



THE GREAT COMMUNICATOR

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MELBOURNE UNIVERSITY
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Many of his decisions about refugees, Aboriginals, women, gays and others have left him personally dissatisfied with the law, but with a full understanding that unpleasant decisions are sometimes required by the letter of the law.

Reflecting on his 13 years as a High Court Justice and 34 years as a judge, the recently retired Justice Michael Kirby AC CMG – Australia's longest serving judge - says the job of being a judge is not to make decisions because they are popular.

"A judge in Australia isn't in the popularity business," Michael Kirby told MLS news.

"Nor is the judiciary a branch of Tammany Hall".

"Our judges are the chief guardians of the Constitution and of the rule of law. But this does not mean the judges are automatons, flying on automatic pilot. They have choices to make which must be both lawful and wise."

At his High Court farewell in February the Attorney General, Robert McClelland, observed that Kirby had been tagged the 'great dissenter' but went on to say that he would be remembered as the 'great communicator'. Kirby would most likely agree. He believes that his greatest legacy to the law has been to deliver judgments that are accessible to the ordinary Australian – judgments that demystify the tightly enclosed world of courts and lawyers.

The University of Melbourne Law School in May conferred on Michael Kirby its honorary degree of Doctor of Laws. The University has also appointed Anne Orford, ARC Australian Professorial Fellow and Director of the Institute for International Law and the Humanities, as the inaugural holder of the newly created Michael D Kirby Chair of International Law at Melbourne University.

"I have gradually come to understand the increasing role that international law will play in the law," Michael Kirby told his graduation ceremony.

"This realisation has sometimes put me at odds with judicial and other colleagues," he said.

"But I have lived long enough, read deeply enough, and travelled far enough to see the discipline of law redefine itself as something more than the rules of the sub-national jurisdictions of Australia."

Living in an age of the internet, international trade, and international human rights law, it is inevitable, he says, that international law will grow.

"Do not doubt that every nook and cranny of the law of Australia will adapt to international jurisdiction, and rapidly," Kirby said.

"Nothing will be left out, including Australian public law and constitutional law," he said.

"These may be heresies for some lawyers whose minds have not travelled beyond the confines of the local jurisdictionalism in which they were first raised.

"But today's graduating class will see my ideas vindicated – be in no doubt about that."

In the same address Kirby acknowledged the presence at the ceremony of his long-term partner, Johan van Vloten.

He is not overly concerned about the public discussion about his sexuality – it is not something he believes he should have to hide. However, he hopes that one day this subject will be about as interesting to the general population as whether one is left-handed or right-handed. "It is no big deal", he says.

Michael Kirby was born in Sydney and educated in public schools, including Fort Street Boys' High School.

"I suppose it was inevitable, if you had the gift of the gab, that you would end up becoming a lawyer," Kirby said.

He holds the degrees BA LL.M. BEc from Sydney University. The degree of LL.M. was conferred on him with First Class Honours.

Michael Kirby practised as a solicitor and then as a barrister before his appointment in December 1974 as a Deputy President of the

Australian Conciliation and Arbitration Commission. He is still the youngest man appointed to federal judicial office in Australia. He held that position to 1983 and for the period 1975-1983, he also served as the inaugural chairman of the Australian Law Reform Commission. In 1983 he took up appointment as a Judge of the Federal Court of Australia. He relinquished that post in 1984 on his appointment as President of the New South Wales Court of Appeal, a position he held until 1996. In August 1995 he was concurrently appointed as President of the Court of Appeal of Solomon Islands. He resigned these positions when he was appointed in February 1996 as one of the seven Justices of the High Court of Australia, Australia's federal Supreme Court.

Although now retired from the High Court, the Kirby diary remains a full one, he is currently:

- President of the Institute of Arbitrators and Mediators Australia;
- A Board member of the Australian Centre for International Commercial Arbitration;
- Involved with a number of international agencies such as UNAIDS, UNDP and UNODC;
- Visiting professor at five universities. With his new Melbourne degree, he promises regular interaction with the Melbourne Law School faculty and students. "I have a long-standing love affair with Melbourne University Law School", Kirby says with a smile.
