8. Performing Citizenship, Embodying Obedience

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Many of the great religious and political figures of history have been agitators, and human progress owes much to the efforts of these and the many who are unknown. As Wilde aptly pointed out in *The Soul of Man under Socialism*, 'Agitators are a set of interfering, meddling people, who come down to some perfectly contented class of the community and sow the seeds of discontent amongst them. That is the reason why agitators are so absolutely necessary. Without them, in our incomplete state, there would be no advance towards civilisation.'²

Introduction

In March 2003, an Australian citizen and a British citizen protested against Australia's invasion of Iraq. The two men painted 'NO WAR' in red capital letters on the iconic white sails of the Sydney Opera House. A NSW local court found both men guilty of malicious damage and ordered them to serve weekend detention. The media later reported that immigration officials detained the British citizen and considered cancelling his visa.³

Although protests like this one are controversial, they are an important display of active citizenship. Active citizenship is more than political participation within the existing framework of laws and institutions,⁴ and includes critical protests that question the founding framework. Although philosophers differ about when unlawful acts are justified, even a relatively narrow view accepts that there are circumstances when non-violent acts of public civil disobedience are warranted.⁵ The acts of civil disobedience of Mahatma Ghandi, Martin

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2 *Neal v The Queen* (1982) 149 CLR 305, 316–7 (Murphy J) quoting Oscar Wilde, *The Soul of Man Under Socialism* (Andrade, unspecified) 6.

3 'Opera House Defaced in War Protest', *The Age* (Online), 18 March 2003, <http://www.theage.com.au/articles/2003/03/18/1047749763708.html>; 'No War Scrawl to Cost Doctor', *The Sydney Morning Herald* (Online), 26 March 2003, <http://www.smh.com.au/articles/2003/04/16/1050172650756.html>.

4 Sue Kenny, 'Non-Government Organisations and Contesting Active Citizenship' in Glenn Patmore (ed), *The Vocal Citizen* (Arena, 2004) 70.

5 Kent Greenawalt, 'Justifying Non-violent Disobedience' in Hugo Bedau (ed), *Civil Disobedience in Focus* (Routledge, 1991) 170.

Luther King Jr and Rosa Parkes enhanced their democracies. Their unlawful and public actions strongly criticised laws, government policies and decisions, and stimulated social change that led to more inclusive and democratic societies.

This chapter considers the extent to which active citizenship is currently supported by the Australian government. The Australian government has stated that it encourages active citizenship.⁶ However, this chapter argues that the law conveys a very different message. In particular, recent changes to the *Australian Citizenship Act 2007* (Cth) (the 'ACA') have emphasised citizenship as obedience to the law.

The argument in this chapter unfolds in three sections. The first section argues that even though there is no definition of citizenship in the ACA, the government conveys meanings about Australian citizenship through the regulation of associated citizenship practices. The second section argues how recent changes to the legislative criteria of the ACA have led to an increasing significance being placed on the pledge of commitment. The third section analyses the meaning conveyed by the pledge of commitment by exploring its performative dimensions. It analyses the pledge as a speech act and a public ritual and argues that the citizenship pledge embodies obedience to the existing democratic structures. With no Australian Bill of Rights to protect political rights generally, this chapter concludes that the meaning of citizenship currently conveyed by the government undermines active citizenship and threatens the quality of political participation in Australian democracy.

Conveying the meaning of citizenship through law and practice

The meaning of Australian citizenship is conveyed by the practices associated with the ACA, rather than the text itself. The ACA does not define citizenship.⁷ Nor does the legislation include a statement about the rights and responsibilities that must be complied with in order to become an Australian citizen.⁸ Instead,

6 Senate Select Committee on Employment, Education and Training, Parliament of Australia, *Education for Active Citizenship Education in Australian Schools and Youth Organisations* (1989); Senate Select Committee on Employment, Education and Training, Parliament of Australia, *Education for Citizenship Revisited* (1991), Civics Expert Group, *Whereas the People: Civics and Citizenship Education* (Commonwealth of Australia, 1994) 6; Department of Education, Science and Training, Parliament of Australia, *Discovering Democracy Program 'Civics and Citizenship Education'*, <http://www1.curriculum.edu.au/ddunits/about/about.htm#about>.

7 That is, a definition of citizenship is not included. There is an attempt to describe the meaning of citizenship through the preamble, which is discussed below.

8 Sir Ninian Stephen, 'Australian Citizenship: Past, Present and Future' (2000) 26(2) *Monash University Law Review* 333, 336; Joint Standing Committee on Migration, Parliament of Australia, *Australians All: Enhancing Citizenship* (1994) 85; Australian Citizenship Council, *Australian Citizenship for A New Century* (February 2000).

the ACA sets out the statutory basis upon which individuals acquire, lose and resume the legal status of citizenship. Scholars have therefore described the ACA as ‘mechanical’⁹ and a piece of ‘legislative machinery’.¹⁰ Yet characterising Australian citizenship legislation as machinery ignores the many different ways legislation conveys meaning about citizenship. Informed by critical legal studies, this section explores how official meanings of citizenship are generated through citizenship practices. In other words, this section explores the ways that the government promotes certain meanings of citizenship through the ACA by changing what people do and how they act. Two examples illustrate this point: the introduction of the legal status of citizenship in 1948, and the introduction of the preamble in 1993. Both these moments generated citizenship practices that conveyed a celebratory meaning of Australian citizenship. While a celebratory notion of citizenship is not necessarily inconsistent with protest and civil disobedience,¹¹ neither does it clearly accommodate them.

The legal status of citizenship

The legislation that first introduced the legal status of citizenship also generated the first Australian citizenship practices. The legal status of citizenship was introduced in Australia through the *Nationality and Citizenship Act 1948* (Cth) (the ‘1948 Act’). Prior to 1948, membership in the Australian community was recognised through British subject status.¹² Although the 1948 Act did not include a definition of citizenship, it did convey a meaning of citizenship by introducing two new citizenship practices. First, the legislation sought to change how a group of people described themselves. Second, it also sought to change aspects of the citizenship ceremony. How each of these citizenship practices conveyed a celebratory meaning of citizenship is described in more depth below.

