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Sydney by night from St. Aloysius' School, Kirribilli, March 1969. Photographed by Max Dupain, and courtesy of Mitchell Library, State Library of New South Wales

Book Extract

A newly released book containing a selection of papers and speeches by Michael Kirby covers his journey from childhood in 1950s Australia, through law school and legal practice to his work as inaugural President of the Australian Law Reform Commission. Here, Kirby reflects on a moment that altered the course of his life forever: meeting his beloved partner Johan.

“In a moment, in the twinkling of an eye, our lives had completely changed.”

I MET JOHAN VAN VLOTEN ON TUESDAY 11 February 1969. We were both getting uncomfortably close to our 30th birthdays. Every gay man of our generation knew that this was the moment when one ended up “on the shelf”. I had been born on 18 March 1939 in Sydney. Johan was born, a month later, on 23 April 1939 in The Hague, the Netherlands. Each of us was therefore perilously close to the big 30: marking the beginning of genteel old age. On that hot February night, each of us was pretty desperate, as we asked ourselves whether to venture out, searching for the long awaited soul with whom to share our lives.

I had virtually no romantic attachment until 6 months before I met Johan. In July 1968 I took up with a handsome young Spaniard, Demofilo Solera, then aged 24. He was a newcomer to Australia. Some members of his family in Spain, I understood, were a trifle too close to the unpleasant government of General Franco. He had sampled the gay life in London. And now he was exploring Australia. We had met at a dance party in Petersham, an inner suburb of Sydney. After an on again off again acquaintance, Demo had come with me, at Christmas 1968, on a holiday to New Zealand. However, shortly after our return to Australia, on 28 January 1969, he announced that he was continuing his odyssey, to take up life in Melbourne. I got my marching orders. I accompanied Demo to the Central Railway Station in Sydney to farewell his train. Loneliness descended on me again.

I looked out of the windows of my new apartment in Kirribilli, overlooking Sydney Harbour, that night in February 1969. I saw the sparkling lights of Sydney all about. Like most others of my age in the same predicament, I thought “surely someone out there would welcome a person as brilliant and attractive as myself”. This was the thought that took me to the “Bottoms Up Bar” in the Rex Hotel in Kings Cross, Sydney.

Johan’s journey that evening – to one of the few gay venues in the mainly hostile world of Sydney – had been more down to earth. There was no broken heart of love scorned. We were both newcomers to the gay scene in Sydney. Yet the same quest for love took us on our separate journeys, leading to the Rex Hotel. In the years since February 1969, Johan and I have often speculated on what our lives might have been like if we had not met that night.

You do not know it at the time, but chance and propinquity play vital roles in the events that can lead to a lifelong relationship.

Neither of us was accomplished in the opening gambit that broke the ice. I least of all. However, Johan came home with me to my apartment in Kirribilli. He saw the little ferries plying their silent journeys across the famous harbour. He admired the Sydney Opera House, then still under construction. He studied the Sydney Harbour Bridge, close up. We did not realise it then, but, in a moment, in the twinkling of an eye, our lives had completely changed.

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Johan allowed a day to pass before returning to the scene of the crime. On 13 February 1969, he knocked on the door of my apartment. With only short interruptions when one of us was overseas, we have lived together since that moment. We brought our different life experiences to the relationship. I was then a young lawyer with a very busy legal practice. Johan’s life was still indelibly marked by the bitter experiences that had occurred to him and his family on the other side of the world. His birth was followed, soon after, by the German occupation of his homeland. His father had been seized in a raid and taken to France to help build Hitler’s Atlantic Wall. His mother, with her three infant children, was moved by the occupying power to Nijmegen, near the German border. His schooling was interrupted. The economy was shattered. After the War, one of the few jobs that wanted Johan was with the Royal Netherlands Merchant Marine. His first post was as a cabin boy.

Johan’s father had walked back from France to the Netherlands. Their neighbours began speaking about the collaborators. Although there were brave resistance fighters, there were also many stories of betrayal. Thus, Johan’s growing up was quite different from the calm, stable life of family and education that I had experienced in Australia. However, Johan was smart and a voracious reader. When the captain of one of his ships found this junior crew member reading the book *Brighter than a Thousand Suns: The Story of Hiroshima and*



Michael Kirby (left) with Johan van Vloten. Photo: Her Excellency The Hon Ms Sam Mostyn AC

Nagasaki, he told Johan that he should pursue promotion and ambition. Well-meant advice; but easier said than done in the circumstances of the post-War Netherlands.

Eventually, Johan came to Australia as a migrant in 1963. Thereafter, he was never out of work. In the manner of those halcyon days of opportunity in Australia, he eventually rose to be the Paymaster for New South Wales of the Australian Broadcasting Commission. He was always very smart with mathematics. He was also restless, as I soon learned when we turned our relationship, after less than a year, into an adventure.

