Chapter Twelve:
A Century of Achievement

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I was recently asked to speak at a graduation at one of our larger universities.

A graduation is a solemn moment. It marks the happy conclusion of one of those significant parts in the lives of our young men and women.

An ideal address should congratulate and encourage the graduates, and contain a message which is relevant to and of interest to all of them, as well as their families and friends.

So I attempted to do this. Whether I succeeded I do not know. But as we were then, as we are now, in the process of celebrating the events leading up to the foundation of our Commonwealth, I thought that this would be an ideal subject.

I reminded the graduates that when Governor Arthur Phillip first came to these shores he soon realised that his task would not be easy. The colony would not soon be self-sustaining, as the imperial authorities had believed. He accepted he had to take difficult decisions. I told the graduates that if they were to visit what is now the Governor's Office in Macquarie Street, they would see there the 19th Century office of the Prime Minister of New South Wales, as the Premier used to be known. And next door the Cabinet Room. If they were to visit the Parliament too, they would appreciate how very soon after the foundations of the penal colony the full panoply of Parliament and the Westminster system, and democracy itself, took root here. Indeed, I told them, we were soon to be in the vanguard of the world's democracies, with universal male suffrage, the vote for women and the secret ballot.

There are only four other countries which could claim to have a longer unbroken democratic history. And it is relevant that we celebrate this year the fact that, one hundred years ago, a federal Constitution was drafted in Australia, by Australians and approved by the Australian people, for the very first federation whose borders would encompass a whole continent.

The foundation of our federal Commonwealth was an extraordinary achievement. Sir John Quick, one of our Founding Fathers, played a significant role in it. He saw that by the 1890s the federation movement had to be saved from the political morass into which it had fallen. At Corowa in 1893, he proposed that the people had to be directly involved in the election of a convention to draft the Constitution, and that the people should finally determine whether to approve it. It was the acceptance of this principle that ensured that the federal movement would succeed. Sir John Quick was to write subsequently, with Robert Garran, in what is, even today, the magisterial commentary on the Constitution:

> "Never before have a group of self-governing, practically independent communities, without external pressure or foreign complications of any kind, deliberately chosen of their own free will to put aside their provincial jealousies and come together as one people, from a simple intellectual and sentimental conviction of the folly of disunion and the advantages of nationhood. The States of America, or Switzerland, or Germany were drawn together under the shadow of war. Even the Canadian provinces were forced to unite by the neighbourhood of a great foreign power. But the Australian Commonwealth, the fifth great Federation of the world, came into voluntary being through a deep conviction of national unity. We may well be proud of the statesmen who constructed a Constitution which – whatever may be its faults and its shortcomings – has proved acceptable to a large majority of the people of five great communities scattered over a continent; and proud of a people who, without the compulsion of war or the fear of conquest, have succeeded in agreeing upon the terms of a binding and indissoluble Social Compact".[1]

Our Federation was born on the very first day of the new Century, 1 January, 1901. In that year Australia had the highest income per head in the world, an honour it shared with another former settled colony, Argentina. I make no criticism of Argentina, a fine country and a fine people. But she has been a less happy land than ours. Since 1930 military dictatorships have alternated with democratic governments, with cruel results for her people. Shortly after our own constitutional crisis in 1975 – which resulted in no loss of life – an Argentine military junta waged a "dirty war" against its own people. This resulted in many thousands of "disappeared", a euphemism for tortured and murdered by the military. And now Argentinians' income per head has declined to less than half of ours. She was to play no significant role in the defence of freedom in either the first or second World Wars.

In the meantime we in Australia have always remained a democracy. We remain among the world's most successful economies. And just as we achieve outstanding results on the sporting field, although a small country, so too we have made an outstanding contribution to the cause of liberty and freedom worldwide. With a population one-quarter of what it is today, it is sad to recall that more serving Australians died in the First World War than those of any of the other non-European powers involved. These include South Africa, India, Canada and even that great power with its vast population the United States. And all of the Australians were volunteers. In the Second World War, Australia was one of that tiny coalition of powers which resisted Hitler from the very beginning.

