

Review

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YOUR GUIDE TO THE WORLD OF ISSUES, IDEAS & OPINION

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MASS DENIAL

The climate change debate has to leave the hip pocket and focus on the big picture, says **Mark Latham**

When a politician shifts ideological positions, marching left-right-left, it is often depicted as a sign of erraticness. The university system, thankfully, has a less rigid approach. In the case of Robert Manne, Australia's leading public intellectual, these free-thinking oscillations are viewed as a virtue. In many respects, he is an Antipodean version of John Maynard Keynes: when the evidence changes, so too does Manne's position — hence his reputation for intellectual honesty.

Manne grew up in the shadow of the Holocaust, having lost his grandparents to the Nazi horror. This linked him instinctively to the politics of the left. After the war, however, when other young left activists were blindly defending Stalin and Mao, Manne looked to the evidence and saw evil — thus commencing his pilgrimage to the anti-communist right. Fifteen years ago he broke from this neoconservative cadre on another matter of historical record, the tragedy of the stolen generations.

Today Manne is still crusading from a left-of-centre position. Rare among Australian academics, he is willing to take a stance in the public arena and wear the opprobrium that comes from controversy. His new blog on *The Monthly's* website is true to these values. I find his work to be



Giving a value to emissions fed climate scepticism in suburban Australia. Houses in south-west Sydney. Photo: ANDREW QUILTY

irresistibly rational, especially on the pre-eminent issue of our time, climate change.

Late last year Manne blogged on the question that should be troubling all intellectuals: how has the hard evidence of modern science been so thoroughly undermined that action against global warming is now an unpopular position in Australian politics? Manne calls it "the mysterious rise of climate change denialism".

I share this concern, not from the standpoint of academia, but from talking to people where I live in

anyone who believes in global warming, let alone the legitimacy of collective action against the

"The challenge for progressive politics is to develop a post-left future, one that addresses the contradictions of left success."

south-west Sydney, a typically consumer-inclined and aspirational community. It is difficult to find

problem. Denialism is on the rise, creating a sharp paradox in the formation of public opinion.

The longer the climate change debate has gone on, the weaker the community's acceptance of climate change has become. This is more than just part of the political cycle, a consequence of the damage caused by Julia Gillard's broken promise on carbon taxation and the general unpopularity of her government. It goes to the science of the issue and how scientists themselves are perceived in society.

I find that intelligent people, high-achievers in life, are just as likely to dismiss the evidence of global warming as anyone else. That is, those we most readily associate with the ideals of reason and rationality are turning their backs on the world of evidence-based research. As Manne blogged in December:

It would be comforting to believe that the denialist army is composed of fools. This is simply not the case. Many of the denialists are accomplished and educated people. It would also be comforting to think that they represent a small island of unreason in an ocean of rationality, like people opposed to immunisation. This also however is not true.

In the climate change debate, we are witnessing a puzzling shift in
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The Tory and the radical: opposites attract

Damien Freeman reveals a connection through drawings

Horsehair wigs, silk gowns and lace jabots have long been the preferred means by which those sitting in judgment over their peers have sought to preserve their anonymity. Looking out from under their identical wigs and gowns, Roddy Meagher and Michael Kirby, though both spent their professional life in the cloistered world of the Sydney bar and bench, could not have seen the view from the NSW Court of Appeal bench more differently. Meagher, who died last year, was the great Catholic Tory, whose powerful intellect and profound aesthetic sensibility was often masked behind the

gratuitously politically incorrect facade he enjoyed cultivating. Kirby, the indefatigable and high-profile radical Protestant, presented himself as the antithesis of the crusty old establishment that Meagher was widely assumed to embody.

What inspired Justice Meagher to pass Justice Kirby a note saying, "I lived in a fibro house for 10 years in the poor white area of Bowral," when the two judges were sitting together in the Court of Appeal, we do not know. We do know, however, that it inspired Michael Kirby to sketch the portly figure of Roddy Meagher sitting on the ground outside his fibro, beggar's bowl in

hand, as the Protestants walked by on their way to church.

