MULTICULTURALISM AND CITIZENSHIP: SILENCING THE MIGRANT VOICE

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MairiAnne McKenzie (this issue) worries that multiculturalism may be going too far but Alastair Davidson believes that it has not gone far enough. He argues that multiculturalism has been confined to questions of lifestyle and welfare and that it has left Australian political and constitutional arrangements untouched. Migrant voices which might have spoken on questions of political and legal rights have been silenced. This means that Australia has missed opportunities to reshape its political institutions according to a European Continental model.

If migrant voices had been heeded we might have moved beyond the Westminster system, developed more powerful local governments and a less powerful central Govemment. A central Government reformed according to Continental models would have been less nationalistic, more open to the idea of a Bill of Rights and more receptive to international treaties on human rights. But as it is we persist with a managerialist form of government which continues to emphasis national communitarianism. This is not fully democratic and is open to the charge of racism on a number of counts.

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In Australia multicultural policies were never extended to included citizenship understood as a bundle of democratic and human rights. ...

It is not flippant to say that a multicultural Australia incorporated *souvlaki* and dragon dances, but not the legal, political and ethical voices of its myriad NESB [non-English-speaking-background] newcomers. ...[Government policy documents indicated that migrants] had nothing to teach a population which was heir to 600 years of British legal and political traditions about how best to arrange such matters to empower a multi-ethnic citizenry. ...

This paper explores some of the dimensions of that reality in the hope that it may throw light on some of the closures which have allowed the slide from the maintenance of Anglo-Celtic legal and political traditions to the 'new nationalism' and to its latest expression in the racism of Pauline Hanson. ...

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It is important at the outset to clarify what is understood by citizenship in this paper. It comprises two factors which are separated here for purposes of analytical clarity. ... The first is *nationality*, that is, what decides who can belong to a particular nation-state. The second is *citizenship*, which comprises the rights which those who have nationality can exercise within a nation-state's territorial jurisdiction.

[A brief history of the rules governing nationality and of the development of multiculturalism follows.]

... If multiculturalism allowed a migrant voice to be heard on such matters [as legal and political rights], its opinions were never more than half-accepted. On matters of citizenship, that is, how power 'from below' can be established and maintained, the national communitarian 'old' Australian view has always remained sacrosanct. ...

Focus on the cultural success of multiculturalism and the ending of the strong

commitment in Australia to a national identity which was a strange Anglo-Celt hybrid based on blood notions which founded racism both internally and externally hides a serious deficiency in the multicultural experience. It did not mean any real debate on the merits of the legal and political arrangements in this country except in the brief three year period of the Whitlam government. ...

The argument of this article is that we can see rather a continuity of opinion on such matters for at least the fifty years since 1945. Indeed, the Anglo-Celtic national communitarianism lived on under multiculturalism precisely in the unpreparedness to reconsider both the theory and the practice of government in Australia and, in particular, what role citizens ought to have. ...

This blindness depended on maintaining the myth of Australian primacy and superiority in such matters. The continuation of such myths requires a continuing silencing of the migrant voices; or, more grandiosely, refusing to listen to the other. ... In fact, the continuation of a commitment to the Australian Anglo-Celtic tradition on such matters is achieved in a double move. First, through a false legal and political history which makes Australians more free and democratic than even their British forebears. Second, through a refusal to consider what the present-day arrangements are in the countries of origin of our migrant populations. ...

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So, in the realm of legal and political arrangements—or what it was to be a citizen—the monocultural Anglo-Celtic past did not disappear when multiculturalism became state policy in Australia. Rather...there remained a firm commitment to the Westminster system and the common law. What I wish to do now is tease out some of the themes in the half century of history and then draw some inferences for Australian citizenship.

The almost religious commitment of the ruling Liberals in 1949-1972 to the traditions of the common law and representative government as they had been developed in the 19th and 20th centuries has to be seen in the context of the development of Australia as a nation. The desire to continue such British traditions and yet establish a separate identify from that of Great Britain meant a deliberate attempt to encourage only British migrants to come to Australia until this proved no longer possible. The parameters for new legal and political experience could extend but little beyond a world dominated by loyalty to the British monarch and a notion of the predominance of parliament according to a Diceyian notion of legal sovereignty.

This meant silencing certain political traditions from which NESB migrants came in the 1950s. For the Liberal leaders, what had defeated the totalitarianism of fascism had been the power of the Western liberal democracies. Maintaining those traditions as they understood them became paramount. Indeed, their hostility to centralising power and to what they referred to as state socialism rested on that understanding. ... But, when the Cold War started and Communism was regarded as the main menace to democracy, they became firmly anti-Communist and hostile towards welfare-state measures proposed by trade unions and Labor. The history of the witch-hunts against Communists and the Australian Communist Party which lasted until the 1972 election needs no rehearsal here. What is sometimes neglected is how it affected migrants who were permanent residents and who sought citizenship.

