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Description

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"THE LIFE AND WORK OF SIR RICHARD KIRBY – WHAT DOES IT TELL US FOR THE ISSUES OF TODAY?"

HON R J L HAWKE AC

THE 20TH KIRBY LECTURE
DEPARTMENT OF ECONOMICS
UNIVERSITY OF WOLLONGONG
20TH APRIL 1999
I thank the University of Wollongong for the invitation to deliver the 20th Kirby Lecture. It is a particular privilege to deliver it in Sir Richard’s presence with his spirits bright and mind alert in his 95th year.

I do not suffer from the problem Dick Kirby ran into in 1945 when, in his capacity as a member of the Australian War Crimes Commission, he first met the British Chief-of-Staff, South East Asian Command, General (later Sir Frederick) Browning. Browning was married to Daphne du Maurier, the writer whose best-seller “Rebecca” had been recently published and was frequently introduced as “Daphne du Maurier’s husband.” Kirby recalled: “God it made him furious. Fortunately I was tipped off by Charlie Spry (later of ASIO fame) and never referred to his wife or her books.”

I, too, have a wife with a name of French origin who is a writer. I haven’t as yet been referred to as Blanche d’Alpuget’s husband but, as distinct from Browning, I would regard it as an honour. I refer to this not as a matter of uxorious pride but because Blanche’s first book—“Mediator”—was a biography of the great Australian we honour this evening – Richard Clarence Kirby – and I am indebted to her diligent research for much of what I have to say tonight about my dear friend Dick.

To appreciate the man, first understand the boy. In reading about Dick Kirby’s childhood and indeed his early adult years, we can discern the shaping of the principles and concepts which motivated this man who had such a profound impact on this country and on its relations with its nearest major neighbour—Indonesia.

What comes through most dramatically to me in that reading is the abhorrence on the part of the young Kirby, and his parents, of racial intolerance. Dick had a warm, loving relationship with their aboriginal servant, Ginny. One of his earliest recollections of paternal admonition was of his father telling him: “Never let me hear you calling a Chinese ‘a Chink or a Chow.’ They are not proper words.”

This attitude was a reflection of a broader perspective, which Kirby put in the simplest terms: “I was an underdog’s man.”
philosophical predisposition was strengthened by his personal experience not just of severe financial hardship but, at times, hunger during the Depression in the early 1930's. He joined the Labor Party in 1937 and his wife, Hilda, demonstrated a degree of commitment and enthusiasm beyond the norm by holding in her dining room the first meeting of the Hunter's Hill branch of the Party. In a burgeoning practice as a barrister the major proportion of Kirby's work involved the pursuit of damages at common law in compensation for workers' injuries. He was ardent and he was successful, losing only three per cent of his cases in a three year period before he enlisted in the Army Education Corps. Kirby's membership of the Party and his work with a group of labour lawyers established his name favourably at a time when the ALP was about to enter one of its most significant periods in office at the national level – from 1941 to 1949. And assignments given to him by government during that period were to shape the rest of his public life. After a two-year stint in the army Kirby was appointed in 1944, at the age of thirty-nine, a judge of the NSW District Court. John Kerr, whose lack of perspicacity seemed to grow over the years, asked him why he had taken "such a dead-end job". With considerable prescience Kirby had replied: "I think something else will turn up." It did – and quickly. Within three years Kirby had represented Australia with distinction overseas and been appointed - in August 1947 – to the Commonwealth Court of Conciliation and Arbitration. Kirby's first international experience was as a member of the Australian War Crimes Commission to which he was appointed in 1945, at the end of the war against Japan. Two aspects of that period help to illuminate our understanding of the later Kirby. First, as his biographer puts it "Kirby had no stomach for revenge on the defeated enemy." He believed that long drawn out trials would only revive the bitterness of war and concentrated his attention on arranging technical details, including ways of taking evidence which would allow servicemen to return home quickly.

Second, Kirby re-examined his assumptions about colonialisation. In Ceylon, when he was working directly to Lord Mountbatten, he was appalled by the living conditions of servants and the attitude to them of their masters. He said of his feelings then: "The squalor of the black quarters was appalling. There were open sewers in residential streets which made such a stench you hardly dared to walk down them. The whites used to say "What can one do with people like that? I thought that was not the point. The whites, I felt, were at fault for allowing such conditions in a country they ruled."

