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Can Citizenship be Gender-neutral and -inclusive? Exploring the possibilities of social and legal citizenship

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Abstract

This paper will consider whether extending the notion of social citizenship to include legal citizenship offers the possibility of developing a gender-neutral and -inclusive conception of citizenship. The notion of legal citizenship encapsulates the view that all people are equal before the law and have a right to access to justice. Legal citizenship extends the idea of social citizenship, first developed by T.H. Marshall, by emphasising the importance of fair, equitable and effective access to the legal institutions and processes that enable individuals to give effect to their social rights. The social rights included in Marshall's notion of social citizenship refer to the necessities of life, without which it is impossible to participate fully in the public sphere of society. Legal citizenship is closely associated with social citizenship in that it calls attention to the importance of access to justice and equality before the law of all citizens in any conception of a just, fair and inclusive society. However, it marks an important development in the notion of social citizenship because it is neutral on the issue of gender. Unlike social citizenship as conventionally conceived, it does not regard paid employment as an eligibility requirement for admission to the public sphere and access to the rights of citizenship. Access to the rights included in social citizenship was considered to be largely conditional on the status held by an individual vis-à-vis the paid workforce. This meant that women's traditional roles of child bearer, caregiver and homemaker were usually regarded as being inconsistent with social citizenship and full participation in the public sphere. While it is gender-neutral, legal citizenship like social citizenship points to the important role played by the institutions, practices and social support mechanisms that enable individuals to be full, active and informed members of the society to which they belong. The paper will develop the notion of legal citizenship and explore to what extent it is able to escape the limitations of social citizenship. In doing so, it will briefly consider legal citizenship's own shortcomings in the Australian context with reference to the Federal Government's mutual obligation regime and Welfare to Work legislation.

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Can Citizenship be Gender-neutral and -inclusive?
Exploring the possibilities of social and legal citizenship

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Abstract

This paper will consider whether extending the notion of social citizenship to include legal citizenship offers the possibility of developing a gender-neutral and -inclusive conception of citizenship. The notion of legal citizenship encapsulates the view that all people are equal before the law and have a right to access to justice. Legal citizenship extends the idea of social citizenship, first developed by T.H. Marshall, by emphasising the importance of fair, equitable and effective access to the legal institutions and processes that enable individuals to give effect to their social rights. The social rights included in Marshall's notion of social citizenship refer to the necessities of life, without which it is impossible to participate fully in the public sphere of society. Legal citizenship is closely associated with social citizenship in that it calls attention to the importance of access to justice and equality before the law of all citizens in any conception of a just, fair and inclusive society. However, it marks an important development in the notion of social citizenship because it is neutral on the issue of gender. Unlike social citizenship as conventionally conceived, it does not regard paid employment as an eligibility requirement for admission to the public sphere and access to the rights of citizenship. Access to the rights included in social citizenship was considered to be largely conditional on the status held by an individual vis-à-vis the paid workforce. This meant that women's traditional roles of child bearer, caregiver and homemaker were usually regarded as being inconsistent with social citizenship and full participation in the public sphere. While it is gender-neutral, legal citizenship like social citizenship points to the important role played by the institutions, practices and social support mechanisms that enable individuals to be full, active and informed members of the society to which they belong. The paper will develop the notion of legal citizenship and explore to what extent it is able to escape the limitations of social citizenship. In doing so, it will briefly consider legal citizenship's own shortcomings in the Australian context with reference to the Federal Government's mutual obligation regime and Welfare to Work legislation.

