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AUSTRALIANS FOR CONSTITUTIONAL MONARCHY

SOUTH AUSTRALIAN BRANCH

LAUNCH, ADELAIDE TOWN HALL

TUESDAY 16 NOVEMBER 1993

A REFORMER'S VIEW OF CONSTITUTIONAL MONARCHY

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The Hon Michael Kirby

In his moving speech on Remembrance Day, the Prime Minister was clearly right when he said that the unknown Australian soldier fought, far from home, "for no other reason than that he believed it was the duty he owed to his country and his King".

A love of country and duty to the Crown are not new things in Australia. They have been with us ever since settlement began in this land. Nor are they things of the past - safely buried with the fading memories of the Great War. They are living things, in the hearts of millions of ordinary Australian people. Because they are in the heart, they cannot easily be erased.

I want to give some practical, hard-nosed, Australian thoughts as to why our *system* of constitutional government has advantages which should not be dismissed lightly.

These are the perspectives of a reformer. Reform means more than change. It means change for the better. I am not convinced that the republican options on offer are better than the constitutional arrangements which history has given Australians. The basic question is what is best for Australians. In my view we should stick with the Constitution that Australians made, fought for and have kept. Let me say why.

When you look around the world at the countries which seem to be the most stable, liberal in their laws and tolerant of diverse opinions, overwhelmingly those countries tend to be constitutional monarchies. The Netherlands, Belgium, Sweden, Denmark, Norway, Spain, Japan, the United Kingdom, Canada, Australia and New Zealand. Why should this be so? It cannot be an entire coincidence that so many of the members of the Organisation for Economic Co-operation and Development (OECD) are constitutional monarchies. The advanced, democratic, rule of law societies with the best economic records tend to be constitutional monarchies, although the world is full of countless republics which do not make the grade. Is this just chance? Or is it something to do with checks on unbridled power and reminders of the historical perspective in the holding of office which constitutional monarchy constantly provides?

It might be said that Australia would remain stable and tolerant as a republic, with its own local Head of State. So indeed it might. But before we change, we have to weigh up the risks:

- * Having as a Head of State a person chosen by accident of birth means that politicians cannot aspire to the number one job. In this sense, the Queen of Australia keeps out of the top position the pushing and shoving types who are vitally necessary for our democracy, but who do not always engender universal respect, affection and trust;
- * In the case of Australia, the monarch is not ever present as a local Head of State would certainly be. We have the Governor-General and Governors, it is true. Henceforth they will always be Australians. But because the Governor-General is the representative of our normally absent Head of State, this puts a limitation on Head of State protections. Not for us the stretch-limousine, the First Lady and the schoolchildren pressed into dutiful flag waving. With an ever-present republican Head of State, we would surely go down the road of pretension. Anyone in doubt about this should observe what happens when there is a

change. In South Africa, the President was soon unsatisfied with that title. He quickly became the "State President". Very soon after he sprouted an orange sash. This is worn everywhere important. When you replace a monarch there is a mighty void. And especially if the monarch is as long serving, professional and dutiful as Queen Elizabeth II;

* The republicans want the "minimalist" Head of State to be appointed like the Governor-General by the politicians in power. But whereas that will do for a Governor-General, representing a monarch who has a link with a thousand years of history, it will not, I am afraid, satisfy the Australian people if they are to have a President of their own. They will (as repeated opinion polls show) insist in that case upon a President elected by them. Yet as every politician knows, if you elect the President you give him or her a legitimacy which may imperil the stability of our Parliamentary democracy. The President may claim a mandate and a legitimacy for that office. Unless you wrap up and throw away the reserve powers, the President may just be tempted to use the powers to sack the Prime Minister. Look what has happened in Pakistan twice in recent years. Look even at the recent strife in Russia;

* Then there is the very fact that we are all - judges, ministers, politicians, police, defence forces, cast by our system into the state of mind that we are all but temporary office-holders *under* the Crown. This involves a self-conception (and a conception of our offices) which puts a break on delusions of grandeur and a check on arbitrary power. The very fact that the Head of State serves, here as elsewhere, in a line which can be traced back a thousand years, puts a brake upon the temptation to a *coup d'état* or to a breach of valid constitutional conventions. This safety might, or might not, pass to a new republic. But the very continuity of constitutional monarchy, in a country like Australia, is a symbolic assurance against the brutal assertion of oppressive power. It thus provides one ingredient for tolerance and diversity where the symbols of a

republic may fall into the trap of democratic majoritarianism. Constitutional monarchy, of its nature, demands careful checks;

* To the suggestion that we must have in Australia a home grown President and that the Queen is a foreigner, I say: Tell that again to the Scots and the Welsh and the Northern Irish and all the other people who accept Queen Elizabeth as their Head of State. In an internationalist age we should regard this common link as a bonus. And reject the call back into the bosom of primitive South Seas nationalism. It is so *passé*;

