

**The Order of Australia Association
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**Educating the young and the governance of Australia.
What are we doing?**

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Mr Chairman,
Ladies and Gentlemen

I have to admit that in addressing you as "ladies and gentlemen" it appears I am in breach of the instructions given to schoolchildren under the *Safe Schools* program, "*All of Us*". This decrees that phrases such as "ladies and gentlemen" or "boys and girls" should be avoided.

That is what is being taught or proposed to be taught to our children. Let us go now to what is no longer being taught to our children – our heritage.

I was recently invited to give the vote of thanks to the United Kingdom High Commissioner who had delivered the occasional address at a function following Australia Day.

I recalled that in 2006 a report about the teaching of history in Australian schools had found that three quarters of school students surveyed did not know why we celebrated Australia Day.

The New South Wales Minister for Education went to the media to argue that at least in that state, the teaching of history was of the requisite standard.

Asked by a radio presenter why we celebrate Australia Day, the Minister replied "Because that's the day when it became a nation, the day the states joined together."

Whether or not students (and a minister of the Crown) know why we celebrate Australia Day, they have been taught little about that crucial golden thread that comes to us through the Magna Carta, the Glorious Revolution, the settlement and what has transpired since. Even the story of Anzac is under attack, according to Dr. Mervyn F. Bendle's account of what he describes as "the history war on Australia's national identity."

The result is that our children know little about our heritage.

This is of course not their fault. But instead of giving them the first rate education that my generation received, it is clear that in terms of literacy and numeracy, the evidence is that our standards are in decline. In addition, young people are not being exposed to the heritage that made Australia. The picture appears just as bleak in significant areas of tertiary education, where free speech

is under attack, bureaucracy dominant and too many students admitted to courses for which they are unprepared and which are inappropriate for their aspirations.

This is at a time when record sums of money have been poured into education, and students left with substantial personal debts even before they work out how they will acquire the house which was once considered the birthright of all Australians.

Add to that the fact that they are the generation who will pay the increasing interest on increasing government debt and they are the generation who will be liable for its repayment.

In summary something is seriously amiss.

First, Australia's youth is being denied the opportunity to know, to understand and to appreciate their heritage.

But that is not all. This failure in educational administration is, I believe, but another example of a serious decline in the quality of the governance of this country.

Denial of our heritage

First then, let us examine the failure to educate our children about our heritage. This means that young people are not being given the opportunity to understand and to learn from those things which have made Australia such an exceptional nation.

So why has Australia been so successful?

Is it that Australians are racially superior? Is it our weather? Is it geographical? Or is it that we are endowed with such resources we could never fail?

The latest research, such as that by MIT Professor Daron Acemoglu, Harvard Professor James A Robinson and Harvard and Oxford Professor Niall Ferguson, concludes that not one of these factors is definitive. Otherwise, they ask, how can we explain why Botswana has become one of the fastest growing countries in the world, while other African nations are mired in poverty and violence? Or why North Korea is a failure and South Korea a success?

They conclude that man-made political and economic institutions determine economic success, or indeed, the lack of it.

The truth of their thesis can be illustrated by recalling that at the time of our federation, Australia and Argentina were the world's richest countries.

Argentina was not actively involved in the two world wars and did not suffer the enormous losses, both in terms of human potential and wealth, that Australia did. So Argentina should have been more successful than Australia. But the twentieth century history of Argentina has been one of instability, periods of brutal dictatorship, and economic decline.

Why is this? As a former minister in Argentina's Menem government observed on the ABC's Four Corners programme in 2002, there is one important

difference between the two countries: “Australia has British institutions. If Argentina had such strong institutions she would be like Australia in ten or twenty years.”

Our heritage

The point is that at the settlement in 1788, Captain Arthur Phillip did not only bring people and provisions – he brought four institutions which we have adapted, institutions which are still with us today and which, with two others, have made this nation.

The first was the English language. We were extraordinarily fortunate that this was the language not only of Britain, but also of its successor as the world's dominant power, the United States. Only those who have lived for long in a foreign country will know the enormous advantage we enjoy because we speak what is without serious challenge now or in the foreseeable future, the language of the world.

The second institution Philip brought was the rule of law. This means two things. First, everyone, including and especially the executive arm of government, is subject to the law. To understand how unique this proposition is, you really have to go back to at least the Magna Carta. The second aspect of the rule of law is that while citizens may do anything not prohibited by the law, the executive government may only do those things authorised by the law.

To describe the colony as a British gulag, as one senior Australian politician has, is completely erroneous.

