

Transcript for the Hon. Dr Barry Jones AC's oration

Professor Lidia Xynas

Good evening everyone. I am Professor Lidia Xynas. I am the Dean of the College of Law and Justice here at Victoria University. Let me begin with an Acknowledgment of Country.

We acknowledge the ancestors, elders and families of the Boonwurrung (Bunurong), Woiwurrung (Wurundjeri) and Wadawurrung (Wathaurung) people of the Kulin who are the traditional owners and custodians of the university land. As we share our knowledge practices within the university.

May we pay respect to the deep knowledge embedded within the Aboriginal community and their ownership of country. We acknowledge that the land on which we meet is a ..., a place of age old ceremonies of celebration, initiation and renewal and that the Kulin people's living culture has a unique role in the life of this region. Victoria University is committed to building better relationships and fostering greater understanding between the wider Australian community and Aboriginal and Torres strait islander peoples. So thank you. I would like to welcome all of you to this evening to the 11th Michael Kirby Justice Oration for Victoria University for 2022.

Special welcome to our patron, the Honourable Michael Kirby and also our orator for this evening. The Honourable Barry Jones who will be presenting our aeration this evening. I also would like to welcome our chancellor, the Honourable Dr Steve Bracks, his wife, Terry Bracks and our Vice Chancellor, Professor Adam Shoemaker and the Deputy Vice Chancellor of Higher Education, Professor John Germov. So now I would like to hand over the proceedings to the Honourable Steve Bracks who will continue. Thank you.

Hon. Steve Bracks AC

Thank you very much Lidia. Well, thank you very much for that welcome. And it's a, it's a great honour of course to have the 11th Michael Kirby oration here and even greater honour to have Barry Jones. The Honourable Barry Jones AC who will be delivering the oration as well. But could I acknowledge that we have many, many distinguished people here. We have 3 former chancellors in the audience as well. Peter Labor, a former Chancellor of Victoria University, it's great to see you here. Justice Frank Vincent, a former Chancellor of Victoria University is here and a former Chancellor of the Australian National University Gareth Evans, the Honourable Gareth Evans is here as well.

So, I in esteemed company as a current chancellor to have three former chancellors here present at this for this oration as well. This oration as you've heard was established in 2010 and it was established to provide a platform for leaders within our community to share their experiences deep understanding knowledge and reflections on issues of justice and what a better name the oration could be in, then the Honourable Justice Michael Kirby as well.

I'd like to especially acknowledge the Honourable Michael Kirby, AC. Michael Kirby is an international jurist, educator and former judge. He was the Justice of the High Court of Australia between 1996 and 2009 and over the last decade, the annual Kirby orations at VU continue to pay tribute to justice and human rights issues. Michael's relationship as friend, colleague and mentor to

Victoria University and the College of Law and Justice is also significant. Michael Kirby is an Adjunct Professor in the College of Law and Justice here at Victoria University and thank you very much Michael for being here as well. I'm also very pleased to now introduce our orator for the 11th Michael Kirby justice oration for 2022. The Honourable Barry Jones AC Barry's topic for the oration is the death penalty, populism and democracy. Barry has been a teacher, lawyer, academic writer and politician, a labor member of the Victorian Parliament between 1972 and 1977 and the Commonwealth Parliament between 1977 and 1998. He led the successful campaign in Victoria to abolish the death penalty and in fact, it was part of my political awakening when that was happening when Barry was leading that campaign here in Victoria. Barry is Australia's longest serving Minister for Science. He served as the Minister for Science between 1983 and 1990. He was the first politician to draw attention to the existential challenge of climate change and global warming and the way that the IT Revolution would transform employment and politics. He represented Australia in Paris at UNESCO between 1991 and 1995 and the World Heritage Committee between 1995 and 1996 has consulted for the OECD. Barry, it is so long Barry's accolades that I'm only going for a sample of them by the way. I know we've got to get onto your oration Barry but I'll do a sample.

Barry is the only person elected to four of Australia's five learned academies and I understand that is extremely hard to be elected to one. Barry has been elected to four. He became a living treasure, a living national treasure in 1997 and was made a companion of the Order of Australia, the nation's highest award in 2014. What is to be done? Political engagement and saving the planet was a bestseller in 2020 and as you know, the penalty is death. First published in 1968 has had a second edition updated and much expanded in 2022. And I know that's available for people to purchase here as well.

So I wonder if you can join with me in welcoming the Honourable Barry Jones AC to deliver the Michael Kirby Justice Oration for 2022.

Hon. Dr Barry Jones AC

Well, Chancellor, Michael Kirby, Vice Chancellors, Vice Chancellor, Dean and friends. That seems to be the shortest way to do it. First of all, let me begin by saying something about Michael Kirby. I'm greatly honored to have been invited to deliver the 2022 Michael Kirby oration to celebrate his outstanding contributions. Not just in Australia but internationally We first met in 1975. He's one of Australia's 100 living national treasures as the chancellor said, and I'd place him right at the top of the list. He first attracted public attention as the inaugural chair of the Australian Law Reform Commission and its members included Sir Zelman Cowen later Governor General, Sir Gerard Brennan, the later Chief Justice of the High Court, John Cane, premier of Victoria later, and Gareth Evans who is with us tonight, Michael holds the dual records of being the youngest person appointed as a judge in Australia and the longest serving member of its judiciary from 1975 to 2009. Michael Kirby paradoxes and principles by A. J. Brown is the scholarly work on his influence in shaping the law. Kirby J. Was a frequent dissenter on the high court, but with the wisdom of hindsight, his dissents seem unusually prescient, especially on ethical, scientific and technical areas reflecting his deep understanding of the biological and information revolutions.

