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Transcript of Public Lecture: "Taking the 'Con' out of Constitution."

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Good afternoon ladies and gentlemen, my name is Rodger Hills and today I am going to be leading a discussion titled: "Taking the 'Con' out of Constitution."

I would like to acknowledge the traditional owners of the land on which we are gathered, The Gadigal people of the Aeroa Nation, and pay my respects to their elders past and present.

I hope you enjoy what is about to follow.

It seems that before, during and since the 1999 Republic Referendum, that the Republican and Monarchist movements have maintained some surprisingly similar and fixed attitudes towards our Constitution. These attitudes appear to stem from the results of various polls, which show that only a minority of Australians are aware that we have a Constitution at all, and that even fewer people have actually read it. Those who want a Republic and those who want to stay with the Queen also point to the fact that, despite extensive media coverage at the time of the 1999 Republic Referendum, the population was far more interested in sports results and their favourite soap operas. Those involved in the Republic debate have concluded from these simplistic observations, that the average Aussie is apathetic when it comes to all things political, and downright ignorant of all things constitutional.

FIRST "CON"

This perceived apathy seems to have encouraged our lobbyists and politicians to invent several "cons" aimed at pushing a narrow agenda onto the Australian public. The first of these "cons" has been perpetrated for at least the last 15 years that I know of, and it works something like this:

- "As a result of the perceived political apathy of Australians, the only way to get such a disinterested population fired up, is pick a politically charged topic and argue endlessly over it. So let's focus on the Head-of-State issue and argue about whether we should be governed by a President or Monarch."

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In my view, it really doesn't matter if we defer to President Ita Buttrose, or King Charles or even Daffy Duck. While global warming and pollution ravage our country, while the unemployment queues get longer, while our financial system remains in tatters, while people are unable to get adequate health care and our children miss out on a decent education, the finer points of political sovereignty are a significant distraction. As the saying goes, arguing over who makes the best Head-of-State is like fiddling while Rome burns.

Yet Republicans and Monarchists sweep all these critical social problems under the Republican Debate carpet. If pressed, they tell us these issues are current affairs and fall outside of the scope of the Republican Debate. They are for the "government" to fix. It is nothing to do with the Constitution they say, which they hold out as if it were some sacred text, handed down by mystical and inscrutable statesman ancestors. Don't touch the Constitution. Don't change it. That way lies dragons and certain doom.

Some of the arguments I have heard FOR NOT making significant changes to our Constitution are as follows:

1. Making radical changes is dangerous..... That's it. Nothing more. No explanation, just dangerous.
2. We are already independent of the Monarch in almost all respects..... Well, except the most critical one that really matters, which is who has the right to run the country if they so choose.
3. The consequences of radical change are often unpredictable.....We aren't talking about smashing atoms together at the speed of light to see what might happen. We are talking about changes that have been proven to work in other countries and in other societies.
4. Changing it will undermine our existing system of government..... Isn't our system of government already fairly severely compromised?
5. Changing it will open the legal floodgates..... If the changes are well designed and based on evidence, we should see a dramatic reduction in legal activity, not the opposite.
6. Changing it is a waste of money..... And footing the bill for all the current bureaucracy and political waste isn't a waste of money?
7. Changing it will create uncertainty and distrust in our political institutions.....Really? Show me an Aussie that DOES trust our existing political institutions.
8. Changing it opens the way for minorities and lobby groups to highjack the process..... Unless minorities and lobby groups are included more in political dialogue, they will eventually use subversive means to further their agendas.

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9. And that old chestnut: "If it ain't broke, don't fix it"..... With increasing unemployment, global warming, and a stack of other disasters facing us, how much more broke do things have to get, before we take action to fix them?

Therefore, I stand here before you today, to tell you these arguments are a load of baloney. None of them stands up to logical scrutiny. They are all based on a belief that if we were to come up with a new constitution, that it would resemble our existing one, with the real political power and decision-making left to the government. Nobody it seems, even those advocating for a Republic, wants real systemic change. Yet we desperately need a new social contract.

