

WORKSHOP

COSMOPOLITAN CITIZENSHIP LEGAL ISSUES FOR THE EU & AUSTRALIA

15 JUNE 2006



- Hosted by the
- ◆ NATIONAL EUROPE CENTRE
 - ◆ CENTRE FOR INTERNATIONAL & PUBLIC LAW
 - ◆ NATIONAL INSTITUTE OF SOCIAL SCIENCES & LAW

NATIONAL EUROPE CENTRE | 1 LIVERSIDGE ST | THE AUSTRALIAN NATIONAL UNIVERSITY

This workshop, convened through the support of the National Europe Centre European Diaspora Research Network, will explore legal issues to do with citizenship, relevant to Europeans in Australia and Australians in Europe. In doing so, it necessarily raises questions about citizenship's cosmopolitan value. It also examines law's role in strengthening European citizenship and promoting the active participation of all Europeans, including expatriates and people of European descent, in the process of European integration.

PROGRAM

10.00 – 10.05	WELCOME Prof Simon Bronitt <i>Director, National Europe Centre</i>
10.05 – 10.35	DUAL CITIZENSHIP Prof Kim Rubenstein <i>Director, Centre for International & Public Law, ANU</i>
10.35 – 11.05	DIASPORAS AT THE GATE Dr Matt Harvey <i>School of Law, Monash University</i>
11.05 – 11.20	Morning tea
11.20 – 11.50	THE PROMISE OF POST-NATIONAL EUROPEAN CITIZENSHIP Dr Michael Longo <i>School of Law, Victoria University of Technology</i>
11.50 – 12.20	THE VOTE TO ITALIANS OVERSEAS: A DEMOCRATIC RIGHT, A DEMOCRATIC WRONG OR ELECTORAL OPPORTUNISM Dr Bruno Mascitelli & <i>Swinburne University of Technology</i> Dr Simone Battiston <i>Swinburne University of Technology</i>
12.20 – 13.00	GENERAL DISCUSSION
13.00 – 1400	Lunch

Workshop sponsored by:
JEAN MONNET GRANT
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CONTEMPORARY EUROPEAN
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AUSTRALIA



RSVP
(limited places)

This workshop is free but RSVP is essential.
Please send RSVP by cob 13 June to:
Nives Klesnik E: Nives.Klesnik@anu.edu.au
T: (02) 6125 1490

Venue

National Europe Centre, 1 Liversidge Street (Bldg 67C), Australian National University Campus, Canberra ACT

Parking

Time limit parking available off Balmain Lane
For more parking options go to:
http://transport.anu.edu.au/Driving/Public_Parking_Map.html?version=flash

Enquiries

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DUAL CITIZENSHIP

Prof Kim Rubenstein

Director, Centre for International & Public Law, The Australian National University

Professor Rubenstein will examine the rise of dual/multiple citizenship around the globe and in the Australian legal context. In reviewing the international developments, together with the history of the *Australian Citizenship Act's* approach to dual citizenship, she will reflect upon the impact of law in developing an understanding of a cosmopolitan view of citizenship.



Kim Rubenstein took up her position as Professor and Director of the Centre for International and Public Law at the ANU College of Law in 2006. Prior to this she spent 13 years at the University of Melbourne. Her research concentrates on citizenship law. She is a Barrister and Solicitor of the Supreme Court of Victoria, the High Court of Australia and a Legal Practitioner of the Supreme Court of the Australian Capital Territory. Before becoming an academic Kim practiced as a solicitor and she has appeared in several High Court citizenship matters, the most recent being *Re MIMIA; Ex parte Ame* [2005]. Kim edited the collection: *Individual, Community, Nation: 50 years of Australian Citizenship* (Australian Scholarly Publishing, 2000) and is the author of *Australian Citizenship Law in Context* (2002, Lawbook Company).

DIASPORAS AT THE GATE

Dr Matt Harvey

Faculty of Law, Monash University

Australia is predominantly a collection of European diasporas. As a settler society, it has an inclusive citizenship policy. Obtaining citizenship has not required renunciation of existing citizenships. There is also generous provision for permanent residence. It has thus been possible both at law and in culture to maintain a European identity in Australia.

Interest by members of the European diaspora in returning to their European 'homelands', whether temporarily or permanently, is high. Whether they have retained their European citizenship is therefore vital. In most cases, they have either retained their citizenship or it has been revived, especially for those who fled communism. It is instructive to examine the citizenship policies of the post-communist states.

One group that has been less favoured is the extensive British diaspora. British citizenship does not pass by descent beyond one generation. While all young Australians can get working holiday visas to Britain, obtaining entry for longer periods is difficult.

Australia's recent major change to citizenship law to allow Australian citizens to obtain other nationalities received remarkably little coverage. Australians are now in a position to acquire dual nationality similar to European settlers in Australia. I would like to refer to those with both Australian and European citizenships as 'Antipodean citizens' with a foot in each place, metaphorically straddling the globe.



Matt has been a Lecturer in the Monash Law Faculty since 2002, teaching European Union Law, Australian Constitutional Law and Legal Ethics. He has previously taught at Deakin, Melbourne and RMIT Universities. He completed his PhD on the constitutional development of the European Union. His research interests are in constitutional development, legal ethics, and law in society. He is a barrister and solicitor of the Supreme Court of Victoria.

