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DEMOCRACY AND DUAL CITIZENSHIP

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Citizenship lies at the heart of democracy and, at present, there are two main ways of thinking about this in Australia. One is based on the idea of cool attachment: citizens should adhere to the procedural rules of the state and should not harbour strong emotional attachments to the nation. The other holds that citizens should do more than simply abide by the procedures; they should think of themselves as belonging to a people. The first view focuses on justice and tolerance, the second on collective identity and a concern for the common good which is nurtured by feeling as well as reason.

Proceduralism has more currency among intellectuals and members of the policy elite, while the idea of a national people is probably more popular with the electorate. The current move to legalise dual citizenship illustrates the political dominance of proceduralism.

PROCEDURALISM AND PEOPLEHOOD

Democracy means popular sovereignty: the people rule. To do so they must create a government which acts responsibly over the long term. How is this possible? The men and women who constitute the people are a collection of many millions of individuals, each with their own desires, talents and goals. Why should an aggregation of unrelated individuals keep wanting to honour obligations incurred by their predecessors and keep wanting to ensure a common future for those who come after them?

To create a polity which lasts, the individuals who constitute the people must be citizens of the same state but, beyond this, what sort of relationship should they have with one another? There are two main answers to this question. They can be grouped under the headings of *proceduralism* and *peoplehood* (or communitarianism).¹ The answer the proceduralist gives is simple: citizens need only agree to abide by the legal procedures governing their state. If the laws are obeyed rational self-interest will take care of the rest of their common life. As Kant put it, a liberal polity does not require virtue from its members; it can be

run well enough by rational devils.² A contemporary proceduralist would add that the rational devils should display tolerance toward each other. He or she may also argue that the procedures they share should be formally expressed as civic values. This will have a civilising effect; if individuals forget the need for the rule of law, the civic values will be there to remind them. Tolerance and justice are all we need.

From this perspective there is no need for citizens to have any particular fellow-feeling for each other. Indeed, it is better if they direct any generous impulses they have, not to fellow citizens, but to humanity as a whole; special feelings for compatriots might degenerate into narrow selfishness, rabid nationalism, racism, or worse.

The proceduralist is happy to imagine the state without the nation. Donald Horne, a leading exponent, is adamant that there is no such thing as the Australian community (and that if people do use the term they 'almost always mean conformity').³ In a brief sketch of his childhood in the country town of Muswellbrook he speaks of the meaninglessness of community and the practicality of the state:

The idea of an Australian community was not for us in Muswellbrook. Not that we didn't respect the state: it was there in the form of the railway station, the post office, the courthouse, the town hall, the school, the police lock-up, the Commonwealth Bank, the prickly-pear inspector, ready to be of use.⁴

The state provides useful services, but it would be foolish, if not dangerous, to become attached to it. The *How to be Australia* pamphlet puts it like this: 'In a world where nationalism is again a threat in Europe, and in Australia where one of the greatest changes has been an increase in diversity, we should no longer look for a national identity ... we should seek a civic identity'.⁵

The political community imagined by communitarians is different. Here citizens must feel a special connection with one another if the polity is to work over the long term. In this community kindness and generosity to compatriots are virtues and emotional commitment to the community matters. Without emotional commitment, individuals will be unlikely to sacrifice short-term personal interests for broader goals which serve the common interest, such as caring for aged veterans of wars fought long ago, fighting fires which threaten other people's houses, forgoing current income to preserve the environment or, indeed, paying for railways, schools and prickly-pear inspectors whether they themselves require these services or not.

Proceduralists either do not see any conflict between short-term personal interests and long-term collective goals, or they imagine that it is easy to persuade individuals to behave altruistically. Just point out what is right and they will respond. Communitarians are not so sanguine; they believe that if modern individuals are to form an enduring

society they need to care about each other and that this works best if they acquire a collective identity as a national people. A sense of being a people gives us responsibilities for debts incurred by our country before we ourselves were born and for its future after we are gone. One of the ways in which it does this is by providing a community of memory, a way of remembering the service of those who have gone before and inspiring new generations to give back to the community in their turn.

Communitarians believe that rational self-interest cannot inspire altruism and responsibility towards others and that groups cannot survive and prosper without these qualities; consequently they value the aspects of their common life which inspire them. Proceduralists see the state as rather like a service station where busy people can pull in, fill up with services, pay for them (with taxes), and move on. Communitarians think that, if such a state existed, it would be unstable. Who would build it in the first place, and who would want to invest in its long term future? What would motivate its managers and clients to behave honestly? Why should anyone want to care for clients who cannot pay? The buying and selling imagery repels them; they are more likely to talk of nations as families where affection and responsibility rather than self-interest shape people's actions.

In the communitarian vision members of the national society have to be motivated to invest in collective goods and to care for the weak. Distrust of other members threatens this motivation, but so does the risk of free-loading by outsiders. So some communitarians believe that we must distinguish between fellow citizens and others. They also believe that, without the infrastructure of the liberal democratic state, altruism towards outsiders

would be all but impossible. The need to give foreign aid, to abide by treaties, and to be a trustworthy participant in international forums, provides further moral reasons for discriminating between members and non-members.