As Minister for Science, I asked Michael Kirby to accept appointment to the board of CSIRO And he served from 83 to 86. He played an extremely valuable role in issues as diverse as setting priorities guaranteeing international property rights and redefining ethical standards. His capacity master of brief is almost unparalleled in my experience. He was president of the International Commission of Jurists in Geneva from 95 to 98. He drafted a major report on privacy issues for the OECD. He drove the development of the Universal Declaration on bioethics and human rights adopted by the General

conference of UNESCO in 2005. He served for a decade on the ethics committee of the human genome organization in London at that time, the largest cooperative scientific project in history. His reports for the United Nations on violations of human rights in Cambodia and North Korea were outstanding. He made an important international contribution to tackling human rights issues arising from the HIV AIDS pandemic.

The charter of the commonwealth setting out 16 core beliefs of the then 54 nations of the commonwealth was largely shaped by him. He has a long history of involvement in the process of law reform in the United Kingdom, India, New Zealand and other commonwealth countries. The Kirby Institute in Sydney founded in 1986, but renamed for him in 2011 conducts research in Australia in the neighbouring region on infection and immunity in society. He's been awarded 30 honorary doctorates, a record for Australia. Perhaps even for the southern hemisphere. He's a great humanitarian, selfless, generous, a strong supporter of the arts, tireless in his commitment to justice, openness, fairness, education, ending slavery, torture and the death penalty. I can think of only one public policy issue where we politely disagree. However, the issue in which we passionately agree is that of working for the abolition of the death penalty internationally, Let's say something about the 2nd edition of the penalty is death. The year 2022 marks the Centenary of the abolition of the death penalty in Queensland. Not only the first Australian state to do so, but the first jurisdiction in the then British Empire. And I'm delighted that Stephen Keim SC who drove the whole process in for the commemoration of the Centenary is here with us tonight. Part of the commemoration was the publication of a second edition of *The Penalty is Death*.

I mean, I edited both. It was launched at Parliament House Brisbane on the first of August but due to my very bad timing with COVID, I appeared only as a ghostly presence on zoom. The 1st edition of *The Penalty is Death* had been published by Sun Books in 1968 in the aftermath of Ronald Ryan's hanging at Pentridge on 3rd February 1967. Ryan had been the last of 2,140 people they executed in Australia since 1620, 987 of them in Victoria.

The new edition of *the penalty is death*. Published by a scribe is much longer updated, revised and with much new material. It begins with three outstanding forwards by Michael Kirby, Richard Burke, an expatriate, Melbourne Barrister who's worked in the United States since 2002, and Julian McMahon, with unparalleled experience on death penalty cases. Michael Kirby wrote, Nobel Laureate, John Coetzee, in *Waiting for the Barbarians*, adapting an idea by Nathaniel Hawthorne, referred to the black flower of civilization, essentially, the coercive power of the state, which would include the death penalty, torture and wrongful imprisonment. Essentially, there are two black flowers, the barbarity of state involvement in the premeditating, extinguishing, extinguishing of human life, and the overwhelming objective proof that doing so did not have the suggested practical merit of reducing the incidence of serious crimes.

Yet there's a third bloom, A golden flower that can be identified in the advance of civilization in our world. It's the golden flower of universal human rights. That has enhanced civilization since the Queensland, abolition of capital punishment in 1922. The true foundation for the authority of the judiciary and other governmental institutions. Australia rests not on executions, but on the adherence of its judges and people to constitutionalism and disrespect for the human dignity of all people. No exceptions, even those committed of grave crimes. This is the message of this book. It remains relevant and timely in Australia. 100 years after the first abolition of capital punishment in Queensland. It's more than ever a timely message for a wider world in which violence by States and their agencies is never far from human deeds and imagination. That's All those words are Michael Kirby's.

As early as 1916, Queensland's Labor government led by Thomas John Ryan born and educated in Victoria, introduced a bill to abolish the death penalty. It was carried easily in the Legislative Assembly but blocked by the Conservative Legislative Council, a body which was then entirely appointed.

In 1921, Premier Edward Granville Red's Ted Theodore, later commonwealth treasurer. Persuaded the governor of Queensland Sir Matthew Nathan, to appoint enough new members soon dubbed the suicide club to vote the Legislative Council out of existence. On the 1st of August 1922, capital punishment was abolished in Queensland [COUGH] for all crimes.

Queensland had its last execution in 1913, New South Wales in 1939, Tasmania in 1946, the Northern Territory under Commonwealth Law in 1952, South Australia and Western Australia in 64, and Victoria the last [COUGH] in 1967.

Between 1901 and 1964, Western Australia executed more than any other Australian state, and was the last to abolish the death penalty for murder in 1984. During World War I, there have been many executions of soldiers for desertion or cowardice.

Thousands in Germany and France, 306 in the British Army, 25 in the Canadian army five in the New

Despicable in many ways, Hughes was sound on two issues. The death penalty and being the first politician in Australia to recognize Hitler as an existential threat. Now, what's the relevance of debating the death penalty in 2022?

Capital punishment as a central metaphor or analogy about the problems of state power, the fallibility of human judgment, flaws in rigid institutions, the use of special pleading, and the danger of making decisions that are irreversible.

The World Coalition Against the Death Penalty reported the number of recorded executions internationally in 2021 at 2,397, with at least 2,000 in China. Total figures probably far higher because China keeps details as executions a state secret. An estimated 33,000 people are currently under sentence of death globally. China executes for murder, drug trafficking, official corruption, financial crimes, and robbing ancient cultural sites. However, the number of executions fell significantly from 12,000 in 2002, to 6,500 in 2005. Many of those convicted and acquittal is very rare, may be sentenced to death subject to a reprieve.

Iran with a population of 83 million, has a higher education rate per capita than China. In addition to murder, treason and drug trafficking, it's enforced for a far wider range of offenses, including sodomy, rape, incest, pedophilia, adultery. Repeat offenders only. Producing pornography, political dissidents, apostasy blasphemy, some economic crimes, and enmity against God. So be careful if you go there.

Egypt ranks third [COUGH] among executing states. In the decades 2011 to 2021, the Muslim Brotherhood sentenced to death 2,182 people, including children, mostly for political offenses. In 2022, Myanmar had its first execution since 1989. Four political associates of Aung San Suu Kyi Singapore has resumed executions for drug offenses, citing 80% public support.

