

Address by the Rt. Hon. Sir Ninian Stephen

What we are today celebrating, the first half century of Australian citizenship, is something that initially crept into our lives quietly, almost unnoticed, in 1949. It was a crucial part of that gradual process of evolution which has, this century, transformed Australia from British colony to independent nation-state. The process of evolution, begun in the last century, has had none of the drama of revolution but in its own quiet way has in its outcome been as dramatic in effect as the bloodiest of revolutions.

We may be rightly cynical about the importance of the calendar, of the fact, made so much of today, that a century is ending and a new millenium is beginning. For a majority of the world's population this marking out of the years and centuries must seem meaningless, based as it is upon a religious faith that is not theirs and which is anyway known to have taken as its baseline an incorrect year as that of Christ's birth.

But for Australians the fact remains that the units of time marked out by what we know as the 19th and 20th centuries accurately enough divide up into neat compartments much of our constitutional history culminating in our citizenship. In the first half of the 19th century settlement in Australia consisted of no more than a group of British colonial possessions, extensive in territorial claims but tiny in population numbers, their peoples lonely on the fringes of a strange and largely unexplored continent and governed by the representatives of a far off home government in Whitehall.

The second half of the century began the process of transformation when, punctually at mid-century the Australian colonies' government act of 1850 and the other imperial legislation that followed it in that mid-century decade, gave to the people of those colonies power to create legislatures, to fix their franchises and to amend their constitutions. As a result four Australian colonies emerged into the second half of the 19th century with partly elected legislative councils and power to modify their form of government as time passed. By the end of the 1850's those four colonies were joined by Queensland and responsible government existed in all but western Australia.

Then the coming of the 20th century, with equal regard for the calendar, saw federation an actuality, with the Australian constitution proclaimed on 1st January 1901, the first day of the new century. But no question of Australian citizenship then arose. The concept had been discussed in the 1890's, in the great constitutional debates that led to what was certainly then and may still be unique, a world first, the creation of a federal constitution drafted by the elected representatives of the people of the colonies and approved of at popular referendums continent wide. Only the exclusion of indigenous people and, in all but one colony, of women from the franchise marred its fully democratic character. But as voted upon and as subsequently enacted by the imperial parliament the constitution was silent as to Australian citizenship and so

continues to this day. Instead it is to “the people of the commonwealth” that the constitution refers.

So citizenship of Australia is a creation of our parliament and not of our constitution. But parliament very nearly achieved adherence to the same temporal pattern of development half century by half century when it only anticipated the next half century by some two years by creating Australian citizenship in early 1949.

Whether this remarkable adherence of our constitutional development to the calendar of the centuries and half centuries persists, with the dawn of the 21st century seeing Australia as a republic, will depend on the outcome of the referendum later in this year. What is certain is that Australian citizenship is now firmly entrenched in our community, albeit lacking that aura which surrounds citizenship in the United States and in France. Perhaps it takes revolution to lend auras to citizenship. For us in Australia citizenship, as I have said, came so painlessly as to have been barely noticed and our citizenship lived happily enough in double harness with the old title of British subject for the next twenty years until, in 1969, Australian citizens ceased to also bear the title of British subject, and instead were to have the status of British subject. That in turn was dropped in 1984 since when we are simply Australian citizens and no more.

Citizen and citizenship are, to the ear, benign and peaceful words, like those of “civilian” and “community”; very different from the martial ring of “nation” and “nationalism” and innocent of the implications of force and subjection which “subject” carries with it. But for Australians, citizenship expresses much more than a mere benign relationship to our country of Australia and to our fellow Australians. It is the key to so much that is at the heart of being an Australian. The word can be used in two different senses, the formal and narrow one of the possession of various statutory rights and duties and the wider one of the sharing in common with fellow citizens of certain civic values and beliefs, belief in our democratic institutions and in our freedoms, including the right to criticize those same institutions and to seek new freedoms, while at the same time valuing the privileges which citizenship confers and accepting in full the significant responsibilities it imposes on us.

Why we as a nation have not in the past perhaps accorded to our citizenship its full value, usually giving little thought to the concept of citizenship, may be because, like nationhood, it has been bestowed on us without struggle or violence. Perhaps too, because all the benefits it brings with it we take rather for granted as inalienable rights that we of course possess. All this is some indication of our good fortune in living as we do in a country at some remove from the trouble spots of the world, an island continent with no border disputes with neighbours and with a population not torn by centuries-old ethnic feuds. This happy state now seems likely to be somewhat overtaken by the shrinking of our globe through the advances of technology, that phenomenon perhaps unhappily described as globalisation. But, as we will hear in this conference, globalisation may in fact, far from imperiling the present relatively even tenor of our ways, lead to an enlargement of the whole concept of citizenship, so that we may ultimately move from Australian citizenship to become world citizens, with national boundaries transcended and the rule of law of each nation transformed into a truly international rule of law prevailing worldwide.

