

Herbert Vere Evatt, the United Nations and the Universal Declaration of Human Rights After 60 Years

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HERBERT VERE EVATT was a product of public schools. He attended Fort Street Boys' High School in Sydney, the oldest public school in Australia, as I later did. That school has reflected the ethos of public education in Australia: free, compulsory and secular. These values influenced Evatt's values as they did my own.¹

As an Australian lawyer, Evatt stood out. He was a Justice of the High Court of Australia for 10 years in the 1930s. However, his greatest fame was won by his leadership role in the formation of the United Nations and in the adoption of its Charter in 1945. He was elected the third President of the General Assembly. He was in the chair of the Assembly, on 10 December 1948, when it voted to accept the Universal Declaration of Human Rights (UDHR).²

It is 60 years since that resolution of 1948. In the imagination of immature schoolchildren, like me, in the 1940s and 1950s, the Hiroshima cloud was imprinted on our consciousness. We knew (perhaps more than Australians do today) how important it was for the survival of the human species that the United Nations should be effective, including in the attainment of the values expressed in its new UDHR.

When I arrived at high school in 1951, Evatt was honoured as a famous alumnus. By then, he was no longer a judge or Federal minister. He had become the Leader of the Opposition in the Federal Parliament. His nasal, flat-toned voice was familiar

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1. See *Federal Commission of Taxation v Word Investments Ltd* (2008) 236 CLR 204, 252.

2. See generally *Newcrest Mining (WA) Ltd v Commonwealth* (1997) 190 CLR 513, 657–9, citing H Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law' (1996) 25 *Georgia J International & Comparative Law* 287.

to us from the daily broadcasts of the proceedings in the Federal Parliament. Evatt was the alternative Prime Minister to Mr Robert Menzies. Both were impressive and leading lawyers. Each presented a different vision of Australia and of the world. Each spoke for somewhat different values and, to some extent, different ideals.

As events were to unfold, I had a second, more personal, reason at the time for feeling connected to Evatt. When I commenced high school, my grandmother had remarried. Her new husband was the national treasurer of the Australian Community Party, Jack Simpson. After Mr Menzies's return to government in December 1949, a Bill was introduced into the Federal parliament in fulfilment of an electoral commitment given by the new Coalition government. This Bill aimed to dissolve the Australian Communist Party and to impose various civil disabilities upon communists.³ It promised direct and adverse consequences for someone who, effectively, was a new member of my family.

As counsel, Evatt led the challenge to the constitutional validity of the legislation. In one of its most important decisions, *Australian Communist Party v The Commonwealth*,⁴ Evatt's submissions were substantially upheld by the High Court. Against all odds, and with initial opinion polls showing that 80 per cent of the electors supported the legislation, Evatt successfully directed the ensuing campaign against the attempt by the government to secure approval of the electors to amend the Constitution to overcome the High Court decision. In a referendum held on 22 September 1951 a majority of the electors in three States (Queensland, Western Australia and (only just) Tasmania) approved the proposal. Three States (New South Wales, Victoria and South Australia) voted against. The majority national vote of electors was 49.85 per cent against, with 48.75 per cent in favour.⁵ There was thus no majority of States and of the electors in favour of the referendum proposal. It failed to pass. Although at the time I did not understand the full ramifications of the court decision and the referendum, being then 12 years of age, I appreciated that a most significant contest about liberty in Australia had been won. In large part, it was won because of the courage, determination and foresight of Evatt.

In recent years, I have read extracts from Jack Simpson's national security file. One such entry in 1950 records how he was closely observed at the Sydney Taronga Park Zoo, in company with three young schoolchildren. Perhaps those conducting the surveillance were concerned about the potential communist corruption of young minds. If so, they need not have bothered. The schoolboys were myself

3. The Bill became the Communist Party Dissolution Act 1950 (Cth). The main provisions of the Act appear in *Australian Communist Party v Commonwealth* (1951) 83 CLR 1, 6–9 in the case stated by Dixon J for the opinion of the Full Court of the High Court.

4. Ibid.

5. A Blackshield & G Williams, *Australian Constitutional Law and Theory* (Sydney: Federation Press, 3rd edn, 2002) 1305.

and my brothers. One became a Sydney solicitor. Another is now a judge of the Supreme Court of New South Wales. I was the eldest.

After the Hungarian uprising in 1956, Jack Simpson came to question his earlier political philosophy. But to the end he was idealistic, even if many would say misguided. Australia's highest court, and then its electors, upheld, in effect, the liberal principle that he was entitled to hold and advocate his political opinions, however foolish the majority of citizens might think them to be.

Because of his faith in Australia's institutions and his confidence in the wisdom of its democracy and because of his leadership at the United Nations that gave birth to the UDHR, Evatt in my childhood was a hero. This was so despite faults that were constantly called to notice by the press and were sometimes all too evident. In the big picture of Evatt's colossal achievements, his defects are of much less significance, especially viewed with the hindsight of 60 years. We can now see that he was one of the most influential Australians of the 20th century. We do well to remember his important contributions to the Commonwealth and to the world.

In part, then, this is a personal reflection on a predecessor Justice of the High Court of Australia whose life, in some respects, ran in parallel to my own. He was a legal intellectual; but he resigned from high judicial office, in time of war, to pursue political objectives and ambitions. Because of the dangerous times, Evatt was then thrown into the negotiations that resulted not only in the Charter of the United Nations, but also the UDHR that quickly followed. Although there is no evidence that Evatt was directly involved in the drafting of the UDHR, there is no doubt that his general liberal and idealistic sympathies and his understanding of the discourse of legal protection of human rights, made him an unusual leader of the Australian delegations to the United Nations at a critical time when the UDHR was being drafted and adopted. The same liberal instincts that later evidenced themselves in Australia in his struggle against the communism legislation came to the fore. They helped persuade a generally sceptical government and diplomatic community to throw Australia's support behind the UDHR. His approach in government may be contrasted, in this respect, with the approach that emerged after the government of which he was a leading member was defeated at the Federal election in 1949.

In his later political life, Evatt presided over a 'split' in the Federal parliamentary Labor Party, ironically caused, in part, by the very success that he had enjoyed in defeating the communism legislation. For this reason, and because of his later physical and mental decline, Evatt was mocked and dismissed, including by many lawyers who witnessed his deterioration. However, it is the thesis of this article that a thread was woven through Evatt's life of commitment to the rule of law, diversity and pluralism upheld by respect for basic civil rights.

Thus, this is an essay that attempts to draw together two large themes: the life of HV Evatt as a notable Australian judge and lawyer and the providence that placed

him in the chair, as President of the General Assembly of the United Nations, when it approved and proclaimed the UDHR. There is a unity between these themes because Evatt's life, at a critical moment, faced a test whether to oppose legislation that seemed to challenge the values dear to him, reflected by then in the UDHR. Prudence and political advantage might have caused another political leader to hold back and to let the laws take their course. Yet, when faced with this choice, as I will show, Evatt put the principles enshrined in the UDHR into practical action. He opposed the legislation and helped to defeat it. This was an instance of taking fundamental rights seriously. Because the passage of time may mean that younger



An Australian Achiever

Australians have forgotten the titanic struggle of HV Evatt in 1951, it is timely as the 60th anniversary of the UDHR is remembered, to recall those events and to consider their relevance today.

