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MICHAEL KIRBY & LEADERSHIP

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In our 'young and free' Australia, a dry continent to which men were once condemned for, among other things, 'the abominable crime of buggery'; I met with our first openly homosexual Justice of the High Court. The man who bears the name and letters 'Justice Michael Kirby AC CMG' is a member of both one of the most highly regarded, and also the most frequently vilified, categories of humanity; a judge of the High Court of Australia and a man who has lived with a same-sex partner for many years. As judge, Michael Kirby is decorated and commands a certain degree of respect, as a gay man Kirby has faced unfair stereotyping, a lifetime of discrimination and the pain wrought by fear and secrecy. People have made assumptions about him. People have gossiped about him. Some of their assumptions are correct. Michael Kirby is over sixty and not particularly radical in a relative sense. In this he resembles numerous other members of the judiciary the nation over. He is very intelligent, displaying a history of academic excellence and dedicated scholarship, and this is how we like our judges to be. But Michael Kirby should not be homosexual. Two hundred years ago his type were convicts. But Michael Kirby is homosexual, and he is considered, arguably, the most powerful openly gay man in Australia. This is an exploration of some of the aspects of Kirby's life that have brought him to this position. In particular, Kirby's attitudes towards, and experiences of, leadership shall be discussed. In Michael Kirby's case; an unwavering sense of spirituality, a conviction that scientific innovation, and education generally, can liberate the downtrodden and finally a devotion to the protection of human rights, have all combined to produce this widely admired Australian leader.

#### **Assumptions and Surprises: Human Rights are Fundamental**

As mentioned, Michael Kirby is a Companion of the Order of Australia. He is also, however, decorated with an honour from a much wetter nation. From the same British Isles that once incarcerated Oscar Wilde, gay playwright and decadent wit. Despite professing the same variety of love as Wilde, Kirby received a Companionship of the Order of St Michael and St George in 1983. Whereas in that earlier *fin-de-siecle* he would have been imprisoned for his kisses, Kirby in our own millennial era is celebrated. The social changes that have forced the reappraisal of societal attitudes towards

homosexuality, and the currents that have stirred those changes, are reflected in the life and leadership qualities possessed by this respected Australian leader.

Michael Kirby's leadership success has flowed from the qualities and attributes he is often praised for and which have seen him find his place at our judicial pinnacle. He is gifted with an expansive perspective and rather than restrict himself, as may be expected, to the enormous tasks before the gay-rights lobby, His Honour is well known as an advocate for all Human Rights. He has said:

*One of the problems of gay people is that they don't see the linkages between discrimination against them, and other forms of discrimination. I want to see the linkages.*

Such sentiments have lead Kirby to a lifetime of Human Rights activism. His résumé is filled with positions with UN bodies and other agencies that have directly involved him in the fight to restore or safeguard the basic rights of oppressed peoples across the globe. Perhaps this interest is fuelled by his firsthand knowledge of the personal tragedy of having one's Human Rights denied, or perhaps it is borne out of Kirby's firm Christian faith. It is likely a synthesis of the two.

Just as it may appear incongruous for a High Court Judge to be openly homosexual, Kirby's strong Christianity may surprise some individuals. The widely accepted homosexual stereotype does not include a regular churchgoer. Nor does it include an individual who frequently recalls Jesus' teachings from the Bible in an attempt to apply Christian ethics to real life situations. As with the previous stereotype, Kirby resists such a shallow categorisation. For as open as he is about his love for his male partner, His Honour is also open about his trust in the love of Jesus Christ and the value of organised Christian religion.

**The Religion of Love: 'It's Wrong and It Has Got to Stop!'**

*Ultimately we are accountable to God, not to earthly creations – Michael Kirby (16-08-00)*

*For there are eunuchs who have been so from birth, and there are eunuchs who have been made eunuchs by men, and there are eunuchs who have made themselves eunuchs for the kingdom of heaven – Matthew 19:12*

Eunuchs of the kind initially spoken of by Matthew, are fortunately, rare in modern life. There are, however, a variety of perspectives regarding the final two types and the relation of these to the condition of homosexual Christians, a category into which Justice Kirby fits. From the perspective of the Catholic Church, the largest religious organisation on Earth, and explained by the *Catechism*, there is much evil in the persecution and discrimination perpetrated against homosexuals by some community members. On this matter Kirby and the Churches agree. His Honour has also described homophobic violence and attitudes as 'evil'. Others find less cause to object and loudly espouse their detestation of the so-called 'homosexual lifestyle.' Dr Laura Schlessinger, a media personality, is perhaps the most vocal of such recent exponents of anti-homosexual attitude. She has created a storm of controversy with her frequent pejorative statements about gay people. In a manner similar to others who object to same-sex relationships, Dr Laura bases her opposition upon a literal translation of Biblical teachings and a good deal of prejudice.