Introduction

This paper will consider the notion of social citizenship, and review the restrictions on gender equity and inclusiveness with which it has usually been believed to be burdened.¹ It also considers the opportunities for equity and inclusiveness that it offers women. These have often been overlooked in the literature on citizenship, particularly that dealing with T.H. Marshall's contribution to knowledge and understanding of the history and development of citizenship in Great Britain and countries having similar political, economic and social systems. The notion of social citizenship developed by Marshall is associated with the welfare state and the social services that it provided to citizens who were either unemployed or otherwise not in a

¹ My thanks to the anonymous reviewer/s who read an earlier version of the paper and made some helpful recommendations on how it could be improved. Naturally, the usual disclaimers apply.

position to become full participants in the paid workforce. This latter category included many, perhaps most, women. The social services gave those either completely outside the paid workforce or who did not participate fully in it the opportunity to become active participants in the wider society. Thus it offered women a measure of equity and inclusiveness. However, because it did not completely disconnect citizenship from individuals' labour market status, and thus remained subject to the inferior position generally occupied by women in the employment market, it was constrained in the extent to which it was able to underpin the full equity and inclusiveness of women in society and polity. The paper also introduces the notion of legal citizenship and considers whether, in building on the strengths of social citizenship and jettisoning its shortcomings, it can serve as the basis for a new model of citizenship that is able to escape the gender shackles of social citizenship.

The paper begins with an examination of social citizenship, identifying its strengths and possibilities but also its shortcomings, particularly the eligibility requirements and gender qualifications for which it has come under sustained criticism. The following section considers the often-overlooked possibilities in the notion of social citizenship for a measure of gender equity and inclusiveness. It also confronts the obstacles that social citizenship puts in the way of the full realisation of gender equity and inclusiveness. The third and final section of the paper develops the notion of legal citizenship, the idea that all citizens are equal before the law and have a right to fair and effective access to justice. It explores the extent to which legal citizenship escapes the shortcomings with respect to gender that are associated with the notion of social citizenship and inquires into legal citizenship's ability to offer a more gender-inclusive model of citizenship. Like social citizenship, legal citizenship regards individuals' full participation in the public sphere of society as being conditional on their ability to provide themselves with the necessities of life. Thus, it extends the meaning of 'access to justice' to include the ability of individuals who are outside of the paid workforce to gain access to welfare entitlements and other public services by which they are able to provide themselves with the bare necessities of life, and to seek effective redress for problems with welfare and public service delivery. However, as the final section demonstrates, in the Australian context legal citizenship's own shortcomings and limitations have been exposed by the Federal Government's welfare to work legislation and strict mutual obligation regime governing the accessibility of income support payments.

Citizenship and gender in the public and private spheres

Margaret Allors points out that Marshall classified citizenship into three historically and socially-structurally connected types, civil, political and social. Civil rights are those upon which individual freedom is founded, such as freedom of speech and the right to own property. Political citizenship encompasses the right to vote and to stand for election to parliament. Social citizenship consists in a wide range of rights including to a basic level of economic welfare and to live as a civilised human being (Allors 2001: 81). On the relationship between the three groups or categories of rights, Allors writes that

Marshall recognised the relationship, arguing that the realisation of social rights may be an essential precondition to the exercise of civil and political rights... Many theorists of citizenship have argued that a citizen's exercise of political rights depends upon his or her first achieving a certain socio-

economic position according to some rough measure of equality. They have accepted that social rights assist in integrating all citizens into society, furthering a sense of community and participation. There is no doubt that the development of social rights in the 20th century promoted the exercise of civil and political rights (Allors 2001: 87; see also, for example, Zetlin and Whitehouse 2003; Canning and Rose 2001; Ellingsæter 1999; Walby 1997).

In the context of the welfare state, the achievement of what Allors refers to as ‘a certain socio-economic position in society’ measured by some official or consensual benchmark of what constitutes ‘equality’ was dependent on a person’s status vis-à-vis the labour market. Indeed, as Ellingsæter observes, ‘wage work has become the nucleus of citizenship and social rights (Ellingsæter 1999: 111; see also Yuval-Davis 1999: 119-120).’ This nucleus was highly gendered, the male bread winner and family provider embodying the ‘social democratic citizen’. The male bread winner’s labour market status determined his rights, identity and ability to participate fully in the social and political life of the society to which he belonged. In Anglophone societies for example, comments Margaret Thornton, ‘it is tacitly assumed that the benchmark citizen is a white, Anglo-Celtic, heterosexual, able-bodied, middle-class man, for it is he who has historically dominated political life’ because ‘[t]raditionally, only he had the right to vote and to represent others (Thornton 1997: 486-487).’ Thus, masculinity and waged employment conferred eligibility on an individual to have access to the rights that are included in social citizenship. Sylvia Walby remarks in this regard that ‘Significant aspects of income maintenance payments by the state, pensions, and related welfare provision are provided as a result of waged employment (Walby 1997: 173; see also Bussemaker and Kerbergen 1994; Weeks 1996; Sainsbury 1994; Haney 1998; Lister 2003).’ Those who are unable to make provision for themselves through wage work have either to become dependants, for example, on their husbands or else settle for modest income support usually from the state.

