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THE UNIVERSITY OF MELBOURNE

FACULTY OF LAW

DINNER IN HONOUR OF

THE RIGHT HON SIR NINIAN STEPHEN KG AK GCMG GCVO KBE

ON HIS 80TH BIRTHDAY

ORMOND COLLEGE

THURSDAY 24 JULY 2003

SIR NINIAN STEPHEN - INTERNATIONALIST

The Hon Justice Michael Kirby AC CMG

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NEW INSIGHTS

I looked from the window of my Sydney chambers, on a blue day, with sunshine almost of springtime's warmth, waiting for inspiration of things to say worthy of the decade of Sir Ninian Stephen's life assigned to me.

The 1990s are my focus. By then, our hero had passed through the ages of a young barrister and busy silk; through the

* Justice of the High Court of Australia.

years as a judge in Victoria and on the High Court of Australia; through the years of service as Governor-General. He was already decorated and redecorated, honoured and applauded. What was left for him to do? What new peaks could he conquer?

At the moment of my daydreams a new book arrived on my desk: the second edition of Dr Damien Cremean's excellent text *Admiralty Jurisdiction*¹. The frontispiece proudly boasted that it contained a new foreword by Sir Ninian Stephen.

Writing a foreword is an economical way of making a point about one's hobbyhorses without the beastly trouble of writing the book itself. Each foreword writer tends to reflect his or her obsessions. As I turned the pages of Dr Creamean's work, I pondered on how others would have composed a foreword for it. Justice Gummow, for example, would possibly have written about "The fusion fallacy of law and equity: Admiralty analogues". Justice Heydon would have put together a moving piece: "Admiralty law - a dark chapter of judicial activism". No two forewords are alike. So what would Sir Ninian say?

¹ D J Cremean, *Admiralty Jurisdiction: Law and Practice in Australia and New Zealand* (2nd ed, 2003), Federation Press.

In keeping with his original and somewhat quirky way of seeing things, he opened not with an erudite comment on the law but with a homely, nostalgic remembrance of times past²:

"I always thought it quaintly charming that, at least until the 1950s, the Victorian Supreme Court still boasted a signboard announcing the presence there of the Vice Admiralty Court, a court abolished for Victoria and New South Wales, in 1911 and for other States twenty years earlier. But to the common lawyer, admiralty jurisdiction still retains a flavour of the exotic".

One can just picture Stephen QC, with a young Brian Shaw in tow, rushing past the noticeboard of the Supreme Court - Shaw's mind on the complexities of the case they were about to open. Ninian's mind was elsewhere, as he cast his eyes to the gold lettering of the board and the images it conjured up of Vice Admirals in days of yore. The human mind is a wonderful instrument. Great spirits see the same matter but view it in a different context. That capacity provides the breakthroughs of knowledge and understanding. To some it is given to see old things in different ways.

In his foreword, Sir Ninian Stephen comments on how, virtually from the start, admiralty law in England drew upon

² *Ibid*, iv.

international influences in a manner different from the usual approach of the common law³:

"[S]ince its early British contributors were civilian lawyers who took up the work of continental jurists ... by the early 17th century [they] came close to conferring upon the Court of Admiralty exclusive jurisdiction in commercial law, the Law Merchant".

Although, as he records, the hostility of the English Parliament's common lawyers after the Civil War ensured that the evolving fields of commercial and maritime law were largely absorbed into the mighty stream of the common law, the international impact of the Law Merchant remained an undercurrent. It provided a counterpoint that encouraged admiralty lawyers to embrace different doctrines and novel procedures which the common lawyers did not have the imagination to invent. Even in a brief comment on an area of law so peculiar and specialised, Ninian Stephen's mind perceived different things. He beckons the reader to a receptiveness to universal legal developments, made easier in admiralty law because of the global phenomenon of the sea itself and those who travel upon it.

³ *Id.*, iv.

A RESCUE PACKAGE

During his years in Government House, Sir Ninian Stephen won the friendship of the two Prime Ministers with whom he served: the Right Hon Malcolm Fraser and the Hon Bob Hawke. When he left office as Governor-General, he did not follow the course laid down by his predecessors. He did not return to live in a palace; to a home in the Old Country, to work abroad, to life in exile at home or the sackcloth of years in obscurity.