The relationship between members and non-members is not only a question for foreign affairs; it is very much to the fore in immigration policy. Can non-members be admitted to the polity, can they become members and, if they can, how does this process affect the relationship between citizens? The phrase *social cohesion* is often used in answers to these questions but some proceduralists find it hard to understand. In 1991 the Bureau of Immigration Research commissioned a report on immigration and social cohesion. But the authors found the phrase so vague as to be virtually meaningless and decided that, instead of clarifying it, they would write about racism instead.⁶ If all a functioning society needs is some ground rules, plus self-interest and tolerance, one can take the first two criteria for granted and focus on the third — tolerance and its absence.

In contrast communitarians see social cohesion as the foundation which gives us the motivation to want to create rules and obey them (and as a resource to help us manage the excesses of self-interest). For them the phrase refers to the belief that, whatever else we might be, we are all Australians, members of a national community with a common responsibility for our shared future. We also share a common past. Even if our own ancestors were not here to shape this past we take pride in it, and responsibility for it, because it has formed the group that we belong to and identify with.

Proceduralists imagine that, provided migrants are law-abiding, it is easy to add them to the people. Communitarians may

be more cautious. If new arrivals do not identify with the national people, if they do not become members in heart as well as in form, feelings of altruism and responsibility for others may erode.

Both views value citizenship but they differ in their ideas about how citizens should relate to each other: the one emphasises civic values, the other national identity — a shared sense of belonging to an enduring people. At present proceduralism has wide currency among Australian intellectuals, as is evident in its prominence in the republican debate and in official reports on citizenship. This means that, even though most ordinary Australians value a sense of being a people, the communitarian view is not often articulated in public life.⁷

If we begin by recognising that the procedural model is more popular with reformers, policy makers and their advisers, and the peoplehood model with ordinary Australians, current debates about citizenship, including dual citizenship, become more intelligible.

AUSTRALIAN CITIZENSHIP

Australia is introducing a legal change that will, in effect, legalise dual citizenship. To understand this move we need to set it in the broader context of Australian citizenship law and practices. For most of the people born in Australia citizenship is unproblematic but for migrants the situation is different. Australia has long had a large migrant intake and has therefore been obliged to give active consideration to the rules of citizenship. It is clear that the Australian Government wants migrants to become citizens, and that this desire has become more compelling over the last few decades. Evidence for this growing desire comes in two forms: active campaigns to persuade migrants to apply and a progressive dilution of the

eligibility requirements.

Currently, permanent visas for Australia are hard to get, but citizenship is not. The rules are set out in the Australian Citizenship Act, first passed in 1948 but often revised.⁸ Once migrants had to live in Australia for five years. They also had to have an 'adequate' knowledge of English. In 1973 the qualifying period of residence was reduced to three years, in 1984 it was reduced to two and the English requirement to a 'basic' knowledge. In 1986 the oath of allegiance was changed. Previously, candidates for naturalisation had to renounce 'all other allegiances' in order to swear their loyalty to Australia.⁹ In 1973 the then Minister for Immigration, Al Grassby, wanted to drop this requirement. It 'has been a cause of great emotional misgivings amongst people who want to become Australians...', he said. The 'humane and sane course [is] to drop these distressing and ineffectual words about renunciation'.¹⁰ He was unsuccessful but, in 1986, under one of his successors, Chris Hurford, renunciation was indeed abandoned. (Hurford said that after a decade of multiculturalism, insistence on renunciation was 'ambiguous and unnecessary'.)¹¹ Today, documents on the Immigration Department's web site emphasise that, provided an immigrant's country of origin permits dual citizenship, migrants wishing to naturalise do not have to surrender their original citizenship.¹²

Since 1988 and the bicentenary year, reductions in the eligibility criteria have been accompanied by active campaigns to encourage more migrants to apply. For example in May 1994 Senator Bolkus announced a three-year 'major promotional campaign' costed at over \$4 million 'to encourage the take up of Australian citizenship and to enhance its profile and significance among all Australians'.¹³ The

message here is that no one should be deterred by any sense that the barriers might be steep, and that all who are eligible are urged to come forward.

Why has official enthusiasm for naturalisation increased? Perhaps policy makers hoped that higher rates of citizenship would legitimate the immigration program in the wider community, a need that became more pressing as opposition to immigration grew in the late 1980s.¹⁴ In 1988 the FitzGerald Report found that many Australians were unhappy with immigration and that they had come to see it as serving special interests, especially those of the ethnic lobby. They linked immigration with multiculturalism, a policy also seen as ethnic favouritism and, for some, the failure of many migrants to take out citizenship crystallised these grievances.¹⁵ Thus, managing public dissatisfaction with immigration is one possible reason. Another is the desire to promote social cohesion in an increasingly diverse society: reciprocal ties of altruism and responsibility are more likely to flourish when most people share a common citizenship.

If we focus on social cohesion, formal membership matters. Tourists, temporary residents and international students are just passing through. They are customers, here to suit their own interests. As in any market transaction, we hope that we may gain from the arrangement too. Provided neither defrauds the other, this hope may be realised but, like any other service provider, we do not expect altruism from our paying guests. Permanent migrants are different. They are not customers but potential compatriots. When they take out citizenship they are making a public statement that they are not just here for what they can get; they are throwing in their lot with us.