The 1948 Act gave Australians a new way of describing themselves. In debating the bill, parliamentarian Mr Haylen stated that ‘[w]hen this Bill becomes law, an Australian may call himself an Australian because he holds Australian

9 Commonwealth, *Parliamentary Debates*, House of Representatives, 16 November 1993, 2904 (Phillip Ruddock).

10 Joint Standing Committee on Migration, Parliament of Australia, *Australians All: Enhancing Citizenship* (September 1994) 89. See also Sir Ninian Stephen, ‘Australian Citizenship: Past, Present and Future’ (2000) 26(2) *Monash University Law Review*; Margaret Thornton, ‘The Legocentric Citizen’ (1996) 21 *Australian Law Journal* 72.

11 Tristan Ewins, ‘Citizenship Education in Australia: Beyond Consensus’ in Glenn Patmore (ed), *The Vocal Citizen* (Arena, 2004) 100, 102.

12 Kim Rubenstein, *Australian Citizenship Law in Context* (Law Book, 2002) 9.

citizenship'.¹³ It was explicitly hoped that this new way of describing oneself would create a distinct sense of national identity. In the second reading speech of the Bill, the former Minister for Immigration Mr Calwell noted that

[t]o say that one is Australian is, of course, to indicate beyond all doubt that one is British; but to claim to be of the British race does not make it clear that one is Australian. The time has come for Australia and other dominions to recognize officially and legally their maturity as members of the British Commonwealth by the passage of separate citizenship laws.¹⁴

The 1948 Act changed the way that Australians described themselves in order to distinguish themselves from other British subjects. Using the term Australian citizen to describe oneself was also intended to evoke positive emotions. Mr Calwell stated in parliamentary debate that the 1948 Act would 'help him express his pride in citizenship of this great country'.¹⁵ Mr Calwell further claimed that '[t]his Bill is more than a cold, legalistic formula. It is a warm, pulsating document that enshrines the love of country of every genuine Australian.'¹⁶ The novelty of the use of legislation to capture an affective sense of Australian identity is highlighted by the parliamentarians who argued against the introduction of the 1948 Act. For instance, Mr Gullet asked: 'Does anyone feel any more Australian as the result of establishing an Australian nationality?'¹⁷ Mr Ryan further doubted whether citizenship could be reduced to words at all, noting that '[t]he ties which bind the Empire cannot be defined in words; they are bonds of sympathy, blood and kinship'.¹⁸ Yet the 1948 Act was passed and from that moment onwards, the term 'Australian citizen' has been used to describe membership in the Australian community.

Second, the 1948 Act introduced the requirement that applicants for Australian citizenship take a public oath of allegiance.¹⁹ While taking an oath had been a requirement for naturalisation for some time,²⁰ before 1948 oaths were

13 Commonwealth, *Parliamentary Debates*, House of Representatives, 18 November 1948, 3248 (Leslie Haylen).

14 Commonwealth, *Parliamentary Debates*, House of Representatives, 30 September 1948, 1060 (Arthur Calwell).

15 *ibid.*

16 *ibid* 1066.

17 Commonwealth, *Parliamentary Debates*, House of Representatives, 19 November 1948, 3281 (Henry Gullet).

18 Commonwealth, *Parliamentary Debates*, House of Representatives, 19 November 1948, 3278 (Rupert Ryan).

19 *Nationality and Citizenship Act 1948* (Cth) s 41.

20 Conal Condren, *Argument and Authority in Early Modern England: The Presupposition of Oaths and Offices* (Cambridge University Press, 2006); Clive Parry *Nationality and Citizenship Laws of The Commonwealth and of The Republic of Ireland* (Stevens & Sons, 1957) 53, 65; *Naturalization Act 1870* (Imp) 35 & 36 Vict, c.39 s 9. For a history of oaths in Australia see Deidre McKeowan, 'Changes in the Australian Oath of Citizenship' (Parliamentary Research Note No 20, Parliamentary Library, Parliament of Australia, 2002).

made privately before a justice, judge or magistrate.²¹ The 1948 Act gave the Minister powers to make arrangements that the oath could be made in public and ‘accompanied by proceedings designed to impress upon applicants the importance of the occasion’.²² Mr Calwell noted that

[i]t is proposed that the oath be made in open court, where the Australian flag shall be prominently displayed and have pride of place ... The old system, under which a man’s naturalization papers came to him through the mail, like his annual licence for his dog or his motor car, was inappropriate.²³

Making the pledge in public gave applicants a sense that becoming an Australian citizen was a ‘great and joyful decision’²⁴ and more than ‘merely a piece of office routine’.²⁵ In 1954, the legislation clarified that the Minister could require that the oath be taken in public.²⁶

Although the 1948 Act included no definition of citizenship, it is clear that Parliament intended that it was more than a piece of legislative machinery. The 1948 Act promoted the meaning of Australian citizenship by introducing two new citizenship practices: a new way of describing oneself, and a public demonstration of pride in acquiring citizenship. These two practices emphasise the meaning of citizenship as a public celebration of a newly created Australian national identity.

The preamble and the pledge

In 1993, the government amended the 1948 Act and generated new citizenship practices that altered and reinforced meanings about Australian citizenship. In 1993, the Keating government added a preamble to the 1948 Act by passing the *Australian Citizenship Amendment Act 1993* (Cth) (the ‘1993 Amendment Act’).²⁷ The new preamble led to a change in citizenship practices relating to the oath. The oath was reworded to mirror the preamble and was called a pledge of commitment. The new pledge of commitment was more than a change in the machinery of the 1948 Act. It was a new practice that altered and reinforced a celebratory meaning of citizenship.

21 Commonwealth, *Parliamentary Debates*, House of Representatives, 30 September 1948, 1064 (Arthur Calwell).

22 *Nationality and Citizenship Act 1948* (Cth) s 41.

23 Commonwealth, *Parliamentary Debates*, House of Representatives, 30 September 1948, 1064–5 (Arthur Calwell).

24 *ibid* 1065.

25 *ibid*.

26 *Nationality and Citizenship Act 1953* (Cth) s 41.

27 *Australian Citizenship Act 1948* (Cth) preamble, as amended by *Australian Citizenship Amendment Act 1993* (Cth).