Soon after departing office, he gave a speech, unburdening himself of a point of view that he had presumably held during all his years as a judge and Governor General but which hitherto he had kept, Trappist like, to himself. In the speech, he suggested the abolition of the Australian States. Even in those quieter and more respectful times, his suggestion was greeted with astonishment by States-righters around the nation⁴. They were most upset that he had secretly harboured such a perfidious thought about the Constitution, with its potential to unsettle the very basis of the federal compact. The calls of "resign" rang out; but there was nothing to resign from. Imagine what would have happened in today's era of media pundits of the neocon persuasion. They would have become ballistic.

⁴ H Charlesworth, "Ninian Martin Stephen" in the *Oxford Companion to the High Court of Australia* (eds T Blackshield, M Coper and G Williams), 643 at 645.

Even in 1989 the speech caused such a furore that it necessitated a rescue passage which Prime Minister Hawke hurriedly set about creating. Its object was to spirit the erstwhile Viceroy out of the country to avoid the rage of the mob and the chattering classes. It was the closest we have ever come to the rescue by the Americans of the Shah of Iran; or by the French who brought the Emperor Bokassa from Central Africa to Lake Annecy, with all his diamonds. Or the deal now being struck to move President Charles Taylor from Liberia to Abuja. The VIP plane was made ready; the parachute was packed. The former Viceroy had to leave for his own safety and for the peace of the people.

But what to do; where to go? At this, Mr Hawke, hit on a devilish idea. He invented a high sounding international office; but one that promised to keep its holder forever locked in backroom meetings in obscure places, preparing documents which, it was expected, would never see the light of day. He was to be like ex-King Constantine of the Hellenes, struggling in London for decades in litigation concerning his family home of *Mon Répos* in Corfu.

And so Sir Ninian Stephen's fourth career was launched. In 1989 he was named Australia's first Ambassador on the Environment. He was banished to a thousand preparatory commission meetings (affectionately known in the trade as prepcoms). They prepared the way for the first international

conference on the environment. Eventually, this took place in Rio de Janeiro. But the trouble was that, by this, Sir Ninian found that he enjoyed this new experience of international diplomacy. He saw the utility of Australia's contributions, however small, in building an effective response to the damage caused by modern civilisation to the global environment. He liked the work. The workers from every land liked him. Australia had discovered a hitherto untapped resource of mixed charm and steely determination that was quickly to be deployed on a wider international stage.

In 1992 the governments of the United Kingdom and the Republic of Ireland appointed him to chair strand two of the talks on Northern Ireland. These were designed to bring the warring factions of Gerry Adams, for the IRA, and Ian Paisley, for the Ulster Unionists, around a table, to replace murder and cruelty with talk and compromise.

Of course, he did not succeed in bringing an end to the Irish Troubles. They had, after all, lasted for centuries. The enmities were deep. The suspicions were deeper. In Ireland, the path to peace is a slow path along winding roads that lead through dangerous glens⁵;

⁵ W B Yeats, "The Lake Isle of Innisfree" in *The Collected Poems of W B Yeats* (1983), 44.

*"And I shall have some peace there, for peace comes
dropping slow,*

*Dropping from the veils of the morning to where the
cricket sings;*

*There midnight's all a-glimmer and noon a purple glow,
And evening full of the linnet's wings".*

The choice of Sir Ninian to chair the Irish talks was inspired. With occasional horrible interruptions, the process of talking has continued ever since. It is harder to hate and murder a person that you know. When I visited my family in Ulster, outside the little town of Cullybackey, they told me that they had every confidence in "Mr Stephen". After all, they believed that he had been baptised a Presbyterian and came originally from Scotland. So for Ulster Unionists, who thought the Reverend Paisley a wimp and far too compromising, the image of the tall gracious Australian was reassuring. May the talking that he initiated continue so that, without interruption, peace will come dropping slow. It was mostly in gratitude for Sir Ninian's work on Irish peace and reconciliation that Her Majesty the Queen appointed him in June 1994 to the exquisite honour of Knight of the Garter.

Then began a period of service in international tribunals and the court of the United Nations. In 1993, he was elected, on the nomination of Australia, one of the first eleven judges of the International Criminal Tribunal for the Former Yugoslavia. Most Australians have only the vaguest idea of the important work of that

Tribunal. At a conference that I attended recently in Greece, a speaker described the Tribunal's hearings into the genocidal acts of the combatants as Yugoslavia fell apart. Aerial photographs were shown of the roundup of young men and boys in erstwhile football fields where once they cheered their teams. There they were slaughtered in hundreds. It was unsettling to think that such terrible wrongs had occurred in the middle of modern Europe, just a few hundred kilometres up the highway. The Tribunal would not have been an easy judicial function. Judge Stephen must often have reflected on the comparative simplicity of the challenges he had faced in the High Court of Australia.

