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CONFERENCE ON STATISTICS, SCIENCE AND
PUBLIC POLICY

XXTH CONFERENCE: HERSTMONCEUX
CASTLE

25 APRIL 2015

DEMOCRACY, CHANGE AND VALUES:
SUMMING UP

The Hon. Michael Kirby AC CMG

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OPENING IN HISTORICAL TIMES

At the time I began this day at the Castle, it was dawn at ANZAC Cove, near Gallipoli on the Dardanelles in Turkey.

At first light, exactly a century ago today, young soldiers from Australia and New Zealand, in the ANZAC Corps, waded ashore in the World's largest amphibious invasion to that time. Their object, with allies from Britain and France, was to open a new front in the Great War which had been bogged down for six months in unmoving trenches. In that endeavour, they failed. By January 1916, they were forced to retreat.

This day, 25 April, is always remembered in Australia, New Zealand and Turkey. Now we are friends; but then we were mortal enemies. The Turks celebrate a great victory. Rightly they congratulate themselves on finding an inspired military and secular civilian leader of ability: Kemal

* Justice of the High Court of Australia (1996-2009); President of the International Commission of Jurists (1995-8); Chair of the UN Commission of Inquiry on DPRK (North Korea) (2013-14).

Atatürk. The ANZACs celebrate heroism in defeat. Perhaps it is better for nations to celebrate defeats. It tends to remind them of the futility of unnecessary wars.

This 20th conference in the series at the Castle has, once again, been convened by Professor Agnes Herzberg of the Queen's University of Ontario in Canada. It has been an outstanding meeting, marked by conviviality, energetic discourse and unusual passion. The fact that it coincided with many anniversaries from the Great War and with a contemporaneous general election in the United Kingdom, ensured that throughout we took an historical perspective.

In her opening remarks, Professor Herzberg, famous daughter of a famous father, reminded us once again that we would not solve all the world's problems. But we would clarify what they were by our interdisciplinary exchanges. As David Strangway was to observe in his summation, the special feature of the Castle conferences is that the participants escape from the silos into which knowledge is now poured. All of us have been invited to think beyond the familiar square.

The first session included, on 22 April 2015, my own opening address. This reminded participants of various centennials: 800 years since Magna Carta; 600 years since Agincourt; 500 years since Hamden Court Palace was opened; 200 years since Waterloo and the Congress of Vienna that followed Napoleon's defeat; 100 years since the Dardanelles campaign and great wrongs to the Armenian people in Turkey. Thinking on these great events helped us to put today's problems in perspective.

In my opening remarks, I moved beyond an attempt to define “democracy” with precision. I examined the several flaws in the current operations of democracy in all of our countries. These included especially low turnouts in national elections; the exclusion of particular electors on grounds of race, incarceration or age. And the diminishing involvement of citizens in political parties at the very time when legislators are coming from a smaller gene pool.

Our opening session was followed by a marvellous concert in which Louise Winter, mezzo soprano, and Julius Drake, lifted our thoughts to eternal and spiritual things by their challenging music.

EXPLORING DEMOCRACY

The second session on 23 April 2015 opened under the stern and strict control of Dr David Hand, as Chair. I read the paper by Dame Margaret Anstee on elections under the egis of the United Nations. Her distinguished service for that Organisation was once again recounted. Dame Margaret has been unwell. I was delegated to convey our greetings to her. She could have simply sent apologies. It is a mark of her fidelity to duty that she prepared a most thoughtful paper, including in it the story of the sacrifice of people in Angola, questing for the right to determine their government by the peaceful processes of voting, rather than the use of force and guns.

Ian Gibson drew on his great experience in the “mother of parliaments” at Westminster. He illustrated how every decade has new challenges to the operation of democratic institutions. He lamented the time that was wasted in the first year of the Blair Government on debates over fox

hunting when a huge majority should have beckoned his Party to Attlee-like energy and imagination. He described how now “something is happening” in Scotland that injects a new passion into UK politics. His own passion led him into occasional swear words rarely heard in this conference series. In all, over 3 days, I was greatly shocked to hear “bloody” deployed by him 20 times. But the issues that we explored were ripe for passion, and not only by Ian Gibson.