Iran is ramping up executions or unexplained deaths in custody. The Australian history. First Nations, people in Australia had strict codes of punishment, some of which may have resulted in death, but execution as a ritual begins in Australia with European [COUGH] intervention. In October 1629, seven Dutch mutineers and murderers, survivors of the sinking of the Batavia, were hanged by the Dutch East India company on Seal Island, on the Houtman Abrolhos islands off the coast of Western

Australia. The first fleet began the occupation or settlement of Australia in January 1788. The first execution took place in Sydney just one month later, when Thomas Barrett age 17 was hanged for theft. The first 24 executions in New South Wales were for stealing or burglary.

In Australia and Norfolk Island, there were seven hangings in the 17th century, 380 in the 18th, 1,630 in the 19th, 119 in the 20th, and none in the 21st. Not all executions took place in or outside Australian prisons, there were extrajudicial killings of aboriginal people, probably thousands, even more than all judicial executions. And as Shane Maloney points out Indigenous deaths in custody since 1991, amount to 511 which inevitably raises questions about interventions acquiesced in or even assisted by officials. Arguments for abolition.

The death penalty is deeply embedded in our culture, and probably our psyches. It was inextricably linked with imperialism, colonialism, and Christianity too. The crucifixion of Jesus by a Roman method is central to the church history, and teaching to its liturgy of art. For millennia, the practice and execution was virtually unchallenged. Religious fundamentalism is a powerful force in the US, and Christian fundamentalists are among the most zealous supporters of judicial execution.

They rely on highly selective reading of the bible. On my reading of the New Testament, it's hard to see Jesus, a victim of execution himself, as a hard line retentionist.

I thought you'd laugh at that. Perhaps you're all stunned.

>> [LAUGH] [APPLAUSE] >> Fundamentalists rely on the mosaic code, which provided death for many crimes, including murder, witchcraft, and cursing parents although the last two are no longer insisted on. It's worth record, that's better. It's worth recalling that as an expression the prevailing thinking of the Hebrews when they were normally nomads without penitentiary, the mosaic law expressly endorsed slavery. Those who insist that capital punishment is God's law still read that law selectively.

Michel de Montaigne, the great French essayist and magistrate a contemporary of Shakespeare, was a powerful critic of absolute judgments, where a ruler, a judge or a general makes a categorical decision which impact on or ends the lives of others. Actions which are irreversible, and where decision makers are deeply hostile to challenges or questions after the event. Montaigne was preoccupied with how his mind worked. And he wrote, I go backwards and forwards, my judgment does not always march straight ahead, but floats and bobs about like a tiny boat buffeted on the ocean in a raging tempest.

He often writes, and here I paraphrase that didn't affect what he wrote yesterday looks absurd today, and that all judgments are speculative and provisional. He neatly sets out his reasons for opposing the death penalty. Judgments normally inflame themselves towards revenge out of horror for the crime. That's precisely what tempers mind. My horror for the first murder makes me frightened of committing a second, and my loathing for the original act of cruelty, makes me loathe to imitate it.

And for opposing execution for heresy, blasphemy, and witchcraft, after all, is to put a very high value on your surmises to roast a man alive for them. Cesare Beccaria, an economist and philosopher from Milan, born into an aristocratic family, is I believe the most important single figure in the campaign to end state killing.

His name will be unfamiliar to most, even in an elevated group like this, that he should be celebrated. Their careers on crimes and punishments, published in 1764, argued for the abolition of

the death penalty, the Classic Simplicity. That is there's no demonstrable correlation between the severity of punishment and the crime rate.

All punishment deters, but there's no statistical evidence that execution or torture deters uniquely. Essentially, there's been no new arguments for abolition since Beccaria. He was influenced by the Persian letters by Montesquieu and by Voltaire. On crimes and punishments was published anonymously with a preface by Voltaire who was assumed by many to be the author. It was an immediate success and translated into many languages, and I know of at least six English translations. Beccaria chapter of the punishment of death is published in full in the penalty as death, with the commentary by me. He was astonishingly prescient, rejects the concept of punishment as divine vengeance and adopt a utilitarian approach. What's the aim? Does it succeed? Who benefits? And >> Just I've got to make a correction here.

>> [LAUGH] >> Does it succeed? Who benefits? What has to be learned? Beccaria's main arguments are these, no penalty should be imposed. That is neither necessary nor useful, since capital punishment cannot be equated to self-defence. Contrary to the popular fallacy, there's never any necessity to execute, although it may be well essential to have tighter prison security.

If governments don't say I kill you because I must, that is where there's no possibility of alternative penalty. There in fact saying I kill you because I prefer to. That is, there's a positive choice. A preference. Second, the use of torture especially to extract information or confessions is not only bad but stupid. If two men equally innocent or equally guilty, the robust and courageous will be acquitted, the weak and the timid will be condemned.

The prevention of crime, for example, by education, a proper police force or encourage in factors which promote social stability is far preferable to punishment after commission. And fourth, certainty of detection and conviction are better deterrence than severity of punishment. The certainty of a small punishment will make a stronger impression than the fear of one more severe if there's a reasonable chance of escaping it. Due directly to Beccaria, the death penalty was abolished in Tuscany as early as 1786. The Holy Roman Empire, that is Austria, Hungary, modern Belgium, the Czech Republic, Croatia, in 1787. And greatly restricted in Russia by Catherine the Great. Leo Tolstoy the preeminent Russian novelist, observed the guillotine of a murderer in Paris in 1857, and the image haunted him all his life. I witnessed many atrocities in the war and in the Caucasus, but I should have been less sickened to see a man torn to pieces before my eyes, than I was by this perfected.