When he and his colleagues arrived in the Hague to establish the trial chamber of the new Tribunal, there was no staff, no courtroom, no chambers, no judicial assistants, a tiny library and few facilities. Yet he looks back on that time of creating a new institution with a great sense of excitement and accomplishment. It threw him into close contact with lawyers from completely different cultural, linguistic and legal traditions. I have it from Judge David Hunt, the present judge of the Tribunal from Australia who has continued the sterling work that Sir Ninian commenced, that his high professionalism, personal decency and sharp intellect immediately won him the respect of his colleagues and of the advocates appearing there.

Of one thing this experienced judge was determined. It was that the Tribunal would not be established like the military tribunals of the victors that had tried the leaders of the vanquished powers in Nuremberg and Tokyo after the Second World War. It would be no military commission of the kind that seems contemplated for the shackled prisoners kept in the United States' base in Guantanamo Bay⁶. Stephen, a judge again, was at pains from the start, to uphold in the work of the Tribunal the common law principles of fair play and due process. It is sometimes forgotten that the great international human rights instruments that were devised after the Second World War - most especially the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* - were very largely the work of Anglo-American lawyers, steeped in common law doctrine.

The first trial that was conducted, and in which Sir Ninian participated, was of Duško Tadić. In the course of the trial, an application was made by the prosecution to call a witness against the accused without disclosing that witness' identity. As in so many problems of this kind, the issues of principle were finely balanced. So deep are the continuing divisions between families and

⁶ Justice (UK Section of the International Commission of Jurists), *The Proposed Use of Military Commissions to Try Detainees at Guantanamo Bay, Cuba* (July 2003).

communities in the former Yugoslavia that vengeance is often close at hand to those who give testimony. A majority of the Tribunal rejected the demand of the accused to know the identity of the witness. They rejected his submission that he needed this information to prepare his defence; to cross-examine the witness effectively; and to provide rebutting testimony to challenge or disprove what the witness said. The majority held that the application for anonymity was justifiable⁷.

Judge Stephen dissented. In his dissent, he referred to provisions of the *International Covenant on Civil and Political Rights* and to the similar terms guaranteeing fair trial in the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. He invoked a number of decisions of the European Court of Human Rights dealing with the provisions of that Convention. He also referred to decisions of English⁸ and Australian⁹ courts. The Australian case concerned a Crown witness who was an under-cover police officer whom the accused knew very well, except for his true name. The accused had been able to watch the anonymous witness give his evidence. Even these protections were not available to the

⁷ Re *Duško Tadić* (1994-5) 1 *Judicial Reports of the ICTY* 125.

⁸ eg *Marks v Beyfus* (1890) 25 QBD 494 at 498; *R v Rankine* [1986] 1 QB 861 at 867; *R v Keane* [1994] 1 WLR 746 at 751.

⁹ *Jarvie v The Magistrate's Court of Victoria* [1995] 1VR 84 at 88-90 per Brooking JA.

accused Tadić. Most observers who have read this decision of the Tribunal comment on how well written and persuasive is the dissent. Observers of the more recent jurisprudence of the Tribunal feel confident that, if a similar problem arose today, it would be the dissenting opinion, rather than that of the majority, that would be followed.

I wrote to my friend Hans Corell, General Counsel for the United Nations, about Sir Ninian Stephen's work in the trial chamber of the Yugoslavia Tribunal and later in the appeals chamber, when it was established both for the Yugoslavia and Rwanda Tribunals. Hans Corell has a good insight into these matters. In his earlier life he was as a judge in Sweden. He has played a distinguished role in establishing criminal tribunals for the United Nations, most recently the new International Criminal Court.

Hans Corell observed that, because Sir Ninian served "in the formative years of the Tribunal, [he was] instrumental in shaping its image, laying the legal framework for its operation and most importantly developing the principles for international criminal jurisdiction"¹⁰. Like other observers he recognises that the *Tadić* decision, the first delivered by the Yugoslavia Tribunal, was "a landmark in the development of international criminal law". He says:

¹⁰ Letter from H Correl to the author, 26 June 2003, para 9.