THE CAREER OF HV EVATT

HV Evatt was born on 30 April 1894 in East Maitland, New South Wales. His admission to Fort Street High School, then situated in the old school buildings at Observatory Hill in the shadow of where the Sydney Harbour Bridge now stands, occurred in 1906. In his years at the school, until his matriculation in December 1911, Evatt displayed intellectual gifts that were to continue throughout his university studies and after. The headmaster of the school, AJ Kilgour, was, unusually, himself a law graduate. He made it his business to encourage young pupils of talent to aspire to be lawyers, that being an occupation that Kilgour saw as the best avenue towards social engagement and community improvement. At the school, Evatt won prizes that I was later to win or aspire to. His intellectual prowess was spectacular.

In 1912, Evatt arrived at Sydney University and won a scholarship to attend St Andrew's College. Without the scholarship, he would not have been able to afford university education. His father, a publican in East Maitland, had died when he was seven years of age. With outstanding results in the senior school examinations of 1911, Evatt was 'prox acc' to the top matriculant of the State of New South Wales. These results won him, additionally, a bursary to the University of Sydney, as mine later did in 1955. They provided him free tuition and textbooks and an allowance of £20 per annum. By 1956, that sum had risen to £100 a year.

St Andrew's College awarded Evatt the Horn Scholarship, valued at £50 per annum. This also provided him with free board and lodgings. The scholarship lasted three years. Forty years later, an award allowing me to attend Wesley College within Sydney University, was snatched from me at the last minute. This was because of late competition from a Methodist minister's son whose father's vocation trumped my better grades. Perhaps, like Evatt, I should have applied to St Andrew's College. He faced no such similar challenge. He was admitted to the College and proceeded to win university results of the highest order, including the Bachelor of Arts degree with first class honours and the University medal in 1915 and the Bachelor of Laws degree with medal in 1918. In 1916, Evatt was appointed associate to Chief Justice Cullen of the Supreme Court of New South Wales.

According to a biography of Evatt by Ken Buckley, Barbara Dale and Wayne Reynolds:

At the Presbyterian St Andrew's College, Evatt discovered not only the benefits of communal life, with its 'domestic supervision, systematic religious instruction and efficient tutorial assistance', but also 'intellectual competition, athletic sport,

and Union, Club and Society activity, those qualities of influence, self-reliance and leadership [which] have not failed to find suitable and honourable expression'. Yet despite the camaraderie of dining hall and common room, debates committee and cricket field ... there was a hint that Evatt's life-long battle against unwarranted privilege was about to begin. In December 1914, when editor of *St Andrew's College Magazine*, he argued against the abortive proposal for the formation of army companies based on the GPS [private] schools.⁶

As a product of public schools, Evatt regarded this proposal as an initiative based on 'snobbishness of a certain grade of society, which is continually revealing its imperfections in the pitiful struggle to convince itself that it is not bourgeois at best'.

Evatt eventually spent seven years in residence at St Andrew's College. In fact, he continued to live at the College until he was admitted to the Bar of New South Wales towards the end of 1918⁷. In 1915, Evatt had been elected President of the Undergraduates' Association (the forerunner to the Students' Representative Council) and in 1915–16 he became the first undergraduate to be elected President of the Sydney University Union. In the 1960s, I was one of his successors in both of these posts and, like him, I served as a Fellow of the University Senate. With such school and university links and many common interests and values, it was perhaps natural that I felt a closeness to Evatt, although I never knew him, except from afar.

Although headmaster Kilgour had regarded Evatt as 'the manliest boy ever to pass through Fort Street School'⁸ (a reference to his vigour, courage and idealism), it cannot be said that at school, or at university, Evatt was popular. According to a biographer:

Evatt at St Andrew's was not generally popular. He had a small group of gifted friends but he was formidable to the less brilliant. His habit of rushing to the window and ostentatiously breathing in clear air was as unfavourably regarded as his treading down of opposition with heavy foot. He seemed to think dullness a crime. He had a prissy attitude to blue jokes and talk about sex. The Evatt family humour did not go beyond leg-pulling, terrible nicknames and amiable jeering. More sensitive undergraduates found Evatt's sarcasm wounding. His politics at the time of fervency for England and the Empire were suspect.⁹

His reputation at the College was to survive into later years:

I remember going to an old boys' dinner at St Andrew's', one of his associates relates. Evatt was there – a judge of the High Court at the time – but he left early.

6. K Buckley, B Dale & W Reynolds, *Doc Evatt* (Melbourne: Longman Cheshire, 1994) 7–8.

7. *Ibid* 8.

8. K Tennant, *Evatt: Politics and Justice* (Sydney: Angus & Robertson, 1970) 20. Evatt was dux of Fort Street School in 1911. He retained close links with the school and established an essay prize, still awarded, in memory of two brothers, Ray and Frank Evatt, who were killed during active service in the First World War. At the school, I finished the leaving certificate year *prox acc*.

9. Tennant, *ibid* 20–2.

As soon as he went the knives were out for him. The men there were rising men, career men. They looked on Evatt as a traitor. If you had his abilities, you should be with the right people, keen to do what right people did. Otherwise you were an enemy.¹⁰

By the 1920s, Evatt had established a political association with the Australian Labor Party. He was also carving for himself a brilliant career as a barrister. In 1924, he wrote the thesis for which Sydney University awarded him the degree of Doctor of Laws. The thesis was later published as *The King and his Dominion Governors*.¹¹ It was a brilliant examination of constitutional monarchy and of the reserve powers of the monarch, as exercised throughout the British Empire by vice-regal representatives. It was a book that was to prove important and influential in respect of the dismissal of two Labor Governments, namely that of JT Lang by the New South Wales Governor Sir Philip Game in 1932 and that of Prime Minister EG Whitlam by the Governor-General, Sir John Kerr, in 1975. Evatt's title of 'Dr', that accompanied him throughout his political and public life, was earned by his legal writing. It was not honorary, as in my case. It was earned by thesis. From the 1920s Evatt was commonly known as 'The Doc'.

In 1925, Evatt was elected to the New South Wales Parliament as the Labor member for Balmain.¹² In 1927, he was re-elected as an Independent. Unusually, this did not result in the loss of the good opinion he had won in the Labor Party. In 1929, he was appointed King's Counsel. In the following year, at the age of 36, he was appointed a Justice of the High Court. He was the twelfth appointee to the Court. He remains the youngest person ever appointed to the office. Years later, in 1975, I was appointed a Deputy President of the Australian Conciliation and Arbitration Commission at the age of 35. But it was not until 1996, at the much more orthodox age of 57, that I followed Evatt onto the High Court and was the fortieth Australian so appointed.