Whether Mountbatten shared these views completely, he formed the highest opinion of Kirby and, in a personal cable to Prime Minister Ben Chifley, described Kirby's presence as "invaluable". The respect this generated for Kirby in the minds of both Chifley and his foreign minister, Dr Evatt, was soon evidenced in 1946 when they asked him to undertake a mission that was to begin his love affair with Indonesia. From the time that Soekarno and Hatta proclaimed their version of the Republic of Indonesia on 17 August 1945, fierce fighting raged between their forces and the Dutch who were intent upon continuing the pre-war colonial regime. Tragically, in this highly dangerous situation, three Australians pursuing investigations into Japanese war crimes were shot and killed while travelling by car on the road to Bogor. Against the background of claims and counter-claims of responsibility for the atrocity by the Dutch and Indonesians and a growing outcry in Australia, Chifley and Evatt decided there must be an independent Australian enquiry into the murders. They chose Kirby for this task. For the purpose of this lecture it is not necessary to traverse in any detail Kirby's thorough investigative work on this assignment. Suffice it to say that his calm impartiality so impressed the Indonesians that the stage was set for Kirby's next, and major, role in the evolution of Indonesian independence.

In August 1947 the Security Council appointed a Conciliation Committee, "The Committee of Good Offices on the Indonesian Question" to assist the two parties to achieve a positive settlement of their dispute. Indonesia nominated Australia to represent it on
the Committee, the Dutch nominated Belgium, and Australia and
Belgium nominated the United States to be the third member. Ben
Chifley appointed Dick Kirby as the Australian representative.

Again, this is not the occasion to spend a great deal of time on
this important episode in Kirby’s career, but I would make three
points. First, he had a clear perception of the new realities of the
post-war world – “He did not believe the Dutch were reclaiming
what was rightfully theirs; rather they were laying false claims to
property they did not own.” (Mediator p.72) This view put Kirby
directly at odds with his Belgian colleague and it did not sit
comfortably with the ambivalent attitude of the United States which
then – as now, more than fifty years later – did not have a clearly
thought through policy towards the changing political and economic
landscape of Asia. While he established a constructive working
partnership with his colleagues, he was never diverted from this
fundamental premise.

Second, Kirby was assisted in maintaining this position by the
integrity of his relationship with the Australian government,
particularly with Prime Minister Chifley. In addressing the
Parliament, Chifley said: “I did not attempt to acquaint Mr Justice
Kirby with the government’s views in regard to the Indonesian
matter or to influence him in the judgment which he will be called
upon to make conjointly with his two colleagues.” This public
statement faithfully reflected the private conversations between the
two men. Chifley, whom Kirby regarded with something, as he
put it “just this side of idolatry” had said to Kirby that he knew he
would do the fair thing: “Always do the fair thing and you can’t go
wrong.” Kirby understood that if his conclusion as to what was
“the fair thing” was at odds with the aims of Australian foreign
policy he was expected to adhere to his position.

This principle characterised the whole of Kirby’s career in the
Commonwealth Conciliation and Arbitration tribunals. He
believed, properly, that the view of the national government,
appropriately presented to the tribunal, should always be given
very serious consideration but should never, of itself, be decisive.
For him there was a happy coincidence between his oath of office
and his own deeply held philosophy. If doing “the fair thing”
collided with the view of government – so be it.

Third, Kirby displayed in the discharge of his responsibilities on
the Committee of Good Offices precisely the qualities of assiduous
commitment to the task at hand and warmth of personality that
marked the rest of his career. Australia’s representative at the United
Nations observed that “Kirby knew as much or more about what
was happening in Indonesia as anybody in the United Nations.
Added to this, he had a great deal of charm, which meant that people
sought him out.”

Kirby’s argument that arbitration would be needed to resolve
the Dutch-Indonesian conflict did not prevail immediately but after
further bloodshed it did become part of the process by which, finally,
Indonesia achieved independence in 1950. No-one did more to
establish Australia’s good standing with the new Republic than Dick
Kirby, a fact generously acknowledged by President Suharto at a
State Dinner in Djakarta in 1973 attended by Kirby on his first visit
there since 1948:

“The people and the government of Indonesia will always remember
the assistance and support given by the people and government of
Australia in those decisive moments in the history of our struggle
defending our independence – the struggle in which a representative
of the Australian government played an important role towards
reaching Indonesia’s independence. And, in remembering his good
service, we feel honoured indeed by his presence … having in our
midst on this happy occasion Sir Richard Kirby and Madame.”