The Catholic and Anglican Churches have distanced themselves from such insensitive viewpoints. The Catholic *Catechism* now recognises that 'the number of men and women who have deep-seated homosexual tendencies is not negligible' and admirably advocates acceptance of homosexuals with 'respect, compassion, and sensitivity.' It also acknowledges that homosexuals 'do not choose their condition.' The Catholic Church, however, also prescribes perpetual chastity for homosexuals and calls for gay Catholics to identify the 'difficulties they may encounter from their condition with the sacrifice of the Lord's Cross.' Through the 'virtues of self-mastery that teach them inner freedom, prayer and sacramental grace' such people can 'gradually and resolutely approach

Christian perfection.' Some would describe this as the 'love the sinner, hate the sin' approach, or in the eloquence of Matthew, as 'eunuchs for the kingdom of heaven.' These facts, taken with the movement of some factions of the Anglican Communion to ordain and celebrate openly homosexual clergy, may lead one to believe that if there is not peace between the Christian Churches and their homosexual adherents, at least there is not open rebellion.

It is Michael Kirby's view that this is not the case. The third part of Matt's passage speaks of another kind of eunuch. Kirby would argue, along with some Gay and Lesbian Christian groups that homosexual Christians are cast as Matt's second kind of eunuch. Kirby and these others assert that gay Christians are stripped of a loving or meaningful outlet for their natural sexual desires by the arbitrary impositions of an insensitive Church hierarchy. The *Catechism of the Catholic Church* also, for instance, describes 'homosexual acts' as 'intrinsically disordered', 'contrary to the natural law' and directs that 'under no circumstances can' acts of homosexual union 'be approved'. Recently, Edward Cardinal Clancy issued a joint statement with his Anglican counterpart, condemning the Sydney Gay and Lesbian Mardi Gras. Far from being an example of pride or an important forum for presenting legitimate homosexual issues, the Archbishops' statement called the Mardi Gras 'an exercise in gross exhibitionism', and an event that 'does not merit...support'. Whatever your view on the Mardi Gras, it can be recognised by nearly all that what began as a human rights protest march has indeed morphed into a gaudy licentious spectacle, but the symbolism of the most senior of Australian Catholic hierarchy making a negative statement about Mardi Gras resonated in many places.

When I questioned Kirby about his reaction to such issues he cited the example of Martin Luther and replied in the following manner:

*I was brought up within that tradition (Protestantism) to believe, rather boldly really, that you have a kind of hotline to God, that the other, mortal institutions can get it wrong,*

*that you can receive a Spirit, which is bigger than yourself, without the interference of other human beings.*

I informed Kirby that these statements sounded foreign to my Catholic ears, and that the majority of Christians, those of my own tradition, have great respect for and put much emphasis upon, the promulgations of 'other human beings'. In fact, the Catholic Church believes that under specific circumstances the Pope is infallible, that he cannot make a mistake. Kirby responded with:

*It is my belief that we should all listen to the point of view of others. The fact that earthly institutions have a view different from your own should cause you to reflect on your own and question your own. You should not arrogantly believe that you have all the truths. The history of the Churches, not only the Catholic Church but also my own church, the Anglican Church, and all the other churches and beliefs, beyond Christianity is that they get into the hands of human beings who are flawed. Sometimes deeply flawed. You've got to keep a healthy scepticism about these things because, what is orthodoxy one day, may be heresy in the next.*

Michael Kirby appeared here to oversimplify the enormous leap of confidence (some may say arrogance) such a perspective requires homosexuals to take. It is an almost Socratic 'personal contract', not between man and the State, but between man and his Creator. It is the product of a very Lutheran notion that one does not receive salvation through mortal intermediaries, but brokers it with God by the personal recognition of the sacrifice of Christ and the guidance of the Holy Spirit. Such a belief was natural to His Honour. Others may find rebellion against the codified teachings of their religion; the institutions on earth that purport to dictate the path of redemption for all humanity, harder to swallow. Surely, the decision to voluntarily participate in acts that have sometimes been listed by your Faith as 'sins that cry out to Heaven for punishment' would be much more difficult to proceed with than Michael Kirby allows? How far can one go with this personal contract? Accept the Virgin Birth, but reject Church teachings on homosexuality? Believe in the redemptive crucifixion of Christ; yet remain sceptical

about a bodily resurrection? There is a fundamental uncertainty introduced into organised religion when adherents become selective about which dogma that are willing to accept, and which they shall discard.

