Any member of the Sydney Bar can be forgiven for thinking Dr Bennett is the sole conscience of that part of our collective mind which turns itself to the judicial lives of our colonial past. His monumental series is now well known.

Charles Lilley, premier and chief justice of Queensland, is slated for imminent release. The publication of Sir Richard Hanson, premier and chief justice of South Australia, heralds the arrival of a new entrant in the field. Dr Greg Taylor is an associate professor of law at Monash, and Honorarprofessur für Common Law und Rechtsvergleichung at Marburg.

And what better evidence can we have of Taylor’s expertise in matters South Australian, German and colonial than the words of Lord Walker of Gestingthorpe hearing a matter from the St Lucia Court of Appeal? As early as paragraph 2 of the Privy Council’s opinion, reference is made to – and reliance laid upon – ‘Professor Greg Taylor, Is the Torrens system German? (2008) 29 JLH 253’: Louisien v Jacob (St Lucia) (2009) UKPC 3 (9 February 2009). (And yes, according to the online report, an opinion of the council is now a judgment.)

Marburg is the home of Savigny. Among his many achievements was the legal teaching of the brothers Grimm. Whatever the ratio of their output, more relevant is the university’s assertion that it is ‘the oldest university in the world that was founded as a Protestant institution in 1527’.

Richard Hansen was schooled in Melbourne [no ‘e’ please, subed], Cambridgeshire, under the tutelage of the Rev Mr Carver. The school was one ‘in which the sons of many opulent Dissenters received their education’.

But what to do afterwards? We are apt to recall the Tests Act in the framework of their injustice to Roman Catholics. It should also be recalled that Dissenters such as Hanson were unable to enter Oxford or Cambridge until 1871, unless they were willing ‘to simulate membership of the Church of England’. It would be profane to suggest that simulation has proved the sine qua non of such membership on more than one occasion, but in Hanson’s case, he was not willing to jettison his principles. Too young, perhaps.

Fortunately, then as now, study at a university was not a prerequisite to practice in the practical world of the law, and Hanson found himself articled in 1822 for a period of six years. He took his exam before Lord Tenterden, the great jurist who had risen – as Taylor notes – from even greater obscurity than Hanson. Tenterden, it will be recalled, died in harness; his last words were ‘and now, gentlemen of the jury, you will consider of your verdict’. A Dworkinian end?

While in London, Hanson was involved intimately with the Wakefield project soon to bear fruit in South Australia. However, he got no gig, and ended up, via Canada, in New Zealand, Edward Gibbon’s brother!

There is relatively scant material about Hanson’s time in our neighbour nation. Taylor does some recreation and hypothesis, but his approach is a lawyerly one, sceptically questioning his own conclusions. This method is dryer than the methods chosen by many modern biographers, but one which is I think justified.

Hanson arrived in Adelaide in mid-1846, aged 40. It must have been something of a thrill to walk for the first time down Hanson Street, the 1837 Street Naming Committee’s recognition of his work in London for the proto-colony.

Hanson arrived in Adelaide in mid-1846, aged 40. It must have been something of a thrill to walk for the first time down Hanson Street, the 1837 Street Naming Committee’s recognition of his work in London for the proto-colony.
work in London for the proto-colony.

Hanson Street no longer exists, but Taylor informs us that it is the lower half of Pulteney Street, that is, I infer, the part running south from Wakefield Street. And there I was thinking you started with the premise that everything in Adelaide was named ‘Torrens’ and sought the exception.

I confess I can’t find when the name was changed. As Pulteney Grammar School’s site records:

The original trustees met in May 1847 to establish a school for the children of Adelaide and after 12 months, on Monday, May 29, 1848, Pulteney Street School opened its doors.

As only a school in the city of fine food can note:

Town Acre No 228 at the corner of Pulteney and Flinders Streets was purchased and a school building was erected immediately north of the present St Paul’s Restaurant.

Flinders Street is to the north of Wakefield Street. We cannot therefore infer that the Street Naming Committee had resiled from one of its objects and deprived him of his fame.

It would have been to Hanson’s limited satisfaction that ‘The School was a foundation of the Church of England but was open to those of all faiths and denominations.’

I say ‘limited’, because Hanson’s major political concern was that of state aid:

But Dissenters such as Hanson did not merely object to state support for religion in England on the grounds that it went to the wrong type of religion; they were also committed to the view that state support was bad for religion, of whatever type, and thus the grant was to be resisted as not merely potentially, but actually dangerous.