The female counterpart of the male social democratic citizen is the ‘citizen mother’ who bears children, manages the household and nurtures her husband and children. These roles, as important they are—and, apart from bearing children, there is no *biological* or anatomical reason that men cannot perform the other roles—do not qualify a woman to be able to access the same rights as her husband enjoys. This is because they all involve generally unpaid work in the private realm of the family and home and are thus inconsistent with social citizenship and full participation in the public sphere. This is important, because the public sphere and participation in it are central elements in the concept of ‘citizenship’ as traditionally understood, a concept which, therefore, ‘has no significant meaning’ in the private sphere (Walby 1997: 176). Birte Siim points out that the ‘principle of universality in British social policy was based on the male worker and the exclusion of married women from social insurance (Siim 2000: 81).’ This raises the issue of just how universal the ‘universality’ that is presumed in Marshall’s notion of citizenship actually is. Kathleen Canning and Sonya Rose note the ‘implicitly teleological’ aspect of Marshall’s model of citizenship, and his account of Western history, in which civil, political, and social rights ‘represent progressive, linear stages of citizenship, encompassing the period between the “age of democratic revolutions” and the rise of twentieth-century welfare states (Canning and Rose 2001: 428).’ Siim recalls that Carole Pateman (1989) was one of the first to challenge the putative universalism of Marshall’s model of citizenship. Pateman pointed out that ‘independence’ was the

central criterion in Marshall's model noting that throughout much of the period covered by his account of Western history women were denied 'the three elements of 'independence': the capacity to bear arms, to own property, and for self-government (Siim 2000: 79-80).' Other feminist critics have questioned Marshall's historical account based on the 'impossibility of mapping the struggles of minorities, women or colonised peoples for citizenship onto [his] model of progressive stages (Canning and Rose 2001: 428).' Thus,

[T]he recognition of sexual [and other] difference in our way of thinking calls into question the universality of the traditional conceptual scheme. The political system, the world of work and the theory behind them are based on a universal concept that continues to be abstract and general. The pretence of blind, neutral universality has contributed to the subordination and historical marginalization of women and has legitimized the historical hegemony of men (Longo 2001: 280).

With the public sphere and independence both being central to the Marshallian model of citizenship, what then of the family and the private sphere in which many women live and work (even if they are often not paid for the work they do)? First and obviously, the presumption of gender-neutrality inclusiveness is not a good starting point for a frank and critical analysis of citizenship (Longo 2001: 269). Significant differences remain in respect of productive and unproductive (more correctly, paid and unpaid) labour and the ways in which men and women are able to access and exercise their civil and political rights. The separation of the private from the public sphere continues to exclude many women from the public realm of citizenship which 'is normatively masculine, and relies on an opposition between the private and public dimensions of human life (Foster 2000: 204-205).'

