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THE HON SIR RICHARD BLACKBURN OBE

The death of Richard Arthur Blackburn, the former Chief Justice of the Australian Capital Territory, on 1 October 1987 at the early age of 69 years was a sad loss to the legal and university communities of Australia and to public life itself. It has special significance to the University of Adelaide, where from 1950 to 1957 he was Bonython Professor of Law.

Richard Blackburn was one of a group of young Professors, including Peter Karmel, JJC Smart and Hugh Stretton, who came to the University when post war growth was quickening. On his appointment as Bonython Professor at the age of thirty-two he had already achieved distinction. His student life at St Peters College and his time as an undergraduate at St Marks' College, University of Adelaide, was marked by high achievement. He graduated with First Class Honours in English Literature, and in 1939 he was awarded the John Howard Clark Prize as the candidate who was placed highest in the final examinations. He was chosen as Rhodes Scholar for 1940. Active service in the AIF in North Africa and Papua New Guinea, and the good fortune not to be 'killed, wounded, imprisoned or made invalid by the efforts of the King's enemies'¹ left him with the rank of Captain and with an enduring respect and sense of duty towards His Majesty's armed forces.

At the end of the Second World War Richard Blackburn took up his Rhodes Scholarship, becoming President of the Junior Common Room at Magdalen College, and in 1949 he and another distinguished South Australian, the Hon Mr WAN Wells AO QC (now a former Judge of the Supreme Court of South Australia) were the first 'Dominion' students to be awarded the Eldon Scholarship. Undoubtedly these were formative years, and many times later in life did Sir Richard speak of his good fortune to participate in 'not only a wonderful education in law for among my tutors were the late Dr JHC Morris and the late Sir Rupert Cross — but a life and experience which is unforgettable'.²

His return to Adelaide after the Oxford years meant more than merely commencing an academic career. In 1951 he married Bryony Helen Dutton, daughter of Mr and Mrs HH Dutton. His wife, a woman of independence of spirit and of interests, was to prove his complement and his unfailing support throughout the years that followed. Their daughter and son were born while Richard Blackburn held the Bonython chair.

In the early 50's the young professor, moving with the times, initiated important changes in the teaching of law. Not the least were the moves firstly to two full time student years and secondly to an increasing introduction of full time academics, among them DP O'Connell, who were to carry the load previously borne by part time lecturers from the

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1 Blackburn CJ; unpublished transcript of Sitting of Supreme Court of ACT to farewell the Chief Justice 29 March 1985 at 25.

2 Ibid 25.

profession, working under a single full time academic, the Professor.³ Curriculum reform described as ‘the most far ranging revision of the course since its foundation 70 years earlier’ was achieved under his leadership, though not without, as Sir Richard later recalled, ‘some opposition’ from the profession ‘led with a combination of wit, forensic vigour and imperturbable good humour, by the late Charles Brebner’.⁴

As Bonython Professor of Law, Blackburn made an indelible impression as a teacher on many of his students, as much for the clarity of his exposition and the standards which he expected, as for the patience, consideration and understanding he showed for the individual grappling with the discipline of law in whatever circumstances. Of his classes, one former student wrote ‘God help you if you made a superficial, easy analysis or suggestion and tried to get away with it’.⁵ After his death another wrote

‘In the Law of Contract all the force and vigour of Dick’s personality and intellect were brought to bear, and I still remember these lectures as wonderfully clear statements of often very difficult concepts. No other lecturer made anything like the impact on his students.’⁶

It was typical of Professor Blackburn’s concern for the welfare of individual students that he proposed, unsuccessfully in the event, a system by which each student could meet with several faculty members each year to discuss and assess that student’s achievements and problems. Nor were academic concerns the limit of Sir Richard’s involvement in university life; he took a positive interest in the University Debating Club and maintained his great interest in the Army as a Lieutenant Colonel and the Commanding Officer of the Adelaide University Regiment. Even when, in 1957, he resigned the Bonython Chair this interest continued, and he became Commanding Officer with the rank of Colonel of the First Battalion of the Royal South Australian Regiment, a post held from 1962 to 1965. Fittingly, he was awarded an OBE in the Military List of 1965.