Taking out citizenship is a public

demonstration of commitment. Provided it is seen this way it promotes social cohesion and this provides the second reason for Governments to encourage it. But there is a third reason, which looks rather similar, and this is trying to ensure that migrants are not politically marginalised. Here the focus is on the interests of the migrants rather than their hosts; migrants must be helped and persuaded to become full participants in their new nation. These two reasons would be mirror images of each other were it not for the fact that some enthusiasts are so eager to protect migrants' interests that they do not want to place too much emphasis on formal citizenship. This is because such an emphasis might be exclusionary towards migrants who do not want to take it out. So they emphasise 'denizenship' or 'small "c" citizenship', arguing that legal long-term residents should be treated more or less as citizens regardless of their formal status.¹⁶ This is not the view of government but it has some currency among proceduralists. As Kim Rubenstein puts it, 'If a person ... [is] legally entitled to live in Australia permanently and participate in the community in other ways, why should they not be entitled to vote?'¹⁷ For her, 'the legal status of citizenship is not essential for membership of the community'.¹⁸

There is also a fourth possible explanation for recruitment zeal. Whether membership rules are tough or soft, many migrants will eventually become naturalised and then be able to vote. Given this, a political party can try to win their allegiance by extending a warmer welcome than others, and by offering more accommodating membership rules. The Australian Labor Party was the first of the major parties to seek out ethnic constituencies,¹⁹ and all of the changes in eligibility set out above occurred while

Labor was in power.

Diluting the rules on citizenship also conforms with structural multiculturalism, an ideology which paints Australian society as a mosaic of ethnic groups, each with their own identity, and none with any inherent right to take precedence over any other.²⁰ Here an easy membership scheme is part of the inclusive openness which old Australia should show to the new groups forming within it. Rules which are demanding are exclusive; they imply that candidates for citizenship should demonstrate commitment to the nation they say they want to join. They should live here for a substantial period, learn English, and publicly put their old allegiances behind them. Critics of such rules ask what is it exactly that a new migrant is being asked to be loyal to? A dwindling group of 'Anglos' among a jostling *mélange* of other ethnic groups? When multiculturalism allies itself with proceduralism the idea of a national people with a right to ask for loyalty appears to have no legitimate basis. Demanding rules come to look like an arrogant attempt by one group to assimilate the others to its norms,²¹ while permissive ones look like tolerant pluralism. Some, like Alistair Davidson, assert that Australians have never had a strong sense of identity and that, in any case, by 1972, what there was of it had been peacefully replaced by multiculturalism.²² Davidson has little time for communitarians trying to promote a sense of national community. He asks, 'What's so special about "Our Fellow Countrymen"?' The phrase means little in a migrant nation. Here 'to bring unity from diversity what is required is universalist value-neutral procedural politics'.²³

There are then at least four possible explanations for the trend towards weaker citizenship rules and, seen as a whole, all

but the second (which emphasises social cohesion) fit well within the proceduralist view. The second is compatible with peoplehood, with the idea that immigrants are joining a cohesive Australian people. But by the turn of the millennium, its significance in public rhetoric had faded. The most recent official report on citizenship is the Australian Citizenship Council's *Australian Citizenship for a New Century*, 2000. This report shows that proceduralism has captured the high ground (Horne is a member of the Council and Davidson and Rubenstein wrote submissions to it). The report urges Australians to take a 'balanced view' of the fact that 940,000 migrants who are eligible for citizenship have not applied,²⁴ and constantly reiterates the need for citizenship to be 'inclusive' and multicultural.

The fundamental tenet underlying Australia Citizenship is that of inclusivity and full participation in all aspects of Australian life. ...[and] as a general principle, the Government encourages migrants/new Citizens to maintain their cultural heritage whilst living in Australia.²⁵

Australian citizenship is now low cost; indeed *Australian Citizenship for a New Century* says that 'Australian citizenship laws now are probably the most generous and welcoming in the world'.²⁶ The membership rules are open, the price in practical and emotional terms quite reasonable but, for the utility-maximising individual, the advantages are also few. Permanent residents who have lived in Australia for two years have the same access to health, welfare and education as citizens; citizenship confers the right to vote, to serve on juries, to stand for Parliament (subject to section 44(i) of the Constitution, discussed below), to apply for an Australian passport and to register

a child born overseas as an Australian citizen.²⁷ Citizens also gain priority in sponsoring new migrants and are almost completely safe from the risk of deportation.²⁸

An Australian passport may be useful for some new citizens and immunity from deportation appealing to a few but, for most candidates, the practical advantages of citizenship over legal permanent residence are few. This leaves the symbolism of the act, and watering down the entry requirements of citizenship has been accompanied by a determined effort to talk up its symbolic aspects. This was clear in a citizenship report published in 1994 (*Australians All: Enhancing Australian Citizenship*)²⁹ and in the 2000 report.³⁰ But the irony is that under the procedural model the symbolism is thin.

Australian Citizenship for a New Century tried to make the symbolism of rules, tolerance and diversity mean rather more by expressing them in a set of explicit civic values labelled 'The Australian Compact', and by calling for a publicity campaign to promote these values.³¹ The Government rejected this part of the report (a move which suggests it is not entirely happy with the procedural model).³² But like *Australians All* before it, the 2000 report did recommend a specific legal change — that the Government legalise dual citizenship. This recommendation was not rejected.