This tradition has continued, through Korea to so many peace-keeping interventions. More recently, Australia played a significant role in helping the people of East Timor. This in many ways made some amends for our role in recognising the forced incorporation of that territory into the Republic of Indonesia.

In July of this year the British Parliament invited the Australian Parliament to celebrate with it the enactment of the *Constitution of Australia Act* on 9 July, 1899. And also to honour Australia for its great contributions to the Commonwealth over the century. The *Constitution of Australia Act* was a British Act which, subject to a compromise principally concerning the Privy Council, gave effect to the Constitution which had already been drafted in Australia by Australians, and which was approved by the Australian people.

The highlights of that week, for me, were two-fold.

First, the Federation Guard, the men and women of our defence forces, especially those wearing the slouch hat, guarding the great palaces of London.

Second, the ecumenical service for Australia in Westminster Abbey. There were many magnificent moments in that service. As I was fortunate enough to draw a ticket for that, let me mention three.

One was immediately after the procession of the clergy and the Sovereign, which was announced by a great trumpet fanfare, the Royal Anthem, and the hymn, "Praise my soul the King of Heaven, to his feet thy tribute bring". As the hymn continued, I could see an Australian flag coming slowly up the Nave towards the Sanctuary. Protected by a flag party of three, they seemed so lonely in that vast Abbey. I could just see the slouch hat of the soldier, the caps of the sailor and the airman. Slowly they came up the Nave, with that symbol of our nation, the symbol which has comforted and encouraged us, in peace and in war, in wealth and in depression, in joy and in sadness.

And while the congregation continued:

"Angels help us to adore Him

Ye behold Him face to face..."

The Dean came forward to receive the flag, our flag, the flag under which so many had fought and died. And they carefully placed it in its cradle in the Sanctuary, by the high altar and near the Sovereign.

The flag party retired, slowly, while the hymn concluded:

"Sun and moon, bow down before Him;
Dwellers all in time and space.
Praise Him! Praise Him!
Praise with us the God of grace".

Then later, Richard Walley, a cape about his shoulders, and with bare legs and feet, went up to the Sanctuary and played the didgeridoo. This must have been the first time this ancient instrument, with its strange timeless sounds, echoed around that very old but not so ancient building. And each time he passed before his Sovereign he stopped, he turned, and he bowed low, gracefully and naturally.

Then there was the address given by The Most Reverend Peter Hollingworth, AO, Archbishop of Brisbane. His theme was deeply spiritual. He said:

> "...We Australians have yet to discover fully the power and life giving presence of God the Holy Spirit brooding over us and our land.
>
> "When we do, we will be able to embrace the idea of Australia as 'the Great South Land of the Holy Spirit', *Australia del Espiritu Sancto*, as Spanish Navigator Pedro Ferdandez de Quiros named it.
>
> "Our destiny is to be a 'spiritual Commonwealth', a people of many traditions bonded together in the spirit by our sense of place and a desire to order our life together in justice and charity".

Our success in this, he says, will depend on the extent we "drink of the cup of salvation and call upon the Name of the Lord" of History who, in partnership with us, is "gradually transforming *Terra Australis Incognito* into the Great Southern Land of the Holy Spirit".

There were other moments in that service, for example, Yvonne Kenny's singing of Mozart's *Laudate Domini*.

Australia Week celebrated a significant moment which leads up to the celebrations on the first day of the New Year, and of the new century, when all the church bells of all of Australia will peal in unison in honour of the centenary of our Federation.

When we celebrate those first one hundred years, we will be celebrating a century of achievement. But we will not be celebrating a century of perfection.

It is right and proper that we not hide our failings and our weaknesses.

One of the liturgies close to the hearts of many Australians requires its worshippers to admit, humbly and upon their knees:

"We have left undone those things which we ought to have done,
"And we have done those things which we ought not to have done,
"And there is no health in us".

It is good to reflect on our failures. But it is not good to become obsessed by them, or to exaggerate them.

Perhaps our greatest failings were in racial matters – White Australia, and especially, with the Aboriginal people.

But there was also another failing, and this not of the people at large, but a select circle from that small but powerful priestlike class, the Justices of the High Court.

Let me speak to that first, before I turn to our race relations.

