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"LEADERSHIP"

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Leadership

The Honourable Mr Justice Michael Kirby reflects on leaders past and present, in Australia and abroad. He draws on his own encounters with leaders such as President Nelson Mandela and the Dalai Lama, as well as with individuals not quite so well known, perhaps, but just as inspiring.*

ON OUR BLESSINGS

When I went to Adelaide recently to give an address on the blessings of our Constitution I examined it from the point of view of a person looking from outside Australia. Something that really struck me was that we Australians do not very much celebrate our achievements or our leaders. When Australians look through the list of people who took part in the foundation of this nation, they can usually think of Barton, Deakin and perhaps Griffith. Then, unless they know the suburbs of Canberra or particular federal electorates, they really come to the end of the line. Why is this?

I suspect it is because we did not have a revolution. We did not have a need to break the continuity. By the time our nation had to be established the imperial "oppressor" was extremely benign. For that reason we really did not have the need for political leaders who would have the dash or flair to capture and inspire the public's imagination. And that, according to Mr Paul Keating, was how it remained.

My ultimate conclusion in Adelaide was that it is a blessing in a constitution if most people do not know much about it. When a country works quietly and peacefully, when the judges are independent, when the military obey the commands of the civilian government, when the public service is uncorrupted and when the people elect governments and put them out quite regularly, that is a peaceful country with many blessings.

We should talk about this because we are getting close to the centenary of our Constitution. Not enough people are thinking about the way in which it has provided us with a fabric of government which has served us rather well.

What I want to speak about tonight are the ingredients of leadership. What is the difference between a good leader and a good manager, because there is a difference?

In a recent issue of the *McKinsey Quarterly*, there was an essay by John Katzenbach on "Real Change Leaders".[†] Katzenbach's thesis was that a good manager is a person who keeps things under control, who quests for personal success and is quite good at delegation. That is a good manager—the person who keeps the machine, whether a

business or a government, running efficiently. On the other hand a real change leader, he wrote, is a person who shakes things up, who sets out positively to make a difference, and who enjoys getting his or her hands dirty.

Turn the question inward upon yourself and ask yourself whether you fit more comfortably into being a good manager or a real change leader. It is a question that is worth asking. It is a question I have asked myself ever since I read the essay in the *McKinsey Quarterly*. In my life in the Law Reform Commission, I was there to shake things up. Perhaps in the High Court of Australia I am there to keep things under control. We might go through different phases of leadership in our lives.

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INVOLVING OTHERS

When I endeavour to identify those features of leadership which strike me as important, there are five in my pantheon: First of all, a desire, willingness and ability to involve others. I saw this very vividly when I went to Cambodia in my former function as the special representative of the Secretary-General of the United Nations. My work in Cambodia took me there five times a year. Since my appointment to the High Court of Australia I have had to relinquish it. That is a sadness because any of you who have been watching recent programs on the ABC will realise that in terms of human rights, government and freedom in Cambodia, things are not all going in the right direction. But in Cambodia I saw very many wonderful people who, with twenty or twenty-five years of absolutely desperate constitutional conditions—the revolution, genocide, invasion, isolation—nonetheless came through with real strength. It was a wonderful inspiration to work with people who were, undoubtedly, fine leaders.

Some of them were Australians. One of them was a person whom I came to know in Battambang, which is in Northern Cambodia, quite close to the frontline where the Khmer Rouge is still operating. He was an Australian Army officer named "Shorty" – for reasons I do not need

* The Honourable Mr Justice Kirby, AC, CMG, was appointed a Justice of the High Court of Australia in February 1996. His previous appointments have included, *inter alia*, Chairman of the Australian Law Reform Commission (1975-84) and President of the NSW Court of Appeal (1984-95). Edited text of address to IPAA (ACT Division), 5 September 1996.

† J. R. Katzenbach, "Real Change Leaders", in *McKinsey Quarterly* 148, 1, 1996.

to elaborate—Coleman. He was from Queensland. I saw him working with Khmer de-miners—the people who are working in the field getting the mines out from their lethal position. Coleman's job was basically to instruct the Khmer so that they could take over the work from him. He did so with gentleness, persistence, high discipline and professionalism and with leadership. He showed me how painstaking the task is. They do it by minute measurement. I have written to Adrienne Clark, Chairman of CSIRO, saying that it should really work on some solution to this problem. At the rate they are going, it will take hundreds of years to clear Cambodia of the mines that have been sown there. Cambodia is only one of many countries that have this problem. Afghanistan is another and there are several in Africa. I understand the CSIRO is working on various procedures by way of laser, radar and other means so that science can undo what science has wrought. But in the meantime we have to depend on people like "Shorty" Coleman.