In 1992, amidst public concern about the need to promote a commitment to democratic rights and values,²⁸ former Senator Michael Tate commissioned well-known Australian poet Les Murray to craft the words of a new preamble to Australia's citizenship legislation.²⁹ The introduction of the preamble was designed to raise awareness of the importance of citizenship. In the parliamentary debates, Mr O'Keefe said: 'The act should also contain a preamble defining the meaning which the parliament and the people of Australia accord to citizenship. This is what the preamble will do.'³⁰ The words of the new preamble were:

The Parliament recognises that Australian citizenship represents formal membership of the community of the Commonwealth of Australia, and Australian citizenship is a common bond, involving reciprocal rights and obligations, uniting all Australians, while respecting their diversity; and persons granted Australian citizenship enjoy these rights and undertake to accept these obligations

- (a) by pledging loyalty to Australia and its people; and
- (b) by sharing their democratic beliefs; and
- (c) by respecting their rights and liberties; and
- (d) by upholding and obeying the laws of Australia³¹

The words used in the preamble suggest that the government supported active participation in the Australian democracy. However, words such as 'democracy', 'freedom' and 'loyalty' can have many, varied meanings. During the debate of the 1993 amendment, some parliamentarians expressed dissatisfaction with the wording of the pledge, describing it as 'wishy-washy'³² and argued that it should be a much stronger statement.³³

Insight into the meaning of citizenship that the government sought to convey through the preamble can be gained by considering the words that were not included in the preamble. The initial draft of the preamble, written by Les Murray went as follows:

Under God, from this time forward

28 Mark McKenna, 'First Words: A Brief History of Public Debate on a New Preamble to the Australian Constitution 1991–99' (Research Paper No 16, Parliamentary Library, Parliament of Australia, 2000).

29 Les Murray, *The Quality of Sprawl* (Duffy & Snellgrove, 1999) 16.

30 *ibid* 2000.

31 *Australian Citizenship Act 1948* (Cth) preamble, as amended by *Australian Citizenship Amendment Act 1993* (Cth), preamble.

32 Commonwealth, *Parliamentary Debates*, House of Representatives, 16 November 1993, 2989 (Alan Cadman).

33 Commonwealth, *Parliamentary Debates*, House of Representatives, 16 November 1993, 2924 (Warren Truss).

I am part of the Australian people

I share their democracy and their freedom, I obey their laws,

I will never despise their customs or their faith

And I expect Australia to be loyal to me.³⁴

In the final version, the government did not include the words ‘freedom’ or ‘customs and faith’. Les Murray later commented that these words referred to tolerance of diverse ways of life and religious affiliations.³⁵ Instead, the government inserted a new line which referred to ‘respecting rights and liberties’. The government also deleted the last line of Les Murray’s draft. Les Murray indicated that the last line referred to ‘the voice of the sovereign citizen making promises and demands as of right vis-à-vis the nation and its servant — the government’.³⁶ This deletion suggests that the government intended to convey a meaning of citizenship that was more celebratory of existing structures of parliamentary sovereignty, than a meaning that called on citizens to actively seek to hold government accountable.

The impact of the new preamble was clearly symbolic. The meaning of citizenship conveyed through the preamble was not designed to alter any citizenship rights or obligations. For although preambles are legally part of an act,³⁷ the only impact of the preamble is on judges and decision-makers engaged in statutory interpretation. That is, where there are competing interpretations of another term in the Act, then the preamble might be referred to in order to decide which interpretation best achieves the purpose or purposes of the Act.³⁸

However the preamble did impact on citizenship practices. Alongside the introduction of the preamble, the oath was reworded and renamed a ‘pledge of commitment’. The words of the new pledge draw explicitly on the words of the preamble:

From this time forward [under God]

I pledge my loyalty to Australia and its people

Whose democratic rights and liberties I respect, and

Whose laws I will uphold and obey.³⁹

³⁴ *ibid.*

³⁵ Murray, above n 29, 16.

³⁶ *ibid.* 17.

³⁷ *Acts Interpretation Act 1901* (Cth) s 13(b).

³⁸ *Acts Interpretation Act 1901* (Cth) s 15AA.

³⁹ *Australian Citizenship Act 2007* (Cth) sch 1.

The 1993 Amendment Act created a new practice which required candidates for citizenship by grant (previously called naturalisation, now called conferral) to recite these words aloud before their citizenship took legal effect. The significance of the new wording was that the pledge was now made to 'Australia and its people'. Prior to 1993, the citizenship oath had been made to the British monarch.⁴⁰ The parliamentary debate surrounding the new pledge focused on whether it was more Australian to make a pledge of loyalty to historical English institutions including a foreign monarch, or to make a pledge of loyalty to Australia and 'its own symbols'.⁴¹ The successful passage of the 1993 Amendment Act removed from the pledge any reference to the British monarch.

Although the words used in the pledge affirmed Australian independence from Britain, it missed an opportunity to convey active citizenship. Although the pledge includes words such as 'democratic beliefs', 'rights' and 'freedoms', these words of the pledge do not clearly convey active Australian citizenship. These characteristics are held by Australians in a passive tense. The future citizen-subject merely 'shares' their democratic beliefs with others. The future citizen-subject promises to 'respect' the rights and freedoms of others, without mentioning the positive obligation to realise and protect those rights and freedoms. The future citizen subject also obeys the law without a hint of critical or ethical concern. These words of the pledge might be contrasted with a proposed draft of the Australian constitutional preamble, which while 'celebrating unity', also was 'believing in freedom and equality, and embracing democracy'.⁴² The words of the preamble emphasise the celebration of Australia's democratic institutions and its independence from Britain.

The introduction of the preamble triggered a change in the practice of the oath. The oath, now a pledge of commitment, requires candidates for citizenship to recite aloud a shortened form of the words contained in the new preamble. Both the preamble and the pledge, sought to convey citizenship as a public celebration of a newly created Australian national identity.

These two examples demonstrate that the ACA is not only a mechanistic set of rules about the acquisition, loss and resumption of citizenship status. Rather, the government uses citizenship legislation as a vehicle to generate citizenship practices which effectively convey particular meanings about Australian citizenship. The introduction of the legal status of citizenship in 1948 changed

40 Deidre McKeowan, 'Changes in the Australian Oath of Citizenship' (Parliamentary Research Note No 20, Parliamentary Library, Parliament of Australia, 2002).

41 Commonwealth, *Parliamentary Debates*, Senate, 29 September 1993, 1433 (Christopher Schacht). See also Commonwealth, *Parliamentary Debates*, House of Representatives, 17 November 1993, 2994 (Alan Cadman).

