It is tempting to formulate the real reasons in predominantly political terms. The hegemony of conservative politics in this country has in the post-war era been almost unrelieved. It is not without significance, I think, that there is no *federal* reform agency at all, nor that the state which alone at present promises to become something of a reformist laboratory should be Mr. Dunstan's South Australia.[1]

No one, moreover, should overlook the part the law schools of this country have played in producing a legal profession which, as Professor Sutton himself does not hesitate to point out, is characterized by over-cautiousness, 'entrenched opposition to radical ideas', and 'haphazard and somewhat unproductive methods of reform' (p. 5). It is still true to say that most courses in Australian law schools are only incidentally or eclectically concerned with the reform of the law. Nor is most Australian academic scholarship concerned with critique on other than merely conceptual or analytic levels.[2] One need only think for a moment of the role played in the United States by the great law schools there, and the literature produced by them, to get a sense of the failure of our own schools in this regard.

The creation of a 'tradition of reform', of an educated profession, and, ultimately, of an articulate public, is at least as much the responsibility of the law schools as that of any other agency or institution. And Professor Sutton, as Dean of one of our larger schools, is ideally placed to do something about it.

M. P. ELLINGHAUS*

Australian Trade Practices: Readings, edited by J. P. NIEUWENHUYSEN, Senior Lecturer in Economics, University of Melbourne, (F. W. Cheshire, Australia 1970), pp. i-xxvi, 1-331. Australian Price $4.25.

Although no cases have yet been decided by the Trade Practices Tribunal and the precise nature and scope of the activities of the Commissioner are shrouded in secrecy (despite the rather tantalizing glimpses given by his three Reports) there has been quite a surprising amount written on the subject of the Trade Practices Act. This present volume is a *pot-pourri* of articles (fifteen in all) by lawyers and economists. Seven of the articles were written specially for the book and the others were published in various journals from 1961 to 1968, four being published in 1965, when the Trade Practices Bill was introduced.

As to be expected in such a book, both the quality, and the relevance of the articles to the situation in 1971, vary considerably. Law and economics are of course inextricably intertwined in a study of trade practices, and one of the potential difficulties in such a collection of writings by economists and lawyers is that the economists are interpreting an Act and lawyers are advancing views on economic theories. In general the contributors display an impressive grasp of each other's fields but occasionally mistakes are made, as when an economist ventures on an analysis of the monopoly provisions.

The majority of the articles deal with the nature and extent of restrictive trade practices in Australia and the deficiencies, or likely deficiencies of the legislation. The authors are in agreement on a surprising number of points. The principal criticisms of the legislation are—

(1) that the criteria for determining public interest set out in section 50 is in such wide and general terms and involves so many conflicting groups of interests that it provides no real guidance to the Tribunal, and amounts to an abrogation by Parliament of its responsibilities.

[1] The A.L.P.'s Federal platform does not either, however, include any proposal for the setting up of a national reform agency, although various specific reforms of the law are adumbrated.

[2] Professor Sutton's own book on the sale of goods is representative. True, this is so not casually, but by virtue of deliberate slant: 'my aim has been primarily to state the law as I conceive it to be rather than to seek its reform', says Professor Sutton prefatorily: Sutton, *The Law of Sale of Goods in Australia and New Zealand* (1967). The question is, why *should* this be so often the 'primary' aim not only of the Australian author-practitioner, in whom such tendencies are perhaps understandable, but also that of the Australian academic writer.

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(2) that mergers should have been subject to control or regulation by the Act.

(3) that the extreme nature of the secrecy provisions is unnecessary and undesirable in that a greater knowledge of restrictive practices and the operation of the Act is essential in determining the effectiveness of the legislation and amendments that should be made to it.

Some authors take the criticism much further, and in an impressive and thoughtful article Professor Brent argues that a proper policy of control of restrictive practices should have a much wider base and should aim to regulate the general economic environment by way of Governmental economic policy, control of various types of business conduct including mergers, and an increased knowledge of business conduct and affairs coupled with greater disclosure by the businesses. She also argues that the public interest should have been defined in terms of benefit to the consuming public.

Three articles written for the book by J. M. Collinge dealing with collective pricing, resale price maintenance and collusive tendering are practical and useful discussions of these types of business conduct, and the extent to which they are subject to the legislation. While these three articles are a valuable contribution to the subject, Mr Collinge tends to argue that the legislation has a wider application and scope than would appear to be justified, and his arguments in favour of such a view are not always convincing. Thus, he argues that price leadership and conscious parallelism will be of doubtful value in circumventing the legislation as, if prices of competing businesses remain the same or similar despite economic factors making a price reduction by one or more of them possible, then an agreement or understanding can be implied. He overlooks or discounts the inhibiting effect of a fear that price reductions may commence a process of retaliatory price cutting that would outweigh any temporary gains. In dealing with resale price maintenance he corrects a common misapprehension that resale price maintenance is not dealt with by the legislation, and deals with various situations in which it is or may be caught, but his conclusion that 'the possible scope of the Trade Practices Act in relation to resale price maintenance could hardly be more extensive' does not appear to be justified by his arguments. His article on collusive tendering contains some valuable criticisms of the illogical basis for the provisions and in particular the injustice that could result from the provision giving a civil right of action for damages, but his advice to traders wishing to avoid a prosecution for collusive tendering appears to be marred by a misreading of section 85(3). This article makes no reference to the very real problem of when an agreement can be said to be made 'for the purposes of a particular invitation to tender', as arises when a price agreement is expressed in general terms, but it is known that it will apply only to a limited number of tenders.

One live topic surprisingly not dealt with by any of the contributors is the extent to which the legislation can be defeated by agreements relating solely to intra-State trade, and otherwise designed to fall outside the constitutional power of the Commonwealth. The fate of such agreements at the date of writing this review is soon to be decided by the High Court, the Commonwealth arguing that such agreements are within the scope of the Act by virtue of the corporations power.

Space does not permit reference to stimulating contributions by the editor, G. de Q. Walker, Professor Hunter and others, but taken as a whole this book contains a great deal of thoughtful criticism of and comment on the Australian Trade Practices experiment and will be a convenient source of reference to economists, and lawyers, but its value to individual business and their associations, as claimed on the cover, is more doubtful.

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BOOKS RECEIVED

Police Killings in Australia, by R. W. HARDING, (Penguin Books Australia Limited, Australia, 1970), pp. 1-266. Australian Price $1.20.

Tutorials in Contract, by JOHN COLLINGE, B.LITT.(Oxon), LL.B.(Auckland), Barrister and Solicitor, (Formerly Lecturer in Law University of Leeds and Senior Lecturer in Law University of Melbourne), (The Law Book Company Limited, Australia, 1970), pp. i-xxxii, 1-302. Australian Prices: Cloth—$9.00, Paper—$6.50.

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