

CHAPTER TEN

DANSE MACABRE:

CIVIL LIBERTIES AND CONSPIRACY

Evatt had a constant concern that liberty had been or was about to be subverted and that conspiracies were afoot. These preoccupations and his perceptiveness and misjudgment in dealing with them are evident in his judgment in R v Hush; ex parte Devanny, his involvement in the so-called 'Petrov affair' and his submission before a television licences inquiry that the ALP and Australian Workers' Union be granted licences.

R v Hush; ex parte Devanny was an important case which aroused in those concerned the contemplation of political beliefs.¹ Evatt joined with the high court majority although his reasons were contentious.² Francis Devanny, publisher of the leftist newspaper Workers' Weekly, was charged under section 30d of the commonwealth Crimes act 1914-1932 on an information laid by Sidney Hush, an agent of the commonwealth government. The information was a voluminous sixty-eight page document which in essence

¹ (1932) 48 CLR, p.487.

² Ibid., pp.488,510-9.

alleged that Devanny used the paper unlawfully to solicit funds for an illegal organisation, the communist party of Australia. Much of the information alleged the subversive and violently radical aspirations of the communist party and its sinister and destructive links to international communism. Section 30a of the Crimes act declared illegal associations which challenged the fundamental authority of the state by advocating or encouraging its destruction. Section 30d made unlawful financial contributions to such associations. Section 30r provided, with qualifications, that averments contained in an information validly comprised prima facie evidence against such associations.³

The alleged solicitation of funds was published in the Workers' Weekly issue of 1 July 1932 which wrote of a successful labor meeting of 27 June (alleged to have been convened by the communist party), of a proposed public demonstration on 1 August, and of weekly meetings from 11 July which it was hoped would include representatives from all working class organisations. The request for funds was to assist the operation of the demonstration. Counsel for the crown alleged the influence of the communist party in these activities.⁴

The matter was heard initially before the magistrate's court; Devanny was found guilty and consequently ordered to

³ Ibid., pp.487-96.

⁴ Ibid., pp.488-9,494-5.

pay court costs and sentenced to six month's hard labor. An appeal directly to the high court followed. The grounds for the appeal were numerous although key objections were that sections 30a,d and r were unconstitutional; that the newspaper item did not solicit funds for the communist party, but for a committee representing sixty-four organisations; that the communist party was not an unlawful organisation within the meaning of the Crimes act; that the averments contained in the information failed to show that which was claimed; and that there was no evidence to support the information. Evatt's brother, Clive, was one of the barristers to represent Devanny. Counsel for the crown included Victor (later Sir William) Windeyer.⁵ Evatt, with the majority of the court, held that the information and other evidence failed to establish the offence with which Devanny was charged.⁶ The appeal was therefore successful. Evatt additionally gave general condemnatory comments of the crown's case and of the fact that the matter was allowed to reach the high court. His scathing judgment was broadly divided into three portions, they being discussions of the Crimes act, the information and communism.⁷

⁵ Ibid. Windeyer, as counsel assisting the commissioners, was to meet Evatt later before the royal commission on espionage, 1954-5.

⁶ Ibid., p.488, Rich, J. dissenting. Other evidence comprised the oral testimony of witnesses who were questioned on the information.

⁷ (1932) 48 CLR, pp.510-9, magistrate criticised, p.515.

Evatt rejected the contention of counsel for the crown that the Crimes act was afforded constitutional authority by the defence power, section 51 (xxix) (and the covering power of section 52).⁸ In particular, he remarked that there was no relationship between placitum, section 51(xxix), and the subject matter of the legislation, the protection of the state. In other words the legislation relied for its validity on being sufficiently 'incidental' to an assignable source of power.⁹ (Similarly, in R v Carter; ex parte Kisch, the Immigration act was criticised for erroneously claiming political authority in legislation by stating, but not demonstrating, a source of proper constitutional power.¹⁰) Because the lack of an incidental bond between placitum and act was made clear by an absence of wartime relevance to this case, Evatt admonished the foolhardiness of Windeyer's 'very daring contention' which claimed persuasive linkage.¹¹ Similarly, an attempt to

⁸ Ibid., pp.510-1. See chapter 15 for the details of these placita. Evatt had a fine understanding of this power, an understanding which he used to good effect throughout his career. He wrote in his doctoral thesis of the historical restriction of the defence power to wartime defence, that is as the power had been employed during the first world war as directly related to wartime matters. He correctly expressed fears in parliament in 1944 that this power could not assist the government in its post-war reform aspirations. As shown in chapter 6, he successfully argued before the high court against the validity of the Communist party dissolution act in 1950 on the ground that the defence power could not be invoked to authorise peace time action.

⁹ Ibid., p.511.

¹⁰ See chapter 5.

¹¹ (1932) 48 CLR, p.511.

ascribe additional constitutional authority to the act through section 61, which indicated only broadly the crown's authority to maintain governmental stability and gave no specific executive direction, was rejected by Evatt. This act was therefore too imprecise, and was particularly inapt because of its vain search for covering authority.¹²

The problem of the tenuousness, and so of the failing strength of the crown's argument, continued with Evatt's doubts on the validity of section 30d of the crimes act. He was troubled by the slenderness of the connection of a publisher to the subject-matter of the publication. Section 30r, which accepted an information as evidence, was imprecise.¹³ Additionally, there was the general difficulty that the true domain of legislation in criminal law was conferred by constitutional authority to state legislatures. It was questionable whether such legislation was a valid commonwealth activity, a doubt raised strikingly by the legislation's very title, 'Crimes act'. He was able to identify the intention underlying a given piece of legislation. It was clear to him that the Crimes act was designed for purposes other than the apprehension of peaceful, if radical, publishers.¹⁴

¹² Ibid. This section was also examined closely in his doctoral thesis, see chapter 14.

¹³ Ibid. p.512.

¹⁴ (1932) 48 CLR, pp.513,518.

Evatt was clearly enjoying this judgment in which he faulted the legislative work of political conservatives and continued in this vein. He allowed that the act may be valid so as to proceed with the second part of the judgment which was an extended rebuke of the information. The information averred, or asserted, rather than proved the substance of the offence. This failure was symptomatic of general errors. Two drafting attempts had been made, both of which were woefully inadequate. It was an excessively long 'queer medley' of assorted, misdirected averments which were used through the improper invocation of section 30r as uncritical inducements to inspire the support of the magistrate:

It is certainly one of the most amazing documents in the whole history of the law.¹⁵

Notably, the information failed to establish the 'unlawful conspiracy' which was alleged of the August 1st demonstration or of any potentially incriminating meeting which might have followed the demonstration:

And yet the Court was, and is, asked to infer as against the defendant the existence of an unlawful conspiracy so heartless and wanton as to cause overwhelming prejudice.¹⁶

He further criticised the information, particularly for its vagueness, illogicality and the abuse of context: The averments contain quotations of articles from the Workers' Weekly, which have been torn from their context, and given a sinister character. The object of all this is to suggest that the Communist Party

¹⁵ Ibid, p.513, 'queer medley', p.514

¹⁶ Ibid., p.514.

advocates, by way of offence, the use of physical force and violence. Political slogans, such as "Smash the Arbitration Court. Smash the Capitalist Offensive," are selected by the informant in order to suggest that the word "smash" refers to the use of actual physical force. In one instance the informant actually averred one half of a sentence taken from the newspaper, omitting the first half of it, though it was necessary for the understanding of the whole. In another, selections from the election policy of the Communist Party were averred, without stating that it was the election policy of its candidates, and that it was expressed to be conditioned upon the support of the majority of the people. The information is full of cliches and question-begging phrases. Certain Internationals are alleged to be "interlocked," as a result of which the Communist Party is "brought into co-operation with" another movement. Upon this slender, and legally insufficient, basis the information proceeds to impute all the activities of the "interlocked" movement to the Communist Party.¹⁷

In short, the information was irrelevant except for the brief statement of the alleged offence. Evatt was consequently most critical of the magistrate who by his acceptance of the information failed to implement the New South Wales Justice act which specified and obliged the courts to adhere to the contents of a charge.¹⁸ In fact, that acceptance represented an abuse of the procedure of the court - Evatt characteristically guarded the standing of the court:

In the case of a dispute as to the meaning of a written document, the probative value of the document is so great that, for all practical purposes, it must annihilate

¹⁷ Ibid., pp.514-5. (underlining in original)

¹⁸ Ibid., p.515.

anything elsewhere averred as to the meaning of the document. No court exercising the judicial power of the Commonwealth could allow the prosecutor's ex parte statement of what the document means to outweigh the Court's own construction of the document.¹⁹

In fact, he was so scornful of the information that he appeared to praise the contentious item of the Workers' Weekly. For he stated that it was an invitation to send funds so that a combination of working class organisations, with a non-existent or extremely tenuous link to the communist party, might hold a demonstration against war. This recalls Evatt's judgment in R v Carter; ex parte Kisch, where he supported Kisch's right to speak in Australia against war.²⁰

Although he had with the dismissal of the information completed the substance of his judgment, his obiter dicta were just as interesting and, from the point of view of his character, just as revealing; he now strode comfortably through his dissection of the case, turning his mind to the question of communism, particularly as a doctrine which espoused the use of violence. He pointed to the need to distinguish between the engendering of radical change and the physical violence that might be applied to facilitate that change. However, instead of conceding communist inspired violence, he contended that change was likely to

¹⁹ Ibid.

²⁰ Ibid., p.516. See chapter 5 for R v Carter; ex parte Kisch.

be accompanied by 'violent civil upheaval' caused by the newly dispossessed, that is, the wealthy. He therefore tacitly not only exonerated but praised the dissatisfaction of lower classes and castigated the inequalities of the distribution of wealth. He referred to standard communist authors rather than elaborating on communist doctrine. He remarked that the principal ambition of communists was the dismantlement of the present economic system, 'conveniently enough' named capitalism, but noted that the communists were not alone in this ambition. The 'more violent protagonists', who were rightists that were called fascists also *dis*claimed capitalism.²¹ He suggested that communists were the least violent, or potentially violent, of the major contemporary political forces because they were more peaceable than fascists and, by the provocative nature of the inequalities of wealth, than capitalists.²²

Additional problems which confronted the presenters of the case against Devanny, and so of the 'criminality' of the communist party, were the matters of fact and timing. It was not so much an issue of whether it was believed that

²¹ Ibid., pp.516-7. Evatt was not to know that he was writing during the time when approximately fourteen and a half million Ukrainians, Russians and other victims were to perish, largely by starvation, during Stalin's campaign to win the countryside for communism, R.Conquest, The harvest of sorrow, London, Hutchinson, 1986.

²² Ibid., pp.517-8. Additionally, capitalists were argued by labor theorists to encourage war, or at least not to oppose it, given the high profits that industry and finance enjoyed from war.

it was desirable to have a class struggle, but whether in fact such a class struggle existed in Australia. Evatt observed, with implicit approval, the objection by communists to the concentration of political power in property owners, a concentration which was enhanced by supportive democratic institutions, and which was surreptitiously strengthened by the concealment of that concentration. The proposed establishment of ruling property-less classes as advocated by communism, were to be open and equal, a remark which recalled his explorations of the resonance between 'liberal' openness and 'oppressive' secrecy.²³ Although he emphasised the 'evil' of the wealthy by showing no sympathy for their acquisitiveness, he also regarded them as dishonestly deceptive and secretive; his easily aroused suspicion of 'conspiracy' was here activated by the unequal accumulation of power and wealth but also by the failure to openly acknowledge this accumulation. The success (although not necessarily the successful continuation) of that function of capitalism implicitly cast doubt on the presence of a class struggle.

The difficulties with timing concerned the timetable of upheaval. He conceded the moderation of less extreme political creeds, such as socialism and labor doctrine, which propounded gradual change. However, on the evidence, and despite the espousal by communists of the inevitability

²³ Ibid., p.517. See chapter 7.

of the fall of capitalism, there was no indication of the time when such radical communist-proposed change would eventuate. He furthermore noted that the absence of a schedule signified that this occurrence would probably be quite distant in the opinion of communists. Finally, to dispel commonly held fears of communism, he neatly inverted the notion of inevitability; the lack of specificity in timing may have tended:

...upon close analysis, to show that, to turn the phrase, Communism illustrated the gradualness, the extreme gradualness of inevitability.²⁴

The advocacy by communists of the projected overthrow of the Australian government, together with the problematical issues both of the immediacy and the violence of such an overthrow, made unrealistic the resort to the Crimes act. It failed on the substantive matter of its direction towards the defeat of communism as well as by drafting, legislative intention and constitutionality. It unjustly, and without constitutional endorsement, offended against the liberty of affected persons and bodies.²⁵

This judgment typified his legal and political radicalism; it seems extraordinary that a high court judge of the 1930s would present such embellishment to a decision. He with great skill analysed and exposed the Crimes act as an unjust conservative political instrument

²⁴ Ibid., pp.517-8.

²⁵ Ibid., p.518.

which falsely attempted to invest itself with unauthorised power to the detriment of the left in Australia.

* * *

One of the last major issues that was fought by Evatt and which turned in his mind to the civil liberties problem was the so-called 'Petrov affair'. It was a particularly significant issue because Evatt lost this fight and reacted badly by turning on his own fissiparous party. The Petrov affair led to the ALP split of 1954-5 which would keep the party in opposition for years to come.

Vladimir Petrov was a Soviet spy who worked from the Soviet embassy in Canberra. He was nominally the third secretary whose principal position was as an officer of the ministry of internal affairs, the ministerstvo vrutrennik del (MVD). His brief was to pass to his superiors general material relating to Australia, especially concerning Australian security.²⁶ Petrov was not a good or loyal worker. From 1952 he enjoyed carousing excursions to Sydney

²⁶ R.Manne, The Petrov affair, Rushcutters Bay, Permagon, 1987, pp.8-9.

usually accompanied by the Polish migrant and medical practitioner, Dr Michael Bialoguski. Bialoguski presented himself to Petrov as an active Soviet sympathiser but worked in fact for the Australian security intelligence organisation (ASIO). In spite of disputes with ASIO, Bialoguski worked from 1952-54 to secure Petrov's defection, mainly through the vehicle of Petrov's indiscreet Sydney sojourns. Petrov slowly and unevenly warmed to the idea of defecting.²⁷

The real impetus for defection however came not from ASIO but from the deterioration of his work and relations with his colleagues. When in Sydney he successfully distanced himself from Soviet colleagues, who were confused by his absences, so that he would be free to enjoy himself. He seemed not to distinguish himself in his work either as a spy or as a clerk. In fact he was almost certainly involved with his wife, who worked at the embassy as an account's clerk, in embezzling the Soviet government. The Petrovs, among other illegal operations, appeared to have successfully joined in the operation of a fraudulent duty free whisky scheme.²⁸ Petrov was disliked and criticised by his immediate superior, the Soviet ambassador to Australia

²⁷ Ibid., pp.9-24,41-4.

²⁸ Ibid., pp.13-4,19,34-5. Reports to Moscow were 'padded' to give the false impression of diligence and the acquisition of security gains, R.Murray, The split: Australian labor in the fifties, Sydney, Hale and Iremonger, 1984 (1970), p.168.

Lifanov. When Lifanov was replaced by Generalov, Petrov hoped for an improvement, but his new superior was also unsympathetic. Petrov, and his wife, became very worried and by late 1953 they had even contemplated suicide.²⁹

He eventually defected on 3 April 1954. The defection was announced by prime minister Menzies to the Australian federal parliament on 13 April. Menzies had earlier announced that a federal election would be held on 29 May. There was little or no attempt to seek direct advantage from the defection through the timing of the election; the election had already been delayed for some months, and a variety of other issues were more prominent considerations in the setting of its date. Menzies had played no part in the lead up to the defection and was not informed of the possibility or probability of defection until February of that year.³⁰ It was decided that a royal commission would be formed to inquire into the circumstances of the defection and the value of documents brought over by Petrov. This decision was taken more from the urging of Sir Charles Spry, the head of the Australian Security Intelligence Organisation (ASIO), rather than through the

²⁹ Ibid., pp.31,36-8.

³⁰ Ibid., pp.48-9,59-63,70,93-7. There were two contentious meetings in September 1953 between Bialoguski and Menzies' secretary, Sir Geoffrey Yeend. Bialoguski claimed in the second meeting that Menzies was told of the impending defection, which was subsequently denied by Menzies and Yeend and, indeed on the evidence, it was highly unlikely that Menzies was in fact informed; *ibid.*, pp.24-5.

enthusiasm of Menzies. Three state supreme court judges, Owen, Ligertwood and Philp, were appointed as commissioners. Ligertwood had earlier shown some friendliness towards Evatt.³¹ The commission sat for over three days in Canberra, from 17-9 May, before the election. There were then extended sittings in Melbourne and then Sydney after the election, from 11 June.³²

The defection did not specifically disadvantage labor's electoral prospects. However, there existed a broad and potentially damaging public perception of labor's association with the left. Distrust of the left, particularly of the extreme communist left (both domestic and international) could only intensify with the defection and consequent speculation of the role of Soviet espionage in Australia. In a general, unquantifiable sense labor's electoral prospects may therefore have been damaged.³³ The liberal-country party coalition, with Robert Menzies continuing as prime minister, won an extremely close election. Labor polled a far greater percentage of the

³¹ Ibid., pp.67-70,160.

³² 'The royal commission on espionage: transcript of proceedings, part 1'

³³ Murray, p.151. Manne, p.104. Especially with the result hanging on the outcome of a small number of finely balanced seats, Murray, p.156-7. The coalition of the liberal and country parties, after a long period of unpopularity, was steadily gaining ground in Gallup opinion polls throughout the early months of 1954. In fact, its support at the May polls had dropped a little from a mid-March high, undermining attempts by labor stalwarts to use opinion poll and election figures to blame electoral defeat on the Petrov defection, Manne, pp.109-11.

total vote, around 51% to the 47% won by the coalition, but the coalition enjoyed a reduced majority of seven seats.³⁴ Evatt's best and really his only realistic chance to become prime minister was lost with this narrow defeat.

The Petrov affair dominated the overwhelmingly anti-labor press, both before and after the election. However, this was just one of a number of important issues which occupied the minds of voters. The most important election issue was the state of the economy and the questionable wisdom of the financial responsibility of Evatt's economic promises. Evatt was attacked mercilessly for attempting to win over the electorate with unfulfillable and financially reckless pledges, a claim which was justified given his poor or insincere accounting and the doubts that were entertained by his own party colleagues. Such was his poorly guided ambition to lead his country that he offered far too much, without credible or responsible indications of the means by which he proposed to finance his policies; his economic pledges were complemented by other unsustainable promises such as offering the same cabinet post to two people.³⁵

Petrov brought with him documents of varying importance, but particularly documentation which claimed the operation in Australia of a Soviet spy ring. This was

³⁴ Murray, pp.155-7. Manne, pp.108-9.

³⁵ Murray, pp.151-3. Manne, pp.100,104,106-7. Personal interview with Mr F.Crean, Melbourne, 20 August 1984.

found to be false and indeed no criminal prosecutions resulted from Petrov's oral and documentary contributions.³⁶ There was little which gave assistance to ASIO about Soviet espionage in Australia, although there was general material of much value to western intelligence, especially relating to codes.³⁷ Two documents of virtual insignificance came to be known at the royal commission as exhibit or document 'H' and exhibit or document 'J'. Despite their lack of significance, these documents caused Evatt great trouble, falsely raising the importance of the status of the defection. Document 'H' examined in frequently scurrilous and confidential terms the lives of prominent, especially political, figures. It embarrassed Evatt because it was written by his press secretary Fergan O'Sullivan, even though its content was harmless from a security point of view and had been written during a previous term of O'Sullivan's employment, with the Sydney Morning Herald. (When he discovered that O'Sullivan had written this document he immediately sacked him in a bitter letter of dismissal.)³⁸ Document 'J' consisted of thirty-

³⁶ Report of the royal commission on espionage, 22 August 1955, Sydney, government printer for New South Wales, 1955, especially, pp.95-7,294-301. Letter Mr J.A.Meagher to K.Tennant, 24 January 1969, TP, box 23, file 'Letters concerning Evatt, 1969-71; newspaper cuttings'. CPD, new series vol.8 (19 October 1955), pp.1694,1700-3,1705-7.

³⁷ Report of the royal commission, pp.294-301. Manne, pp.219-36.

³⁸ Report of the royal commission, pp.419-20. 'Transcript of proceedings, part 1', pp.386ff,396-7. Letter Meagher to Tennant. Meagher represented O'Sullivan at the royal

seven pages divided into four portions headed, 'Japanese interests in Australia', 'American espionage in Australia', 'Dr Evatt' and 'Sources'. It was written or prepared in the Soviet embassy by the Australian communist Rupert Lockwood.³⁹ Typed by the representative in Australia of the Soviet newsagency Tass, Victor Antonov, it was similarly innocuous.⁴⁰ Nevertheless, a particular page, the thirty-fifth (which came to be known as 'J35'), named two members of Evatt's staff, Alan Dalziel and Albert Grundeman, their mere mention ostensibly placing them among the more than sixty other sources who also by their naming were thought possibly to have provided the information that comprised document J. The references to his staff were not at all incriminating although Evatt was greatly disturbed.⁴¹

commission. Manne, p.122. 'Transcript of proceedings, part 1', p.397ff for Evatt's cross-examination of O'Sullivan.

³⁹ Report of the royal commission, p.419

⁴⁰ For Antonov's role, *ibid.*, pp.426-7. Antonov was also reputedly an MVD agent. Meagher, in his letter to Tennant, remarked that this document:

contained some facts relating to American infiltration in the Australian economy, a great deal of partly truthful and wholly untruthful statements of a scandalous variety relating to many prominent Australians known to be unfriendly to Russia and some vague references to some Australian-American Joint Military ventures none of which were in any real sense secret.

A third major category of the documents handed to ASIO by Petrov was the 'Moscow letter', 'being a series of photographic prints of enciphered and encoded letters in Russian', Report of the royal commission, p.419. The Moscow letters and document J together comprised seven of the total of nine documents given to ASIO, 'Transcript of proceedings, part 1,' p.731. Document J as the least important document, Manne, p.68.

If Evatt was gripped by the real and imagined implications of the Petrov defection before the election, he became obsessed by it after the election when it was revealed that two of his staff had been named in document 'J' and when O'Sullivan confessed his authorship of document 'H'. He unwisely chose to appear personally before the commission as the senior legal representative of Dalziel and Grundeman, against the advice of senior members of his party and without consulting caucus.⁴² He neglected his parliamentary duties during and after his commission engagements. He used the plight of his staff to explore deeper matters that were raised by the affair; Dalziel deferred to Evatt's tactical decision to delay appearing before the commission.⁴³

Evatt gave an extraordinary performance, and one that was memorable for its consistency as a continuing public release of internal preoccupations. He argued that the defection and the documents were premeditated concoctions to give electoral advantage to the coalition at a time when it sought re-election. The vast majority of his time before

41 Dalziel, Evatt the enigma, Melbourne, Lansdowne, 1967, p.92. 'Transcript of proceedings, vol. 1', pp.309,591,681.

42 A.A.Calwell in the film documentary, produced and directed by J.Power, 'Like a summer storm', Australian Broadcasting Commission, undated. Meagher letter to Tennant. 'Transcript of proceedings, part 1', p.377. Evatt's junior barristers were his nephew, Phillip (now Mr Justice) Evatt and G.T.A.Sullivan.

43 Dalziel, p.93, deferred to Evatt's advice. Manne, pp.153-4,157-63.

the commission, and all of his cross-examination, was devoted to uncovering this wilful fabrication, which in time he called a 'conspiracy'.⁴⁴

The presentation of his case was skilful in the sense that with remarkable forensic diligence and exactitude he pursued avenues that might throw doubt on the authenticity of Petrov's material, especially Document 'J'. Evatt relied deeply on his own political intuition, or his unreasoned or sensed apprehension, subconsciously to align internal preoccupations with issues he thought marked by conservative oppression. Logic lagged and was mobilised to instil respectability and rigour to meaning that was internal to Evatt. Where intuition failed, that is where he pursued the wrong issues in satisfaction of personal need, he could find himself in trouble. This happened, and happened badly, at the commission. For his intuition told him that there must have been a conspiracy, because the 'coincidence' of the defection and the naming of his staff were too personally unfortunate in occurrence and timing not to have been manufactured. He furthermore seemed to have an appropriate civil liberties issue, based upon an 'oppressively' applied conservative power to which he could align his inner requirements, and the vital added

⁴⁴ 'Transcript of proceedings, vol.1', pp.483,541,590-1,672,681-3. For the disparagement of the 'conspiracy theory', see Report of the royal commission, p.426, 'not a tittle of evidence emerged to support any of these grave charges'. Manne, pp.44,54,57,93ff.

importance of a direct professional threat to himself through his personal staff and his party. He now anticipated, and indeed was convinced, that as the hearing proceeded he would expose the conspiracy; his intellectual strength had so often concealed its true supportive function as ancillary machinery employed to vindicate, nourish and exalt psychological hunger.

Given his consistent and excessive susceptibility to suspiciousness, his belief in conspiracy was unsurprising. So he had divined a conspiracy; now he had to locate and organise supporting evidence, presented by the dictates of legal procedure, to substantiate his initial apprehension. During his addresses, in August and early September 1954, he spent innumerable hours in cross-examination in order to discredit the authenticity of document 'J', the falseness of which was the cornerstone of his theory of conspiracy. He explored alleged inconsistencies or other fallacies with typing, annotated handwriting, page-numbering, writing style, staple marks and historical errors. In particular, he asserted that the incriminating page, J35, was a fake that was inserted into the rest of document 'J'.⁴⁵

As the days passed, the commissioners grew impatient with Evatt and demanded that he give firmer indications of the directions that he was taking and demanded more

⁴⁵ Transcript of proceedings, part 1', pp.404,411-7,428,459,461,475,504,509,569-74,579ff.

tangible evidence of his theory of conspiracy than he was able to provide. One commissioner aptly described his cross-examination as a 'fishing expedition', for given his method of conducting this issue it was necessarily a fishing expedition.⁴⁶ His argument became increasingly tenuous as the pressure mounted on him to strengthen his case, and as he foraged around more desperately for facts to bolster his theory.⁴⁷ As he worked more intensely in the matter his involvement deepened to obsession, although this was characteristic given his proneness to the obsessive pursuit of issues:⁴⁸

Remembering the work that has been done, it will take weeks for that work to be done by another leader of the Bar, and I am already fully seised (sic) with it, and I have never in all my career devoted so much time and attention to a matter, because I believe it is of supreme importance.⁴⁹

In his zealous attempt to substantiate conspiracy he became contradictory. Simply, his now exceedingly complex intellectual excursions became contradictory. For example, two postulations contended that on one hand document 'J' was authored or prepared by Lockwood and another or others (including the now contemptuously regarded O'Sullivan) and on the other hand the documents were anyway forged; awkward, and in fact unexplainable, ambiguities and

⁴⁶ Ibid., p.673.

⁴⁷ Ibid., pp.429,666-7,672-4,678-82.

⁴⁸ Ibid., pp.729,731. Personal interview with Mr Alan Reid, Sydney, 20 May 1986.

⁴⁹ 'Transcript of proceedings, part 1', p.730.

irregularities appeared such as the fantastic need for O'Sullivan deliberately to misspell his own name on a forged document and for him to name himself as an author and 'conspirator' in documents that he knowingly allowed to be transmitted or connived in the transmission to ASIO. Evatt broadened the scope of conspiracy to include Ronald Richards, the head of ASIO's New South Wales office, to encompass Australian security in the conservative plot to keep labor from office. Evatt again lacked supporting evidence.⁵⁰ It was likely that he would, if allowed sufficient latitude to develop his theory, embrace senior officials of the Menzies government, and presumably Menzies himself, as perpetrators of this pernicious plan.

The central problem, to the surprise of many including Evatt, was that Lockwood, a particularly evasive witness, refused to deny authorship of document J. It was clear that he was the author or preparer of the material, yet that refusal forced Evatt to style and restyle his advocacy according to shades and combinations of authorship. Evatt had to forgo the obvious conclusion that document J was

⁵⁰ Ibid., p.509, Evatt alleges that portions of J were written by O'Sullivan; p.533, Lockwood denies typing J which is to be distinguished from writing it; p.534, Lockwood refuses to deny authorship of J, rather he denies knowledge of parts of it; p.541, Evatt claims that O'Sullivan and Lockwood contributed to the authorship of J; p.591, Evatt claims authorship of J not limited to Lockwood, Evatt being interested in the mind that brought the document together; p.678, Evatt claims that J was a concoction, W.J.V.Windeyer, counsel assisting the commission, responds by accusing Evatt of wild statements.

Lockwood's work. Evatt's problem was understandable - he wanted to prove that because Lockwood did not write document J, it was thus a forgery and the whole case against this document and against Evatt himself collapsed; his barren cross-examination of course severely tested the credibility of his advocacy:⁵¹

In his book 'Evatt the Enigma' Alan (sic) Dalziel says that Evatt honestly believed Lockwood and thought that it really could be proved that the document was a Petrov forgery. I saw and heard Lockwood in the witness box and how a trained and experienced lawyer could have been deluded into thinking he was telling the truth passes my comprehension. At this stage Evatt was obviously losing his grip, and he even went as far as suggesting that the document might have been forged by O'Sullivan. His anger with O'Sullivan for writing Document "H"...thereby putting him in such an equivocal position entirely distorted his judgement and he began to hit out wildly all round him.⁵²

Evatt was a little unlucky because, while the material which eventually became document J was certainly prepared by Lockwood, it was indeed a 'fabrication' in the sense that it was drastically condensed from 170 pages to just thirty-seven.⁵³ Evatt seemed to be aware of the confusion that was aroused by the transition undergone by document J but elected to press on with an interpretation of forgery

⁵¹ 'Transcript of proceedings, part 1', p.484. For Lockwood's repeated prevarication, p.722.

⁵² Letter Meagher to Tennant. For Evatt believing that Lockwood was truthful, 'Transcript of proceedings, vol.1', p.723. Report of the royal commission, p.425 for Evatt's 'wild variations'.

⁵³ Report of the royal commission, pp.426-7.

rather than one of authenticity that was modified by the severe editing done by Antonov.

The commissioners grew exasperated by his convoluted and unsubstantiated wanderings. More importantly they became increasingly concerned about his status before the commission. For he appeared to assume dual roles as an advocate. He firstly claimed to represent his two clients, Dalziel and Grundeman. Yet he also was personally involved for his clients were members of his own staff, while that staff represented the political party, of which he was a leader, all being the alleged victims of the alleged conspiracy. The commissioners argued with just cause that Evatt neglected or used his role as advocate for his clients to pursue personal and wider political matters.⁵⁴ The commissioners therefore doubted that Evatt should be permitted to appear before the commission. Ligertwood observed that:⁵⁵

...I have felt, as the Commission goes on, that you are alleging a conspiracy against yourself. In substance you say it is against the Labour (sic) Party, but you are the Leader of the Opposition...You are not able to approach it from the disinterested position that we expect of an advocate.⁵⁶

Evatt finally went too far when, beyond the jurisdiction of the commission in his public capacity as leader of the opposition, he denounced the treatment by the

⁵⁴ Transcript of proceedings, part 1', pp.722-3,727-32.

⁵⁵ Transcript of proceedings, part 1', pp.430,541,591,681,727-32.

⁵⁶ Ibid., p.730.

French government of Rose-Marie Ollier. Ollier was a French diplomat working in Australia who had happened to have some brief and innocuous dealings with Petrov. Evatt was highly critical of the derogatory publicising of her name in a statement by the French ambassador to Australia (improperly through the name of the commission) and of her hasty departure for three months to Noumea where the institution of proper judicial proceedings was not expected.⁵⁷ He offended the commission by issuing a press statement defending Ollier. The commissioners correctly complained that Evatt's role as an advocate before them was unacceptably compromised by his public comment on matters receiving the consideration of the commissioners. Evatt also spoke critically of witnesses who appeared before the commission, namely the Petrovs.⁵⁸ Evatt claimed in his defence that it was legitimate as a politician for him to function in that public capacity without conflict or detriment to his other personality as an advocate, in which he was responsible to his clients and the commission.⁵⁹

⁵⁷ Ibid., p.727-9. If her departure from Australia was absolutely necessary, and he believed that she should have been given the opportunity to establish her innocence before the commission, Evatt contended that the obvious destination should be Paris where proper legal proceedings might be instituted. It would have taken only a day or so to send her to her home country.

⁵⁸ Ibid., p.727-32.

⁵⁹ Ibid.

On 7 September Evatt's permission to appear was withdrawn despite his stubborn resistance.⁶⁰ Evatt's disappointment was such that he believed his career to be profoundly compromised. He continued publicly and through caucus to present his case. (Caucus was upset by his activities and he resorted to deception to retain its confidence and to continue the assertion of the wrong that was done to him and his party.) In fact, on 16 September he applied to the commission to reappear as an advocate for the same two clients. This was immediately refused. In response Evatt requested permission to appear for himself, which again was rejected immediately.⁶¹ Such was Evatt's determination and obsessiveness that Evatt for a time 'coached' his nephew, now with Sullivan representing Dalziel and Grundeman, by whispering advice to him from the public gallery.⁶² These two remaining barristers forthwith jettisoned the conspiracy theory as a line of legal argument.⁶³

Evatt's work at the commission was very revealing of character. The very fact of his own appearance was characteristic; he needed to manage affairs personally, having to do everything himself rather than leaving it to others. He would have believed that those affairs were most

⁶⁰ Ibid., p.732.

⁶¹ 'Transcript of proceedings, part 2', pp.915-9.

⁶² D,Marr., Barwick, Sydney, Allen and Unwin, 1980, p.121.

⁶³ 'Transcript of proceeding, part 2', pp.902-11,920-9,964 passim.

capably arranged in his hands, while his direct guidance enabled the control of environment which was a need that was integral to his character.⁶⁴ He lectured the commissioners about the need to adhere to strict judicial procedures in order to ensure the most just handling of the matter. He in particular appealed for the responsible treatment of evidence and witnesses, his care for witnesses demonstrating a concern for the reputations of those named before the commission and the general protection of the reputation of his party.⁶⁵ He sought to establish the precise statutory status of the commission and the commissioners in order to apprise the commissioners of both the fullness and limitations of their authority and responsibility.⁶⁶ Thus he again looked beyond the substance of this forum to the examination of the rudimentary

⁶⁴ Although this raises the issues of self-assurance and egocentricity it also recalls his inability to trust others, see chapter 6.

⁶⁵ `Transcript of proceedings, part 1', p.384 for Evatt's claim that Windeyer's naming of the secretary Miss Barnett had ruined her reputation. Madame Ollier's reputation offended, pp.727-8, `Today she will find herself defamed throughout the world as a spy'. However, in order to gain access to document J in its entirety, Evatt was prepared to advise the publication of the document. This was refused because of the sensitivity of the material which included many names. Evatt nevertheless showed no concern for the use of his own name in this document, p.412. Reputation, general, pp.379-80.

⁶⁶ Ibid., p.379 for the commission as a statutory body with executive powers. Because the act now does not come through the governor general, the individuals who directly discharge the duty of the commission are the judges, p.379. For the following of judicial procedures and the scope of the statute, pp.380-2, 681, 684, 722. Royal commission bill debated, CPD, new series vol.3 (14 April 1954), pp.378-81.

political and legal machinery which permitted the establishment and set the guidelines for the commission. When he had located and shaped the commission in a fundamental political and legal context, he then felt free to consider the substance of the commission's work.

This presumptuousness, intellectual arrogance and offensiveness from Evatt was typical. The commissioners were understandably unimpressed by an advocate telling them how to conduct their work, as illustrated by Ligertwood's sardonic query:

Do you not think that you can rely on us to do justice to the witnesses without asking us to lay down the definite procedures that you want?⁶⁷

But Evatt was also characteristically unselfconscious in his failure to consider the possibility that he might have offended the commissioners. In the search for the rigorous application of pure law Evatt expected the impartial and virtually self-assumed victory of legal principle. This was of course to change dramatically as Evatt's advocacy continued, with the domination of politics over law.⁶⁸

⁶⁷ Ibid., p.381. Similarly, p.382 Owen responded to Evatt's assertions of procedure:

I do not propose to sit here to be chided by you on the administration of justice by the Commission.

For his generally poor manner, where he was disciplined by the commissioners, pp.382,411,429,475,542,590-1,684,729,732. For his rudeness to Windeyer, pp.413,422,592,682.

⁶⁸ Ibid., especially his final address, pp.727-32. Of course the highly political environment of the commission and its work induced in Evatt highly political considerations. He had similarly exercised a rare

Through these initial means and through the propounding of the conspiracy theory, Evatt dominated the commission to the point of literally wresting control of the commission from the commissioners. This was testimony to the strength of his assertive personality; his presence was defined by his extreme emotional intensity and supplemented by his overwhelming legal manner and sedulous legal and forensic rummaging. The withdrawal of his permission to appear before the commission was as much an assumption by the commissioners of the control of their commission as it was a means to redirect proceedings away from Evatt's misconceived reasoning.⁶⁹

He further exercised his control over the commission by releasing the substance and direction of his theory in small morsels. The commissioners were often left in ignorance of what Evatt hoped to achieve by certain cross-examination, and when pressed to explain he was evasive, providing half answers or promises of later revelations. Obviously, because he lacked evidence for the case which he

preference through the law for obviously political considerations in his address to Long Innes, J. of the equity court, where it will be recalled, he hoped by an injunction to delay the judicial consideration of the approved bill abolishing the New South Wales legislative council. See chapter 8.

⁶⁹ Transcript of proceedings, part 1', pp.429,682-4 Evatt claimed that the issue of document J was not one of espionage but of local political purpose, pp.542, 683-4; Evatt refused to give details of his case; p.728 Evatt claimed that the statute governing the commission allowed the discussion of these broader issues.

hoped to build as he proceeded, he wanted to tell the commissioners as little as possible so as not to arouse their scepticism. As this evidence failed to appear, he was eventually pressed so hard and repeatedly that he had to reveal all of his ideas about the matter.⁷⁰

Therefore, in spite of the unreasonableness and the frenzy of his advocacy, he played a rather skilful 'game' with the commissioners. This game was given an additional twist because, while Evatt at stages had access to portions of photocopies of document 'J' and once was allowed use of a complete copy, he was for sound reasons denied access to the entire original document; he deemed that access imperative so as to prove conclusively that it had been forged or otherwise subjected to sinister interference.⁷¹ In particular, he sought access to establish that 'J35' had been maliciously inserted. So while the commissioners 'played' with the release of document J, he 'played' with the commissioners by refusing for as long as possible to

⁷⁰ Evatt's vagueness, *ibid.*, pp.429,484,509,666-7,672-4,680. Evatt's slow release of conspiracy allegations, *ibid.*, pp.483,541,590-1,667,672,681-2,683-4,721.

⁷¹ Evatt was denied access to the whole original copy so that general suppression would allow the protection personal reputations and preserve the delicacy of other matters, *ibid.*, pp.412,545; if the document was shown to one, it should properly be shown to all, pp.412,544; if a portion should be published, the entire document should properly be published, p.544-5. Evatt was granted access to portions of document J and to a photostat copy of the entire document, pp.416-7,463,542. Yet Windeyer, as counsel assisting the commission, was granted access to the entire original document, p.542.

share his thoughts on the presentation of his case; if he could not consult this material, he would be unable adequately to develop those thoughts.⁷²

He was always an ardent admirer of facts. He repeatedly and defiantly claimed the presence of 'facts' which vindicated his reasoning. An extraordinary illustration of this aspect of his thinking was the flattering description of the commission as a 'tribunal of fact', an epithet which conferred honour and rigour to the commission.⁷³ When compelled eventually to provide 'facts' to substantiate his theory he cited two newspaper articles. These articles were offered by him in preference to the forensic conclusions which he had earlier alleged to expose the fabrications of document 'J'.⁷⁴ The first was a recent article from the Sydney Morning Herald which conveniently upheld the belief that the defection had been timed to help the government win the election. The commissioners quickly tired of Evatt's narration of this item and prevented its completion. The second article was more interesting. It was published in the right wing Catholic newspaper, News Weekly, on 28 January 1953. It boasted foreknowledge of an

⁷² See above for Evatt's denied access to document J Ibid., p.689 for his attempt to get the handwriting expert Dr Charles Monticone to examine document J.

⁷³ Ibid., pp.413,682,685. See chapter 14. This repetition and defiance served really to cast doubt on the certainty in his own mind of the existence of this stated factual substance.

⁷⁴ Ibid., pp.682-3.

impending defection. The fact that it was written with accuracy so early in the preparations for the Petrov defection further convinced him that indeed the planning of the defection had been in train for a long time. He of course did not entertain the possibility that such time was needed to encourage Petrov to defect if indeed it was likely that defection would occur at all. His belief in the power and revelatory capacities of the press here extended to the role of evidence before a royal commission. It was also a further indication of the unworldly excesses to which Evatt was always prone, especially when his florid imagination was fired by emotional and psychological tension. The commissioners, who were offended by these narrations, again quickly dismissed this fancy.⁷⁵

These proceedings also exemplified the resonance within him between law and politics. It was a resonance which Evatt was unable to control, such was the desperation which marked his personal involvement. He was intensely political just as his law was political, despite the sanitised and sanctified impartiality and ineffable morality which he reverentially bestowed upon the law. His preliminary address to the commission, in which he called for the stern adherence to those legal principles which bind a court of law, was an obvious illustration. Such

⁷⁵ Ibid. Reiterated by Evatt, CPD, new series vol.8 (19 October 1955), pp.1697.

principles which he specified for the edification of the commission were the rules of the admissability of evidence and the suppression of names to protect reputations. Yet the commission was above all most political, both in its own right and under the domineering influence of Evatt. It was political because it was concerned with political figures and the future of their careers and with espionage which addressed crucial matters of government.⁷⁶ Evatt's early advocacy before the commission was so typical of his law. The appeal to the attendance to strict legal principle and rigorous judicial procedure were vehicles by which to reform or to shape an issue to a preferred political outcome. He then faltered badly of course but that faltering served to magnify the roles of law and politics in him. The procedure and method of the commission were substantially legal, and Evatt initially wanted the most complete imitation of a court of law but this soon gave way to utterly political methods. Not that Evatt was troubled by this; in fact he promoted it. Moreover he himself disregarded legal forms in the quest for political satisfaction; notably his double and quite unethical role as advocate before the commission was a travesty of legal principle.

⁷⁶ The division of security and party politics superficially distanced politics from state security although fundamentally the purpose of security was to uphold the political authority of government and to ensure the stability of society.

He virtually jettisoned his legal role for a political one as he became increasingly determined to 'expose' the political 'crimes' of his opponents. He effectively mistook this quasi-legal body for a kind of intimate parliament before which he revealed his political suspicions. More accurately he simply but obsessively took the most public and influential tribunal available, wrenched it from its course and purpose, and attempted to use it for his own preconceived, tendentious ends. It was predictable that he would try to manipulate a forum due to hear matters in which he was deeply concerned. Finally his political motivation was pronounced just as his adherence to judicial forms was effectively renounced by his desperate attempt to seek permission to represent himself.

There was therefore essentially nothing unusual about his reaction to the Petrov affair. The most exceptional thing was that this 'civil liberties' issue centred, most worryingly, on the career and person of Evatt himself. This caused a response of remarkable intensity which, expectedly, ignited the standard matters of suspiciousness, obsessiveness, ambition, desire for power and the alleviation of oppressiveness. His failure here to prosecute a 'liberal' case indicated the cleavage between psychology and intellect that was caused by his faulty political intuition, or sensed apprehension. Through that cleavage his often erratic, illogical and overtly political

behaviour was exhibited.⁷⁷ This failed attempt therefore magnified and made public well-established idiosyncracies. Earlier advocacy was marked by a reliance on political preconception and tendency to suspiciousness but had lacked the personalising of political exigency which here extended through the 'lost' prime ministership to direct governmental and electoral relevance. The intensity of this intimacy resulted in the unfortunate withdrawal of intellectual guidance; a psychology that was prone to imbalances here became radically unbalanced. His excessive self-assurance, together with his frantic urge for vindication were particularly notable. He had won civil liberties struggles before by liberating the 'oppressed' and in fact had had few failures at all; he fully expected to win again. Evatt thought that he was not only a person of exceptional ability but a person who was always right. That 'rightness' would prevail, and he intended to show his rightness to all.⁷⁸

Given his proneness to suspiciousness and given the fall of events which so clearly favoured the government, it was hardly surprising that he became convinced of a conspiracy. Indeed it would have been most unusual had he

⁷⁷ Such as that which exemplified much of his behaviour as minister for external affairs. See also chapter 6 for Hasluck's observation of Evatt reaching premeditated decisions.

⁷⁸ For Evatt's belief in his rightness, interview of Mrs Marjorie Evatt, Sydney, undated, held privately by Justice Elizabeth Evatt.

pursued an alternative course, such as political circumspection, or the progressive legal and logical construction of a case according to the evidence and his sole duty to his clients. However, the Petrov affair was notable because of the peculiar combination of rather coincidental but highly important elements, all of which he saw as having potentially dire consequences to his personal and professional welfare. This issue raises two additional matters: firstly there was the characteristic problem of the facts of an issue being too complex for Evatt's essentially uncomplicated principal psychological concerns which turned on oppression; secondly, luck went badly against him.

The first additional matter was the complexity of the affair.⁷⁹ Typically he was not 'interested' in matters, however simple or vital to larger perspectives, if they did not address his primary psychological activity. That activity invoked the need to preserve pride, reputation and power through raised oppression. Simply, in this case, Evatt was unable to force the facts of the case, in their substance and complexity, into the tight, intractable corridors of psychological insistence. It was complex because it was not a clear-cut civil liberties issue, for it concerned state security, a federal election, law and

⁷⁹ See especially chapters 5-6 for the suitability of the alignment of personal needs to uncomplicated public issues.

politics through parliament, caucus and a royal commission, the apparent concealment of information and the uncertain roles of international and domestic communism. Conversely, earlier civil liberties issues had divided left and right, usually with quite clear distinction, so that his psychological requirements could be more or less directly transposed onto his professional environment. He thought that this was simply another case of the unjust right oppressing the liberal left, but his conspiracy theory, devised to demonstrate unjust oppression, was wrong. It was wrong, not because of conceptual or intellectual perversity, but because he erroneously drew on his suspicion of conservatism. He used the vehicle of pernicious conspiracy, understandably given his make-up, to simplify or reduce (and to intensify) that suspicion. His extraordinary mental powers were radically subordinated, and ultimately rendered irrelevant, because of his unwillingness and inability to apply his mind beyond the narrowness of his uncomplicated psychological needs.

The second additional matter was the role of luck. He was unlucky in six key instances, all of which contributed to his precipitate suspiciousness. Chronologically they were first, the successful and early prediction of the defection by News Weekly;⁸⁰ second, Petrov's decision to

⁸⁰ The publication of the News Weekly article was indeed an unfortunate event for Evatt and one that may have contained more premeditation than luck. It seems remarkable that this

defect was coincidentally timed to a nicety in relation to the election; third, he was not in Canberra on the night of the defection announcement to handle personally in parliament his party's reaction to that announcement; fourth, two of his personal staff happened to be named, if innocuously, in a document that happened to be brought 'over' by Petrov; fifth, his press secretary was the author of document 'H'. The sixth matter was unconnected with presumed right wing anti-labor activities. Lockwood, appearing before the commission would have been expected to deny authorship of document 'J', for as a communist it was anticipated that this denial, and a denial of everything, would have aptly frustrated the commission. Instead, Lockwood thwarted the commission's attempt to prise information from him by very skilfully evading answers altogether. In other words, he did not deny writing document 'J'. This disadvantaged Evatt because he could better have built his conspiracy case, centring as it did on alleged forged documents, without an identifiable author. From other evidence, and in the light of Lockwood's evasive behaviour, it was clear to the commissioners that Lockwood did write or prepare this document, much to Evatt's discomfort. Given this remarkable and for Evatt most disagreeable fall of events, and given his

newspaper successfully predicted a defection. For Manne's explanation, see p.163.

suspiciousness, Evatt could hardly have been expected to do other than concoct his conspiracy theory.

Menzies appeared to act with integrity in his handling of the affair. Appearance was more impressive than fact. He suppressed the names of all mentioned in Petrov's documents until the commission's resumption after the election. The publication of the names of members of Evatt's staff might seriously have damaged labor's electoral aspirations. However, he similarly suppressed the fact that \$5,000 was paid to Petrov in exchange for the documents, an admission which could have adversely affected the government's electoral prospects. Menzies properly, but with incomplete success, declined the opportunity to obtain campaign advantage from the defection by directing that his colleagues abstain from mentioning it.⁸¹ Yet the electorate might have reacted unfavourably to its use as a smear tactic, just as he probably won votes for his statesmanlike aloofness from the application of underhanded tactics. In particular, the strident, unreasonable discrediting of communism that prevailed in the early 1950s had now passed.

Menzies was nevertheless willing to make a theatrical display of the three day Canberra sittings, from 17-19 May, shortly before the 29 May election. Albert Hall was

⁸¹ Murray, pp.151. Manne, pp.73,99,101-2. Several, including Fadden and Harrison sought electoral advantage from the affair, Murray, p.151, Manne, pp.101-4. Labor was of course silent on the matter.

suitably and portentiously presented.⁸² Similarly and more importantly, Menzies' address to parliament on 13 April had been impregnated with high drama through the raised expectation of momentous revelations regarding Soviet espionage activities in Australia. Evatt of course, as shown from his judgment in Devanny's case, knew the Crimes act thoroughly. It was a measure of the great anticipation which accompanied Menzies speech, with attendant presaging of startling implications for the nation's security, that Evatt was completely swept up by the earnestness of Menzies' concern, and fully backed the decision to establish the royal commission. The Crimes act gave extensive powers to deal with the matters raised by the defection, notably treason. Orthodox judicial process was adequate to deal with the matter under the Crimes act, which rendered the commission quite unnecessary.⁸³ Evatt was not to know then that the Petrov documents were largely unimportant, but Menzies by that stage surely had a

⁸² Letter Meagher to Tennant. Admitted by Manne, p.105. E.Ward derided it as, 'The Hollywood touch', CPD, new series vol.8 (19 October 1955), p.1701.

⁸³ Letter Meagher to Tennant. Evatt's statement of support for the establishment of the royal commission, approved by his party, is cited in Murray, p.149 and Sydney Morning Herald, 14 May 1954, p.1. Meagher claims that Evatt could have made Menzies, also a constitutional lawyer, look very small in parliament when the final report, the disclosures of which were now appreciated as innocuous, was debated by simply reading to the House applicable sections of the Crimes act.

reasonably good appreciation of the importance that the defection represented to Australian security.

There was a noteworthy instance in which Menzies behaved with conspicuous dishonour. Evatt, in the presence of the political journalist Alan Reid, asked Menzies on the morning of 13 April, which was the last day of that parliament, whether there was any pressing business that might compel him to remain in Canberra to attend parliament's evening sitting. Evatt was to fly that afternoon to Sydney to attend a Fort Street reunion that evening. It was of course the night that Menzies announced the defection to parliament and the world. Menzies lied; he told Evatt that no important business would preclude his trip. Evatt was therefore stranded helplessly in Sydney while Menzies made his momentous announcement in Canberra.⁸⁴

One view claimed that Menzies was well advised to leave Evatt uninformed given the untrustworthiness and unpredictability of Evatt's character.⁸⁵ Menzies' deception certainly worsened the already acrimonious relations between them; Evatt's irredeemable hatred of Menzies

⁸⁴ Personal interview with Mr Alan Reid, Sydney, 20 May 1986. Incorrectly reported, Sydney Morning Herald, 14 May 1954, p.1. Menzies descended to melodrama with the inaptly forbidding introduction to the announcement of the defection, 'It is my unpleasant duty to convey to the House...', CPD, new series vol.3 (13 April 1954), p.325. Murray, p.149, Manne, p.74.

⁸⁵ Manne, pp.76,99,101.

intensified once he was persuaded that he had concocted the defection for political gain.

Their dealings during the Petrov affair can in one sense be viewed as a microcosm of the relations between them. The play of one character on the other was clear from political manoeuvring before and after this important federal election. Menzies shrewdly handled Evatt as a politician who skilfully used appearance to mask substance, and who applied his knowledge of Evatt, acquired over more than thirty years, with superb astuteness. A delightful spark of luck coruscated tantalisingly before Menzies. He nursed that luck expertly, providing here and there a little directional guidance and encouragement, employing the light touch with proficiency. A problem had been presented to Evatt; his attempt at resolution was likely to attract him with unerring sureness to even greater problems. Menzies advisedly remained in the background, occasionally intervening as if to define the problem, anticipating that Evatt would grasp its special nature with sufficient psychological purchase. Menzies seemed with tactical guile to use the defection to draw Evatt over a perilous political precipice.

Evatt tenaciously clung to his belief in a conspiracy and, in the heat of his resentment at this career failure, he turned on his own party. Certainly he had arrogantly pursued an independent path in his prosecution and

inflammation of the Petrov affair; he doubtless thought his success in the 1951 referendum campaign, secured with little party assistance, to be a self-justifying model. Caucus members were upset by his avoidance of party procedures while the Catholic right wing of the labor party, among many other elements, had for ideological reasons disapproved of his involvement and the nature of his involvement in the proceedings of the Petrov affair.⁸⁶ In turn Evatt was aware that the Catholic right wing had failed to provide adequate assistance to his re-election as party leader in May 1954, an awareness that squared with his suspicions about the foreknowledge of News Weekly of the defection. The connection was therefore able to be made by Evatt of broad conservative conspiratorial elements both from within and outside his own party. The labor split of 1954-5 came therefore to be closely related to the Petrov affair.

The party had long been subject to division with the formalising of splits either materialising or regularly being genuine possibilities.⁸⁷ Nevertheless, the party's proneness to disunity was inflamed by Evatt's poor

⁸⁶ Personal interviews with Mr F.Daly, Canberra, 29 October 1984. Manne, pp.163-4,167-70,239-41.

