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# Q&A WITH MICHAEL KIRBY

Interview by Joe Lewis  
Southern Cross University  
School of Law and Justice  
*The Agitator*  
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The Hon. Michael Kirby AC CMG

**SOUTHERN CROSS UNIVERSITY**

**SCHOOL OF LAW AND JUSTICE**

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*The Agitator* editor Joe Lewis recently caught up with Michael Kirby to discuss education, the law, and life after serving on the High Court of Australia.

**Southern Cross University is excited to have you attend a dinner as part of the Law School's Michael Kirby Lecture Series. What is it about being involved in education that enjoy?**

I've been involved in education for an awful long time. I love education. I had a wonderful education in public schools. I had free education in university. Australians of my generation were greatly blessed. Education is a process for expanding our brains. Our brains are the most precious and distinctive feature of our species. Therefore, for me, the opportunity to learn more, to understand more, and expand my rational being is the very definition being alive and knowing what it is like to be a human.

**What was something you liked about studying law when you were at university?**

I like law because I didn't like the idea of cutting up rats. I wasn't patient enough to be a teacher, and I wasn't holy enough to be a priest. So, it was by a process of elimination that I ended up in law. However, law is a wonderful vocation, because it now opens to so many opportunities. It's a way of training the mind and getting an ability to analyse problems – and by analysing the problems finding what the solutions will be. So, I never regretted studying law. It has given me a very interesting and exciting life, and it's still going on!

**You spent thirteen years on the High Court bench. What case, or cases, stand out to you as ones where you were glad to have taken a part in, or felt that it was important to have your say about the matter brought before the court?**

I felt that about every case. People often ask me 'what is the case that you remember most?' I remember them all! All of them were important to me, and all of them were cases where I gave my all, as do the other judges of the court. It's a great privilege to sit in a final national court, and that is what I did for thirteen years. There are some decisions, particularly those affecting minorities. For example, the Wik decision which extended the Mabo principle to pastoral leases, and the Wurridjal decision at the end of my service on the High Court, which concerned the Constitutional challenge to the Northern Territory Intervention. In the Wik decision I was in the majority. In Wurridjal I was in dissent. But, it is when the law is called upon to deal with the rights of minorities that often lawyers and judges are tested, as I believe the High Court was in those cases, and in other cases that concerned minorities.

**You are known widely and respected accordingly for the use of international conventions as interpretative tools for Constitutional disputes. So other justices, past and present, have not as frequently 'read rights' into the Constitution. What effect – if any – do you think introducing a Bill of Rights in Australia will have on judges who do shy away from international human rights norms, and other rights instruments?**

First of all, the Rudd Government postponed any implementation of a Bill or Charter of Rights. Regardless of who forms government, it is unlikely that we will see a Bill or Charter of Rights any time soon. Therefore, this question is somewhat hypothetical at the moment. The State Government also has rejected a Charter. Therefore, I don't see the impact of that hypothetical development being something that's going to affect the Australian legal scene, at least for the next five years. If we had such a provision, it would certainly help in teaching children at school the fundamental principles on which Australians live together, and it would help in the implementation of human rights by requiring officials to tailor their action so as to conform to the Charter or Bill of Rights. This is what has been happening in Victoria where they have a state charter of rights. In that state, the provisions of the charter are available to teach students in primary or secondary schools about fundamental rights. [Such teaching] enhances a right-respecting community, but it also means that officials and ministers have to certify

that they are acting in accordance with the Charter – and that without ever going to a court, secures compliance with fundamental rights, which is the way most modern societies act at this stage. Australians don't have such provisions, and that is despite the fact that in our Asian immigrants; in our treatment of Aborigines; in our treatment of women; of gays and people with disabilities we have often fallen short of the international standards.

**Where do you think the High Court is headed with the advent of cyber court rooms and the ability to conduct proceedings through new technologies? Will it expand its mediums or remain in its present form?**

The High Court does use advanced technology, for example, in special leave applications, the special leave cases are mostly conducted by video link from the outlying cities of Australia (the capital cities), and the arguments are advanced in a local court room there and seen by the Justices in Canberra, and dealt with. That was so during the entire period of my service on the High Court. You can use the new technology in a very constructive and economical way. It means that people don't have to travel to Canberra, and the litigants – who are most affected – can actually sit in a court in Perth and see their matter dealt with in Canberra by the High Court Justices. So, I think we'll see more of that. The High Court has so far not agreed to filming of proceedings in the Court. This is so although the Supreme Court of Canada has agreed to that procedure. My own view is that under proper arrangements it should be adopted, but it hasn't been adopted yet. I believe that we will see that adopted at some time in the future.

