



Nicholas Hasluck in the Supreme Court of Western Australia in 2002

# Lessons from fiction in letters of the law

Roy Williams

## Legal Limits

By Nicholas Hasluck  
The Federation Press, 234pp, \$49.95

SOME books don't have an obvious "business case" but — thankfully — they get published anyway. This is such a book: caviar to the general. In part a meditation on the relationship between law and literature, *Legal Limits* is also an eclectic commentary on modern-day Australia by one of our best conservative minds. I use the word "conservative" in its old-fashioned Burkean sense. Like his estimable father Paul Hasluck (who was one of Robert Menzies's closest cabinet colleagues and governor-general from 1969-74), Nicholas Hasluck is not an ideologue. He is a cultivated, astute observer of people, trends and events.

Formerly a judge of the Supreme Court of Western Australia, Hasluck is also an accomplished novelist. To my knowledge only one other living Australian can boast such a dual achievement: Ian Callinan, the retired High Court judge, whose fictional output Hasluck analyses generously and at length. But whereas Callinan is a capital-C conservative (albeit an unusually urbane and good-humoured one) Hasluck cannot be so pigeonholed.

There are two aspects to *Legal Limits*. First and foremost are Hasluck's ruminations on his special subject, the interplay between law and literature, both the obvious differences and the less obvious similarities.

As to the latter, Hasluck observes wisely that "any work of the imagination is an attempt to see things from a standpoint other than your own, a skill which will be of use to lawyers if they are to win the confidence of their clients and put cases to the court. The best advocates know how to tell a story. Subject to the evidence, they draw upon the lessons of literature."

Likewise, he points out, novelists have drawn on the law for plots, settings and ideas. Put to one side whodunits, crime thrillers and police procedurals. Many fictional giants have entered the territory. The list includes Dickens (*Bleak House*), Dostoevsky (*Crime and Punishment*), Melville (*Billy Budd*), Kafka (*The Trial*, *The Great Wall of China*), Tom Wolfe (*Bonfire of the Vanities*) and JM Coetzee (*Waiting for the Barbarians*, *Disgrace*).

Hasluck's musings about these and other novels had me itching to read them again, or for the first time. He nails Kafka. On the one hand, he touched a raw (layman's) nerve: "His observations about the law — the suggestion that an accused person within the

legal system is bound to be constantly misunderstood and treated unjustly — continue to resonate."

And yet there is also a sense in which Kafka is overrated: "His notion that the law in action reflects a mystery, that it tends to be a frustrating hotchpotch of ambiguous procedures ... begins to look unconvincing," suggests Hasluck. "Even a disgruntled litigant, if obliged to survey the broad picture, would probably be willing to concede that a legal system based on a tradition of reason and impartiality has much to commend it."

More recently, and closer to home, legal or quasi-legal themes have been explored in celebrated novels by Robert Drewe (*Fortune*), Cassandra Pybus (*Gross Moral Turpitude*) and David Malouf (*The Conversations at Curlow Creek*). So, also, by Hasluck himself, most notably in *The Bellarmine Jug* (1984) and *Dismissal* (2011). The latter is a lively Gore Vidal-style account of the events of November 1975, culminating in John Kerr's dismissal of the Whitlam government. Perth academic Peter Johnston discusses Hasluck's writings in an afterword to *Legal Limits*.

Beyond the law-literature relationship, Hasluck touches on myriad issues pertaining to the Australian legal system, politics and society. This is the second aspect of the book. Refreshingly, Hasluck is not out to fire another shrill, partisan shot in the culture wars. His account of the Andrew Bolt case of 2011, concerning a breach by Bolt of the federal Racial Discrimination Act, is worth reading for its balance. Hasluck observes the case "neatly illustrates the way in which the right in question [free speech] may be curtailed by countervailing rights or a need to consider the public interest". Similar issues arise as regards the preventive detention of sexual offenders.

Before his appointment to the bench, Hasluck was for 10 years president of the Equal Opportunity Tribunal of Western Australia. His reminiscences about that experience are fascinating and, at times, wryly funny.

"The first case I presided over," he recalls, "concerned a taxi driver who had treated an Aboriginal passenger badly. He defended himself against Marlene Jackamura's plea of discrimination by asserting blithely that he treated all of his passengers badly. This line of argument (which was not uncommon) became known as the 'taxi driver's defence'."

A small criticism I would make of Hasluck is that, in the manner of a postmodern novelist, he left this part of his story hanging. I wanted to know how he dealt with the taxi-driver.

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