DUAL CITIZENSHIP

The proceduralists focus on the law and are distressed by what they see as an anomaly in Australian citizenship law. As we have seen, migrants who become naturalised may keep their original citizenship if their country of origin permits. Though past officials did not emphasise this (and may have been unaware of it), de facto dual citizenship has existed here for

a long time. This situation has its origins in international law. In 1930 Australia signed the Hague Convention on Certain Questions relating to the Conflict of Nationality Laws (this treaty came into force in Australia July 1937).³³ This Convention holds that citizenship is a status granted, or revoked, by the nation concerned: Australia cannot deprive a Dane of their Danish citizenship just as Denmark cannot deprive an Australian of theirs.³⁴

Migrants who took the oath of allegiance before the renunciation phrase was removed in 1986 may have imagined that their public renunciation of all other allegiances meant that they had legally repudiated the citizenship of their country of origin. In fact, the renunciation may not have had any legal status. In a few cases if the homeland state knew that their former citizen had taken out Australian citizenship they would have automatically revoked the old one. However, in most cases, further steps would have been necessary for the renunciation to have been legally effective. For example, the new Australian citizen should have formally notified their previous government of their wish to renounce their old citizenship, or have taken what ever other action that Government required for effective renunciation. But candidates for naturalisation were not told this. Some may have known that their old country's laws of attachment were strong and that, irrespective of their new status, they risked conscription or taxation if they returned unwarily. Grassby had alluded to the fact that our procedures did not automatically obliterate old citizenship ties in 1973; this is why he said renunciation was ineffectual.³⁵ But this knowledge was probably not widespread. However, in 1992 it was made clear to all in the High Court judg-

ments in *Sykes v Cleary and Others*.³⁶

Prior to 1986 most Australian were probably not aware of renunciation's lack of force. Nevertheless, if migrants' former nations did not automatically revoke their first citizenship, we created a de facto dual citizen every time someone was naturalised. After 1986 more people knew, and after 1992 and *Sykes v Cleary*, everyone with an interest in citizenship should have known. Today the Government advertises this feature of the law to potential applicants for citizenship as an attraction. Adrienne Millbank writes that, 'Since 1986, successive governments have... not only tolerated, but even encouraged, dual citizenship for migrants'.³⁷

This situation developed as a by-product of international law and the citizenship laws of other countries; it is not one intended by the Australian people or their Parliament. The Australian Citizenship Act is clear on the matter; it does not permit dual citizenship. Section 17 of the Act provides that, except in relation to 'an act of marriage':

(1) A person, being an Australian citizen who has attained the age of 18 years, who does any act or thing:

- (a) the sole or dominant purpose of which; and
- (b) the effect of which;

is to acquire the nationality or citizenship of a foreign country, shall, upon that acquisition, cease to be an Australian citizen.³⁸

Presumably the authors did not imagine that a naturalised immigrant might be a dual citizen so they confined the express provisions of the Act to people who were already Australian citizens. Australians who take the citizenship of another country forfeit their Australian citizenship. Today most people who are subject to the letter of the law were born

in Australia; it is they who began life as Australians and who can therefore forfeit this status. Of course naturalised Australians also lose their Australian citizenship if they take out another after naturalisation, but they are allowed to keep the one they started out with.

This situation produces two classes of Australians: foreign-born Australians, some of whom may have dual citizenship, and the native-born who may not. While inclusive citizenship policies for immigrants have helped to bring it about, the situation has not been directly created by the Australian Government. But this does not mean that the Australian Government is powerless; it could always insist that migrants taking out Australian citizenship not only swear to renounce their former citizenship but also that they take active steps to make their renunciation effective. This is the procedure which the High Court recommends for those troubled by ambiguity and it is also the practice in Germany.³⁹ Offering dual citizenship to everyone is not the only way to resolve the anomaly. Insisting on exclusive citizenship for all is indeed an option but both the 1994 and 2000 reports made clear that such a move would run counter to the international trend as today an increasing number of countries recognise dual citizenship.

Both these reports emphasise this trend to dual citizenship overseas and both were troubled by the disadvantage suffered by Australians who lose their Australian citizenship under Section 17. But these people are not necessarily seriously inconvenienced. Since 1986 it has been relatively easy for them to reacquire Australian citizenship.⁴⁰ And there is also the question of 'who's to know?' At one time the Government put effort into finding out if its citizens were in breach of the Act by swapping data on naturalisations

with other countries. Today this practice has fallen into disuse, partly because it is expensive, and partly because there are fears that it breaches personal privacy.⁴¹ A lobby group entitled the Southern Cross Group was formed in Brussels in January 2000 to advance the interests of expatriates, particularly those who felt disadvantaged by Section 17.⁴² The advice on the Southern Cross web site is that most former Australians who have taken out another citizenship are discovered when they try to renew their passports at an overseas post. There they will be asked if they have taken out another citizenship. But if they take care to renew their passports in Australia they will not be asked. Thus, patching up the situation or evading discovery is not difficult.

HISTORY OF EFFORTS TO LEGALISE DUAL CITIZENSHIP

While the implications of international law have taken a while to surface, dual citizenship was first officially considered by a Parliamentary inquiry held in 1976. (For convenience I refer to dual citizenship but logically one should speak of multiple citizenships. Once more than one is tolerated there is no reason for an enterprising person to stop at two.) The 1976 inquiry concluded that dual citizenship was undesirable, partly on the grounds that it could disadvantage naturalised Australians who could be subject to conscription and taxation in their countries of origin,⁴³ and the change was not recommended. The authors may have been unaware that the Australian Government would have needed to have taken firmer action to ensure exclusive citizenship, or they may have known that they were talking about symbolism rather than the positive law. In any event, the report chose to protect the interests of Australians of migrant origin (as the

authors saw these interests) by upholding the position that migrants should not be allowed to have dual citizenship.

