

## *About the Author*

The Hon. Michael Kirby, AC, CMG

Dr John Kennedy McLaughlin, AM, was a most distinctive person. He was born on 3 July 1938. His death on 21 March 2023 left the Australian legal and historical scene diminished. He had a unique voice and vocabulary and a personality to match. As he explains in the opening pages, his upbringing was, on his father's side, Catholic and on his mother's side Presbyterian. However, the Catholic side prevailed in the educational and religious upbringing of the young John. These elements reflected, and reinforced, the Irish element in his psyche. In my case it was similar but some things were reversed. The Protestant beliefs of Ulster prevailed. However, as we discovered, in a long friendship, the differences between the two communities of Ireland from which John and I derived our experience were ultimately more apparent than real. In this way, we discovered many common attitudes, not least in our discussions about the idea of this book.

After schooling in Waverley College in Sydney, John McLaughlin entered the University of Sydney, pursuing early plans to study Law. Although I arrived at the University a year after him, I took a similar path. Each of us participated in the students' Law Society and each of us was elected to the board of directors of the Sydney University Union where we served together for many years. Early in his life in student affairs, he acquired the title "Honest John". He was not displeased with this appellation. As a lawyer and an historian, he always considered honesty to be the best policy.

Whilst at Law School, John became the associate (law clerk) to the great Australian jurist [Sir] Cyril Walsh, later elevated from the Supreme Court of New South Wales to the High Court of Australia. This was a priceless experience to prepare him for a life in the law.

Early in his career at the Bar, John was fortunate to fall under the spell of Clive Evatt, QC. A leader of the Bar and brilliant advocate, Evatt often secured his son, also Clive, as his junior counsel. Soon John became part of the team. At the Sydney bar they were known, not unkindly, as "the Father, Son and Holy Ghost". Experience across a wide range of legal problems was, at once, thrilling and terrifying for John. Clive Snr was given to abandoning his juniors in favour of other briefs in other court rooms. This gave John the obligation and opportunity to take the lead, often at very short notice, in presenting cases that might otherwise have been beyond his experience. It was a testing introduction

#### ABOUT THE AUTHOR

to legal practice. John long retained his links with the University, in union debating and other activities. His life at the Bar (1961-1989), from a room on the 13th floor of Wentworth Chambers, in Phillip Street, Sydney, became busy. One of his companions in chambers in those early days was the young Mary Gaudron, later herself to become a Justice of the High Court and a life-long friend to John.

Eventually, John was appointed to the office of a Master of the Supreme Court of New South Wales (1989-2005). He liked being a judge and this appointment came early. Later the title of his office was changed to "Associate Judge" (2005-2010). The honorific "The Honourable", traditionally used by Judges of the Court, was eventually conceded to Associate Judges but, unlike the Judges, they (only two in number) were not permitted its use in retirement. This was a petty occupational differentiation that he understandably resented. He was a hardworking judicial officer. A lot of his work in later years was in the area of family provision litigation. This arose where relatives contested the wills left by forebears who were accused of neglecting their moral duties of support to the relatives claiming to be short-changed.

John was always keenly interested in legal education in general and teaching legal history in particular. For much of his early lifetime, the study of legal history was a compulsory subject for every law student throughout Australia. Only later did it become optional. Later still, to his dismay, it was substantially removed from the curriculum of most law schools. When John taught future generations of lawyers, about the detail and relevance of legal history (1980-1984), he was in his element. He boasted of many subsequently famous students, including the future Roman Catholic Archbishop of Sydney, The Most Reverend Anthony Fisher OP.

