

# Michael Kirby Interviewed by Troy Bramston

## Law, Justice and Other Challenges: Selected Speeches and Papers of Michael Kirby (ed Dr Paul Vout KC)

Published by The Federation Press, Dec 2025: <https://federationpress.com.au/product/law-justice-and-other-challenges/>

Former High Court Judge Michael Kirby reflects on a stellar career in which he rose to the very top of the legal ladder



TROY BRAMSTON  
SENIOR WRITER

Michael Kirby has never been short for words. As a barrister, judge and advocate for human rights, he has lived a life engaged in the battle of ideas. Known as "the great dissenter" while a High Court judge (1984-2009), he has never been far from controversy. His speeches and essays outpace any other former High Court judge. Yet he is hard to categorise as a constitutional monarchist whose Christian faith he holds to fast yet also a progressive, a liberal and a reformer.

A collection of his speeches and writings have been collated in a magnificent new book by Paul Vout. It provides an autobiographical lens into his life journey. While Kirby lives in the public spotlight, much of his life as a gay man with partner Johan van Vlieten was hidden.

Kirby writes movingly of their relationship in a new essay. As I arrived at his office for a wide-ranging interview, Kirby, 86, was tapping away at a computer, surrounded by piles of papers and books on his busy desk, floor and jam-packed into shelves. There are mementos, awards, gifts and photos. He regularly brings flowers to brighten up the office.

We spoke about his life and career, and a range of issues from Indigenous recognition and the importance of freedom of speech, multiculturalism, and the importance of faith.

**TROY BRAMSTON:** As I was reading the book, I was wondering whether you ever imagined doing something else with your life that wasn't in the law. Can you see a different pathway that a young Michael Kirby might have taken?

**MICHAEL KIRBY:** Yes, I expected in high school that I would go into politics and become prime minister of Australia. And my brothers have always said, "We all believed he'd become prime minister but he had to settle with the High Court." But then I realised that if that had been done, it would have been a requirement that I don't mention my sexuality, in which event I would be very vulnerable in politics at that time, maybe still. And so I looked for another pathway.

**TROY BRAMSTON:** You were president of the Sydney University Student Representative Council and Union. Is it true your father was a Labor supporter but your mother was a Liberal supporter?

**MICHAEL KIRBY:** Yes, I'm afraid that you have to face the fact that in some families, people support the opposites. And my father had quite a hard life, but he was a small T liberal and supporter of the Labor Party. My mother's father had been a journalist for the Farmer and Settler newspaper and he was quite conservative. So they were quite well-educated and a bit Tory. That was the way they voted.

**TROY BRAMSTON:** Are there things that you've learned from your mother and father that have stayed with you?

**MICHAEL KIRBY:** Both of them were very intelligent and very proud of their children. But looking back, they never really harassed us. They never said, "Well you've got to do better, you've got to pull up your socks." Mainly because my socks were always pulled up. I was always academically ambitious and striving to do the best I could, and that stood me in good stead.

**TROY BRAMSTON:** What was it like being a young clerk and lawyer in 1960s Sydney? You have noted the profession seems more profit-driven today.

**MICHAEL KIRBY:** Law is a very pressured job. Stress is a real factor. And now you can go to a conference of judges and lawyers without people talking about stress. There was the drive to make money, but not to the point that you were charging on an hour-by-hour basis. It was the billable hours that came in the



To mark the release of a collection of his writings and speeches, Michael Kirby spoke with Vout in his Sydney office about a broad range of hot button issues

# THE GREAT DISSENTER ON LIFE, LAW & LOVE



Michael Kirby signs copies of Law, Justice and Other Challenges at the launch of the book, edited by Paul Vout, in the Supreme Court in Sydney; left, with his lifelong partner Johan van Vlieten



DAMIEN SHAW



DAMIEN SHAW

1980s and '90s that really led to the profession being less idealistic and less concerned about justice than when I started out.

**TROY BRAMSTON:** You had many appointments: Conciliation and Arbitration Commission (1975-83), Federal Court (1983), Court of Appeal (1984-96) and High Court. How did you learn to be a judge?

**MICHAEL KIRBY:** In France and other countries of the civil law tradition, judges are trained. But that isn't our tradition. You get appointed and that's where you remain and that's what I expected in my life. I got promotions and my promotions took me ultimately to the highest court. But nowadays, one of the factors that has changed is they allow people to put in a bid, as they have in most courts.

**TROY BRAMSTON:** The High Court, for outsiders, is a mysterious, almost secretive, place. How do you deal with other judges? Do you have lunch together? Do you socialise? Do you spend a lot of time talking about cases? Or is it a solitary existence?

**MICHAEL KIRBY:** It's a pretty solitary existence. You've got to have independence, including from each other, so that people who are inclined a bit to be bullying or are very decisive and assertive don't get a chance to influence the decision-making independence of other judges. But there wasn't much socialising. I organised my associates to arrange lunches with various people and I gave me an outlook and understanding of things that were going on. But judges were careful who they meet, where they go, but they should keep in touch with the world about them.