I continued by quizzing Kirby about Catholic Archbishop of Melbourne, Dr George Pell's widely publicised comments warning of the moral inconsistency of an active homosexual life and the kind of life a Catholic is called to lead. He informed me that he didn't want to 'get into a debate with Archbishop Pell.' He mentioned the fact that as a citizen, His Grace is entitled to a point of view. He continued by stating that His Grace is a very influential churchman and then:

*I am sure that he is sincere in the views that he expresses. His life's experience has been different to mine. If he had had my life's experience, and reflected on it, he might well not have come up with such hurtful statements. People don't choose their sexuality. It is a wrong thing to stigmatise it, or try to put it down. Sadly, that is a feature of the Christian Churches at the moment. But it will change.*

His Honour expressed dismay at such attitudes in the following manner:

*It's almost beyond my belief and understanding, in the face of modern scientific knowledge on homosexuality, that intelligent people can still hold these views. But they do, and we must take the time to correct their errors. It is the moral duty of people, and not only gay people, to endeavour to do so. I feel a moral duty to do so. I accept my Christian upbringing. I will not allow anybody to part me from it.*

Thus, Michael Kirby feels his motivation for religious and social reform is based upon a moral, and indeed Christian, understanding of human nature. Despite the possibility of these statements being construed as arrogant espousals, I was surprised by the lack of spite or condescension in Kirby's tone. When speaking of instructing Archbishop Pell in moral wisdom, he spoke with compassion and a little disappointment, rather than with the sanctimony or angry rebukes so often directed at His Grace by the Gay Lobby. Kirby's

comments upon what he views as the clergy's ignorance of 'scientific fact' were delivered in a quiet manner, devoid of indignation. He was not rebuking the Churches but, rather, he appeared to be appealing to them. Justice Kirby seems to be imploring the Christian Churches, and society by extension, to follow closer in the steps of another renowned leader, the Man-God who commanded that we 'love one another' as He loved us. What the Churches make of this appeal, and how society generally are to accept such a petition from a man so openly pursuing an agenda many feel is morally questionable if not wrong, remains to be seen.

Despite his professed Christian convictions, Kirby has expressed a concern that some may see him as an exclusivist Christian. He assured me that this is not the case, saying:

*Certainly I was brought up in that faith. I believe that I remain true to my love of Jesus. But I also love people who search for spirituality in other ways – through the Orthodox Churches, Judaism, Islam, Hinduism, Jainism, Sikhism and Buddhism.*

He has also noticed, along with George Pell, that:

*The fastest growing religion in Australia is 'no religion'. There are plenty of non-religious people (including my partner) who have a deep spiritualism and love of humanity. You do not need to find God to find love of humans and indeed animals. Sometimes the God of the Churches or at least the Churches themselves actually get in the way of that search. I have always thought that the global movement for the defence of human rights and human dignity is based on love and is a form of spiritualism. So I do not exclude Humanists from my world.*

And here we have Kirby the inclusive, Kirby the Humanist, Kirby as a spokesman for pluralist Australian society. Here we have Kirby's cast on the basic human need to seek out and attempt to describe the unknowable, something we often term religion. Every reflection of human spirituality is celebrated and valued. Some may interpret such a view as a naïve cultural relativism. Others clamour that it is the mark of a truly tolerant man. Whichever your preference, Kirby's reminder of the negative role that has sometimes been played by organised religious bodies is nothing new. The Spanish and Roman Inquisitions, the desecration of holy places and wholesale slaughter of Catholics under



the reign of Henry VIII in England and the madness that creeps from the religious fundamentalism germinating in predominantly Muslim countries for much of the past few decades support this. There are few who would argue, however, that the current failings of organised religion share any of the malicious intent that has characterised much of the religious evils of the past. Nor is this the view of Michael Kirby. Rather, he acknowledges that Christianity and other forms of spirituality, and even the Humanist movement, foster good relations between humans. Modern psychology has shown us that those who subscribe to these philosophies are less likely to hurt their fellow humans and more likely to respect life in all its manifestations.

Michael Kirby's view on this is neatly summarised in his simple ejaculation:

*The Spirit of the Lord is everywhere!*

Ecumenism aside, Michael Kirby once more returned to expressing his admiration for the teachings of Jesus Christ. He has a great respect for the particular pedagogical style employed by Jesus. He extols the virtues of learning through parables, by explaining complex moral or other theories through the medium of a simplified tale. Parables often have elements that are highly familiar to the intended audience. For instance, Jesus' stories involving fish and nets would have been easy for a band of professional fisherman, like the Apostles, to understand. It is through such simple parables on leadership that Michael Kirby feels we may be able to teach the young to acquire leadership skills. By representing examples of great courage and good leadership in simplified tales, Kirby feels we will be able to pass on leadership knowledge to those who will mature into the leaders of the future. This admiration for parables is coloured by a deeper belief in the value of education. Justice Kirby's educational beginnings, and his continued involvement in the area, read like a parable for future leaders, instructing them in the benefits of learning and scholarship.

