

15 April 2009

Dear Productivity Commission,

12 month limit on Territorial Copyright (Parallel Importation)

Attached please find an article, published 29 March 2009 in the Sun-Herald (Sydney) explaining my opposition to any change to Australia's important and successful copyright provisions as currently enshrined in law.

Please protect the income of Australian writers, and the future of Australian writing by opposing any time limit on territorial copyright.

Sincerely yours,

Leslie Cannold

Dr Leslie Cannold

St Kilda South, VIC 3182

EXTRA

WaterstreetLife

CHARLES WATERSTREET



The mob shows no mercy

First, a sense of proportion; at the time Marcus Einfeld wrote a false name for the driver of the Lexus at the heart of the sorry case that saw him taken into custody this month, the maximum, I repeat, the maximum fine for making a false declaration of that nature was \$1000.

Second, a declaration: I've known Marcus for 30 years and worked on many cases with him - some contentious, some not.

That said, has there ever been a more pernicious avalanche of bile and hate by the press directed at a man who spent the previous 70 years of his life attempting to build a better Australia, a better world? A less circumspect man than myself might have written that he is not the first Jew they have crucified.

Peter Fitzsimons of this paper is not alone to query the crushing sentence of the Supreme Court. The legal basis of the punishment will be analysed on any appeal that is lodged. It will not be an easy task for an appeal court to choose between the judgment of a single judge and the misjudgment of a retired judge. It is not the law I want to address: it has been full of holes - inadequate, chaotic and mysterious - since the Ten Commandments. I make my living pointing this out.

But the whole head-on-a-stick reaction of the press, radio callers and lip-licking popularists is another matter; it reeks of what mobs have always wanted - blood, especially if it is different from theirs. It is embarrassing to witness. It is cruel beyond words. It should be un-Australian. Oh, where are the angels of mercy? When should you be able to call upon the reservoir of good graces and goodwill you have built up over a lifetime? Why do we need sacrificial lambs?

There were those who said Marcus Einfeld had too many speeding tickets on himself anyway. They called him a show pony, a show-off. Australians have a deeply ingrained tall grey-haired poppy syndrome; no one is better than anyone else, get out the hedge clippers if anyone dare grow too far. Our press are famous for their hatchet jobs.

Justice is not a scantily clad woman blindfolded as if about to be shot or whipped, holding a set of gram scales. Justice is humanity with a heart. Judges are first and foremost human beings with all the lacklustre luggage we each carry. They are able to judge others because they too share common origins, frailties, characteristics, sorrows, temptations, passions of the DNA.

The moment we expect a



Judges are first and foremost human beings.

judge to become superehuman, then they lose the right to judge others because, if they are not human, they are not humane. So when an ex-judge falters we ought not act as if we were in the Colosseum and the lions and the Christians are tied with 10 minutes to go. We respect judges not for rising above us but only for taking on the burden and still being among us.

I had lunch with Marcus the day before he went away. I returned a copy of the Jewish Prayer Book he had absentmindedly left in my chambers some months earlier. I toyed with giving him Jeffrey Archer's *A Prison Diary* as a joke and, for once, resisted.

He had long embraced his guilt. He worried for his children and his family; the Crown had earlier subpoenaed his 96-year-old mother. Prostate cancer meant he bled often and needed to urinate hourly. The eloquent evidence of the Aboriginal woman who spoke for him in court moistened his eyes as he recalled her. There was no self pity. He had long graduated from that school. He was a better person than he had been and he was a damn great person.

He has not driven a car since the day he gave false evidence. He broke his leg shortly afterwards. He travelled by bus with his crutches to fulfil his obligations in town, at the Synagogue, in court. Suffering, like superannuation, it seems, does not build a nest egg of goodwill in the public sphere. Much of his life involved

public service. As a barrister, he was an advocate for the oppressed: workers' compensation claimants, criminals and, ironically, the late Lionel Murphy after his acquittal of attempting to pervert the course of justice. (That was before Murphy faced a Royal Commission into his links with Abe Saffron.) In the interests of being even handed, I must add that not all Marcus's causes were for battlers: he won a trial for Don Lane on a charge of pot possession. He was an advocate for causes that were unpopular at the time, such as the alleged Greek Conspiracy cases, the convictions in the Ananda Marga case. He won his cases by force of persuasion, hard work and tenacity.

