It is not necessary, even though it would be interesting, to discuss further the variations and agreements of the two editions. In general it is enough to say that this new edition is a scholarly and usable work, and that neither the instructor nor the practitioner in the important field of law with which it deals can afford to work without it.

HARRY A. BIGELOW*

The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence.† By K. N. Llewellyn‡ and E. Adamson Hoebel.§ Norman: University of Oklahoma Press, 1941. Pp. ix, 360. $3.00.

Karl Llewellyn and Adamson Hoebel are bold men. They set out to capture the lawways of a folk far removed in culture, economy, intellectual climate—and fifty-three full cases, with scraps of material from about as many others, are all they have to go on. The reach is not bad; for, few as they are, the cases present tension and conflict in almost every aspect of tribal life. The span of time, 1820–1880, will do; it is long enough to capture a flux which one can chart by the instances. But at no point of stress do the cases come thick and fast enough to give sharp edges to any type of judgment. Worst of all, not one is a case of official record; the whole docket has to be accepted on the basis of hearsay. A more conventional pair of scholars would have obeyed the proprieties and have thrown up the job.

But not these pioneer adventurers. A neophyte, stumped at interpretation, seeks more and more materials until he is smothered beneath the heap. A canny craftsman devises techniques for drawing forth significance from the scanty stuff at hand. It is a superb workmanship which makes this venture possible and endows its result with quality. Llewellyn is a lawyer who sees in his subject, not a brooding omnipresence to be brought down from the skies for dialectics only, but a going institution shaped to the needs of its society. Hoebel is an anthropologist who understands that any item turned up in field work draws its meaning from uses dictated by the impinging culture. Where the one discipline is stopped, the other may provide a hunch; where the one plunges recklessly ahead, the other is there to impose a check. And where either alone is impotent, the two together may provide a fresh set of tools.

Men less wise about their crafts would have been balked by the hearsay. The authors tapped the stream of decision not as cases came, but nearly sixty years after the last doom was spoken. The judgments were passed on by word of mouth; along the way many minds and tongues could intrude to corrupt the unwritten text. Yet, the materials used are hardly less reliable than cases of record. Literacy is unable to insure the integrity of utterance; it has contrived no device by which meaning can be insu-

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† [Since the materials reviewed represent the cooperative effort of a lawyer and an anthropologist, and since the results of such a collaboration seem to be of more than momentary interest, it seemed an interesting project to get in a later review the reaction of a lawyer to materials already reviewed by an anthropologist. See the review by Robert Redfield, Dean of the Division of the Social Sciences, University of Chicago, 9 Univ. Chi. L. Rev. 366 (1942).—EDITORS.]

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lated against pervading opinion. The case of *Man Lying on His Back with His Legs Flexed*, as recited here, is surely as authentic as anything we can now make out of *Dr. Bonham's* cause,[1] or *Chandelor v. Lopus*.[2] The case of *Walking Coyote* has carried its pristine implications down the decades at least as well as that of *Rylands v. Fletcher*.[3] The cases of *Sleeping Rabbit, Medicine Bird,* and *Carries the Arrow* may present perplexities; but not one of them can vie with, say, *Dartmouth College v. Woodward*[4] or *Gibbons v. Ogden*,[5] in telling contradictory things to a number of rather intelligent persons. Name any case here—*Broken Dishes, Shoots Left-Handed, She Bear, Big Laughing Woman, Bull Head,* or *Which Will You Take*—and you are on far firmer ground than in wrestling with the resolution of a great constitutional issue, such as *New State Ice Co. v. Liebmann*[6] or *Ashwander v. T.V.A.*[7]