"In his knowledge, wisdom and grace he was one of the leading judges on the Bench". Australian judges and lawyers can take pride in this expert assessment.

In 1995, on the nomination of Australia, Sir Ninian Stephen was elected a judge *ad hoc* of the International Court of Justice to participate in the case concerning East Timor. Portugal had brought Australia to the Court, contending that the 1989 bilateral treaty between Australia and Indonesia, dividing the resources of the Timor Gap, was invalid. As the former colonial power, Portugal purported to bring a claim on behalf of the people of East Timor, then part of Indonesia. The International Court of Justice rejected Portugal's proceedings, on technical rather than substantive grounds¹¹. As a judge of the Court, Sir Ninian joined in the majority opinion. It is a misfortune that he did not have the opportunity of serving as a judge of that Court over a longer time.

ACTIVITIES AND A FLAW

Having been discovered, and having proved himself so successful on the international stage, invitations began to arrive in

¹¹ *East Timor (Portugal v Australia)* [1995] ICJ Reports 90. See G Triggs and D Bialek, "The New Timor Sea Treaty and Interim Arrangements for Joint Development of Petroleum Resources of the Timor Gap" (2002) 2 *Melbourne Journal of International Law* 322 at 328.

Melbourne to request Sir Ninian Stephen's involvement in new and difficult initiatives, many of a diplomatic rather than specifically of a legal, character.

Just before the change of government, and the inauguration of the new Constitution of South Africa, Sir Ninian was invited to participate with other Commonwealth experts in giving advice to South Africa on the form that its new basic law should take. Soon afterwards, another Commonwealth mission in which he participated, travelled to Dacca in Bangladesh. The head of government and the opposition leader had not been talking. Once again, his skills were invoked to pour oil on troubled waters so that the fledgling democracy of Bangladesh might be restored.

Later, under the auspices of the International Labour Organisation, the oldest of the agencies of the United Nations, he took part in an investigation in Burma. The United Nations practice, following the renaming of the country by the military regime, is to call the land "Myanmar". But no Australian should change the name of Burma until a democratic body agrees to the change. Sir Ninian led investigations into labour conditions in that unfortunate country. This took him to the borderland and the refugee camps in the Golden Triangle, including some in Thailand. Having himself been brought to Australia by his mother when he was a child, escaping war-time conditions in Britain, Ninian Stephen has always had an understanding for immigrants and refugees. In the High Court, like

Justices before and since, he was constrained by the terms of municipal law¹². But, in a new diplomatic role, his empathy for the disadvantaged could be given a freer rein.

In 1998, the Secretary-General of the United Nations appointed him chairman of a Group of Experts that he had established to investigate the possibilities of setting up an international tribunal to try former leaders of the Khmer Rouge in Cambodia. This appointment followed soon after the conclusion of my own work as Special Representative of the Secretary-General for Human Rights in Cambodia. My efforts to persuade the Cambodian government to render publicly accountable those in Cambodia who had taken part in the genocide, which had killed more than a million Khmer, fell on deaf ears. One of the key difficulties, not always understood by outsiders, is that so many were complicit in the crimes of the Khmer Rouge. Many of them now hold offices of various kinds. Some hold high office and have no enthusiasm for a tribunal which they could not control.

Sir Ninian Stephen and his colleagues produced a report recommending the establishment of a fully independent and international tribunal for Cambodia. Alas, that plan was not accepted by the Cambodian government. According to observers,

¹² eg *Simset v MacPhee* (1982) 148 CLR 636.

insufficient political support was provided by key states, including Australia, to exert pressure on the leadership in Cambodia. In the result, a compromise was struck. The United Nations is now assisting in the establishment of extraordinary chambers within the Cambodian court system. Because that system was founded on a colonial model that did not always respect the independence of judges and includes personnel with little or no past training in the law, the prospects of doing justice to the victims of the genocide recede with every passing year. Although the model proposed by Sir Ninian Stephen and his colleagues was not adopted, there can be little doubt that the mission of the Group of Experts, and the subsequent pressure from the United Nations, has contributed to the continuing effort to provide some form of public trial, where the suffering of the Khmer people can be expressed and, as may be hoped, a proper catharsis achieved.

Commenting on Sir Ninian Stephen's work as head of the Group of Experts on Cambodia, Hans Corell has observed that he "combined a legal and political judgment, profound belief in the principles of international criminal jurisdiction and grace and human warmth to the many Cambodians who shared with him their pain the grief"¹³. In these remarks, Mr Corell picks up one of the key features of Sir Ninian's personality. It was also mentioned by

¹³ Letter from H Correl, above n 10.

