Hun be played by a man or that Marie Antoinette be played by a woman. This type of exception is normally recognised by statutes but rarely by bills of rights. The point is that a wise and just general principle has exceptions. Supporters of capital punishment may wish to impose it for a variety of crimes; opponents of capital punishment usually do not wish not to have it imposed at all. Why can neither group recognise that there are cases where it should not be considered (perhaps the Bali nine) and cases where it may be justified (such as Hitler or the Bali bombers). Too often today both groups describe someone who favours their principle but is prepared to recognise an exception as a hypocrite. The most obvious example is abortion. Many proponents of a woman's right to choose refuse to recognise an exception for the horror known as partial birth abortion at 8 ½ months. Many 'right-to-lifers' refuse to recognise an exception to their anti-abortion stance in the case of a morning-after pill. In each case, the power of their arguments would be strengthened not weakened by the recognition of an obvious exception.

I should disclose that, since writing my first draft of this oration, I became aware of the work of the United States legal philosopher Frederick Schauer. Much of what I have said is similar to the views expressed in his 1992 book *Playing by the Rules*. His examples are different to mine – indeed his principal example is a rule forbidding dogs in a restaurant and the issue whether that rule should apply to a taxidermically stuffed dead dog on the one hand or to a live cat on the other. In self-defence I merely plead that we came to our conclusions independently.

I summarise my conclusion by saying that all generalisations, including this one, have exceptions and that loyalty to the generalisation should not prevent recognition of the exception. If I had to summarise it in two words, those words would be 'exceptions rule'.

American Bar Association (Section of International Law) Conference

On 9 & 10 February 2010, the American Bar Association (Section of International Law) held a conference in Sydney on 'Cross Border Collaboration, Consequences and Conflict: The Internationalisation of Domestic Law and its Consequences'.

One of the many highlights of the conference was a discussion between US Supreme Court Associate Justice Antonin Scalia and the Honourable Michael Kirby AC CMG, former justice of the High Court of Australia. The issue considered was the extent to which international law may assist or inform national courts in determining constitutional questions and human rights issues. Not surprisingly, the speakers were at polar ends of the debate as Justice Scalia adheres to the originalist theory of constitutional interpretation, while Michael Kirby takes the view that the Australian Constitution is a 'living force' which quite rightly may be coloured by legal developments and attitudes abroad.[1] However, Michael Kirby did manage to find some common ground, observing that both he and Justice Scalia are great supporters of the British tradition of dissent. He later invited Justice Scalia to attend joint therapy sessions with him to address that tendency.

On the second day of the conference, various judges and counsel from the United States and Australia participated in a moot court entitled 'The Art of Persuading Judges' at the University of Sydney Law School. The moot was highly entertaining, yet with the selection of Justin Gleeson SC and Andrew Bell SC as the Australian sparring partners, the organisers' intention to demonstrate a contrast between the renowned flamboyancy of the US bar and the more subdued approach of the Antipodeans, was somewhat frustrated.

Justice Scalia, when asked at the conclusion of the moot what the most common and annoying mistake made by counsel is, replied that that the failure of counsel to answer a question from the bench by way of 'yes' or 'no', followed by an explanation for that response, is aggravating. He said that many counsel regard questions from the bench as an inconvenient intrusion of their time when, in reality, answering a question is the only occasion that counsel can be certain they are not wasting their time.[2]

By Jenny Chambers

Endnotes

1. See the opening remarks of the Honourable Michael Kirby AC CMG, former justice of the High Court of Australia, reproduced on the following page.
2. In the US Supreme Court each party is allocated thirty minutes for oral argument.