Intimacy is rarely a feature of interactions between lawyers. Given their well-known differences of opinion, it would hardly have been surprising to learn that Meagher and Kirby had only the most limited personal interactions during their years together on the Court of Appeal bench. And yet, what is remarkable is the unexpected warmth that blossomed between the two men during this time — as witnessed in the notes they passed one another in court.

The warmth of their relationship, which was genuine and valued by
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Meagher: I lived in a fibro house for 10 years in the poor white area of Bowral. Kirby: I can just see you with your beggar's bowl as the Protestants walked by on their way to Church.

Illustration: MICHAEL KIRBY
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Opposites attract

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both of them, was real, if not nearly as well known as their public bickering. The question, however, is whether they were really ever friends. I suggest they were not capable of being friends but that they shared something else that was valuable; that they were still able to see the good in each other.

Earlier in history, RP Meagher QC appeared not infrequently before Justice Kirby — when Kirby was president of the Court of Appeal — and was noted for having remarked that he was “off to see the three Communists” when the president was sitting on the bench with justices Bill Priestley and Michael McHugh.

Accordingly, it was widely assumed that the Court became a battlefield when Meagher was appointed to that bench, as he and Kirby were assumed to have hated one another. Kirby and Meagher were colleagues on the Court of Appeal from the time that Meagher arrived in 1989 until Kirby's departure for the High Court in 1996.

Until then, there had been very little social or professional contact between the two in the years since Kirby — as president of the Student Representative Council — had denounced Meagher over the latter's conduct as fellow of the Senate of Sydney University, elected by the undergraduates. (Kirby believed Meagher had an obligation to consult the Student Council about Senate business, Meagher thought otherwise.)

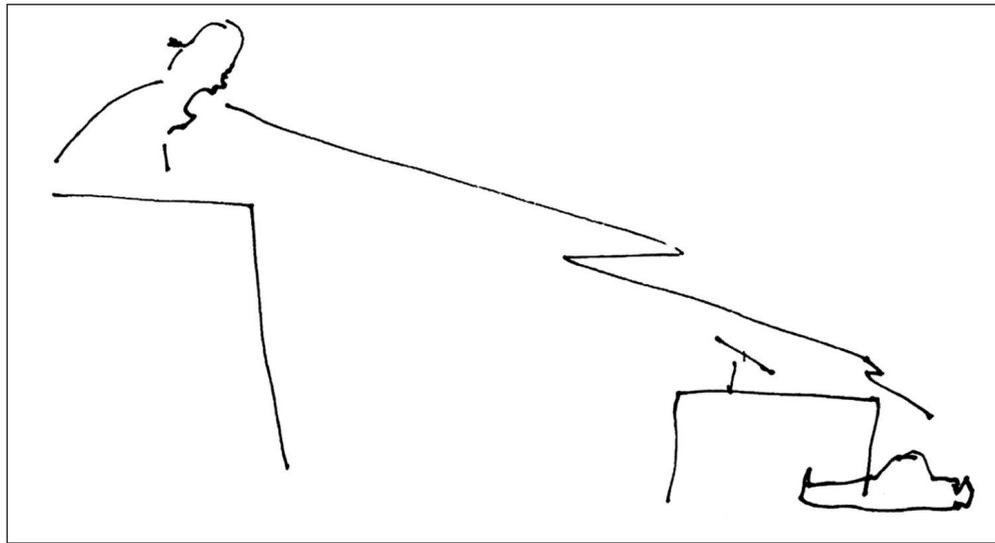
Such assumptions might have been circulating only within the legal profession until June 18, 1993, when headlines such as “Judges trade insults” appeared in the *The Australian Financial Review*, “Appeal judges in slanging match” in *The Australian*, and “Judges at war over ‘xenophobic rodomontade’” on the front page of the *Sydney Morning Herald*, brought the seeming judicial tension to the attention of a wider audience.

