

# "Immigration and Citizenship"

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## **A Nation of British Immigrants?**

Australia has been simplifying its citizenship definitions and laws since Federation in 1901. Today it has two basic classes only: citizens and non-citizens. The latter are immigrants born outside Australia who have not become naturalised or are not yet eligible to be naturalised. The former includes those immigrants who have become naturalised, the children of 'legal permanent residents' who have been born in Australia, and all others born in Australia to the Australian-born, including Aborigines and Torres Strait Islanders. We have now ended the four-part system which I have outlined elsewhere (Jupp 1996 ) namely: British subjects (born or naturalised) of European origin; aliens of European origin; non-Europeans; and Aborigines. While not specifically detailed in Commonwealth legislation, these four classes existed *de facto* from 1901 until the adoption of Australian citizenship in 1949 and, in some respects, beyond that date. The important transitional period was between 1966 and 1973, which included the ending of the White Australia policy and the assumption of the Aboriginal affairs power by the Commonwealth through the referendum of 1967.

Australia is a nation of immigrants in the same sense as the United States which first adopted this self-description. Since 1788 it has been peopled overwhelmingly from overseas and through births to those who came from overseas within the past two hundred years. The great majority of these, about 75 per cent, have been of British or Irish origin. Until 1949 British citizenship ( or more correctly subjecthood to the British Crown) was the only form of citizenship available to Australians who did not wish to remain aliens.

Today 23% of permanent residents were born overseas and only 55% were born to parents who were also born in Australia - the rest having one or both parents born overseas. Of the 55% hard core of 'native Australians' most cannot trace the mainstream of their local ancestry much further back than the 1880s, though this is less true in the two 'founding colonies; of New South Wales and Tasmania than it is elsewhere. In contrast to the United States many of the founding families in Australia were of convict origin. Thus less prestige attaches to earlier generations than is true, for example, for the 'first families in Virginia'.

Despite this, 'being there first' is still relevant in Australia as elsewhere in determining the popular view of the 'real Australian'. The new multicultural agenda launched by John Howard on 5 May stresses the British and Irish inheritance and the origins of Australian political institutions and practices in the British Isles (NMAC 1999). While advocates of multiculturalism have never denied this, it was presumably spelt out as

a counter to the proposition that multiculturalism was only for immigrants or 'ethnics'. Indeed the prime minister, and the document he was launching, placed great emphasis on the notion that 'multiculturalism was for all Australians', as Professor Zubrzycki had already argued nearly twenty years before. (Zubrzycki 1982). While not too much should be read into an official document which had been extensively revised and rewritten, this was at least a useful corrective to the notion that Australia is 'the most multicultural society in the world'.

Australia is only very multicultural compared with its former self ( before 1950) or because it contains a very wide variety of different origins, languages and religions - often represented by very small numbers of people and including, of course, the indigenous peoples as well as immigrants and their second generation children. It does not include very large numbers of very well established and regionally based ethnic minorities, even when compared with the United States, Canada, New Zealand or Britain, let alone India, Indonesia or the late Yugoslav federation. Rather it contains a very large core of those derived from the British Isles, either directly by British immigration, or more numerous by descent . Increasingly these are added to by British-derived immigration from New Zealand, South Africa, Canada and the United States, all becoming more important as Britain becomes less so. New Zealand is now the largest single source of immigrants, passing Britain for the first time since 1788 only in 1996.

Thus while there has been a massive shift away from the idea of a 'new Britannia' which inspired immigration policy from the 1830s to the 1950s, at least one-third of all new settlers are still essentially 'British' in their origins, at least to the same extent as the majority of Australians. Not all those derived from Britain are culturally the same, as anyone from Ireland would quickly confirm. The very term 'Anglo-Celt' has been officially banned in New South Wales because it suggests an amalgam between these two component elements of the British Isles peoples. It was, of course, not invented in the current politically correct environment but by E.W. O'Sullivan almost a century ago as a rejoinder to the then popular definition of the British as 'Anglo-Saxons'. The point is, however, that at least three-quarters of Australians speak only English, trace their ancestry back to the British Isles and have largely abandoned the division between Catholic and Protestant which was so important in Australia before post-War immigration introduced a new 'other' ( the New Australian) into the country, followed after 1975 by an even more noticeable Asian 'other'.

Australian citizenship has now been liberalised to an extent almost without international parallel. The above lengthy preamble (to use a fashionable term ) seeks to suggest that while the dichotomy between British and alien has now been replaced by that between citizen and non-citizen (which also embraces the distinction between European ( 'Caucasian') and Asian) it is highly probable that the traditions of the past and the realities of the present still influence popular ideas about citizenship regardless of the letter of the law. It also remains true that the previous status of indigenous Australians as 'citizens without rights' still colours attitudes and practices, especially in those jurisdictions where Aborigines form a significant part of the local population. Orwell's famous slogan "all

animals are equal but some are more equal than others" might well apply in a society where some came earlier than others and where there is a multiplicity of small ethnicities clustering around a large cultural core. This is not the same sort of society which Australia was before 1940. But it is not a multicultural society in the same sense as the United States, Canada, India or South Africa. Moreover, some parts of this vast country are little more multicultural than they were fifty years ago, most notably those areas in which One Nation got a high vote in 1998.

