



Order of Australia Association
Western Australian Branch

Address by

The Honourable Wayne Martin AC
Chief Justice of Western Australia

Royal Perth Golf Club
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Introduction

Major General Barry Nunn AO RFD ED, Chairman of the WA Branch of the Order of Australia Association and Mrs Margaret Nunn, distinguished guests too numerous to mention and fellow members of the WA Branch of the Order of Australia Association.

I have been asked by the Patron of the branch, His Excellency the Governor, Mr Malcolm McCusker AC CVO QC, and Mrs Tonya McCusker, to convey their sincere apologies for their inability to be present this evening due to another engagement.

Serendipitously, the unavailability of His Excellency the Governor has provided Margie and I with the opportunity to attend this annual dinner in a number of capacities. It is a great pleasure for us to be present this evening to renew some old friendships and hopefully make some new ones, and I am honoured to have been invited to address this august gathering.

Investiture Ceremonies

Since my appointment as Chief Justice, Margie and I have been privileged to attend many of the investiture ceremonies held at Government House twice a year following the announcement of the Australia Day and Queen's Birthday honours. We always try to find the time to attend these occasions not only because they are pleasant and enjoyable, but because they provide a tangible affirmation of the strength of our community and of the commitment which so many members of our community have to improving the lot of their fellow Australians. At those ceremonies it is heartening and reinvigorating to see so many

Australians from so many walks of life, almost all of whom could be described as quiet achievers, unsung heroes, if you like, obtaining the recognition and acknowledgement which they so richly deserve after years of community service.

In the course of my work as a Judge, I am exposed to many of the less salutary characteristics and traits of human nature on a daily basis. A jaundiced view of the world and its inhabitants is something of an occupational hazard. Our regular visits to the award ceremonies serve the important purpose of restoring one's faith in human nature, and reminding us of the strength of our community and of the importance of citizenship.

Citizenship

Citizenship is often seen as a right, or a bundle of rights, arising from membership of a community of fellow citizens. The rights commonly associated with citizenship include the right to reside in and amongst the community of which one is a citizen, the right to vote, and the right of access to the courts for the purpose of enforcing the many and various rights that accompany membership of a community. In most legal systems, including our own, citizenship can be acquired by birth or by a process which requires the applicant for citizenship to demonstrate that he or she has in fact become a member of the community, and should be allowed all the rights which flow from citizenship.

Citizenship and Community

John Donne famously observed that "no man is an island", and the notion of individual citizenship, or of citizenship unrelated to or isolated from community is a nonsense. I digress to observe that John Donne took what was to become his most famous utterance seriously, and certainly did not

live an insular life. His wife, Anne, bore him 12 children until she died tragically a few days after delivery of the 12th. But the essence of citizenship lies in the relationship which it characterises between the citizen and the community of which he or she is a member - a relationship of mutual rights and corresponding obligations because, of course, every right carries with it a correlative obligation - a matter to which I will return.

The notion of citizenship as characterising the relationship between an individual and his or her fellow human beings is evident in the well-known expression "citizen of the world" which can be traced to the writings of Cicero in the first century before Christ. The same expression was used more recently, although still some time ago, in 1625, by Francis Bacon in his essays published under the title "Of Goodness, and Goodness of Nature" where he wrote:

"If a man be gracious and courteous to strangers, it shows he is a citizen of the world."

In this passage, Bacon reinforces the notion of citizenship as a characteristic of the relationships and dealings between an individual and his or her fellow human beings, whether they be friends or strangers.

Bacon was an eminent jurist. He was appointed Queen's Counsel, served as Attorney-General and later as Lord Chancellor. He wrote extensively on legal topics, and was one of the first to document the fundamental principles of the common law. But his interests were not limited to the law, and he wrote also in the fields of philosophy and science - today he would have been described as "multi-talented".

He was, however something of an enigma. He and his wife lived well beyond their means, and he fell into debt. He was stripped of the office of Lord Chancellor in 1621 after he admitted accepting gifts from litigants. He endeavoured to justify his conduct by asserting that he had never allowed gifts to influence his judgment, pointing to one occasion upon which he had given a verdict against those who paid him. Before we scoff too loudly at these assertions, we should remember that only a couple of years ago, the Supreme Court of the United States was divided on the question of whether a judge who had received a donation of \$1,000,000 towards his election campaign (he being a judge in one of the many States where judges are elected) was disqualified from hearing a case in which the donor was a litigant. The minority, which included Chief Justice Roberts, thought there was no reason why the judge should disqualify himself from sitting - perhaps on the basis that the donor, like Francis Bacon's benefactors, could not reasonably expect to obtain any dividend from their benefaction.

Corruption was not the only scandal ensnaring Bacon. Some writers of the day accused him of being a pederast and sodomite although others have contested these slanderous assertions. There does not appear to be any enduring hard evidence in support of these allegations, and they may derive from nothing more than the fact that Bacon's wife was 14 when he married her (he being 45 at the time), and that they had no children. However, neither of these things was uncommon by the standards of the day.

Bacon's interest in science proved his undoing. He was conducting experiments into the possibility of improving the storage and preservation of meat by freezing it, by stuffing a chook with snow in a snowdrift near

Highgate when he contracted influenza which turned into pneumonia and killed him on 9 April 1626. On his deathbed he wrote to a friend comparing himself to Caius Plinius the Elder, who lost his life trying an experiment about the burning of Mt Vesuvius. Bacon had removed his wife from his will some years earlier, when he discovered that she was having an affair with one of their friends. She had no reason to be concerned by her excision from the will, however, because following his death, his estate realised about £13,000, whereas his debts exceeded £23,000, so he died insolvent.