⁸⁷ For the everpresent prospect of internal division, particularly in Victoria, personal interview with Mr W.Byrne, Canberra, 8 January 1987. W.Hudson (ed.), Towards a foreign policy: 1914-1941, Melbourne, Cassell, 1967, pp.118-21ff.

leadership.⁸⁸ He had treated his party so badly that he had been forced to survive a vote of no-confidence in his leadership.⁸⁹ Furthermore, and most damagingly, he had by now lost his main party support base of New South Wales and could now not rely on any recognised or substantial group to back his leadership and party decisions.⁹⁰ He was, apart from occasional colleagues, politically friendless - and he knew it. The careful use of compromise, understanding and vision by such leaders as Curtin and Chifley had in the recent past usually averted the likelihood of a split, qualities which were conspicuously absent in late 1954.

The dormant potential for division required a catalyst which Evatt was prepared to provide; ruminative, aggrieved and vengeful, he sought a large public restorative release to sooth a *disturbed* psychology. He attacked the right wing of his party, specifically for falling under the influence of a non-party, Catholic-led body, which was known as the 'Movement'.⁹¹ The method he chose for this release was characteristically the 'public statement'; he had so often used a public, usually press, statement rather than conventional party channels to obtain tactical advantage - given this well tried precedent and his poor party

⁸⁸ On Evatt's poor relations with his party, Murray, pp.172-3,158. Personal interview with Mr F.Daly, Canberra, 29 October 1984.

⁸⁹ Evatt was challenged by Tom Burke, Murray, pp.159-60.

⁹⁰ Personal interview with Sir Peter Lawler, Canberra, 14 January 1987. Murray, pp.159-60,174.

⁹¹ For the background to the Movement, Murray, p.44-8.

relations he was unlikely to consult his party. He made his initial emotional effusion at Sheppard's Sydney bookshop on 5 October 1954.⁹² He declared illegitimate the Movement's connection to the party because it carried no official authority by which to influence ALP activity or policy.

That force deserved admonishment for:

Adopting methods which strikingly resemble both Communist and Fascist infiltration of larger groups, some of these groups have created an almost intolerable situation - calculated to deflect the Labor Movement from the pursuit of established Labor objectives and ideals.

Whenever it suits their real aims, one or more of them never hesitate to attack or subvert Labor policy or Labor leadership.⁹³

Evatt's outburst, which was to prove so destructive, was dependent on his long-standing antipathy to conservatism - he believed that he could 'right' the 'wrong' of the 'injustice' to which he had been subjected by addressing the warmly familiar psychological crux of raised oppression. He again blamed the oppressive conservative enemy which he had so often 'found' responsible for society's depredations. That illiberal enemy consisted of Menzies and his government and the associated perpetrators of the Petrov 'plot'. However, a key bridging element apparently now united non-labor conservatism with conservative elements of his own party. The link was provided by the Movement through the failure

⁹² For the full statement, Dalziel, pp.168-70.

⁹³ Ibid., p.168. His statement was an unoriginal and vague denunciation, Murray, p.181.

of the party's right wing to assist his electoral aspirations. The irrationality of this 'bridging' process was of course immaterial for at issue was the mollification of psychological turmoil. (Obviously the party's right would have much preferred office under Evatt than continued rule by the Menzies government, despite reservations they would have held about an Evatt government.) Evatt would also have well remembered the cool response by B.A.Santamaria, the leader of the Movement, to his appeal for assistance during the 1954 election campaign and recalled general criticism by the party's right wing, a portion of which, under the influence of the Movement, was organised chiefly in trade unions as bodies known as industrial groups whose main task was to foil communist influence in the Australian labor movement.⁹⁴ He would further have recollected the lack of sympathy and respect accorded to him from this section of the party when he recorded his celebrated high court and referendum 'victories' which prevented the banning of the Australian communist party.

Evatt's general resentment of the party's right wing was supplemented by three specific factors which may have been crucial to persuading Evatt to turn on his party. Firstly, he continued to resent the claimed foreknowledge

⁹⁴ Personal interview with Mr B.A.Santamaria, Melbourne, 6 September 1984.

of the Petrov defection that had been published in News Weekly on 28 January 1953. This gave him a crucial pretext to oppose the Catholic right, for the publication controlled by the Movement, News Weekly, had to him clearly conspired against him through the prearrangement of the Petrov affair, professedly in order to inflict electoral damage. In other words, the News Weekly article bridged the labor right to the broad non-labor right. Therefore, not only did the party's Catholic right, or its sponsor the Movement, not alert him to this vital information, but it was deliberately withheld from him and in fact used against him so as to contribute to his political downfall.

The second matter concerned the character of the Movement. It led a secretive, shadowy existence which could only reinforce his mistrust of this body and its influence on his party. The dark and the ill-defined aroused his always susceptible suspiciousness and prompted his desire to be informed.⁹⁵ He was likely to accuse and denigrate when deprived of knowledge. The problem of the seemingly 'sinister' identity of the movement addressed the fundamental internal difficulty with which he grappled of the dichotomy between the liberal 'open' and the oppressive 'concealed'.

The third matter was sectarianism. The political divisions between Catholicism and Protestantism could in

⁹⁵ See especially chapters 6-8,14.

the labor movement be approximately described as the Catholic right which feared the godless totalitarian expansion of communism and the liberal, moderate Protestant centre-left which partially tolerated but did not condone communist tactics. Importantly, this dualism was able to be transposed aptly onto the dualism of Evatt's vivid and simplistic liberal-oppressive psychological plane. Labor's lay Catholic right wing now became the oppressive conservative 'bad'.⁹⁶ Just as he was drawn to the convenient psychological reduction of his hatred of the conservative 'evil' into a single individual, Menzies, so Santamaria was similarly reduced to an abstract, vilified object of contempt. In psychological terms, Menzies and Santa maria (and other conservative figures such as Spry and Bruce) were type-cast as the same, or shades of the same, personification of conservatism.⁹⁷

Evatt drew predominantly on internal requirements and points of reference to reach decisions. This did not prevent him, however, from listening to liberally-minded

⁹⁶ That lay Catholic grouping consisted of the Movement (with its organ News Weekly), the industrial groups (not all of whom were Catholic), and 'Catholic action', uninfluential body which sought to organise Catholic activity along the lines of distributism, a doctrine which advocated a form of equality of control and wealth, especially through the ownership of property, Murray, pp.44-8.

⁹⁷ The Catholic diplomat, Paul Maguire, was also claimed by Evatt to be implicated in this hostile right wing force, Manne, p.243; For Maguire's diplomatic activity, T.P.Boland, James Duhig, St Lucia, University of Queensland Press, 1986, p.348. p.348.

advisers whose thoughts corresponded with his own preconceptions. The Protestant leftists, Keith Dowding and Alan Dalziel were an influence, however tacit.⁹⁸ The Protestant federal member of parliament and confidant Leslie Haylen, and possibly the former secretary of the department of external affairs John Burton, gave opinions. James Ormonde was an influential Melbourne Protestant political colleague who shared Evatt's criticism of the party's right wing. A Sydney anti-Movement group lobbied him at this time, and it has been remarked that Clement Attlee, during his visit to Australia in 1953, warned Evatt of the influence of Catholicism in Australian labor politics.⁹⁹

Politics traditionally thrives in an atmosphere of suspicion, intrigue and duplicity - punitive action to redress tactical defeat was in consequence an unsurprising feature of politicians. Evatt was naturally placed in this environment of schemers and numerous paranoiacs.¹⁰⁰ Few if any observed with incredulity his behaviour as a suspicious

⁹⁸ Dowding and Dalziel in the film documentary, produced and directed by J. Power, 'Like a summer storm', Australian broadcasting commission, undated. Dalziel, pp.93,137-8. Tennant, p.121, Santamaria claimed Dalziel to be an old-fashioned anti-Catholic, personal interview with Mr B.A.Santamaria, Melbourne, 6 September 1984.

⁹⁹ Murray, pp.172,177,179. Haylen and Burton in the film documentary, produced and directed by J. Power, 'Like a summer storm'.

¹⁰⁰ B.M.Rutherford, 'Psychopathology, decision-making, and political involvement', in F.Greenstein and M.Lerner (eds), A source book for the study of personality and politics, Chicago, Markham Publishing Company, 1971, pp.243-62.

politician because he was in the company of like-minded professionals who indulged in or at least understood similar practices; it was an environment which fostered suspiciousness as a 'necessity' to guard against insincere, unexpected and disloyal behaviour. Evatt's mistrustfulness and suspiciousness thus were helpful instruments.¹⁰¹

Evatt's prosecution of the Petrov affair and the split demonstrated the poverty of his principles and his poor political judgment where personal advancement was at stake. Away from the resolution of civil liberties conflicts which could be married neatly to his inner concerns, his sure instinct deserted him. His great error during the 1954-5 split was a destructive leadership which showed little concern for or understanding of the consequences of action, for surely Evatt failed to realise the magnitude of the forces which he unleashed and the permanence of division - certainly he made no attempt to unite the party or calmly to dismantle the groups or dissuade communist influence.

His misjudgment indicated an attraction to audacious, impulsive action which was always likely to impede or to

¹⁰¹ A legal environment also carried unsavoury connotations. Where an illegality has been alleged and heard before a court of law, a catalogue of charges is usually met by a catalogue of denials; the search for accuracy in an environment of lawbreaking and occasionally of turpitude aroused a wariness of dishonesty and mistrust which again would give authority to a facet of character which was prone to suspiciousness. Evatt knew the distastefulness of some branches of the law - he declined criminal and divorce work. Personal interview with Dr M. Tunley, Sydney, 6 December 1984.

annihilate long-term party benefit. That is, he was capable of winning important battles, fought as crises in the short-term, but he lacked a political breadth and cast to prosecute the war. He therefore sparkled in the present as an 'immediate' 'conflict' politician. Despite his political longevity, he was unsuited to planning and enacting long-term political strategies which would in time carefully result in office. He frenetically worked for immediate power in 1940-41 when Coles and Wilson sided with labor to give him power - he was not prepared to bide his time, riding the ebb and flow of career politics on the labor backbenches, and indeed admitted that he only wanted to stay in politics for the duration of the wartime emergency.¹⁰² In 1954, he frantically and irresponsibly gave unfulfillable promises and lobbied any group that he felt could provide him with the prime ministership. The winning of immediate power at any cost was a limited and limiting task, although the totality of its scope and need rendered it a consummating task; he would manage subsequent matters only later, after he had gained office.

The party split was to him just another political crisis from which he would have expected regeneration, fully expecting his own principal participation in that

¹⁰² See chapter 5. Dalziel, pp.18-9. Even in federal opposition in 1940-1, he thought of leaving politics.

regeneration.¹⁰³ Acrimony, in this sense, was healthy for it paved the way for regeneration. Evatt, by his attraction to the intensity of civil liberties issues and by his need to hold office and exercise power directly in crucial matters, therefore possessed a 'crisis mentality'; his political make-up moved from flux to reflux, from the absence of intensity, where he rested briefly from the rigours of a prior crisis, to the fullness of intensity where he devoted himself fully to the next crisis - this action left him unprepared for the permanence of the split, for it broke the rhythm of a career which had moved from 'crisis' to 'crisis', usually as a progression of important constitutional cases, but also as a progression of intense political 'crises', from state politics to wartime politics and then to the series of momentous political issues of the late 1940s and the 1950s was soon superseded by the growth, or creation, of new political, legal and societal life and fresh opportunities to assert 'greatness' and to receive acclaim. In personal terms, he appeared to need the distress of friction caused by crisis to demonstrate professional and moral glory in order to receive acclaim and so to bask in 'greatness', while also the demands of ambition were simply so great that he could not bide his

¹⁰³ For Evatt's role in the 1927 New South Wales ALP split, see chapter 11. The New South Wales split of 1927 was healed relatively quickly and without lasting rancour. Bavin was in office for only one term after Lang returned to power on 25 October 1930.

time; these imperatives apparently required repeated gratification through the reassertion of the need for glory by regular involvement in appropriate issues - Evatt was fortunate to live at a time when an abundance of issues arose against which he could align personal imperatives. Thus he was capable 'unknowingly' of wrecking a party because the consequences of long term division bore little relation to a political psychology that was geared to the exploration of short-term crises. He thus in fact seemed to view the split amorally; for it lay beyond the schema of oppression and the alleviation of oppression.¹⁰⁴ Once he had initiated the split he was strangely devoid of continuing involvement, seeming to become a dispassionate bystander, allowing the unrestrained factional brawling to proceed without his intervention.¹⁰⁵ Indeed as a leader, unsuited to party politics and as one whose relationship

¹⁰⁴ Evatt, from a distance, could write fluently of Australian labor and constitutional history as an academic, but this work of course was unrelated to his personal career as a politician, where intense personal needs were displayed, not in the quiet contemplation of academe, but in the immediate environment of political turmoil. See chapters 4, 11, 14. H.V. Evatt, Australian labour leader: the story of W.A. Holman and the labour movement, Sydney, Angus and Robertson, 1945 (1940). Hence, his brief appearances in the New South Wales legislative assembly were restricted to the dangers of constitutional degradation, the injustice of inadequate or non-existent basic wage, child endowment and widow's pensions.

¹⁰⁵ An exception was Evatt's delivery of a fine speech in March 1955 at the ALP federal conference in Hobart, Murray, p.228.

with his party was poor, he operated apart from his party, using politics to address inner issues.¹⁰⁶

Evatt was 'lost' after the split; he could not and would not attempt to 'create' or to 'repair' by long-term strategy the unity of the party. A single gesture, which demonstrated the absence of any synchronisation in him between calculated restorative strategy and explosive short-term action, was his impulsive offer during the 1958 federal election campaign to resign the leadership in return for DLP preferences.¹⁰⁷ This flamboyant, ill-considered posturing was sincere but typically was a misconceived, spontaneous act which by his impulsiveness, and by his failure to consult with his party, demonstrated a personal political style which was highly independent and inconsiderate of party procedure. It of course lacked strategic direction, containing no careful planning, or measured, consultative evolution. Evatt's last years in politics were more than usually lonely, being bereft of the dynamic civil liberties issues which captured the public imagination and that had made his career until the mid 1950s.

¹⁰⁶ He led best when he worked alone, unencumbered by party restraint and in the midst of grave crisis from which he would fashion new profound directions from matters of grave principle. The most striking domestic illustration of this was his victory, unfettered by party obligations, of the 1951 referendum.

¹⁰⁷ Personal interview with Mr W. Byrne. Murray, pp.346-7.

* * *

In January 1955, just a few months after his appearance before the royal commission on espionage, Evatt was closely involved in the proceedings of a second quasi-legal administrative forum. This involvement, as with the royal commission and Devanny's case, displayed his highly political concern for the oppressive power of conservatism. The media was the instrument through which that concern was expressed.

Businesses with media interests prepared themselves for the introduction of television. A royal commission had offered recommendations concerning the qualifications and nature of the operations of successful applicants to television licences.¹⁰⁸ This report acted as a guide to a public inquiry into applications for the award of two licences each in Sydney and Melbourne. The inquiry was conducted by the Australian broadcasting control board. The

¹⁰⁸ 'Report on the royal commission on television, 29 September 1954', PP, vol.3 (1954-5), pp.679-809.

board's recommendations were then referred to cabinet which formalised the recommendations as decisions.¹⁰⁹

The inquiry heard submissions from applicants in Sydney and Melbourne. It was dominated by large media concerns. In Sydney six large and wealthy media companies, or companies to be formed from large media interests, competed from a slightly larger group of applicants. In Melbourne, the General Television Corporation proprietary limited and a representative of a company to be formed by the Herald and Weekly Times Limited were large, affluent media organisations which were always likely to win the board's favour over the two other applicants which were inexperienced and enjoyed only modest financial and technical credentials. A feature of the applications of several large media interests was the international technical, financial and controlling power backing them.¹¹⁰

Evatt however would never allow the passing of an opportunity such as that presented by this inquiry. A rather unusual but utterly earnest application was heard in both Sydney and Melbourne. This was tendered by Tom Dougherty, secretary of the Australian Workers Union, and

¹⁰⁹ 'Australian broadcasting control board: public inquiry into applications for television licences, Sydney and Melbourne areas, transcript of evidence', vol.1, part 1 (21 January 1955 - 1 February 1955), pp.1-315; vol.1 part 2 (3 February 1955 - 16 February 1955), pp.316-654; vol.1 part 3 (17 February 1955 - 23 February 1955), pp.655-1000.

¹¹⁰ 'Transcript of evidence', pp.32-43,55-6,74,92-100,162-7,250-7,261-7,269,390-1,399-400,668,789-90,985.

Evatt, in his capacity as leader of the ALP, as joint and provisional trustees of the bodies that they represented. Evatt appeared personally before the inquiry to represent this application, as he had done while party leader before the high court when opposing the Communist party dissolution act and before the royal commission into espionage when challenging the motives of the Petrov defections. His submissions in Sydney and Melbourne were similar, particularly his criticisms of the applications of large media interests. His submissions were uneven and, realistically, never likely to succeed. For while he raised important issues, his own submissions, while interesting and at times persuasive, were strong through exposing the deficiencies of other applications rather than pointing to the qualities of his own. Nevertheless, the quality of his advocacy, with his interposition of intellectual, moral and cultural substance, was a noteworthy contribution to the commission's proceedings.¹¹¹

He was eager to impress upon the board the perceived imperative that it was a dangerous and fallacious assumption to believe that a television licence should naturally be awarded to a great corporation with extensive control over mass communication. He contended that such a large and potentially increased control of information was of questionable value to the community. For the criterion

¹¹¹ Ibid., pp.64-5,141-6,763,774,778,873-4.

of public interest should be a major consideration in the board's determination, as the influence of an uncritical and unchallenged presentation of information was damaging to the community through the singular shaping of public opinion.¹¹²

He was therefore concerned that there be an open, vigorous, varied and so a balanced presentation of television material, particularly of opinion. He was mindful of the concentration in the media of conservative power in ownership, and thus in the determination of policy, a matter which had attracted his attention more than twenty years earlier in his judgment in R v Hush; ex parte Devanny (1932). He argued that such a concentration created an imbalance that favoured conservatism. This was a generally disturbing problem but specifically, and most distressingly, it was unjustly beneficial to conservatism by the shaping of public opinion in political matters, particularly during election campaigns. He observed the concealment of the identity and concentration of powerful conservative media ownership so that the imbalance was not readily discernible to a disadvantaged public, a point also previously made by him in the Devanny judgment. The royal commission report which guided the board recommended that there be no party political involvement in the ownership of licences. Evatt objected to

¹¹² Ibid., pp.16,135,139-42,165,409-11,769-70,776-7,983.

this recommendation because it was innately and adversely prejudicial to labor. That is, labor interests needed to be represented in order to enable the presentation of free and balanced opinion.¹¹³ He felt duty-bound to inform the board of this perceived injustice. To the question:

I think your own approach was that it would be very dangerous to have one political philosophy only represented in commercial television?

Evatt replied:

I do not think it would be dangerous; I think it would be advantageous; it would tend to balance the expression of opinion.¹¹⁴

Evatt criticised the large degree of international control and ownership from Great Britain and America in the backing of other applications. He feared the dictation from abroad, especially of public opinion, and the loss of national revenue. His nationalism was therefore aroused, just as he was protective of any threatened interference to Australia's independence. He asserted that such applications were opportunistic through the uncompromising search for large and quick profits to be made chiefly from lucrative advertising arrangements. Companies were hastily formed or were to be formed without measured and thoughtful preparation; money was to be made and these interests were determined not to be excluded from the windfall. He implicitly criticised these applicants therefore for using

¹¹³ Ibid., pp.58,100-1,138-40,143,313-4,575,670,668-70,767,776-8,788-90,983-4,988.

¹¹⁴ Ibid., p.788.

Australia for amoral commercial gain, and also to foster a conservative, complacent political climate that would protect and encourage their vast media investments.¹¹⁵ Two important observations flowed from these criticisms: first was the 'conspiratorial' and anti-oppressive cast of Evatt's mind; second, was his desire to defend and to engender the cultural health of Australian society.

Evatt, as always, feared the powerful, oppressive and conspiratorial weight of conservatism, as if it were a sinister, serpiginous menace. He spoke of the link of mass communication to big business and the owners of big business:

Like other big businesses they are often associated with other big corporations.¹¹⁶

He then observed the interlocking of media interests with big capital interests which lay beyond mass communication. The implied political oppression of despotic conservatism complemented this inequitable, rapacious and ethically brutal politico-commercial alliance. The accuracy of his observations is in one sense immaterial; it is useful for affirming the consistency of his central psychological preoccupations, which appeared as professional manifestations from as early as the 1920s with his formation of the Evatt brains trust to combat the powerful, monolithic conservatism of the Sydney legal profession. The

¹¹⁵ Ibid., pp.33-43,787-8.

¹¹⁶ Ibid., p.257.

political shape of his judgment in Devanny's case and his advocacy before the royal commission into espionage and the inquiry into applications for television licences were later affirmations of this preoccupation.¹¹⁷

Evatt was deeply mindful of the cultural effect of television on Australian society, particularly given his belief in the undesirable intentions of other applicants. He was anxious that the board give serious consideration to this important non-commercial aspect of the operation of licences. He saw television as an opportunity to enhance the community's appreciation of the arts. He also envisaged the use of television as an educational aid. He was therefore very positive in his hope for the realisation of the potential of television. He saw it as an opportunity for the development of an exciting and creative local industry which would stimulate and provide employment for Australian artists, particularly actors. He anticipated a decline in the popularity of radio, and sought the protection of those employed in that medium. He hoped that

¹¹⁷ Ibid., pp.139,164,257-9,787,790. It was also reminiscent of his parliamentary speeches, particularly of the mid 1940s, which declaimed the grasping, self-interested and monopolistic activities of powerful financial bodies, such as cartels, combines and trusts, CPD, vol.177 (11 February 1944), p.148. CPD, vol.178 (15 March 1944), pp.1351-2,1380-2. The open, liberal-radical, just 'truth' was pitted eternally against that oppressive darkness, see chapter 12 in relation to the media and reform. Also the Petrov affair and his pleas for the disclosure of truth, 'transcript of proceedings, part 1', p.731.

the proper guidance of the local television industry would encourage the expansion of Australia's film industry. He criticised the intervention of American film companies in Australia, but urged their investment and operation in Australia should be in Australian hands. He opened his mind to new artistic forms and showed an appreciation of how one might assist the other to the creative and economic benefit of the nation and to assist employment.¹¹⁸

His appreciation of the good uses to which television might be put heightened his awareness of the power of this new medium. He quickly absorbed the directness, intensity and technological marvel of an omnipresent medium that would be placed in nearly every living room and that used the powerful combination of image and sound.¹¹⁹ In short he understood that television was an extremely powerful instrument - 'this unique and revolutionary medium' - that might be misused by powerful business interests.¹²⁰ Such was the power of television that he urged programming controls. Always concerned for the welfare of children, he

¹¹⁸ 'Transcript of evidence', pp.16,36,128,143-4,164,265-6,750,778,794-5,835-6,982-4. He in fact had a personal interest in film making - he unsuccessfully approached several American film companies with the request that a film be made of his book, Rum rebellion; EP, file 'Evatt - miscellaneous and incomplete papers', letter K.Brennan to R.Halliday, 16 July 1940, unsigned letter to F.Lloyd, 16 July 1940, letter K.Brennan to F.Underwood, 19 July 1940. Admiration for French cinema, letter Evatt to Mrs A.M.Sheffer, 16 July 1938, privately held papers of Mrs C.Weaver, Melbourne. See also chapter 4.

¹¹⁹ 'Transcript of evidence', pp.576,626-9,770-1,775-7,790.

¹²⁰ Ibid., p.982.

warned of the impact of television on young impressionable minds and advocated their protection from disturbing programmes. At the same time he was keen to protect television. He argued that the established (and apprehensive) film industry not be permitted to interfere with the competition that was likely to be presented by television. It needed independence and the opportunity and time to grow.¹²¹

Evatt was intrigued as well as concerned. He indulged in this exciting innovation; a new television set adorned the Evatt household when television was introduced to Australia in 1956.¹²² He had seen early displays of television when he was abroad in 1938 and marvelled at its capabilities.¹²³ He had even had an early movie camera in the 1930s which he used to capture family activity on film.¹²⁴ He was usually at the forefront of developments which would induce societal change. It was his understanding of television together with his fearfulness of the misdirection of its effects that compelled his appearances before the board. He was nevertheless well ahead of his time in raising important concerns which were much later to receive the attention of interested parties.

¹²¹ Ibid., pp.57,772,775.

¹²² M.Newton, 'Evatt's last campaign', Nation, no.182 (13 November 1965), p.11.

¹²³ Letter Evatt to A.M.Sheffer, 28 August 1938, held by Mrs C.Weaver.

¹²⁴ Film documentary produced and directed by J.Power, 'Like a summer storm'.

He typically addressed the board as if he were engaged in a civil liberties issue; he acted again as a self-assumed protector of the liberty of the public, here against the oppressive and despotic rapacity of conservative media interests. He again followed personal directions, pursuing his own preoccupations when he should perhaps have redirected his energies; for the hearings were in late January and early February 1955 at a time when serious divisions had formed in the party and were soon to widen to an open split. An always professionally self-assured Evatt doubtless felt quite able to handle both matters, although strictly it might be argued that he was free from party political obligation until the Hobart federal conference in March. Typically again, he spoke of the need for vigorous and open public debate at a time when party intrigue, secrecy, dishonesty and mistrust were rife. The civil libertarian, who so often failed to adhere to his own advocacy, excelled at the most unlikely times, although really it was characteristic of the eternal tension that was created from the twin longing for openness and suppression, a duality that co-existed uneasily within his psyche.¹²⁵

Evatt quoted press items to the board, mainly to warn against the problems of the concentration of media

¹²⁵ 'Transcript of evidence', pp.58,138-9,143,668-70,776-7,778,788-90,988.

ownership. Press quotations had previously been presented as evidence to the commissioners at the royal commission on espionage and he had been sternly rebuked. Here he repeated the tactic and at least received a hearing as, presumably, the opinions of the press could hardly be condemned at a media inquiry convened to determine the means to promote the expansion of the media industry.¹²⁶

Evatt graciously conceded weaknesses in his submissions. He admitted the appearance of negativity, where he chose to be critical of other applications rather than choosing to present a strong, positive case in support of his own application. The AWU and ALP were, by comparison with most other applicants, inexperienced in media management, having in the past restricted their concerns to small print and broadcasting operations. Evatt accepted the lack of technical expertise to support his application, claiming that this could be acquired readily enough. Most importantly, there was an absence of adequate finance at the disposal of two organisations that he represented; should those bodies be granted a licence, there appeared to be no reasonable assurance that a television station might be properly established. When pressed closely on the anticipated financial outlay that he expected to support his application, he refused to be drawn into a specific figure. Instead he agreed vaguely to a very broad, and low,

¹²⁶ Ibid., pp.56-7,265.

range into which the cost might fall. When attacked for undercosting his application he responded with the contention that there should be an allowance for the smaller and less wealthy operator to hold a licence, and that such a smaller operator should not automatically be pushed out by large concerns simply because of their massive financial resources. To strengthen his submissions, and implicitly to condemn the self-interestedness of other applicants, he stated that a labor television station would be run as a non-profit enterprise which would return income from advertising to the station to maintain its services.

This was probably the first and last time that Evatt was cross-examined as a witness, which gave novelty and added interest to the inquiry. He had quickly overcome his obsession with the Petrov affair, for his advocacy and appearance before the board displayed measured intelligence, a quick wit, and a thoughtful wisdom which warned against the ill-advised ramifications of possible directions that the television industry might take. He was cross-examined in the witness box by an erstwhile conservative legal adversary, Sir Garfield Barwick. He was careful to circumscribe the meaning of Barwick's probing questions. His responses were most coherent, reasoned and at times clever in an atmosphere of tense sparring at close quarters:

[Barwick] And the ultimate control of this station and its policy would...rest

with the rank and file of the Trade Union Movement?---[Evatt] Through their various elected officers, no doubt.

[B] And I suppose you would expect the rank and file to have as much or as little say in the management as they have to-day in Union affairs?---[E] What do you mean by that?

[B] I said as much or as little?---[E] Perhaps you would state it more positively.

[B] Would you expect them to have as much or as little say in the control of the policy of such a television station as they have in the ordinary affairs of their Trade Union to-day?---[E] Yes if you do not use it in a tendentious or direct sense I think that is correct.

[B] I suppose as you were rendering a public service you would favour the affording of equal opportunity to all shades of opinion to express themselves over your station?---[E] Yes, that is the distinction I made this morning. I would allow on all public matters debate - that is my own personal view; again it would have to be determined - and opposing points of view to be presented...I am saying that if we had a debate or discussion on public affairs that would be the very purpose of it, to have such a forum.

[B] I am not talking about a forum, but I am talking about an equal opportunity to express a separate point of view which was opposed, maybe, to that of the Labour Party?---[E] I wish you would give an illustration.

[B] I asked you a question and it is very simple?---[E] You have asked me an abstract question.

[B] It has to be abstract? (sic)---[E] I would like it in the particular.

[B] It has to be abstract; is that your view that this station which you wish to have identified with the Labour Party and frequently to put its point of view before the public would, on public questions, afford equal time to the expression of other points of view by people opposed to those of the Labour Party?---[E] I do not regard the question of political discussions as being frequent or a vital part of the television

system that we would conduct, but I can only repeat in a broad outline that we would, on public discussions and international affairs, encourage the expression of opposing points of view even though those points of view be opposed to the point of view of the Labour Party.

[B] Does that not answer the question?--
--[E] I think it does.

[B] I will put the question again and see whether you can answer it. Would your television station, identified with the Labour Party, according to your view afford an equal opportunity with respect to public questions for points of view other than those held held by the Labour Party to be expressed over the station by people who held those views?---[E] In that absolute way I do not think I can deal with it.

[B] You could not deal with it?---[E]
Not in that absolute way.127

Devanny's case, the Petrov affair and the television licences inquiry demonstrated Evatt's tendency to a suspicious, conspiratorial conception of conservative 'oppression'. His determination to pursue his attacks on this oppression, and his insistence upon assuming a personal, frontline role in those attacks was always, and particularly at this time, a feature of his work.

CHAPTER ELEVEN
INTEGRITY IN LAW AND POLITICS

Public life, with its association to power and privilege, has long raised the issue of integrity. Evatt's career gave special meaning to this matter by the great length of time during which he held public offices, the special importance to him of holding power and the immense intensity with which he sought to gratify ambition.

He was likely to be accused of hypocrisy whenever he insisted on the absolute probity of conduct in others, especially in their political conduct, given his own massive and often unregulated desire to hold power. This charge should be greatly modified - he displayed an extraordinary respect for integrity through his feeling for the probity required of professional behaviour, particularly of public conduct in politics and the law. He cared intensely for these professions in themselves and as vehicles for the betterment of Australian and international society. In fact, he at times imperilled the success of his career by acting in the interests of that betterment, for example through the risks he took in personally prosecuting

the defences of the right of the communist party of Australia to exist.

His regard for professional integrity therefore reflected concern for the integrity of public life, or society. This attitude was familiar; it recalled his considerable personal pride, particularly in the defence of his own reputation and understanding of the importance to others of the protection of their reputations. It also recalled the seeking of approval from professional success. That is, the fulfilment of ambition enhanced a reputation that could be endangered by the exposure of a lack of integrity, so the upholding of integrity was closely associated with the maintenance of professional success.¹ His public use of professional talents filled him with immense honour and obligation in a manner which would benefit society - there was conviction in his integrity.

Although Evatt disregarded his personal appearance and was often inconsiderate in social relations, this carelessness did not extend to his work. Similarly his derision of the etiquette that characterised many of the 'forms' of conservatism, which he believed empty and deserving of ridicule, did not reflect the seriousness that he invested in work. His professional conduct related to an

¹ Although the artificiality and vulnerability of pride and reputation were complications, especially given his easy susceptibility to flattery, where accomplishment failed to correspond with self-image.

intellectual and moral regard for the dissemination of talent throughout principal areas of public life, as a conscious display of integrity through the full employment in society of personal gifts. Given his broad political position, he invested his legal work with an immense intellectual and moral integrity which crucially restrained a tendency to poorly regulated political ambition - it was a restraint that he greatly admired and one which he considered a duty of legal practitioners to apply. In various important cases, as both advocate and judge, he attempted to and often succeeded in preserving fundamental principles and providing new directions for the betterment of society.² That legal work was fired by an intellectual and moral duty, although much overtly political criticism questioned its benefit to society.

Integrity in professional action was also evident in his political work. He again invested vast moral energy in his frequently successful attempts to preserve fundamental principles and provide new directions for the betterment of

² See chapter 6 for his judgment in Chester v Waverley and his improper conduct during the hearing of R v Carter; ex parte Kisch. See also his judgment in New South Wales v Commonwealth and others (no.1), (1932) 46 CLR, pp.197-8, for Evatt's implicit criticism of Starke's judgment illustrated his disappointment with work that failed to exercise probity through the application of proper legal principle. Evatt's disagreement with Starke's decision was not at issue here, although their views did reflect the widely different political sympathies held by the two judges.

society.³ There were numerous illustrations of his concern for the integrity of politics in parliamentary practice. In his desire to subordinate party politics to national interest, he frequently asserted that debate on legislation at hand need not occupy a great deal of parliament's time. He believed much legislation to be clearcut as obviously beneficial to all; its passage should be uninterrupted because party or ideological issues were not relevant. His call for unified, non-partisan action was often ignored, with debate continuing although perhaps with reduced antagonism. During the war years, where united action was more important than in peace-time, he often called on parliament for constructive discussion where it was vital to set an example of generous, unselfish national spirit and co-operation.⁴

³ See his defences of the right of the communist party of Australia to exist, chapter 6, and his conviction of the need to abolish the undemocratic New South Wales legislative council, chapter 8. See also his aspirations for the 1944 referendum, chapter 12. The most obvious breakdown of integrity and reform was during 1954-5, as his career declined sharply, see chapter 10.

⁴ For example, CPD, vol.172 (7/8 October 1942), p.1475; vol.174 (26 March 1943), p.2473; vol.180 (29 November 1944), pp.2367-8; vol.184 (30 August 1945), p.5017. Of course he badly wanted power, as illustrated most tellingly by his agitation in 1940-1 and contemplation then and in 1943 of wartime national governments. This form of government naturally suited authoritarian and partisan aspects of his character. Yet even then national governments, at least in theory, were designed in troubled times to unite national political energies. See chapter 6; also personal interview with Prof. L.F.Crisp, Canberra, 24 October 1984 and personal interview with Mr A.Reid, Sydney, 20 May 1986.

He greatly enjoyed healthy parliamentary debate from members of all political persuasion. He appreciated contributions to the understanding and deepening of issues and gladly acknowledged by name those who by their worthwhile contributions added sophistication to the larger, united function of parliamentary practice. He said of the liberal party parliamentarian, T.W.White:

The House should be grateful to the honourable member for Balaclava for the spirit of his remarks. With most of what he said, we agree; with certain of his remarks, we disagree; but he has imparted to the House a spirit which enables the House to consider the proposal placed before it.⁵

He was careful to praise aspects of a member's speech which he deemed helpful, although perhaps opposing the thrust of that speaker's argument. He was open-minded when presenting draft legislation to parliament, accepting that improvements of substance and language might strengthen its purpose and linguistic rigour. He therefore often agreed to, or welcomed, changes just as his criticism of opposition drafting was aimed at the enhancement of legislation. He hoped to improve the work of parliament by distributing or making available material that supplemented parliamentary debate, so as better to inform members of issues.⁶

⁵ CPD, vol.168 (21 August 1941), p.91.

⁶ Personal interview with Mr Gordon Bryant, Melbourne, 6 May 1986. A selection of many instances of his respect for parliament, praise for others, attention to drafting improvements and providing material for members is; CPD, vol.165 (22 November 1940), p.126; vol.166 (12 March 1941),

When on 15 March 1944 the country party member, John McEwen, was briefly suspended from the house of representatives for misconduct, Evatt refused to speak of matters which concerned him in his absence, so as not unfairly to disadvantage him. He returned to these matters only when McEwen resumed his seat.⁷ Evatt was anxious that parliamentary procedure be respected - his regard for procedure complemented a close knowledge of its workings although he knew that it could be used as an important political weapon. He believed that strict conformity with forms of parliamentary practice was an expression of political integrity.⁸

Evatt lived the theatre and historic solemnity of parliament. He devoted much time and scholarship to his parliamentary speeches, the drafts of which were worked and re-worked many times until finally he was satisfied of their quality. He appreciated the greater historical and constitutional weight behind important debate and imbued

p.33; vol.126 (21 August 1941), pp.121-2; vol.168 (3 October 1941), pp.682-5; vol.172 (7 October 1942), pp.1431-3; vol.174 (16 March 1943), p.1768; vol.174 (18/19 March 1943), p.2042; vol.177 (1 March 1944), p.734; vol.178 (15 March 1944), p.1379-80,1386; vol.180 (11 February 1944), p.2595; vol.180 (30 November 1944), p.2477. Also J.Killen, 'Evatt - enigma of Australian politics' Herald (Melbourne), 15 October 1984, p.5.

⁷ CPD, vol.177 (15 March 1944), p.1367.

⁸ For example, NSWPD, vol.110 (17 February 1927), p.1330; CPD, vol.168 (8 October 1941), pp.479-80; vol.172 (7 October 1942), p.1432; vol.177 (17 February 1944), p.289; vol.177 (15 March 1944), pp.1356,1358; vol.178 (17 March 1944), p.1563.

that debate with dramatic force - he often drew on the lessons to be gained from the second world war by the experience of Australia during and after the first world war. Historical and constitutional factors often revealed the true purpose and responsibility of parliamentary activity - he encompassed historical parallels, comparable present-day international circumstances and persuasive legal factors to supplement and deepen material and to recall that grave purpose and responsibility of parliament.⁹ He considered politics to be a fittingly solemn activity - he disliked the cliché 'playing politics' for it suggested an inappropriate levity. He probably thought that party politicians who indulged in party manoeuvring for its own sake engaged in unproductive, misguided 'play'. Political responsibility weighed too

⁹ For example, CPD, vol.165 (22 November 1940), p.126; vol.172 (1 October 1942), p.1334-6; vol.172 (2 October 1942), pp.1388-91; vol.177 (10 February 1944), p.76; vol.177 (1 March 1944), pp.732-3; vol.179 (19 July 1944), p.233; vol.179 (8 September 1944), pp.608-9; vol.180 (17 November 1944), p.1900-1. He was keen to alert parliament to the profound constitutional forces behind his opposition to the Financial agreement ratification bill, NSWPD, vol.112 (15 November 1927), pp.294-30; vol.113 (30 May 1928), pp.1094-1102. See also his defence of the proposals of the 1944 referendum, chapter 12. For constitutional relations in Australian political history, see chapters 16-7. For his attention to speeches, personal interview with Mr C.Cameron, Adelaide, 1 October 1984. J.Killen, Inside Australian politics, North Ryde, Methuen Haynes, 1985, p.19. See chapter 1.

heavily to allow such behaviour or to permit the use of such an expression.¹⁰

There was some sanctimoniousness, or hypocrisy, in his discourses on political moral righteousness, given his resort where convenient to vacillation and sporadic subjugation of principle to ambition. He did not indulge in rough politics inside parliament - here he showed disappointment rather than engage in taunting mockery - but reserved such strident conduct for the hustings, admonishing the alleged poor performance of an opposing party.¹¹ Nevertheless in parliament he formed a strong understanding of the need to represent a balance of views and, if necessary, to change the emphasis of that representation as shifts in balance took place.¹²

Two issues from Evatt's state political career clarify his concern for integrity. The first concerned his desire to retain his seat of Balmain against spirited, communist-backed opposition. The second related to his chairmanship

¹⁰ CPD, vol.168 (21 August 1941), p.93; vol.172 (2 October 1942), p.1399; M.Pratt interview with Mary Alice Evatt, 30 April 1973, ANL, TRC 121/41.

¹¹ For Evatt's criticism of the conservative government during the September 1940 election campaign, Cantwell papers, ML, MS 1919.

¹² CPD, vol.178 (15 March 1944), pp.1348,1379. CPD, vol.178 (28 March 1944), p.2105. For changing views that represented political expediency, Evatt's decision not to recognise China, personal interview with Mr J.Burton, Canberra, 5 January 1987. A.Renouf, Let justice be done: the foreign policy of Dr H.V.Evatt, St Lucia, University of Queensland Press, 1983, pp.114-7. R.Murray, The split: Australian labor in the fifties, Sydney, Hale and Iremonger, 1984 (1970), pp.,145-6.

of a parliamentary committee established to enquire into allegations of the bribery of labor members of the legislative assembly.

The rise of communism which followed the first world war deeply affected New South Wales labor politics. The communist party in the 1920s made various official and unofficial (or unconstitutional) attempts to control the trade union movement and the political and industrial wings of the labor party.¹³ An ongoing power struggle, evident at union and party conferences, climaxed in 1927 during Lang's first administration.¹⁴ A breakaway state ALP, communist-backed conference of April 1927, was chaired by W.H.Seale and was known as the Seale conference.¹⁵ Lang, for tactical reasons, attended the conference in order to retain communist backing, a decision which drew harsh criticism from many in his party. In fact Lang appointed the forceful and shrewd militant socialist, Albert Willis, to his cabinet and refused repeated appeals to dismiss him. In addition, Lang alienated many colleagues by his autocratic, selfish leadership.¹⁶

¹³ Sydney Morning Herald, 27 May 1927, p.10; 3 June 1927, p.11; 15 September 1927, p.10; 16 September 1927, p.10; 17 September 1927, p.16. I.Young, Theodore: his life and times, Sydney, Alpha, 1971, pp.51-2,68,70.

¹⁴ Sydney Morning Herald, 21 April 1927, p.11; 16 September 1927, p.10; 17 September, p.16. Nairn, pp.46-138.

¹⁵ Sydney Morning Herald, 21 April 1927, pp.11-2; 22 September 1927, pp.11-2. Young, p.76.

¹⁶ Sydney Morning Herald, 27 April 1927, p.13; 25 May 1927, p.15; 2 May 1927, p.11; 29 September 1927, p.10. Lang also

The crisis worsened over the middle months of 1927, and with the overwhelming majority of cabinet opposed to Lang, government at this senior level became ineffective. The division became formalised as the Seale faction and the Conroy faction, to which Evatt was aligned. The federal executive confirmed the legitimacy of the Conroy faction.¹⁷ Lang then dismissed his cabinet and later scheduled an election for 7 October.¹⁸ A 'unity' conference was held on 24 July in an attempt to resolve the matter, resulting in the legitimising of the previously unaccepted Seale conference; the radical faction headed by Lang now controlled the labor party and the Conroy faction was expelled.¹⁹ Evatt responded to this reversal by attacking the new New South Wales executive for falsely acquiring its new found 'constitutionality' through unethical practices at the conference, including voter intimidation and scrutineering irregularities. He further assailed the new

appointed Willis to the vice-presidency of the legislative council, Nairn, pp.93-4,119-22.

17 Sydney Morning Herald, 4 May 1927, p.9; 11 May 1927, p.15; 13 May 1927, p.11; 17 May 1927, p.11; 6 June 1927, p.9. Past heated differences between the Lang group and the federal ALP had existed over the federal government's 1926 referendum proposals concerning increased government powers to deal with industrial arbitration and essential services. In fact concerted efforts were made to unseat Mathew Charlton, the leader of the federal ALP; Willis was said to be a candidate for Charlton's position. Young, pp.71-2,184.

18 Sydney Morning Herald, 27 May 1927, p.10.

19 Sydney Morning Herald, 1 July 1927, p.10; 6 July 1927, p.17.

Seale executive by claiming that it was out of touch with the labor movement.²⁰

At a meeting of the Conroy executive on 3 June, Evatt bitterly attacked Lang, whom he called 'the biggest crook in the labor movement'. He rejected Lang's leadership and asserted that the premier and his new supporters had placed themselves outside the movement. Moreover, he accused Lang of having taken credit for legislation for which members of the previous ministry were responsible. Lang responded with a similarly acrimonious attack. He particularly blamed Evatt and Evatt's supporters in the legislative council for the failure of labor's policy to implement the abolition of the legislative council. He also rebuked Evatt's misdirected advocacy of the child endowment and basic wage issues.²¹

Evatt issued a telling reply to Lang's scathing comments. His response to Lang had not been reported, as Evatt's initial attack and Lang's response had been. Evatt therefore wrote to the Sydney Morning Herald in order also to enjoy press coverage. In a letter to the editor, he wrote:

Firstly, I did and do charge Mr Lang with bungling the Constitutional question affecting the Legislative Council. He had available to him the fruits of long study and research on a delicate and important

²⁰ Sydney Morning Herald, 12 August 1927, p.12.

²¹ Sydney Morning Herald, 4 June 1927, p.16; 13 June 1927, p.11. For the general claim that Lang took virtually all credit for his government's successes, Nairn, pp.127-8.

Constitutional question, including Mr McTiernan's and my own. The party records and "Hansard" will bear that out. But Mr Lang, instead of recourse to argument or persuasion, employed his usual methods of crude bluster and intimidation against all concerned, threatening and insulting everyone from the King's representative downwards. More recently, the public will remember, his empty threat that he would get rid of the Governor "within a month," and thus abolish the Council. That was seven months ago. Mr Lang has done nothing. Mr Lang's characteristic suggestion that I was a party to the defeat of the bill is a malicious invention. If Mr Lang refers to his own organ, the "Labour Daily," he will be given the lie direct in this connection.

Secondly, Mr Lang cannot evade the issue in connection with the basic wage. I do not say he is responsible for any decision of the Industrial Commissioner (Why does he protest so much on this score?) But I do say that Mr Lang is responsible for the retrograde step of permanently penalising the basic wage worker who is married without children, or has only one child or whose children are growing up, or who is not married. Mr Lang cannot evade responsibility for thus violating one of the basic principles of Labour legislation.

Thirdly, Mr Lang cannot, by his habitual resorting to abuse and insult, escape condemnation for the main charges which I have levelled against him, and which are proved to demonstration - his continued defiance of the democratic system of majority rule in the party, and his contempt for all constituted authority therein; his alliance with the Communist element, which threatens to sap the vitality of Labour in New South Wales; his methods of trickery, evasion, and deceit; his neglect of much useful legislation while insisting on laws for the personal benefit of a small class, e.g., the Liquor Bill, passed under circumstances of such grave suspicion that even the Seale conference instructed him to repeal the Act; his setting up of a reign of terror, particularly hateful to Australians, by the systematic vilification of any one

and every one who differed in opinion from him or Mr Willis, and who dared to express such opinion; and his dictatorial selection of a subservient Cabinet.

I am certain that when the workers realise the true facts about Labour's "only Premier" there will be an enormous revulsion of feeling. When one contrasts his methods of self-glorification with those of Labour leaders like the late John Storey, who inspired both admiration and affection, one is satisfied that the ultimate outcome will be the cleansing of the Labour movement from much that is not only hurtful but corrupting, and the re-establishment of moral standards in public life.

Mr Lang is gravely mistaken if he thinks that he can intimidate me by threat or insult. When the proper time comes I shall again prove the truth of all I have said, and his cunning and trickery will avail him nothing with the fair-minded people of this State.²²

Evatt's outspoken, determined and fearless comments were those of an inexperienced politician, but one who astutely used public prominence to demonstrate leadership aspirations and one who expected a party shake-up in which the demise of Lang and the Seale faction would allow his selection to an important ministerial position. His comments particularly exhibited his willingness to exploit weaknesses and divisions for political gain. He conveniently overlooked the damage of the current turmoil, as if short-term cleansing would return the party and the labor movement to its former strength and purity. A typical lack of any long-term strategy foreshadowed his political style in 1954; Evatt was quite prepared to promote a major

²² Sydney Morning Herald, 16 June 1927, p.12.

party rending in both splits, and thereafter did little to pursue the issues that caused division.²³

A deep grievance, a profound morality nevertheless reinforced and vindicated his acceptance of destructive political action. He fought with the problem of unity as he characteristically condemned the undemocratic and unconstitutional action of Lang and the Seale faction, action which he described as subjecting the labor movement to a 'reign of terror':

The action of the Premier (Mr Lang) in dissolving his Ministry and agreeing to a general dissolution was the most retrograde step in the history of the struggle of self-government... Mr Willis, Mr Lang, and the Seale executive [had] no real intention of securing unity against the anti-Labour forces in New South Wales. The near future would determine whether open rebellion to constituted Labour authority was to be not only condoned, but actually rewarded, and whether intimidation would succeed.²⁴

In the midst of this uncompromising power struggle Evatt clung, rather naively, to his legalistic belief in the sanctity and authority of constitutionally ordered principle and administration.²⁵

The need for Evatt to win votes in his own constituency of Balmain now became his chief concern. He was willing initially to seek the endorsement of the new executive as an official Lang labor candidate. The

²³ He was not active in state politics after the 1927 election campaign. Nairn, p.163, considered it remarkable that the party was not decimated by the split.

²⁴ Sydney Morning Herald, 24 June 1927, p.11.

²⁵ Sydney Morning Herald, 28 June 1927, p.11. Young, p.76.

executive ordered a fresh selection ballot in Balmain because of accusations of voting irregularities in the previous election. That is, it contended that Evatt had or might have been falsely elected, although clearly the executive would not want to give Evatt automatic pre-selection to his seat. An inquiry was established. Evatt led easily on first preferences in the new selection vote but lost to the Seale faction candidate, H.Doran, after the distribution of other preferences. Stormy scenes resulted. Evatt claimed that the votes of miners, who were not ALP members, had invalidly been cast against him. His request to present his case to the executive was refused. Consequently he declared his intention to stand as an independent labor candidate. On 30 August four members of parliament, including Mutch and Evatt were expelled from the party for opposing endorsed ALP candidates. With the continued intransigence of the new Seale executive, a breakaway group that eventually numbered twenty-four was formed from the defeated elements of the Conroy faction. It was led by Mutch and was formalised as a labor split with the remainder following the example of the four initial parliamentary members who announced their intention to stand against Lang candidates in the forthcoming elections.

They stood as independent labor candidates against those of the now official 'Lang' labor.²⁶

Evatt campaigned fiercely - he continued his admonishment of Lang's despotic political management and sneered at the meaninglessness of party expulsion. He was particularly severe on the injustices of communist tactics, such as the executive's defiance of party rules, and was especially derisive of the unscrupulous and undemocratic ruthlessness of the quest by communists for power. He revealed the astute and determined ability of a small number of communists to gain control of the central organisation of a body in order to exercise power over a large majority.²⁷

Yet he was not entirely negative towards communism - he later showed an intellectual and moral appreciation of some, limited tenets of orthodox communism, mainly as a

²⁶ Sydney Morning Herald, 13 August 1927, p.16; 22 August 1927, p.11; 23 August 1927, p.12; 25 August 1927, p.12; 30 August 1927, p.12; 31 August 1927, p.16. Evatt initially prepared to accept the executive's endorsement, Sydney Morning Herald, 8 September 1927, p.12. Those initially expelled from the party, with Evatt, were Mutch, G.Cann and C.Murphy. For details of the breakaway group, which included seven former ministers, and of those who were undecided, see J.Lang, I remember, Katoomba, McNamara's books, 1980 (1956), pp.327-31. New South Wales was not alone in its troubles; the Queensland ALP was also at this time faced with a party split, Sydney Morning Herald, 12 September 1927, p.11.

²⁷ Sydney Morning Herald, 30 August 1927, p.12; 31 August 1927, p.16; 19 September 1927, p.12. The positive contributions of his campaign included the examination of issues such as health, housing and the preservation of the shipbuilding industry, Sydney Morning Herald, 7 October, p.14.

sincere and admirable foil to the excesses of capitalism.²⁸ Passages in subsequent speeches showed that he was sympathetic to the desire of communist writers to seek justice, especially economic justice, which was unattainable from the inequitable, unprincipled and oppressive manifestations of capitalism, particularly as practiced by many large financial and industrial corporations. He implied that he had thoughtfully read a breadth of communist and communist-related literature. He was however careful and very selective in his praise. For while he generally invited the communist censoriousness of capitalism, he cherished the liberal-democratic political system in which capitalism flourished. He aimed at a modified capitalism which would allow a more compassionate and just financial system, one which would correspond with the freedoms and broad intellectual and moral probity of the institutions of liberal-democratic society. In other words, he admired the incisive fault-finding by communist writers of capitalism, but did not approve of the dismantling, and certainly did not approve of the revolutionary dismantling, of capitalism.²⁹ In particular,

²⁸ Evatt judgment in R v Hush; ex parte Devanny, (1932) 48 CLR, pp.510-9.

²⁹ CPD, vol.165 (22 November 1940), pp.124-5. CPD, vol.177 (11 11 February 1944), pp.136-53. CPD, vol.178 (15 March 1944), pp.1343-1390. H.V.Evatt, Liberalism in Australia: an historical sketch of Australian politics down to the year 1915, Sydney, Law Book Co., 1918, pp.62-3. H.V.Evatt and T.R.Bavin, 'Price-fixing in Australia during the war', Journal of comparative legislation and international law,

he rejected the autocratic, unrepresentative and fanatical methods to which communist activists resorted. It was these methods which aroused Evatt's anger during the 1927 election campaign.

Evatt could be a stickler for rules. Labor regulations instituted order and just practices so as to protect members of the labor movement. He therefore was sharply critical of communist elements which in his electorate pursued unconstitutional and undemocratic methods to influence voters against returning him to office, in unashamed defiance of labor regulations. Evatt in a campaign speech fulminated:

In a few week's time the workers of this State will be completely satisfied that the great Australian labor movement is seriously menaced by a small but determined body of men lacking in moral or religious scruple, who are gradually filling many of the key positions in the A.L.P. It is no answer to contend, as has been plausibly done, that the actual number of open and avowed Communists is small. That is perfectly true, but beside the point. At the last State elections the Communist party had to fight in the open against Australian Labour candidates, and its nominees were overwhelmingly defeated, as witness my own electorate of Balmain, where I myself polled 60 votes to every one recorded for the Communist candidate.