Yet another facet of Professor Blackburn’s enthusiastic contribution to the life of Adelaide University was his membership from 1951 to 1966 of the Council of his undergraduate college, St Marks. He was responsible for a number of improvements to the Constitution of the College, which always stood high in his affections. In 1986 he was elected an Honorary Fellow of St Marks’ College.

With his departure from the Bonython Chair his second legal career as a practitioner commenced. As a partner of the well known South Australian firm of Finlaysons his qualities of careful and patient analysis earned the respect of his partners and clients alike.

The year 1966 saw the beginning of his judicial career when he was appointed to the Supreme Court of the Northern Territory. The

3 The writer is indebted to Vicki Waye and Jane Crean, Research Assistants at the University of Adelaide Law School for their assistance in obtaining and surveying Faculty of Law Minutes 1950-1958.

4 Blackburn, ‘Law School Curricula in Retrospect’ (1983) 9 Adel LR 43.

5 Sermon by The Ven Ian George at Funeral Service of Richard Arthur Blackburn 3 October 1987.

6 Letter to Lady Blackburn 22 October 1987 from Malcolm Montgomery LLB, a practitioner of the Supreme Court of South Australia.

translation from a commercially oriented practice in Adelaide to judicial responsibilities in the Darwin of the late 1960's, still with some of the atmosphere of a frontier community, was not easy for one commencing life on the Bench. One of the addresses in welcome when he presented his Commission was from Mr John Lyons, 'a practitioner well known to this day whose not infrequent ferocity with Judge and witness alike earned him the sobriquet of 'Tiger' and whose wiliness as an opponent and earthy charm with the jury combined with the remains of a fiery mane caused him often to be referred to as 'the Red Fox'.' The new Judge 'expressed very great misgivings, indeed trepidation at the prospect conjured up by Mr Lyons' speech'⁸ in welcome. Mr William George Cridland records however that 'It is a matter of history that His Honour proved more than equal to the task. His erudition and academic background were complemented by practicality, adaptability, industry and humanity.'⁹

Nor was his time in Darwin confined to the law. Rather, he had wide community involvement, becoming President of the Arts Council of the Northern Territory and playing an important and influential part in the formation and development of the Aboriginal Theatre Foundation. With these wide interests and contacts he and his wife won a place in the hearts of many Territorians. Both the Judge and Mrs Blackburn were qualified light aircraft pilots and were known for their adventurous exploits in visiting remote, interesting places in Northern Australia and even in the Indian Ocean.

It was during his tenure as a Justice of the Supreme Court of the Northern Territory that Richard Blackburn was called upon to deal with the historic case *Millirrpum v Nabalco*¹⁰ in which aboriginal land rights were raised before the Court with the far-reaching contention that 'at common law the rights under native law or custom of native communities to land within territory acquired by the Crown were rights which persisted and must be respected by the Crown itself and by the colonising subjects'. The judgment accepted the 1889 Privy Council decision in *Cooper v Stuart*¹¹ as decisive against the plaintiff's contention. In that case the Privy Council expounded the doctrine that Australia was, at the time of British colonisation in 1788, not conquered or ceded, but rather settled or occupied, and that the continent of Australia was to be classified as within the legal status of *terra nullius* and without inhabitants whose tenure of land had to be recognised by the legal doctrines of the time. The decision, however, was of momentous effect. It formed the departure point for the Woodward Royal Commission which led to the enactment of the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth).

The year 1971 saw Richard Blackburn leave one territory for another and take up his Commission as a Judge of the Australian Capital Territory. The move in no way diminished the Judge's vigour, and soon he found himself Chairman of the Law Reform Commission of the Australian Capital Territory, a post which he held between 1971 and 1976.

7 WG Cridland, unpublished transcript of Memorial Sitting of Supreme Court of Northern Territory on the occasion of the death of Sir Richard Blackburn, 7 October 1987 at 4.

8 Montgomery, above n 6 at 4

9 Ibid.

10 (1971) 17 FLR 142.

11 (1889) 14 App Cas 286.