The Constitution of 1901 would never have been approved by the people unless its terms settled as precisely as possible the division of powers between the Commonwealth and the States. And consistent with the democratic principle that Quick forged at Corowa, the Constitution provided that change could only be effected by the precise details of any proposal being laid before the people, and approved by them nationally and federally. By nationally, I mean by the overall approval of the people across the Commonwealth, and by federally, I mean by the approval of the people in a majority of States.

Now some people will tell you that this produces too much rigidity in the Constitution.

This view is usually based on the fact that Australians have not readily approved referenda proposing change to the Constitution. Of the 44 proposals for change made over this century, Australians have approved eight. By way of comparison, 25 changes have been made to the Constitution of the United States. But ten of these – the Bill of Rights – were made in 1791, and were necessary to secure its ratification. So from 1791 there have been fifteen changes to the US Constitution. Fifteen in two centuries, compared to eight in our one century. A comparable record, I would say, especially if one excludes the two American amendments on Prohibition, one to impose it and one to remove it!

And it must be remembered too that in Australia, unlike Switzerland, the people cannot themselves propose a constitutional change by way of an initiative. Nor can the States. Only the Houses of the federal Parliament can propose constitutional change. It is not surprising then that most proposals for constitutional change have been either to increase Commonwealth powers, or reduce the Senate's power and influence. In other words, to change the federal balance.

The people rarely want this. As Australia is a democracy, forged on John Quick's principle that the people are the final judge of constitutional change, it would be reasonable to assume that the people's clear wish should be respected. But there is a view in certain circles that there are those who know better than the people. Such a view is often found in political circles, the law, and the media. Thus Mr Kim Beazley, MP, Leader of the Opposition, observed:

> "Ours is a remarkably adaptable country, whose take up of new technology is among the fastest in the world, whose universal education aims have been admired worldwide, and yet our people continually resist attempts to strip the barnacles from a 100-year old Constitution. Over the last century, the people have only agreed to eight changes to the Constitution, out of 44 proposals put by government for change".[2]

John Quick and Robert Garran, wise men that they were, anticipated this idea that governments and others know better. They believed that the safeguard that the people be fully informed on any proposed constitutional change, and that they must approve it both nationally and federally, was a proper and appropriate constitutional safeguard. As such, they believed it is:

> "… necessary not only for the protection of the federal system, but in order to secure maturity of thought in the consideration and settlement of proposals leading to organic changes. These safeguards have been provided, not in order to prevent or indefinitely resist change in any direction, but in order to prevent change being made in haste or by stealth, to encourage public discussion and to delay change until there is strong evidence that it is desirable, irresistible and inevitable".[3]

Now as I have said, the people had agreed at Federation, and they have confirmed ever since, that the Commonwealth Parliament is to be a Parliament of *limited* powers; that is, those powers enumerated in the Constitution and no other powers. Only four powers would be exclusively the Commonwealth's (these are set out in ss. 52 and 90). In addition there would be a range of powers set out in a list, available to both the Commonwealth and the States. All the rest would be *reserved* to the States. So Federal/State powers were to be in balance.

In the first decade, the States were protected by the High Court finding there were two implications in the Constitution. The first was evident if you accept the fact that it was clearly intended that the Constitution would reserve certain powers to the States. So the implication was that the Court must have regard to those powers reserved to the States before the ambit of any Commonwealth power could be determined. (This was called the doctrine of the reserved powers.)

The second was that the Commonwealth and the States were immune from the legislation of the other – the doctrine of implied inter-governmental immunities. These two doctrines ensured a proper place for the States in the federation. This was changed in the *Engineers Case*[4] in 1920 by the High Court, now dominated by Sir Isaac Isaacs, widely believed to be a centralist. Sir Samuel Griffith had left the Court in 1919, and Justice Barton and Justice O'Connor had died. Sir Samuel Griffith himself died in 1920, after the hearing of *Engineers,* but before the judgments.

Since then, the powers of the Commonwealth are to be ascertained according to their "natural and ordinary meaning", without the obvious implication that you must balance these against the reserved powers of the States. As a result, those powers reserved to the States are not to be interpreted according to their natural powers and ordinary meaning! State powers just have to give way to Commonwealth powers. So it does not matter how much a Commonwealth power intrudes into an area of State responsibility, say education, hospitals or law and order. So the scales are no longer in balance. The High Court has put its hand – heavily – on the scale marked "Federal powers".