The Obligations of Citizenship

As I mentioned earlier, it is an axiom of jurisprudence that every right must be accompanied by a corresponding and correlative obligation. The rights which accompany citizenship are well known and are easily identified. The corresponding obligations of citizenship are not so readily evident outside the investiture ceremonies to which I have referred.

The obligations which accompany membership of a community were acknowledged many centuries ago by John Locke who was a follower of the philosophy of Bacon. In his "Second Treatise of Civil Government" (published in 1690) he wrote:

"The only way by which anyone divests himself of his natural liberty and puts on the bonds of civil society is by agreeing with other men to join and unite into a community."

This was written in a context in which Locke was extolling the powers and liberties of the individual, when he wrote in the same chapter:

"Man being ... by nature all free, equal and independent, no-one can be put out of his estate, and subjected to the political power of another, without his own consent."

So, according to Locke, the only way in which the natural and intrinsic freedom and independence of mankind can be curtailed is by consensual joinder with others to form a community.

Locke's voluble assertion of the inherent freedom and independence of humanity is a little difficult to reconcile with the fact that he was a major investor in the Royal African Company, the primary business of which was the supply of African slaves to the American colonies, and with the fact that he assisted in drafting the constitution of North and South Carolina in terms which basically established a feudal aristocracy in which a master had absolute power over his slaves. Critics have suggested that when Locke was writing of "man", he had in mind landed English gentry, rather than humanity as a whole.

The Importance of Community Service

Earlier I noted that the awards in the Order of Australia, and other associated awards, acknowledge and reinforce the importance of community service. A moment's thought quickly brings to mind many aspects of our daily life in which we depend upon services voluntarily provided by others without a view to profit or reward. Government cannot do everything, nor should it try to do everything. There are many areas of endeavour in which non-government organisations can and do provide services more effectively and efficiently than government ever could.

This fact has resulted in some services that one might have expected to be within the core services provided by government being left to NGOs historically. One of those areas concerns the transport of medical patients. Ambulance services are provided by St John's Ambulance and aerial ambulance services are provided by the Royal Flying Doctor Service, both of which are voluntary not for profit organisations. Although they receive substantial funding from government, it is apparent that the element of community service which pervades each organisation makes it a more effective supplier of services than a government department.

There are many other examples. I am proud to serve as a member of the Board of Directors of Holyoake which provides a number of programmes dealing with substance abuse. Most our funding comes from State and Federal government, who accept that we are better at providing services of this kind than they would be. Our welfare systems are structured on an assumption that charities like Anglicare, the Salvation Army, the Perth City Mission and others will provide frontline services to the poor and needy in our community. Not for profit hospitals and schools form a vital part of our health and education systems.

Financial Rewards

A free market for the provision of labour is generally thought to be an efficient economic mechanism for relating financial reward to the value of the services provided. However, there are some areas in which the free market does not work so well in relating financial reward to either the value of the service provided, or the burden placed upon the service provider. In my own field of the law, Legal Aid lawyers working enormously long hours in regional and remote Western Australia,

travelling very long distances by road after a day in court in order to keep up with the magistrate's circuit, sleeping rough, using the boot of their car as their office and providing an enormously valuable service to the inhabitants of those parts of our State, are paid a tiny fraction of the amount received by the partners in major commercial law firms who work in comfortable offices with the support and assistance of many legal and other staff.

In the field of medicine, the lives of many in a rural community may depend upon the services of their general practitioner who will often work longer hours and in more difficult conditions than a specialist working from nice rooms in West Perth who earns a lot more money. In the field of education, teachers in schools in remote communities, or in the socially disadvantaged suburbs of Perth, work in much more difficult conditions than those who work on the affluent campuses of the private schools in our leafy suburbs, but receive no greater financial reward for taking on that extra burden.

Why is it so?

Why do people do it? Why do people accept less money to do a harder job, or provide their services without remuneration at all in order to assist others? It seems to me that there is abundant evidence to support a conclusion that the provision of assistance to others has become a basic human instinct perhaps arising, as part of the process of natural selection, from the fact that human beings have lived as members of communities, or tribes, if you like, pretty much from the earliest times when we appeared in the evolutionary scale. Surveys show the people feel good about helping others - the successful provision of assistance to another leaves one feeling happy and content.

Those of us who are Christians would be well aware of the maxim "Do unto others as you would have them do unto you". Less well known is the fact that Christianity inherited this maxim from Judaism, and in fact it is a fundamental tenet in virtually every world religion, including Islam, Buddhism, Shinto and Tao. The universality of this concept, as an aspect of religious practice, reinforces my proposition that it reflects basic human nature.

But this is not to say that community service can be taken for granted. Our society, particularly in this resource-rich State, is becoming increasingly affluent, materialistic and hedonistic. It is vitally important that future generations understand and accept that much is expected from those to whom much is given.

This is why it is so important to continue the practice of formally acknowledging and recognising those who provide conspicuous service to their community by awards like those within the Order of Australia. I do not for a moment suggest that anyone will be consciously motivated to serve the community by the prospect of obtaining such an award, or that any member of this organisation was thus motivated. However, not only do those awards appropriately recognise the contribution of the recipients, but more importantly perhaps, they reinforce the value and importance which we, as a community, place upon service to the community. That is why it has been an honour and a privilege to address this annual dinner of the WA Branch of the Order of Australia Association, and why I am looking forward to active engagement in membership of this Association.