The case in question, Videski v Australian Iron and Steel Pty Ltd, was an appeal brought by Videski, a Macedonian immigrant to Australia, who was dissatisfied with the payment that he had been awarded by the New South Wales Compensation Court. The trial judge had found him not to be a credible witness, but rather one who exaggerated his pain in court.

On appeal, Kirby said that the learned trial judge might not have been sensitive to conventional expressions of pain amongst Macedonians, who might possibly have a tradition of exaggerating pain, not a tradition of keeping a “stiff upper lip” in the face of pain, as was once common in Australia.

Meagher took Kirby to be suggesting that Macedonians were more predisposed to lying than other peoples, and explained in his own judgment that Alexander the Great was a Macedonian; that Arrian's *Anabasis Alexandri* emphasised his “honesty and taciturnity”; and that “there was no evidence before the Court that his epigoni have changed”. He accused Kirby of “an elaborate, and distinctly xenophobic, rodomontade”.

According to the recollections of Jerrold Cripps, the third judge on the bench in this case, the reporting misrepresented the nature of their relationship.



Kirby: This is crap! Even my saintly patience is coming near its end.

Illustration: MICHAEL KIRBY

They got on quite well together. But you could see that there was that deep hostility to things that Michael thought were good, and I suppose on Michael's part, to things that Roddy did. Michael never liked being laughed at. He cared about it, and I don't blame him for caring about it ... and Roddy knew he cared about it. He didn't like being laughed at. Most people of the left, I find, don't. Show me someone who wants to save the world, and I'll show you someone who hasn't got a sense of humour. My criticism of Michael in all of this would have been a bit less than Roddy's, but that he should not have used this case to make a great big stir about whether multiculturalism was operative in Australia or not. He loved anything that he could, in any way, attach to the United Nations, Michael. That inflamed Roddy, but he shouldn't have done it. Michael is quite light about lots of things, these cartoons he used to draw, and he could be quite funny when you talked to him, and everything else. But what he didn't like was everyone laughing — none of us really likes being laughed at — but he didn't like it. He was saving the world and all the people were laughing at him.

In *Michael Kirby: Paradoxes and Principles* (Federation Press, 2011), Kirby's biographer, AJ Brown, concludes that “Despite legends about their enmity ... Kirby ... came to see Meagher as ‘one of the best read, wittiest, quickest, most civilised people’ he knew, deciding that ‘nobody in the court’ was ‘a more agreeable person.’” Such evidence clearly undermines the popular assumption, but it is not clear exactly how friendly they became. In his chapter in *Appealing to the Future* (Lawbook Co, 2009), Ian Barker quotes Kirby saying of his relationship with Meagher, “ours did not blossom into a deep friendship”, and yet Brown writes of the relationship with Kirby, in his chapter in the same volume (some 500 pages earlier), “despite

appearances as his political nemesis, [Meagher] was in fact a close friend”.

However inconsistent they might seem, both of these remarks would be consistent with the conclusion that there was at least some limited friendship between Kirby and Meagher. However, such a qualified conclusion is at odds with the spirit of the stream of communications between the two, in which Kirby consistently signs his letters to Meagher with salutations such as “Love, Michael”, or “Johan sends his love, as do I”. Such expressions of sentiment would not have been common in communications between lawyers of their generation, and would suggest a rather more intimate friendship. When pressed, Kirby confirms, “I've never written to any other judge with the word ‘love’. Never.”

There can be no doubt that each found real and genuine pleasure in the other. In *Portraits on Yellow Paper* (Central Queensland University Press, 2004), Meagher wrote of Kirby:

He has no knowledge of art whatever, and yet, curiously, he is an excellent draughtsman. He constantly exercises this faculty whilst he is sitting on a case. I once had a large portfolio of the drawings he made in Court, but some person from Porlock has stolen it ... He is a person of great generosity and kindness, and I have benefited from it.