THE PROMISE OF POST-NATIONAL EUROPEAN CITIZENSHIP

Dr Michael Longo

School of Law, Victoria University of Technology

The creation of European citizenship has generated a burgeoning discourse and literature along the lines of an emergent 'post-national' European citizenship. The very notion of European citizenship transcends the classical idea of citizenship as nation-bound since the EU is not a state, much less a nation-state. The idea of European citizenship is imbued with great promise. It promises the construction of a political space which privileges individual rights and freedoms. It points to the emergence of a European identity constituted by a common understanding that Europeans are united in their respect for and acceptance of diversity and the human rights protections they enjoy. It signals a hope that the practice of exclusion and the excesses of nationalism, which have blighted the European political landscape for centuries, may be averted in a nascent EU polity.

However, the Treaty provisions on citizenship are underdeveloped and lacking in substance. They are tied to national conceptions of citizenship. European citizenship is said to 'complement' rather than 'replace' national citizenship. Yet, the EU appears only too willing to defer to national imperatives and to evade difficult issues and dilemmas presented by citizenship. Thus, the many third country nationals residing in the EU who do not enjoy the citizenship of a Member State are also denied political rights under the EC Treaty; and the grant of a right of movement to citizens is still generally tied to the single market objective. While the embryonic nature of European citizenship would preclude the substitution of national citizenship (even if this were seen as desirable), the constraints embedded within current institutional and political arrangements are impeding the emergence of a meaningful European civic identity and citizenship.



Michael lectures in various areas of law including Constitutional Law, European Union Law and Business Law. He has published in legal and political science journals and is the author of a book entitled *Constitutionalising Europe: Processes and Practices*, (Ashgate, 2006). He is a fellow of the Contemporary Europe Research Centre, The University of Melbourne. Before joining Victoria University, Michael worked for 6 years in the Commonwealth Attorney-General's Department.

THE VOTE TO ITALIANS OVERSEAS: A DEMOCRATIC RIGHT, A DEMOCRATIC WRONG OR ELECTORAL OPPORTUNISM

Dr Bruno Mascitelli & Simone Battiston

Swinburne University, Melbourne

The recent Italian elections produced a razor-thin majority for the centre-left Prodi-led coalition. The Berlusconi centre-right government, the longest continuous government in post-war times, lost narrowly to a conglomerate of centre-left parties. The vote was so close that the nature of the voting system and technical voting aspects assumed greater importance. Changes to the voting system enacted by the Berlusconi government, and thought to favour the centre-right coalition, eventually worked against it. But the greatest and ultimately decisive novelty of the elections, given its closely fought nature, was the vote to the Italians living overseas.

The law allowing the vote for Italians living overseas was passed in 2001 under the direction of Berlusconi's centre-right coalition government, but was in fact supported across bi-partisan lines. The law granted full voting rights to Italians overseas and those of Italian descent, as long as they complied with Italian citizenship requirements. The elections of 2006 would be the first time the vote of Italians overseas would count in such a decisive and crucial manner—amply transcending the expectations and impact its supporters foresaw.

Some 1.1 million overseas Italians eligible to vote cast their ballot papers by mail and elected in the Italian Parliament their own representatives (12 deputies and 6 senators). This extraordinary model of political participation and representation, which is both unique and unprecedented in Italian history, draws one's attention to the possible impact this model may have on the receiving end, the Italian Parliament, and in the not too distant future, on elections involving the European Parliament. Italy, like other countries, has chosen the 'blood line' (*Jus sanguinis*) as the common denominator for deciding citizenship eligibility. This raises many contentious issues about democratic rights. Seen from the standpoint of democracy there are aspects of this vote to Italians overseas, its origins and drivers, and eventually its application.

For many of Italian background, as well as observers, throughout the world, the impressions were a mixture of stupor, excitement, challenge and perplexity. Seen from the Australian standpoint the vote to Italians would assume even greater importance as it eventually translated into a senator whose vote to the Prodi coalition would provide the slender majority, and therefore -one could argue- the balance of power in favour of the centre-left coalition. But there are far greater political principles involved in this newly acquired right to vote for Italians. This paper seeks to review the constitutional-legal debate that preceded the *Italian overseas vote Act* (2001) and pose ethical and political considerations about whether this Italian-made model of political participation and representation of Italians overseas is based on acceptable democratic principles. Moreover the paper will seek to establish if this extension of the voting right is a democratic right or wrong, and one that could become copied by other communities with a large diaspora and immigrant populations resident outside its homeland.



Bruno worked for Austrade in Italy for over 17 years and was primarily engaged in export promotion of Australian products into the Italian market. On returning to Australia, Bruno was employed with the Commercial Office of the US Consulate, which involved assisting US companies entering the Australian market. Since joining Swinburne University in 2000, Bruno has specialized in European Studies and International Business. He completed his Masters in International Business in 2001 and completed his PhD at Melbourne University in 2005. His additional interests include Italian Political Economy and Italian politics. He is President of the European Studies Association of Australia and is President of the School Council of the Victorian School of Languages.