

ARTICLES

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JOHN BRAY: THE MAN AND THE JUDGE

“Even lawyers are partly human” wrote A. M. Honoré in his biography of the Roman jurist Gaius.¹ Some are more human than others. The human part is very large in John Bray.

There are many who know him well either in his public or private life, many who could call him a friend, and many therefore who could contribute to the picture of him as a man. What appears here is only something of what could be said, some qualities salient as we see them. The whole man is more than this brief picture.

“Human” is a wider term than “humane”. “Humane” suggests kindness, compassion, a tempering of justice with mercy. All of these John Bray certainly has. “Human” goes beyond this and contains at least three other things. The first of these is an understanding, deeper than compassion, of personal interior disorder. John Bray has a power of penetration, a probing restlessness, uneasy because unable to be satisfied, into those dark springs of our activities that produce not only the cases in the criminal courts but also the misdeeds and unhappinesses that never come to court. Hence his belief, often publicly expressed, that though there must be prisons, for some people at least and for some time at least, prisons do little good and are not the answer to the crimes for which men and women are sent there.

Hence also comes the quality which seems to us to stand out in him — tolerance. True tolerance, such as his, is not the weakness of passivity or of trying to please everyone, nor is it only pity. It is an abstaining from moral judgment. He has abstained from it as a judge — an act of self-disciplined tolerance because, although a judge is rarely if ever really called on to make moral judgments in deciding the issues of fact or law which come before him, many of course do make and announce them. He has abstained from it in both public and private life, because he has seen some distance into that world within us where things are not black-and-white, where all the pressures of ignorance and the emotions can produce actions which most others will condemn and punish. He has understood that most absolutes are not absolute and that the wise man knows that he seldom if ever has all the facts in a concrete case within his comprehension.

This tolerance has shown in him in private life through many years. A long time ago when he was still at the bar a fellow practitioner and a close friend related how he and others had often tried, in the end as a test or challenge, to “get John Bray to say something unpleasant about anyone”, adding “we have never been able to”. That is a very rare quality. It is of course not only tolerance but also strength of character. Colleagues and acquaintances can be secure that no gossip or unkind comment is spoken

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1. Honoré, *Gaius* (1962), xvii. (Our thanks are due to the Oxford University Press for permission to use this quotation).

of them behind their backs. Perhaps at times loyalty to his friends has led him to judge too severely any action of others which has appeared to harm a friend, but that is the only wart that appears on the canvas of a magnificently tolerant and fair mind. It is hardly necessary to say that this extreme loyalty, so far as it has perhaps given forth in him anything approaching undue criticism towards those who have attacked his friends, never affected his work as a judge.

The second element of the word "human" is one that is widely known to belong to him. This is the cultivation of the whole intellect.

In law he has made his mark very clearly and deeply in South Australia and indeed beyond. There are those who believe that his intellectual capacity has not been surpassed by that of any judge in this country or for that matter in the United Kingdom. His capacity for rapid work is prodigious, as many can testify. The work he has done most carefully in both research and writing has often been produced speedily; care and speed in him have gone hand in hand.

Beyond law, though, is the whole polished mind: the mind of easy familiarity with classical and modern literature, of exact and yet graceful use of words, of a lucidity that can see and expound complicated things with simplicity. It is a mind by nature both receptive and active which has become exceedingly rich. It takes delight in the beauty of words and has seen no reason why abstract matters of law or commonplace matters of fact should not be clothed with that beauty. His great knowledge of common law and of Roman law, his pleasure in the Latin, Greek and English tongues, his loving acquaintance with poetry old and new, his own poetry, his prose style — lively, strong, often pungent, often ironic, always clear — are all facets of one profound and urbane mind. He is perhaps as good an exemplar as one could find of Newman's ideal of the truly educated man:

"As the body may be sacrificed to some manual or other toil, whether moderate or oppressive, so may the intellect be devoted to some specific profession; and I do not call *this* the culture of the intellect. Again, as some member or organ of the body may be inordinately used and developed, so may memory, or imagination, or the reasoning faculty; and *this* again is not intellectual culture. On the other hand, as the body may be tended, cherished, and exercised with a simple view to its general health, so may the intellect also be generally exercised in order to its perfect state; and this *is* its cultivation.

