

CONCLUDING REMARKS - THE PAST AND THE FUTURE OF CITIZENSHIP IN AUSTRALIA

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One of the most difficult problems in a conference as diverse as this one is to establish what the discussion of citizenship is most fundamentally about. While I do not think we can determine anything through searches for consensual definitions, my own beginning point, regarding citizenship, is the same as the one contained in the papers by John Chesterman and Brian Galligan, and Jane Connor. It seems to me like them, that when we discuss citizenship we are discussing what is and what ought to be the relationship between the individual and the polity or the state.

A concept is often best seen by locating it in relation to concepts with which it is, in one way or another, contiguous. It comes naturally to Australians, given the history of our law, to contrast the idea of the citizen with the idea of the subject, an alternative description of the relationship between the individual and the state where she or he resides. The contrast between subject and citizen – and the twisted road in Australia from one to the other – is at the heart of Alastair Davidson's work in this area, and of the paper he presented to this conference.

Conceptually speaking, the idea of the subject seems to be rooted in feudal thought, reflecting the time where the individual owe the highest secular authority of the state in which he or she happened to reside, that is to say the sovereign or the Crown, allegiance and where, in return for that allegiance, the sovereign owed the subject protection or care. The alternative idea of citizenship, which exists in Greek and more narrowly in Roman legal thought, burst back into western consciousness during the era of the late eighteenth century revolutions in America and France. It represented a new imagined relationship between the individual and the body politic. In the revolutions sovereignty was thought to reside not in the monarch but the people. At least a part of these people – male and white and perhaps propertied - were now thought of as active political participants in the body politic, and then as citizens of the republic, no longer subjects of the British or the French Crown.

In the case of Great Britain and the non - rebellious British settlerist colonies, like Australia, the relationship between the idea of subject and citizen has been, until recent times, rather complex. Within Britain or British colonial societies – essentially because Britain's republican experiment occurred in the seventeenth century and because the British monarch was restored after the failure

of the republican interregnum, the idea of the subject lived on in Britain far longer than in the United States or those parts of Europe which had dispensed with their monarchies in the course of the nineteenth century or at the end of the First World War. Until very recent times in both British and British settler societies the words and thus the ideas of both subject and citizen rubbed shoulders, as it were. Let us take the Australian case. Before 1949, from a legal point of view, there were no Australian citizens only British subjects who resided in Australia. After 1949 individuals born in this country, British-born immigrants and the so called “aliens” who have been “naturalised”, were British subjects and Australian citizens. After 1969, Australians were no longer British subjects in name. After 1984 they were no longer British subjects in fact. What is important here, I think, is that although, legally speaking, a typical Australian born in 1930 would have been at different times first a British subject, then a British subject and an Australian citizen and, finally, an Australian citizen and nothing else, from the substantive point of view, insofar as the relationship between that individual and the Australian state did evolve over time, it did so independently of the changes in nomenclature. This case is seen most dramatically in the case of the Aborigines where 1949 means nothing from the substantive point of view – a matter which formed the subject of the contributions of Chesterman and Galligan and of Linda Burnie, to which I want later to return.

One way of looking at all this is to say that in British societies the legal conceptual distinction between the idea of subject and citizen has been, from the substantial point of view, confused, ambiguous and thin. Another way of looking at it is to say that in societies like ours the inner movement of our ideas and practices has been to make the transition from passive subject to active citizen progressively more real.

I am not inclined to agree with one of the views Alastair Davidson expressed in this paper, namely that citizenship under the Westminster system, as compared with citizenship in the American presidential system, is of necessity a compromised or partial kind. The distinction between the Westminster and the Washington model of representative democracy in essence – as Walter Bagehot pointed out last century – turns on the different kind of relationship between the executive and legislative branches. In the American system the executive and legislative arms of government are separate; under Westminster the executive branch is created and sustained by the legislative branch. I see no reason to believe that those societies which have, in recent times, imitated the Washington model of parliamentary democracy, like, for example, Russia, which has a powerful president as head of the executive branch and a separate parliament, provides a more propitious climate for active citizenship than those countries, like Germany or Israel, which have adopted one or another version of the Westminster model, albeit without the mythology of the Crown. Both the

Westminster and Washington models provide the possibility for a non-crippled citizenship under contemporary conditions. Equally, of course, the adoption of either the Westminster or the Washington model does not, by itself, guarantee the strength of citizenship from the substantive point of view. Regarding the future wellbeing of Australian citizenship, minimalist republicanism Westminster without the Crown need not be opposed as maximalist republicans, like Alastair Davidson, would like us to believe.