Elegant machine by means of which a strong, clean, healthy man was killed in an instant. In the first case, there is no reasoning will but a paroxysm of human passion. In the second, coolness to the point of refinement, homicide with comfort, nothing big. When I saw the head part from the body, and these of them fall separately into a box with a thud. I understood not in my mind, but in my whole being, that no rational doctrine of progress could justify that act. And that if every man now living in the world, and every man who had lived since the beginning of time, were to maintain in the name of some theory or other, that this execution was indispensable. I should still know that was not indispensable, that it was wrong. Ultimately, all executions are political.

Their exercises are irrevocable, arbitrary, and often capricious. It depends on geography too as Blaise Pascal noted in his *pensée* number 434, if you've got a copy with you. 3 degrees of latitude upset the whole of jurisprudence and one meridian determines what is true. It's an odd sort of justice whose limits are marked by a river true on this side of the Pyrenees, false on the other. The Canadian

philosopher Ronald Wright noted states employ various styles of human sacrifice as forms of the ultimate political theatre.

If I may insert a political note, I've been a passionate abolitionist since the age of six. My role in securing the abolition of the death penalty in Australia gives me more satisfaction than anything I've ever done. Followed by my lonely years arguing for action against the challenge of climate change.

As the secretary of the Victorian, Anti-hanging committee from 62 to 75. I was the leader of the successful campaign, in 1962 to reprieve Robert Tate assisted, I must admit by the high court of Australia. And the failed campaign, 66 to 67 to save Ronald Ryan. The Ryan case. In 1967, Ronald Ryan had been executed for the shooting of the warden in the course of the jailbreak from Pentridge. One can be confident that the killing was not deliberate and that Ryan intended to fire a warning shot.

He was smart enough to grasp the killing of the warden would not be a good career move. Ryan's killing a warder to George Hodson was almost certainly unintended. Premier Henry Bolte, his killing of Ron Ryan was calculated and deliberate. Ryan's hanging became an important factor in recruiting young people to political activism, perhaps second only to the Vietnam war.

Steve Bracks our chancellor here tonight being a prime example. Nevertheless, Sir Henry Bolte cruised to victories in the Victorian elections in 1967 and 1970. Bolte's successor, Dick Hammer, was a convinced abolitionist and following the long campaign by Jack Galbally, Labor's Upper House leader worked with me to repeal the death penalty in 1975. Even in my 1975 speech of the Victorian parliament in the debate which led to the abolition of the death penalty,

I never mentioned Ryan, so raw was my memory. I wrote about him but could not speak. Mike Richards, who's an apology tonight, wrote the hanged man, a biography of Ryan and made a valuable contribution to *The Penalty is Death*.

Steve Bracks and I both spoke at the launch of *The Hanged Man* in 2002. It was the first time in 35 years that I had ever spoken about Ryan in public. Mike Richards he wrote eloquently about the effects of the execution on Justice John Sark. Who had pronounced death sentence on Ryan, although himself a convinced abolitionist who in fact had been the counsel for Robert Tait in 1962. Ryan's counsel Philip Opus, Brian Burke,

Paul Guest never got over his execution like it just falls with us tonight, but Paul was later a judge of the family court. But he had actually been in the prison, he'd actually been with Ryan when the governor came in with the answer that he would be hanged the following morning at 8 o'clock. And Paul Guest was very distressed with it all and they just sort of gasp for breath and Ryan leant over to him said, don't worry about me, son, I'll be all right on the day. He said, I'm more worried about you. And of course, Paul Guest said he thinks about it every day. He never forgot the impact, was really quite extraordinary, but the impact that it had on people like his counsel, as I mentioned Philip Opus, Brian Burke, Paul Guest. They never really got over it.

In February 2017, 50 years after hanging, the Supreme Court of Victoria held a commemorative event and Lex Lasry, who's with us tonight played an important role in that. I reflect constantly on the issue of equivalence, does the punishment fit the crime.

Fritz Sokal was directly responsible for organizing the deaths of more than a million people with unspeakable cruelty during the Nazi regime.

At Nuremberg he was hanged. Ronald Ryan suffered an identical penalty. Would anyone argue that the cases are equivalent, I want to say something about the extraordinary wartime executions by the AIF in World War II.

After my election of the commonwealth parliament in 1977. One of the first issue had put up was the mutilation of the Australian National Archives relating to the World War II executions of indigenous from Papua New Guinea by the AIF.

The numbers of executions in Papua New Guinea under colonial rule, first Germany and New Guinea, then Queensland in Papua and then the Commonwealth are elusive. But there may have been about 60 until hanging ceased in 1954.

In Papua New Guinea in 1943 and 44, the Australian imperial force, the AIF tried, convicted and hanged about 150 Indigenous people in remote areas mostly for murder, but often for collaboration with Japanese forces. These punishments carried out in public but not reported to the Australian government now seem inexplicable. 1959, I've been told about these extraordinary executions by ALF Conlan, a consummate networker. Who advised both John Curtin and Sir Thomas Blame as the head of the Army's directorate of research and civil affairs.

In May 1978 I delivered a speech in the House of Representatives about what I've been able to glean from the mutilated files in the Australian National Archives. About the hanging of 34 New Guineans by the AIF in September 43. The new Guineans all lived in a small area to the east of the Owen Sound ranges near the point of cultural interface where territory was successively occupied by Germans before 1918, Australians and Japanese.

