

BOOK REVIEW
NICHOLAS HASLUCK, *LEGAL LIMITS*, (ANNANDALE:
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The interdisciplinary study of law and literature has been a recognized part of legal education since the 1970s, but it has remained a marginal component of the curriculum. Best known as a vigorous research area within critical legal philosophy and legal humanities, it has not acquired the adherents or the influence of other interdisciplinary projects, such as law and economics or medico-legal studies. One writer with eminent achievements in both the law and literature is Nicholas Hasluck, and in his latest collection of essays, *Legal Limits*, he explores some connections between these two fields, and uses his experience of both professions to propose some reasons for its limited uptake.

Hasluck is the author of eleven novels and four collections of poetry, but he is also an accomplished practitioner of that almost forgotten genre, the familiar essay, in which personal ruminations on experience and ideas are presented with tentativeness and irony. As a once-famous Australian essayist, Sir Walter Murdoch, put it, the essay 'is not a statement of facts, it is not a cold, abstract argument, it is not an inflammatory harangue; it is a quiet talk, reflecting the personal likes and dislikes of the author. It never pretends to treat a subject exhaustively; it is brief, informal, modest.'¹ Some of the essays in this collection explore current issues facing the law, and offer facts and argument, logic and information, and others reflect on travel, books, and memories, but all are marked by a digressive and exploratory approach that opens up their themes in agreeable and unpredictable ways.

The title essay, 'Legal Limits,' is a wide-ranging reflection on the connections between law and literature, which astutely acknowledges at the outset that despite their obvious links as language-based disciplines, the two operate in very different ways, and that 'practising lawyers, like Plato of old, find it difficult to take literature seriously.' From this premise, claims and counterclaims about the value of literature are advanced dialectically, focused around the significance of Kafka's surreal narrative, *The Trial*, for lawyers. While Kafka was himself a lawyer, many have accounted his perceptions mad,

¹ *On Rabbits, Morality, etc.: Selected Writings of Walter Murdoch*, ed. Imre Saluszinsky (Crawley: UWA Publishing, 2011) --.

or exaggerated. Hasluck finds that Kafka's scenarios, with their arbitrary and bizarre events, have meaning and value as satire and allegories, that above all they reveal the bewilderment and powerlessness of litigants in any legal system where the officers of the court are insiders and they are outsiders. Further, he argues, imaginative writings are especially effective in presenting these recognitions because they rely on symbol and allegory, and hence allow readers to intuit the larger significance of a problem through telling details. Noting the commonplace that advocates too must tell their clients' stories, Hasluck's professional and literary experiences are brought to bear in the realization that the most successful courtroom lawyers have the ability to identify those details in the evidence that have symbolic resonance or to read between the witnesses' lines for their desires or fears. This is an insightful and beautifully structured discussion, which concludes with a moving synthesis of how the two fields work together to change the law and address 'legal limits.'

The following essays explore various topics of common concern to law and literature, such as the interaction between European legal-political institutions and local customs and beliefs in post-colonial societies, the protection of freedom of thought and expression, the legal career and novels of Ian Callinan, and a reflection on his aims and methods in writing his own political novel, *Dismissal*. Two pieces derive from Hasluck's travels in Latin America, 'Being Somewhere Else' and 'Other Customs.'

The former is a relaxed meditation on literature and life, set in the Buenos Aires café formerly frequented by the legendary blind poet and librarian Jorge Luis Borges. Thinking of Borges' teasing puzzles about illusion and reality, a model Hasluck adopted in his novel, *The Bellarmine Jug*, sets off a chain of literary associations concerning exile and belonging in colonial societies, the role of metropolitan law and the influence of past customs. These observations have obvious relevance in Australia as well as in South America, and Hasluck explores them from an interior or psychological perspective, using literary works to tease out key issues. From Mario Vargas Llosa, the Peruvian writer and presidential candidate, who reflected on the importance of law's cultural context, the discussion moves to David Malouf's dialogic encounter between a guard and a convict in *The Conversations at Curlow Creek* and another excellent fictional account of nineteenth-century Australia, Roger McDonald's *Mr Darwin's Shooter*, both of them stories with contemporary resonances. That Hasluck is an engaged reader, active and perceptive in his responses, is confirmed when he moves to discussing *Nyabbarri: Kimberley Tracker*, the life