After a few decades the High Court realised that this method of interpretation could even destroy the States (*Melbourne Corporation Case*[5] in 1947). So they found, after all, another implication. This applied to invalidate a federal law which discriminated against a State, or which operated to destroy or curtail the continued existence of the States or their capacity to govern. But it is rare that the Court will find a federal power will be so limited in relation to a State power.

On top of this the High Court has more recently given an interpretation to the power to legislate with respect to external affairs (s.51 (xxix)) which would have astounded the Founding Fathers. The power can now expand into and even take over any State responsibility.

The Court seems to be saying – although some of the judges seem to have some reservations about sham treaties – that if the government enters into a treaty with, say, Fiji and Papua New Guinea on the rules about garbage collection, this allows the federal Parliament to pass legislation to give effect to those rules on garbage collection throughout Australia. But garbage collection is not a federal power. This was never, ever intended, and this change to the Constitution was never, ever agreed to by the people. And "external affairs" also include matters not covered by treaties.

This incursion of federal powers into areas of State responsibility has been exacerbated by removing from the States their financial independence. I refer in particular to the problem of what is called "vertical fiscal imbalance". This is the phenomenon whereby the States provide services such as hospitals, schools and the police, but are not responsible for the collection of much of their income. The States raise about 20 per cent of the total Australian tax revenue, but spend 40 per cent. To bridge this gap they have become mendicants on the Commonwealth. It is a fact that children become responsible adults by earning their own, and managing their own income. They move from dependence to independence. Since 1901 the States have been moved from independence to a state of dependence. They no longer have to explain to their electorates why they need access to taxation and how they spend that money. That is *not* how this democracy was supposed to function.

As the Founding Fathers of the United States pointed out:

> "In a federation, the individual States should possess an independent and uncontrollable authority to raise their own revenues for the supply of their own wants".[6]

In 1942 the States lost their right to levy income tax. Although subsequently restored in theory, the political moment had passed for a separate State income tax. In the last decade the High Court has taken away any possibility of State taxes on goods. This is the result of the Court's interpretation of s.90, which gives the Commonwealth the exclusive power to "impose duties of customs and excise".

This section was to secure the customs union I referred to above – that is, a common external tariff and no customs duties on goods crossing State frontiers. So that, for example, the customs houses on the Murray River would be closed down. But not so that the States would become mendicants on the Commonwealth.

When the Founding Fathers referred to "customs" and "excise", the natural and ordinary meanings of these two words were clear. (I have used the phrase "natural and ordinary meaning" because that was central to the High Court decision in the *Engineers' Case* which so significantly shifted the constitutional balance against the States.) Customs are levied on goods coming into a country. "Excises" are taxes on the production and manufacture of goods. The purpose of s.90

was to prevent States imposing a different rate of excise on goods coming from other States. But in 1993 and 1997 the High Court decided that an excise was more than that. The Court said it was "an inland tax on a step in (the) production, manufacture, sale or distribution of goods".[7]

This extended interpretation of "excise" was never intended by the Founding Fathers. It has the consequence that a State tax on goods is invalid. Now the Howard Government has sought to overcome this problem. In an act of rare and statesmanlike generosity, the Government has agreed that *all* of the proceeds of the GST will go to the States. An attempt has been made to entrench this and make any change subject to the consent of the States.

The mistake of the Founding Fathers was to assume that the High Court would always act with judicial restraint. This is easy to say now, but no one had seen the extreme judicial activism which some American judges were to exhibit in the 20th Century.

It has been said of judges that they have the choice between accepting the doctrine of judicial restraint or having popular control imposed on them. That is, if they want to be legislators and not judges, they should stand for Parliament. Alternatively, judges should be elected, or at least be subject to some democratic control. The election of judges is sure to turn them into political judges, so that they then are tempted to decide at least some cases not according to the facts and the law, but according to what they believe to be their chances of re-election. So that is undesirable. Better to make sure they are judges and not politicians.