By the 1990s the situation had altered and pressure for a change in the law was building from some native-born Australians. They found a champion in the Department of Foreign Affairs and Trade (DFAT) where officials considered that efforts of Australians to export and to internationalise their business enterprises were being hampered by Section 17. At the inquiry for the 1994 report DFAT officials argued for the repeal of Section 17; in contrast, officials within the Immigration Department were unenthusiastic.⁴⁴ But the influence of DFAT prevailed and, as we have seen, the 1994 report recommended that Section 17 be repealed.⁴⁵

At that time the Labor Party, under Paul Keating, was in Government. They were supportive but, in the event, the recommendation was not implemented. The March 1996 election was too close and the Government may have sensed that the move would be unpopular. In September 1995 the then Immigration Minister, Senator Bolkus, said:

This would be a major change to our law, and there are complex legal issues involved which will need detailed examination ... In these circumstances it is not a practical possibility to steer through the necessary legislation during the life of the Parliament.⁴⁶

There is some indication that the newly elected Howard Government considered legalising dual citizenship in 1996; after all, the new Minister for Immigration, Philip Ruddock, had expressed strong support for the idea when in Opposition late in 1994.⁴⁷ If this did occur, Cabinet rejected the move. However, in February 2000 the idea of repealing Section 17 surfaced again in *Australian Citizenship for a New Century*. The Howard

Government has moved cautiously. The report was preceded by an issues paper published in February 1999. This was written by the Citizenship Council and called for submissions to its forthcoming review of citizenship; the paper mentioned dual citizenship as one of the questions to be reviewed.⁴⁸ After the report was published, the Government promised another issues paper⁴⁹ which duly appeared in June 2001, this time specifically announcing that the Government would repeal Section 17 but giving the community a further opportunity to comment.⁵⁰

In August 2001 the Minister for Immigration, Philip Ruddock, announced that the Government would indeed repeal Section 17,⁵¹ and to effect this introduced the Citizenship Legislation Amendment Bill to the House of Representatives on 23 August 2001. But the Bill lapsed when the November 2001 election was called. However, the Government reintroduced it on 13 February 2002. It enjoys bipartisan support; Labor's only regret is that the legislation is prospective and does not include easier rules for the resumption of citizenship for people who have already lost it.⁵² There is every expectation that the Bill will pass through both Houses of Parliament by mid-year.⁵³

For some decades dual citizenship has been a de facto right for some Australians; it is almost certain that, by mid 2002, it will be a de jure right for all. But this does not mean that all legal anomalies will have been tidied away. There is still the problem of who may stand for election to Federal Parliament and who may not.

DUAL CITIZENS AND FEDERAL ELECTIONS

When Section 17 of the Act is repealed Australians who acquire another citizenship will no longer have to surrender their Australian passports or their right to vote.

But this does not mean that they can stand for election to the Federal Parliament. Section 44(i) of the Constitution forbids it, and the Constitution can only be changed by a referendum. Section 44(i) says:

Any person who —
Is under any acknowledgment 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 subject or a citizen of a foreign power ...
... shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.⁵⁴

Thus a candidate must be a citizen of Australia and he or she must not be a citizen of any other nation. The *Sykes v Cleary* case focused on de facto dual citizenship and made the implications of Section 44(i) clear for naturalised Australians. But the same principle will apply to native-born Australians who acquire other citizenships.

Parliament can change the Citizenship Act but only the people can change the constitution. Will they be asked to do so? The Australian Citizenship Council believes that a referendum to repeal Section 44(i) should be held. Its language is 'archaic', it offends against the principle of 'inclusivity', and it ignores the principle of encouraging migrants to maintain their cultural heritage. Thus it is 'at odds with Citizenship law and government policies of successive governments' and other ways must be found to ensure the loyalty of Members of Parliament.⁵⁵ The debates on this section of the Constitution at the Constitutional Convention in 1897-98 make it clear that delegates were acutely concerned about the adverse effects of conflicting loyalties.⁵⁶ Archaic or not, Section 44(i) is written in the language of peoplehood,

a dialect that may still be the language of the electorate.

If a referendum is not held (or if it is held and fails) we will still have two classes of citizen in Australia. Instead of those who are allowed dual citizenship and those who are not, we will have those who may stand for Parliament and those who may not.

SUPPORT FOR DUAL CITIZENSHIP

Groups who would like to legalise dual citizenship include policy makers concerned about a brain drain of skilled Australians overseas, ethnic organisations, and transnational corporations who find that national citizenship laws of any kind impede their efforts to move employees about the world. Parliamentary debate on the Bill in February 2002 emphasised the theme of globalisation,⁵⁷ but intellectuals committed to the proceduralist point of view have been crucial. It is they who have made the arguments for change seem overwhelming and those against seem muted and indefensible. But the immediate source of current pressure to repeal Section 17 comes from Australian-born citizens living abroad, people who want to take out the citizenship of another country without losing the one they already have.