For the purpose oral tradition may even be an advantage. Here, as with the Roman and the common law, the case is the thing. But its value lies, not in its statement, but in its revelation of the command which prevails in the pinch. We are no longer seriously interested in the personal fortunes of *Ira Munn, O'Gorman and Young, Leo Nebbia,* as they did legal battle against the *State of Illinois*, the *Hartford Insurance Co.*, and the good *People of New York*. But we are mightily concerned with the tolerance accorded by the state to the person in fixing the prices of the articles he sells. In a word, it is *the rule in Shelley's Case*—or *Hankering Wolf's* or *Tall White Man's*—which we seek. And to find it, we must remember that among the Cheyenne the law was not as yet a differentiated institution. There was no priestcraft of attorneys, no judicial caste to generate legalism, no corpus of professional lore to intrude upon common sense. The stuff of judgment came from the people; the men who delivered sentences were busied with everyday affairs. Under such conditions the very absence of literacy counted; for it kept away from the intellectualizing touch of specialists a thing which belonged to the folk. The cases set down here became fireside stuff; as tales they were told over and over again; in their reiteration they remained true to the prevailing norms of justice. Thus they stand out, not as points upon which a series of doctrines is pivoted, but as imperatives which stem from community life. Where literacy can provide no alibi, the mind cannot afford to be inexact or sluggish. But if popular belief has departed somewhat from what actually happened, it is of little consequence. The cases are more, rather than less, reliable because of the way they have been handed down. It is the law-in-action which the authors seek, and its hiding place is in tribal memory.

The result is an articulate cluster of law-ways. Facts do not have feet with which to walk into court; the norms with which men in conflict are judged are not created by legal process. The law is pointed by the morality, decency, good taste of a people. If the cases are few, there is at hand a whole culture to draw upon, to give setting, to suggest leads, to provide check and cross-check. In each case it is the Chief, a bystander, or the Group of Wise Men, who speaks; and the spokesman in a brilliant, competent, or stupid way makes articulate the decision. It is an art, that of saying doom; and there is need here—as with Iroquois, Maoris, the Supreme Judicial Court of Massachusetts

[1] Bonham's Case, 8 Co. Rep. 113b (1610).

[2] Chandelor v. Lopus, Cro. Jac. 4 (1603).

[3] Rylands v. Fletcher, L.R. 3 H.L. 330 (1868).

[4] Trustees of Dartmouth College v. Woodward, 17 U.S. 250 (1819).

[5] 19 U.S. 448 (1821). [6] 285 U.S. 262 (1932). [7] 297 U.S. 288 (1936).

—for "the old man who speaks the straightest judgment." A fine art it is, for "a judgment straight enough, though hard to speak, is unmistakable when spoken." The authors quote Vinogradoff, who mournfully regrets, in respect to a primitive people, "we do not know how, or by whom the merits of the different judgments were estimated." The authors with a larger understanding retort, "read the Cheyenne material and you do not need to know." Yes, the judge must make say the say that goes straight to the heart of the dispute; but the experience and wisdom from which it is distilled belong to the people. The use of techniques for focusing a whole culture upon the instance here endows with sharp edges what would otherwise remain a small amorphous mass.

The law-ways set down are not a thing apart. For all their sharp definition they cling close to tribal life. As with us, the trouble-case reveals the institution in tension; as with us, the flash of insight as to the way out is shorthand for all that comes to judgment. The absence of a priestcraft kept decision a homely, earthy, sweaty sort of thing. Words do not carry over easily; but the law of the Cheyenne savors rather of tort than of crime. Although the punitive note is not absent, the greater stress falls upon the rehabilitation of the wrongdoer. Persons prone to offense are given public office to sober them up and to develop a sense of responsibility. Property reveals only faint outlines. As between persons rights are clearly defined only in respect to chattels; and borrowing, especially of horses and for the occasion, is only on its way towards being called stealing. The feast proclaimed the difficulties of hoarding; possessions were much too personal to sustain any full-fledged institution of inheritance. At a man's death his earthly goods were dissipated. He took his best suit and a miscellany of necessities into the grave; the daughters, less adept than the sons at the craft of filching from the enemy, came in for the larger share; and even neighbors got a cut in on the disappearing estate. Contract was known, though not overused; it was far from a holy thing whose obligations were never to be impaired. Even the smoking of a pipe in common was only to a degree promissory; there is little of long-time commitments for a fixed fee. Virginity was hemmed in by taboos; divorce was easy; adultery intolerable. Banishment was a device to rid the community of an anti-social element. The exile—as outcast, fellow traveler, or penitent—was controlled by being denied the blessings of society. The job of law was to groove behavior as well as to clear up messes; and this it did almost with no reference to technically phrased rules.