### **The Inheritance of British Australia**

Until 1949 there was no Australian citizenship nor was there any effective immigration control over British subjects who were also of 'European' appearance and culture. Between 1831 and 1940 generous assisted passages ensured that immigrants from the British Isles would come to Australia in preference to the much closer destinations of the United States or Canada. During that period 1 068 311 took advantage of this system. With small exceptions for Germans and Scandinavians in Queensland, these were all British subjects from the British Isles. Even after assistance was extended to Europeans from 1947, British immigrants greatly outnumbered them until assistance and preference for the British was finally ended by the Fraser government in 1982. Between 1947 and 1981 the English-born population increased by 506 838 - the Scottish-born by 48 631 - the Welsh-born by 12 246 - and the Irish-born (North and South) by 22 925. Of these well over half were on assisted passages and the numbers obscure the fact that almost one-quarter were returning home by the late 1960s.

If racially acceptable under White Australia it was very unusual for a British subject to be rejected for admission. Of course free and assisted passages were more carefully screened for health and skill. When I arrived without assistance, without money and without a job in 1956 the officer at Fremantle said "welcome to Australia". When I returned as a tourist in 1976 I had to be interviewed by an immigration officer at Manchester to get a visa. When I returned as a permanent settler in 1978 I was not only interviewed in Toronto but had my fingerprints taken by the Royal Canadian Mounted Police. This little vignette is included to show that there were no advantages to being an Australian citizen in 1956 but that there were considerable benefits by 1978, which I quickly took up soon after I arrived.

One inheritance of this preference for British immigrants in the past is that British subjects are the largest element in Australia unwilling to take out Australian citizenship. This is despite the fact that United Kingdom citizens suffer no disadvantages from dual citizenship and, indeed, now have free entry to all the states of the European Union as well on their UK passport, a privilege denied to the Australian-born. All governments urge naturalisation upon immigrants and have progressively made it easier over the years. The 'problem' of dual citizenship or the failure to take up citizenship have preoccupied governments and spawned various citizenship drives over the years. The 'problem' is often misstated because of the failure to realise that by far the largest component among non-citizens are the British and that by far the largest number with dual

citizenship are also the British. Stephen FitzGerald was 'amazed' during his conduct of the review of immigration in 1988 to find that one million permanent residents had not taken out citizenship. But his hostile reaction to multiculturalism and his strong advocacy of citizenship obscured the reality that the most obviously assimilable of immigrants are the ones least likely to become citizens. This also greatly puzzles American social scientists, for whom naturalisation has long been taken as an indicator of assimilability.

The 'problems' of British reluctance to naturalise can be greatly overstated. The main problem for most British non-citizens is that they must secure a re-entry permit if they leave Australia. Many do not know this and some have been refused re-entry much to their amazement. Any competent travel agent can sort that one out! Indeed, the Commonwealth could sort it out if only they accepted that permanent residents who have been in Australia for half a lifetime have become part of the 'Australian community' and should not need to apply for readmission to what has become their homeland. This is too simple for the Department of Immigration but courts have been making similar judgements since the early years of this century.

The second 'problem' is that all British subjects (including those not from the British Isles) who were admitted for permanent residence prior to 1983 retain the right to vote. As virtually all of these are now adults this amounts to a considerable part of the electorate, especially in South Australia and Western Australia which have always been the states most proportionately favoured by British immigrants. This agitates Ausflag in particular, who feel that the British are most likely to want the monarchy and the existing flag. Their solution seems to be to deprive several hundred thousand voters of that right - an equitable but not politically very advisable solution! Certainly there is an anomaly, though it might be noted that all British Commonwealth subjects residing in the United Kingdom also have the right to vote there regardless of their date of entry. They do not, of course, constitute the same proportion of the electorate, but certainly run into more than two million adults. This privilege they share with 750 000 citizens of the Irish Republic also living in Britain.

The third 'problem' is that the status of British subjects seeking public office is not the same today as it was when the Constitution was drawn up a century ago. British-born migrants are the most likely of the overseas-born to be elected to parliaments and local councils, to serve in the armed forces or to hold public service positions. For all of these an oath of allegiance is required and for most of them citizenship or evidence of intent to become a citizen is also required. The most contentious provision at present is probably s.44(i) of the Commonwealth Constitution (House of Representatives 1996). This prohibited election to the Commonwealth parliament to any person who "is under any acknowledgement of allegiance, obedience or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a citizen of a foreign power". This section lay dormant for fifty years, as very few elected politicians were not native-born after 1918 and few cared about the British-born (or even those like King O'Malley who merely claimed to be British-Canadian-born when he was actually born in Kansas). The only case recorded until recently was in 1950 when a challenge to a Catholic for owing

allegiance to the Pope was dismissed as frivolous and vexatious (*Crittenden vs. Anderson*).