Kirby, likewise, speaks of the pleasure he found in his relationship with Meagher:

He is always very attentive to the things that are important to another human being ... And he has always been very warm in his relationship, in meetings with my partner, Johan [van Vloten] ... When you divorce the issue of his attitude to minorities, and you just engage him in day-to-day banter and in a very busy

court like the Court of Appeal, he was fun and agreeable to be with. Just every now and again something outrageous would come out, and because I was presiding I ultimately came to the conclusion that I had to do something ... I do not want to exaggerate this, because most times the cases went smoothly. We had our private humour in the corridors and discussing the matter, and we got on well. But this was an irritant in our relationship.

There were common interests outside the law, but it seems that an important element in the pleasure they took in one another lay in the fact that it was so unexpected. Says Kirby:

I think the friendship blossomed because we were both surprised that we got on quite well. When he arrived, we were not particular

friends ... I think he would feel the same as I: that was an agreeable time in our lives, and we were both pleasantly surprised that we didn't find the other an ogre. On the contrary, we found the other, in their own peculiar way, a stimulant and an agreeable person who you could respect.

In *The Thread of Life* (Yale University Press, 1984), one of the more profound reflections to be penned in recent years on the nature of friendship, the late British philosopher Richard Wollheim, alludes to two traditional views of friendship — as an alliance for the sake of the good, and as that affective relationship in which a person otherwise only stands to himself — before noting that “even so untroubled a thinker as Montaigne was inclined to look on both with favour”. Not satisfied with either, Wollheim offers his own view on the matter:

The essence of friendship lies, I suggest, in the exercise of a capacity to perceive, a willingness to respect, and a desire to understand, the differences between persons. Friendship lies in a response to the singularity of persons, and a person's friendship extends only as far as such singularity engages him.

Whether or not this is how Meagher or Kirby would define friendship, my research for my biography of the former, *Roddy's Folly*, leads me to believe that his friendships were best understood in terms of his desire to perceive, respect and understand the singularity of other persons. How many people were able to perceive, respect and understand the singularity of his life is another matter.

When discussing the different ways in which we can take pleasure in one another, Wollheim distinguishes “the alleviation of physical suffering or deprivation”, “the gifts of love and sexual pleasure”, and “the charms and delights of social life”, from friendship, and it is only in the relationship of friendship that we are required “to be continuously aware of and to accept what others are really like, so that their awareness of our awareness and acceptance, both of them and their singularity, becomes a source of strength to them”. So it is not inconsistent with the fact that many people enjoyed Meagher's company that he might nevertheless not have had many friends.

However much pleasure each was surprised to discover that he could take in the other, Kirby is aware that there were limits to how much each was capable of relating to the other. When reflecting on the relationship, Kirby says:

He would have reservations about having a deep friendship with a Commo, and I would have deep reservations about having a deep friendship with somebody who was insensitive to the predicament of people who were in courtrooms and also insensitive to the vulnerable and the disadvantaged by the use of language by someone who was so gifted in the use of language.

Returning to Wollheim's account of friendship, it now looks like neither Kirby nor Meagher might have been

able to respond to the other in the way necessary for friendship. Wollheim writes:

Being a response to the singularity of others, [friendship] is possible only with those whose singularity we are able to respond to appropriately. There are various ways in which this might be impossible for us. In some cases we cannot see what the person is really like. In some cases we can, but we are not able to respect what we see. And in some cases the effort that understanding the person would ask of us is too much. These, then, are the limits of friendship, and these limits are in effect fixed by our attitudes. Hence we choose our friends, and we choose them for what we take them to be, which, if it is a case of true friendship, must approximate to how they actually are. Friendship cannot be based on deceit, lies, or even on excess of error.