Peter Millikin, long-time Speaker of the Canadian House of Commons, was congratulated on his appointment to the Privy Council in Canada. He described the positive and negative aspect of political parties in a modern democracy. He recounted the ways in which parties now select topics and members for questions in Question Time and discourage the spontaneity that a Westminster Parliament should exhibit. He chronicled the sobering reality that was emerging in modern legislative institutions.

Dr Mark Lachmann was missing from this conference and sadly missed. We sank our sorrows in cupcakes supplied by our host; although they became chronologically and organically older with each passing day.

VALUES

In the third session, we were led first by Henry Dinsdale with his quiet, reflective introduction. He described the differing approaches of medical and social scientists to identification and resolution of ethical questions. And the methodologies each considered necessary to uphold good standards. He recounted the huge technological advances that had produced the *Nuremberg Code* and *Helsinki Principles*. He described

the resistance of social scientists to the medical ethics models for research and investigation.

Andrew Thompson, one of a small but welcome number of younger participants in this conference, described the history of universal human rights, following the creation of the United Nations, the war trials that began in 1945 and the adoption of the UN *Charter*, the *Universal Declaration of Human Rights* and various UN treaties. He described the creation of the Human Rights Council and the danger that it would attract human rights oppressors who bid for election in order to protect their patch. Yet Dame Margaret Anstee's brave work sprang to our minds. And my own recent work on human rights in North Korea revealed dedicated officers of integrity, working in the field of human rights for the UN.

Dr Michael Dan opened a special session on the great wrongs that had been committed against indigenous peoples, including in our own historical traditions, in Canada, the United States, Australia and New Zealand. He lamented the pernicious doctrine of *terra nullius* that had sometimes encouraged colonial administrators to disrespect the basic rights of indigenous people. But he ended on a more optimistic note because of changes that have come about in recent decades and the recognition of the need for further change. Later, Michael Dan was to dig back into historical days and to describe the principles of heraldry and of the symbols (some of them indigenous) that now appear on contemporary official coats of arms in Canada, Australia and elsewhere.

Bernard Farber took up the theme of injustices in his examination of genocide. He began with the murderous attack of the German colonial

administrators on the Herero in South West Africa. Some 70,000 indigenous people were murdered. That wrong has never been fully repaired. He recounted the events involving the Armenian citizens of the Ottoman Empire, whose intellectuals were rounded up, murdered and displaced, in a wartime frenzy of actions that many now describe as genocide.

Bernard Farber also described the atrocious acts of the Khmer Rouge in Cambodia and of the warring factions in the 1980s in Rwanda. This brought him to the contemporary eradications of populations on the basis of race and religion, including in Syria and ISIS. But his chief insights addressed the Holocaust that engulfed the Jewish people in Nazi occupied Europe (1933-45). This was a sombre session. Whereas the demand of observers, in relation to genocide, was “never again”, all too often this was distorted into “again and again”.

Ian Gibson raised questions as to whether the treatment of the Palestinian people by Israel was a form of genocide. Bernard Farber acknowledged wrongs in that relationship but pointed to the great difference between organised and efficient destruction of populations and the wrongs done to people for reasons other than to destroy them as a race. Our conference reflected on the adequacy of the definition of “genocide” in the UN *Genocide Convention* of 1948.

CHANGE

The fourth session opened on 23 April 2015. It addressed the challenge of change. Lord [Julian] Hunt, out of deference to the prohibition imposed by Professor Herzberg, showed no slides. But he drew graphs

to illustrate the trends in climate change that were engulfing our world. He stated that there was a consensus of scientific opinion that, if global warming rose above the increased level of 2 degrees Celsius, a most serious outcome would afflict humanity and other living creatures in the Earth's biosphere. He explained the problem of getting an effective response to this challenge through democratic legislatures and in the face of economic and political opposition. He explained the upcoming international meetings that would present the Earth with a last chance opportunity.

