CITIZENSHIP IN AUSTRALIA: An Indigenous Perspective

Michael Dodson

A call for structured and comprehensive representation of Indigenous people in Australia's Constitution.

In the lead up to the Centenary of Federation, citizenship and constitutional reform have become increasingly popular topics of public debate. As this nation's First Peoples, the participation of Indigenous peoples in this debate is essential.

Exclusion from citizenship

Before 1967 Aboriginal and Torres Strait Islander peoples were denied citizenship. We were not free, for example, to travel between imposed State borders nor within States — no matter where the borders of our country lay — and we were not entitled to an Australian passport although many of us had already fought and died overseas in two World Wars. We had to have permission to marry and we were not even counted in the census of the people of this country. In fact, for more than a century of non-Indigenous presence in our country, our humanity was actively denied — in many places the births of our children were recorded on livestock records.

Pre-1967, during the assimilation era, there was a way Indigenous people could, theoretically, enjoy rights like non-Indigenous people. These rights did not, however, inherently accrue to us by virtue of our humanity. If we could show that we lived like white fellas then we could have rights like them. Citizenship and the protection of our rights were a reward, achieved at the price of our Aboriginality. Only if we were prepared to embrace the dominant status quo and renounce our identity could we have access to the spoils of citizenship — education, health care, housing and paid employment, to name just a few.

The mechanism for the granting of such rights, this endowment with citizenship, was an exemption certificate commonly called a 'dog tag'. This certificate excluded an Aboriginal person or a Torres Strait Islander from the operation of relevant legislation in their State or Territory which otherwise ordered and restrained their lives.

The 1967 constitutional referendum recognised the citizenship rights of Indigenous Australians. Many of the formal and overt forms of discrimination against Aboriginal and Torres Strait Islander peoples were, in principle, removed by this referendum.

Citizenship provided a ticket of entry into the political system. Unfortunately it was a concession ticket which only gave us entry to the back stalls at some of the shows. In practice, Aboriginal and Torres Strait Islander peoples did not, and still do not, exercise and enjoy basic citizenship rights.

The daily experience of Indigenous people is the most shameful testament of the failure of the referendum. A quick scan of the statistics of Indigenous infant and maternal mortality, of Indigenous morbidity rates, of educational achievement by Aboriginal and Torres Strait Islander kids, of the provision of essential services like water and sewerage disposal in Indigenous communities and of the over-representation of Indigenous people in the criminal justice system

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is evidence enough of Australia's failure to accord us our citizenship rights.

A more fundamental and radical consideration of citizenship and what it means is necessary. The concept of citizenship is ill-defined, poorly understood, confused and confusing. We need to reassess citizenship and political participation as a nation. Our political and social organisation and the structural relationship between different groups of people and the nation need to be questioned.

The Australian constitution adopted in 1901 excluded us as Australian citizens. This exclusion was not just about the colour of our skin, although this was almost certainly a significant factor, it was also fundamental to the building of this nation:

> Aborigines were dispossessed of their land parcel by parcel, to make way for expanding colonial settlement. Their dispossession underwrote the development of the nation.[1]

The doctrine of *terra nullius*, finally rejected in the *Mabo* decision, embraced and made law the myth that in 1788 Australia was an unoccupied country. This doctrine was just one example of a broader rejection of all Indigenous systems of pre-existing social and political organisation.

Terra nullius said there are no owners of this land so we, the colonisers, can establish a system of land ownership. On a broader application this approach also said:

- there is no law, so we can establish a legal system;
- there is no language, so we can declare an official language;
- there is no culture, so we can nominate and endorse a national culture; and
- there is no decision-making structure or system of authority so we can empower a parliament.

In rejecting the existence of Aboriginal and Islander nations in 1901 the establishment of the nation state, Australia, was legitimated and the displacement and annihilation of our structures was sanctioned by law. The very foundations of the current accepted Australian legal, political and social institutions and the Commonwealth of Australia are based on the total denial of pre-existing systems.

Legal recognition of Aboriginal Australia's ownership of land

More than two centuries after invasion, the High Court's *Mabo* decision recognised that in 1788 a complex system of land tenure existed in this country. This decision did not, as is too often believed, give Indigenous people rights to country, it merely recognised what we have always known — that we had and have unique rights to land. And it recognised those rights on our terms:

> these people haven't lost this land, they are now recognised under Balanda (white) law. That's all it is — a recognition. In our own law it has been recognised for thousands of years, and that law remains. We never lost it to anybody. It is a restating of our rights of ownership to land.[2]

For the first time Australian law recognised the continued existence of Indigenous political and social organisations. This decision and the continued existence of our laws, our highly developed decision-making structures, our languages and our cultures represent a fundamental challenge to the cornerstones of this nation.

I know that such a challenge to the legitimacy of the Australian nation state is deeply threatening. I appreciate that it is difficult to acknowledge that the advancement of the Australian nation has been made at the cost of our human rights and the suppression and decimation of our cultures. I recognise that it is nigh on impossible to admit that Australia has been built on illegal and immoral foundations.

But saying all this does not make it untrue.

Arguments, which reject the survival of Indigenous law and culture, still abound. Now, more than ever, talk back radio hosts, politicians and academics continue to challenge the existence of our laws and culture, our sovereignty as independent nations. They continue to deny us citizenship of this nation and our identity as Indigenous Australians.

Indigenous citizens or citizens?

Thirty years on from the referendum, the reality is that we remain de facto exiles in our own country. Thirty years on, the exercise and enjoyment of our right to citizenship still turns on the relinquishment of our unique identity. Various arguments are presented to support claims that our systems and structures are redundant.