As a High Court judge, Evatt was brilliant and often innovative. He displayed a willingness to contemplate the growing role that Australia would play in international affairs and the growing impact of that engagement upon the powers of the Federal parliament, especially the power to make Federal laws to give local effect to international treaties.¹³ He was innovative in matters of private law as, in 1937, in foreshadowing the need of the common law to recognise a right to privacy, hitherto denied by the common law of England.¹⁴ He wrote judicial opinions marked by their compassion, foresight and inventiveness.¹⁵ He was often

10. Ibid 20.

11. His doctoral dissertation was titled 'Certain Aspects of the Royal Prerogative: A Study of Constitutional Law'. It was described as 'simple and direct, eminently readable': ibid 104.

12. Ibid 45–6.

13. *R v Burgess; ex parte Henry* (1936) 55 CLR 608.

14. *Victorian Park Racing and Recreation Grounds Co Ltd v Taylor* (1937) 58 CLR 479, 519.

15. See eg, *Chester v Waverly Municipal Council* (1939) 62 CLR 1, 18, citing J Furphy (Tom Collins), *Such is Life*.

in agreement with the other formidable jurist of the Court in the 1930s, Owen Dixon. With Dixon, Evatt wrote a number of important joint opinions.¹⁶

For a man of such broad intellectual interests, service on the High Court in the 1930s was rather constricting. Things would not have been made easier by the hostility shown to him (and to Justice McTiernan) by his colleague on the Court, Justice Hayden Starke.¹⁷ Evatt tended to give as good as he received but he immersed himself in judicial and extra-curial writing. He published several books during his High Court service, including *Injustice Within the Law* (1934); *Rum Rebellion* (1938); and *Australian Labour Leader: The Story of W A Holman and the Labour Movement* (1940). On a visit to Harvard Law School in October 1938, Dean Erwin Griswold, later Solicitor-General of the United States, then a junior member of the academic staff of Harvard, recalled that he was ‘very much impressed by [Evatt] at the time ... He seemed to have a flexibility and a breadth of outlook which was not always found in British judges, including some Australians’.¹⁸

In 1940, after the outbreak of the Second World War, Evatt resigned from the High Court to re-enter politics. When John Curtin formed the wartime Labor government, he quickly harnessed Evatt’s talents and energies. In 1941, Evatt was appointed not only Federal Attorney-General but also Minister for External Affairs, posts he held under Curtin and Chifley in the three successive Labor governments of the 1940s. It was because of these posts that Evatt was able to continue his engagement with legal issues, but now on a wider stage.

EVATT AND THE UNITED NATIONS

As the war progressed towards its end, Evatt took a leading role on behalf of the smaller nations in the design of the post-war organisation intended to establish a new world order. The widespread hope was that the United Nations would replace the chaos of war, the brutality of the fascist dictatorships, the horrors of genocide and provide protection against the newly realised dangers of nuclear annihilation. Rarely, if ever, in human history had there been such an opportunity for a brilliant lawyer, former judge and convinced internationalist, to play such an important role in the shaping of the global institutions.

At the San Francisco conference, convened to consider the Charter of the United Nations Organisation, and indeed before, Evatt was closely involved as the titular leader of the Australian delegation in a number of projects aimed to shape the new body and the role of nation states within it. By 1944, Evatt had been endeavouring to promote a goal of universal full employment as an essential attribute of a just

16. See eg, *R v Federal Court of Bankruptcy; ex parte Lowenstein* (1937) 57 CLR 675; *R v Burgess; ex parte Henry* (1936) 55 CLR 608.

17. C Lloyd, ‘Not Peace but a Sword: The High Court of Australia under JG Latham’ (1987) 11 *Adel L Rev* 175; R Douglas, ‘Judges and Politics on the Latham Court’ (1969) 4 *Politics* 20.

18. Quoted in Buckley, Dale & Reynolds, above n 6.

post-war settlement. In effect, this goal evidenced a realisation on his part of the importance that economics would come to play to the attainment not only of individual rights and dignity but also of international peace and security.

At this time there were many, both at home and abroad, who resisted Evatt's endeavour to persuade the international community to become involved in the ideal of full employment. Critics suggested that this was entirely a matter of domestic jurisdiction and not properly a subject of international concern. Evatt rejected that view, such was his broad conception of international concerns. In a sense, Evatt was foreshadowing the role that the International Labour Organisation (first established by the *Treaty of Versailles* in 1919 and later an agency of the League of Nations and the United Nations) would play in the post-1945 world. He was also perceiving, perhaps unconsciously, the role that world trade, the later World Intellectual Property Organisation, World Trade Organisation and economic changes would play in the global scene, as it was to develop.

Under the leadership of Evatt, the Australian delegates at the preparatory meetings for the United Nations supported the idea of the international protection of human rights, including social and economic rights. The UDHR, as ultimately adopted, included in its statement of fundamental human rights, 'economic and social principles'¹⁹ which had not previously been generally regarded as part of fundamental human rights at all, certainly in English-speaking countries. The UDHR was to include rights to own property (article 17); to work under reasonable conditions of work (articles 23 and 24); to have the protection of social security (article 22); to enjoy an adequate standard of living (article 25); and to enjoy access to education (article 27); and to freedom of association (article 20).

Such a perception of the inter-relationship of economic and social rights, as part of the enjoyment of human rights more widely conceived, was, for some Australians, an outcome of the social philosophy which the Australian Constitution had itself recognised in its provision for the conciliation and arbitration of interstate industrial disputes.²⁰ In Evatt's time, that constitutional provision was to be, with section 92 of the Constitution, the one that most engaged the High Court of Australia and obliged consideration of the values and aspirations that section 51(xxxv) of the Constitution enshrined. Not until 2007 was the central importance of that provision for Australia's national institutions and its values doubted, and then in the divided decision of the High Court in the *Work Choices Case*.²¹ In Evatt's day, such a decision would have been unthinkable, given the history and language of the Constitution and the common assumptions of all those who had adopted its provisions and then worked to implement its terms.

19. A Devereux, *Australia and the Birth of the International Bill of Human Rights 1946-66* (Sydney: Federation Press, 2005) 28.

20. Australian Constitution, s 51(xxxv).

21. See *New South Wales v Commonwealth (Work Choices Case)* (2007) 229 CLR 1, 185, 186-9, 374.

Other projects of importance for Evatt in the post-war settlement included his attempt to advance the interests of smaller, less powerful, nations so that those interests would not be overwhelmed by the powers assigned by the Charter to the Security Council, with its primacy in the protection of international peace and security. In this, the United Nations had been designed to repair the failures of the League of Nations. Evatt's leadership of the smaller nations won him the support and admiration of those states, including countries in Latin America with which Australians, to that time, had relatively few connections. It also won him the criticism and irritation of the great powers, including the United States of America and the United Kingdom.²² The independent line that Evatt prosecuted for Australia in the late 1940s won many admirers. Generally speaking, successive governments of different political persuasions have tended to subscribe to the strategic view that Australia's best interests were to be secured in alliance with a great and powerful ally – first the United Kingdom, and later the United States.

