

"Sir John Quick - He Trusted the People"

The Inaugural Sir John Quick Bendigo Public Lecture

Latrobe University, Bendigo Campus

29 April 1994

001115

LA TROBE UNIVERSITY
BENDIGO CAMPUS
Friday 29 April 1994

THE INAUGURAL SIR JOHN QUICK BENDIGO PUBLIC LECTURE

SIR JOHN QUICK - HE TRUSTED THE PEOPLE

The Hon Michael Kirby AC CMG*

QUICK - A FATHER OF THE FEDERATION

It is customary, in a public lecture dedicated to the memory of a named person, to say something of that person's life. In an inaugural lecture, it is obligatory.

Sir John Quick was born in Cornwall, England in 1852. With his family he came to Australia, arriving in Bendigo in 1854, then in the midst of the gold rush. His father died soon afterwards so that, at an early age, he was cast upon his own talents: and great they were.

His formal education at the local public school finished when the young John was but 10 years of age. He then went out to work in an iron foundry and later a newspaper printing room. From there he graduated to be a junior reporter on the *Bendigo Independent*. His expert shorthand soon secured him a job with the *Melbourne Age*. Supported by a scholarship, he matriculated to

the University of Melbourne, graduating with Bachelor of Laws in 1877 and with Doctor of Laws in 1882.

His unflagging energy took him into the Victorian Legislative Assembly as Member for Sandhurst (Bendigo) in 1880. Upon his election, he resigned from the *Age* and opened a practice as a solicitor in Bendigo.

However, following a redistribution, he lost his seat in the colonial Parliament in 1889. But by this time his interest was fired in the Australian Natives' Association - a potent vehicle for the Federation movement. A hundred and one years ago exactly, in August 1893, he attended the Intercolonial Conference at Corowa. It was there that he made his most important contribution to our national life. Quick insisted that the legitimacy of the coming Federal constitution should be based directly upon the will of the Australian people. He suggested the direct election of delegates of a national constitutional convention. Each colony would be represented by ten delegates. There was to be no indirect determination of the shape of the new polity. It was not to be fashioned in smoke-filled party rooms, in clubs or in the board rooms of powerful interests. It was not to be crafted by the colonial Parliaments, filled with politicians. Still less was it to be laid down and handed to the people of Australia by the politicians at Westminster, across the waters. Dr Quick trusted the good judgment of the people of Australia.

He insisted that the decisions on their constitution should not be taken for them by their politicians; but taken on their behalf by those fellow Australians whom they had directly elected.

Quick's idea was at variance with the alternative, earlier, scheme for an Australian Federation. This was the Federal Council of Australasia, established

by the Imperial Parliament in October 1885. He objected to this idea insisting that

"It is only by consistent agitation and discussion that a national question such as this can ever be brought to maturity".

Ultimately, Quick's clear insistence upon the legitimacy of the course which he proposed won the day. He drafted the Bill which became the basis of the convention deliberations in 1887. It was passed by the colonial legislatures. Quick was returned second in popularity amongst the representatives of Victoria - always a leader in the Federal movement. Throughout the 1890's Quick was President of the Bendigo Federation League. His energy at this time was tireless. In 1897 he produced a pamphlet with a digest of Federal constitutions. He was prominent at the Bathurst Convention of that year. In his speeches, he is revealed as a practical man, willing to compromise, but demanding always that the people, who were ultimately to vote on the draft constitution, would need to be well informed so that their vote might be informed.

The Australian constitution, which emerged from the debates in which Quick participated, displayed many of the features of the popular sovereignty upon which Quick insisted.

