

POSTSCRIPT: TONY BLACKSHIELD AS A TEACHER AND AUTHOR

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It is an honour to return to Macquarie Law School to give a lecture in Tony Blackshield's name, and also to follow in the giant footsteps of Michael Kirby, who delivered such an eloquent inaugural lecture last year.¹

I was a student of Tony's in 1989, some 24 years ago, in my third year at Macquarie University. He taught me Australian Government I and II, which were then the names of the compulsory constitutional law subjects. Tony's teaching remains firmly entrenched in my memory. Put simply, he was brilliant in the way that he combined an encyclopaedic knowledge of the Constitution with a rich repertoire of anecdotes and stories about the High Court.

He was also a hard task master. Each week we would receive a bundle of new material. It was clear that Tony was determined to include as much as he could, and so tens of pages were presented with the text flush to the margin and in a tiny font. It was an intimidating, if highly rewarding, course.

Tony was renowned for his feedback. I still have some of my assignments from his courses, and my essays show that Tony was not shy in making use of his red pen. As I flick through the pages I can see my feeble efforts at constitutional analysis covered by swathes of Tony's careful responses. Indeed, I wondered at the time why students were subject to a word limit, when the marker was not.

One comment of Tony's that pleased me at the time was his response to a paragraph I had written on the *Engineers Case*.² Tony wrote: 'Very thoughtful and balanced – Coperesque!' On rereading my paragraph, I think that Tony was more than a little kind to me, and far less so to Michael Coper.

I must admit though that I remember less about the content of the thick bundles of reading he assigned to us each week, than his stories. I still use these in my own teaching. I can recall Tony talking about how Justice Lionel Murphy kept a copy of the Constitution by his bedside as a cure for insomnia, and how Justice Edward McTiernan broke his hip, while chasing a cricket in his hotel room, and had no choice but to resign when Sir Garfield Barwick refused to install a wheelchair ramp at the Court.

Tony was an exceptional teacher because he combined intellectual rigour with the life and colour of the law and the people who inhabited it. He imbued what could be a dry subject with its necessary, human side. Indeed, the greatest impact his teaching had on me was not in conveying the basic rules of our Constitution, but in helping me to understand for the first

¹ Michael Kirby, 'A R Blackshield and Realism in Australian Constitutional Law' (2012) 11 *Macquarie Law Journal* 8.

² *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129.

time how legal rules can be dependent on the vagaries of circumstance and personality. More broadly, Tony awakened in me a sense of the connections, actual and potential, between the Constitution and social justice.

I have been very fortunate that my relationship and association with Tony deepened after he taught me in 1989. He supervised my legal honours project two years later and, consistent with his own approach to word limits, permitted me to hand in a monstrous 40 000 word thesis. Its subject was the significance of the High Court's 1951 decision in the *Communist Party Case*.³ In particular, I was determined to unpick the extent to which the decision was a consequence of the people and personalities involved, and how the case had shaped, and had been shaped by, the politics of the time.

Tony's support of me did not cease when I finished my undergraduate studies. He wrote the reference that enabled me to spend a year at the High Court as an associate to Justice Michael McHugh. I was fortunate to arrive in 1992, and so had the opportunity to work on decisions such as *Mabo*⁴ and the free speech cases.⁵ Tony also wrote a reference that turned me away from a full time career at the bar, in that it enabled me to win a junior position as an academic at the Australian National University.

My first act as an academic was to approach Tony with a view to translating his reams of course materials into a text on Australian constitutional law. He displayed an enormous, and generous, degree of trust in agreeing to undertake the project with me, a 25-year-old newly minted constitutional lawyer. That book, *Australian Constitutional Law and Theory*,⁶ has now been published in five editions by Federation Press and has sold over 55 000 copies. The sixth edition will appear in just a few months, sadly, for the first time, without Tony as co-author, as he has now finally taken the step into retirement. Working on this book has been the greatest joy of my academic career and the result has been the publication of which I am most proud.

The book once again displays Tony's relaxed attitude to word length. It extends to nearly 1500 pages and has been nicknamed 'the brick' by law students, no doubt with affection. Despite its size, words are squeezed onto every page, thereby keeping faith with its origins. The book also bears all the hallmarks of Tony's great intellect, which is one reason why it has been one of the most successful Australian legal books of recent decades, and why it been prescribed as the text in a majority of Australian law schools.

Working with Tony on this book has certainly expanded my intellectual horizons. It has formed the bedrock of my knowledge of the field, and through him I have come to know much more than I had expected, or I suspect wanted, about subjects such as the year books of mediaeval England or the proper use of the ellipsis.

³ *Australian Communist Party v Commonwealth* (1951) 83 CLR 1.

⁴ *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

⁵ *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1; *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106.

⁶ Tony Blackshield and George Williams, *Australian Constitutional Law and Theory* (Federation Press, 5th ed, 2010).

There is much more that I could say about Tony and his teaching, ranging from the time he fell asleep mid-class through to the lengthy digressions and good humour involved in our weekly sessions on the *Oxford Companion to the High Court of Australia*.⁷ I will say though that some things are beyond even him. He has taught me many things, but never to sing about the High Court and its cases.

⁷ Michael Coper, Tony Blackshield and George Williams (eds), *Oxford Companion to the High Court of Australia* (Oxford University Press, 2007).