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Book Review: Cases and Materials on Family Law, by Caleb Foote, R. J. Levy and Frank E. A. Sander; Sources of Family Law, by J. C. Hall

CASES AND MATERIALS ON FAMILY LAW, CALEB FOOTE, R. J. LEVY AND FRANK E. A. SANDER. Little Brown & Co., Boston: 1966. pp. 1005. (\$16.75).

SOURCES OF FAMILY LAW, J. C. HALL. Cambridge University Press, Cambridge: 1966. pp. 514 (\$10.25, \$6.00 paperback).

These two collections of materials on Family Law present a sharp contrast in approach despite the fact that both are concerned with the same general subject matter. The collection by Mr. Hall is from England where books of this nature are still relatively uncommon. The Foote collection is from the United States where the art of case-book writing has been sharply honed over a long period of time. The difference in experience shows clearly, but the vast gulf between the wide ranging and provocative book by Foote and Company and the dull unimaginative effort by Hall can scarcely be explained on the basis of the difference in experience.

We see embodied in these two books totally different concepts of education, of the role of the lawyer and of the law itself. It is worthwhile to contrast these two books in Canada where our legal thinking is heavily influenced by forces from both England and the United States but where the primary influence, at least at the judicial level, is from England. One rose does not make a summer, nor does one book fairly represent the mainstream of legal thought in a country, but both may be indications of a trend. Where Hall has amassed a compact categorized library, Foote and Company have fashioned a book which operates on a variety of levels. It is aimed not only at producing a lawyer capable of solving problems and preparing and arguing cases but also at producing a student who has made an effort to inquire into the function of law in governing family relationships, the function of the state in intervening in these relationships and the other basic questions which must be asked if we are to make any attempt to understand and evaluate the operation of law in this phase of human activity. The book constantly forces the reader to ask, "why?" by contrasting decisions which take different approaches and by exposing him to material from a variety of non-legal sources such as psychology, sociology and psychiatry.

The materials from the social sciences not only permit the student to see the problems from a number of different points of view, but also expose him to the type of thinking and writing which he will encounter in dealing with family law problems. Whether he likes it or not, the lawyer who handles the problems of child neglect, delinquency, custody, adoption and divorce will be dealing with social workers, psychiatrists and a variety of other people trained in various aspects of social science. Some measure of familiarity with what these people are doing seems likely to make these dealings more fruitful for all parties concerned.

The social science materials are also likely to expose some of the student's preconceived moral judgments and help him to better

understand the actions of some of the clients with whom he will be dealing. Whether or not he condones his clients activities he is likely to be a more objective advisor if he is fully aware of his biases and is aware that they may affect his ability to counsel objectively.

The Foote book is liberally sprinkled with sample problems, many of which are found at the beginning of a section of materials and are designed to direct the student's attention to the potential uses of materials of various types in solving problems. In addition to these problems the book also contains materials from two actual cases; one concerning delinquency, the other custody. In both cases the editors have reproduced a variety of expert opinions in the form of reports. Again, through this device the student is introduced to something more than the bare bones of the reported case and is shown the type of raw materials which are employed to arrive at a decision on these problems.

The tasks undertaken by this book are varied; some being handled more successfully than others. But the cumulative effect is a book which never ceases to prod and involve the reader. After reading this book the student, even without classes, should have a much broader perspective of what family law involves and a more sober approach to the problems it raises.

There are of course problems inherent in this approach to case-book writing. The editor of such a casebook must make a serious effort to be objective and present a variety of points of view from the social science disciplines. Such a book can very easily become a one-sided propaganda piece for particular points of view with the author consciously or unconsciously selecting materials which appear to establish conclusively the position the author takes and which do not give the student a fair chance to judge for himself. There are different schools of thought in every discipline and an unrepresentative selection of materials can easily hide this fact from the uninitiated reader. Biased selection is to some extent inevitable. Because of the vast amount of material available, no book of manageable proportions could be completely comprehensive but the authors of such books must make an effort to be objective. There is also a possibility that the student who is exposed to this material may consider himself sufficiently expert to engage in counselling of a kind which should be left to the skilled professional.

Admitting these possible difficulties, the risks are made worthwhile by the potential benefits to the community of a student more broadly informed with some idea of the thinking going on outside legal circles and with a better idea of the possible ramifications of his activities as an advisor in domestic problems.

The Hall book undertakes none of the objectives attempted by the Foote work. The book is a dull collection of cases and statutory materials with occasional excerpts from legal periodicals and Royal

Commission reports. The author has failed to exploit the potential of such a book for challenging and stimulating students. The book appears to have been written primarily to provide the student with a handy reference library containing the recent and "leading" cases with statutes reprinted where pertinent. There is virtually no attempt to juxtapose cases which arrive at inconsistent results or to trace the history of the decisions on a point to give the student the opportunity to evaluate the route by which the courts have arrived at their present position in order to test, even analytically, the soundness of that position. In some cases the court's discussion of earlier decisions is edited out, virtually ensuring the acceptance by the student of the inevitability of the result. There is virtually no opportunity to test the English decisions against those from other jurisdictions. Hence, the student is given no basis for criticism of the cases on any ground. Conflicting cases are so rarely presented side by side that the student is likely to assume that such uncertainties are rare indeed. The crowning insult to the student is the inclusion of a one line ratio at the beginning of almost every case in the book. The result then is that not only is the student given no opportunity to test the analytical or social soundness of the cases but also he does not have to analyse them to find out what he thinks they say. He is told.

The book presents the student with the most up to date set of rules from cases and statutes without taking him through the tortuous process of criticising and analysing the avenues by which the courts and legislatures have arrived at these results. The reader is not intended to be an active participant, his work is done for him.

If Foote and Company have undertaken a great many tasks the same cannot be said of Hall. His book will keep students from over-taxing both the library and their minds, but seems likely to accomplish little else.

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