More than most Australians, therefore, Sir Richard will be looking
with sadness at the unfolding tragedy in Indonesia. By every
relevant criteria, Australia has a vested interest in current
developments in this nation of more than two hundred million
people, our largest most immediate neighbour. Substantial and
sustained economic growth in recent years up to 1997, while
accompanied by the accumulation of obscene wealth by Suharto
and his cronies, had seen significant improvement in the standard
of living of most Indonesians. But the cement provided by generally
rising standards and diminished poverty has been broken and we are faced with the real possibility of an implosion in Indonesia. Ethnic, religious and political tensions are stretching the national fabric to breaking point, with flashpoints in Aceh, West Kalimantan, Irian Jaya and East Timor.

In commenting particularly on East Timor it might be useful to draw some conclusions from the approach adopted by Sir Richard more than half-a-century ago. The clearest conclusion to emerge from such an approach is that acquisition of territory by force, as in the case of East Timor, cannot guarantee either the right or the capacity to retain that territory. No more than the Dutch could establish that right or that capacity to hold what they had acquired could the Indonesians legitimately expect to automatically retain a tenable sovereignty over East Timor.

President Habibie seems to have accepted that fact. He has agreed to a vote on proposals granting autonomy to the region with a negative outcome being taken as support for independence which would then be conceded by Indonesia. But just as happened fifty years ago with the Dutch, significant sections of the new colonialists and those of the local population who see their interests identified with these forces, are engaging in a murderous campaign of intimidation not just of their obvious opponents but the more general population. They are being armed by supportive elements within ARBRI.

How far to the top that support goes is not certain but what is certain is that its chief, General Wiranto, with the support of Habibie could, if sufficiently minded, halt this supply of arms to the pro-integrationists. The fact is that we fast have a Kosovo emerging on our doorstep and I believe the implications of that are clear. It is right for the Australian Government to be pressing President Habibie to pacify the situation in East Timor. But it is equally clear that Habibie’s commitment and continuing capacity to do this is seriously in question. If it is appropriate for international intervention to seek to bring to an end the internecine massacre in Kosovo it is becoming increasingly appropriate to have a United Nations’ presence in East Timor to create a situation where the expression of the will of the East Timorese people can be conducted in a peaceable manner. This is both desirable and a logical extension of the fact the proposed autonomy package is being developed under the auspices of the United Nations.

Both in terms of history and an intelligent perception of our own national interest Australia should be prepared to play a significant role in helping to achieve that outcome. For the same reasons if an independent East Timor emerges from that process “the fair thing” will require substantial Australian support for that new entity. And looking at the broader challenges confronting Indonesia, in the same spirit and for the same reasons, Australia should do everything it can bi-laterally and through international agencies to assist both the creation of a sound and equitable framework for the resumption of economic growth and for a peaceable resolution of political, ethnic and religious conflict.

Kirby returned from his Indonesian mission in early 1948 to take up his position as a Judge in the federal Arbitration Court, an appointment he had accepted at the personal request of Ben Chifley. In the next quarter of a century, but particularly after his appointment as President of the Conciliation and Arbitration Commission, in 1956, Kirby established himself – with Henry Bournes Higgins - as the most significant member of the federal arbitration tribunal in Australia’s history.

I had the privilege of appearing before him as advocate, of cooperating with him in the resolution of industrial disputes as President of the ACTU and of becoming his friend. For those reasons I guess I will not be allowed to claim objectivity in my assessment of the man. But I trust that as I tell something of our entwined story – as a basis for looking at some current issues - you will be persuaded of the reasonableness of my claim.

In the near half-century before Kirby went on the bench, the tribunal had gradually evolved from being a specific dispute settler to an institution directly, and indirectly, fixing national wage standards – and in this regard the basic wage was the centrally important element. By Kirby’s time the periodic national cases determining the basic wage were becoming the focal point for what
has remained at the core of the industrial relations debate in this country—reconciling demands for wage justice with the constraints of national economic management.