I wrote to the Order of Australia saying that we should honour this fellow citizen. We should recognise his work. He has never had any recognition in the Order of Australia. He is just another Australian soldier. But in my estimation, he is a person of whom we can be proud. He was a leader—he was giving encouragement and instruction to the people who were working with him.

Another person I saw there was Sister Joan Healey of the Carmelite Order. I was brought up as an Ulster Anglican. Seeing Sister Joan there was, shall we say, an eye opener to me! Sister Joan is working on the empowerment of women in the belief that, with such empowerment in Northern Cambodia, some of the desperate games that men play can be put under some sort of a check. Sister Joan has set up an establishment in a Buddhist ashram. In Cambodia they are now trying to rebuild the Buddhist religion, which was virtually destroyed during the Khmer Rouge period. Her task, sitting on a floor with grass matting, was to give day-by-day instruction to groups of Cambodian women. She taught them that, under their new constitution, they have rights and opportunities. They can stand up for themselves. Against a background of cultural phenomena and sheer physical necessities of survival in that country, it is an easy message to verbalise but not so easy to communicate. Yet Sister Joan, through her efforts and by just living there with the women, is giving an inspiring example of leadership.

I asked her whether she ever told the women she was sitting with about Jesus Christ and the message of Christianity. She seemed quite shocked by my question. Her response was, "Goodness, no!". That probably reveals more about me than about her! She told me that this was not appropriate. She was simply trying to help the women. But in a very real way, just by her life and her efforts in dangerous circumstances, she was giving a daily example of leadership. She is another citizen of whom we can be proud.

The first of the qualities that I think are important in leadership is the capacity, willingness and desire to involve others—involving the de-miners, involving the women. There are many others, including many Khmer, whom I saw during my missions to Cambodia. The capacity to involve others is quality number one

COURAGE TO DO UNPOPULAR THINGS

Quality number two is a capacity and willingness to do unpopular things with courage. As Chief Justice Sir John Latham (1935-52) said, it is very easy to support freedom of religion in Australia when the target of the imposition is one of the major religions of the country—Catholicism or Anglicanism or one of the other common religions. The real test for freedom of religion comes when the target is a small or unpopular religion, such as the Jehovah's Witnesses, the Seventh Day Adventists or, for that matter, The Family—groups that have unorthodox views. That is when respect for freedom of religion becomes important.

In my lifetime I have read of and been inspired by the work of many people who stood against the tide. I think this is an important quality in leadership—a willingness to do something which is not immediately popular.

I think, for example, of Martin Luther (who will probably be canonised by the end of the century). Luther stood against the whole organised world for his beliefs. That took remarkable courage.

I think also of Mahatma Gandhi. Recently I was in Ahmadabad in the north of India. It is a mighty city. It is where Gandhi established his refuge during the period of British rule. Gandhi was the son of a local Prime Minister in one of the princely states. His father was wealthy. Gandhi was sent to England, where he was educated. He became a barrister. His life could have stretched before him as a person of quite exceptional ability as a servant of the law. He went to South Africa and then to India. It was from Ahmadabad that he led the Great Salt March. What an inspirational thing that was, if you think about it. How irritating it must have been to the bureaucrats governing India at the time. Just walking down to the sea. There was nothing that the authorities could do about it. Gandhi started to gather tens, then hundreds, then thousands of people to walk down to the sea to gather salt and not pay the tax on it. A forceful protest.

When he was brought back to Ahmadabad, he was put in the dock and charged. The record of what happened on that day is there in the Ahmadabad Museum. It contains the actual transcript of the remarks of the unfortunate and melancholy magistrate who had to deal with Mahatma Gandhi. I feel a little sympathy for this British judicial officer. He said, "In the eyes of the law you have committed a most serious offence; in the eyes of the overwhelming majority of your fellow countrymen you are a prophet and a hero".

Gandhi rose in that little courtroom. He made one of the greatest speeches of the twentieth century. He said, "I have committed a most terrible offence against the law. You must punish me most severely because I am completely unrepentant. This was a very serious offence. I am challenging your authority in this country".

