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Democracy Without Citizens: Australian Citizen Agency and the Symbolic Significance of Not Having Rights

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Abstract
In a global context of narrowing civil liberties and intensifying state repression, it is critical to have adequately nuanced theories to account for the conditions of the emergence of democratic subjectivities. Guillermo O'Donnell's theory of citizen agency, in which citizens are rights-bearing moral agents and the 'vectors of democratization', bridges democratic and citizenship theory, normative and empirical approaches. In O'Donnell's rendering, the significance of rights lies in their capacity to legitimise rights claiming and other performances of citizenship. Australia is unique among democracies insofar as it does not recognise the rights of the citizens constitutionally or in a bill of rights. I use O'Donnell's *Democracy, Agency, and the State* as a focus for reflecting on the meanings and symbolism of Australian citizenship, and the symbolic significance of not grounding citizenship in rights. My discussion combines ethnographic analysis of citizenship ceremonies with critical discussion of recent laws. I argue that the absenting of rights in constitutional and ceremonial evocations of citizenship has created a vague and contradictory figure of the citizen that straddles authoritarian and democratic values and symbols. This empty and contradictory mythology unhinges citizenship from democracy in Australian political culture, leaving it susceptible to authoritarian creep. Nonetheless, democracy's symbolic openness offers hope for the emergence of new democratic subjectivities, even amidst conditions of narrowing civic possibility. O'Donnell's study of citizen agency hones attention to the importance of the cultural conditions amenable to democratic subjectivity and warrants further comparative exploration.

Keywords Australia · Citizen agency · Guillermo O'Donnell · Democratic citizenship · Right to claim rights · Political symbolism

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Introduction

Globally, the figure of the citizen as democratic agent appears to be receding. Spaces for the expression of citizen agency and the conditions of the emergence of democratic subjectivity also appear to be withering. The 2019 Freedom House report on global Freedom recorded its thirteenth consecutive year of declining world freedom (Freedom House 2019). With few exceptions, democracies became less democratic and authoritarian regimes became more repressive. State restrictions on civil and political freedoms place more countries at risk of drifting into new forms of electoral authoritarianism. Data compiled by Civicus (2019) paint much the same global picture. All regions of the world are experiencing a sustained narrowing of citizen rights and freedoms, and in 2019, only two countries, Moldova and the Dominican Republic, evidenced gains in civil society openness while twice as many people (40% compared to 19%) lived in repressive states than a year earlier.

The closure of civic space and the disappearance of the citizen as political agent in national democratic arenas have been interpreted in a variety of ways. The rise of ethnonationalism and insecurities over national sovereignty has been used to legitimise new walls, migrant prison archipelagos and perpetual state of emergency insecurity laws (Brown 2010; Gambetti and Godoy-Anativia 2013; Rygiel 2010). Wolin (2008) laments that citizenship, 'democracy's most important institution', has been reduced to spectatorship as pathways for participation in deliberative processes and public life close. Turner sees a historical movement toward a passive form of citizenship as the state retracts its commitment to public welfare, the market replaces associational life and spaces for deliberative action are swapped for surveilled and corporately shaped digital opinion forums (Turner 2013). Siapera (2017) argues that neoliberal globalisation has driven a loss of political, social and civil rights that amounts to a major challenge to citizenship. Going even further, Brown (2015) suggests that the extension of a singular economic rationality across all domains of social life (including government and civil society) has replaced politics altogether, making democracy impossible. In this reading *Homo oeconomicus* has colonised *Homo politicus*. The neoliberal colonisation of life worlds has created what some scholars refer to as the 'post-democratic condition', where citizenship is no longer a meaningful framework for organizing and thinking about political agency. Siapera, for instance, writes: 'By negating the mediations performed by citizenship between the people and the state, post-democracy renders citizenship meaningless' (Siapera 2017, p. 24).

I suggest that the issue, however, is not that citizenship has been rendered meaningless, but that we lack adequately nuanced tools for appreciating the conditions of citizen agency and democratic subjectivity in a global context of narrowing civil space, emergent authoritarianisms and neoliberal hegemony. Normative and empirical studies of democracy have tended to leave citizens out of their analysis. In part, the absence of the citizen in democratic theory owes to a privileging of abstract individual rights over historically contingent social struggle. When citizens are integrated into democratic theory, they often exist as ghost figures conjured from a cluster of rights and institutions. However, clusters of individual rights, if they are present in constitutions at all, do not add up to the conditions for being a democratic subject because they do not account for the moral terrain (when and why are the exercise of rights legitimate?) or the structural conditions on which the performance of citizenship, and the emergence of democratic subjectivity, rests. Mouffe sees the major shortcoming of democratic theory in its neglect of the conditions in which the citizen as political subject can emerge and find agency. She writes:

> The failure of current democratic theory is to tackle citizenship or the consequence of … operating with a conception of the subject which sees individuals as prior to the society, bearers of natural rights, and either utility maximizing agents or rational subjects. In all cases they are abstracted from social and power relations, language, culture, and the whole set of practices that make agency possible. What is precluded in these rationalistic approaches is the very question of what are the conditions of existence of the democratic subject (Mouffe 2009, p. 95).

Democratic theorists have tended to reify legal abstractions of institutions and rights, and to abstract individuals from their socio-cultural ecologies. Liberal contract theory's reliance on empirically untenable assumptions about human nature has resulted in the perverse alienation of subjects from the conditions of their subjectivity. Anthropological studies of citizenship, meanwhile, demonstrate how citizens are located in specific webs of values—about equality, rights, participation, community, hierarchy—and relationships—neighbourhood, workplace, family, friends—from which political power—symbolic, material and social—is drawn, and that enable or discourage participation in public life (e.g. Holston 2008; Lazar 2013).

