

Indigenous people and Citizenship

A personal experience

Speech by

Colin Dillon

ATSIC Commissioner with the portfolio on the recommendations of the Royal Commission into Aboriginal Deaths in Custody

50th Anniversary of Australian Citizenship Conference

University of Melbourne

21-23 July 1999

Delegates; friends —

First of all, I wish to acknowledge the Wurundjeri people, who are the traditional owners of this region.

This is an important gesture, because only in the last two or three decades have our cultural needs and responsibilities begun to gain recognition.

Until we make more progress in this matter, discussion about citizenship can have no meaning for Indigenous people.

I note that an issues paper released by the Australian Citizenship Council earlier this year gave much emphasis to the concept of 'a fair go' and of tolerance and diversity in the community.

It talked of the place of democracy, national identity, shared civic values and civic pride in shaping the Australian community.

It spoke of a community belief that Australian citizenship is unifying force that both confers a benefit and invokes responsibilities.

But few Indigenous people would have seen practical evidence of these ideals.

We see little evidence of the mythical 'fair go' in our everyday lives.

We don't see much evidence of inclusion or benefit.

And far from unifying us, the democratic process works against our interests when it is captured by populism.

Other, more learned speakers will remind you that the right to vote was not made available to all Indigenous people until 1962.

The Australian Constitution did not recognise us until 1967.

And you should not need reminding that our people face a life expectancy that's up to 20 years less than non-Indigenous people and that we face 17 or 18 times the rate of incarceration of the rest of the community.

About 35 per cent of Indigenous people are unemployed, compared with 7 per cent of the mainstream population.

Let me quote a speech by the former Social Justice Commissioner, Mick Dodson.

With reference to the 1967 referendum, he said:

Many of the formal and overt forms of discrimination against Aboriginal and Torres Strait Islander peoples were, in principle, removed by this referendum.

Citizenship provided a ticket of entry into the political system. Unfortunately, it was a concession ticket which only gave us entry to the back stalls at some of the shows.

In practice, Aboriginal and Torres Strait Islander peoples did not, and still do not, exercise and enjoy basic citizenship rights. The daily experience of Indigenous people is the most shameful testament of the failure of the referendum. ()

Much of the thrust of the discussion on citizenship seems directed offshore — to set standards for those people who want to move to this country.

But I believe a discussion on citizenship must begin with a question about what it means for those people born here.

And that question must probe the reasons for the continuing failure of the political systems in this country to deliver equity and justice to the original owners and inhabitants of this country.

It is ridiculous to hold immigrants to standards we do not — cannot — maintain for ourselves.

Until 30 years ago, governments energetically pursued policies designed to reinforce the idea that Indigenous people did not deserve citizenship.

State and territory governments bear most of the responsibility for the problems in our communities today.

Today, they tell us that both citizenship and reconciliation have been extended to Indigenous people through the provision of housing and health services and opportunities in education and employment.

But the question is this:

How does the late provision of basic entitlements offset in any way the legacy of discriminatory policies that were active in parts of this country as recently as 15 years ago?

Let me illustrate with Western Australia's Natives (Citizenship Rights) Act that operated until the early 1960s.

It specified that an Aboriginal person was entitled to apply to a magistrate for a certificate of citizenship only if that person had spent two years dissolving tribal and native associations.

That person also had to be deemed a fit and proper person who had adopted the manners and habits of civilised life, could speak English, had two references from reputable citizens and was not suffering from a number of common diseases.

The Certificate of Citizenship — people called it a “dog licence” — could be suspended or cancelled by a magistrate if that person later fell foul of the Native Administration Act or contracted leprosy or other disease.

This legislation operated for perhaps 15 years after the Commonwealth had passed the Nationality and Citizenship Act.

The question has been raised whether Western Australia thought it had the right to over-ride common law and the Commonwealth act. ()

But WA was not alone — other jurisdictions had similar legislation.