- * The preamble begins in the name of the people:

"Whereas the people of New South Wales, Victoria ...";

- * The title of the new nation was to be "The Commonwealth", a word found throughout English literature and constitutional

history; but one closely associated with the republican interregnum of Oliver Cromwell;

* A system of democratic popular government was established in Chapter 1 of the Constitution, constituting the Parliament of the Commonwealth;

* Such faith was placed in this body, representative of the people, that no Bill of Rights of a general character was adopted to shackle and limit Parliament's valid expressions of the will of the people of Australia. In this, the Australian constitutionalists rejected the competing model of the United States Constitution;*

Above all, the provision for the alteration of the Constitution¹ went entirely outside the British constitutional tradition. It looked to Switzerland for its model. It assigned the responsibility for endorsing a change of the fundamental law to the people of Australia, as electors; and

* Although the Federal Parliament could make a proposal for constitutional change, such proposal was obliged to be submitted

to the electors and then only if "in a majority of the States a majority of electors voting approved the proposal" would the Constitution be changed.

Quick was knighted on the inauguration of the Commonwealth on 1 January 1901. On the same day, he and Robert Garran published their

¹ See *Australian Constitution*, s 128.

famous *Annotated Constitution of the Australian Commonwealth*. This book, reprinted in 1976, is still a marvellous source document. It is full of historical reflections, information on the debates and analogies from American legal authority with which Quick was well familiar.

Sir John Quick represented Bendigo in the Federal Parliament for twelve years. He was Chairman of the First Tariff Commission between 1905-7. He was Postmaster-General of the new Commonwealth in 1909-10. In 1913, upon his defeat at the Federal election, he resumed private legal practice. Six years later he published the *Legislative Powers of the Commonwealth and the States of Australia*.

In 1922 Sir John Quick was appointed Deputy President of the Federal Arbitration Court. When he retired from that Bench in 1930, he could claim that his awards, with one exception only, had been observed without strikes. He died on 17 June 1932. He was survived by his widow, Catherine Harris. They left no children. The citizens of Bendigo presented his portrait to the Bendigo Gallery. They erected a bronze memorial bust to his memory. Now, at an important time of renewed constitutional reflection, his memory has been revived by this lecture series. It is a great honour to me to be invited to inaugurate it.²

THE CROWN IN QUICK'S DAY

In a recent essay in a new book, *A Republican Manifesto*, the historian John Hirst celebrates Sir John Quick's contribution to the character of the Australian Constitution:

² The biographical notes on Sir John Quick were taken from his entry by Michele Maslunka in the *Australian Dictionary of Biography* and the unsigned entry in the *Australian Encyclopedia* Vol 8, p 185.

*"The Australian people were more involved in making their Constitution than the people of any of the other great democrats. Our constitution has a better claim to begin with the words 'We the people ...' than the United States Constitution. This is one of the most remarkable features of our history, but since we are not interested in ourselves as political animals, it has dropped out of our common memory."*³

Hirst recounts how the then precursors to the Australian Labor Party were suspicious of the Federal movement because it would allow small, backward and unprogressive colonies to have the same representation in the new Federal Senate as the large ones. It was in this context that the prospect for Federation, particularly in New South Wales, declined. For a time, the Federal movement seemed dead. Only Dr Quick's intervention in insisting that the constitutional conventions be elected by the Australian people, rather than the Parliaments, cut the Gordian knot. Only this initiative secured a constitutional movement which won popular approval at the ensuing referenda. It cannot be insisted too often that the Australian Constitution - one of the six oldest surviving constitutions of the whole world - was designed and determined by Australians and adopted by them following popularly elected conventions and national referenda. It is quite wrong, as a simple matter of objective historical fact, to suggest that it was imposed on us by anyone else; although, doubtless, Australia's position in the British Empire of the time affected both the vision of the drafters of the document and the people who endorsed it by their votes.

³ As extracted in the *Weekend Australian* 19-20 March 1994 (J Hirst, "Australia's Untold Story").