Similar themes were explored by John Stone. He recounted the international responses to climate change that had begun in earnest in 2001. He traced the reaction of people and leaders worldwide according to their backgrounds, beliefs and world views. He insisted that all countries would have to contribute to extremely urgent steps essential to reverse the insidious consequences of climate change caused by carbon emissions.

Osborn Jackson, in absentia, presented a paper on the Ebola crisis in West Africa. This described the outbreak of the recent epidemic and the large numbers who died from exposure to Ebola (Liberia 4000; Sierra Leone 3500 and Guinea 2140) before the epidemic was brought under control. The need for an effective response by the international community was described; as were the lessons that could be learned from the earlier response to the HIV epidemic. He suggested that global solidarity could be invoked against such perils and that Ebola did elicit, without much delay, a powerful response, motivated mainly by human self-preservation.

The Q&A session that followed these papers concerning existential threats to human beings, populations and the biosphere was powerful and vigorous. Lord Hunt explained that great scientific advances often evoked opposition: witness 19th Century resistance to Charles Darwin's *Origin of Species*. Lord Hunt urged that it was desirable to reverse the computer modelling on climate change to demonstrate that it was not too late to rescue the world from a potentially devastating outcome of current policies. Ian Gibson illustrated the conservatism of people, locked into their individual values, by reference to farmers in Scotland who strongly resisted wind turbine engines, essential to harness energy from wind power. He said that, on the whole, politicians had been poor in giving leadership on this issue. It deserved more attention by our conference.

OLD HISTORICAL WRONGS

A special session on 23 April 2015 explored a number of historical wrongs and the ways in which humanity had responded or was still responding, to them:

- * Jim Beall chronicled the issue of slavery in the United States of America and the way in which it had divided US society, effectively from the beginning of the nation. He extolled the leadership that had occasionally and sometimes belatedly, been given by the Supreme Court of the United States in upholding the principle that the Constitution was “colour blind”.
- * Toby Collis, another younger newcomer to the Castle, described the Armenian wrongs of 1915 and supported the view that, at least

in terms of the usage of language of general understanding, these wrongs justified the description of a 'genocide'. Whether this would enliven legal remedies, and in particular a retrospective availability of the 1948 *Genocide Convention*, was a challenge for lawyers. But lawyers could not prevent ordinary citizens from using the language of 'genocide' if they concluded that the ordinary connotation of the word was broad enough to include the wrongs that had happened to the Armenians. Basing his exposition on a recent book by Geoffrey Robertson QC, on the *Armenian Genocide*, for which he had provided research assistance, Mr Collis described vividly the events that were unfolding exactly a century previous to our session. After this presentation, Dr Orhan Güvenen offered a Turkish perspective. He pointed out that his grandfather had been killed by an Armenian activist and that there were always two sides to every historical dispute. He indicated that the current President of Turkey had acknowledged wrongs. However, Turkey held back from applying the label 'genocide' because it was only defined by international law in 1948 and had explicit and especially horrible connotations which were contested.

- * Michael Dan examined Canadian history and heartless bureaucratic handling of the compulsory movement of indigenous Native Canadian children. He pointed out that the wrongs in Canada were reflected in equal wrongs done in Australia, New Zealand and elsewhere. He questioned whether some of the wrongs in Canada might not themselves amount to a form of genocide. This question drew strong resistance from Dr Keith James and Mr Robert McKersher, both of whom contested that the thoughtless and incompetent action of Canadian officials could

amount to the kind of intentional destruction of a population, necessary for the ordinary connotation of 'genocide'.

