researched, thorough and generally convincing. The author offers many interesting observations and suggestions in dealing with a number of important issues. Readers will not necessarily agree with all of them, particularly the author's contentious views about 'battered women' (pp 339-353); for example, the assertion that 'battered woman syndrome' is not relevant to any of the factors that underlie the justification of private defence (p 349; for an apparently contradictory view about the relevance of 'battered woman syndrome', see Edwards (2004)). However, *Self-Defence in Criminal Law* provides a careful and valuable analysis of the issue of private defence.

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References

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Edwards S 2004 'Abolishing Provocation and Reframing Self Defence – The Law Commission's Options for Reform' *Criminal Law Review* March pp 181-197