In this regard, Chris Beasley and Carol Bacchi remark that many, what they call 'mainstream' accounts of citizenship overlook just how dependent activities carried out in the public sphere are on activities performed in the private sphere of the family and home and the associated difficulties that arise from treating them as hermetically-sealed and entirely separate realms (Beasley and Bacchi 2000: 359). As seen above, the public sphere and the ability to participate in the activities carried out in it are fundamental elements of the concept of citizenship. Thus, the notion of citizenship 'as active *public* participation' perpetuates the lore of the 'benchmark citizen' and, by dint of their involvement in the private sphere, at the same time marginalises women and others who either cannot or refuse to reach the benchmark. Furthermore, treating 'the public' sphere as tantamount to 'the political' and 'the social' 'contributes to the ongoing marginalization of the domestic [and] private in political thought (Beasley and Bacchi 2000: 341).' But, for Beasley and Bacchi there is an alternative. Women's association with the private sphere of the family and home can be viewed as 'involving a crucial form of embodied social participation which is both imbued with power/politics and suggestive of alternative notions of political sociality—as a resource as well as a limitation (Beasley and Bacchi 2000: 342).' As Raia Prokhovnik comments in this regard 'Public and private are crucially inter-connected by the fully human selves that characterize both spheres' a perspective which suggests that citizenship, contrary to the traditional view, has meaning and is able to be exercised in both realms (Prokhovnik 1998: 98).

In the following section, in which T.H. Marshall's conception of social citizenship is examined in some detail, Beasley and Bacchi's and Prokhovnik's suggestions are taken up. That is to say, the possibilities offered by social citizenship for bringing the public and private realms back together will be considered. For, contrary to most interpretations of Marshall's conception of social citizenship it does offer some possibilities for gender equity and inclusiveness. By incorporating the norms of fairness and equity as two of its central tenets, it does provide a basis for extending these to gender roles and the ability of women to participate as full citizens in society and polity. Nevertheless, its capacity to extend full citizenship to women (and others not able to accept full-time employment) remains constrained by its retention of labour market status as an eligibility requirement for access to the rights of full citizenship. In the third and final section of the paper the notion of legal citizenship will be introduced and interrogated with a view to determining its capacity for overcoming the constraints of social citizenship. Its own shortcomings and limitations will in the process be exposed.

Marshall, social citizenship and gender

Di Zetlin and Gillian Whitehouse interpret the account of citizenship developed by Marshall in 'Citizenship and Social Class' (1950) in a way that they claim renders it gender-inclusive. This is interesting, and if they are correct provides the possibility of retaining the most positive aspects of Marshall's account, discarding its unsatisfactory aspects, and building a new conception of citizenship that combines the positive aspects with the possibilities offered by the notion of legal citizenship. While Marshall's conception of citizenship largely excluded women, Zetlin and Whitehouse point out that it did include 'social rights and norms of fairness' and equity. They argue this offers a framework for a conception of citizenship that is capable of incorporating 'gender equity rights' (Zetlin and Whitehouse 2003: 773). A thorough exploration of Marshall's account is required to see how this is so.

As Marshall observed, by the end of the nineteenth century far-reaching economic and social changes had drastically altered the nature and significance of citizenship. The trappings of a 'civilised and cultured life' that had previously been available exclusively to a privileged few were now within reach of the masses (i.e., the working and lower middle classes) 'who were encouraged thereby to stretch out their hands towards those that still eluded their grasp (Marshall 1950: 28).' The aspirations of the members of the working and lower middle classes to qualify materially for the civilised and cultured life was accommodated, as Marshall notes, by 'incorporating social rights in the status of citizenship and thus creating a universal right to real income which is not proportionate to the market claim of the claimant (Marshall 1950: 28).' In other words, this 'universal right' extended beyond the employment relationship in that it did not require individuals to be members of the paid workforce in order to qualify or become eligible for it. Thus, Marshall included 'the social services' among the institutions that were fundamental to the social element of citizenship. The social services underpinned and made possible the realisation of the right to a minimum level of economic welfare and security and the right to live a civilised life according to the standards obtaining at the time.

