Law Making In Australia, by Alice Erh-Soon Tay and Eugene Kamenka, Melbourne. Edward Arnold (Australia) Pty. Ltd., vii + 328 pp. $19.95.

It has long been asserted that if dinosaurs had been able to invent their own form of worship, the first invocation in their litany would have been "From all manner of change Good Lord deliver us". What is certain is that their spiritual descendants are alive and well and living in Australia.

As a nation we are not given to deep thought and introspection. The motto *causas cognoscere rerum* is a most unlikely candidate for any Australian coat-of-arms. Yet the fourteen contributors to this book are united in their conviction that on the subject of law making, which concerns us all, Australians should take time out from the racing form and the football news to do some deep thinking for a change.

How far have they succeeded? In this reviewer's opinion surprisingly well, provided only and this is the big proviso, that Australians can be persuaded to read the book. If law making could be sold by half minute commercials like motor cars or paint, the average Australian just might pay some attention.

The most interesting chapters from my viewpoint were those contributed by the Editors on the philosophy underlying the topic, by Mr. Justice Kirby on Law reform, and by Mr. Justice Hutley on the appellate judicial process.

If I were to try and review every chapter the result would be a disconnected mélange, and so I have restricted my comments to the chapters referred to above. This does not imply that the others are any less interesting or any less well done.

Professors Tay and Kamenka show well how the law must change to meet new areas of life requiring regulation by law and how necessary it is to think out a coherent legal philosophy to underwrite the changes. Their great knowledge of European law as well as common law is an ingredient missing from most Australian legal thinking which tends to be bounded on all sides by the constraints of the common law.

Mr Justice Kirby surveys with his customary clarity of exposition and ability to cover the field, the present situation of law reform in Australia today. It is an impressive record of achievement. And yet the slowness and selectiveness of enacted law reform troubles me deeply. As long as we only recommend procedural and cosmetic reforms, Parliament takes legislative action within a more or less reasonable time. As soon as we venture to deal with larger themes for a newer Australia the report falls into a vast and timeless abyss. Of the sixty odd reports of my own Committee to date, five really broke some new ground: aids to interpretation of statutes, newer forms of paternity identification, privacy, a legal régime for solar energy and

class actions. Not one of those five has become law. Only one, privacy, failed after the Attorney of the day took action, only to be defeated in Parliament. The others are in limbo. Every law reform agency has its own catalogue. Anyone who has studied the history of the Reformation knows that far reaching and feasible schemes of canon law reform preceded it — drawn up by men at least as able, as devoted, and as godly as the root and branch "Reformers" and yet the gradualist reformers Winzet, Hamilton and Quintin Kennedy went down to defeat while Knox, Buchanan and Melville became part of the mythology of a nation. Is it to be once again the old story that those who will not read history are doomed to repeat it and that gradual law reform will be implemented too late?

Fellow feeling makes us wondrous kind and so I read Mr. Justice Hutley's contribution with the utmost enjoyment. Like him I have to try and serve two masters: the Judicial Committee and the High Court, whilst longing for another Gratian to produce a new *Concordia discordantium canonum*. Like him I have to allow for the fact that the High Court varies its rules as to appeals on fact and on mixed fact and law every few years — there have been two if not three new sets of rules since he wrote. I particularly commend his analysis of what constitutes a discretionary judgment for the purposes of appeal — a concept which has been too often taken for granted in the past.

Of the other contributions I can only refer in passing to Dr. Lumb's assessment of the difficulties of throwing off the inherited shackles from our colonial past and Professor Zines' study of the conflicting approaches used by the High Court in interpreting the words of the Constitution, both of which will repay careful and thoughtful study.

This is an excellent book. Please read it yourself and make sure that everyone you know — lawyers, politicians and public alike — reads and ponders it.

HOWARD ZELLING*

Introduction to Commercial Transactions by Robert Braucher[1] and Robert A. Riegert.[2] Foundation Press Inc., Mineola N.Y., 1977.

Australian teachers of Commercial Law who have any time at all for the comparative aspects of the subject, law reformers and practitioners who simply want to know what the Americans are doing will find this a most valuable book.

---

* A Judge of the Supreme Court of South Australia.

[1] Justice of the Supreme Judicial Court of Massachusetts; formerly Professor of Law, Harvard Law School.

[2] Professor of Law, Cumberland School of Law, Samford University.