#### **Education: Participant and Leader:**

*I didn't have a disadvantaged education. I had a very good education!* – Michael Kirby  
(16/08/00)

Michael Kirby, like most young Australians, began his long history of involvement in education as a participant in the system. He proved to be a very good one. He attended Sydney's Fort Street High School, an institution with a tradition of academic excellence. When comparing Fort Street to Riverview, a Jesuit School at which he once gave a notable address, Kirby said:

*It was a sort of, less well endowed, but academically superior, version of Riverview College. I didn't receive a disadvantaged education; I received a very good education. I remember a Judge did come to Fort Street (Justice Charles McLelland). He spoke and he seemed a very grave, serious sort of person. I suppose he was a kind of role model to me of the authority figures of society. I wasn't unaffected by that.*

It was not long before Michael Kirby began to excel at Fort Street and rose to one of his earliest leadership positions, joining the ranks of the school's prefects. His Matriculation result gained him a position at the University of Sydney. He eventually graduated from that institution with a BA, an LL.M (first class) and a B.Ec. After quite some time at study, a persistent legal mind with leadership potential was unleashed upon the world.

Something of a hero to human rights advocates and jurists, Kirby has since received numerous plaudits from teaching institutions around the globe. He is the recipient of a number of honours and honorary degrees that recognise either his dedication to the advancement of Human Rights or his contribution to Australian tertiary education. Macquarie University, the National Law School of India, the University of Ulster, The University of Newcastle (NSW), The University of Sydney and most recently, the University of Buckingham have conferred honours upon him. As a complement to his academic leadership, Michael Kirby has also been closely involved with the administration and guidance of Australian universities, as a member of the governing bodies of the University of Sydney, the University of Newcastle (NSW) and Macquarie University. He served as Chancellor at this last institution for nine years between 1984 and 1993. From 1996 onwards he has been an Honorary Fellow of the Academy of Social Sciences in Australia. It is difficult to imagine a leader with such an educational pedigree

as Justice Kirby's ever feeling shamed in an academic setting. This makes it important to recall that whilst he was attending university, general societal attitudes to homosexuality ranged from begrudging tolerance to episodes of outright violence.

Thus, his academic achievements are all the more commendable considering that while he was studying; the undergraduate Michael Kirby's sexual orientation was still classified as criminal. Long before the Tasmanian uproar regarding discrimination based on sexual orientation, the United Nations censure, and the subsequent Commonwealth Anti-Discrimination Amendments, the youthful undergraduate Kirby would have been imprisoned for making love with another man. This may appear incredible now. It may be hard to believe that amidst the sexual exploration and experimentation common to most people in their twenties, homosexual men like Michael Kirby were forced to choose between living out their sexual preference and displaying affection for one another, or remaining law abiding citizens. Kirby assured me that initially he belonged to the second category. His first sexual experience was delayed until his late twenties, a fact that he intimated caused him substantial personal pain and which he feels was unfair and unjust.

In light of these facts and in spite of them, Michael Kirby cherished his intellectual opportunities and he encourages a robust intellectual vigour in the youth of today. When asked for advice to young people who may be studying at the moment, he advocated a healthy scepticism. Kirby welcomed a concern, especially amongst those studying legal or political subjects, that the law may truly guarantee justice and equality for all.

#### **'Leadership', and Other 'Boring Topics:'**

*If we could extract the essence of leadership and bottle it, it would be a product bigger than Coca Cola – Michael Kirby (16-08-00)*

It has been said that leadership is less about being visionary and more about the ability to communicate a vision directly to the people. If we think on notable leaders of the past, both great and terrible, we begin to notice that regardless of their particular vision, if they

could convince the public that their path forward was best, they gained the favour of their constituents. Michael Kirby is an Australian leader of an exceptional kind. His 'path forward' is professed to be altruistic, to be structured around his spirituality, his faith in science as an enlightening force and his optimistic vision for the future of Australian society. Not only does he excel in the legal profession and in the pursuit of Human Rights, but Kirby is also involved in ethical debates about the advancement of human genomic technology and is in hot demand to deliver addresses to rooms full of admiring listeners or to contribute to reputable publications. What are his views on leadership? How does he perceive leadership in an Australia context? What insights into leadership can he offer to younger Australians? Many of his answers to these questions begin with God and end with the law. They concern the 'ordinary people' and the 'great'. They call all Australians to an unwavering standard of moral fortitude. They speak of honour, courage and love.