Again, as health ought to precede labour of the body, and as a man in health can do what an unhealthy man cannot do, and as of this health the properties are strength, energy, agility, graceful carriage and action, manual dexterity, and endurance of fatigue, so in like manner general culture of mind is the best aid to professional and scientific study, and educated men can do what illiterate cannot; and the man who has learned to think and to reason and to compare and to discriminate and to analyze, who has refined his taste, and formed his judgment, and sharpened his mental vision, will not indeed at once be a lawyer, or a pleader, or an orator, or a statesman, or a physician, or a good landlord, or a man of business, or a soldier, or an engineer, or a chemist, or a geologist, or an antiquarian, but he will be placed in that state of intellect in which he can take up any one of the sciences or callings I have referred to or any other

for which he has a taste or special talent, with an ease, a grace, a versatility, and a success, to which another is a stranger."²

Despite all that great knowledge of law and immense power of swift application, law is not — at any rate one can well suspect that it is not — his greatest love. Literature is; or perhaps, more correctly, humankind and its doing is, particularly in its warmth and in its best expression. John Bray is one to whom Cicero could well have written, as he wrote to his friend the rising young lawyer Trebatius: "you are not the man to find your delight in the civil law alone".³

The other Roman whom he resembles even more is Servius Sulpicius Rufus, the one whom Cicero praised above all other lawyers because to vast learning in law he added the whole armoury of the fully educated man; in particular, the great power of oratory springing from (as Cicero and his contemporaries understood it to do) the universal culture embraced in philosophy. "He brought" said Cicero, "the greatest of skills [dialectic] to the confused juristic responses and actions at law of others".⁴

John Bray is indeed not an orator in the common meaning of that word today nor indeed does he approach the perfection of Cicero's meaning. Yet Cicero would have accepted him. There is no golden voice, but the compelling power is there which forces men to listen and to heed. He was very effective at the bar with juries. He could well apply to himself Mark Antony's words, "I am no orator, as Brutus is",⁵ for though his voice might lack force or music, it achieved the results he wanted.

The third element in being human has perhaps already been touched on in what we have said of the second. The largeness, acuteness and suppleness of mind are coupled with a scorn of pretentiousness, social clambering for position, and that false valuation which ranks people by what they can do or what they have or whom they know, not by what they are. So he takes his acquaintances and his friends too as they are, rich or poor, intelligent or dull, well-dressed or badly-dressed, old or young, people who count or people who do not. He detests social functions and is mostly far more at ease and far happier among those people that respectable society would often look at askance; though he has respectable friends too of course, like us.

As was that Roman lawyer Trebatius whom we mentioned, so also this Adelaide lawyer is fond of swimming: the former, so we are told, in the Tiber and apparently too in the French rivers and even in the North Sea when he was up there in Gaul campaigning with Julius Caesar; the latter, as the newspapers never tire of resurrecting, taking public transport to the beach on summer days, clad in an old shirt and shorts and sandals. That habit is but a part of his strong independence, holding hard to his right to please himself in friends, dress, and activities; in short, his right to be the person in all ways that he wants to be. Through all there is the quick deft humour, irrepressible really, for it is always peeping through, sometimes hard to hear in the soft voice, genial and never unkind, yet as keen as a razor's edge.

2. Newman, *The Idea of a University: Discourse VII—Knowledge Viewed in Relation to Professional Skill*.

3. *Neque enim tu is es quem nihil nisi ius civile delectet*—*Topica*, XIX, 72.

4. *Brutus*, XLI, 151-152.

5. *Julius Caesar*, III, 3.

Three vignettes catch something of his almost infinite variety. The first is the judge on the bench, formally robed, dignified, very learned in the law, polished, sharp minded, impartial, yet personal, never cold. The second is his reading of his paper on "Catullus as a Lover" to the Classics Association, his eyes agleam with enthusiasm, his voice, sensitive to every nuance of word, rhythm and meaning, bringing out with gusto and delight the glorious Latin verses. The third is the man in any casual, even old clothes in any company serious or merry, or wandering alone through a book store, responsive and alive though always quiet, a modern Scholar Gypsy:

"A fugitive and gracious light he seeks,
Shy to illumine".⁶

We have qualified his infinite variety with "almost". His tastes have their limits; they are not catholic. He has no interest in nor knowledge of sport, nor did he ever have. Had he lived in classical Greece, loving it then as he does now, he would have been hard put to it to decide whether or not to go to the Olympic Games, with the chance of meeting Pindar there and yet finding himself at a competitive sports meeting. Nor does a knowledge or love of automobiles figure in his life. Some other defects similar to these hardly fit him for Australian society but he has risen high despite them.

