CITIZENSHIP IN AUSTRALIA

ABSTRACT

In 200 years, Australia has moved from being a British-oriented society, with racially based immigrant selection as the basis of population building, to a multicultural society selecting new citizens from around the world. While this change has been accomplished with minimum friction, there remain some anxieties and problems, largely with respect to the citizenship rights and integration of indigenous (Aboriginal) Australians and immigrants. With few legally entrenched rights or freedoms, Australians so far have relied on British common law and parliamentary methods to protect individuals and groups and to extend citizenship.

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Australia once prided itself on being 90% British and 99% white. Those days are long gone, and politicians now frequently refer to it as "the most multicultural country on earth." Yet old habits die hard, and opinion polls suggest that at least one-third of Australians believe that only those born in the country are "real Australians." If the polls are reliable, this number represents more than one quarter who were born overseas. Moreover, many are worried that the increasing ethnic makeup of the population that has developed over the past fifty years somehow threatens social cohesion. But as this author has argued elsewhere, "Australia is among the most cohesive and harmonious societies on earth, based on stable institutions, high standards of living, economic expansion and isolation from zones of conflict" (Jupp et al. 2007a). All these conflicting characterizations need more analysis to bring them in line with perceived realties. There are ethnic tensions in some parts of Australia, particularly in western Sydney and in indigenous (Aboriginal) communities. There was a major race riot at the Sydney beach suburb of Cronulla in December 2005, a riot directed against those of "Middle Eastern appearance" (namely Lebanese). There is a "war on terrorism" directed in practice against Muslims, although no terrorist acts or deaths resulting from terrorist acts have occurred on Australian soil. This is in contrast to the 30 deaths resulting from drug-based gang wars between 1995 and 2006.

Citizenship laws: Then and now

Before looking further at the social situation, it is worth mentioning that Australia has moved from restrictive to very liberal citizenship laws over the past 50 years but now seems to be moving back to stricter procedures. It must also be remembered that between 1996 and 2007, Australia had a quite conservative government. This government did its best to wind back many aspects of multiculturalism with which Prime Minister John Howard disagreed and to reassert nationalist values, which he espoused. That government is no longer in power, but its replacement, the Labor Party, has not yet developed a coherent alternative. Politics are at the heart of citizenship, immigration and multiculturalism. These are all managed by the Department of Immigration, which gives a certain flavour to the debate. One of the first acts of the Howard government in 1996 was to shift responsibility out of the Department of the Prime Minister and Cabinet and back to Immigration. This emphasized the difference between citizens by birth, citizens by naturalization and non-citizens. At least the term "aliens" is no longer used, as it was for much of the past century.

Formal legal citizenship has developed through several phases since the British settlement of 1788. As a result of that colonization, all those born in Australia, including Aborigines, were deemed to be British subjects. As a result of the adoption of a distinctive Australian citizenship in 1949, this principle was applied to all those thereafter born in Australia. In both cases, race was not relevant to citizenship status, although in many other statutes it was. It is often wrongly asserted that Aborigines became citizens only in 1967, with the constitutional amendment transferring power over them to the Commonwealth. Nor is it true that Aborigines only got the vote with this change. They had already had the Commonwealth vote since 1962 but were slow to get a state vote in Queensland. The confusion arises from the anomaly of "citizens without rights." Aborigines under state laws before 1967 were subject to considerable controls on movement, behaviour, voting and welfare eligibility. In a federal system, there was room for great variety. But there was also considerable difference between the cultures of indigenous Australians north of the tropic of Capricorn and the increasing numbers moving into towns and cities. In contrast to indigenous peoples of Canada, the United States and New Zealand, indigenous Aborigines have never had a treaty status.

Apart from the anomalous situation of Aborigines, which is still a major issue in terms of living standards, they have enjoyed equal legal rights with all other locally-born citizens and slightly greater rights (being free from loss of citizenship and deportation, both of which are extremely rare) than

naturalized Australians. But in most other respects – health, life expectancy, education, crime, imprisonment and general living standards – they are uniquely disadvantaged, a situation that is a disgrace to successive Australian governments, which cannot or will not effectively remedy their conditions. This led the Howard government in 2007 to revert to some of the paternalistic practices that had previously limited the rights of the indigenous. This policy is now under review by the new government and was only imposed in the Northern Territory, which is under Commonwealth ultimate control and has an Aboriginal population of over 25%.

The principle that everyone born in Australia is a citizen was only recently modified by excluding children born to unlawful immigrants – a change following similar legislation in the United Kingdom. But in the past, there were several limitations on those not of "white" origin, even if locally born. They could not exercise the franchise, were not eligible to join the armed services or for permanence in the public service, could not access many licences to pursue occupations, could not sponsor relatives for immigration and, if born overseas, could not become citizens by naturalization and needed special permission to return to Australia. Some of these limitations applied under state law. But the most important ones arose from the immigration and citizenship powers in the 1901 Constitution, which rested with the national Commonwealth government.

