

01670

LESSONS FROM THE REPUBLIC REFERENDUM IN AUSTRALIA

The Hon Justice Michael Kirby AC CMG

Embargoed until 10.00pm on 4 July 2000

LESSONS FROM THE REPUBLIC REFERENDUM IN AUSTRALIA

Michael Kirby*

It is exactly a century since the Constitution creating the Commonwealth as an independent federal nation under the Crown was enacted by the British Parliament, substantially as it had been adopted by the Australian people.

For R G Menzies, republicanism was unthinkable in the Australian context. He was not alone. The ALP leader, Dr H V Evatt, like Menzies, regarded the monarchy as beneficent. J B Chifley, Prime Minister in the post-War years, also regarded the monarchy in Australia as "a handy constitutional fiction".

In 1951, the wisdom of the Australian electors in a referendum defeated Menzies' proposal to ban the communists and the Communist Party. It was Evatt's greatest triumph and Menzies' greatest rebuff in his long second period as Prime Minister. It demonstrated the occasional wisdom of the restrictive Australian referendum provision.

Extract from the R G Menzies Memorial Lecture given by Justice Kirby of the High Court of Australia at King's College London on 4 July 2000 on the eve of the Centenary of the passage of the Constitution Act 1900.

The republic referendum took place throughout Australia in November 1999. The national vote of the electors in favour of Australia becoming a republic was 45.13%, with 54.87% against. The republic proposal was rejected in every State. It secured a majority only in the Australian Capital Territory. In the history of the Commonwealth, there have been 43 proposals for change to the federal Constitution. Only 8 have been approved. So the defeat of another proposal was, in some ways, unsurprising.

Despite the popularity which constitutional monarchy reached in Australia during the time that Menzies was Prime Minister, there has always been support for a republican form of government. In the 1850s John Dunmore Lang, founder of the Presbyterian Church in Australia, was an avowed republican. At the Convention held in Sydney in 1891, which produced the first draft that was to become the Constitution George Dibbs, former Premier of New South Wales, described as the "inevitable destiny of the people of this great country" the establishment of "the Republic of Australia".

Any pretence of British intervention in Australia's internal affairs in legislation, administration or the judiciary has long since ceased. Australia is, and for decades has been, a wholly independent nation. Queen Elizabeth II has fulfilled her duties under the Australian Constitution since 6 February 1952, forty-eight years in all. Menzies was her first Australian Prime Minister. She has now seen out ten of them. In a message to the people of Australia following the result of the referendum, the Queen acknowledged her respect for, and

acceptance of, the outcome. This was a position which she reiterated in Australia during her thirteenth Royal visit to Australia in March 2000.

There are many reasons why the 1999 referendum failed. The "rout" of the country's "intellectual elite" by what one newspaper described, accurately enough, as "a coalition of battlers, supported by a Dad's Army and a monarch living 17,000 km away" astonished the media and many Australians. In my view there were ten main reasons for the result:

First there was the partisan error. The lesson of formal constitutional alteration in Australia is that, without affirmative support by all the major players in the political debates, there is little or no chance of securing the double majorities required to amend the Constitution. Even with such support, there is no guarantee that the electors will agree to the proposal.

The second was the error of haste. To change the Australian Constitution in such a significant respect, within the space of five years, imposed requirements of comprehension and adaptation to change which proved unacceptable to the majority of the Australian people. Impatience for constitutional change is sometimes understandable. However, such impatience must be tempered by a respect for the process and by the need to allow time for that process to become tolerated, even if not welcomed, by those who will lose out in it.

The third was the elitist error. The post-referendum analysis of the voting patterns throughout Australia indicated the way in which the republican proposal divided the electors. The country against the cities. The small States against the big States. The high income earners against the "battlers". Clearly enough, the change was seen by many as an unnecessary distraction from really important issues and one that was being pressed on the nation by an urban elite out of touch with the values and concerns of other citizens.

The fourth was the patriotism error. Some republican advocates, before and after the vote, denigrated those who did not agree to the proposed change as somehow less patriotic and even un-Australian. To upbraid half the people of a nation, or at least a good proportion of them, as "unpatriotic" because they do not happen to agree with a proposal, is a sure way in a country such as Australia to alienate them.