Kirby has said that:

*Ancients described leaders as having a charisma, a special grace or talent, that exuded from them as a favour vouchsafed by God.*

When questioned about which leaders in the Western tradition he felt embodied such qualities Kirby eschewed the choice of a politician saying:

*I wouldn't normally think of attributing to a political leader as such, charisma. It's a word much bandied around. There's a great need for political leadership, but I would look for something beyond that, and it's often found not in people who are at the top of the totem pole, but people who are lower down, who are working in areas of work that are very difficult.*

Michael Kirby then suggested Martin Luther King jr. and Nelson Mandela as appropriate role models for all people. His choice of these two is not surprising given his interest in Human Rights and belief in the inherent dignity of all human beings. Kirby also,

however, cautioned about rashly glorifying role models to the point of ignoring their faults. He said:

*Each of them, like myself, had his flaws. Nelson Mandela, for example, wouldn't talk about AIDS whilst he was President. He could have affected the struggle against HIV in South Africa. He was once asked to do so and he told the people who came and spoke to him about it, that they couldn't expect him to talk about condoms, it was beneath dignity. He has changed since leaving office. But what he could have achieved as President!*

Kirby then acknowledged one of his own flaws. He spoke of his failure whilst President of the Australian Law Reform Commission to do 'more for another minority taught by the centuries to hide itself – homosexuals and others disadvantaged by law because of their sexuality'. He lamented the absence of 'greater courage on my own part' that may have allowed him to channel more of his energy, and the resources of the Commission, into eliminating some of the legal inequalities that are a reality for same sex couples. Kirby hastened to add, however, that 'courage in those days risked imprisonment and social ostracism.'

Faults aside, Kirby lauded his role models for first:

*Their courage and secondly, because they were people of forgiveness which I think is very important and one of the chief lessons I learnt from my religious upbringing. Thirdly, they had a spiritual dimension.*

Spirituality is such an integral part of the kind of leadership Michael Kirby values. He often speaks of some of the people he met during time he spent in Cambodia. These people, whom Kirby describes as 'workers for human rights and the betterment of society' had a profound impact upon him. He asserts one example of spiritual fortitude, moral strength and admirable leadership, in particular. He speaks of Sister Joan. When asked about this figure from his past Kirby stated that he could 'see her' in his 'mind's eye.' The leadership qualities he admired in Sister Joan included a capacity for the gentle

incitement of others to perform acts of love, a good sense of humour and saint-like patience. These three qualities, he has said, also inform Michael Kirby's leadership endeavours. His gentle yet insistent plea to Australians to join the campaign to protect the rights of all members of society certainly appears to encapsulate the quite encouragement of moral goodness in others that Kirby recognised in Sister Joan.

Kirby became uncomfortable when discussing his own leadership qualities:

*I feel a bit awkward about talking about leadership in my own case because I feel it tends to aggrandise myself in a way I feel uncomfortable about. I suppose inevitably the fact that I am a Justice of the High Court makes me a kind of leader to contemporary people, at least to lawyers. The fact that I have done a lot of work for human rights makes me a leader of some kind in that area. The fact that I have expressed my opinions about sexuality makes me a leader in those areas. But I just feel awkward about the notion because it does seem to be blowing your own trumpet.*

Indeed. Although one wouldn't necessarily accept such a statement from Michael Kirby, a man who is renowned for his willingness to put himself in the public eye and who has been known to air his opinions on topics as diverse as landmines in Europe and breastfeeding in Africa. This aversion to self-flattery is a trait common to many Australians. We tend to quickly desert those of our leaders who appear too self-assured, we turn from personalities who appear to be riding upon a wave of their own popularity and we quickly dismiss those who are bloated with their own self-importance. Leadership in an Australian context, as demonstrated by Michael Kirby's comments, involves little of the self-praise that may be seen elsewhere. The Australian people become disinterested in notaries who express too much of a self-interest. This may result from the convict history common to some pioneering white Australians or it may be borne of a distrust of the megalomaniacal tendencies witnessed in the leaders of the nations from which many of our population have fled.

Or maybe it has something to do with Michael Kirby's sentiments. His is a vision of Australia, and Australian leadership, that he claims is egalitarian and honest. It is a vision that recognises the dignity of all citizens and celebrates their potential as leaders of the new century:

*I think a very important aspect of my persona, is that I do not feel myself to be better than the ordinary citizen. I came from ordinary citizens. I went to a school with ordinary citizens. I got scholarships that took me to university where I mixed with a lot of ordinary citizens. And I acted, as a lawyer, for ordinary citizens.*

Here is also a man conscious of the fact that his position is irretrievably connected with the hopes and aspirations of the Australian population:

*I was appointed to do work for ordinary citizens and I continue to do that.*

As Michael Kirby would have it, the greatness of a nation can be measured by the calibre of its peoples.

When questioned further, this time regarding the specific qualities he felt were important to those who aspire to leadership positions, Kirby replied:

*There are undoubtedly people whom, by their example of courage and a spiritual dimension, are people I look up to.*

Once more Kirby drew our conversation back to spirituality. Obviously the matter begged once more to be discussed and I questioned him about another name he had earlier added to Mandela's and Luther King Jr.'s: Martin Luther himself. The father of the Protestant Reformation and champion of spiritual reform to some, the Great Betrayer to others. Regardless of your viewpoint, Martin Luther altered the story of human history when he nailed his theses to that fateful door.