Full of praise for Quick, Professor Hirst declares:

*"We have a republican past as well as a republican future. Our monarchist opponents are happy to emphasise the republican elements in our Constitution. They highlight its checks and balances, and its foundation in the sovereignty of the people. They outdo each other in saying how limited a role the monarch plays in it. They tell us we are, in effect, a crowned republic. ... Professor Geoffrey Blainey says that the monarchy is no more than a veneer on democratic Australia. Australians for Constitutional Monarchy, unique among lobby groups, argues not how great, but how small is the influence of the institution it protects."*⁴

It is useful, in considering this comment, to go back to the writings of Quick, who Hirst, rightly, celebrates as the exponent of the place of the popular will in the charter of the new Australian Federation. In his book, with Robert Garran, Quick scotches the story (now gaining ahistorical credibility amongst ignorant people) that there was always a deep republican sentiment in Australia, of the fruits of which the Australian people were somehow cheated by cunning imperial forces a century ago.

Quick and Garran, comment on the preambular statement in the Australian Constitution that the people of Australia

⁴ Ibid.

" [H]ave agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland ..."

They observe:

"It is a concrete and unequivocal acknowledgment of a principle which pervades the whole scheme of government; harmony with the British Constitution and loyalty to the Queen as the visible central authority uniting the British Empire with its multitudinous peoples and its complex divisions of political power. ... Some years ago a few ardent but irresponsible advocates of Australian federation indulged in predictions that the time would inevitably come when Australia would separate from the mother country and become an independent Republic. Those ill-considered utterances caused, at the time, strong expressions of disapproval throughout the colonies, which effectually prevented the repetition of such suggestions, as being beyond the arena of serious contemplation and debate. Throughout the political campaign which preceded the election of the Federal convention not a solitary public writer or speaker seriously discussed the possibility, much less the probability, of separation."⁵

Quick and Garran mused on whether the provision for popular referendum in s 128 of the Australian Constitution could be used to alter the fundamental character and cardinal understandings of the constitution. Other

⁵ J Quick and R R Garran, *The Annotated constitution of the Australian Commonwealth*, Angus & Robertson, Sydney, 1901, 294-5. Hereafter "Quick and Garran".

writers have expressed the view that this could not be done.⁶ I do not wish to explore that issue here. But it is worth pointing out that Quick and Garran call attention to the special requirement in s 128 of the Constitution preventing the alteration of the proportion of representation of any State in either House of the Federal Parliament unless approved by a majority of the electors in *that* State. Although some commentators speculate on an Australian nation of mixed republics and monarchies, this notion is plainly absurd. At the very least, it would certainly be desirable if Australia were to become a republic, that it should do so unanimously, just as a century ago it unanimously embraced Federation.

Later in their book, Quick and Garran explain the difference between legal sovereignty (being the corporate will of the community) and titular sovereignty (being in the person of the Queen or King for the time being). To call the Queen the sovereign is, they point out:

*"... [I]n accordance with traditional theory and usage and it is being continued as a matter of courtesy, notwithstanding the fact that the form is at variance with the reality and the substance ..."*⁷

Sir John Quick's book on *Legislative Powers of the Commonwealth and States of Australia* reflects the time in which it was written. It begins with a list of the Sovereigns of the Commonwealth of Australia. It records the Queen's message to the people at the moment of Federation:

⁶ For example Sir Harry Gibbs.

⁷ Quick and Garran, 327. At 994, Quick and Garran comment: "*Questions of local expediency would no doubt be left to the decision of the people and the States of the Commonwealth; whilst questions of constitutionality could, with equal safety, be allowed to be settled by the Federal courts.*"

"Pulsating through the electric cable, a tune to the new impulse and throb of national life, came Queen Victoria's noble message ... 'Her Majesty commands me to express through you to the people of Australia Her Majesty's heartfelt interest in the inauguration of the Commonwealth; her earnest wish that under Divine Providence there may ensure increased prosperity and well being to her loyal and beloved subjects in Australia'."

