

2/02/04

MICHAEL KIRBY

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Michael Donald Kirby was born on 18 March 1939 and educated at Fort Street High School (then, as now, an institution of considerable intellectual distinction), and at the University of Sydney, where he took (simultaneously) degrees in Arts, Law and Economics. He went to the New South Wales Bar, and subsequently became President of the New South Wales Court of Appeal, which position he filled from 1984 to 1996. In 1996 he was appointed to the High Court of Australia, where he still is.

He has held numerous offices and posts, sat on a vast number of committees and tribunals, and conducted (either alone or in company) an untold number of enquiries. This habit began when he was a student, when he was President of the Sydney University ALP Club (a fact which he has suppressed from his lengthy entry in *Who's Who*).

He was a personal advisor to Mr E G Whitlam in the evil days of 1972 to 1975.

Unlike most ALP supporters, he is a fanatical devotee of the monarchy. (Only one ALP member of any Australian parliament preferred the monarchy to a republic in the famous referendum). Not only of the monarchy, but of all traditional English things – when sitting on the New South Wales Court of Appeal, he used to get very cross with any ethnic plaintiff who did not display enough "stiff upper lip" when enduring his tribulations. It was on this issue that I was once induced to deplore his "xenophobic rodomontades". He would love to be a member of the House of Lords, if only it existed.

His socialist principles have not induced him to distribute his personal wealth amongst the more deprived members of the community. He luxuriates in an enormous Sydney waterside house, outside which poverty-stricken inhabitants of Vaucluse are living on the footpath.

He loves making speeches. It does not, seemingly, matter to whom. He will address any conference, association, eisteddfod, congregation, reunion, symposium, levee or

dining club. Nor does it matter on what subject. He will speak on any aspect of the law, on modern medicine, on dental decay, on child welfare, on the activities of UNESCO, on the Arab-Jew problem, on music, on economics, on the Stock Exchange, and on the multiple complications of the computer. Recently he spoke to the Loya Jirga at Kabul on "The Message of Islam" and to a gathering of senior monks at Phnom Pen on "The Necessity for Silence".

Despite the almost innumerable number of things he says on a multitude of occasions, there is almost nothing he has said which I can remember. One thing only that I can think of: that Dr Evatt was a champion of civil rights. And that utterance is totally false. When did Dr Evatt ever denounce the Soviet Gulag?

A curious subject which has absorbed much of his time and attention is breast-feeding. I cannot remember his point of view. Perhaps it is that the habit infringes the child's civil rights; perhaps it is that breast-feeding is the modern woman's ultimate achievement. At any rate, whatever his point of view, he espouses it with a rare fervour. Once he was invited to talk about it at a gathering of African chiefs, and it was only when he mounted the rostrum on which sat his principal hosts with their plumages unruffled and nose-bones polished, that he realised the subject he was supposed to speak on was not "Breast Feeding" but "Press Freedom".

His legal philosophy may, I think, be summarized as follows: (1) When a superior appellate court changes the law (which it obviously does from time to time), it is exercising a power which on a correct legal analysis can only be described as legislative; and (2) therefore, the Court, being seized of legislative power, should exercise it whenever and wherever it wants to, as if it were Parliament, and that, irrespective of principle and precedent. The non sequitur involved in the second proposition is fairly obvious.

He has no knowledge of art whatever, and yet, curiously, he is an excellent draughtsman. He constantly exercises this faculty whilst he is sitting on a case. I once had a large portfolio of the drawings he made in Court, but some person from Porlock has stolen it.

His long time partner, Johan van Vloten, is a charming and intelligent Dutchman, full of learning about his home country.

He is a person of great generosity and kindness, and I have benefited from it.