If there was any lesson that these people and their families must have learned, it was that foreigners where the German, Australia or Japanese wearing a uniform and air and authority. We're in a position to enforce their wishes and had to be obeyed without question. Treason is a highly conceptual crime involving an understanding of legal obligations, the Australian state or to the British crown and the significance of breaching them, in the first batch of trials. The sentences referred to an apparently confirmed by the general officer commanding the first Australian army Lieutenant General Sir Edmund Herring, later Chief Justice of Victoria. In his capacity as administrator of the Australian New Guinea Administration Unit (ANGAU) I received more hate mail after this speech than on any other issue in my career. Some of the angriest letters contained important new evidence. I didn't know what I was talking about, my informants wrote the hangings had not been eager too, but it's Samurai, Milne Bay, Itopy, Lae, Rabaul, Port Moreby and the Sepik where they had all been witnesses. The numbers began to rise sharply. It's clear that the AIF was very careful not to tell the Australian government what it was doing. And when Prime Minister John Curtin found out about it in April 1945, just really weeks before he died, he ordered the execution stopped. The few remaining files remaining in the national archives revealed that after cabinet directed the new GOC. Lieutenant General V A H, later Severn Sturdee not to proceed with hanging about 50 Papua New Guineans. Now listen carefully to this. In July 1945 he sought legal advice from the Director of Army Legal Services, Brigadier Alan S Lloyd later, a judge in New South Wales as to whether he was bound to follow cabinet direction. Lloyd replied dryly that while the GOC may not be legally comparable a reading of history suggested a certain caution [LAUGH] Had he failed to comply the consequences might not have been happy, because cabinet enforces compliance by removing from office any public servant who flouts his instructions. The most profoundly disturbing feature of the incident was to find a GOC urging execution as a matter of military necessity within weeks of Japan's surrender.

Because the official files have been gutted, it's impossible to form of judgment about how many indigenous Papua New Guineans were executed and where and when. The precise nature of the charges was murder, rape, treason, collaborating with the Japanese.

The nature and quality of the evidence, how the trials were conducted and by whom, whether the accused had the benefits of defence counsel. Whether prosecution witnesses were subject to cross examination, what languages the trials were conducted in and whether translators were available, the average duration of each trial.

Whether there was a right of appeal against conviction and sentence, how much time elapsed between conviction and execution? Whether there were any commutations, whether full records were kept, who was the driving figure behind the trials and executions, why?

If the aim of the hangings was deterrence, they were kept secret, why Canberra was not briefed? Why the military historians ignored the hangings, who mutilated the national memory? There are other disturbing issues significantly, the executions were infected redacted from the Australian official war history.

These trials and executions had occurred at the same time as action on the cocoa track. When Indigenous Papua New Guineans received very sympathetic press coverage in Australia as the fuzzy wuzzy angels. So savage punishments carried out in public but unreported are inexplicable, wanted to encourage enthusiasm for the allied cause. And again, there's the question of proportionality. The number of AIF executions in Papua New Guinea was about 150, 35 more than all executions in Australia between 1901 and 1967.

Drugs and murder. In 1991 Australia ratified the second protocol of the International Convention on Civil and Political rights which binds nations to oppose the death penalty. That has been adopted by the UN General Assembly.

The state has been monumentally hypocritical about the death penalty abroad. We will not extradite persons held here to death penalty jurisdictions even to our close ally of the United States but were also highly selected.

We empathise with our fellow citizens and will campaign to save them but for decades failed to argue strongly enough for the general principle of opposition for death penalty. I hope and expect this will change.

Andrew Chan and Myuran Sukumaran executed in Indonesia in April 2015 had good reasons to expect clemency. They were exporting drugs from Indonesia not taking them in. If the Australian federal police had waited to arrest them on returning with drugs to Australia, they might well have received only short prison terms. There's no contesting the evidence that they've been dramatically rehabilitated during their decade in prison. There are puzzling inconsistencies in imposing the death penalty for murder and drug offenses. With murder there are actual identifiable victims and a direct link between cause and effect.

With drug crimes the penalty is imposed to protect potential hypothetical and quantified victims. In Australia far more people die from misuse of legal drugs, alcohol, nicotine pharmaceuticals than from cocaine or heroin. One of the sickening aspects of execution for drug offenses is that only mules are caught. Those who control the drug sentence just read about the executions on Facebook. There are disturbing similarities between having a war on drugs and a war on terror. Each punishes the potentiality for death and destruction, and challenges, even undermines for how law and justice ought to be administered.

Evaluation of evidence. Deep analysis, rationality, and causality may be discarded or suffer collateral damage. Populism The rise of populism is a direct challenge to the whole concept of liberal democracy. And the values and methodology developed in the enlightenment with its emphasis on evidence, analysis, and scientific method. But paradoxically, unexpectedly, in this age of the information revolution for millions, probably billions, opinion has displaced evidence.

Looking for simple solutions to complex problems, appeals to fear and rage are increasingly powerful weapons at elections. The death penalty has been abolished in 108 states, including the European Union, the United Kingdom, Australia, Canada, and New Zealand, South Africa, and all of South America. 54 more states have longstanding moratorium. American exceptionalism puts the United States in a special category, the death penalty is still part of federal law. It's been abolished in 23 states, subject to a moratorium in four, California Oregon, Ohio, Pennsylvania, and retained in 23 states, all of the old confederacy and the Midwest. Support for capital punishment is highest in the former slave states, plus Missouri and Oklahoma. Which have very high levels of gun ownership, racial discrimination, misogyny, religious fundamentalism, anti-abortion laws and the history of lynching.

Support for the death penalty is one of the few social policies that the US has in common with China, Iran, Egypt, Iraq, Saudi Arabia, and North Korea. Donald Trump is an enthusiast for capital punishment. So as Brazil's heir, Bolsonaro, Erdogan tried to restore in Turkey, Orban in Hungary, that abolition is a precondition for EU membership or candidate. Right wing parties in France and Italy look nostalgically towards executions but recognise the unreality of restoration.

In Australia, only Pauline Hanson's one nation party supports a return to capital punishment. It must be said in Clive Palmer's favour, that he took a very strong line against the IFPs appalling role in the execution of super Myron and Chan, Craig Kelly may not have been aware of that.

>> [LAUGH] >> The way ahead, there is much to reflect on. Seeking security is understandable, reacting to fear as another, but fear is a bad driver for public policy. We live in deeply troubling times, it's easy to understand why people in many countries are gripped by insecurity. The ready access to lethal weapons, and mood changing drugs, and the risk of attack for internal or imported terrorism in schools, churches, mosques, heritage sites. Public transport, shopping malls, and offices, a horror scene on every day, on television and the internet. As a defensive reaction, many citizens would like to see the return of retributive punishments, desperation may push them to rely on subjective opinion rather than objective evidence.