The Americans favour either electing their judges or requiring the confirmation of judicial appointments by the Senate. Because many US Supreme Court Justices in the latter part of the 20th Century decided they were legislators and could change the Constitution as they wished, confirmation by the Senate became a formidable political process. Unfortunately this does not ensure that the best judges are appointed. In fact it has sometimes achieved the opposite. It is now used to attempt to ensure that the judges' politics are the same as the confirming majority. Senate confirmation here would have the same effect. And the frequently suggested creation of a Judicial Commission to select judges would probably only ensure judges held views similar to those on the Commission.

The desirable solution seems to ensure the best judges, ones who will apply and not alter the Constitution, are appointed. In recent years an attempt has been made to appoint judges who do not seem to be activists. But what would stop a future federal government from appointing activist judges, or those who have a strong centralist inclination, either consciously or unconsciously? Perhaps the States should have been constitutionally involved in both the appointment and the removal of the judges, either with appointments or by allowing *ad hoc* judges appointed by the States to join the Court in relevant cases, as in the International Court. Or alternatively, the facultative initiative could have been introduced to allow the people to review all new laws, whether by the legislature or by the courts. Our Founders had assumed the Justices would act with judicial restraint, which they did for the first twenty years. This is surely the best way to ensure that the High Court is not politicised.

White Australia Policy

The Australian century can also be criticised for its attitude to immigrants from Asia.

The most virulent opponent of Asian immigration was the republican journal *The Bulletin.* On 22 June, 1901, it attacked the Colonial Secretary, Joseph Chamberlain, who had blocked certain Queensland legislation banning coloured labour:

> "If Judas Chamberlain can find a black, or brown or yellow race...that has as high a standard of civilisation and intelligence as the white, that is progressive ... as brave, sturdy, as good nation building material, and that can intermarry with the whites without the mixed progeny showing signs of deterioration, that race is welcome".

One of the first laws passed after Federation instituted the White Australia policy. This allowed Asian immigrants established here to stay, but was intended to stop further immigration.

To allay British objections, a discretionary dictation test in any European language could be administered by customs officials.

Yet immigrants still came through. My own maternal grandparents, and their children, arrived in Sydney from Batavia, now Jakarta, in 1917. A dictation test was administered – on this occasion in English, fortunately one of the at least four languages in which they were fluent. They passed, including my mother, who was still a child.

While the White Australian policy seems outrageous by our standards, it was not so different from the barriers to Asian immigration erected in other countries, including the United States and Canada. It is not so different from the immigration policies still applied by some countries today, and which are rarely criticised. In any event it was gradually relaxed after the Second World War and no longer applied in any real sense by the mid-sixties.

Australians can be least proud of the policy concerning the Aboriginal people. And with the advent of self-government, the restraining influence of more liberal Colonial Secretaries and Governors was removed.

There is a widespread belief, reported in the media, that the 1967 referendum gave the Aboriginal people, for the first time, Australian citizenship and the right to vote. The truth is not so clear cut. They were already citizens. Moreover the right to vote was granted in a piecemeal way, in four States at least in law if not in practice, before Federation.

The 1967 referendum was first about removing provisions from the Constitution against counting Aboriginal people (then considered mainly nomadic) in reckoning the numbers of people. It was also to give the federal Parliament a power to legislate with respect to Aboriginal people. This referendum was a bipartisan measure, and was approved by a record affirmative vote of 90.77 per cent.

This vote was the clearest indication of an overwhelming view among Australians that the Aboriginal people were entitled to be treated as the equals of other Australians. The extent to which the Aboriginals have been accorded this status is the subject of continuing debate.

The noted French historian and anthropologist, Emmanuel Todd[8] argues that the leading indicator of the degree of the acceptance of minorities within a society is the degree of female exogamy – that is, the extent to which female members of the minority marry out of their group. In Australia, the 1996 census[9] demonstrated that 64 per cent of "indigenous couple families" were unions between non-indigenous and indigenous partners. These families were almost evenly divided between those where the mother was indigenous and those where the father was indigenous. This indicates a rate of female exogamy among aboriginal people of about 32 per cent. This is far higher than those minorities which Todd evaluates, including black Americans in the United States, 1.3 per cent; Turks in Germany, 7 per cent; or Algerians in France, perhaps 23 per cent, although the statistics probably inflate this, because French citizens of Algerian descent are treated as French.