Throughout his life, John was very active in the Catholic Church. He participated in the Thomas More Society in Sydney (1987-2009) and held office in other Catholic and secular benevolent associations, including as a director of the Glendonbrook Foundation (2011-2023). For services to the Catholic Church, he was richly rewarded with high honours. His appointments included as a Knight (subsequently promoted to Knight Commander) of the papal Order of St Gregory the Great (KCSG) and as a Knight Grand Cross of the Equestrian Order of the Holy Sepulchre of Jerusalem. In 2014 he was appointed to the Order of Australia as a Member. His work in philanthropic bodies and his unceasing devotion to Australian legal history constituted the main reasons for his Australian civil honour. He also served as a member of the Sydney University Standing Committee of Convocation (1959-2009) and was later elected its President following its reconstitution as the Alumni Council. That University made him an Honorary Fellow in 2009. He was a true participant in various activities in civil society.

Despite our different pathways in life, John and I became friends. He was punctilious in insisting upon which of us had the modest obligation to pay for the regular lunches at each encounter. He was proud of and very happy in his

ABOUT THE AUTHOR

early prudent investment in a terrace house in a fashionable part of Paddington in Sydney, close to St Vincent's Hospital.

Towards the end of this life, John suffered greatly from pain in the hip and other ills. He underwent major surgery in late 2022. He knew that this carried risks. However, the pain drove him to seek relief. Such relief was only partial and brief in duration. On 20 March 2023, after a dinner with close friends, he complained of feeling unwell and nauseous. Typically, he resisted suggestions that he be taken to seek help at St Vincent's Hospital. On the morning of 21 March 2023, friends went to his home to find him dead. His funeral was held on 31 March 2023. All who were his friends miss him and honour his memory.

This story of the life of the author of this book does scant justice to a career in the law, University life and teaching, church activities and scholarly writing. A great pleasure of his later years was completing the research that became his PhD thesis for conferral of the degree of Doctor of Philosophy of Monash University in Melbourne. He had always been interested in the history of the law and society in colonial Australia. When he came to choose a topic for research amongst original sources, it was therefore natural for him to select the lawyers who are subjects of this book. They brought together his familial sense of identity with the early Irish settlers in the Australian colonies, particularly New South Wales. They obliged him to examine the forces of discrimination in Ireland that had encouraged many lawyers in the nineteenth century to immigrate to the Australian colonies. He discovered the many links that existed in those imperial times between the Catholic and Protestant migrants, including those destined for legal, and later judicial, service in Australia. The law courts in Melbourne are built after the style of the Four Courts in Dublin. The silken rosette on the black robe of senior counsel in Victoria is a copy of the decoration on the robes of senior counsel in Ireland. The result of John's curiosity and research convinced him that the Irish immigrants, Catholic and Protestant, often found that they had more in common with each other than with other lawyers who derived from England, Scotland and elsewhere. So that became the focus of this book.

At the lunches held with John whilst this book was emerging, he often told me of the intricacies of his sources; the documentation available in abundance in the "old country"; and how we, as Australian lawyers in the 21st century, could look back with amazement at the bitter conflicts of long ago and far away.

When he completed his thesis, and was duly awarded his doctorate, I joined others, including the late Dr John Bennett, AM, in urging him to have the work published so as to bring his discoveries to a wider audience. Many Australian lawyers today still trace their forebears to Ireland. It is important and useful to discover how differences, religious, cultural and educational, ultimately gave way, in a new land, to shaping new traditions that would leave the prejudices of the past behind.

ABOUT THE AUTHOR

I thank The Federation Press, and specifically Jason Monaghan, for the decision to publish this work. The knowledge that this was planned was a great comfort to John in the closing year of his life. I also thank Richard d'Apice, AM, the executor of his will, and Tim Eakin, the trustee of The VJA Flynn Settlement Trust, for making this happen. All Australians, certainly Australian lawyers, have a stake in the story told in these pages. John McLaughlin would be happy to see this book available today. It shows how sharp differences of the past can be reconciled by the unifying forces of human nature and emphasis on the experiences that we hold in common.

As an important work of Australian legal history, John has left us this book. It is a precious legacy. As is usually the case, reflection on this history has lessons for us in a broader context of other cultural, religious and ethnic differences. Including conflicts that lives together ultimately present to all peoples, and eventually, with wisdom, help them to overcome.

*Michael Kirby*  
14 October 2023