

INDIVIDUAL, COMMUNITY, NATION: FIFTY YEARS OF AUSTRALIAN CITIZENSHIP edited by Kim Rubenstein, Melbourne, Australian Scholarly Publishing, 2000, 194pp, ISBN 1-8756-0682-3

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This collection offers a timely opportunity to reconsider some foundational questions about the meaning and significance of Australian citizenship. The work is of particular interest in light of two recent, and momentous, developments in Australian citizenship law. On 6 September 2001 the High Court of Australia handed down its decision in *Re Patterson; Ex parte Taylor* (2001) 182 ALR 657. Overturning a 13 year precedent,<sup>1</sup> the Court held that a British migrant who arrived in Australia prior to 1987 (when significant amendments to the *Australian Citizenship Act* 1948 (Cth) came into force) and who was never naturalized as an Australian citizen, was not an 'alien' for the purposes of the Constitution. The High Court ruling means that Taylor cannot be deported pursuant to legislation relying on the aliens power in the Constitution.<sup>2</sup> The second development is on the legislative front and concerns a Bill now before Parliament that would allow for the retention of Australian citizenship upon the acquisition of another nationality.<sup>3</sup> *Individual, Community, Nation* provides an accessible introduction and overview of some of the historical, legal and theoretical issues underlying these recent developments.

*Individual, Community, Nation: Fifty Years of Australian Citizenship* is a collection of papers presented at a conference on Australian citizenship held at the University of Melbourne in 1999 – a year which marked the fiftieth anniversary of the commencement of the *Australian Citizenship Act* 1948 (Cth) (originally enacted as the *Nationality and Citizenship Act*). That Act established the phrase 'Australian citizen' as a legal term of art. However, the reference to fifty years of Australian citizenship in the title of the collection is a little unfortunate – if not misleading – insofar as it serves to perpetuate a myth that it was only in 1949 that members of the Australian community acquired a distinctive Australian identity. On the contrary, as contributors to the collection show, it is possible to speak of a distinctive Australian citizenship in broad social terms, from Federation, if not before.

The collection is divided into three parts, concerned, respectively, with Australian citizenship as a legal concept; with the citizenship experience for particular groups of individuals; and with globalisation and citizenship. Those themes are explored through 16 contributions in a volume of just 194 pages.

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1 *Nolan v Minister for Immigration and Ethnic Affairs* (1988) 165 CLR 178.

2 Section 51(xix).

3 Only a few weeks before the High Court handed down *Re Patterson* the Commonwealth Government introduced legislation to repeal section 17 of the *Australian Citizenship Act* 1948 (Cth) which currently provides that adult Australian citizens automatically lose their Australian citizenship should they do any act or thing the sole or dominant purpose of which, and the effect of which, is to acquire the nationality of a foreign country (See *Australian Citizenship Legislation Amendment Bill* 2002 (Cth)).

Accordingly each chapter is brief. It may be thought that the resultant economy is a significant weakness as many of the contributions fail to adequately address the issues they raise. Brevity and unanswered questions are perhaps to be expected in the context of a conference designed to foster opportunities for discussion. However, such features should not be regarded as a virtue for an edited collection seeking to contribute to the literature on citizenship. The book also contains distracting pieces in Part II on specific civic activities that digress from the conference themes of 'individual', 'community' and 'nation'.

The collection opens with an edited version of Sir Ninian Stephen's address to the conference. Sir Ninian places the essays that follow in context by describing the legislative watershed in 1949 as part of the gradual evolution of Australia from autonomous dominion to independent nation. He notes the remarkable effectiveness of the *Australian Citizenship Act* despite the fact that it is silent on the rights and responsibilities of citizenship. In her examination of citizenship before 1949 Helen Irving points out that the popular usage of the words 'citizen' and 'citizenship' has a prodigious history and that the terms entered the vernacular well before Federation to describe non-politicians who were white and subjects of the British monarch. Irving also notes the absence of constitutional provision for citizenship, and the history of the shrinking relevance of British subject status to Australians. Kim Rubenstein, the editor of the collection, then examines the High Court's treatment of citizenship. Previous work by Rubenstein has examined the legal aspects of citizenship more generally,<sup>4</sup> and this more specific work is an important contribution to that scholarship.<sup>5</sup>

While Irving considers the constitutional silence about citizenship a strength, Rubenstein reiterates the argument that the silence about citizenship in express terms is a significant failing. She argues that it has prevented the High Court from shaping the meaning of citizenship and consequently has deprived Australians of a clear constitutional sense of who they are. Despite frequent use of the term citizenship in many varied contexts, where the High Court has made reference to *membership* of the Australian community it has done so only tangentially or in narrow constitutional and legislative contexts. We must now await analysis of *Re Patterson* in which the Court has more directly and thoroughly considered these issues.

Part II of the book looks beyond formal citizenship and examines the experience of specific groups (women, Aborigines and migrants) in attaining and enjoying Australian citizenship. By contrast to Rubenstein's faith in legal prescription, Margaret Thornton argues that the liberal legal concept of citizenship implies a false universality in status. She argues that liberal constructs of citizenship normalise and enhance, while at the same time obscure, the power of the 'benchmark' citizen – the healthy, wealthy, white, Anglo-Celtic male. Thornton

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4 Kim Rubenstein, 'Citizenship and the Constitutional Convention Debates: A Mere Legal Inference' (1997) 25 FLR 295 and 'Citizenship in Australia: Unscrambling its Meaning' (1995) 20 MULR 503.