As is still the case today the debate was bedevilled by the anachronisms of a minimalist federal constitutional structure drawn up at the end of the nineteenth century which was increasingly irrelevant to the needs of a modern economy. The powers reluctantly conceded to the new Commonwealth Parliament by colonial leaders in the 1890’s bore little resemblance to what a national government required to conduct sensible macro and micro policy in a progressively interdependent world economy in the second half of the twentieth century. The federal arbitration tribunal in this context was asked to fill a role for which it was neither constitutionally charged nor institutionally equipped.

Kirby assumed the presidency of the tribunal in 1956. The challenge posed for him by these intrinsic complexities was made significantly more difficult by the historic decision of the Court in 1953 to abolish the system of automatically adjusting the basic wage for changes in the cost-of-living index. There has probably never been more behind-the-scenes drama on any bench in any case in any court in Australian history. Two judges who were opposed to abolition—Foster and Wright—drew it during the case. By the end of proceedings two judges led by Chief Justice Kelly supported abolition while Kirby and another supported a temporary suspension. The fifth remaining judge, McIntyre, was mortally ill. On the day before the decision was to be announced he was taken from hospital to Kelly’s chambers to listen to a brief exposition of the two positions. McIntyre came down on Kelly's side, returned to hospital and died nine days later.

Kirby adhered to the gentleman’s agreement that had been made with the other judges before the meeting with McIntyre i.e., whichever way he came down they would present a “judgement of the court”, an apparently unanimous decision. The 1953 decision and the written judgement in support was Kelly’s.

The Chief Judge had signalled his thinking in his infamous “Fourteen Points” letter distributed six months before the start of the 1952-53 case. Obsessed with an agrarian philosophy of another age, Kelly had written:

“We must attract people to the land, and we cannot wait for the large irrigation schemes to open up new territory....Moreover our immigration policy might well be developed with a view to settlement by migrants on the land rather than in the manufacturing and processing trades. We need a far greater proportion of our population than there is at present to be engaged in primary productive pursuits. We need from abroad many more good peasants than good artisans....”

This intellectual garbage was embedded in Kelly’s 1953 reasoning. He purported to base his judgement on the ground that the basic wage was now determined not on needs but economic capacity. In fact it represented an attempt by Kelly to create in Australia the environment for his “Fourteen Points” philosophy—the fourth point of which had been “a reduction, by say, 10 per cent per annum of any adjusted basic wage during a period of say, three years.”

Kirby did not share Kelly’s philosophy but he did share the responsibility for what happened in the next six years. As President of the Commission from 1956 (the title of the tribunal changed in that year) Kirby presided over each of the basic wage cases until 1959 and in that period of national economic growth the real value of the basic wage declined by 5 per cent from 1953 to 1959.

The setting for my relationship with Kirby was therefore far from propitious when I first appeared as advocate for the ACTU in the 1959 Basic Wage Case over which he presided. I knew nothing of the background manoeuvring behind the 1953 decision and as far as I was concerned, Kirby was as guilty as Kelly in the perversion of the role of his tribunal. For his part Kirby was no more enamoured of me. I had assisted the ACTU’s Dick Eggleston QC with some material in the 1957 and 1958 cases and, during the latter hearing had sought an interview with Kirby in relation to the doctoral thesis on wage fixation I was pursuing at the Australian National University. Kirby told his biographer:
"He came in and explained he was a research student at the ANU. He began asking me a series of questions which I found quite objectionable in tone; how did we judges make our decisions? Did we believe we had the economic training necessary for the job we were trying to do? He more or less suggested we were a lot of economic ignoramuses, and things would be better off without us. I got pretty annoyed and indicated I thought him offensive.

May I say in all honesty, Sir Richard, that I must concede you were not too far off the mark and my only defence is one of passionate conviction. I hope you will agree however, Dick, that the 1959 case was the beginning of what has become a deep friendship and, speaking from my point of view, an unbounded respect for your integrity.

However uncongenial my observations in chambers may have been they were as nothing compared with the sustained broadside delivered by the brash young advocate in opening submissions, witness cross-examination and reply. Much of this, of necessity, was extremely hurtful to and indeed derisory of what Dick Kirby had been associated with in his earlier judgements and he must indeed have wished, often, to throw me out of court. But to his credit, Dick allowed me, virtually without inhibition, to deliver the assault I had prepared with the assistance of my brilliant economist friends – Horrie Brown, Eric Russell and Wilf Salter.