Concerning the idea of subject and citizen there seems to me some more things to say. If we think of subjects as passive members of the body politic and of citizens as potentially politically active ones – there is no reason to believe that the trajectory of the twentieth century has been unambiguously from subject to citizen. There are two main reasons here. In the first half of this century in two types of political systems – the fascist and the communist – the idea of the passive subject, legally rightless in regard to the state, was reborn with a vengeance. I have always regarded it as absurd to speak of citizens of Nazi Germany or Fascist Italy or the Soviet Union.

In the past two decades within those kinds of societies where to speak of an active citizenry was not absurd – in the United States, Great Britain, Western Europe, Canada, Australia and so on – different kinds of threats to the idea of the active citizenry have begun to appear. This threat comes from within the process we call globalisation. In contemporary conditions economics is at the heart of the politics of a modern democracy. It seems to me, however, hard to deny that over the past twenty years or so the direction of things has been to reduce the economic independence of the nation state and its capacity to stand outside the economic patterns of the international or transnational world.

At the time the Chifley government passed the first Australian Citizenship Act, when Australians voted for either the Liberal Party or the ALP they were voting for substantially different economic futures. Over time the choice the voters have has been narrowed. The narrowing, moreover, is almost certainly connected with the loss of economic sovereignty by the nation state in the era of globalisation. As Stephen Castles argues in part of his paper, as economic sovereignty departs the nation-state, so does the possibility of active citizenship recede. One reason for the anti-political mood of the citizenry in so many western democracies is, I think, the recognition among citizens of their impotence. From this point of view the age of globalisation represents a crisis for the idea of substantive citizenship which is so intimately bound up with the ideas both of representative democracy and the independent nation-state.

If we take as our premise the idea that citizenship is the real or ideal description of the relationship between the individual and the state, we can think of citizenship by contrasting it with another closely related idea with which it rubs shoulders - the idea of nationality, an idea raised in different ways in the papers of Professor Ooman and Jane Connors. Individuals may be said to belong to or participate in a state by virtue of their citizenship. They may also be said to belong to or participate in a state by virtue of their nationality, as Britons or Greeks or Australians. What, then, is the relationship of these two ideas, of citizenship and nationality, in our own country?

The idea of nationality in Australia seems to me a very complex one, even leaving aside for the moment one element in that complexity – the relationships between indigenous and non-indigenous Australians. Australia, since the arrival of the British in the late eighteenth century, was for the first three-quarters of its history remarkably homogenous from the ethnic point of view. Overwhelmingly its population came from the United Kingdom or Ireland. From federation to the mid-1960's non-Europeans were excluded as migrants. Before 1945, moreover, even amongst European sources of migration the preference for the British or the Irish was very clear. As a consequence of all this, the ideas of citizenship in Australia and of British nationality as the overwhelming ethnic source of that citizenship were closely tied. Full Australian “citizens” were British subjects. To be a British subject in Australia one had either to be born here or to have migrated from the United Kingdom or Ireland or to be a former “alien” who had been (interesting word) “naturalised”.

In part the naturalisation of aliens was a legal matter, connoting certain years of residence here, proven capacity with the English language, and so on. In part, however, the non-formalistic aspect of the naturalisation of aliens represented, in addition, a cultural process whereby these aliens were expected to pass through a cultural process known as assimilation. As Ann-Mari Jordens rightly pointed out in her paper, assimilation of migrants in Australia was a far less harsh process than the assimilation of the indigenous population, with far less harmful consequences from the psychic and cultural points of view. Nonetheless, under assimilation, non-British settlers in Australia and especially their children were expected, in general, to conform in language, dress, habit, food, styles or thought and even places of residence to the pre-existing “Anglo-Celtic” norms of the provincial British settlerist society to which they had migrated. The full participation of a naturalised alien in the political, social or cultural life of Australia was, until the 1960s, made possible by successful assimilation. From this point of view citizenship, in the fullest sense, was only really open to those former aliens who had assimilated culturally to the nationality of their hosts. Nationality, therefore, in Australia was a powerful force not necessarily based on ethnicity or blood but on a hegemonic,

derivative Anglo-Celtic culture.