Defeated in open contest these men resolved to seize control of the A.L.P. by

third series, vol.3, part 4 (1921), pp.202-12. chapter 15. Yet his understanding of economics was poor and rather simplistic, Grattan papers, Harry Ransom humanities research center, university of Texas at Austin, Grattan manuscript notebook on Dr H.V.Evatt, pp.35-8,52. Personal interview with Sir Leslie Melville, Sydney, 4 February, 1986.

the less honorable but more effective method of organisation from within. Already their success has surprised themselves, and demonstrated the truth of Lenin's saying, 'that a small minority, if sufficiently unscrupulous and persistent, can capture most political parties.

It is beside the point that A.L.P. candidates are not themselves members of the Communist party. The fact is that the present [communist influenced] executive will exercise the power of political life and death, and unless some obstacle is placed in its way the movement will be driven no small distance along Communist lines...

[Communists have] adopted the classic Communist tactics of intimidation, abuse, and insult at Labour league meetings, culminating in disgraceful scenes at the selection ballot. They are trying to force their nominee down the throats of league and union members, although outside the miners he polled only 50 votes against my 250. The miners themselves had no right whatever to vote, because they did not sign the pledge necessary under the A.L.P. rules, and as a fitting finale we now find that the Communist candidate at the last State elections, Mr Tom Payne, is a trusted organiser against me in the forthcoming contest. The situation may not be so clear in the other electorates, but the issue is perfectly plain in Balmain. It is this - whether the Labour movement is to remain Australian in spirit and ideals, or whether it is to be secretly controlled by a Communist minority who are out to degrade, disintegrate, and destroy the Labour movement of Australia.³⁰

There was doubtless a good deal of merit in Evatt's claims. He understandably presented arguments that were designed to enhance his popularity with voters, by claiming the exclusive possession in this campaign of

³⁰ Sydney Morning Herald, 7 September 1927, p.16.

reasonableness, moderation, patriotism and democratic principle and practice. The secrecy and questionable motives and tactics employed by communists compared poorly with Evatt's professed openness and honesty. He appealed to the devout for support, implying that irreligion as advocated by communism detracted from a suitability for office. He carried his moral indignation from the party split to his campaign. Yet characteristically he subdued principle if necessary in order to clear the way for personal advancement. His speech attracted spirited responses. Mr A.McPherson, vice-president of the New South Wales A.L.P., claimed of Evatt that:

Although he now endeavours to disown the A.L.P. executive, he was, nevertheless, now prepared to accept the executive's endorsement. Indeed, he implored the disputes committee of the A.L.P. to recommend the endorsement of [the communist backed] Mr H.Doran and himself. He even asked that an exchange of seats should be made between [the independent labor candidate] J.Quirk and himself, as he was particularly anxious to run against Mr Murphy.³¹

Mr S.Bird, secretary of the state A.L.P., also took issue with Evatt. He claimed that Evatt:

...should be the last person in this community to accuse members of the A.L.P. of 'lacking moral or religious scruple.' The A.L.P. executive intends to release to the public evidence of packing A.L.P. branches, and shown in the Balmain-Rozelle branch minute books, by Dr Evatt's henchmen. The executive has also evidence that Dr Evatt's supporters hawked the rule 18 roll book from

³¹ Sydney Morning Herald, 8 September 1927, p.12.

factory to factory in Balmain, in defiance of the rules of the A.L.P.

While Dr Evatt makes a great fuss with regard to the miners' vote, he did not complain when the first ballot was conducted by the Balmain miners' lodge. On that occasion - although the second ballot was conducted under precisely the same conditions - he made no protest whatever. Two members of the A.L.P. executive were deputed to test the bona fides of the A.W.U. votes received by Dr Evatt. In every instance the votes were fraudulently recorded. Voting slips were filled in for addresses where no residences existed. Dr Evatt received almost the entire A.W.U. vote.³²

Evatt's campaign in the 1927 state election revealed much about the degree and nature of his personal struggle during these years to forge a way to political power. Much of the criticism of Evatt was aimed not at Evatt personally but at those working for him or in his interests. It was possible but unlikely that he did not know of the conduct of those who represented him. Of his knowing transgressions he probably felt in unscrupulous political times, where he was not the initiator of violations of political conduct, that his occasional hypocrisy was justified. Similar and more outrageous practices were employed in New South Wales by labor and non-labor groups alike during an earlier period.³³

³² Ibid.

³³ C.Pearl, Wild men of Sydney, Melbourne, Cheshire-Lansdowne, 1965 (1958). For Evatt's later formal appreciation of the unethical conduct of labor politics in this state, see H.V.Evatt, Australian labour leader: the story of W.A.Holman and the labour movement, Sydney, Angus and Robertson, 1945 (1940).

Evatt quite comfortably defeated Doran at the election of 8 October. He was one of only two independent labor candidates to win office. The Lang government was soundly outvoted by the nationalist party which was led by a former Evatt law colleague, Thomas E. Bavin.³⁴

Despite the bitterness of this internal struggle, and the particular bitterness of Evatt's participation, he quickly dismissed any persisting feelings of rancour. He continued his struggles against the 'real enemy' of the labor movement, that is conservatism. During the late 1920s he was engaged in three legal defences of the contentious communist Jock Garden.³⁵ In 1930 he directed

³⁴ Sydney Morning Herald, 28 September 1927, p.18; 7 October 1927, p.14; 10 October 1927, p.11. For the final results, Sydney Morning Herald, 12 October 1927, p.17, Nairn, p.160.

³⁵ The first case, before Evatt sought reelection to the seat of Balmain, was reported in Sydney Morning Herald, 14 August 1927, p.15; 16 August 1927, p.11. The second case, Sydney Morning Herald, 19 June 1928, p.11; 28 August 1928, p.12; 18 September 1928, p.11; 19 September 1928, p.19; 21 September 1928, p.13. The third case, Sydney Morning Herald, 28 August 1929, pp.15-6; 29 August 1929, p.11; 3 September 1929, p.11. In the high court in 1932 he defended Lang's methods of raising money and his decision that his government not repay interest on international loans on previously specified terms; see New South Wales v Commonwealth (no.1), (1932) 46 CLR, p.155. Lang similarly was later to dismiss past animosity by expressing admiration for Evatt's legal work. Evatt was retained by Edward Theodore, the former premier and current federal treasurer, to contest a charge of dishonest exploitation of his state through the Mungana mining leases. However, Theodore was always aligned with moderate elements of the ALP and, like Evatt, had problems with communist and communist-influenced portions of the labor movement. Evatt was appointed to the high court before the matter was resolved. K.H.Kennedy, The Mungana affair: state mining and

his legal efforts to the abolition of the legislative council to promote the ultimate benefit of labor.³⁶ His dismissiveness of past political differences, and the assumption that others would adopt a similar attitude, again demonstrated his failure to align personal issues with a principled concept of longevity in political action or politics as a profession.

The second matter concerned Evatt's work in a parliamentary committee formed to enquire into allegations of the bribery of labor members of the legislative assembly. Evatt was concerned by these allegations, proposing to the assembly in September 1926 that a committee be established to investigate a Labor Daily article which made the allegations. This paper, controlled by Lang, persisted with these allegations in order to deflect criticism of Lang's controversial appointment of A.D.Kay, an independent MLA, to a well paid position on the Metropolitan meat industry board. This larger issue reflected Lang's deteriorating relations with caucus.³⁷

Evatt read from the article to the house allegations that the nationalist party had attempted to bribe labor parliamentarians so as to induce them to desert the ALP, thus allowing the overthrow of the labor government which

political corruption in the 1920s, St Lucia, University of Queensland Press, 1978, pp.141-2. Young, pp.70,76.

³⁶ See chapter 8.

³⁷ Nairn, pp.123-5.

enjoyed only a slender majority in the legislative assembly. He observed that the article implied that labor members were ready and willing to be bribed. So often wary of conspiracy, he noted the inference that a conspiracy was initiated by the nationalist party. The article did not mention names. He made no statement as to the truth or falsehood of the allegations, and honorably refused to reveal names known generally to be implicated, although he was protected by parliamentary privilege. He called for an investigation to dispose of the matter so that the house would be free to continue its ordinary work, its integrity thus preserved.³⁸

He favoured the convening of a parliamentary select committee over a royal commission because a royal commission was formed on the authority of an executive act, which was an instrument of the government. Because the matter ranged beyond the government, it was appropriately a matter for the entire legislative assembly:

It seems to me that not only is the government involved, but that all sections of this House are involved, and therefore this House itself, as the ultimate guardian of its honour and of the honour of its members, should proceed to elect a committee representative of the whole of the members of this House, so that the matter may be investigated. Further, although the proposed committee, whose names I have mentioned, may be objected to by some members of the House,

³⁸ NSWPD, vol.108 (28 September 1926), pp.79-81,90.

it certainly contains members of every section of the House.³⁹

Evatt's proposal was overwhelmingly approved and a select committee appointed with Evatt as chairman. The inquiry in its report, which was signed by Evatt, firstly considered the article. There was a close examination of the meaning of words, their context and their imputations. A distinction was made between the material evidence of the article and what may have been in the mind of the writer. It was found that the article did indeed claim bribery attempts and a willingness to be bribed. The report then turned to the sworn evidence to determine whether facts supported the allegations. The matter turned primarily on the assertions of one witness, P.H. Farley, that he was the central figure in making arrangements for the bribery of parliamentarians. All of those individuals denied involvement, which cast doubt over Farley's claims:

It is obvious therefore, that Farley, who on his own admissions is a conspirator, informer and agent provocateur, with the onus upon him of proving his charges beyond reasonable doubt, must be closely tested in respect of his record and general credibility. Fortunately the Committee was able to test him in certain ways.⁴⁰

Farley's was damned by his unscrupulous past, in which he was shown to be untrustworthy, unreliable and a liar.

³⁹ Ibid., p.81. He furthermore wished to protect the judiciary, for a member of the judiciary would be likely to be selected to preside over a royal commission. That person's findings may be criticised on political grounds.

⁴⁰ PP (NSW), Vol.4 1926, second session, pp.679-80.

Incriminating statements of others as to the bribery allegations were dismissed as based on rumour, and therefore without substance. The allegations were consequently held to be unfounded.⁴¹

There were always strong doubts of the truth of the allegations. Evatt's determination to clear the name of the house despite these doubts further emphasised his concern for parliamentary integrity. The report, which was tabled in parliament, was predictably not pursued.⁴²

The employment of unified parliamentary action to advance the work of politics always appealed to Evatt. He thought better of politics when it was free of pettiness, stridency and unproductive opposition. He thought parliament to be a splendid institution that worked in the interests of the people it served. The executive and legislature were privileged in their duty to sustain and to reform society. It gave hope to all, particularly to the disadvantaged or less affluent. This progressive mood, and action, pervaded the first two years of Lang's first administration, in 1925-26, and must have given Evatt the warm satisfaction that some hope was fulfilled.⁴³

⁴¹ Ibid., pp.681-5. For the proceedings and evidence of the inquiry, pp.686-798.

⁴² NSWPD, vol.109 (18 January 1927), p.433.

⁴³ H.Radi and P.Spearitt (eds), Jack Lang, Sydney, Hale and Iremonger, 1977, pp.69-98. This administration's legislative programme was 'at most, moderately reformist', p.87.

His party political activity was based on the belief that parliament was capable of meeting, at least partially, its potential as a representative, concerned and reformative body. In this sense he distinguished the mundane and internecine from the exalted and idealistic in politics - and party politics was often sharply separated from statesmanship. Party politics, which often inspired disdain in him, was used for manoeuvring and intriguing to achieve personal and party gain and to win office. It could be acrimonious and duplicitous, but was a necessary evil. Statesmanship was the ultimate aim, promoting the true purpose of politics which was to apply principle so as to facilitate societal change. However, it could be practiced only with the power that was acquired from office, through adherence to the demands of the political party system.

He however was ambivalent towards parties. He opposed that portion of party action which was unseeing, inflexible and unswervingly committed to little but the party line. Such selfish partisanship used party politics narrowly, in a highly limited and perverse fashion, as an end in itself (although Evatt himself engaged in relentless party intrigue in order to maintain leverage.) Yet he appreciated and approved of the organisation of politics into parties as positive structures of reform through which political thought might blossom; they were the practical means in democracies by which to achieve productive political

action. In other words, parties congregated like-minded politicians into convenient groupings which acted as the machinery of politics and which facilitated the implementation of policy, of principle or of ideals. The problem, which Evatt regarded as so damaging and wasteful, was when party political action intruded and at times overwhelmed the purpose and duty of elected politicians to apply its platform creatively in the national interest. Thus the New South Wales ALP was forced in 1927 to turn eventually to self-preservation, after the long unproductive period of internal turmoil, so as to remain a forceful and cohesive party (although the party may in the long term have benefited from that turmoil). Conversely, Evatt drew the legislative assembly together in united action to rid the house of the damaging taint of corruption, a symbol of the positive period of 1925-6, which contrasted so sharply with 1927.

His admiration for party politics was therefore qualified and rather distant. Parties fulfilled the essential theoretical requirement in liberal-democratic societies of open, formal political diversity. Because part of his character embraced tolerant and thoughtful libertarianism, he advocated the need and obligation of a multi-party political system to provide the best available means to respond to the changing, multifarious political aspirations of society. In practice another, larger region

of his character dominated; the partisan, the autocrat and the critic of conservatism found the occupation by party politics, which dominated so much of political activity, to be a wasteful frustration, particularly in its divisiveness and confrontation. Certainly it appeared to detract from the nurturing of statesmanship. If Evatt was a largely successful statesman during labor's halcyon years of the 1940s, he was a largely unsuccessful party politician during labor's benighted years of the 1950s. Although he was outmanoeuvred by tactically superior radical forces in 1927, he showed himself to be a skilful organiser and intriguer in 1927, being one of only two labor independents to win their seat in the 1927 election.

A central point of Evatt's political activity was that he at times regarded issues to be of such importance that the normal 'give and take' of party political life was unacceptable; essential political rights had to be observed in the defences of the right of the communist party of Australia to exist; the New South Wales legislative council had to be abolished by constitutional means; a stand had to be taken in 1927 against the intrusion of unscrupulous communists and communist sympathisers. His intellectual and moral integrity dictated that the threshold of tolerance in political activity could not be reduced where basic constitutional and political imperatives were threatened. He, like most other politicians, appreciated and practised

the necessity and desirability of expediency. The problem was the extent to which this undermined or compromised fundamental, generally-held political concepts that expressed a belief in the maintenance of society's structures and institutions. That belief broadly embraced provision for the accommodation within society of a range of ideological sympathies, a desire to represent a preferred portion of the community and an appreciation that national unity and interest were preferred in order to realise the potential for reform.

Where and to what extent did Evatt subordinate ideals to expediency? He differed from other politicians by the intensity and uniqueness of his internal demands, and with a consequent extreme personalising of his political life. The urgent requirements of ambition, particularly as a means to exercise power, were tied to the need to win popular approval in the satisfaction of ambition. His thrusting ambition was offset by the steadying moral entreaties of adherence to the defence of justice, liberty, and freedom from oppression through the advocacy of the rule of law, particularly of constitutional law. The intrusion of unregulated, selfish and at times harmful ambition on principle was contingent upon the closeness of Evatt to reaching important goals, such as the prime ministership. The thwarting of ambition, especially where the realisation of ambition was expected, was likely to

produce in him the least principled action, as illustrated by his behaviour during 1954-5. Absolute derogation from principle was rare, although erosion of principle occurred from time to time. The solid foundation of fundamental ideals which he regarded as crucial to himself and the community nearly always gave him sound guidance. Occasionally he was strongly influenced by the altruism of selfless, intractable conviction, where conscience and principle alone enlightened action. The magnitude of the internal tension existed between ambition and principle, which was accentuated by vast energy, egotism and personality and was fed by exaggerated psychological demands, amplified the problem of integrity. It was a problem of which he was well aware and of which he was anxious to meet with honour and justice. The times when he lost mastery of this internal tension should be weighed against the many times that he was able to reconcile that tension through principled action. The political life of Evatt was a sharply-defined, enlarged study of the dilemma of an individual's struggle in politics and law to knit the cleavage between power and integrity.

CHAPTER TWELVE
TIGHTROPE WALKER:
LIBERTY IN WAR AND ITS AFTERMATH

Evatt was confronted with a difficult and intensely personal struggle during and after the second world war; he felt obliged to reconcile the preservation of liberty with personal autocratic proclivities in an inherently autocratic environment of highly regulated wartime life. As a senior agent of the state who possessed a strong desire to exercise authority, he directly experienced the full character of power through his keen mindfulness of its internally oppressive potential.

The manner in which Evatt formed a model of liberal conduct and ideals is explored in this chapter, particularly his dealings as a senior wartime politician with the activities of the Australia first movement, his responses to wartime radio and press censorship and his promotion of the three safeguards which were appended to the 1944 referendum proposals. With skill and sincerity he struck a workable and plausible balance between the preservation of national military, security and societal interests and the unimpairment of fundamental liberties.

The Australia First Movement was an organisation which developed from the pro-German, anti-Semitic and Australian nationalist writings of W.J.Miles and P.R.Stephensen. These writings, of the pre-war and wartime periods were disseminated through their journal, the Publicist, which existed from 1936 to March 1942.¹ Miles, who in particular gave warm support to national socialism and Hitler's views and leadership, was its editor and owner.² Stephensen was a paid employee whose special interests were broad extreme right wing views which embraced anti-Semitism and Australian nationalism.³ Miles died in January 1942, the cessation of his work and financial support leaving in doubt the continued operation of the Publicist.⁴

Born in November 1901, Stephensen had a history of attention-seeking, political agitation and non-conformism. He was self-important, viewing himself as an intellectual and 'man of letters'. He went to school in Queensland but his Rhodes scholarship gave him an Oxford education, although he spent a good deal of time pursuing publishing and journalistic interests. He was a member of the

¹ B.Muirden, The puzzled patriots: the story of the Australia first movement, Carlton, Melbourne University Press, 1968, for example, pp.29-48,64. Before the war there were also pro-Japanese sympathies, p.37.

² Ibid., p.29.

³ Ibid., pp.29-30,56.58,70,150-51,178. Stephenson later claimed to be the journal's editor and part-proprietor, P.R.Stephensen, 'How Dr Evatt put me in gaol', Observer (Sydney), vol.2, no.17 (22 August 1959), pp.515-7.

⁴ Muirden, p.64.

Australian then British communist party from 1921 to 1926. He returned to Australia in 1932 after eight years in Great Britain. He moved to Sydney where he was engaged in occasional journalism and a continued succession of publishing enterprises, all of which were unsuccessful.⁵

Stephensen had advocated the establishment of an 'Australia first' party through the pages of this journal since December 1938 although the Australia First Movement was not formally established until 15 October 1941 with the convening of the first meeting, an informal gathering at a private location.⁶ The Movement was an amalgamation of followers of the Publicist and a women's guild group which as a political association was named the people's guild and was led by Adela Walsh (nee Pankhurst). Like Stephensen, Mrs Walsh was a former communist.⁷ The fledgling Australia First Movement issued a rather innocuous ten point manifesto (with subsequently added points) which espoused the promotion of Australian nationalism, particularly through the successful prosecution of the war.⁸ There was nothing seditious in the aims of the Movement. Rather, it

⁵ C.Munro, Wild man of letters: the story of P.R.Stephensen, Carlton, Melbourne University Press, 1984, pp.1-169. Muirden, pp.15-28.

⁶ Muirden, p.43,61.

⁷ Muirden, p.61. Munro, p.210. A.Summers, 'The unwritten history of Adela Pankhurst Walsh', in E.Windschuttle (ed), Women, class and history: feminist perspectives on Australia, 1788-1978, Melbourne, Fontana/Collins, 1980, pp.388-402.

⁸ Muirden, pp.61-2. Munro, pp.201-2

was the listed fifty points of the Publicist that were menacing, containing national socialist and anti-Semitic provisions.⁹ The link between the followers of the Publicist and the journal's writings and programme was later to be used by opponents of the Australia First Movement.

The first public meeting of the Movement was on 5 November 1941 and was followed by six later meetings in late 1941 and early 1942, so that its members met for a total of eight times. The public meetings were marked by dissent from opponents who resented the Movement's right wing views and who doubted its commitment to the war effort. Meetings became rowdy through numerous interjections. The daily Sydney press covered the meetings.¹⁰ Adela Walsh, embarrassed the Movement by her support for Japan and either resigned or, more likely, was expelled from the movement.¹¹ Another Member, L.K.Cahill, who had acted as an organiser left in December 1941.¹² A person with sympathetic views to the Movement, J.T.Kirtley, was asked to join but declined due to pressure from other commitments.¹³ With the absence of Mrs Walsh, opposition became concentrated on Stephensen, who was regarded as a

⁹ Muirden, p.62. Munro, pp.,209,211.

¹⁰ Muirden, pp.62-5.

¹¹ Ibid., p.65.

¹² Ibid., p.170.

¹³ Ibid. Similarly, Miles never joined, p.170.

German sympathiser, with other speakers being received, in comparison to Stephensen, in general silence.¹⁴

The Movement last met on 19 February 1942. Organised opposition attended in force and, after a quiet opening became raucous when Stephensen commenced his speech. The meeting descended into a brawl although it concluded peacefully after the belated restoration of order. A further meeting was arranged for 5 March but was cancelled after the New South Wales police commissioner, J.W.MacKay, forcefully urged its cancellation to Stephensen. Stephensen intended to recommence meetings after the end of the war. MacKay admitted to Stephensen that his instructions came from Evatt.¹⁵ Strictly speaking, the Minister for the army, Frank Forde, was responsible through army intelligence for security matters such as that raised by the Movement's activities. Evatt, as attorney-general and custodian of the nation's civil order, clearly perceived the matter at this stage as at least partially within his ministerial jurisdiction.

A separate rather loose Western Australian grouping of four people held views similar to that of the Movement. They had no official links to the Movement although some members had read the Publicist; a fifth person, Mrs E.L.O'Loughlin, had written to Miles. Word of the

¹⁴ Ibid., pp.63-8.

¹⁵ Ibid., pp.66-9.

movement's activities filtered through to Western Australia by January 1942. Of this group, only one seemed to be potentially troublesome to the authorities. L.F.Bullock boasted indiscreetly of his right wing views, for example by advising appeasement of the Japanese. Colonel H.D.Moseley, the staff officer in charge of army intelligence in western command, decided that investigation was warranted. He gave the matter to detective-sergeant G.R.Richards who instructed F.J.Thomas, as an agent provocateur, to infiltrate this group.¹⁶ A writer of the Movement remarked of Richards that:

Had this man been a purely passive investigator nothing further may have been heard of the matter, although Bullock's talk of peace with Japan would perhaps merely have brought restrictions on his activities...¹⁷

From 10 March alleged members of the Australia First Movement were arrested. The arrests were authorised under regulation 26 of the national security regulations.¹⁸ The order came from Forde who argued that he acted correctly on the recommendations of army intelligence. Evatt, whose 1942 overseas mission had been planned for some time, left Australia just before the first arrests.¹⁹ Jack Beasley,

¹⁶ Ibid., pp.77-81.

¹⁷ Ibid., p.81.

¹⁸ Ibid., pp.94-114. Sawyer, p.150. Most arrests occurred from 10-20 March, and were not completed until 7 May. There were sixteen arrests in New South Wales, two in Victoria and four in Western Australia. See Muirden, pp.102-4 for the wide power of regulation 26.

¹⁹ CPD, vol.177 (30/31 March 1944), 2457. Muirden, p.100.

the minister for supply and development, was acting attorney general in Evatt's absence and claimed no knowledge of the Australia first movement.²⁰ Evatt's communication to Mackay indicated the nature of Evatt's early background work in the matter although the full extent of his involvement is not and possibly never will be known.²¹ However, it can be noted that Evatt had enjoyed close relations with Australia's security organisations and was friendly with Brigadier W.B.Simpson, the director general of security.²²

Although army intelligence probably did not have a comprehensive knowledge of the activities of these two groups, there were still long-standing doubts about the gravity of the threat posed by them to Australia's security.²³ Bullock appeared to advocate treason, and Stephensen's leadership, organisation and views seemed, at least at first sight, to be suspect. The civil disruption caused by the movement's meetings could be interpreted as causing or likely to cause unwanted turmoil and damage to wartime morale, although there was no specific infringement

²⁰ Stephensen, p.517.

²¹ Muirden, p.180.

²² Muirden, pp.95,133, for Simpson's appointment and his defence of Evatt as not being responsible for the internments. Also Muirden, pp.107,174. Evatt's praise of Simpson, CPD, vol.179 (19 July 1944), p.226, practiced at Sydney bar and held in high esteem by Evatt. G.Sawer, Australian federal politics and law, 1901-1929, Carlton, Melbourne University Press, 1956, pp.150,202, for Evatt's close interest in security.

²³ Sawer p.150.

of the law. All four of the Western Australian group were charged and tried, two of whom were convicted and interned. All sixteen from the New South Wales group, and Cahill, were interned but unlike the Western Australian group were at no stage charged or tried. Tribunals heard appeals against internment. Nine refused to appeal, seeking public trials instead; five of these internees were nevertheless released under restrictions. Seven appealed, five of whom were released immediately and unconditionally.²⁴

Evatt did not return until 21 June and very soon afterwards turned his attention to the arrests.²⁵ He addressed parliament on the matter on 2 September 1942. He read extracts of correspondence between alleged members of the Movement which appeared to establish a reasonable security concern.²⁶ For example, hope had been expressed of the success of the current Japanese thrust into the south Pacific, and preparations were urged to welcome the Japanese occupying forces. However, it was unclear how far effective practical assistance could be rendered by the Movement to the enemy.²⁷

²⁴ Ibid.

²⁵ Evatt claimed that the matter only came to his jurisdiction as attorney general after his return to Australia, CPD, vol.172 (2 September 1942), p.49.

²⁶ CPD, vol.172 (10 September 1942), pp.156-7; vol.177 (30/31 March 1944), p.2458. Also the view of Sawyer, p.150.

²⁷ CPD, vol.172 (10 September 1942), pp.156-7. Muirden, pp.80,83-5.

Evatt defended the mechanism of the tribunals and the regulations which gave authority to that mechanism. The appeal procedure was appropriate for internees who believed that an injustice had been committed - he blamed Stephensen (without naming him) for refusing to take advantage of his right to appeal, implicitly criticising the other eight who also refused this avenue. Stephensen had support for his view that he deserved a public trial. There were two inferences in the repudiation of a hearing before an appeal tribunal: firstly that members wanted to publicise, or to 'expose', governmental repression; secondly, that through an aversion to the tribunal's secrecy, there was the expectation that a fairer hearing would result through the openness and procedural orthodoxy of standard judicial practice.²⁸ Stephensen was represented by the leftist lawyer and federal labor politician, Maurice Blackburn who, like Evatt, was concerned with the protection of civil liberties.²⁹ Blackburn criticised Evatt's refusal to have the matter heard before a proper court while two other party colleagues, Arthur Calwell and Max Falstein,

²⁸ CPD, vol.172 (2 September 1942), pp.50-51.

²⁹ CPD, vol.172 (2 September 1942), p.50. Blackburn overrode ideology to accept the defence of this 'man of letters'. Blackburn was a member of the Victorian branch of the council of civil liberties who died on 31 March 1944 during Stephensen's internment.

persistently argued that Evatt should have done more to secure releases of Movement internees.³⁰

Evatt corrected an aspect of the procedure of the appeal tribunal by later ensuring that internees were aware of the essence of charges laid against them.³¹ The appeal tribunals remained the only further judicial avenue available to Movement internees. Stephensen and another detainee, Keith Bath, nurtured an intense hatred of Evatt. Bath wrote a pamphlet, 'Injustice within the law', a parody of Evatt's own publication of the same name on the Tolpuddle martyrs. Bath contended that Evatt intentionally delayed parliamentary debate on his case in order to invoke the 1623 Statute of limitations, a technicality which denied redress to Bath because a period of four years had elapsed from his arrest to an impending high court hearing.³² Stephensen was interned for three years, five months and one week, the longest period of any of the detainees;³³ he referred to Evatt as 'dirty Bertie', and

³⁰ CPD, vol.169 (25 November 1941), p.816; vol.172 (2 September 1942), pp.49-50. John McEwen also queried Evatt's actions, CPD, vol.177 (30/31 March 1944), p.2459. Muirden, pp.108,132,135. Munro, pp.226-8. W.M.Hughes was also a vocal critic.

³¹ Muirden, p.171.

³² K.Bath, Injustice within the law (with no apologies to H.V.Evatt), Chippendale, Stafford Printery, 1948. Commonwealth defence changed from lawful arrest and detention to expiry of statute of limitations. Bath refused to sign a quittance in exchange for compensation of 500. Bath then offered £1000 to forget the matter, Muirden, p.172. Bath called for a royal commission, Sydney Morning Herald, 4 May 1944, p.4.

³³ Muirden, p.166; Stephensen, p.517.

wrote a bitter denunciation of Evatt entitled 'How Dr Evatt put me in gaol'.³⁴

There was however a political option available to Evatt because the cases of internees were open to constant review. He was dependent on recommendations of releases given to him. He always viewed those recommendations in an equal or more liberal light than advised. On his return to Australia in June 1942 he immediately formed a committee to investigate all cases under Mr Justice Clyne. He authorised the unconditional release, and often the immediate release, of Movement internees, as well as the release under restrictions of those who were well behaved and loyal to Australia.³⁵

Evatt was concerned to protect the reputations of internees, refusing to mention names in parliament and opposing publicity to internees who would clearly not have wanted the dissemination of the facts of their internment.

³⁴ Muirden, p.129. Stephensen, 'How Dr.Evatt put me in gaol', pp.515-7.

³⁵ CPD, vol. vol.177 (30/31 March 1944), p.2457-9; vol.179 (19 July 1944), pp.225,227. For a discussion of the inquiry, particularly of Clyne's mistakes and the wide terms under which subversion were held to apply, see Muirden pp.140-66. Sawyer, p.178. Stephensen attacked the commission as not being a royal commission, and so not subject to the rules of evidence. Thus he criticised Evatt for falsely referring to the inquiry as a royal commission and alleged that Evatt intentionally delayed by months the work on the commission by giving Clyne another investigative task, concerning telephone tapping. Additionally, he admonished Evatt for making a press statement, without privilege, which 'seriously prejudiced' the inquiry, Stephensen, 'How Dr Evatt put me in gaol', pp.516-7.

He prided himself on the reduction of the total number of internees from 6,174 when he took office to 1,180 when he addressed parliament on 19 July 1944.³⁶

He seemed more disturbed by alleged hardcore offenders of the Australia First Movement; his reluctance to act leniently towards the worst offenders was countered by his genuine sympathy for the periphery, some of whom he accepted had been unfairly treated.³⁷ He regretted that mistakes had been made but claimed that this was inevitable - they were honest mistakes committed by officers who acted precipitately or without a full appreciation of the facts.³⁸ Indeed, mistakes were made, and despite Evatt's defence, he took extraordinary liberties to assert the existence of a security threat. Three particularly troublesome individuals, Stephensen, Kirtley and Cahill, were noted yet Evatt seemed not to realise or be concerned by the fact that Kirtley was never a member of the Movement and that Cahill was a lapsed member. Kirtley's letters, extracts of which were read to parliament by Evatt in 1944 and again in 1946, were cited as examples of Movement activity. Extracts of Cahill's letters were similarly cited. Not only was Cahill not a movement member at the

³⁶ CPD, vol.177 (30/31 March 1944), pp.2458,2460-1; vol.179 (19 July 1944), p.227. These figures of course also represented the diminishment of the security and military threat to Australia.

³⁷ CPD, vol.177 (30/31 March 1944), p.2467-8; vol.179 (19 July 1944), p.227.

³⁸ CPD, vol.177 (30/31 March 1944), p.2461.

time of the arrests, but some of his allegedly incriminating letters were written during the first world war.³⁹

He could have used his authority inside and outside of parliament to speak in the defence of the remaining internees, and could presumably have taken action to institute orthodox court proceedings to hear appeals. He chose to deny this special protection, believing that the appropriate tribunals derived legitimate authority from the wartime national security regulations. Evatt regarded national security as supreme. He emphasised the dire military crisis facing Australia in March 1942 when the arrests occurred. He felt that in the current, special circumstances, liberty had to be subordinated to security. He advocated the application of two principles; firstly that liberty be respected within the ambit of the national security regulations and secondly that the war effort take priority over individual liberty.⁴⁰ Moreover:

...history will record that I acted in the best interests of the country and in defence of civil liberties.⁴¹

Evatt's parliamentary defences, although not entirely convincing and at times misleading, were generally

³⁹ Muirden, pp.132,170. Stephensen, p.517.

⁴⁰ CPD, vol.172 (21 September 1942), p.50. CPD, vol.178 (30/31 March 1944), pp.2457-61. CPD, vol.179 (19 July 1944), pp.226-7.

⁴¹ CPD, vol.179 (19 July 1944), p.226.

plausible, and occasionally reasonable.⁴² His conduct was understandable and moderate given his tendency in governmental administration to apply power oppressively, but it is likely that questions about his failure to act more positively on behalf of the internees will persist.⁴³

Stephensen surely aroused Evatt's extreme sensitivity to criticism and protectiveness of his reputation, and of the reputations of those whom he admired and regarded as friends by his writings in the Publicist. Stephensen had earlier known Evatt well, but was unconcerned about whom he might offend.⁴⁴ Stephensen made numerous enemies by his florid, trenchant and specious attacks on prominent leftist and liberal leaders in Australian society and the international community.⁴⁵ Evatt was close to Bishop Burgmann of the diocese of Canberra. Burgmann was a strong-minded left-leaning liberal who was often politically outspoken on civil liberties issues. Dalziel met Evatt through Burgmann.⁴⁶ Evatt was friendly with the American

⁴² Dalziel believed Evatt to have remained unhappy about the affair, but observed Mr Justice Clyde's defence of Evatt, A. Dalziel, Evatt the enigma, Melbourne, Lansdowne Press, 1967, p.27. Evatt defended by members of parliament, CPD, vol.179 (19 July 1944), p.226.

⁴³ D. Watson, Brian Fitzpatrick: a radical life, Sydney, Hale and Iremonger, 1979, p.130.

⁴⁴ Grattan papers, Harry Ransom humanities research center, university of Texas at Austin, Grattan manuscript notebook on Dr H.V. Evatt, p.55. Munro, pp.205-5,209-10, correspondence August 1940 and December 1941, but only Stephensen to Evatt.

⁴⁵ Muirden, p.34.

⁴⁶ Interview M. Pratt with M.A. Evatt, 30 April 1973, ANL, TRC, 121/41.

liberal historian, Hartley Grattan, whom Evatt met during Grattan's first trip to Australia in 1939. The two remained in regular contact until 1960.⁴⁷ An old family friend and liberal conservative was the academic Garnet Vere Portus.⁴⁸ Stephensen bitterly attacked these three prominent figures in the pages of the Publicist, as much for their political and societal assumptions as for their views.⁴⁹ Although Evatt would have scoffed at the publication, he would have resented these base attacks on friends.

In 1940, just before he left the bench, Evatt published a sympathetic political biography of the former New South Wales labor premier W.A.Holman which was reviewed by Stephensen.⁵⁰ Evatt could only have been delighted to mark his resignation with the publication of an important study, which set Holman's career against labor history.⁵¹ Just as he sought to assist the nation in a time of dire need, he supported the labor movement by this recent writing. Stephensen was pleased that such a work had been produced for it filled a gap in Australian political history. It was well researched and well organised; Holman

47 Grattan papers, Grattan manuscript notebook on Dr H.V.Evatt, pp.20,28-30,43-4,62-4.

48 Personal interview with Prof. L.F.Crisp, Canberra, 24 October, 1984.

49 Muirden, pp.34-6.

50 P.R.Stephensen, 'Evatt on Holman: the permutations of an Australian labour leader', Publicist, no.52 (1 October 1940), p.3-7.

51 Ibid., p.3.

was 'fortunate indeed in his biographer', for Evatt's was a 'superb biographical achievement'.

Evatt had known Holman quite well - it will be recalled that in 1915 he was an assistant secretary to Holman - and admired his youthful radicalism and the progressiveness of his first administration of 1913-6. That political activity ceased with his swing to conservatism, which was marked by his expulsion from the ALP over his support for conscription and the formation of a nationalist party and ministry which enabled him to hold government until 1920.⁵² Evatt's sympathy for Holman was striking given Evatt's hardened detestation of conservatism. He concluded that Holman was unaware of the true voluntary enlistment figures preceding the conscription referendums. He implied that because those figures were higher than Holman realised, he would probably not have continued his support for conscription. Evatt nevertheless regretted as a 'tragedy' the loss to labor of the leadership of Holman as well as the discord of internal division and the telling pressure of conservative influence of radical ideas.⁵³

⁵² H.V.Evatt, Australian labour leader: the story of W.A.Holman and the labour movement, Sydney, Angus and Robertson, pp.412-36,484-94. Australians: a historical dictionary, p.193.

⁵³ H.V.Evatt, Australian labour leader, pp.2-3,444-6. Evatt's qualified but warm regard for Holman and Hughes, who also left the party because of his support for conscription, revealed his attraction to certain political figures, especially leaders, rather than to parties and the machinery of party politics which here were subverted by individuals. It also demonstrated his regard for those who

Although Stephensen welcomed Evatt's publication, he was predominantly derogatory of Evatt, his book and his new professional direction. He noted that Evatt's resignation from the high court was not primarily altruistic; he observed that perhaps Evatt, like Holman, was attracted to politics for the promise of 'power, prestige, acclaim, rhetoric, spell-binding: in a word, vanity...'.⁵⁴ Stephensen emphasised the ignominious history of labor, especially in New South Wales, tainted as it had been by widespread corruption and graft. He was glad that Evatt hoped to improve labor politics but was pessimistic.⁵⁵

The reviewer compared Evatt with the former labor radical V.G.Childe; he contended that Childe had correctly spurned labor politics and that Evatt's publication was intellectually outstripped by Childe's work on the labor movement, How labour governs: a study of workers' representation in Australia.⁵⁶ The detached intellectual

acted 'courageously' by retaining their beliefs to the end - they renounced party welfare in order to maintain the 'purity' of personal conviction. Both factors help to explain his distance from party activity and resistance to remorse at the fate of the ALP in the two party splits with which he was closely involved, Evatt's admiration for Hughes, personal interview with L.F.Fitzhardinge, Canberra, 11 December 1985.

⁵⁴ Stephensen, 'Evatt on Holman', p.5. In addition to these elements, Evatt might enjoy in politics freedom from the stifling atmosphere of the judiciary, the right to criticise and be criticise and the freedom of self-expression; *ibid.*, p.3.

⁵⁵ *Ibid.*, pp.4-5.

⁵⁶ V.G.Childe, How labour governs: a study of workers' representation in Australia, London, Melbourne University Press, 1964 (1932).

integrity of Childe was contrasted with Evatt's admiring closeness to his subject, while Evatt's enforced discussions of the lapse in integrity of labor members was an implied self-admission of labor's failure.⁵⁷ Stephensen inferred that Evatt's biography was a plodding, second rate although adequate study. Evatt skilfully organised his facts, the value of this work being 'in the conscientious collection, arrangement and documentation of the facts' rather than their interpretation.⁵⁸ The work failed as 'biographical drama', and was thus ultimately unsatisfying:⁵⁹

There is material in Holman's life for a novel of pathos with a grand sweep. A masterly chronicler, using story-telling technique, and concentrating on psychological elements, could wring the withers of his readers in sympathy with the frustrations which Holman suffered by the collapse of his original Socialist ideals in the harsh light of actual governmental responsibility.⁶⁰

Stephensen, ever the nationalist, derided the intellectual poverty of labor thought, the movement to which Evatt was now to return; it contained an unimaginative pastiche of the ideas of English leftists and social democrats and Europeans socialists.⁶¹ The key labor leaders Lane, Hughes and Holman were English, and all of them left the

⁵⁷ Stephensen, 'Evatt on Holman', p.4.

⁵⁸ Ibid., p.5.

⁵⁹ Ibid., p.7.

⁶⁰ Ibid., p.6.

⁶¹ Ibid., p.5.

Australian labor movement.⁶² Stephensen wrote of Evatt in sad, derisive and belittling terms.

Evatt was friendly with Childe in their university days, being contemporaries at St Andrew's college. They kept in touch despite their busy lives and despite Childe's itinerant existence compelled by the pursuit of his interests in classical studies, especially archeology. Evatt, in spite of his liberal radicalism (however much that may have been compromised), stayed within ordinary institutional structures, through the law and party politics. Childe spurned them. Evatt and Childe argued intensely and at length at St Andrew's college on the future of Australia and of the ability of labor to implement much needed reform. Evatt retained his belief in Australia's future and of course worked within the labor political system. Childe rejected labor politics and many other aspects of Australian life, producing How labour governs from his declamation.⁶³ While Evatt admired the university of Sydney and continued to hold positions in its teaching and administration Childe, more truly the radical, was dismissed as vice-principal at St Andrew's in 1916 for speaking in favour of peace in 'The Domain' park in Sydney.

⁶² Ibid., pp.5-6.

⁶³ St Andrew's college magazine, no.16 (November 1918), p.12. Pratt with M.A.Evatt, 26 April 1973. EP, file 'Childe, Prof. G.'.

Childe continued to teach, moving to Queensland where he encountered one Latin student, P.R. Stephensen.⁶⁴

Stephensen's review of the biography of Holman must have brought Evatt back sharply to his heated university discussions with Childe, for this attack and those which assailed colleagues surely endured as wounds to Evatt's pride as he contemplated the Australia First Movement. If Evatt personalised his hatred of the right in figures such as Menzies, Bruce and Santamaria, Stephensen would also have figured prominently in that company.

The Australia First Movement was indiscreet and provocative with the war at an extremely delicate stage. Evatt correctly pointed to the extreme concern for the community's security; Darwin received its most intensive bombing on 19 February 1942, the day of the final meeting of the Movement,⁶⁵ while during the early months of this year government politicians and senior bureaucrats were extremely anxious, to the point of being alarmist. Evatt's handling of the detainees' predicament was understandable if seen as his reluctance to chance the Movement threatening, or becoming more dangerous to, national security. There was also a generally unsavoury extreme right wing intent to the Movement's meetings, especially from Stephensen, and to the Movement's organ, the

⁶⁴ Stephensen, 'Evatt on Holman', p.4.

⁶⁵ Muirden, p.66. Munro, p.226.

Publicist. In many respects Evatt acted with restraint by ordinary standards and with exceptional restraint given his character, even if his conduct fell short of that which might be expected of a strict civil liberterian. Evatt may be compared with Brian Fitzpatrick, who exemplified the vigilant defender of civil liberties through his position as the general secretary of the Victorian branch of the Australian council for civil liberties. Fitzpatrick, who regularly used a line of communication to Evatt to voice his concern about violations against liberty, did not comment to the attorney general about the detainees.⁶⁶ Fitzpatrick's dislike of anti-Semitism indicated the improbability of sympathy from him for the anti-Semitic policy of the Publicist or of the Movement's close links to this journal.⁶⁷

⁶⁶ Brian Fitzpatrick papers, ANL, MSS 4965/1; voluminous correspondence between them, but mainly Fitzpatrick to Evatt. Watson, pp.130-1. Stephensen criticised the Australian council for civil liberties for failing to act in the defence of the Movement's detainees. Fitzpatrick was evasive in discussing his wartime dealings with Evatt but remarked that the council was never asked for support. Stephensen and Fitzpatrick continued to present their cases, B.Fitzpatrick, 'The internment of P.R.Stephensen' Observer, (Sydney), vol.2, no.18 (5 September 1959), pp.552-3. P.R.Stephensen to editor, Observer (Sydney), vol.2, no.19 (19 September 1959), p.603. B.Fitzpatrick to editor, Observer (Sydney), vol.2, no.20 (3 October 1959), p.635.

⁶⁷ Fitzpatrick papers, ANL, MSS 4965/1/14016, D.K.Rogers to B.Fitzpatrick, 11 January 1942. Muirden notes that only four of the Movement's members were expressly anti-Semitic, p.154.

A second matter which concerned the problem of liberty in wartime was Evatt's relations with the Australian broadcasting commission (ABC) and the wartime press. He typically used the media for self-publicity, during and after the war, as an often transparent but also a skilled manipulator.⁶⁸ He extended the time of ABC news sessions to allow further coverage of his views and, when the British prime minister Harold McMillan visited Australia in 1958, he criticised the ABC for failing at a dinner to direct the cameras at him - Evatt was distressed by the greater visual attention given to Menzies.⁶⁹ The personal role of the importance to Evatt of publicity to reputation and 'grandiosity' should be remembered.

He strongly censured the 'oppressive' policy of the wartime Menzies-Fadden government, whose extensive media censorship offended his views of the right of free and open public expression, particularly the right of legitimate criticism:

...censorship has been employed by Government servants in a way that prevents fair and constructive criticism of the war

⁶⁸ M.F.Dixon, Inside the ABC: a piece of Australian history, Melbourne, Hawthorn Press, 1975, pp.54,64. K.Inglis, This is the ABC: the Australian broadcasting commission, 1932-1983, Carlton, Melbourne University Press, 1983, pp,170-1. A.Thomas, Broadcast and be damned: the ABC's first two decades, Carlton, Melbourne University Press, 1980, p.103. Personal interview with Mr C.Buttrose, Sydney, 19 May 1986.

⁶⁹ G.C.Bolton, Dick Boyer: an Australian Humanist, Canberra, Australian National University Press, 1967, p.252. This was hard to avoid as Menzies sat next to McMillan.

effort. This seems to me a very dangerous policy indeed. I believe that Parliament will agree that the right of honest and legitimate criticism by the public and by the Press is essential to victory.⁷⁰

However, this criticism was as much a matter of Evatt seeking political gain by finding fault with the government as it was an expression of his concern for liberty. For he had been constantly unhappy with the manner in which the media had disregarded labor interests; from the time of labor's ascension to power in October 1941 until virtually 1960 when he retired from politics, Evatt alleged that the ABC was a biased, anti-labor news organisation. His immediate concern was a dissatisfaction with the failure of the ABC to assist the government's prosecution of the war.⁷¹ On 7 January 1942 he made formal those complaints with Jack Beasley, the minister for supply and development, and William Ashley, the postmaster general and minister for information, in discussions with senior ABC and department of information officials.⁷² In principle, the matter came under Ashley's sole jurisdiction, but as senior ministers

⁷⁰ Daily Telegraph, 30 January 1942, p.4, quoting Evatt's views of 30 April 1941. Also Evatt's implied criticism of the censoring of a national broadcast address by R.W.G.Mackay, of the British Labour Party, CPD, vol.166 (19 March 1941), p.138.

⁷¹ Dixon, pp.64-5, Inglis, pp.94-5,189,191-2, Bolton, p.254.

⁷² AA(NSW), SP314, unnumbered file 'Miscellaneous news files from Miss D.Carroll', five page typescript 'Conference, Canberra: Wednesday, 7th January, 1942'. The name of Beasley's portfolio was changed in 1942 to supply and shipping.

Evatt and Beasley asserted influence over the policy of the ABC.⁷³ It was a most acrimonious meeting, in which Beasley, the most aggressively offensive, charged the ABC with misrepresentation of his views.⁷⁴

Evatt characteristically interfered with Ashley's portfolio, to which Ashley took umbrage. Although the prime minister John Curtin authorised a degree of interference from Evatt (and Beasley), Ashley later sought and received Curtin's support. Dedman and in particular Chifley objected to this encroachment.⁷⁵ Evatt wished to broaden his power through the control of information, a matter so important to the quality of the secrecy and openness of national security. Of course, this work ideally matched his inquiring nature, recalling his interference, just a couple of months later, in the jurisdiction of Forde who, as minister for the army, was responsible for considering the recommendations of army intelligence into the activities of the Australia First Movement.

⁷³ Evatt and Beasley were close political allies until Beasley's death in September 1949, personal interview, Dr J.Burton, Canberra, 5 January 1987, Dalziel, p.28.

⁷⁴ AA(NSW), SP314, unnumbered file 'Miscellaneous news file from Miss D.Carroll', five page typescript, 'Conference, Canberra: Wednesday, 7th January, 1942'. Beasley later admitted the existence of a misunderstanding. The director of information, C.H.Holmes resigned on 8 January because of the intensity of the onslaught to which he was subjected at the meeting.

⁷⁵ Ibid. AA(NSW), SP314, unnumbered file 'Miscellaneous news file from Miss D.Carroll', memorandum W.Denning to chairman, 5 February, 1942, memorandum W.Denning to A.M.Smith, 6 February, memorandum W.Denning to A.M.Smith, 7 February, 1943.

Evatt intrigued; he promised but failed to inform Ashley of important developments and disrupted departmental communication by neglecting to reply to six letters from the department of information regarding one matter of overseas broadcasting.⁷⁶ Dissimulation was a technique often employed by him - he regarded as powerful tactical weapons the failure to consult or inform colleagues and subordinates of decisions and information. Despite repeated attempts to formulate firm guidelines of broadcasting policy, he refused to be drawn into a concrete commitment.⁷⁷ In fact he admitted a desire to work with effect behind the scenes on broadcasting policy.⁷⁸ This feature of Evatt's conduct amplified traditional problems between department and minister.⁷⁹

⁷⁶ AA(NSW), SP314, unnumbered file 'Miscellaneous news file from Miss D.Carroll', conference, 7 January 1942. 'Note from chairman, 5 February 1942.

⁷⁷ AA(NSW), SP314, unnumbered file, 'Miscellaneous news file from Miss D.Carroll', memorandum from W.Denning to chairman, 5 February 1942.

⁷⁸ Ibid.

⁷⁹ Evatt's uncommunicative political style and his reluctance to respond to punctilious public servants and to officials requesting specific directions upset many subordinates, for example Hodgson, Hasluck and Knowles (who was succeeded by Bailey as solicitor general), see Dalziel, pp.29-30, for Knowles. W.McMahon Ball was responsible to Evatt in some degree as the head of the shortwave division of the department of information and in 1946 as the commonwealth representative to the allied control council in Japan, AA(NSW), SP314 unnumbered file 'Miscellaneous news file from Miss D.Carroll', conference, 7 January 1942, A.Rix (ed), Intermittent diplomat: the Japan and Batavia diaries of W.McMahon Ball, Carlton, Melbourne University Press, 1988.

Further meetings were convened to resolve differences between government ministers and officials of the ABC and the department of information, especially regarding broadcasting policy. Important decisions were reached: final censorship matters were placed directly in the hands of the prime minister; shortwave broadcasting was taken from the department of information and returned to the ABC; and a parliamentary sub-committee, known as the censorship committee, was formed, comprising Evatt, Beasley and Ashley, and was the final authority for policy and other major decisions on the activities of the ABC.⁸⁰

Evatt believed that the media should assist the nation in victory for, as reflected in his handling of the Australia First Movement, he was intensely concerned to preserve the nation's security. Another, somewhat resigned and truculent, opinion was expressed unofficially by him in the midst of this continuing dispute. Evatt believed that further discussions were unlikely to be beneficial:

...because there were big and irreconcilable economic interests at stake in the matter of news dissemination in Australia. He said that these interests obviously could not be reconciled by making a few pleasant speeches around a table...but he did not much mind if Senator Ashley wanted to have a few happy speeches.⁸¹

⁸⁰ AA(NSW), SP314, unnumbered file 'Miscellaneous news files from Miss D.Carroll', transcript headed 'Personal and Confidential, 19th January, 1942, Memorandum to: The Chairman'.

⁸¹ Ibid., p.4.

He thus anticipated by some fifteen years the substance of his submission before the Public inquiry into applications for television licences.

Evatt nevertheless did attend a further conference at which he revealed balanced views on the role of the media and which in the context of the administration of the war - particularly in 1942 - were not generally illiberal. He opposed the transmission of British broadcasting commission (BBC) news bulletins, for they emphasised the Atlantic theatre of the war - Evatt wanted a news service which promoted Australia's *Pacific* interests, which then were under close military threat. The ABC, which ultimately wanted independence, and Evatt therefore shared the objective of an independent Australian news service. The BBC bulletins were banned.⁸²

Evatt was a wartime propagandist; he viewed this instrument as a subtle and effective 'liberating' contribution to victory, not an 'oppressive' force as it became in peace time. Authority was therefore allied benignly to the people in the advancement of a common purpose.⁸³ He felt that all appropriate services should be committed to the war effort:

⁸² AA(NSW), SP314, unnumbered file 'Elimination of B.B.C. commentaries', 7 January 1942', unnumbered file 'Miscellaneous news files from Miss D.Carroll', letter W.Cleary to Evatt, 8 January 1942.

⁸³ AA(NSW), SP314, P2/4.3, box 3, file 'Press agreements', 'Conference on newspaper and broadcasting activities in relation to the war effort', 10 February 1942, p.8 passim.

The real question is whether it is the duty of the press to help the government to have its decisions executed so that the people shall be prepared against the worst emergency. Some decisions may be wrong, but they have to be obeyed. This conference can best function by...discovering how you [the press] can help the Government in its tremendously difficult task.⁸⁴

Evatt did not support the biased presentation of party politics in the media. He did not want the distorting use of bold type to display enemy opinions of events in the war without a balancing type format. He questioned the uncritical use of unsupported enemy opinions, believing that restrictions might justifiably be applied. He opposed a newspaper's search for opinion in other parts of the world to bolster criticism of the government.⁸⁵ He did not accept that the truth of a wartime position should be necessarily unrestricted:

The building up of public morale does not consist simply of telling the truth to the people. If the news is bad, you have to counter it and make the people prepared to resist the enemy when he comes. The job of the press is not merely to give the news but also to prepare people to bear the impact of attacks when they come. If the Government believes that attacks are likely, morale is not helped by the press saying that attacks are not likely.⁸⁶

He felt that the media, generally, should not criticise the government. Rather the excessive reportage of real or

⁸⁴ Ibid., pp.15-6.

