Friedman, Whistler and Ruskin, Professor Triggs, and many other names famous in libel lore.

The author states that his book was written for practical purposes. He thinks that writers, reporters, editors, etc. are presumed to know the law when they don't. Although such persons are not presumed to know the law, it is true that for the most part they don't know it and are dealt with by the law as if they did know it. The author's idea is to furnish them a practical guide as to what they can say about other people without letting themselves in for a libel suit. "If the individual were conscious of the elements of legal libel," he says in the Preface, "he could avoid the harmful utterance." Such awareness, the author thinks, calls for ". . . . the development of a sense of danger so that, almost subconsciously, there is recognition of risk and the necessity to consider and rewrite, or change." As a part of his scheme, the author has added an appendix containing a long list, in "capsule summary," of words, epithets, phrases, and innuendos that have been held libellous, arranged under such headings as sexual libels, libels of public officers and employees, candidates for office, political leaders and bosses, professions and other vocations (clergymen, lawyers, doctors, teachers, publishers-wrestlers, insurance agents, etc.), labor unions, and others.

The avowed purpose of this volume no doubt accounts for the lack of systematic arrangement. Beginning with chapters dealing with what amounts to libel and how language is to be interpreted, the book continues with sections on political libels, anonymous libels, etc., with such unrelated sequences as a chapter on truth as a defense followed by one on libel of children, and sections on group libel followed by one on radio libel. Here again, however, as a working tool for the libel-frightened editor, the arrangement is probably as good as any other.

Dangerous Words has merit in another and important respect. The author has far more than a superficial grasp of the public policies reflected in the morass of technicalities of the law of defamation. Conflicting social objectives are analyzed in understandable language, and the appraisal of community values implicit in the rules of law involved is explained with clarity.

As a handbook for newspapermen and others, this book probably can serve a useful purpose. As a scientific exposition of the doctrinary phases of the law of libel, it leaves a good bit to be desired. Since the author had the former rather than the latter end in view, it is not unlikely that he has attained at least a moderate degree of success.

FOWLER HARPER*

Studies in African Native Law. By Julius Lewin. Philadelphia: University of Pennsylvania Press, 1947. Pp. vii, 174. $2.50.

Mr. Lewin, who is an advocate of the Supreme Court of South Africa, of the Middle Temple, barrister-at-law, and Lecturer in Native Law and Administration in the University of Witwatersrand, Johannesburg, combines the practical experience of a skilled lawyer with the functional perspicacity of a keen social scientist. The result is the kind of approach to problems of legal administration and realistic jurisprudence that is refreshing and fruitful. His little book on African Native Law bids fair to win a wide reading among lawyers and social scientists in this country.

In the first place, it is easy to read. The essays were prepared as addresses or con-

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tributions to South African periodicals, and the author's style is felicitous. In the second place, by nature of the subject matter there is just enough of the exotic in the materials to titillate the interests of lawyers and jurisprudes who may not feel impelled to pick up the book out of professional necessity. Third, although the author's style is comfortable and the materials exotic, the fundamental problem with which the book wrestles is one of universal concern and one which has alternately baffled and stimulated legal minds to their best creative efforts: the conflict of laws. To see conflicts in a new and different setting should be a rewarding and stimulating experience for any intelligent lawman.

In spite of the implications of the title of the book, it is not an anthropological study in the content of the law of the native tribes of Africa. What is offered is an analysis of the problems that beset the courts and administration of the Union of South Africa and the solutions they have arrived at or attempted in their efforts to do justice in cases involving African natives (members of the Negro tribes) who live under the authority of a hybrid, Dutch-English conquest state. The juridical richness inherent in such a setup impels the author to exclaim with reason, "What wouldn't Maine have given to study the practice of law in a country like ours whose tradition combines substantial elements of primitive law, Roman law, Roman-Dutch law, and English law!"[1]

Pity the poor native who must adjust his life to such a welter of legal systems. Where once powerful tribal kingdoms had ordered their own legal affairs in accordance with their age-old custom, ".... the background of Native Law today is not simply the tribal system but the vastly more complicated social and economic system in which the natives now find themselves."[2] Until recently there has been little attempt to rationalize the Native Law.

Indeed, in South Africa, it could be said of the Negroes as Justice Miller once wrote of our Indians, "The relations of the Indian tribes living within the borders of the United States, both before and after the Revolution, to the peoples of the United States has always been an anomalous one and of complex character."[3]

Indian legal relations in the United States, which today rest upon more than 4,000 treaties and statutes, plus uncountable judicial and administrative rulings, are still anomalous and complex. In South Africa an attempt was not long ago initiated to dissolve the anomalous complexity of its situation by means of intelligently conceived legislative fiat. The Native Administration Act of 1927 did in the main three things: 1) It recognized Native Law for natives, provided that such Native Law shall not be opposed to the principles of public policy or natural justice. 2) It explicitly guarded against possible moral prejudice on the part of judges by declaring it unlawful for any court to declare the custom of *lobolo*[4] or any similar custom repugnant to such principles. 3) It recognized the Courts of Native Chiefs and established Courts of Native Commissioners to hear cases outside of tribal *loci*, and it also established a new Native Appeal Court of judicial review.

Mr. Lewin's chief concern in this book is with the manner in which the new arrangements are working out. Lawyers will nod their heads in satisfaction and a feeling of

[1] P. 25. [2] P. 21.

[3] United States v. Kagama, 118 U.S. 375, 381 (1886).