We hammered a few simple propositions. The tribunal had a constitutional duty to settle industrial disputes and an obligation to do that by fixing a just wage; that justice was not done if the real value of wages was allowed to decline while the economy was growing in real terms; that "economic capacity" was a vague concept allowing different factors at different times to be used to deny wage increases; that to make decisions meeting the requirements of equity and real capacity, both prices and productivity movements had to be taken into account; that it was inequitable to attempt to contain the price of labour while allowing other prices to run rampant particularly under the pervasive practice of retail price maintenance under which Australian manufacturers dictated the price paid by consumers.

The 1959 decision began the process of destroying the perversion of 1953 with a fifteen shillings increase setting the basic wage above what it would have been if automatic adjustments had applied since 1953. Kirby presided over a margins test case later in the same year and adopted a similar approach in awarding a 28% increase. A measure of how Kirby was changing the direction of the tribunal was the fact that after these decisions he was described in that bastion of economic conservatism – the Commonwealth Treasury Department – as "a menace."

This view was reinforced when Kirby led a Bench of three in 1961 which unanimously overturned the 1953 decision and reinstated price movements as a central element to be considered by the tribunal in future cases. My assessment of Kirby at that time, recorded by his biographer, could not have been more different from Treasury and I have never had reason to resile from it:

"Kirby showed a tremendous integrity – he is one of the onlpublic figures since federation willing to defeather himself publicly, to admit he had been wrong and to accept a fantastic amount of criticism from the Establishment for it. Personally, he was at comfort stations; the Establishment had got him. It took real courage to do what he did."

By 1965 Kirby could be justifiably proud of where he had brought the Commission in almost a decade under his leadership. It was not simply that the broad trade union movement now believed it could expect "the fair thing" there, but the employers, generally, respected its integrity. But for Kirby it was all shattered in 1965. In the major national wage case that year three of his brother judges, including one who in the previous year had embraced the Kirby approach, came to his chambers twenty minutes before the Commission was to announce its decision and, without any prior warning, told him that they would be handling down a majority judgement (John Moore would be with Kirby in the minority), overturning the 1961 principles.
Kirby was devastated and it is significant that not only Albert Monk, president of the ACTU, but Doug Fowler, head of the major metal trades employers’ group, went to his chambers together to express their outrage at how he had been treated.

But Sir Richard was resilient. In 1966 he excluded himself from the national wage case bench and appointed three of his brothers in terms of their seniority – Wright, as presiding judge, who had not been a member of the earlier benches, Moore, and Gallagher who had been one of the majority in 1965. In a unanimous judgement awarding a $2 increase in the basic wage and foreshadowing the granting of the employers’ claims for a total wage, the aberration of 1965 was eradicated. The concept of taking account of both prices and productivity in adjusting wages – and not just productivity as the employers had argued – was back on the table. In one way or another they have remained there ever since.

I do not intend this evening to engage in a detailed critique of current developments in the area of industrial relations generally or wage fixing practices in particular. Rather, it seems to me it may be useful, on the basis of this brief examination of Kirby’s unique experience and contributions in these fields, to suggest certain broad principles that should guide governments and the parties to the industrial relationship as they seek to establish frameworks and processes for handling that relationship equitably and efficiently.

Inevitably my suggestions will be seen by some to be coloured by my background as a union leader and Labor Prime Minister – and, of course, to some extent they are – but I trust they will be understood to have been shaped by my perception of the national interest.

First, parties should not set their faces against change. No period in history has witnessed the magnitude of change in the technologies of production and communication that we have experienced in our lifetimes. It would be absurd to believe therefore that every practice and process shaped in earlier days is necessarily appropriate to the present and foreseeable future. This does not mean that certain principles are not constant through time.

Second, there is one self-evident truth which should never be but all too often is – forgotten in the discussions and arguments about industrial relations and wage fixation i.e. wages and salaries are both an income and a cost. One of life’s paradoxes is that it is nearly always those on high salaries who wear the bi-focals on this issue. They are quick to call for restraint by those lower down the scale because of what they see as the adverse cost – and price - implications of wage rises. At the same time many of them have been the recipients of massive increases in remuneration packages which they regard as entirely appropriate adjustments to their income to compensate them for their contribution to the enterprise in which they are employed. There may well be a case at times for wage restraint by workers – there is never a case for restraint below and licence at the top. While ever there is not a consistent appreciation of this income/cost nexus there will not be optimum equity or efficiency in the system.