Phillip came with a Charter of Justice, which unlike the Soviet Constitution, was actually applied. The very first civil case in Australia can be found in the law reports, *Cable v Sinclair*. The Court of Civil Jurisdiction sat in Sydney on 1 July 1788 to hear this. It was brought by two convicts, Henry and Susannah Cable (or Kable). How they met and what brought them together is a wonderfully romantic story, one which is a great tribute to Lord Sydney as the minister responsible for establishing the colony. The case was brought against Duncan Sinclair, who was the master of the *Alexander*, one of the ships in the First Fleet. It concerned a valuable shipment which had been sent from England. Not only did the Judge Advocate hear the case, he found for the convicts and made a substantial award in their favour. That is not what happens in a gulag. There is another aspect of the rule of law which is important. This was about slavery. Both Phillip and Lord Sydney would have been well aware of a celebrated case in 1772 concerning a runaway slave from the American colonies, James Somersett. In a case brought by his owner, Lord Mansfield is said to have concluded his judgement with the words “The air of England is too pure for a slave to breathe; let the black go free.”

Americans, especially in the South, were appalled by this decision which freed 15,000 slaves and which left slave owners who had gone to England with their

slaves without any legal recourse. Worse, they feared the precedential value of this in the colonial courts. The slave owners soon saw the advantages of independence, just as those who wished to seize lands reserved to the Indians under George III's Great Proclamation. Taxing the colonies to help pay for the long war defending them against the French under the mantra "No taxation without representation" 'was not the only reason for the revolt.

Philip was determined that the American experience should not be repeated in the new land. Before leaving England he wrote: "The laws of this country will, of course be introduced in [New] South Wales, and there is one that I would wish to take place from the moment His Majesty's forces take possession of the country: That there can be no slavery in a free land and consequently no slaves." As Keith Windschuttle observed in 2007,

"The idea that slavery was an affront to humanity that had no place in a free land was part of the original definition of what it meant to be an Australian ..."

Although NSW founder Arthur Phillip's original anti-slavery declaration was once well known to earlier generations of students, he points out that historians today rarely mention it. School children are deprived of the pride in knowing that theirs is the only continent in the world that has never known slavery.

The third institution Philip brought was constitutional government. Although Phillip had considerable powers, the penal colony was only an interim measure. It proved to be extraordinarily successful, the world's most successful experiment in criminal rehabilitation. Philip was not a dictator, he was subject to the law and answerable for his actions. Philip brought with him our oldest institution, the Crown. But this was not an absolute monarchy which was by far the dominant model in Europe. Here was living recognition of the maxim that power corrupts and absolute power corrupts absolutely. Hence it operated under what Montesquieu had identified as uniquely English, the separation of powers. Constitutional government, as Phillip knew it, was already emerging as the Westminster system which we know today. The King was subject to the laws and the laws could only be changed by Parliament. It was becoming accepted that the executive government, the ministry, could only survive if it enjoyed the confidence of the House of Commons. Above all, and completely consistent with the English concept of the rule of law, people were free to do whatever was not prohibited by the law. Consequently, government, rather than being absolute, was limited to performing what was essential and in particular defending the realm and maintaining the King's Peace, that is law and order.

The fourth institution which Philip brought to Australia was civil society. This consists of all of those institutions separate from government – above all the family and the church – together with those values which are essential in a civilised society and without which neither constitutional government nor democracy can survive. The values which Phillip brought can best be described

as Judeo-Christian, and in particular that version which produced the great campaign led by Wilberforce to end the institution of slavery.

Even with the decline of organised religion, those Judaeo-Christian values continue today to permeate our laws, our language, and our fundamental institutions. They are part of our broad Australian culture.

This does not mean Australia should not welcome those from other religions, nor does it mean that there is any obligation for an Australian to belong to any of these religions, nor indeed any religion.

In fact, this openness to others was stressed in the very first sermon preached in this land on Sunday 3 February, 1788 by the Rev Richard Johnson. He began:

"I do not address you as Churchmen or Dissenters, Roman Catholics or Protestants, as Jews or Gentiles...But I speak to you as mortals and yet immortal

...

"The gospel...proposes a free and gracious pardon to the guilty, cleansing to the polluted, healing to the sick, happiness to the miserable and even life for the dead."

Over one century later, in the public consultations on the draft of our Federal Constitution, more supporting petitions were received than for any other concerning a proposal that the preamble recognize what one delegate called the "invisible hand of providence". This is reflected in the preamble in the Constitution Act, a provision which summarises, succinctly, the very pith and substance of our federation.

This is that the people of each of the several states:

"... humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown...and under the Constitution hereby established."

These – the English language, the rule of law, constitutional government and civil society – were the institutions Philip brought to Australia which were to become first four pillars of our nation. There were to be two more.

The fifth pillar of the nation – the gift of the British – was self-government under the Westminster system, and within a surprisingly short period of time. The French, the Spanish, the Portuguese did not transmit the parliamentary concept to their colonies, as the British did to their American colonies long before independence, and as they did to Australia.