And as police were often the only government representatives in remote areas, they often had a prominent role in enforcing these policies.

Police had control over the property and physical movement of Indigenous people and had the task of removing children from their families.

In NSW between 1914 and 1934, the listed duties of police on Aboriginal reserves included making recommendations on the use of reserve land, administering visits to doctors, enforcing school attendance; and preventing people of mixed descent from visiting the reserves.

When Queensland became a separate colony in 1859, the government instituted measures for eliminating Aboriginal people from the land to make way for livestock.

It used the brutal and disloyal Native Police to scatter Aboriginal people.

Queensland later passed the Aboriginals Protection and Restriction of the Sale of Opium Act, with subsequent amendments — all designed to maintain firm control of Indigenous people.

Most states instituted the dog tag system for Indigenous people who were deemed civilised.

These gave us permission to walk the streets after sunset and purchase alcohol from licensed premises — usually a hole in the wall out the back of a hotel.

The Queensland Act remained in effect until 1984 and I can testify that it was enforced.

Overall, the Australian mainstream definition of citizenship and supporting legislation has not provided equality or freedom in Australian society.

It's for these reasons that a number of my Indigenous brothers and sisters regard acceptance of Australian citizenship as a betrayal of our rights and cultures.

They refuse to participate in a system that continues to deny Indigenous sovereignty and to erode Indigenous heritage.

They see no benefits conferred by citizenship and no prospect of governments meeting their fiduciary duties to Indigenous people.

By virtue of the oath of office I swore upon being inducted into the Queensland police force in 1965, I can't be counted among these campaigners.

But I don't dismiss their arguments, which carry the weight of international law.

And I believe it's essential for any meaningful debate on the nature of citizenship to look at what the community will do to reassure my sceptical brothers and sisters — to draw them in.

In my own case, bitter experience has given me plenty of scope to understand such scepticism.

On entering police training in 1965, two years before the referendum, I found it frightening to realise that I was the only Aboriginal person on the police force.

The only others were the Black Trackers, universally regarded as inferior with no police powers.

It was conveyed to me — informally but very bluntly — that I had entered the wrong profession, that there was no place for a black man as a sworn officer in an all-white police force.

I persevered and endured the unfettered racism and hard training and was eventually formally sworn in as a Constable.

Yet even as I stood in the parade that day for the ceremonial swearing in of constables — a moment that should have been the proudest in my life — I remember the Commissioner as he made his inspection.

On coming to me he commented to the parade Sergeant “He’s a bit on the dark side”.

My troubles continued — not only was I not wanted within the Police Force but my chosen profession and its associated tasks alienated me from my own people.

Even the enactment of the Racial Discrimination Act in 1975 offered no respite, as it would have been sheer folly to formally complain in a work environment that quite openly tolerated racial and discriminatory practices.

I have suffered more from racism in the profession of policing than I ever did from within the wider community.

But it’s important to remember that police don’t just enforce the laws enacted by parliaments, they practise behaviour tolerated by society.

Most discussions about citizenship for Aboriginal and Torres Strait Islander people assume that what is positive, equal and fair for mainstream Australia is positive, equal and fair for us.

But our people have been excluded from participating in and defining our governance systems and Australia’s identity as a nation.

Today, Australia camouflages this exclusion through token participation and consultation.

But there is resistance to recognition of the fact that Indigenous people are not like everyone else — we are the First Australians.

And the political argument that advocates the non-recognition of Aboriginal and Torres Strait Islander people has become embedded within Australian political thought and society.

The most blatant display occurs during debates on Indigenous rights to land.

For example, the rights associated with the practice of customary law, land and sea rights, cultural and intellectual property are either denied or constrained.

The word ‘equity’ and its literal meaning in terms of social justice for Indigenous people is clearly without meaning.

Far from assuming the lead responsibility in Indigenous affairs given to it by the 1967 referendum, the federal government is returning much of the responsibility to the states and territories.