While a minority, many migrants from Europe and particularly Greeks and Italians who arrived in the 1950s, had been Communists and sometimes remained Communists after they arrived. They had fought in the Resistances against fascism and came from states whose new post-war constitutions were often liberal-socialist in orientation. This was true of many Italians and Greeks. ... Such people could obtain Australian nationality and therefore express their political views under the Migration Act 1958 only if the Minister agreed. This was because he had an absolute discretion. He could deport aliens if the conduct were such that '... he should not be allowed to remain' and there was no possibility of hearings in an open court because that might require the disclosure of security information.

It has been estimated that 551 permanent resident migrants were refused citizenship before 1972 because they were regarded as Communists. After Whitlam's dismissal in 1975 such discrimination was extended, Jim Cairns alleges, to ALP members as well. ...

... Salemi was an Italian Communist who entered on a temporary visa and overstayed his visa, thus becoming a 'prohibited migrant' who could be expelled by Ministerial fiat. Salemi applied when an amnesty was declared for overstayers and was refused the right to remain... [He] was deported, fortunately to a 'civilised' country where his life was not in danger.

Such anti-Left cases can be seen from several angles. This first is, of course, the tendency to silence a left voice in politics for fear of deportation, or that citizenship would be denied. ... [In such circumstance we] would not be surprised if people thought twice before they criticised political arrangements in Australia.

However, in the simplest of senses they were not silenced. Rather they both spoke up, organised in favour of their opinions, above all in community groups, trade unions and, later, ethnic bodies and through their newspapers. ...

So this left was not terrorised into silence. ...

But in a longer-term and wider sense their ideas about citizenship were shut down. ... [W]hile the ultra-democratic conciliar experience of Communism in [the Resistance] struggle was replaced by something a little more party-centred among both Greeks and Italians in the 1950s and 1960s, it was the dominant thread in Eurocommunism of the late 1960s and early 1960s. ...

Yet, because even significant parts of the ALP were so sure that Australia had optimal legal and particularly political arrangements or, as was more common under Whitlam, defined local changes by reference to past national history only, they were inimical to such views which reached them directly and indirectly. In particular, as fierce centralisers and strong nationalists they resisted these European innovations strongly. ....

The main innovation of the migrants was precisely a call for decentralisation of democratic power within a constitution to as many places as possible and simultaneously a playing down of national interest in favour of building international rules of law which were overriding.

So, on this level the migrant voice was silenced. The constitutional denial of right to local government remained and still exists despite the proposal of a Constitutional Commission in 1988 that it be introduced in conformity with Australia's needs to encourage citizen participation.

... [E]ven under Whitlam, Australia was deeply involved in nation-building

and therefore fostering a national identity separate from that of Britain. It was therefore ill-informed about international standards in just about anything at all. ...

But, these migrant legal and political traditions were ignored in another way which is much less understandable than suspicion of views coming from explicitly Communist or socialist sources. .... [T]he radical decentralised consiliar experiments of the Italian left took place within a Constitution which permitted them. That Constitution was the fruit of compromises made by Resistance participants after the Second World War which reconciled needs for social justice, and therefore a welfare state, and those for democracy and a rule of law. They often drew inspiration from the United Nations Declaration of Human Rights and other international bills of rights. While there could be dispute about such Constitutions, they really represent attempts to update liberal representative democracy in a regime of nation-states by giving it a liberal-socialist twist. Those who drafted the first such documents numbered explicit liberal-socialists who wanted more democracy in more places. They thus represented models of what a modern Constitution should contain, notably a Bill of Rights to protect minority difference against the democratic majority which was given a Rousseauian privilege. They also included powerful Constitutional Courts....

Against news of the workings of such Constitutions there should have been no suspicion of Communism. Yet such information was also effectively silenced even right within the Whitlam Government itself. ....

... A most striking consequence of this refusal to look at such norms has been the disappearance of real debate about the need for a reform of the Constitution which involves introducing a Bill or Rights into the Australian constitution. .... The absence of a Bill of Rights makes our Constitution pre-modern in the view of Norberto Bobbio, perhaps the leading living European procedural democratic theorist. Yet Bobbio is today another cult figure with progressive Australian opinion debating citizenship. His views were there to be mined in the seventies, again among Italian migrants... This brings us to a third way in which the refusal to review legal and political standards by giving migrants a voice can be viewed.