Third, both in terms of the Australian tradition and sound common sense, there is an unarguable case, I believe, for a capacity to have the national interest inserted into the industrial relations and wage fixing framework. This should occur both in the setting of national minimum standards and, if necessary, at the level of particular disputes.

Fourth, at the national level the major role of the Commission should be the setting of these minimum standards. The truth is that there are many people in the labour force who, for a variety of reasons, have virtually no power to protect or advance their own interests. The Australian tradition has been that the conciliation and arbitration system should provide the protection these people cannot provide for themselves. It is a good tradition. If the national economy grows in real terms in its capacity to provide better living standards for our citizens then, in the language of Kirby, it is simply “the fair thing” that the poorest and least organised should share in that growth.

Increases in money wages need not be seen as the only mechanism by which to achieve this goal of equity. Under the Accord which operated throughout the period of my Prime
Ministership, the trade union movement accepted restraint in movements in money wages in return for improvements in the social wage, particularly but not exclusively, in the areas of education and health. While these benefits had a more general application, the government and the trade unions accepted that because of the application of means-testing provisions, the greatest beneficiaries were those at the lower end of the wage scale.

I do not argue necessarily for the revival of the Accord as we knew it, but I do strongly suggest that it is appropriate to consider possible new approaches to this basic objective i.e. the most effective method of allowing low income earners to participate in the fruits of economic growth. One proposal – tax credits for low wage earners in low income families – has been put by a group of five economists (Peter Dawkins, John Freebairn, Ross Garnaut, Michael Keating and Chris Richardson) as part of a wider plan to cut unemployment in Australia.

I believe it would be an act of statesmanship for the government to convene a meeting with the ACTU, employers, the Commission, these economists and others who could make a relevant input to consider this question of how best the government and the Commission, with the co-operation of the parties, can achieve what should be the common objective of looking after the weakest in the community.

Fifth, it makes little sense to me that the capacity of the Commission to intervene in an industrial dispute can not be invoked now until a point threatening “significant damage to the Australian economy or part of it” has been reached. While it often may be desirable to allow the parties to work their way through a dispute to a settlement, the public interest, I believe, would be better served by the Commission having the power to intervene before such a point has emerged.

Sixth, while “capacity to pay” is a vague concept at the national level, it is not at the enterprise level. Enterprise bargaining should reflect employees’ contributions to higher productivity and, ultimately, the capacity of the enterprise to carry improved wages and conditions of employment.

Seventh, government should not regard one side of the industrial relationship as “the enemy”. The unprecedented decline in industrial disputes during our period of office was not simply a function of our co-operation with the trade union movement. We made the employers equal partners in the work of the Economic Planning Advisory Council and our doors were always open to them. Some groups and individuals on both sides have often acted with scant regard for the public interest but the reality is that trade unions and employer organisations are central and legitimate parts of our economic and social fabric.

Eighth, it is fair that no person with a genuine objection should be forced to be a member of a union. It is equally unfair that people who say they want nothing to do with trade unions, but who accept benefits derived from trade union activities, should not make some contribution to that trade union.

Ninth, it is a nonsense however to elevate the high sounding concept of “freedom of contract” into some form of holy writ that disguises a simple truth recognised as far back as Adam Smith himself i.e. an individual employee will normally never be in a position of equal negotiating power with the employer.

Tenth, there is therefore an unacceptable asymmetry between the increasing globalisation of capital and any attempt to make it more difficult for employees to bargain collectively.

In summary, the sensible conduct of industrial relations should be a microcosm of good governance generally – representatives of the community seeking to reconcile competing interests and thereby advancing the common good.

I turn now to another important decision of Kirby’s where he showed himself to be way ahead of the times in an area where we as a nation have still not come to terms with ourselves. In 1966 Kirby presided over a bench with Moore and Senior Commissioner Taylor hearing a claim for equal pay for aboriginal stockmen in the cattle industry. At the time the case was brought before the Commission these men received, generally, 27% of the wage paid to their white counterparts. Kirby was appalled both by their conditions and the attitude of many of their employers. He observed
that “even when treated kindly they seemed to be regarded as a mixture between dogs and cattle and sub-human beings.”