[4] *Lobolo:* the payment of cattle by the kinsmen of the groom to the kinsmen of the bride—brideprice. The legislation bestows recognition on brideprice as a fundamental mechanism of native social and economic equilibrium.

self-vindication at his first findings. The intent of the legislature was to reduce the trial process to bare-bones simplicity. In concordance with this intent the Administration laid down but 128 rules of procedure for all three levels of Native Courts. It was assumed that attorneys would not enter into cases heard in the Native Courts. The second assumption was that most cases would turn on points of native custom. Since the first assumption was wrong, the second was also vitiated. For, as Mr. Lewin notes, "As soon as we enter the realm of the court itself, the influence of anthropology flies out of the window while the lawyers with measured tread come in at the door."[5]

It could hardly be otherwise, for the Native Law is no longer an isolated thing, and the natives enter constantly into commercial activities in the sphere of South African law and society. The nature of the situation combined with the paucity of procedural rules, plus the presence of lawyers, has resulted in the fact that the majority of cases appear to turn not on points of native custom but on trial procedure. The author does not develop the subject very deeply, but what an opportunity is here for the study of the growth of procedure as an organic necessity in the life of the law!

The Native Law draws an interesting distinction between marriage and customary union. Marriage is that connubium which results from Christian ritual. Customary union is wrought by native ritual. The relative rights and obligations arising out of the two forms of connubium pose legal questions of great delicacy and difficulty, since by Christian marriage the natives put themselves under the Common Law with respect to all consequences flowing from the marriage contract. A good many natives still living under native conditions undergo Christian marriages by missionaries not at all aware of the shift in legal status that is involved until litigation draws them into court. Conflicts are legion.

Finally, the differentiation of jurisdiction and the application of different bodies of tribal law pose a number of intriguing problems touched on by Mr. Lewin. Although the Bantus all possess generally similar cultures, wide variations exist in the detailed provisions of their laws and usages. Urban migration and tribal disintegration have brought members of many different tribes into the same localities. What happens when X and Y, parties to a suit, reside in a modern city which is located in the territory of tribe Z? As enacted in 1927 the Native Administration Act flatly adopted the principle of the domicile of the defendant. Regardless of the original tribal affiliation of the defendant the tribal law of the place of residence was to apply even though the defendant had no social contact with the tribe of the locality. The aim was judicial uniformity; the result was extreme discomfort for the natives. The first remedy, according to Mr. Lewin, was a judgment which sanctioned the setting aside of the principle of domicile by contractual agreement of the parties. But apparently not many natives are aware of this possibility, so in 1943 the Act was amended to read that while a court may not apply any system of law other than that which is in operation at the place where the defendant "resides, or carries on business or is employed," if two or more systems of Native Law are in operation at the place of residence, business or employment of the defendant, and said place is outside a Native Area (equivalent to our reservations) the court is forbidden to apply "any such system unless it is the law of the tribe (if any) to which the defendant belongs."[6] Thus is the principle of domicile compromised by a

[5] P. 16.

[6] The quotations in this paragraph are at page 75, the author in turn quoting the Native Administration Act.

kind of personal law carried about by a migratory native.

Perhaps this is enough to indicate that the problems raised in this book are nice ones. They are treated in terms of both principles and cases. *Studies in African Native Law* is by no means an exhaustive treatise, but within its scope it admirably interweaves the historical, analytical and functional approaches to legal problems.

E. ADAMSON HOEBEL*

Marriage Is on Trial. By Judge John A. Sbarbaro. New York: The Macmillan Co., 1947. Pp. xiv, 128. $2.00.

Interesting proposals for new marriage and divorce laws are included in Judge Sbarbaro's search for ways to make marriages last. This excellent treatment of the causes of divorce is addressed first of all to the individual who needs better understanding of the marriage relationship. It is of equal interest to the welfare worker and the legislator who are seeking practical ways of checking a dangerously mounting divorce rate.

A recommendation for legislation which would minimize hasty, thoughtless marriages follows naturally the author's demonstration by national statistics and by his own court experience that such marriages have a high failure rate. There is a strong presumption as well as favorable experience to support the idea that legislation requiring a "cooling-off" period would do some good and little harm.

Legislation to require marriage intelligence tests represents a more sweeping suggestion but the author makes a convincing argument on its behalf. "All applicants for marriage license," says Judge Sbarbaro, "should be required to present a certificate showing that they have completed a course of premarital training and counsel, given under the auspices of the state. The course should be completed not more than sixty days in advance of the issuance of the license; an important point, since it would indicate an actual plan to marry which had been carried out over a reasonable length of time."

To those who would consider this a radical suggestion or perhaps an abrogation of individual rights, the author points to the widespread requirement of a health certificate for marriage, arguing that health of the mind is just as important as health of the body in promoting successful marriages. If precedent were needed, he might also have pointed to the present requirement in some states of attendance at instruction classes of those who seek a license to drive an automobile. Welfare workers would probably agree that pre-marital counselling would be an example of preventive social work at its best and that to require it by law would tend to slow down the divorce rate.

Special attention is also given by the author to the legal and social problems involved in the present hodge-podge of state divorce laws wherein wide variations in the legal grounds for divorce produce a variety of obstacles and inequities for those who find it truly necessary to get a divorce. "The only obvious solution," says the author, "to the present muddle is a standardized federal divorce law which clearly and realistically sets forth grounds in keeping with contemporary thought and behavior."

Laws alone will not create successful marriages nor eliminate divorce, and this is not implied in *Marriage Is on Trial.* The basic responsibility of church and school in educating for marriages that last is clearly and forcefully established. But the state, which

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