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TRANSCRIPT OF ADDRESS GIVEN BY
THE HON. MICHAEL KIRBY

AT THE QUEEN'S BIRTHDAY RECEPTION

SOCIETY OF THE FRIENDS OF ST. GEORGE
SYDNEY UNIVERSITY
ON 21 APRIL, 1993.

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Mrs. Grogan, Mrs. Clark, Sir Charles, dear friends and fellow citizens.

We meet together on Her Majesty's Birthday at a very important moment in the life of our country in terms of its Constitution and of nothing less important than its future.

I spent the day, as Mrs. Grogan has said, awarding degrees at a conferring ceremony at Macquarie University. I was performing my functions there the continuity of the history of our institutions and of our ceremonies and of our love of ceremony and of our love of continuity came home to me very clearly. It was there in the very spirit of the young people (and not so young people) who came up for their conferring.

It was a wonderful day on which to celebrate the Queen's Birthday. I reminded them all that beautiful weather was decreed by Royal Decree, it being Her Majesty's special day.

Now, if you had been paying attention to the media of this country you would be forgiven for wondering whether there was any point of view other than the inevitability of a Republic in Australia. Loyal Australians, I think especially of Lloyd Waddy who is in the audience tonight, have put up a heroic struggle to breach the wall of silence that to a very large extent the Australian media has imposed

upon those who do not go along with the point of view. It is the accepted orthodoxy of the media.

Let us declare here and now that we will not tolerate this intrusion into our freedoms. Nothing will prevent our expressing our point of view. We will not accept that to put a point of view which doesn't happen to go along with the inevitability arguments (the first inevitability since Karl Marx' inevitability) makes us in some way second-rate Australians.

I have to say to you I am not a descendant of a Knight of the Garter. It is 30 years since I last went to St. George's Chapel. I do regard the continuity of our history with the United Kingdom as a most precious thing. I see it every day in court. In my boyhood, if I was ever in doubt, every Sunday the reminder of the King's Majesty and, later, the prayers for the Queen's Majesty and all the Royal Family put into my mind and into my sub-conscious a feeling which I carry with me to this day - Allegiance, Loyalty, Affection, Respect.

St. George's Chapel, as Sir Paul Hasluck said when he spoke in this place, is one of our national heritage institutions. It's part of our Australian continuity.

But I have to say I look on the issue of the constitutional arrangements of Australia entirely and exclusively as an Australian matter. I do not look on it as something that is of particular significance in relation to the United Kingdom. The United Kingdom can get on perfectly well if we become a Republic. There are so many Republics within the Commonwealth. It wouldn't make a great deal of difference there.

I look on this issue, which is an issue for our Constitution as something exclusively for us. Something which we in this country have to sort out as best suits Australia and Australians.

It seems to me that there are two fundamental issues which we have to address. The first, the issue of pragmatic persuasion. The issues of Realpolitik. The second is for those who, like yourselves and myself, are people of principle. The issues of principle.

If we look at the Realpolitik of our Constitution and remember the constitutional referenda which we have had in this country, a moment's recollection of our constitutional history will teach us how extremely difficult it is to have a referendum passed in this country. On occasions this has caused the greatest possible heartburning and irritation to politicians of different political persuasions. But that is not to say that our constitutional arrangements have not served us very well. As is constantly said, it is one of the six longest serving constitutions in the world.

When we look around at the chaos and disarray of our world at the moment we have at least to pause, I suggest to you, before we needlessly and without very sure conviction throw this stable arrangement away.

There have been, in all, 62 questions put to the people of Australia in constitutional referenda. Of the 62 questions put on 42 occasions some 12 have been accepted. So that if you look at the history of the voting at referenda in Australia, it is a history that sobers the enthusiasm of those who believe that it is a pushover. Very good letter, did you see it in the Sydney Morning Herald? "This was the election with an inevitable result. Now, we have to have the

'inevitable' constitutional referendum. Next poll please," was the letter writer's call. So, next referendum please, I say to those faint of heart under the pressure of media-led inevitablism.

If we look at the referenda in this country it would make us very circumspect in suggesting that victory for a Republic is a push-over. Even where the referenda have been passed with a majority of the people it is very frequent that the referenda are lost because of the requirement of securing a majority of the States. Therefore, do not be discouraged by the opinion polls with which this country is so endlessly bombarded nowadays. Politicians no longer think and dream of what is best for Australia but what will respond to the latest opinion poll. The people are different.