We need to think deeply about how we define our humanity. In the final analysis, we make judgments coolly and calmly on the basis of evidence that's capable of being weighed and objectively analysed. Or is it the case that in dealing with human nature, objective analysis is useless, and we're forced into terror incognito and must decide blindly on the basis of instinct or gut reaction. We stand our hope against darkness, against obscurantism, against instinct, against pessimism about society, and the capacities that individuals have for moral to generation. Campaigners for abolition had to be provoked, prepared to argue for the tough cases repulsive as they are. Julius Streicher, Fritz Arco, Adolf Eichmann, Saddam Hussein, Osama Bin Laden, Timothy McVeigh, Amrozi.

The moral high ground does not allow campaigners to be selective. A former artist for Paris Cardinal Francois Marty wrote, if a man does no longer act like a man, the community must refrain from following him. Each time a human being is treated as a non-human being, then every human being is threatened. Any individual who commits an act of violence against another individual is degrading

mankind. We want to safeguard the concept of human beings now being threatened, we much resist the temptation of retributive anger.

Can man, that imperfect being, be expected to render perfect justice. In that respect, could capital punishment, give a notion of perfection to the justice of human beings. State killing is not only brutal and destructive, but also pointless. In the world of an eye for an eye and the truth for a truth, we can all be blind and toothless, that will not preserve our lives or maintain our values.

The evidence for abolition is compelling as we face the challenge with violence, drug dependence, and jihadism. We cannot rely on an instinct for vengeance, as we fight against darkness, we need rationality, evidence, values, and compassion at the highest level, If the senseless executions of Sukumaran and Chan in 2015 taught us anything, it's this.

Australia must be much more active in advocating abolition of death penalty internationally. This is not merely to protect and preserve its own nationals, but part of a campaign with universal application, without picking and choosing. And with the moral force of earlier generations worked with to end slavery, liberate women, and eliminate torture and punishment or heresy and witchcraft. In so many of these causes, Michael Kirby has been a leader and we salute him.

[applause]

Professor Lidia Xynas

So many thanks to the Hon Dr. Barry Jones.

[applause]

Thank you so much. And now I'd like to invite up the Hon Michael Kirby AC, to give thanks and a response to the oration. Thank you Michael.

Hon Michael Kirby AC

Thank you very much Barry Jones for a wonderful oration and full of wise source and many excellent and new facts. You really are an amazing citizen of our country and your contribution to public discourse is quite unique. And unique for the values that you have been pronouncing upon for such a long time. But also unique for the detail, you are not a person for a light and frothy discussion of issues, you get into the detail.

>> [LAUGH] >> And it's really wonderful and I'm most appreciative of you giving this oration in my name. Like the Dean, I acknowledge the Indigenous people, the First Nations people of our country. Most of the problems that arose from settlement were reinforced by and were implemented by or under the law. And it therefore specially behaves lawyers to be sensitive to that and judges and to use what my great professor of jurisprudence, Professor Julius Stone said. Using the leeways of choice that judges have inspired and encouraged in this state by the charter of rights and responsibilities, to bring justice where justice has been missing in the past. And with justice there must be economic recompense. It is not enough for us to simply acknowledge though that is a good thing. It is not enough for us to remember our wrongs, and that also is a good thing.

But if you deprive people of their land rights and other rights, you shouldn't be surprised that they, and their generations, and their descendants will be greatly disadvantaged in matters of education, health, welfare, housing, and so on. And so, at every occasion, we Australians should take a moment

like the New Zealanders do. To pause and think about those early days and the wrong path that they lead to, which happily we are now in the process of changing, I hope we will get a voice.

I've often thought that the First Nations people talk in poetry, whereas we talk in prose. And their demand for a voice is not a demand as Mr Turnbull and otherwise highly intelligent and liberal minded person said a third chamber in our constitution that is far from what is being sought.

What is being sought is a voice into our national and state parliaments and territory legislatures, that will sound the opinions of the Indigenous brothers and sisters. So, I was very glad to see that the Albanese government is going ahead with the voice and with other very important and puzzlingly delayed policies. But I want to thank Victoria University for continuing this lecture series.

What a wonderful oration series it is? I don't know any oration series in the nation, that is, has such magnificent speakers and who have brought really important points to this room. But the audience tonight is a special tribute to Barry Jones and to the knowledge that he won't just tread lightly on issues, he will give us A to Z, and that is what he has done tonight. Very soon after I was appointed to be a deputy president of the arbitration commission, I was in Shepperton, a very beautiful rural city of this state. And it happened that the Supreme Court was sitting there and two judges, one and already quite old judge,

Murray McInerney, later, Sir Murray McInerney. And a very young, freshly minted Michael Kirby were there and we agreed to meet in the park at Shepperton. And that was unusual because shall I say, and I'll try to say this as delicately as possible.

My appointment had not been generally welcomed by the judiciary and the government in Victoria, but I won't go into that, that would be too much detail.

So Murray and I, just had a sandwich in the park there. And the conversation came round to his early life at the bar, because that can always be a source of really interesting contrast and comparison to your own life. And he began to tell me the story of a dock brief that he had received in the very early stages of his life, the bar.

A dock brief was a kind of legal aid on the cheap, it involved a young barrister or lawyer going to the court and being handed a brief, which he, and in those days it was usually a he, would take up and pursue. And he told me that one of the earliest cases he had as a very inexperienced and immature barrister, was a capital case.

And as the premier and Barry Jones have said, in those days, this was not a theoretical matter in Victoria. And so, Murray, I could see was rather upset, and he began to talk about his experience. And he began to talk about the stress and pressure that was put on young lawyers receiving a dock brief in a murder case or in another capital case.