- * I then contributed a short reflection on the injustices perpetrated upon sexual minorities (LGBTI persons) in many countries including, until recently, the United Kingdom, Canada, Australia and the Commonwealth. The failure of the Commonwealth of Nations to act decisively against the barbarous, ignorant and often violent hostility towards LGBT people in 43 of 53 member countries of the Commonwealth of Nations was shameful. Treatment of this topic led the conference into a consideration of the special challenges faced by transgender persons. Michael Sinclair raised the issue of the entitlements to support for sexual reassignment of Bradley (now Chelsea) Manning, who attracted attention because of his role in exposing what he claimed to be unacknowledged wrongs perpetrated during military operations involving the United States.

These reflections produced a most vigorous debate. Some participants asked whether it was not time to "move on"? Was it truly necessary to remember the Battle of Culloden and the Battle of the Boyne? The advice of Professor William Schabas was noted. This was that it was not essential to apply the crime of 'genocide' to every great wrong resulting in the death of persons. Many such wrongs were crimes against humanity which was a classification of great gravity to international law. Needless invocations of the concept 'genocide' was not essential to denounce wrongdoing and to initiate the requirement of action to achieve accountability.

DEMOCRACY AND EQUALITY

The fifth session on 24 April 2015 contained many interesting insights, several of them of an economic character. Professor Güvenen described the special role now played in the international community by transnational corporations. Whereas national corporations were normally required to pay local taxes, averaging in OECD countries about 30%, transnational corporations, which could not be tied down to a particular country, usually got by in paying only 5% tax.

Dr Keith James explored the issue of inequality in market economies. He described the problems of stagflation; the concentration of wealth capital; the ways in which the tax systems can be improved; and the need to address global tax avoidance.

John Gerard drew on his career as a federal politician and minister and long-time member of the Manitoba legislature. He examined the endemic problems of mental health; the justice system; and provision of housing to vulnerable people. In doing so, he exposed several weaknesses of the law making process.

Ian Gibson described his own special interest in identification of change agents in society. Finding those who had the power truly to initiate moves to change long-standing wrongs was an important ingredient for securing reform. Robert McKersher chronicled the buying up of farms in Saskatchewan and the huge increase in housing prices in Canadian cities. John Stone expressed his concern about the concentration of political power in relatively few families; Bush and Clinton were standout

cases. But every political system had many instances of a new nepotism.

MEDIA AND EDUCATION

The sixth session on 24 April 2015 was energetically chaired by Professor Loveday Conquest.

- * Dr Lewis Wolpert addressed the question whether it was essential that lay citizens should understand development in science and technology so that they could consider the democratic needs for control and regulation. He explained why he was not now convinced that the public needed to know the workings of technology in order to respond to social implications that it presented.

- * Dr David Hand, who followed in this session, suggested that it was desirable that the public should broadly “appreciate” the workings of science and technology, even if they did not “understand” the detailed operation of technological inventions. These could be left to experts.

Dr Hand took the conference participants back to the first conference at the Castle 20 years earlier. He reminded participants of the then address of Sir John Kingman about wrong turnings in the use and understanding of statistics. As in early years, Dr Hand explained the evolution of big data and its potential to improve human life and to protect the biosphere, on the basis of factual data rather than mere intuition and hunch. He lamented

the fact that many scientists today spend almost as much time writing applications for funding as they did the actual research. He introduced a thinly disguised promotion of his own new book and planted subliminal messages about the differing titles under which it was published, respectively in the United States of America and in the United Kingdom. Dr Hand insisted that it was essential that scientists should become better at fixing the public narrative on their work with the numbers that emerge to describe outcomes but which may cause eye glazing amongst non-expert circles.

- * Peter Calamai, based on a lifetime's experience, recounted his concern that young journalists today were unaware of basic facts of the history of their countries. He condemned the attempt of governments to manipulate essential data relevant to science policy. He described the way governments seek data to confirm pre-ordained policy, rather than to help guide political decision-makers to policy, appropriate to the data available.
- * Frank Berkshire examined the role of "pop science" in modern society. He explained the need to teach pre-teen youth about science and technology. However, he acknowledged that science and mathematics were regarded by school pupils as 'hard' topics. Something was needed to make them attractive, so that their importance would secure maximum uptake.
- * David Strangway also lamented the fact that government today frequently prefers policy based evidence instead of evidence based policy. Demanding scientific messaging that would re-enforce government or bureaucratic decisions already made was

the wrong way to use, in a socially effective manner, the big data now available.