I argue that Guillermo O'Donnell's approach to citizen agency, developed in his final and most ambitious book, *Democracy, Agency, and the State: Theory with Comparative Intent* (2010), is a useful bridge between democratic and citizenship theory and between empirically based and normative approaches to democracy and citizenship. In this book, O'Donnell draws on decades of reflection on distinct democratisation processes in the Americas and around the world to consider the socio-cultural and moral situatedness of democracy and citizen agency. *Democracy, Agency, and the State* represents O'Donnell's most significant foray into normative theory and was something of a 'fully integrated statement of his closing beliefs and conclusions' (Whitehead 2014, p. 333). O'Donnell was an Argentine political scientist known especially for his studies of Latin American authoritarianism and democratic transition. O'Donnell's experience of thinking about democracy in relation to dictatorship led him to conclude that the focus of analysis should be democratisation as an open-ended process rather than democracy as institutional end, and to recognise that the institutions that bear on this open-ended process are constituted by sets of social relations and moral sensibilities.

> I believe that the proper object of inquiry, as well as of political practice, lies more in *democratization* than in democracy. It consists beyond the core provided by the regime and its own eventual further democratization, of the acquisition and legal backing of wider and more solidly supported rights and freedoms that pertain to the civil, social, and cultural aspects of citizenship and, more broadly, of the agency of everyone irrespective of his/her positions as a citizen (O'Donnell 2010, p. 213).

Democracy, Agency, and the State positions the citizen as a moral agent, the 'vector' of democratisation and the 'micro-foundation of democracy tout court'. However, O'Donnell recognised that the conditions for acting as a moral vector of democracy have both socio-cultural and legal dimensions. Because the practice of citizenship is embedded in networks of social relations that dynamically generate and reflect cultural values, democracy can never be abstracted from the moral system in which it lives and can be made to die. Rights, in his reckoning, provide moral legitimacy for the performance of citizenship, including demands for new rights. Rights and freedoms associated with democratic citizenship might be couched in individualistic terms, but O'Donnell emphasises that their practice is contingent on a conducive moral climate. '[T]hese freedoms … cannot exist outside reasonably congenial social and

political institutions, legislation, values, and practices' (O'Donnell 2010, p. 171). From an institutional perspective, citizen agency can be cultivated or prevented. However, the dialogical networks and moral sensibilities that transcend institutions are diffuse. Citizen agency, therefore, exists in a terrain of ethical complexity and shifting social relations. In this sense, for O'Donnell, citizenship can be legally defined, but citizen agency is culturally determined.

Citizens, to O'Donnell, are moral and political agents whose agency rests in the exercise of political rights. These political rights are used in the election of governments but extend also to the ability to enact societal changes in power relations. Thus, as Marshall (1983) outlined, the expansion of rights, originally attached to citizenship, into social domains has established new forms of holding those with power accountable to the law, and expanded the 'grammar of political rights' into the corporate and domestic spheres. Equally, 'a grammar of political rights' can be encouraged to recede from domains where once it had existed as the legitimacy of rights themselves fluctuates. In O'Donnell's terms, the current global turn towards a criminalisation of civil society represents a decline of the moral foundations for citizen agency and of the state itself.

In this paper, I present an overview of O'Donnell's model of citizen agency and suggest that it provides a comparative lexicon for conceptualising the possibilities for democratic subjectivities in a world tending towards dedemocratisation. Then, I use O'Donnell as a focus for reflecting on the cultural terrain of Australian citizen agency. My discussion combines ethnographic analysis of citizenship ceremonies with critical discussion of recent laws that threaten citizen agency. Citizenship is both 'at the heart of Australian politics' (Chesterman and Galligan 1999, p. 1), insofar as it is the primary framework for administering inclusion and exclusion, and absent as a framework for thinking about and practising democracy in Australia. Perhaps unsurprisingly then, Australia was one of seven countries to have their status in the 2019 Civicus report downgraded from an 'open' to a 'narrowing' democracy (Civicus 2019). Since 2002, the Commonwealth of Australia has proposed and/or introduced laws that expand state surveillance, diminish capacities for citizen oversight of government affairs, as well as restricting protest and civil society participation in public debate. While these laws are justified on different grounds (e.g. national security, the sanctity of business and protection against international interference in elections) they collectively weaken the moral basis of rights claiming, discourage dissent and civic engagement and diminish citizens' capacity to hold governments accountable. Australia's former Human Rights Commissioner recently accused the Australian government of being 'ideologically opposed to human rights', while maintaining that Australia's human rights are 'regressing on almost every front… [w]hether it's women, Indigenous, homeless and most of all of course asylum seekers and refugees' (Triggs 2017).

Writing in 2003, before counter-terrorism laws of 2004, 2014 and 2016, and anti-protest laws of 2016, rolled back an array of freedoms, Jenny Hocking asks how it is that radical reductions in civil liberties could pass with so little resistance and public outcry (2003, p. 356). She argued that the absence of debate and resistance reflects a long-term focus on questions of the quantity of citizenship, such as: 'how many people should Australia let in', which has disappeared from public discourse questions relating to the quality of citizenship. Public discourse has tended to focus on the citizen in negative relief—which potential migrants should be denied the status of citizen, and whose citizenship should be removed?—rather than in positive relief—what does it mean to practice democratic citizenship, and how to create public spaces amenable to democratic subjectivity? However, as one Australian citizenship scholar argues, 'It would be difficult to assign a quality to individuals unless one knew what it

was equal with' (Francis 2002, p. 80). By not constituting the qualities of the citizen, or grounding them in rights or emancipatory myths, the terms of citizen agency and the citizen's role in sustaining democratic government in Australia remain vague.

Drawing on O'Donnell's theory of citizen agency, I argue that the symbolic absenting of rights and the contradictory symbolism of Australian citizenship—including authoritarian and democratic elements—create a moral terrain conducive to the willowing of rights and liberties. Nonetheless, democracy's symbolic openness offers hope for the emergence of new democratic subjectivities, even amidst conditions of narrowing civic possibility. O'Donnell's study of citizen agency hones attention to the importance of the cultural conditions amenable to democratic subjectivity and warrants further comparative exploration.