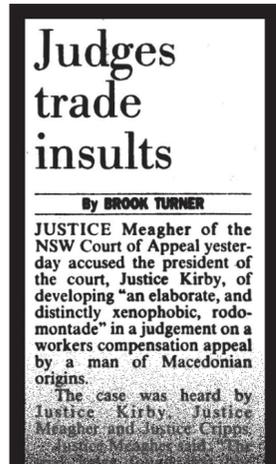
To be sure, they took pleasure in one another. But, I suggest, they were not friends, because they could not respond appropriately to the other's singularity. In Meagher's relationship with Kirby, there was no misunderstanding or breakdown of understanding. Rather, there had always been an inability to respect the other's singularity in a way that leads to acceptance. In trying to capture the essence of the relationship, Kirby says:

I had the same love for him as he had for me, which was love with a footnote; the footnote having a question mark because of the differences we have in our attitude to the world, to people, to social causes, to law, to values, to religion. All of these things are the makings of a very energetic and enjoyable, sometimes fractious, relationship ...

These things made for the charms and delights of social life where it was least expected. But they do not make for the understanding and acceptance that constitutes friendship. Indeed, it seems that Kirby felt that Meagher might not have been able to understand or accept him, or else that Meagher was not the sort of person whom Kirby would want to accept him. Reflecting on one of their last telephone conversations, Kirby suggests that Meagher's very choice of language reveals these limits:

The other day, when I rang off, he said, “Well, goodbye, darling.” Now, that is a sort of Oscar Wildean affectation of endearment ... I didn't reciprocate that, that was too intimate even for me. But I didn't take that to mean, “you are a sexual friend”, I just took that to be his Wildean dictionary that he was using. That's how I took ‘love’ to be ... Perhaps he puts me in a category of a Wildean type of character; which I'm not: I'm prudent, focused, driven, and not given to verbal extravagance.

They took pleasure in one another, but they could not accept one another;



Above, Australian Financial Review story, June 18, 1993. Roddy Meagher (left) and Michael Kirby (right).
Photo: GEORGE FRETTEING, PETER BRAIG.

therefore friendship was not possible. What there was between Roddy and Michael was something other than friendship — they could not understand one another; their differences were an impediment to friendship, although these same differences allowed something else to flourish, and this proved valuable to both of them.

Kirby's cartoons may not display formal beauty, deep insights into human nature or highly refined technical skill, but they do reveal wit, nimbleness and occasional ribaldry, all of which might reasonably be claimed to possess some aesthetic value. At the beginning of her classic study of such aesthetic claims, *Beauty Restored* (Regal Books, 2001), Columbia University's former professor of philosophy, Mary Mothersill, writes of the encounter between Socrates and Alcibiades at the end of Plato's *Symposium*:

Alcibiades was beautiful but unwise, whereas Socrates, though wise, was not beautiful. Socrates loved Alcibiades for his beauty and put up with his bad character in the hope (we are told) of improving it. Alcibiades loved Socrates for his virtue, his eloquence and what he describes as an inward or spiritual beauty. Having tried and failed to seduce Socrates, he settled down for a while

and became his disciple. So everything worked out for the best: each found in the other a source of pleasure and the promise of good. It might have been otherwise ... They might have gone their separate ways and each thereby have been the loser. There would have been that much less good in the world.

Meagher and Kirby both put up with objectionable aspects of the other's character because each saw something of value in the other. (Whether either held out hope of improving the other we do not know.) So everything worked out for the best for the seven years that they were colleagues. It might have been otherwise: they might not have developed a personal relationship, but rather limited their interactions to those required by professional co-operation.

In every sphere of human interaction, we encounter a plurality of world views; many of them diametrically opposed. But it is desirable that people who are fundamentally opposed about what they believe is good for individuals and society at large should be able to find a level on which they can relate to one another, despite their fundamental differences. Otherwise, there would be that much less good in the world.

It is all the more important that, in public institutions of a collegiate nature, public officials, who deviate

radically in their conception of how best to discharge their common duty to the public, can find the good in one another. For Kirby and Meagher, the source of pleasure that each found in the other was a shared sense of visual humour.

One cartoon that Kirby passed to Meagher has written under it: “You must admit it's fun when we sit together. I don't get the same kicks in the Court of Criminal Appeal, and Priestley JA, when I send him a sketch or note, seems to take deep umbrage at my un-Protestant levity and never answers it.”

