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Dedicatory Essay

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DEDICATORY ESSAY

It is a great pleasure to respond to the invitation of the editor-in-chief to write an introductory note to Volume IX of the *Journal of Contemporary Health Law and Policy* which is dedicated to Justice Michael Kirby, an Australian lawyer of international reputation. He and I have been friends over the greater part of two decades, and early in that time I worked closely with him when he was Chairman of the Australian Law Reform Commission, and I was a part time Commissioner.

That specific association came to an end when I was appointed Governor-General of Australia. But throughout my time in that Office we maintained many links. We were fellow speakers on various platforms, and he was a great resource and support to whom I could turn for advice, ideas and reference on many matters on which I was called upon to speak.

In more recent years, when I have been away from Australia and he has undertaken major judicial responsibilities, we have met less frequently. I know, however, that he has continued to carry on incredible range of activities: He has listed as his all embracing interest, "work," and his travels, his memberships, his speeches and writings bear abundant testimony to that.

Michael Kirby was born in New South Wales in 1939, and was educated at the Fort Street Sydney High School from which some famous Australian lawyers have come. He then graduated from Sydney University with high honours in Law and Economics. He practised for some years as a solicitor and then as a barrister. In 1974 at the age of 35 he was appointed a Deputy President of the Australian Conciliation and Arbitration Commission and remains the youngest man ever appointed to a Federal judicial office in Australia. In the following year he was appointed Foundation Chairman of the Australian Law Reform Commission, and in 1983 he was appointed a Judge of the Federal Court of Australia. In 1984, he became a Judge of Appeal and President of the Court of Appeal of the Supreme Court of New South Wales, and that office he continues to hold.

As well, he has held a range of national and international offices; he is active in the affairs of Australian Universities, and his work has been recognised by a range of high academic and civic honours and awards. From 1964 to 1969, Justice Kirby was a member of the Faculty of Law of Sydney University. He served as Deputy Chancellor at The University of Newcastle from 1978 to 1983 and assumed the duties of Chancellor at Macquarie University in Sydney in 1984. Subsequently in 1987, the University

of Newcastle conferred on him the honorary degree of Doctor of Letters. In 1991, he was made a Companion of the Order of Australia, the nation's highest award, and in the same year he was awarded the Australian Human Rights Medal.

Among his international posts, he is a member of the Executive Committee of the International Commission of Jurists, and he was elected its Chairman in January 1992. He has been a Commissioner of the World Global Commission on AIDS; in 1991 he was elected Chairman of an Expert Group of the OECD in Paris which is developing guidelines on the Security of Information Systems, an area of continuing interest to him. He has an active interest in the rights of people in international law, an area of urgent relevance in the context of the revival of nationalist movements in the Baltic, the Balkans, and in the fractured areas of the former Soviet Union.

It is an amazing catalogue of activities on the part of a man who, almost a decade ago, spoke of the production of "essays, articles, speeches and so forth, written at the rate of about one hundred a year, during the years since my appointment as Chairman of the Australian Law Reform Commission in February 1975." Since 1984, he has added the duties of the President of the Court of Appeal.

It is for his work as a leader in law reform that he is specially well remembered. Lord Scarman, one of the great modern English judges and law reformers has written that

Michael Kirby has established himself as one of the liveliest minds active in the field of law reform The Kirby approach is absolutely right: that law reform serves no true social purpose unless it is "to take the whole body of the law" as Bacon put it, under review and to sustain the review indefinitely, calling for law reform in this, that, or the other part of the system as the review progresses.¹

Michael Kirby published a book in 1983, not very long before he left the Chairmanship of the Australian Law Reform Commission, which gave a picture of his concerns and vision for law reform. Under him the Commission was intensively active: It drew upon a range of community resources. It sought the views and the assistance of experts with appropriate and related experience. When for example, it was concerned with human tissue transplants, the Commission worked in close relationship with doctors and scientists concerned with these aspects of transplants. I remember quite vividly a long discussion between members of the Law Reform Commission and medical doctors of varying specialties on the definition of death for purposes of the law. The range of consultation on this and other matters was very wide:

1. Lord Scarman, *Forward to REFORM THE LAW* at vi (Michael Kirby, ed.1983).

In exploring privacy it turned to philosophers to explore what was involved in the notion. Experts apart the Commission under Kirby carried its inquiries to the general public: It did so, for example, by publishing widely circulated working papers, by inviting public comment, by holding public hearings at which anyone moved to do so might offer views.

I shared the interest in technological change, and I was particularly interested in biomedical issues. We both appreciated the apt statement of an Australian judge that the law marched with medicine, but in the rear and limping a little. I always remember the work on human tissue transplants which was immensely interesting and in terms of legislative outcome productive.

I have no doubt that Lord Scarman was right in describing Michael Kirby as one of the liveliest contemporary minds active in law reform, and it is surely for that he will always be remembered. In the law, and apart from law reform, he is an extremely able popularizer. For example, in 1983, he published a little book *The Judges* which was the text of a series of radio addresses, the *Boyer Lectures*, in which he drew upon great knowledge and experience a thought provoking picture of the judicial role in contemporary society.

Since the mid 1980s, he added a major and very substantial judicial role to his other activities. I shall say no more about this than that he brings to this task great learning, great breadth of vision and a lively social awareness. What is amazing is his capacity to carry this great new responsibility, and to maintain the great range of activities which are not normally part of the baggage of judicial office. That is, however, the style of Michael Kirby, who is still a comparatively young man, full of zest for his multitudinous works, who has much yet to contribute to the world society which he bestrides with so much enthusiasm and commitment.

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