Australian citizenship has, since its creation, been in a continuous state of development over the past fifty years. The legislation that initiated it has seen many amendments over those fifty years, some thirty of them in all, with the result that the present legislation enshrining it is scarcely a model of law-making and is certainly no document to stir the blood of patriots. But that has never really been its purpose. Essentially it does no more than describe who are citizens of Australia, whether by birth, adoption or descent, how one may become a citizen and how one may lose and may later resume citizenship. It does not attempt to describe the rights of citizens or their obligations, leaving this to a whole variety of other acts which take up the status of citizen as defined in the Australian citizenship act and confer rights and impose obligations by reference to that status.

In limiting itself in this way the act achieves its limited purpose well enough but, although it is the source of citizenship, it discloses none of the high significance of the citizenship it creates, which is why it will never be a document which Australians may regard as enshrining their birthright. However in its given role it has proved to be a highly successful mechanism by which Australia, as a country which has welcomed millions of migrants over the past fifty years, establishes the ground rules for the grant of citizenship to those who come to make their home here.

The citizenship which the act creates has proved an extraordinary success in the very area which it was designed to foster, that involved in the melding into our national community of those millions from overseas who in the last half century have chosen to settle in Australia. Since world war ii and the discarding of the concept of white Australia and with it the recognition of Australia's future, like that of Canada and the united states, as a land of mass migration, citizenship has played the key role in welcoming migrants into the Australian community. The record it has achieved has been remarkable, of the over four million post-war migrants who have to date made their home here well over three million have already become citizens. Of migrants who have lived here for thirteen years or longer almost 77% have become citizens and what makes this statistic truly remarkable is that that 77% has been achieved despite the fact that the two largest sources of our migrants, Britain and New Zealand, contributed relatively little to that total. Of all those over the years not taking up citizenship, as recorded in the 1996 census, a good deal more than half have been from Britain, New Zealand and Ireland. Their reasons can only be matter for speculation but it seems not unreasonable to suppose that very many of them, and the Canadian and united states migrants too, have felt so much at home in the Australian community that they have not felt any need to initiate steps towards acquisition of citizenship, being content to remain simply permanent residents.

Post-war Australia early determined that consistently with its liberal reception of migrants should be a no less liberal availability of citizenship. Some nations who have welcomed guest workers from abroad in time of full employment have made it very difficult indeed for them to become citizens. This has left those migrants, even into the second and third generations, facing the possibility in times of economic down turn of having, at short notice, to leave the country they have made their homes in and may have lived in much of or all of their lives.

Australia, instead, has through its citizenship policy not only welcomed migrants but has facilitated their becoming an integral part of the Australian community. Perhaps the best evidence of this lies in the volume of 1996 census statistics about citizenship from which I have already quoted. At first sight a bleak document, it in fact makes fascinating reading. It shows for instance that of the almost 125,000 Greek migrants eligible for citizenship 97% had by 1996 become citizens and the figures for migrants from Yugoslavia, Hungary, Poland, the Baltic states, Egypt and a number of southeast Asian nations are also all over 90%. Those are the figures as at 1996 and since then this remarkable move towards citizenship has continued.

The great role of citizenship, its remarkable accomplishment, lies then really not with those of us who are Australians born and bred but, rather with those millions who, migrating to this land, have of their own free will chosen to become citizens and thus become an intimate part of the Australian community. I say of their own free will because Australia has not, as it might have done, exerted pressures upon them to become citizens by otherwise excluding them from valued entitlements. Without citizenship migrants eligible for citizenship who choose to remain as only permanent residents are still entitled to share in very many of the benefits which citizens enjoy, including the right to remain in Australia as residents, and to share in the pension and other social welfare rights which citizens enjoy. So it has been very much the desire to join fully in the Australian community as citizens that has produced these very high rates of acquisition of citizenship. And that was precisely the aim of the creation of Australian citizenship, as a nation-building tool once we opened the door, post-war, to large scale migration in no way confined to settlers from the British Isles.

It is in the light of this achievement of the Australian citizenship act to date and confident in the belief that, as in the past, Australian governments will continue in the future to treat the act as a flexible tool, subject to occasional review and frequent consequential amendment to keep it attuned to current needs, that I believe that the attainment of the citizenship's half-century is well worthy of celebration.

The University is to be congratulated in convening this conference in celebration of this first half-century. Those of us at this conference, members of the citizenship council, who have the task of reporting to the minister on our citizenship legislation and more generally on Australian citizenship, will be listening to and reading with great attention what the distinguished speakers from all over Australia and from overseas have to say about the whole range of aspects of citizenship which are to be discussed; listening too to the discussion groups as they debate some of the very issues with which the council is actively concerned.

So let the discussion begin, subject only to what, in my early version of the programme, is, charmingly described, perhaps nostalgically, as morning tea.