First, opponents contest that Indigenous culture, laws and socio-political order no longer exist at a level worthy of recognition and protection by the nation state. Too often, if Indigenous culture does not comply with a non-Indigenous romanticised version of 'traditional' Aboriginal culture then it is deemed unworthy of protection.

Non-Indigenous Australia wants a blackfella culture that is rich with witchetty grubs, walkabout and woomeras. The culture which existed here over 208 years ago is seen as the only legitimate Indigenous culture worthy of legal protection. We have all heard talk of 'proper blackfellas' who are considered deserving of protection because they have maintained a traditional lifestyle and are 'really' Indigenous.

It is an act of cultural imperialism to presume that non-Indigenous Australians have the right to judge the authenticity of Indigenous culture. It is fundamentally racist to say that the only Indigenous culture worthy of protection is a culture which cannot create its own future. A culture which is not living. Such an approach says, the only good Aboriginal culture is a dead culture. Such an approach is easily refuted by the mountain of anthropological, sociological and ethnographical evidence to the contrary.

This argument also denies the role of non-Indigenous culture in the breakdown and disruption of Indigenous systems and structures. The immorality of denying us recognition on the grounds that our culture has not survived invasion intact is conveniently forgotten. This is patently unacceptable when cultural destruction was, for many years, official government policy. Such a system which enables majorities to profit from their own injustices must be rejected.

Second, it is argued that to recognise our systems and structures will threaten the social stability and territorial integrity of the nation state. The implication is that the recognition of the rights of Aboriginal and Torres Strait Islander peoples will irreparably damage Australian sovereignty. This argument requires complex refutation.

In the first instance, such an approach is untenable on human rights grounds. The promotion of the interests of the many can never justify violating the human rights of the few. I acknowledge that the nation state must negotiate between sometimes competing interests to maintain stability. But there has never been genuine negotiation with Indigenous peoples, there has never been agreement between Indigenous

and non-Indigenous Australians as to the terms of our citizenship in this nation.

Next, this argument breaches international law and denies our right to self-determination. This right is protected under the first article of the two core human rights instruments — the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The right of the majority in this nation to determine its own future has never been in question, indeed the constitution of the nation state actively supports this. But our capacity to exercise and enjoy this right has always been controversial and strongly opposed. Recently the Government has rejected self-determination as a plank of Indigenous affairs policy and has instead replaced it with a watered down notion of self-management.

I also reject the assertion that suppressing the rights of Indigenous Australians is necessary to protect the security and stability of the nation. Indeed the opposite is true. It is when a people is oppressed and denied its rights that instability occurs. In the future, Indigenous nations may well resort to secession if the appalling conditions under which they exist within the nation state are not addressed.

The final most common argument against recognition of our unique status, and closely allied to the argument of societal stability, is the contention that the principle of equality requires that all Australians are treated the same. This approach rejects different treatment as unfair, as contrary to the great Australian ethos of the 'fair go'. Such an approach says that we have one Australia and that we are all unified under one national system of institutions which apply to us universally, irrespective of our status:

> ...we are all Australians together, united under a common body of law, to which we [are] all subject but from which all of us [are] entitled to an equal dispensation of justice. My view is that we are one nation.[3]

But this is an equality which relies on homogenisation and sameness of treatment. It is a citizenship which erases peoples' differences in the quest to unify all Australians under the banner of 'one Australia'. It is an approach which implies that recognition by the law and just treatment come to those prepared to toe the majority line.

Such an approach denies our unique status in this country as its First Peoples and it also denies the unique position we occupy in this nation after more than 200 years of oppression and dislocation — an unenviable position as this nation's most disadvantaged citizens. To treat Indigenous Australians as non-Indigenous Australians will fail to address the acute disadvantages we suffer as a result of historically and generally worse treatment. Indeed such an approach will only serve to entrench our disadvantage. The continued adoption of principles of exclusion, oppression and abuse will only cement the current state of affairs.

Distinct political rights

Radical reconstruction of the nation state to include the distinct political rights of Indigenous Australians is necessary. The debate which precedes the Centenary of Federation must look to constitutional change which establishes a framework for community which includes Indigenous no less than non-Indigenous Australians. Tinkering with the edges of the existing constitution, fiddling with the nuts and bolts of the existing institutions of this nation will simply not be enough.

We must look to a reform process which includes Indigenous Australians and which protects and promotes our unique status in this county. I am calling for a radically new approach to the place of Indigenous people in the reformulation of Australian citizenship.

Up to this time citizenship has meant little to Aboriginal and Torres Strait Islander Australians. In the next few years this nation must move beyond traditional concepts and stretch the way that it thinks about citizenship and political participation. Until it does this and until the more fundamental moral and political issues around citizenship have been settled, there will be little in the way of real change. Together we must redefine what it means to be an Australian citizen so that that definition recognises and protects the rights of this nation's First Peoples.

References

1. *Mabo and Others v The State of Queensland (No. 2)* (1992) 175 CLR 1 at 69 per Brennan J.
2. Galarrwuy Yunupingu, speaking at presentation of title to part of the Upper Daly land claim and quoted in Aboriginal and Torres Strait Islander Social Justice Commissioner, Native Title Report: January-June 1994, AGPS, 1995, p.76.
3. Transcript of the Prime Minister-Elect the Hon. John Howard, Press Conference, Sydney, 4 March 1996, p.17.

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CONFERENCES

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