⁸⁵ Ibid., pp.11-2

⁸⁶ Ibid., p.16.

potential damage to Australia's war interests should be curtailed.⁸⁷

In a letter written on 8 January 1942 to Evatt by William Cleary, the chairman of the ABC since 1934, Cleary stated his understanding of the Government's ABC policy.⁸⁸ He wrote, among other things, that broadly the safety of Australia was paramount, with the defence of the Pacific a particular priority; that material was not to be broadcast which was inconsistent with government policy; precedence was to be given to ministerial statements; and Australia's national policy was to be emphasised. Furthermore, and this fairly restated to Evatt his own measured and thoughtful view of the onerous wartime role of the media:

On the negative side it is not desired that criticism of domestic political policies or actions shall be suppressed, but that care must be taken to see that governmental decisions on matters of high policy involving national security and/or military considerations, shall not be prejudiced at home or abroad by individual personal or newspaper comment which might give the impression that such policy was not supported by or representative of the Nation at large.⁸⁹

An important civil liberties issue arose on 16 April 1944. Copies of Sydney newspapers, including the Daily Telegraph and Sydney Morning Herald, were seized by the chief censor in order to suppress it. Both these papers

⁸⁷ Ibid., p.8. AA(NSW), SP314, unnumbered file
 Miscellaneous news files from Miss D.Carroll, W.Cleary to Evatt, 8 January 1942.

⁸⁸ Ibid.

⁸⁹ Ibid., p.1.

carried feature articles which criticised Arthur Calwell, who in 1943 had succeeded Ashley as the minister for information. A high court action ensued; the court granted an injunction so that before the matter had been heard, the papers were effectively permitted to publish the offending material. The judiciary had been widely reproached for granting the injunction, for that decision effectively meant that the newspapers had won. Two high court judges were admonished for presenting opinions which prejudged the proposed hearing.⁹⁰

On one hand, the press felt that censorship was now being implemented too severely, particularly by the suppression of governmental mistakes; on the other hand the government resented the claimed right of the press to decide the effect on the war effort of the publication of material.⁹¹ Sawyer remarked positively that:

The episode had a good effect; both the regulations and the administration of censorship were liberalized, as was proper at the stage of the war now reached.⁹²

More than five months later, on 24 November 1944, the matter was raised in parliament regarding the establishment

⁹⁰ Sawyer, pp.177-8. B.Penton, Censored! Being a true account of a notable fight for your right to read and know, with some comment upon the plague of censorship in general, Sydney, Shakespeare Head, 1947, pp.72-92. L.F.Crisp, Australian labour party, federal parliamentarians, pp.8-9. Evatt later felt that the high court prejudged the issue, CPD, vol.180 (29 September 1944), p.2328, but felt that 'the claim of the Censor supported by the Government was legally unsound'.

⁹¹ Sawyer, p.177.

⁹² Ibid., p.178.

of an inquest on this dispute but debate was closed soon after its commencement.⁹³ Evatt nevertheless shared his personal views with parliament; he spoke in a measured, liberal manner.⁹⁴ Although anxious to protect the integrity of the court, he accepted the right, and indeed the duty positively to criticise the judiciary. He quoted lord Atkin, who in 1936 stated that:

The path of criticism is a public way. The wrong headed are permitted to err therein. Provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune.⁹⁵

Evatt was eager to avoid the denigration of individual judges or to call into question their impartiality but he felt that as a principle the court had wrongly granted the injunction. That decision was the result of poor judicial procedure, for it indicated the preconceived opinion of the court. It should have heard the case and reached an opinion on the merits of argument before deciding on the suitability of publication. He was seized by the importance of this matter, rather than by the particular grievances of either party.⁹⁶ The facts of the case addressed crucial

⁹³ Ibid., p.177; CPD, vol.180 (24 November 1944), pp.2139-47.

⁹⁴ CPD, vol.180 (29 November 1944), pp.2321-35.

⁹⁵ Ibid., p.2321.

⁹⁶ Ibid., p.2328.

issues which appealed greatly to his libertarian conscience:

Here was a great and grave constitutional issue, namely, was the Censor acting in good faith to be judge of what was detrimental to the prosecution of the war or, on other hand, was the court competent to say or right in saying, that despite the Censor's opinion his order could be nullified and publication could take place in spite of that order? In popular language the constitutional issue was this: Did the regulations which have been operating since 1939, when they were promulgated by the Menzies Government, make the Censor the final judge of what was a detrimental publication or could the court, to use the words of Mr Justice Rich in another case, "censor the Censor"? I repeat that the case required careful consideration. It was a great case.⁹⁷

The matter was settled out of court so that these large matters did not exercise the minds of the judges.⁹⁸

Evatt during the war continued to express his disappointment with the ABC's allegedly biased presentation of political material. On 27 March 1944 he specifically

⁹⁷ Ibid.

⁹⁸ Ibid. Sawyer, p.178. It is worth recalling that before war, the climate of thought in Australia was generally quite repressive, particularly during the 1930s as Europe became increasingly unsettled. Authorities were secretive in order not to concern the public of the unpleasant possible ramifications of adverse international developments. Parliament was not prompted to discuss foreign affairs, because of lack of interest or so as not needlessly to excite public anxiety. Censorship was rigorously implemented. The banning of material was widespread and in one instance a radio station, 2KY, was closed down. This was clearly not an environment in which the vigorous and open discussion of national and international issues could flourish. W.J.Hudson (ed.), Towards a foreign policy: 1914-1941, Melbourne, Cassell, 1967, pp.107-13.

accused the ABC of thwarting the government's promotion of the 1944 referendum by using a misleading 'wider powers' short title for the referendum.⁹⁹

The proposals of this referendum illustrated Evatt's desire to reform Australian society by constitutional amendment, particularly through a comprehensive economic and social restructuring scheme. His regard for liberty and constitutional propriety was displayed by his inclusion of the three safeguards into the amendments.

Evatt was closely interested in the reshaping, or 'restructure', of Australia from shortly after the commencement of the war. For example, Evatt had while in opposition been an honorary director of the post-war research division of the department of labour and national service, a department which had been created by the Menzies government in October 1940.¹⁰⁰ The functions of this division grew so that the entire department was changed in early 1943 to the new department of post-war reconstruction.¹⁰¹ Chifley, who was the department's first minister from 1943-5, was replaced by John Dedman who served from 1945-9.¹⁰² Evatt as attorney general managed

⁹⁹ AA(NSW), SP314, MI.9, file 'Statements by members of parliament', telegram Evatt to C.Moses, 27 March 1944.
¹⁰⁰ Personal interview with Sir Roland Wilson, Canberra, 8 December 1985. Dalziel, pp.6,38.
¹⁰¹ Hasluck, Diplomatic witness: Australian foreign affairs, 1941-1947, Carlton, Melbourne University Press, 1980, p.55.
¹⁰² Crisp, Australian labour party: federal parliamentarians, pp.11,17.

legal and legislative matters regarding post-war reconstruction. He was also involved as minister for external affairs. The department of external affairs set up a post-hostilities planning committee to co-ordinate activities between Australia and New Zealand. Later a post-hostilities division was established within the department. There was therefore an association of concept and direction between the two departments. For example Arthur (later Sir Arthur) Tange, an officer of the department of post-war reconstruction, worked for a time in the post-hostilities division of the department of external affairs.¹⁰³

The work of reconstruction employed some of the country's best talent, such as H.C.Coombs, Paul Hasluck, Finlay Crisp and Tange. That early work was largely directed to the 1944 referendum proposals, a concept which expressed an inspirational grand design for a newly organised society. If the everyday minutiae of the work undertaken by the departments of post-war reconstruction and external affairs was the formal embodiment of the hope for a new future, its spiritual and visionary manifestation was the radical blueprint for a reinvigorated, just and prosperous society that was anticipated in constitutional amendments sought by the referendum proposals.¹⁰⁴

¹⁰³ Hasluck, pp.130-1.

¹⁰⁴ A book was published for general distribution which emphasised the proselytising intent that was invested into reform, H.V.Evatt, Post-war reconstruction: temporary alterations of the constitution: notes on the fourteen

On behalf of the federal government Evatt requested increased commonwealth powers to make laws in respect of fourteen subjects; the proposals carried three safeguards to assure the people of the government's solemn commitment to act with thoughtful responsibility in the application of greater powers and of its principled desire to defend fundamental rights.¹⁰⁵ Some of the proposals related directly to immediate peace-time needs, others considered longer term restructuring. All were claimed to increase prosperity for all by ensuring socially responsible regulation that was guided by the principles of compassion and equality. The proposals sought to give the federal government control over:

- 1) The reinstatement, rehabilitation and advancement of servicemen and servicewomen.
- 2) Employment and unemployment.
- 3) Organised marketing of commodities.
- 4) Companies.
- 5) Trusts, combines and monopolies.
- 6) Profiteering and prices.
- 7) Production and distribution.

powers and three safeguards, Canberra, printed by the Commonwealth government printer, 1944. Also Hasluck, pp.62-3. Although the publication carries Evatt's name, it was produced predominantly by government officials. The Constitutional alteration (post-war reconstruction and democratic rights) bill, 1944, which bore Evatt's unmistakable imprint, authorised the holding of the referendum, Commonwealth votes and proceedings, vol.1 (1943-6), p.112.

¹⁰⁵ A preliminary convention comprising representatives of federal and state parliaments, met in 1942 to discuss the referral of state constitutional powers to federal parliament. Despite a successful conference, the subsequent extent of state parliamentary approval for the referral of powers was unsatisfactory, that inadequacy rendering necessary the 1944 referendum. CPD, vol.178 (11 February 1944), pp.137-9.

- 8) Overseas exchange and investment and the raising of money in Australia.
- 9) Special phases of transport;a) air.
- 10) Special phases of transport;b) uniformity of railway *gauges*.
- 11) National works.
- 12) National health.
- 13) Social security power.
- 14) People of the aboriginal race.¹⁰⁶

The thrust of many of these proposals drew on current or near-contemporary economic thinking which debated the extent and desirability of substantial governmental control of key economic and financial forces in societal management.¹⁰⁷ This culminated in Australia in the attempts by the Chifley government in 1947-8 to nationalise private banks.¹⁰⁸ The issue of economic control by government raised the problem in Evatt of liberty in Australia in peace-time. His broad response, apart from the safeguards, was that such control was justified by the assurance of long term prosperity. With Australia still at war, society was moreover accustomed to regulation and so would be entering a period of greatly relaxed regulation relative to wartime conditions.¹⁰⁹

The three safeguards were included to:

¹⁰⁶ CPD, vol.177 (11 February 1944), pp.146-52.

¹⁰⁷ CPD, vol.178 (15 March 1944), pp.1380-3, for Evatt's recommendation of 'a study in the trust movement in Australia, published in 1914 by Mr H.L.Wilkinson...', p.1382. E.R.Walker, The Australian economy in war and reconstruction, New York, Oxford University Press, 1947, pp.133-416.

¹⁰⁸ CLR, (1948) 76, p.1. Evatt represented the government but was not as enthusiastic as Chifley, Grattan papers, Grattan manuscript notebook on Dr H.V.Evatt, p.43.

¹⁰⁹ CPD, vol 177 (9 March 1944), pp.1152-4.

- 1) ensure that, in the exercise of the new fourteen powers, parliament should, as a constitutional right, have a full opportunity of supervising the exercise by the executive of delegated legislative power.
- 2) guarantee freedom of speech and expression against impairment by parliament either of the commonwealth or of a state.
- 3) extend the existing guarantee of religious freedom - contained in section 116 of the constitution - to legislation of the states as well as legislation of the commonwealth.¹¹⁰

The opposition's reaction to these proposals was mixed. Menzies regarded the desired powers to be unnecessary, for they exceeded the requirements of a non-socialist programme for post-war reconstruction, or a confusion to the exercise of powers if granted. The country party was interested in the proposals, voting for a second reading but a procedural mishap during the committee debate turned the country party against the proposals. The third reading was on party lines, with the exception of Percy Spender, who voted with labor.¹¹¹

Evatt disagreed that sufficient power already existed to implement its post-war reconstruction programme through the defence power of the constitution (section 51 (xxix)). This contentious point of course resolved the outcome of the high court case which determined the validity of the Communist party dissolution act.¹¹² It was an important

¹¹⁰ Ibid.

¹¹¹ Sawyer, p.172. CPD, vol.178 (15 March 1944), pp.1350-1.

¹¹² See chapter 6.

objection given that Evatt, a reputed libertarian and a senior minister in an already powerful government which implemented widespread civilian controls, appealed for still more power and control. He responded that the government either did not possess adequate power or that its power was in question; the wide-ranging powers sought would give the commonwealth great additional power during and after the war to enable it to manage the civilian and military demands of exceptional and threatening circumstances. With the dispute centred on the expansion of the defence power beyond wartime boundaries, Evatt sought to place the constitutional validity of its post-war programme beyond the clutches of legal challenge by not relying on the defence power. He believed simply, and as later demonstrated by his high court advocacy correctly, that this power could only be implemented during wartime so that a high court challenge against its peace-time application would be successful.¹¹³

The peace-time application of this power had not been legally challenged in either of the world wars.¹¹⁴ Evatt noted that even in wartime the defence power could be successfully challenged before the high court on the basis

¹¹³ CPD, vol.177 (11 February 1944), pp.144-6.

¹¹⁴ Nevertheless limits had in recent years been placed on the federal government's general wartime power, notably in the range and intrusiveness of the national security regulations, a vast legislative body implemented to control most civilian life during the war, CPD, vol.178 (15 March 1944), pp.1376-9.

that the link was too tenuous between defence and activity contended to be within the scope of the maintenance of defence. A rare exception was the ratification by the commonwealth legislature of the treaty of peace in 1919, but this was understandable given the close link between the peace-time legislation and defence. He recalled an illustration with strong personal ties. A Cockatoo Island shipping contract was invalidated by the high court because of the lack of connection between the contract and defence. He also quoted legal authorities taken from sources other than judgments to express his grave doubts of the usefulness of the defence power.¹¹⁵ He stated a distant or unrelated relationship between the defence power and post-war reforms which were to be implemented when, without war, there was no apparent 'defence' content in commonwealth power:

...the defence power of the Commonwealth is no sure foundation for general Commonwealth laws regulating employment and unemployment, prices and profiteering, and the production and distribution of goods.¹¹⁶

¹¹⁵ CPD, vol.177 (11 February 1944), pp.144-5. CPD, vol.178 (15 March 1944), pp.1383, 1385. CPD, vol.180 (17 November 1944), pp.1900-8. Evatt had for a considerable period displayed a strong interest in the defence power. In his doctoral thesis, which is discussed in chapter 14, he explored the character and extent of the power by discussing a number of cases that came before the high court during the first world war. From the timing of the cases and the nature of the issues covered there was a clear assumption that the defence power was only ever conceived for use as as a wartime measure.

¹¹⁶ CPD, vol.177 (11 February 1944), p.145.

Nevertheless, Menzies opposed the referendum proposals, insisting that sufficient constitutional power already existed. He claimed that the defence power should and could be invoked to implement post-war reconstruction needs.¹¹⁷

Evatt's efforts were in the end fruitless. The national electorate voted on 19 August against the referendum proposals with a result of 2,305,418 against and 1,963,400 in favour. There were majorities in only two states, South Australia and Western Australia.¹¹⁸

Evatt appeared to be satisfied with the referendum proposals but the safeguards gave nobility to his wish to preserve liberty; for all the mollification that he received from the exercise of power, he was haunted by the moral quid pro quo of progressive, responsible and 'unoppressive' political action. He nevertheless would have known that the insertion of the safeguards, as a balance to the request for enlarged federal powers, would enhance the chances of the referendum's electoral approval.

¹¹⁷ CPD, vol.178 (15 March 1944), p.1385. R.G.Menzies, Central power in the Australian commonwealth: an examination of the growth of commonwealth power in the Australian federation, London, Cassell, 1967. Menzies opinion was of course to result in his misjudgment of the high court's interpretation of the defence power in the case which found invalidity of the Communist party dissolution act.

¹¹⁸ Sawyer, p.173. There was a 'No' majority in Evatt's own electorate of Barton, Sydney Morning Herald, 26 August 1944, p.4.

The first safeguard was designed to assure people of the necessity for delegated legislation and of its widespread acceptance by comparable democratic countries as a form of government administration. Delegated legislation had during the war become a way of life with the implementation and administration of a vast number of regulations by bodies subordinate to parliament. The structures that were consequently established developed as regulatory forms shaped by the exigencies of wartime administration. For with the massive workload of wartime and post-war management, it was impossible for parliament to attend to all aspects of legislation, particularly to the minutiae of drafting and of the administration of laws. It was important that parliament's valuable time be devoted instead to the important tasks of discussing and framing principle and policy and the more fundamental legislation that directly affected wide sections of the community. The key to this first safeguard was not to restrict delegated legislation, but to enable its more efficient working by permitting better supervisory control by parliament over that delegation. This affirmation of parliamentary responsibility thus was a most important 'liberal' political issue for many of the responsibilities of government lay beyond the direct administration of parliament. This safeguard was strongly influenced by Evatt - it suited his work methods to leave tedious

administrative detail to others so that he could pursue broader, and for him more interesting, matters. This 'safeguard' nevertheless allowed a high level of government regulation, despite claiming to protect the people through better government.¹¹⁹

Evatt expended great intellectual and psychological effort on the defence of the second and third safeguards. It was an effort that far exceeded a desire merely to induce parliament and the electorate to approve the reform scheme. In a deeply personal speech he spoke at length on liberty as he discussed the two freedoms that he hoped to include in the constitution, the freedom of expression and the freedom of religion. He characteristically spoke as a lawyer, substantiating his views with numerous quotations from legal authorities, including judgments. He varied and broadened his observations by pointing to the attitudes of the British, Canadian and American people and legal authorities to freedoms established in their constitutions. Their experiences offered useful guides to Australian constitutional reform. It was not a wholly creative speech because he so often quoted authorities to express his ideas; it was innovative however because of the assiduous research and the way in which material was shaped. His obvious commitment to principle and the emotional intensity that he invested into its writing and delivery gave power

¹¹⁹ CPD, vol.177 (9 March 1944), pp.1152-4.

to the speech.¹²⁰ Of all of Evatt's many public legal and political defences of liberty, he spoke here at length on liberty with the greatest intellectual breadth, cogency and wisdom.

Evatt argued that liberty was never assured; it had always to be vigilantly protected. The need for this defence was most obvious in the present century where newly-formed dictatorships had abused fundamental liberties which had seemed quite secure. It was therefore wise to include these two freedoms as specific safeguards. The rise of dictatorships showed that each generation was not guaranteed liberty from earlier conquest over repression. In fact, Australian leaders in the prelude to the current war had not only failed to warn of the fascist danger but had in part supported it. The constitutional guarantee of free expression would protect the individual against repressive legislation; it would in peace time prevent the imposition of such wartime restraints as censorship; it would ensure the free discussion of public affairs and broadly it affirmed citizens' rights.¹²¹

Evatt had long respected the American president, Franklin D. Roosevelt. He was one of many Evatt admired as 'idealised' figures for their liberal-democratic legal and

¹²⁰ CPD, vol.178 (15 March 1944), pp.1343-1431.

¹²¹ Ibid., pp.1394-99. See chapter 8 and the conclusion for the constant guarding of liberty.

political work.¹²² Evatt retained a high regard for Roosevelt's four freedoms, namely the freedom of expression and religion, and the freedom from want and fear.¹²³ Roosevelt's impact was also felt by Evatt through his adoption of the language of these first two freedoms in the two safeguards of freedom of expression and religion.¹²⁴

He was similarly impressed by the American constitution for giving express guarantees of important freedoms. He recalled that this constitution provided a model for the authors of the Australian constitution, despite differences between both documents. He acknowledged the influence of the American constitution by partly basing the wording of the freedom of expression safeguard on the first amendment of that constitution. That guarantee was also drafted in the light of developments in the interpretation of the amendment by the American supreme

¹²² The idealisation of these figures was consistent with a character that was prone to divide in unrealistic segmentation the desirable and admirable from the less desirable and disdainful. The goodness and purity he attached to the law was matched in exaggeration and regard for exemplars of liberty. A line of friendships that began with Kilgour at Fort Street boys' school and Peden at Sydney university continued as idealised 'friendships' through his reverent esteem for great liberal figures. In some cases, such as Roosevelt, Frankfurter, Nehru and Laski, he indeed formed not friendships but acquaintanceships. Three further luminaries of this Evattesque pantheon that were cited in this speech, with Roosevelt, were the American supreme court judges, Brandeis, Cardozo and Holmes. Pratt interviews with M.A.Evatt, 26 April 1973 - 30 May 1973.

¹²³ Ibid., p.1394. Interview M.Pratt with M.A.Evatt, 24 May 1973. Dalziel, p.21.

¹²⁴ CPD, vol.178 (15 March 1944), pp.1373-4.

court. Evatt preferred a balance between the precision of the wording of the first amendment and the generality of the language of Roosevelt's four freedoms to determine 'true' unequivocal meaning.¹²⁵

The essence of Evatt's argument was that freedom was not an absolute condition; it was subject to the control of those Australian laws which protected the morality, safety and order of society - during war in particular national security had to be preserved. These laws for example protected individuals through the ordinary legal consequences that resulted from publishing defamatory, seditious, subversive, blasphemous or obscene matter. In short, the grant of freedom did not permit anarchy through the interference or breakdown of basic premises upon which society was built; society retained the right of self-preservation. His references here to the fundamental machinery and institutions which formed society again illustrated an appreciation of the working of its primary elements that was derived from a contemplation of the philosophy of law.¹²⁶

He contended that the experience of American law and the work of the thinkers of that country demonstrated that its people had been better served by the guarantees - certainly there was no known movement for their repeal. The

¹²⁵ Ibid.

¹²⁶ Ibid., pp.1395-9.

practical worth of the guarantees was shown by the wisdom and integrity of judicial interpretation as the precise nature and power of the guarantees was established from numerous legal challenges. These interpretations balanced the needs of state and individual by allowing neither too much nor too little power of control of society to either polarity. With the guarantees in place by express constitutional embodiment, the judiciary 'fine-tuned' the language of guarantees to give full and flexible effect to their purpose. Evatt had again displayed his constant belief in the judiciary to decide important matters for the people. Such was his faith in this case in the strength of the supreme court that he drew the attention of the referendum committee:

...particularly to the robust grasp of the truth that freedom of speech, though sometimes alarming if abused, is basic to the whole idea of democratic citizenship, which runs through the judgments of the Supreme Court on the guarantee of the freedom of speech. I feel sure that in part it is a result, as well as one of the causes, of the existence of the guarantees themselves.¹²⁷

Evatt was fond of quoting Milton when he was swept up in a wave of idealistic fervour that demanded the vigilant protection of fundamental rights.¹²⁸ The opportunities that were presented in 1944 were most apposite as he read from a 1927 judgment of Brandeis:

¹²⁷ Ibid., p.1395.

¹²⁸ Interview M.Pratt with M.A.Evatt, 1 May 1973.

'Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is an opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.'

One is reminded of the words of Milton in one of his famous essays on a similar problem, when he said:

"Let truth and falsehood grapple. Whoever knew truth to be worsened in an open encounter?"

The quotation continues -

'Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom.129

A spirit of brave justice and defended principle pervaded his speech. He had clearly perused American law reports to discover the views of judges hearing civil liberties cases. He read out excerpts from many of those judgments to enlarge and elucidate the value of constitutional guarantees of freedom of expression, and then of freedom of religion, and of the intellectual and moral authority conferred on those guarantees by the opinions of members of that nation's highest court. The decisions in the cases he chose for discussion gave views on threats to national security when the nation was at war

129 CPD, vol.178 (15 March 1944), p.1395.

including the assistance by a citizen during war of enemies of the nation; the shouting of an emergency in a theatre; publications advocating and encouraging a breach of the civil law; the distribution of innocuous street leaflets; the freedom of press from political manipulation, and the assembly of a meeting, alleged to be a criminal syndicate, that was convened under the auspices of the communist party.¹³⁰

Evatt quoted from the court's judgment in this final instance, which protected the right of those who attended the meeting. The fact that the defendant was a member of the communist party was immaterial. The meeting he attended was lawful, except that it was held under the auspices of the communist party. The court held invalid the state act which enlarged the activities of criminal syndicalism to include assistance given by one who attended a meeting which advocated a criminal syndicalist doctrine. The degree of closeness between certain activities and the practice of communism was a recurring issue of freedom of speech and assembly and one which touched Evatt, notably in his judgment in Devanny's case and his legal and political opposition to attempts in the early 1950s to ban the communist party. This case, Dejonge v Oregon, recalled Evatt's advocacy and judgments in the 1920s and 1930s which criticised the excessive and unconstitutional claim of

¹³⁰ Ibid., pp.1395-9.

power by government in its legislation. This judgment among others checked a tendency of a legislature, through its misinterpretation, to take unwarranted control of a guarantee. There was also a foreshadowing of the issues raised by him in order to persuade the Australian electorate to reject the 1951 referendum. The judgment remarked of fundamental rights that:

These rights may be abused by using speech or press or assembly in order to incite to violence or crime. These people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that Government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the republic, the very foundation of the constitutional government.¹³¹

Evatt discussed the third safeguard, which protected the freedom of religion, in a similar manner. He took the example of important American cases to demonstrate dangers and to reinforce trust in judicial interpretation. The matters which prompted legal challenges were the right of parents to secure a religious education for their children; the right to raise money for a religious organisation; the

¹³¹ Ibid., p.1397.

validity of a statute prohibiting voting rights to a person of an organisation which practiced bigamy or polygamy as a doctrinal right; the validity of the practice of religion which disturbed the peace, and the right to object to participating in war and military training on religious grounds as a justification for attending a university without undergoing a mandatory course in military training. (Although Evatt did not discuss the matter, Americans were probably more intent on the guarantee of religious freedom because many came to this new land to escape religious persecution in Europe. Broad religious tolerance in Britain meant that the freedom of its practice was more or less accepted in Australia.) The general principles that governed these decisions, as embodied in the first amendment, were that there be no religious test as a qualification for office, and that freedom to practice religion be guaranteed, so that belief may respond to conscience and judgment, and worship may be allowed in a manner that was thought proper in exhibiting such sentiments. Such freedom could not be injurious to the equal rights of others.¹³²

Section 116 of the Australian constitution was modelled largely on the first amendment.¹³³ The

¹³² CPD, vol.178 (15 March 1944), pp.1403-7.

¹³³ Section 116 of the Australian constitution reads:

The commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for

constitutional safeguard proposed no new principle, Evatt being satisfied with the section which prevented the commonwealth from making any law for establishing a religion, or for imposing a religious observance, or for prohibiting the free exercise of any religion. The high court twice to the time of Evatt's speech considered the application of this section. On both occasions the court agreed that military measures necessary to preserve the security of the nation did not infringe the section.¹³⁴

Evatt's great respect for Holmes was understandable. His incisive libertarian's mind clearly delighted him, as with Holmes's judgment in Abrams v United States, (1919). Holmes regretted his inability in this case to write more impressively than he had; Evatt would have been happy to pen his words. It is worthwhile reproducing most of the long quotation read by Evatt to his parliamentary colleagues on 16 March 1944:

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power, and want a certain result with all your heart, you naturally impress your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has the circle, or that you do not care wholeheartedly for the result, or that you doubt either your power or your premises. But when men have

prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

¹³⁴ CPD, vol.178 (15 March 1944), p.1405.

realized that time has upset many fighting faiths, they may come to believe even more than they believe the foundations of their own conduct, that the ultimate good desired is better reached by free trade in ideas - that the best of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our constitution. It is an experiment, as all life is an experiment. Every year, if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system, I think that we should be eternally vigilant against attempts to check the expression of opinions that we loath and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purpose of the law that an immediate check is required to save the country.¹³⁵

Evatt considered the right of free speech and press in the dissemination of ideas through the distribution of literature, a matter which was most relevant given the instance of attempted press suppression in Australia earlier that year. He quoted at length from an American judgment that held invalid a municipal law seeking to prevent the distribution of leaflets from that municipality's streets. For the law was found to infringe free speech and free press. It was particularly odious because it required that those wishing to communicate ideas be approved by local police authorities. Such prior assessment clearly transgressed the authority and intention

¹³⁵ Ibid., pp.1395-6.

of the fourteenth amendment; it was not for police officers to act as censors or to determine the worthiness of the characters of those wishing to distribute leaflets. The municipal law, which ostensibly sought to keep the streets free from litter, hid its true and sinister intention. Evatt used this case to confirm the ability of the judiciary to discern true legislative purpose and to reaffirm his warning that:

The trouble is that when the danger comes, it is too late to guard against it. The trend in a country may alter suddenly and things which we value and which we deem inalienable may be endangered. As these two freedoms have been selected by the leaders of the United Nations as fundamental to the future of democracy, we shall be wise to include them in our constitution. We have a clear guide to their probable interpretation in the cases which I have cited. The distinctions may appear fine, but they are real. Everything turns upon the court's judgment as to what the law objected to is really striking at. The last case which I cited shows this clearly.¹³⁶

Evatt typically adopted a lawyer's approach to the maintenance of liberty; he was sincere in reform and careful in wartime to balance liberty with the peculiar security needs that then faced the nation.

¹³⁶ Ibid., p.1398. Evatt noted that this was a test which favourably resembled those of the high court and privy council.

CHAPTER THIRTEEN
A PERSONAL APPROACH TO THE LAW

Evatt's successful legal career affirmed his professional eminence and authority. He was called to the Sydney bar in 1918 and became one of its leaders during the 1920s.¹ His reputation was such that he could command briefs from solicitors throughout the nation. He built up a large practice in appellate work, particularly in constitutional and industrial law although he showed his versatility through considerable learning in numerous branches of the law.² He took silk in 1929.³ The following year, at the age of 36, he became a judge of the high court and remains the youngest appointee to this position. During his decade on the bench he earned widespread respect and recognition through both majority and dissenting judgments.

¹ The law list of Australia and New Zealand, 1919, Sydney, Butterworth, 1919, New South Wales division, p.114; admitted 31 October 1918. He was accepted to the Queensland bar 25 November 1930, Sydney Morning Herald, 26 November 1930, p.14.

² See for example, H.V.Evatt and J.G.Beckenham, Conveyancing precedents and forms, Sydney Law Book Co., 1923. Evatt's contribution to this book was substantial; personal interview with Mr Justice Phillip Evatt, Sydney, 2 April 1985. J.G.Starke, 'Evatt' in World encyclopedia of national biography, pp.39-41.

³ Australian Law Journal, vol.3, no.8 (15 December 1929), p.273; appointed 22 November 1929.

He was acknowledged as an innovative judge willing to present a variety of new legal interpretations.⁴

He was a forceful advocate before the workers' compensation tribunal, compelling many important changes in the interpretation of legislation that affected compensation. However, his judgments provided the most valuable contribution to the law on this subject.⁵ A strong dissent in the Cricket ball case, was to become the accepted line of reasoning.⁶ He held that injuries received by employees at work, during meal times, came within the protective duty of employers. In Pye v. Metropolitan Coal Company Limited, he with a majority of the court upheld the commission's decision to award compensation. He convincingly altered the definition of injury by broadening it to include those affected by dust diseases.⁷

⁴ L.Zines, 'Mr Justice Evatt and the constitution', Federal law review, vol.3 (1968-9), pp.180-6. Likened to Sir Isaac Isaacs, Z.Cowen, 'Mr Justice H.V.Evatt and the high court', Australian bar gazette, vol.2, no.1 (December 1966), pp.4-5. Starke, p.40.

⁵ Undated script on Evatt's legal career by Judge W.J.Dignam, ANL, TP, MS 4734, box 3, folder 2. As a lawyer concerned with the principles of justice, especially as applied to labor relations, he was understandably regarded as a fine equity lawyer, Starke, pp.39-40, that is one who applied the principles of justice to correct or supplement the law.

⁶ Whittingham v Commissioner of Railways (W.A.), (1931) 46 CLR, p.31-35. See also Dignam.

⁷ Pye v Metropolitan Coal Company Limited, (1934) 50 CLR, pp.623-8. The high court's decision was affirmed on appeal to the privy council, Metropolitan Coal Company Limited v Pye, (1936) AC, pp.342. In this judgment he also wrote influentially of fine distinctions between an aspect of the construction of statutes, Pye v Metropolitan Coal Company

Many of his peers acknowledged his acute mind. An eminent contemporary advocate, Eric Miller, admired his knowledge of the law of evidence. Another leading barrister, George Amsberg, who appeared frequently before Evatt at the high court, observed that the quality of Evatt's questions illustrated the penetration with which he probed legal issues. Extensive annotations in the margins of Evatt's law books revealed both his comprehensive reading and capacity to improve or criticise argument. His erudition was enhanced by a prodigious memory that enabled the ready recall of remote points of law and obscure precedent.⁸

As a junior barrister Evatt was in frequent professional alliance with the king's counsellor, A.R.J. 'Andy' Watt. A successful and capable barrister, Watt recognised and nurtured Evatt's talent - they were a formidable pair, winning the vast bulk of cases they fought. It was fortunate perhaps that they were contrasting types; Watt's experience and legal outlook taught him to blend the principles of the law with its human elements. For the vagaries of judge and jury were central to a shrewd advocate, Watt developing to art-form a delivery moulded from the deft modulation of a voice of such natural beauty

Limited, (1934) 50 CLR, pp.623-5,627. Dignan, undated script on Evatt's legal career.

⁸ Personal interview with Mr Joseph Starke, Canberra, 13 January 1987.

that law students were inspired to facetious imitation. The persuasiveness of his honeyed entreaties embodied the essence of jury advocacy.⁹

Evatt's conception of the law was by contrast more formal. To him it possessed a self-contained purity, unsullied by human influence. When addressed with a logician's exactitude, it would resolve the most abstruse legal dilemma; cogent argument founded in sound law yielded self-evident solutions. The clarity and forcefulness of coherent exposition stood independent of appeal to the emotions. Such an appeal was an irrelevant, perhaps offensive elaboration, the more disturbing because a form of intellectual vandalism; to criticise or demur before the patently incontestable was a senseless defilement of the ineluctable.¹⁰ He frequently regarded opposition with injured bafflement as if dissension was misguided and destructive. Evatt was a poor jury advocate and was not inclined to improve this facet of his advocacy.¹¹

His faith in the law and its institutions approached reverence. Despite an uneasy relationship with juries he was an ardent upholder of the jury system.¹² Judges, as

⁹ Personal interview with Sir Richard Kirby, Nowra, 7 June 1985.

¹⁰ Ibid.

¹¹ Personal interview with Mr A.Barkell, Sydney, 2 June 1986; personal interview with Mr C.Buttrose, Sydney, 19 May 1986; personal interview with Prof. L.F.Crisp, Canberra, 24 October 1984.

¹² H.V.Evatt, 'The jury system in Australia', Australian law journal, vol. 10, supplement (October 1936), pp.49-77.

dispensers of justice and defenders of the integrity of the court, were naturally regarded highly by him. When he was told by a companion of a dispute with a judge who then dismissed him from court, Evatt censured the surprised companion. A barrister who argued with a judge challenged the authority of the court. Evatt felt such a challenge to be wrong, regardless of the substance of the dispute or particular characteristics of a judge, however unattractive.¹³ When at his least questioning, his belief in the inviolability of the law and its institutions was credulous idealism or naivety - here his attention focused too narrowly on the law. He was a sophisticated lawyer but carrying his law into the solving of national and international problems often rendered his proposed solutions simplistic; the law was consequently degraded.¹⁴

Evatt regarded the Australian constitution as a formal and solemn instrument of constitutional law which was charged with the power and responsibility to respond to the national interest. He was entranced by its various

¹³ Personal interview with Sir Richard Kirby.

¹⁴ See chapters 14-5. For example, law reform as a remedy for parliamentary crisis, H.V. Evatt, The king and his dominion governors, London, Oxford University Press, 1936. Evatt's success at UNCIO (1945) a constitutional conference, may be compared with his lack of success, or lack of understanding of the requirements, of the Paris peace conference (1946), a non-legal or 'political' conference, personal interview with Sir Alan Watt, Canberra, 20 October 1984. Evatt's advocacy of an international commission to determine the authenticity of allegations of Soviet espionage in Australia, CPD, vol. 8, new series (19 October 1955), p.1695.

characters: he understood it as a technical although flexible statute that was simultaneously bound and released by its language; it was also a 'human' and humane document which represented the aspirations and needs of society; and it was an organiser and dispenser of power. There was such a profound totality in the constitution that a deeply committed constitutional lawyer, such as Evatt, saw it as the spiritual custodian of the people; it represented and incorporated the soul of the nation. The constitution was of the people, it was a manifestation of the identity of the people, and as a paternal guide, or 'God-figure', it stood benevolently above the people.¹⁵

Evatt was not a religious person, at least not in the generally understood sense of a religious orthodoxy that was ascribable to his mother. Moreover he showed no theological interest in Christianity although, through his erudition, he showed an extraordinary knowledge of the background and meaning of hymns.¹⁶ His writings and the reminiscences of colleagues reveal no religious turn of mind, although one or two speculated that he was a believer

¹⁵ H.V.Evatt, 'Certain aspects of the royal prerogative: a study in constitutional law', Ph.D. thesis, university of Sydney, 1924. H.V.Evatt, The king and his dominion governors. H.V.Evatt, 'Constitutional interpretation in Australia', University of Toronto Law Journal, vol.3, no.1 (1939), pp.1-23.

¹⁶ Personal interview with Mr C.Wyndham, Sydney, 12 June 1985.

in God.¹⁷ On the available evidence, he thought little of religion, both in the sense that it occupied little of his time and was regarded as not of great consequence.

In fact he regarded the church, as an institution of society, as a political weapon of considerable societal and electoral force that was to be treated with respect. He was careful where necessary to balance Protestant and Catholic representation at important forums, such as in the composition of the Australian delegation to the 1945 San Francisco conference that was convened to determine the charter of the United Nations Organisation. He sought and sometimes gained influence among important clerics although usually they saw through his self-interested attempts.¹⁸ He tried unsuccessfully to include B.A.Santamaria in his plans to win office in 1954, believing despite Santamaria's denials that his backing would guarantee an important increase for labor in the Catholic vote. The transparency of his offer of political influence in return for Catholic support left Santamaria appalled.¹⁹

¹⁷ Personal interview with Mr C.Cameron, Adelaide, 1 October 1984.

¹⁸ Dalziel, pp.56-7. Evatt overrated the power of the Catholic hierarchy to influence the Catholic vote, personal interview with Mr A.Mulvihill, Sydney, 13 June 1985. Evatt's cynical use of the church, Heydon papers, privately held by Mr D.Heydon, file 'Confidential: H.V.Evatt', pp.16-8.

¹⁹ Personal interview with Mr B.A.Santamaria, Melbourne, 6 September 1984. Also B.A.Santamaria, Against the tide, Melbourne, Oxford University Press, 1981, pp.140-3. See chapter 10.

Yet, although he was not attracted to theology or conventional religious practice, he did reveal a strong religious tendency. He was seized by the religious or spiritual character of constitutional law, especially of the Australian constitution. He showed this 'spiritual' state of mind through his protectiveness, reverence, wisdom and knowledge of constitutional law, and through his belief in its reformatory ability to cure the world's ills. There was even a fevered preaching quality to his advocacy of its widespread application. His belief in constitutional law was religious because such a trusting and zealous expansionist approach incorporated moral and reformist properties which far exceeded professional duty or love.²⁰

Evatt was warmly disposed to Richard Kirby, a younger legal colleague. On an occasion memorable to Kirby, the two found themselves alone driving late into the night. Evatt was relaxed and voluble as he warmed to a rich conversation inevitably centred on the law. The social barriers had fallen. Kirby presented his illustrious travelling companion with a vexed hypothetical problem in which two sides of a legal dispute were so finely balanced that it was impossible, at law, to favour either side. Kirby assisted Evatt by offering the view that only the introduction of individual interpretation or ideology could resolve the dispute. Evatt refused vehemently to concede

²⁰ See chapters 12, 14-5.

that anything but dispassionate legal analysis should be employed to break the impasse. Kirby was shocked by this response, given Evatt's own willingness to use the law as an instrument of reform; his legal career had been marked, in reputation and deed, by the often illusive factors of individual interpretation and ideology.²¹ The picture of an idolatrous Evatt in devout genuflection before the shrine of law tells much of his legal make-up. However, his piety was not wholly chaste.

For Evatt's erudition was comprehensive and diverse. His appreciation of the law was consolidated and deepened by reference to numerous fields of learning.²² In particular his affection for history, notably Australian and political history, complemented legal perspectives and compelled him to reflect from a distance upon the role and development of the law. He was immersed in its practice as a constant, often mechanical, task dedicated to yielding the best possible result for his client. Yet behind the quotidian, he was intrigued by the philosophy of law as a system of precepts elemental to the moulding of society.²³ While the law conferred upon society moral and intellectual justification and guidance and provided continuity and stability, it also acted as a vehicle for change, albeit

²¹ Personal interview with Sir Richard Kirby.

²² See chapters 1,4,14.

²³ See especially chapter 14, H.V.Evatt, 'Certain aspects of the royal prerogative'.

unhurried, as the product of measured deliberation. Despite his puristic regard for the law, and particularly of constitutional interpretation, he was firmly dedicated to its change, especially by his personal guidance, so that the reshaping of the constitution and constitutional law would reflect changes in society.²⁴

Judges are best placed to advance their notions of legal reform. However they seldom are roused to tamper with the machinery of society because of an ideological disinclination or a lack of will or imagination. Evatt came to the high court as a lawyer but also as an historian and perhaps as philosopher and visionary. The law to him was virtually bound in symbiotic union with society, this discipline promoting formal change through response to perpetual movement in society.²⁵ A mutual dependence existed where the raison d'être of the law lay in the very being of society while the law acted as society's interpreter and guide. Charged with societal responsibility the law reformer was helmsman. Such a person required inordinate self-assurance, belief in legal ability and sense of destiny to assume such a role, faculties which Evatt possessed in apparent limitless quantity. A variety of personal and professional characteristics contribute to the formation of such a figure, but notably in Evatt's

²⁴ For constitutional change see especially chapters 1, 5, 8, 12, 14-5.

²⁵ See chapters 5-6, 8, 10, 14-5.

case, vanity, impatience with those unable to scale his heights and delight in rarefied intellectual contest. He not only felt himself to be good but also to be special.²⁶ Evatt was mindful that there were few reformers, self-centredly numbering himself in that company; he felt inspired by a grand destiny that was beyond the great majority of lawyers who rightfully performed as obliging journeymen, faithful and uncomplaining in routine legal practices - he at times regarded with condescension the lower echelons of the legal hierarchy, ill-equipped to address the philosophy of law.²⁷ He believed in a personal and public responsibility to apply his gifts for the betterment of society. Altruism and self-glorification sought a sublime fusion of great talent with great mission. The fulfilment of this other-worldly ambition, which represented the successful transposition of inner demands on environment, gratified in the sense that it gave what might be called a tranquil 'high'.

Some qualification is needed to the conflict between Evatt's reverential and pragmatic concept of the law and his appreciation of a reformer's capacity personally to influence directions of the law. Evatt's double values were evident, for although he could rebuke a colleague's disrespectful behaviour towards a judge on the ground that

²⁶ Personal interview with Mr K.Brennan, Adelaide, 2 October 1984. See chapters 2,3,10.

²⁷ Personal interview with Sir Richard Kirby.

it debased the position of judges, Evatt himself clashed in court with Sir William Cullen, the chief justice of the New South Wales supreme court, even though as a student Evatt had been employed by Cullen as his associate.²⁸ (This earlier personal acquaintance may well have prompted Evatt's audacity.) Moreover Evatt as well as Watt was taken to task by the chief justice of the high court, Sir Adrian Knox, for the alleged mistreatment of members of an arbitral board formed to determine whether the deportation of two trade unionists should proceed.²⁹ Thus Andy Watt, as worldly and persuasive, should not be blandly contrasted with a characterisation of Evatt as his callow, untainted and wide-eyed protégé.

Other features of Evatt's singular character may be summarised to examine further his contention that the law prevailed to the exclusion of 'human' factors. He was poorly attuned to society; solitary, troubled, intense, vulnerable. His poor social and professional relations were marked by frequent rudeness and egocentricity, although

²⁸ Sydney Morning Herald, 20 December 1930, p.14.

²⁹ This alleged mistreatment, which centred on charges of corruption, occurred while the board was sitting and later in argument before the high court. The opinion of Sir Adrian Knox was supported by fellow high court judges, Sir Isaac Isaacs and Sir Hayden Starke. Sydney Morning Herald, 8 December 1925, p.11; 10 December 1925, p.6; 19 December 1925, p.16; personal interview with Sir Richard Kirby. The case was Ex parte Walsh and Johnson; in re Yates (1925), 37 CLR, p.36.

when relaxed he could be engaging.³⁰ His lack of social integration indicated ardour, indifference and remoteness from people; to varying degrees of inappropriateness and inconsistent fervour he could be too affectionate, too sentimental, too inconsiderate, too overbearing, too insouciant. He channelled empathy, or warmth, through ideas, as if acknowledging this deficiency. For example, he was less concerned with the particular identity of jurymen and judges (although he certainly held strong opinions of the different abilities of particular judges); rather it was the idea, or idealisation, of the sanctity of those positions within the law that stimulated his affection.³¹ Similarly compassion, as expressed through the law, was projected artificially from afar. The attraction of the

³⁰ See chapters 1,6. See also personal interview with Mr H.Gullett, Canberra, 19 December 1985; personal interview with Sir Keith Waller, Canberra, 28 November 1985. Sir Arthur Tange and others considered Sir Paul Hasluck's uncomplimentary assessment of Evatt's behaviour to be too generous in P.Hasluck, Diplomatic witness: Australian foreign affairs, 1941-1947, Carlton, Melbourne University Press, 1980, personal interview with Sir Arthur Tange, Canberra, 10 December 1985. Among those who could enjoy his company, see personal interview with Mr J.Burton,, Canberra, 5 January 1987; personal interview with Mr C.Wyndham, Sydney, 12 June 1985, personal interviews with A.Barkell and J.Starke.

³¹ Evatt regarded highly the judge Mr Justice Long Innes; see H.V.Evatt, 'Mr Justice Long Innes', unpublished and undated typescript, private papers of Mrs C.Weaver. He also respected the ability of the high court judge Sir Owen Dixon, see personal interview with J.Brennan, Sydney, 3 June 1986. He had a low opinion of Sir Edward McTiernan and Sir William Webb, although Evatt was responsible for Webb's appointment to the high court in 1946, see personal interview with K.Brennan and personal interview with Mr J.McPhillips, Sydney, 29 May 1986.

world of ideas therefore performed a most agreeable double function. It firstly compensated for personal emotional inadequacy by acting as a vehicle for the transmission of emotion. It thereby offered a means to distance himself from his own emotional turmoil. It secondly provided merciful exemption from involvement in the bewildering emotional vagaries of others which, because he was so constituted as to be unable to associate with the emotions of others, appeared as predominantly beyond his own experience and in consequence inexplicable and threatening.

Ideas were uncomplicated because they were subject to mental regulation. Their inherent structure and order bestowed harmony and provided sanctuary from the mystification and danger of emotional chaos. Gratification from intellectual elitism was a natural progression. Reform embraced intellectual exhilaration and the 'human' as it explored the condition of humanity. The exploration however was sanitised for humanity was conceived as an arithmetical collective rather than as a grouping peopled by individuals harbouring needs, hopes and aspirations.³² Evatt would certainly feel distress at the unfortunate state of an individual (probably an exaggerated distress indicative of a forlorn attempt at equilibrium), yet it was the

³² For a general discussion of these issues see A.Davies, Skills, outlooks and passions: a psychoanalytic contribution to the study of politics, Cambridge, Cambridge University Press, 1980, pp. 100-20. Personal interview with J.Brennan.

individual, not as a person, but as a component of a collective that fired his imagination. Intellectual purity was maintained. His insistence that a legal solution gave sole recourse in an equally balanced dispute was indeed in accordance with his defiance of the 'human' factors of personal interpretation or ideology. The humanity of the acclaimed legal reformer was present, but a presence that was cushioned by detached intellectualism.

CHAPTER FOURTEEN

THE PREROGATIVE: A CONTEMPLATION OF POWER

Evatt's preoccupation with power was demonstrated by his eagerness to follow both the professions of the law and politics. A profound fascination with power raises the issue of the role of power in society for the exercise of power is so often a means to impress personal will upon society - the impression of will reveals a desire to dominate and so is an imposition of control. The commanding personal influence applied by Evatt in his private and professional relations exhibited a need which, as earlier contended, may be interpreted in terms of an emotional and psychological intensity that, among other things, produced social isolation and a desire to dominate others.¹ The level of that intensity seemed to be so great that the containment of his life within the ordinary confines of private life was untenable. That is, a loving or 'full' private life was alone unable to address his isolation or desire to dominate; private life by itself was inadequate because it contained a conventionality, particularly a quiescence, to which these needs were ill-

¹ See especially chapters 1,6,9.

directed. He overcame the limitations of the society of private life by 'channelling' his inner needs into socially 'acceptable' and even admirable professional activity.²

The surroundings of private life were simply not pertinent to his needs, although he indeed raised a family for whom he cared greatly.³ He projected those needs onto the greatly extended environment of the 'public', not in neglect or repudiation of the capacity of private life to address and pacify anxiety, but rather because private life was not germane to real concerns. In a sense, he led two private lives; his own family life and a second, figurative but 'true' private life that was the public arena, through which he released and exhibited these highly personal, crucial concerns. The public was induced to participate in the open resolution of internal struggles. From the personal and particular to the public and expansive he

² A frustration which might ultimately have led to severe disruption and breakdown was implied. It was remarkable that he so successfully applied himself to the alignment of personal needs with his life's work. His legal and political eminence, at both commonwealth and state levels, continued from early adulthood to the near-completion of professional life: so that, despite occasional disappointments, an approximate equilibrium between interior and exterior requirements was maintained. His life was in many ways an exhilarating demonstration of the triumph of ability, direction and will. It is disturbing but intriguing to wonder how he would have developed had he lacked these attributes. He may well have become an errant juggernaut careering in barely controlled fury, divided by the disharmony of private needs and unacceptably inadequate public results.

³ Indeed his two children were adopted, such was his desire to form a 'conventional' family.

exhibited an innate appreciation of scale, that most elemental component of grandeur, which was evident in the breadth of his work interests - the personal expression of power amplified inner imperatives.⁴

Evatt realised that an indispensable corollary of the exercise of power was the acquisition of a knowledge of its operation. The intellectual and professional vehicle which provided a comprehensive examination of power was constitutional law. Thus this branch of the law became his métier. Australia became a nation through the enactment of the Constitution act of 1901. This act formally established a federal system of government, defining the essence of national self-government through the statement of guidelines for its administration. The crown, through the imperial parliament, authorised this political development as an exercise of the royal prerogative, for ultimate power in Australia then lay in the crown and the imperial parliament. The constitution arranged power chiefly through a balance and independence between the three heads of power, the executive, legislature and judiciary. The majority of Evatt's professional life was lived amid this triumvirate.

Evatt's need to explore the machinery of power was a strong force from early adulthood. His master of arts

⁴ For the displacement of political man, see H.Lasswell, Psychopathology and politics, Chicago, University of Chicago Press, 1977 (1930)

thesis, 'Social and political tendencies in Australia', examined the nature of the power relations of empire, a theme which was continued in his doctoral thesis, 'Certain aspects of the royal prerogative: a study in constitutional law'.⁵ He had for many years been engaged in its research, although it was submitted in 1924 when he was aged twenty-nine. This extended preoccupation implied a mental absorption in excess both of curiosity and formal academic requirement. The success of his thesis was recognised with the bestowal of two cherished prizes, a university medal and a rare doctorate in laws.⁶ It also established a firm grounding for later legal and political conquest. The greatest reward was probably the personal tranquility and equipoise gained from an exploration of the operation and organisation of power.

Evatt's decision to write on the prerogative was at first sight obscure. The role of imperial power within empire was in Evatt's time more or less taken for granted for most dominion citizens felt undisturbed by that imperial relationship - Australians were heartened by the effect of more than twenty years of national self-

⁵ See chapter 4 for a discussion of his master of arts thesis. H.V.Evatt, 'Certain aspects of the royal prerogative: a study in constitutional law', Ph.D. thesis, university of Sydney, 1924. This thesis was published more than sixty years after its submission; H.V.Evatt, The royal prerogative, North Ryde, Law Book Co., 1987. The thesis page numbers cited here use the original thesis page numbers, not the numbering of the publication.

⁶ University of Sydney calendar, 1925, p.442.

government. There existed however a small group of Australian professional figures, mainly politicians and constitutional lawyers who were concerned with defining the precise nature of dominion status. Some, particularly labor politicians, were eager to interpret that status as one of full independence. Evatt in his thesis showed that he was sympathetic to the aspirations of that group.⁷ The manner in which he addressed dominion status was obscure because the prerogative was rarely discussed expressly in this context. This was probably both because it was generally unknown or was taken for granted, while very few cared for or understood it. It was telling that, despite widespread apathy about the nature of imperial relations, and despite the collection of like-minded lawyers and politicians who did express concern for that nature, Evatt virtually alone chose to examine the essence of imperial authority. That decision was most fitting, given his deep inner fixation on power.

He was concerned and surprised that the prerogative lacked exactitude, contending that the relationship of the crown to its dominions was pervaded with vagueness in both the demarcation and application of power. He considered the problem to be crucial to Australian political independence.

⁷ T.B.Millar, Australia in peace and war: external relations 1788-1977, Canberra, Australian National University Press, 1978, pp.70,76-7,79-80, although no major Australian political party 'wanted to reduce the British relationship'.