Theory with Comparative Intent: Democratic Subjectivity and Citizen Agency

O'Donnell's theory of citizen agency is an ambitious work of synthesis that considers the conditions on which citizens can be the vectors of democratisation, and in which the broad conditions of citizen agency can be historically or cross-culturally compared. His comparative intent here is to generate theory that emerges from an appreciation of cultural specificity rather than from the assumption of a singular historical logic. One of O'Donnell's overarching concerns, and a basis for the originality of his work, was his recognition that practically all definitions of democracy are 'a distillation of the historical trajectory and present situation of the North-western countries' (Anglo America and Western Europe) which he referred to as 'the northwest quadrant' (O'Donnell 2010, p. 5). This peculiar historical trajectory has then been applied problematically to all other regions of the world. The consequence, he writes, is that political theory divorced from historical specificity becomes the basis for normative prescriptions that pass as procedural models, which pathologise the historical circumstances of developing countries and misdiagnose the nature of and limitations to their democratic forms. O'Donnell's critique of procedural models of democracy detached from the study of society and history share similarities with the political philosophy of Sheldon Wolin (1989, 2008, 2016), Axel Honneth (2014) and Pierre Rosanvallon (2006). Sheldon Wolin's critique of Arendt's a-social notion of the political leads him to conceive of politics as a cultural order, in the sense of being concerned with caring for or tending to the common good. 'The political', he writes, 'emerges in a literal sense, as a "culture", that is, a cultivating, a tending, a taking care of beings and things' (Wolin 2016, p. 248). If politics is seen as a cultural order, then democratic citizenship requires a special type of cultivation or the 'self-fashioning of the demos' (Wolin 1996, p. 98). Honneth's *Freedom's Right* (2014), meanwhile, develops an approach to democracy centred on micro-level social relationships (e.g. in the family, in the workplace) that shares much with O'Donnell. All four theorists believe that political philosophy should be reconnected to the social sciences in order to better diagnose and find solutions to the problems of the present and share a commitment to reframing tighter connections between theory and practice.

O'Donnell's introductory discussion of theories of democracy from Schumpeter to Huntington to Rawls and Dahl shows how claims for minimalist definitions are complicated by unclarity about the meanings of, and social preconditions for, the exercise of basic rights and freedoms. Schumpeter provides a paradigmatic 'minimalist' definition of democracy as 'that institutional arrangement for arriving at political decisions in which individuals acquire the

power to decide by means of a competitive struggle for the people's vote' (1975, p. 242). Schumpeter, however, in a rather nebulous way, recognises that certain basic freedoms relating to the legal and moral principles of the community are essential (Schumpeter ibid., p. 271–2). However, Schumpeter's definition fails to offer a typology to distinguish full and diminished kinds of democracy. Huntington provides a variation of Schumpeter's definition, defining democracy as '[a [political system that exists] to the extent that its most powerful collective decision-makers are selected through fair, honest, and periodic elections in which candidates freely compete for votes and in which virtually all the adult population is eligible to vote'(1991, p. 7). He adds that democracy 'also implies the existence of those civil and political freedoms to speak, publish, assemble, and organize that are necessary to political debate and the conduct of electoral campaigns' (ibid.). O'Donnell argues that even these minimalist definitions of democracy involve undefinable and 'undecidable' elements of contingency relating to the cultural terrain on which rights and freedoms can be exercised. What exactly are 'a set of freedoms… that are necessary supports for the likelihood of… elections and their related participatory rights' (O'Donnell 2010, p. 23), and in each case how is support maintained, encouraged or discouraged? This 'undecidability' makes democracy 'the only kind of political rule that entails an open historical and normative horizon' (O'Donnell 2010, p. 214). O'Donnell writes this open-endedness into his definition of democracy in terms of three criteria: fair elections; the participatory rights to vote and the attempt to be elected (including taking part in activities relating to the exercise of these rights), and *an undecidable set of freedoms that support elections and their related participatory rights* (ibid., p. 23, emphasis mine). O'Donnell's intervention here is to elucidate the ambiguity of the social and moral terrain on which political rights and freedoms necessarily rest, and hence of the ambiguities inherent in so-called minimalist definitions whose procedural focus relies implicitly or explicitly on political rights and freedoms. The question is which additional conditions are required in order for citizens to perform the rights and freedoms necessary for participation in public life.

Rights and freedoms are not easily empirically identified or understood. They relate to shifting historical and cultural as well as institutional dimensions that interrelate to make democracy more or less possible in a given place or regime. O'Donnell distinguishes the private sphere of 'civil rights', what Habermas called 'bourgeois rights' or Marshall 'civil citizenship' (as opposed to social citizenship), from 'political rights' of the democratic wager that refer to the public sphere. O'Donnell uses the term 'democratic wager' to denote the situation whereby every citizen has the rights and freedoms to potentially enact legal and governmental decisions, even though few in practice enact these. Even if all definitions of democracy, however, include a basic set of political rights (e.g. freedom of expression, assembly and participation in political life), the meaning of these rights can never be fixed, and the terrain on which these rights can be exercised cannot be delimited by their legal definition. To explain the significance of the cultural terrain of laws, rights and the state, O'Donnell refers to a hypothetical chain of relations making 'corruption or other illegal activity' culturally acceptable, and hence emphasising that the legitimacy of the law is not evenly distributed within a state. For O'Donnell, the law is the formal contribution of the state to the reproduction of society and all its inequalities. Here, O'Donnell borrows from Norberto Bobbio who writes: 'The state through law is also a form of social organisation and as such cannot be dissociated from society and from underlying social relations' (1989, p. 47). From this perspective, laws do not create social relations so much as legitimise them. Rights are special types of laws that legitimise a wide range of practices that strive against the inequalities

generated in and by capitalism and bureaucracies (O'Donnell 2010, p. 212). The basis of the democratic wager is the legally sanctioned and backed capability to make claims against others and against the state. The exercise of rights, however, requires amenable social conditions, public spaces and legitimising mythologies to enable them to be enacted, reinterpreted and made meaningful to citizens at any given time. The meanings of freedom of association and expression have evolved significantly since 9/11, let alone over the last century, and continue to evolve with the intensification of migrant flows and digital surveillance. Similarly, demands for new rights cannot be dissociated from the social and moral terrain on which they are made, dismissed or gain legal traction.

