

**Keynote Address - "Breaking Societal Barriers" - The Hon. Justice  
Michael Kirby AC CMG Justice of the High Court of Australia**  
(Transcript of video)

I'm Michael Kirby, and I'm a Justice of the High Court of Australia, Australia's highest court. I'm sorry that I can't be with you on this occasion. I'm speaking to you by electronic form from Sydney, the Olympic city. We've found in the High Court of Australia in video links which bring litigants to the Court, from the far reaches of the continent of Australia, that when lawyers are speaking in electronic form, they tend to be briefer. Now judges don't necessarily conform to the rules of all lawyers, but we'll just see whether or not this message by me can be briefer than otherwise it would have been if I had been with you in the flesh.

Normally the High Court of Australia sits in Canberra, but I'm speaking to you from my Chambers in Sydney. In the building in which I am speaking, courts, from the Supreme Court of the state and the Federal Court, and other courts, are disposing, according to law of the disputes of the litigants throughout this building. And that is the nature of a society that is ruled by law. The High Court of Australia has played an important role in defending the right of freedom of association. In fact, my first knowledge of the Court came when I was 11 years of age, when an important challenge was presented to freedom of association in our country.

The challenge came this way. Australia was then engaged in the Korean War, there was a great fear of communism and the government of Mr. Menzies, which had just been elected, promised to ban the Communist Party of Australia. My grandmother had just remarried, and the person she married was a Communist. I came to know this man, who had fought in the First World War, who'd fought at Gallipoli, who'd been gassed, and who had become very depressed with the nature of society, and determined to change it. Communism became, in a sense, his religion, and he joined the Communist Party. Now the government and the Parliament of Australia were going to ban him and ban the Communist Party of Australia and to place civil restrictions upon him. A challenge was brought to the legislation, which passed through the Federal Parliament of Australia, in the High Court of Australia, the Court on which I now have the honour to serve. The challenge came before the Court in 1951. It was, I think, one of the proudest moments of the Court. Here is the report of the Court's decision. The Australian Communist Party and others, against the Commonwealth. The Communist Party was joined in its opposition to the legislation by many civil society organisations, as we call them now - by churches, by trade unions, and by other citizen groups. The matter went to decision in the High Court of Australia, and most people at the time thought that the Court would uphold the constitutional validity of the legislation. Australia doesn't have a general Bill of Rights and the matter had after all been debated in the recent Federal election in Australia. In fact, by a vote of 6 Justices to 1, the High Court of Australia, my court, Australia's highest court, struck down the legislation as unconstitutional. In effect it said that in Australia, you could join an association, you could have views, even unpopular views, and the government and the parliament could not do anything about it. It could act if you acted in

an antisocial way; it could legitimately target legislation on antisocial activities, but it couldn't deal with the fact that you were a member of an association, or you held views which were important to you, however bizarre your fellow citizens might think them to be and however much they disagreed with them. That was the decision of the High Court of Australia in 1951, at the time of the McCarthyist activities in the US, the US un-American activities, war in Korea, and many legitimate fears of citizens about the spread of communism and the fall of the dominos.

As a young lawyer, I was a joiner. I joined lots of what we then called non-governmental organisations, civil society organisations. One that I joined was the Council for Civil Liberties. This was a group of lawyers, many of whom ended up judges, who were working for the civil liberties of their fellow citizens in Australia, largely issues of police power and some of the issues that arouse out of the conscientious objections of some citizens to serve in the Vietnam War. But as I look back on the work of the Council for Civil Liberties and my part in it, it is really surprising to me to reflect up the fact that at that time I did not really see, and nor did the Council, the significance of many issues of civil liberty that we've come to see in the last 20 or 30 years in Australia. The civil liberties and rights of the Aboriginal people and Torres Strait Islanders, the rights of women and the disadvantages they suffer in society and in the law, the rights of children, the rights of ethnic communities, and one group that was absolutely never spoken of, were the gays and lesbians against whom there were very serious legal restrictions and inhibitions. And so the lesson of my experience in the civil society organisations, such as the Council for Civil Liberties, is that all of us are in a voyage of discovery. All of us are discovering from each other the issues of disadvantage and generally it takes the people who are most disadvantaged in their particular groups, to break down the barriers of society, and with their friends, to lead their fellow citizens to enlightenment.

This is what has happened with the organisations of Aboriginal and Torres Strait Islander citizens in Australia, it's what happened with the ethnic communities in Australia, speaking up against the old attitudes of the White Australia Policy. It's what happened in the women's movement, ensuring the provision of anti discrimination laws, and perhaps, more important, the change of social attitudes. It's what's happened in youth groups, and young people, speaking up for the rights of children, and certainly it's what's happened in relation to gays and lesbians in Australia. Their concerted effort when HIV Aids came along, that ensured an enlightened attitude on the part of Australia and of its laws and policies. People in civil society organisations, speaking up for rights, breaking down social barriers, ensuring social equity, doing so in their own country, and never forgetting their brothers and sisters in all parts of the world.

Another development of the past 30 years has been in our discovery in the links we must have with civil society organisations in other countries. In a number of the activities in which I have become involved, in the field of Aids, in the field of people's right to self determination, in the field of geonomic development and in the field of global civil liberties or human rights, I've come to realise how many things civil society organisations share in common and how they can learn from each other. For a period I served as the special representative of the Secretary-General for Human Rights in Cambodia and that threw me into contact with the civil society organisations in that country, which had suffered war, revolution, invasion and genocide. It was a marvellous thing to see the way, that after the United Nations presence in Cambodia, the civil society organisations grew up and flourished, and spoke up for human rights and demanded that there must never again be an oppression of the kind that they had lived through. Civil society organisations concerned with land mines, concerned with

women's rights, concerned with children's rights, all speaking up for a better Cambodia and a better world. We should emulate them and do the same in our own societies.

CIVICUS, the international body which is upholding the third sector in society, and which is working at international level to encourage the understanding of the legal protections and other social protections that must exist for civil society organisations tells us that in Australia there are 400,000 civil society organisations. In the US, it is said that there a million, which considering the population of the US and the population of Australia means that we are in Australia a community of joiners, and of civil society activists. That's a good thing.

For my contribution to you, I suggest there are three lessons. First, you need the legal protection; you need courts, you need laws which will uphold the rights of people to join together in their associations and organisations. Whether they be very unpopular political groups, whether they be very unpopular religious groups, or choral societies or knitting clubs. This is the way a free civil society organises itself, and as our experience in Australia has shown, it's the way important reforms can be achieved.

Secondly, you need to encourage citizens to join civil society organisations and you need to promote the ease of membership. You need to provide tax benefits, you need to provide other benefits to ensure that this can take place.

Thirdly, you need to teach the lesson that nothing happens that is good, no great reforms are ever achieved, unless people stand up for their own rights and organise themselves with people of like minds. Some of their ideas may pass into history, as my grandmother's second husband's ideas about communism have largely now done. But other ideas, the ideas of freedom and liberty can be secured by law and can be upheld by the activities of ordinary citizens. This is the notion behind CIVICUS, it's the notion behind the non-governmental organisations and civil society organisations. It's the notion behind a freer world in which freedom of association is provided and asserted by citizens and breaks down the social barriers which stand in the way of a true enlightenment. What are the issues that we don't see now, such as the issues that I've mentioned we didn't see in the sixties? That is the question we must constantly ask ourselves. The answers will be given out of the lives of ordinary citizens and out of their activities in the civil society organisations of their countries.