Marshall also recognised that a minimum level of literacy, and accordingly education, enabled individuals to exercise the civil rights that were associated with individual freedom. He regarded the right to work, i.e. the right to choose an occupation, place

of employment and an employer free from the constraints of statute, custom and hereditary privilege, as the most fundamental civil right in the economic field ‘subject only to legitimate demands for preliminary technical training (Marshall 1950: 10)’. Moreover, because modern industry and democratic institutions required educated workers and voters he regarded an educated or ‘civilised’ population as being essential to the health of society, and believed that the members of society therefore had a duty to improve and civilise themselves. Thus, the state had an obligation to provide its citizens with the opportunity to acquire an education thereby enabling individuals to discharge their duty to state and society to be educated. Seen in this way, the compulsory education of children is in effect the preparation of citizens-in-the-making. It followed, then that ‘The right to education is a genuine social right of citizenship, because the aim of education during childhood is to shape the future adult (Marshall 1950: 16).’ Put simply, education was a social right of citizenship because it allowed individuals to enjoy their civil rights—in particular, the right to work—to participate fully in the public or political sphere of society, and more generally to contribute to the health and vibrancy of the society to which they belonged. In short, it provided individuals with the ability to exercise their civil rights and to discharge their general duties of citizenship.

For Marshall, trade unionism was an important dimension of citizenship. Political power was usually essential for the establishment and exercise of the social rights of citizenship, for, commented Marshall, ‘social rights imply an absolute right to a certain standard of civilisation which is conditional only on the discharge of the general duties of citizenship (Marshall 1950: 26).’ The economic power of the individual claimant therefore is not, or shouldn’t be, a consideration. The importance of trade unions is that they enabled workers to exercise their formerly individual civil rights collectively. The collective exercise of civil rights through trade unionism provided workers with the opportunity to raise their social and economic status, in other words, to establish ‘the claim that they, as citizens, were entitled to certain social rights (Marshall 1950: 26).’ Historically, trade unionism (and collective bargaining) was thus a vehicle through which workers were able to establish and exercise their social rights of citizenship even before they had learned or become able to exercise political power. Having made these gains in the late nineteenth and early twentieth centuries, for workers trade unionism became a sort of ‘secondary system of industrial citizenship parallel with and supplementary to the system of political citizenship (Marshall 1950: 26).’

In Marshall’s view, it was ridiculous to suggest that individuals should have to bargain and negotiate in order to be able to exercise their political right to vote. Equally ridiculous in Marshall’s view was the idea that individuals should have to bargain and negotiate in order to earn a basic living wage, which was a basic social right (Marshall 1950: 40). This did not mean, however, that everyone should receive the same remuneration for work performed, regardless of differences in experience, formal qualifications, skill level and so on. Rather, in determining what constituted a ‘fair wage’ beyond the basic living wage—and, allowing for variations above this basic level that could be won by each grade subject to prevailing market conditions—the notion of social status had to be factored in. The formulation of general principles of social justice required a system of classification and stratification of all workers into groups or grades that included uniformity within grades (eschewing minor occupational differences) and distinctions between them. For as Marshall observed,

‘The claims of status are to a hierarchical wage structure, each level of which represents a social right and not merely a market value (Marshall 1950: 42).’

By incorporating the notion of fairness, and therefore social status, into the hierarchical wage structure, Marshall sought to foster social cohesion and inclusiveness. This is also why he was so keen to promote compulsory education. An education was not only a genuine social right, just as importantly it enabled individuals to discharge their general duties of citizenship, of working, voting, and in general contributing to the health of society. A society which enforces the duty of its members to educate or civilise themselves ‘has begun to realise that its culture is an organic unity and its civilisation a national heritage (Marshall 1950: 16).’ The different levels and amounts of education received by individuals provided a normative basis for the hierarchical wage structure. The hierarchical and status-riven nature of the wage structure was the basis of its fairness and faithfulness to general principles of social justice. It was also why it underpinned the cohesiveness and inclusiveness of society. The social rights framework of Marshall’s conception of citizenship could also accommodate the industrial rights of women. As Zetlin and Whitehouse observe, ‘By infusing work with the values of citizenship, in particular with the idea that fairness was the principle on which inequity could be justified, Marshall’s concept of citizenship opened the way for feminist claims for inclusion and equitable treatment (Zetlin and Whitehouse 2003: 786).’