This is not an unreasonable test, even if it may encourage a charge that those who rely on it are reviving the assimilationist policies of the past. At the very least, these statistics must constitute a balance against others which compare adversely such matters as the health and the life expectancy of Aboriginal people with other Australians.

In any event, it is clear that there is hardly any support for a policy which would be intended to differentiate adversely against the Aboriginal people.

The question remains about the proper assessment of past policies. The final judgment on that, if a final judgment can ever be made in this world, will be made by Australian historians in an objective search for the truth. But the ancient Latin saying remains true:

"*Infecta facta fieri nequent, facta infecta fieri nequent*".

"Things that have not happened cannot be made to happen; things that have happened cannot be undone".

Assessments of our past treatment of the Aboriginal people range across a broad spectrum.

Expatriate Australians – Germaine Greer, Robert Hughes and Philip Knightley – are among the harshest critics. Robert Hughes says:

> "No country colonised by Europeans has treated its indigenous minority more inhumanely, and the legacy associated with colonialisation for Australian blacks has been terrible".

This was inserted not into a journal of opinion but into the *Official Souvenir Program* for the Sydney Olympics, 2000! While it says little about the rigour of Mr Hughes' survey of centuries of European colonialism, it says much about Australia's liberal attitudes to freedom of speech.

In a recent critique of the views of those who assert a genocidal intent in, and effect of Australia's indigenous policies, Keith Windschuttle[10] cites Philip Knightley's conclusion:

> "It remains one of the mysteries of history that Australia was able to get away with a racist policy that included segregation and dispossession and bordered on slavery and genocide, practices unknown in the civilised world in the first half of the twentieth century until Nazi Germany turned on the Jews in the 1930s".

Of course there were bloody disputes brought on by the occupation of land by white settlers which impinged on the traditional wanderings of the Aboriginal people, or who may have regarded the white men's flocks as legitimate prey.

Certainly there were individuals, and even officials, who committed unspeakable crimes against the Aboriginal people. There is no evidence that the Australian treatment of the Aboriginal people ever approached the barbarity of the Nazi's treatment of Jews, Gypsies and others, including homosexuals and the mentally ill. In the case of these unfortunates, the Nazi policy was for a "final solution" – a term which in itself stifles everything that is good in man and in his institutions.

The Nazi policy was for the liquidation, the physical destruction of all people of that race or group by agents of the state aided by the police and the public service in accordance with the decisions and directions of the highest state authorities.

To repeat, there is no evidence that the crimes committed against the Aboriginal people were ever committed as government policy. And there is overwhelming evidence to the contrary. Indeed, from the beginning of the penal colony, the authorities were to insist on the application of the rule of law – at least the criminal law – to all men and women, of all races and colours. That this was to be imperfectly applied, and that there were to be legal restrictions on Aboriginal people, often for paternalistic reasons, is a matter of great regret. But it does not equate to some form of Nazism at the heart of white Australia.

The application of the rule of law was demonstrated cogently in the final grave words of the judge when sentencing the white perpetrators of the massacre of Aboriginal people at Myall Creek in 1838 – over 160 years ago. These words demonstrate that even then, the principle that the rule of law must in Australian society prevail whatever the race or colour of the victim or offender, was fully upheld.

Mr Justice Burton pronounced these words:

> "Prisoners at the bar ... you have been found guilty of the murder of men, women and children.
>
> "The circumstances of the murders of which you have been found guilty are of such singular atrocity that I am persuaded that you long ago must have expected what the result would be. This is not the case where a single individual has met his death by violent means; this is not the case, as has too often stained indelibly the annals of this Colony, where death has ensued from a drunken quarrel; this is not the case, when, as this session the Court has been pained to hear, the blood of a human being and the intoxicating liquor were mingled on the same floor; this is not the case where the life or property of an individual has been attacked, ever so weakly and arms have been resorted to.
>
> "No such extenuating circumstances as these, if any consider them extenuating, have taken

place. This is not the case of the murder of one individual, but of many – men, women, and children, old men and babes hanging at their mothers' breasts, to the number in all, according to the evidence, probably of thirty individuals, whose bodies on one occasion were murdered – poor defenceless human beings...