My argument is that if these long-term environmental, economic and social problems are to be fixed, it has to be at the constitutional level. Leaving these kinds of problems to the "government" and our elected representatives, is just going to make our predicament worse. After all, the current political system flows from the belief that we can have unlimited growth, we can access infinite natural resources, that we can access an ever growing pool of skilled labour, and that our planet has an infinite capacity to absorb our waste.

WORLD FINANCIAL CRISIS - To demonstrate just how useless it is to let "government" do our thinking for us, let me give you a few cases to ponder. Take something very important at the present moment: The World Financial Crisis which has now worsened into a World Economic Crisis. We hear that it was caused by the greedy banks lending money to home buyers who couldn't afford to repay their loans. And the "government fix" for this nightmare, has been to inject vast amounts of capital into the financial system so that credit can be eased up, and banks can lend to each other again.

Hmmm. Let's back up a bit. We know the banks were lending to people they shouldn't. But why do they need so much credit? When I was a lad, it was impressed upon me that banks took people's deposits and used those deposits as security to create loans, or credit. In economies that are regulated, this is still the case. In Hong Kong for instance, the banks are required to hold \$2 in deposit for every \$1 they lend out, much as I was taught.

But in Australia, governments have allowed banks to engage in Fractional Reserve Banking. In this country, banks only need to hold \$1 in deposit for every \$2 they lend out. So where does the extra dollar come from? It's borrowed. And where is it borrowed from?

Other banks that also only hold a fractional deposit or reserve. What is going on, is that debt is being shuffled around the world, growing all the time and never being paid off. The system only stays in balance if all the world's banks continue to lend to each other.

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So when they stopped lending to each other recently, the system froze up. In panic, governments stepped in to buy a stake in major banks. They sacked the CEOs and declared they would "never let this happen again."

Hang on a minute. Haven't we heard the "never let this happen again" speech before? After the terrible deprivations and upheavals of both the Great Depression and WWII, world leaders established strict controls that would regulate the financial system. In Australia, as a direct result of the banking and financial excesses of the 1920s, the banks were heavily regulated. Government and world leaders declared they would "never let this happen again."

In the mid 1980s however, Australian politicians and business leaders decided that de-regulation was a great idea. It was peddled as promoting greater consumer choice, increased convenience and you guessed it, increased access to credit. What the government allowed, was deregulation of the savings and deposit rates, removal of controls on who could be lent money and how much, along with an opening of the local financial markets to overseas banking consortia and "banking committees" that lobbied for less regulation by public authorities. Exactly the things that have created the current financial crisis.

Along with GATT, WTO, APEC and a host of other trade conventions and treaties held over the last 50 years, Australian governments have been complicit in creating this unstable and unsustainable system.

So how can the public protect themselves from this sort of government duplicity? Apart from staging a revolution, there is only one way, and that is to have a Constitution that sets the rules. One that bans financial practices like Fractional Reserve Banking, derivatives and hedge instruments. One that prevents government and politicians from agreeing to screw-ball deals in "treaties" and "trade pacts."

GLOBAL WARMING - Let's take another example of government's inability to solve our problems: Global Warming. Long, long before the Kyoto Protocol, when man was taking the first steps on the moon, we knew that DDT had washed up in every part of the globe and was accumulating rapidly throughout the food chain.

Starting with the crash of the Peruvian anchovy fisheries in the 1970s we have watched fishery after fishery collapse. In Japan, a chemical company drained its residues into a harbour, causing horrific birth defects in the local population. And let's not forget Bhopal, the Exxon Valdez, Chernobyl or all our choking, polluted cities.

Here in Sydney, a toxic brew of chemicals is making its way through the underground aquifers and groundwater systems towards Botany Bay after years of dumping by ICI Chemicals, and people are discouraged from eating

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Sydney Harbour seafood due to pollution leaching out of the Parramatta River.