The fifth was the Convention error. The Constitutional Convention imposed upon supporters of a republic haste and an inability to explore and forge links with republicans of differing persuasions. Once the Convention proposal was adopted, it became anointed, not only by ARM but by the media and various celebrities and notables. The Prime Minister's offer of a referendum locked republican supporters into a time frame, and then a model, which it was difficult or impossible to change.

The sixth was the error of the model. Critics certainly raised many false issues. However, if such matters are put to one side, there

remained genuine concerns about the proposed alterations. Probably the chief concern was the fear about the ease with which, under the proposed alterations, the Prime Minister would be able to dismiss the proposed President. In Australia, this was not a theoretical point, given events which had occurred in the dismissal of Prime Minister Whitlam by Sir John Kerr in November 1975.

The seventh was the pundit error. The republican strategy involved calling upon a number of "names" well known to the Australian people to support their cause. The campaign tune adopted the "It's Time" theme which had accompanied the election of the first Whitlam administration in 1972. However, it seems clear from the general irrelevance of party allegiance in the pattern of voting in those city areas which favoured the republic that the advocacy of the heroes of earlier times did not reach down to the grassroots, certainly not to outer suburban and rural Australia.

The eighth was the small State error. The post-referendum scrutiny of the voting for the republic largely concentrated upon the national vote. However, the truly serious figures for those who hoped for change appear to lie in the high negative votes in the States of Australia with smaller populations.

The ninth was the media error. There were no real exceptions to the affirmative editorial line on the republic followed by the Australian media. So uneven and biased was the media coverage of the referendum issues that almost certainly it became part of the problem

for support for the republic. It tended to reinforce opinions that this was a push by intellectual, well-off east coasters, not necessarily to be trusted by the rest of the nation.

Finally there is the resulting republican problem. If, in the short term, republicans were to put forward another version of a republic, with a President elected in some way by Federal Parliament (or any other group including politicians), it seems likely that such a proposal would face the same fate as the 1999 proposal. To advance a proposal for a directly elected President, would amount to the most radical surgery upon the Australian Constitution. Such a change would seem unlikely to be accepted by Federal Parliament whose acceptance is necessary for the referendum process.

These are the reasons why the republic proposal in Australia is in a kind of electoral gridlock. However, the future may bring a new momentum with different players and different urgency. Seventeen weeks after the referendum the Queen made a Royal visit to Australia. She will return in 2001 to mark the centenary of federation and to attend a meeting of the Commonwealth Heads of Government in Brisbane.

During the Queen's visit, the same editorialists who had urged the Queen's removal from the Constitution continued to do so. Their opinion columns repeated the institutional obituaries. Some republicans complained energetically about the visit of Australians to London in July 2000. Invoking the ghost of Alfred Deakin, they

suggested that Australian centenaries should be celebrated "anywhere in Australia, just not bloody London! "

The warmth of the Australian response to the Queen personally in March 2000, so soon after the referendum, appeared to surprise some Australian journalists, for she had not visited the country during the republic debate. Observers were reportedly struck by how relaxed and confident the Queen looked in the wake of the republican ballot.

An unnamed republican, at a loss to explain the monarch's resurgent popularity with a phalanx of suburban mums and dads waving Australian flags reportedly said: "They're just loopy". Although he probably would not have used such a vulgar word, that would almost certainly have been Robert Menzies' assessment of the Australian people when they voted down his referendum proposal of 1951 to amend the Australian Constitution to ban communists. Loopy or not, the instinctive feeling of the Australian people towards caution in large constitutional changes is very deeply ingrained. It has been repeatedly displayed. It is probably wise. And whether it is wise or is not, it is a political and constitutional reality.

One day Australians may bring the monarchical form of the Constitution into line with the republican realities. But it will not happen until proponents of a republic resolve their fundamental dilemma. It will not happen unless they learn the lessons of the referendum of 1999. Meanwhile Australians will continue to get by with Chifley's "handy constitutional fiction". It is a fiction that reminds us of Australia's

special, legal, cultural and emotional links to the United Kingdom, its people and the Crown.