Despite Evatt's support for the small nations, when it came to the colonial question, he evinced inconsistent views. He was foremost in asserting Australia's quasi-colonial involvement in the former League of Nations mandated territory of New Guinea. Neither he, nor the Australian delegation under his leadership, contemplated complete political independence in the foreseeable future for New Guinea or indeed for Papua. In this respect, Evatt simply followed the perceptions of Australia's national interests that had first been voiced at Versailles by Prime Minister WM Hughes, after the First World War.²³

The United Nations *Charter* envisaged, from the start, that human rights would be one of the intellectual and political foundations of the organisation²⁴. Probably because of Evatt's background as a lawyer and a judge, his generally liberal and often idealistic instincts and his commitment to building a better world on firmer institutional foundations, he indicated a commitment by Australia to the United Nations playing a leading role in the protection of fundamental human rights throughout the world. It was this that led Evatt to express strong support for the drafting of a universal instrument on human rights. Such an idea had been propounded in 1945, in the belief that a bill of rights of some kind would be incorporated in the *Charter* of the United Nations or would at least be adopted at the same time.

In the rush of events in 1945, incorporation did not prove possible. Nevertheless, the Australian delegation, under Evatt's leadership, accepted that steps should be taken to adopt a Universal Declaration as a non-binding statement that was nevertheless to be taken seriously as an expression of the general criteria of human

22. WJ Hudson, 'Dr HV Evatt at San Francisco' in Department of Foreign Affairs and Trade, *The Monthly Record* (April 1991) 162, 170–1.

23. A Renouf, *Let Justice be Done: The Foreign Policy of Dr H V Evatt* (Brisbane: Uni Qld Press, 1983) 259.

24. Charter of the United Nations, Preamble and art 1, s 3.

rights against which, for example, Australian law and policy would henceforth be measured. Evatt went so far as to call for a binding international statement of human rights that could be given effect by an international court of human rights. Weighed against that aspiration, the adoption of the non-binding UDHR would have seemed a much more modest achievement.

Several fundamental difficulties arose in Australia's taking too vigorous a stance in support of a binding treaty of human rights or securing the creation of an international court with legal powers to enforce such provisions. The first was Australia's position as a minor player in a world already deeply divided by the Cold War in which Australia's strategic interests lay generally with the Western powers (the United States and Britain) upon which Australia relied for its ultimate security. The second was the interest Australia displayed at the time in the maintenance of its quasi-colonial interests in Papua-New Guinea. No Australian politician, mindful of the then recent evidence of danger of invasion from the North, could contemplate surrender of the Australian interests in the mandate/trusteeship of New Guinea and in the future governance and control of that territory and of Papua. Thirdly, Australia's internal policies at the time, including the White Australia migration policy and the disadvantageous position of its Aboriginal people, were such as to make any excessive Australian expositions of fundamental human rights appear less than convincing in the eyes of at least some of the other delegates in San Francisco and later New York.²⁵ As WJ Hudson wrote on 'Dr HV Evatt at San Francisco':

[I]t is difficult to convey to younger readers, the nature of the times in which Evatt worked in the 1940s. Seen through 1990's eyes, the intellectually more adventurous men and women of the 1940s can look incredibly naïve and, on issues like White Australia, wrong-headed. And so in some ways they were. But the more self-confident advocate of progressive views in the 1990s does well to remember that his grandchildren will boggle that he ever found such views tenable. The need is not for judgment but for understanding.²⁶

What Evatt and those about him brought to the Australian approach to human rights in the mid-1940s was a sense of intellectual excitement, emotional commitment and aspirational idealism for a step towards the institutional improvement of the human condition. As Professor Manning Clark described them, the times were 'heady ... [with the idea that] the great dreams of humanity were about to come true'.²⁷ If Australia had inconsistencies in its position, it was not alone in such a deficiency.

25. Renouf, above n 23, 283. FD Roosevelt, like Woodrow Wilson, was unenthusiastic about colonial regimes (including Australian) and willing to tolerate few exceptions (mostly American): see Renouf, 224. The exclusion of indigenous peoples from enjoyment of the rights expressed in international principles of human rights was often justified domestically in Australia on the basis that such people were 'wards of the State, in need of guardianship' who would cease to be wards when they demonstrated an ability to 'assume the full citizenship to which they are entitled': HV Evatt, 'Aboriginal Policy' (Paper presented at the Commonwealth and State Conference on Native Welfare, September 1951), cited in Devereux, above n 19, 13.

26. Hudson, above n 22, 163.

27. See *ibid* 164.

Evatt saw the United Nations Charter as a temporary document suited to a transitional phase of international affairs which was itself the product of the then undeclared war being waged between the Western nations and the Soviet Union.²⁸ No doubt Evatt's views concerning the aspirations of human rights had within them the seeds of his sometimes inconsistent and incompatible opinions. These were, in turn, exacerbated by Evatt's brilliant mind and his capacity and inclination to pursue a dozen objectives and lines of argument, some of them contradictory, at the one time. Neater and more ordered minds (like those of Alan Watt and Paul Hasluck) found the apparently chaotic condition of policy development under Evatt 'slightly mad'²⁹ and Evatt's conduct as apparently manic on occasions. Yet in a way, Evatt was simply displaying, in diplomacy, capacities he had learned as a barrister and judge with a quicksilver mind, working on numerous difficult cases. He was always at ease in accommodating inconsistent opinions, so long as they all ultimately led to his conception of an acceptable goal.

During the 1950s and 60s, when Evatt was in Opposition and then after he had left politics, there was an increased governmental and bureaucratic resistance in Australia to the development of international civil and political rights, reflecting a comparatively low level of philosophical debate over the basic purposes of the international human rights system. According to Annemarie Devereux, domestic political pressures helped to exacerbate such divergences. As the finalisation of the International Covenant on Civil and Political Rights (ICCPR) approached in 1966, Australia abstained, or voted against, a number of its provisions. It did this too in respect of the International Covenant on Economic, Social and Cultural Rights (ICESCR). At the time the reaction of the Australian government to such treaties was described as 'luke-warm'.³⁰

28. From the start, Evatt regarded a non-binding declaration alone (as distinct from a treaty) as unsatisfactory and pressed the United Nations to go further. When the Commission on Human Rights began its deliberations, Evatt was strongly in favour of proceeding simultaneously towards the preparation of a declaration and a binding treaty. His urgings were unsuccessful. See Renouf, above n 23, 117.