But if you think of the polls, then I would remind you of the beginning of Mr. Menzies' referendum campaign in 1951. This was the Communist Party referendum. A referendum to ban the Communist Party and to provide powers to the Federal Parliament to deal with communists and communism. Three weeks before the poll, the opinion polls were suggesting that Mr. Menzies would sweep the country in every State with 80% of the support to the people. I have to say I think it was the marvellous effort of Dr. Evatt at that time that prevented that referendum from being successful. Who knows where it would have gone? But in the end when the people of this country in Darby, in Gilgandra, Cootamundra and Shepparton and all the little towns and suburbs of this continental nation went into the little church halls. They cast their votes. The referendum as we know, was lost.

Even more telling, perhaps, are the referenda 'which we had to have' in 1988. Do you remember the referenda for the Bicentenary? How we had to have the four referenda for the Bicentenary? Well, three weeks before those proposals went to the people of this country. The polls were showing an 80% support. Who could oppose the proposals for juries, for equal electorates, for freedom of religion in the States? Who would dare to stand against these very wise and sensible Bicentennial referenda proposals? We now know it went to the people in Goondawindi and in Bourke and in all the church halls and schools, town halls and other little places where peacefully we exert our democracy. The result was that not a single State accepted a single one of those proposals. Only one of them received a majority in one place in one jurisdiction in Australia. That was the proposal for fair, equal electorates. At least I think that was how the proposal was presented. That one was carried in the Australian Capital Territory alone. But nowhere else did a single one of the referenda which we had to have, on which 80% of the people were reported in the media about three weeks before to be enthusiastic, on the ramparts, not a single one of them was passed. Still less did any of them receive the requisite number in the States.

The Australian people are very suspicious. They are very suspicious about anything that changes their fundamental document. I don't think it is a bad thing to be extremely cautious on this matter. The document, with a little bit of help from the High Court of Australia, has served us very well over the whole of this century.

Now, that is not to say that one should oppose reform and change out of mindless devotion to the past. I think my life's work is security enough for the fact that that is not the way I approach this

issue. But the question of the Republic and the way it has been put upon us is disturbing. The manner in which it suddenly has burst forth like a great sun that we all have to pay respect to. Why has this issue been put upon us?

Unkindly it has been said that it's because there are other more pressing, more important problems that we need to address that are more difficult or more intractable or less jazzy, less attractive to the passing fancies of politicians.

I think that the issue of our relationship with the Aboriginal people, a matter which was of the keenest concern to Sir Paul Hasluck, is an issue which is far more important. It is interesting to note is it not, that the Aboriginal representatives are saying that a republic of the minimalist kind, simply replacing the Queen with a President would be a "tarnished" republic. Then we would fail to address issues more important and fundamental than the cosmetic change that Mr. Malcolm Turnbull of the Australian Republican Movement would urge on us.

So that in this matter I don't lose heart at all. I simply look at the history of the country and at the great caution of Australians, particularly when a referendum proposal has the slightest possible prospect of offering more power to politicians. I say that without disrespect. I know that here there are many distinguished and fine politicians in our audience. But the fact is, and we have to acknowledge it, that Australians are very suspicious people. Especially, I would suggest, when the moment comes and the vote has to be cast. They look about them at the orchestrated campaign on another referendum which 'we just have to have'.

If you turn from the Realpolitik and are concerned to look at the issue as a matter of principle, I think that one thing we should keep in mind is how fortunate we have been under our constitutional arrangements at avoiding what I would call the Bosnian phenomenon. Look at Bosnia today. Look at this particular triumph of nationalism.

I must say to you that I think that, after Hiroshima, the notion of local nationalisms is really outdated. The idea that we have to somehow find this very distinct national and exclusively local culture that is only and uniquely an Australian phenomenon, is I believe something we should be very cautious about.

Nationalism has been the curse of this century and of the centuries before. If we want any further evidence of its current burdens we can look at the former States of the Soviet Union and the former component parts of Yugoslavia. I am very suspicious of people who beat the drum of nationalism. We should be internationalists today and not looking for a South Seas Republic which is only and distinctly and deliberately cut off from the links which we have with a sovereign who is international as well as Australian.