Hanson’s achievements included dealing with the notorious Justice Boothby.

Jeffrey Smart, one of the school’s students, abandoned Christianity while a chorister at St Peter’s Cathedral. Hanson’s own abandonment came at the end of his life, and was based on scholarship. Doubtless – or is that faithless? – Hanson’s intellectual rigour founded his most well-known work, Jesus of History.

With the faith still held in earlier writings gone, what he ‘was really writing [was] history rather than theology – indeed, the project of stripping away the accretions of faith and writing a secular history of Jesus’ life might even be called anti-theology’. When we think of Barbara Thiering’s Jesus the Man, we conclude ‘Yay verily the life of the exegete never easy’.

Hanson’s achievements included dealing with the notorious Mr Justice Boothby. For the many of us who have had to meet arguments about the illegitimacy of Australia, of the state, or of the court in which we are appearing, I set out for comfort a report of Hanson’s arrival:

The Commission [of Hanson as Chief Justice] being read, Mr Justice Boothby made objection thereto, that the same had no legal validity, and is void and of no effect, as being contrary to law. Mr Justice Gwynne declared his opinion to the contrary.

Thereupon Richard Davies Hanson, Esquire, claimed to give a judicial voice on the same question, to which Mr Justice Boothby objected and declared his opinion to be that he was not so entitled. Mr Justice Gwynne pronounced his opinion that Richard Davies Hanson, Esquire, was entitled to a voice in deciding on the validity of the Commission he had laid before the Court.

Thereupon Richard Davies Hanson, Esquire, declared his opinion in agreement with Mr Justice Gwynne on both questions, and in opposition to the opinion of Mr Justice Boothby, and claimed to preside over the Court by virtue of the Commission he had laid before the Court.

Mr Justice Boothby gave his opinion that Richard Davies Hanson, Esquire, had no right so to preside. Mr Justice Gwynne declared his opinion to the contrary, and that Richard Davies Hanson, Esquire, had such right.

Mr Justice Boothby declared his intention to appeal to Her Majesty in Council on each of the several matters whereon he had declared an opinion contrary to that of Mr Justice Gwynne.

So there. By the bye, was either Mr Justice Gwynne or the reporter correct to nominate Hanson as ‘Esquire’? By the time the subject of the second paragraph came to pass, was he not, too, ‘Mr Justice’?

And so with pre- and post-nominals in question, we close with reference to knighthoods, an issue made relevant by
The governor, possibly not at one with this expression of Christian forgiveness, disagreed. However, his own recommendation of a gong for Hanson got nowhere. The end of the story is the real delight. Taylor records that Hanson, doubtless with the governor’s encouragement, applied directly to the Colonial Office, with the result that it had to put up, and procure the knighthood, or shut up but – a bureaucrat’s nightmare – do so with an explicit and public snub. Hanson got his gong.

I enjoyed this study. It reminds us that the image of superfluous English and Irish barristers flooding the colonial bars is at best misleading, and that many many fine legal minds also had wide life experiences elsewhere in the Empire before taking up the posts for which we now remember them. In Australia, Francis Forbes is only one among many examples, and now we have an excellent life of another.

Reviewed by David Ash

Devil in the Grove: Thurgood Marshall, the Groveland Boys and the Dawn of a New America

By Gilbert King | Harper | 2012

Devil in the Grove, awarded the 2013 Pulitzer Prize (General Nonfiction) is the dramatic account of a little known but very significant sexual assault case that unfolded in Florida in late 1949. In 1949, Lake County, Florida was a dangerous place to be a young black man. Segregationist ‘Jim Crow laws’ ensured the continued suppression of black Americans. The Ku Klux Klan was active, well organised and well represented in every echelon of public life – the governor of Florida, Fuller Warren, was a Klan member prior to taking office, as was local sheriff Willis V McCall, a man renowned for his brutal treatment of blacks. The lynching of black men and boys was common, as was the rape of black women and girls by white men. During his 28-year tenure as sheriff, Willis V McCall was investigated numerous times for civil rights violations including the abuse and murder of black prisoners.

This was the South of To Kill A Mockingbird, where white juries tried black defendants on racially motivated charges in segregated courts.