*My religious upbringing was not unimportant. I was brought up in a Protestant tradition. That is a tradition which is democratic, essentially, and also willing to stand against authority. It holds that, ultimately we are accountable to God. I think that did have a big effect on me. So I would add Martin Luther to my list of people I admire. Not that he didn't have flaws. For example, he was flawed by his anti-Semitism. But he stood up against a lot of things that we would now see as wrong, in the Church of his age. He took great risks in doing so. Risks of his own life. By his courage, he helped change the world.*

It was at this point that I began to feel that here was a man of deep thought regardless of my view of his moral perspective. Kirby at least is a man with eyes that flicked from the past to the future attempting to learn from previous mistakes to build a better tomorrow. Despite occasionally appearing naïve, I feel there is no shame in being the kind of courageous idealist, the determined optimist Kirby embodies, as long as idealism is tempered with a firm understanding of moral concerns. Surely it is for the developing generations of Australians, for the youth of our nation, to emulate at least the passion in articulating a vision shown by Michael Kirby. In this way they may attempt to construct a fairer, more excellent future than the one some Australians have experienced in the past.

Kirby's vision, not surprisingly, includes a greater focus upon scientific exploration and discovery. The conclusions this research shall produce, Michael Kirby believes, will enlighten the prejudiced and eliminate discrimination, two blights that sometimes trouble Australian society. Simultaneously, Kirby urges acts of personal courage to reinforce the benefits delivered by good science. He calls on homosexual individuals to shoulder leadership initiative and reveal their true nature:

*It's a matter of people, like me, of whom there are millions in the world, speaking out. So far everybody's gone along with this game of silence. It's absurd and it has to stop. But it won't stop whilst people who are homosexual or bisexual, simply hold their tongues and go along with the game. I've gone beyond that. I think it's necessary for other homosexual people to do so and for their friends to support them.*



Tough words, and possibly more evidence of the unrealistic assumptions Michael Kirby sometimes asserts. Surely, the process of revealing one's sexual orientation to a family, a circle of friends, a church community or the wider world, would demand major bravery on the behalf of the individual. The sacrifice and valour Kirby believes every homosexual person would readily supply may be more difficult to find if one isn't a High Court Judge. The situation for a seventeen-year-old schoolboy, an aging Catholic Priest or a high profile member of an Olympic team may be more difficult or at least irrelevant when compared to the position from which Kirby publicly revealed his sexuality. Their friends, family, or congregation may be less inclined to support them than was the case with Kirby, may quite validly expect something different from them. Indeed, newspaper articles around the time Kirby 'outed' himself noted that his statement caused modest public interest and very little outcry, if any at all. This is, however, something that he is aware of and thankful for:

*There are risks and dangers in doing so. Of course, I'm in a privileged position. I can do it without losing my job, or losing all my friends. There are others who are not so well placed.*

Despite this, Michael Kirby would argue, courage on the behalf of the leaders and every member of the homosexual community is necessary if the situation of intolerance and discrimination he feels they sometimes face is to be fixed:

*Basically, it's a matter of spreading the truth and confronting the mores, which demand silence and shame. You can't be ashamed of something that God made, or that Nature made, and what you are. It's like being ashamed of your height, or your eye colour, or your skin colour, or your gender. It's ridiculous.*

Michael Kirby has also an interesting perspective on the kind of situations that may force homosexual leaders to remove themselves from positions of authority. He speaks mainly about judges disqualifying themselves from cases. Such situations usually occur where a judge has a financial or other interest in the outcome of the case, or when the judge has,

under another capacity, advised one of the parties about the details of the case. Such a scenario may see judges who are related to plaintiffs declare themselves ineligible to preside. Some sections of the community believe that homosexual judges should similarly, remove themselves from cases concerning mainly homosexual parties. Hence, when in the case of *Green v R.*, Justice Kirby's judgement against a man who had assaulted another man because the latter approached him with a non-violent sexual proposal differed from that delivered by the majority of the High Court, there were rumblings heard. In that case Kirby judged that Mr Green should be criminally punished for:

*Taking a pair of chicken shears and cutting a butterfly pattern into the chest of the one person who had shown kindness to him.*

Some would argue that it was Michael Kirby's inability to detach himself from his sexual orientation that coloured his judgement and biased it in favour of another gay man. Kirby, despite expressing a reluctance to discuss a case which had previously been decided, stated his belief that:

*It shouldn't matter as to whether a judge is homosexual or not homosexual to decide cases. What was, and is, required is an enlightenment of the nature of sexuality and the nature of peoples' reactions to sexuality. As I said in Green if every woman who was confronted by a situation in which a non-violent sexual proposal was legitimately and lawfully responded to with the kind of violent response that occurred in Green's case, then, we'd have a lot of dead males. It's a matter of impartially applying the law in a way that is blind to sexuality. I expressed what I thought in Green but I really don't think it's a matter of one's sexuality. I would believe that a lot of people who are not homosexual would have that view. I would hope so.*

Further, commenting on the frequency with which he is questioned regarding the issue of self-disqualification, Kirby replied:

*It's obviously something that worries some people. But why would you not ask would Justice Brennan not step down in a case involving a woman? Does that mean that every heterosexual male is incompetent to judge impartially a heterosexual offence? Or Justice Gaudron (the only female member of the High Court at present) to step down in every case involving an issue concerning the dignity or rights of women? She would not do that.*

To support his position, Kirby cited a recent case involving a gay man who had applied for refugee status in Australia, claiming that he was in danger of being persecuted in China.