With the exception of the Dutch, they did not have parliamentary government concept at home.

Initially the power of the colonial governor was restricted by the law and carried out under written instructions from London.

This power was tempered by granting an increasing role to the people culminating in legislation in 1850 which empowered the various colonies to draft their own constitutions, although they were still to be approved by the Colonial Office in London before being presented for the Queen's Assent. The

New South Wales and Victorian Constitutions received Royal Assent on 16 July, 1855. These constitutions were not imposed by London. They were, as Professor Patrick Lane put it, "essentially home grown...".

To strike down another myth, the bills were in London well before the Eureka Stockade. Whatever the Eureka Stockade achieved, it was not self government under the Westminster system.

The sixth great pillar of our nation was Federation. This was never inevitable. We could have easily become several countries. In fact, when the British first suggested it the local politicians were outraged. The assertion by former Prime Minister Paul Keating that it was imposed on Australia by the British Foreign Office foreign office is manifestly untrue. It was drafted in Australia by Australians and approved by the Australian people.

When it happened it was different from any other federation.

There were no deaths, no violence, no threats of war. Those great Founding Fathers, Sir John Quick and Sir Robert Garran described this great achievement this way:

"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."

The results of those institutions

These six pillars are the institutions which have not only made Australia but made Australia an exceptional nation, both internally and in our role in the world. According to the international Human Development Index, our standards of health, wealth and education resulted in our being ranked the second nation in the world, very close to the first country, Norway. But with declining educational standards, not telling the young and the new about our heritage and an inability to control increasing government debt we are very much relying on the achievements of earlier times. How long will we stay there?

As to our role in the world, Australia has been involved in a remarkable way in defending the freedom and liberty of others. In the Second World War, we were one of a handful of countries who fought from the beginning to the end. As a percentage of the population, almost twice as many Australians gave their lives as Americans, 0.57% to 0.32%. In the First World War, more than ten times Australians gave their lives than Americans, 1.25% to 0.11%.

But if we do not tell our young people about this heritage and how we have achieved it, they will not appreciate it. Worse, they may succumb to other theories, fashionable beliefs and new values which will in no way advance their welfare or that of the nation.

The mind is not a vacuum. In my view man is programmed to believe. There is I believe an analogy with a warning about religious belief attributed to GK Chesterton. The warning is along these lines: "When a man stops believing in God it is not that he believes in nothing. It's that he will believe in anything." Putting aside religious belief, if we do not pass on to the next generation the facts about our heritage, what ideas, what propaganda will be pumped into their receptive minds?"

Decline in governance

I argued at the beginning of this paper that the failure in education is an example— another example —of a broader problem concerning the quality of the governance of this country.

Unlike the situation which prevailed when I was young, university education is almost the sole responsibility of the federal authorities, who now also preside over school, preschool and vocational education. This is with a vast duplicate bureaucracy and massive financial resources, an increasing part of which is borrowed.

This is manifestly contrary to the carefully considered constitutional arrangements which the people approve and under which this country was formed. We should never forget that the Federal Parliament is no more than a parliament of limited powers, powers set out in the Constitution. All powers not specifically granted by the Constitution to the Commonwealth are saved or reserved to the states under the Constitution.

There was a time when the people were regularly asked to give more powers to the Federal Parliament. In fact, they have been asked to vote more than once to transfer nine powers to the Commonwealth. Three of these had been put to the people on five occasions, monopolies, corporations and industrial matters. All of these proposed transfers were rejected by the people.

It is an appalling fact that most of these referendums would not need to be repeated today. Through a re-interpretation of the Constitution by the High Court of Australia they are no longer necessary. As a result, the Commonwealth enjoys powers which the people denied them. The High Court has even said that

in the interpretation of the Constitution, they cannot and will not be guided by a previous No vote in a referendum.

Most of you will have seen the reports eulogising the late American judge, Antonin Scalia. He was celebrated for proceeding from the very common sense view that the Constitution means what reasonable people at the time believed that it meant. He held that it was not for judges to change this original intention. If there was need for change this should be done by a constitutional amendment. He believed any other approach, for example that the Constitution had to be adapted to current values, or that it was a "living document", effectively meant the judges were saying that the Constitution means what they want it to mean. So most of the constitutional barriers to vastly increasing the role and function of the Federal government have been removed without the peoples' consent. In the meantime, the people are constantly told by the establishment that uniformity in almost every sphere of government is overwhelmingly desirable. This is linked to a second theme. This is that Canberra can be trusted to choose the best system to administer any sphere of government which must be made uniform.