O'Donnell points out that all rights are the product of specific historical struggles. However, drawing on Charles Tilly who frames citizenship as 'always incomplete and uneven' (1999, p. 417), O'Donnell recognises that the possibility for people to enjoy the practice of rights varies within and across states and time. Historical advances did not achieve the ideal of social or economic equality. Nonetheless, political rights provide citizens with the legal and symbolic capital to fight for the democratisation of other social domains. He writes:

> [T]he resulting lesson is that these rights and freedoms, and behind them the legally institutionalised recognition of agency, are rarely graciously granted; they are hard won by means of struggle that help both the emergence of democracy and its expansion. The rights and freedoms of democracy are helpful for democratizing various social, not only strictly political areas, or at least of humanizing them in ways consistent with agency – as in the workplace, relations in and with bureaucracies, and anti-discrimination actions, among others (O'Donnell 2010, p. 210).

O'Donnell continues:

> Human beings have the right to have rights and, consequently, of being able to struggle for those they deem proper for those and others. This is the basis of the assignment of legal personality; in turn, thus recognized agents are the legally-enabled citizens that provide the micro-foundation of democracy and its main raison d'être (O'Donnell 2010, p. 214).

The legal recognition of rights provides the symbolic and moral legitimacy for expanding democratising struggles into new social domains unconnected from past rights claims. In this way, the right as law opens up dialogic networks and encourages deliberative spaces in which citizens and groups renegotiate inequalities. The key to O'Donnell's theory of citizen agency is his notion of dialogic networks, which allow citizens to collectively shape public life. O'Donnell conceives of 'dialogical appeals and networks' connected to the right to claim rights as the practical basis of both agency and the public sphere. He writes:

> A dialogical network of appeals entails that we can co-constitute a public sphere by addressing others and the rulers about matters we deem significant as they refer to values, identities, and/or interests of alleged public importance (O'Donnell 2010, p. 137).

Citizen agency is expanded the more dialogical networks are criss-crossed by diverse appeals and deliberations. The legal sanctioning and backing of the citizen as agent are the product of a long and culturally varied history of conflict. This legal basis of agency brings with it immense moral and political significance that can either be silenced and forgotten or placed centrally in public discourse and practice. O'Donnell recognises that democracy is not possible where

information is guarded or censored. However, the significance of this is not reducible to the importance of individual freedoms but lies in the social practices and spaces that individual freedoms can give rise to. Individual freedoms are legal protections for individuals to engage in the dialogical networks and deliberative spaces that O'Donnell equates with citizen agency. The larger insight here, for O'Donnell, is that citizens are the 'vector of democracy', but that citizen agency is contingent on an amenable and shifting cultural terrain that legitimises or delegitimises rights claims, dialogical networks and spaces for deliberation.

In the following section, I draw on historical analyses of Australian citizenship and ethnographic analysis of Australian citizenship ceremonies to consider meanings associated with Australian citizenship, and the implications for agency of not grounding citizenship in rights.

Democracy Without Citizens

Australia is an institutionally stable democracy with a peculiarly vague notion of citizenship disconnected from legal grounding in the rights of the citizen. Australia rates highly in many international rankings of democratic freedom (e.g. Freedom House), while it is also unique among democracies to have neither a national Bill of Rights nor constitutional protections of citizen rights. Indeed, despite over a century of stable parliamentary government, Australia's political mythology would appear to be more in line with authoritarian than democratic regimes. All national holidays are devoted to events, people and processes antithetical to the democratic values of liberty and equality. These include celebrations of a monarch's birthday (Queen Elizabeth II's birthday), participation in wars for imperial powers and their large-scale memorialisation (ANZAC Day and associated memorial celebrations), and the landing of British colonial ships that marks the beginning of Australia's colonial and penal colony history and fictive sovereignty (Australia Day). Although Australia recognises Labour Day, there are no national rituals or holidays that celebrate, for instance, Australia's federation, its precocious history of women's suffrage or secularism, the opening of its borders to non-white migrants or its belated recognition of indigenous citizenship. The Australian human rights lawyer Geoffrey Robertson notes the incongruity of a polity with significant democratic institutions that is nonetheless headed by a foreign head of state 'via an arrangement that discriminates on grounds of race, sex and religion' (Robertson 2009, p. 52). The incongruity of a political mythology untethered by rights produces a vague, if not contradictory, figure of the Australian citizen. Australian citizenship is 'institutionally diffuse' and has been developed incrementally 'through legislation, administrative practice and public policy by both Commonwealth and State governments' (Chesterman and Galligan 1999, p. 4). However, from its formal invention in the 1901 federal Constitution, to its evolution this century, Australian citizenship continues to be seen as hollow, ill-defined, unsubstantiated by rights, and tainted by an undemocratic colonial legacy. Nick Dyrenfurth, for instance, notes that a flurry of scholarship on Australian citizenship around the turn of the twenty-first century belies a longer popular neglect, reflective of the emptiness of the practice itself. He writes:

> The 2001 federation 'celebrations', which should have witnessed a considered evaluation of citizenship, focused almost entirely upon political parties and leaders. The 1999 republican debates were focused upon technical models of polity rather than a simultaneous and logical discussion of citizenship rights. Citizenship as portrayed by 'inclusive

> naturalisation' ceremonies is a privilege bestowed, but not actively experienced. The formal study of Australian citizenship has until quite recently been an under-theorised and concomitantly underdeveloped concept, akin to the practice itself (Dyrenfurth 2005, p. 91).