The universal social right to a real income that is not proportionate to the economic power of the individual is an important development in the conception of citizenship because it removed the requirement of being a member of the paid workforce to become eligible for full access to the status of citizenship and the rights it encompassed. The absolute social right to a certain standard of civilisation is also for Marshall not conditional on the economic power of the individual. These social rights of citizenship are thus to a certain extent able to accommodate gender equity rights. Women who do not belong to the paid workforce, and who inhabit the private sphere of the family and household, are nevertheless able to access these social rights. This implies that a woman who is a child bearer, mother or care giver and who does not participate in the paid workforce should be remunerated for playing these roles. The social services should provide such a woman with a minimum level of economic welfare and security and a civilised life irrespective of her marital status or the income of her husband or partner (market forces *and* political constraints prevent her from bargaining above this minimum level). She herself is a citizen having all the rights of a full citizen. However, the same status and fairness considerations that are incorporated in the hierarchical wage structure will determine the amount of income that she receives from the social services. Regardless of how important the roles of child bearer, mother and so on actually are in principle and in practice they are not valued as highly in economic terms as occupations (especially ‘male’ ones) in the paid workforce. So, even though the woman-in-the-home is a full citizen, principles of fairness paradoxically demand that she receives a lower income than her male (and female) counterparts in the paid workforce irrespective of the actual social or economic importance of their jobs. These principles also do not take into account that many women have dual roles, i.e. wife, mother, care giver, house keeper *and* employment in the paid workforce.

The roles of wife, mother, care giver, house keeper and so on are, in market terms, not highly valued. Indeed, they are generally unpaid despite the important, indeed indispensable, part they play in supporting the public sphere and the activities carried on there. Undertaking these roles also restricts many women's capacity to undertake full-time employment and thus restricts their access to well-paid jobs with good prospects for career advancement and enhancement and thus, in the end, restricting their access to even better-paid jobs with even better prospects. Being confined to part-time, casual or otherwise low paid jobs the principle of equal pay for work of equal values offers women only little comfort. Because the income that a woman receives for her work in the paid workforce will be determined by the rung in that structure on which her occupation sits, even if the principle of equal pay for work was given effect in these circumstances most women would still receive a lower income than most of their male counterparts. Thus, the notion of social citizenship while allowing for some measure of gender equity and inclusiveness does not offer women the prospect of complete equity or full inclusion. In the following section, the notion of legal citizenship will be introduced and briefly explored to determine whether it can overcome these shortcomings with social citizenship. Its own shortcomings will also be reviewed.

Legal citizenship, gender equity and social inclusiveness

In essence, legal citizenship refers to the right of all citizens to have 'fair and effective access to the justice system' (NACLC 2003). It is thus fundamental to the maintenance of social order and stability, and to the prevention of social fragmentation, for the idea that 'each citizen is equal before the law and should have access to justice is essential to the community's confidence and compliance with the law' (Federation of Community Legal Centres Victoria Inc. 2003). Such confidence in and compliance with the law are absolutely essential because the law is what establishes 'the shape of society and its character' (NACLC 2003). Equality before the law and equal access to justice not only underpin the legitimacy and effectiveness of the legal but also of the entire social system

But legal citizenship is not just about equal access to justice and equality before the law, as fundamentally important to the fabric of a just and fair society as these certainly are. Just as importantly, it is about providing individuals, including the poor and disadvantaged, with the means and opportunity to be full and active members of society. Full membership of society entails active participation in the public sphere. That is, it also encompasses a citizen's ability to exercise their civil, political and social rights. Legal citizenship is indispensable for the full integration of all citizens into society, fostering a sense of community, inclusiveness, belonging and participation (some of this terminology has been borrowed from Allors 2001). It encourages individuals to give effect to their political rights and individual freedoms.

Like social citizenship, legal citizenship recognises the importance of an individual's ability to provide themselves with the necessities of life—that is, to give effect to their social rights—for their capacity to exercise effectively their civil and political rights and thus to participate fully in the public sphere of society and in its economic, political and social life. Thus, it similarly emphasises the importance of the 'social services' for the inclusion of all citizens, even those who are unemployed and for other reasons outside of the paid workforce, in the public sphere of society. Seen in this way, the welfare agencies of the state are indispensable for enabling poor and

unemployed citizens to enact their civil, political and social rights for they provide these individuals with the means to procure the necessities of life. In the context of the 'contract' or 'post welfare' state, legal citizenship also highlights the important role played by organisations to which governments outsource delivery of human and welfare services. The Job Network is a good case in point.