When the question was reviewed in 1994 some expatriates wrote individual submissions emphasising the unfairness of their plight.⁵⁸ Today they are more annoyed and, thanks to the Internet, more organised. The Southern Cross Group has played a central role in coordinating their

efforts to change the law. The Group consists of Australians (and New Zealanders) living abroad and was formed with the 'aim and purpose ... to advocate and work towards the removal of legal, financial and practical barriers which presently impede international mobility in the global economy'. In January 2000 it had the question of dual citizenship in Australia as the first item on its agenda.

Group members keep in touch by email and, individually and collectively, lobby policy makers to change the law;⁵⁹ indeed after the Government published its response to Australian Citizenship for a New Century it 'received close to 2,000 representations from people expressing support for the early repeal of Section 17'.⁶⁰ Laurie Ferguson, Labor's shadow minister with responsibility for citizenship affairs, describes the Southern Cross Group as a 'sensible lobby group', says that he 'particularly acknowledges their efforts', and adds that, 'We act on the basis of lobbying by groups which want this matter finalised'.⁶¹

The 1999 issues paper was sympathetic to expatriates' problems. The Citizenship Council wrote that Section 17:

may be deeply resented, in particular when one identifies as an Australian citizen but feels that Australia's formal boundaries are too confining for one's aspirations, whether regarding business or lifestyle.⁶²

From within the proceduralist perspective there is no reason to deny such people what they want. Though it is possible that plural citizenship may facilitate international crime,⁶³ there is as yet no evidence that plural citizens will break the law as they pass through Australia, or indeed that they will behave intolerantly, or cease to pursue their self-interest. Only narrow-minded parochials could object to such a logical attenuation of the rules of membership.

But what happens with dual citizens when times get tough? If enlightened self-interest and obedience to the laws is all that we require we should not expect too much from them. For example, Argentina is currently facing serious economic and political difficulties. It is also a country of immigration where many citizens either have two passports or the possibility of gaining an extra one. Many of them have been besieging foreign embassies trying to activate alternate citizenships and get away. They are not being threatened with persecution; they just want to avoid the difficulties that their single-citizenship compatriots must stand and face.⁶⁴ People have often emigrated in search of a better life; this is no crime. But the legitimization of dual citizenship also means the legitimization of fair-weather citizenship.

The authors of *Australian Citizenship for a New Century* cannot imagine that stable democracies might require committed members. They do acknowledge that some individuals want to feel a sense of belonging and commitment to their country and that they take pride in their nation's history.⁶⁵ They have some sympathy for such people but remind them that 'ideas about what is peculiar to Australia change over time' and warn them that such ideas must always be open to question and 'ought never form the basis of nationalistic gloating or self-regard'.⁶⁶ They try to wean readers of this kind from their dangerous attachment to the idea of the Australian nation and, instead of a sense of belonging to an organic community of memory, offer them the civic values of the 'Australian Compact'. If some Australians still need a focus for their loyalty it is these that they should cling to; nothing else is warranted, or safe.

From the proceduralists' point of view

it is fortunate that core civic values are not nationalistic; indeed they are the very opposite. These values also have the advantage that they do not engage emotional attachments, and are not limited to formal citizens. Thus they have the added attraction of approximating the essence of ‘small “c” citizenship’.⁶⁷

The Council is aware that the idea of defining Australia in terms of procedural values is new, and probably unpopular.⁶⁸ Unfortunately, Australians have failed ‘to attach ourselves to our political system as the embodiment of our nation’.⁶⁹ But it is for political leaders to remedy the situation: ‘elected representatives should come together in the unique project of presenting these overall civic values as an embodiment of the nation’ starting with the celebrations of the centenary of Federation. This should be ‘the beginning

of something wider — of a civic definition of Australia’.⁷⁰

Other polities have recognised dual citizenship and yet maintain a continuing identity as democratic nations. Communitarians will hope that, despite blurred memberships rules, Australians too will keep wanting to act as a collectivity. The outcome of the pressure to legalise dual citizenship is important, not because it necessarily presages the unravelling of the Australian people, but for what it demonstrates about the relative strength of the two models. For the time being at least the proceduralists are in the driver’s seat.