In mid-1969, Johan insisted that we should take a year out of the routine of our lives. He proposed that we should follow many other young Australians of that time. We should travel by road “overland” from Singapore to Europe. This was not a predictable career move for either of us. But it proved to be an adventure that helped to reinforce our relationship. The journey in a Kombi van allowed us to explore our mutual interests in history, music and literature. These pastimes were interrupted with reading books, listening to music and buying *The Economist*, if we could find a copy on our long journey across the World.

When I told my colleagues at the Bar in Sydney of my plan to embark on this journey, one of them, Michael McHugh, later my judicial colleague in the Court of Appeal and on the High Court of Australia, sought to dissuade me. “This will ruin your practice. People will regard you as unstable and foot-loose.” But I persisted. We were unrepentant. The first overland journey was in 1970, and a second similar journey followed in 1974. On each occasion, we returned to Sydney after a year of explorations, including of ourselves. Me to my chambers in Phillip Street; Johan to his work with the ABC. In those well-mannered times, no one asked me about any companion I might have had on my journey. This was the age of “Don’t ask. Don’t tell”. For me, it was a time of secrets, shame and silence.

Observing these rules was not difficult for me. At law school I had learned about the criminal laws that targeted queer people. However, Johan had been raised in a country that had abolished such laws in 1811. True in the Netherlands, there were social restrictions and hostile religious expectations. However, there was no danger of criminal prosecution just for being gay or challenging the law. Johan always objected to the Australian code of silence expected of gay people. But he

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inferred that it was important for my career that our sexuality should not be talked about openly in polite society. My family was eventually supportive of me. His family was supportive of him. Both of us thought that such ancient and widespread prejudice would far outlive us. A combination of events ultimately brought us to change our minds.

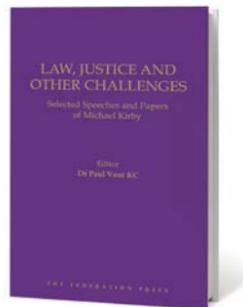
In November 1974, I was appearing alone, as a barrister, in an important case in Melbourne before the Full Bench of the Commonwealth Conciliation and Arbitration Commission. This was the national industrial tribunal, a place of considerable status and power. The presiding judge in my case was Justice [later Sir] John Moore. He was a shy and reserved man; a good judge. The case concerned an industrial dispute that threatened the entire State of Victoria with the loss of its supply of electricity. I was briefed to appear for all of the employee unions that were threatening to strike for higher pay and better working conditions.

I must have done my job skilfully because the parties promptly settled their differences. The danger of industrial action receded. And just before I was about to leave the hearing in Melbourne, I received a request from the presiding judge’s clerk, inviting me to call on Mr Justice Moore in his chambers. This was unusual. But without beating around the bush, Mr Justice Moore said: “I have been authorised by the Commonwealth Government to enquire whether you would entertain an offer of appointment to be a Deputy President of the Arbitration Commission?”. I was shocked and said that I would need to consult my family. This was a totally unexpected development in my life. I was engaged as an advocate in many industrial and other cases. My practice was really taking off. I immediately consulted Johan, my parents and my siblings. The decision had to be made quickly. My barristers’ clerk, Greg Isaac, said to me: “You cannot turn this down, Boss. This would be a great

opportunity. It involves the same salary and status as a Federal Judge. Take it.”

Still, the same professional colleagues who had earlier cautioned me against the repeated overland journeys returned to their now familiar themes. Michael McHugh told me that I had an outstanding career ahead of me. This appointment would be a “siding”. It would be the end of my legal career. I would never be heard of again. He eventually even hinted that it would be the end of civilisation. Only Johan, who had seen close up the stressful features of my life as an advocate, looked at the issue from a personal point of view. “It will make your life calmer and happier. It will offer you fulfilment on a wider stage.” So I took it.

Things happen fast in such matters in Australia. Immediately, I had to return my briefs, to the glee of the legal colleagues who inherited them. I had to sell my room at Wentworth Chambers on Phillip Street; to say farewell to my fellow advocates; and to inspect the new judicial chambers with friends who would become my colleagues in the Arbitration Commission: Justices Elizabeth Evatt and Mary Gaudron. I clearly anticipated that this would be a career-changing move. So it proved. In the last days of December 1974, I was welcomed in Sydney to my first post as a Judge. Johan predicted that it would mean that we would see more of each other than had been possible to that time. I warned him that the overland trips were now a thing of the past. The welcome ceremony took place. It was the first of several judicial welcomes from which Johan discreetly absented himself. Neither of us complained about that. It was just part of the “deal” society imposed upon us, if I wished to participate in public office. We had to keep to ourselves. We were not to be open about our relationship. But otherwise, we were not dishonest. In a way, the code of secrecy strengthened our relationship. I thought that this was the beginning of the rest of my life. 📌



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