The magistrate duly obliged, although Gandhi was soon released. He went on with his struggle, by his example and leadership, to lead India to independence. It is an interesting comment that the system of justice which that humble magistrate in Ahmadabad was administering that day is still basically the system of justice that is

administered in India, although now without wigs and by Indian jurists solely.

One of the most inspiring people that I have met in my life is Nelson Mandela. Mandela's inspiration derives from his willingness to do unpopular things, as he had to do in challenging the minority regime which formerly obtained in South Africa. It can also be seen in his almost saintly willingness to forgive and seek reconciliation, which is the path he now treads.

His Holiness the Dalai Lama is another inspiring leader I have met on many occasions. Rather like President Mandela, he is a person who never speaks with violence against China. He always makes the point that Tibet must live with China and that it may be that Tibet's long-term interests require some political and constitutional association with China. But he insists that that is something to be decided by the people of Tibet.

Kim Dae Jung, the leader of the Opposition in the Republic of Korea, who visited Australia recently, is a man who has spent ten years in prison and six years under house arrest. We simply cannot understand fully and comprehend what these people go through for their beliefs. Yet the shining example of leadership, forgiveness and a quest for reconciliation is a feature of those three people—Mandela, the Dalai Lama and Kim Dae Jung.

We have such people in Australia who have been willing to stand up at times when it was necessary to take up causes that were not entirely popular. I am thinking, for example, of a moment in recent political history in Australia where political decisions were made, in part by politicians and in part by officials, which were extremely important for the saving of human life and for justice in our country. If I look back on the last decade, two of the most honourable politicians I have known are Professor Peter Baume and Dr Neal Blewett. When AIDS came along it would have been so easy for political capital to be made out of the epidemic. Instead, by a unique and unusual combination of political skills and devotion to a higher principle than mere political gain, these two politicians of differing political parties made critical decisions which led their parties and then Australia to take policy and legal steps which have been extremely important in the containment of HIV-AIDS.

I go later this month to a consultation on AIDS at Geneva. I have been invited because Australia is regarded as one of the countries that is in the forefront of legal and policy reactions to the epidemic. We have things to teach other countries. If that is so, it is very largely the result of strong and potentially unpopular decisions which were made by Neal Blewett and Peter Baume.

There are other people who fall into this category. I remember the occasion when Lionel Murphy said to me, back in 1973, "I am thinking of challenging in the International Court the French nuclear testing in the South Pacific". I knew Lionel's devotion to the International Court and international law. I shared some of his views in that regard. But I must admit that I said to him, "Don't do it. It would be a most unwise step. It would be doomed to fail. It is politically perilous. I think it is fraught with legal difficulties."

Well, that did not trouble Lionel. He just went ahead. He barged in. He took the matter to the International Court of Justice. He obtained a decision there which was one of the steps in the course upon which we are still embarked of ridding the world of the problem of nuclear weapons. Sometimes you can be too cautious. Lionel Murphy was not on that occasion. Nor was he on other occasions. But it was an example of the fact that, as in so many things in life, leadership requires courage. Sometimes you have to back your judgment and take the steps that are necessary and appropriate. You must do so even if it is risky and potentially unpopular at the time.

COMMUNICATING AND CONCEPTUALISING ISSUES

Another important feature is communicating and conceptualising issues. A Chinese writer said that a leader is a dealer in hope. It is an important capacity of leadership to be able to express and articulate people's ideas so that they think they are their own.

One of the problems that we face today is that leadership must now be communicated to a nation in 30-second television grabs. Politics has changed in the past generation. It is now very much a product of the media, including the global media—the media with its concentration on brevity, and often a concentration on entertainment. This has made much more difficult the capacity of leadership that is called upon: to conceptualise and communicate issues. Advertisements must be communicated in very palatable and preferably very brief form. Anything that takes a little time is much more difficult. Yet, as we all know, many of the issues that are before society are difficult. They need careful and thoughtful communication.

Good communication does not necessarily have to be verbal. It can be very distinctly non-verbal. One recalls Kieren Perkins, arm raised as he came to his medal; and Cathy Freeman's action (which for the life of me I cannot see what everybody was so upset about) in carrying the Aboriginal flag at the time of her Commonwealth Games success. It was a non-verbal signal. But it was one of pride and one about which I think decent Australians were not at all upset, but rather proud.

