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Australian citizenship is qualification enough to serve in parliament

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If so many parliamentarians risk being disqualified under section 44(1) of the Constitution, it is because parliament's composition broadly reflects that of Australian society. With 49 per cent of Australia's population either born overseas or having a parent who was, dual nationality, or at least the entitlement to dual nationality, has become widespread.

Moreover, changes to Australian citizenship laws, which have facilitated dual nationality, and the desire by growing numbers of Australians to live and work in other countries have boosted multiple passport holding.

But there is an obvious tension between those trends and the plain wording of the section, which prohibits "any person" who is "a subject or a citizen or entitled to the rights or privileges of a subject or citizen of a foreign power" from "being chosen or of sitting as a senator or a member of the House of Representatives".

That tension could be resolved by amending the Constitution, as successive reviews have recommended, to simply require parliamentarians to be Australian citizens. After all, the section was formulated long before Australian citizenship acquired a meaning distinct from that of being a British subject, which only occurred in full with the British and Australian nationality laws that followed the 1947 Commonwealth conference.

The section could therefore be viewed as the founders' attempt to achieve indirectly, through a list of prohibitions, what article 1, sections 2 and 3, of the US constitution, article 50 of the Belgian constitution of 1831, and article 64 of the Swiss constitution of 1848 straightforwardly achieved by requiring that elected representatives be citizens. However, by excluding dual nationals (and even those entitled to dual nationality), the indirect approach adopted went well beyond the overseas models on which they drew, putting Australia out of line with most advanced democracies.

A constitutional amendment would rectify that anomaly, in the process ensuring that all Australians, including those caught by foreign nationality laws that make citizenship rights difficult or impossible to renounce, could legitimately stand for elected office.

That is important in and of itself: as Aristotle put it, one is truly a citizen only if one has an undiminished right to "share in the civic life of ruling and being ruled in turn". And it is made all the more important by global trends in citizenship laws.

Those trends are somewhat paradoxical. On the one hand, countries have repeatedly reaffirmed the link between citizenship and birth or residence in the national territory; at the same time, however, they have often retained, and even materially expanded, the scope to acquire citizenship by multi-generational descent, as Italy and Spain did in 1992 and 2002 respectively.

Together with large-scale migration, those changes have made dual nationality increasingly common. But if multiple passport holding has become a mass phenomenon, it is also because the obligations countries impose on their citizens have diminished to the point of almost disappearing.

Historically, by far the most arduous of those obligations was conscription — and as warfare became a matter of national mobilisation, being called up was the greatest risk a dual national faced.

Indeed, the first treaty regarding dual nationality, struck between the US and Prussia in 1868, arose out of the US's insistence on its right to conscript dual nationals in the American Civil War. However, the almost universal shift to volunteer forces, and the lack of public support for mandatory civilian service, means that risk no longer discourages dual passport holding.

Yet if the burdens of citizenship have faded, the benefits have not. On the contrary, with immigration laws being tightened almost everywhere, and restrictions on foreign ownership of land and many other assets widespread, dual nationals are often the greatest winners from the birthright lottery, accumulating options most of their fellow citizens do not have: notably the option of avoiding the suffocating embrace of any single nation-state.

That those options are individually valuable is beyond doubt. But it is hardly obvious that the rise of the elusive citizen is beneficial from society's point of view. It is fine to celebrate inclusiveness, but citizenship without commitment is a marriage of convenience, if not the political equivalent of casual sex. Stripped of any legacy of shared memories, much less of a genuine desire to perpetuate the nation's heritage, today's "citizenship lite" is too thin a gruel to sustain the country in times of difficulty.

Banning dual nationality would be a draconian response to those concerns. And whatever its possible merits, such a ban would be so far removed from global realities as to be unviable.

As the failure of every international attempt at regulating dual nationality shows, countries of emigration will continue to retain links to emigrants (and their children and grandchildren) through citizenship by descent, while those of immigration will continue

to compete for the best and brightest by offering citizenship through residence.

But it would be feasible and desirable to make Australian citizenship more consequential by raising the threshold for naturalisation. The government's proposals to do so are a good first step.

Its stricter language test is controversial but John Stuart Mill, who was hardly a reactionary, got it right when he argued that "among a people (that) speak different languages, the united public opinion necessary to the working of representative government cannot exist".

And demanding real proof of the willingness to integrate is long overdue.

A better citizenship test won't solve the problems of section 44(1). Nor should the High Court disguise them through another fudge: the section's plain meaning is clear, and if it is out of touch with the times — as it is — it ought to be amended. To do otherwise would merely confirm that we don't take Australian citizenship, which should be this country's greatest gift, seriously.

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