29. P Hasluck, quoted in Hudson, above n 22, 160. According to Kylie Tenant, one of the most able members of the Australian delegation at the United Nations was Mr (late Sir) Paul Hasluck. A Western Australian, he was a protégé of John Curtin, the war-time Prime Minister of Australia. 'He was exact, a master of detail, neat and somewhat rigid. He prided himself on his objectivity.... There was confusion and Hasluck could not bear confusion, whereas Evatt was used to working through it. Evatt never minded doing ten things at once but the juggling with loads of political dynamite possibly tried Hasluck's nerves.' Hasluck, with the old school diplomat Colonel Hodgson, represented Australia at the General Assembly and on the Security Council during 1946. When Dr John Burton became Permanent Secretary of External Affairs in 1947, Hasluck resigned. He was appointed Reader in History at the University of Western Australia before securing a seat in the Federal Parliament in the interests of the Liberal Party. He later became Foreign Minister and subsequently Governor-General. See Tennant, above n 8, 211–12.

30. See Devereux, above n 19, 237.

Evatt's vision of an international human rights court was also sidelined as unattainable and, in the view of some, undesirable. However, events since 1948 have shown that the creation of international human rights courts was by no means an impossible dream. The growth and significance of the jurisdiction of the European Court of Human Rights, hearing cases arising from Galway to Vladivostok, is an illustration of the fact that Evatt's dream was not, ultimately, unrealistic. Likewise, the creation of the Inter-American Court of Human Rights and the African Court of Human and People's Rights shows what can be achieved. If there is no such court in Asia or the Pacific – Australia's own world regions as dictated by its geography – this may simply indicate the need to close the circle in creating further regional human rights courts as steps towards the ultimate objective of achieving Evatt's goal of enforceable international human rights everywhere.

Even without such courts, the later development of the international treaty system and the consequent creation of treaty bodies, such as the United Nations Human Rights Committee, established under the ICCPR, indicate the way in which treaties can be given effect and can influence events without the necessity of there being binding court orders.³¹ Certainly, it is too early to dismiss Evatt's idea of an international human rights court as a pipedream. The institutional progress made in this field in the past fifty years is nothing short of astonishing when the preceding course of human history is considered.³²

For all that, the proposal for an international human rights court had effectively been shelved by 1948. Nevertheless, the proposal to adopt what was at first called an 'International Bill of Human Rights' had made much speedier progress. In April and May of 1946, the Economic and Social Council of the United Nations regarded itself as 'being charged ... under the *Charter* with the responsibility of promoting universal respect for, and observance of, human rights and fundamental freedoms'. The Council therefore established a Commission on Human Rights. It mandated the Commission 'first of all to come up with a recommendation and report regarding ... an international Bill of Rights'.³³ This resolution led directly to the preparation of the UDHR.

31. A good example is *Toonen v Australia* (1994) 1(3) Int Hum Rts Reports 97. Cf *Croome v Tasmania* (1998) 191 CLR 119. See also the recent views of the United Nations Human Rights Committee in Communication No 1347/2005, *Dudko v Australia*. Cf E Willheim, 'Australia's Racial Vilification Laws Found Wanting?: The "Nigger Brown" Saga: HREOC, the Federal Court, the High Court and the Committee on the Elimination of Racial Discrimination' (2003) Asia-Pacific J Hum Rts and Law 86, in relation to *Hagan v Australia* (2002) CERD/C/62/D/26/2002, [8].

32. The creation of the International Criminal Court under the Rome Treaty and of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda are also examples. There are others.

33. UN Economic and Social Council, Resolution E/248.

DEVELOPMENT AND ADOPTION OF THE UDHR

Having received its mandate, the Commission on Human Rights worked on the project between January 1947 and December 1948, two very productive years. It was this work that produced the UDHR.³⁴

Seventeen nations were elected to serve on the preparatory committee. They were chosen by the General Assembly 'pay[ing] due regard to equitable geographical distribution and to personal qualifications of the nominees for service on the Commission'.³⁵ In addition to experts from the five permanent members of the Security Council, Australia was selected to serve on the Committee. There is little doubt that this selection grew out of Dr Evatt's popularity with the smaller nations and his well-known personal enthusiasm for the project.

Mrs Eleanor Roosevelt (USA), widow of the wartime president of the United States, was elected to chair the Commission on Human Rights. She, in turn, selected a small executive body. She appointed Mr (later Professor) John P Humphrey, a Canadian academic, to be the director of the Division on Human Rights within the United Nations Secretariat. She promptly convened the drafting committee to meet her in her Washington Square apartment to begin work on the proposed UDHR at once. The drafting group asked John Humphrey to prepare a first draft of the proposed Declaration. His task was not easy because he had to reconcile the differing philosophies that manifested themselves from the very beginning in the drafting group's work.

Mr [Peng-chun] Chang of China suggested that Mr Humphrey should set aside all other duties and spend six months studying Chinese philosophy 'after which [he] might be able to prepare a text for the Committee'. This proposal was an indication of the magnitude of the problem that he faced. The successive drafts prepared by John Humphrey are now deposited in the University Library of McGill University in Montreal, Canada. They evidence remarkable brevity in expression, conceptual clarity and linguistic eloquence. The final product was a spectacular achievement, recognisable as such particularly by anyone who has ever attempted the drafting of an international consensus on sensitive topics negotiated between people of different linguistic, legal and cultural traditions.

In the 1990s, I came to serve as a Commissioner, and later President, of the International Commission of Jurists. One of the Commissioners of that body at the time was Emeritus Professor John Humphrey of Canada. By then, he was an eminent scholar, full of years and honours. Whenever he began to describe to me his functions of preparing the early drafts of the UDHR, his eyes would light up as he told of how it was accomplished. Of how, following much reading and

34. J Morsink, *The Universal Declaration of Human Rights, Origins, Drafting and Intent* (Philadelphia: Uni of Pennsylvania, 1999) 4.

35. J Humphrey, cited Morsink, *ibid* 5.

consultation, he would begin to put pen to paper. Of how ideas came to him on the bus journeys to the United Nations Secretariat building, then for a time at Lake Success. Of how he would jot his ideas on scraps of paper and subsequently link them together as drafts for the proposed Declaration. John Humphrey's account bore out once again the aphorism of V I Lenin: the enemy to important action in life is usually the blank page. Progress is made by individual human effort. In this case that effort began with John Humphrey. It was scrutinised by Eleanor Roosevelt and her drafting group. It was then examined in the heated debates of the successive meetings of the Commission on Human Rights. Eventually, it was considered by the Economic and Social Council whose recommendations were, ultimately, approved by the General Assembly.

John Humphrey's drafts were generally regarded as excellent. He, in turn, paid tribute to the assistance he had received from various international and national organisations, including the International Parliamentary Union, the World Federation of United Nations Associations and the American Law Institute. The draft provided by that Institute was described by him as being of special value. The objective was to draw up a document that would be acceptable to all participating states. This was an extremely challenging task, especially given the stage by then reached in the Cold War. In the end, there was a broad consensus in favour of the draft UDHR. At the vote, there were six abstentions from the members of the Soviet Bloc; an abstention by Saudi Arabia; an abstention by South Africa and various other criticisms. However, none of these abstentions, nor the criticisms, detracted from the general appeal of the UDHR. Especially in the time available, it was a great achievement by the drafters and by the infant organs of the United Nations bodies.

