

Archaic Obstacles: Australia, Parliament and Dual Citizenship

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Dusting away the must on a constitutional text may be a rare thing, but it should be a point of order for the elected officials of a country. Often, these contain laws that are irretrievably archaic, and resist change by virtue of being embedded in a document deliberated over in another age.

The one provision in the Australian Constitution that has received considerable attention of late is section 44, one unmistakably dull yet absolute in effect: “Any person who is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.”

It is a provision that nabs the unsuspecting member of Parliament who discovers, by self-pursuit or otherwise, that he or she is, in fact, seized of the loyalty of another state, with its “rights or privileges”. A mere snifter of benefit from a foreign power disentitles and disables.

This was the situation Greens Senators **Larissa Waters** and **Scott Ludlam** found themselves when they discovered that their previous nationalities (in Waters case, Canada, in Ludlam’s, New Zealand) had not been extinguished by the act of naturalisation. This bumbling did not just come at some cost to the Greens: it also excised two able working representatives who risk being hounded for their pay.

The resignations precipitated a dash in the halls of Parliament, with members rushing to consult paperwork, embassies and home offices as to what, exactly, their status might be. Of 23 other Australian MPs and senators born overseas, a near half have made public announcements about their position.

Springing into action with an enthusiastic rumble was Labor **Senator Sam Dastyari**, who admitted to forking out a good \$25,000 in the process of giving up his Iranian citizenship. The ones to profit heartily from the endeavour seemed to have been those “two teams of lawyers (Australian and Iran)”. Apostasy to a state can be a dear business indeed.

Some of the responses were drawn from the bottomless pit of faux patriotism, sounding more relieved than sensible. **Ian Goodenough** sought confirmation from the Singapore High Commission, who “unequivocally confirmed I’m part of Team Australia.”[1] (The good member of parliament was also good enough to sport a hat and snap a shot of himself in front of the Australian flag.)

Matthias Corman, much to the disappointment of some, merely confirmed that his Belgian

citizenship had ceased to exist in accordance with that country's laws. (Good timing, that.) **Derryn Hinch**, born in New Zealand, also passed muster, claiming that he, rather than Ludlam, had been the original target of Perth constitutional lawyer **John Cameron**.

"Ludlam was actually collateral damage."

Hinch has since focused his ire on Liberal **Senator Eric Abetz**.

"It turns out that Abetz only renounced his German citizenship in 2010," claimed Hinch to radio host **Neil Mitchell**. "He was a Senator long before that. So, why isn't he in the gun?"[2]

On that score, Hinch is trawling over old news. Antique dealer **John Hawkins** had tabled a petition in the Court of Disputed Returns in 2010 asking that the High Court declare Abetz unfit to remain in the Senate. **John Sackar** QC, acting on Hawkins' behalf, withdrew the petition once evidence was revealed showing that the senator had renounced his German citizenship.

One Nation climate change sceptic and comical fantasist **Malcolm Roberts** got on with the business of confessing to being true blue to earth and soil (his leader **Pauline Hanson**, would have had it no other way) despite being born in India in 1955, before throwing a few grenades of his own.

"On another note, I do not own, nor have I ever owned, a 7-11. I'm not even a chucker."[3]

Because Indians (as opposed to Sri Lankans) have such proclivities on the cricket field.

But the pearl in this swinish lot would have been former **Prime Minister Tony Abbott**, who staved off critics at the pass by producing a letter from January 5, 2015 from UK Visas & Immigration showing that he had renounced his British citizenship prior to entering federal politics. As with other amateur sleuths, Abbott had had his own agitator, a certain **Tony Magrathea** who failed to net his quarry.[4]

Due diligence, as it tends to be called, requires combing, investigation and verification. But section 44 remains an anachronism in an age where dual nationality has become a pressing reality, less a matter of patriotism than access. Nothing gets away from the fact that Ludlam and Waters were also Australian tax-paying citizens who could also be electors. That they could not be sitting members in a legal sense will be the stinging travesty in all of this.

All chat about reform is fine and good, till one realises how grindingly difficult it is to adjust the wording of Australia's functional, as opposed to aspirational, document. In a rather odd twist of fate, the change would be, not to add a right so much as to remove an impediment. The constitution continues being more a poor bill of fare than a bill of rights.

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Notes

[1] https://twitter.com/lanGoodenoughMP/status/887242838978711552?ref_src=twsrc%5Etfw&ref_url=http%3A%2F%2Fwww.abc.net.au%2Fnews%2F2017-07-19%2Faustralian-politicians-born-overseas-jump-to-clarify-citizenship%2F8721994

[2] <http://www.3aw.com.au/derryn-hinch-turns-citizenship-blowtorch-on-liberal-senator/>

[3] https://twitter.com/SenatorMRoberts/status/887187235543539713?ref_src=twsrc%5Etfw&ref_url=https%3A%2F%2Fwww.businessinsider.com.au%2Fone-nations-malcolm-roberts-offered-proof-he-wasnt-an-indian-citizen-then-followed-it-up-with-a-racist-tweet-2017-7

[4] <http://thenewdaily.com.au/news/national/2017/07/14/tony-abbott-citizenship/>

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