The absence of mythologisation and intellectual development of Australian citizenship has left it an empty category within Australian political life. Brian Galligan writes: 'If citizenship is at the heart of Australian politics, there has been little appreciation or celebration of its history and development over nearly a century' (1998, p. 1). The vagueness of the figure of the Australian citizen begins with the absence of the citizen from the Australian constitution. In a review essay entitled 'The Disembodied Citizen in Australian Civics', Mark Francis writes:

> Citizens are formally absent from the Australian constitution. It gives them none of the rights which one would expect citizens to possess. The absence of rights has an historical dimension; Australia began in 1901 without seriously considering the nature of its citizenry (Francis 2002, p. 79).

The word 'citizen' does not appear in the original constitution of 1901, which refers instead to 'subjects'. The word citizen is introduced in the Australian Citizenship Act of 1948, which delineates how a person might become an Australian citizen while saying nothing about what being a citizen entails. However, the word 'subject' is not replaced by 'citizen' until constitutional reforms of 1968. According to Galligan, the founders chose to use the word 'subject' rather than citizen not because they had not considered the nature of Australian citizenship but because the word subject was appropriate:

> Proud heirs of the nineteenth-century British tradition which they had already implemented in their self-governing colonies, Australians largely took for granted civil or legal rights as being sufficiently protected by the common law and through having the government answerable to a democratically elected parliament. The constitutional treatment of citizenship and rights protection—leaving it to future parliaments—simply reflected this positive view of democracy and government (Galligan 1998, p. 4).

Alastair Davidson's (1997) history of Australian citizenship, *From Subject to Citizen*, meanwhile, argues that the shift from subject to citizen reflects the country's coming of age and relative independence from the UK. Even as subjecthood to the Crown was officially superseded by national citizenship, citizenship continued to be framed primarily in terms of belonging and membership (Davidson 1997, pp. 104–5), in which Aboriginal people belonged less than white Australians (Rintoul 1993). In 1993, a Preamble to the Citizenship Act was inserted, with no legal consequence, which defines citizenship in terms of both membership in a national community and the enjoyment of unspecified rights and liberties. According to this preamble:

> Australian citizenship represents formal membership of the community . . . 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 by pledging loyalty to Australia and its people, and by sharing their democratic beliefs, and by respecting their rights and liberties, and by upholding and obeying the laws of Australia (Australian Citizenship Amendment Act 1993).

The Preamble implies that citizenship involves active obedience to state power and passive enjoyment rather than active performance of rights and liberties. One does obedience, but enjoys rights. Mention is made of 'democratic beliefs', but it is unclear what this term implies. The Preamble's focus on diversity and inclusion has been seen to have more to do with administering an increasingly multicultural national community than identifying the possibility for citizens to participate in shaping this political community (Walter and MacLeod 2002, p. 7). The Preamble's emphasis on membership and obedience also provides a script for the performance of Australia Day citizenship ceremonies.

The citizenship ceremony is the central state ritual performed at Australia Day celebrations throughout Australia. These ceremonies include city, state and federal politicians, unelected representatives of the Queen, local and national recipients of 'Australian of the Year' awards, military personnel and indigenous representatives from local first nations communities. The ceremonies condense and communicate a number of symbols associated with Australian democracy, multicultural national identity and the hierarchies of state power. Unelected representatives of the state (Governor General) are at the apex, supported by military detail and draped in formalised gestures of subservience by the elected politicians. After hearing from the Queen's representative, federal and state members of parliament address attendees from the podium, followed by traditional owners from local first nations. A flag raising ceremony is performed by military officers, who hoist the Australian flag higher than either the Aboriginal or Torres Strait Islander flags, a symbolic legitimisation of the colonial administration's violent domination of indigenous peoples. The mayor emcees. Surrounding the large marquee in which the ceremony is conducted, police officers stand in pairs at each corner to ensure that attendees feel securitised and that protesters calling for the date of Australia Day to be changed are prevented from disrupting the ceremony (protesters were outnumbered eight to one at the 2018 citizenship ceremony held in Townsville). New citizens are called one by one to the stage to shake hands with the mayor, and as they descend from the stage they pass by a large photo of the Queen. The first instant of the citizen's new identity is witnessed not by secular or democratic authority but by a monarch. Then, the citizen walks to a table and receives a native tree seedling that they might plant, symbolising the cultivation of their new identity as naturalised natives. The value of obedience is threaded into the Australian Citizenship Affirmation, which all new citizens make at the ceremony. The affirmation reads:

> As an Australian citizen, I affirm my loyalty to Australia and its people, whose democratic beliefs I share, whose rights and liberties I respect, and whose laws I uphold and obey (Australian Citizenship Affirmation n.d.).

The affirmation emphasises loyalty and obedience to the state firstly. Only secondly is there an uncomfortable and unclear positioning of rights and liberties. Laws are to be upheld and obeyed. Rights and liberties are to be respected not enacted. Respect, in this sense, speaks to the requirement to conform to a shadow of authority, rather than any experience of liberty or equality. The language—uphold, respect, obey, loyalty—is hierarchical and exclusionary rather than egalitarian. For the lucky few, rights are given not won. Australian Citizenship ceremonies emphasise inclusion in a multicultural national community and obedience to state power, but do not elucidate what the rights and responsibilities of the democratic citizen are. The paradox of Australia's citizenship ceremony is that while it officially performs the granting of a political status as members of a democracy, it symbolically performs subjecthood and hierarchical state power over democratic subjectivity and horizontal citizen agency. As a result,

the ceremony reflects and contributes to producing a contradictory and vague figure of the Australian citizen rather than providing the moral legitimacy of rights claiming and democratic subjectivity.

