

BOOK REVIEWS

Cases and Readings on Law and Society. By Sidney Post Simpson and Julius Stone, with the collaboration of M. Magdalena Schoch. St. Paul: West Publishing Co., 1948. 3 vols. Pp. xlviii, 2389. \$22.00.

If thou bringst many things,
something thou bringst to ev'ry one.—GOETHE, *Faust*.

A new type of course has made its appearance in a number of American law schools. Under such varying names as "Law and Society," "Law and the Social Order," or "Sociology of Law," it is concerned, in one way or another, with the discussion of the role generally played in society by law. The phenomenon is not limited to the United States. In European countries, too, we find a growing concern with the fundamentals. Both professors and students, at least the more mentally alert and morally responsive among them, are feeling the urge to know "what it is all about," to see the law in a major context, to inquire into its place in society and its very *raison d'être*. This urge can follow a two-fold path, the philosophical or the sociological. Both have found their followers in present law teaching. The philosophically minded inquirer is interested primarily in ethical evaluation. "Is the law just?" is his principal question. "What does the law do and why is it as it is?" is the principal question of the more sociologically minded.

Comprehensive writings of legal philosophy in the strict sense of the word have been rare in our times, especially in the English-speaking countries. Books taking the sociological approach have been none too numerous either. But even if there were some comprehensive treatises of either kind, American law teachers would make little use of them as "texts." We are all so wedded to the case method that we have come to regard it as axiomatic that even in "jurisprudence" students should never be exposed to a comprehensive, systematic text but to "the original sources," even if those sources consist of excerpts from the more or less comprehensive treatises or monographs of others. We may leave it open here whether the case method of presentation is really best. Most of us are firmly committed to it, and quite possibly at the present time it is the only possible one, not only because of the limited number of texts available, but also because of the highly subjective approach of every individual teacher. "Law and society" is a field of immense scope and allowing of innumerable different approaches. Naturally, in his selection of the topics to be chosen or to be omitted, in his emphasis and in his general attitude, every instructor is influenced by his own background, his own experiences and his own predilections. Hence, no other man's text will really do as a teaching tool. So, most of us have gone

over the literature, excerpted passages from the work of our predecessors and colleagues, reshuffled them according to our own "system," interspersed them with excerpts from original historical sources from Hammurabi to Hitler and Mr. Justice Black, and presented the product to our students as a reading list or as a mimeographed collection of "cases and other materials." The compilation of such a collection is, of necessity, not quite easy and many a law teacher may have given up his desire to teach a course on "law and society" just because he could not find among the available case books one on that field. The work of Professors Simpson and Stone is obviously meant to accommodate this demand. It probably satisfies that demand as well as it can be satisfied at all.

"Law and society" is not a "field" like family law, decedents' estates or conflict of laws. The content is not defined. Perhaps all we can say generally about a course on "law and society" is that in it the instructor attempts to take his students outside of the mansion of the law and, together with them, looks upon that mansion from a variety of different view points; at one time investigating the history of its construction, at others comparing the mansion called American law with others called French, Roman, Hindu or Ifugao law, at other times investigating its technical structure, at others its esthetic appearance or its raw materials or its builders or users. Just as a text, so a "case book" in the field must, of necessity, be subjective. That criterion, to some extent, applies to every case book in any field. Not any two good case books on contracts, torts or decedents' estates are alike. But, with all their differences in arrangement and selection of cases, the scope of the field is fairly well defined. Obviously a successful teacher must know a great deal more than the contents of the case book he uses. But since the field is not limitless, that additional knowledge can be acquired and the contents of the case book can be integrated with it. But can that be done in "jurisprudence"? The answer must be negative simply because "jurisprudence" or "law and society" is not a field, but an attitude or an approach. And so it seems to me that he who knows only what he finds in a case book on jurisprudence can hardly teach it successfully, and he who knows more than the case book is likely to have his own approach and to prefer his own reading list or collection of materials to everyone else's.

Yet, in spite of such general doubts, I highly welcome the publication of Messrs. Simpson and Stone's collection of materials. Their book is so comprehensive, their material is so varied and contains so many original sources that large parts of it can be used by a teacher whose own course is organized upon lines quite different from those of Simpson and Stone. I gladly acknowledge that the preparation and the teaching of my present course on sociology of law has been greatly facilitated by the authors. I have used about two-thirds of their materials as "prescribed" or "recommended" reading, rearranged in an entirely different order and supplemented by some additional readings. But, thanks to Simpson and Stone, the list of books and periodicals to be consulted by the students could be kept very much shorter than in former years, since a great

many materials formerly listed by me singly, together with a large number of excellent additional ones, have now been brought together for easy use and reference.