Legal citizenship thus builds on the notion of social citizenship by emphasising the importance of the institutions and social support mechanisms, based largely in the public sector and civil society or 'third sector', which provide individuals with the capacity to be full and active participants in the public sphere of the society to which they belong. At a more mundane but related and equally important level, it is also about providing individuals with the legal and other advice, assistance and representation necessary for them to be active and responsible citizen 'consumers' of income support and welfare payments, and of public services in general. For, in the context of the 'post-welfare state' this is how individuals are able to demonstrate that they are meeting their 'obligations' to the government and the community and that they are thus earning their benefits. Legal citizenship is also about helping individuals to seek redress for any shortcomings or problems that they encounter in the delivery of public services—in other words, dealing with the failure of the government to meet its obligations narrowly considered as service provider. In Australia, for example, 'third sector' organisations such as community legal centres play a vital role in informing welfare recipients of their rights and in resolving any problems they encounter with Centrelink and other government welfare agencies (see Rix 2005). They thus facilitate access to justice (considered broadly) for these people.

Thus, in building on social citizenship, legal citizenship does not as it were throw the baby out with the bath water instead incorporating its worthwhile aspects. That is to say legal citizenship, like social citizenship, adopts the view that only in providing individuals with the means to furnish themselves with the necessities of life (considered broadly) is it possible for them to give effect to their civil and political rights and thus enjoy full membership of society. However, in adopting this view legal citizenship shrugs off the gender qualifications and eligibility requirements that have been supposed to characterise social citizenship and focuses instead on equality before the law and equal access to justice for all citizens. It does not regard eligibility for citizenship, and enjoyment of the legal, social, civil and political rights that it incorporates, as being subject to an individual's labour market status. Legal citizenship is thus neutral regarding an individual's gender and, because of its presumption of equality and fairness, also neutral or silent with respect to the marital status, age, sexual preference, disability, ethnicity and religion of any individual (for a lengthier treatment of legal citizenship, see Rix and Burrows 2005; see also Rix 2005).

In the Australian context, income support payments such as the sole parent's benefit and disability support pension had for several years to some extent, however limited in reality, weakened the nexus between labour market status and welfare entitlement and therefore access to full citizenship rights (but see Hopkins 2005 for the regressive gender repercussions of the marital status provisions of the Social Security Act). They thus broadened the compass of social citizenship, and access to the rights it encompasses, to include many women, persons with a disability, and others who had also previously been excluded from the social welfare system. However, the extension

in the 2005-06 Federal Budget of the mutual obligation regime to incorporate these categories of payee has tightened eligibility and, in addition, imposed much more onerous qualifying conditions than had previously obtained under earlier income support and welfare programs (these so-called ‘welfare to work’ reforms are outlined in detail in Australian Government 2005). At bottom, these severe qualifying conditions severely curtail the social rights of the many individuals affected by effectively disabling many of them from full and active participation in the public sphere of the wider society and the polity. They thus severely downgrade the meaning and significance of social citizenship.

In a continuation and deepening of the above trend—which, in any case, predates by some years the extension of the mutual obligation regime contained in the measures announced in the 2005/06 budget—the Australian Government’s Welfare to Work Bill has recently had passage through both houses of the Federal Parliament. In the words of Kevin Andrews, the Minister for Employment and Workplace Relations, the legislation will ‘provide the opportunity for people to break the shackles of welfare dependency and get a job (Andrews 2005).’ Based on the assumption that ‘the best form of welfare is a job’ (however poorly paid), the legislation seeks to reduce ‘the numbers of working age Australians on welfare who are capable and available to work (Andrews 2005)’. It does so by redefining ‘capability’ and ‘availability’ for work and ‘replacing the outdated approach of people on welfare being expected to seek work only when they can work full time’ with a policy that focuses on ‘encouraging self-reliance and recognising the capacity of many recipients to work part-time (Australian Government 2005).’ This new approach is to be supported by a ‘new compliance framework’ providing people with new and better ‘incentives’ to meet their ‘obligations’. This is justified with the assertion that ‘people are better off working and participating in the economic life of the nation rather than being condemned to a sedentary existence on welfare (Andrews 2005).’ And here is the nub. In the Government’s view, welfare condemns many recipients to a ‘sedentary existence’ that is not really a part of the economic life of the country. In other words, welfare recipients are second class citizens who do not meet their obligations to the wider society thus requiring the government to force many of them to take low paid and low quality jobs even if they have to become ‘nomadic’ in order to do so.