His thesis was therefore chiefly devoted to establishing the effective identity and power of dominions, especially Australia. The royal prerogative, as the expression of the crown's power, both determined that identity and created vagueness. Consequently, he sought by clarifying the royal prerogative to demonstrate the legal capacity of dominions to apply that prerogative.⁸

His capacity for presenting cogent argument was impressive given the mass of often conflicting or indecisive precedent and academic commentary. The definition of the prerogative itself was widely disputed.⁹ His wise avoidance of a detailed definition reflected this dispute:

What in the King is a prerogative is a franchise in the subject. The rights of the Crown are quite distinct in law from the rights of "common" people.¹⁰

There was, however, general agreement upon the awesome power of the prerogative, a rare instance of unanimity among constitutional experts on this subject.¹¹

The dominant authority of the crown to exercise its prerogative in matters of vital dominion importance was argued by Evatt to be inviolable, although lesser powers did draw facets of the prerogative into their spheres. The introduction of those facets bolstered subordinate powers

⁸ H.V.Evatt, 'Certain aspects of the royal prerogative', for example, pp.14-7,30,45-54,67,72-3,101-32,308-16.

⁹ Ibid., for example, pp.8-9,26,36-41,60-5,124,128-33.

¹⁰ Ibid., p.10.

¹¹ Ibid., pp.8,14.

and supplemented the fluid movement of power. This movement was in restless and eternal fluctuation; in expansion through the increase of power and by the assertion of independence, and in contraction as power was eroded by challenges from related spheres. He noted the Australian constitutional cornerstone which dictated the separation of executive, legislature and judiciary. This ensured the prevention of the disproportionate ascendancy of any single head of power and so preserved a basic independence and balance. Persistent encroachments nevertheless tested independence and delineated boundaries of power. The greater authority of the prerogative of the crown lay usually in disengaged dormancy, its customary exercise being of lesser, perfunctory duties that were included in its many functions. An ill-defined, distant character contributed to a deceptive ambience of disinterested passivity. He sought to remove this finely suspended Damoclean sword.¹²

Both Evatt and the high court judge Sir Isaac Isaacs found the elusive and often contradictory nature of the prerogative to be a difficult concept. Evatt quoted Isaacs to illustrate the ability of the role of the prerogative in a federation to confound the best constitutional minds:

Why, when the King, for his wider Australian powers, took over by virtue of Imperial legislation the land appertaining to the transferred governmental functions, he

¹² Ibid., pp.30-1,42-51,55-71,361-441.

should be supposed out of regard for the State prerogative, to ignore the Commonwealth prerogative, I am at a loss to understand.¹³

The primary issue of Evatt's thesis, the legal capacity of dominion executives to apply the prerogative, raised this problem. He for example considered the conflicting notions of the divisibility and indivisibility, or unity, of the crown. Indivisibility affirmed strength through a single ubiquity. It was therefore a concept marshalled in support of imperial dominance. Curious anomalies were raised by this concept, such as Isaacs' bafflement at the crown representing a state in litigation against the crown representing the commonwealth. The diverse capacities and agencies of the crown compelled a gradual accommodation of the alternative belief in divisibility. Both, however, valid: the essence of indivisibility preserved imperial cohesion through the existence of the prerogative; divisibility facilitated the acceptance of distinct governmental personalities. This assured the implementation of a theoretical independence of dominion power, as conferred by constitutions. The crown's ambiguous identity further complicated the hazy guidelines by which the prerogative was delegated to subordinate bodies.¹⁴

Importantly, Evatt neglected to explain that the prerogative was crucially compromised, or 'divided', from

¹³ Ibid., pp.358.

¹⁴ Ibid., pp.68,74-101,245,255.

the time of the English civil war of the mid 17th century and execution of Charles 1, when the English parliament assumed fundamental prerogative power. The crown's authority nevertheless remained predominant as the titular and still very powerful head of empire, through continually fluctuating power relations between crown and parliament - the prepotency of the prerogative since the restoration of the monarchy was in effect shared between them.¹⁵

The application of the prerogative to dominion judiciaries was straightforward. The prerogative right of final appeal before the privy council preserved the ultimate authority of the crown in judicial matters.¹⁶ The application of the prerogative to dominion legislatures was less distinct. This illustrated the ambition of one sphere of authority to erode the power of another. He discussed a class of the prerogative which embraced proprietary rights to indicate the restricted ability of dominion legislatures to divest the crown of some of its power. He suggested two broad principles by which the infringement or abolition of prerogative power as exercisable by the crown might occur;

¹⁵ B.Kemp, King and commons 1660-1832, London, MacMillan, 1965.

¹⁶ H.V.Evatt, 'Certain aspects of the royal prerogative', pp.216,313. Section 74 of the Australian constitution, however, specifies circumstances by which the high court is the final judicial tribunal. A case in point was the correctness of the decision of the privy council to refuse leave to appeal from the high court's decision in the Engineers' case, Amalgamated society of Engineers v Adelaide Steamship Company Limited and others, (1920) 28 CLR, p.129.

by either a statute's specific wording or by its 'necessary implication', that is by its implied intention. The crown was thereby protected from a general or indirect erosion of power. He claimed that dominion autonomy was stronger in the indistinct, and more contentious, domain of extra-territorial legislation. He did concede that here the legislative competence of dominions remained undetermined. He was nevertheless eager to nullify the potential damage to dominion independence by reducing this question to one of legal construction, not restraint of power.¹⁷

He returned with worried frequency to the greater authority of the crown, in this case of legislative supremacy. Dominion legislation could not, for example, encroach upon this feature of the prerogative's dominant authority.¹⁸ He was however heartened by the degree of freedom permitted to the newly created Irish Free State. This freedom flowed by analogy to other dominions. He observed that no law would be passed and made applicable to self-governing dominions without the consent or request of the dominions themselves. Furthermore, imperial acts possessed no jurisdiction over dominions unless a clear intention to do so was recognised. Yet, the legal power of the crown to revoke dominion constitutions was an overwhelming indication of the potential for self-

¹⁷ H.V.Evatt, 'Certain aspects of the royal prerogative', pp.52-4, 55-71, 107-32.

¹⁸ Ibid., p.132.

government itself to be withdrawn. The only technical method to ensure dominion prepotency was to institute a new and rigid basis to constitutional law. The extreme improbability that the crown would authorise such a change was acknowledged.¹⁹

Evatt shrugged off the intractable reality of greater imperial power with barely concealed apprehension in a shrewdly argued repudiation of obstructions to autonomy. The crown acted in the guise of enlightened paternalism through the encouragement and protection of dominion autonomy. It bestowed self-government upon dominions, chiefly through the enactment of constitutions, to foster their growth to political maturity. The crown retained legal supremacy as a guardian of dominion independence. The sincerity of this view was questionable - the retention of greater power by the crown caused little apparent practical difficulty yet he observed that it was this very dominance which invested the prerogative with importance, particularly as its division between crown and dominion was contentious.²⁰ He glanced incessantly over his shoulder as the shadow of imperial domination threatened to cloud dominion freedom.

¹⁹ H.V.Evatt, 'Certain aspects of the royal prerogative', pp.121-8,132. Ultimate imperial supremacy over Ireland was conceded, pp.126-7.

²⁰ Ibid., p.133.

He examined three conflicting legal theories, all of which specified criteria by which the prerogative might be apportioned. His rejection of the suitability of each left him dismayed but not surprised, given his resignation to the prerogative's capacity for adroit evasion from concrete admeasurement. The first was to be found in Musgrave v Pulido (1879). This influential theory asserted that royal power vested in a governor was confined to the terms of his commission. Its highly restricted framework precluded discussion of the effect of the prerogative. The privy council in its judgment seemed fearful that the powers of a governor would be too great if extended beyond his commission. This theory, furthermore, rested upon outmoded circumstances which rendered current application inappropriate. He refuted this theory by citing alternative judgments which approved the dominion exercise of the prerogative beyond expressed authority. He used as illustrations the valid exclusion of aliens without recourse to statutory law and executive control of proprietary rights beyond reference to the terms of a governor's commission. This view therefore falsely dismissed the large unwritten portion of the prerogative able to be exercised by dominions.²¹

The second theory was that of 'necessity'. It claimed that all power, prerogative or otherwise, was assigned to a

²¹ Ibid., pp.148-75.

dominion only as necessary to administer the law and to conduct public affairs in pursuance of the safety and protection of its people. He considered this theory discredited by vagueness, both in its failure to locate authority within a particular head of power and in the absence of a specific formula by which to apply prerogatives. A theory calling for power as required was also a temptation for its abuse. He warned of its danger by invoking the verse of Milton:

Thus spake the fiend, and with necessity,
the tyrant's plea, excused his devilish
deeds.²²

This doctrine, moreover, created diverse opinions of its application because it was directed more to political circumstances than to the law. The self-contained unity demanded of theory was inherently undermined.²³

The third theory arose from the decision of the privy council in Attorney General v Cain (1906). This decision held valid dominion legislation by affirming the supremacy of imperial authority over the extra-territorial legislative capacity of dominions. The case concerned the immigration of aliens to Canada. He argued that the legislation could more simply have been upheld by deciding that with the legal expulsion of aliens from a dominion came the complementary power of prohibited entry. The privy council exposed a fear of challenge to its power by

²² Ibid, p.181 (*italics in original*).

²³ Ibid., pp.176-203.

adopting the more treacherous course of the assertion of imperial dominance. He revealed weaknesses in this theory by again noting the deficient criteria by which to locate power within a specific source. The major drawback however was the inevitable and extraordinary conclusion that the authority of dominion law derived not from power vested in a dominion government, but on or behalf of the imperial government - dominion governments in consequence enjoyed the same extensive power of the imperial government. Cain's case demonstrated the confusion that might arise between a dominion's innate legislative power and a separate exercise of the prerogative by crown or dominion. It therefore further complicated the problem of the quantity and division of the prerogative's delegation to a dominion. He argued that Cain's case showed that the prerogative was severely eroded by the failure of legislation of the imperial parliament to act as a delegation of the right to exercise the prerogative. It possibly represented its total surrender. He therefore contended that this case strengthened dominion authority, particularly as it enhanced and extended dominion statutory authority. The privy council's judgment in this case also implied the requirement that the crown give assent to legislation, thus reducing dominion autonomy, an error which again confused innate legislative power with the delegation of the prerogative, for granting assent was essentially a

mechanical endorsement and not a valid demonstration of the prerogative's power.²⁴

Evatt was particularly interested in the discussion raised by this case of the competence of prerogative authority beyond the territory of a dominion; he turned then to the contemporary problem of a dominion's ability to exercise 'external' prerogatives, a discussion which addressed its authority beyond written law. It was widely accepted before the first world war that dominions possessed no authority to negotiate a treaty with any foreign power or to receive any benefit from a foreign power that was not offered to the entire British empire. Subservience was punctuated by isolated appeals for enhanced dominion status, especially through an insistence upon consultation at international conferences. The position altered dramatically during and after this war. The methods of co-operation developed within empire as co-operation itself flourished. The authority gained from this participation permitted greater dominion autonomy; representatives were sent to a variety of vital international meetings, dominions taking a forceful role at the imperial war cabinet, the 1917 imperial war conference and the Versailles peace conference. They joined the the League of Nations (although it should be added that the Australian delegation to the league was neither large nor

²⁴ Ibid., pp.204-19.

prominent). He further observed that courts swiftly recognised the rapid movement in relations between Great Britain and dominions, demonstrating a flexibility within the legal system that permitted development outside the often cumbersome and inhibiting constrictions of statutory law. The altered perception of dominion status radically transformed constitutional theory. For example the crown was obliged to act on the advice of dominion executives in matters of mutual concern. Autonomy guaranteed the right of independent action in world affairs, promoting a 'sense' of nationhood.²⁵

Evatt focused his attention on Australia with an evaluation of the relationship of the prerogative to the Australian constitution. He repeated Australia's claim to self-government in spite of theoretical imperial supremacy. The constitution expressly stated the right of the Australian executive to exercise the prerogative. In particular, an analysis of sections 2 and 61 established his belief that a portion of the prerogative as exercisable by the governor general confirmed the distance between Australia and the crown.²⁶ For he argued that the appointment of the governor general on the authority of the constitution severed the line of authority between crown and dominion.²⁷ He devoted special attention to the

²⁵ Ibid., pp.230-74. Millar, pp.119-32.

²⁶ Chapter 10 contains a brief discussion of section 61.

²⁷ Ibid., pp.276-312.

persuasive support for this contention from the privy councillor, viscount Haldane, who expressed his view on the effect of section 61 during his consideration of the state governments' application for special leave to appeal from the important high court decision in the celebrated

Engineers' case (1920):28

The difficulty is that under section 61 it is declared 'The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor General as the Queen's representative and extends to the execution and maintenance of this constitution and of the laws of the Commonwealth'. No doubt that does not take away the power of the Governors of the States as representing the Sovereign within their limits, but does it not put the Sovereign in the position of having parted, so far as the affairs of the Commonwealth are concerned, with every shadow of act of intervention in their affairs and handing them over, unlike the case of Canada, to the Governor General?29

The formidable constitutional alliance between Australia and governor general was seen therefore to form a bulwark against interference, formalising detachment from the crown. This alliance was unstable, for there was uncertainty over the division of the prerogative between Australia and her governor general. Evatt observed the very strong body of legal authority which adhered to the supremacy of the governor general. He was silent however on

28 Amalgamated Society of Engineers v Adelaide Steamship Company Limited, (1920) 28 CLR, p.129.

29 H.V.Evatt, 'Certain aspects of the royal prerogative', p.312.

the governor general's precise power. He explicitly, and

misleadingly, continued to assert Australian dominance:

It is submitted then that no legal limit exists to prevent the exercise in respect of the Commonwealth of Australia or any or all of the prerogative powers of the King on the sole advice and responsibility of the Commonwealth executive government.³⁰

He sought then to dissipate the tension that had been aroused by his robust discussion of battles between conflicting spheres of power. A postulated doctrine of self-government allowed him to display a theoretician's desire for the harmony of completeness and self-unity. He moved surely when reminding readers of his need to safeguard an exposed flank:

The whole principle of Imperial polity is that self-governing powers once accorded to Dominions will never be withdrawn or restricted.³¹

He continued in this spirit as he allowed himself a contemplative respite from the task of penetrating the inscrutable recesses of a mass of constitutional law; an exploration of the rudiments of power brought satisfied tranquility:

...all prerogatives may by virtue of the principle of self-government, a principle based on the highest legal authority, be exercised by Dominion Executives. This view is, it is submitted, in harmony with the whole history, and particularly with the recent developments of the Constitution of the British Commonwealth of Nations. Difficulties may arise under it, but they are not insuperable, and the exercise of mutual co-operation will get rid of them

³⁰ Ibid., p.308.

³¹ Ibid., p.323.

all. There is nothing in this view involving the disruption of the Empire...it preserves the fundamental unity of the Empire through the personality of the King. He remains King of the new Commonwealth of Nations, his prerogative powers lend powerful aid to the general principle of self-government...32

Yet, even in this moment of magnanimity, he could not refrain from delivering a Parthian shot. He added that the king's name:

...is the symbol of unity, not a unity resting on legal supremacy, but rather resting in the hearts and minds of British citizens throughout the world.33

Evatt infused restless motion into this work. Change in society mirrored the manoeuvrings of rival powers. The law exhibited a willingness to align itself with this swell and recession. The permutations of the prerogative were guided not by written law, even though a small portion of the prerogative was embodied within statutory law. Rather the prerogative developed according to custom and usage articulated by case law and the work of academic lawyers. Statutes contained their own interpretative principles and they might of course be amended. Yet it was that body of law which was not subject to legislative enshrinement, or perhaps rigidity, which enjoyed a freedom conducive to a ready response to the temper of society. This unwritten law, or common law, gave vitality to the law. Its lack of legislative definition was however greatly responsible for

32 Ibid., pp.324-5.

33 Ibid., p.325.

its elusive, and so often troublesome, character.³⁴ He quoted the constitutional authority Duncan Hall, who wrote that 'the stony face of the law' could not acknowledge the altered status of dominions.³⁵ It was evident in Evatt that this writer failed to grasp the open-mindedness and elasticity of common law which formed its basis and strength.³⁶

The nature and quality of Evatt's legal outlook was well defined in this work, particularly through his admiration for the diversity and subtlety of the law and legal opinion and their relationship to society. He admired the aptitude of courts to accommodate swift movement in interpretations of the prerogative in matters relating to external affairs. It was the vibrant nature of common law which buttressed his advocacy of the revival and elevation of the prerogative, as integral to 'a living system of law'.³⁷ For this area of the law was frequently disregarded; his sedulous research so often yielded only fleeting and peripheral attention in judgments. He thus challenged a prevailing custom of neglect; he sought both to make important the function of the prerogative and to relate that function to the basic role of the law in society, especially as it affected self-government. The

³⁴ Ibid., pp.16-7,30,222,265.

³⁵ Ibid., p.263.

³⁶ Ibid., p.264.

³⁷ Ibid., p.13.

thrust of his thesis was thus transformed from the near exclusive domain of desiccated academic interest to a larger, enlivened world of contemporary significance.³⁸

The incessant adjustment and adaptability of society rendered the study of movement itself central to obtaining an understanding of the law. Historical considerations consequently gave this study a sharpened perception. For example, he discussed the evolution of responsible government in colonial Australia, a development which represented a heartening illustration of political accountability and self-reliance. Stability was promoted both within a colony and between colony and crown by the settled, but not wholly implemented, tradition of acceptance of the advice of colonial ministers by the crown, or the crown's agent.³⁹ Colonial courts invested further political composure and clarity with the maintenance and enunciation of the principles of responsible government. Imperial satisfaction with colonial development was further endorsed by the application to the Australian colonies of the Colonial laws validity act. This act extended legislative independence and enhanced colonial self-confidence.⁴⁰ He nevertheless warned that it was the very success of responsible government which blinded authorities to the dormant might of the prerogative.

³⁸ Ibid., for example, pp.1-4,13-4,276-313.

³⁹ Ibid., pp.18-35.

⁴⁰ See chapter 8.

Regular excursions into pre-federation political and legal life broadened his outlook so that contemporary insights were clothed with greater sophistication and meaning.⁴¹

Evatt's examination of fundamental structures of the law flavoured his search for a greater reality or philosophy by which to comprehend societal forces. This perspective placed him within an Australian legal fraternity led by George Higinbotham, Henry Higgins and Isaac Isaacs. He quoted frequently from their judgments so as to guide and lend authority to his own thoughts as if it was acknowledgement of a self-conscious, although tacit, duty to cherish and cultivate this heritage. A knowledge of constitutional law compelled the inclusion of factors which were not specifically 'legal'. Yet these predecessors infused a fundamental appreciation of allied fields of human activity into their perceptions of the law. The vitality and freshness with which they salted outlook indicated a distinct, varied mental quality. Quotations from Higinbotham's judgments were employed to elucidate political discussion. Higgins sought to reach behind doctrine to discern the essence of power relations. Isaacs noted a duty of the law to respond to the absorption of public policy into the community. He admired the ability of common law to adapt its principles to the changing life of

⁴¹ H.V.Evatt, 'Certain aspects of the prerogative', pp.18-28, 117.

the community and observed the alertness with which courts reacted to important constitutional movements. Isaacs' interest in the introduction of English common law exemplified the usefulness of historical insight to inform contemporary assessments.⁴²

Evatt's thesis demonstrated his attraction to the prime workings of society as an intellectual, especially a philosophical, fascination. He valued the law with other disciplines, such as history, politics and art, for yielding the secrets of those workings although the study of history, which most accurately apprehended society's movements, bound other disciplines into a unified social chronicle.⁴⁵ History as a study was particularly alert to the contours of society when society was tested by upheaval. His trained eye saw society's defining features from its institutional balances, its inequalities, its systems of organisation and, through these features, its arrangement of power. Such rudiments guided and unified outlook, particularly in his writings and speeches on art, politics and the law. In fact all his major writing was 'societal' in its examination of the recasting of society by those who in crisis sought to retain the status quo or to devise new forms moulded from personal motivations and

⁴² Ibid., pp.15,97,176,265,288,301-3.

⁴⁵ See chapters 4,13.

ambitions. In short, he was transfixed by the inexorable force of society's changeable but enduring machinery.

His contemporary insights were conceived from the signals of often distant rumblings that rose, recurred or were suggested in apparent or distorted forms in the past. Although primarily interested in Australian society, that interest echoed his respect for western civilisation. The evolution of Australia and its governing civilisation had an irresistible momentum - society's deviations were ancillary to, or an expression of, an admiration for its continuity and grandeur and was confirmed in word and deed by the guidance he offered to society.⁴⁶ This eternal flow marked the surge of humanity; individuals were subordinate components deferring to society's more profound purpose. Regardless of the grouping or structuring of society's elements, the imperishable whole was greater than the sum of its parts.⁴⁷

His studies of upheaval, whether of political and legal crisis or of outbursts of creative energy, were also studies of society's rejuvenation by self-examination and changed direction. His holism provided a magnificent and quite appropriate backdrop against which to exhibit ambition. It demonstrated his desire to 'rub' against

⁴⁶ Evatt's judgment in *Jolley v Mainka*, (1933), 49 CLR, p.271. H.V.Evatt, The British Dominions as mandatories, London, Melbourne University Press, pp.5-6ff.

⁴⁷ This tendency is consistent with his attraction to the idealisation of people and issues.

society's everlasting glory by incorporating his work, which focused upon highwater marks of Australian and international affairs, with the timelessness of society.

Evatt's thesis, as predominantly a study of power relations of which relations between imperial and Australian institutions were paramount, concerned the assertion and rejection of independence. He hoped professionally to locate or to confine the friction of inequality within society's legal and political patterns and unities. These themes of society's divisions reflected a climate of thought, emotion and psychology which naturally but insistently derived from the author's character; his appreciation of independence was formed from a life that was marked by a defiant apartness, a sympathy for those who were disadvantaged by oppressive forces, the use of society as a public environment for self-assertion, and the oscillation between splintering confrontation and unifying consensus. These manifestations turned chiefly on the interaction of independence won and independence denied which, as argued to be broadly shaped by the environment of infancy, invoked a consideration of the quality of oppression. In other words, the personal was able to be transformed onto the public, in varying shades, in two ways. Firstly, public activity was 'united' by the subjugation of independence to collective authority (usually where he fully or partially represented that

authority); secondly, it was 'disunited' by an assertion of independence which repudiated that authority.

His projection of personal issues onto the public realm in this work was demonstrated by his high regard for established legal and political frameworks. It also signified his desire to define and delineate spheres of power, so that he was concerned to preserve the integrity of power. Thus he resisted aggressive advances when he discerned an encroachment upon the independence of a lesser power that was perceived as unjustifiable, particularly of empire towards a dominion. Yet the unprogressive nature of empire, with its attendant threats to dominion independence, did not outrage him in a manner that might be expected of someone bearing his progressiveness.⁴⁶ In fact he quite willingly employed the existing framework of empire. That lack of outrage pointed to a political inconsistency which in turn indicated the relevance of distinctively personal factors in work. A 'conventional' radical, for example, might advocate Australian secession from empire or the dissolution of empire itself. In fact, Evatt valued the proven political and military strength of this confederation, which had recently emerged ravaged but victorious and intact from the demanding trial of protracted war. He further held in esteem the fairness,

⁴⁶ For Evatt's conservatism, particularly of his desire to work within established structures of society, see chapter 7.

intellectual sophistication and 'liberalism' of British democracy, particularly as embodied in judicial and political institutions.⁴⁷

His admiration for his own country was enhanced by a firm understanding of the broad cohesiveness of Australian society and its institutions, notwithstanding the resistance to progressive ideas which, for example, then marked the legal profession. He therefore warmly accepted the adoption by Australia of fundamental British societal frameworks - his desire for change in his own country was consequently located within these conservative, although unifying, Australian and ultimately British structures. He fought assiduously in the courts and in parliament for the preservation of that society. He was thus grateful, not scornful, in his use of the established frameworks upon which empire and Australia evolved in order to formulate a new unity which would adequately reflect altered constitutional relations. He believed that appropriate adjustment would strengthen empire.⁴⁸

⁴⁷ H.V.Evatt, 'Certain aspects of the royal prerogative', pp.243ff,253,324-5. As with the law it also possessed a largeness which suited the magnitude of his grandiosity. See chapters 4,15.

⁴⁸ For reform within legal structures at the time of his writing, see his advocacy in R v MacFarlane; ex parte O'Flanagan and O'Kelly, (1923) 32 CLR, pp.521-3. Ex parte Walsh and Johnson; in re Yates, (1925) 37 CLR, pp.39-41,50-55; personal interview with Sir Richard Kirby, Nowra, 7 June 1986. For a later discussion, The Times, 30 May 1942, p.5.

The entire thesis turned on the centrifugal force of independence and the centripetal force of unity. He sought to alleviate imperial domination over dominions, particularly over Australia, by postulating an advanced dominion legal and political maturity. He skilfully moulded a new concept of political inclusiveness that transformed a widespread perception of political adolescence. It was an ambition that resonated with the independent, innovatory urge of the law reformer. Political inclusiveness was therefore designed to facilitate a new and unqualified Australian exclusiveness. The work's dynamism was created from the interaction of these two personal, and by extension public, characteristics; unshackled self-government appeared to guarantee freedom from domination while the appearance rather than the fact of independence returned with troublesome frequency. For the continued dismissal of ultimate imperial supremacy masked genuine concern. A fundamental sacrifice of Australian identity to a broader and more imposing imperial significance thwarted the final resolution of this struggle, however advanced was its march to nationhood.

The legal paramountcy of the crown was argued not to exist through his analysis of section 61. However, his silence on the potency of the position of governor general was a resounding omission. This particularly contrasted with the claim of an authoritative body of opinion which

held that this office contained legal supremacy through the exercise of the royal prerogative.⁴⁹ The logician-theoretician had fought the law reformer to wearied and insoluble deadlock. The professed harmony of the author's legal and political philosophy was essentially fractured. The thesis therefore failed in its principal goal, that of presenting a new vision of untainted Australian self-government within an imperial framework.

Evatt's prolonged efforts to grapple with this fundamental riddle of constitutional power persisted formally at least until 1936. This year marked the pinnacle of his academic pursuits in constitutional law with the publication of The king and his dominion governors: a study of the reserve powers of the crown in Great Britain and the dominions.⁵⁰ Its appearance, twelve years after the submission of his doctoral thesis, was a further illustration of an incessant craving to grapple with the workings of power. This book was an attempt to address an inability to resolve the fundamental problem tackled in his doctoral thesis. Its writing was also important because he had not to that stage been engaged actively in politics for six years. This and other publications of his high court years contained a marked political content. They permitted a tangible, and for a judge acceptable, means to retain an

⁴⁹ Ibid., pp.22-3,30,304,315-8.

⁵⁰ H.V.Evatt, The king and his dominion governors, London, Oxford University Press, 1936.

involvement in politics. While experience of legal power was very real, his experience of political power was vicarious. With an eventual return to active politics these writings helped to prevent political skills from falling into disuse.

He discussed major recent English and dominion constitutional crises that afflicted empire in The king and his dominion governors. He was primarily concerned with dominion crises so that the role of the governor became a focus, for this person was empowered to oversee a return to political stability. That power was a prerogative power named the 'reserve' power, so called because it was held for use during exceptional, conflict-ridden times.⁵¹

An ingrained appreciation of the vagueness and uncertainty of the prerogative led him with knowing apprehension to a predominantly ad hoc world in which desultory reaction to unfolding circumstances was so often the norm. Although guided by the terms of a commission, indistinctly defined constitutional conventions denied dominion governors a reliable or formal pattern by which dispute might with confidence be brought to serene and peremptory settlement. The most consistent and neutral, or passive, course of action available to a governor was to accept the advice of his ministers. Such advice was usually

⁵¹ Ibid., for example, pp. xiii, 1-2, 7-8, 12-3, 17-8, 45, 137-43, 249ff, 305-6.

to dissolve parliament so that the altered composition of a newly elected parliament might ensure a resumption of political calm. This basic model of conduct was discredited by the regular flouting of ministerial advice or of unilateral action taken in the absence of advice. Seemingly endless combinations of circumstances fell together to almost ensure uniqueness in each crisis. A fortunate but not especially capable governor might have a crisis resolved without or in spite of his intervention; an unfortunate governor, well versed in constitutional convention and seeking best to satisfy all parties, might be blamed for events beyond his control resulting in the worsening of crisis.⁵² The human component, which so often troubled Evatt in his personal and professional assessments, worried him especially when it was subjected to strained conditions; the purity of 'impartial' appraisal was a quality unreasonably expected of the author by a governor.⁵³

There had been a constitutional crisis involving the governor in New South Wales. Complex circumstances led to the recall from office of the governor, Sir Gerald Strickland. W.A.Holman, then labor premier of New South Wales and of course later the subject of Evatt's political

⁵² Ibid., for example, pp.30-3,38-40,43,45,51-2,60,68-9,121-2,125-9,146-51,153-6,196-8,217-28,256ff,269-71,283-4,310-1.

⁵³ Ibid., for example, pp.26,32,61-2,103-7,129,146-51,233,244-6.

biography, initiated legislation to extend the parliamentary term of his government.⁵⁴ Strickland demanded Holman's resignation which was refused and countered by Holman's successful appeal for Strickland's recall. The crisis embraced the nature of Strickland's discretion, responsibility for his judgment and the role of imperial authority.⁵⁵

The king and his dominion governors contained many of Evatt's characteristics and concerns. He observed the fluidity of the prerogative and admired the adaptability of common law to society, also enriching his narrative with an infusion of historical understanding. He revealed an aversion towards conservatism by contesting the work of unprogressive authorities, his preferred antagonist being the noted writer on constitutional law, A.B.Keith. The method of assertion and rebuttal placed this work within a 'courtroom' framework, not unlike the manner in which advocates engage in legal argument. Discussion of the views of authorities in this way laid a foundation for the expression of his own views.⁵⁶ Contentions were polished and invigorated as he neatly concluded chapters with a

⁵⁴ Ibid., p.147. See chapter 11 for a brief description of Holman's actions during the New South Wales ALP split of 1916. The extension of that parliamentary term, under a nationalist government, indicated the extent to which he had jettisoned the liberalism of his earlier career.

⁵⁵ The king and his dominion governors, pp.147-52.

⁵⁶ Ibid., especially pp.3-4,32-6,46-9,55-8,60-3,66,89,131-5,141-3,150-1,169-71,176-7,179-82,184-5,196,201-2,209-11,215-6,236,245,272,275-6,284-5,289,302,305.

restatement of difficulties created by the current disordered position of the reserve power.⁵⁷ He was again disillusioned by this power as a labyrinthine and ethereal facet of the law, devoid of principles by which the fluent transition from crisis to stability may be assured. This further exemplified a legal pragmatist's yearning for that which was tangible and cohesive.⁵⁸

Evatt's concern for the conservative and uncircumscribed application of constitutional power in the thwarting of dominion independence was shown by the example of Durham's governorship in Canada. His report, which urged the assimilation of Upper and Lower Canada and complete responsible government, was poorly received by imperial authorities, and led to Durham's disgrace. Evatt's showed sympathy for Durham's poor treatment and took pleasure in telling of Canada's eventual progress to political maturity. The law reformer's proud and defiant self-image was evident.⁵⁹

Evatt had observed in his doctoral thesis the erosion of prerogative power through legislation and a shift from its exercise by the crown to exercise by dominions. This

⁵⁷ Ibid., pp.10-1,48-9,68-9,89,102,107,120,136,145,152,200,247-8,252,267,281,284-5,314-5.

⁵⁸ Ibid., for example pp.101-7,117-20,125,173-4,187,193-200.

⁵⁹ H.V.Evatt, The king and his dominion governors, pp.17-23,27-9. B.Jones and M.V.Dixon (eds), The MacMillan dictionary of biography, second edition, p.258.

evolution was significant but did not alter the essential character of the prerogative. The status quo was undisturbed because the common law standing of the prerogative remained essentially untouched. The crucial factor of ultimate imperial supremacy, as located mainly in the crown or the crown's agent, was in particular left intact.⁶⁰ The inherently vague features of the prerogative were advantageous to centralised imperial power, but were not conducive to the solution of constitutional crises. Disputes drew dominion governors into their orbits with an inevitability that unsettled Evatt but that also gave him an opportunity to turn conflict to his account. He presented a remedy which envisaged the reduction of the reserve power to analysis and definition in explicit law; a judicial or arbitral tribunal would interpret and maintain this legislation. He was aware of the problems raised by his suggested reform. For example, he noted difficulties in devising laws for the myriad combinations of past and conceivable crises. He warned against potential rigidity by advising that rules defining the exercise of the reserve power be tempered by provision for adaptability and amendment. He nevertheless believed that rigorous

⁶⁰ Ibid., for example pp.8,85-7,92,97,269-80,297ff,310-5.

investigation by competent legal authorities would overcome such hindrances.⁶¹

This panacea was grounded in a sincere desire to resolve disputation. It appeared sensible to substitute an often formless and turbid feature of constitutional law with a concrete and quantifiable alternative. This worthy intention, however, concealed his principal motivation. The transformation of the reserve power to statutory law would strip it of those common law characteristics which gave it strength. This prerogative would be drained of all lifeblood, emasculated because entrapped in legislative shackles. His concern with cold scrutiny and regulation was really an appeal to enslave a prepotent force lying beyond dominion control. Significantly, he avoided a discussion of the consequences of this reform for imperial supremacy or for the role of the governor. This avoidance was a vital omission because he now advocated, in effect, unrestrained Australian self-government. This was denied to him as a doctoral student.⁶²

⁶¹ Ibid., pp.8,68-9,89,182,281,289,291-2. He qualified the completeness of domestic supremacy in reform by stating that he believed that the rules of his suggested innovation would probably incorporate 'the exercise of a personal discretion where Ministers are seeking a dissolution of the popular House', H.V.Evatt, 'The discretionary authority of dominion governors', Canadian Bar Review, vol.18, no.1 (January 1940), p.9.

⁶² The imperial parliament enacted the statute of Westminster, 1931, between the writing of his doctoral thesis and The king and his dominion governors. This statute promoted greater dominion independence although it

The problem of the prerogative exemplified the general difficulty that he encountered with his inability to trust unwritten agreements. His approval of the Australian constitution as an enacted document was matched by a 'mistrust' of the unwritten British constitution which was expressed particularly through his displeasure of Anglo-Australian constitutional relations and which centred on the power of the prerogative. He was captivated and disturbed by the prerogative's mysteries, particularly by its dormant yet threatening power, its fluidity and its elusiveness.

That authority was beyond the legislative reach of dominions because Britain was and remains a constitutional monarchy, a form of rule which was defined chiefly by the subservience of a monarch's subjects to the crown. Since the execution of Charles 1, the power of the monarchy had been limited although not codified. However, Evatt wrote in his doctoral thesis of the prerogative as an uncompromised and oppressive imperial power. That is, he did not explain the troubles and the erosion from complete power that the crown had experienced. This omission indicated, through his conception of conservatism as an undivided inimical force, another manner in which his simplified psychology pivoted on oppressive power. Hence there was here a close link with

was not finally ratified by Australia, at Evatt's urging, until 1942. See chapter 15.

his actions during the Petrov affair and the federal ALP split where he united broad hostile non-labor conservative forces with the conservative right wing of his own party. It furthermore indicated the hierarchical structure of his thinking. As an extremist, or absolutist, he found it difficult to adjust his outlook to accommodate competing, and quite valid, claims of different factors to a particular issue. His puristic approach to the law, where other disciplines were denied comparable access or authority in the determination of particular matters, complemented his concept of the royal prerogative not only as a supreme power but as a supreme legal power (that is one that was not infringed by the political work of the British parliament).

He therefore emphasised the detachment and dominance of the crown to indicate that the prerogative was the heart of British constitutional practice and law. The prerogative was thus the heart of imperial power and so in fact, of empire. The core of British imperial power was thus reduced by Evatt to this unwritten monarchical rudiment. That reduction, despite its inaccuracy, again suited his desire for psychological simplicity. He could direct and concentrate his energies on this single, highly-charged unit of power and work to divest Australia of its oppressive content by arguing for its reform by dominion legislation. The sincerity of his desire to save Australian

society from future division through constitutional crises could not be doubted; their damage disturbed his socio-legal outlook, attuned as it was to the prime machinery of society. He hoped through reform to 'heal' society as action that was thus both 'pre-emptive' and 'reparative'.

Political authorities showed little enthusiasm for Evatt's postulated solution. Political machinations operate within a framework of conduct and according to a rhythm that was quite different from that of the judiciary. With the threat of legal delays, workable synchronisation between political and legal action could not be assured. His remedy was a further demonstration of that exaggerated element of his character which advocated the right and duty of the judiciary to intervene and settle a vast range of disputes. Moreover, the Australian legislature would hardly have been empowered to use its defining quality, that is the power to enact legislation, to contain the prerogative given the immense implications for imperial power should it have attempted to do so. Nevertheless, far less dramatic reform later occurred in enactments which gradually gave increasingly explicit constitutional independence to Australia, and which a moderate conservative would argue was in keeping with the maturing of Australia as a nation.⁶³ Evatt's call for reform and the later although

⁶³ For an important development in the technical realisation of absolute independence, see the Australia

different implementation of constitutional reform demonstrated the extent to which he was ahead of his time.

The problems of Evatt's projected reform, however, began and multiplied with his concept of the nature and power of the prerogative. The prerogative, in its many guises, was indirectly administered by Australian authorities. He sought here however, in effect, to divest the crown of its fundamental power of supremacy by placing that power in the hands of an Australian tribunal receiving its power and direction from local legislation. From a dominion perspective therefore he attempted the truly impossible; such was his need to confront the problem of 'oppressive' imperial power that he tried to make written the essence and quality of the 'unwritable' British constitution. The written word, which in the Australian constitution was the font of power and which in the British constitution was unable to be that font, gave language as political power a very special, sacred meaning to Evatt.

Evatt was born an Australian under imperial might. As an Australian pursuing an academic preoccupation he had taken this problem as far he could in The king and his dominion governors and received gratification from its writing and from its suggested reform. It was another, albeit highly detailed, way of addressing and re-arranging

irreconcilable power divisions. In the hard world of political reality, which lives so much by pragmatism and compromise, he practiced his 'religion' as capably and as faithfully as he was able. He lived at a time when it was unthinkable that Australia might not be a member of empire, or of empire's incarnation, the British commonwealth; he chose not to think, aloud, of an alternative Australian political identity. Even today it is difficult to consider Australia as a republic. He could perhaps only attain ultimate psychological peace, or in religious completeness, nirvana, with Australia as a republic (with him of course as president). He nevertheless performed remarkably well. The presidency of the United Nations General Assembly, with Australia demonstrating its nationhood free from imperial fetters, was his mandala.

Not long after his appointment to the bench, a seventeen year-old lad decided to visit the judge. The lad came from a struggling working class family and was attending the judge's former school, Fort Street high. His father had helped the judge in Balmain electioneering during his recent political career. He was one of numerous assistants, so it would have been most unlikely that this particular helper would have been remembered, although the lad did carry a formal letter of appreciation from Evatt to his father. There nevertheless seemed sufficient common ground to justify an informal conversation. This lad, whose

name was John Kerr, regarded the judge with wide-eyed and slightly confused admiration. That judge was a well known lawyer and politician whose defence of the disadvantaged and oppressed was respected. Yet how did this lawyer, with prior active involvement in politics but without medical association, come to be called 'doctor'?⁶⁴

The judge was not at home when first the young John Kerr tried to see him, but the judge's wife asked him to return that evening to be assured of a meeting. He duly obeyed and found the judge to be most sympathetic. Dr Evatt wanted to and did help him pursue a legal career. So began a long acquaintance. Communication was later to become irregular, mainly because of interruptions which were caused by political turmoil. However, the two met often in the decade of Evatt's high court sojourn, engaging in stimulating discussions on a range of issues. Kerr came to know closely the material of Evatt's unfolding work on the reserve power. With Kerr's later embroilment as governor general in a highly controversial and divisive constitutional crisis, it was an intimacy proven later to be of far greater importance than he could possibly have imagined.⁶⁵

Evatt's thirst to explore the nature of power could be slaked only by its ceaseless contemplation and exercise.

⁶⁴ Personal interview with Sir John Kerr, Sydney, 5 June 1986.

⁶⁵ Ibid.

The turbulence of his own being found an eccentric but appropriate matching with the agitated centre of power. This matching gave him strong, perhaps intuitive, understanding of the flow of history. He 'lived' and shaped history throughout his professional life as a major legal and political protagonist. In his writings however he demonstrated an ability to delve 'inside' history by investigating its fundamental processes. This investigation was deeply personal, a visceral release necessitated by unorthodox requirements. His exploration of the royal prerogative was ultimately unsatisfying, although he correctly made public a continuing problem in constitutional relations. In this sense he successfully married private and public issues.

CHAPTER FIFTEEN

A NEW NATION: A NEW WORLD

Evatt's fascination with the theory and application of international power provided a foundation for his later work in international relations. His conception of international relations was dictated, at a personal and national level, by the need to express ambition through Australian assertion within a world managed and made secure by the rule of law. He believed that war should or would be averted by raised economic standards and by the negotiation of disputes at appropriately structured and authoritative international forums. This chapter deals with these concerns by adopting an approach which moves broadly from regional to global perceptions.

Evatt formed a view of international relations which, as with most of his professional attitudes, was fashioned by constitutional theory and practice rather than political thought or ideology. This was demonstrated by his work on the royal prerogative, which was given closer definition, together with The king and his dominion governors, by work of the mid 1930s in the form of a pamphlet, The British dominions as mandatories, and three high court judgments,

Jolley v Mainka (1933), R v Burgess; ex parte Henry (1936) and Frost v Stevenson (1937).¹

There has been considerable debate over the extent and forcefulness of the identity of Australian foreign policy before the second world war. It can nevertheless be noted that the most pronounced political and legal gains in Australian independence during the inter-war period were constitutional. These gains naturally attracted Evatt's interest and may broadly be divided within and outside empire.

Within empire, the dominions and Great Britain met regularly in London to discuss matters of mutual concern. These meetings were called imperial conferences and were important vehicles for the exchange of information and views. They were therefore useful as forums for consultation. The imperial conference of 1926 was most important because it produced a report that recommended enhanced dominion independence in international relations and confirmed the need for closer consultation. The

¹ H.V. Evatt, The British dominions as mandatories, Parkville, Melbourne University Press, 1934. Jolley v Mainka, (1933) 49 CLR, p.242. R v Burgess; ex parte Henry, (1936) 55 CLR, p.608. Frost v Stevenson, (1937) 58 CLR, p.528. He was vice-president of the Australian and New Zealand society of international law, and published his article in the first edition of the society's proceedings in 1935. Evatt's early work, Liberalism in Australia: an historical sketch of Australian politics down to the year of 1915, Sydney, Law Book co., 1918, also displayed precocious and at times deep historical learning, particularly of the constitutional relations between states; see chapter 4.

document, written by the British foreign secretary, Arthur Balfour, was known as the Balfour report. This important and acquiescent British statement was consolidated at the 1929 imperial sub-conference, which called for further constitutional concessions to dominions in international affairs and prepared and set the direction for the 1930 imperial conference. This conference was a landmark in relations between dominions and Great Britain because it produced the celebrated imperial enactment, the statute of Westminster. This act formalised the acceptance by Great Britain of dominion enthusiasm to promote full dominion freedom in its affairs. In particular, section 3 empowered dominions to take full and independent control over their respective international affairs.²

The parliaments of two dominions, Australia and New Zealand, failed immediately to ratify the statute of Westminster, an omission which was at first sight surprising. In Australia's case, it was considered by many that the ratification of the imperial act was unnecessary or it was feared that it might in fact by its explicit expression create restrictions on Australia's imperial relations, relations which had previously worked well as an amalgam of fluid and implied understandings.³ Evatt claimed to be unconcerned by the failure of Australia to ratify

² CPD, vol.172 (2 October 1942), p.1390.

³ CPD, vol.172 (1 October 1942), pp.1334-7.

this imperial act, contending that it merely formalised a dominion freedom that had already taken practical effect. This was unconvincing; in 1942 as attorney general he quickly and successfully achieved the legislative enshrinement of principle to give firmer authority to practice and legally to enforce fuller dominion independence.⁴

Beyond the British empire, the League of Nations was formed on the authority of the first world war settlement, the 1919 treaty of Versailles. The power and management of the league was derived from its constitution, or covenant.⁵ Evatt admired this body as an international forum of negotiation designed to prevent dispute. He refused to blame the league for failing to prevent the second world war. Rather he often stated that it contained the appropriate preventative machinery - it was the obligation of member states to employ that machinery to ensure the settlement of disputes; the league had not failed, rather key member states failed the league by not fulfilling their obligation to negotiate and enforce settlements. He elaborated by remarking that peace was an active condition;

⁴ CPD, vol.172 (1 October 1942), pp.1334-8. CPD, vol.172 (2 October 1942), pp.1387-1400. He argued unpersuasively that the reason for ratification was technical or mechanical, it being a sensible device to facilitate Australian legislation, particularly of wartime maritime legislation.

⁵ Jolley v Mainka, (1923) 49 CLR, pp.270-1.

its preservation required vigilant and assiduous attention.⁶

Evatt regarded the league's covenant as a source of immense new international power. It was thus to Evatt an important forum for the exercise of authority which lay outside imperial might. Although Australian governments failed adequately to use this organisation when Evatt was a high court judge, he was drawn to its potential to express Australian constitutional assertiveness. Furthermore it gave full representation to smaller states and affirmed, at least in theory, the equality of status of all members. It was therefore a movement of substance away from traditional methods of conducting international affairs, where 'power politics' were indulged solely by the powerful. These domineering states formed and re-formed expedient and often predictable 'oppressive' alliances that were motivated by narrow, uncaring self-interest, often with the intention of expanding territory.

A key expression of this new arrangement of international power was the dutiful and compassionate assumption by developed nations of a responsibility to administer and encourage the advancement of less developed territories. The terms of this obligation were stated in article 22 of the covenant, the essence of which was that:

⁶ H.V.Evatt, 'Peace must be more than absence of war', Labor Digest, vol.1, no.7 (September-October 1945), pp.1-5.

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves...there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation...The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to the advanced nations.⁷

An audacious new scheme, known as the mandatory system, was established by the authority of this article. Mandates were territories which received the benefit of that 'sacred trust'. They were divided into three classes, 'A', 'B' and 'C', which were distinguished by varying administrative functions undertaken by states providing assistance, which were known as mandatories. Dominions were concerned with 'C' class mandates. In the post-war settlement, Australia accepted responsibility for the mandates of New Guinea and Nauru.⁸

Evatt was concerned in his article on British dominions as mandatories to determine the precise status of mandates and the power and independence of dominions as mandatories; it was an important early Australian responsibility from which her subsequent international work

⁷ H.V.Evatt, The British dominions as mandatories, p.5.

⁸ Ibid. For the distinctions between the three classes, The League of Nations and Mandates, issued by the information section, League of Nations secretariat, 1924, pp.7-11. For a listing of all mandated territories, H.Duncan Hall, Mandates, dependencies and trusteeships, New York, Kraus, 1972 (1948), p,295. Nauru was administered by Australia under the authority of the British empire.

might be judged and consolidated.⁹ The article considered five main issues. He firstly discussed the location of the sovereignty of mandates.¹⁰ Numerous conflicting professional views on sovereignty emerged. He examined the four chief opinions of sovereignty. The first, that the mandatory itself held sovereignty, gave Evatt an opportunity to discuss his views on the covenant's provision to compel member states to adhere to their 'sacred trust of civilisation'. He was critical of the vagueness of the term. In particular, and with foresight, he implied that more concise language was needed to enforce obedience from those states.¹¹ A second opinion was that it rested in the inhabitants of mandates. Evatt regarded this view as too generalised although article 22 did give it some clear support.¹² A third opinion held that sovereignty resided in the five principal allied and associated powers who dominated the league. He considered the historical role of large powers that traditionally held sovereignty over smaller states but predictably remarked that, while this view was not discredited, it was preferable to regard large powers not as possessors but as liquidators of sovereignty.

⁹ H.V.Evatt, The British dominions as mandatories, especially pp.5-21.

¹⁰ Ibid., pp.5-9.

¹¹ Ibid., pp.5-7,11.

¹² Grave complications arose because the legal power exercisable by the league and by mandatories could not be dismissed or abstracted from current obligations and legal situations, *ibid*, p.8

The fourth opinion, which received most support, was that sovereignty lay in the league itself. This belief gave point to the authority placed by members onto this new international body. He was careful to explain that sovereignty might be divisible; it could be distributed between powers and bodies. He was struck not so much by the lack of unanimity concerning sovereignty as by the legally thought-provoking problem created by the establishment of a novel and powerful international political organisation; new understanding, new rules and new principles required shaping through practice. This diversity reflected the nascent league's originality. An unsettled but exciting and stimulating indecisiveness accompanied this rawness.¹³

The second main issue examined regarding the mandatory role of British dominions was the nature of sovereignty itself, an often elusive concept which was of course to Evatt a continuing concern. He typically sought to make sovereignty more concrete, more palpable and less fearsome. He used the fluidity of sovereignty to argue in legal terms that because its abstraction and remoteness was not absolute it was capable of movement to an explicit form. He dismissed the relevance of general theories of sovereignty; rather it was important to consider a particular problem. The difficulties of that problem would be resolved legally by the assessment of the facts of that problem, together

¹³ Ibid., pp.5-9.

with a recognition of the authority of prior decisions. Although mandates were not subject to the authority of international law - instead they were administered legally according to the laws of mandatories - there was scope here to contain and circumscribe the authority of sovereignty through the power and universality of international law.¹⁴ However, his legalistic reduction was more an avoidance than a meeting of the problem.

The third matter was the status and breadth of dominion mandatory authority. Evatt twice criticised the efforts of the constitutional writer A.B.Keith to diminish dominion independence, thus questioning the capacity of dominions to act as mandatories. Evatt distinguished between theoretical independence (for instance, of the sort that was freely claimed at imperial conferences) and the desirability in practice to demonstrate that independence by actual political and legal assertion. He feared the false and complacent assumption of independence, a condition which when tested was found in reality to be lacking.¹⁵ In other words the possession of theoretical power was hardly beneficial unless its deployment could usefully be implemented. Still worse, it was deceptive to

¹⁴ Ibid., pp.9-11.

¹⁵ This distinction recalled his complaint as a state politician of the absence of the material definition of, and hence the exertion to, the boundaries of state constitutional power, a failure which left open the true fullness and conversely the restrictiveness of the reach both of state and commonwealth power. See chapter 5.

be misled into believing that power which was thought to exist was in fact absent or shackled.¹⁶

This matter took Evatt to the fourth problem, that of the distinction between status and function. Status signified the fact of dominion power, that was present or in reserve, while function denoted the aggregation and exercise of power. He saw little legal difficulty in the determination of dominion status and function or in appraising the constitutional relationship between dominion and Great Britain.¹⁷ He became angry with and dismissive of British subtlety and abstraction in this matter as later he also rejected the sophistication of the mysteriousness and aloofness of the royal prerogative and the unwritten British constitution. He criticised an evasive and patronising pretension in the Balfour report, a 'theological' exposition of the character of relations between constitutional components of empire:

There is a trace of the Balfour insouciance, even a trace of irony, discernible in the Report. One notes also the somewhat condescending reference to the imaginary "foreigner endeavouring to understand the true character of the British Empire"...But unless words were employed in order to throw doubt upon and cut down the general principle [of that character], no foreigner sufficiently interested in the subject should have the least difficulty in understanding it or applying it.¹⁸

¹⁶ Ibid., pp.11-3.

¹⁷ Ibid., pp.13-6.

¹⁸ Ibid., p.14.

Evatt saw the 1926 imperial conference, from which was produced the Balfour report, as creating concrete, visible and readily understandable advances towards absolute dominion independence. Enhanced status was real, although he was careful to acknowledge that the theoretical equality of status between Great Britain and dominions did not exist in practice; it was of course his keen awareness of this lack that made imperative the demand that advances at conferences be followed through to the actual recognition and implementation of reformed constitutional relations. Only in this manner could function be drawn into meaningful correspondence with technical status. He nevertheless guardedly observed that discrepancies in functions between dominions did not at all impair the parity of dominion status.¹⁹

The final key aspect regarding the power of dominions to act as mandatories was the strength of the legal authority which conferred applicable dominion power. Evatt acknowledged the contest in Australian international activity between imperial and national constitutional power. He predictably argued for the diminishment of prerogative power and the enlargement by full recognition of Australian mandatory power. He also remarked upon the need for foreign states to accept the reality of the full independence of Australia; he asserted the validity of sole

¹⁹ Ibid.

national legislative action to authorise Australian mandatory power, not through the crown's undoubted mandatory authority but through the inherent power of the Australian constitution, unsupported by British legal power. This power gave to Australia the unassisted right to conduct her foreign relations and the authority of the extra-territorial operation of Australian laws.²⁰

Many of the views that were stated by Evatt in The British dominions as mandatories had been expressed earlier in his judgment in Jolley v Mainka (1933), which concerned the mandate of New Guinea; he additionally commented fully in this judgment on the general authoritative status of mandatory powers to reinforce the valid sole activity of Australia's international personality.²¹

Evatt was most interested in the mandate of New Guinea. During the early 1880s Queensland had determinedly sought its own or imperial control over New Guinea to secure the defence of its northern flank. Great Britain administered coastal regions of south-eastern New Guinea from 1884 in response to Queensland's appeal. A large north-eastern portion of New Guinea was annexed by Germany on 16 November 1884. Great Britain colonised the remaining south-eastern area, or Papua, in 1888. Germany retained its New Guinean territory until the outbreak of the first world

²⁰ Ibid., pp.16-21.