As a judge, he was known as a bleeding heart. *Herald* columnist Paul Sheehan criticised him for having had more successful appeals by the Government against his decisions on immigration as a justice of the Federal Court than any other judge. Oh, give me a break. He gave the homeless, the disenfranchised, the stateless, boat people fleeing wars we started the benefit of the doubt. The label is a badge of honour.

He overturned legal presumptions and brought a new equality before the law. He was aligned against the forces of the state. He spent four years as president of the Human Rights and Equal Opportunity Commission and 15 years as a justice of the Federal Court. Judges work their butts so hard, it is a wonder that they can sit at all. They work for a fraction of what they could earn in private practice. Paul Sheehan has appointed himself as the national undertaker commissioned to bury Living National Treasures.

Marcus, in his retirement, became a legal activist Jew who reached out. He arranged to

chart a legal system for Palestinians to encourage the making of a nascent, peaceful Palestinian state. He scoured the bookshelves of Australian lawyers to send their surplus legal books to Palestinian law libraries and to the libraries of other peoples trying to build fledgling states. He drafted the outline of a Palestinian constitution. He was foundation president of the Australian Paralympics Federation.

Unlike those men who build a financial or corporate empire and, having amassed their fortune, give some of it away, Marcus built an empire of good works and a lifetime of selfless dedication to creating a fairer society.

Yes, he lied in court and continued to lie having been caught in a tragic web of his own making. Yes, the original offence was relatively trivial, but the consequences were serious. He did not lie to cover up murder, rape or robbery. His fall from grace is truly Shakespearean; his character flaws revealed for all to see.

Marcus was a patron of the Australian Association of Jewish Holocaust Survivors and Descendants. It is ironic that a German word best describes the media bloodlust that accompanied his fall: schadenfreude. It means getting pleasure from the misfortune of others. There has been a shared schadenfreude within the media and elements of the public. We should resist it and remember that a 70-year-old, once proud man faces two to three years looking "upon that little tent of blue that the prisoners call the sky". After our last lunch for some time to come, the least I could do was pay for it.

Charles Waterstreet is a Sydney barrister and author. cwaterstreet@gmail.com

MORAL MAZE

LESLIE CANNOLD

A word for the writers

AUSTRALIAN publishing is a success story. In contrast to the uneven product of the heavily subsidised film industry, publishing continues to go from strength to strength. About 45 per cent of general-audience books sold in Australia have been published here, and 40 per cent of the top 5000 trade books have Australian authors. Not bad for a small island nation.

So why is the Rudd Government poking sticks at a winning game? Why has it asked the ideologically purist Productivity Commission to consider the parallel importation issue again?

The debate about parallel imports may seem confused and arcane but it's one that affects us all.

Do you read? Watch films, many of which are adapted from books? Proposed changes to copyright law will mean fewer Australian writers with less time to write. This means fewer books, and so less jobs in publishing, with predictable downstream effects on printers and independent booksellers.

The Productivity Commission wants the Government to reduce the protection Australian authors have from parallel imports. If it is successful, one year out from the publication of the Australian edition of their book, authors would find foreign copies being flogged by "would-you-like-a-book-with-that" retail chains like Dymocks and Kmart at prices that will earn them little or nothing at all. They would find themselves alone among their American and British counterparts in being made subject to such let-the-market-rip forces.

This is why Australian writers wrote to the commission to plead for the retention of the current law. Most authors earn peanuts. The average writer's income is \$11,000 and practically no one makes enough to live off their work. No wonder the commission's proposals are scaring writers to death. Says one, who estimates that the changes would reduce her Australian-made income by two-thirds: "The money I make from... copyright to my work is my livelihood; the way I pay my mortgage and eat. Proposing changes to copyright laws are, to me, the equivalent to discussing redundancy for an employee... I have attempted to keep alarm and fear from my tone when writing this submission. It wasn't easy."

The argument that changes to the law will benefit consumers, isn't backed by facts. In fact, a comparison provided by a conglomerate of 180 independent booksellers, found Australian books were cheaper than editions sold in the US and Britain. Of course, a convulsion in exchange rates could alter that but is anyone seriously suggesting we hang such critical cultural policy on prevailing rates of exchange? Even the commission doesn't claim the current law makes Australian books dearer. Only that it has the potential to do so.