It is quite clear in 1997 that there are many 'ethnic' members of Parliament, of the judiciary and of the administration. Not all of them hide an intention to speak as ethnics about matters of citizenship. Then a much more subtle system of silencing the ethnic voice begins.

[This point is illustrated by an analysis of the work of Dr Andrew Theophanous, a Member of Parliament of Greek parentage, who comes from the socialist left. The author finds Theophanous' efforts to liberalise the rules governing naturalisation to be admirable but that his work on innovations in citizenship is flawed. This work on citizenship emphasises the need for a rights regime and social justice, but its intent is managerial. Theophanous is looking for ways to cope with the crisis of globalisation and quickly lapses into a defence of national communitarianism. His work also draws exclusively on Anglo sources — such as John Rawls, T. H. Marshall and Charles Taylor.]

[Theophanous] does not arrive at the most interesting recent European work which shows that private communities defend themselves against tyrannical national communitarian majorities precisely by appealing to the culturally (in the national sense) neutral international human rights bodies. ....

[He fails] to recognise that a viable rights-based citizen regime in a world of difference must rest on a majority culture never having the last say. An internal self-reverential standard is not good enough and so the use of Anglo literature on citizenship cannot defend the outsiders in a country already based on the reason of such standards. The point is that even the most progressive local majority standard is not good enough when it is a judge in its own cause.

This brings me to some of the implications in the three examples given of silencing the migrant voice.

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Theophanous highlights what is a major problem. How to get the migrant voice heard since it is that which brings the new vision into our legal and political world. ... [He] shows the problem of highly trained and therefore accultured second generation politician. His heart is in the right place, his understanding of the problems of the NESB migrant a lived experience, but his citizen theory is partial. ...

... [T]he Westminster system has never included popular sovereignty, where all the continental European systems to which we have referred assume popular sovereignty. ....[T]he monarch-in-parliament [in the Westminster system] is sovereign and individuals are never more than subjects, or recipients of rights made by their representatives in Parliament according to the law. Power lies with the optimates who are elected to Parliament. In the European systems, the people are sovereign and therefore citizens, or authors of the laws under which they will live. Power lies with the people who make the rights prior to their delegates legislating within them.

In the Anglo-Celtic system...there is a real emphasis on handing over to experts the managing of the commonweal. It is a managerial model, where in the European systems...the model is political and the people are believed to have a right to interfere directly and much more in the decision making.

[There are some fundamental distinctions between the two systems:] The first is that international law is never law in a Westminster system before it has been made law by the nation-state legislature. The converse is true in continental Europe. Frontiers are much more important and less porous in a Westminster system. The sense of ownership of the territory and the right and obligation to manage it in the interests of nationals is very strong. ...

[B]ecause the central Parliament is so important in mediating between the local and the international in a Westminster system, except where inherited, as in England, assertion of local popular power is rare. ...

[T]here is a much stronger active citizen presence assumed by the Rousseauian tradition of the continent than is the case in a Westminster system. The issue is whether it is more appropriate to empower people in the contexts of 1997.

A point which needs to be made is that no debate has been encouraged by the Anglo-Celtic majority on this issue. The common law and Westminster system are barely challenged. It would seem sensible and democratic in a multi-ethnic country where hierarchies of political values are different to let all voices be heard. So far, as this article has shown, they are not. This is to Australia's detriment, so far has it fallen behind the standards of some of the source-countries of its migrants. ...

A managerial model always tends towards maintenance of what exists. ...

Managerialism, understood both as not

giving newcomers a political voice until they belong and as protection of the national patrimony, also leads to unacceptably racist attitudes (breaching international agreements) towards the outside threat to national identity along the line that 'this is our county and we have always done things like this round here'. It leads, for example, to refusal of international norms which are not shared nationally, and directly to control of immigration flows and treatment of illegal entrants seeking refugee status, which provoke further accusations of racism. ...

An Anglo-Celt tradition of handing power over to elected representatives, understood as experts by themselves and their constituents, makes getting away from a racist past difficult. Experts are necessarily repositories of a national history, possession of which makes them expert. If this false history is excessively confused with civics and citizenship innovations and training in Australian discourse, it becomes harmful for minorities. ... But to make that history consistent with claims that politically Australia has been so good that it is not up for radical or even minor reform requires a denial of the meaning of undeniable acts. Today's example is the refusal of the government to accept that the removal of Aboriginal children from their parents was genocide when that is what it is clearly stated to be in the Convention on Genocide IIe which was ratified by Australia in 1958.