And suddenly, I saw that this, what I thought was a very old man, he was actually much younger than I am now. And he was weeping and the tears flowed down his cheeks and I felt very distressed. He was actually remembering those feelings from the times decades earlier that he had been handed a dock brief, and he said I didn't do very well, I don't think he'd lost his life because I was his barrister, but I didn't do well and it's haunted me ever since.

So there is a tale from inside the purple curtain, it's a tale of how being involved in criminal cases that may and often did lead to execution had an impact not only on the victim and not only on the judge and maybe the jury, but also upon the lawyers who are involved. And this is a point that has been made elsewhere by Stephen Keim, and I'm very glad he is here.

He's a wonderful barrister in Queensland and I said to him, you know you should be appointed to the High court of Australia. But he told me he'd almost reached his used by date, which is a tragedy that we miss out on a man of that quality and with those values.

So these were the days, and Barry Jones stood up and he became a leader, and he was critical to getting the necessary votes that abolished it in the last state in Australia that continued to execute people.

So it was not only on the books, it was carried out, and it had become a kind of symbol and a challenge, a mental challenge for Sir Henry Bolte, but it was also, let us be frank. It was a policy that was popular in many quarters and it needed an advocate and a politician, and a thinker who would know about and not too many people who knew about the long history, but Barry Jones not only knew about it, but he then began speaking about it. He spoke about it endlessly. He drove people mad speaking about it. And he wrote this book which is on sale outside. There's no point coming here not buying the book, because as he's pointed out in this oration, it's not only a story of the struggle in Australia, but it's the struggle internationally. You might say, well, what's the real relevance of this given that every state and the commonwealth have abolished capital punishment?

Well, the relevance of it is, it's a microcosm of the history of the law and of the fact that we can change the law, and we can remove the injustices and that we must be concerned to do that, and we mustn't leave it to others and we must do it ourselves. So I thought it was a wonderful oration, and it's up there with the best and I'm very glad that the university continues the tradition.

I thought that the new building, which I had never seen before is a magnificent addition to the campus of Victoria University, I'm very proud myself to be an alumnus, and I'm very proud to come frequently to the School of Law and Justice. I like that extra bit. It's not just a law school, it's a school of law and justice, and this occasion is one that is special. But it's not the only book Barry Jones has written.

>> [LAUGH] >> As you know, he's written a biography, *A Thinking Reed*. He's also written a most influential bestseller, *Sleepers Wake*, taking its words from a JS Bach cantata and it was a real shakeup as was his writing on climate change. So he's really been an amazing thorn under the saddle of our polity, and it's we need you to be replicated possibly by clone process and you can tell us whether that will be possible. But it would be a very good thing if it happened.

But another book that he's written is the *Dictionary of Biography*, and I have it on the shelf behind me at work, and often when I should be concentrating on tasks at hand, I start reading it, because it's tremendously fascinating potted versions of very interesting and important lives. But it's also very amusing because in the forward to it he recounts the trouble he had with getting it published by penguin. And it's a hilarious story of the battles between Barry Jones and the publishers, he started the exercise and this is typical of the man that we've seen tonight and heard tonight.

He started when he was working in the land titles office which is just next door. And he was there with John Button and other famous Victorians. They got a lot of good training, but Barry started his exercise in taxonomy. There is only one taxonomists greater than Barry Jones, and that was Alfred Kinsey, who was originally a taxonomists of bees, gall wasps and turned from that to a taxonomists of human sexuality. And I was in Bloomington just a week or so ago where they made a bronze image of of Alfred Kinsey. I think it would be a good thing if the grateful people of Victoria, and if this university could contribute to a bronze image of Barry Jones.

>> [LAUGH] [APPLAUSE] >> It would be good if it could have the marvellous features that are captured in this painting. Stephen Keim put the painting up for sale with the permission of the owner in Brisbane on the very day, 100 years after the Labor government in Queensland had piloted through the Queensland Parliament, the first statute for the abolition of capital punishment anywhere in the British empire. And that was a really important first step, and it only happened because a few people with knowledge became advocates for change. At the beginning of the book, he mentions rather than melancholy I think, that looking back on his life, there was only one person he could say who was in public life at the time he joined public life in 1973.

And that person was her majesty, queen Elizabeth. And that reminds us that Barry Jones in two weeks' time or three weeks' time reaches his 90th year. But I expect like the queen that he will just go on and serving, he'll be working a day before he is called by the heavenly gates. He'll still be working, he'll still be a taxonomist.

He'll still be trying to think through and puzzle through some new change, nuclear weapon control is the great challenge of our species. And it would be a good thing if he could turn his very considerable intellect and enormous knowledge to that topic. But whatever he does, it will be perfectly accomplished. So Barry, we're going to have some questions, but not too many. And then a few of us are going to dinner with you to raise a glass to a really great Australian, and a great intellect, and an internationalist and a reformist.

And that has been the feature of the orations, and I'm very proud that they continue. And so long as they continue and I continue, I will be here to welcome them and to praise the orator, as I now praise Barry Jones.

Professor Lidia Xynas

>> [APPLAUSE] >> So we'll just take just a few questions. So any questions there? Stephen, how are you Stephen? Come, just make your way across.

Speaker 1

My question is, does the death penalty still exist in Australia by the commonwealth in the states for treason, and with treason, including either imagining or inflicting death on the sovereign or the here to the sovereign?

Hon. Dr Barry Jones AC

Well, the The death penalty legislation that was carried by the Whitlam government in in 1973 abolishes for all crimes, including treason. Funny thing is that there's been a number of states, Ireland is a good example where you had the death penalty for civil crimes abolished at an early stage and then later on, they, they didn't deal with treason at all. But the the protocol that were that Australia has signed up to and which the states are involved in. It means that treason is also treason is also excluded. You might say that's been wonderfully successful as a deterrent because no one's ever been prosecuted with. So I should add that. In fact, the very last instance of death penalty was in the Michael Kirby's own state of New South Wales where by sheer inadvertence when they abolished the death penalty, they abolished for murder, but forgot that there are other crimes and I think it's still applicable for piracy and dockyards, which doesn't happen all that much.