In New York, the National Association for the Advancement of Coloured People (NAACP) was making progress toward securing greater equality for African Americans. The NAACP’s star attorney, Thurgood Marshall (‘Mr Civil Rights’) was making his name mounting constitutional challenges to Jim Crow laws, culminating in Brown v Board of Education of Topeka, 347 U.S. 483 (1954), which led to the desegregation of public schools across the United States and the eventual dismantling of institutional segregation through the Civil Rights Act 1964 and the...
Marshall was later to become the first African-American US solicitor-general and the first black appointee to the US Supreme Court.

This was the South of To Kill A Mockingbird, where white juries tried black defendants on racially motivated charges in segregated courts.

In addition to its constitutional advocacy, the NAACP represented black defendants in criminal trials where it considered that the charges were racially motivated. Part of the NAACP’s strategy was to demonstrate the impossibility of a black defendant receiving a fair trial in certain states. Marshall was an inspired criminal lawyer who understood the importance of publicising the systemic inequality and racial prejudice routinely suffered by black defendants in criminal trials in the South.

When a 17 year old white girl claimed she was raped by four black men in Lake County, Sheriff McCall was determined to administer swift Southern justice. He arrested three young men later that day - Sammy Shepherd, Walter Irwin and Charles Greenlee. A few days later, the fourth suspect, Ernest Thomas, was shot in the back by a posse led by Sheriff McCall as Thomas ‘evaded arrest’. The three remaining suspects became known as ‘the Groveland Boys’.

On news of the arrests, a lynch mob of 500 men led by the Ku Klux Klan formed outside the police station. They swept through the town, shooting at and burning the homes of black residents. This marked the start of the ‘Florida Terror’ – six days of uncontrolled rioting and violence against blacks ultimately quelled only through the intervention of the National Guard.

Devil in the Grove recounts the involvement of Marshall and the NAACP in the trial and appeal of the Groveland Boys. King, a legal historian, obtained access to unedited and previously unseen FBI files on the case and to the tightly guarded files of the Legal Defense Fund of the NAACP. These extraordinary sources are skilfully woven together by King to create a gripping and meticulously researched account of the NAACP’s campaign to seek justice for three young men in America’s heartland of bigotry and racial hatred.

One of the many fascinating aspects of the book is King’s detailed description of the legal strategies developed by the defence team at trial and on appeal and his insightful description of the trial process, drawing on transcripts and the first hand accounts of lawyers, journalists and witnesses. His description of the police and prosecution treatment of the three accused, both prior to and during their trial, is shocking.

King adroitly contextualises the trials within the broader battle for racial equality fought by Thurgood Marshall and his colleagues at the NAACP, gracefully weaving in absorbing accounts of the constitutional cases pursued at the time by the NAACP. King also examines in detail state and federal government responses to the trial, including ongoing FBI suspicions that the NAACP was a communist organisation and Thurgood Marshall’s efforts to dispel those rumours. Through his examination of media coverage of the case, King reveals the true horror of the environment in which the trial was conducted – on the day the jury was empanelled the major local newspaper ran a front page colour cartoon depicting three electric chairs and the caption, ‘No Compromise’. One of the many interesting themes in the book is the shift in the attitude of the local media toward the accused men and their lawyers as the gross corruption of the police and prosecution became clear.

Tightly written and suspenseful, King combines historical accuracy with well-drawn character studies to create a fascinating insight into this horrifying chapter of American legal history. Every player in this tragic story is vividly brought to life by King – the sordid and corrupt Sheriff McCall; the dishonest State Prosecutor Jesse Hunter; the racist ‘whittlin judge’ Truman Futch; the vitriolic local reporter who fanned the flames of racism in her editorials; and most importantly, the heroic lawyers of the NAACP who risked their lives to represent the Groveland Boys.

The story of how this small group of underfunded lawyers played a pivotal role in American history is inspiring. Devil in the Grove is essential reading.

Reviewed by Sally Dowling
First, the basics. For the True Believers: Great Labor Speeches that Shaped History is an anthology of speeches made by leading figures in the Australian Labor Party. The book includes eighty-nine speeches, reproduced in whole or in part. The speeches are organised in seven parts: Reconciling Australia; Reform, Progress and the Future; the Campaign Trail; History, Tradition and Ideology; War and Conflict; Australia and the World; and Victory, Defeat, Love and Loss. The earliest speech in the anthology is one made in the NSW Legislative Assembly by George Ryan on 16 July 1891 (‘to make and unmake social conditions’), when a Labor electoral league had – for the first time – gained seats in an Australian parliament. The most recent are speeches by Julia Gillard, made in 2009 and 2011.