story of Jack Bohemia. Here the transcription of the tracker's words reveals 'an unusual commentary upon the workings and language of the law,' through a single word from his Goondyandi language, '*Maroowa*,' a person responsible for the death of another. Encoding a different system of law and morality, it captivates the writer by providing a new way of understanding reality. Hasluck values *Nyabbarri* as a work of social history, an account of an era and a place, written from the inside. He contrasts this mode of writing about the past with histories driven by the concerns of the present, particularly in Aboriginal affairs: in short, he favours the Isaiah Berlin approach to history, rather than that of Michel Foucault. However, this final turn in the rumination seems abrupt when compared with the transitions which have preceded it. From Buenos Aires to Broome, this essay is a sprightly conceptual journey by a self-described 'lawyer in a Borgesian mood.'

That engaging persona is also heard in a companion piece, 'Other Customs,' which recounts a trip Hasluck and his wife made to Peru. Here their physical journeys open up a series of encounters with landscapes and people that lead to deftly sketched reflections on the history and politics of the country. The running commentary of a guide on one bus recalls the narrators of magic realist novels, while by night Hasluck reads equally strange episodes in the writings of Anglo-American explorers. In his own narrative, ruminations on tradition and the way nation states mask historic problems jostle with anecdotes about llamas behaving badly in Machu Picchu.

'Thought Crimes in Postcolonial Literature' is a product of Hasluck's chairing of the judges' panel for the Commonwealth Writers' Prize. Notwithstanding the Orwellian reference in the title, this paper brings together the Commonwealth organisation's goal of promoting human rights and the rule of law and literary explorations of freedom of opinion and freedom of speech. It does not examine the censorship of literature, whether in vexed cases such as *The Satanic Verses* or the content of rights in general. Rather it explores the operation of such rights in different societies, particularly the relationship between legal culture and other social values that may impinge on such freedoms. Fiction from postcolonial nations including South Africa, New Zealand and Australia exhibits a sustained interest in the conditions which limit free speech. Through novels such as Lloyd Jones's *Mister Pip*, V. S. Naipaul's *Half a Life* and Peter Carey's *The Unusual Life of Tristan Smith*, Hasluck teases out a range of factors, political oppression, social conformity, psychological complicity and the ambivalence created when a global power

dominates a local culture being among them. He shows that these writers from Commonwealth countries offer insights into the realities of power, and thus into human rights. His analysis is valuable, but his selection of examples will also provide readers with new leads.

'Vanishing Borders' takes up the oft-proclaimed consequence of globalization, its rendering of national boundaries as irrelevant, using Kafka's story, 'The Great Wall of China,' as a parable on this issue. Using law and literature, Hasluck focuses on relations between national sovereignty and human rights, especially freedom of speech. His discussion centres on the way declarations of rights need to be understood in the community to which they apply, and on the ways that the language of rights can be interpreted. He suggests that judicial officers 'will benefit by constantly pondering the ambiguities of language and the unpredictable ways that meaning can be interpreted by different cultural backgrounds.' A key example here is the English case of Derek Bentley, convicted of being a party to the murder of a police officer on the basis of his words, 'Let him have it,' which might have meant, 'hand it over,' or as the trial found, 'shoot.' Bentley, whose story was filmed in 1991, was posthumously pardoned in 1998, fifty years after the events. The limits of free speech, rather than ambiguity, were at stake in the next case discussed, that of Andrew Bolt and the breach of s. 18C of the *Racial Discrimination Act 1975*. Hasluck does not pronounce an opinion on that case, but canvasses the arguments for free speech and the need to balance other public interests in a complex judgment.