- * Ian Gibson explained that, in his experience, scientists were not generally bold enough in their dealings with members of parliament. He recounted instances where he had urged scientists to rapidly increase the amounts they were seeking from government to support their research and how they responded with astonishment when the increased sum was later procured. Courage and determination were not only important for military personnel.
- * Sheila Bird explained the way in which scientists could sometimes engage politicians by getting to know them; visiting their constituency offices; arguing for policy; and procuring their aid by asking useful questions in parliament that would gather beneficial data thereby placed in the public domain.

At the end of this session a panel, with questions and answers, was chaired by Dr David Hand. Amongst the issues that were explored in this lively interchange were:

- * A proper response to “boat people” (whether refugees or economic migrants) and how the international community and its legal norms should respond to the apparent crisis of Mediterranean and Asian boat people;
- * The “Starbucks issue”, which arose out of Dr Güvenen’s paper. What could be done in the current national and international legal

order to ensure that multinational corporations did not, by deft book entries, avoid a fair payment of taxation on local income, given that they and their employees rely on local government services and should not be allowed an unrestricted capacity to avoid fair taxation payments;

- * The operation of retroactive laws was explored, including as these might affect such issues as a finding of genocide or the application of a criminal law of rape in marriage retrospectively to reflect changes in social values; and
- * The voting age for young people and whether the age of 16 should replace the age of 18, given the current attributes of young people, their stake in the future and the typically low voter turnout in the youth cohort except in countries (like Australia) where voting is compulsory.

BANQUET AND CELEBRATION

The intellectual feast at the conference was followed by a fine banquet. Sir David Cox acknowledged the outstanding work of Professor Agnes Herzberg who had breathed life into the Herstmonceux Castle Conference series and, with her small team, kept it operating, bringing together statisticians and other disciplines to address contemporary puzzles.

Sir David expressed the heartfelt thanks of all attendees. He presented to Professor Herzberg a book, assembled by Ivo Krupka (*Public Policy and Management, Ottawa*) containing individual tributes written by

attendees addressed to Professor Herzberg. This presentation was greeted with prolonged applause.

Sir David Cox then, with a whimsical speech, introduced the conference speaker, Ian Gibson. The great utility of Mr Gibson's address, which supplemented discussions in many sessions, was that it gave all participants the perspective of a person of Scottish origins concerning the strong feelings already evident during the current general election, both in England and in Scotland. We were privileged to hear the authentic voice of a Scot who could see both points of view: at once the need to acknowledge the importance and different view-points of Scots on many issues; whilst at the same time preserving the Union of the United Kingdom, as a strong and important force for good, both in Europe and the world.

DEMOCRATIC SECURITY AND POLICY

On 25 April 2015, the participants concluded their meeting with a lively session on the reconciliation of effective security protections with democratic tolerance of difference of and disagreement.

Dr O. Ljones (Statistics Norway) explained the special pleasure of working with statistics: a science of disembodied materials which sometimes seems to outsiders to be disengaged from human beings. To the contrary, statistics is not only important for human life but encapsulates the experience of human beings by aggregating such experience and allowing it to speak to the democratic institutions of society.

Jim Beall took the conference back to the writings of Socrates on *The Republic* when examining issues of secrecy and democracy. He acknowledged the tricky nature of placing security and intelligence services under the effective control of democratic institutions, whilst at the same time avoiding destruction of the features of secrecy and confidentiality often necessary for the effective performance of their job.

David Strangway obliged participants to address the often neglected issue of nuclear weapons. He explained his role of the technical body that advises the UN Test Ban Treaty Organisation in the measurement of 'incidents' in the international community that may be interpreted as involving the conduct of nuclear weapons tests.