Legislating Against Citizen Agency

The shaky constitutional and cultural foundations for citizen rights in Australia have been further eroded this century. Over the past 20 years, Australian counterterrorism, anti-protest, anti-association and secrecy legislation have reset the balance of power between state and citizen in favour of state and corporate interest and curtailed the legitimacy of rights claiming more broadly. These laws contribute to creating a moral terrain hostile to rights claiming and sustaining the dialogical networks on which O'Donnell's theory of citizen agency rests. As of 2016, Australia had sixty-four counter-terrorism measures in place, more than any other liberal democracy (Gelber 2016). Several other bills that propose to concentrate state power and limit the capacity for citizens to hold governments accountable are still under consideration. Pre-emptive security amendments have removed accountability—either political or judicial—of the state's capacity to extinguish or suspend civil liberties in a disturbingly open-ended fashion. This has resulted, according to Hocking 'in an often unstated and unarticulated apprehension and mistrust, an unwillingness to speak and act politically, a sort of "existential insecurity"' (Hocking 2003, p. 370–1). Anti-protest and anti-association laws may already be producing self-censorship of citizens and civil society organisations. For example, several new acts in state parliament take the threat of terrorist attack as a baseline for placing restrictions on protest and public association. The G20 Safety and Security Act Queensland of 2013 (G20 (Safety and Security) Act Queensland n.d.) built on 9/11 counter-terrorism acts that normalised a state of exception and lowered the threshold of citizen rights. The Act, developed to prevent disruptions to the G20 Summit meetings in Cairns and Brisbane, divided the cities into different security zones and granted the police special powers within these zones, including the power to search all people moving in and out of restricted areas, stop and search vehicles, and enter and search premises without a warrant. While it is impossible to tell if these laws protected citizens, they certainly protected the state from citizens. This was the conclusion of an independent law report on the effects of the G20 Safety and Security Act. The report by Caxton Legal found that the event was a success for the police in terms of executing the Safety and Security Act laws, but a failure for democracy because the laws prevented people from using public space and expressing their political views (Caxton Legal 2015). The study concluded that fewer than 1000 people demonstrated from an expected 100,000, indicating that police regulations prevented protest from occurring.

The state of exception counter-terrorism policing of economic summits has drifted into the everyday policing of protest. In 2016, Tasmania and New South Wales introduced laws that expanded police powers and restricted the capacity of citizens to protest business practices, especially those relating to the natural environment (e.g. mining and forestry). The 2016 Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act in the state of New South Wales (NSW) grants police new powers to stop, search and detain protesters, to seize property and to shut down peaceful protests that obstruct traffic (Inclosed Lands n.d.). The Act also introduced a new law against 'interfering' with a mine site that carries a maximum penalty of 7 years in prison or $5000. The NSW Council for Civil Liberties regards the primary purpose of these laws as conferring expanded powers on police while

severely enhancing penalties for protesters (NSW Council for Civil Liberties 2016). Similarly, in 2014, the Tasmanian Government introduced the Workplaces (Protection form Protesters) Act 2014 n.d., arguing that forestry businesses needed to be protected from the inconvenience of protesters. These laws restrict people from promoting 'awareness or support for … an opinion, or belief, in respect of a political, environmental, social, cultural or economic issue' from accessing or moving around business premises. Protesters could face 5 years in prison for damaging or threatening to damage a business and be fined $10,000 for failing to leave an area when directed by police. Police could also arbitrarily ban people who had been directed to leave a protest from returning for 3 months. However, those who participated in a procession that moved through the area once at 'a reasonable speed' would not contravene the ban.

In January 2017, Bob Brown, the ex-leader of the Australian Green's party and Jessica Hoyt, a nurse who grew up in the north west of Tasmania were arrested under the Workplaces Act while protesting logging at the Lapoinya forest block. Brown and Hoyt challenged their charges in the High Court of Australia on constitutional grounds. Because Australia has no Bill of Rights, however, making a case for constitutional rights involves stitching together a vague patchwork of implied rights. Brown and Hoyt relied on the implied freedom of political communication, the notion that Australian democracy requires citizens to freely communicate their ideas. Accordingly, governments cannot prevent citizens from communicating politically relevant information. However, as Ryan and Howie (2017) note, the implied freedom of political communication 'is a freedom rather than a freestanding right; it is doctrinally complicated; and compared to other constitutional courts, the High Court has traditionally been reluctant to intervene and overrule policy decisions of elected politicians'. In October 2017, however, the High Court's seven judges decided in favour of Hoyt and Brown. In delivering their verdict, three judges decided that the ambiguity of the Tasmanian laws would discourage protest, and that it would be too difficult for the police or protesters to establish what was a 'business premises' or 'business access area', on which the application of the law depended. Three of the judges saw the laws as unnecessarily draconian and ill-suited to their stated aims of preventing damage and disruption. One justice was concerned with the singling out of protesters by the legislation. Ryan and Howie (2017) see the Brown v Tasmania case as a 'landmark decision for the right to protest in Australia'. They view the Court's decision as the clearest articulation that protest is protected by the Constitution, and write that 'Themes across the judgments will probably prove important in future cases and when governments are contemplating introducing protest-restricting legislation' (Ryan and Howie 2017). Two of the judges, however, found the Workplaces Protection Act to be both constitutional and proportional. Significantly, none of the judges saw a constitutional contradiction in creating legislation to criminalise protest in order to protect business activity. Tasmania lost its case because of the law's ambiguities and a disproportionality between its aims and penalties. However, it is unclear if the Brown v Tasmania finding will establish a legal precedent for solidifying an implied freedom for political communication into a right to protest in Australia. The Court's decision appears to reinforce the constitutionality of privileging economic over political behaviour, a right to do business over an absent right to take political action. As Bob Brown put it in relation to the case: 'The Tasmanian anti-protest laws are part of the global purchase of democracy by corporations. Corporations lobby weak politicians to legislate against the time-honoured rights of the people' (Brown, cited in Ryan and Howie 2017).