ACCEPTING RESPONSIBILITY

The next feature of leadership is a willingness to accept responsibility. This is something I also saw in Cambodia. My first contact with that country was when I was asked to go there to take part in training the judges. All the judges who had served in the old Cambodia had been killed. It was literally a case of putting into action Shakespeare's aphorism: "First, let's kill all the lawyers". They did so, because the lawyers were either killed or fled into exile.

The people who had to be trained to become the judges and magistrates of Cambodia were basically teachers. They were educated people who could read. Most of them did not need glasses because, as you remember, the Khmer Rouge were suspicious of anybody with glasses. They considered them intellectuals. Dangerous people

It was an awesome thing to try to communicate what it is to be a judge in a short time. The total course was about five weeks. My effort was about a week. Yet something had to be done. We had to start from nothing. The courthouses were still there. There had to be judges.

The questions which the student judges asked were often rather naïve. Questions, for example, such as whether they could continue to belong to the political party. Most of them belonged to the Cambodian People's Party, the former communist party. They sought answers to questions that we would simply take for granted because of our knowledge of our institutions. These people were trained and were sent out. They said to me later, as I visited them around Cambodia, "We don't have any laws. The first thing you need if you are a judge is to have some laws. The old French laws were all destroyed. We have a few rat-eaten copies of some old statutes and a few bits and pieces, but we just don't know what to do."

... as a citizen I think it is a wonderful thing that I live in a country where quite regularly I go to the local school hall, I put in my humble ballot, and then I go home and watch the results peacefully accomplished. Without bloodshed the government changes. The white cars pass. The power is shifted. No one doubts it or questions it. Our leaders are thereby rendered our servants. Our governors become those who serve us. That is a good system of political government.

So in the best tradition of the common law of England, which we have inherited in this country, I said, "No problem: make it up!" That is what the common law has done for 800 years. When there is a gap, you cannot just say, "There's no law". You have to develop, by analogous reasoning, the law that will apply, with commonsense and common justice, to the problem in hand. In the past we, the judges, kept that function of ours a big dark secret from everybody. Now, increasingly, there is a greater willingness to be candid about this aspect of our work. How else could the common law of England have developed from a rural, feudal society to be the legal system which operates in a quarter of humanity? It was done by judges working by analogous reasoning from precedents to just results.

I told the judges there: "You should keep copies of your decisions. You should share them. You should try to see what others are doing, you should try to be consistent." They accepted their responsibility. They went out into the villages. They became the judges. I pray that they are judges without corruption. They are paid of the order of \$US20 a month. Of course complaints about corruption are common. The problem is the old problem that we Australians understand very well, that of relativity. The authorities cannot increase the pay of the judges because if they put up their pay, they have to put up all the public

servants of equal rank and the military of equal rank, of whom there are large numbers. Therefore, the judges are not paid properly. Yet I was distinctly impressed that most of them were striving in very difficult circumstances to give leadership to their local communities. They were attempting to live in those communities under a lot of pressure, and to try to be a judge with about five weeks' training.

KNOWING WHEN TO GO

Another important capacity of leadership is to know when to go. It is an illuminating comment on the political leadership of this country that since the Second World War only one Prime Minister, Sir Robert Menzies, went of his own volition, at his own time and his own choosing. None of the others has done that. A couple died in office. But the others did not and were defeated.

It is an important quality of a leader to know when their time has come. When they have run out of ideas. When they, for their own sake and for the sake of those who are behind them, have to move on to some new or different challenge. That has not always been a feature of public life, not only in politics but in other branches of public life in this country.

RESERVATIONS ON LEADERSHIP

So I have spoken to you, as I was asked, about leadership. Yet I have some mental reservations about the notion of "the leader". The leader has caused an awful lot of havoc in the course of the twentieth century. You can have too naïve a belief in leadership. You can have too ardent a desire to be led, and too blind a willingness to march to a single drum behind the leader. If we think of the problems of fascism, communism, Nazism—the great doctrines that, with Prohibition, are probably the four great social experiments of our century—three of them were based very much on the notion of "the leader". It was not so good to be led, because the leaders were not really leading in the right direction, as history will judge.