We have been conditioned to accept without question, that all industries pollute and it will be a slow, economically costly process to limit these emissions. Governments, through sloppy standard setting, handing out industry welfare, poor planning and dodgy short-term policy, have been guilty along with big business in getting us to this tragic point.

So again, when the "government" is a big part of the problem, what are people to do? They can change the Constitution to direct that all forms of pollution will be banned and that the waste from one manufacturing process will form the feedstock for another. People can mandate that only sustainable industries will be allowed to operate in the country and that all resources will be fully valued, so that their use will cover the cost of replacement or rehabilitation. And so on.

HEALTH CARE CRISIS - And while we are at it. How did we end up with such a crappy health care system? Again history provides some answers. Numerous reports to the government since the 60s and 70s have advocated spending on infrastructure to support a healthy active lifestyle. But all we got was the "Life Be In It" campaign and no extra parks, aquatic centres and the like. Rather than invest in the health of the general public, mega-millions have been spent on training elite athletes, so they can win medals at sports competitions. Time and again, government at all levels, has had the opportunity to invest in cost-effective preventative measures, but they have chosen to do nothing. We now have obesity, cardiac, emphysema and cancer epidemics that will cost taxpayers squillions to treat.

And what about the provision of health care itself. Successive governments over the last 40 years have been quietly cutting back on nurse and doctor education. Recently the Howard government accelerated the process by axing literally thousands of university places for doctors and nurses.

Despite all the evidence of a higher need for care from an aging population, and the increased need for care as a result of technological advances keeping people alive, who under the same circumstances would have died a decade ago, no money has been spent on extra training or appropriate increases in remuneration for health care workers. Instead of creating a professional, well paid and well educated workforce, governments have cried "skills shortage" and resorted to importing overseas health workers, effectively turning their back on local jobs.

Despite the clear and urgent need, and despite the substantial public outcry about the situation, current governments, like their predecessors, continue to do very little. Since our governments have made such a hash of our Health Care system, why doesn't our Constitution say something like: "The government will provide the highest level of free public health care to all

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citizens and promote disease prevention, proper nutrition and life-long wellbeing?"

GOVERNMENT SHORT-TERM FOCUS

In each of these cases, the problem isn't because the "government" doesn't work or that politicians are idiots – although some might disagree with me on that point. The larger picture is that our Constitution provides no guidance to elected representatives on these and many other critical issues. Another problem has to do with time-frames. Politicians and governments work on short, 3-4 year time horizons. That is the nature of the parliamentary political system. There is no way that someone who has back-stabbed their way up the political ladder for their 3 years of glory, is going to make bold, long-term decisions that might jeopardise their party or their own political future.

As a consequence of the adversarial nature of our Westminster system, successive governments from both sides of politics have failed miserably to make our lives richer and the world a better place. Our current system gives us the illusion that we are doing OK, but scratch beneath the surface and you find a very different reality.

Yet it is precisely this flawed and illogical status quo that a majority of Republicans and Monarchists want us to continue with. What these two camps fail to realise, is that Australians want change and they want it NOW. They just don't want it foisted on them by people they don't trust and can't relate to.

Now, after people have heard these arguments of mine they usually say: Yes, this "power-to-the-people" idea is all very well, but don't you realise that Section 128 of our Constitution prevents any direct involvement by the public in the constitutional change process? Don't you understand that only politicians can develop, introduce, debate and support any proposed Constitutional changes?

Well of course I do, but so what? Did the British rules and regulations stop Ghandi? Did Mandela throw up his hands in defeat because the white South African government was against him? No. Democracy isn't about asking someone in power politely for permission. It is about taking the moral high-ground, demanding change, and working out ways to make your goals a reality.

SECOND "CON"

This leads me to discuss the second great "con" being perpetrated against the Australian public. This one works like this:

- "Given the restrictions of Section 128 and the numerous referendum defeats that have occurred since Federation, trying to change the

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Constitution is basically a waste of time. Only a concerted effort by all political players from both sides of politics can give us a better democracy.”