The dormant nature of s. 44(i) changed as more immigrant candidates began to be elected, especially as some of these were not British immigrants. *Sykes vs. Cleary* (1992) sparked off the whole issue although it had originally been looked at by a Senate Committee as early as 1981. Although the issue against Cleary was holding an office of profit under the Crown (s.44(iv)) it was noted that two unsuccessful candidates ( Kardamitsis and Delacretaz) did not appear to have taken sufficient steps to renounce their Greek and Swiss citizenship, despite becoming Australian citizens. A British-born Senator-elect, Robert Wood, was ruled ineligible in 1988, as he was not an Australian citizen but merely retained the right to vote in Australia. More recently Senator-elect Heather Hill of One Nation, who is also British-born, has been challenged as not having renounced her British citizenship. The case which is proceeding raises the very interesting question of whether the United Kingdom is a 'foreign power', given that it was not so in 1901.

Repeated reports have urged the amendment of s.44(i) so that it simply prohibits non-citizens from sitting in parliament, as in virtually all other societies. But the political implications of putting this to referendum seem to have terrified governments on both sides of politics. While the number of overseas-born Commonwealth parliamentarians is only about twenty (of whom at least half are formerly British ), the wider implication is that several million Australian citizens holding dual citizenship or entitlements ( for example to pensions or to a second passport ) are ineligible to be elected to public office. This is far more important than the rights of the small minority who currently are elected, especially as it may also affect those born in Australia of immigrant parents from some states.

### **Non-British Immigrants**

The 'problems' of dual citizenship faced by the British are a relatively recent development and refusal to take up citizenship is probably more of a 'problem' to those involved than it is to the state. Many British non-citizens are active in public life and many have the vote without becoming citizens. Change of citizenship does not invalidate United Kingdom citizenship and the oath of allegiance was, until recently, to the Queen of Australia who happened to be the same person as the Queen of the United Kingdom. Presumably a republic would clarify much of this confusion in people's minds though constitutional and legal clarification would still be needed.

Of greater importance is the situation of those citizens who do not derive from a British background. All changes to citizenship and immigration law for the past fifty years have moved progressively towards the present status in which such a background no longer carries any special privileges in law. Non-British immigrants are more likely to

take up citizenship but there are compelling reasons, such as the loss of rights in the homeland, which prevent some from doing so. The assumption in popular thinking that refusal to take up citizenship is 'disloyal' to Australia still needs to be eradicated in official pronouncements. Many Australians, moreover, do not understand that Australia cannot control the policies of other states. If those states choose to ignore Australian citizenship, as many do, then the immigrant has few protectable rights on returning to his original homeland as far as the Commonwealth is concerned.

As with the British, dual citizenship is much more of a problem for the individual than for the state, although it can also be very advantageous especially for those from the European Union. These advantages may even extend to Australian-born children, as for example under the United Kingdom 'patrial' provision. Immigrants, in fact, may often enjoy more privileges than the Australian-born, who lose their citizenship in most cases when taking up another. Their 'problem' might well be solved by abolishing this restriction, as the United States has now done. The notion that citizenship is unique and exclusive is incompatible with globalisation and states other than Australia are increasingly moving away from it.

The most important areas of concern for non-British immigrants now surround the issues explored through public policies collectively known as 'multiculturalism'. These seek to equalise life chances and to eliminate prejudice. These include the access to public services of those whose English is defective, addressed since the 1980s under the general rubric of 'access and equity'; success in achieving elected office, addressed much more gingerly since the 'agenda' of 1995; promotion within the public service; participation in political parties, trade unions and other public agencies; effective consultation - in general what the new 1999 agenda calls 'inclusiveness'. These issues were actively addressed from the Galbally report on migrant services in 1978 until the election of the Coalition in 1996. They have, unfortunately, usually rested with the Department of Immigration, which has led to them being classed as of no concern to the locally-born majority. They have also been seen as only applying to the 'ethnic' population, numbering between 18% and 25%, depending on the generosity of the definition. Even more regrettably, multiculturalism came under consistent ideological attack from the mid-1980s, much of it coming from those influential upon the Liberal--National Coalition.

The struggle against racism and prejudice includes the redefinition of Australians as citizens of the world rather than sons and daughters of the British Empire. Effective citizenship includes the election to public office of 'equitable' proportions from non-British backgrounds, something being only slowly achieved against the resistance of many already active in politics. Hopefully public policy will continue to move towards effective citizenship and incorporation of immigrants fully within the civil order. As the most recent agenda recommends, civic duty, cultural respect, social equity and productive diversity should be the principles on which "the Australian people and the institutions of our society base their actions and measure their achievements" (NMAC 1999, pp.82-83). Let us sincerely hope so!

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