42 Non-Government Parties Preamble to the Australian Constitutional Referendum by Gareth Evans, Natasha Stott-Despoja and Bob Brown on 28th April 1999. Cited in Mark McKenna, Amelia Simpson and George Williams, 'With Hope in God, the Prime Minister and the Poet: Lessons from the 1999 Referendum on the Preamble' (2001) 24 (2) *University of New South Wales Law Journal* 401, 405.

the way that people described themselves and made the oath public. These practices sought to convey a celebratory notion of Australian citizenship. The introduction of the preamble in 1993 changed the wording of the oath. The government intended that this new practice more clearly convey a celebratory notion of independent Australian citizenship. The rest of this chapter examines the most recent reforms to Australian citizenship legislation and considers the extent to which these reforms have changed citizenship practices and altered the meaning of citizenship.

The meaning of citizenship and the increasing significance of the citizenship pledge

The Australian government has shown a renewed interest in Australian citizenship law and policy in the last two decades. There have been numerous government inquiries and reports,⁴³ leading to a number of legislative reforms to the citizenship eligibility criteria.⁴⁴ Some of these reforms have been controversial,⁴⁵ while others have passed without much comment.⁴⁶ This section outlines how two changes to the current ACA have led to the government placing increasing significance of the pledge of commitment. The two changes considered are the introduction of the citizenship test and the legal regulation of the citizenship ceremony.

43 Senate Select Committee on Employment, Education and Training, Parliament of Australia, *Education for Active Citizenship Education in Australian Schools and Youth Organisations* (1989); Senate Select Committee on Employment, Education and Training, Parliament of Australia, *Education for Citizenship Revisited* (1991), Joint Standing Committee on Migration, Parliament of Australia, *Australians All: Enhancing Australian Citizenship* (1994); Nick Bolkus, 'Ties that Bind: A 4-year plan for Australian citizenship' (Media release, 4 September 1995); Senate Legal and Constitutional Reference Committee, Parliament of Australia, *National Well-Being: A System of National Citizenship Indicators and Benchmarks* (1996); Civics Expert Group, *Whereas the People: Civics and Citizenship Education* (Commonwealth of Australia, 1994); Australian Citizenship Council 'Australian Citizenship for a New Century' (Report, Commonwealth of Australia, February 2000).

44 *Australian Citizenship Legislation Amendment Act 2002* (Cth); *Australian Citizenship Act 2007* (Cth); *Australian Citizenship (Transitional and Consequential) 2007* (Cth); *Australian Citizenship Amendment (Citizenship Testing) Act 2007* (Cth); *Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Act 2009* (Cth); *Australian Citizenship Amendment (Defence Families) Act 2012* (Cth); *Australian Citizenship Amendment (Special Residence Requirements) Act 2013* (Cth).

45 Such as the citizenship testing criteria, and the length of time before a permanent resident can apply for citizenship. See Fardia Fozdar and Brian Spittles, 'The Australian Citizenship Test: Process and Rhetoric' (2009) 55(4) *Australian Journal of Politics and History* 496; John Tate, 'John Howard's "Nation" and Citizenship Test: Multiculturalism, Citizenship and Identity' (2009) 55(1) *Australian Journal of Politics and History* 97.

46 Julie Szego, 'I am, you are, we are...', *The Age* (online), 26 September 2006, <http://www.theage.com.au/news/in-depth/i-am-you-are-we-are-/2006/09/24/1159036415375.html>. Also note that the name of the Department of Immigration and Multicultural Affairs was changed to the Department of Immigration and Citizenship in 2007.

The pledge and the citizenship test

In October 2007, the Australian federal Parliament introduced testing of all candidates for Australian citizenship by conferral. Following a subsequent review of the citizenship testing regime, an independent committee recommended that citizenship testing be kept, but that the knowledge required to pass the test should be more closely aligned with the citizenship pledge.⁴⁷ The Rudd government agreed and sought to make the pledge of commitment ‘the centre-piece of the Australian citizenship testing’.⁴⁸ A brief explanation of the citizenship test and its purpose provides some useful background to explain the new significance of the pledge.

In 2007, Parliament introduced a citizenship testing regime with bi-partisan support.⁴⁹ Passing the citizenship test is now the only way that a candidate for citizenship by conferral can satisfy three eligibility criteria,⁵⁰ unless an exception applies.⁵¹ The eligibility criteria satisfied by the test are: an understanding of the nature of the application, a basic understanding of English, and knowledge of Australia and the responsibilities and privileges of Australian citizenship.⁵² Previously, officials interviewed candidates to determine whether they satisfied these criteria.⁵³ The purpose of the new written test format was to

encourage prospective citizens to obtain the knowledge they need to support successful integration into Australian society. The citizenship test will provide them with the opportunity to demonstrate in an objective way that they have the required knowledge of Australia, including the responsibilities and privileges of citizenship, and a basic knowledge and comprehension of English.⁵⁴

The government stated that the test created an incentive for candidates to gain the necessary knowledge to support their future participation in Australian society, and to provide a mechanism by which they could demonstrate this

47 Australian Test Review Committee, ‘Moving Forward ... Improving Pathways to Citizenship’ (Report, August 2008) 3, 4.

48 Australian Government, ‘Moving Forward ... Improving Pathways to Citizenship’ (Government Response to the Report by the Australian Citizenship Test Review Committee, November 2008) 2.

49 See Fardia Fozdar and Brian Spittles, above n 45. The introduction of citizenship testing in Australia is part of a wider international practice of introducing citizenship tests, particularly in Europe. However, other forms of integration tests have also been introduced such as requirements for courses, pledges etc. See Sara Goodman, ‘Integration Requirements for Integration’s Sake?: Identifying, Categorising and Comparing Civic Integration Policies’ (2010) 35(5) *Journal of Ethnic and Migration Studies* 753.

50 *Australian Citizenship Act 2007* (Cth) as amended by *Australian Citizenship (Citizenship Testing) Act 2007* (Cth) s 23A.

51 *ibid* s 21(2A).

52 *Australian Citizenship Act 2007* (Cth) s 21(2)(d)–(f).

53 Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Australian Citizenship Amendment (Citizenship Testing) Bill* (2007) 11.