* To the complaint that the Queen is not, when overseas, seen as a representative of Australia, a ready answer may be given: The Prime Minister should be the main representative of Australia overseas. We can survive the shame of a 19 gun salute. Our system is Parliamentary. That means a Prime Minister. Let him or her be Australia's representative overseas. And in the unlikely event that the people of Asia, or anywhere else, care the slightest about our constitutional arrangements, let them mind their own business. Just as we mind ours in relation to their constitutions. Such things are the product of history and sentiment and are not always susceptible to easy explication to neighbours;

* To the complaint that the Queen is not always amidst us, I say: This is actually a positive advantage of our system. Basically, we have the perfect blend of a monarchy and a republic. The people have the ultimate say. Great power is divided as befits a republic. But the Crown, as the symbol of continuity, is there. All of us serve it and, through it, the people - beyond our partisan causes. That is the strength of our historical monarchy. The Queen comes when she is invited. But not too rarely or too often. We basically get by *without* a Head of State and with the Governor-General and Governors doing those modest functions which we think necessary to us. As we have so many politicians, this is at least one way we can save money. All this may seem, to some, an anarchist's view of the Constitution. But, to the extent that a President has power and legitimacy, the Prime Minister must watch out. For

we then run the risk of tension at the top. At the moment there is no such risk. The Prime Minister is the undisputed top dog in power. But he or she is deprived of the symbols of ultimate power and this to remind him or her of the temporary hold enjoyed upon it. I hope I may say, without offence, that this is a reminder which some, at least, of the incumbents of the highest office in recent years have needed, occasionally, to receive;

To the suggestion that the Asian and Arab, the Latin-American and the Islander people of Australia have no affinity with the Queen of Australia I would say: They probably think as little about her as the Australians of Anglo-Celtic stock. It is the *system* of stable democracy and parliamentary government that is, to them, one of the chief attractions of this country. A system that puts a brake on extremes and keeps all in their respective place has rational advantages which may not be fully understood, but is instinctively felt. And will be reflected in safety if a vote comes;

And to the assertion that the republic is inevitable and that we should therefore lie back and accept it, I would answer in the words of John Maynard Keynes:

"The inevitable never happens. It is the unexpected always.

The passage of the communism referendum, in the frenzy of the Cold War, was inevitable; but it was lost. The bicentennial referenda were inevitable but were lost, overwhelmingly. The only referenda that have succeeded in recent years in Australia have enjoyed bipartisan support and carried not the slightest risk of affording significant new powers to politicians. So when I hear the assertion of "inevitably" I spare a thought for history and reach for a pinch of salt. There is a certain impatience in some Australians who resent the constitutional conservatism of their fellow citizens. It is unfashionable just now in Australia to support the Constitution. But as its centenary approaches, I hope and expect that, as a people, we will come to reflect upon and appreciate the blessings we have enjoyed, living under it.

The Australian Constitution of 1901 - one of the oldest in this unstable world - has assured us of stable parliamentary democracy. We have avoided civil wars. We have defended ourselves in war and peace. Governments have changed without bloodshed. The law has been administered in tranquillity. If you doubt that these are great achievements by the world standards, look around.

The Constitution has itself changed over the century principally through court decisions. Our relationship with the Crown has changed. The Queen herself has adapted and changed the royal rôle during her long reign. Indeed, in many ways the monarchy has changed most of all amongst the elements of Australia's government over the century past.

These elements of our Constitution are appreciated by many of our fellow citizens, in all parts of Australia. But they are most appreciated in the less populous States and in the country towns and districts. It is here, in the heartland of Australia, that the republicans must carry their cause or lose their battle. Or worse still, win it at the price of shattering the unity of the continent in this Federal Commonwealth under the Crown.

The evidence does not suggest that the republicans have made headway in the less populous States or in the country districts of Australia. There, the merits of our Constitution are clearly seen. The dangers of changing its fundamental character are feared.

We have so many other *real* challenges in Australia to which we could be called as a united people, that the question must go out: Why divide us unnecessarily, as divide us you will, upon the one feature of the Constitution that shows no urgent need of change? Lead us instead to an attack on the problems of the long-term unemployed. Lead us to a new reconciliation with the indigenous peoples of this continent: the Aborigines and the Torres Strait Islanders. Lead us to solutions to the urgent needs of our internal waterways. Lead us to a new relationship with Asia and the Pacific and the Indian Ocean states so that we come to terms with our geography and make the most of its opportunities. Lead us to better health services, educational

opportunities and employment prospects for our people. Lead us to a better understanding of the causes of drug dependence and a more effective response to HIV/AIDS. Lead us to a more tolerant society, respectful of minorities and determined to break the stereotypes which have limited women and other disadvantaged groups. Lead us, if you will, to an honest and open debate about our Constitution when *all* the cards are on the table and the fundamental character of the compact can, if necessary, be re-negotiated from scratch.

But in the meantime, leave the Constitution, the flag and the Queen alone. Because we, ordinary Australians, rather like them all. They are matters of our spirit - not in a grave with the Unknown Soldier. But daily with us, in our hearts.