**How would you suggest fresh graduates approach their career so that they 'don't forget the justice bit'?**

I was a joiner. I always joined things. I joined the Council for Civil Liberties and student representative bodies. I was involved in various pro bono activities. I acted free for people who were involved in the so-called Freedom Rides to Walgett in the 1960s – and in challenging their arrest in anti-Vietnam War events at the same time. The way to become involved is to take full benefit of being in a free society and being able to join community groups to stand up for rights of the disadvantaged. By giving you receive. By participating you see the perspectives of the law from the point of view of people less fortunate than yourself. You also remove some of the starry-eyed nostalgia about the law and get real. You get a real appreciation of the fact that law reform is essential, that

the law isn't always up to date, and that all of us have to play a part in improving the law. So, my feeling is that a young lawyer in Australia will do well for themselves, but also for society by becoming a joiner and getting involved in community groups that stand up for the disadvantaged and make the rule of law, and the reality of the availability of law something for all citizens, not just the wealthy.

Of course lawyers have set aside years for study. No one can expect lawyers to do everything for nothing. Everybody is entitled to be paid for their extra talent, skill and training. On the other hand, a life in the law can result in a satisfactory income, and if you do work that is for disadvantaged people having a good claim it does help them to get at justice, but it also reminds you of why you entered the law in the first place – because of the hope to contribute to a rule of law society that respects the universal rights of everyone.

**Now to turn to some matters less legal. If you had more hours in each day, what do you think you would find yourself doing?**

More emails. I think we are now – all of us – slaves to our emails. This is a real phenomenon that has come about in the last 5 or 10 years. When I was in the High Court, my associates would open my emails and protect me from the spam advertisements for Russian brides or Viagra. Nowadays I am exposed to it all. I open the emails and answer my own emails. You have to resist the temptation of the fascination of the latest message, and this is a challenge. There has been some writing that suggests that the way we are thinking is changing because of the lack of an opportunity to reflect and consider, and the demand that this technology puts on us to respond immediately to everything. I think that will have some significance for lawyers in the future. It is always important to make time to consider and think about the correct responses to legal problems at least, because of the fact that justice isn't entirely intuitive – you have to be analytical and you have to feed in the best information, which includes the information on the condition of the law, and the principles of justice and the law that have been laid down over many years.

**What is one thing you miss, or alternatively don't miss, about being on the bench?**

I don't really miss being on the bench. I thought I would, but I've been so busy since I left the High Court that I haven't had time to feel sorry for myself! I have become involved in the Eminent Persons Group of the

Commonwealth of Nations – which is looking into the future of that important institution. I am going later this month to Brazil for the first meeting of the Global Commission on HIV and the Law (part of the United Nations Development Program). I have been appointed to the arbitration panel of the International Centre for Investment Disputes (World Bank), and I'm a professor of ten universities. I have constant invitations to go to conferences and give seminars and to attend lectures like the one in Southern Cross University this week. So, I'm just so busy that I don't have time to reflect upon my loss of significance and power! Maybe the regret is that I don't always a correct work-life balance. Many lawyers fail on the work-life balance. In part, this is because of the great urgency of many of the tasks that lawyers are confronted with, that tends to focus the mind on the things that have to be done instanter - that requires urgent and immediate action in defence of the rights of other people. But you have to keep in the back of your mind the rights of your partner, and of your family. That is something that lawyers don't always do – and I haven't always done. If I look at my partner's life, for example, Johan – he has made great sacrifices really, and I'm sure that at the end I will look back and regret that I didn't spend more time with my partner and my family. But, in the meantime there are problems to be solved and there's work to be done so I just get on with it. But that is something, especially for young lawyers, to reflect upon and try to get a better work-life balance than ever I have done.

### **Have you read any good books lately? If so – what were they?**

Yes, I received a book recently which is edited by a young Australian lawyer – Damien Freeman – who is at Pembroke College in Cambridge. It's called Mao's Toe. It's about a correspondent who worked in China at the time of the takeover of the country by the Communist Party and Chairman Mao. It's a fascinating story of the personalities of Mao Zedong and Zhou Enlai. The accounts are so vivid that it may make it difficult for a reader to sleep at night. This is because of the mixture of their great ability – but also their enormous ruthlessness – in lurching China from a position great poverty and deprivation into a modern economy. A ruthlessness that is unsettling; but regardless history might say was necessary. There are always lots of books that come to me. Most of them are sent to me for review, or for launching, so my problem is finding time to read them all.

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