54 Commonwealth, *Parliamentary Debates*, House of Representatives, 30 May 2007, 4 (Kevin Andrews).

knowledge.⁵⁵ While the test's purpose might be simply stated, identifying the knowledge that was necessary was more difficult. The government's solution was a pragmatic one. The government developed a citizenship booklet and stated that the questions in the citizenship test would be based on that booklet.⁵⁶ When the first edition of the booklet was prepared in 2007 it included topics such as: responsibilities and privileges of Australian citizenship, Australian values, the Australian people today, Australia's name and symbols, a story of Australia, government in Australia, the Australian Constitution, levels of government, and elected representatives.⁵⁷

The subsequent independent committee later found that the testing framework did 'not sit well with the legislative requirements'.⁵⁸ The committee recommended that the knowledge required in the citizenship test should be aligned with the pledge.⁵⁹ The Rudd government accepted this recommendation and revised the content of the booklet.⁶⁰ The information in the second edition of the citizenship testing booklet was split into 'testable' and 'non-testable' sections.⁶¹ The testable section was further divided into sections which corresponded to different parts of the pledge. The restructure both reduced the volume of knowledge required and more clearly identified how the information related to the pledge of commitment. However, the content of the knowledge in the testable section of the second edition is largely the same as the first. The second edition continues to focus on knowledge of the symbols, history, and the basic institutions of Australian democracy. This suggests that aligning the citizenship test with the pledge was less about modifying the content of the citizenship test, and more about finding a more persuasive justification for the citizenship test. As a result, the pledge of commitment acquired a new and heightened symbolic importance.

The legal regulation of the pledge

The significance of the pledge was also enhanced by two changes to the legal regulation of the pledge. First, the ACA elevated the significance of making the pledge as a distinct and essential step towards acquiring citizenship. Second, the pledge was increasingly prescribed by law.

55 Australian Government, 'Much More Than Just a Ceremony' (Discussion paper, September 2006) 11–12.

56 Australian Government 'Becoming an Australian Citizen' (Booklet, Commonwealth of Australia, 2007).

57 *ibid.*

58 Australian Citizenship Test Review Committee, above n 47.

59 *ibid.* 16.

60 Australian Government, 'Moving Forward ... Improving Pathways to Citizenship' above n 48, 2–3.

61 Australian Government, *Australian Citizenship: Our Common Bond* (Citizenship Booklet, Commonwealth of Australia, 2009).

The Howard government elevated the significance of the pledge in the legislative reforms of 2007. Prior to 2007, the requirement to make the pledge was located separately from the other eligibility criteria, and was described as a condition to be satisfied before the grant of citizenship had legal effect.⁶² The ACA elevated the legal importance of the pledge by making it clear that there were two essential steps in acquiring citizenship by conferral: the application for citizenship must be approved, and the applicant must take the pledge.⁶³ The legal status of citizenship would not be conferred without the applicant making the pledge.

The ACA also clarified that the Minister had powers to make arrangements for how the pledge was to be made.⁶⁴ Although the Minister had this power previously, this provision of the ACA was now used to pass regulations which explicitly provided that the Minister 'may notify additional arrangements for making a pledge, or conducting a ceremony, that are designed to impress upon applicants the responsibilities and privileges of Australian citizenship'.⁶⁵ Under this regulation, a new citizenship ceremonies code (the Code) was published in 2008, prescribing certain guidelines concerning how the ceremonies should be conducted. The Code included a number of existing practices such as: the ceremony itself must be conducted by a duly authorised officer,⁶⁶ national symbols must be displayed during citizenship ceremonies,⁶⁷ all of the citizenship candidates must take the pledge,⁶⁸ the Presiding Officer must attest that each applicant has recited the pledge before the applicants are formally recognised as citizens,⁶⁹ a Minister's message which must be read aloud,⁷⁰ and that citizenship ceremonies should be promoted by the media.⁷¹

Following the alignment of the pledge with the test, the Rudd government updated the Code in 2011. While nearly all of the arrangements for conducting citizenship ceremonies under the previous Code were kept, the new Code provided additional information about how to publicise the ceremony,⁷² and suggested a stronger emphasis on compliance by stating that some community

62 *Australian Citizenship Act 2007* (Cth) s 15.

63 *ibid* s 20.

64 *ibid* s 27.

65 *Australian Citizenship Regulations 2007* (Cth) reg 8.

66 *Australian Citizenship Act 2007* (Cth) s 27(3).

67 *ibid* s 25.

68 *ibid* s 20(b).

69 Commonwealth of Australia, *Australian Citizenship Ceremonies Code* (Booklet, 2008) 12.

70 *ibid* 17, *Australian Citizenship Regulations 2007* (Cth) reg 8(b), sch 1.

71 Commonwealth of Australia, *Australian Citizenship Ceremonies Code* (Booklet, 2008) 11.

72 *ibid* 19. For instance, ABC TV covered the citizenship ceremony on Australia Day 2012 and 2013. See Australian Broadcasting Commission, *National Flag and Raising and Citizenship Ceremony Australia Day*, <http://www.abc.net.au/australiaday/ceremony.htm>. Citizenship ceremonies are also publicised on the Australia Day website events. See for example Australian Day, *Citizenship 'What's On'*, <http://www.australiaday.com.au/whatson/citizenship.aspx>.

organisations would be required to ‘sign an agreement with the department on how ceremonies are to be conducted’.⁷³ Increasing the legal regulation of first the pledge, and then the citizenship ceremony, intensified the significance of the pledge of commitment.

The emerging significance of the pledge in 2007 suggests that a fresh examination of the pledge as a practice is warranted. This chapter now turns to consider to what extent the new practice conveys a meaning of active citizenship, including the extent to which it values protest, disagreement and even acts of civil disobedience.

Interpreting the citizenship pledge as a performance

This section examines the meaning of citizenship conveyed by the current practice of the pledge of commitment. This section applies the theoretical frameworks of John Austin and David Kertzer to analyse the meaning of citizenship conveyed by the pledge of commitment as a performance. First, John Austin’s well known theory about speech acts demonstrates the importance of focusing on the meaning communicated through the performative dimensions of the verbal statements. Second, David Kertzer’s work on political rituals identifies the wider social meaning that the performance of the pledge plays in national societies. This section concludes by arguing that the performance of the pledge is a symbolic act which asks the citizen by conferral to embody obedience to the law by submitting to the authority of the government.