From the 1960s the distinctive idea of an Anglo-Celtic Australian national character slowly died away. From this time the expectation of the assimilation of migrants - from Europe, the Middle East and East Asia - was gradually abandoned in favour of a new idea known as multiculturalism. Multiculturalism has meant very different things in many different places. In Australia, however, it has meant essentially a newly imagined relationship between non-British settlers and the groups of British and Irish settlers and their descendants. Under multiculturalism Australia was reimagined as an ethnically diverse society where Anglo-Celts were the largest but no longer the culturally hegemonic group. Under multiculturalism, at first in theory and then, more gradually, in practice, the non-Anglo-Celtic settlers in Australia were able to become, not only legally but also genuinely, full citizens without having first to pass through the pressure cooker of assimilation.

Concerning Australian citizenship, Australia's historical past as part of the British Empire and Commonwealth has left certain anomalies which have not yet been entirely cleared up. One concerns voting. The only non-citizens who can vote in Australia are British citizens who had the vote before 1984. One of the questions presently being considered by the Australian Citizenship Committee, before it makes its recommendation to government, is whether or not these British citizens ought to retain their franchise while they opt not to take out Australian citizenship. The anomaly of the citizens of a country the High Court has recently called a foreign power voting in Australian elections will, I suppose, become particularly obvious if Australia becomes a republic. While logic might suggest their disenfranchisement - after all if these people took out Australian citizenship they would not even lose British citizenship - political pragmatism and perhaps the capacity to tolerate non-harmful anomalies suggest to me, as they do to James Jupp, in his paper, something else, namely that sleeping British bulldogs are best left in peace.

Another problem we must confront is the relatively low citizenship take up of the British settlers and also of their New Zealand kin. For those who hope that, so far as possible, the permanent residents in Australia will signal their attachment by becoming citizens in law and thereby open to themselves the possibility of full political and civic participation, there is a real puzzle as to why so many British and New Zealand migrants do not bother to take up citizenship. One possible explanation is that there is inverse relationships in Australia between the propensity of migrants to take up citizenship and the cultural comfort they experience here. Another explanation may be ignorance. Many British citizens are unaware that they may become Australian citizens without losing British citizenship. Public education here may help. Perhaps, also, they do not take up

citizenship because so many do not have anything, even the vote, to gain. Finally there may be an embarrassment factor. Many long-established British settlers, who have long thought unselfconsciously of Australia as their home, might anticipate with something less than pleasure a public ceremony among newly arrived migrants from the four corners of the world. One possibility that has been the subject of some discussion on our committee, but where no final position has emerged, is the possibility of recommending to government some form of less public ceremony for old established residents, where the grant of citizenship might less flamboyantly take place.

I think it is fair to say that the Committee of which I am a member is often caught, when thinking about the process of encouraging citizenship take up, by a rather paradoxical thought. It is, I think, true that most of us are committed to thinking about ways to encourage permanent resident non-citizens to take up citizenship. On the other hand most of us also value the characteristic fact that in Australia there are, apart from the franchise and the right to public service jobs or parliamentary seats, few discriminations between citizens and permanent residents, and little sense that permanent residents are as Australians second class or that, as in so many countries, citizenship is an exclusionary category, bestowing benefits on those who hold it and disprivileges on those who don't. One of the problems concerning the future of Australian citizenship is how it can be endowed with greater meaning - not only for non-citizen settlers but also for the native born, without making the idea of citizenship more exclusionary or sharpening the dividing time between citizen and non-citizen. The fact that Australia is the kind of country where people may be uncertain about whether or not they are citizens is a kind of negative virtue that should not lightly be challenged or overlooked. It is the easygoing nature of citizenship in Australia that is one of its most appealing features.