The new Federal Parliament was opened by King Edward VII's son, later King George V:

*"The King is satisfied that the wisdom and patriotism that have characterised the exercise of the wide powers of self-government hitherto enjoyed by the colonies will continue to be displayed in the exercise of the still wider powers with which the United Commonwealth has been endowed. His Majesty feels assured that the enjoyment of these powers will, if possible, enhance that loyalty and devotion to his throne and empire of which the people of Australia have already given such signal proofs."*⁸

Of course, the times in which Quick wrote were different than the times today. Empire defence, trade preference, White Australia and the composition of the population have changed. But not, in this respect, the Australian Constitution with its foundation - historical, cultural and legal - in that mode of government which is constitutional monarchy.

⁸ J Quick, *The Legislative Powers of the Commonwealth and States of Australia*, Law Book Co, Sydney, 1919, 8.

REPUBLICANISM BY STEALTH

Like many of you present, I grew up in the closing days of the British Empire. At school every Thursday we honoured God, served the King and saluted the flag. As often as not, the flags we saw were the Union Jack. At the cinema on Saturday, we stood in the dark for the National Anthem - *God Save the King*.

When King George VI died, my High School in Sydney was summoned to a solemn assembly. The significance of the passage of the Crown was explained to us. I shall never forget the photographs of the young Queen - veiled and in sombre black - descending from her plane which had brought her on the sad journey back from Kenya to be greeted, symbolically enough, by her United Kingdom Prime Minister and Leader of the Opposition; Churchill and Atlee. The Queen, the Queen Mother and the Dowager Queen Mother, dressed in black veils, reminded us of our link to an ancient constitutional history and to a worldwide family of nations.

Fortunate were we in the dutiful Queen who acceded to the Crown in February 1952. Australia, and much of the world, came to a stop in June of the following year for the Coronation. There, the Queen took her solemn oaths to her Dominions. She promised to govern them according to their laws and customs. I believe she has kept her promise to us in Australia faithfully. No one disputes that Queen Elizabeth II has been an exemplary constitutional monarch. She remains a very human, very visible and personal impediment to those who would change one of our nation's basic constitutional features to a republic.

When the Queen arrived in Sydney in February 1954, the crowds were unforgettable. Those old enough will remember the decorations in the streets and on the buildings. The vast Anthony Horden's Emporium was completely repainted. No doubt these were similar clean-ups in Bendigo. There was something dazzling and rather romantic about the young Queen. Perhaps it is the fact that she was, and is, the living embodiment of a history of a thousand years that captured the imagination. We in Australia were, as we still inescapably are, an integral part of that history. That was part of our national character - not easily eradicated.

Over the years, changes have occurred. The Queen has become older. The Duke of Edinburgh once said that the fascination of the Royal couple was at its peak in their youth and would trough in middle age but, like Victoria, would rise again in venerable years. That may yet prove to be so.

The Queen's visits to Australia became briefer and less grand. The modes of transport changed. The degree of formality was dropped in keeping with our more egalitarian ethos. To all of this, the Queen readily adapted. She came when invited. She did not intrude.

Some changes which have occurred in our constitutional government were natural and desirable. Thus, the gradual abolition of appeals to the Privy Council in London followed the failure of successive British Governments to build a true Commonwealth international court. Dropping the old National Anthem at the cinema was clearly appropriate. For the picture show was hardly a natural place of reverential patriotism. Inappropriately, the last bars of the Anthem usually merged, laughably, in the first discordant notes of the cartoon. Slowly, the second Union flag disappeared. It became less common to see the Australian flag and the Union Flag flying together on public and

other buildings. Even the BBC ceased to play *God Save the Queen* before the World News on the Queen's Official Birthday. These were relatively minor changes. They caused no real heartburn.

But now I invite your attention to some of the other changes we have lately witnessed. Separately and together they amount to creeping republicanism. Republicanism not by a proud choice of an informed and decided people. Not republicanism of the citizens but republicanism by stealth - and often done by leaders and officials afraid to consult the people honestly and to accept their verdict on this issue.