²¹ Jolley v Mainka, (1933) 49 CLR, pp.264-92.

war, when it was taken by Australian forces. German New Guinea was then controlled by British military authorities until May 1921, after which it was administered by Australia as a mandatory power; the New Guinea act of 30 September 1920, legislated by the Australian parliament, authorised Australia's mandatory administration. The mandate emanated from the council of the League of Nations.²² The crown accepted the mandate on behalf of Australia and was confirmed by the council of the league, which stated that:

The mandatory shall have full power of administration and legislation over the territory (sic) subject to the present mandate, as an integral portion of the Commonwealth of Australia, and may apply the laws of the Commonwealth of Australia to the Territory, subject to such local modifications as circumstances may require. The mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the Territory subject to the present mandate.²³

In 1926, five years after New Guinea had become an Australian mandate, Karolina Mainka agreed to repay a New Guinean mortgage to Frederick Jolley at the annual rate of

²² Ffrost v Stevenson, (1937) 58 CLR, pp.533-4. R.Langdon, 'A short history: sixteenth-century explorers and twentieth century ballot boxes', in P.Hastings (ed.), Papua/New Guinea: Prospero's other island, Sydney, Angus and Robertson, 1971, pp.46-51. P.Hastings, New Guinea: problems and prospects, Melbourne, Cheshire, 1968, pp.43-7, 67-75. Papua continued to be administered by Great Britain after the first world war. The western portion of the New Guinean island was formerly controlled by the Dutch as Dutch West New Guinea, was more recently named West Irian, and is now called Irian Jaya.

²³ Ffrost v Stevenson, (1937), 58 CLR, p.535

900 pounds in gold or its equivalent value in currency. The value of Australian and New Guinean currency depreciated markedly after the agreement was reached. Mainka paid Jolley the agreed annual gold value in Australian currency. Jolley objected, claiming that the correct payment due was an increased currency amount that corresponded with the full gold value of 900 pounds. The central court of the territory of New Guinea favoured Jolley's objection, but Mainka appealed from this decision to the high court of Australia. The high court unanimously reversed the decision of the lower court, holding that the applicable provisions of the Commonwealth Banking act 1911-1931 applied to the territory of New Guinea and, therefore, the payment of nine hundred one pound notes satisfied the debt of 900 pounds due under the mortgage. Evatt remarked that given that there was no agreement to supply bullion, the payment in currency of 900 Australian pounds satisfied the agreement of providing in currency the established annual amount.²⁴

In this judgment Evatt asserted the full right of the League of Nations, through the authority of the permanent mandates commission, to confer power on states to act as mandatories, which Australia affirmed by passing the New Guinea act. Australian laws therefore validly applied to the judicial administration of New Guinea. One of those

²⁴ Jolley v Mainka, (1933) 49 CLR, p.242, pp.242-4,265,267-8.

laws, the Commonwealth Bank act, 1926, authorised the operation of Australian banking regulations in New Guinea, enabling Australian currency to be used as legal tender in New Guinea.²⁵

Evatt insistently attested to the validity of a direct power link from the treaty of Versailles through the League of Nations and the permanent mandates commission to Australia's mandatory authority. He examined comparable constitutional instances where dominions similarly asserted national power as mandatories. Canada and South Africa successfully enlarged their constitutional power in this manner. South Africa particularly, through a legal decision on treason, claimed very considerable powers of control over the mandate of South-West Africa; its control may have exceeded its entitlement as a mandatory in this case and, as events in recent years have shown, in later cases.²⁶

Evatt was particularly interested in a New Zealand case, Tagaloa v Inspector of Police (1927).²⁷ A dispute arose concerning the validity of New Zealand's Samoa act, 1921, to operate in the New Zealand mandate of Samoa. A most progressive judge, Ostler J., asserted that extensive international power had been vested in New Zealand as a result of its authority as a mandatory. Ostler believed that this dominion had by its membership of the league of

²⁵ Ibid., pp.264-72.

²⁶ Ibid., pp.271-85.

²⁷ (1927) New Zealand Law Reports, p.883.

nations proceeded to a distinct international personality and statehood. The rapid advancement of this evolution gave New Zealand a new and radical constitutional identity that was uninfluenced by imperial constitutional factors, a transformation that raised the consideration of whether New Zealand's constitution had become obsolete. In fact, Ostler's views of the extension of national power into international affairs was so broad that even Evatt, despite his warm admiration for this sentiment, paused to query the amplitude of this opinion. Ostler's appreciation of the maturing of dominion constitutional relations, which questioned the ability of the New Zealand constitution to reflect the growth in dominion independence, recalled Evatt's explication of this common law development in his doctoral thesis.²⁸ However Evatt, unlike Ostler, believed it necessary, and preferable, to discover mandatory authority within, not outside, the constitution. He again showed a predisposition to work within society's institutions - the Australian constitution could not be disregarded for he believed it vital that parliamentary power be exerted within the constraints of its constitution. Moreover, Evatt's respect for constitutional law, and for the 'sanctity' of the written Australian constitution was invested with such 'divinity', that Evatt could never countenance the 'iconoclastic' action of the

²⁸ Jolley v Mainka, (1933) 49 CLR, pp.274-7.

assertion of parliamentary power that was not rooted in constitutional propriety. In other words, Evatt adhered strictly to Australian parliamentary and especially constitutional institutions.²⁹

Ostler's view did not prevail. The majority view of the New Zealand Supreme Court disappointed Evatt because it held that New Zealand mandatory power relied not on the authority of the treaty of Versailles but on an 1890 imperial act, the Foreign jurisdiction act. Evatt regarded this as most unsatisfactory because of course he held that the treaty of Versailles, which authorised the establishment of the 'extra-imperial' League of Nations, provided true mandatory power. He conceded that the Foreign jurisdiction act may have presented a separate avenue to the authorisation of mandatory power, but contended that its legal basis was unsteady.³⁰

Rather Evatt found the source of Australian mandatory (and broad international) power to be located in the external affairs power, section 51(xxix), to which he applied a particularly wide-reaching interpretation. This section stated that:

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:-...

²⁹ Ibid., pp.277-8. See for example chapters 11-3.

³⁰ Ibid., pp.274-6,280.

(xxix.) External affairs...31

Jolley's counsel attempted to locate the power for Australia's external jurisdiction in section 122, a section which authorised the legal acquisition by Australia of territory placed by the crown in Australian possession.³² Evatt rejected the relevance of this section for it provided for the acceptance by Australia of the acquisition of territory and so was the antithesis of the intended role given by the League of Nations to mandatories. The administration of mandates was to be quite exclusive of acquisition by annexation or otherwise by incorporation. The mandatory system dictated the encouragement of the growth to independent political maturity, and the assistance to general organisational and material prosperity and health of the inhabitants of less developed territories; it therefore rejected the oppressive, grasping and self-interested possessiveness of larger powers. Mandatories were to act as guides and protectors, not as gatherers of territories; they were to foster the development of mandates to competent and self-subsistent membership of the international community. If annexation (and recourse to section 122) was authoritarian, oppressive and 'receiving', then the administration of mandates (and

³¹ The constitution of the commonwealth of Australia, published by the constitutional commission, undated, pp.13-4.

³² Jolley v Mainka, (1933) 49 CLR, pp.278-9. Cited by Jolley's counsel on the authority of Isaacs.

recourse to section 51 (xxix)) was compassionate, libertarian and 'giving'.³³

Evatt's judgment four years later in Ffrost v Stevenson (1937) covered much the same ground as the judgment in Jolley v Mainka.³⁴ However, important additional views were expressed. Galfred Ffrost was an overseer and medical assistant at a New Guinea plantation. A native of the plantation was killed by another native and Ffrost was allegedly implicated in the murder. Ffrost had moved to New South Wales where he was held in gaol. Henry Stevenson, of the New Guinea police force, sought the extradition of Ffrost in order that he stand trial in New Guinea. The full court of the New South Wales supreme court rejected the validity of the federal legislation authorising extradition, the Service and execution of process act, 1901-1934, holding that the legislation was an unlawful encroachment upon state jurisdiction. This decision was overruled on appeal to the high court; Ffrost was returned to New Guinea. The entire court held that the extradition could lawfully proceed under the imperial Fugitive offenders act 1881. It was further held by Latham, C.J. and Evatt (and in a similar manner by Rich, J.) that the applicable sections of the Service and execution of process act were valid, so that the extradition could

³³ Ibid.

³⁴ Ffrost v Stevenson, (1937) 58 CLR, p.528.

proceed without the assistance of the imperial legislation. Additionally, Latham and Evatt held that the federal act was not incompatible or 'repugnant' to the imperial act.³⁵

Thus Evatt in his judgment was eager to establish the authority of the Service and execution of process act to stand alone and unchallengeable, untouched by any professed superiority of or influence from the imperial Fugitive offenders act which similarly authorised extradition. To distance imperial from Australian legislative authority, he argued that no 'repugnance' existed between the two extradition laws, and typically enriched his observations with historical insight. The celebrated Colonial laws validity act, 1865, which was passed largely to overcome technical objections to the validity of colonial laws, was cited to affirm that invalidity extended only to the extent of the repugnancy between two laws. Similarly, no repugnancy existed between federal or state law. He saw a common purpose in state and federal activity, so that no contest existed between these powers regarding extradition, for this federal exertion of power did not impair state power.³⁶ In fact, Evatt favoured commonwealth supremacy in international and some other matters as a means to protect all constitutional entities of the nation.

³⁵ Ibid., pp.528-33,535.

³⁶ Ibid., pp, 594-6,601-7.

He reiterated Australia's mandatory power and indeed declared its duty to exercise legal jurisdiction over New Guinea through the affirmation of and preference for the valid operation in this northern mandate of the Service and execution of process act. He again emphasised the distinct and independent status of mandates and the absence of any right by mandatories to acquire the territory of mandates. He additionally remarked here, however, that while status was different from the nationality of mandates, naturalisation might voluntarily be sought by inhabitants of mandates of the mandatory power. The absence of coercion is important, for enforced immigration suggested the oppressive incorporation and exploitation of a mandate's inhabitants. Although Australia's immigration policy certainly did not reflect the ready acceptance of such inhabitants, he implied that this possibility complemented the obligation of a mandatory willingly to tighten and to unify the bond between both parties. It was also a gesture which indicated the depth of faith placed by Evatt in the responsibility charged to a mandatory to fulfil its duty to assist mandates.³⁷

³⁷ Frost v Stevenson, (1937) 58 CLR, pp.580-90,592-3,594-6. Similarly, it implies Evatt's desire to protect Australian values, for the failure of a mandate to be afforded Australian nationality disallowed inhabitants the right to inherit or otherwise to receive entitlement to the benefits of British legal institutions. They:
must discover their guaranteed rights in the international instrument under which they are governed.

The principle of a mandatory's trust was held as a solid and fundamental element in the prosecution of this international arrangement:

Amazing cynicism has been employed by Dr Baty, who characterizes art.22 of the Treaty of Versailles as a page out of "a University extension lecture" (British Year Book of International Law (1921-1922), p.119). But can it be doubted that the general principle of the mandate is reasonably plain? According to Brierly, the trust is the governing principle of the new institution of the mandate (British Year Book of International Law (1929), p.217). Brierly quotes from an account of the conception of the private trust adopted by M. Pierre Lepaulle, who adds that "the only possible theory is that the rights of the trustee have their foundations in his obligations; they are tools given to him in order to achieve the work assigned to him. The trustee gets all the tools necessary for such end, but only those" (British Year Book of International Law (1929), pp.218, 219).³⁸

When guided by the canons of constitutional law, enshrined in express language, the concept of trust was transformed in Evatt by the weight of high international policy to an idealised, sanitised precept of law and politics.

Evatt held that it was desirable in law usually not to generalise in doctrine or principle. Rather, he advocated the more careful course of considering the particular facts and related circumstances of a case before applying a selected principle or doctrine which suited that case. It was for this reason difficult to attach consistent shades of thought to Evatt which revealed a steady adherence to

³⁸ Ibid., p.584 (underlining in original).

certain principles and doctrines - that is, he avoided an approach which 'covered the field' of a particular range of applicable facts or events.³⁹

Evatt had in his article on the nature of dominions as mandatories argued that generalisations as to the location of sovereignty were unnecessary and that it was preferable to consider each question of power and jurisdiction as a particular problem. His thinking had altered by the time of this judgment to the extent that he believed this view to be untenable because, in the case of Australia and other dominions, municipal courts were required to consider problems of international law which came before them as arbiters with jurisdiction over mandates. The status of mandates required determination in order to resolve such problems, so the broad question of sovereignty was inevitably raised.

Evatt approached a 'covering the field' evaluation of the status of mandates from his application of principles established in earlier cases. He thereby exhibited an eagerness to give an established authority, and with it respectability and breadth, to the domestic judicial application of international law. He thus hoped to instil a familiarity with the protected and autonomous identity of

³⁹ L.Zines, 'Mr Justice Evatt and the constitution', Federal Law Review, vol.3 (1968-69), pp.157-8,161,172,181-2. L.Cowen, Mr Justice H.V.Evatt and the high court', Australian Bar Gazette, vol.2, no.1 (December 1966), p.3.

mandates. He in fact reached a decision of the status of a British protectorate to discern parallels with the status of mandates. In other words, he promoted the early and speedy maturity of a new field and jurisdiction of international law through the legal administration of mandates. He sought not only to give precocious repute to a new arrangement of international power, but he desired the early and authoritative recognition of the machinery of that power, which in itself greatly enhanced the repute of that new power arrangement. He wished therefore to shake out the newness and strangeness of this political and legal development. He was so anxious to do this that he compromised his aversion to generalisation, or to 'covering the field'. Evatt thus showed here that he was willing to compromise a self-imposed legal principle to further politically progressive aspirations.

Australia's participation in the mandatory system well illustrated Evatt's ability to match public issues with his inner preoccupations. It allowed the avoidance of imperial guardianship, it promoted and gave intellectual and moral sophistication to an assertive and maturing international personality for Australia, and it protected Australia from the 'oppressiveness' of the political and diplomatic presence and military strength of large and aggressively covetous powers.

The machinery of colonialism, by which a powerful nation administered a territory, was compatible with the machinery of the mandatory system; it might therefore be anticipated that Evatt, at least during and immediately after the war, would accept and encourage the forms of colonialism, especially as Australia was not directly affected by the application of colonial power. In fact, he eagerly embraced those European powers with Pacific possessions, for he believed that such powers were broadly beneficial both to those territories and to Pacific security. For instance there was little thought from Evatt and other Australians during the war for the projected independence of the Netherlands East Indies (NEI) from the Dutch; it was only as a result of the turmoil which erupted at the end and during the aftermath of prolonged Japanese wartime occupation that the nationalist aspirations of local inhabitants became a matter of pressing concern to Australians. Even then, Evatt was surprisingly slow to alter his views of the advisability of the continued Dutch presence in the NEI.⁴⁰

⁴⁰ CPD, vol.169 (26/27 November 1942), p.977. CPD, vol.170, (25 February 1942), p.50. CPD, vol.172 (4 September 1942), pp.83-4. CPD, vol.175 (14 October 1943, pp.570-1. CPD, vol.179 (19 July 1944), pp.235-6. M.George, Australia and the Indonesian revolution, Carlton, Melbourne University Press, 1980, pp.101-2,130,149. A.Renouf, Let justice be done: the foreign policy of Dr H.V.Evatt, St Lucia, University of Queensland Press, 1983, pp.160-1ff.

Great Britain, France, and Portugal, in addition to the Netherlands, were colonial powers that were welcomed by Evatt in the Pacific area. His conception of the effect of colonialism can however be misleading. At first sight, he seemed unprogressive and even oppressive. It again is important not to evaluate or to apply his uncertain political views but rather to consider his law, and especially the morality that shaped that law; he used legal forms that he admired in the mandatory system to impose political and moral obligations on colonial powers. He commented often on the capacity and duty of advanced nations to 'civilise' less developed territories. He was particularly conscious of the unpredictable collision of historical and geographical events which imposed the western life of Australia and New Zealand upon Asian and Pacific culture. He regarded these two countries, although distant from European culture, as virtually 'European' nations with an obvious interest in the welfare and security of the Pacific.⁴¹ As demonstrated by his support of the mandatory system, he believed that they, with other applicable European nations, were obliged to 'civilise' less developed and poorer Pacific and South-East Asian territories. This obligation was made more imperative by

⁴¹ CPD, vol.176 (14 October 1943), pp.572-3. CPD, vol.177 (10 February 1944), p.75.

the uneven spread of development throughout the region and by the current and potential problems of security.

All interested parties would be beneficiaries to the 'civilisation' of this region at the levels at least of economic and strategic welfare. Such mutual benefit did not nevertheless detract from the sincerity of Evatt's desire to ensure that less developed regional inhabitants be entitled to the advantages offered by modern society; the realisation of that entitlement was best cast and enforced in legal terms by powers which acted formally as mandatories or informally as colonial powers and who in either capacity hopefully acted in the interests of colonies as well as of the colonial power. His appreciation of this link between the mandatory system and colonialism and of the security that colonial powers brought to the Australian region were during wartime strong reasons not to criticise the theory of colonialism, although the application of that theory was later harshly criticised by Evatt.⁴²

Evatt implicitly faulted colonialism for two reasons, but through his criticism he believed in the improvement, not in the destruction, of colonial administration. Firstly, a fundamental precept of colonialism was the

⁴² Of course the welfare of colonies was often a lesser consideration of colonial powers, or no consideration at all. Evatt's anti-colonialism, Renouf, pp.89-90,93. CPD, vol.184 (30 August 1945), p.5028.

incorporation by possession of foreign territory into that of a colonial power which, in avoidance of oppression, the mandatory system repudiated. Secondly, there was in colonialism no legal enforcement of the moral obligation actively to work for the betterment of colonial inhabitants. His broad approval of the established international institution of colonialism was a further illustration of his conservatism. Rather, and doubtless because he deprecated the tyranny of some colonial rule while being appreciative of the military security that colonial powers brought to region, he worked within this structure hoping to improve it from 'inside'. The shape and authority that the law gave to the mandatory system was an improved method of obliging large powers to use their considerable resources for the betterment of territorial inhabitants. The mandatory system therefore took many of the forms of colonialism, with his guarded acceptance, but gave it moral and legal rigour, and theoretically at least withdrew the oppression of possessiveness and exploitation.

Evatt's gratitude for the pre-war and wartime presence of the Dutch in the Pacific contributed to his belated appreciation of the flaws of Dutch colonial rule of the NEI and the right and desirability of native self-determination when the inadequacies of Dutch colonial rule became obvious and unyielding to international influence. These inadequacies centred firstly upon the violent repression of

nationalist aspirations and secondly upon the Dutch slowness and reluctance to negotiate the partial or total satisfaction of those aspirations. The authority of Dutch law and administration appealed to Evatt as a proper and authoritative ordering of the life of the NEI. The power of that legally inspired ordering was not easily dismissed by him, given the legalistic cast of his mind. Dutch intransigence with the breakdown of negotiations, which themselves were moulded by 'legal' forms, and the return by the Dutch to repressive action indicated the absence of the operation of legal authority at local and international levels. It was only then that Evatt openly withdrew his support for the Dutch.⁴³

The constitutional thrust of Evatt's internationalism was strikingly revealed by his high court judgment in R v Burgess; ex parte Henry (1936).⁴⁴ This judgment, which was written with Edward (later Sir Edward) McTiernan, was for its time a most bold and far-reaching statement on the amplitude of the concession of Australia's federal power in world affairs. From the style, content and constitutional audacity of this writing, it was clear that Evatt was the predominant authorial influence.⁴⁵ The judgment upheld the

⁴³ George, pp.102,121-7. Renouf, pp.178ff.

⁴⁴ R v Burgess; ex parte Henry, (1936) 55 CLR, p.608.

⁴⁵ Later known as the Evatt doctrine, R.Menzies, Central power in the Australian commonwealth: an examination of the growth of commonwealth power in the Australian federation, London, Cassell, 1967, pp.129-33 passim.

right and ethical duty of Australia to contribute to basic matters of international concern such as the betterment of the world's disadvantaged inhabitants and the search for unity, co-operation and peace.⁴⁶ Australia herself, as well as the world, would properly benefit from the prominent and vigorous character of Australia in international affairs. The judgment was a developing moral and constitutional statement of the manner in which world power should be contained and controlled; its tone and substance were therefore reformist and idealistic. It is a link between his admiration for the League of Nations and his later work for the UN.

An agreement reached at an international convention for the regulation of aerial navigation was signed in Paris on 13 October 1919. Australia was a signatory. King George V subsequently ratified the agreement on behalf of the British empire. The Australian federal parliament purported to give effect to the terms of the agreement through the enactment of the Air navigation act, 1920. An unlicensed New South Wales pilot, bearing the colourful and unlikely name of Henry Goya Henry, was charged for breaching a regulation of the act which specified that aviators be licensed. He was charged on an information laid by Vernon Burgess, of the civil aviation branch of the department of

⁴⁶ R v Burgess; ex parte Henry, (1936) 55 CLR, especially pp.680-7.

defence and the district superintendant of civil aviation in Sydney. Henry was convicted by a New South Wales court of petty sessions, a decision from which he appealed to the high court. The high court held that the external affairs power, section 51(xxix), did not provide constitutional protection to sections of the act which claimed such protection, although it decided that the commonwealth government had general control over the subject matter of civil aviation. Many regulations of the act were therefore invalid because they relied erroneously on that act for constitutional authority. Most importantly, however, those regulations were invalid because they failed to give effect to the terms of the convention. Henry's appeal was therefore successful.⁴⁷

The judgment of Evatt and McTiernan supported the unanimous decision of the court on the invalidity of the Air navigation act but differed in the manner in which they interpreted the external affairs power and the authority of the convention. Evatt determined to overcome the competing appeals of prerogative power, state power, the poorly drafted Air navigation act and the restrictions of the boundaries of empire in order to encourage the flowering of unimpeded federal power in international affairs.⁴⁸ His

⁴⁷ Ibid., 608-10.

⁴⁸ Ibid., 677-80.

dismissal of objections raised by these four matters will now be briefly examined.

Counsel for New South Wales, which was a further party to the litigation, discussed the treaty rights of the crown which formerly were held as a sole prerogative power, but were now accepted as Australia's sole power. It was nevertheless argued that in the absence of the specification in the constitution of federal treaty rights, those rights returned to the crown. Evatt responded that a residue of law remained unspecified by the constitution; the widened interpretation of the constitutional legislative competence enabled such unspecified contents to be brought within the scope of the constitution as falling within broad classes of persons, places or things which were included in the commonwealth's constitutional power. For example, a treaty-making power, which embraced the power to enter into conventions, was not specified in the constitution as a subject of commonwealth legislative power but constitutional interpretation came to include that power under the external affairs power.⁴⁹

Evatt addressed two potentially difficult objections that were raised by counsel for New South Wales that state power would inevitably and harmfully be impaired by such a great enlargement of federal power. The first objection was that the commonwealth interfered in the legislative power

⁴⁹ Ibid. p. 676.

of states to make laws regarding trade and commerce. Evatt countered this criticism by adopting an argument that was similar to that expressed in his judgment in Jolley v Mainka. He held that no contest existed. Air navigation was a matter of trade and commerce. The commonwealth possessed constitutional power to legislate on national and international trade and commerce, although he conceded that the commonwealth had no control over intrastate trade and state matters.⁵⁰ The commonwealth was therefore alone empowered to discharge the nation's treaty and convention obligations, so the commonwealth acted on behalf of, and not in conflict with, the interests of states. In fact, some air navigation powers that were formerly in the possession of the states had been referred by them to the commonwealth; a co-operative spirit had therefore been established between the commonwealth and states.⁵¹

The second objection was that Australia's domestic jurisdiction would be threatened by the expansion of international power. The argument held that the convention's agreement indicated that matters, persons and

⁵⁰ Ibid. pp.617,676-8. Because the regulations were held invalid, no opinion was necessary on Henry's unlicensed intrastate flying; Henry, who flew while his licence was under suspension, had limited that flying to the vicinity of Mascot airport when he was charged with a breach of the act.

⁵¹ Ibid., pp.610,676-8. Evatt was of course later as a politician to regret the absence of that spirit in 1942-3 with the failure of state parliaments from 1942 to refer to the commonwealth powers that were deemed necessary to conduct post-war reconstruction and constitutional reform.

things', which ostensibly were to be regulated internationally, would be controlled within Australia. The inevitable result, the contention proceeded, would be the invasion of the domestic jurisdiction of states. Evatt responded that 'the proper method of approach to the construction of the Constitution' was to recognise and interpret the extent of the external affairs power determining the extent of state power. Evatt of course interpreted the reach of the external affairs power so expansively that he pre-empted and overrode state power. Evatt again implied that the exercise of such commonwealth legislative power would be applied in the interest of states.⁵²

Evatt was critical of the Air navigation act because it claimed itself rather than the convention as a source of authority through invalidly citing the external affairs power and the convention. It thereby sought to give to the executive excessive powers of control over air navigation in transgression of the constitutional principle of the separation of powers.⁵³ He was an ardent admirer of the convention and was a firm adherent to the right of Australia independently to enter into international

⁵² Ibid., pp.616-8,679-80,687. The shift in Evatt from state to federal support was now marked, still more than four years before he became a federal politician.

⁵³ Ibid., pp.688-90. Rather, the source of power lay in the convention and the external affairs power of the constitution which the act was of course obliged to acknowledge.

treaties and conventions. His support for the regulation and improved standards of aviation mirrored his general concern for the protection of physical health, specifically through his own fear of the real and imagined perils of flying. He wrote at length of the wisdom of the recommendations of the convention, especially of the many safety measures that were argued by the convention to warrant international approval. These included the implementation and standardisation of markings, signalling, licencing and navigation. He also wrote with personal and professional interest of the measures by which collisions were avoided and of the need for pilots and crews to pass rigorous medical examinations.⁵⁴

Evatt was anxious to demonstrate that Australia's position within empire was no impediment to her activities further afield. It had however been contended that Australia was entitled only to legislate in 'external' rather than 'foreign' matters, for the term 'external' was argued to be concerned with matters within empire while the term 'foreign' allegedly denoted matters that lay beyond empire. The framers of the Australian constitution from

⁵⁴ Ibid., pp.688,690-4. It is easy to imagine Evatt, in nervous mid-flight, calling for the pilot's attention in order to ensure the observance of the more worrisome features of the convention's agreement.

1891 to 1901 simply did not foreshadow the full independent role of Australia in international affairs.⁵⁵

Evatt did not consider this problem to be crucial to the judgment, which was to determine the intention of section 51(xxix). He seemed by this dismissiveness to want to avoid the embarrassment of addressing the apparent uninterest of the constitution's authors in order to achieve a desired political result, that of the amplification of Australia's international personality.⁵⁶ He was nevertheless convincing in his approach - he used the word 'relative', where 'external' and 'foreign' shared the same relative quality of being beyond Australia's boundaries, to describe the openness of the term 'external affairs' and to join 'external' with 'foreign'. He incorporated both terms under a broad conception of internationalism, thus predictably rejecting the traditional distinction between external and foreign affairs, the boundaries of which had anyway become less clear as the broad international activity of dominions increased. Section 51(xxix) therefore empowered and obliged Australia to engage widely in international affairs.⁵⁷

⁵⁵ Ibid, pp.615-8. W.Hudson (ed.), Towards a foreign policy: 1914-1941, Melbourne, Cassell, 1967, p.22.

⁵⁶ Ibid., p.684.

⁵⁷ Ibid., pp.684-6 Evatt examined authorities to demonstrate the broadening of the term 'foreign' to include imperial and extra-imperial affairs.

Evatt contended that it was impractical to specify items which came under the external affairs power, believing that it was more sensible to allow openness to the placitum so that it may develop a more particular identity through constitutional interpretation; he applied the development of the word 'foreign' to overcome the problem of the use of the word 'external' in section 51(xxix). He did acknowledge that the use of 'external' instead of 'foreign' appeared to indicate the need to comprehend the difference between imperial and extra-imperial relation, but declined then to pursue the matter.⁵⁸ He therefore avoided the conclusion that any restriction on Australia's relations with any other states may exist, and certainly declined to explore the obvious imperial reason for the use by the authors of the constitution of the less expansive word 'external'. Thus he very conveniently and tendentiously superimposed a most liberal and 'false' interpretation on the commonwealth's power to legislate in 'external affairs' upon an orthodox legislative conception that excluded a consideration of Australia's activity in extra-imperial relations. That conception was vague rather than liberal, allowing Evatt 'falsely' to link the breadth of liberality with the breadth of vagueness.

⁵⁸ Ibid.

Freed from these legally troublesome (and personally inhibiting) fetters, Evatt was capable of directing section 51(xxix) to great things. He needed no prompting; in this 1936 judgment, containing as it did a remarkable constitutional approval, he paved the way for Australia's leaders, which later included himself, to establish an Australian international stature of energy and expansiveness:

The fundamental declaration of [the imperial conference of] 1926 dealing with the status both of Great Britain and the self-governing Dominions included the assertion that they were "equal in status, in no way subordinate one to another in any respect of their domestic or external affairs" (Cmd. 2768, sec. 11). It would be a complete derogation from such status if this court were to hold that the Commonwealth was not competent to assume the obligations imposed, and accept the rights conferred, by the convention of 1919 (Jolley v Mainka).⁵⁹

This convention moreover bore remarkable similarity to the treaty of Versailles to which Australia was of course a signatory. The expansive co-operative duty of Australia to assume a responsible international position in an unrestricted range of issues was clear:

...it is a consequence of the closer connection between the nations of the world (which has been partly brought about by the modern revolutions in communication) and of the recognition by the nations of a common interest in many matters affecting the social welfare of their peoples and of the necessity of co-operation among them in dealing with such matters, that it is no longer possible to assert that there is any subject matter which must necessarily be

⁵⁹ Ibid., pp.683-4.

excluded from the list of possible subjects of international negotiation, international dispute, or international agreement. By way of illustration, let us note that Part XIII. of the Treaty of Versailles declares that universal peace can be established only if it is based upon social justice and that labour unrest caused by unsatisfactory conditions of labor imperils the peace of the world. In face of these declarations and the setting up (under the treaty) of the International Labour Organization it must now be recognized that the maintenance or improvement of conditions of labour can (as it does) form a proper subject of international agreement, for differences in labour standards may increase the friction between nations which arises even when trade competition takes place under conditions of reasonable equality.⁶⁰

The external affairs power was a moral (as well as a nationalist) power of obligation to serve the international community; Australia was duty-bound to contribute at international forums to the solving of the world's problems by ensuring co-operation, peace and prosperity. It was imperative that the external affairs power be employed to its full potential:

...the real question is - what is comprehended by the expression "external affairs." It is an expression of wide import. It is frequently used to denote the whole series of relationships which may exist between States in times of peace and war. It may also include measures designed to promote friendly relations with all or any of the nations. Its importance is not to be measured by the output of domestic legislation on the topic because this sphere of government is characterized mainly by

⁶⁰ Ibid., pp.680-1.

executive or prerogative action, diplomatic or consular.⁶¹

Evatt in fact gave such expansive power to the external affairs power that in his judgment in R v Burgess; ex parte Henry, he even envisaged the possibility of federal parliament enacting international draft proposals and recommendations:

It would seem clear, therefore, that the legislative power of the Commonwealth over "external affairs" certainly includes the power to execute within the Commonwealth treaties and conventions entered into with foreign powers...It is not to be assumed that the legislative power over "external affairs" is limited to the execution of treaties and conventions; and...Parliament may well be deemed competent to legislate for the carrying out of "recommendations" as well as the "draft international conventions" resolved upon by the International Labour Organization or of other international recommendations or requests upon other subject matters of concern to Australia as a member of the family of nations. The power is a great and important one.⁶²

Evatt in this judgment reflected his admiration for the League of Nations by stating with some detail a view of world organisation, based on the principles and practice of constitutional law, that he was later to espouse in international wartime and post-war forums. This judgment was therefore an harmonious fusion of Evatt's morality, intellect and psychology, particularly as a highly

⁶¹ Ibid., p.684. The authority of the external affairs power was compared favourably by Evatt with the comparable section of the Canadian constitution, section 135, in his judgment in Frost v Stevenson, (1937) 58 CLR, pp.596-9.

⁶² R v Burgess; ex parte Henry, (1936) 55 CLR, p.687.

disciplined personal and professional expression of character.⁶³

Evatt's promotion of Australia's international personality contrasted sharply with contemporary labor attitudes which tended to isolationism or a disinterest in international relations. The 1936 Spanish civil war stimulated some concern for events beyond the direct relevance of Australia, although this dispute was notable for dividing labor opinion rather than facilitating the formulation of a cohesive and thoughtful labor policy on foreign affairs. It took the second world war, the burden of office and the encouragement of Evatt to arouse the ALP in this matter.⁶⁴

Evatt's admiration for the League of Nations and the mandatory system illustrated his belief in the effectiveness of written constitutional agreements as primary instruments of international policy. This was especially evident through the implementation of the Australia-New Zealand Agreement of 1944. This agreement was Evatt's fullest regional expression of the need to assure independence, assertiveness and security.⁶⁵

⁶³ Admired in J.G.Starke, 'Current topics: the plenitude of the external affairs power', Australian Law Journal, vol.56, no.8 (August 1982), p.382.

⁶⁴ Hudson, pp.124-39. Curtin and later to some extent Chifley were the only prominent labor politicians who saw the need to drag labor policy from the intellectual and political inhibitions of isolationism.

⁶⁵ CPD, vol.177 (19 February 1944), p.73-4. CPD, vol.180 (30 November 1944), pp.2532-5.

It was the first formal arrangement to be reached by Australia to be implemented without British involvement, and so was a landmark.⁶⁶ Its shape, content and timing bore Evatt's imprint; it was remarkably similar to views expressed in his judgment in Jolley v Mainka (1933) and his pamphlet of the following year, The British dominions as mandatories. He observed that Australia and New Zealand were natural allies because of their similar backgrounds, attitudes, cultures and geographical proximity. Through current adversity and in hope for the future he sought to strengthen and formalise this bond. He further hoped to apply this agreement to world affairs, for regional and world matters were contended ideally to be mutually beneficial. The agreement additionally represented the tightening of the machinery of the British commonwealth through the firmer binding of these two constituents of the commonwealth. As a security arrangement, it was therefore not selective or aggrandising, but a creative measure to assure world security through regional peace.

The essence of the Australia-New Zealand agreement was to assure national and regional security and, relatedly, to enhance the welfare of regional native inhabitants. He

⁶⁶ Renouf, p.131. For Evatt concerning the distinctions between an agreement and a treaty, CPD, vol.177 (10 February 1944), pp.71-2. Evatt argued against the strangeness of the agreement by listing regional and bilateral arrangements, although he made no apologies for the agreement, CPD, vol.179 (19 July 1944), pp.234-5.

therefore mirrored principles expounded in earlier legal work and the key goals of the League of Nations, of peace, prosperity and equality, A chief innovation was the pledge to co-ordinate civil aviation between the two nations. This provision resulted from the development of the aviation industry, particularly with the dominant military importance of air warfare, the use of aircraft to defend a sparsely populated large country such as Australia, and the opportunities for the post-war employment of wartime pilots. His appreciation of the importance of civil aviation echoed an interest expressed earlier in his judgment in R v Burgess; ex parte Henry.⁶⁷

Renouf, who went to some lengths to disavow the agreement as unnecessary and provocative, in fact showed some admiration for the sheer temerity of this expression of Australia's independence. Evatt had been repeatedly distraught by the failure of the big powers to recognise Australia's right to speak, to advise and to be consulted in important wartime and post-war matters; in a petulant response, he engaged New Zealand without seeking the views of either Britain or the United States.⁶⁸ Britain was not

⁶⁷ CPD, vol.177 (10 February 1944), pp.75-83, including a copy of the agreement itself, pp.79-83. General interest in civil aviation, CPD, vol.181 (22 February 1945), p.63.

⁶⁸ Renouf, pp.126-33. Renouf regarded the agreement as 'flamboyant and pretentious'; matters covered by the agreement should have been placed in a far more subdued instrument, through, for instance, a press statement which would contain a less formal exchange of views.

troubled by the agreement, for she appreciated the value of having two dominions formally express principles that were consistent with the identity of the British commonwealth and which would have been unsuitable and embarrassing for Britain herself to have stated.⁶⁹ The United States, who had grown to dislike Evatt's pressing diplomacy and who suspected Australia's territorial ambitions, was most displeased at this regional assertiveness, (although the agreement did not indicate any expansionist desire.)⁷⁰

Despite Renouf's criticisms, it was nevertheless only seven years later, in 1951, that the United States, Australia and New Zealand signed the ANZUS pact, a defence treaty whose negotiation was made smooth by the earlier agreement.⁷¹ The agreement moreover gave identity to Australian nationhood and was an important concrete progression in Evatt's efforts to thrust Australia into world affairs. It:

⁶⁹ Especially regarding trusteeship and commonwealth relations, *ibid.*, p.134. CPD, vol.181 (22 February 1945), p.65-6.

⁷⁰ *Ibid.*, pp.134,136-9; Evatt's diplomacy criticised, P.G.Edwards (ed.), Australia through American eyes, St Lucia, University of Queensland Press, 1979, pp.17,19,68-70; defended, R.J.Bell, Unequal allies: Australian-American relations and the Pacific war, Carlton, Melbourne University Press, 1977, pp.58-63.

⁷¹ The Australian government through Evatt was also innovative through independently declaring war on Japan on 8 December 1941 and joining with Britain, at the suggestion of Australia, to declare war on 5 December on the German allies, Finland, Hungary and Rumania. CPD, vol.169 (16 December 1941), p.1088. He was also ahead of his time regarding the post-war economic and social future of Japan, Renouf, p.211.

...contemplates and postulates not mere regionalism, but security plans which are to be part and parcel of a general system of world security. Whether or not one agrees with every clause of the agreement, it is necessary to get rid once and for all of the idea that Australia's international status is not a reality, and that we are to remain adolescent forever.⁷²

The Australia-New Zealand agreement was primarily a security arrangement, and one which stressed Evatt's intense care for the preservation of national security. The military threat from Japan closely addressed this matter; Evatt typically conceived the broad wartime issue of Japanese aggression in legalistic terms, particularly through the status of written agreements and judicial administration.

Evatt believed that the defence of Australia was so important that 'life itself would not be worth living' until force and the threat of force had been dispelled.⁷³ He held that Australia, if invaded, would be a critical battleground and one on which 'We shall be defending liberty in its most elemental form':⁷⁴

'Tis well! from this day forward we shall
know
That in ourselves our safety must be sought
That by our own right hands it must be
wrought;
That we must stand unpropped, or be laid
low.⁷⁵

⁷² CPD, vol.179 (17 July 1944), p.229.

⁷³ CPD, vol. 169 (16 December 1941), p.1089.

⁷⁴ CPD, vol.170 (25 February 1942), p.57.

⁷⁵ CPD, vol.169 (16 December 1941), p.1089.

Evatt, it will be recalled, was delicate in all matters relating to death, illness or any aspect of physical damage (an observation which contrasted with but did not contradict his admiration for the physical bravery of Australian servicemen).⁷⁶ Evatt maintained a constant abhorrence of war for the essence of the conduct of this or any war was the infliction of physical harm. Moreover the horrors of the first world war were still well remembered. He was outraged by the aggression of the axis powers, particularly of Japan's prosecution of the war in the Pacific; the savagery of the 'atrocious cruelties' that were indulged by Japanese soldiers truly appalled him.⁷⁷ Although his profound concern with security was typical of the time, it may be seen to relate closely to his fear of physical harm. He expressed and fortified his disgust in legal terms through the espousal of negotiation as an authoritative and binding means of dispute settlement.

Before Japan entered the war, Evatt spoke optimistically of the progress of talks directed at averting expanding Japanese militarism. (Japan occupied Korea and had for some years been at war with China.) The talks were between the American secretary of state, Cordell Hull, and the Japanese ambassador to America, M.Kurusu. Hull tried reasonably but firmly to negotiate compromises

⁷⁶ CPD, vol.176 (14 October 1943), p.568-9.

⁷⁷ CPD, vol.180 (30 November 1934), p.2531.

with Kurusu. As Japan became less likely to agree to peace, Roosevelt appealed directly to the Japanese emperor, Hirohito, to prevent the spread of war:

...for the sake of the peoples, not only of our great countries, but for the sake of humanity in neighbouring territories...⁷⁸

These talks failed demonstrably with the bombing of Pearl Harbour. Evatt responded that:

The only answer to this sincere and moving appeal [of Roosevelt's] was to hurl death and destruction.⁷⁹

Evatt was particularly terrified by Japan's militarism, which he considered worse than that of Germany, not only because of the 'so many callous and brutal acts of aggression' but because of the accompanying treachery, the 'active deception and guile', which characterised the outbreak of the Pacific war while negotiations continued.⁸⁰ He was upset therefore not only because Japan resorted to military aggression while there was still a chance to avert war by negotiation, but because Japan used the screen of negotiation as a device of war in the pursuit of concrete military and strategic advantage.

Evatt listed the numerous treaties to which Japan was a signatory and subsequently transgressed. This emphasised his extreme pique at the wilful neglect of the procedures

⁷⁸ CPD, vol.169 (16 December 1941), p.1086.

⁷⁹ Ibid. Evatt had attempted to promote the continuance of allied talks with Japan, P.Hasluck, The government and the people, 1939-1941, Canberra, Australian War Memorial, 1965 (1952), p.551.

⁸⁰ CPD, vol.169 (16 December 1941), p.1087.

and substance of the 'legal' measure of negotiation. It also revealed the tradition of disturbance to the Pacific and Asia for which Japan was responsible. The authority of formal agreement certainly appeared to mean little to the Japanese. Initially Japan contravened the Hague convention of 1907, which required notification of the intention to wage war, then broke a string of treaties commencing with the 1930-1 invasion of China. The defiance of these arrangements led in the current war to Japan's 'insensate' plan of Pacific domination:⁸¹

The truth is that Japan's conduct in 1931 turned out to be the first step in the attempt to destroy the entire basis of international law and international justice.⁸²

Two particularly important Japanese transgressions were the disregard of its duty as a mandatory and its default of the terms of the Geneva red cross conventions of 1906 and 1926 and the prisoners of war convention. The League of Nations gave mandatory control to Japan of Pacific islands that were situated north of the equator. Japan used this control as a strategic wartime instrument that was vital for the furtherance of its expansionist plans; it was thus by this time (if ever) comprehensively uninterested in the application of the compassionate notion of 'sacred trust'. Japan in fact withdrew from the league in 1936 as a result

⁸¹ CPD, vol.169 (16 December 1941), pp.1087-90. CPD, vol.170 (25 February 1942), p.57. CPD, vol.176 (14 October 1943), pp.571-2.

⁸² CPD, vol.169 (16 December 1941) p.1090

of criticism by league members of its military aggression on continental Asia.⁸³

The ghastly treatment by Japanese soldiers of Australian and many other prisoners of war was marked not only by the degradation of prisoners but by the attempts, which were usually transparent, to hide it - repeated assurances from Japan of the adherence to the Geneva red cross convention and the prisoners of war convention were in reality groundless.⁸⁴ Evatt was perhaps too credulous in his expectation that foreign, and particularly axis, powers would stringently or even loosely continue to adhere to international agreements when it no longer served military goals. He seemed not to appreciate the utter ruthlessness of war, as if he simply could not appreciate a side of life that was and probably always will be barbaric. Certainly, he expected too much from the professedly inviolable tenets of international law. Nevertheless, recourse to the law was to him the best and possibly the only effective way that he could address this problem.

⁸³ CPD, vol.176 (14 October 1943), pp.571-2, 578. Withdrawal from the league was a technically proper but negative option open to Japan. Although at this early stage Japan's militaristic intentions were perhaps suspected, but not established, it was an indication of the irresolution of the league's controlling powers, and a signal of the league's eventual failure, that Japan was not dispossessed of its mandates as soon as it left the league or at any later stage before the war.

⁸⁴ CPD, vol.176 (14 October 1943), p.578.

Evatt persisted with this approach by firmly advocating that offending Japanese, and Germans, who came to be known as 'war criminals', be made to suffer the consequences of their transgressions; they broke the 'law', so they were to be punished. The severity of that punishment was to correspond with the nature and gravity of the crime. His support for the judicial and administrative machinery by which these criminals would be brought to justice was rigorously legalistic. Thus he was an ardent devotee of the international body that was formed to address the matter. This body was the United Nations commission for the investigation of war crimes, and was known epigrammatically as the war crimes commission. It established the machinery by which the allies might 'ensure the just and orderly trial of war criminals' who breached the 'laws of war'.⁸⁵ Australia was represented initially by Lord Atkin, described by Evatt as:

...a very distinguished Australian and a very great judge.⁸⁶

Evatt deeply regretted Atkin's death (and death of course always moved him), which occurred soon after his appointment to the commission. The Australian government then appointed another 'most distinguished judge', Lord Wright, to represent Australia. Evatt had known both judges and had liberally and favourably quoted from their

⁸⁵ CPD, vol.180 (30 November 1944), p.2532.

⁸⁶ Ibid.

judgments in his own High Court judgments.⁸⁷ Evatt clearly was responsible for both appointments.

Evatt was aware that some crimes lay beyond the jurisdiction of national courts. He accordingly pursued Atkin's recommendation of the formation of special international tribunals with a particular capacity to determine crimes and atrocities of special magnitude, for:

An atrocity or a breach of the laws of war is not only the concern of the state whose nationals suffer from the breach, but of all states upholding the law of nations and the standards of civilized conduct.⁸⁸

As with his wish to give early legal authority to the 'new internationalism' of the mandatory system, he sought quick provision for the machinery of judicial administration which would facilitate the effective prosecution of particularly flagitious crimes. The attainment of this peculiar facet of justice similarly required a fresh outlook so that its administrators might grasp this 'new internationalism'.

⁸⁷ CPD, vol.179 (19 July 1944), p.231. Who's who in Australia, 1938, p.49. Evatt's dissenting judgment in Grant v Australian Knitting Mills Limited and others had, on appeal to the privy council, been supported by Wright in his judgment, delivered on behalf of the higher court. Evatt found that there was a duty of care from the Australian Knitting Mills to manufacture woollen garments that would not cause *dermatitis* in the wearer. (As a radical decision which expressed compassion for distress endured by an individual and inflicted by an 'oppressive' body, it recalled his decision in Chester v Waverley.) Evatt would most certainly remember the privy council's reversal the high court's decision. (1936) AC, pp.89-108.

⁸⁸ CPD, vol.180 (30 November 1944), p.2531.

In the desire to assure maximum efficiency in the prosecution of war criminals, he complemented the work of the commission with the establishment of a 'regional' inquiry. This inquiry was to investigate and report into war crimes committed against Australians; he was most anxious that imprisoned fellow countrymen be satisfied that justice was implemented. He appointed William (later Sir William) Webb as head of the inquiry. Webb's earlier legal work recommended him for the tasks of the inquiry for he had investigated Japanese offences in New Guinea. Webb submitted a report in March 1944 to Lord Wright of the commission but, with further evidence of additional Japanese breaches, Webb's commission was renewed and the scope of the inquiry's investigation enlarged. Evatt sought the prosecution of Hirohito, the Japanese emperor, but later withdrew this appeal due to a lack of support.⁸⁹

Evatt's legalistic view of international relations was narrow - it reflected an ignorance of much history, especially European history.⁹⁰ Therefore it was not surprising that Hasluck and the British historian and

⁸⁹ CPD, vol.179 (19 July 1944) ,p.231. CPD, vol.180 (30 November 1944), p.2531. CPD, vol.181 (22 February 1945), p.67. Dalziel, pp.48-51.

⁹⁰ Evatt was disadvantaged by not formally studying history as a student, and there were later found to be many gaps in his understanding of European history, Hasluck, pp.26-7, Renouf, p.13. This omission seemed to stress Evatt's one-sided understanding of international relations. A further aspect of his unevenness, as alleged by Hasluck and which may be refuted, was his failure to relate domestic and international policies.

diplomat, C.K. Webster, observed with astonishment some basic and glaring omissions in his knowledge of important issues.⁹¹ For his world view was therefore so tightly constrained within constitutional clothing that he was never a grand, comprehensive or balanced internationalist. That is, he lacked a measured and thorough international perspective because specific inner demands were directed onto specific international concepts and issues which gratified those demands; those demands broadly embodied a concern for justice and security, a desire for national assertiveness and a view of power relations that was based rather simplistically on the inequitable division between strong states and those which were weak or only moderately powerful. For example, he lacked the understanding that a well-read political scientist has of the ebb and flow of peace and war and the appreciation of the arrangement and fluidity of international power. On one occasion, the world map was facetiously shown to him by the Czech politician, Jan Masaryk, to remind him of the relative positions of European Czechoslovakia and distant Australia when Evatt soon after the war spoke earnestly of the more pressing problems of Australian security.⁹²

⁹¹ P. Hasluck, Diplomatic witness: Australian foreign affairs, 1941-1947, Carlton, Melbourne University Press, 1980, pp. 25-6.

⁹² Hasluck, p. 28.

Evatt was often however formidable when addressing his strengths and at times was profound in thought. Those strengths embraced his appreciation of constitutional issues which centred on the administrative management of international power and the negotiated settlement of international disputes. He skilfully applied these qualities as minister for external affairs, and indeed was greatly excited by the expectation of contributing to the creation of a new world order out of the chaos and destruction of the second world war. That contribution was broadly sanguine, unified and holistic and was constructed comprehensively and with great logic. It was profoundly indebted to the contemplation, exercise and management of power through his understanding of constitutional law. It was also a personal and national demonstration to the international community of Australia's political and constitutional maturity.

He was eager to establish Australia's authority at the highest international levels in problems arising from the second world war and in plans for a post-war international organisation. Australia justified that recognition through its administrative contribution to the prosecution of the war and her exemplary military record. For example, her representatives promoted and participated in important wartime councils such as the Pacific war council and the

British war cabinet;⁹³ Australian diplomatic activity was greatly expanded;⁹⁴ and Australia compliantly accepted foreign military leadership.⁹⁵

Evatt looked to the authority of highly 'moral' principles to direct Australia's activity in world affairs and to establish rudimentary, humane determinants by which a future world organisation would be guided. He was therefore impressed by the large statements of principle upon which the major allied powers pursued victory and sought to form a post-war order, particularly of the wartime meetings between the leaders of these powers at Tehran, Cairo and especially Moscow. A further declaration, the Atlantic charter, was a fundamental statement on the principles of expanded post-war management to which Evatt was greatly attracted.⁹⁶ He was disappointed that Australia

⁹³ CPD, vol.169 (26/27 November 1941), pp.972-3. CPD, vol.172 (4 September 1942), p.79. CPD, vol.176 (14 October 1943), p.569. CPD, vol.179 (8 September 1944) p.602. CPD, vol.181 (2 February 1945), pp.65-6.

⁹⁴ CPD, vol.169 (26/27 November 1941), p.972. B.Kelly, 'The early years: Australian foreign policy towards Latin America, 1941-49', unpublished papers, 1986, pp.6-24. Australia, from a London base, represented Polish interests in Russia until Poland was suitably disposed to resume direct and settled diplomatic links with Russia, CPD, vol.181 (22 February 1945), p.64. Poor diplomatic representation acknowledged at the commencement of labor administration, CPD, vol.169 (26/27 November 1941), p.977-8. CPD, vol.176 (14 October 1943), p.575.

⁹⁵ CPD, vol.169 (16 December 1941), p.1085. CPD, vol.172 (4 September 1942), pp.78-9. The Times, 30 May 1942, p.5.

⁹⁶ CPD, vol.170 (25 February 1942), pp.55-6. CPD, vol.172 (4 September 1942), p.82. CPD, vol.176 (14 October 1943), pp.569,570-1. CPD, vol.177 (10 February 1944), p.74,76. CPD, vol.177 (17 March 1944), p.1554. CPD, vol.179 (19 July 1944), p.229-30. CPD, vol.181 (22 February 1945), p.64.

was not a signatory to these agreements and especially displeased that she was not consulted.⁹⁷

Evatt regarded the Atlantic charter very highly as a document which 'provides us with a sure and certain guide to future policy'. It was an Anglo-American agreement that was signed by Roosevelt and Churchill in August 1942, and was later sanctioned by Russia. The charter was a broad blueprint of the means to ensure peace by the disarmament of aggressors, the restoration of sovereignty to those so deprived by war, the negotiation of international disputes, and the attainment of economic advancement by international co-operation through, for example, the improvement of labor standards and social security. It was the enshrinement in formal constitutional language (which in itself of course gave Evatt great pleasure) of an 'historic declaration of the four essential human freedoms'. They were the freedom of speech, freedom of religion, freedom from fear and freedom from want. He expressed the understanding and hope that these principles would be implemented universally, for they were 'solemn pledges' to be carried out; they were not 'mere platitudes but living actualities'.⁹⁸

⁹⁷ Renouf, pp.102-3,127. His restraint was an acknowledgement of the pragmatic requirements of united allied action, and certainly of a united public face.
⁹⁸ CPD, vol.170 (25 February 1942), pp.55-6. CPD, vol.172 (1 October 1942), p.1339. CPD, vol.176 (14 October 1943) p.569.

The grandeur of large principle was again revealing of the shape and organisation of Evatt's thoughts. Moreover, these fundamental concepts were again indicative of his appreciation of the rudimentary management of society according to basic but changeable, and usually undemonstrative, although most influential, themes. A broad and unifying cast of action was formed by principle; purposeful administrative machinery was then needed to give practical and rigorous effect to principle. This framework was a continued expression of the method and morality of his constitutional law, one whose international format envisaged the resolution of disputes within legal tribunals or constitutional forums. In this manner broad theoretical principles were conveyed and transmuted into the solving of particular practical problems. That is, from chrysalis to imago, the abstraction of the Atlantic charter was in time transformed, in maturity, into the materiality of an active UN.⁹⁹

He was anxious for the considered, influential hearing of the views and claims of smaller powers. Specifically, the valuable contribution of smaller powers formed an indispensable element of the performance and character of

⁹⁹ The UN did not formally exist until the signing of the charter that was negotiated at the San Francisco conference of 25 April-26 June 1945, and its subsequent ratification by the parliaments of member nations. Its first session, which was held in London, was not convened until the following year.

post-war organisation; he was fond of reminding big powers that they, despite their size, possessed no sole entitlement to wisdom.¹⁰⁰ The role of smaller nations in international affairs had of course been formerly recognised through the structure and proceedings of the League of Nations.