Professor Lowitja O'Donoghue in her perceptive observations on his role as Governor-General, dealing with the issues affecting the indigenous people of Australia. He is a man with an open heart. He reaches out to, and empathises with, the disadvantaged: those who have suffered in law and in life and those who have experienced the pain of marginalisation. Because my memories of the suffering of the Khmer people are still fresh in mind, I can readily rekindle the dialogue of suppressed recollections that the Khmer people, responding to this warm and good man, would have felt able to share.

The report on Cambodia was released in 2000. Since then other activities have continued apace. Just a few weeks ago, I became aware that Sir Ninian had been invited to participate in the project to assist the Afghan people to draft a constitution and restore institutions of law and justice in that land. The engagement of Sir Ninian Stephen with the world proceeds. Indeed, the only real flaw that I have discovered in his international activities is his most recent appointment to the Ethics Committee of the International Olympics Committee.

When I read of this appointment, my heart sank. In my Court of Appeal days, one of the few issues upon which I always agreed with Justice R P Meagher concerned our mutual disdain for sport. Justice Meagher expressed this feeling in a decision that he wrote in the Court of Appeal during those days. The case concerned a claim

for damages in negligence of an unfortunate novice ice-skater who had been inveigled into the reckless dangers of that sport with inevitable consequences. Of this case Justice Meagher said¹⁴:

"All reasonable people know that any form of physical activity is both unpleasant and dangerous, and probably unhealthy as well; and sport which has communal physical activity, suffers the additional feature of exposing its participants to the perils of tribal barbarism."

I am not sure that the principle so expounded would survive into our more severe and plaintiff-unfriendly times¹⁵. However that may be, I had fondly hoped that Sir Ninian Stephen was a person of like mind. His daughter Sarah reassured me that, upon his appointment as Governor-General, he was offered the No 1 ticket of the Hawthorn VFL Football Club. It had to be explained to him what this meant; where the club was; who the players were; how they were infinitely more famous than the Queen's representative. I was assured that Sir Ninian has never engaged in the unpleasant and dangerous activity of sport of any kind. But I know that Justice Meagher, lies in wait for this bauble of the IOC, to drop in due course from Sir Ninian's table into his lap. He has drawn a correct inference. To be a member of the Ethics Committee of the IOC, one

¹⁴ *Trevali Pty Ltd (t/a Campbelltown Roller Rink) v Haddad* (1989) Aust Torts Reports 69, 029 (80-286) per Meagher JA.

¹⁵ See *Agar v Hyde* (2000) 201 CLR 552; *Wood v Multi-Sport Holdings Pty Ltd* (2002) 208 CLR 466.

must not only be *disinterested*. One must be completely *uninterested* in sport.

The day on which this festive celebration takes place is one when the world awoke to the news of the killing in Mosul, Northern Iraq, of the two sons of the deposed President Saddam Hussein. It should therefore perhaps, be mentioned that the most recent task of the Ethics Committee of the IOC had been to investigate allegations of unethical conduct on the part of one of Saddam's sons, Uday. The mission to Iraq was called off just before the recent Iraq War began. Saddam was overthrown. Now, as we know, Uday, his brother Qusay and Saddam's grandson, the 14 year-old Mustafa, were blown to pieces in an attack on the villa in which they were hiding. Helicopter gunships and rockets were deployed. Photographs of their bodies have been displayed to convince the Iraqis and others that they are dead.

There is another model for a dangerous world to replace the corralling of human beings in this fashion in Mosul. Saddam Hussein and his sons were violent autocrats. They had contempt for the rule of law and the processes of public proof of grave wrong-doings. But the Anglo-American tradition, even in the removal of a King¹⁶, or the

¹⁶ M D Kirby, "Trial of King Charles I: Defining Moment for our Constitutional Liberties" (1999) 73 ALJ 577. The Trial of King Louis XVI of France is described in S Schama, *Citizens* (1989, Knopf), 659-674.

impeachment of a President¹⁷, has normally been to precede an execution with a trial. Tribunals, trials and public legal process represent the alternative model. It is one more powerful than guns because it appeals to our reason, not simply to fear.