1. The Royal Anthem was replaced by the Australian Anthem Song. Fair enough. At least on that there was a poll. But then there was an attempt actually to prevent the playing of the old Anthem, even when people wished to sing it. Odd this, given that the Queen whom the Anthem asked God to save was also the Queen of Australia;
2. At dinners in universities, clubs and other public occasions, the Loyal toast gradually disappeared. It is now very rare indeed to honour that Toast. If nothing else, in years gone by, it saved us from the smokers for the better part of our dinners. Last night it was drunk to a dinner of the Bench and Bar in Canberra which I attended. But the young proposer actually had to ask the president how he should do it;
3. The appointment of Privy Councillors - the exclusive band of "Right Honourables" was terminated. Labor Governments of recent years had made no appointments to the Queen's Privy

council. But Curtin, Chifley and Evatt were all Privy Councillors. It was Prime Minister Whitlam who first declined. The last political Privy Councillor appointed in Australia still sits in Federal Parliament, the Right Hon Ian Sinclair. But he now sits alone. None of the justices of the High Court of Australia are now sworn of the Privy Council - a change natural enough when the appeal of the Privy Council finished. But what a shame we did not have the imagination to build a regional Commonwealth Court for the common law countries which share the same legal tradition.;

4. Then anxiety set in amongst some circles about our national flag because it bears the Union Jack, as a sign of our history and links with the Sovereign, in its corner. For the first time, a Prime Minister (Mr Keating) declined to fly that flag on his official car. Or even to be seen with it, if it can be avoided. Proposals for change of the flag are legitimate and even understandable. For my own part, I do not see it as a bedrock debate. But whilst it remains the flag, it might be thought that it should be flown with pride. The disharmony between this attitude, and the logo of the Federal governing party, was quickly pointed out. Now that logo has been changed. The stars remain. Only a sweep of red at the base reminds us of the Union flag which clings resolutely to the corner of the national standard - apparently still with overwhelming popular support;
5. Portraits of the Queen are no longer put up in public buildings. The Australian Government Publishing Service which hitherto had carried such photographs for sale, was reported to have

discontinued this service. In some government and local government venues, portraits of the Queen of Australia were removed often to crowing stories by young journalists, taking apparent pleasure in the apparent denigration of a Sovereign who has given nothing but dutiful service to this country;

6. The Imperial Honours came to an end. The last of the knighthoods was conferred. Advice was tendered to the Queen to terminate the dual system of honours. Dutifully, she complied. The Order of Australia is now well established and most distinguished. But it has not fully replaced, in number and variety, the wealth of people formerly recognised under the old system. In a word, the Order of Australia is more exclusive and selective. But the old awards will not return;
7. Then there was even a battle to remove the Queen's image from the first denomination currency note. The King or Queen had always appeared on that note. Pressure was applied to the Reserve Bank for the Queen's removal. All of this, I ask you to note, in advance of any change in our system of government by the people's will. The Bank, properly, rebuffed the pressure, dressed up as an attempt to save the image of another English born woman, Caroline Chisholm. The fact that our Sovereigns for the majority of Australia's political history have been remarkable women, is something often overlooked or conveniently ignored;
8. Crowns began to disappear where formerly they had been in relative abundance. Arrive now at the new terminal at Sydney

Airport and the Crowned badge of the Australian Customs logo no longer stands to greet the visitor. The logo has not been changed. The transfer has simply been deleted altogether;

9. In some parts of Australia, the title of Queen's Counsel has been abolished. This was not part of government policy expressly mandated by the people at an election. It was simply announced overnight, as on a whim. The result has been the creation of a new rank of "Senior Counsel". So nothing significant whatsoever has been secured, except the abolition of the Queen's name and of an historic office of hundreds of years duration;
10. If you look at the statutes of the Australian Parliaments, they have also been changed. In the Federal statutes, the original formulation, apt for a constitutional monarchy, was:

"Be it enacted by the King's Most Excellent Majesty, the Senate and the House of Representatives of the Commonwealth of Australia, as follows."

In due course, this was simplified. But until 1990, the formula of enactment was:

"Be it enacted by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows."