The authors' own system of arrangement has much to recommend itself. In general they follow an anthropological-historical order. Law in a kin-organized society; law in an emergent political society; law and the rise of commerce; law and expanding industrialism; law in a complex, economically organized society; and law, totalitarianism and democracy—these are the headings of the six "Parts" of the book. For each of these different types of social organization the authors first present materials describing or illustrating its general pattern and its peculiar machinery of social control. In each part the bulk of the readings is then devoted to changes of social conditions, changes in interests to be secured, the adjustment to the new conditions of the law in general and of the techniques of law enforcement in particular. This general plan, while it is not the only possible one, is well suited to make conspicuous elements of typological importance and it yields categories which are understandable and which lend themselves readily to the well-structured presentation of a vast material. The authors have drawn upon anthropological descriptions of primitive peoples of all parts of the world and on historical source materials as varied as the Code of Hammurabi, the Laws of Manu, Sophocles, The XII Tables, Gaius, the Lex Salica, the Anglo-Saxon and the West-Frisian Laws, the Senchus Mor, the Russkaya Pravda, Bracton, the Year Books, St. Germain, Coke and Blackstone, modern law reports and statutes, Adolf Hitler, Benito Mussolini, the statute book of the Third Reich, the codes and judicial reports of the Soviet Union or the Reports of the U. N. Commission on Atomic Energy. There are, furthermore, passages from writers on history, legal and general, and from "jurists" and sociologists, American, British and foreign.

The wealth of the materials presented is truly overwhelming. The author index is eighteen pages long, the table of cases thirteen pages, that of statutes (ancient law and codes, United States, Great Britain and British Commonwealth, Germany, Italy, Russia) eleven pages; and that of government documents and miscellaneous materials (Bible, Restatement of the Law, Selden Society Publications, etc.) two pages. These materials are well chosen. In the first part, for instance, the reader is presented with a well-rounded picture of present-day anthropological knowledge about social control in primitive society, including the famous controversy as to the role played in it by law. The extensive chapter on law in the Nationalist-Socialist state, in preparation of which Doctor Magdalena Schoch has apparently had a major share, realistically and objectively illustrates the modern totalitarians' use of legal forms and their characteristic combination of legality and arbitrariness. With the help of Professor John Hazard the authors were able to prepare materials on the role of the law in the U.S.S.R. that will go far to satisfy the students' curiosity. The part most richly endowed is naturally that dealing with law in modern democratic society.

Yet, it is exactly in that part that, also quite naturally, the authors' choice of materials will appear the most arbitrary. Both authors have been close to Roscoe Pound. Elaborating on his ideas they devote much space to the presentation of the "interests pressing and secured" in our society as compared with those of earlier ages. Is this problem still one of "jurisprudence," of "sociology of law"? Or is it rather one of general history or sociology? The borderlines are not too well defined and it is undoubtedly important for the lawyer, especially the judge, to know which interests are valued highly in his social order, which are still struggling for recognition, and which are being pushed into the background. And yet can any single book do justice to so vast a problem? Still, there is merit already in a book which draws the students' attention to the problem in general and quickens their sense of its fundamental importance. That purpose, at least, will be achieved by Messrs. Simpson and Stone. One interest, however, has been neglected by them, viz., society's fundamental interest in peace and order. There are fine readings in the first two parts of the book illustrating the slow, cumbersome and laborious processes by which the feud was gradually superseded by the peaceful process of composition, arbitration and adjudication. But the topic is little pursued into its later stages of efforts to achieve internal peace through the Truce of God, the nonaggression pacts (*Landfrieden*) of medieval territorial rulers and the peace imposed by the one most powerful, the King. Fascinating connections and parallels might be shown to exist between these phenomena and our modern efforts to achieve peace in labor relations and between nations.

But we have already observed that every cultivator of the field of "law and society" must have his own subjective approach. The contents of the book by Simpson and Stone are so rich that they will satisfy many different tastes. A teacher who will try simply to use the book as "his" text, will be able to cover it in a usual one-semester course. 2,300 pages of historical-anthropological reading do not require the same time as 2,300 pages of cases on, let us say, conflict of laws or property. Long chapters may well be assigned and class room discussion may be limited to questions raised by the students and such supplementary observations as the instructor might care to add. More profitable, it would seem at least to me, is the use of parts of Simpson and Stone's rich menu within the framework of a course cut to an individual teacher's own personal approach. Finally, the book lends itself well to plain, individual reading by not only those students of the law who are still in law school but also by those who have preserved their intellectual curiosity through a busy life at the bar, on the bench or on the platform of the lecture hall.

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