Paradoxically perhaps, the removal and curtailment of citizens’ rights and entitlements, and of the duties and obligations of the state/government that complement them, have compelled the introduction of ‘mutual obligation’ regimes and associated restrictions on the availability of income and welfare support. This is in fact an implicit admission that people find it difficult to feel any sense of obligation when they have only limited access to the services and support that they once could and should have expected to receive by right—and which are, in addition, increasingly delivered by contracted service providers rather than the government itself. Thus while citizens are urged to become ‘active’ consumers who ‘earn’ the right to be provided with reduced welfare support and fewer public services that are no longer directly provided by the state, the state has in the process effectively removed the conditions that enable or encourage citizens to become active and responsible members of their communities, society and the polity.

And here is the major shortcoming with legal citizenship. Because legal citizenship requires a national government to put in place policies and programs enabling all citizens to give effect to their right to have full and equal access to the justice system it is entirely dependent on the government for its enactment. To be sure, this is a serious limitation on social citizenship itself. But, in the case of legal citizenship its reliance on the sense of nationhood and goodwill of the national government to give it meaning and effect is even more pronounced. As the discussion of legal citizenship has made clear, the justice system extends well beyond the courts and formal legal system and refers inclusively to the relations between the government and all of the individuals belonging to the society. Thus, it increasingly also encompasses service providers contracted to the government to provide human and welfare services to individuals and groups in the community on its behalf, and to the manner in which they treat these 'clients'. And, it refers to the institutions and mechanisms by which clients are able to demonstrate that they are meeting their obligations to the government and country by being active and responsible consumers of those services and by which they are able to seek redress for any problems in service delivery. But this is precisely the issue. Constrained by the dominant neo-liberal ideology in which the Federal Government is so deeply immersed, and the accompanying welfare policy agenda it is aggressively pursuing, legal citizenship has become a notion almost empty of meaning and content. Providing citizens with access to justice and equality before the law in this climate is often reduced to giving individuals the means to demonstrate that they are responsible consumers of public services, that they meet their obligations, and that they earn any benefits they receive. Full inclusion in society, and participation in its economic, political and social institutions, is at best an after thought.

Conclusion

Contrary to mainstream understandings and interpretations of Marshall's notion of social citizenship, because of its inclusion of the norms of fairness and equity it is able to incorporate gender equity and inclusiveness. Thus, it is able to offer women limited access to full citizenship and the rights that it entails. However, precisely because of these norms, enshrined particularly in the principle of equal pay for work of equal value, it compels many women to accept a lower position in the labour market and an inferior status in the wider society. Economic and practical realities, and the constraints imposed by these norms, in reality prevent many women from enjoying full citizenship. Legal citizenship to an extent is able to escape these limitations because it disregards the labour force status of individuals and focuses instead on equality before the law and equal access to justice broadly considered. Thus legal citizenship is gender-neutral, just as it is silent with respect to ethnicity, disability, and so on. However, because it relies on the national government for its full enactment legal citizenship has in the Australian context fallen victim to the Federal Government's neo-liberal ideology and accompanying welfare policy agenda. Rather than providing men and women with the means to become full and active participants in the wider society and the polity, legal citizenship has been reduced in many cases to ensuring that particularly poor and otherwise disadvantaged individuals are able to demonstrate that they are meeting their obligations and earning whatever benefits they receive.

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