Austin’s theory of speech acts

Analysing the pledge as a speech act helps to understand the pledge as a performance, rather than just the words that are used in the statement. This is particularly important as although the ACA has been subject to critique, the critique typically focuses on the text of the ACA. Examining the performative dimension of the pledge offers new insights into the meaning of citizenship conveyed by the pledge.

Philosopher John Austin argues that verbal statements not only describe or report facts, they are also ‘performative’. In his lecture series ‘How To Do Things With Words’, Austin argues that the statement ‘I name this ship Queen Elizabeth — as uttered when smashing a bottle against the stem’,⁷⁴ is to perform

73 Commonwealth of Australia, *Australian Citizenship Ceremonies Code* (Booklet, 2008) 7.

74 J.L Austin, *How To Do Things With words* (Oxford University Press, 1962) 5.

the naming of the ship.⁷⁵ Similarly, the statement 'I do', means 'I marry you'.⁷⁶ A performative utterance or speech act can be made up of either verbal or non-verbal cues, or a combination of both.

For an utterance to amount to a speech act, Austin states that the utterance must have certain features. Those features are:

A.1 There must exist an accepted conventional procedure having a certain conventional effect, that includes the uttering of certain words by certain persons in certain circumstances, further

A.2 The particular persons and circumstances in a given case must be appropriate for the invocation of the particular procedure invoked, and

B.1 The procedure must be executed by all participants both correctly and,

B.2 Completely, and

C.1 Where if certain feelings are to be communicated or felt, they are communicated or so felt

C.2 Must actually conduct themselves subsequently.⁷⁷

The convention procedure mentioned in A.1 is the most complex part of the speech act, and deserves some further explanation. A convention procedure is the context in which the verbal utterance is made. Words can become performative when they are recognised by an audience as being part of a particular context. Recognition of the context will depend on a number of other factors, including the roles that the speaker and audience play, how authority is exercised, as well as the presence of other symbols and cultural practices that might accompany the performance.

A citizenship pledge is a speech act when it is made during a citizenship ceremony. The citizenship ceremony is recognisable in that it is accompanied by legally prescribed symbols, and follows a consistent and recognised order that is clearly prescribed by the citizenship ceremonies code. Authorised persons must ensure that the pledge is spoken by each candidate. The convention effect, if properly followed, is that a person at the end of the ceremony will have the formal legal status of Australian citizenship. The appropriate emotion generated during the ceremony is of dignified celebration and a sense of unity. If the candidates do not take the pledge, then the performance is incomplete and citizenship will not be conferred.

⁷⁵ *ibid* 6.

⁷⁶ *ibid* 5.

⁷⁷ *ibid* 14–15.

Austin's theory of speech acts brings into clear focus the importance of examining the context in which the pledge is performed. David Kertzer's theory of political ritual provides an analytical framework to interpret the performance of the pledge.

Kertzer and political ritual

David Kertzer's work offers insights into the meaning and emotional affect communicated through the performance of the citizenship pledge. Kertzer identifies a number of characteristics of modern rituals: rituals are typically formal in the sense that they are ceremonial;⁷⁸ a ritual will follow standardised procedures so that the ceremony is recognisable to the audience;⁷⁹ and rituals use simultaneity in physical space to generate and spread an appropriate emotional response.⁸⁰ The emotional response to the ritual is important as this is what contrasts ritual with a habit or custom. Kertzer also notes that to generate an appropriate emotional response, rituals avoid specific language.⁸¹ Instead, rituals use dramatization and symbols to generate a rich ambiguity, or 'multi-vocality'.⁸² Ambiguity avoids the potential for disagreement or dissent between the individuals and the group about the content of the ritual, and instead permits the participants to focus on the embodied experience of the ritual.

Kertzer argues that many political organisations, clubs, associations and nations use membership rituals.⁸³ These rituals reassert the power and legitimacy of the organisation and make the organisation be 'seen' in certain ways.⁸⁴ He argues that, during membership rituals in nation states, oaths of allegiance and pledges are primarily used to build solidarity,⁸⁵ particularly when consensus is lacking.⁸⁶

Understanding the Australian citizenship pledge as a membership ritual highlights how the performance creates an embodied experience for the candidate. Unity is enacted through the formal, simultaneous and public recitation of certain words. The words of the pledge are vague, and employ multi-vocality to enhance the sensation of physical and sonorous unity. In 2000, when the Australian Citizenship Council considered whether the wording of the pledge of commitment should be amended, it said:

78 David Kertzer, *Ritual, Politics, and Power* (Yale University Press, 1988) 9.

79 *ibid.*

80 *ibid* 40: 'emotion'; *ibid* 30: 'space'.

81 *ibid* 30.

82 *ibid* 11.

83 *ibid* 13.

84 *ibid* 15; *ibid* 24: making organisations visible in relation to rituals and power.

85 *ibid* 67.

86 *ibid* 153.

The view was put to the Council that because the Preamble is drafted in fairly general terms, it may not be as relevant to some Australians (for example those born in Australia) as it is to others. Nonetheless, in the Council's view, it is precisely this lack of prescription which allows the Preamble to be relevant to all Australian Citizens — whether born in Australia or overseas ...⁸⁷

The ritualised pledge creates a unified community through simultaneous performance.⁸⁸ Indeed, the government has explicitly acknowledged that placing increasing significance on the pledge enhances national unity. For instance, the government has stated that '[t]he Pledge joins all Australians in a statement of unity'.⁸⁹ The sense of unity is amplified by the growing public nature of the ceremony, its increased promotion and media coverage.⁹⁰ Not only is the sense of unity experienced by the candidates making the pledge, but the experience is shared by the general public, who are witnessing the pledge.

However, the physical sensation of unity is not the only embodied experience that is reinforced by the performance of the pledge of commitment. The performance also embodies obedience and, in particular, obedience as submission to government authority. This dimension of the performed pledge of commitment potentially undermines active citizenship in Australia.

Performing citizenship, embodying obedience

This section explores the ways in which the performance of citizenship pledge embodies obedience. It then identifies how this performance is problematic for active citizenship and Australian democracy.