Within that span, the speeches have a diverse subject matter. One little gem which Mr Bramston has retrieved from the NSW ALP’s archives is a speech by Premier Joe Cahill at the Sydney Town Hall on 15 June 1957. In that speech, at a NSW ALP Annual Conference, Mr Cahill – a man who had never seen an opera, a ballet or a symphony – spoke forcefully against a resolution opposed to the building of the Sydney Opera House and the ‘homes before opera’ cry then resounding.

There are speeches that call for change, action or steadfastness in response to most of the great issues that have faced the nation. The challenges posed by free trade or protectionism, world war, conscription, the White Australia policy, the equality of men and women, reconciliation between Aboriginal and non-Aboriginal Australians, native title, Australia’s place in the world and her ‘great power’ alliances, the dissolution of the Communist Party of Australia, the Vietnam War and the 1975 Constitutional crisis, are all addressed in the course of this anthology. There are speeches relevant to Labor’s great schism of the 1950s, the Split.

Mr Bramston, the editor of the collection, is an opinion writer for The Australian newspaper and was the principal speechwriter in 2007 for Kevin Rudd. Mr Bramston introduces each speech with a short explanation he provides of the context of the speech. These short explanations are usually informative and, on occasion, rather evocative. Gough Whitlam’s speech at Wattie Creek on 16 August 1975 is introduced with:

At Wattie Creek, as the sun radiated its warmth from above, Prime Minister Gough Whitlam and Gurindji Chief Vincent Lingiari stood together on the red earth under a clear blue sky. Whitlam bent down and scooped up a handful of dirt and then poured it into Lingiari’s hand, symbolising the transfer of that land into traditional ownership.

Sometimes the editor contrasts the immediate reception or contemporary assessment of the particular speech with its subsequent, different reception or assessment.

There is a foreword by leading ALP speechwriter Graham Freudenberg, as well as both a preface and an introduction by Mr Bramston. The theme of these three pieces seems to be that speeches are of particular significance to the ALP as a political party with a ‘continuing quest for practical idealism’ (Freudenberg) and as a party which agitates for change.

What then might be the relevance of ‘political’ speeches to members of the Bar Association? Perhaps there is none. Mr Bramston quotes from an interview with Bob Hawke conducted for this book. Mr Hawke said that speeches in parliament did not matter because the decisions had already been made in the government party room. Mr Hawke contrasted the charade (his word) of parliament with his previous experience as an advocate in industrial tribunals: ‘in my experience as an advocate, I was used to a situation where the outcome depended on the quality of your argument.’ Nonetheless, looking at some of the ‘political’
speeches collected in this work, it is hard not to appreciate some fine examples of the art of persuasion and to see how the skillful use of phrase, rhythm and style, can be employed to change minds.

Three of the speeches in the anthology were, for me, particularly impressive.

There is Gough Whitlam’s speech in Melbourne on 9 June 1967 at the Victorian ALP State Conference (‘Certainly the impotent are pure’). The speech is a bold, unvarnished attack against members of Mr Whitlam’s audience, calling for change in the federal ALP’s organisational structure and urging the ALP to be a party of national government and legislative change rather than ideological purity. The arguments wielded are wide-ranging. What is striking about the speech is that it is so richly-laden with technique and the devices of the art of persuasion. Among other devices, there is epiphora with tricolon (‘The party was not conceived in failure, brought forth by failure or consecrated to failure.’) that would be at home in Latin or Classical Greek literature. There is the use of a version of anthypophora or erotoma (‘Some think that … If this view is meant to be complimentary to me, it is a compliment I refuse to accept …’ and ‘So let us have none of this nonsense that defeat is in some ways more moral than victory.’) that has strong resemblance to the style adopted by Paul, in articulating his arguments in his first century AD epistles to the churches of Greece and Asia Minor.

Next, there are twin speeches by Billy Hughes in the House of Representatives on 27 and 28 May 1909. Mr Bramston describes Hughes’ presentation:

Politicians and journalists raced into the chamber to watch Hughes in full flight. Few had heard anything like this before. The face of Hughes was red hot with anger. The veins in his hands were bulging. His mind was calculating the most venomous invective to unleash. His voice was high-pitched, shrill and excitable.