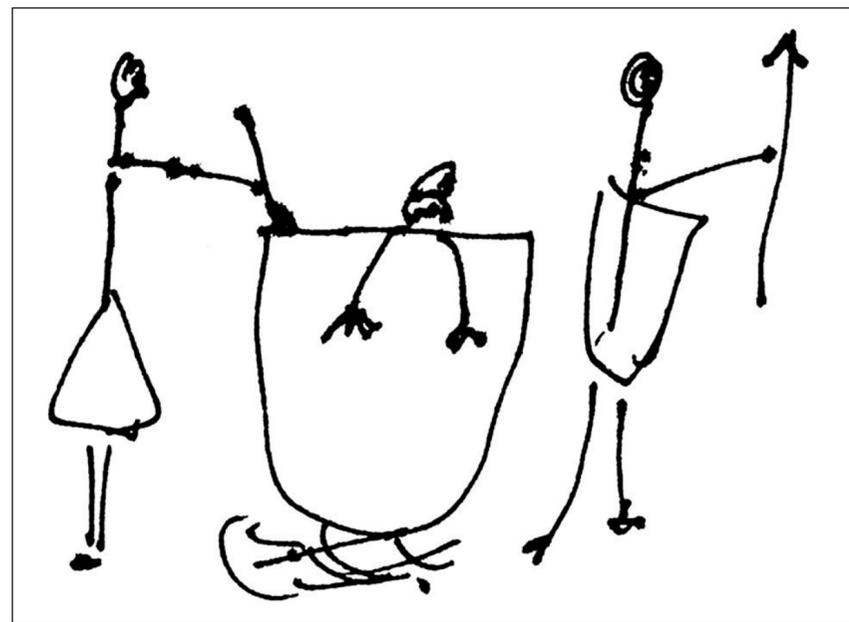
Socrates and Alcibiades did not become lovers, just as Meagher and Kirby did not become friends. Yet the limits of each relationship did not limit the pleasure each found in the other.

Roddy's folly might not have inspired Kirby's cartoons. There would have been that much less good in the world.

Roddy's Folly: RP Meagher QC — art lover and lawyer, by Damien Freeman, including 16 drawings by Michael Kirby, is published by Connor Court.

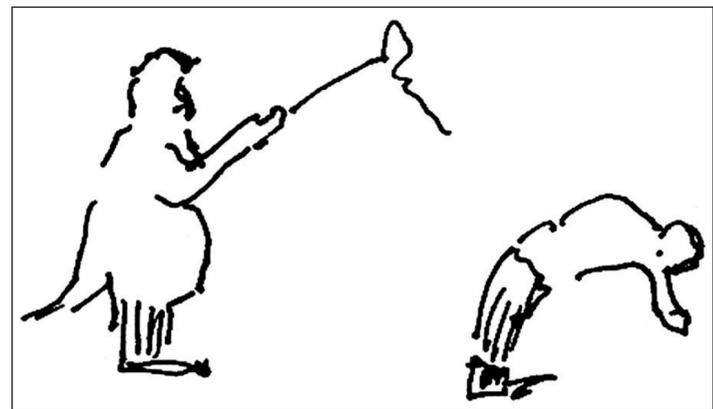
Damien Freeman teaches ethics and aesthetics at Pembroke College, Cambridge. He became Roddy Meagher's Hebrew teacher when the two met at the NSW Court of Appeal.

Roddy's Folly will be launched in Sydney by Tony Abbott on April 23.



Kirby: I have been asked to be an occasional Judge of Appeal in Namibia (on their Supreme Court). Should I accept? Meagher: Yes.

Illustration: MICHAEL KIRBY



Meagher: Why does he waste time by telling us what the facts are when we know already? Kirby: If I try to stop him, Mahoney JA will spank me ... and I might enjoy it too much.

Illustration: MICHAEL KIRBY