The first recorded question asked by an Australian delegate at the Commission on Human Rights, during the debate on the draft UDHR, concerned jurisprudential issues. The Australian representative on the Commission, Colonel R Hodgson, asked John Humphrey to identify what was the 'underlying philosophy' of the draft UDHR.³⁶ The fact that an Australian delegate should have asked that question appears somewhat astonishing. Perhaps unwittingly, Colonel Hodgson had touched a raw nerve as the subsequent internal debates between the Chinese representative (P C Chang) and the Lebanese representative (Dr Charles Malik) were to indicate.

Those who have studied the instructions given to the early Australian delegates, working on the draft, conclude that the 'overwhelming sense' emanating from those documents was that 'debates concerning the genesis or nature of human rights were [regarded as] an unnecessary diversion from the pressing task of drafting internationally binding instruments. As such, Australia generally sought to short-circuit such discussions'. Doubtless it did so because of Dr Evatt's feeling

36. Devereux, above n 19, 114.

that philosophical and theoretical discussions would inevitably lead nowhere and might instead defeat the entire operation.³⁷

Repeatedly, in the Commission and in the drafting group, Mrs Roosevelt, as chair, felt it necessary to remind those who were criticising the draft and suggesting changes that '[the need is for] a clear, brief text which could be readily understood by the ordinary man and woman'. As Mrs Roosevelt put it, the proposed UDHR was 'not intended for philosophers and jurists but for the ordinary people'.³⁸ Fortunately, most of the participating delegates were of the same opinion. Simplicity was usually best served by brevity.

The recorded debates in the drafting group and in the Commission indicate that, overwhelmingly, the drafters thought of themselves as directing their attention to all members of the human race. This was demonstrated, in turn, by the operative paragraph of the opening words of the UDHR, as finally approved:

Now therefore the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of the Member States themselves and among the peoples of Territories under their jurisdiction.

When eventually the Declaration was adopted by the General Assembly, Evatt, the representative of Australia, was in the chair as the President. In declaring the UDHR adopted, Evatt observed that this was:

[T]he first occasion on which the organised community of nations had made a declaration of human rights and fundamental freedoms. That document was backed by the body of opinion of the UN as a whole and millions of people, men, women, and children all over the world would turn to it for help, guidance and inspiration.³⁹

The General Assembly endorsed the UDHR at about midnight on 10 December 1948. The vote was 48 in favour, with no votes against and with the eight abstentions previously mentioned. The closing words of the debate were expressed by Abdul Rahman Kayala, the representative of Syria. He noted that 'civilisation had progressed slowly through centuries of persecution and tyranny until finally the present Declaration had been drawn up'. The Declaration was not, he said:

The work of a few representatives in the Assembly or in the Economic and Social Council; it was the achievement of generations of human beings who had worked

37. Ibid 115.

38. See Morsink, above n 34, 34, n 72.

39. See Morsink, *ibid* 12 (UN General Assembly Record, 934).

towards that end. Now at last the people of the world would hear it proclaimed that their aim had been reached by the United Nations.⁴⁰

For Evatt it was self-evident that human rights, in operation, went far beyond the spiritual or moral sphere and beyond hortatory language into the political sphere. For Evatt, human rights were an important element in re-defining the juridical relationship between the nation state, the community and the individual.

Still the President of the General Assembly in 1949, in sending a message to the President of the French Republic on the inauguration of UNESCO as an agency of the United Nations with headquarters in Paris, Evatt described the UDHR as:

[A] solemn pronouncement by the governments that the power exercised by governments is to be used by them in trust for the benefit of those they govern.⁴¹

We now know from official records that not all of the Australian delegates who participated in the drafting and adoption of the UDHR were as supportive of the idea of the UDHR as was Evatt. In this respect, there were divisions in the delegation as there still are in the Australian community, including the legal community, concerning the role that broad statements of fundamental rights should play in promoting and upholding such rights.

For example, Sir Frederick Eggeston, an academic and occasional diplomat, considered that some of the rights expressed in the UDHR were 'meaningless'. He argued that the only way to secure a worthwhile social and international order was by 'the disinterested effort of millions of human beings willing to make sacrifices for their objectives'. But, even Eggeston did not reject the notion that certain fundamental human rights exist. He simply doubted that, drafted in such a broad fashion, they could give rise to any effective protection. Notwithstanding such doubts, the Australian delegation supported the draft and it was Evatt who pronounced that it had been adopted.

In her monograph, *Australia and the Birth of the International Bill of Human Rights 1946-66*, Annemarie Devereux concludes:

Australian delegates during Evatt's period consistently supported the international and domestic legal enforcement of human rights.... [I]t seems likely that Evatt's vision of an international order of human rights was most responsible for this commitment and conceptualisation. There was little in the Labor Party platform that made adoption of these stances inevitable, though it is conceivable that the Labor tradition of engaging in a struggle against the state and employers for better conditions for workers increased receptiveness to viewing the individual as a claimant against the state. The key factor, however, seems to have been the personal

40. See Morsink, *ibid* (UN General Assembly Record, 922).

41. Australian Department of External Affairs, Cablegram to Australian Embassy (Paris, 28 September 1949). See Devereux, *above* n 19, 120.

political philosophy held by Evatt and his supporters. Once Evatt departed and Spender and Fred Whitlam emerged as the major decision-makers, significantly new assumptions emerged.⁴²

According to Devereux, after the electoral defeat of the Chifley Labor government in December 1949 and the formation of the Menzies government, there was, to some extent, a degree of flux in Australian policy about the UDHR. A lack of consensus quite often surrounded the attitude of Australian delegations concerning the values underpinning human rights in the successive drafts of the ICCPR and ICESCR. This was probably, in part, a reflection of the absence of a general bill of rights in the Australian Constitution and of general sympathies for the legal tradition that inherited the sceptical approach of 'British justice' to such notions up to that time.⁴³

The peculiarities of the UDHR, from the point of view of 'Anglo-Saxon jurisprudence', were later noted by Mr Fred Whitlam, a member of the Australian Mission to the United Nations. In reporting in 1950 on the Fifth Session of the Commission on Human Rights, Fred Whitlam said that:

[I]n terms of Anglo-Saxon jurisprudence, the draft Covenant [developing the UDHR] has some unusual features ... [including] a tendency to turn to rather vague and impressive language ... and a desire to utilise institutions of law beyond the limits normally set to them in Anglo-Saxon jurisprudence.⁴⁴

The story of those developments is for another time. However, it is appropriate to remember Evatt's leading role, both nationally and internationally, in supporting, advancing and promoting the UDHR. It is a story relevant to the national consultation which the Australian nation is now embarked upon concerning the effectiveness of the nation's current legal protections of fundamental human rights.