These two speeches involved a denunciation of Alfred Deakin who had withdrawn support from Fisher’s Labor government and created a new Fusion Party, thus sweeping Deakin into the premiership for the third and final time. Hughes’ language was searing and pitiless:

... I heard from this side of the House some mention of Judas. I do not agree with that; it is not fair – to Judas, for whom there is this to be said, that he did not gag the man whom he betrayed, nor did he fail to hang himself afterwards.

To realise this noble ideal he has assassinated governments, abandoned friends to the wolves, deserted principles and deceived the people … He will lead any party – he will follow none! He is faithful to only one thing – himself.

This speech by Hughes, the former tinker, union leader and barrister, was made at a time when the standing orders in the House of Representatives prohibited the reading of prepared speeches. It is a speech memorable for its delivery, in its use of satire and hyperbole and it is as coruscating as any of the famous speeches of Cicero against Catiline or Verres, or Charles James Fox against George III. Reflecting on it, a question arises. How important is the truth or accuracy of a speech’s content in persuading the listener? Was Hughes’ attack on Deakin so effective in damaging Deakin’s credibility (as it was widely-acknowledged to have been) because there was, at very least, some truth in Hughes’ brutal words?

The third speech I want to highlight is a speech by Paul Keating to the Dail Eireann, the Irish Parliament, in Dublin on 20 September 1993. Towards the beginning of the speech, Keating says:

It would not surprise me if you are thinking – here we go again, he is going to tell us about our Irish past or our literary tradition; he is bound to quote Yeats at us; tell us about 1798 again or give us his views on our character. I would dearly like to spare you this and I will.

The contrast between this speech and the speech of Julia Gillard to the US Congress on 9 March 2011 is marked:

I firmly believe you are the same people who amazed me when I was a small girl by landing on the moon. On that great day I believed Americans could do anything. I believe that still. You can do anything today.

Having introduced his speech by telling his Irish audience what he was not going to do, Keating then proceeds to deliver a speech which is effortless in its prose and inspiring in its sentiment. The speech celebrates much
of what is the best of Australia. Keating depicts the great promise of Australia and the opportunity and liberty which Australia has delivered. Keating celebrates the ‘lesson of the emigrant’ while at the same time informing his audience that the great casualty of immigration was Aboriginal Australia: ‘the destruction of this extraordinary ancient culture, and the brutality and injustice inflicted on the first Australians can never really be set right.’ The speech simply is a thing of beauty.

There are many other memorable speeches in the anthology. Western Australian Senator Dorothy Tagney’s speech to the Senate on 24 September 1943, with its optimism for, and vision of, post-war Australia, the power and logic of ‘Doc’ Evatt’s ‘No man should be deprived of civil rights’ speech against the bill to dissolve the Communist Party, Keating’s splendid eulogy to the Unknown Australian Soldier at the Australian War Memorial on 11 November 1993 and several famous speeches by John Curtin and Ben Chifley, are among the highlights.

It is hard not to notice too, in our age of individualism, how the early speeches by leading Labor figures appealed so frequently to collectivism, and the values of community and the social.

The book is most likely to be enjoyed by those with an interest in the techniques of persuasion, Australian history or the Australian Labor Party.

Reviewed by MR Tyson

The second book which I have been asked to review is The Whitlam Legacy. It features thirty-eight essays about Mr Whitlam and his government. Among other things, there are essays about the Whitlam government’s political style, its relationship with key institutions, and its achievements in discrete areas of public policy. There are other chapters which look at the legacy of the Whitlam government. Gerard Henderson, Bob Carr, Frank Brennan, Susan Ryan, Peter van Onselen and Malcolm Mackerras are just some of the contributors. Mr Whitlam has written a foreword to the volume.

There has been so much written about the Whitlam prime-ministry and Mr Whitlam himself that I am not entirely convinced about the need for this book. However, I did enjoy reading Michael Kirby’s chapter ‘Gough Whitlam: In His Father’s Shadow’ which surveys the legal career of Gough Whitlam’s father, Fred Whitlam, a distinguished lawyer and dedicated public servant. Fred Whitlam, inter alia, served as Commonwealth crown solicitor for 12 years from December 1936. Michael Sexton, then an adviser to the Attorney-General Kep Enderby, has contributed an intriguing chapter: ‘The Dismissal’, which starts from about 8.00am on 11 November 1975 and then describes from Mr Sexton’s perspective, how the events of that momentous day unfolded.

This book will be most appreciated by those unfamiliar with the Whitlam years or those who have an interest in revisiting that time. It is a volume which is fairly comprehensive in its coverage of its topic and does offer some fresh perspectives.