By way of contrast, we in Australia have seen through this turbulent century with our rather strange Constitution. Like so many things that are based on constitutional monarchy, it reveals paradoxes and fictions where nothing is what it seems. If you look at our Constitution you would think that the Queen in Buckingham Palace has unlimited powers to direct the affairs of our nation, through the Governor-General, commanding the armed forces, through the public service being in the nature of her feudal household, and the Parliament in which she is a member, being, as it were, there to provide humble advice to her through the Federal Executive Council. It is like living in a country with constitutional mirrors: nothing is what it appears. And that is because we live by conventions and by long-settled traditions.

Our traditions include putting a very real check on leadership. We do this so that it does not get too big for its boots. Without commenting on any political affairs, as a citizen I think it is a wonderful thing that I live in a country where quite regularly I go to the local school hall, I put in my humble ballot, and then I go home and watch the results peacefully accomplished. Without bloodshed the government changes. The white cars pass.

The power is shifted. No one doubts it or questions it. Our leaders are thereby rendered our servants. Our governors become those who serve us. That is a good system of political government. Leadership subject to the will of the people.

In summary, we should reflect on the blessings of our Constitution and the way we keep aspirations of leadership in check and answerable to the people. It does so in Australia, whether it is in the political branches of

government, the public service or anywhere else. We should reflect on the qualities of leadership that are important: involving others, having the courage to do unpopular things, having the capacity to communicate and conceptualise, accepting responsibility and knowing when to go. And we should retain a healthy scepticism about the siren song of political leaders. Our leaders should always remain (and see themselves as) the servants of the people.

QUESTIONS AND DISCUSSION

John DRURY (Customs): *Could you perhaps share with us examples of failures in leadership? When you comment on those who take us forward, there must be examples where the opposite has occurred. The lessons that come from those perhaps can be traced back to exploitation of constitutions or whatever?*

Justice Michael KIRBY: You will understand that I will be a little discreet in talking about that subject. I will cast my eyes across the oceans to far distant countries, where there are people who would not be so sensitive as would some closer to hand.

Recent reviews in the newspapers and on television about the situation in Cambodia are pretty accurate. I believe that the problems which are presented by the slow apparent decline of the joint government and the growing ascendancy of the CPP (the old communists) under Hun Sen really reflect something of a failure of leadership and a failure of the bright hopes that many people, including myself, had for Cambodia. The problem really lies, at its heart, in the lack of experience with the sorts of conventions that we have grown up with and learned to accept.

It is perhaps asking too much to have expected that those conventions of a democratic polity and of changing governments should have been accepted overnight in Cambodia simply because, in the first real election that Cambodia had, where 90 per cent of the people voted, the winning team could not really accept the will of the people. You know what happened. The Funcinpec effectively won the election. The CPP to their utter astonishment lost it. But the CPP refused to yield the white cars and the power. The result was the joint government. However the real power has remained and, as has increasingly become obvious, lies in the CPP and with Hun Sen.

This all demonstrates that it is not enough to have the outward semblance, the institutions, the good vote, setting up a National Assembly, setting up bureaucracy, training judges to go out to the village courts. There has to be something more. It is an appreciation of the importance of changing the culture of violence, oppression and autocracy.

In conversations with the King of Cambodia I was convinced that Norodom Sihanouk had come to the view that the time had come in Cambodia to put an end to the past and to become a modern country. He explained to me that he had lost five of his children in the Khmer Rouge period. He was locked up in the palace, not knowing from day to day whether that was the day when he would be killed. He is trying to encourage steps towards democracy. But it requires a willingness to compromise. That is something we have inherited from a thousand years of constitutional struggles in England and we have reinforced it for ourselves. In Cambodia they have had a different history.

Another example of a failure is Dr Hastings Banda. One of the most interesting things that I was ever asked to do was to chair the constitutional conference of Malawi. Malawi was formerly Nyasaland. It is there just above what used to be Northern Rhodesia. The country has few resources. It has had a one-party state with a life president. That was a failure of leadership on the part of Dr Banda. I did not quite understand how it came about until I arrived at the airport and saw a photograph which had Dr Banda presiding at a military passing-out, giving commissions to the soldiers.

There the soldiers were dressed in their shiny British-type uniforms. There was Dr Banda, always with a bowler hat. Suddenly I realised that what Dr Banda was trying to do in Malawi was to build the image that had become embedded in his mind from photographs of Sandhurst. There were all the commissioned officers and there was the Queen or Queen Mother dressed in simple mufti. Dr Banda's idea of being a life president was to be a sort of life sovereign. He got this idea and tried to introduce it into a very different circumstance. It descended into brutal oppression of all dissidents.