The 'time-honoured [implied] rights of the [Australian] people' are subject to challenge by private interests. Heath and Burdon (2017) argue that repressing protest has historically been justified in terms of maintaining law and order. However, protest is increasingly conceived as

an impediment to market behaviour. They explain the silencing of Australian protest in general and environmental protest in particular in terms of the dominance of neoliberal rationality that promotes corporate rights over all other rights. Politics, citizens, and notions of the public good have no place in a corporate rationality that reduces everything to the level of individuals and economic value. Common law has never supported protest as a democratic right. However, the idea of citizens being active in the political process beyond 'clicking' and voting has been progressively eroded. Heath and Burdon argue that 'the right to protest [in Australia] is facing a level of statutory suppression not previously seen in peacetime' (Heath and Burdon 2017, p. 190). Ricketts underlines the weak position that the right to protest enjoys in Australian common law:

> Lawful protest in the common law tradition means no more than the residual activities not yet rendered unlawful. Every new curtailment of the right to protest simply reduces residual rights further, and so what remains of lawful protest becomes further emaciated (Ricketts 2015, p. 236).

In the absence of a binding bill of rights, common law becomes a carcass on which the residue of rights is gradually stripped away. Rather than encouraging principled dissent, Australia has many laws that discourage civil disobedience. These include public order offences, terrorism offences, offences criminalising obstruction and violence, legislative restrictions on large events, public safety restrictions and civil litigation. The contingent legality of protest means that any public assembly must gain permission from the local Police Commissioner, registering its intent, estimated size, logistics and other information a week in advance (e.g. Queensland Police 2020). Further, city by-laws restrict protest and other forms of public gathering (e.g. music and arts performances, and public assembly in a range of spaces). Despite not having any constitutional basis, city administrations use private security to threaten protesters with fines and demand, in some cases, that those wishing to organise public meetings purchase permits in advance, which can be withheld or removed by a city council without notice if there are public complaints (e.g. if material is considered offensive or disruptive). In the absence of a constitutional right to protest, the assemblage of laws that restrict protest create a moral terrain hostile to dissent and the expression of rights claiming.

Recent acts and proposed bills that restrict citizens and associations from criticising the government have also curtailed citizen agency. Australia's National Security Legislation Amendment Bill (2018) ushered in wide-ranging restrictions on access to information while increasing the penalties for whistle-blowers. These laws justify state secrecy on extremely broad national security pretexts and make the state the sole arbiter of 'national interest'. Further, the new definition of 'information' in the Amendment goes beyond documents to include the much vaguer concepts of 'opinion' and 'advice'. Instead of thanking citizens who act in the public interest by exposing government wrongdoing, these laws threaten 20-year jail sentences for Commonwealth employees who receive or possess sensitive information, and moderately less severe penalties for other citizens (Sathanapally 2018). While the government made amendments to the bill to protect journalists who receive or handle information that may incriminate the state, there are no such protections for other citizens. The laws have been described as being in line with those of China, Turkey, Cambodia and Cuba (Cave 2018), and reinforce an anti-democratic turn toward foreclosing public debate and accountability, while further reducing citizen agency.

A bill that aimed to prevent foreign influence over domestic elections was widely criticised by community sector organisations and civil rights advocates as a mechanism for preventing

charities from criticising the government or engaging in advocacy. In February 2018, the Australian Liberal Party attempted to pass the Electoral Legislation Amendment (Electoral Legislation Amendment n.d.) Bill, which was referred to by the social justice advocacy network GetUp! as the 'charity gag law' (GetUp! 2018). The law introduced 'complex, cumbersome, and costly compliance requirements' on organisations that spend more than $13,500 a year on 'political purpose' (Human Rights Law Centre 2018). The Bill was sold to the public as a means of protecting the Australian political process from foreign interference, which it no doubt addressed. However, the Bill also places restrictions on civil society organisations' legal capacity to participate in public discourse. According to Hugh de Krester, the Executive Director of the Human Rights Law Centre, speaking at a Parliamentary Committee hearing to examine the Bill:

> 'Political purpose' is defined so broadly it appears to cover the public expression of any issue of public significance. The compliance regime in the bill is so bad it will mean many charities will simply choose not to speak out in public about their work. This will harm Australian democracy (de Krester, cited in Human Rights Law Centre 2018).

GetUp! led a national campaign against the Bill, arguing that:

> If passed into law, this legislation would severely curb the ability of independent civil society groups to participate in political debates and advocate for better public policies…. This is more than an attack on civil society – it's a sinister abuse of government power to silence those who speak out against it (Get Up 2018).

Despite grassroots efforts to oppose the bill, it eventually passed and continues a recent trend towards the suppression of civil society voices. The 2017 Human Rights Law Centre report *Defending democracy: Safeguarding independent community voices* is critical of the normalisation of gag laws tied to government funding (Human Rights Law Centre 2017). The authors of the report note that it has become standard practice for government funding to be tied to clauses that restrict community sector organisations from publicly criticising the government or policy. The report concludes that: 'Imposing conditions on funding to limit advocacy sends the wrong message to civil society. It suggests that its views are unwanted and unwelcome and it creates a dangerous environment where organisations are more likely to self-censor for fear of losing funding' (Human Rights Law Centre 2017:4).

Recent counterterrorism, anti-protest, anti-association, and anti-whistle-blower legislation delegitimise rights claiming, and reframe the relationship between citizen and state in Australia. These laws weaken individual citizen agency as well as the capacity for citizens to participate collectively in civil society and public life. While common law has never provided a solid grounding for political freedoms, what grounding there is results from an implied right to political communication. This implied right supports a series of other liberties, such as assembly, association, speech, and protest. The cumulative consequence of recent legislation is to weaken the pulse of this implied right by criminalising and administratively discouraging rights claiming and participation in the dialogical networks that sustain the public sphere. The significance of this legislation lies in its hostility towards rights claiming as a normative basis for democracy and reflects an animosity towards the cultural values (equality, liberty, participation) and social bases (associational life) of democratic citizenship.

In this section, I have touched on a selection of recent laws that undercut citizen agency in Australia, and which contribute to Civicus downgrading Australia's rating of civil society openness from that of an 'open' to a 'narrowing' democracy. In the final section of this essay, I

conclude by discussing the symbolic significance of not grounding a figure of the citizen in rights, and touch on hope for the emergence of new citizenship mythologies and democratic subjectivities in Australia.