Reviewed by MR Tyson

The Whitlam Legacy

Troy Bramston (ed) | Federation Press | 2013
BOOK REVIEWS

The Law of Affidavits

By John Levingston | The Federation Press | 2013

The Law of Affidavits states that its object is to ‘draw together the sources of the law of affidavits and to identify the many elements which together should result in an affidavit of an acceptable standard, and assist the inexperienced practitioner in reaching an appropriate standard’.¹

The poorly prepared affidavit is an all too common phenomenon and the aim of improving standards is admirable. However, it is an ambitious task for a book, considering that it is often a lack of care and adequate preparation, rather than a lack of knowledge or experience, that causes the most egregious problems with affidavits. A practitioner sufficiently assiduous to consult a book on the law of affidavits is unlikely to be among the worst culprits when it comes to these abuses.

The challenge of raising standards is heightened by the ease with which one can set out the principles of good affidavit drafting, which stands in stark contrast to the difficulty of putting those principles in practice. It is straightforward to advise practitioners to avoid problems such as a story that is ‘too long and complicated’ or prose that is ‘obscure and obtuse’.² However, even the most experienced practitioner will find themselves falling foul of such rules, albeit unintentionally.

Nonetheless, the book goes some way to pulling together the various tips, advice, rules and principles that provide a framework for drafting a good affidavit.

The book has three parts. The first part is an eclectic discourse on the history, law and practice of affidavits, covering everything from the earliest uses of affidavits (some 800 years ago) to whether a requirement in the rules for clear, sharp and legible contents implies a font of not less than 12-point. The topics range from the basics (Chapter 2, What is an affidavit?) and a range of practicalities (use, form, oaths), to the treatment of an affidavit in court (cross examination, objections). Those topics are dealt with at varying levels of detail – to illustrate, the chapters range from half a page in length (Chapter 23, False statements and contempt) to some fourteen pages setting out how an affidavit is used (Chapter 6, Use of an affidavit).

The second part is entitled ‘Jurisdiction Summaries’. It sets out the rules, and detailed requirements, that apply in each of the High Court, Federal Court, Federal Circuit Court, each of the state supreme courts and New Zealand.

The third part consists of precedents, listed in alphabetical order, starting with ‘Abbreviations’ (‘In this affidavit I will refer to [long form] as [abbreviation].’) and ending with ‘Statement of truth’ (‘I believe that the facts stated in this witness statement are true.’) As is evident from those two examples, not all of the examples are ‘precedents’ per se but rather provide illustrative examples of language or phrasing to use in particular contexts.

Unfortunately, the tome does not have an index. While the book is sufficiently short to flick through

Of the three sections, the second is basic but comprehensive and is by far the most useful aspect of the book.

The poorly prepared affidavit is an all too common phenomenon and the aim of improving standards is admirable.
quickly, a short index would have made the book significantly more usable for a practitioner, who may wish to look specifically for topics of concern (for instance dealing with bankruptcy rules or interlocutory matters).

Of the three sections, the second is basic but comprehensive and is by far the most useful aspect of the book. It sets out in comprehensive lists all of the relevant sources of rules in each of the different states, the Commonwealth and New Zealand. It also sets out the detailed requirements for form, style, content etc. Thus, a practitioner drafting an urgent jurisdiction can look quickly at this part to determine details ranging from the correct spacing or font to whether amendments or alterations are permitted (for instance, in South Australia, alterations are not permitted after the affidavit is certified, whereas in Queensland an alteration is permitted where the witness initials it). It may be that this section is, on its own, of sufficient practical value to justify its acquisition, at least for the interstate practitioner.

In contrast, the precedents in the third section are of limited usefulness. Some of the precedents are extremely basic (for instance, a ‘footer’ precedent advises that the words ‘Deponent: ……’ and ‘Witness: ……’ can be added to the foot of each page of the affidavit by using a word processing program). Other precedents are so specific as to be of no or very limited utility (for instance, a precedent setting out the words that can be used to verify a photograph taken by a photographer). Affidavits for default judgment and security for costs are generally helpful in setting out the basic information that should be present in such documents, and may serve as useful reference points for the sole practitioner or small firm that does not have ready access to more sophisticated precedents.