In 'Seeing What Happened' Hasluck reflects on his experiences presiding over the WA Equal Opportunity Tribunal, adjudicating in cases of discrimination and harassment. After running through several of the most memorable cases, he sets out a few of the key insights from those early days of a new jurisdiction. These include the need for even-handedness, the value of the rules of natural justice, of due process and procedural fairness. Just as the tribunal should 'hear the other side,' so the respondents in many cases should 'see through the eyes of others.' In a many-sided discussion, this essay recognises how the content and bases of human rights change over time, and how this will be an evolving area of law. A similar concision and breadth is apparent in 'In Cupid's Court,' a review essay of Bernadette McSherry and Patrick Keyzer's book on sex offenders and preventive detention that draws on legal provisions, leading cases and literary examples.

'Beyond the High Court' discusses the career and novels of another

Australian literary lawyer, Ian Callinan. He places particular attention on the novel, *The Lawyer and the Libertine*, noting its similarities to certain events in the life of Justice Lionel Murphy. In an extended reading that brings out the strengths and weaknesses of this book, Hasluck welcomes its engagement with political and legal matters at what Christopher Harvie has called ‘the centre of things,’ that is, parliament and the courts.² For Hasluck, there is a dearth of such political fiction in Australia, and what there is tends to be dispraised by reviewers and overlooked by literary editors. Some of his novels from the earlier part of his literary career, such as *The Bellarmine Jug* and *Truant State* are political fictions of this kind, the latter dealing with the West Australian secession movement of the 1930s. One of his recent novels, *Dismissal*, returns to this preoccupation, with a narrative built around the dismissal of the Whitlam government by Sir John Kerr in 1975. An essay entitled ‘The Whitlam Dismissal Revisited’ offers an excellent reflection on how to make compelling fiction out of well-known political events. The key issue here is a question of technique, for in a hybrid form which is part historical and part fictional, the representation of events is tied to decisions about narrative form. Hasluck chose to focus his efforts on drawing the reader’s attention to ‘gaps in the record or areas of ambiguity’ that open up the possibility of speculation. This allows him to draw on his own experiences of the ‘corridors of power’ in building up a convincing fictional world, yet produce an engrossing and surprising plot. Though the central narrative is speculative, it is embedded in ‘the agreed facts,’ which allows the novel to present a realization of some of the key ideological conflicts in postwar Australia.

The book’s title, *Legal Limits*, encompasses a variety of limits, fundamentally those boundaries that laws set for human behaviour, and the limitations of the law that from time to time become apparent, but also ‘the legal limits we have become accustomed to’ in the Westminster system of government, and limits to the achievement of justice or rights that are caused by community understandings and ideologies. While more radical law and literature scholars might well regard the latter as an occasion for critique, Hasluck sees it as a key aspect of legal cultures, capable of producing good or bad results depending on the circumstances. In his 1984 novel, *The Bellarmine Jug*, he explored some of these theoretical issues. The present volume includes a scholarly analysis of jurisprudential debates in this novel, especially its

² *The Centre of Things: Political Fiction in Britain from Disraeli to the Present* (London: Unwin Hyman, 1991).

metaphorical rehearsal of the Hart-Fuller debate. Written by Peter W. Johnston, it turns the critical lens on Hasluck's own legal fictions in an illuminating manner, and thus is a useful complement to his essays.

Throughout this volume of essays, one is reminded of the American philosopher Martha Nussbaum's book *Poetic Justice*, especially its subtitle, 'the literary imagination and public life.'³ Whereas Nussbaum's approach to law and literature stresses the ethical benefits of lawyers reading literature, Hasluck shows how literature can deepen our understanding of situations and of language in the law. In consequence, the legal imagination is fed by moral insights, psychological understandings and the social values of the broader cultural tradition, of which literature in the broadest sense is a critical repository. This two-way interaction is made possible by Hasluck's deep understanding of legal and literary interpretation, both of which infuse his treatment of all the topics he discusses.

Hasluck defines the role of the writer in society as that of 'a small personal voice,' but this modest and unassuming stance is complemented by a worldly engagement in public institutions, and the realistic understandings that such experience brings. With its commitment to rationality and civil discourse, and its insights, *Legal Limits* contributes significantly to law and culture in Australia.

³ (Boston: Beacon Books, 1995)