The most important law within this power was the *Immigration Restriction Act* of 1901. This did not mention race at all but allowed an appointed migration officer the right to impose a dictation test in any European language – a method of exclusion derived from British South Africa a few years before. This power was used only against non-Europeans and was consciously used in a language the immigrant did not know. It gradually fell into disuse since shipping companies would not issue tickets to intending immigrants who were not "White," because the companies were liable for the costs of returning them from whence they came. However, the dictation test was not abolished until 1958, when a new *Migration Act* was introduced. The exclusion of non-Whites continued but was gradually modified until it was abolished altogether in 1973. Under the *Migration Act*, immigration officers did make decisions as to the race and colour of applicants.

The obverse of all this was that "White" British subjects (New Zealanders, those from United Kingdom, Canadians) could enter freely and become eligible for all the rights of locally born citizens, including the vote, after a nominal waiting period. Many thousands of immigrants from the United Kingdom who had the vote in 1984 still have it, although others subsequent to that date must now become naturalized citizens. Only in 1973 did these anomalies and discriminations stop. Now there are only citizens and non-citizens.

Since 1973, then, citizenship in the legal sense has been equally available to those born in Australia, with the exception mentioned above – the children of unlawful immigrants. British subjects have no more or no fewer rights than anyone else, except for the declining numbers retaining the vote without naturalization. Like all non-citizens, other than New Zealanders, they need a visa issued overseas to enter Australia. Citizenship through naturalization has been equally available for non-citizens, subject to criminal and security checks. But this is not the end of the story. After two centuries of building a British society, Australia counts many Australians who still see this as a desirable objective, or at least are anxious about the shifting ethnicity arising from mass immigration since 1945.

Shifting concerns

Many thousands of non-citizens are in the uncertain position of living on temporary protection visas after entering as asylum seekers. The policies adopted by the Howard government in this area have become world famous. This is a result of the arrest of the Norwegian tanker *Tampa*, in 2001, after it had rescued 400 asylum seekers, mainly from Afghanistan. The asylum seekers were removed to the remote Pacific island of Nauru, outside Australian jurisdiction but under Australian control. This went alongside a general policy of detention in remote centres such as Woomera and Baxter, the latter being custom built along the latest lines for prisons. Breakouts, riots and long-term detention brought this system into disrepute, and it was eventually ended by the new Labour government in 2008.

With the legal status of citizens equalized, public discussion moved towards the integration of both immigrant and indigenous communities. What this meant and how it was distinguished from assimilation depended on who was advocating it.

The asylum seeker crisis of the first years of this century coincided with growing concern about Islamic terrorism, culminating in the attack on New York City in 2001 and the bombing in Bali in 2002, in which 88 Australians were killed. The great majority of asylum seekers who were detained were Muslims from Afghanistan and Iraq. The Muslim population of Australia had risen to 340,000, according to 2006 Census, and was increasingly visible through the building of mosques and opening of Islamic schools (which received public funding). All this brought to a head the anxieties that had been festering ever since the temporary political success in 1998 of the One Nation Party based on a platform opposing multiculturalism and mass immigration. The Cronulla riot added a local dimension. Small racist groups like Australia First emerged, although conservative Christians and party members were more important. The Howard government had always been lukewarm about the policy of multiculturalism adopted by all successive governments since 1973. It also favoured English-speaking

migration, which was growing from New Zealand, South Africa and Britain. However, immigration numbers increased to a level higher than they had been for 30 years.

The effect of this overlapping of events and concerns was not to revive the extreme attitudes of the past but rather to shift concern away from "Asians," which had been the focus of One Nation, and towards "Muslims." Some conservatives called for a ban on Muslim immigration, others wanted to outlaw the *hijab* (headscarf). These were rejected by responsible politicians, not least because Australia lies next to the world's largest Muslim state in Indonesia and has major trading arrangements with the Middle East. Efforts were made to encourage immigration of "moderate" Muslims, although opposition to the Iraq war made this difficult. In one sense, the concentration on Muslims made life easier for others. There was little evidence of prejudice or violence against the Chinese, who had always been seen in the past as the main "menace" to White Australia.

With the legal status of citizens equalized, public discussion moved towards the integration of both immigrant and indigenous communities. What this meant and how it was distinguished from assimilation depended on who was advocating it. Multiculturalism was quietly revived as a public policy, made easier by the fact that all nine governments in Australia (Commonwealth, State and Territory) were controlled by the Labor Party. Public subsidies for schools of all religious faiths, hospitals and welfare agencies shifted funding away from the state and towards private initiatives, something conservatives and ethnic minorities both wanted. But legal citizenship was made more difficult to obtain. The waiting period was doubled to four years and a written test in English was added by the Howard government. This is currently under review after criticism of the questions that were being asked. As the chair of the review said, "there is no reason why knowing about sportsmen should be a criteria for citizenship," a view not held by cricket-mad John Howard.

Abuses of the anti-terrorism and immigration powers were also being reviewed. As the new Immigration Minister put it, his task was "to clear up the mess left by the previous government." However, Australia has no constitutional or legislative bill of rights, except in two lower jurisdictions. There is a strong view on both sides of politics that the British traditions of parliamentary supremacy and common law will suffice. Most cases of concern have affected non-citizens and, especially, asylum seekers, whose numbers have dwindled. The disturbing social conditions in remote Aboriginal locations were also under review in an attempt to balance individual rights with effective improvement. Self-determination had not worked in many instances, yet paternal coercion roused too many memories of previous failed policies to be acceptable.

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