5 See also Kim Rubenstein, 'Citizenship and the Centenary – Inclusion and Exclusion in 20th Century Australia' (2000) 24 MULR 576.

distrusts formal legal instruments as they can achieve only formal equality, with scant regard for the reality of substantive inequality. She exhorts action by groups ignored by formal equality to reconstruct citizenship. Marilyn Wang similarly critiques the effectiveness of international agreements, but makes a more specific claim. She argues that a precondition for real democracy is radical equality of the sexes and posits that women will only become full citizens once they have acquired equal representation in parliament. Jane Connors carries this international theme forward in her discussion of the struggle for rights for women through international treaties and organizations, the vulnerability of women to statelessness and the sex discrimination that many municipal nationality laws enshrine.

The relationship of Australia's Aboriginal peoples to Australian citizenship is then addressed. Chesterman and Galligan pose and answer two questions: when did indigenous Australians become citizens and how do indigenous rights relate to citizenship? The difficulty in answering the first question highlights the complexity of Australia's citizenship laws and the racial construction of citizenship. In relation to the second they argue that citizenship and indigenous rights *should not* be run together and that citizenship should not be used as a synonym for justice for indigenous peoples. While Chesterman and Galligan emphasise the necessity for separating citizenship and indigenous rights, Linda Burney argues for an inclusive Australian identity in her discussion of the reconciliation process.

A third group historically subject to exclusion are migrants, and Ann-Marie Jordens discusses the rules by which citizenship is conferred upon newcomers to Australia. She argues that important aspects of Australian national identity are revealed by this process – a process that defines membership of the Australian community by determining those who are to be excluded from it. However, Jordens contrasts the discrimination in favour of British migrants that was once enshrined in statute with the social harmony engendered by the process of economic and social integration in which non-British migrants were highly successful. James Jupp covers much of the landscape travelled by Jordens, but deals in more detail with the British underpinnings of Australian citizenship and the anomalous position of the rump of long-term permanent residents from the United Kingdom who are, of all migrants, the most unenthusiastic about taking-up Australian citizenship.

The two remaining contributions to Part II do not sit well in the Part or in the collection as a whole. Both are concerned with the issue of active citizenship, but in very specific respects. In their chapter Susan Pascoe and Sue Ferguson emphasize the importance of education for engendering active citizenship and discuss past and present Commonwealth government efforts to include civics in school curricula. Mary Crook's following chapter examines a specific example of civic virtue, namely the 'Purple Sage Project' co-ordinated by a small group of community organisations in Victoria. Although these chapters are, of themselves, valuable and interesting, it is to be regretted that the collection did not include additional chapters dealing more broadly and comprehensively with active citizenship issues. Without having the support of additional and more general discussion of civic virtue in Australia, these two chapters seem to be very much out of place in the collection as a whole.

Part III is more thematically consistent. While the term 'globalisation' is frequently used as glibly as citizenship, the opening chapter by Stephen Castles provides a clear definition of globalisation and posits a fundamental question in relation to the phenomenon: how can democratic citizenship in Australia be maintained and enhanced in the face of increasing worldwide interconnectedness? Castles argues that rather than assert those powers, predominantly military and economic, that nation-states retain, a commitment has to be made to develop a transnational democratic citizenry. T.K. Oomen's theoretical approach to the interactive processes of citizenship, nationality and ethnicity provides a framework for a broad socio-historical analysis of citizenship within and between states. He regards globalisation as a phenomenon that may lead to peaceful co-existence of people with widely differing identities through the de-linking of ethnicity from nationality and nationality from citizenship.

In the last two chapters the challenges of globalisation are explored from opposite directions, but with similar conclusions. Peter Stuck focuses on the nation state and commends federal structures as a strategy for responding to globalisation. Gary Sturgess, in the final chapter, looks beyond the nation state and heralds the death of citizenship as a homogenous conception of identity. Sturgess extols the resilience of humankind in taking-up multiple, and sometimes conflicting, memberships of various communities. He would no doubt regard the repeal of the legislative restrictions on acquiring multiple citizenships as an important development in this respect.

The ground that *Individual, Citizenship, Nation* covers has been well ploughed before. The body of academic literature making reference to Australian citizenship is extensive. Nonetheless this collection is important. It successfully straddles both the small body of literature that directly engages in a discussion of Australian citizenship in its legal and associated political sense, and the large mass of literature that employs citizenship terminology more loosely and broadly.

It is in the latter literature that the terms 'citizen' and 'citizenship' have often been employed in multiple, disparate, contexts without adequately addressing the content of the notions. This confusion is largely attributable to the absence of a clear and substantive constitutional meaning of membership of the Australian body politic. However, this confused debate, constitutional silence and legal complexity may in turn hinder the development of an unambiguous and significant Australian citizenship. Concise and informed discussion, explanation and clarification of major issues relating to Australian citizenship are essential to such a development. *Individual, Community, Nation* provides an accessible and clear, though brief, introduction to some of the formal dimensions of Australian citizenship and to the major debates concerning its substantive content.

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