Piracy and I, and I think stealing lead lead from church roofs, but something like that. And it was one of those, oops, moments where they said, we didn't realise we've left it in the, we've left it in the

statute book and nobody ever thought about it because nobody ever raised the question of stealing lead from church roofs as you tend not too much.

Speaker 2

First of all, thank you to both gentlemen for your talks tonight, Michael, you'd be pleased to know. I come from Shepperton. So, my question relates to migration law. One of the biggest problems with migration law is the character provision in migration law and it is impossible for somebody who has had a death sentence in other, the country to pass a character test. So how does this fit in with our move to abolish the death penalty in international countries?

Hon. Dr Barry Jones AC

Might be better to ask Gareth, he's got a view on that. But that's a very, that's a very thoughtful, that's a very thoughtful issue. I must confess. I haven't really thought about that. I'll have to get back to, I'll see our secret learned counsel's advice. I'm sure Gareth could come up with something better than me.

But it's a very, that's a very worthwhile point. And I can understand where somebody might, you know, perhaps have been framed in another country subject to a subject to a penalty manages to avoid. It then manages to escape and get here. But you can hold, you could say, well, the paperwork suggests that you don't need to test a very tricky question, We'll have to think about that.

Speaker 3

Thanks Barry. Thanks for a good address.

Look, can you explain the paradox for me that particularly in America, the most enthusiastic supporters of the death penalty, the most enthusiastic anti-abortion people and vice versa, the most enthusiastic, anti-hanging, anti-death penalty people seem to be the prochoice people. Can you understand that?

Hon. Dr Barry Jones AC

Look, I think it's beyond human reasoning, I but it certainly, it certainly is true that there's a correlation between the strength of support for the death penalty state-imposed execution. But on the other hand, the denial of the right of a woman to be able to choose, you know, what's happened in her in her own life.

The it's and it's difficult to see how it's going to change. I was very struck by something that there was a very interesting article in the economist last week, I think it was in the Lexington column, where they're making the point that in the United States, that 37 of the 50 states are now one-party states. You see, you've got 37 states where the possibility of the other party winning is so remote, so so unlikely, don't even think about, so the chances of the chances of the republicans winning in California zero, the chances of democrats winning in in Florida probably zero.

And so the result is that what then happens is that political decisions have really made, not on the basis of what the general community thinks, but what the the the members of the dominant political party, the actual branch members paid up members, they make the big decisions. And then in the end, you see, you can see that with the application of gerrymandering, it means that if you've got a group which gets the support, say, of the religious fundamentalists, they get them to stack the local,

the local primary process and so on. That's more important than the vote than the than the final vote when the when the whole electorate comes out, who gets that, who gets that nomination or what we call an Australia preselection. But it is it is absolutely bizarre. And of course, you've got the same thing. It's extraordinary to find that when you you know, you think also the correlation between the role of the of the gun bobby and their reaction to multiple killings, to mass killings by the use of guns. And and they say, well, we've got to have the guns. And, well, it's probably a mental health issue if people, if people commit these crimes, so it's nothing to do with the guns. It's just to deliver with delusion in people's heads.

It's but the point that you've made is the most extreme example of the opposition to opposition to abortion under any circumstances or right to abortion, I should say, and the imposition of the death penalty, it's quite inexplicable, and it's appalling. But in a way, it's something that's one of the reasons the Americans put this emphasis on, you know, what we think of as the as the American exceptionalism, why they won't join the International Criminal Court, for example, they won't they just want don't want to be part of it. They have their own way of doing it and state by state by state, it's utterly different. And that's a matter of grave concern. But I don't see that. I don't see that changing. And there's the prospect I would think in the with the midterm elections coming up. But while the general feeling now is that the democrats will retain the Senate and might even gain a seat or two, you know, the probability is that the democrats will will lose the House of Representatives, perhaps not by much, but they'll lose it. And that means you're going to have in effect a hung legislature. And it means that there's a danger of Biden appearing to be a lame duck president in those last two years.

Professor Lidia Xynas

Thank you so much Barry. And if I could call up the honourable Steve Bracks AC to provide the closing comments and to close the oration.

Hon. Steve Bracks AC

Well, could I could I add my thanks to that of Michael Kirby to Barry Jones for an excellent oration? Quite telling, as Michael said, very detailed and quite revealing in lots of ways. You know, under the cover of War in the Second World War. That Papuans were executed by our own forces is quite disturbing when the narrative that they wanted to give was was of the Papuans actually supporting and and supporting our war effort more broadly and being eulogised.

So, it's quite revealing and, you know, and quite telling and Barry. Of course, as always a great speech great oration. Well prepared. Well researched and we understand the sort of work that went into that and I was amused to see you whilst you were delivering your speech that you're correcting it on the way. And that tells me something because I know when my wife Terry worked for you in your electorate office regularly speeches wouldn't be a regular, not a static thing and they'd be pulled out of the file and they'd be regularly updated and regularly corrected and that would be going on and on. And I could see that that is still happening now with, with your speeches as well. And it's a great thing. We'll, we'll take on notice the call from Michael Kirby to have a bronze statue in the forecourt of the Victoria University building or in the forecourt of the state records office or the land titles office. But it would be certainly appropriate what you know, who is quite rightly a living treasure. Someone who has given so much to Australia more broadly, someone who has achieved so much and someone who presented this oration with, with, with great ability and skill and great rationality, and so to Barry Jones, thank you very much for delivering the 11th oration of the Michael Kirby oration. So, thank you very much.

[applause]

And to Michael Kirby again, thank you for allowing us to have an oration in your name and your response was second to none and we appreciate enormously the work you're doing with Victoria University and our law School and Law and Justice School, I should say. And we are, we are greatly appreciative of all the work that you've done for the university. So thank you very much also.

And so it just leaves with me, to officially thank everyone for being here and to officially close the 11th Michael Kirby Justice oration for 2022. And thank you all for your involvement here today. Thank you.

[applause]