The UN was however fundamentally different from the league because the later body was split decisively into two forums. The first was the security council which hosted the permanent membership of the five major powers, America, Russia, China, Great Britain and France. These powers held very considerable executive authority. The second was the general assembly which was the platform of all members of the UN. It similarly was powerful, but lacked the executive might that was enjoyed by the members of the security council. There was a twofold link between the two forums. The assembly apprised the council of its proceedings by specific communication (notwithstanding the presence of council members at the assembly) and influenced the council simply by the weight of its opinion. A further link was provided by the temporary membership of the council by assembly members.¹⁰¹ That membership continued for two years. A maximum of six assembly members sat in the council

¹⁰⁰ CPD, vol.176 (14 October 1943), p.572. CPD, vol.179 (19 July 1944), p.603. CPD, vol.184 (30 August 1945), p.5032.
¹⁰¹ CPD, vol.1084 (30 August 1945), pp.5018,5026-7. For the absence of executive power, pp.5017,5024-7.

at any given time (who with five permanent members comprised a total of eleven). These temporary assembly members were limited by the requirement that no important decisions were valid without the unanimous support of the five permanent members; that is the permanent members' veto was a final executive power which the temporary members lacked.¹⁰² The representatives of smaller nations could thereby exert a considerable but still limited degree of world leadership. Evatt was anxious to take full advantage of these means in order to circumvent the vast authority of big powers.

Evatt warned of the dangers of distancing the ideas and operation of the UN from the past and from region. The League of Nations covenant provided for the use of force by member nations against members who transgressed the terms of the covenant. That force was not employed to compel the prevention of war. It was important that members of the proposed new organisation apply force to avoid the breaking of obligations. That force could consist of moral opinion or the weight of opinion of member states, or it could be military action. Those obligations, or the 'laws' of the constitution of the UN required diligent application, for:

To say that the present war was caused by the breakdown of the League is just as absurd as to say during a period of

¹⁰² H.V. Evatt, The United Nations, London, Oxford University Press, 1948, pp.9-16,19-26,51-62ff. The five permanent members are the United States, the United Kingdom, the USSR, France and China.

lawlessness in any community that the lawlessness has been caused by the existence of the criminal law.¹⁰³

Evatt stressed the need to relate the ideas and operation of the UN to Australia's national policy. For the potency of the new international organisation lay in the co-operation not only of member nations (who after all acted for their own countries), but in the co-ordination of their respective domestic policies with those of the UN. The two most relevant and influential international arms of national policy were foreign and economic policy. The extension of foreign policy, through expanded Australian diplomatic representation, indicated Evatt's awareness of the need to facilitate the machinery of international consultation and the exchange of information, while it was essential that regional and global security be complementary.¹⁰⁴ By 1940, there were just five diplomatic overseas missions.¹⁰⁵ That was raised to nine by 1945, and during the following year ten more posts were added. By the

¹⁰³ CPD, vol.176 (14 October 1943), pp.571-2. CPD, vol.179 (8 September 1944), p.604. CPD, vol.184 (30 August 1945), pp.5018-9, 5034, 5036.

¹⁰⁴ CPD, vol.176 (14 October 1943), p.570, 572. CPD, vol.178 (17 March 1944), pp.1554-5. CPD, vol.181 (22 February 1945), pp.65-6.

¹⁰⁵ The major ones outside England were in the United States and Japan. In 1937, Sir Keith Officer took up duty as Australian counsellor in the British embassy in Washington. In 1940, after war had begun but before the entry of Japan, Richard Casey was appointed first Australian minister to America. Also in that year, Sir John Latham became Australian minister to Japan. With the exception of a London office, there was before this war no Australian diplomatic representation. Hudson, p.39.

close of Evatt's tenure as minister for external affairs in 1949, the total number of overseas missions was twenty-six. In 1936 the department's total staff was a mere nineteen. By 1949 that figure had risen to 642.¹⁰⁶

He was quite adamant that Australia's economic policy fulfil the intention of the UN to promote the economic advancement of all peoples. A cornerstone of this economic policy was the goal to achieve full employment. Full employment was a key element of labor policy that had been hardened to virtually a strident imperative as a result of the mass unemployment of the great depression. All labor leaders of the time adhered strictly to the promotion of this policy. Evatt repeatedly stressed its importance and most speeches delivered by him during the 1940s which discussed economic policy reiterated the necessity for full employment.¹⁰⁷ In fact Australia, headed internationally at first by the senior labor minister Jack Beasley, and then by Evatt, led the world in proclaiming the ameliorative economic and societal consequences of full employment.¹⁰⁸ A further expression of the alignment of national with

¹⁰⁶ B.Kelly, pp.6-7.

¹⁰⁷ CPD, vol.179 (19 July 1944), pp.233-4. CPD, vol.179 (8 September 1944), pp.623-8. Renouf, pp.91,119-21, on Evatt's enthusiasm for and the inadequacies of this policy.

¹⁰⁸ Evatt later attempted, with indifferent success, to include a provision in the UN charter to the effect that the attainment of full employment be an essential goal of the organisation's economic scheme. CPD, vol.181 (22 February 1945), p.66. CPD, vol.184 (30 August 1945), pp.5031,5038. CPD, vol.188 (13 March 1946), pp.197-8.

international economic policy was the signing in 1944 of the Canadian mutual aid agreement between Australia and Canada. It was an agreement to facilitate consultation and the exchange of information between these nations and to re-establish and to expand overseas markets.¹⁰⁹

International economic objectives were largely directed towards disadvantaged nations. He contended that it was crucial to world security that such nations be economically workable and durable. His compassionate appreciation of the requirements of these nations was derived formally from his understanding of the work of the permanent mandates commission which of course reflected his long interest in the mandates system.¹¹⁰ He rather naively associated economic welfare, attainable through full employment, with peace. This aspiration, while admirable and probably simplified for public consumption, demonstrated his lack of sophistication in the complexities of economics and high political and military policy in international affairs. The concern for the economic welfare

¹⁰⁹ CPD, vol.178 (17 March 1944), pp.1554-7. Evatt additionally showed a concern for the desirability of the stability of international currencies and the role in preventing the accumulation of a vast war debt that was provided by the Anglo-American lend-lease agreement, CPD, vol.170 (25 February 1942), pp.54-6.

¹¹⁰ CPD, vol.169 (26/26 November 1941), p.978. CPD, vol.178 (17 March 1944), pp.1554-5. CPD, vol.169 (19 July 1944), pp.624-7. CPD, vol.184 (30 August 1945), pp.5023-4, 5027, 5038. CPD, vol.188 (13 March 1946) pp.187-8, 197-8. He drew an understanding of the worth of a variety of food and health programmes into the work and organisation of the United Nations.

of the disadvantaged extended to Evatt's adherence to the trusteeship scheme, an arrangement which superceded the mandatory system.¹¹¹ He was anxious after the war to resume Australia's guardianship of territories in the Pacific, especially through its administration of New Guinea.¹¹²

Evatt's view of the UN as a grandly unified, powerful and paternalistic institution was backed by a profound faith in the creative and reformative aspirations of mankind and of mankind's leadership. The UN was to provide the practical machinery for the realisation of these ideals. Because of his 'spiritual' or 'religious' investment in the curative nature of this organisation to deny mankind's seeming will to destruction, he perceived the organisation as holistic; it had a life of its own, a life that swept up its members into a state of anticipation and idealism. Thus Evatt:

All will recognise that the success of any organisation will depend, not only on its machinery, but also on the spirit that animates members and their abiding faith in the possibility of maintaining peace through joint action. That spirit cannot be impeded, and may be greatly assisted by a general declaration of guiding principles.¹¹³

¹¹¹ CPD, vol.172 (4 September 1942), p.83. CPD, vol.176 (14 October 1943), p.574. CPD, vol.184 (30 August 1945), pp.5019-5022, 5028-30.

¹¹² CPD, vol.188 (13 March 1946), pp.195-7. Australia was later most active through the work of W.D.Forsyth at the trusteeship council, an organ of the United Nations. Forsyth was a diplomat and administrator who greatly admired the international work of Evatt. PP, vol.2 (1946-8), p.15. Personal interview with Mr W.Forsyth, Canberra, 23 October 1984.

¹¹³ CPD, vol.179 (7 September 1944), p.604.

That declaration of guiding principles materialised in the form of the UN charter. Evatt enthusiastically affirmed the rule of law both through the international court of justice and the charter. He promoted the authority of international law and the capacity of the international court of justice to apply that law in dispute settlement. He hoped that participants to a dispute might negotiate a settlement at one of the UN's forums. If unsuccessful he called for the determination of this dispute by the court. The alternative was for the assembly to vote on the issue, which he believed a just method, or for the security council to act as arbitrator, which he thought at times draconian and to be used warily as a last measure when negotiated settlement was no longer tenable. He hoped for a loosening of the procedure of referral of disputes to the council so that the court's capacity to determine disputes might more gainfully be employed.¹¹⁴

The authority of the charter pervaded the structure and substance of the negotiating work of the assembly and the council. Those forums were necessarily conducted according to the constitutional dictates of the charter. Its presence weighed upon members so that the obligation to further the work of the UN by the application of the charter's just procedures acted as an incentive to overcome

¹¹⁴ CPD, vol.184 (30 August 1945), pp.5022-3. H.V.Evatt, The United Nations, pp.131-3.

disagreements, and to overcome them with haste, if possible.¹¹⁵

It was this charter, and the charter as a product of constitutional law, to which Evatt addressed himself with much gusto and expertise at the San Francisco conference which was convened to establish the UN (UNCIO). The labor minister for the army, Frank Forde was technically the leader of the Australian delegation to San Francisco.¹¹⁶ However Evatt's dominance of the delegation through his forcefulness and constitutional knowledge rendered him the sole effective leader. Evatt, as can be appreciated, was extremely well prepared for the conference, while its constitutional work could hardly better have suited his intellectual strengths.¹¹⁷

The Australian delegation was a major force at the conference. It proposed thirty-eight amendments of substance to the UN charter, of which twenty-six were

¹¹⁵ CPD, vol.179 (7 September 1944), p.604. CPD, vol.184 (30 August 1945) p.5017,5022,5037.

¹¹⁶ See chapter 6 for a discussion on Evatt's dismay at the leadership being given to Forde.

¹¹⁷ Personal interview with Sir Alan Watt, Canberra, 20 October 1984. P.G.Edwards. Prime Ministers and diplomats, The making of Australian foreign policy 1901-1949, Melbourne, Oxford University Press, 1983, p.158. The report of the Australian delegation strongly bears Evatt's influence, 'United Nations conference on international organization held at San Francisco, U.S.A., from 25 April to 26 June, 1945: report by the Australian delegates', 5 September 1945, PP, vol.3 (1945-6), pp.701-803. Evatt's work on the Australia-New Zealand agreement provided a fine basis for his work at the San Francisco conference, CPD, vol.184 (30 August 1945) p.5017.

either adopted without material change or were adopted in principle. In an effort to reduce the influence of the big powers, Evatt was most sedulous in his attempts to omit the veto power of the permanent members of the security council. He unsurprisingly failed. The successful and partially successful Australian amendments included the acceptance, in substance or principle, of territorial integrity and political independence, peaceful settlement in conformity with the principles of justice and international law, the assembly's right of discussion and recommendation to all matters and questions within the scope of the charter, the promotion of full employment, and a general declaration of trusteeship which embraced the positive and just promotion of the welfare of peoples concerned.¹¹⁸

Evatt used the UN as a forum of immense international authority through which to express his ambition. He vigorously promoted Australian social, political and economic policies through his direction of the Australian delegation at sessions of the UN during the 1940s. He unsuccessfully sought election in 1947 to the second presidency of the general assembly, an understandable aspiration given the prestige and acclaim enjoyed by him at

¹¹⁸ CPD, vol.185 (30 August 1945), pp.5031-2. For the veto, CPD, vol.185 (30 August 1945) pp.5023-6, CPD, vol.184 (13 March 1946), p.192. J.K.Jessup, 'Evatt: Australian is conference hero', Life, vol.19, no.4 (23 July 1945), pp.72,74-7.

the San Francisco conference. He lobbied vigorously for support in the election of the third president, held in 1948, and was this time successful.¹¹⁹ That presidency continued from a session in Paris in 1948 to the American venue of Lake Success in 1949 and was marked by Evatt's active and often contentious guidance. This period corresponded with a testing time in international relations; for example, Evatt contributed to the resolution of the Berlin blockade crisis, administered the decision which authorised the establishment of the new state of Israel and was implicated in attempts to free the Hungarian cleric, cardinal Mindszenty.¹²⁰

Evatt was most skilful at grasping the totality and insight of the concept of the UN, especially by binding together the multifarious elements of the organisation to form a tightly logical, humane and positive vision. It was one of force, harmony and beauty. The thrust of that vision may be discerned in his doctoral thesis of 1924 as a

¹¹⁹ Personal interview with Sir Arthur Tange, Canberra, 10 December 1985. He worked feverishly, and with considerable political strategy, to ensure his election to the presidency of the general assembly. R.Gouttman, 'First principles: H.V.Evatt and the Jewish homeland', in W.D.Rubinstein (ed.), Jews in the sixth continent, Sydney, Allen and Unwin, 1987, pp.297-8. For Evatt's conceit as president, Heydon papers, held privately by Mr D.Heydon, Sydney, file 'Age September 2, 1970 - Evatt's crowning year', pp.1-20.

¹²⁰ Renouf, pp.118,241-3. The value of Evatt's administrative work in resolving the Palestinian problem was questioned, Gouttman, pp.271-81. Tennant, Evatt: politics and justice, Sydney. Angus and Robertson, 1970, pp.233-4.

stimulating and progressive constitutional study of the shape of the world, particularly of the imperial world.

The common law advances of Australia's international position within empire were broadly reflected in the constitutional enactment of the covenant of the League of Nations. For the force of principle that was enshrined in this international statute animated the possibilities of the future direction of Australia and the world by written constitutional power management. The operation of international power by the authority of written agreements suited Evatt's constitutional preferences more than the development of constitutional relations by common law. An Evattesque spark lurked in the 1930s, awaiting the chance to ignite an enervated and isolationist Australia. That spark flashed in 1933 with the Jolley v Mainka and Frost v Stevenson judgments and British dominions as mandatories. It surged again in the judgment in R v Burgess; ex parte Henry.¹²¹

His doctoral thesis was written after the first flush of the realisation of Australian international power, during the aftermath of the first world war. The magnitude of destruction of the first world war drained the power and influence of empire so that the new and powerful extra-imperial machinery of the League of Nations both averted

¹²¹ This stimulating international activity was a further inducement to his high court resignation.

the dominance of imperial power and complemented Australian security with the military strength of empire. These patterns, expressed in his thesis as legal and constitutional verities, continued with modifications during and in the aftermath of the second world war; they were patterns which gave Evatt a constitutional structure of genuine international perception and proportion.

This process entered its final phase with the contraction of the British empire after the second world war; empire was transformed into commonwealth. Evatt's career in constitutional relations developed in a way that he was able to anticipate and to enforce his international vision on Australian and world affairs. His aversion to imperial power was countered by his admiration for the League of Nations. Imperial power conveniently declined. In its place (with the flowering of American and Soviet power) rose the international extra-imperial power of the UN, to which Evatt was unerringly drawn.

He was at no stage able fully to gratify or to dispel the demands of his unintegrated, demanding psychology. That psychology was vexed by unsatisfied ambition, the desire to receive wide public acclaim, the need to exert control through the sole application of vast power, and the need to unburden the oppressive weight of real and imagined adversaries, ranging from individuals to big powers, who applied power 'against' him. At most he could enjoy

transient inner mollification by joining internal demands with professional endeavour. Evatt's constitutional work in international relations permitted that mollification; as a result the definition of Australia's international position was greatly sharpened.

CONCLUSION

Evatt's character, while uneven, was striking for a continuity that was formed from excessive narrowness and imbalance. Yet the nature and depth of personal needs were also capable of yielding a profundity of thought and action where public issues could be transposed upon inner imperatives.

Key contours of character in the adult Evatt may be traced from aspects of his infant development. For the influence of his mother may be interpreted as largely creating his remarkably lavish psychological texture. Her rather cool nature indicated the inadequate bestowal upon the infant of maternal love; her anxiety at his feared ill-health gave to that inadequate love an unsatisfactory quality despite the attention that accompanied that anxiety. Her influence was emphasised by her position as a virtual sole figure of authority, with his dying father ineffectual and then finally absent. The influence of a stern mother seemed by her authority defensively to induce a broad public concern with injustice and power; by her distance the issue of inadequate love seemed important, which was expressed publicly as a desire for acclaim. A

response to demanding maternal urging, in order to gain approval, contributed to driving ambition.

The cause of the extraordinary self-assurance which marked his public life may similarly be seen to relate generally to infancy. Egocentric feelings of great power and importance are natural in infants, but seemed in this infant to be greatly reinforced by the attention that accompanied the worry of anticipated ill-health; exaggerated self-centredness may here be interpreted as both a defence against a cool mother's reserved attitude and a product of a feeling of inordinately enhanced self-importance. (His actual good health appeared to reinforce that self-importance.)

The understandably changeable and unnatural senses that stemmed from this distance and anxiety appeared to be connected to later excess and disjunction; Evatt's social integration was poor and often undesired. In particular his intensity, which again seemed to be reflected in his fraught infant environment, and lack of understanding of others were products of his demanding egocentricity. Thus the self-centred and otherwise unstable environment of his infancy was seemingly a major factor in his uneven intellectual, moral, psychological and emotional traits. That unevenness was reflected in his strained grasping at the law as an intellectual doctrine (to the virtual exclusion of the wisdom that was contained in other

disciplines) by which he might guide and justify his actions. Similarly, a colleague, the bookseller Alec Sheppard, noted that he found it difficult to concentrate on two matters simultaneously, as might be required of two unconnected documents placed before him on his desk - he devoted himself entirely to one and finished dealing with it before proceeding to the other.¹ The consistency of his single-mindedness signified the continuity which permeated his life, and which marked his private and public behaviour throughout early, middle and late life.

An intrinsic lack of balance which underpinned Evatt's preoccupation encouraged his tendency to distort and so was likely to deny him the benefit of full perspective - thus he was preoccupied during the second world war with Australia and with the neglect of the Pacific region as a theatre of military operations. Although his concern was understandable this preoccupation could be exaggerated to the point where he understated the importance of more crucial, hard-fought regions of the war. Similarly at the UN he successfully accentuated the importance of the authority of Australia. This was to him quite appropriate and balanced, whereas representatives of large powers were bemused by the effrontery of this representative of a minor to middling power who unselfconsciously behaved as though

¹ Personal interview with Mr A. Sheppard, Sydney, 21 May 1986.

he were the foreign minister of a great power. His concept of the 'natural' order of things, that is of things which he believed were or should be commonly appreciated, was distorted by his obsessiveness and the need to locate himself centrally within that order. Not surprisingly, his order differed from that of others so that both orders bore little relation to each other - he was therefore 'unnatural' because he did not enjoy commonality.

Many of Evatt's evaluations of issues were predictably unbalanced. He was greatly preoccupied during the Petrov affair, a manifestation of this condition being extreme suspiciousness, so that his evaluation of the motivation of Petrov's defection was badly astray. The very public display of his idiosyncratic conduct during this cause celebre has led commentators to claim that he was mentally ill or at least that he showed palpable signs of the illness which was later to afflict him.² If he were mentally ill at this time, the time of his illness would date from mid-1954, or earlier. They cannot claim this as a certainty because he had been most intensely preoccupied by numerous earlier issues; even if he were preoccupied to the point of excessive imbalance during the Petrov affair more than at any previous time, that attitude was understandable

² R.Murray, The split: Australian labor in the fifties, Sydney, Hale and Iremonger, 1984 (1970), pp.154,169,174. Evatt was claimed to have 'slackened and declined noticeably by the middle of 1956', p.330. Personal telephone interview with Mr K.Asprey, 21 January 1988.

given its importance to ambition and ultimately to his political survival. In fact this behaviour was so typical that it would have been surprising for him to have behaved differently, should for example he have greeted this matter in a cool, clinical, reasonable and integrated fashion. The conduct of Evatt during this period, such as his defence of the right of the communist party to exist, and from earlier life, such as his promotion of the abolition of the New South Wales legislative council, fundamentally and consistently united personal and public need.

Similarly, he had usually tended to suspiciousness. It is no insight to indicate his suspiciousness during the Petrov affair because this has been held to be a singular feature in his advocacy before the royal commission on espionage.³ It is important, rather, to acknowledge the extent to which the imbalance of preoccupation, under the great stress of political crisis, prompted or emphasised his developed proneness to suspiciousness.

Evatt's general social inadequacy, which caused misunderstandings of others through especially his uncertainty of their intentions, enhanced his suspiciousness. This occurred in most environments because of the need he felt to enjoy full control. In an

³ R.Manne, The Petrov affair: politics and espionage, Rushcutters Bay, Permagon, 1987, pp.73,124,139ff,158,167. Again, it would have been irregular and therefore confusing had he not been suspicious.

environment of crisis, where control was usually contentious and where he was consequently fraught and defensive, he was likely to become preoccupied with the need to assert control - a lack of control encouraged his misunderstanding of others which in turn engendered suspiciousness. This of course occurred during the Petrov affair where the usual imbalances of his character were intensified by a crisis which worsened as his case unfolded.⁴

His predisposition to suspiciousness was also apparent from his inadvertent matching of political intrigue (and he instilled no artfulness into the Byzantine intrigue of the Petrov affair) with naivety. Just as his preoccupied conduct here was typical, there was little that was surprising in his celebrated, naive decision to write to the Soviet foreign minister, Vladimir Molotov, expecting him truthfully to reveal whether Russian agents were engaged in espionage in Australia.⁵ Moreover, there was nothing unusual in the cohabitation of this naivety with the excessive suspiciousness of his protracted, convoluted and unrealistic theorising of a rightist Petrov conspiracy. In fact, the naivety and the arcane, rather than being polarised, were drawn together by their shared unreality.

⁴ That stress may of course have been self-induced or applied externally, while its presence and degree were variable.

⁵ A. Dalziel, *Evatt the enigma*, Melbourne, Lansdowne Press, 1967, pp.119-33.

That unreality in turn was indicative of his characteristic, 'unnatural' imbalances.

A fundamental difference between the Petrov affair and earlier events in which Evatt was a participant, apart from the personal professional relevance invested by Evatt in this issue, was that his behaviour during the Petrov affair was scrutinised closely. Because of the highly controversial content and public nature of the crisis, some of that behaviour was well publicised. A particularly intensive but isolated scrutiny of Evatt at this time, and particularly of his advocacy before the royal commission on espionage, might create the belief that his unusual actions and state of mind were attributable to his later illness rather than to a consistently intense and erratic preoccupation. Illustrations of the uniformity through adulthood of his preoccupied behaviour included his numerous pursuits of freedom from oppression (in all its forms) and the ceaseless desire to gratify ambition (whether or not such gratification corresponded with his views on oppression). Similarly, his suspiciousness had been evident from at least as early as the 1930s as shown from his writings and relations with fellow judges, and during the 1940s when he was minister for external affairs.⁶

⁶ See especially chapter 5.

His conduct during the Petrov affair was one further demonstration, albeit one of the more extreme demonstrations, of continuity of character. For example, there was little psychological difference within a three year span between his conduct during the Petrov affair and his campaigning for the defeat of the 1951 referendum; they were bound especially by his preoccupation, suspiciousness, and the desires for freedom from oppression and the gratification of political ambition. The difference was in the facts imposed upon that consistent psychological condition. The narrowness of the issue of the 1951 referendum, that is of the contest between political freedom and oppression, well suited his single-minded intensity and psychological preoccupations. He predictably carried that psychological equipment into the political complexity and obscurity of the Petrov affair, to his detriment, in the belief that his dogged single-mindedness and eye for (and personal investment in) freedom from 'oppressive' injustice would yield success. His misjudgment, which culminated in attacks on the imagined sinister motives of perceived enemies, was accentuated by his unsuitability to this issue. Quite soon after that defeat, and bearing no ill-effects of that defeat, he returned fluently in 1955 to another civil liberties issue, that of the submission of his party's application before the inquiry into the allocation of television licences. His

submission, which was predictably and conveniently argued in terms of the liberal left and oppressive right, was conveyed with force and cogency, although without success.

He had been defeated before in important issues, the substance of which were characterised by his defences of the left against 'oppressive' conservatism when he was at the height of his powers; he argued against the deportation from Australia of the Irish nationalists O'Kelly and O'Flanagan in the Irish Envoys' case (1924) and when representing radical platforms of labor governments in Trethowan v Peden (1929) and the Bank case (1949).⁷ He published The king and his dominion governors in 1936, a work which was shaped by a mistrust of conservative, imperial power which he felt to be imposed 'oppressively' upon Australia; the ill-defined nature of that power, with its uncertain, fluid application to constitutional crises, deepened his suspicion.⁸ His suggested reform of this power was ignored. These defeats were united by their general suitability to his internal requirements; the Petrov affair, by its unsuitability to his consistent professional exposition, stressed the depth and continuity of those internal requirements.

⁷ Irish envoys' case, R v MacFarlane; ex parte O'Flanagan and O'Kelly, (1923) 32 CLR, p.518, briefly mentioned chapter 14. Trethowan v Peden, (1930) SR(NSW), p.183, see chapter 8. Bank case, Bank of New South Wales v the Commonwealth, 76 CLR, p.1, briefly mentioned chapter 12.

⁸ H.V.Evatt, The king and his dominion governors, London, Oxford University Press, 1936. See chapter 14.

Evatt's long-standing suspiciousness in fact became so accentuated that from 1960, when he was chief justice of the New South Wales supreme court, it worsened to irredeemable paranoia and broad incoherence. By 1960 Evatt was in steady mental decline. Those, such as John Brennan who had known him much earlier but had not seen him in recent years, were shocked by his deterioration.⁹ In that year he twice read one page from a speech delivered as president of the trustees of the public library of New South Wales, unaware that he was repeating himself.¹⁰ During this period, to March 1962 when he suffered a stroke and was unable to resume work, he was in clear decay and unable properly to perform the exacting administrative and judicial duties required of a chief justice. Before being offered this appointment, the minister for justice, Mr Reginald Downing, opposed the intention to place Evatt on the bench, for he knew that he was unfit for the position.¹¹

⁹ Personal interview with Judge J.Brennan, Sydney, 3 June 1986.

¹⁰ First personal interview with Mrs I.Cantwell, Sydney, 17 October 1984.

¹¹ Personal interview with Mr R.Downing, Sydney, 1 June 1986. Evatt was at this time, in 1960, still leader of the federal A.L.P., although a concerted effort was being made to replace him. To relieve him of the leadership with dignity, the state ALP cabinet agreed in a very close, face-saving vote to consign their unwanted national leader to the New South Wales Supreme Court bench. Sydney Morning Herald, 21 January 1960, p.3; 27 January 1960, p.1; 6 February 1960, p.1; 7 February 1960, p.1; 10 February 1960, p.1.

Evatt received total or partial assistance in the writing of his judgments from two fellow judges. He was firstly helped by Mr Justice Bernard Sugarman but, when Evatt turned against Sugarman in the unfounded paranoid belief that he no longer enjoyed that judge's support, he was then assisted by Mr Justice Herron.¹² The pace of judicial administration had quickened markedly since Evatt's experience as a judge in the 1930s, with the attendant workload having also risen dramatically. Unfortunately he floundered in administrative chaos. Several factors therefore made court and judicial work under Evatt quite unacceptable; his deepening paranoid hostility towards most judges, his judicial and administrative ineptitude, and the poor example that his inadequate courtroom questioning and conduct set to those attending his court.¹³ The dilemma worsened to the extent that Herron remarked to the journalist Jim McDougall that strike action was threatened by judges against Evatt.¹⁴ However, this staggering and quite unprecedented threat is disputed by Downing who claims that he was in regular contact with the judges and that strike action was never a

¹² Second personal interview with Mr Justice Else-Mitchell, Canberra, 12 January 1987. First personal interview with Mrs I. Cantwell, 17 October 1984.

¹³ Second personal interview with Mr Justice Else-Mitchell.

¹⁴ Personal interview with Mr J. McDougall, Sydney, 30 May 1986.

possibility. McDougall's assertion nevertheless was an indication of the extreme plight of the bench.¹⁵

Two events followed which dissipated tension and consequently led to the end of Evatt's tenure. In early 1962, Herron called a meeting of judges, excluding their chief justice, to suggest a means of overcoming the problem. A law reform commission was to meet in London, and Herron sought approval from his colleagues to encourage Evatt to represent Australia, thus giving the bench a much needed respite. The other judges were generally reluctant to agree to this plot (a reluctance which throws considerable doubt on the possibility that a judges' strike would have taken place). Herron, nevertheless, as senior puisne judge dismissed the reservations of other judges and authorised the appointment of Evatt as a delegate to the commission.¹⁶ Not only does credit (or discredit?) for this idea belong to Downing but it was he who persuaded Evatt to take the job. He displayed a fine understanding of Evatt firstly by flattering him. He expressed admiration for his fine record in law reform and commented that he would be sure to make a most worthwhile contribution to the work of

¹⁵ Personal interview with R. Downing. Evatt as a judge in 1930s and 1960s worked only in most unpleasant judicial environments, but of course for quite different reasons. In the 1930s he was a talented judge whose political sympathies, and probably talent, were resented. In the 1960s he was a poor judge who, through mental decline, stirred animosity among his own judges.

¹⁶ Personal interview with Mr Justice Else-Mitchell.

the commission. Downing then cleverly added that he felt, however, that the judge should remain on the bench to attend to current matters. Evatt predictably took vain exception to the suggestion that the commission might be poorer for being deprived of his potential contribution to law reform. He thereupon resolved to attend.¹⁷

The second event which curtailed his term as chief justice was, as mentioned, the stroke he sustained in March 1962; he collapsed in Perth while en route to London for the commission's conference and returned by air to Sydney.¹⁸ His condition was diagnosed as arteriosclerosis, an illness in which the arteries in the neck harden to prevent sufficient oxygen from reaching the brain. The illness worsened and he was unable to resume work. His family, especially his wife, was so keen that he return to public prominence that a surprisingly long period of six months elapsed before he officially resigned. After the stroke he was at various times examined by three physicians, doctors Miller, Noad and Ellard, all of whom attested to his irretrievable mental decay, a position noted from daily observation by Evatt's resident nurse, Mrs Elizabeth Olley.¹⁹ He remained housebound in sad and

¹⁷ Personal interview with R.Downing.

¹⁸ Personal interview with Mr Justice Phillip Evatt, Sydney, 2 April 1985.

¹⁹ Personal interview with Mrs E.Olley. Personal interview with Sir Douglas Miller, Sydney, 11 June 1985. Personal telephone interview with Dr J.Ellard, 29 April 1988.

erratic irrationality, although dark unreason was punctuated by periods of clarity and coherence.

These final years, far from rendering meaningless an assessment of the relationship between character and career, most helpfully reinforced the relevance of such a study. For by amplification Evatt virtually caricatured his professional needs and his chief strands of character. He revealed the emotionally distraught condition to which he had been reduced in a New South Wales supreme court case dealing with the 'oppressed' plight of an Australian divorcee and her daughter, Kades v Kades (1962). Evatt was bedevilled by the desire to allow Mrs Kades the protection of the law. The quality of the legal reasoning according to which he sought to obtain the desired result was indifferent.²⁰ His concern for a 'defenceless' mother and her child, allegedly neglected by Mr Kades, aroused his characteristic sentimentality, here to morbid excess. It showed also, by emphasis, his continued tendency to prejudge issues, in this case of the favourable treatment of mother and child, before allowing the case to run its course. His interests and compassion (although not the quality of his law) here mirrored his judgment, almost thirty years earlier, in Chester v Waverley, where Evatt

²⁰ Personal interview with Mr Justice Else-Mitchell. Kades v Kades, (1962) 62 SR(NSW), pp.576-608 for Evatt's judgment. Evatt accused of misconduct by a participating barrister, Age, 12 May 1961, p.5.

advised legal protection to a mother who experienced nervous shock after seeing the body of her child dragged from a flooded ditch. His resentment of opposition was also, by bizarre exaggeration, apparent. One sitting judge, Bernard Sugarman, who had formerly been well supported by Evatt, disagreed with Evatt in this matter. Sugarman was thereafter despised by him, a reversal which amplified his proneness to divide others into supporters or enemies.

This and earlier behaviour differed in degree and kind: it was different in degree because of the sheer excesses of a conduct which had earlier, and often distastefully, been apparent; it was different in kind because it had developed beyond his ability purposefully to work, or work with colleagues. His activity to the late 1950s was meaningful because it was 'containable', that is it was able to be contained in action, including leadership, which related to the aspirations and expectations of those with whom and above whom he worked. By 1960, however, that conduct and work became 'uncontainable' in the sense that he lost relationship with his environment; he thought that he was competent, but was totally lost administratively and legally in the duties that were demanded by his position. His colleagues had no respect for him; in court he was often a laughing stock.

His life up to the late 1950s, when there was an absence of demonstrable illness, lay apart from the later

period of obvious illness. The bizarre excesses of his 'uncontainable' activity were cleanly separated from the 'containable' activity of preceding decades by the period of relative quietude that marked the mellowing of his aging during the late 1950s. This hiatus indicated that the organic deterioration of the brain did not gain momentum until at least the late 1950s, so that there was no direct influence of illness on his conduct and work until that time. For of the many instances of 'uncontainable' behaviour in Evatt during the 1960s very few similar or corresponding instances were evident in the 1950s to sustain the view that his illness afflicted him throughout this earlier decade. Since the leadership ballot that followed Chifley's death on 13 June 1951, Evatt had been the sole federal leader of his party - during this time he possessed sufficient intelligence, political wit and composed conduct to retain as leader the confidence and respect of a majority of caucus, conduct that is which was 'containable' within aberrations of behaviour.²¹ That

²¹ A high court associate of Evatt, Keith Brennan, for example affirmed the consistency of those aberrations. He remarked that his behaviour in the 1950s should not have been regarded as surprising, but rather as typical given his eccentricity during the 1930s. He cited as an illustration of characteristically immoderate behaviour the consternation that was aroused when Evatt heatedly stood on a table to write down names of labor members of caucus who failed to support his denigration of the 'movement'. It should be added that the consternation was excited as much by his exaggerated manner as by the fact that he publicly and threateningly took down names. Brennan found both aspects of this behaviour long to be expected of him. (That

respect and confidence, qualified by his poor leadership, was retained until 1960, when it was clear that he would not step down voluntarily to make way for a replacement. He campaigned resolutely under the public gaze in the later elections of 1954, 1955 and 1958 without his mental stability being questioned (although during his appearance before the royal commission on espionage in August and September 1954, that stability was questioned). A physician, Dr Breidahl, examined Evatt for pneumonia in 1958 and he found his mental condition to be perfectly sound, although he noted typical fulminations which in this case were the result of his frustration at the interruption to his election campaign that sickness caused.²² Evatt's daughter and son-in-law, Rosalind and Peter Carrodus, set the time of his discernible mental decline at a year or so before his appointment to the New South Wales Supreme Court bench, that is at around 1959.²³ They may well have been a little defensive of his reputation and so may understandably have been conservative in their dating, although other evidence supports their estimation. Cyril Wyndham worked closely with Evatt as his private secretary

list appeared in the press the following morning.) Personal interview with Mr K.Brennan, Adelaide, 2 October 1984. See also Evatt's relations with high court colleagues, chapter 5.

²² Personal interview with Dr H.Breidahl, Melbourne, 27 June 1985.

²³ Personal interview with Mr and Mrs P.Carrodus, Sydney, 6 December 1984.

during the late 1950s. He was, and remains, a warm admirer of Evatt and he too may understandably have been a little defensive of Evatt's reputation when he claimed no instances of mental instability in his closing years as a politician.²⁴

In 1958, Evatt was sixty-four years of age. The journalist Maxwell Newton campaigned with him before the 1958 federal election. He observed in the party leader a tranquility and mellowness indicative of a calmer, philosophical and more easy-going character.²⁵ Rather than edging towards irrational excesses, he seemed to be a more rounded, less erratic figure. This represented a cohesive, evenly paced maturing into old age that belatedly denoted a passive resignation to the passing or near passing of his life's work.²⁶ There was an impression in these years of a contemplative man who, having weathered the vicissitudes of a difficult, indeed punishing, life, was now able to come to terms with himself and his society. Wyndham similarly remarked upon his calmness, notably in his subdued, undemanding acceptance of life.²⁷ This late development

²⁴ Personal interview with Mr C.Wyndham, Sydney, 12 June 1985. Senator D.McClelland noted mental deterioration from the late 1950s, personal interview with Senator D.McClelland, Sydney, 16 May 1986.

²⁵ M.Newton, 'Evatt's last campaign', Nation, no.182 (13 November 1965), pp.11-2.

²⁶ While he knew there was some chance for victory in that election, but even he must have known that his chances were slim, as indicated by several falsely hopeful or unrealistic tactics.

²⁷ Personal interview with C.Wyndham.

indicated that the furnace that had raged within him was finally moderating and that he instinctively was preparing for old age in a well measured, rational manner; the strident forces which formerly had ignited and twisted his psyche had now abated.

At this time Evatt became an admirer of Tom Bass's sculpture in Wilson hall at the university of Melbourne.²⁸ Neither mystery nor chance sparked Evatt's exhilaration, for Bass's motif centred upon a forceful rendering of Socrates imbibing a lethal draught of hemlock administered by three elders who represented the body of peers that sanctioned the execution of Socrates. Followers of Socrates, including Plato, nearby prepared to continue his work. Socrates is today remembered chiefly for his liberal commitment to the right of freely expressed opinion, while firmly adhering to the authority of legally constituted forums. He had been unjustly convicted on false or spurious charges.²⁹

²⁸ Film documentary, produced and directed by J.Power, 'Like a summer storm', Australian broadcasting commission film documentary, undated.

²⁹ A.E.Talyor, Socrates, Edinburgh, Davies, 1932, pp.50-1, 78-9, 95-119. H.D.F.Kitto, The Greeks, Harmondsworth, Penguin, 1981 (1951), pp. 126-8, 153-4. Key accusations included the contamination of youth through the teaching of new doctrine; the sole refusal to endorse the prosecution, en bloc, of commanders who failed to rescue wartime survivors; and the unwitting cultivation of friendships with two compatriots later tried for sedition.

Evatt proudly informed Bass that he saw the Socrates sculpture as often as possible when visiting Melbourne.³⁰ He was attracted to the quality of the work and wrote of the excitement and inspiration that it instilled within him. Evatt specifically told of two distinct impressions; 'the representation of the supreme moment of tragedy' as seen in the carrying out of the death sentence, and the 'comment on the tragedy - and triumph - of Socrates' death'. The two themes were fused so that 'the judgment of history on Socrates' trial is pronounced', a judgment which vindicated Socrates' decision to accept death rather than submit to injustices, particularly the denial of civil freedoms.³¹

Evatt then turned to a discussion of the propitious timing of the creation of Bass's sculpture. He claimed that the struggle for freedoms was a continuous need, to be fought by every generation; he pointedly observed the obstruction of freedoms in Australia during the 1950s while regretting that the use of indirect methods were often more sinister and subtle than overt attacks.³²

Because Evatt had throughout his life regarded himself as a valiant public custodian of civil freedoms, and because he was an ultimately unsuccessful opponent of

³⁰ Letter, T.Bass to the writer, 8 April 1985.

³¹ H.V.Evatt, 'Trial of Socrates: the mural sculpture of Tom Bass', Meanjin, vol.16, no.1 (autumn 1957), pp.44-6.

³² Ibid., pp.46-8. Here his suspicion of the secretive was again evident.

oppression, his repeated viewing of the Socrates sculpture signified an emotional stirring more profound than admiration or even reverence; Evatt perceived himself as a latter-day Socratic figure. Bass stated of Evatt that, although I can't recall his actual words, I know that he identified with Socrates - that he in fact saw himself in a Socratic role in the Petrov trial. He was aware of the McCarthyism of the fifties and the accusations made against Socrates.³³

The exalted theme of justice denied as it occurred during important moments in history struck Evatt deeply. Although he opposed logical inconsistencies presented by injustice, anger was a more potent stimulus. True to the Socratic tradition, Evatt rejected the mere acknowledgement of injustice; a duty existed publicly to condemn and actively to oppose that injustice. Hence the inadequacy in Evatt's mind of Castellio's intervention against Calvin for, while his exposure of the suppression of ideas was admirable, he balked at open resistance.³⁴ Significantly, Evatt spoke in the mid 1950s of the right of dissent at a time when his own openness - or outspokenness - and the diversity of opinion of others inflicted grievous damage to his own party.³⁵

Evatt's political demise, which commenced and gained momentum with the Petrov affair, contained elements of what

³³ Bass to writer.

³⁴ H.V.Evatt, 'Our expression of freedom', Overland, no.5 (spring 1955), p.2.

³⁵ Personal interview with the hon.B.Jones, Canberra, 29 October 1984.

was to Evatt the relevance of the Socratic tragedy to Australia, whose conspiratorial dimensions were of such magnitude as to plunge the nation into an era of darkness. Doubtless with mingled feelings of ruefulness and defiance, he returned compulsively to the Socrates sculpture, realising self-justification in its inspirational and cathartic qualities.

BIBLIOGRAPHY

1 OFFICIAL

Manuscript

(a) Australian archives, Canberra

(b) Australian archives, Sydney

Printed

(a) Great Britain

(b) Commonwealth

(c) New South Wales

11 UNOFFICIAL

Private papers

Interviews

Books and pamphlets

Books, pamphlets and published collections of speeches by

Evatt

Journal and magazine articles and reviews

Journal and magazine articles by Evatt

Newspaper articles

Newspaper articles by Evatt

Newspapers

Theses and other unpublished work

Theses and other unpublished work by Evatt

1 OFFICIAL

Maunscript

(a) Australian archives, Canberra:

Prime minister's department, A1608, correspondence files, 1940-4, and A461, correspondence files, 1941-51.

Department of external affairs, Dr Evatt's mission overseas, 1943, AA1971/360.

Department of defence, papers collected by Sir Frederick Shedden, MP1271/A5954, 1942-51.

Stanley Melbourne Bruce, monthly war files, M100, 1941-3.

~~Archives~~ of the ~~de~~partment of foreign affairs, Canberra:

Unnumbered files relating to Evatt's foreign affairs work, 1945-7, particularly regarding the Japanese occupation.

(b) Australian archives, Sydney:

Papers relating to the wartime work of the Australian broadcasting commission, SP314.

Taped Australian broadcasting commission interviews with contemporaries of Evatt, SP1163.

Evatt broadcasts and other Australian broadcasting commission work, 1945-9, SP300.

Printed

(a) Great Britain

Appeal Cases

(b) Commonwealth

Commonwealth of Australia gazetteCommonwealth parliamentary debates, 1940-60.Commonwealth parliamentary papers:

`United Nations conference on international organization held at San Francisco, U.S.A., from 25 April to 26 June, 1945: report of the Australian delegates', 5 September 1945, PP, vol.3 (1945-6), pp.701-803.

`Inquiry into matters relating to the detention of certain members of the "Australia First Movement" group: report of commissioner (his honour Mr Justice Clyne)', 12 September 1945, PP, vol.4 (1945-6), pp.941-60.

`Report on the royal commission on espionage', 14 September 1955, PP, vol.3 (1954-5), pp.187-677.

`Report on the royal commission on television', 29 September 1954, PP, vol.3 (1954-5), pp.679-809.

(c) New South Wales

New South Wales state reports, 1918-30.New South Wales government gazetteNew South Wales parliamentary debates, 1926-30New South Wales parliamentary papers:

`Report from the select committee on allegations of bribery by the "Labor Daily" newspaper against members of the legislative assembly', NSWPP, vol.4 (1926), pp.677-92.

11 UNOFFICIAL

Private Papers

ALP (federal)	ANL.
ALP (Victorian branch)	State library of Victoria.
Bailey, Sir Kenneth	ANL.
Blackburn, Mr and Mrs M.	State library of Victoria.
Boote, Mr H.	ANL.
Brodney, Mr and Mrs A.	State library of Victoria.
Burgmann, Bishop E.	ANL.
Calwell, Hon. A.	ANL.
Carrodus, Mr and Mrs P.	Held privately, Sydney.
Casey, Sir Richard	ANL.
Chambers, Hon. C.	ANL.
Evatt, Mr F.	ANL.
Evatt, Hon. H.V.,	Flinders University library, Adelaide.
Fitzpatrick, Mr B.	ANL
Grattan, Professor C.H.	Univerity of Texas at Austin.
Institute of Public Affairs	ANL.
Isaacs, Sir Isaac	ANL.
Johnson, Hon. H.	ANL.
Latham, Sir John	ANL.

Mackness, Professor G.	ANL.
Murdoch, Sir Keith	ANL.
Page, Sir Earle	ANL.
Peden, Sir John	ML.
Robinson, Mr W.S.	Melbourne University Archives.
Shedden, Sir Frederick	Australian Archives (Canberra).
Tennant, Ms K.	ANL.
Tonkin, Hon E.	ANL.
Weaver, Mrs C.	Held privately, Melbourne.

Personal Interviews

Asprey, Mr K.	Sydney, telephone interview, 21 January 1988.
Barkell, Mr.B.	Sydney, 2 June 1986.
Bell, Miss H.	Sydney, 18 October, 1984. Melbourne, 20 December, 1984.
Booker, Mr M.	Canberra, 13 December 1985.
Breidahl, Dr H.	Melbourne, 27 June 1985.
Brennan, Judge J.	Sydney, 3 June 1986.
Brennan, Mr.K.	Adelaide, 2 October 1984.
Bryant, Hon. G.	Melbourne, 6 May 1986.
Burton, Mr J.	Adelaide, 5 January 1987.
Buttrose, Mr C.	Sydney, 19 May 1986.
Byrne, Mr W.	Canberra, 8 January 1987.
Cameron, Hon. C.	Adelaide, 1 October 1984.

Cantwell, Mrs I.	Sydney, 17 October 1984.
	Sydney, 4 December 1984.
Carrodus, Mr and Mrs P.	Sydney, 14 October 1984. Sydney, 6 December 1984.
Crean, Hon. F.	Melbourne, 20 August 1984.
Crisp, Professor F.	Canberra, 20 October 1984.
Daly, Hon. F.	Canberra, 29 October 1984.
Dark, Dr E.	Katoomba, 15 October 1984.
Dobson, Miss R.	Canberra, 10 January 1987.
Downing, Hon. R.	Sydney, 1 June 1986.
Dunstan, Hon. D.	Melbourne, 10 December 1986.
Ellard, Dr J.	Sydney, telephone interview, 29 April 1988.
Else-Mitchell, Mr Justice R.	Canberra, 30 October 1984. Canberra, 12 January 1987.
Evatt, Justice E.	Sydney, 30 May 1986.
Evatt, Mr Justice P.	Sydney, 2 April 1985.
Fitchett, Mr I.	Canberra, 9 January 1987.
Fitzhardinge, Mr L.	Canberra, 11 December 1985.
Fitzpatrick, Mrs D.	Melbourne, 4 May 1984.
Forsyth, Mr W.	Canberra, 23 October 1984.
Gullett, Hon. H.	Canberra, 19 December 1985.
Jones, Hon. B.	Canberra, 29 October 1984.
Kane, Hon. J.	Sydney, 28 May 1986.
Kerr, Sir John	Sydney, 5 June 1986.
Kirby, Sir Richard	Nowra, 7 June 1985.

Lawler, Sir Peter	Canberra, 14 January 1987.
McClelland, Sen. D.	Sydney, 16 May 1986.
McDougall, Mr J.	Sydney, 30 May 1986.
McMahon, Sir William	Sydney, 22 May 1986.
McPhillips, Mr J.	Sydney, 29 May 1986.
McTiernan, Sir Edward	Sydney, 11 October 1984.
Maddox, Mr J.	Sydney, 15 June 1985.
Melville, Sir Leslie	Canberra, 4 February 1986.
Miller, Sir Douglas	Sydney, 11 June 1985.
Mulvihill, Mr A.	Sydney, 13 June 1985.
Oldham, Mr J.	Canberra, 30 November 1985.
Olley, Mrs E.	Canberra, 4 December 1985.
Reid, Mr A.	Sydney, 20 May 1986.
Reid, Mr B.	Melbourne, 21 June 1986.
Ross, Dr L.	Sydney, 3 December 1984.
Santamaria, Mr B.	Melbourne, 6 September 1984.
Shann, Sir K.	Canberra, 5 February 1986.
Sheppard, Mr A.	Sydney, 21 May 1986.
Short, Mr L.	Sydney, 31 May 1985.
Staples, Mr Justice J.	Sydney, 23 May 1986.
Starke, Mr J.G.	Canberra, 12 January 1987.
	Canberra, 13 January 1987.
Tange, Sir Arthur	Canberra, 10 December 1985.
Tunley, Dr M.	Sydney, 6 December 1984.
Waller, Sir Keith	Canberra, 28 November 1985.
Ward, Professor R.	Sydney, 25 May 1986.

Barr, A.H., Picasso: fifty years of his art, London, Secker and Warburg, 1975 (1946).

Barwick, G., The monarchy in an independent Australia, Clayton, Printed by Monash University, 1982.

Bath, K.P., Injustice within the law (with no apologies to H.V.Evatt), Sydney, printed by Stafford Printery, 1948.

Bell, R.J., Unequal allies: Australian-American relations and the Pacific war, Carlton, Melbourne University Press, 1977.

Bennett, J.M., Portraits of the chief justices of New South Wales, 1924-77, Sydney, John Ferguson, 1977.

Bialoguski, M., The Petrov story, Melbourne, Heinemann, 1955.

Blainey, G. (ed.), If I remember rightly: the memoirs of W.S.Robinson, 1876-1863, Melbourne, Cheshire, 1967.

Boland, T.P., James Duhig, St. Lucia, University of Queensland Press, 1986.

Bolton, G.C., Dick Boyer: an Australian humanist, Canberra, Australian National University Press, 1967.

Booker, M., The last domino, Sydney, Collins, 1976.

Brown, W.J., The communist movement and Australia: an historical outline - 1890s to 1980s, Haymarket, Australian Labor Movement History Publications, 1986.

Brown, W.J. et al, The Petrov conspiracy unmasked, Sydney, Current Books, undated.

- Burgmann, V., In our time: socialism and the rise of labor, 1885-1905, Sydney, Allen and Unwin, 1985.
- Burton, J., The light glows brighter, Sydney, Morgan's Publications, undated.
- Buttrose, C., Words and music, Sydney, Angus and Robertson, 1984.
- Calwell, Be just and fear not, Adelaide, Rigby, 1978.
- Campbell, D.A.S. (ed.), Post-war reconstruction in Australia, Sydney, Australasian publishing, 1944.
- Carboni, R., The Eureka stockade, Windsor, Lloyd O'Neil, 1980 (1855).
- Chapman, I.D., Iven G. MacKay: citizen and soldier, South Melbourne, Melway, 1975.
- Chifley, B., Things worth fighting for: speeches by Joseph Benedict Chifley, Carlton, Melbourne University Press, 1952.
- Childe, V.G., How labour governs: a study of workers' representation in Australia, London, Melbourne University Press, 1964 (1932).
- Chisholm, A.R., Men were my milestones, Carlton, Melbourne University Press, 1958.
- Clark, C.M.H., A history of Australia, volume 6: 'The old dead tree and the young tree green', 1916-1935, with an epilogue, Carlton, Melbourne University Press, 1987.
- Cole, G.D.H., The life of Robert Owen, London, Frank Cass, 1965.

- Combe, J., Heronimus Bosch, Paris, Pierre Tisne, 1946.
- Coombs, H.C., Trial Balance: issues of my working life, South Melbourne, Sun Books, 1983 (1981).
- Coper, M., Freedom of interstate trade under the Australian constitution, North Ryde, Butterworths, 1983.
- Crawford, R.M., 'A bit of a rebel': the life and work of George Arnold Wood, Sydney, Sydney University Press, 1975.
- Crisp, L.F., The Australian federal labour party, 1901-1951, London, Longmans, 1955.
- Crisp, L.F. and Atkinson, B. (eds.), Australian labour party: federal parliamentarians, 1901-1981, Canberra, Printed by the Australian National University, 1981.
- Crisp, L.F., Ben Chifley: a political biography, London?, Angus and Robertson, 1977 (1961).
- Crisp, L.F., et al, Peter Richard Heydon, 1913-1971, Canberra, privately published, 1972.
- Crocker, W.R., Australian ambassador: international relations at first hand, Carlton, Melbourne University Press, 1971.
- Cumes, J.W.C., A bunch of amateurs: the tragedy of government and administration in Australia, South Melbourne, MacMillan, 1988.
- Curthoys, A. and Merritt, J. (eds.), Australia's first cold war: vol.1 society, communism and culture, North Sydney, Allen and Unwin, 1984.

Curthoys, A. and Merritt, J. (eds.), Better dead than red: Australia's first cold war: 1945-1959, vol.2, North Sydney, Allen and Unwin, 1986.

d'Alpuget, B., Mediator: a biography of Sir Richard Kirby, Carlton, Melbourne University Press, 1977.

Daly, F., From Curtin to Kerr, South Melbourne, Sun Books, 1977.

Dalziel, A., Evatt the enigma, Melbourne, Lansdowne Press, 1967.

Dangerfield, G., The strange death of liberal England, 1910-1914, New York, Capricorn, 1961 (1935).

Davidson, A., The communist party of Australia: a short history, Stanford, Hoover Institution Press, 1969.

Davies, A.F., Essays in political sociology, Melbourne, Cheshire, 1972.

Davies, A.F., Skills, outlooks and passions: a psychoanalytic contribution to the study of politics, Cambridge, Cambridge University Press, 1980.

Deery, P. (ed.), Labour in conflict: the 1949 coal strike, Canberra, Australian society for the study of labour history, 1978.

Derriman, P., The grand old ground: a history of the Sydney cricket ground, North Ryde, Cassell, 1981.