DENOUEMENT

At the end of the Pacific War, like most Australian schoolchildren, I received a medal celebrating the victory of the Allied powers in the Pacific. At my primary school in Sydney we saw a constant stream of Red Cross ambulances taking injured

42. Devereux, *ibid* 121. In Australian domestic politics, divisions quickly emerged between those who favoured in the multilateral United Nations system and those, like RG Menzies, who in 1946, described the UN as 'an experiment' which left great power relations untouched. Mr (later Sir) Percy Spender attacked Evatt as relying too much on the United Nations and urged instead Australian efforts to strengthen the 'British Commonwealth' and to foster closer cooperation with the United States of America. These were to become recurring themes in Australian domestic politics. Perhaps in response to the criticisms, Evatt sometimes tended to exaggerate the United Nations' achievements and was often inclined to place excessive faith in the United Nations Organisation. See Renouf, *above* n 23, 253.

43. See Devereux, *above* n 19, 114.

44. Memorandum of HFE Whitlam, cited in Devereux, *ibid* 122.

veterans to the Repatriation General Hospital at Concord, which Mrs Roosevelt had herself visited during a brief wartime stopover.

Early in 1949, Australian schoolchildren received another gift, one even more precious than the VP medal. It was a small pamphlet-sized copy of the UDHR. This gift was memorable because it bore the blue imprint of the then newly familiar global emblem of the United Nations. It was also unusual because it was printed on airmail paper, doubtless so that it could be sent in huge numbers from New York to far-away classrooms throughout the world. Our teacher explained the purposes of the UDHR and its general contents. A large poster-sized copy of the UDHR was displayed in the classroom. I doubt that today's Australian students receive copies of the UDHR. It would be no bad thing if the practice were revived. The gift certainly made an impression on me. That impression has remained with me ever since.

In the same year as I received my copy of the UDHR a peaceful change of government occurred as the Australian electors discarded Mr Chifley, Dr Evatt and their colleagues in favour of Mr Menzies, Mr Arthur Fadden and Mr Percy Spender. The Coalition Parties had promised to 'put value back in the pound' and to end petrol rationing. Some topics in Australian politics never seem to change.

In June 1950, forces from North Korea invaded the Republic of Korea to the south. The new Australian government introduced into the House of Representatives the Communist Party Dissolution Bill 1950 (Cth). Its suggested urgency is indicated by the fact that only 20 pages of the annual statute book preceded this measure when it was passed. The Bill had an unusually long preamble concerning the dangers and techniques of communism. In part, it was by this preamble that the Menzies government sought to establish the constitutional facts upon which to ground its reliance on the nominated heads of Federal constitutional power needed to sustain the measure's validity. The Bill secured passage through both Houses of the Federal Parliament and was given the Royal Assent on 20 October 1950.

At the same time, somewhat similar legislation was enacted both in the United States (the Smith Act), in South Africa and elsewhere. The South African legislation was later to be adapted as the statute that reinforced the laws of the apartheid state. The United States Act was upheld by the Supreme Court as constitutionally valid.⁴⁵

Evatt repeatedly described the local legislation, and the later proposed amendment of the Australian Constitution, as a 'totalitarian blot' on the notion of 'British justice' which, he considered, the Constitution upheld.⁴⁶ To a large extent Australians have

45. *Dennis v United States* 341 US 494 (1951). See also *Yates v United States* 354 US 268 (1957).

46. *Australian Communist Party v Commonwealth*, above n 3; cf MD Kirby, 'HV Evatt: Libertarian Warrior' in *Seeing Red* (Sydney: Evatt Foundation, 1992) 1, 11–12. G Winterton, 'The Communist Party Case' in HP Lee & G Winterton (eds), *Australian Constitutional Landmarks*, (Cambridge: CUP, 2003) 108.

Evatt to thank for the fact that Australia avoided acquiescence in the amendment to the Constitution that might potentially have become a vehicle for diminished liberty.⁴⁷

After his successes in the High Court and at the referendum, it was widely expected that Evatt would accede to the office he most prized: Prime Minister of Australia. This was not to be. The decisions about the communism legislation caused a split in the Australian Labor Party, the formation of the Anti-Communist Labor Party (subsequently the Democratic Labor Party) and repeated defeats for the Australian Labor Party in Federal elections. These were halted only by the return of the Whitlam government in December 1972, led by Gough Whitlam, the son of Fred Whitlam.

In his declining years Evatt was appointed Chief Justice of New South Wales, by inference mainly to provide a dignified exit that would remove him from Federal political office. A serious mental decline had by then tarnished his reputation, particularly within the judiciary and legal profession.⁴⁸ In 1962, he was given leave of absence from his duties as Chief Justice. He never returned to public life. Just the same, the achievements of Evatt's earlier days cannot be doubted. On the world stage, those achievements loom large, whereas the political and other events in Australia are probably unknown or, if once known, long since forgotten.

When Evatt died on 2 November 1965, his death was recorded by the General Assembly of the United Nations. The members of the Assembly stood to honour his memory and the contributions he had made to the design of the Charter and to the adoption of the UDHR. His presidency of the Assembly is the sole inscription appearing on his tombstone in Canberra. Later generations of Australians do well to remember Evatt's contributions as a lawyer and an internationalist. Especially so on the 60th anniversary of the UDHR.

As an institution, the United Nations has many weaknesses. Some of them were stamped on its organs from birth, as Evatt at the time warned. Nonetheless, the initial enterprise of the UDHR led to a creative system of international human rights law. The struggle to ensure a proper protection of basic human rights goes on, including in Australia. That struggle requires perpetual vigilance on the part of courts and citizens.⁴⁹

The work of those who seek to implement the objects of the United Nations Charter, the UDHR and the treaty system continues to this day. Between 1993 and

47. Kirby, *ibid* 12–18. See also EA Evatt, 'Referendum 1951: A View from the Media' in *Seeing Red*, *ibid* 38, 43–5.

48. See eg RP Meagher, 'Evatt and Civil Liberties' in *Seeing Red*, *ibid* 179, 186; G Henderson, 'Evatt: Canonisation or Cannonade?' *Sydney Morning Herald*, 29 December 1992, 9.

49. See *Thomas v Mowbray* (2007) 233 CLR 307, 484–7 (Callinan J) and contrast 442 of my own reasons. Cf commentary G Martin 'Anti-Terrorism' Laws upheld in High Court challenge' (2008) 32 Crim LJ 114, 116.

1996, it was my duty, as Special Representative for Human Rights in Cambodia, to report to the United Nations Human Rights Commission. The Commission has now been replaced by the Human Rights Council. Before that Council, the Special Rapporteurs and Special Representatives of the United Nations continue to render accountable, before the world community, rulers who in earlier generations were accountable to no-one except to their supporters. This represents an important development of the Organisation that Evatt helped to fashion.