Then there are the dangers of change. How many of you have been listening to the BBC this week. Did you note what happened in Pakistan? The Pakistan President dismissed the Prime Minister; old reserved powers, you know. The Pakistan President wanted Sharia Laws, the Moslem laws, to be introduced with greater vigour. He carried with him a number of the members of the Cabinet. The Prime Minister, a man of semi-reformist bent did not like that idea

at all. He put up a fight. The President then said, "You are a corrupt person. I'm going to dismiss you. Reserve powers. Out you go!" Along comes the Prime Minister of Pakistan walking up and down the length and breadth of Pakistan denouncing the President for what he has done to him and to democracy. Mrs. Bhutto, who earlier suffered the same fate may get the President's nod again. Yet this is a President who is minimalist - nothing more than the successor to the Viceroy and Governor-General. With reserve powers.

Those of the minimalist persuasion would merely make a little erasure. Take out 'Queen' and insert 'President'. If that's all they do, then we will invite the Pakistan phenomenon. It's happened before. It's happened in other countries of the former Empire where the Queen has been replaced by a President.

It is much more unlikely for these things to happen at the hands of a person who has the appointment from the passing governments and who represents a sovereign who is continuously in office and owes nothing to anyone. It is much less likely that people of that appointment will do what the President of Pakistan has done than if we have a person who has no claim to the legitimacy of a vote.

If the person is voted in by the people then that is the legitimacy of democracy. You will have a problem like Mr. Yeltsin has in the Soviet Union, in Russia. A contest between him and the Congress of People's Deputies. Where does power lie in Russia now? Between President Yeltsin and the Congress of People's Deputies? If you have a person who is like the President of Pakistan, then it is much more likely that such a person will conceive the idea that they

have a mission and a calling and a duty to assert their representation of "the People" than will the dutiful men and women who serve the Queen without such pretensions.

The last point I think to be made in the points of principle is that we have at present, a Queen who comes to Australia when she is invited. But not more often. Why doesn't she live here? The answer is, "She lives in England" and we all understand that. The Canadians understand that. The New Zealanders understand it. In Papua New Guinea, they understand it. Why has it suddenly confused some Australians? Have they not noticed the sovereign's residence these past 205 years?

In some senses we have the very best of both systems. We have the monarchy in the person of the sovereign who is the only royal link of the Crown with our Constitution. We do not have what to many Australians would not be particularly congenial: the barons and the lords and all the other aspects of privileged English society. Some of you might like that. I think most Australians would not. We have monarchy, a constitutional monarchy. But we do not have some of the royal trappings that are really not Australian trappings. We have in every way independence. There is undoubted independence in our legislature. Independence in our executive government. And independence in the courts. There is no formal link with Britain now anywhere. Just the links of kin, of descendants, friendship, of constitutional traditions, the culture. Links such as the activities which this very valuable Society celebrates and demonstrates. And we have, under our Constitution, the Queen of Australia.

So that when I look at the arguments I hear how inevitable everything is. I say: pay attention, pray, to the history of our constitutional referenda and to the great suspicion of the people of Australia and their unflinching disinclination to change a document that has worked well.

When I hear people say, well, this is unAustralian and you've got to get with it. I say, well, it's a funny old system. It has developed in a very peculiar way. It is a bit like the jury in that respect. It has come along. And now it's quite a different thing than it was when it began. The jury you know, were the people in the neighbourhood who knew what happened. Now it has developed over the centuries to the position that the jurors may not know what happened. They must have it proved before them. The institution remains. But what a difference there is!

So it is with the monarchy. It has developed over the centuries. We are the inheritors of a wonderful tradition which is personified in a person whom I am proud humbly to say, is a person I admire. A woman whose life has been dedicated to service and duty. These are things that are not unimportant in a world of change. Our Queen is a person who sets a very good example to the people everywhere including her people in Australia - service above self.

The more we hear of the complications of the Republic the more our people will be rightly suspicious of the powers that have to go with this and that form of Republic, of the dismantling of the States. Perhaps of the increase in the powers of the Federal Parliament. Maybe we'll have regions. Maybe we'll do this and that.

Maybe Western Australia will secede. The more we unravel this issue the more I feel sure that, at least in my lifetime, when my fellow citizens in Goondawindi and Darby, Bourke and Gilgandra and Concord in Sydney and all the other little places go to cast their vote, that they will remember the strengths of the system they have.

It's the system we have to think about. If the system ain't broke you don't fix it. And then the people will remember the sovereign, the Queen whose life has been a life we've seen through our lives. Who has never put a foot wrong. Who has only done her duty.

So when I was asked to take Sir Paul Hasluck's place tonight I was proud to do it. To join with my fellow citizens in sharing these little reflections of my own at what is an important moment in Australia's history. Apparently we must make a choice. We should make our choice according to what suits Australia best. I suggest to you that it will be a choice that we will stay with our present constitution. Defend the Constitution!