The assumption here is that because only elected representatives can propose a Constitutional change into the Federal Parliament, we have to wait for Rudd and Turnbull and Brown and all the independents to get together, come up with the ideas, and take action. Now I ask you, is this a recipe for disaster or what? Politicians won't propose, and the public won't vote, for any Constitutional change they haven't seen or don't fully understand. Why would any sane person. You don't write blank cheques and hand them to people you don't trust.

THIRD “CON”

While we are on the subject of Section 128 and referendums, I would like to introduce you to the third and final “con” we have been subjected to. When we refer to the Australian Constitution, we are not actually referring to a Constitution in the way we all perceive a Constitution to be. That is, the people getting together, hammering out an agreed document, publicly voting on it and then creating the institutions of government. What we are talking about instead, is the Constitution Act. In our case, over a hundred years ago, the colonies got together, agreed on a legislative act – called the Constitution Act – that was submitted to the UK parliament and passed into law.

In effect, our highest law, the one that defines us as a nation, is really just another act of parliament passed by the British Government.

Now the tricky bit, is that “The Constitution” as we know it, is only one clause of the Constitution Act, Clause 9 to be exact. And Section 128 only allows us to modify Clause 9 of the Act and not the whole Act. So even if we were to radically change Clause 9, we are still stuck with:

Clause 1 – Short Title

Clause 2 – Act to extend to the Queen's successors.

Clause 3 – Proclamation of Commonwealth

Clause 4 – Commencement of Act

Clause 5 – Operation of the Constitution and Laws.

Clause 6 – Definitions

Clause 7 – Repeal of Federal Council Act

Clause 8 – Application of Colonial Boundaries Act

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Due to subsequent Australian and British acts, the UK parliament can no longer create, pass or amend any Australian legislation, including the Constitution Act. If we continue down the path being laid out for us by current Republican advocates, we will end up with the ludicrous situation of holding a "Yes-No" referenda, replacing the words "Governor-General" with the word "President", and removing all references to the Queen and her successors in Clause 9 - the Constitution, only to find we are still in a situation where we have: "agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland."

However, there is nothing stopping the Australian people from creating a completely new Constitution. One that establishes a new government structure and legal process, and which supersedes the current Constitution Act.

A bit radical perhaps. But in essence, far easier to accomplish than the tangled constitutional mess that we have at the moment.

So what all this boils down to, is that we have two ways to approach the problem of constitutional reform. Firstly, we can work at modifying Clause 9 of the Constitution Act to get some, or all of our issues dealt with, which is the approach advocated by the Republican movement OR we can create a completely new constitution that replaces the Constitution Act. Either way, both approaches need to occur outside of the daily "political" squabbling and muck-raking. Away from the corrupting influence of politicians, elites and big business. That way ordinary people would:

- a) Have actual and meaningful input into its drafting.
- b) Be able to debate, discuss and consider its effect on their lives.
- c) Feel a deep connection with the democratic process.
- d) Gain confidence that they have some control over the political machine.
- e) Clearly articulate their needs and wants to political leaders.

Once such a constitutional blueprint was created and widely agreed to by the public, it could either be submitted to Parliamentarians and Senators, to modify Clause 9 of the Constitution Act as a done deal.

In such a case, it would be made clear to the elected representatives that their political fortune would largely be determined by them passing the proposed Bill or not. It would be a very brave politician indeed, that went against a written and clearly articulated mandate from the people they represent.

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The other option is to put a constitutional blueprint to popular vote in the same way the French, American, Timor Leste and a host of other nations have done to create their democracy. One whose power and legitimacy comes from the people, not some foreign power or a bunch of State parliamentarians.

Now, of course, both these options are difficult roads to take. They require a considerable commitment to civic education of the adult Australian population. And as two organisations pushing their respective political agendas, one would expect the Republicans and Monarchists to be out there, running courses, holding public forums like this, producing educational material and so on, wouldn't you? But they are seldom to be seen. A pretty ordinary website, no educational content, some political lobbying and the occasional odd pot-shot through a media release is about it. So much for "cry freedom." Both camps appear to be sitting around waiting for the "government" to educate the people. But as we all know, the government has done a particularly lousy job in this area too. And that is not about to change any time soon.