The Hon Justice Michael Kirby, CMG, President of the Court of Appeal of New South Wales, delivering the third Blackburn Lecture, a series of lectures inaugurated by the Law Society of the ACT in honour of Sir Richard, said:

‘His commission was energetic: a reflection of his own personality. It delivered eight reports from the first in 1972 on a new civil procedure for the Court of Petty Sessions to the last in 1976 on the law relating to conveyancing. Sadly, the proposals of the Commission were not quickly translated into law. Many have still not been. In the attention to heady national affairs, the needs of law reform in this Territory are often overlooked. This was a source of the most intense frustration to Justice Blackburn. I believe it is a reason why he came to be a vigorous supporter of my endeavours to promote a new sense of the urgency of law reform. He was a stalwart champion of the public discussion of law reform proposals. Where other judges doubted the propriety of judicial activism in the cause of law reform, he never wavered. On the contrary, whenever we met, he was full of encouragement, stimulation and even provocation to more effort and outspokenness.’

In 1976 he became Pro-Chancellor of the Australian National University, and, in the words of Peter Karmel, by now an Emeritus Professor and a member of the Universities Commission ‘he displayed that same scrupulous fairness that he had shown as a young man at the University of Adelaide, a characteristic that won him respect as a University Teacher, a Judge and a university office holder throughout his life!’¹²

Though Richard Blackburn never sought honours or outward recognition, his sense of duty and wish to serve nevertheless induced him to accept further high offices that brought with them onerous responsibilities. Thus in 1977 he was appointed Chief Judge of the Australian Capital Territory, and in the same year he was appointed a Justice of the Federal Court. He was elevated to the position of Chief Justice of the Australian Capital Territory in 1982. In the following year he was made a Knight Bachelor, recognising his many achievements both within the law and in the wider community.

As Chief Justice of the Australian Capital Territory, Sir Richard, as he had done in his previous judicial appointments, generated in the hearts of the legal profession a genuine admiration and affection. Mr J Faulks, speaking on the occasion of his retirement as Chief Justice on 29 March 1985, spoke these words:

‘Amongst the lessons we have learned from you, Chief Justice, is the importance of humanity and understanding in the practise of the law. These qualities have been demonstrated again and again during your time on the Bench. . . . Your Honour has also shown us that excellence in knowledge and even in ability is nothing without true humanity and concern for others. Your Honour has shown in word and in example that humility and an appreciation of the other’s point of view

¹² Emeritus Professor Peter Karmel; Australian National University Reporter 23 October 1987 at 6.

are the hallmarks of a good lawyer, whether he be judge, solicitor or barrister.¹³

Although he held high office in many fields, it is fair to say that Sir Richard Blackburn always thought of himself as a lawyer, a legal professional. It is typical that his last words whilst presiding at his farewell sitting in the Supreme Court of the Australian Capital Territory were to the legal profession. On that occasion he said:

'If we want a society in which order and cohesion are the guardians, and not the enemies, of liberty and moral responsibility, then I assert that the presence of an efficient and devoted legal profession is indispensable. You are indispensable to the Court, you are indispensable to the community. To you I declare my gratitude, my affection and my confidence in the future which is in your hands.'¹⁴

Even Sir Richard's departure from the Bench, prompted by ill health, did not see any diminution of his sense of duty or desire to serve. He continued on as Chancellor of the Australian National University, a post which he had held since 1984, dispensing 'wise counsel and calm judicious chairmanship of the University Council'¹⁵ In this he persisted until very shortly before his death.

Sir Harry Gibbs, formerly Chief Justice of the High Court, in delivering the second Blackburn Lecture summed up Sir Richard's judicial qualities thus:

'A deep and scholarly knowledge of the law, together with the experience and ability necessary to apply that knowledge in practice, complete dedication to the duties, often onerous, of his office, patience, courtesy, dignity and absolute integrity and propriety in his public and private life.'¹⁶

The force of this perception is nowhere more clearly evidenced than by the fact that Sir Richard was called upon, with two other distinguished retired judges, The Hon Sir George Lush and The Hon Mr WAN Wells, to consider the questions arising in relation to the alleged misbehaviour by the late Justice Murphy. This task he accepted notwithstanding his poor health, and it is a signal recognition of the reputation for impartiality and fairness of consideration which he established throughout his life.

¹³ Blackburn CJ, above n 1 at 12.

¹⁴ *Ibid* 37.

¹⁵ Karmel, above n 12 at 6.

¹⁶ Sir Harry Gibbs, The Blackburn Lecture for 1987 (1987) Australian Federal Police Association Journal October/November at 15.