*I did not disqualify myself. I sat in that case with Justice McHugh. We rejected the application. As far as I am concerned I will continue to sit in cases which involve homosexual issues unless I feel I could not bring an impartial mind to bear on the question which is before the court.*

Michael Kirby also spoke of the monumental case that dealt with Tasmania's infamous laws criminalizing homosexual acts. In that instance he removed himself from the case because he had donated money to the Tasmanian Gay and Lesbian Human Rights body of which one of the parties was a member. He continued that:

*It's a matter of judging each case on its merits. But, obviously, if you are associated with a party to litigation, you should not sit in a case. I have always been very strict on other judges and strict on myself. The right to an impartial and independent judge is a very important human right.*

Yet again, as so often happens, Kirby returns to the subject of Human Rights. Like spirituality, Michael Kirby also often speaks of scientific innovation and he talks of it in relation to dispelling what he terms ignorance and eliminating Human Rights abuses. He feels advances in scientific understanding will open up taboo topics and usher in a new age of tolerance and freedom for humanity. Einstein said that religion without science is

blind and science without religion is lame, but Kirby thinks he has both eyes open as he runs headlong towards embracing the opportunities offered by the findings of research.

### **Science and Human Potential: A Vision of Equality**

Leadership in an Australian context, Kirby would advocate, therefore requires ample quantities of courage, personal strength, moral enlightenment, religious devotion and unswerving conviction. When we have such leaders, Michael Kirby believes, his vision of a fairer future will become a national reality. To further affect the process of achieving such harmony Michael Kirby believes in the benefits of 'good science.' It is a conviction that also informs his hopes for the homosexual community as he feels:

*Encouraging and promoting knowledge of the scientific explanations, including about the nature and origins of sexuality is the starting point. It's the starting point of all rational, ethical, constructs. To understand what you did, to understand its true nature. For example, so long as people believe that homosexuality is a "lifestyle" and that it's something that is deliberately and wickedly chosen by people in order to upset devout members of the Church or of society, then you will have ignorant points of view expressed about it. But when science sweeps away those cobwebs, things will change.*

The power of truth and knowledge is immense. The benefits of scientific insight when coupled with moral rigour can change history. The invention of the motor car and the ethical guidelines that form the road laws combined in this way to gift humanity with a valuable mode of transportation free from many of the horrendous dangers that could possibly result from driving. In the same manner, Michael Kirby hopes, research into human genomics and psychological functioning will improve the situation of homosexuals and other minority groups in society. The wisdom learned from research, Kirby argues, is beginning to erode the basis upon which people may object to homosexuality and he expressed the view that:

*Science is definitely on my side. The revelations of the nature, origins and features of human sexuality are so overwhelming today that those who speak against it are like those who speak against the scientific understanding of the creation of the world or the evolution of human beings and other species.*

It remains to be seen whether or not science and time will vindicate or rebut Kirby's view on this issue.

Stemming from this enthusiasm for scientific inquiry, Michael Kirby holds a number of notable positions in the various scientific fields, including an ongoing term as Governor of the International Council for Computer Communications and a member of the World Health Organisation's Global Commission on AIDS, in which capacity he has contributed to debate about possible vaccines for the HIV/AIDS dilemma. Despite these positions, Kirby's special interest is in genetic research ethics. He is a member of the Ethics Committee of the Human Genome Organisation, a member of the International Bioethics Committee of UNESCO and was a Rapporteur at the International Conference in Bilbao, Spain on the Legal and Human Rights Issues of the Human Genome Project (HUGO). He describes the Ethics Committee of HUGO as:

*Basically the ethical watchdog of the publicly funded, scientific body which brings together scientists from all parts of the world who are mapping the human genome, identifying where, on the genome, are the various genes that lead to our being tall or fair or left-handed or prone to Alzheimer's Disease and so forth.*

The UNESCO Committee he described as:

*A body established within one of the UN agencies which is trying to formulate the general principles which will guide the global response to the issues of the genome.*