If the government doesn't educate the people, and political lobby groups won't do it, there seems to be a golden opportunity for a third player to come to the party. What is needed, as I see it, is an honest broker. A national, pro-democracy, pro-change, pro-civic education organisation, that is well resourced and trusted by the community.

At present, there are a number of candidates that have the potential to take on this role or perhaps be part of a confederation. I am thinking of organisations like Amnesty, Earthsharing, Oxfam, Inspire, the Evatt Foundation and a number of others. I would be happy to talk about this sort of coalition in greater detail during the following discussion section, or independently, with those who are interested.

CONCLUSION

In conclusion, I hope to have illustrated, that there has been some very deft "conning" going on as part of the Australian Republic debate. I have also outlined the consistent inability of government to meet the challenges of the 21st century. It is entrenched vested interests and "old style" political thinking that are at the root of our problems. It is a mindset that the world's resources are infinite, that there are no limits to growth, and that social disadvantage is just the necessary price we have to pay for progress, that has gotten us into the awful mess we are now experiencing.

As I see it, the only way forward is to stop allowing ourselves to be "conned" by reasonable sounding, but flawed arguments. We all need to stop being distracted by endless, unproductive Head-of-State debates. We need to dump the notion that only politicians, think-tanks and big business, can map out our future. Or that TV shows like: "20-to-1 Best Constitutional Ideas" and celebrity debates, will win over the hearts and minds of average Aussies. I

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put it to you, that Australia is nowhere near its full potential, and that given the current outdated Constitution and political system that goes with it, the situation is unlikely to change.

Unless we want to live in perpetual mediocrity as a nation, I believe we need to breathe new life into a tired old Republican agenda. If we start thinking outside the box that our political masters have built for us, we might just get the transformational change most of us want.

To paraphrase the 19th century American poet James Russell Lowell, "Failure isn't a crime, but aiming low is."

Thank You

STATISTICS

- 680,000 Australian children are living in households where no resident parent is employed (ABS data)
- 100,000 people are homeless in Australia each night.
- 300,000 reported cases of child abuse in 2007.
- NSW has 5% of the land, currently affected by dryland salinity, but almost 50% of the potentially affected land.
- Australia's hospitals operate on, X-ray or carry out other procedures on the wrong patient or body part every second day. Over 50 patients last year had to undergo surgery to retrieve an instrument or other material left in them when they went into surgery (Australian Commission on Safety and Quality in Health Care).
- At least 45% of registered nurses are over 50 years of age and are approaching retirement (Australian Nurses Federation).
- Australia's emissions of carbon dioxide during the past 25 years have risen at almost twice the world average rate, yet the country is a poor performer in producing energy and wealth from the large amounts of fossil fuel it burns (CSIRO 2007).
- Literacy and numeracy performance among Australian students is no better now than it was in the 1960s and 1970s (ANU).
- 73,000 Australians are users of the drug "ice," and 2,000 methamphetamine labs having been discovered.

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ISSUES THAT CAN BE ADDRESSED IN A CONSTITUTION

Administrative Structure and President

Court and Law System

Taxation System

Finance and Spending

Hardship Provisions

Electoral System

Eligibility for Office

Civil Peace, Conflict and Emergency

Separation of State and Church

Artificial Legal Persons

Sustainability, Energy Independence, Resources and Production

Protection of Nature

States, Territories and Municipalities

Responsibilities of the Administration

Responsibilities of Citizens

Human Rights Protection

Political and Official Governance

Freedom of Speech, Movement and Assembly

Education, Health Care and Housing

Food, Water, Waste, Transport, Communication and Energy Security

Social Welfare

Recreation, Fitness and Nutrition

Industrial Relations

Consumer Protection and Education

Scientific Endeavour