When we think of citizenship not in its wider meaning but from the narrow or legal point of view, the largest question facing our Committee concerns the thorny issue of what is most usually called "dual citizenship". I speak now on this rather sensitive topic from what I must insist is a personal point of view. On the question of "dual citizenship" I have come to the opinion that Australian citizenship law is at present in an unsatisfactory state because it discriminates in favour of new settlers and against the native born. With regard to non-citizens, Australian citizenship law is, in general, very generous. It has permitted several million migrants to take up Australian citizenship without requiring them to renounce their previous citizenship. As a consequence, the Department of Immigration estimate that there may be at present as many as four or five million dual citizens in Australia, from the UK, the USA, Canada and elsewhere. On the other hand, those native born Australians who take up citizenship in the UK, the USA or Canada or elsewhere automatically lose

that their Australian citizenship. Why Australian citizenship law evolved in this direction I simply do not know. Our Committee has had many very interesting submissions from Australians living or working overseas who have been torn between the often practical reasons for taking out citizenship of another country in the course of advancing their business or their careers but who are distressed by the necessity of relinquishing the citizenship of the country they were born in, love and still think of as home. In a globalising world and in a world where the possibility of overlapping identities and allegiances is more and more understood, the discriminatory Australian citizenship law, which treats the non - native with consideration and the native born with harshness, seems to me at least impossible to defend.

There is here an associated point. At present under article 44.1 of the Constitution those who are citizens of a foreign power are excluded from standing for parliament. In recent weeks the High Court has made clear that this includes dual citizens from Britain. Under its citizenship law, then, Australia accepts the idea of dual citizenship for the non-native born but, under its Constitution, does not accept that these dual citizens, who have the capacity to renounce their country of first citizenship but have not done so, are entitled to sit in the federal parliament. The situation is more anomalous still. Certain countries, for example Greece, do not allow their former citizens to renounce their citizenship. So long as a Greek Australian taking Australian citizenship has made some effort to renounce his or her citizenship, (of what kind none can say), he or she can take a seat in the federal parliament. An Australian citizen also holding original British citizenship cannot. This situation would certainly have puzzled our founding fathers. The only obvious remedy seems to be a constitutional amendment with regard to article 44.i.

One final point. The Australian Citizenship Council has found it useful to distinguish between the legal aspect of citizenship law, which we have agreed to call citizenship with a capital C, and the more general aspects of citizenship, which we refer to as citizenship in the lower case. From this perspective the question of the future of Australian citizenship with regard to the Aborigines is worth considering. The relationship of citizenship and the Aborigines is, as several speakers at this Conference have remarked, a remarkable one. In the first century and a half of European settlement Aborigines were British subjects. Between 1949 and 1969 they were Australian citizens and British subjects. After that time they were Australian citizens in name and then in fact. And yet throughout Australian history, until some time in the 1960s according to Chesterman and Galligan, Aborigines have been subjects in the genuine sense of the word, lacking radically the most fundamental citizenship rights - not only the right to the vote in many states, but also to control over property, to freedom of movement, to the protection of industrial law, to the choice of whom they might marry

or cohabit with, to control over their own children's lives.

Since the late 1960s the Aborigines have become full citizens in both the legal and the substantive sense. However, the legacy of this long history of rightlessness cannot be overcome overnight. At present Australian are involved in a process we call reconciliation. It is a process not concerned so much with the terrible problems of health, employment and education as with the recognition by the non-Aboriginal citizenry of the depth of the injustice dealt out to the Aboriginal people during the course of the European settlement of Australia, and a willingness by the Aboriginal population to accept that the recognition of injustice goes deep. Coming to terms with the past is a prerequisite of the reconciliation process. Only on the basis of such a kind of reconciliation might Aboriginal citizenship become real.

The final speaker at this conference, the Minister for Immigration and Multicultural Affairs, Philip Ruddock, is involved with the reconciliation process as well as with citizenship. On both points, I thank him for his work and wish him well.

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