**TROY BRAMSTON:** You have been described as "the great dissenter". Is that a label you embrace?

**MICHAEL KIRBY:** That's what I've got to put up with, so I don't worry too much about it. In fact, I wasn't a great dissenter. In my time in the Arbitration Commission or in the Law Reform Commission or in the Federal Court or the Court of Appeal, I wasn't a great dissenter.

**TROY BRAMSTON:** But on the High Court, it was like 30-40 per cent, wasn't it?

**MICHAEL KIRBY:** Yes, and that was very high and in fact it is the highest dissent rate of the court in its history. But I think that was partly because of the fact that my colleagues, many of them, had been appointed by the Howard government, and that led to a stream of very able, very independent, impartial judges who were conservative. I didn't set out to become "the great dissenter" but the truth of the matter is I dissented in a lot of cases and I understand that in law schools now they teach cases by reference to my dissents and the majority opinions and they ask the kids, "What do you think about this?" So I did have some utility in that respect.

**TROY BRAMSTON:** You concede that you could have done more to build consensus on the court.

**MICHAEL KIRBY:** I should have tried more. I've learned since I left the court that in the argument of cases, it is natural that barristers will make submissions by reference to rulings, and the ruling is determined by the majority. And therefore a dissent may have some teaching use, it may give some satisfaction to those who came to court and asserted the law as they

saw it, but from the point of view of taking a slot in the influence on the decision stream of the court, you reduce your impact and that is something I think I should have been more conscious of.

**TROY BRAMSTON:** You don't like the term "judicial activism" but do you think judges should be able to draw on their personal values, even political outlooks, when making judgments?

**MICHAEL KIRBY:** This is settled long before a judge goes to law school; it's settled probably in infant school. And so it exists. Julius Stone, the great professor who taught me jurisprudence, insisted, "You can believe in the fairy story if you want to, but now we don't believe in fairy stories and you should face up to the fact that there are deep values and you should try to identify them and expose them so that citizens or lawyers disagree with them, they can tackle it."

**TROY BRAMSTON:** It seems to me, though, that your broad humanitarianism small in your judgments. But you would not regard that as activism?

**MICHAEL KIRBY:** No, I don't. I think it's a selected title that is given to judges who don't fit the stereotype of a just read water, keep everything just as it is. And that isn't what happens. The Mabo decision was made by judges most of whom had been appointed by Coalition governments and that is one of the great decisions of the High Court. Likewise, the Communist Members' legislation that struck down Mr Menzies' legislation was another of the

great decisions and that was made at a time when we were quite conservative.

**TROY BRAMSTON:** You were compulsorily retired at age 70. Would you like to still be on the court?

**MICHAEL KIRBY:** No, certainly not. I supported compulsory retirement for High Court judges. It was something the High Court gave itself, decided that because there isn't a compulsory retirement age in the Constitution, it means we are all going to be kept out of office people of a younger generation who will bring the values and experience and challenges and burdens of younger generations? I think you have your period in the sun and then you go.

**TROY BRAMSTON:** How did your experience of discrimination as a gay man shape your commitment to human rights for others?

**MICHAEL KIRBY:** If you suffer discrimination, and I did during most of my life, then you don't like it. It's unpleasant and it's unjustifiable, and you resent it, and in my case also affected my family, and my partner. One of the problems is gay people who are only concerned about gay rights, or women who are only concerned about women's rights, or people of colour who are only concerned about discrimination against black people or indigenous people. The big lesson is everybody should make judgments based on the individual facts and the particular features of the case and the persons who are involved and in the right of free speech and the media protection. We've changed a few things in Australia, but there's

still prejudice and there's still discrimination.

**TROY BRAMSTON:** You often spoke, it was said, outside the strict law, on all sorts of issues: drugs, HIV/AIDS, race issues, land rights, refugees, gender. Were you concerned this might hinder your career?

**MICHAEL KIRBY:** I was appointed to the first chair of the Australian Law Reform Commission (1975-84) and that therefore got me involved in the use of media in spreading the problems and the perspectives and having public hearings and listening to people who were suffering discrimination. I was always careful about it; anything that was before a court I was sitting on or might come before that court, or by rushing into judge matters where I didn't really have access to all the facts.

**TROY BRAMSTON:** You've also been involved in global human rights issues in North Korea, Cambodia, the Commonwealth. Looking at the world today, we seem to be a long way from the acceptance of universal values, which is something you've spoken about. Are you pessimistic or optimistic?

**MICHAEL KIRBY:** It's true that in recent times because of actions taken often in the US but also in Russia, China and other countries, that that is at risk and under challenge. Am I pessimistic? No, I believe these are an aberration and I believe they will be corrected and I think the US constitution has a corrective element in the election system and in the public opinion and in the right of free speech and the media protection. The basic principles of the Universal Declaration of

Human Rights, which was taught at Summer Hill Opportunity School when I was nine, remains as a very good statement of the fundamental principles that bind human beings together.