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References

- ¹ For the peoplehood approach see work by two British scholars, M. Canovan, *Nationhood and Political Theory*, Edward Elgar, Cheltenham, UK, 1996, and D. Miller, *On Nationality*, Clarendon, Oxford, 1995; in Australia see B. Birrell, *Federation: The Secret Story*, Duffy and Snellgrove, Sydney, 2001. For examples of proceduralism in Australia see D. Horne, *Looking for Leadership: Australia in the Howard Years*, Viking, Ringwood, 2001; D. Watson, ‘Rabbit syndrome: Australia and America’, *Quarterly Essay*, vol. 1, no. 4, 2001; A. Davidson, *From Subject to Citizen: Australian Citizenship in the Twentieth Century*, Cambridge University Press, Cambridge, 1997. For a debate between the two positions see D. Horne, ‘Celebrating our differences’, *The Australian*, 9 February 2001, p. 13 and the reply, J. Hirst, ‘A core culture is vital to our success story’, *The Australian*, 14 February 2001, p. 13. For an analysis of both in the US (described as the civic republic [peoplehood] and the procedural republic) see M. J. Sandel, *Democracy’s Discontent: America in Search of a Public Philosophy*, Harvard University Press, Cambridge, MA, 1996.
- ² E. Kant, ‘Perpetual peace’, in H. Reiss (Ed.), *Kant’s Political Writing*, Cambridge University Press, Cambridge, 1970, pp. 112-113
- ³ Horne, *Looking for Leadership*, 2001, op. cit., pp. 250-252
- ⁴ *ibid.*, p. 252
- ⁵ National Centre for Australian Studies, *How to be Australia*, Monash University (on behalf of the Federal Government’s Ideas for Australia Program), Melbourne, 1994, p. 3
- ⁶ See B. Cope, S. Castles and M. Kalantzis, *Immigration, Ethnic Conflicts and Social Cohesion*, Bureau of Immigration Research, Australian Government Publishing Service (AGPS), 1991, pp. 20, 26-29, 43.
- ⁷ See K. Betts and V. Rapson, ‘Pride and commitment: patriotism in Australia’, *People and Place*, vol. 5, no. 1, 1997, pp. 55-66, and K. Betts, ‘The cosmopolitan social agenda and the referendum on the republic’, *People and Place*, vol. 7, no. 4, 1999, pp. 32-4.
- ⁸ The Act was originally called the Nationality and Citizenship Act; it became the Australian Citizenship Act in 1973. See Australian Citizenship Council, *Australian Citizenship for a New Century: February 2000*, Ausinfo, Canberra, 2000, p. 35.
- ⁹ A summary of these changes is outlined in *ibid.*, pp. 34-36.
- ¹⁰ Quoted in S. O’Brien, *Dual Citizenship, Foreign Allegiance and s.44(i) of the Australian Constitution (Background paper number 29)*, Parliamentary Library, Canberra, 1992, p. 37 (n. 118)
- ¹¹ *Commonwealth Parliamentary Debates: House of Representatives*, 19 February 1986, p. 869
- ¹² See *Australian Citizenship, Q & A’s*, fact sheet no. 3, and *Citizenship: There’s never been a better time to become an Australian citizen*, both downloaded from www.citizenship.gov.au, 27 January 2002.

- ¹³ Minister for Immigration and Ethnic Affairs, Media release B23/94, 10 May 1994
- ¹⁴ See K. Betts, *The Great Divide: Immigration Politics in Australia*, Duffy and Snellgrove, Sydney, 1999, pp. 113-116.
- ¹⁵ S. FitzGerald, *Immigration: A Commitment to Australia*, AGPS, Canberra, 1988, pp. 11, 32-33
- ¹⁶ For denizenship see T. G. Hammar, 'Citizenship: membership of a nation and of a state', *International Migration*, vol. 24, no. 4, 1986, pp. 735-748; Y. N. Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe*, University of Chicago Press, Chicago, 1994. For 'small "c" citizenship' see Australian Citizenship Council, 2000, op. cit., pp. 4, 7, 8, 22, 23-26.
- ¹⁷ K. Rubenstein, 'Citizenship in Australia: unscrambling its meaning', *Melbourne University Law Review*, vol. 20, 1995, pp. 503-528
- ¹⁸ *ibid.*
- ¹⁹ See M. Grattan, 'Immigration and the Australian Labor Party', in J. Jupp and M. Kabala (Eds), *The Politics of Australian Immigration*, AGPS, Canberra, 1993, pp. 130, 137-138, 141-142.
- ²⁰ Structural or 'hard' multiculturalism refers to policies which see Australia as a set of distinct ethnic groups and which aim to preserve the identity of these groups into the future. 'Soft' multiculturalism refers to policies which emphasise tolerance. See J. Hirst, 'National pride and multiculturalism', *People and Place*, vol. 2, no. 3, 1994, pp. 1-6.
- ²¹ See, for example, A. Davidson, *From Subject to Citizen: Australian Citizenship in the Twentieth Century*, Cambridge University Press, Cambridge, 1997, pp. 2-3, 10, 138, 144-145.
- ²² *ibid.*, pp. 59, 252
- ²³ *ibid.*, pp. 256-257
- ²⁴ Australian Citizenship Council, 2000, op. cit., p. 26
- ²⁵ *ibid.*, pp. 77, 19. For other references to inclusiveness see pp. 10, 13, 22, 26, 25, 33, 34, 38, 39, 44.
- ²⁶ *ibid.*, p. 34
- ²⁷ *ibid.*, pp. 111-112
- ²⁸ Apart from breaches of Section 17, a naturalised Australian citizen can only be deprived of their citizenship if they are found to have committed fraud in their application for citizenship, or migration fraud in relation to their previous status as a permanent resident. Once deprived of citizenship they would be liable to deportation on the same grounds as other permanent residents. See *ibid.*, pp. 67-68.
- ²⁹ Joint Standing Committee on Migration, *Australians All: Enhancing Australian Citizenship*, AGPS, Canberra, 1994. This report had two main objectives: enhancing the meaning of Australia citizenship and making recommendations on dual citizenship.
- ³⁰ See the 'Australian Compact' advocated in Australian Citizenship Council, 2000, op. cit., pp. 16-17.
- ³¹ *ibid.*, pp. 16-17, 22-25, 82-84
- ³² See Government of Australia, *Australian Citizenship...A Common Bond*, AusInfo, Canberra, 2001, pp. 8-9.
- ³³ Australian Treaty List: Multilateral (as at 31 December 2000), p. 389 (Facsimile provided by the Parliamentary Library)
- ³⁴ See Joint Standing Committee on Migration, 1994, op. cit., pp. 178-180.
- ³⁵ He made this quite explicit. 'It [renunciation] has served no legal purpose at all because loss [or] retention of former citizenship depends entirely on the law of the person's former homeland'. Quoted in O'Brien, 1992, op. cit., p. 37
- ³⁶ See the judgment of Brennan, J, para 7, and judgement of Dawson, J, para 5, in *Sykes v Cleary and Others* (1992) 176 CLR 77 FC 92/046, downloaded from www.austlii.edu.au, January 2002.
- ³⁷ A. Millbank, *Current Issues Brief 5 2000-01: Dual Citizenship in Australia*, Parliamentary Library, Social Policy Group, 2000, downloaded from the Parliamentary Library web site <http://www.aph.gov.au/library/pubs/cib/2000-01/01cib05.htm>, January 2002 [p. 5]
- ³⁸ Australian Citizenship Act 1948 Act No. 83 of 1948 as amended, consolidated as in force on 1 March 1999. Downloaded from http://www.austlii.edu.au/au/legis/cth/consol_act/aca1948254/ 28 January 2002
- ³⁹ Candidates for naturalisation in Germany must make their renunciation of their former citizenship 'legally effective by successfully expatriating themselves under the other state's law'. P. H. Schuck, 'Plural citizenships', in N. Pickus (Ed.), *Immigration and citizenship in the twenty-first century*, Rowman and Littlefield, Lanham (MA), 1998, p. 162.
- ⁴⁰ Australian Citizenship Council, 2000, op. cit., pp. 35, 71
- ⁴¹ *ibid.*, pp. 65-66
- ⁴² It maintains an active web site at <http://www.southern-cross-group.org>. See Who Are We? About the Southern Cross Group, downloaded from <http://www.southern-cross-group.org/sys-tmpl/whoarewe/> January 2002

