

BOOK REVIEWS

Cases and Other Materials on Domestic Relations. By Albert C. Jacobs. Chicago: The Foundation Press, Inc., 1933. Pp. 994. \$6.50.

It is the function of a casebook in law to make accessible the materials necessary for legal generalizations in a given branch of the subject. Since the student is not expected to be an independent worker, and an instructor is assumed somewhere in the teaching process, the materials in a casebook can be definitely and intelligently limited. What constitutes a branch of the subject may be logically determined, but more often this determination is the result of an historic accident and the doctrine of *stare decisis* which somehow makes every compiler try to include all the cases and divisions used by all of his predecessors. Because of this filial piety and a tendency on the part of the compiler to forget the function of his book, case books are frequently too long, and include more cases, and fewer other materials than are desirable.

The virtue of the case book as contrasted with the ordinary text or hornbook is that it reveals the judicial process and introduces the student to the type of reasoning he will spend the rest of his life trying to confound or justify. The vice of the ordinary casebook as contrasted with the text is that it fails to include many relevant data. What is summed up in the opinion is there, but the political, social, and economic context is absent as are the dramatic personal factors of the trial. The assumption that these will be supplied by the teacher implies a broader background than is had by most instructors who go into teaching after brilliant careers in the law school, rather than in practice or in the other social sciences.

Although Mr. Jacobs, in his "Cases and Materials on Domestic Relations," was determined to supply some of the relevant social data he was not willing to go far in other directions. He writes in the preface (p. vii) that "wherever possible an attempt has been made to continue the main portions of the material covered in the older courses on Domestic Relations." True there is new material, and a rearrangement of the usual divisions of the subject; there are in both text and footnotes extracts and abstracts of social studies; but there is not the much needed fresh attack on family law and family relations. He apparently tried to build on to the revered older courses. A genuine contribution will not be made until someone starts his compilation not by asking "what can be added to what we have to make it a little bit more"; but "what background is essential for a practicing lawyer or research worker in this important field?"

The major divisions and subdivisions of the book give it a specious sociological framework. On close examination they turn out to be merely new names and not new classifications. Such divisions as "Family Organizations," "Relations among the Members of an Organized Family," and "Family Disorganization" provide perhaps a better filing system, but they throw no new light on the problem of family law and family relations. The re-grouping may indicate to the law student where the appropriate sociological material can be found, but that is hardly enough to justify a new volume of almost a thousand pages. The inclusion of cases such as those on the testimony of one spouse for or against another which are conventionally covered in books on evi-

dence seems to be based on the mere fact that mention of the family relationship occurs in the cases. The same principle, or lack of it, might have justified the inclusion of much more on wills, for example.

The non-legal material, mainly sociological, is uneven, and badly co-ordinated with the cases. Much of what is presented is common-sense and historical interpretation with relatively few concrete data. Thus we have a pleasant introductory section on definition of the family, on the Roman, contemporary American, and Russian families, that gives the legal student an entirely erroneous idea of the way a social science expert in family relations attacks his problem. A statement of sociological conclusions, without the data on which they are based, in a book containing legal cases supported by some of the materials necessary for the formation of opinion is likely to make the tough minded legal student a little contemptuous of the tender minded sociologist. That Mr. Jacobs shows some of this entirely unjustifiable contempt is evident from the type of social question he asks at the conclusion of various sections. "What would be the social consequences flowing from the adoption of one or the other view?" (p. 205, n. 2). "What is the fundamental aversion everywhere found to the marriage of near relatives other than the physical question?" (p. 254, n. 2). "How effective are the laws of the type set forth above?" "Do they to any extent act as a deterrent in the prevention of cases of desertion?" "How effective could legislation be in keeping the mother with her children during their early years?" (pp. 788, 799, n. 1, 2, 5). The sociologist called to mind by these questions is a genial judge in a study mulling over the opinions of earlier social scientists, or figuring out answers on a purely common-sense basis. The law student is given no hint of the arduous process of rational analysis, the search for relevant data, and the complicated statistical techniques that enter into the solution of any of the above problems.

Sometimes, of course, in the interest of economy, and after their method of research has been made clear, "opinions" of sociologists may be set down for what they are worth. Then, however, Mr. Jacobs could economize still further by abandoning the general form of the casebook as far as the opinions are concerned, and adopting the typewriter's method of clarification and summary. He is so buffaloeed by the casebook form that he even includes quotations from himself giving them the specious authority of a footnote reference.

On the few occasions where data instead of conclusions are presented the value of a social science casebook is suggested. On page 862 divorce statistics from 1924 to 1931 are summarized, and on page 899 the legal causes of divorce taken from "Lichtenberger, Divorce a Social Interpretation" are given, and the student immediately has something to bite into. The questions raised by these data will be answered by analysis and additional data and not by *ad hoc* speculation or appeal to authority. If Mr. Jacobs had included more concrete social material; if he had defined his field, and then rigorously limited his choice of cases to those which threw light on it; if he had taken the intellectual responsibility of co-ordination and interpretation; if he had included in his "social materials" some of the highly important trial court statistics, and materials on administrative problems, such as those of the juvenile court, he could have produced a small book that might have contained a genuine contribution. As it is, it is just another compilation making a bow toward the demand for co-ordination, but achieving none of it.

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