Far from being concerned with setting consistent national standards, the Commonwealth is determined to hand back the function of interpreting and managing Indigenous rights to that level of government that has failed us so severely in the past.

This is the case with the native title amendments passed last year, with the proposed amendments to the Aboriginal and Torres Strait Islander Heritage Protection Act and with proposed changes to the Land Rights Act in the Northern Territory.

Our people have no grounds for confidence in any of these moves.

Sadly, history has shown that the states and territories cannot be trusted to deal with Indigenous issues without federal supervision.

The current fascination with such measures as mandatory sentencing and zero tolerance policing — measures that have a particular, adverse impact on the Indigenous experience of justice — is just one immediate example.

It shows how readily the states and territories react to populist sentiment — even though these measures constitute a breach of their commitments to implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

The reserves and mission of the past have been replaced with prisons as the means for segregation.

But at the same time, as we move into the new Millennium, it is wrong to believe that the policy of assimilation has gone away.

Today, assimilation is demonstrated through governments that inhibit the right of Aboriginal and Torres Strait Islander people to develop our own solutions.

The words 'self-determination' and 'self-empowerment' are not to be found in political vocabularies.

Today, children may not be stolen and exclusion from public places is unlawful, but the mainstream platform that denies Indigenous rights remains as a form of assimilation.

The rights of Indigenous people must be identified in the Constitution so that they shape the thinking of governments.

But beyond this, we look to the Commonwealth to fulfil its obligations to ensure that we are able to exercise and enjoy both our general citizenship rights and entitlements and our specific rights as Indigenous peoples.

In its 1995 submission on social justice to the federal government, titled Recognition, Rights and Reform, ATSIC called for the federal government to use legislation to enforce the access and equity requirements faced by all governments. ()

We also called for a commitment to developing acceptance of issues relating to intellectual and cultural copyright, customary law and self-determination in the development of government and legislative processes. ()

In companion with constitutional reform, ATSIC suggested that a Bill of Rights might be the most appropriate means for identifying and enforcing Indigenous rights. ()

I expect that number of people at this conference might see the importance of a Bill of Rights to citizenship processes.

ATSIC also recommended the reform of the way in which the Commonwealth funds the states and territories to ensure greater accountability in the delivery of services and the treatment of Indigenous communities. ()

However, there is no sign of any action on these matters.

And so the Indigenous pursuit of recognition and justice continues and questions of equity of citizenship remain unresolved.

I want to conclude by saying that I hope this conference succeeds in paving the way for a more inclusive society where rights meet respect.

I hope that the highly trained minds giving their views this week can nudge the wider community towards a community that better understands issues of citizenship.

Certainly, I will listen with willing interest and — where warranted — enthusiasm for the ideas presented.

I hope to return to ATSIC with some insight to guide us in our own policy decisions.

It would be a great thing if this conference could move some way towards agreeing on what we mean by citizenship and how we measure it.

Citizenship must mean more than houses and jobs and an oath of allegiance and waving flags.

It can't ignore history — in fact, citizenship must be about history.

The principles of citizenship should instruct governments — especially state and territory governments — on how to behave at the first whiff of populism.

This is especially important for Aboriginal and Torres Strait Islander people — because we can't afford to buy public opinion.

Thank you.

Dodson, M. Citizenship in Australia: An Indigenous Perspective. *Alternative Law Journal* 22(2) April 1997, pp 57-59

Attwood, B. and Markus, A. (in collaboration with D. Edwards and K. Schilling). *The 1967 Referendum, or When Aborigines Didn't Get the Vote*. Canberra: Aboriginal Studies Press 1997

Aboriginal and Torres Strait Islander Commission, *Recognition, Rights and Reform — Report to Government on Native Title Social Justice Measures*, Canberra 1995, recommendations 9-10 (p 39)

Ibid., recommendations 11-14 (p 40)

Ibid., recommendation 16 (p 41)

Ibid., recommendations 59-66 pp 82-84)