OF STARS AND THEOLOGY

The trajectory of Sir Ninian Stephen's life continues through the firmament of Australia and the world. It has by no means run its course. Projects lie ahead. Most of them, I am sure, will be in the international domain where he has won respect and admiration by his work and his character.

Yesterday, I learned two new pieces of information that I wish to share . The first was the discovery by scientists, using the Hubble telescope in space, of the vastly increased number of stars in the universe. Our vision of the universe has hitherto been limited by the necessity to see it through the atmosphere that surrounds our watery planet. With the Hubble telescope, the magnificence of space is shown in all its wonder. There are millions more stars. Most are far more powerful than our sun. The universe continues to expand, growing ever faster and spreading into infinite space. The closest star is 300 light years away. By its power, it dwarfs our sun

¹⁷ The reference is to the impeachment trial before the Senate of President William J Clinton.

as if it were a candle. And far beyond it lie systems of stars and planets and galaxies in abundance.

In such a context, how small and insignificant are we? How puny and trivial are our human differences? When we think of those differences, in the world and in our country, it is a healthy corrective to try to conjure up the most distant star exploding somewhere in the infinite universe. When we consider that we are important, and that our worldly achievements are mighty, we should remember that star and the words of Ozymandias. Throughout life's journey, Ninian Stephen has kept such a sense of proportion. Remembering this should tame our sense of our own eminence and the passions with which we assail each other simply because the other is different or holds views different from our own.

On the day I learned of this expansion of knowledge of the stellar universe, I attended a lecture on the theology of the new Archbishop of Canterbury, Dr Rowan Williams¹⁸. On television, he appears as a man of quietness and reflection. Indeed, a man rather like Sir Ninian Stephen. One who is willing to listen to others with grace and human warmth and to allow others to share their pain and grief.

¹⁸ Rev Humphrey Southern, "The Impossibility of the Last Word - The Theology of Rowan Williams", Address to the St James Institute of Spirituality, Sydney, 23 July 2003: <<http://www.stjameschurchsydney.org.au/spirituality/seminarnotes/hs230703>> (Accessed 23 July 2003).

As the lecturer recounted the new Archbishop's writings, and the debates that have swirled around it on both sides of the world in recent days concerning human sexuality, I came to see, quite vividly, the identity of the issues over which churchmen contest and some of those that are debated in modern political discourse. Also some of the conflicts that we have in the law. I could picture Dr Williams, surrounded by strict constructionists, the adherents to doctrinaire beliefs, those mortals who insist that they alone hold the keys to the Kingdom and have the entire truth. Am I alone in seeing parallels outside theology? Does all this seem familiar? We must resist the triumph of the formalists, the doctrinaire positivists, those who think that all truth lies in words and not in context and in sometimes seeing words as metaphors, imperfect instruments for conveying meaning from one human mind to another¹⁹.

It is in the decade of which I have spoken, that Sir Ninian Stephen seems to have come to a greater realisation of these simple truths. The law today must be seen in its context, as, in truth, the best and wisest lawyers probably always saw it. The context today is no longer the petty local context but the great globe itself. That globe, in turn, is becoming better known to us by the miracles of science and technology. Our hubris as lawyers must be kept in

¹⁹ C Pickstock, *After Writing: On the Liturgical Consummation of Philosophy* (Blackwell, 1998) 147-152.

check. Our minds and hearts must be kept open for new insights about law and a new sense of justice which, like true religion, serves all people - not just those who go to Church or can afford to go to law.

What is remarkable is that these precious insights came with greater power to Sir Ninian Stephen in his seventies. They came after he had held the highest offices that the law and the Constitution could offer in Australia. Even in his seventies, his mind was open to fresh ideas. He is an example to others whose minds like those of the theological levellers, are caught in a spasm of formalism. He is an example to those in his old profession who forget the fundamental purpose of law as an instrument of justice and order in the world.

Serving Australia was not enough for Ninian Stephen. He went beyond and served a wider world. Through it all, shoulder to shoulder with him, was Lady Stephen, a national treasure and internationalist in her own right. Of course, when we think of those distant galaxies and the exploding stars in infinite space, their service, like that of all of us, is but a passing thing. As we are taught in *Ecclesiastes*, we humans cannot achieve much. But that does not release us from the obligation to try.

Sir Ninian Stephen has lived by these rules. His honours rest lightly upon him. But in our puzzling universe, where eternity and

infinity meet, it is his kindness, intelligence and capacity to reach out and to give back far beyond his own country that makes him a model for citizens; and especially for lawyers.