However, the first part of the book suffers from a number of difficulties, not the least of which is the disjunct discussed above between, on the one hand, a focus on rules and, on the other, the very practical problems that plague the affidavit drafter (or reader). Little thought appears to have been given to the actual audience – thus, for instance, the book explains to the reader that there are ‘two types of pleading’ and that ‘[k]nowledge of the relevant law includes the law and cases concerning the cause of action, issues in dispute, and general common law rules…’. Neither gives any insight into the actual challenges of drafting affidavits – the former because it is too basic, and the latter because it is too high level. Of course, one must know the substantive and procedural rules. Yet knowing that does not bring a practitioner a step closer to applying that substance or procedure correctly.

The book is not an essential text, and suffers from the very practical nature of the subject matter.

Reviewed by Natalie Zerial

Endnotes
2. Ibid., p.28.
3. Ibid., p.240.
4. Ibid., p.233.
5. Ibid., p.289.
6. Ibid., p.299.
7. Ibid., p.10.
8. Ibid., p.69.
In the opening chapter of his latest book, Nicholas Hasluck, a former judge of the Supreme Court of Western Australia, remarks that our legal system depends upon stories being well told. For this reason, among others that Hasluck goes on to explore in the chapters that follow, literature has much to teach lawyers, and especially advocates.

Hasluck reflects on the lessons a lawyer can draw from literature.

Hasluck has been exploring the relationship between law and literature for some time, both in his works of non-fiction and in his novels. Throughout this book, which might most accurately be described as a collection of essays, Hasluck reflects on the lessons a lawyer can draw from literature. However, the book also has the air of a memoir about it. While Hasluck touches on the nexus between law and literature in each chapter, he also covers an eclectic array of other subjects, including the question of mediation and its place within our legal system, the preventive detention of sex offenders, the dismissal of Gough Whitlam, his own writing, and the writing of others.

In Chapter 1 (‘Legal Limits’), Hasluck demonstrates that the insights offered by fiction to those working within the legal system are many. It is a rich area for exploration and Hasluck paints with a broad brush, briefly examining the works of a number of authors, including Borges, Kafka, Orwell and Dickens. Perhaps the most important insight which Hasluck identifies in this chapter is that literature, in casting light on the complexities of any given contentious situation, reminds us of the importance of paying attention to the individuality of litigants’ stories. It is our task as advocates, says Hasluck, to ensure that the ‘small, personal voice of the litigant’ is heard and understood.

Chapter 2 (‘Thought Crimes in Post-colonial Literature’) is a discussion of how fiction illuminates our understanding of human rights, via an examination of a selection of post-colonial novels. Again, Hasluck casts his net wide. Adopting a freewheeling, discursive style, Hasluck commences his survey with Alan Paton’s Cry, The Beloved Country, a novel written about the injustices of South African society in the 1940s, which was published immediately prior to the passage of laws that institutionalised Apartheid in 1948. Hasluck comments that Paton’s novel not only provides a graphic illustration of the workings (and shortcomings) of the legal system but also brings a ‘sense of reality to the abstractions known as human rights’. More recent works by South African novelists are discussed, such as JM Coetzee’s Waiting for the Barbarians, an allegorical novel about imperial power and Apartheid (published in 1980), and Shaun Johnson’s The Native Commissioner (published in 2006). Hasluck then goes on to examine the works of post-colonial writers from other areas, including Australia’s Peter Carey and Kate Grenville.

The chapters that follow are more memoir and political commentary than literary analysis. In Chapter 4 (‘Other Customs’), Hasluck reminisces about a trip he and his wife took to Peru. In Chapter 6 (‘Seeing What Happened’), Hasluck shares some of his experiences and observations from his time spent as president of the Equal Opportunity Tribunal of Western Australia. Chapter 8 (‘Should Judges be Mediators?’) is a confined inquiry into the increasing popularity of mediation and its place within our legal system, in which Hasluck canvasses other extra-judicial writing on this topic. Chapter 9...
... the book is a collection of reflections and reminiscences from a life cunningly – and successfully – spent in both disciplines.

(‘Beyond the High Court’) is, in essence, a review of Ian Callinan’s first novel The Lawyer and the Libertine, published in 1997.

It is in Chapter 10 (‘The Whitlam Dismissal Revisited’) where Hasluck is at his best. In this chapter, Hasluck explains why he wrote his most recent novel, Dismissal, a fictionalised account of the constitutional crisis preceding Gough Whitlam’s dismissal as prime minister. Even more interestingly, Hasluck uses this chapter to explain the choices he made as a novelist in recounting a story already so familiar to Australians. With a light and endearingly modest touch Hasluck reveals aspects about his personal history that led him to write Dismissal. The story behind Hasluck’s decision to tell this particular tale makes for fascinating reading in and of itself.