"I cannot expect that any words of mine can reach your hearts, but I hope that the grace of God may reach them, for nothing else can reach those hardened hearts which could surround that fatal pile, and slay the fathers, mothers, and the infants...

"I cannot but look at you with commiseration; you were all transported to this Colony, although some of you have since become free; you were removed from a Christian country and placed in a dangerous and tempting situation; you were entirely removed from the benefit of the ordinances of religion; you were one hundred and fifty miles from the nearest Police station on which you could rely for protection – by which you could have been controlled.

"I cannot but deplore that you should have been placed in such a situation – that such circumstances should have existed, and above all, that you should have committed such a crime. But this commiseration must not interfere with the stern duty, which as a Judge the law enforces on me, which is to order that you, and each of you, be removed to the place whence you came and thence to a place of public execution, and that at such time as His Excellency, the Governor shall appoint you be hanged by the neck until your bodies be dead, and may the Lord have mercy on your souls".

Let me remind you that this is a judge, in 1838, sentencing to death white men for the murder of Aborigines.

What greater evidence of a society under the rule of law for all, and for all races and colours, can there be than these words? And this in the early part of the 19th Century. These words are more than sufficient not only to deny, but to unmask, the unjustified attempt by some to paint our country as a genocidal hell.

In conclusion, it has been a remarkable century, and one of which we can be proud.

So soon after Federation, this young country was to be tested in that terrible Great War. It was in answering that challenge that our nation came of age. Our great national poet A.B. "Banjo" Paterson captures that in these verses from *Australia Today* (1916):

"They came from the lower levels
Deep down in the Brilliant mine;
From the wastes where the whirlwind revels
Whirling the leaves of pine .....
On the Western stations, far and wide,
There's many an empty pen,
For the 'ringers' have cast the machines aside
And answered the call for men .....
For the men have gone, as a man must go,
At the call of the rolling drums;
For the men have sworn that the Turks shall know
When the old battalion comes .....
Brotherhood never was like it;
Friendship is not the word;
But deep in that body of marching men
The soul of a nation stirred.
And like one man with a single thought
Cheery and confident;
Ready for all that the future brought,
The old battalion went.

Column of companies by the right,
Steady in strong array,
With the sun on the bayonets gleaming bright,
The battalion marched away.
How shall we tell of their landing
By the hills where the foe were spread,
And the track of the old battalion
Was marked by the Turkish dead?
With the dash that discipline teaches
Though the hail of the shrapnel flew,
And the forts were raking the beaches,
And the toll of the dead mean grew.
They fixed their grip on the gaunt hillside
With a pluck that has won them fame;
And the home-folks know that the dead men died
For the pride of Australia's name.
Column of companies by the right,
To the beat of the rolling drums;
With honours gained in a stirring fight
The old Battalion comes!"

Endnotes:

1. John Quick & Robert Rannelph Garran, *The Annotated Constitution of the Australian Commonwealth*, 1901, reprinted by Legal Books, 1955 at 225.

2. Honourable Kim Beazley, *Planning for a New Republic*, Notre Dame University, Fremantle, 7 October, 2000.

3. Quick and Garran, *op.cit*.,at 988.

4. (1920) Commonwealth Law Reports, 129.

5. (1947) 74 Commonwealth Law Reports, 31.

6. *Federalist Papers* No. xxxii, 1788, reprinted 1979, The Eastern Press, Norwalk, Connecticut.

7. *Capital Duplicators Pty Ltd v. Australian Capital Territory (No.2)*.

8. *Le Destin des Immigrés*, Seuil, Paris, 1994.

9. John Taylor, *Policy Implications of Indigenous Population Change 1994-1996*, (1997) Vol.5, No.4, *People and Place*, 1.

10. Philip Knightley, *Australia*: *A Biography of a Nation*, quoted in Keith Windschuttle, *The Myths of Frontier Massacres in Australian History*, in *Quadrant*, October, 2000.