Kirby and his colleagues were not moved by the massive case mounted by his old acquaintance, John Kerr, on behalf of the pastoralists. In an historic judgement, Kirby wrote:

“The pastoralists have......not discharged the heavy burden of persuading us that we should depart from standards and principles which have been part of the Australian arbitration system since its inception....There must be one industrial law, similarly applied, to all Australians, aboriginal or not.”

The decision to delay implementation of the decision until December 1968 incurred the anger of some aboriginal spokesmen. But the significance of Kirby’s judgement and statement of principle was well summarised by Dr Nugget Combs, than whom Australian Aborigines have had no better friend: “The judgement was very important in the growth of equal treatment for Aborigines. It was very important in the history of Aboriginal liberation.”

That was thirty-three years ago and it must be for you, Sir Richard, as it is for me, a matter of profound regret that although we have made some progress along the way since then, we remain unreconciled with our Aboriginal citizens. Therefore tonight, Dick, in your presence and in the spirit of the principles you held to throughout your life I wish to state, once again, what I have said before should guide our nation’s thinking on this issue.

One does not have to be emotional with guilt to accept that by any relevant social and economic criterion the Aborigines are the most disadvantaged group in our community, who, far from being responsible for the problems of our society, or a threat to it, are most deserving of its compassion and special effort. In particular, we do not have to believe that all those who were involved in removing Aboriginal children from their families were badly motivated. But surely we do have to believe that the fact of the stolen generations is a stain upon our collective history. Surely we are sorry that it happened and non-Aboriginal Australians should be prepared to say to our fellow Australians - the Aborigines - that we are. And that can only be done in a full and final sense by the Prime Minister through and with the support of the Commonwealth Parliament. “Sorry” is a small word but, genuinely expressed, it could have a huge influence in moving towards a real reconciliation between us.

More than anything else, I think, a fundamental misapprehension about the question of aboriginal land rights is blocking a decent approach to our relations with Aboriginal Australians. If we are to begin to deal fairly with this question we must understand the intrinsic significance of the land to traditional Aboriginal people. We white Australians who have been nurtured in a Christian civilisation should have no difficulties in acknowledging the innate mysteries of religious belief. As one brought up from my earliest days in a religious household I still find perplexing many of the central tenets of the Christian dogma – the virgin birth, the Holy Trinity to name but two – but this does not diminish my readiness to respect the beliefs of so many others in our society who hold them as the foundation of their way of life. For our traditional Aboriginal communities their beliefs, their gods, are inseparable from the land. We may not ourselves be able to comprehend their beliefs but we should respect them. We must understand, in other words, that Aboriginal commitment to ownership of, or access to, land is based not only on a perception of prior rights but on a spiritual bond with the land.

It does no justice therefore to Aborigines, and little to the rest of us, to wage campaigns calculated to have non-Aboriginal Australians believe that their homes everywhere are under threat from some open-ended land grab by Aborigines. One of the sadder spectacles in recent political history has been the television image of the Prime Minister dolefully displaying maps of Australia insinuating and supporting such divisive nonsense.

Australia’s pastoral and mining industries have made a magnificent contribution to Australia’s economic development and will continue to be important sectors in providing growth in our national output and living standards. And they can do this without politicians creating images in the public mind which pit the interests
of those industries against the aspirations of the Aboriginal people. We don’t have to do this, for the Aborigines themselves do not. A former Executive Director of the National Farmers’ Federation, Rick Farley, who now works closely with Aboriginal leaders, made an important statement to that effect on the 7th May 1997: “The Aboriginal people….have said that they would concede the validation of all rights necessary to operate a modern pastoral property.” And that concession extends to the concept of diversified activities on pastoral properties beyond traditional concentration on cattle raising. Individual pastoralists have established precisely such a modus vivendi which allows Aborigines reasonable opportunities for traditional hunting and fishing and access to sites of spiritual significance.