Ironically, both gay commentators and religious institutions have cautioned scientists regarding the development of genetic technology, for similar reasons. Both fear that

genetic manipulation or 'tampering' with the genome will lead to a new form of eugenics with the same outcomes as those generated by Adolph Hitler. Both envisage a future where prospective parents will be able to design their offspring, eliminating any 'undesirable' traits or qualities in the effort to create a 'perfect' child. Such an outcome, they argue, would lead to the creation of a genetic lower class, a section of the society born into disease, deformity and suffering because their parents couldn't purchase a brighter life for them. Homosexual commentators fear parents will deselect the theorised 'gay gene' and produce uniform generations of heterosexual humans. This would be an insidious form of sexual genocide they argue. Michael Kirby, however, feels that these concerns can be kept relevant and implemented via involvement with the bodies in which he holds membership:

*I think that, overwhelmingly, the Human Genome Project and the outcomes of it will be to the benefit of humankind. It's no big benefit to have a genetic disease and to suffer premature death or pain from it. The beginning of the steps that will take humanity to curing, responding effectively to genetic diseases (of which there are five thousands major conditions that cause suffering) will be the knowledge of what the genome is, where the genetic conditions are and how we can go about helping people. But it's true; there are a lot of problems. The possibility that insurance companies can charge extra premiums for people with established genetic conditions, or refuse them insurance altogether, or provide cheaper premiums for people who'll take a scan on a number of genetic tests, or elimination of fetuses (people) with particular conditions. These are major problems and they're only a few of them.*

By his example, Michael Kirby shows that only the constructive participation of leaders in the debate surrounding important scientific developments can yield fairer outcomes for humanity. Leadership in a scientific context therefore involves channelling an avid interest in a particular development into an understanding of the issues surrounding that technology. By moderately contributing to a discussion of the concerns raised by certain sciences, one can have a positive influence upon the future direction of research and more importantly, upon the just implementation of the changes brought about by the new

developments. Specifically, this approach informs Kirby's involvement in debate surrounding the issues of the patenting and intellectual property protection of human genomic information.

*That is a matter that might come before the court. Whatever my personal stand is, my duty is to give effect to the law. Patenting is statute law. It's therefore a matter where the Parliament will have spoken. My duty will be to try to interpret the law, so long as it is within the Constitution. The Federal Parliament has very large powers over patents of invention. It is basically for the Parliament in Australia to decide. In any case, whatever Australia's view on that matter, it is also going to be relatively insignificant in the global debates about the patenting of life forms. Most of the patenting goes on in the United States of America, where the Supreme Court held that it was possible under the US law to patent life forms. I don't wish to be unduly negative about this. Clearly, the way in which you will get major investments in the pharmaceuticals that will help people with Alzheimer's and other genetic conditions will be by protecting intellectual property.*

Similarly, it guides his response to the related issue of the so-called "corporate hijacking" of the new technology and a possible squandering of scientific resources in the production of biotechnology consumer products that will benefit the frivolously rich and not those in most need:

*The question of whether the Genome Project will really benefit all humanity, whose genome it is dealing with, or will be concerned with wrinkles, rather than with the issues of malaria prevention is a major global question. There are many problems. Yet overwhelmingly we should be positive. We should realise that it is not alien to us. The genome has always been there. It is just that in the last fifty years we have begun to discover it.*

But, as a leader, one should not be discouraged from an interest in, or enthusiasm for, the benefits to be garnered from scientific developments. Leaders, Michael Kirby has shown by example, are to guide science towards what they feel to be equitable outcomes and

positive results. It is the duty of leaders, not to take a reactionary stance and condemn new technologies, but to consider how they may be best used to benefit humanity. Leaders must actively participate to safeguard the Human Rights of individuals in danger of being adversely impacted upon by scientific discoveries.

### **Conclusions: A Story Still Unfolding**

Firmly grounded in his own controversial understanding of the Christian faith, a belief in the ability of humanity to chart our own course towards redemption, a sense of the value and sanctity of Human Rights, a trust in the benefits of education, an enthusiasm for scientific innovations and a generous optimism in the future of Australian society, Michael Kirby, the lawyer, the campaigner, the leader, presents something of an example for the youth of our nation. As is so often the case with those who ascend to great places, Justice Kirby has risen above the prejudices and possible discrimination that may have worked against him. He now holds a position where he can best affect what he believes to be positive reform of Australian society. Whether one either appreciates or rejects Michael Kirby's perspective on certain issues, one cannot help but acknowledge his persistence and peculiar success in making his message heard in many and varied places.

This piece has detailed only some of the great variety of leadership roles Michael Kirby has possessed, the most notable omission being details of Kirby's time with the Australian Law Reform Commission. It cannot forecast what Kirby will involve himself with in the future. One gets the feeling, however, that whatever activity Kirby chooses to undertake, the task will be informed by his unfailing enthusiasm. Perhaps one may divine something from Kirby's entry in the *Who's Who*, a publication usually remembered as the one in which he publicly 'came out' as a homosexual. Under another heading Michael Kirby listed an attribute that should better enable one to predict his future endeavours. Listed below 'recreations' is a single word: 'work'.

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