The Figure of the Australian Citizen: Vague, Contradictory, but Undecidable

The socio-cultural factors that engender or delegitimise the performance of freedoms and rights have been inadequately conceptualised in democratic theory. Given a global context of narrowing civil liberties and intensifying state repression, it is critical that we have adequate theories of citizen agency to account for the socio-cultural conditions supportive of the emergence of democratic subjectivities. O'Donnell's theory of citizen agency and call to pay theoretical and empirical attention to movements toward or away from democracy makes his work apt for understanding a global moment marked by the erosion of democratic institutions and the closure of civic agency. He emphasises that the vitality of democracy is contingent on citizen agency, which has legal, moral and social aspects. Agency is the capacity to participate in dialogic networks that constitute the public sphere. Despite his grand theorising, O'Donnell saw the foundations of democracy in the micro level of mutual recognition among rights bearing citizens, while appreciating that democratisation can proceed through various paths, each of which opens possibilities for further democratising potentialities (O'Donnell 2010, p. 198). His work shows up the importance of understanding how people make rights and other laws meaningful through social practice, and how laws inform the making of meaning in the first instance. Future empirical and comparative work on citizen agency and the micro level practices associated with the meaning of rights and freedoms warrant further examination.

Australian citizenship is highly unusual insofar as the Australian constitution does not enshrine political rights, and the primary myths and rituals of citizenship concern quantity over quality, and obedience over rights claiming and participation in public life. The symbols of Australian citizenship, which continue to be tied to monarchy and disconnected from emancipatory struggle, create a contradictory and vague figure of the citizen. I have applied O'Donnell's theory of citizen agency to a reading of legal and cultural aspects of Australian citizenship. In O'Donnell's account, the significance of rights lies in their capacity to legitimise rights claiming, public space, and the dialogical networks that enable citizen agency. The historical absence of rights can be seen to create a moral terrain in which the current wave of anti-citizenship legislation is regarded as normal, acceptable or necessary. The consequence of not grounding citizenship on rights is twofold: firstly, rights claiming, the primordial act of citizenship, is delegitimised, and secondly, the absence of rights as representations of emancipation robs citizens of powerful symbols to imagine future democratic possibilities.

Rights are the central symbols of citizen agency in national narratives of democratic history and human emancipation. Rights condense several fields of symbolic significance. They collapse social histories of political struggle into abstractions of individual agency, linking the 'I' and 'we' of citizenship (Rodd 2018). They look back to previous social movements and ahead to potential futures and symbolise public responsibility and open-ended political possibility. They can be umbrellas and anchors for myriad campaigns against inequality and injustice. Democratic citizenship involves both public participation and a share in power, which together produce political responsibility. But while rights are often memorialised and celebrated as symbols of citizenship, the meaning of responsibility associated with citizenship

is oftentimes less clearly defined. Citizen responsibility, in O'Donnell's terms, involves enacting and claiming rights, participating in and creating public spaces and forums for deliberating and sharing power. The responsibilities of the democratic citizen result from the public and participatory implications of political rights and freedoms. As rights and freedoms are eroded, so the horizon of responsibilities also shrinks. Thus, attacks on citizen rights must also be seen as undercutting the capacity for citizens to perform their democratic responsibilities.

Rights have been seen as a generative basis of democracy, which animates political institutions (Lefort 1986, p. 260). Modern democracies marked a radical break with the symbolic basis of power in the Crown or church. The demos replaced the king or God as the symbolic seat of power. However, because the demos is an abstraction rather than a divine or biological being, democracy is constituted by a symbolic void (ibid.). This void created a new political imaginary, a gap between the substance of power and the identity of those who hold power and, according to Sofia Näsström (2014), a sense of democratic responsibility. Näsström (2014) argues that democracy is the normative basis of the right to have rights, and that the right to have rights is what 'we share in our capacity as democratic beings, that is as beings having to assume the responsibility for the absence of a higher law in politics' (2014, p. 562). Rights and democracy are symbolically and socially co-implicated. Each provides a normative basis for the existence of the other. The absence of rights associated with Australian citizenship implies that there is a very different normative basis for democracy in Australia than found elsewhere, and conversely that the contradictory nature of Australian democracy does not provide a normative basis for rights claiming. The absence of rights creates a symbolic void occupied by vague and contradictory symbols that obscures a sense of democratic responsibility. On the one hand, appeals to obedience and hierarchy as symbolised by the Crown and the narratives and ritual structure of citizenship ceremonies, and on the other hand, lip service to rights and freedoms which are not symbolically elaborated and have no legal backing. The absenting of rights in constitutional and ceremonial evocations of citizenship has created a vague and contradictory figure of the citizen that straddles authoritarian and democratic values and symbols.

I have shown, using O'Donnell's theory of citizen agency, that Australia's absence of either legally recognised rights or a civic mythology and ritual calendar that celebrates the emancipatory struggles on which the figure of the citizen rests, discourages the chains of social relations, public spaces and recognition of citizenship responsibilities. This empty and contradictory mythology unhinges citizenship from democracy in Australian political culture, leaving it susceptible to authoritarian creep. The absence of either legal articulations of rights or the symbolic recognition of struggles for emancipation that could be integrated into a national democratic mythology creates a peculiar cultural landscape hostile to the citizenship practices fundamental to sustaining democratic subjectivity. A historical legacy that has absented the figure of the democratic citizen and the rights on which citizenship rests, and a new wave of legal attacks on civil society, reinforce each other to discourage citizen agency and democratic subjectivity. However, citizenship is both a symbolically significant marker *of* political agency and a legally backed basis *for* political agency. The symbolic multiplicity of citizenship ensures that in any given context there can only ever be figures of the citizen, mythologised variations of legal abstractions, contemporary interpretations of historical struggles and local instantiations of national membership. This symbolic openness, democracy's

'undecidability' in O'Donnell's terms, offers hope that even imaginaries tending toward closure can be opened with collective action organised around new rights claims, even if the right to claim rights is only marginally legally backed.

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