Although Llewellyn and Hoebel talk of the Cheyenne, their minds are intent upon our own law-ways. The abundance and intricacy of current material has made us sharp on the doctrine, the rule, the mooted point. But the larger issues of office and outline we are prone to neglect. Intent upon them and for want of a better laboratory, the authors are driven back to the usages of a more direct people. The law, I take it, must be at once remote and near. It must be remote; for, if an imperative is to be imposed on a man, it cannot be at the will of another man. It must appear backed by the weight of position or the voice of authority. It must be near; for it must make sense in the situation in which it is applied—and that is impossible unless it is constantly recast in response to a moving world. As change is inevitable, scope must be given to the dynamic impulses of men who will not conform. As order is essential, a frontier of tolerance must be thrown about all human conduct. So there must be leeway, alike for the judge and the judged, or the community cannot carry on. Rules must have a capacity to flex; behavior, it's thus far and it's no farther. The zone of tolerance makes of judgment an art and demands that the judge be a craftsman. His trade, which can exhibit

only its degree of perfection, must aim at the superlative. As a doctrine forsakes its reason-to-be, it imposes the dead hand of restraint. As rules harden into a code, they enslave where they are meant to serve. It has taken a brilliant use of a superb technique for the authors to say that the life of the law is not observance, but function. They merely profess to set down an objective account of the Cheyenne way; but you and I know it is a sermon to the brethren of the American bar.

WALTON HAMILTON*

Public Policy. Edited by Carl J. Friedrich† and Edward S. Mason.‡ Published by the Graduate School of Public Administration, Harvard University Press, 1942. Pp. xiii, 391. $3.50.

Perhaps it is because the reviewer is too rigidly bound by canons of academic logic that he has extreme difficulty in tracing that thread of continuity which is usually found in a book. Possibly, however, there is no reason to confine miscellaneous articles to weekly, monthly, or quarterly magazines encased in paper covers. If not, here then is a series of excellent articles on various topics pertaining to problems arising out of the war (and one should add parenthetically that all deal with the social sciences) in another edition of the "annual magazine" of the Harvard Graduate School of Public Administration.

The first two articles deal with the question of war morale. In one of these, Gordon Allport discusses the problem of morale and its measurement. His is a very good survey of the various kinds of evidence pertaining to national morale, such as the suicide rate, mental illness, tax evasions, sabotage, and strikes, to name a few of the indices which he enumerates and discusses. He concludes that it is not possible to add algebraically the assets and liabilities in national morale, but points out that it is possible from empirical surveys to identify those factors which seem to be high and those which seem to be low, and to plot trends over a period of time. In the second of the articles on morale, Edward L. Bernays discusses "The Integration of Morale." He defines morale and outlines certain basic premises which underlie the building of a strong morale. He points out the need for a broad integrated plan and states its achievement is not easy because democracy means different things to different persons. In any case, it is important in a democracy that persuasion should be through truth. Although much is now being done by the public relations units of many government departments, there is no master plan marked out by technicians drawn from the fields of the social sciences. Technicians and experts in the physical sciences already advise on similar subjects, and similar advantage should be taken of expert knowledge in the nonphysical fields.

In the most lengthy article in this "year book," David Riesman discusses "Civil Liberties in a Period of Transition." He points out that we have been the inheritors of a great liberal tradition which we have been inclined neither to challenge nor to adapt to the radically changed conditions which confront us. Mr. Riesman discusses the United States Supreme Court cases dealing with freedom of speech and press, beginning

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