**TROY BRAMSTON:** You mentioned freedom of speech. There should be limits to freedom of speech. That was explained in a great case in the US that you don't have freedom to a crowd to cheer to scream out "fire" because that will cause a panic if there's no fire, and that is a misuse of freedom of speech. But those limits have to be kept under control because there are a lot of do-gooders around who would like to stop free speech. In the High Court, we had a lot of cases on freedom of speech and I was always the most protective of freedom of speech because I thought, including in relation to gays, that by allowing freedom of speech you would ultimately get the message over but only if gays talked about themselves and what other people were doing to them.

**TROY BRAMSTON:** Every weekend in Sydney and Melbourne, people are taking to the streets to express hatred for certain people or nations, or groups, and antisemitism. Are you concerned there is still so much hatred between people?

**MICHAEL KIRBY:** I'm not concerned that we are still having these debates because that's the nature of our society. Though we don't have a national Bill of Rights or a constitutional statement of most of our rights, we can talk about it and we've got to learn to talk rationally and calmly and not to denounce and hate

other people whose values are different. In Australia at the moment, both for hatred of Jews and for hatred of Muslims. Australians, we've got to find ways that we can accommodate all of them and we've got to be an example to the world of a truly multicultural society.

**TROY BRAMSTON:** What about Indigenous recognition? The voice to parliament referendum failed. Do you think constitutional recognition should be revisited?

**MICHAEL KIRBY:** Well, in due course, some form of recognition. I think citizens, including myself, were a bit uncertain as to what was a voice. This is because Anglo and people of our legal background speak in prose and the Indigenous people speak in poetry. They speak in pictures and they were speaking of a voice as a symbol. And looking back on it, it's a pity that it didn't harden up to a much more specific statement. I think Australians would have embraced a specific institution and a specific statement that was defensive and protective of First Nations people. We showed that when Australians in the biggest vote we've ever had voted in favour of permitting the federal government to make laws for First Nations people.

**TROY BRAMSTON:** One of the things that always puzzled me about you, Michael, is that you don't support a republic. Do you remain a constitutional monarchist?

**MICHAEL KIRBY:** Who knows and who will hold. The poor old Americans inherited the British constitution in 1776 and we inherited the British constitution from about 1830 and by that time the British had got to the point that the monarch was told, "you reign, you do not rule." And that's a good thing. Mr Chifley said it's a handy constitutional fiction. We inherited that from a better world. Hereditary office is a bit strange, I agree. But I remain a constitutional monarchist.

**TROY BRAMSTON:** Has your faith (Anglicanism) become more important as you get older?

**MICHAEL KIRBY:** That was where I was brought up, in the beautiful sea view of the Book of Common Prayer. Yes, I still hang on to that. Johan, my partner, is very open about it. He says, "They've been opposing gays and others for centuries, but he's still doing it, and it's astonishing that you are still adherent." But I just feel, a bit like the monarchist and a bit like the rule of law, it's actually a stem that I find and therefore I still adhere to it.

**TROY BRAMSTON:** You write about Johan in the book. It is a great love story. I was struck by how it's both life-affirming and positive and wonderful, but also heartbreaking in that he paid a price for your success with his life being partly hidden.

**MICHAEL KIRBY:** Well, it wasn't hidden from my family. Within three weeks of our meeting, we're talking about 1969, he came to our family home and to Sunday dinner and he came then during the whole lifetime of my parents, my siblings and my grandother, and everyone loved Johan. Some people, including lawyers, they won't believe this, but they found me hard to take, but everyone who met him respected him for his high intelligence and his dedication to a better world. I regard that as a misfortune that he had to suffer. But Johan knew that I should slow down and I was hatted and it was taken by religion. It was an abomination. I never thought the law would be changed.

**TROY BRAMSTON:** In your High Court biography, you listed recreation as work. You're going to be 87 soon. Have you thought about slowing down on retiring and living a quieter life?

**MICHAEL KIRBY:** That's very unkind of you to remind me of my coming birthday. Although you've got older, I'm beginning to notice people are finding it rather impressive and they think I'm good because I have to tell you, you get a lot of notices of funerals when you get to this age. Will I slow down? Well, Johan thinks I should slow down and that we should spend our time swanning around in holiday places. But I think it's dangerous for people who have had such an extremely busy mental life to suddenly stop. So I'm not going to suddenly stop. But maybe I won't work seven days a week, maybe six. And so we are negotiating this in our relationship. I'm insisting on a busy mental life: you've got to keep your brain active. I think that is what keeps you young and gay.

This interview has been edited. Law, Justice and Other Challenges: Selected Speeches and Papers of Michael Kirby, edited by Paul Vout, is published by The Federation Press.