- ⁴³ Millbank, op. cit., [p. 7]
- ⁴⁴ Information provided by officers of the Department of Immigration and Ethnic Affairs in 1994.
- ⁴⁵ Joint Standing Committee on Migration, 1994, op. cit., p. xliii
- ⁴⁶ Quoted in M. Ceresa, 'Bolkus puts dual citizenship legislation on hold', *The Australian*, 5 September 1995, p. 3
- ⁴⁷ See House Hansard, 12 October 1994, p. 1828.
- ⁴⁸ Australian Citizenship Council, *Contemporary Australian Citizenship: February 1999*, Department of Immigration and Multicultural Affairs, Canberra, 1999, pp. 11-12 (paras 52-54)
- ⁴⁹ Government of Australia, *Australian Citizenship...A Common Bond*, AusInfo, Canberra, 2001, p. 24
- ⁵⁰ *Loss of Australian Citizenship on Acquisition of Another Citizenship: Discussion Paper on Section 17 of the Australian Citizenship Act 1948, June 2001*, Department of Immigration and Ethnic Affairs, Canberra, 2001, downloaded from [http://www.immi.gov.au/citizen\(o\)/0601paper/index.htm](http://www.immi.gov.au/citizen(o)/0601paper/index.htm) January 2002
- ⁵¹ *Australians to Retain Their Citizenship if They Acquire Another*, Media Release, Minister for Immigration, MPS 109/2001, 3 August 2001
- ⁵² See Laurie Ferguson, Shadow Minister with responsibility for citizenship affairs, Current Hansard Proofs, 21 February 2002, pp. 722, 761-763. Downloaded from www.aph.gov.au/hansard/refs, 8 March 2002.
- ⁵³ Information provided by the office of Gary Hardgrave, Minister for Citizenship and Multicultural Affairs, 20 February 2002
- ⁵⁴ Commonwealth of Australia, *The Constitution*, AGPS, Canberra, 1986 [1900], Section 44 (i), p. 15
- ⁵⁵ Australian Citizenship Council, 2000, op. cit., pp. 75-77
- ⁵⁶ See O'Brien, 1992, op. cit., p. 35.
- ⁵⁷ See Hardgrave, Current Hansard Proofs, op. cit., 13 February 2002, p. 52, and Ferguson, *ibid.*, 22 February 2002, pp. 723-4.
- ⁵⁸ See Joint Standing Committee on Migration, 1994, op. cit., pp. 201-202
- ⁵⁹ Who Are We? About the Southern Cross Group, Downloaded from <http://www.southern-cross-group.org/sys-tmpl/whoarewe/> 26 January 2002
- ⁶⁰ Hardgrave, Current Hansard Proofs, op. cit., 13 February 2002, p. 52
- ⁶¹ Ferguson, *ibid.*, 21 February 2002, pp. 762, 760, 762
- ⁶² Australian Citizenship Council, 1999, op. cit., p. 12 (para 53)
- ⁶³ Non-citizens applying for visas to come to Australia have to pass a character test; people who hold Australian passports do not need visas and consequently do not have to pass a character test.
- ⁶⁴ G. Gamini, 'Argentina's economic refugees just want to go home', *The Australian*, 29 January 2002, p. 11
- ⁶⁵ Australian Citizenship Council, 2000, op. cit., pp. 13-14
- ⁶⁶ *ibid.*, p. 14
- ⁶⁷ *ibid.*, pp. 13, 6-7
- ⁶⁸ *ibid.*, p. 15
- ⁶⁹ *ibid.*, p. 19
- ⁷⁰ *ibid.*, pp. 16-17