In Chapter 9, Hasluck admits that Callinan’s The Lawyer and the Libertine ‘passes the essential test...of being readable.’ Happily, Legal Limits also passes that essential test. But the book is not what it purports to be. Regarded as a whole, rather than being a discussion about the relationship between law and literature, the book is a collection of reflections and reminiscences from a life cunningly – and successfully – spent in both disciplines.

Reviewed by Juliet Curtin

Crossword solution

CROSSWORD SOLUTION

I P I S C T C T
B O U L T E N O V E R L A Y
I B E E L R I P
D I L E M M A D E R A N G E
E I K F A I C
M A C R O C Y T E F A C I A
I E I A S
P E A R L E R T A R T L E T
R C B E M
O U T R E M A N D A T O R Y
P IA E O L A
H U N D R E D U N C L E A R
E I I G I V R
C A D E N Z A A R T D E C O
Y E G L T E L W
From 2005, the Queensland Supreme Court Library published its History Program Yearbook. 2012 marked a consolidation with the publication of a Legal Yearbook.

Of course, the Year Books – two words, capitalised – have a special meaning for common lawyers. They are the books of reports from the English courts published annually from the reign of one of the first Edwards (I or II?) to the reign of Henry VIII. The Selden Society has a particular interest in publishing and consolidating them: www.law.harvard.edu/programs/selden_society/pub.html#ovps.

The yearbook – one word, lower case – is a recent phenomenon, the annual publication of a society, school or suchlike. It has a particular relevance for final year school students.

The yearbook thus described is under threat. In our world, constant updating is not an Orwellian dictate from above, but the choice of us all. What is more suspicious than an out-of-date blog or homepage?

But for the more discriminating – nay, the more concerned – among us, constant updating is not an unalloyed good. There is purpose and importance in a regular snapshot. It gives us reference, it gives us pause, it allows us to reflect, and most importantly it gives us perspective.

These things understood, the yearbook is not an anachronism. To the contrary, it is a map of past and present with an eye to the future, and this particular yearbook is self-consciously and successfully a very specific map.

The theme is the creation of the new (state) courthouse in Brisbane. It draws upon all perspectives: the chief justice, the architect, the committee members, the librarians, the curator, the person responsible for the safe transport and custody of detainees, the persons responsible for the move itself.

I was particularly drawn to the essay by John McKenna QC, ‘The Courthouse in Operation – A Perspective from the Bar’. The author is optimistic and frank, at pains to spell out what he calls ‘seven main topics of debate’, two of which are complements as classic, if not conservative, view – is that ‘[f]or some, it is a matter of regret that the external artwork appears to serve only an aesthetic role and that the familiar statue of Themis has been relegated to a position of non-importance’. The second is a delicate rhetorical question as to whether the naming of the courthouse for a sovereign, no matter how well-loved, is not ‘an unusual choice in modern Australia’. The author duly notes that controversies of this nature were inevitable and that the building is a significant improvement upon its predecessor in almost all respects.

There is a comprehensive collection of speeches and lectures as well as tributes and ceremonies. From experience as a member of the editorial committee of this journal, I have become aware of how important a permanent and consolidated record of these things – the changing of the guard – are to all members, and not just the old.

There is then a large number of book reviews, reviews written by notable practitioners. If the most recent Queensland appointment to the High Court is finishing a review of The Byers Lectures 2000–2012 with the admonition that any practitioner ‘interested in constitutional law, administrative law or advocacy should read this book: otherwise he or she may be left behind’, you are getting a hint worth your consideration.

Finally, there is a lengthy section headed ‘Legal Personalia’, covering not only the judiciary, the state’s law officers and the professional associations, but appointments and admissions and, I think vitally, the various law schools. I suppose this information can be gleaned from the relevant body’s website, but this for me is a real example of perspective. I cannot count the number of times over my years of practice where for some professional reason or merely – and is it ‘merely’? – because I am curious, I have wanted to know something particular about the ‘who?’ or the ‘when?’ This is the sort of publication which both whets and sates.

This book is a valuable and necessary record for Queensland practitioners. Outsiders will benefit from it too. For details about this publication, go to www.sclqld.org.au/publications.

Reviewed by David Ash