Law-making in Australia edited by ALICE ERH-SOON TAY and EUGENE KAMENKA. (Edward Arnold, 1980), pp. i-vii, 1-138. Cloth, recommended retail price $37.50 (ISBN: 0 7267 2032 1); Paperback, recommended retail price $19.95 (ISBN: 0 7267 2034 8).

Law-making in Australia is a nicely rounded volume which draws papers from three sources: a three day seminar in Canberra in August 1975 with the theme "A Revolution in our Age? The Transformation of Law, Justice and Morals", the World Congress of the International Association for Philosophy of Law and Social Philosophy held in Sydney and Canberra in August 1977 and four papers specially solicited to balance the volume.

I was privileged to be a participant in the 1975 Seminar, but I was even more fortunate with the World Congress, for I was a member of the small Organising Committee for it. I do not usually enjoy Committee meetings, but these were different: the meetings of the Organising Committee often became delightful seminars on various aspects of law in society. Just occasionally, a little bit of "organising" was done, but very much the larger proportion of the organisation was very deftly done by the husband and wife team of Professors Alice Tay and Eugene Kamenka (who acted as the President and Secretary respectively of the Congress) between meetings of the Organising Committee, a fact greatly appreciated by the other Committee members.

The present volume covers the wide sweep of law-making. It opens appropriately with the speech of welcome that the Premier of New South Wales, the Hon. Neville Wran, gave at the opening of the World Congress. This is followed by the comments of Professor Honoré on "Societies, laws and the future" and the remarks of Sir Anthony Mason on "The courts and their role in changing the law today", made on the same occasion. "Reforming the law" is discussed by Mr Justice Kirby, Chairman of the Australian Law Reform Commission and Dr (now Professor) Lumb contributes a paper on "Fundamental law and the processes of constitutional change". The editors of the volume contribute their "New legal areas, new legal attitudes" and then there is a set of papers that follows the law-making process through. Professor Reid covers "The parliamentary contribution to law-making", Mr Justice Fox discusses "The judicial contribution", further judicial aspects are covered by Mr Justice Hutley in his "Appeals within the judicial hierarchy" and Professor Zines contributes "The High Court and the Constitution: the search for objective criteria". The more administrative side is covered by Professor Whitmore in his "Government by regulation: its scope and limits", by Dr Colin Hughes in "Government action and the judicial model" and by Dr Rawson in his "The retreat from the 'new province for law and order' ". It is very good to have the seminar papers that were already known to me available now in permanent form; and the specially solicited articles all make interesting reading.

The traditional aspects of law-making by Parliament and by the courts are well covered in the volume, although, as Mr Justice Mason observes (page 11), it is only fairly recently that the "myth that judges

do not make or alter the law has been dispelled". But it is particularly interesting to note the emphasis given in the work to the more recent developments in the law-making process—the administrative and the law reform areas.

Professor Northey, Dean of the Faculty of Law in the University of Auckland, recently predicted that, by the turn of the century, more than half of legal practice will be concerned with the broad administrative law area. I am unwilling to quantify as Professor Northey has done but I always argue that the traditional distinction between public and private law is no longer a very useful one. Public law concepts now reach into virtually every aspect of law, and I believe that all lawyers need to master them, or else see the administrative lawyers inherit the legal firmament! The growth of subsidiary legislation has totally changed the balance of our law during the last half century. Almost every member of our society has to find a way through the labyrinthine administrative bureaucratic machinery at some time, even if it is only to object to a valuation under the Rating Ordinance or to get a pension or an accurate telephone bill. Most members of the community are never likely to become involved with the traditional courts.

We have at last settled down to the task of attempting to control this new legal dimension. As Professor Whitmore points out in his essay, in Australia we already have a choice of parliamentary control, oversight by ombudsmen, or review by courts and tribunals, including the new federal system of administrative law. He even mentions the role that the media can play in checking excesses in government by regulation.

Professor Whitmore concludes (page 242) that of course "Government by regulation is undoubtedly here to stay". However, we must continue to develop our means of control over bureaucratic development, and there is the very difficult and delicate task of working out the inter-relationship between these various new arms and the traditional court structure. I feel strongly that there is a very considerable need to develop specialist bodies to evaluate and control the bureaucratic process; I feel equally strongly that these new bodies should not consist entirely of lawyers; specialists in other disciplines have a vital part to play. Nevertheless, I still have a sneaking suspicion that I want the traditional courts to be in the background to decide ultimate questions of law. Perhaps I am just old-fashioned.

Although we have much information about, and a great deal of literature upon, the traditional areas of the law, I feel that there are huge gaps in our empirical and, indeed, fundamental, knowledge of many of the new areas. Uncomfortable as it may be for legal academics, I think that it is not enough for us to use our "traditional" methods and tools of legal research. That many of the modern problems are not purely, or even principally, legal is emphasised by the need to include non-lawyers in the dispute settlement areas. We must develop new methods for new problems; law must be treated as a social science and legal research developed accordingly.

The fruits of much of this can set the main for the "law-making" activities of law reform bodies which, incidentally, I believe, should

also cease to be the sole preserve of the legal profession. Professional law reform is no longer "a thing of shreds and patches" as Mr Justice Kirby so neatly quotes (page 39). But (to use the same source and to drop the irony of the original) if

> The law is [to be] the true embodiment
> of everything that's excellent,

or even anything remotely resembling that happy state, the tools of law reform, which are being developed apace in Australia, must be used to the full.

DOUGLAS J. WHALAN*

In Pursuit of Justice: Australian Women and the Law 1788-1979 edited by JUDY MACKINOLTY and HEATHER RADI. (Hale and Iremonger, 1979), pp. i-xvii, 1-300. Cloth, recommended retail price $19.95 (ISBN: 0 908094 45 0); Paperback, recommended retail price $9.50 (ISBN: 0 908094 46 9).

In Pursuit of Justice is a collection of papers largely written for a seminar on Australian women and the law. Heather Radi notes in the introduction that "the papers were to focus on those areas where the law distinguishes between the rights and responsibilities of women and men. Where such distinctions exist discrimination occurs however impartially the law is administered". Gender-based distribution of rights is probably the popular definition of discrimination. But the more challenging aspect of this working definition is the identification of discrimination in the differential allocation of responsibilities, whereby the law operates by defining the context in which individuals act.

Beverley Kingston has observed that the law reforms of the early twentieth century, conventionally understood as "women's rights", can be interpreted as the middle class transformation of the world, a reformulation of the power of the state, which made increasing use of the category "woman" to define and control and order society bureaucratically.[1] This collection of essays focussing on "women's wrongs" extends, qualifies and sometimes cuts across this type of conceptual generalisation.

In Pursuit of Justice has no one unifying perspective on the function of the different modalities of law. Explicitly, the aim of the collection is to demonstrate the impact of the law on the lives of women from first settlement to the present. And "the law" is a subject of variable content. For example, Jude Wallace's chapter "The 'Red Tape' of Childcare"

---

* LL.M. (N.Z.), Ph.D. (Otago); Professor of Law, Australian National University.

[1] Kingston, *The World Moves Slowly: A Documentary History of Australian Women* (1977) 53.