Similarly, with the mining industry, it is inaccurate to draw a picture of incompatibility of interests between miners and Aborigines. In every major mining State, and the Northern Territory, there are agreements arising out of negotiations in good faith between mining companies and Aboriginal representatives which allow exploration and development of vast mineral sources. These are the realities which allowed Galarrwuy Yunupingu to make this profoundly important statement in June1997: “The Northern Territory experience gives us confidence that we can connect the symbols and the substance to deliver the practical outcomes.”

And so my friends it can be done - and it must be done. Reconciliation is not simply an option but, as I put it in my very last statement as Prime Minister on 20th December 1991:

“...if you’re really serious in this country as you come to the end of this century, the first century of our existence as a nation, and you want proudly to take Australia into the 21st Century there is no chance that you’re going to be able to do this unless you have a reconciliation. Personally I would like to see that embodied in a document. I think it is infinitely more preferable that we have the courage to do that. But it is also true that the document itself, in one sense, is not the important thing. The important thing is what’s in our minds and our hearts.”

My friends, I hope you now understand something more of the mind and heart of Sir Richard Kirby whom the University of Wollongong does well to honour. He gave his whole life in the service of his fellow-man and particularly the less fortunate in society. He was a man to whom racial intolerance was anathema. He was a man of compassion and, may I say, one who brightened the most serious moments with his own infectious sense of humour. I well remember during the 1961 case when fulminating against the evils of retail price maintenance I referred to the case of a migrant furniture manufacturer who had suffered so much from this practice that he had burnt down his factory and been charged with arson. Kirby dryly asked me “Mr. Hawke would you say he made light of his difficulties?”

Sir Richard never made light of the difficulties of the common man and woman nor of the challenges facing the country he loved so well. I salute a considerate and considerable Australian.
Honourable Robert Hawke Presents 20th Sir Richard Kirby Lecture

This year's Sir Richard Kirby lecture promises to be a controversial and fascinating one, as delivered by former Prime Minister Bob Hawke.

The Kirby Lectures, sponsored by the Department of Economics, have become a much-anticipated event in the calendar of the University since Sir Richard Kirby delivered the first of them in 1979. Past speakers have included Justice Jim Staples, Bryan Noakes of the CAI, Blanche d'Alpuget, Simon Crean, Bill Kelty, Brian McCarthy (AFAP), Dr John Hewson (then Leader of the Opposition), Jennie George, Paul Matters, Jeff Shaw (NSW Attorney-General and Minister for Industrial Relations), Jerry Ellis (BHP), and Iain Ross of the Industrial Relations Commission.

The Kirby Lecture always draws a large crowd, which usually includes Sir Richard himself, who turned 94 in September.

Robert James Lee Hawke, whose Oxford University studies included economics (specialising in the Australian wage fixation system), came into politics through the trade union movement, as an advocate for the ACTU and then as its President. He was Prime Minister from 1983 to 1991, thus becoming Australia's longest serving Labor Prime Minister.

He earned a reputation as a conciliator and sought to promote concensus as a means of resolving conflict in politics and the workplace. He was a major architect of the Accords, which steered Australia through the testing economic challenges of the 1980s.

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Prize Winners 1998
Sir Richard Kirby Lecture

The Hilda Kirby Prize
Richard Rollins and Ann O'Gorman Skarratts

Eric Derra Young Prize
Trent Sebbens

The Ern Ferris, Australian Industry Group Prize
Georgia Blackburn

NSW IR Society Prize
Trent Sebbens
Annual
Sir Richard Kirby Lecture
1979-1998

1979  Sir Richard Kirby
1980  Justice Jim Staples
1981  Bryan Noakes, CAI
1982  Blanche d’Alpuget
1983  Simon Crean, ACTU
1984  Noel Mason, Chamber of Manufacturers
1985  Keith Hancock, now Aust. I.R. Commission
1986  Jeff Allen, BCA
1987  Bill Kelty, ACTU
1988  Joe Isaac (Melbourne Uni. and formerly ACAC)
1989  Bert Evans - MTIA
1990  Brian McCarthy - AFAP
1991  Dr John Hewson, Leader of the Opposition
1992  Jennie George, ACTU
1993  Fred Hilmer, University of New South Wales
1994  Paul Matters, South Coast Labour Council
1995  Jeff Shaw, NSW Attorney - General & Minister for Industrial Relations
1996  Jerry Ellis, BHP
1997  Iain Ross, Vice President, Industrial Relations Commission
1998  Mr R J L Hawke AC