This is invariably achieved by appointing expensive consultants who produce a report supported by vast amounts of modelling which inevitably concludes that there is one very expensive solution to whatever problems the consultants have discovered. This solution requires a vast new Canberra based bureaucracy to administer it.

That of course is not how the federation is intended to work. It is contrary to the experience and wisdom of all those who have lived under successful federal systems. It is contrary to the proposition first established by the American founding fathers that a large country can only be successful as a free democracy if government is devolved to the lowest possible level.

We federated on the basis that the new federal entity would have limited powers, with other powers being reserved to the states. The states were to be principally dependent on their own sources of income. They would be responsible for the spending of that income to the people of their state. The Federation would thus encourage competition between the states. People would then see when one state does something very well, for example in its hospitals and roads, and another state does it badly. People would for example say, "I have been to South Australia and they do this so much better than in New South Wales."

The much maligned former Premier of Queensland, Sir Johannes Bjelke-Petersen, demonstrated this. In 1977, against the strong objections of his Treasurer, he abolished death duties, a move that cost \$30 million in revenue. As a young article clerk I had seen what an evil tax death duties were, imposing heavy and inequitable burdens on farming and small business families at precisely the time there were no position to respond adequately. The result of the abolition of death duties was that vast numbers of Australians from other

states, especially the elderly, moved to Queensland. They voted with their feet. The impact was such that within months every other state abolished this tax and even Canberra followed by abolishing estate duty.

We have forgotten this example of how a Federation can and should work.

For some time now, Canberra has been trying to take over, at very high cost, areas of government for which it is manifestly unsuited. Education is an egregious example. The more the Commonwealth becomes involved in education the more standards seem to decline. The founding fathers knew this.

That is why education was neither an exclusive nor even a concurrent power to be exercised by the Commonwealth. Yet the Commonwealth has been able to get away with what is a breach of the Constitution.

The founding fathers were also no doubt aware of the fact that if the Commonwealth were to undertake tasks best left to the states, it would inevitably neglect and mismanage those tasks which were the very reasons why we federated. Take for example, the defence of the Commonwealth, including the protection and maintenance of our borders. There can be no doubt that the acquisition of the Collins class submarine fleet and now its replacement represents one of the most appalling and continuing failures in government administration in our history. And remember, there is no more important role for the Federal government than defence. (This means the government should be concerned about the true defence of the Commonwealth and not be distracted by such peripheral issues as the provision of advice on Islamic matters to the Navy, gender fluidity in and the provision of halal food to the Armed Forces.)

We see a similar problem at the State level. This is probably the result of the states being converted into clients of the Commonwealth and forced to exercise too many of their powers under the tutelage and direction of Canberra.

Probably the most important function of any state government of legislature is what used to be called maintaining the Queen's peace, that is, protecting us against crime. There was a time when the states were effective in exercising this power.

But in 2005 in the Sir Ninian Stephen Lecture, New South Wales' prominent Crown prosecutor, Margaret Cunneen SC delivered a lecture at the University of Newcastle in which she said something no one at her level would say but something which in lay terms was being repeated over and over in the lounge rooms and in the pubs of the nation: "Perhaps it is time for us to consider whether public confidence in the courts is now being eroded by the perception that the pendulum has swung rather too far in the direction of the protection of the rights of the accused person."

That was true then and it is true today.

Ladies and gentlemen. We are seeing a continuing decline in the delivery of government in this country. The solution I believe lies in making the politicians more accountable. We see in the United States a magnificent example of democracy in action in choosing the candidates of each of the parties for

election. This operates not only at the level of the president but at every level of government. The contrast in Australia is dramatic. With exceptions, it is hard to imagine a more closed system, one which ensures candidates are chosen not too much on their merits but for their allegiance to some faceless powerbroker. In return for the cornucopia of legal and financial and branding privileges which the parties enjoy, they should at least be required by law to be open transparent and democratic.

We should be looking to other countries are ways in which we can make our democracy more accountable and more reactive to the wishes of the people. Our North American examples and the Swiss example which achieve this.

It is timely that a convention be elected to consider the reform of government in this country and to make recommendations to the people. After all, that was the only way we could have achieved Federation.

Such a move would not involve turning our backs on pulling down the Federation and instead building upon it.

We should not only recall those wise words of the great Irish statesman, Edmund Burke, we should apply them:

"It is with infinite caution that any man ought to venture upon pulling down an edifice which has answered in any tolerable degree for ages the common purposes of society, or on building it up again, without a having model and patterns of approved utility before his eyes.

Society is indeed a contract ... It is a partnership between those who are living, those who are dead, and those who are to be born."

[This theme is developed in Give Us Back Our Country, How to make the politicians accountable...on every day, of every month, of every year, by David Flint & Jai Martinkovits with a Foreword by Alan Jones, Connor Court, 2nd ed, 2014]