As it happened the constitutional conference led to a referendum which voted Dr Banda out. There was then an election, which resulted in Dr Banda's party being defeated. A multi-party democracy was established. So far as I know, it is still operating. Dr Banda was charged with criminal offences, but as a man of ninety-three he has not been brought to trial. He just did not have the capacity to see the needs of a modern country.

When I was in Ahmadabad some people said to me that Gandhi was a great man to lead the struggle to independence. So he undeniably was. Yet his notions of returning to the spinning wheel and getting back to rather primitive Indian village society were notions which had been embedded in his mind early in his life. They were entirely inappropriate to a modern democracy like India.

The moral of these stories is that you have to be lucky that the person who leads your country or your organisation has the vision to see the way ahead. He or she must also have the broader perspective to be able to see the flow of events and the way in which history is going. Our institutional arrangements have served us well. The strange combination of laws, practices, conventions, policies, things we all understand instinctively, just keeps on chugging away. I keep on with my work in the High Court. You keep on with your work in the official services. The military are there to defend the country. The country has, as it were, its own momentum. But leadership is needed at all levels.

George THOMPSON (Insurance and Superannuation Commission): *Is there a dichotomy between, say, a successful manager and leadership, or can you have a situation where one moment you have a leader, the next moment you have a successful manager?*

Justice Michael KIRBY: According to the *McKinsey Quarterly* there is a very real difference. A successful manager is a person who will be personally ambitious, will be keen to make institutions work, will be a good delegator but will not really shake things up and not really challenge institutions or ask, "Should we change the institutions?"—in a sense will not want to get down there and get into the grubby parts. Leaders are often very uncomfortable people to be with because their objective, often, is to question accepted things. That is what I would say is the difference between good management and a change capacity leader.

Michael COPER (ANU): *Judge, could I ask you a question in the context of leadership about the role of the Chief Justice of the High Court? I ask this because I think the role of the Chief Justice is not particularly well understood, perhaps even by lawyers as well as by non-lawyers.*

We hear a lot of talk about the Mason court and the Brennan court, but a court is composed of seven fiercely independent individuals, of whom you are one, and the Chief Justice is sometimes regarded as first among equals. In that context what is the concept of leadership that is applicable to the Chief Justice? Is there a need for the Chief Justice? Do you feel in need of leadership on the High Court?

Justice Michael KIRBY: I shall have to be specially discreet in answering this question! When I arrived at the High Court after eleven and a half years in the Court of Appeal, I was struck by the deference that is paid one to another. For example, in the Court of Appeal I would propose the court list each month. It would go out as "the List". I would identify the judges who would be required to do the first draft of the judgment. That was a function of the President of the Court of Appeal. In the High Court of Australia, the lists come out as "proposals".

This possibly goes back to the time in the 1930s when Sir John Latham had a difference with Justice Starke. This matter is described in an interesting essay by Clem Lloyd.* It is an essay which reveals the deep bitterness that occurred at that time. Starke, whenever he was rostered off duty, far from accepting it as a respite from a busy life, would simply turn up and a chair would be drawn in for him to participate. Hence the "proposals".

Each Justice has a constitutional commission. We have our responsibilities. They are much greater than responsibilities even in the Court of Appeal in New South Wales, which is the busiest appellate court in the country in terms of sheer volume. So some things are different. The way in which the Justices relate to each other is to me a pleasant discovery. It is one of exhibiting genuine respect for one another's individuality, integrity and constitutional obligations.

The Chief Justice normally takes the lead in public utterances. Chief Justice Mason was the trailblazer here. He went on television, radio and into print much more often than did his predecessors. He rather warmed to that function. He did it very well. He also produced an awesome number of papers for conferences, colloquia, symposia and seminars, and saw that as part of his role as Chief Justice.

Chief Justice Brennan does many similar things. But each Chief Justice has a distinctive personality. That is inevitable in a court with just seven individuals, all of whom have an equal say in virtually all of the orders of the Court.

