



Appealing to the Future—Michael Kirby and his Legacy

Edited by Ian Freckelton and Hugh Selby
Reviewed by Rosalind Croucher

This mega-tome was published to coincide with the 70th birthday of the Hon Michael Kirby AC CMG on 2 February 2009, the day he retired from the High Court of Australia. Co-edited by Ian Freckelton and Hugh Selby, the book contains 35 chapters, preceded by an introductory chapter as well as a preamble; a prefatory tribute; notes about each of the 43 contributors; a lengthy index; an extensive bibliography; and eight pages of photographs.

The book's intended audience is a broad one, and its object, as Selby remarks, is to present Justice Kirby and his ideas 'through many lenses'. Selby's preamble begins: 'None of us can be all things to all men but a select few can set an example that inspires the rest of us. Michael Kirby is such a man.'¹ With such an opening there may be an anticipation that one was about to read a collection in the style of a hagiography—the life of a saint. As the co-editor, Freckelton, says in his introductory chapter, rather than they had 'done [their] best to avoid the adulatory and the sycophantic', while also acknowledging that 'there are many in this volume who are unfeigned admirers of Kirby'.

The preamble provides a guide to reading the edited essays. Given the daunting task of having to review the collection—because of its size, its subject, and the aura which

surrounded the timing of its appearance—I was rather glad to see 'sat-nav' like directions as to how to proceed. This I followed dutifully, except that two chapters were not referred to at all.² The arrangement of the chapters puzzled me nonetheless and it was only when I had almost finished this review that I realised—of course, it was alphabetical! On reflection, perhaps the chapters could have been grouped differently, so that one could read sequentially, or in themed sections.

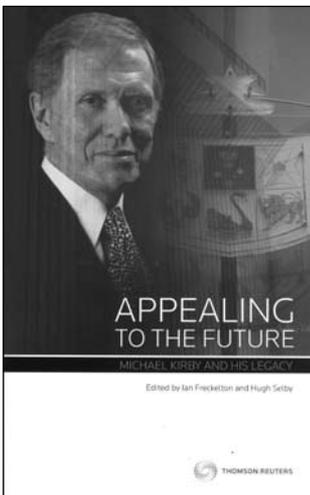
There are included in the contributors—as many authors freely admit—many fans. But many chapters do include a critical eye, especially the large set of chapters that examine Kirby J's judgments in particular areas of law. These chapters, in the main, exhibit a clear, critical, albeit often still affectionate or admiring, eye and form the core of the book. While the chapters examining various slices of 'Kirby jurisprudence' are quite formal, as would be expected, the style of others, in contrast, is more anecdotal, or interlaced with amusing stories.

Kirby's contributions to law reform—he was the foundation Chair of the Australian Law Reform Commission from 1975 until 1984—are a recurring theme and highlighted in particular in the impressive chapter by David Weisbrot (the current President of the ALRC), 'Law Reform, Australian-Style';³ Murray Wilcox's short reflective note on 'The Law Reformer';⁴ in CG Weeramantry's chapter, 'The Internationalist';⁵ and in the section of Freckelton's introductory chapter dubbed 'Kirby the Reformer'.⁶

What is clearly evident through the pages of this vast work are the many intersections that Justice Kirby has had with so many people, in so many walks of life, over his lifetime, and his great courtesy and its effect on individuals and institutions. The impact Kirby had as President of the Court of Appeal of New South Wales is particularly mentioned in David Ipp's chapter on 'Intermediate Appellate Judges'⁷ and in Ian Barker's witty chapter on 'Judicial Practice' and his celebration of 'the phenomenon of tea and raisin toast' as a means of building collegiality and consensus among his fellow judges.⁸

There are a few typos in the book, mostly forgivable in a work of this size and its obviously immovable publication deadline. The repetition of certain elements of Michael Kirby's life and judgments is also not surprising for the same reasons. A case table is a useful addition in this regard so that the reader can find each occasion an author has reviewed or mentioned the same case.

The book is written and titled as an 'appeal to the future', the nature of which is captured in Julian Burnside's concluding comments:



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'Kirby's thinking is guided by an unshakeable conviction that human dignity and human rights are the gravitational centre of any civilised society; and that a legal system which escapes the insistent pull of human rights will produce law without justice. Kirby is writing for a future which honours that role of law in society.

'His appeal to the future ages will come ... from that central idea. His place in history will depend in part on whether or not we acknowledge the centrality of human rights in our system of law. That idea provokes hostility in some quarters and indifference in others. It is by no means certain that we will end up with a legal system based on the notion that law should produce a just result consistent with the principles of human rights.

'If Michael Kirby writes for the future, it is a future I would wish to share. It may be difficult to attain. But he has shown us the way, and he has shown that it is worth striving for.'⁹

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In so far as the editors seek to present 'Michael Kirby and his ideas' through many lenses, they have accomplished their goal with great distinction. It is a monumental achievement and the book is indeed a rich read. It will provide an excellent resource particularly for those fascinated by the jurisprudence of the High Court, on which it provides a very distinct and distinctive lens.

Professor Rosalind Croucher, Commissioner

This review is an abridged version of one that was originally published in the UNSW Law Journal. Professor Croucher is a Commissioner of the ALRC. The views expressed in this book review are those of the author and not the ALRC.

Endnotes

1. H Selby, 'Preamble' in I Freckleton and H Selby (eds), *Appealing to the Future: Michael Kirby and his Legacy* (2009), x.
2. J Burnside, 'Final Thoughts', in I Freckleton and H Selby (eds), *Appealing to the Future: Michael Kirby and his Legacy* (2009), 887–895; and D Weisbrot, 'Law Reform, Australian-Style', in I Freckleton and H Selby (eds), *Appealing to the Future: Michael Kirby and his Legacy* (2009), 607–638.
3. Weisbrot, above n 2.
4. M Wilcox, 'The Law Reformer', in I Freckleton and H Selby (eds), *Appealing to the Future: Michael Kirby and his Legacy* (2009), 639–642.
5. CG Weeramantry, 'The Internationalist', in I Freckleton and H Selby (eds), *Appealing to the Future: Michael Kirby and his Legacy* (2009), 549–562.
6. I Freckleton, 'Introduction: Appealing to the Future' in I Freckleton and H Selby (eds), *Appealing to the Future: Michael Kirby and his Legacy* (2009), 9–16.

7. D Ipp, 'Intermediate Appellate Judges', in I Freckleton and H Selby (eds), *Appealing to the Future: Michael Kirby and his Legacy* (2009), 521–528.
8. I Barker, 'Judicial Practice' in I Freckleton and H Selby (eds), *Appealing to the Future: Michael Kirby and his Legacy* (2009), 565–566.
9. J Burnside, above n 2, 895.

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