The performance of the pledge is the means through which candidates demonstrate with their bodies their willingness to submit to the laws of Australia. The way that the pledge must be made is formal and tightly prescribed through a matrix of the quasi legislative documents, including the citizenship ceremony codes. A candidate must follow the citizenship rules of the performance, otherwise the legal status of citizenship will not be conferred. The performance of the pledge has little room for individual agency. The only choice is whether or not the candidate makes the pledge under God.⁹¹ Moreover, there are generally

87 Australian Citizenship Council, *Australian Citizenship for A New Century* (Report, February 2000) 81.

88 *ibid* 23.

89 Australian Government, above n 48, 2.

90 *ibid* 19. For instance, ABC TV covered the citizenship ceremony on Australia Day 2012 and 2013. See Australian Broadcasting Commission, *National Flag and Raising and Citizenship Ceremony Australia Day*, <http://www.abc.net.au/australiaday/ceremony.htm>. Citizenship ceremonies are also publicised on the Australia Day website events. See for example Australian Day, *Citizenship 'What's On'*, <http://www.australiaday.com.au/whatson/citizenship.aspx>.

91 *Australian Citizenship Act 2007* (Cth) s 27(1) sch 1.

only limited exceptions to the requirement to make the pledge in order to become a citizen.⁹² The migrant's acceptance into the Australian democratic collective is therefore generally contingent on the candidate performing the pledge. The candidate must signal with their bodies that they will obey the laws by physically submitting the legal requirements for this performance.

The pledge enacts obedience as a submission to the government as the sovereign authority. It is significant that the pledge is taken by an 'authorised officer',⁹³ who is a representative of the state. The candidate is further reminded that it is the state that has the authority to accept the pledge, as either the Minister or, in his or her absence, the Minister's speech, is clearly present. The performance of the pledge is marked by the symbols of the state, the flag, the anthem, and the picture of the Queen. These symbols remind the candidate of the authority of the government. So although the text of the pledge expresses loyalty to Australia and its people, the context of the ceremony reinforces that it is the state who holds ultimate authority.

It is also significant that only migrants are required to perform the pledge. The renewed emphasis on the pledge and its performance has followed a period in Australia of increased suspicion towards non-white migrants,⁹⁴ in particular, a suspicion that migrants do not integrate into Australian society and that certain cultural beliefs and practices threaten social cohesion and national unity.⁹⁵ This context reinforces the argument that enacting the pledge reasserts the existing social and political order. In discussion surrounding the introduction of the citizenship test, parliamentarian Alan Cadman hinted that the value of the pledge was to reinforce the message to migrant future citizens that they must not seek to change Australian society:

I think the only way in which we can influence those who want to subvert or change Australia to their own form of dictatorship or dominance and who want to be separate from the bulk of Australians is to have them understand that most Australians really do know what this country stands for and do want to support it and see it prosper. They want to see their families, and the generations who follow, prosper in an open, free and democratic society. The only way in which that can be achieved is

⁹² Exceptions are set out for those who are under 16, who have a permanent or enduring physical or mental incapacity, if they were born to a former Australian citizens, born in Papua, or stateless. *Australian Citizenship Act 2007* (Cth) s 26(1).

⁹³ *Australian Citizenship Act 2007* (Cth) s 27(3).

⁹⁴ Ghassan Hage, *White Nation* (Routledge, 2000).

⁹⁵ Robert Holton 'Immigration, Social Cohesion and National Identity' (Parliamentary Research Paper, Social Policy Group, Research Paper No 1, 1 September 1997).

through the Citizenship Act and by having the Citizenship Act as a basis of understanding: if somebody who has taken the oath seeks to corrupt or ignore [sic], they become answerable to the processes of law.⁹⁶

Performing the pledge therefore ensures that the migrant promises that they will submit to the existing political system or society, and if they do not, they will become traitors and be legitimately punished by the law. Therefore the performance of the pledge not only involves obedience, but submission, and weakens the understanding of the future migrant citizen as an independent and active agent for political change.

The recent introduction of affirmation ceremonies has not changed the focus on the performance of the pledge as an act of submission by migrant future citizens. In 2006, the government introduced a new practice in citizenship ceremonies that invites the audience to repeat the pledge of commitment. However, this new practice does not alter the meaning of the pledge as primarily performed by the migrant. Participation in affirmation ceremonies is not compulsory and does not have any legal effect. The affirmation ceremony is conducted after the pledge of commitment made by the new citizen-migrants. These aspects suggest that the affirmation ceremonies draw their meaning from the migrant pledge and reinforce it, rather than conveying any new meaning about citizenship.

It should be noted that the rich multi-vocality of political rituals permits opportunities for the generation of meanings of citizenship other than those determined by officials or the organisation.⁹⁷ Kertzer identifies that some rituals can challenge the official symbolic meaning of membership rituals.⁹⁸ These include rituals of rebellion (disobedience), reversion (inverting the power relations for 'a day'), or revolution. However, state control over the present citizenship pledge in the Australian ceremony is tight. Opportunities for subversion and challenge within the ceremony itself are limited. Perhaps if alternative civic rituals investing citizenship with different meanings become more commonplace, alternative ways of expressing Australian citizenship might generate new meanings. At present, the opportunities to undermine the official meaning of citizenship as obedience and submission are limited.

The meaning of citizenship generated by the law and conveyed by citizenship practices has the potential to influence the degree and scope of critical political engagement in Australian democracy. There are at least two implications for Australian democracy of a meaning of citizenship that reinforces obedience and submission. First, the emphasis on citizenship as obedience may influence the interpretation of the ACA, and so may exclude some applications for

96 Commonwealth, *Parliamentary Debates*, House of Representatives, 21 June 2007, 58 (Alan Cadman).

97 David Kertzer, *Ritual, Politics, and Power* (Yale University Press, 1988) 12.

98 *ibid* 13.

Australian citizenship. Second, the emphasis on obedience and submission might discourage permanent residents from engaging in active citizenship in Australia, both before they become citizens and afterwards. These implications diminish the level of critical political engagement in Australian democracy.