Now, without consulting the people, the Queen has been deleted, at least by reference. The formula of enactment of Federal statutes now reads only:

"The Parliament of Australia enacts".

Every lawyer knows that the Queen is still part of Parliament under our Constitution. But the deletion is another symbol of the removal of the reference to the Sovereign. Most people think that the Federal Parliament is confined to the politicians in Canberra. Clearly that is the message desired by the change.

This morning at dawn my car took me to the airport at Canberra past the Old Parliament House, flood lit and gleaming white. A lovely building. But something was missing. The Royal Coat of Arms on the front facade had been removed. The wreckers of our history had been at work. They want to wipe out our true history. They utter soothing assurances about respecting history and diversity. But such respect is not their agenda of passion - fuelled all too often by naked anti-British sentiment. Now they cannot even leave historic buildings alone. The King Streets and Royal statues are for the chop. These are the unforgiving - the destroyers of our history.

In the State statutes, the change is even more noticeable. Until quite recent years, the State statutes of New South Wales and most other states bore the logo of the Royal Coat of Arms and a reference to the year of the reign of the Queen or King as English statutes have done from ancient times. Now that too has

been dropped. Now, no reference is made to the Queen at all. the reference at the foot of Proclamations to "God Save the Queen"! has also been deleted from the Government Gazette;

11. If you happen to be an Anglican, you will discover that in Church services in Australia it is now much less common to pray for the Queen and "all the members of the Royal Family". Although it is in the *Book of Common Prayer*, the prayer is now often skipped despite the fact that the Queen needs our prayers more than ever;
12. The old Empire Day with its crackers merged into Commonwealth Day. Little publicity is now given to that day by governments or the media. But then the media note, with mock surprise that nobody noticed the day come and go. Only the Prime Minister, on the eve of Commonwealth Day revealed memories of earlier festive times with his reference to "Cracker Night" when he likened well known opposition politicians to a Catherine wheel and a double bungler;
13. The Oath of Allegiance to be taken by migrants was changed on 24 January 1994 to delete the promise of loyalty to the Queen of Australia. This was done in advance of any change of the Australian polity to a republic. More difficult was the removal of the Oath (or Affirmation) of Allegiance contained in the Constitution and required of Federal Ministers of the Crown. To avoid the embarrassment of such a promise, solemnly undertaken (but not always it seems to be faithfully fulfilled) such oaths are now sometimes even administered behind closed doors;

14. The media appear extremely biased on the issue of the republic. A recent instance is the broadcast on the Australian Broadcasting Corporation's radio programme on 26 March 1994. It was built up by constant advertising "In the headlong rush to the republic ...". Who says there is a headlong rush? Only those who know nothing of the history of Australian referenda and who ignore the objective evidence that - for good or ill - the push to a republic seems to have stalled;
15. There is also the way the Australian Republican Advisory Committee was established and operated. Its task was not to consult the people about *whether* our polity should change. Instead, it was required to presume that change and asked how it should be done. There is no grass roots movement. In a recent Sydney by-election, a republican candidate gained less than 1% of the vote. The push for a republic is an elite thing, largely centred in Sydney and in the hothouse of the Parliament and its press gallery in Canberra. It fails to attend to the history of this country or its abiding and admirable national character. It is ashamed of that character. It is not, I believe, in tune with our natural spirit, at least at this time. Moreover, it all too often overlooks the positive arguments for the system of government we have. Putting it quite bluntly, we in Australia by our constitution, which we adopted, have established a system of government which has all the advantages of a republic - but in a setting that remembers our history and secures to us the unquestionable advantages which a constitutional monarchy offers. We should not toss constitutional monarchy out, at least

without informed debate, because it is old. We should be open minded enough at least to listen to its positive advantages.