When I went to Cambodia at the time I was in the Court of Appeal I would tell the judges there that one of the most wonderful things for me to recount was that in twenty-two years of being a judge in Australia I had never been telephoned by a minister or an official or a trade unionist, or by the big end of town, or by anybody, to tell me how to

* Clem Lloyd "Not with Peace but with a Sword: the High Court under J. G. Latham", *Australian Law Review* 11 (1987), 175-180.

decide a case. I can tell you that that is not the case in most countries of the world. This is one of the strengths of our system. It is one which is practised daily in the High Court of Australia as a mark of respect for each other's individuality, conscience and view of the law. So there is a limit to the question of leadership in a court such as the High Court.

It is said of Chief Justice Barwick that when he built the court here in Canberra, and he must take credit for that leadership there, he endeavoured to get all the judges together and, as it were, knock heads. This was something which doubtless he had learned as a habit of life in his early political days. It did not work. Indeed it was counter-productive. It did not produce the outcome that Chief Justice Barwick hoped for. A result of this has been the continuance of that respect for the integrity and individuality of each of the Justices. My own view is that that is a strength of the high court of our country, not a weakness.

Vernon KRONENBERG: *Judge, leaders require followers if they are to be successful. I am proud to be living in a country where citizenship obligations include the duty to select your leader regularly. I deplore the bumper bar that says, "Don't blame me, I didn't vote for him". There is now some talk of a move to reduce one's citizenship obligations in terms of selecting leaders in making our voting for leaders an option. That might not be a very good idea. I wonder whether you have views on it.*

Justice Michael KIRBY: Like you, I grew up in a country where there were obligations of citizenship, such as jury service, in the old days national service and, in times of war, military service, and also in times of election voting duty. So naturally I grew up in the environment of the compulsory vote. Like you, I saw its strengths. When one looks at the low voter turnout in the United States of America, in particular, and the fact that that appears to disadvantage already disadvantaged people and to fail to get to the vote those whose views may be important to be reflected in the political institutions, one tends then, as an Australian, to be confirmed in the system we have.

On the other hand, we are one of the relatively few countries of the world which has this system. I think it obtained in the Soviet Union as well, and in some other countries that we would not necessarily regard as good models. But it did not obtain in many countries. Most countries have a free vote. Most have relatively lower turnouts. Many have much lower turnouts than we have.

The defenders say, "Well, we are a continental country with scattered communities all over the place, and we have got to ensure that we get a representation of the whole of the nation". The objectors say, "It is part of freedom, to take part or not to take part. This is a liberty you should be able to reserve to yourself. If you cannot choose between the two you should not be forced to go along and make a rude comment on the ballot paper".

I have learnt since my appointment to the High Court of Australia never to express a final view except in court. And as this is a matter that may come into the political debate and even get into the Parliament, I will watch it closely. There are arguments on both sides. It is often a source of astonishment and surprise to visitors that we force people to vote. But that is how we have long been doing it in Australia.

Lynette GLENDENNING (PAL Management): *Judge, you referred earlier to the blessings of our Constitution and perhaps to the virtue of our rather low-key approach to civics and to the knowledge of citizens about the way the Constitution operates. As we look to the next century, what do you think it will take for this country to be able to reflect on its identity, its Constitution, and how do you assess our ability as a nation to move through the debate, not just about the republic but the question of how we face the next century?*

Justice Michael KIRBY: In my address in the Bonython Hall in Adelaide I tried to list the ten major or oft-repeated weaknesses of the Constitution, and then the achievements we have had in this century, in making a nation, in keeping a nation, when so many, especially federal, states have split up.† I then set out what I thought were the blessings of the Constitution. I hope I have avoided complacency. I agree that there are many challenges. However, I do not think that the challenges will require us to turn backward into nineteenth century nationalism, which has been a feature of some of the recent debate on the Constitution.

What we as Australians have to do is, somehow, to come to terms, as we are beginning to, with both the challenge and the opportunities of our geography. In a sense we are something of an anachronism: as a post-settler society in the South Seas comprising people of basically European stock, who really just fly over Asia and have not a great deal to do with it. I think it is one of the achievements of the past ten years or so that this is beginning to change. The penny has dropped that we are down here in this part of the world, and that our position presents us with quite a few challenges; but also tremendous opportunities.