The United Nations also performs important work in other fields in which I have been associated. These include:

- the struggle against HIV/AIDS through the World Health Organisation and later the joint agency initiative of UNAIDS;
- the efforts to promote democratic government and economic opportunities, through the work of the United Nations Development Programme (UNDP);
- the endeavour to bring to life the principles of economic equity and employment justice for which Evatt worked, through the work of the International Labour Organisation (ILO); and
- the development of the governmental principles appropriate to the new age of biotechnology, through the work of the International Bioethics Committee of UNESCO.

In the International Bioethics Committee in UNESCO I chaired the drafting group that, between 2004–2005, produced a new Universal Declaration of the United Nations: the Universal Declaration on Bioethics and Human Rights. That Declaration was adopted by the General Conference of UNESCO in November, 2005. Like the UDHR it is a non-binding statement of general principles. Drafting the document taught once again the difficulties and compromises inherent in drafting such international instruments. The work that Evatt and the UDHR began in the 1940s was before us as an inspiration and an example. That work continues. Australians are engaged in that work. Their efforts are often unsung or even unknown, including in Australia itself. However, such work is in the tradition that Evatt and his colleagues pioneered at the outset of the life of the United Nations, exhibiting confidence in the utility of the organisation and its mission to protect fundamental human rights.

Over the years, the UDHR came to be referred to on many occasions in decisions of the High Court of Australia. The first such reference appeared in *The King v Wallis*,⁵⁰ decided in August 1949. In his reasons in that case Latham CJ cited the UDHR, and specifically the provisions of article 20(1), guaranteeing the right to freedom of assembly and association. Whilst acknowledging that the UDHR was ‘not part of the law of Australia’, it was mentioned to demonstrate the basic issues

50. (1949) 48 CLR 529.

of principle involved in a claim that persons should be required to join a particular organisation before they could lawfully be employed in an industry.⁵¹

Since 1949, individual judges of the High Court have made many references to the UDHR. Several were made by Justice Lionel Murphy.⁵² But he was by no means alone. The UDHR was referred to by most members of the Court in *Koowarta v Bjelke-Petersen*.⁵³ In *Mabo v Queensland* in 1988, it was referred to by several members of the Court.⁵⁴ In more recent years, many Justices have made reference to the UDHR.⁵⁵ Over virtually the entirety of my own service on the High Court, my reasons have contained references to the principles stated in the Declaration.⁵⁶

In the exposition of domestic law in the municipal courts of almost every nation regard is now had to the fundamental principles of human rights. This development is also happening in Australia, including in the High Court. In 2007, a prisoner challenged her exclusion from the right to vote in the then pending Federal election. She called in aid decisions of other countries, such as Canada, upholding and explaining the central importance of the right of citizens to vote, including prisoners.⁵⁷ She also invoked a decision of the European Court of Human Rights which had found that legislation in Britain, that excluded prisoners from the right to exercise the franchise, was incompatible with the United Kingdom's obligations under the European Convention on Human Rights.⁵⁸

The High Court granted relief to prisoners. The majority held that, under the Australian Constitution, prisoners serving terms of imprisonment of less than three years could not be excluded from the right to vote in Federal elections. Such an exclusion would be disproportionate and inconsistent with the Australian

51. Ibid 546.

52. *Dowal v Murray* (1978) 143 CLR 410, 429; *Dugan v Mirror Newspapers Ltd* (1978) 142 CLR 583, 607; *Re Cormick* (1984) 155 CLR 170, 180.

53. (1982) 153 CLR 168, 178, 205 (Gibbs CJ), 219 (Stephen J), 234 (Mason J), 239 (Murphy J); *Gerhardy v Brown* (1985) 159 CLR 70, 102 (Mason J), 124, 126, 134 (Brennan J).

54. (1989) 166 CLR 186, 217 (Brennan, Toohey & Gaudron JJ), 230 (Deane J).

55. Eg, *A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225, 231 (Brennan CJ), 244, 247 (Dawson J), 273 (Gummow J), 296 of my own reasons; *U v U* (2002) 211 CLR 238, 261 (Gummow & Callinan JJ); *Plaintiff s157/2002 v Commonwealth* (2003) 211 CLR 476, 518 (Callinan J); *Re Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 211 CLR 441, 454 (Gleeson CJ, McHugh, Gummow, Hayne & Callinan JJ); *Re Minister for Immigration and Multicultural and Indigenous Affairs; ex parte applicants S134/2002* (2003) 195 ALR 1, 6 (Gleeson CJ, McHugh, Gummow, Hayne & Callinan JJ).

56. Eg, *Wilson v Minister for Aboriginal, Torres Strait Islander Affairs* (1996) 189 CLR 1, 40, n 119; *Ousley v The Queen* (1997) 192 CLR 69, 142, n 317; *Chakravarti v Advertiser Newspapers Limited* (1988) 193 CLR 519, 575; *Commonwealth v Western Australia* (1999) 196 CLR 392, 461; *Malika Holdings Pty Ltd v Stretton* (2001) 204 CLR 290, 328; *A-G (WA) v Marquet* (2003) 217 CLR 545, n 191; *Coleman v Power* (2004) 219 CLR 562, 616–17, n 220; *Harrington v Stephens* (2006) 226 CLR 52, 89, n 242; *Koroitamana v Commonwealth* (2006) 227 CLR 31, 51; *Forge v Australian Securities and Investments Commission* (2006) 228 CLR 45, 127.

57. *Sauvé v Canada (Chief Electoral Officer)* [2002] 3 SCR 519.

58. *Hirst v United Kingdom* (2005) 42 EHRR 41.

constitutional design, which postulates three-year cycles for Federal elections. The Court's decision effectively upheld a basic civil right by reference to the text, history and democratic object of the Constitution and the policy it established.⁵⁹ Nevertheless, the reasoning of the Court in *Roach* reflects the notion that some basic civil rights inhere in all individuals by reason of their humaneness. This was the notion that lay at the heart's core of the UDHR. It is a notion protective of liberty, equality and diversity in a free society. It was a notion that Evatt defended in his public life both in Australia and at the United Nations.

Australians can be proud of the role that their political leaders and officials took in the establishment of the United Nations Organisation and the adoption sixty years ago, of the UDHR. Whatever his mistakes and human foibles, especially in his later years, Australians should honour Herbert Vere Evatt for his role as a legal scholar, as a High Court Justice, as a founder of the United Nations, as a committed supporter of the UDHR, as President of the General Assembly and as an internationalist and defender of the legal principle of universal human rights.

59. *Roach v Electoral Commissioner* (2007) 233 CLR 162, 177–9 (Gleeson CJ); 203–4 (Gummow, Kirby & Crennan JJ); 230–1 (Hayne J); 234–5 (Heydon J).

* The portrait by Max Dupain of HV Evatt sitting at a desk in 1951 is reprinted on page 241 with permission of the National Library of Australia.