First, the emphasis on citizenship as obedience has the potential to influence decisions about which applications are accepted or rejected. At present, 'good character' is one of the eligibility criteria for citizenship by conferral.⁹⁹ Criminal offences are a key consideration which may indicate that a person is not of good character, although mitigating factors are considered. Mitigating factors include assessing the seriousness of the offence, age when committed, length of time since commission of the offence, and whether or not the offence was a one-off occurrence.¹⁰⁰ Another factor relevant to character is whether the person has been involved in activities which show 'disregard for the law'.¹⁰¹ With an emphasis on citizenship as obedience, this could lead to the rejection of candidates who have engaged in political protest and acts of civil disobedience, such as the British citizen who painted 'NO WAR' on the Opera House. Alternatively, an emphasis on obedience may influence the exercise of the Minister's residual discretion.¹⁰² The policy guidelines that govern how the Minister may exercise his or her residual discretion are vague.¹⁰³ The explanatory memorandum suggests that the discretion could be exercised where 'a person incites hatred or religious intolerance'.¹⁰⁴ But the line between political action and religious intolerance is difficult to ascertain, and may operate to reinforce discriminatory stereotypes. For instance, the protests about the release of the film *Innocence of Muslims* in Sydney in 2012 were framed as acts of religious intolerance, rather than political protests.¹⁰⁵ Political agitators might therefore be excluded from Australian citizenship under the wide scope of the Minister's residual discretion. The performance of the pledge which conveys a meaning of citizenship that reinforces obedience and submission has the potential to influence how the ACA is applied, and exclude those who are active citizens.

99 *Australian Citizenship Act 2007* (Cth) s 21(2)(h).

100 Department of Immigration and Citizenship, *Australian Citizenship Instructions*, 1 July 2013, ch 10.5.2 'Good Character'. Note that the 'good character' guidelines for citizenship are different to the 'good character' guidelines for the purposes of the *Migration Act 1958* (Cth). At the time this chapter went to press, the Australian Citizenship and Other Legislation Amendment Bill 2014 was before the Parliament. If passed, it will clarify and extend the scope of the character provisions in the *Australian Citizenship Act 2007* (Cth).'

101 *ibid* [10.2].

102 *Australian Citizenship Act 2007* (Cth) s 24.

103 Department of Immigration and Citizenship, *Australian Citizenship Instructions*, 1 July 2013, ch 5.27 'Decision Making'.

104 Explanatory Memorandum, Australian Citizenship Bill 2005 (Cth) 30.

105 Yoni Bashan, 'Arrests Made After Police Officers Injured at Anti-Islamic Film Protest in Sydney CBD' *The Daily Telegraph* (online), 16 September 2012, <http://www.heraldsun.com.au/news/national/police-use-pepper-spray-on-anti-islamic-film-protesters-in-sydney-at-the-us-consulate/story-fndo317g-1226474744811>.

Second, an emphasis on citizenship as obedience and submission may discourage the political engagement of migrants both before they become citizens, as well as afterwards.

Those seeking Australian citizenship might avoid acts of active citizenship prior to their application. A citizenship application might be rejected where a person has committed a crime, even when this crime was an expression of political activity. Engaging in active citizenship is therefore risky. However, contributions by non-citizens have been very valuable in shaping Australian democracy. For instance, Australian democracy might be entirely different if the Italian migrant Raffaello Carboni had been reluctant to participate in the events during and after the Eureka Stockade.¹⁰⁶

The emphasis on submission to legal authority may also influence the behavior of candidates after they become citizens. Certainly, once a migrant-applicant becomes a citizen, then they are legally free to engage in Australian democracy as they choose and to benefit from the democratic freedoms that other Australian citizens have. However, apart from the government rhetoric about active citizenship, there is a general absence of critical practices that emphasise the importance of critical engagement with Australian democracy. There are only minimal protections of participation in politics, and no express federal legislative charter of liberal rights or tolerance.¹⁰⁷ This political environment creates inconsistent messages for new citizens about the extent to which they are encouraged to participate as active citizens, and to engage in protest action or even civil disobedience. Indeed, research suggests that Australian citizens by conferral are less likely to engage in political action than Australian citizens by birth.¹⁰⁸ While it is difficult to speculate the extent to which the meaning of citizenship as communicated through the performance of the pledge contributes to this result, it does suggest that any emphasis on citizenship as obedience and submission will only further undermine an already low level of political engagement.

Although only applicants for citizenship by conferral need to perform the pledge and embody obedience and submission, the practice has a far reaching impact on Australian democracy. Citizenship by conferral is a significant means of gaining membership in a country of high immigration such as Australia. Government statistics estimate that 26.8 per cent of the Australian population is born overseas, and it is likely that a large proportion of those born overseas acquire

106 Jennifer Lorch, 'Raffaello Carboni' *Australian Dictionary of Biography* (Melbourne University Press, 1968) <http://adb.anu.edu.au/biography/carboni-raffaello-3163>.

107 Donald Horne, 'A Constitution of Openness, Accessibility and Shared Discourse?' (2001) 24(3) *University of NSW Law Journal* 610, 616.

108 Antoine Bilodeau, 'Immigrants' Voice Through Protest Politics in Canada and Australia: Assessing the Impact of Pre-Migration Political Repression' (2008) 34 (6) *Journal of Ethnic and Migration Studies* 975.

Australian citizenship through citizenship by conferral.¹⁰⁹ A performance of citizenship that embodies obedience is problematic for Australian democracy because it undermines the critical agency of nearly a quarter of the population. Furthermore, the public performance of the pledge conveys a submissive understanding of citizenship to the wider public through the media and high profile events, which influences the understanding of citizenship in the Australian community more broadly.

Conclusion

This chapter argues that even though the rhetoric of the Australian government supports active citizenship, the meaning about citizenship conveyed by the law suggests otherwise. Through expanding the analysis to include an examination of citizenship practices in the ACA, this chapter explores the meaning of citizenship conveyed by the government. Although Australian citizenship practices have historically conveyed a celebratory meaning of citizenship, this chapter reveals how the recent government emphasis on the practice of the pledge of commitment has altered the meaning of citizenship. Using the theory of speech act and political ritual, it argues that the performance of the pledge conveys Australian citizenship as obedience and submission to the law and existing democratic structures. Without room made for disagreement and contestation, a robust notion of active citizenship is therefore undermined. The current Australian practice of making a pledge works against active citizenship in Australia, as well as undermining active political engagement in Australian democracy.

109 Commonwealth of Australia *Fact Sheet 15: Population Growth* June 2012, Department of Immigration and Citizenship, <http://www.immi.gov.au/media/fact-sheets/15population.htm>.

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