If you look into the future as to what we should be doing with our Constitution, I think the answer to that will, in part, be found in what our future will be like. The future will be very much influenced by the fact that we are living here on the brink of a region of the world that will be the great economic engine house of the coming century. We have to have a role in that. We have to get a slice of the action. Some of the things that are going for us include the English language, the educational institutions, and the stable institutions of government that I have mentioned. Without complacency we

† M. D. Kirby, *The Blessings of the Constitution* (speech to the Constitutional Centenary Foundation, Adelaide, 13 August 1976).

have to ensure that we keep these strengths. We should not rend our clothes and gnash our teeth and say we are really Asian, because nobody in Asia thinks we are Asian. When we say that we are really throwing away our ace card, which is that we are a different society, with different institutions, in this part of the world with something to offer them.

Kim Dae Jung said exactly that: "We in Asia look to you as the first country in our region which was a democracy. You have been a stalwart, steadfast example to us, and you remain that." Kim Dae Jung is the intellectual opposite of Lee Kuan Yew. He is the man in Asia who says that all this talk about autocracy is merely the talk of autocrats who want to keep control. He denies that this is the Asian way. He denies that autocracy reflects "Asian values". His view is that Asian values are just as democratic and that Asians love human rights just as fiercely as Australians do. Hence his sixteen years in confinement! Aung San Suu Kyi likewise, and so many other people. So let's not forget them. In Cambodia, too, I saw many brave champions of human rights and democracy.

Rosemary GANLY (Defence): *As you travel the world and spend a lot of time with public officials, when you look back at us do you see Australia as having the leaders in our public services to lead us ahead?*

Justice Michael KIRBY: I have been fortunate to have had a lot to do with the Australian public service over the years. My first ten years in public office were in the Law Reform Commission. I did learn, shall we say, to observe, but not particularly love, the inter-departmental committee. I had a particularly unpleasant experience with inter-ministerial committees. I always think of the Standing Committee of Attorneys-General (which, by the way, always meets in Cairns or Queenstown or other holiday resorts) as having over their doorway: "Abandon hope all ye who enter here"! But in the past twenty years, I have seen tremendous changes. In fact we celebrated some of them recently in this city on the twentieth anniversary of the new administrative laws.

Tony Ayers has observed, when you hear some people yearning for the "good old days", you should bear in mind that there are not many around now who were there in the "good old days"—only old codgers like Tony and I who can dimly recall those days. The developments in accountability, answerability and the giving of reasons, the provision of the Ombudsman, the Administrative Appeals Tribunal and judicial review have amounted to a truly amazing revolution. They have made our public service more accountable. Peter Wilenski used to say to me that the basic idea he had behind going along with all this reform was that accountability meant, ultimately, more efficiency. You make the thing more efficient because it is more accountable.

I ask you to note that all those changes—the establishment of the AAT, the setting up of the Ombudsman, the enactment of the *Administrative Decisions (Judicial Review) Act*—and many other changes were done by the Parliament. In England they are still waiting for freedom of information legislation. Such changes as have occurred have happened, mainly, through judges, in the House of Lords (in its judicial capacity) and elsewhere, making up for default of legislation. But in our country the big changes in public service accountability (and I believe efficiency and more transparency) have come about in the past twenty years at the behest of reforming ministers, enacted by the Parliament with the legitimacy of the vote of the people's representatives. They are therefore very unlikely to be changed. We do pretty well in that respect: better than anywhere else as far as I am concerned.

Mind you, the battles are not yet finished. In the Court of Appeal I once made a decision in the case of *Osmond v Public Service Board* in which I held that there was, at common law, a right to reasons from administrative officials.* This was a case where somebody in New South Wales had been denied promotion. He asked the officials in the little committee that denied it, "Well, why?". They said, in effect, "We are not telling you, and we do not have to". Under the state law they did not. The disappointed citizen came to the Court of Appeal. By two votes to one we held, Justice Priestley agreeing with me and Justice Glass dissenting, that the common law had moved to the point which federal legislation had provided: People who are the donees of power of Parliament must be imputed, in a modern society, to act as a modern parliament would require and give reasons. That went on to the High Court of Australia. By a vote of five justices to zero the decision of the Court of Appeal was reversed. Common law was held not to require the giving of reasons.

I would not like you to draw any inferences. I have not told you that little story as an indication that I bear any malice or grudges from the past. Or that I am simply lying in wait for *Osmond* to be reconsidered. But I do. And I am!

* (1984) 3 NSWLR 447 (CA), reversed (1985) 154 CLR 656 (HCA).