So what gives? This is the sixth inquiry into parallel importation in just over 20 years. Why keep pushing to change a legal framework that was updated in 1991 and nearly all stakeholders agree is working well?







Independent publisher Henry Reynolds reckons it is the ideology of economic rationalism at work. And that former NSW premier Bob Carr sits on the Dymocks board and has been agitating for change.

Change for the better or to toe an ideological line? Free trade for Australian authors alone, or fair trade for all? Let's hope for good sense when the Rudd Government comes to decide.

leslie@cannold.com
www.cannold.com



DR LESLIE CANNOLD

-  [Home](#)
-  [About Me](#)
-  [Events](#)
-  [Media](#)
-  [Books](#)
-  [Academic Work](#)

Writer, Commentator, Ethicist, Researcher

Parallel Imports and Copy Wrongs

29 Mar 2009

Australian publishing is a success story. In contrast to the uneven product of the heavily subsidized film industry, publishing continues to go from strength to strength. Around 45% of general audience books sold in Australia have been published here, and 40% of the top 5000 trade books have Australian authors. Not bad for an island at what Former PM Paul Keating reportedly described as the universe's arse-end.

So why is the Rudd Government poking sticks at a winning game? Why has it asked the ideologically purist Productivity Commission to consider the parallel importation issue again?

The debate about parallel imports may seem confused and arcane, but it's one that affects us all.

Do you read? Watch films, many of which are adapted from books? Proposed changes to copyright law will mean fewer Australian writers with less time to write. This means fewer books, and so less jobs in the publishing industry, with all with predictable downstream effects on Australian printers and independent book sellers.

The Productivity Commission wants the Government to reduce the protection Australian authors currently have from parallel imports. If they are successful, one year out from the publication of the Australian edition of their book, authors would find foreign copies being flogged by "would-you-like-a-book-with-that" retail chains like Dymocks and K Mart at prices that will earn them little or nothing at all. They would find themselves alone among their US and UK counterparts in being made subject to such let-the-market rip forces.



This is why Australian writers wrote to the Commission to plead for retention of the current law. Most authors earn peanuts. The average writer's income is \$11,000, and practically no one makes enough to live off their work. No wonder the Commission's proposed changes are scaring writers to death. Said one, who estimates that changes to the law will reduce her Australian-made income by two-thirds: "The money I make from...copyright to my work is my livelihood; the way I pay my mortgage and eat. Proposing changes to copyright laws are, to me, the equivalent to discussing redundancy for an employee...I have attempted to keep alarm and fear from my tone when writing this submission. It wasn't easy."

The counter argument, that changes to the law will benefit consumers, isn't backed by facts. In fact, a comparison provided to the Commission by a conglomerate of 180 independent booksellers, found Australian books were actually cheaper than editions sold in the US and UK. Of course, a convulsion in



What, No Baby? takes us on journey into the lives of



contemporary women who plan to have it all - marriage, motherhood and work - yet have been derailed by reluctant men, insatiably demanding jobs and ever-climbing expectations of what it takes to be a "good" mother.

more 
purchase 



The Abortion Myth forges a new women-

centred abortion ethic capable of preserving a woman's right to control her body and her freedom to choose or reject motherhood.

more 
purchase 

exchange rates could alter that, but is anyone seriously suggesting we hang such critical cultural policy on prevailing rates of exchange?

Even the Commission doesn't claim that the current law makes Australian books dearer. Only that, in what it admits is a largely data-free zone, that it has the potential to do so.

So what gives? This is the 6th inquiry into parallel importation in just over twenty years. Why keep pushing to change a legal framework that was updated in 1991, and nearly all stakeholders agree is working well?

Independent publisher Henry Reynolds reckons it's ideology at work. That despite the success of Australia's parallel importation laws, they remain a pebble in the shoe of economic rationalists. And that former NSW Premier Bob Carr sits on the Dymocks board, and has been agitating for change for years.

Change for the better, or to toe an ideological line? Free trade for Australian authors alone, or fair trade for all? Let's hope for good sense when the Rudd government comes to decide.

Publication History

Parallel Imports and Copy Wrongs, *Sunday Sun-Herald (Sydney), Moral Maze*
29 Mar 2009