ADHERING TO THE CONSTITUTION

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. certainly not by changes achieved by stealth without a proper debate before, and decision by, the Australian people concerning the nature of their constitution

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 by birth and living far away, means that our politicians simply 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. They are now always Australians. But because the Governor-General is the representative of our normally absent Head of State, this puts a limitation on Head of State pretensions. 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 was worn everywhere important, although Mr Mandela has now dropped it. 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 at what has happened in Pakistan twice in recent years. Look even at the recent strife in Russia. And keep your eyes on Sri Lanka;

- * There is the very fact that we are all - judges, ministers, politicians, bureaucrats, police, and defence personnel - 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 to 1066 and beyond puts a brake upon the temptation to a *coup d'état* or to a breach of valid constitutional conventions and which other societies are so prone. 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 majoritarian power. It 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 and secures very 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*. Indeed, unbridled nationalism is a curse as the people of Bosnia and Burundi will tell you;

* 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. Australia's system of government is Parliamentary. That means a Prime Minister. Let him or her be Australia's prinipal 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. They are not always susceptible to easy explication to neighbours;

* To the complaint that the Queen is not always amidst us, I say that I regard this as actually a positive advantage of our present system. Basically, we in Australia have a pretty good blend of 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 many 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 then we 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. This reminds 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 political office in recent years have needed, occasionally, to receive;

* To the suggestion that the Asian and Arab, the Latin-American and the Islander and other 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, for 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 referendum vote comes;

* John Hirst affords what I regard as the ultimate banal reason for changing our constitutional system. He says we must do so because it is, or would be, an abasement of Australians to have the Queen present when an Australian won an Olympic Gold Medal.⁹ I can reassure him

⁹ Hirst, in extract above n3.

that *Advance Australia Fair* would be played on such an occasion where nations of the Commonwealth and elsewhere are differentiated by

nationality. There is not the slightest risk of the band striking up, by mistake, *God Save The Queen*. And the notion that we should change our system of government for a sporting jamboree of a couple of weeks is simply absurd. It deserves ridicule and derision;

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 referendum we had to have for the Bicentenary secured a national vote of only 31%. The 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 what they see as 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 role 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 the battle. Or worse still, narrowly and divisively 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 any headway whatever in the less populous States or in the country districts of Australia. Indeed, recent opinion polls show that the republican cause has faltered and even lost ground.¹⁰ The merits of our Constitution are now being more clearly seen. The dangers of changing its fundamental character are, I suspect, increasingly feared.

¹⁰ See "Support for Republic Stalls", *The Weekend Australian*, Newspan, 2-3 April 1994, 2 ("Support for The Republican Movement appears to have stalled at 39%")

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 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.

ON TRUSTING THE AUSTRALIAN PEOPLE

It is perfectly possible that Australia and Australians will one day opt for a republican form of government. There are, I acknowledge, powerful intellectual arguments which support that system of government. But there are also strong practical arguments for keeping the system of government which our people chose so deliberately a hundred years ago. It has provided us with a stable political system which has very few equals in the world.

Above all, if we are to change our system of government, let us do so frankly and proudly, as the Australian people boldly and assertively did at

Federation. In this respect, there are still lessons to be learnt from the insistence of Sir John Quick that the people, and not the politicians, should fashion fundamental changes in the Constitution by which they are governed. Is it not a curious paradox that, in this current debate, the republicans with their asserted faith in the people draw back from involving the people? They proceed by a committee of "experts" who are excluded from asking whether the people actually want a change at all and if so why. They proceed in short by stealth. And yet those who defend our happy constitutional mixture of monarchical forms and republican reality hold fast to Dr Quick's warning:

"It is only by consistent agitation and discussion [among the people and those they directly elect] that a national question such as this can ever be brought to maturity."

Those who fail to attend to the lessons of history are bound to repeat mistakes. Those who dream of success today should study closely how it was achieved in the past. It was achieved by trusting the people, by involving them closely in the design of their system of government. The failure of the republicans to do this suggests to me that the probabilities are that I will live out my days under Dr Quick's Australian Constitution. Which is not such a disturbing thought, after all. He was a great child of Bendigo. All Australians do well to remember and honour him. Especially at this time.