Peter Calamai, by reference to the recent shut down of the Japanese nuclear power facilities, explained the danger of unexplained public responses and needlessly secret information. A hallmark of democracy, he pointed out, was transparency and an attitude towards trusting the citizenry. There must be exceptions. But the exceptions should be few, publicly explained and provided for by law.

ASSESSMENT

This account of the deliberations at the Herstmonceux Castle in April 2015 brings me finally to the concluding remarks. One must contemplate how, in years to come, the intellectually curious may come upon the record of our conferences: like the intrepid historians and theologians who found the Dead Sea Scrolls decades ago:

“Or like stout Cortez, when with eagle eyes

*He star'd at the Pacific - and all his men
Look'd at each other with a wild surmise -
Silent, upon a peak in Darien*^{*}

Let them reflect upon the merits of our endeavours. We were, it is true, not representative of our national communities, still less of the world as a whole. We were older. We did not have sufficient women in our numbers or in our panels. Participants from Africa, Asia, Latin America and other remote parts of the world were sadly missing from our deliberations. So even were real numbers of continental Europeans. So were ethnic minorities in our own countries. So were indigenous people.

Yet the very commonality of those who came together in this XXth Conference – as in earlier ones - permitted us to explore deep quandaries of the modern world from a view point that is still probably reflective of the decision-making classes in the countries where most of the main decisions are still made for our world. Perhaps it should be otherwise; but yet it is not.

In our defence, we could point to the fact that we leavened our deliberations with a visit to spiritual realm in the form of music. We engaged in a banquet that was wordy and prolonged. But we mostly remained sober and listened respectfully to a personal insight into a pressing national issue (Scottish independence) that has many counterparts in our world. There were many statisticians amongst us. But they were outnumbered by other vocations. Truly ours is an interdisciplinary meeting where we all escape from the narrow confines into which the complexity of every discipline now collects its practitioners.

^{*} John Keats, *On First Looking Into Chapman's Homer*

Our discussions were civilised and articulate. For the first time in living memory an occasional swear word was introduced. But not in the rudest form. And simply to acknowledge the passions that were present in the room as we engaged in our discussions.

When, far from here and in many years to come, we look back on this meeting we will recall the good humour that was skilfully deployed to soften the pressure of weighty topics:

- * Sir David Cox protested that he was not a joker. Yet immediately follow this denial he led us into his world of Oxbridge by telling us how an after dinner speaker must say something cynical about his target which only the *cognoscenti* will fully understand and therefore laugh about. It was Sir David who reminded us of the definition of a sub-Dean in a modern university: a mouse who was being trained to be a rat.
- * Ian Gibson offered much humour from his long life in politics; some of it too politically incorrect to record here. We enjoyed his reference to a new organ of British security: MI5 and a half. We can boast that we heard of this revelation first.
- * Peter Calamai reminded us that “fine words butter no parsnips”.
- * Frank Berkshire, as usual, had the best collection of humour. The exclamation of the Nobel Laureate who declared “Hell! If I could explain my scientific research, I should not have received the Nobel Prize”. He loved his own jest about the research on a

dehydrated elephant. But it was a little esoteric for our taste. He reminded us of James Addison's aphorism: 'We are always doing something for posterity. I feign would wish that posterity for once would do something for us'. Best of all, so soon after his own retirement from Imperial College, came his promise: 'I hope to leave Imperial fired with the enthusiasm which I started with. We have been bidden here by Agnes Herzberg to travel in the 'realms of gold'. We have considered "many goodly states" and seen many kingdoms. "Round many western islands" have we ventured. If we did not reach back to "deep-brow'd Homer" we certainly called on Socrates. And the wisdom, mirth, insight, knowledge, mathematics and narratives that we heard made us "like some watcher of the skies, when a new planet swims into his ken".

For the opportunity once again to travel in the intellectual realms of gold, we thank Agnes Herzberg and each and every one who came to the Castle in 2015.