The cleavage between the professional world of law and the world where he spends so much of his private time is not a complete one, but the cleavage is still markedly there. It was striking to be with him in legal company and observe and hear the deference, the "Your Honour's" and "Sir's" and "Chief's", even in informal gatherings, knowing that those who addressed him would be shocked at the idea that even privately they could address him in any other way; and then to be with him at any one of those manifold meetings or relaxed groups, or with friends here and there, in some house or hall or room or bar, and observe and hear his friends and acquaintances of all ages and types calling him "Bray" or "John". There are those who frown on this kind of thing and think it is letting both respectability and authority down; to others it is a mark of real freedom, which many who believe themselves free do not possess.

Indeed his lack of knowledge of sport and cars has not harmed him with those who like these things. Only recently a taxi driver told one of the other judges of the Supreme Court what pleasure it gave him to point out to passengers the Chief Justice whenever he saw him in the street in his shirt and shorts and sandals. He was proud that the Chief Justice was like the common man. This seems indicative of the fact that South Australia has learnt to accept and respect his view that each person has the right to select the attire he wishes to wear; as also does the editorial in *The Advertiser* on his retirement, speaking of the dignity with which he had upheld his position. He impressed people indeed rather more than he realized, and at times when he thought he was unknown. He does in fact seem to have nourished for a time a fond belief that he could wander around the city incognito, an illusion which received a severe jolt one day in Athens when after a swim on a summer's day he walked to the foot of the Acropolis and removed his shirt, by this time wet with sweat, wrung it out and laid it on the stone beside him. He sat there in his shorts. Two middle-aged women approached and one said, "Excuse me, but aren't you the Chief Justice of

6. Matthew Arnold, *Thyrsis*.

South Australia?" Then for the first time it dawned on him that anonymity was not for him.

The cleavage between the worlds of his legal office and his private life, as we said, was not a complete one. Each world had some elements of the other.

As lawyer and judge he believed very strongly in tradition. For example, he strongly disapproved of a suggestion that the Royal Coat of Arms in the courts should be replaced by the State Coat of Arms. He never seemed to flinch from wearing full formal court attire, including knee breeches, ruffles, full bottomed wig etc., whenever it was appropriate to wear it. He believes that there should be some kind of court uniform for both judges and counsel. Yet as judge he did not favour formality in dress outside of court and was willing to receive counsel or solicitors in chambers when they were wearing very informal attire, nor did he require parties and witnesses in court to be formally clothed. "No one in a court in this State should be expected to wear a tie." Men in South Australia have come now, thanks to him, to take this ease of dress for granted; and are now startled and sadly amused when at the annual visit to Adelaide of the High Court of Australia the usher at the door hands them a tie from the row he has in readiness.

This same combination of attitudes probably reflects his attitude towards the law. He is clearly a traditionalist in that he relies strongly on the historical background to any rule of law, but in the case of conflicting decisions was ready to cut boldly through questionable precedent, or to move when there was open ground, where not to have done so would have caused injustice. He is conservative too in other ways; in his attitude to education for instance.

As Chief Justice he held a monthly conference of judges — something of an innovation. Here matters which affected the court or the profession were considered. He was unwilling to attempt to impose his views on the other members of the bench and went to great lengths to maintain a true democracy. In making recommendations to the government he never in ordinary matters advanced his own views if these differed from those of the majority of the judges. He carried the maxim *primus inter pares* to its limits. Chief Justices in other courts in this country do not, to the best of our knowledge, apply these democratic procedures. If however the view or recommendation was likely to be an unpopular one and failure to state it as his own might have been or seemed a sheltering behind the opinion of others, he left no doubt where he stood. In the days when it was the prerogative of the Chief Justice to make the recommendations for appointments as Queen's Counsel he made it clear to the government of the day on one famous occasion that although he had consulted his fellow judges it was his decision and his alone that no one would be recommended unless a certain name was included which the government had refused to accept.

One of his other notable characteristics as a judge, which fits the man as one would expect, has been his patience and courtesy in court. Unlike some judges with quick minds he was patient in listening to arguments, at times prolonging the arguments even beyond necessity by assisting counsel with questions; excessively patient at times in the face of specious arguments, to the discontent occasionally of his colleagues on the bench; and always

polite. We cannot recall his ever rebuking counsel for an ill prepared argument.

John Bray did not have to fight so hard as others have had to do for his early opportunities. Coming from a secure and well-to-do family and given every chance of a good education and career, his formidable intellect and enormous power of rapid work transformed every opportunity into success. More admirable however than gifts well used is courage. There is a singular courage in a man who has been ready to lose the good opinion of all the world he came from if that loss was the price to pay for defending civil liberties through thick and thin, or insisting on his own right to develop and live his life in patterns not necessarily conventional, and for others, of course, to do the same.