Derriman, P., True to the blue: a history of the New South Wales cricket association, Edgecliff, Richard Smart, 1985.

- Dixon, M.F., Inside the ABC: a piece of Australian history, Melbourne, Hawthorn Press, 1975.
- Dixson, M., Greater than Lenin? Lang and labor, 1916-1932, Melbourne, Melbourne Politics Monograph, undated.
- Dollard, J., Criteria for the life history with analyses of six notable documents, New York, Peter Smith, 1949.
- Duncan Hall, H., Mandates, dependencies and trusteeship, New York, Kraus, 1972 (1948).
- Dunk, W., They also serve, Canberra, privately published, 1974.
- Dunstan, D., Felicia: the political memoirs of Don Dunstan, South Melbourne, MacMillan, 1981.
- Duthie, G., I had 50,000 bosses: memoirs of a labor backbencher, 1946-1975, Sydney, Angus and Robertson, 1984.
- Dutton, G., The innovators: the Sydney alternatives to the rise of modern art, literature and ideas, South Melbourne, MacMillan, 1986.
- Ebsworth, W.A., Archbishop Mannix, Armadale, H.H. Stephenson, 1977.
- Edwards, C., Bruce of Melbourne: man of two worlds, London, Heinemann, 1965.
- Edwards, P.G. (ed.), Australia through American eyes, 1935-1945, St. Lucia, University of Queensland Press, 1979.
- Edwards, P.G., Prime ministers and diplomats: the making of Australian foreign policy, 1901-49, Melbourne, Oxford University Press, 1983.

- Ellis, M.H., John Macarthur, Sydney, Angus and Robertson, 1955.
- Else-Mitchell, R. (ed.), Essays on the Australian constitution, Sydney, Law Book Co., 1961 (1952).
- Erikson, E.H., Identity and the life cycle, New York, W.W.Norton, 1980 (1959).
- Estorik, E., Changing empire: Churchill to Nehru, New York, Duell, Sloane and Pearce, 1950.
- Evatt, J.T., Historical record of the 39th royal Garhwal rifles: vol.1., 1887-1922, Aldershot, Gale and Polden, 1922.
- Fingleton, J., Batting from memory, London, Collins, 1981.
- Fitzgerald, R. and Hearn, M., Bligh, Macarthur and the rum rebellion, Kenhurst, Kangaroo Press, 1988.
- Fitzhardinge, L., The little digger, 1914-1952: a political biography of William Morris Hughes, volume 2, Sydney, Angus and Robertson, 1979.
- Foott, B., Dismissal of a premier: the Philip Game papers, Sydney, Morgan, 1968.
- Foster, L., High hopes: the men and motives of the Australian round table, Carlton, Melbourne University Press, 1986.
- Freud, S., Leonardo Da Vinci: a study in psychosexuality, New York, Random House, 1947.
- Fricke, G., Judges of the high court, Hawthorn, Hutchinson, 1986.

Frith, D., The Archie Jackson story, printed by Surrey Fine Art Press Ltd., 1974.

Galligan, B., Politics of the high court: a study of the judicial branch of government in Australia, St. Lucia, University of Queensland Press, 1987.

Garcia-Granados, J., The birth of Israel: the drama as I saw it, New York, Knopf, 1949 (1948).

George, M., Australia and the Indonesian revolution, Carlton, Melbourne University Press, 1980.

Gibson, R., My years in the communist party, Melbourne, International Bookshop, 1966.

Green, S., Prehistorian: a biography of V.Gordon Childe, Bradford-on-Avon, Moonraker, 1981.

Greenwood, G. and Harper, N. (eds.), Australia in world affairs, 1950-1955, Melbourne, Cheshire, 1957.

Greenwood, G. and Harper, N. (eds.), Australia in world affairs, 1956-1960, Melbourne, Cheshire, 1963.

Haak, B., Rembrandt: life and work, New York, Barron's, 1981 (1976).

Haese, R., Rebels and precursors: the revolutionary years of Australian art, London, Allen Lane, 1981.

Hall, R., The real John Kerr: his brilliant career, Sydney, Angus and Robertson, 1978.

Harper, N., A great and powerful friend: a study of Australian American relations between 1900 and 1975, St. Lucia, University of Queensland Press, 1987.

- Harris, M., The unknown great Australian and other psychobiographical portraits, Melbourne, Sun Books, 1983.
- Hasluck, A., Portrait in a mirror: an autobiography, Melbourne, Oxford University Press, undated.
- Hasluck, P., Diplomatic witness: Australian foreign affairs 1941-1947, Carlton, Melbourne University Press, 1980.
- Hasluck, P., The government and the people, vol.1, 1939-1941, Canberra, Australian War Memorial, 1965 (1952).
- Hasluck, P., The government and the people, vol. 2, 1942-1945, Canberra, Australian War Memorial, 1970.
- Hasluck, P., Workshop of security, Melbourne, Cheshire, 1948.
- Hastings, P., New Guinea: problems and prospects, Melbourne, Cheshire, 1968.
- Haylen, L., Twenty years' hard labor, South Melbourne, MacMillan, 1969.
- Henderson, G., Mr Santamaria and the bishops, Sydney, Hale and Iremonger, 1983.
- Henderson, P. (ed.), The letters of William Morris to his family and friends, London, Longmans, Green and co., 1950.
- Henderson, P., William Morris: his life, work and friends, London, Thames and Hudson, 1967.
- Hogan, E.J., Cause and extension of split in labor party, Melbourne, Printed by Invincible Press, 1960.
- Horney, K., Neurosis and human growth, London, Routledge and Kegan Paul, 1951.

Horney, K., The neurotic personality of our time, New York, W.W.Norton, 1937.

Hudson, W.J., Australia and the colonial question at the United Nations, Sydney, Sydney University Press, 1970.

Hudson, W.J., Australia and the League of Nations, Sydney, Sydney University Press, 1980.

Hudson, W.J., Australian diplomacy, South Melbourne, MacMillan, 1970.

Hudson, W.J. and Sharp, M.P., Australian independence: colony to reluctant kingdom, Carlton, Melbourne University Press, 1988.

Hudson, W.J., Casey, Melbourne, Oxford University Press, 1986.

Hudson, W.J. et al (eds.), Documents on Australian foreign policy, 1937-1949: volume 5, July 1941-June 1942, Canberra, Australian Government Publishing Service, 1982.

Hudson, W.J. et al (eds.), Documents on Australian foreign policy, 1937-1949: volume 6, July 1942-December 1943, Canberra, Australian Government Publishing Service, 1983.

Hudson, W.J. et al (eds.), Documents on Australian foreign policy, 1937-1949: volume 7, 1944, Canberra, Australian Government Publishing Service, 1988.

Hudson, W.J. (ed.), Towards a foreign policy: 1914-1941, Melbourne, Cassell, 1967.

Inglis, K., This is the ABC: the Australian broadcasting commission, 1932-1983, Carlton, Melbourne University Press, 1983.

Iremonger, L., The fiery chariot: a study of British prime ministers and the search for love, London, Secker and Warburg, 1970.

Kane, J., Exploding the myths: the political memoirs of Jack Kane, North Ryde, Angus and Robertson, 1989.

Kemp, B., King and commons, 1660-1832, London, MacMillan, 1965.

Kemshead, K. et al, The 25th anniversary year of the UN and a special tribute to Dr. Evatt, Published by the Fabian Society of Queensland, 1970.

Kennedy, K.H., The Mungana affair: state mining and political corruption in the 1920s, St. Lucia, University of Queensland press, 1978.

Kernberg, O.F., Borderline conditions and pathological narcissism, New York, Jason Aronson, 1979.

Kerr, J., Matters for judgment: an autobiography, South Melbourne, MacMillan, 1978.

Kiernan, C., Calwell: a personal and political biography, West Melbourne, Nelson, 1978.

Killen, J., Inside Australian politics, North Ryde, Methuen Haynes, 1985.

Kisch, E.E., Australian landfall, South Melbourne, MacMillan, 1969.

- Kitto, H.D.F., The Greeks, Harmondsworth, Penguin, 1981 (1951).
- Lang, J.T., I remember, Katoomba, McNamara's Books, 1980 (1956).
- Lang, J.T., The great bust: the depression of the thirties, Sydney, Angus and Robertson, 1962.
- Lang, J.T., The turbulent years, Sydney, Alpha books, 1970.
- Lasswell, H.D., Power and personality, New York, Viking, 1966 (1948).
- Lasswell, H.D., Psychopathology and politics, Chicago, University of Chicago Press, 1977 (1930).
- Lie, T., In the cause of peace: seven years with the United Nations, New York, MacMillan, 1954.
- Lifton, R.J., The broken connection: on death and the continuity of life, New York, Basic Books, 1983 (1979).
- Lifton, R.J., Death in life: survivors of Hiroshima, New York, Vintage books, 1969 (1967).
- Little, G. (ed.), The human element: three essays in political psychology, Fitzroy, McPhee Gribble/Penguin, 1988.
- McClelland, J., Stirring the possum: a political autobiography, Ringwood, Penguin, 1989 (1988).
- Mack, J.E., A prince of our disorder: the life of T.E.Lawrence, Boston-Toronto, Little, Brown and co., 1976.
- Mackness, G. (ed.), Poets of Australia: an anthology of Australian verse, Sydney, Angus and Robertson, 1946.

- Mackness, G., The life of vice-admiral William Bligh, Sydney, Angus and Robertson, 1931.
- McKay, C., This is the life: the autobiography of a newspaperman, Sydney, Angus and Robertson, 1961.
- McKinlay, B., The ALP: a short history of the Australian labor party, Richmond, Heinemann, 1981.
- McManus, F., The tumult and the shouting, Adelaide, Rigby, 1977.
- Mahler, M.S., On human symbiosis and the vicissitudes of individuation, vol.1, London, Hogarth Press, 1969.
- Mahler, M.S. et al, The psychological birth of the human infant: symbiosis and individuation, New York, Basic Books, 1975.
- Makin, N., Federal labour leaders, Sydney, printed by Union Printing, 1961.
- Manne, R., The Petrov affair: politics and espionage, Rushcutters Bay, Permagon, 1987.
- Manning, D.J., Liberalism, London, Dent, 1976.
- Marr, D., Barwick, North Sydney, Allen and Unwin, 1980.
- Mason, A.T., Brandeis: a free man's life, New York, Viking, 1956 (1946).
- Mayer, H. (ed.), Catholics and the free society: an Australian symposium, Melbourne, Cheshire, 1961.
- Menzies, R.G., Afternoon light: some memoirs of men and events, Ringwood, Penguin, 1969.

- Menzies, R.G., Central power in the Australian commonwealth: an examination of the growth of commonwealth power in the Australian federation, London, Cassell, 1967.
- Menzies, R.G., The measure of the years, London, Coronet, 1972 (1970).
- Millar, T.B., Australia in peace and war: external relations 1788-1977, Canberra, Australian National University Press, 1978.
- Millar, T.B., (ed.), Australian foreign minister: the diaries of R.G.Casey, London, Collins, 1972.
- Millar, T.B., The commonwealth and the United Nations, Sydney University Press, 1967.
- Millar, T.B., Foreign policy: some Australian reflections, Middle Park, Georgian House, 1972.
- Morris, C., The school on the hill: a saga of Australian life, Sydney, Morris, 1980.
- Muirden, B., The puzzled patriots: the story of the Australia first movement, Carlton, Melbourne University Press, 1968.
- Munro, C., Wild man of letters: the story of P.R.Stephensen, Carlton, Melbourne University Press, 1984.
- Murray, R., The split: Australian labor in the fifties, Sydney, Hale and Iremonger, 1984.
- Murray R. and White, K., The ironworkers: a history of the Federated Ironworkers' Association of Australia, Sydney, Hale and Iremonger, 1982.

- Nairn, B., The 'big fella': Jack Lang and the Australian labor party, 1891-1949, Carlton, Melbourne University Press, 1986.
- Ormonde, P., A foolish passionate man: a biography of Jim Cairns, Ringwood, Penguin, 1981.
- Ormonde, P., The Movement, Melbourne, Nelson, 1972.
- Osmonde, W., Frederic Eggleston: an intellectual in Australian politics, North Sydney, Allen and Unwin, 1985.
- Page, E., Truant surgeon: the inside story of forty years of Australian political life, Sydney, Angus and Robertson, 1963.
- Palmer, N., Fourteen years: extracts from a private journal, 1925-1939, Melbourne, Meanjin Press, 1948.
- Pearl, C., Wild men of Sydney, Melbourne, Cheshire-Lansdowne, 1965 (1958).
- Penrose, R., Picasso: his life and work, London, Granada, 1981 (1958).
- Penton, B., Censored! being a true account of a notable fight for your right to read and know, with some comment upon the plague of censorship in general, Sydney, Shakespeare Head, 1947.
- Portus, G.V., Happy highways, Carlton, Melbourne University Press, 1953.
- Radi, H. and Spearritt, P. (eds.), Jack Lang, Neutral Bay, Hale and Iremonger, 1977.

- Rawson, D.W., Australia votes: the 1958 federal election, Parkville, Melbourne University Press, 1961.
- Renouf, A., The champagne trail: experiences of a diplomat, South Melbourne, Sun Books, 1980.
- Renouf, A., Let justice be done: the foreign policy of Dr H.V.Evatt, St Lucia, University of Queensland Press, 1983.
- Rickard, J., H.B.Higgins: the rebel as judge, North Sydney, Allen and Unwin, 1984.
- Rix, A. (ed.), Intermittent diplomat: the Japan and Batavia diaries of W.Macmahon Ball, Carlton, Melbourne University Press, 1988.
- Robertson, J., J.H.Scullin: a political biography, Nedlands, University of Western Australia Press, 1974.
- Rosecrance, R.N., Australian diplomacy and Japan, 1945-1951, Parkville, Melbourne University Press, 1962,
- Ross, L., John Curtin: a biography, South Melbourne, MacMillan, 1983 (1977).
- Rowse, T., Australian liberalism and the national character, Melbourne, Kibble, 1978.
- Rubinstein, H.L., Chosen: the Jews in Australia, North Sydney, Allen and Unwin, 1987.
- Rubinstein, W.D. (ed.), Jews in the sixth continent, North Sydney, Allen and Unwin, 1987.
- Rutland, S.D., Edge of the diaspora: two centuries of Jewish settlement in Australia, Sydney, Collins, 1988.

- Santamaria, B.A., Against the tide, Melbourne, Oxford University Press, 1981.
- Sawer, G., Australian federal politics and law, 1901-1929, Carlton, Melbourne University Press, 1956.
- Sawer, G., Australian federal politics and law, 1929-1949, Carlton, Melbourne University Press, 1974 (1963).
- Sendy, J., The communist party: history, thoughts and questions, Melbourne, CPA History Group, 1978.
- Sendy, J., Comrades come rally! recollections of an Australian communist, West Melbourne, Nelson, 1978.
- Serle, G., From deserts the prophets come, Melbourne, Heinemann, 1973.
- Single, A. et al, Parish of St.Peters, East Maitland: centenary booklet, 1834-1934, West Maitland, T.Dimmock Ltd., 1934.
- Smith, B., Australian painting, 1788-1960, London, Oxford University Press, 1962.
- Smith, V. (ed.), Letters of Vance and Nettie Palmer, 1915-1963, Canberra, National Library of Australia, 1977.
- Smith, V., Vance and Nettie Palmer, Boston, Twayne, 1975.
- Spratt, E., Eddie Ward: Firebrand of East Sydney, Adelaide, Rigby, 1965.
- Stargardt, A.W., Australia's Asian policies: the history of a debate, Hamburg, Harrassowitz, 1977.
- Stirling, A., Lord Bruce: the London years, Melbourne, Hawthorn Press, 1974

- Storr, A., The dynamics of creation, Harmondsworth, Pelican, 1976 (1972).
- Storr, A., The school of genius, London, Andre Deutsch, 1988.
- Strahan, L., Just city and the mirrors: Meanjin Quarterly and the intellectual front, 1940-1965, Melbourne, Oxford University Press, 1984.
- Taylor, A.E., Socrates, Edinburgh, Peter Davies, 1932.
- Taylor, A.J.P. (ed.), Churchill: four faces and the man, Harmondsworth, Penguin, 1969.
- Tennant, K., Evatt: politics and justice, Sydney, Angus and Robertson, 1970.
- Thomas, A., Broadcast and be damned: the A.B.C.'s first two decades, Carlton, Melbourne University Press, 1980.
- Thwaites, M., Truth will out: ASIO and the Petrovs, Sydney, Collins, 1980.
- Truman, T., Catholic action and politics, Middle Park, Georgian House, 1959.
- Truman, T., Ideological groups in the Australian labor party and their attitudes, St Lucia, University of Queensland Press, 1965.
- Walker, E.R., The Australian economy in war and reconstruction, New York, Oxford University Press, 1947.
- Walter, J., The leader: a political biography of Gough Whitlam, St Lucia, University of Queensland Press, 1980.

- Watson, D., Brian Fitzpatrick: a radical life, Sydney, Hale and Iremonger, 1979.
- Watt, A., Australian diplomat, Sydney, Angus and Robertson, 1972.
- Watt, A., The evolution of Australian foreign policy, 1938-1965, London, Cambridge University Press, 1967.
- Webb, L., Communism and democracy in Australia: a survey of the 1951 referendum, Melbourne, Cheshire, 1954.
- Weller, P. (ed.), Caucus minutes 1901-1949: minutes of the meetings of the federal parliamentary labor party, volume 3, 1932-1949, Carlton, Melbourne University Press, 1975.
- Weller, P, and Lloyd, B. (eds.), Federal executive minutes, 1915-1915: minutes of the meetings of the federal executive of the Australian labor party, Carlton, Melbourne University Press, 1978.
- Wethey, H.E., El Greco and his school, volume 1, Princeton, Princeton University Press, 1962.
- Whittington, D., The house will divide: Australian federal politics in the past twenty-five years, Middle Park, Georgian House, 1954.
- Whittington, D., Strive to be fair: an unfinished autobiography, Canberra, Australian National University Press, 1977.
- Whitlam N. and Stubbs, J., Nest of traitors: the Petrov affair, Milton, Jacaranda Press, 1974.

Wilkes, J.(ed.), Liberty in Australia, Sydney, Angus and Robertson, 1955.

Williams, V., The years of big Jim, Willagee, Lone Hand Press, 1975.

Wilton, A.W., J.M.W.Turner: his art and life, New York, Rizzoli.

Winning, C., Cricket Balmainia: official history of Balmain district cricket club, Printed by Standard Publishing House, 1981.

Wright, Q., Mandates under the League of Nations, New York, Greenwood, 1968 (1930).

Young, I., Theodore: his life and times, Sydney, Alpha, 1971.

Books, pamphlets and published collections of speeches by Evatt

Evatt, H.V., Australia in world affairs, Sydney, Angus and Robertson, 1946.

Evatt, H.V., Australian labour leader: the story of W.A.Holman and the labour movement, Sydney, Angus and Robertson, 1945 (1940).

Evatt, H.V., The British dominions as mandatories, Carlton, Melbourne University Press, 1934 (appeared also in Proceedings of the Australian and New Zealand society for international law, vol.1 (1935), pp.27-54).

- Evatt, H.V. and Beckenham, J.G., Conveyancing Precedents and forms, Sydney, Law Book co., 1923.
- Evatt, H.V., Foreign policy of Australia, Sydney, Angus and Robertson, 1945.
- Evatt, H.V., Hands off the nation's defences, published by the Australian labor party, 1947.
- Evatt, H.V., Injustice within the law: a study of the case of the Dorsetshire labourers, Sydney, Law Book co., 1937.
- Evatt, H.V., The king and his dominion governors, London, Oxford University Press, 1936.
- Evatt, H.V., Liberalism in Australia: an historial sketch of Australian politics down to the year 1915, Sydney, Law Book co., 1918 (university of Sydney Beauchamp essay prize, 1915).
- Evatt, H.V., Post-war reconstruction: temporary alterations of the constitution: notes on the fourteen powers and three safeguards, Canberra, Printed by the Commonwealth Government Printer, 1944.
- Evatt, H.V., Rum rebellion: a study of the overthrow of governor Bligh by John Macarthur and the New South Wales corps, Sydney, Angus and Robertson, 1975 (1938).
- Evatt, H.V., TAA sabotaged, Carlton, Printed by the Industrial and Publicity co. ltd., 1952.
- Evatt, H.V., The 1917 strike and the aftermath, Sydney, Printed by the Worker Trade Union Print, 1924 (being the publication of a series of articles by Evatt which appeared

in the Labor Daily in 1924 and later in the Railways Union Gazette.

Evatt, H.V., Task of nations, New York, Duell, Sloan and Pearce, 1949.

Evatt, H.V., The United Nations, Melbourne, Oxford University Press, 1948.

Journal and Magazine Articles and Reviews

Anderson, F., 'The war records of the university of Sydney: lest we forget!', Hermes, vol.24, no.2 (August 1918), pp.132-3.

Anon., 'Alexander James Kilgour, B.A., LL.B.: an appreciation', Fortian, vol.24, no.1 (June 1926), pp.8-9.

Anon., '"Bert" Evatt - sportsman!', Rugby League News, vol.25, no.1 (29 April 1944), pp.1,8.

Anon., 'The chief justice of New South Wales', Australian Law Journal, vol.33, no.10 (25 February 1960), pp.381-2.

Anon., 'Current topics: exhibition of Felix Frankfurter papers and memorabilia at Harvard law school', Australian Law Journal, vol.52, no.2 (February 1978), pp.59-60.

Anon., 'Dangerous brand of anti-communism', Voice, vol.4, no.1 (October-November 1954), pp.18-9.

Anon., 'Death of the rt hon. Herbert Vere Evatt, QC, LL.D, D.Litt', Parliamentarian, vol.47, no.1 (January 1966), p.95.

- Anon., ' "The doc" ', Parade, no.240 (November 1970), pp.9-10,31.
- Anon., ' Dr. H.V.Evatt: a world figure when he's away from home ', People, vol.1, no.17 (25 October 1950), pp.23-5.
- Anon., ' Effects of Dr Evatt's activities on British empire ', Hard Comment, vol.2, no.6 (September 1948), p.3.
- Anon., ' Dr.Evatt, the labor party and Voice ', Voice, vol.4, no.7 (June 1955), pp.10-2.
- Anon., ' Evatt mourned ', Australian Jewish Herald, vol.87, no.43 (5 November 1965), p.1.
- Anon., ' Dr H.V.Evatt - R.I.P ', Catholic Worker, no.369 (December 1965 - January 1966), pp.3-4.
- Anon., ' Future of Dr.Evatt ', Voice, vol.4, no.1 (October - November 1954), pp.3-4.
- Anon., ' The graduate in arts: Dr.Evatt's long course in the school of politics ', Nation, no.4 (8 November 1958), pp.6-7.
- Anon., ' Herbert Vere Evatt, 1894-1965 ', United Nations Reporter, no.10 (June - July 1966), pp.4-7.
- Anon., ' Inside the labor movement: in memory of Herbert Evatt ', Spotlight, vol.3, no.2 (1 December 1965), pp.5-7.
- Anon., ' "It's time" how labor did it! ', Media Marketplace, vol.2, folio no.2 (February 1973), pp.12-3,16-9.
- Anon., ' Jaensch v Coffey ', Australian Law Journal, vol.58, no.9 (September 1984), pp.426-53.

- Anon., 'Mr Justice Evatt', Australian Law Journal, vol.14, no.5 (13 September 1940), p.194.
- Anon., 'Is a labor party split unavoidable?', Voice, vol.4, no.1 (October - November 1954), p.7.
- Anon., 'New world charter', Life, vol.19, no.4 (23 July 1945), pp.65-73.
- Anon., 'The policy of Catholic action: "the movement of ideas in Australia"', Voice, vol.4, no.1 (October - November 1954), pp.16-7.
- Anon., 'Professor Francis Anderson, M.A.', Arts Journal, vol.4, no.3 (Michaelmas 1921), pp.77-83 (initials of author, 'H.T.L.').
- Anon., 'Public figures - Dr Evatt', Hard Comment, vol.1, no.10 (January 1948), p.3.
- Ashenden, D., 'Evatt and the origins of the cold war: Australia and the US with the UN in Greece, 1946-49', Journal of Australian Studies, no.7 (November 1980), pp.73-95.
- Ball, W.McM., 'The peace treaty with Japan', Australian Outlook, vol.5, no.3 (September 1951), pp.129-39.
- Beazley, K.E., 'Labour and foreign policy', Australian Outlook, vol.20, no.2 (August 1966), pp.125-34.
- Bell, C., 'Let justice be done: the foreign policy of Dr H.V.Evatt', by A.Renouf, Australian Outlook, vol.38, no.3 (December 1984), pp.217-8.

Bell, R., 'Australian - American disagreement over the peace settlement with Japan 1944-1946', Australian Outlook, vol.30, no.2 (August 1976), pp.238-62.

Berrington, H., 'Review article: the fiery chariot: British prime ministers and the search for love', British Journal of Political Science, vol.4, part 3 (July 1974), pp.345-69.

Bridge, C., 'Herbert Vere Evatt', in Kramer, L. et al (eds.), The greats: the 50 men and women who most helped to shape modern Australia, North Ryde, Angus and Robertson, 1986, pp.242-7.

Calman, D.A., 'Mr Ellis and Dr. Evatt', Meanjin, vol.18, no.4 (December 1957), pp.435-40.

Campbell, I., 'An aspect of A.L.P. industrial group development', Australian Quarterly, vol.33, no.1 (March 1961), pp.60-7.

Clark, C.M.H., 'Political nationalism: Dr Evatt and the foreign policy of Australia', Austral-Asiatic Bulletin, vol.6, no.4 (April 1946), pp.47-51.

Clarke, F.G., 'Towards a reassessment of Dr. Evatt's role in the 1954-5 A.L.P. split', Labour History, no.19 (November 1970), pp.55-62.

Coleman, P., 'Dr Evatt's man in Sydney', Observer (Sydney), vol.3, no.3 (6 February 1960), pp.10-1.

Collocott, E.E.V., 'Dr. Evatt's policy', Voice, vol.4, no.11 (November 1955), p.26.

Cowen, Z., 'Mr Justice H.V.Evatt and the high court', Australian Bar Gazette, vol.2, no.1 (December 1966), pp.3-5.

Cowper, N., 'Injustice within the law: a study of the case of the Dorsetshire labourers', by H.V.Evatt, Australian Quarterly, vol.9, no.3 (September 1937), pp.103-4.

Crisp, L.F., 'The Australian full employment pledge at San Francisco', Australian Outlook, vol.19, no.1 (April 1965), pp.5-19.

Crocker, W., 'Diplomatic witness', by P.Hasluck, Overland, no.82 (1980), pp.66-8.

Crocker, W., 'Let justice be done: the foreign policy of Dr H.V.Evatt', by A.Renouf, Overland, no.94/5 (1984), pp.69-73.

Davies, A., 'Communism and democracy in Australia: a survey of the 1951 referendum', by L.Webb, Voice, vol.4, no.5 (March 1955), pp.28-9.

Dedman, J., 'Encounter over Manus', Australian Outlook, vol.10, no.2 (August 1966), pp.135-53.

Donington, R., 'Doctor Evatt at large', Observer (Sydney), no.20 (15 November 1958), pp.613-4.

Edel, L., 'The biographer and psycho-analysis', International Journal of Psycho-analysis, no.42 (1962), pp.458-66.

Edwards, P.G., 'Evatt and the Americans', Historical Studies, vol.18, no.73 (October 1979), pp.546-60.

- Edwards, P.G., 'On assessing H.V.Evatt', Historical Studies, vol.21, no.83 (October 1984), pp.258-69.
- Ellis, M.H., 'The great "rum rebellion" debate: Dr Evatt and others v M.H.Ellis', Bulletin, vol.85, no.4329 (2 February 1963), pp.22-4.
- Ellis, M.H., 'Rum rebellion reviewed', Quadrant, vol.2, no.1 (Summer 1957-8), pp.13-23.
- Evatt, G.J.H., 'Round the world "on duty"', Chamber's Journal, sixth series, vol.7, no.349 (6 August 1904), pp.564-6.
- Evatt, H.V. (Mrs.), 'Work to build the world we want', Labor Digest, vol.1, no.6 (August 1945), pp.9-12.
- Farrell, P.M., 'A doctor's case book: the relevance of the Rt. Hon. H.V.Evatt's Australian labour leader', Meanjin, vol.14, no.4 (Summer 1955), pp.536-43.
- Fitzpatrick, B., 'The internment of P.R.Stephensen', Observer (Sydney), vol.2, no.18 (5 September 1959), pp.522-3.
- Fitzpatrick, B., 'Rum rebellion: a study of the overthrow of governor Bligh by John Macarthur and the New South Wales corps', by H.V.Evatt, Historical Studies, vol.1, no.1 (April 1940), pp.71-2.
- Fraser, A., 'Evatt's finest hour stands in history', ALP News (NSW), new series 68 (16 November 1965), p.2.
- Fraser, W.N., 'Gunner Frank Evatt', Hermes, vol.24, no.3 (November 1918), pp.300-1.

- Freud, A., 'Adolescence', The Psychoanalytic Study of the Child, vol.13 (1958), pp.255-78.
- Ginnane, B., 'What is Catholic action?', Melbourne University Magazine, (1955), pp.75-93.
- Godfrey, J.R., 'Clive Evatt: wartime minister of education and impetuous reformed', Unicorn, vol.15, no.2 (May 1989), pp.120-3.
- Grattan, C.H., 'Australian labour leader: the story of W.A.Holman,' by H.V.Evatt, Australian Quarterly, vol.12, no.3 (September 1940), pp.69-81.
- Grattan, C.H., 'Evatt of Australia', Asia and the Americas, vol.45, no.10 (October 1945), pp.474-7.
- Gullett, H.B.S., 'Herbert Vere Evatt', Observer (Sydney), no.7 (17 May 1958), pp.203-4.
- Hasluck, P., 'Australia and the formation of the United Nations: some personal reminiscences', Royal Australian Historical Society, vol.40, part 3 (1954), pp.133-78.
- Hasluck, P., 'Australia and the formation of the United Nations: some personal reminiscences', Royal Australian Historical Society, vol.41, part 5 (1955), pp.197-226.
- Haylen, L., 'The Evatts, Australia's political couple...Mary Alice helps him when he's making big decisions', Australian Women's Weekly, vol.9, no.44 (4 April 1942), p.8

- Heydon, P., 'Keith Officer (1889-1969): pioneer and symbol', Quadrant, vol.14, no.4 (July-August 1970), pp.30-41.
- Hilferty, K., 'Dr Evatt', Catholic Weekly, vol.24, no.1234 (4 November 1965), p.3.
- Hill, E.F., 'Petrov in retrospect: conspiracy or cold war', Arena, no.69 (1984), pp.124-32.
- Jessup, J.K., 'Evatt: Australian is conference hero', Life, vol.19, no.4 (23 July 1945), pp.72,74-7.
- Kane, J.T., 'Forum: the industrial groups and the labor party', Voice, vol.4, no.5 (March 1955), pp.16,18-9.
- Kohut, H., 'Forms and transformations of narcissism', Journal of the American Psychoanalytic Association, vol.14 (1966), pp.243-72.
- Kohut, H. and Wolf, E.S., 'The disorders of the self and their treatment: an outline', The International Journal of Psycho-analysis, vol.59, part 4 (1978), pp.413-25.
- Langdon, F.C., 'The Catholic anti-communist role within Australian labor', Western Political Quarterly (Utah), vol.9, no.4 (1956), pp.884-99.
- Langdon, R., 'A short history: sixteenth-century explorers and twentieth century-century ballot boxes', in P.Hastings (ed.), Papua/New Guinea: Prospero's other island, Sydney, Angus and Robertson, 1971.

- Levien, H., 'Royal commission on espionage: survey of Dr. Evatt's charges', Voice, vol.4, no.12 (December 1955), pp.13-6.
- Lockwood, R., 'Vladimir Petrov: a decoy for the M15 moles', Bulletin, vol.106, no.5436 (2 October 1984), pp.56-6.
- McDonald, D.I., 'The Petrov affair revisited', Canberra Historical Journal, no.5 (March 1980), pp.7-13.
- Mack, J.E., 'Psychoanalysis and historical biography', Journal of the American Psychoanalytic Association, vol.19 (1971), pp.143-79.
- McMinn,, W.G., 'Explaining a rebellion: an historical enquiry', Teaching History, vol.4, part 1 (May 1970), pp.29-41.
- Newton, M., 'Evatt's last campaign', Nation, no.182 (13 November 1965), pp.11-2.
- O'Farrell, P., 'The Australian labor split', Landfall, vol.12, no.2 (June 1958), pp. 174-80.
- Ormonde, J.P. 'Forum: the industrial groups and the labor party', Voice, vol.4, no.5 (March 1955), pp.17,19.
- Partlett, D., 'Recent cases', Australian Law Journal, vol.59, no.1 (January 1985), pp.44-6
- Paul, J.B., 'Let's bury the legend', Bulletin, vol.101, no.5216 (17 June 1980), pp.41-4.
- Paul, J.B., 'The Petrov documents', Quadrant, vol.28, no.11 (November 1984), pp.24-31.

- Paul, J.B., 'The Petrovs and the journalists: the conspiracy theorists' flea hunt', Quadrant, vol.28, no.12 (December 1984), pp.71-81.
- Platz, E., 'A German nobel prize winner who forgot his nobility', Meanjin, vol.13, no.4 (Summer 1954), pp.585-90.
- Playoust, M.R., 'Herbert Vere Evatt', Union Recorder, vol.45, no.28 (25 November 1965), p.248.
- Plimsoll, J., 'Herbert Vere Evatt', Union Recorder, vol.45, no.28 (25 November 1965), pp.247-8.
- Portus, G.V., 'Francis Anderson - professor and citizen', Hermes, vol.27, no.3 (November 1921), pp.157-60.
- Reid, A., 'The split - Australian labor in the fifties', by A.Reid, Bulletin, vol.92, no.4729 (7 November 1970), pp.57-8.
- Renouf, A., 'Two innocents who suffered', Bulletin, vol.101, no.5211 (13 May 1980), pp.55-8.
- Renouf, A., 'Diplomatic witness: Australian foreign affairs 1941-47', by P.Hasluck, Bulletin, vol.101, no.5218 (1 July 1980), pp.40-2.
- Rix, A., 'W.MacMahon Ball and the allied council for Japan: the limits of an Australian diplomacy under Evatt', Australian Outlook, Vol.42, no.1 (April 1988), pp.21-8.
- Roe, M., 'More on Ellis v Evatt', Meanjin, vol.19, no.3 (September 1960), pp.295-7.
- Rothman, A.D., 'Dr Evatt in apogee', Nation, no.217 (22 April 1967), pp.13-4.

- Rothman, A.D., 'Dr Evatt and Israel', Nation, no, 218 (6 May 1967), pp.15-6.
- Rothman, A.D., 'Evatt and Frankfurter', Nation, no.216 (8 April 1967), pp.14-5.
- Rutherford, B.M., 'Psychopathology, decision-making, and political involvement', in F.Greenstein and M.Lerner (eds.), A source book for the study of personality and politics, Chicago, Markham, 1971, pp.243-62.
- Santamaria, B.A., '"Catholic action and politics" by Tom Truman: a commentary by B.A.Santamaria', APSA News, vol.5, no.1 (February 1960), pp.1-6.
- Santamaria, B.A., '"Catholic action and politics" a further comment by B.A.Santamaria', APSA News, vol.5, no.2 (May 1960), pp.21-3.
- Santamaria, B.A., 'The split: Australian labor in the fifties', by R.Murray, Australian Quarterly, vol.43, no.2 (June 1971), pp.98-103.
- Sawer, G., 'Evatt the enigma', by A.Dalziel, Canberra Times, 13 February 1968, p.2.
- Shaw, A.G.L., 'Rum corps and rum rebellion', Melbourne Historical Journal, vol.10 (1971), pp.15-23.
- Sheldon, W.S., 'The king and his dominion governors', by H.V.Evatt, Australian Quarterly, no.31 (September 1936), pp.98-100.
- Sheppard, A.W., 'Evatt the enigma', by A.Dalziel, Nation, no.235 (20 January 1968), pp.23-4.

Smith, F., 'The United Nations', by H.V.Evatt, Saturday Review of Literature, vol.31, no.5 (31 January 1948), pp.8-10.

Starke, J.G., 'A note on the rt. hon. H.V.Evatt, Q.C., P.C., chief justice of the supreme court of New South Wales', The Australian Lawyer, vol.13, part 5 (May 1960), pp.65-7.

Stephensen, P.R., 'Evatt on Holman: the permutations of an Australian labour leader', Publicist, no.52 (1 October 1940), pp.3-7.

Stephensen, P.R., 'How Dr Evatt put me in gaol', Observer (Sydney), vol.2, no.17 (22 August 1959), pp.515-7.

Stephensen, P.R., 'A reasoned case against Semitism' Australian Quarterly, vol.12, no.1 (March 1940), pp.52-62.

Stone, J., 'Training for an Australian foreign service', Australian Quarterly, vol.15 no.3 (September 1943), pp.33-46.

Summers, A., 'The unwritten history of Adela Pankhurst Walsh', in E.Windschuttle (ed.), Women, class and history: feminist perspectives on Australia, 1788-1978, Melbourne, Fontana/Collins, 1980, pp.388-402.

Tolpin, M., 'The daedalus experience: a developmental vicissitude of the grandiose fantasy' in J.E.Gedo et al (eds.), Annual of Psychoanalysis vol.2, New York, International Universities Press, 1975, pp.213-28.

- Tolpin, M., 'On the beginnings of a cohesive self: an application of the concept of transmuting internalization to see the study of the transitional object and signal anxiety', in A.Freud et al (eds.), Psychoanalytic Study of the Child, vol.26, New York, Quadrangle, 1972, pp.316-52.
- Truman, T., 'A reply to Mr Santamaria's commentary', APSA News, vol.5, no.1 (February 1960), pp.7-12.
- Truman, T., 'Reply to Mr Santamaria', APSA News, vol.5, no.2 (May 1960), pp.23-5.
- Vonwiller, O.V., 'Herbert Vere Evatt', Union Recorder, vol 45, no.28 (25 November 1965), pp.246-7.
- Wallace, A.C., 'Dr H.V.Evatt, M.A., L1D. (barrister-at-law)" champion of the victimised railway and tramwaymen of 1917', in H.V.Evatt, The 1917 railway strike and the aftermath, Sydney, printed by the Worker Trade Union Print, 1924, pp.3-5.
- Warbey, W.N., 'San Francisco', New Statesman and Nation, vol.29, no.739 (21 April 1945), pp.256-7.
- Weber, M., 'Politics as a vocation', in H.H.Gerth and C.Wright Mills (eds.), Max Weber: essays in sociology, New York, Galaxy, 1958, pp.77-128.
- Windeyer, W.J.V., 'The king and his dominion governors', by H.V.Evatt, Sydney Morning Herald, 29 July 1936, p.12.
- Wolf, E.S., Gedo, J.E. and Terman, D.M., 'On the adolescent process as a transformation of the self', Journal of Youth and Adolescence, vol.1, no.3 (1972), pp.257-72.

Wyndham, C.S., 'Wyndham's tributes', ALP News (NSW), new series 68 (16 November 1965), p.3.

Zines, L., 'Mr Justice Evatt and the constitution', Federal Law Review, vol.3 (1968-69), pp.153-86.

Journal and magazine articles by Evatt

Evatt, H.V., 'Alteration of the Constitution', Australian Law Journal, vol.16, No.6 (16 October 1942), pp.160-3.

Evatt, H.V., 'Amending the constitution', Res Judicatae, vol.1, no.3 (1927), pp.264-7.

Evatt, H.V., 'Australia on the home front, 1914-1918', Australian Quarterly, vol.9, no.1 (March 1937), pp.68-75.

Evatt, H.V., 'Australian cricket: its control and organisation', Wisden's Cricketers' Almanack, (1935), pp.255-8.

Evatt, H.V., 'Australian democracy was born at Eureka', Fifty years of labor, Sydney, issued by the ALP golden jubilee committee, 1940, pp.30-1,65.

Evatt, H.V., 'The Australian way of life', Life, vol.14, part 1 (1 February 1943), pp.55-7.

Evatt, H.V., 'Australia's approach to security in the Pacific', in K.M.Panikkar, Regionalism and world security, Bombay, Oxford University Press, 1948, pp.13-24 (also appears in India Quarterly, vol.2, no.1 (January 1946), pp.3-11)

Evatt, H.V., 'Australia's part in the creation of Israel', Australian Jewish Historical Society Journal, vol.5, part 4 (1961), pp.153-70.

Evatt, H.V., 'D.G.Bradman, 1927-37: an Australian view', Wisden's Cricketers' Almanack, (1938), pp.57-65.

Evatt, H.V. and Dart, R.A., 'College life', Calendar of St Andrews College, (1918), pp.29-30.

Evatt, H.V., 'Competing equitable interests in Torrens system land', Australian Law Journal, vol.4, no.1 (15 May 1930), pp.4-7.

Evatt, H.V., 'Constitutional interpretation in Australia', University of Toronto Law Journal, vol.3, no.1 (1939), pp.1-23.

Evatt, H.V., 'Control of labor relations in the commonwealth of Australia', University of Chicago Law Review, vol.6, no.4 (June 1939), pp.529-51.

Evatt, H.V., 'Corroboration in criminal cases', Weekly Notes, vol.14, no.51 (14 November 1916), pp.201-3.

Evatt, H.V., 'Creating New States', New States for Australia, Sydney, Australian Institute of Political Science, 1955, pp.64-75.

Evatt, H.V., 'Cricket and the British Commonwealth', Wisden Cricketers' Almanack, (1949), pp.111-6.

Evatt, H.V., 'Cricket: a review of the season', Fortian, vol.13, no.10 (May 1911), pp.153-4.

Evatt, H.V., 'The discretionary authority of dominion governors', Canadian Bar Review, vol.18, no.1 (January 1940), pp.1-9.

Evatt, H.V., 'Economic rights in the united nations charter', Annals of the American Academy of Political and Social Science, vol.243 (January 1946), pp.4-5.

Evatt, H.V., 'Editorial: the college and the university', St Andrew's College Magazine, no.11 (August 1914), pp.1-3.

Evatt, H.V., 'Editorial: being a rambling and inconsequent article on certain aspects of the war as they affect us', St Andrew's College Magazine, no.12 (December 1914), pp.1-3.

Evatt, H.V., 'Editorial', St Andrew's College Magazine, no.13 (November 1915), pp.1-4.

Evatt, H.V. and Woodward, E.A., 'Editorial', Hermes, vol.22, no.3 (November 1916), pp.75-8.

Evatt, H.V., 'A "Fair rent" experiment in New South Wales', Journal of the Society of Comparative Legislation and International Law, third series, vol.2, part 1 (January 1920), pp.10-20.

Evatt, H.V., 'Football: a review of the season', Fortian, vol.14, no.4 (October 1911), pp.62-3.

Evatt, H.V., Foreword' in J.B.Chifley, Things worth fighting for: speeches by Joseph Benedict Chifley, Carlton, Melbourne University Press, 1952, pp.v-vii. Evatt, H.V.,

- `Foreword' in You and the United Nations, Canberra, issued by the department of external affairs, 1949, pp.5-7.
- Evatt, H.V., `On getting a "pair"', Fortian, vol.12, no.8 (1 March 1910), pp.85-6.
- Evatt, H.V., `History of federal arbitration', Australian Quarterly, vol.9, no.3 (September 1937), pp.16-21.
- Evatt, H.V., `In memoriam: Morven Kelynack Nolan', Hermes, vol.24, no.2 (August 1918), pp.167-8.
- Evatt, H.V., `The international responsibility of states in the case of riots or mob violence: a study of the Kalgoorlie riots case, 1934', Australian Law Journal, vol.9, supplement (November 1935), pp.9-28.
- Evatt, H.V., `Introduction' in B.Fitzpatrick, British imperialism and Australia, 1783-1833, London, George Allen and Unwin, 1939, pp.7-11.
- Evatt, H.V., `Introduction', in R.Carboni, The Eureka stockade, Windsor, Lloyd O'Neil, 1980 (1855), pp.vii-xl.
(An abridged text appears as, `The Eureka stockade', Overland, Eureka centenary no.2, (Summer 1954-5), pp.3-8.)
- Evatt, H.V., `Introduction', in S.Barnes, It isn't cricket, Sydney, Collins, 1953.
- Evatt, H.V., `Introduction', in J.Burton, The light glows brighter, Sydney, Morgan's Publications, undated, p.5.
- Evatt, H.V., `The judges and the teachers of public law', Harvard Law Review, vol.53, no.7 (May 1940), pp.1145-63.

Evatt, H.V., 'The judiciary and administrative law in Australia', Canadian Bar Review, vol.40, no.4 (April 1937), pp.247-69.

Evatt, H.V., 'The jury system in Australia', Australian Law Journal, vol.10, no.6 supplement (15 October 1936), pp.49-77.

Evatt, H.V., 'Mr Justice Cardozo', Yale Law Journal, vol.48, no.3 (January 1939), pp.375-8. (Also appears in Columbia Law Review, vol.39, no.1 (January 1939), pp.357-60, and Harvard Law Review, vol.52, no.3 (January 1939), pp.357-60.)

Evatt, H.V., 'The legal foundations of New South Wales', Australian Law Journal, vol.11, no.10 (18 February 1938), pp.409-24.

Evatt, H.V., 'Notes (abridged) on the three safeguards', in D.A.S. Campbell (ed.), Post-war reconstruction in Australia, Sydney, Australasian Publishing, 1944, pp.324-42.

Evatt, H.V., 'The organisation of the Australian foreign service', Journal of Public Administration, vol.7, no.1 (September 1944), pp.3-9.

Evatt, H.V., 'Our freedom of expression', Overland, no.5 (Spring 1955), p.2.

Evatt, H.V., 'Out of the deep', St Andrew's College Magazine, no.15 (October 1917), pp.10-2.

- Evatt, H.V., 'Peace must be more than an absence of war', Labor Digest, vol.1, no.7 (September-October 1945), pp.1-5.
- Evatt, H.V., 'Preface', in D.W.A.Baker (ed.), The facts of the Bandung conference, Sydney, printed by Liberty Press, 1955.
- Evatt, H.V. and Bavin, T.R., 'Price-fixing in Australia during the war', Journal of Comparative legislation and international law, third series, vol.3, part 4 (1921), pp.202-12.
- Evatt, H.V., 'Problems of the Pacific', Free World, vol. 5 (June 1943), pp.490-4.
- Evatt, H.V., 'Professor Peden as a teacher of constitutional law', in T.R.Bavin (ed.), The jubilee book of the law school of the university of Sydney, 1890-1940, Sydney, Printed by Halstead Press, 1940, pp.34-7.
- Evatt, H.V., 'Proposed "war memorials" section of the union archives', Hermes, vol.22, no.3 (November 1916), p.109.
- Evatt, H.V., 'Reconstruction and the constitution', in D.A.S.Campbell (ed.), Post-war reconstruction in Australia, Sydney, Australasian Publishing, 1944, pp.238-90.
- Evatt, H.V., 'Risks of a big-power peace', Foreign Affairs, vol.24, no.2 (January 1946), pp.195-209.
- Evatt, H.V., 'The seven age of a schoolbag', Fortian, vol.12, no.7 (1 February 1910), p.84.

Evatt, H.V., 'Since the last war, decline in living standards: a ruthless analysis', in F.Clancy, They built a nation, Sydney, New Century Press, 1939, foreword.

Evatt, H.V., 'Some legal aspects of industrial arbitration in the commonwealth of Australia', Arbitration Journal, vol.3, no.3 (July 1939), pp.356-77.

Evatt, H.V., 'Stray notes on J.M.Syngé', Hermes, vol.22, no.1 (May 1916), pp.27-9.

Evatt, H.V., 'Trial of Socrates: the mural sculpture of Tom Bass', Meanjin, vol.16, no.1 (Autumn 1957), pp.44-8.

Evatt, H.V., 'The union', Hermes, vol.21, no.3 (November 1915), p. 113.

Evatt, H.V., 'The union', Hermes, vol.22, no.1 (May 1916), pp.14-5.

Evatt, H.V., 'The union', Hermes, vol.22, no.2 (August 1916), pp.45-6.

Evatt, H.V., 'The United Nations and the making of peace', International Conciliation, no.445 (November 1948), pp.667-80.

Evatt, H.V., 'Welfare in the Pacific', Australia To-day, no.42 (26 October 1946), pp.91-5.

Newspaper articles

Anon., 'Political portraits: III.- the big four in labour: men who held team together', Sydney Morning Herald, 19

August 1943, p.3. (Later issued in the publication, anon., Men, parties and politics: being articles published in "The Sydney Morning Herald" during the federal election campaign in August, 1943, Sydney, John Fairfax and Sons, 1943.)

Blainey, G., 'A shrine of Saturday paradise', Herald (Melbourne), 29 August 1985, p.7.

Burton, J., 'Petrov', National Times, 28 September-4 October 1984, p.11.

Curnow, H., 'Indomitable women: Mrs. Mary Evatt', Daily Telegraph, 19 March 1968, pp.26-7.

Hastings, P., 'Bruce versus 'blood and thunder' Evatt', Sydney Morning Herald, 25 October 1977, pp.7-8.

McKenzie, C.J., 'The doc - he was just a soft old toughie', Sunday Telegraph, 23 September 1979, pp.15,18.

O'Connor, K., 'Evatt: he's a rum historian', Sun (Melbourne), 2 January 1958, p.8.

West, A., 'True believers in a strange land', Sydney Morning Herald, The Northern Herald, 8 September 1988, pp.1,14.

Newspaper articles by Evatt

Evatt, H.V. (using the pseudonym of 'Not at all'), 'Australian nationalism and imperial federation', Australian Worker, vol.26, no.22 (31 May 1917), p.19.

Evatt, H.V., 'The commonwealth at war: new stage in imperial relations: improved communication', The Times, 30 May 1942, p.5.

Evatt, H.V., '"Curtin was right on Burma"', Herald (Melbourne), 13 November 1950, p.7.

Evatt, H.V., 'Danger to all citizens', Herald (Melbourne), 6 May 1950, p.4.

Evatt, H.V., 'End it rather than mend it', Labor Daily, 13 February 1925, p.5.

Evatt, H.V., '11: planning to provide social security: proper use of wider powers', Sydney Morning Herald, 2 August 1944, p.2.

Evatt, H.V., 'Post-war reconstruction: internal and international aspects of the referendum: peoples control of parliament', Sydney Morning Herald, 18 August 1944, p.2.

Evatt, H.V., 'Your 'yes' tomorrow means progress', Daily Telegraph, 18 August 1944, p.8.

Evatt, H.V., 'What is this freedom? 1: confusion on referendum issues: Australia not tolerant of extremes', Sydney Morning Herald, 1 August 1944, p.2.

Newspapers

Age

Argus

Australian

Australian Worker

Daily Telegraph

Herald (Melbourne)

Maitland Daily Mercury

Sydney Morning Herald

The Times

Theses and other unpublished work

Allan, L., 'A party in disarray - Victorian labor after the split, 1955-1965', unpublished M.A. thesis, university of Melbourne, 1980.

Alomes, S., 'Reasonable men': middle class reformism in Australia, 1928-1939', unpublished Ph.D. thesis, Australian national university, 1979.

Bass, T., 'University of Melbourne: Wilson hall sculptures', 10 April 1959, unpublished typescript, university of Melbourne dental science library.

Bulkeley, P.J., 'The Australian - New Zealand agreement 1944', unpublished honours thesis, university of New South Wales, 1969.

Chapman, L.E.H., 'Dr H.V. Evatt, the Sydney Morning Herald and the Communist party dissolution act', unpublished honours thesis, university of New England, 1971.

Drake-Brockman, T.Q., 'The Australia - New Zealand agreement, 1944', unpublished honours thesis, university of New South Wales, 1969.

Dunn, M.G.L., 'The royal commission on espionage, 1954-5', unpublished Ph.D. thesis, university of Adelaide, 1979.

Helman, J.W.B., 'Australia and the United Nations from 1945 to 1949 - the role of a small power in the world organization', unpublished honours thesis, university of Queensland, 1959.

Jex, A., 'A study of Evatt and the Manus problem', unpublished honours thesis, university of New South Wales, 1974.

Kawaja, M., 'Australia and the Palestine question', unpublished honours thesis, Australian national university, 1987.

Kelly, B., 'The early years: Australian foreign policy towards Latin America, 1941-49, unpublished paper, 1986.
'Merlin', 'H.V.Evatt and Australian-American relations', Samuel Milner prize, university of Sydney, 1967.

Oakes, H.R.G., 'The episcopate of E.H.Burgmann to 1947', unpublished M.A. thesis, Australian national university, 1966.

Plant, J.D.E., 'The origins and development of Australia's policy and posture at the United Nations conference on international organization, San Francisco - 1945',

unpublished Ph.D. thesis, Australian national university, 1967.

Teepel, 'Dr H.V.Evatt and the presidency of the United Nations general assembly', unpublished honours thesis, university of New South Wales, 1974.

Wesley-Smith, P., 'Herbert Vere Evatt and the high court of Australia', unpublished honours thesis, university of Adelaide, 1969.

Theses and other unpublished work by Evatt

Evatt, H.V., 'Certain aspects of the royal prerogative: a study in constitutional law', Ph.D. thesis, university of Sydney, 1924 (published as Evatt, H.V., The royal prerogative, Sydney, Law Book co., 1987)

Evatt, H.V., 'Mr Justice Long Innes', unpublished paper held privately by Mrs C.Weaver, undated.

Evatt, H.V., 'The "play within the play" in the Elizabethan drama', university of Sydney Wentworth medal for undergraduates' English essay, 1913.

Evatt, H.V., 'The possibility of a standard of merit in literature', university of Sydney Wentworth medal for undergraduates' English essay, 1914.

Evatt, H.V., 'Social and political tendencies in Australia', unpublished M.A. thesis, university of Sydney, 1917.